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Senate

The Senate met at 1 p.m., and was called to order by the Honorable E. BENJAMIN NELSON, a Senator from the State of Nebraska.

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Almighty God, Sovereign of this Nation and Lord of our lives, grant us Your peace for the pressures of this week. May Your peace keep us calm when tensions mount and serene when strain causes stress. Remind us that You are in control and that there is enough time to do what You want us to accomplish.

Fill this Senate chamber with Your presence. May we hear Your whisper in our souls: ''Be not afraid; I am with you.'' Bless the women and men of this Senate with a special measure of Your strength for the demanding schedule ahead. You are our Lord and Saviour. Amen.

PLEDGE OF ALLEGIANCE

The Honorable E. BENJAMIN NELSON led the Pledge of Allegiance as follows:

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

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, September 30, 2002.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable E. BENJAMIN NELSON, a Senator from the State of Nebraska, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mr. E. BENJAMIN NELSON 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.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business not to extend beyond the hour of 2 p.m., with the Senators permitted to speak therein for up to 10 minutes each.

Under the previous order, the first half of the time shall be under the control of the majority leader or his designee.

The Senator from Nevada.

SCHEDULE

Mr. REID. Mr. President, originally we had announced there would be a vote this afternoon, but there will not be a vote today. The first vote will be approximately 12 p.m. on Tuesday on cloture on the Gramm-Miller amendment on homeland security.

I ask unanimous consent notwithstanding rule XXII, first degree amendments may be filed until 3 p.m. today and the live quorum with respect to the cloture motion filed be waived; further, the cloture vote on the Gramm-Miller amendment No. 4738 occur at 12 p.m. tomorrow, without further intervening action or debate.

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

MEASURES PLACED ON THE CALENDAR—S.J. RES. 45, S. 3009, AND H.R. 4691

Mr. REID. Mr. President, I understand that S. 3009, H.R. 4691, and S.J. Res. 45, are now at the desk, having been read the first time. Is that right?

The ACTING PRESIDENT pro tempore. The Senator is correct.

Mr. REID. I ask unanimous consent it be in order for these bills and joint resolutions, en bloc, to receive a second reading, but then I would object to any further consideration.

The ACTING PRESIDENT pro tempore. The clerk will read the titles of the resolution and the bills for the second time.

The legislative clerk read as follows:

A resolution (S.J. Res. 45) to authorize the use of United States Armed Forces against Iraq.

A bill (S. 3009) to provide economic security for America's workers.

A bill (H.R. 4691) to prohibit certain abortion-related discrimination in governmental activities.

The ACTING PRESIDENT pro tempore. Objection having been heard, the resolution and bills will be placed on the calendar.

ORDER OF PROCEDURE

Mr. REID. Mr. President, Senator LANDRIEU is in the Chamber to report to the Senate on the devastation of the hurricane that struck her State. I ask unanimous consent she have the full 30 minutes, which would extend the time to 1:35 and then the minority have their full 30 minutes.

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

TROPICAL STORM ISIDORE

Ms. LANDRIEU. Mr. President, I come to the floor today regarding Tropical Storm Isidore, which made landfall last Wednesday just south of New Orleans and dumped nearly 25 inches of rain in 24 hours. This massive and destructive storm brought winds of 60 miles per hour to Southeast Louisiana and a storm surge of up to 6 feet.

I was able to see the flooding firsthand when I traveled to Louisiana on Thursday with the FEMA Director, Joe Allbaugh, to survey the damage.

I was relieved and grateful to learn that on Friday, the President declared a Federal disaster for the area. This declaration triggered the release of Federal funds to bring much-needed recovery assistance to the towns, communities, businesses, and citizens that suffered great loss. I would like to thank President Bush and FEMA Director Joe Allbaugh for their support of Louisiana's recovery efforts.

Although the final cost of Tropical Storm Isidore is still being determined, Louisianans know all too well the damage a storm on this particular path can bring. Had this storm reached the level of strength earlier predicted, it would have been a category 3 hurricane, packing winds of 130 miles per hour and a storm surge of up to 12 feet.

As nearly all of New Orleans area rests below sea level, a hurricane of that magnitude alone on the path that Tropical Storm Isidore has taken would devastate southeast Louisiana.

In Louisiana and throughout the Gulf South, we deal with the threat of hurricanes every year. From all reports, this storm could have been much worse, and we are thankful it was not. But I must take this opportunity to bring to light what is at stake when a hurricane or storm takes aim on the Louisiana coast. Not only is the safety, lives and property of Louisiana residents at risk the Nation's critical energy infrastructure and energy supply as well as crucial conservation measures are in danger.

Tropical Storm Isidore should serve as a wake-up call to the Federal Government, which must do more to protect the nation's resources in Louisiana.

Because the City of New Orleans is below sea level and surrounded by levees, every drop of rain that lands there must be pumped out. This important job is accomplished by local, State, and Federal agencies working together to ensure that the necessary infrastructure is in place and working much of this work is done by the U.S. Army Corps of Engineers. However, in the President's budget request submitted to Congress this year, funding for the southeast Louisiana Flood Control Project, (SELA), was cut by an astonishing 50 pecent.

The SELA flood control project is a smart investment. By investing in these flood control projects, we could prevent the expenditure of hundreds of millions of dollars that will otherwise be spent in Federal flood insurance claims and other disaster assistance programs. Fortunately, the Senate Appropriations Committee understands this investment and has approved an increase for this project, which will allow the construction already underway to continue. However, this is not enough. I urge the administration to rethink its priorities and to include sufficient funding for the SELA project in its budget request for fiscal year 2004.

Although protecting life and property should be reason enough to invest in infrastructure in Louisiana, there is an even bigger problem that faces the entire Nation when severe flooding occurs in South Louisiana. More than 80 percent of the Nation's offshore oil and gas is produced off Louisiana's coast and 25 percent of all the Nation's foreign and domestic oil comes across Louisiana's shores by tanker, barge or pipeline. In fact, according to the Minerals Management Service, (MMS), of the 571 million barrels of oil produced from the Outer Continental Shelf in 2001, 502 million were produced offshore Louisiana. That translates to 88 percent of production.

Let me also tell you all about a very special highway in south Louisiana. This highway also happens to be a main artery for the Nation's energy supply. This highway is aptly named Louisiana Highway 1. Nearly one-fifth of the Nation's entire energy supply depends on Louisiana 1, and we cannot continue to leave its future to the whims of mother nature.

Louisiana Highway 1 connects Port Fourchon, Louisiana with the rest of the country. Why is it important? Consider these facts: 85 percent of the deep-water drilling rigs working in the Gulf are supported by Port Fourchon; the Department of Interior's Mineral Management Service has identified Port Fourchon as the focal point of deep-water activity in the Gulf; it is estimated that Port Fourchon services approximately 16 percent of the U.S. domestic crude oil; natural gas production and imported crude oil; the Gulf of Mexico has 20,000 miles of pipelines, which is the most extensive network of offshore oil and gas pipelines in the world; Louisiana 1 is the only road servicing Port Fourchon, and it spends heavy rain days underwater; Louisiana 1 is the only means of land access to the Louisiana Offshore Oil Port, (LOOP); LOOP is the only offshore oil terminal in the United States and alone is responsible for 13 percent of the United States' imported crude oil. LOOP transports approximately one million barrels of foreign oil a day and approximately 300,000 barrels of domestic crude from the Gulf of Mexico Outer Continental Shelf. The U.S. Army Corps of Engineers estimates that 60 percent of all the Louisiana offshore drilling over the next 30 years will be in the service area of Port Fourchon. –In the event of a hurricane, this lonely little road is the way out for tens of thousands of my constituents.

Last year, after giving a similar speech on this floor about the critical importance of Louisiana 1, it was finally designated as a federal ''high priority corridor.'' But Louisiana 1, like much of south Louisiana, is washing away, and we must act now to preserve it. You can see from this picture that even without a severe hurricane, this highway is in a precarious situation. Can you imagine what would happen if a hurricane hit us head on? It would be gone, and there would be great difficulty in servicing one-fifth of our nation's energy supply. I urge the administration and my Congressional colleagues to think about these facts and to invest more resources in critical improvements to this and other highway systems in south Louisiana.

Year after year, revenues from the oil and gas production off the coast of my State provides most of the funds for the Land and Water Conservation Fund but receives precious little in return. Since 1968, and for most of the life of the Land and Water Conservation Fund, OCS revenues have served as the primary source of funding. In fact, since 1990, OCS funds have accounted for more than 90 percent of the deposits in the Land and Water Conservation Fund each year.

While approximately 80 percent of the OCS revenues collected during this period came from offshore Louisiana, only 1.1 percent, $27 million, of the total Federal side Land and Water Conservation Fund allocated during this period actually went toward Louisiana. On the other hand, 23 percent, $650 million, of the funding allocated during this period from the Federal side of the fund went to California, but only 4 percent of the total OCS funds during this period came from offshore California. In addition, 11 percent, $327 million, of the funding allocated during this period went toward Florida but no OCS revenues come from offshore Florida. The Nation must beware. Louisiana cannot continue to serve as the Nation's energy and conservation platform for much longer without adequate revenue sharing and investment. If we do make these investments, there could be severe consequences to both the State and the Nation.

So, what is at stake? The wetlands in Louisiana that have vanished so far represent an area the size of Rhode Island. Every 30 minutes, a parcel of low lying land the size of a football field disappears. If current trends continue, this will result in the loss of nearly 40 percent of our Nation's coastal wetlands. Not only do these wetlands and barrier islands offer invaluable protection from hurricanes and storms such as Isidore for more than 2 million people living in the coastal zone, including the City of New Orleans, they also protect our Nation's energy infrastructure so much of which is found in Louisiana's coastal zone. Here one will find not only LOOP but also two storage sites for the Strategic Petroleum Reserve (SPR) and Henry Hub, one of the Nation's major natural gas distribution centers.

From Wednesday to Friday of last week, MMS estimated that 4.5 million barrels of oil and 25 billion cubic feet of natural gas were unavailable for U.S. consumption because of Isidore. With over 4,000 oil and gas platforms in the Gulf, storm events such as Isidore

threaten 95 percent of crude oil and 60 percent of natural gas production from offshore federal lands. Louisiana's rapidly eroding wetlands are invaluable in absorbing the surge of storm events like Isidore. Without them, one can only imagine the damage a hurricane could wreak on South Louisiana and the nation's energy infrastructure.

One-third of the commercial fish harvested in the lower 48 States comes from Louisiana's coastal zone. As Louisiana's coastal wetlands disappear, so will these fisheries.

Louisiana's wetlands are home to the Nation's largest flyway, serving as habitat for more than five-million birds and many endangered species. As the wetlands wash away this habitat is lost. Also, they act as a buffer for the number one port system in the United States that moves the Nation's goods from middle America to world markets.

Louisiana takes pride in its role as the country's most crucial energy provider. Ours is a state rich in natural resources. However, given the contribution my State makes to the Nation, it is time for the Nation to carefully consider its deficient investment in South Louisiana and the Gulf Coast Region and to consider what would happen if, God forbid, a major hurricane travels the same path as Tropical Storm Isidore. The Land and Water Conservation Fund is just one example of a Federal revenue stream that will suffer. It is long past time for the Federal Government to adequately and fairly invest in a State that gives so much to the rest of the country.

As I said a few moments ago, Tropical Storm Isidore should serve as our wake-up call. The examples I mentioned today, the SELA flood control project, Louisiana Highway 1 and other highways such as Interstate 49, and our Nation's wetlands, are too important to ignore.

It is too early to tell what the final damage will be from Tropical Storm Isidore. However, one thing is guaranteed: it will not be the last. Let us act now to invest in the infrastructure necessary to protect the life and property of our citizens.

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

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

THE SENATE AGENDA

Mr. THOMAS. Mr. President, I rise to talk a little bit about what I think is the future of some of the things that are being talked about in terms of this Senate session which probably will expire in 2 weeks, and the many things that we have to do prior to that time.

Some of the things that are being talked about seem to me to be a little contradictory from time to time. I guess my hope is that we can together, of course, based on the leadership in the Senate, set some priorities, make some decisions, and accomplish some of the things that are necessary for us to accomplish prior to the recess.

Clearly, we have to do something about homeland defense. I can't imagine anything that is more important to us than to complete this discussion and allow the President to establish what is necessary for homeland defense. It is interesting. It reminds us. This morning, for example, over in the Hart Senate Office Building, we were told we couldn't leave our offices and no one could come in because there was a suspicious package over there on the floor. It reminds us that there is indeed a continuing threat of terrorism which we need to do something about.

Clearly, we have to make some decisions with regard to our position on Iraq. Whatever that decision is, it seems to me it is terribly important that Congress join with the President, and that we make some decisions which cause something to happen there. Hopefully, it will be some kind of a peaceful settlement. But that isn't going to happen—and it hasn't happened for years—until we do something that is very definitive. We can do that.

We clearly have to do something about defense appropriations. I suspect that we will end up—and I have no problem with that—with a continuing resolution for the rest of the appropriations, none of which we have passed at this time, so they can continue at last year's level until whenever—November or February. Defense appropriations and military construction have to be changed because the demands are higher for more money, and we can't go on last year's numbers.

These certainly are some of the things we must do. Then we have to have this continuing resolution.

I hope we will get back to this matter of homeland defense. The President made a recommendation, and the House passed a bill. It is something that is unusual, it is something that is different, and it is something patterned after the threats up to now. I think it has to have management flexibility.

That has been one of the controversial points—organizational flexibility, putting together a Department made up of a number of different departments that have had these specific responsibilities and bring it together so it will be coordinated.

Some of the things we are finding that might have been done better prior to September 11 will be done better in the future. We can do that. We have to assign personnel responsibilities, do budget transfers, and do many of these things that pretty clearly need to be done.

I think one of the interesting things that has happened in recent times because of Iraq and terrorism discussions and home defense discussions is that on homeland defense we see an effort being made increasingly to shift the division from the economy to these issues. I think both of these issues are very important. But when you have threats and you have terrorism, you aren't able to choose the time. When it is there, you have to do something about it.

Some of the talk, particularly in the media, I suppose comes basically from here. It has been interesting. One of the columnists in my home State of Wyoming—one of the few liberal columnists—has written one that I think is interesting. The first point he makes is that President Bush, in his campaign, was for bringing troops home. At that time, that was a reasonable thing to do. We were deployed over the world and beyond where we needed to be.

Now he said the contradiction is that he is willing to commit thousands of young people overseas. Times have changed. September 11 changed things. September 11 indicated to us that there is a different kind of threat from terrorism, and indeed a different kind of war in this world than there was before. Should our position change? It seems to me that it should.

Then he goes on to talk a little bit about the fact that the administration hasn't even shown the need to do this. It seems to me, if you go back and examine what happened in the last 10 years in Iraq, it is pretty clear that the agreements that were made after the 1991 war have not been lived up to. And that is the basis for the kind of threat we have now. It is pretty clear.

It is very interesting. He goes on to say we should never attack anyone unless we have been attacked. I wonder if he has forgotten the 3,000 people who died in New York City. It shows the different changes that have taken place. Years ago, an attack was by 17 divisions with tanks and landing barges. That is what you defended yourself against. That is not the case now. The case is you can bring some kind of a secret thing into a building in New York City and kill 3,000 people.

We are having some strange conversations—all of them valid. We need to go through it. We also hear from some of our friends on the other side of the aisle that we are no longer paying any attention to the economy.

I simply say that I believe we ought to review where we have been and where we could have been—and the number of things talked about here that have an impact on the economy that the leadership has not brought up, and has not been willing to go forward on. One of them is the budget. It is the first year in 20-some years that we haven't had a budget; that has something to do with an economy, of course.

Policy for energy: We have been moving along, but we still haven't gotten an energy policy. It is one of the things that most impacts both our economy and our safety against terrorism. We are hoping to get that. There is still no movement there.

Terrorism insurance on buildings, for example: We have reduced the ability of people to invest their money to help

the economy. We haven't done anything with that.

Tax permanency and doing something about the estate tax so people will be more willing to invest their money—they don't want to do that, and they haven't brought it up. We need to be sure to take those items out of the committees.

Limits on liability, tort reform—that has something to do with the economy—we could do that. The leadership has chosen not to bring that up. So there are many things where there seems to be a contradiction.

All of us want to pass homeland security legislation. No one in this Chamber does not want to accomplish that. And we want to make it work. To do that, we need to move forward. There is no one in this body who does not want to see our economy strengthened, making life better for everyone in this country.

We have to make some decisions. We have to have some movement instead of being 4 weeks on the same thing and having not accomplished it.

Mr. President, I certainly hope we can move forward. I think all of us want to do that. We have a couple weeks in which to do it. Now is the time.

I yield the floor.

The ACTING PRESIDENT pro tempore. Who yields time?

The Senator from Utah.

Mr. BENNETT. Mr. President, may I inquire as to the parliamentary situation? Are we in morning business?

The ACTING PRESIDENT pro tempore. We are in morning business for 20 more minutes, according to the order.

Mr. BENNETT. For another 20 minutes?

The ACTING PRESIDENT pro tempore. The Senator is correct.

Mr. BENNETT. I thank the Chair and ask unanimous consent that I be recognized for the next 20 minutes.

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

THE ECONOMY

Mr. BENNETT. Mr. President, we have had a lot of discussion on this floor about the economy recently. Since we are in an election period, we have a lot of discussion on the campaign trail about the economy, with a number of questions being raised—in raised voices—as often happens during a campaign.

One of the questions we have heard thunder forth on this floor is: Who lost the surplus? Where did the Government surplus go? Those who ask the question almost always answer it by saying: It was the Bush tax cut that destroyed the surplus. And it is the Bush tax cut that causes us now to be in deficit.

As I have contemplated responding to this, my mind has gone back to an old Peanuts cartoon. Charlie Brown and Lucy are having a conversation. In the first panel, Lucy is complaining about various problems in her life. In the second panel, Charlie Brown says: Yes, Lucy, life does have its ups and downs. In the third panel, Lucy makes her position very clear. She says: I don't want any downs. I only want ups. And in the fourth panel, she is marching off saying: Nothing but ups, ups, ups. And Charlie Brown responds with the time-honored comment: Good grief.

There are many people who view our economy the same way Lucy does. They do not want ups and downs; they just want ups: a continuum, as far as the eye can see, of years that are better economically than the years before.

There was a period of time, in the 1990s, when we were in the longest sustained expansion of our history, where people were saying: Lucy has finally got her wish. We have nothing but ups.

During that period, I had the opportunity to talk with Alan Greenspan when he appeared before the Banking Committee. I asked him the question—not necessarily in Lucy Van Pelt terms—but I said to him: Have we repealed the business cycle? As we look at the strength of the economy, and all of the years that are ups, have we now reached the point when the business cycle will not kick in and we will not see a downturn?

Well, Mr. President, as you know, Alan Greenspan is one who spoke of the new economy, who spoke of structural changes in the economy as a result of the information age and the application of technology to our decision making. But when I asked him the question with respect to the business cycle, he smiled that wry smile of his and said: No, Senator, we have not repealed the business cycle; it will still manifest itself in the years ahead. And it has.

I brought this chart to the Chamber to demonstrate when the business cycle started to give us a ''down.'' You can see, in the third quarter of 1999, we were still in a strong ''up'' mode. In the fourth quarter, Christmastime, it was strong. While we did not do so well in the first quarter of 2000, we were still in the very strong ''up'' territory.

But by the third quarter of 2000, all of a sudden we were down dramatically. We were still not in a recession, because a recession technically is when the economy is shrinking rather than growing, but there was very anemic growth, indeed, of 0.6 percent in that quarter.

You get to the fourth quarter, Christmastime, where before you were up with a growth of 7.1 percent, and now you have a growth of 1.1 percent. It was not a recession technically, but it certainly felt like one.

Before, we had been in strong territory, through the 1990s and on into the first half of 2000, and suddenly we were down in this weak territory in the last half of 2000.

In the first quarter of 2001, we slipped into red territory and negative growth, minus 0.6 percent growth in the first quarter; minus 1.6 percent growth in the second quarter; coming back out of the business cycle, minus 0.4 percent growth in the third quarter; and then, in the fourth quarter of 2001, back into positive territory again.

In the first quarter of 2002, we have strong growth again. Then we are back to 1.3 percent growth. But these cross-hatched areas show what the economists are predicting for the remainder of the year.

So we go from the stronger period of the ups that Lucy Van Pelt loves, then the business cycle comes again, we have a recession, and then we start to come out of it again.

To those who say: Where did the surplus go? and, Wasn't it eaten by the tax cut? I say the answer is very clear: It was eaten by the business cycle.

What causes the business cycle? What causes things that have been going well for so long to suddenly go wrong? There are several reasons. Let me try to discuss each one of them.

The first thing that causes the business cycle is, quite frankly, bad decisions—bad decisions on the part of policymakers in Government, bad decisions on the part of business men and women, bad decisions on the part of managers.

One of the reasons we have seen the severity of the business cycle tamp down a little, so that the swings are not nearly as wide as they used to be in my father's business days or my grandfather's business days, where we do not have anything like the panic of 1873, we do not have anything like the Great Depression of the 1930s anymore, is that business men and women have better access to information and, therefore, they make fewer mistakes.

The classic business cycle in the manufacturing world would run like this—this is oversimplified, but it illustrates the point. You open a factory, and you start to produce widgets. You can see I went to business school because in business school they always talk about widgets as the generic product.

All right. You open a factory. You start to make widgets. Let's say your widgets sell pretty well. As the sales reports come in, you, as the manager of the factory, the manager of that business, say: We need to build more capacity. We need to make more widgets because there is demand for widgets out there.

So you double your shift. You put on two shifts, and you are having twice as many widgets come out of your factory. Pretty soon, people say to you: The wear and tear on our machinery is such that we need to build a new factory to meet this demand for widgets. So you invest in a new factory, and you are back to one shift, but now you are producing something like three times as many widgets as you were before. And you are now in the ''up'' period because people who make the raw materials that go into widgets are selling them to you, they are paying their employees, they are buying raw materials

from their suppliers, and it is all running through the economy. There is prosperity.

While there is prosperity in the economy, there is prosperity in the Government, because all of the employees of all of these companies being hired to help you make more and more widgets are paying taxes on their income. They are paying taxes on the profits they make in selling supplies and other material to the widget maker.

Then one day, someone walks into your office as the head of that widget company and says: Have you noticed how many widgets we have in the storeroom? Have you noticed how big our inventory of widgets has gotten? We have so many extra widgets that we have not shipped that we need to shut the factory down until we work off the excess inventory. We need to shut down at least half of our capacity until all the widgets in the storeroom have been cleared out and sold.

You made a wrong decision to keep manufacturing widgets when the demand started to fall off or level off. You didn't realize it was the wrong decision. It didn't feel like the wrong decision, as you expanded capacity, but now the proof is in the inventory. It is piling up on the back lot, and it is overrunning your storehouses.

You have so many extra widgets, you have to say: Shut the factory down; mothball the extra factory we built because we are not going to be returning to that for quite a while; lay people off until we can get rid of all of the excess widgets we have.

So you go into the downside of the business cycle. You go into a recession. And as you stop manufacturing widgets, you stop ordering raw materials from all your suppliers, and they stop ordering goods and services from the people who supply them. And those people get laid off, and the Government doesn't get any taxes because none of those employees is taking home a paycheck. Indeed, they are now drawing unemployment compensation so the Government is seeing more money go out at the very time less money is coming in, and the Government starts to run deficits. We are in a recession and everybody gets concerned. Gloom and doom overhang the economy.

Then one day the same person who walked into your office and said, do you know how many widgets we have in the storeroom, walks into your office and says: Do you know how bare the storeroom is? We have sold all of those widgets. We have sold all the widgets that were in the back lot. We have sold all the widgets that were in the warehouse. We don't have any widgets. There is still a demand for them out there. You better gear up the factory.

So you get on the phone and you call your workers back and you say: We have to gear up the factory.

Once again, you should have done it earlier, but you made a mistake. You had bad information. In the 1950s, in the 1960s, in the 1970s, you were dependent on hand counts of inventory, sales figures that were sometimes weeks, if not months, after the fact, and it was inevitable that even the best manager would make the wrong decision on the upside and make the wrong decision on the downside, which meant that the business cycle was more and more extreme by virtue of bad information.

The main contribution of the information revolution to the business world has been good information with which a manager can now say: Wait a minute. There is a softening in widget demand. We will eliminate the second shift, but we will continue to operate both factories.

Instead of the wild swings that we used to have in the business cycle, today's swings are narrower and softer, but they are still there because, inevitably, at some point, someone will overestimate sales and thereby build too much capacity and then, on the other end, underestimate sales and have to turn around, and you will get a business cycle.

In historic terms, this recession, outlined on this chart, is milder than any we have had. Those with memories go back to the recession that started in the early 1990s. That recession was much sharper and more difficult and more painful than this one has been. If you have an even longer memory, go back to the recession of the double dip in the early 1980s when we had economic devastation that would make these kinds of numbers look like paradise.

I remember being taught in school that 6 percent unemployment was full employment, that the economy could not absorb any more than 94 percent of the available workers and when you got to 6 percent unemployment, you were at full employment. In the 1990s, we got down in some parts of the country to 2 and 3 percent unemployment. There were times in my State where employers could not hang on to workers because there were so many jobs. They said: Our biggest problem is trying to get labor.

Interestingly, at the height of the latest recession, at the time of greatest difficulty in the job market, there was wringing of hands, weeping and wailing and gnashing of teeth because we hit 6 percent unemployment. The unemployment rate has started to go down now from 6 percent, after hitting that peak.

So in historic terms, this is a mild recession, but what comfort is that to people who have lost their jobs and, more importantly, to the issue I started out to discuss: How about the surplus and what has happened to the surplus and who lost the surplus?

You can anticipate my answer to that. The surplus was lost to the business cycle. I said there were several things that cause a business cycle. I have given you the one that happens within the business cycle itself.

The other is that outside things come along. The oil shock that hit us in the 1970s helped trigger difficult times. September 11 hit us just as we were struggling with the economic downturn and made it deeper and longer than it would otherwise have been. Outside shocks and outside circumstances can also trigger a business cycle.

So it is not just bad decisions on the part of business leaders; it is also outside problems. We had both of those hit at the same time. The business cycle turned us down, and then September 11 hit us. We have still not recovered from September 11.

I was speaking to a good friend in the hospitality industry. He said: After September 11, we were off 20 percent from the norm. This is an industry that is bigger than the automobile industry in its total impact on the economy.

I spoke to this leader over the weekend and said: Have you recovered yet?

He said: No, we have come back in relative terms. We are now only 10 percent down from the norm.

But in that industry, 10 percent is huge. We have seen airlines that are faced with bankruptcy because people are afraid to fly. They are filling their planes, but they are filling their planes with cut rates that can't possibly give them an adequate rate of return.

What happened to the surplus? What happened to the surplus is that the economy got hit with business cycle problems and with outside shocks simultaneously and, as I was describing in the widget business, when the economy gets hit, the Government gets hit. Tax revenues go down as business activities go down.

As these numbers remain strongly blue and go strongly blue into the future, the tax revenues will come back. They will come back by virtue of the strength of the economy.

The fundamental rule I want everyone to understand is this: Money does not come from the budget.

Money comes from the economy. We can pass any kind of budget we want. We can make any kind of projections we want. But we will be humbled by the realities of the marketplace every single time. Sometimes the marketplace will produce more revenue than we budgeted for. That is what happened in the 1990s. We budgeted, hopefully, to get to a balance by 2002, and the economy surprised us and took us not only to balance, but surplus, in 1999. We were then budgeting surpluses for as long as the eye could see. The economy said: No, you are forgetting the business cycle. That, plus the attack of the terrorists, threw us into this situation, and Government revenues went down, regardless of what we budgeted.

Let us understand, when we talk about what happened to the surplus, that it was not the passage of the tax cut that caused the surplus to disappear, it was not really much of anything we did here on the floor—except as we reacted to the two realities that hit us unexpectedly. The business cycle came along and said I have not been repealed, and the economy slowed down,

and then outside shocks hit us in the form of a terrorist attack that devastated large segments of the economy that have still not recovered.

Those of us who are so sure that we control this economy, and what it does by virtue of what we pass here, need to have a little more humility and a little more understanding and realize once again that the most important thing the Government can do in order to maximize Government revenues is to create an economic climate in which market forces can produce the greatest beneficial result. But even at those times, when the atmosphere is most conducive, the business cycle is still with us and will humble us if we keep thinking that, like Lucy Van Pelt, we can go through life with nothing but ups, ups, and ups, and never face the reality of the occasional down.

I appreciate the indulgence of my fellow Senators. I will have more to say on this at another time when we have a sufficient amount of morning business. I recognize the time has come to return to the debate of the bill on the floor.

I yield the floor.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER (Mrs. LINCOLN). Under the previous order, morning business is closed.

HOMELAND SECURITY ACT OF 2002

The PRESIDING OFFICER. Under the previous order, the hour of 2 p.m. having arrived, the Senate will now resume consideration of H.R. 5005, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 5005) to establish the Department of Homeland Security, and for other purposes.

Pending:

Lieberman amendment No. 4471, in the nature of a substitute.

Gramm/Miller amendment No. 4738 (to amendment No. 4471), of a perfecting nature, to prevent terrorist attacks within the United States.

Nelson (NE) amendment No. 4740 (to amendment No. 4738), to modify certain personnel provisions.

The PRESIDING OFFICER. The Senator from Nevada is recognized.

Mr. REID. Madam President, I have spoken with Senator THOMPSON and he has indicated that he has a statement to make. There may be others on his side wishing to make statements on the bill. He indicated that there will be no unanimous consent requests related to this bill.

The leaders have announced there will be no votes today. My friend from Tennessee, I am sure, is aware of that. I look forward to his statement and whoever else wants to speak on this most important legislation.

The PRESIDING OFFICER. The Senator from Tennessee is recognized.

Mr. THOMPSON. Madam President, I thank my friend from Nevada. I concur in his analysis. There will be no unanimous consent request or additional amendments brought up, or anything of that nature. I also agree with him that we should have our colleagues down here discussing this bill, if they desire to do so. I encourage anyone who may be listening, if they have comments on this bill, come to the floor. There will be plenty of time this afternoon for us to continue to engage in this discussion. It is a very important discussion.

I think with regard to the several points of disagreement that we have, we should keep in mind the points of agreement we do have. I think, for example, all concerned agree that we need to bring many of these agencies that have to do with homeland security under one umbrella and that we must do it in a much better and more efficient way than we have carried out the operations of Government in many other respects. So let's build on that.

I hope we can build on that and address the points of disagreement and see if we cannot come together. I am still hopeful that in the waning days in which we have to address this issue, we will be able to come together and agree on not only the principle I just enunciated with regard to the merger, but also with regard to issues concerning the President's proper authority and appropriate flexibility that is going to be needed to manage this gargantuan enterprise we are setting out on. It is really a major endeavor. Nothing has been done like this in several decades in this country, and we are going to need all hands on deck, all the tools, all the resources, and all of the attention that we can bring to bear on this problem in order to make this country safer.

I think most of us realize now that we will probably never again be able to believe we are totally safe and that we can cover every border and every bolt and every automobile and every airplane, all to the extent that we will have a failsafe situation and that we will not need to constantly keep our guard up.

There is a lot we can do. A lot has already been done. The President has taken charge and Tom Ridge in the Office of Homeland Security has taken charge. They have issued Executive orders that have addressed many of the burning issues that we face. I think our border situation is already better. Our transportation situation is better. But there is an awful lot to be done before we get to the point where we can say that we have done all that we can do.

It is a very difficult proposition. I said last week that one of the things that impresses me most about this body, about the Government in general, is how difficult it is to make any really substantive change to anything. If there is any difficulty connected with it at all, if it comes to spending money, or something like that, we can usually come together because it benefits those of us who are spending the money, benefits our constituents, and we get some short-term benefit from that all the way around. We sometimes pay long-term consequences for it, but spending money seems to be an easy thing to do.

Here, we are actually stepping on some people's toes and we are acknowledging some dysfunctional aspects of our Government and we are saying, let's change that. But there are a lot of vested interests out there who don't want to change. They want the status quo. In the abstract, they want the same end result we do—we want a better system—but they don't want to change things in order to achieve a better system.

We have been looking, listening, watching, and absorbing for many years in this Congress and in this Senate the various negative aspects of many of the agencies of our Government and how they are not working, how they are not doing what they are supposed to be doing, how they are rife with waste, fraud, and abuse, and billions of dollars are being sent out for things—like people who are deceased, for example. We find that we cannot incorporate high-tech information systems that have been incorporated in the private sector for years and years, to good effect. We cannot seem to bring that into the Government. The IRS has wasted billions and billions of dollars trying to get their computers to talk to each other. They are making real progress now, but for a long time they did not. And there are human resources problems, human capital problems.

We are losing people we ought to be keeping in Government, and too often keeping the people we ought to be losing because of old rules and regulations that were set up decades ago. We have seen all of this happen, all of this evolve as Government got bigger and bigger and more complex, with levels and upper levels—every Deputy Assistant Secretary has an assistant to the Deputy Assistant Secretary, and they have two, three, and four, and it keeps growing. It makes us less efficient and less responsive to the people we are supposed to be serving.

Now, we understand it is not just money and inefficiency and lack of service we have to be concerned about. We have to be concerned about our very safety—the No. 1 job of Government, self-protection.

Yet there are those who want to incorporate that system, this bureaucratic mess that has evolved into the new Homeland Security Department because they do not want to make any changes.

Unfortunately, a part of what has to be addressed. Governmentwide is our civil service system. No one wants to deal with that because it is politically difficult, politically volatile, and you are going to be stepping on some people's toes. Yet there is unanimity

among Democratic and Republican experts who have looked at this problem and have experienced this problem.

In the homeland security bill, we are trying to solve a Governmentwide problem. It is much too big. It is much too politically difficult. There are too many entrenched interests to successfully address that situation. We are trying to say, with regard to homeland security, with the issue most important to our country: Let's have a little flexibility in these civil service rules that we have not had in times past.

When President Carter asked for civil service reforms in the spring of 1978, he said the system ''had become a bureaucratic maze which neglects merit, tolerates poor performance, permits abuse of legitimate employee rights, and mires every personnel action in redtape, delay, and confusion.''

That was President Carter. Accordingly, Congress delivered the requested reforms in the Civil Service Reform Act of 1978. But a lot has happened since 1978 to prove that we still have a long ways to go.

The Brookings Institution report of 2002 quoted earlier now says:

> The civil service personnel system underwhelms at virtually every task it is asked to do. It is slow at hiring, interminable at firing, permissive at promoting, useless at disciplining, and penurious at rewarding.

That is the Brookings Institution's analysis of our civil service system.

This is not news to anybody. President Carter knew about it, spoke on it, and the Brookings Institution and others have spoken about it. We heard testimony in the Governmental Affairs Committee over the years about this issue. Something has to be done about it, and everybody wrings their hands and acknowledges it is not right that it takes 5 or 6 months to hire somebody. It is not right that it takes 18 months to fire a poor performer. But that is the way it is, and that is the way we have been doing business. We rock along tolerating that kind of a system because it is only Government and we really do not expect much out of Government anyway, do we?

Now we are in a different world, and we understand that what is at stake is not just aggravation or waiting in a longer line or putting some civil service employees out who are trying to get a job or trying to get promotion inside a system that only let's them move lockstep or waste a few billion dollars—it is not just that anymore. It is our very safety and survival as a nation because, if we adopt this kind of system into the Department of Homeland Security, we will get the same results as other agencies.

We will see not only waste, fraud, abuse, and mismanagement, overlap and duplication, but we will see the border not protected the way it should be, airline safety not being what it should be, cargoes will not be examined the way they should be, the information technology we need to tie all this together so we can keep up with the bad guys will not be what it should be because we have seen it has not worked in any other aspect of Government.

What makes us think that just by creating this new Department under the same old rules it will work any better in this new Department of Government? If anything, there will be new problems that will be created from this new Department of Government because we are talking about bringing together over 170,000 Federal employees. It will require the coordination of 17 different unions, 77 existing collective bargaining agreements, 7 different payroll systems, 80 different personnel management systems—80—an overwhelming task by any stretch of the imagination.

Again, with this more complex, more difficult, and more-important-than-ever task that we have on our plate now, do we really want to bring the old way of doing business into our Government that has produced these bad results? The answer is no.

We have to do business a little differently. We have to give the President authority that other Presidents have had—not take away his authority as the opposition to this bill would do, or diminish his authority, or set up new requirements for the President to prove. It means that we have to give the people who are going to be running this new Department some flexibility with regard to hiring, firing, promoting, rewarding, holding employees accountable—all those issues we should have done Governmentwide years ago and we do not have the political will to do.

At long last, with regard to the Department of Homeland Security, at least we ought to acknowledge that we have to look at these issues differently. We have done so with regard to several Departments. That is the irony. When the Transportation Security Administration came to us and said, We need a little additional flexibility in hiring, firing, promoting, rewarding, and disciplining, we gave it to them. When the GAO came to us and asked for the same flexibility, we gave it to them. When the IRS came to us and asked for the same flexibility, we gave it to them. When the FAA came to us and asked the same flexibility, we gave it to them. When the President comes today and asks for the same flexibility, we say no. At a time when it is needed the most and is being asked for by the person who needs it the most on behalf of his new Department, we say no. I think it defies logic.

It is not as if we are taking a step back from merit system principles or that we want to engage in prohibited personnel practices and we are going to abrogate civil service for Federal employees. That is not it at all.

The President has made it clear that the merit system principles that have been there for years will still be there. I am talking about principles such as veterans' preference; the requirement to recruit qualified individuals from all segments of society; select in advance employees on the basis of merit after fair and open competition. We keep that, of course. I am talking about treating employees and applicants fairly and equitably without regard to political affiliation, race, color, religion, national origin, sex, marital status, age, or handicapping conditions; we keep those principles.

Provide equal pay for equal work and reward excellent performance—of course, we keep those principles; maintain the high standards of integrity, conduct, concern, public interest, we keep that; manage the employees efficiently and effectively, we keep that. The requirement that we retain and separate employees on the basis of their performance and their performance alone, we keep that. Educate and train employees when it will result in individual performance, we keep that; protect employees from improper political influence, we keep that; protect employees against reprisal for lawful disclosure of information in whistleblower situations, that is, protect people who report things such as illegal or wasteful activities, we most certainly keep that. We want that. We value that as much as anyone.

All of those merit system principles we retain. We do nothing with regard to keeping those. Those are principles on which we all agree, and those who imply we are somehow, in the name of national security, eviscerating the rights of employees, is simply not true.

We can maintain the rights of employees but we are not wedded to 50-year-old operating principles. We can make some changes that make some sense in the light of current circumstances.

Well, they ask, what about prohibited personnel practices? In title V of the United States Code, as we all know, there are several prohibited personnel practices in which the managers of these agencies and the heads of these Departments cannot engage. They say employees who have the authority to take, direct others to take or approve personnel actions shall not discriminate on the basis of race, color, religion, national origin, age, handicap condition, marital status, and political affiliation. We retain that prohibition, for sure. May not solicit or consider employment recommendations based on factors other than personal knowledge or jobs or related activities or characteristics, we keep that; may not coerce an employee's political activity, we keep that; shall not deceive or willfully obstruct a person's right to compete for employment; shall not influence any person to withdraw from competition for any position or improve or injure the employment prospects of any other person; shall not give unauthorized preference or advantage to any person or improve or injure the employment prospects of any particular employee or applicant; shall not engage in nepotism; shall not retaliate against a whistleblower; shall

not retaliate against employees or applicants who exercise their appeal rights; shall not discriminate based on personal conduct which is not adverse to on-the-job performance; shall not violate any law, rule, or regulation which implements or directly concerns the merit principles; shall not knowingly take or fail to take a personnel action if that action or failure to act would violate a statutory or regulatory veterans preference requirement.

All of those prohibitions stay. We retain every one of them. They are principles on which we all agree, and they are meaningful. They are protections that employees should have. They are protections we insist these employees retain.

Again, does that mean one cannot make any changes from a system that was created 50 years ago, in light of current circumstances? It does not. When you find somebody not doing their job, does that mean it should take years to do anything about it? Does that mean it should take months in order to hire someone because of rigorous steps and certain pools from which you have to draw and all of that kind of foolishness at a time when we are really in need of people with technology capability that we have not necessarily needed in times past? Of course not.

Does it mean we should not have a system whereby good performers can jump ahead and get paid more and not have to go in a one-step process all the way up where people who are doing their job, people who are doing an excellent job, people who are doing a mediocre job, and people who are doing a terrible job are all lockstep, just same old thing?

That system was created 50 years ago, with 15 different pay grades, 10 steps within each pay grade, when people would go in as a young person and lockstep their way all the way up through the process and retire after 20 years. That is not the world we live in anymore. Young people can do a lot better than that. We need to be able to pay them more. We need to be able to reward them more. We need for them to be able to jump grades, for example. Under less than very exceptional circumstances, it ought to be the rule for extraordinary performance.

By the same token, there needs to be accountability. These are not inconsistent with the merit principles I have enunciated. There is just a little bit of common sense. It does not mean we have to have collective bargaining agreements that go on for months and sometimes years over such issues as whether or not the annual picnic was rightfully called off.

There is a case at an Army base in St. Louis which lasted 6 years over that momentous issue.

The administrative process is rife with cases such as disputes over whether or not the smoking area should be lit. Sometimes it takes years in order to resolve issues that way. At a time of war, can't we bring a little common sense with regard to the Department of Homeland Security when there are such high stakes? Surely, we can. That is what the issues before us today on this homeland security have to do with. They are in regard to maintaining a rigorous status quo regime or giving the people in this new Department—we will have this Department for the rest of our lives and probably for generations to come. There will be Democrat Presidents and Republican Presidents. There will be Democrat and Republican Secretaries of the Department of Homeland Security. This is not a partisan Democratic or Republican issue; it is a commonsense issue.

Doesn't the new Secretary need to be able to break through some of these old rules and procedures that have gotten us down into waste, fraud, abuse, inefficiency, overlap, duplication, and inability to function and have at least a shot at managing people under the 21st century rules in which we live, instead of rules of another time and another era? I think so. That is what this is all about. That is all we are asking.

I mentioned the various aspects with which the manager of this new Department—whoever that unfortunate soul turns out to be—will need some tools with which to manage. A good employee will welcome that with open arms. In fact, I think all of this would be welcome by employees, the overwhelming majority of whom are doing their job on a day-to-day basis. They are the unsung heroes throughout our Government. If those folks are offered an opportunity to say, look, we are going to make it easier for you to get hired, you are not going to have to be flailing around for 5 months and going through all these various steps, we are going to try to pay you more, once you get in and you do a good job, we are going to make it so you are rewarded commensurate with that, if you do not like what is happening and you file an appeal, or your union does on behalf of you, you are going to have, let's say, two steps instead of four in the appellate process, I think most employees would overwhelmingly embrace that tradeoff.

Ninety-nine percent of the employees are not afraid of bringing a little common sense to the appeals process or the ability to respond to poor performance. If one looks at surveys, they will quickly see the overwhelming number of good Government employees realize there are some poor performers, and nothing can be done with them. They have to be transferred from Department to Department. The political appointees are in there for a short period of time. They are not going to spend all of their time bogged down in administrative hearings and worried about trying to get rid of somebody who has been there—you know the old saying, we will be there when you come and we will be there when you go, and it is true. They are and they will be there. They transfer them around and these other employees see that. They are making the same pay sometimes that the good employees are making, and that is not right.

We do not need to put up with a situation such as that in our Government.

(Disturbance in the galleries.)

The PRESIDING OFFICER. The Sergeant at Arms will restore order to the Senate proceedings.

The Senator will continue.

Mr. THOMPSON. Madam President, chapter 43 goes beyond the intent of merit principles which provides employees who cannot or will not improve their performance to meet required standards should be separated. As a result, managers must give employees multiple opportunities to demonstrate their ability to perform the essential aspects of their position at an acceptable level. Such a requirement undermines the managers' willingness and ability to discipline poor performance and results in poor-performing employees remaining on the job for many months and sometimes years.

Section 4302(b)6 authorizes agencies to remove employees whose performance is unacceptable, but only after giving that employee an opportunity to improve performance. It defines unacceptable performance as failure in any single element of an employee's standards. Another section requires any such opportunity to improve must be provided within one year preceding the removal of the employee.

The combined impact of these provisions is poor performers are entitled to fail at each different element of their performance once each year without being subject to removal. If they are deficient in more than one, they have a year to see if they can improve on that, and if they prove to be deficient on another, they have another year on that. So the worse performing you are, the more time you have before anything can be done. What manager is going to spend his time going through that?

An OPM study conducted in the last administration estimated 3.7 percent of Federal civilian employees were poor performers. When applied to the total Federal workforce, that percentage works out to be 64,340 employees.

Last year, 434 individuals were removed for poor performance, so only .67 percent remained removed from service last year. In other words, of 1,000 Federal employees who did not do their job, 7 of them were let go. Let's hope that of that 1,000, they are not checking the bags or checking the cargos or checking the borders when you or I are there and our safety and our loved ones' safety is at stake. Perhaps we can afford that in some departments, but not in the Department of Homeland Security. That is all we are talking about.

The overwhelming number of good Federal employees and Federal performers see this and know who they are and know they are probably going to be making the same thing, and there is nothing that can be done about it.

What does that do to morale? What does that do to workforce morale?

In 1993, a police sergeant with the Department of the Treasury was fired for providing false statements during an investigation. This action was not finally sustained until 5 years later when it was finally decided by the Supreme Court of the United States. During the intervening 5 years, there was a hearing before the MSPB, the administrative judge, a decision by the MSPB, an appeal to the Federal court, and a discussion by the U.S. Supreme Court. This was all regarding a police sergeant who lied during the investigation.

An employee of the Civil Service Administration removed for falsification of travel voucher claims contends the action was unjustified. Under chapter 707, that employee would be entitled to seek investigation and review by the Office of Special Counsel, an average of 4 months; hearing and decision by the regional Office of the Merit System Protection Board, average 4 months; review by the headquarters of the Merit Systems Protection Board, 4 months; review by the Equal Opportunity Commission, 36 months estimated; and review at all 3 levels of the Federal court system—district court, appeals court and Supreme Court—6 months to several years.

It is not that it would be a good idea to deprive people of their administrative rights. It is just a question of how many levels and how many avenues and how many claims and how long should all this take with regard to the Department of Homeland Security.

Are we doing the best we can do? Clearly, we are not. It is showing up Governmentwide. It has to do with much more than just the rather narrow issues we have been talking about in terms of the homeland security. In June of last year, before September 11, we put out a document called Government at the Brink. This was a document I put out as chairman of the Governmental Affairs Committee. It was subtitled Urgent Federal Government Management Problems Facing the Bush Administration. This was as the Bush administration was coming in. We were trying to inform the new administration of the situation they were going to be confronted with, as other presidents have been informed. We tried to summarize the problems the Federal Government was having. This was not an attempt just to bash the Federal Government. It was an attempt to try to make it work better.

We would have hearing after hearing after hearing. We would bring the GAO in. They would give us every year the high-risk list of agencies that were most subject to waste, fraud, abuse and mismanagement, overlap and duplication. The same agencies every year. No one ever got off of it. New ones kept coming on to it. We passed the RESULTS Act, which said every year: Now, you have not done very well at all. Some of you have done awful. You will have to start showing your results. We will have to start measuring your results.

We have spent years now and we are still in the middle of trying to make that work, and the reports we are getting in many cases from the RESULTS Act show they were producing the right kind of results, but they are incomprehensible themselves. So we are having trouble getting through some of the reports in order to decide whether we are getting any results.

Is Congress just laying on another requirement that will be unfulfilled? It is a very discouraging, long-term problem that has been developing for many years in our Government. It is getting worse and not better. My own view is that until we attach the appropriations process to these problem areas, we will probably never make any progress.

In other words, if these agencies keep coming up with bad performances, not only should people be held accountable, the agencies should be held accountable, and it should be reflected in their funding for the next year. How can you justify continuing to fund failure year after year after year? That would not happen in any other aspect of American society except the Government. Yet what happens if they get bad enough? Usually, we give them more money.

That is the situation. That is the backdrop. That is what we tried to summarize in this little booklet we put out.

We mentioned some of the examples that the new administration was going to have to deal with in term of Government management or mismanagement.

We mentioned the big dig, Boston Central Artery, the most expensive Federal infrastructure project in the Nation's history. Its cost continues to rise and is now estimated at $13.6 billion, an almost 525-percent increase from the original $2.6 billion in cost.

We mentioned abusing the trust of the American Indians. The Department of the Interior does not know what happened to more than $3 billion it holds in trust for American Indians. A judge overseeing this case called it fiscal and governmental irresponsibility in its purest form.

We mentioned the Department of Defense financial management. There is widespread agreement that the Department of Defense finances are a shambles. I hope they are better than when this report was written. It wastes billions of dollars each year, and it cannot account for much of what it spends.

We mentioned NASA, NASA mismanagement; the fact that it causes mission failures. In spectacular example after example, NASA lost billions because of mismanagement at some of its biggest programs. The cause of the Mars Polar Lander failure, for example, was that one team used English measurements—feet, inches, pounds—to design and program the vehicle while another used metric measurements.

We mentioned Medicare waste, fraud, and abuse. Medicare wastes almost $12 billion every year on improper payments. It misspent that $12 billion last year from the fee-for-service part of Medicare alone, which was about 7 percent of the total fee-for-service budget. The amounts wasted on improper Medicare payments would go a long way toward funding a prescription drug benefit or other program enhancement.

We mentioned security violations at the Department of Energy. The Department of Energy does not adequately safeguard America's nuclear secrets. In just one case, a party was dead for 11 months before Departmental officials noticed that he still had four secret documents signed out.

We talked about the IRS fiscal mismanagement. The IRS manages its finances worse than most Americans. The agency does not even know how much it collects in Social Security and Medicare taxes. GAO found significant delays, sometimes up to 12 years, in recording payments made by taxpayers.

We mentioned the Veterans Affairs and how they put patients' health at risk. The Department of Veterans Affairs IG found that the hospital food services shares the loading dock with the environmental management services hazardous waste containers. Dirty environmental management services and red biohazard carts were located next to the area where food is transported to the kitchen.

We mentioned the student financial aid program bilking taxpayers in that program. Federal student aid programs are rife with fraud and abuse. A cottage industry of criminals advises people on how to cheat to get Federal Government loans and grants. In one case, scam artists passed off senior citizens taking crafts classes as college students who qualified for Federal Pell grants.

Then we mentioned unemployment insurance fraud. A Las Vegas, NV, man illegally collected at least $230,000 in fraudulent unemployment insurance benefits from four different States between September of 1996 and November of 1999. He set up 13 fake companies and submitted bogus claims based on falsely reported wages for 36 nonexistent claimants using names and Social Security numbers of dead people, then collected claims by mail from California, Massachusetts, Texas, and Nevada.

These are just 10 examples of things we pointed out last year that were going on in our Government. For the most part, from the Government's standpoint, not counting the people who are out there always willing to take advantage of the Government, stealing from the Government, but for the most part this was not deliberate activity on behalf of people who work for the Government. These were just things that we let happen.

A lot of it had to do with our lack of managing these Departments, the turnover that we had, the inability to keep

good people in developing these information technology programs. That is part of the IRS problem. Who wants to spend their time doing that, at that kind of pay? So we gave them flexibility. They are using it, and they are making some progress now. But this is the tip of the iceberg, and nobody pays any attention to it. We just kind of shake our heads, there is a newspaper story that comes out, and we go on and waste billions of dollars every year in the most egregious circumstances.

Again, I ask: Now we have been attacked. We have lost almost 3,000 people in one attack. We are going to bring some of these agencies together. If we just bring some of these agencies together, what have we accomplished except a bigger mess? We must do so, but we must do so with some ability to reward, punish, promote, demote, and get the right people in, raise some salaries, give some incentives, have some esprit de corps in some of these Departments, and be able to get rid of a poor performer with something less than 6 years in a case before the Supreme Court of the United States.

I mentioned earlier we have already given this kind of ability to manage to several of our Departments: The FAA, GAO, GSA, IRS, several of our agencies. Yet when it comes to the most sensitive area of all, homeland security, we are not willing to give the new Secretary that kind of flexibility and that kind of ability.

Someone might ask us: What about just giving the new Secretary for the Department of Homeland Security the kind of flexibility with regard to its employees that Members of Congress have? What about the same kind of flexibility to hire, fire, promote, set salaries that Members of Congress have?

I can assure anyone listening that Members of Congress have much more flexibility than what is being proposed for this new Department. But more on point, in keeping within the executive branch of Government, what about the flexibilities we have given these other Departments?

With regard to the IRS, there was a provision in there that basically said you must negotiate with the union, and if you do not, you must go to an impasses panel. That is what our friends, who would deny the Secretary this flexibility, suggest we should adopt for the Secretary. So one agency, and one agency alone, is all I can tell. We required them, when we gave them their flexibility—we required them to go through the administrative process that would wind up with some panel making the ultimate decision as to whether or not their actions were justified. We didn't do that with regard to the FAA, we didn't do it with regard to the GAO, we didn't do it with regard to the Transportation Security Agency. I submit that what we are about now, with 170,000 employees and 77 collective bargaining agreements and 80 different personnel management systems—that flexibility is needed more with regard to homeland security than any of these other agencies.

So we are not just comparing apples to oranges. We are comparing peanuts to elephants. We give these agencies this additional flexibility to manage with these relatively contained problems they have. But when we magnify the potential problems we know are going to come about with regard to the Department of Homeland Security, we don't want to give that to the new Secretary. I think we must if we want it to work, and if we want it to work differently, and we don't want to incorporate and adopt and inherit so many of the problems we have seen throughout Government—some of them relating to safety, some of them not—and expect we can keep doing the same old things the same old way after switching the boxes around and expect different results.

What do all these billions of dollars of waste, inefficiency, lost items, and inability to balance the books that the Government cannot do—in small part or as a whole cannot balance its own books—translate over into when you are talking about safety issues? I hope we don't have to find out.

We are suggesting the new Secretary have some of the same things these departments have—that we have already given flexibilities to have—in consultation with the Office of Personnel Management. This is a department headed by a Senate-confirmed person who is an expert in personnel rules, title V, and what the Government can and cannot do—the prohibitions I just read earlier, the principles I read earlier that we must adhere to—in consultation with that person to come up with some rules.

I should point out there is nothing in the Gramm-Miller substitute that mandates any changes. It is simply a law that allows those whose job it is and whose responsibility it is to make this a safer country to make those changes, and then come before Congress for appropriations and oversight—and all of the attention and sometimes aggravation and all of that—it will get as it justifies the changes it has made.

The House of Representatives recognized this need and necessity in passing their homeland security bill. There were basically six areas where this bill gives the new Secretary some flexibility.

There are many areas where no flexibility is sought at all. In fact, with regard to most of the personnel areas and flexibilities that are dealt with in title V, only a small percentage of them are being requested by the administration as being ones they need some flexibility in.

Let us talk about what is not being suggested that there be any flexibility in by the administration.

Chapter 21, general provisions; chapter 23, merit system principles; chapter 29, commission reports; chapter 41, authority for employment; chapter 33, examination and placement; chapter 34, part-time career employment opportunities; chapter 35, retention preference, restoration and reemployment; chapter 41, training; chapter 45, incentive awards; and chapter 47, personnel research programs and demonstration projects.

Again, I am just about halfway through here. But these are areas in which the administration says OK, we are not asking for any changes or for the ability to change anything in these areas.

Chapter 55, pay administration; chapter 57, travel, transportation and subsistence; chapter 59, allowances; chapter 61, hours of work; chapter 63, leave; chapter 72, antidiscrimination and right to petition Congress; chapter 73, suitability, security and conduct; chapter 79, services to employees; chapter 81, compensation for work injuries; chapter 83, retirement; chapter 84, Federal Employee Retirement System; chapter 85, unemployment compensation; chapter 87, life insurance; chapter 89, health insurance; chapter 90, long-term care insurance; and chapter 91, access to criminal history records for national security.

There are close to 30 areas here in title V where no flexibility is being asked for at all.

There are six areas where flexibility is being asked for: Chapter 43, performance appraisal; chapter 51, classification; chapter 53, pay rates; chapter 71, labor-management relations; chapter 75, adverse actions; and chapter 77, appeals.

With regard to those six areas, the House says OK, we will give the new Secretary some flexibility in those areas.

The Gramm-Miller amendment adopts those six areas.

The ''compromise,'' so-called, before us—the Nelson-Chafee-Breaux amendment—would say we will give you four of those six areas. In other words, you have to add two more to the 30 or so you don't touch—labor-management and appeals. The new Secretary can do nothing with regard to the entire area of labor-management or appeals.

Unfortunately, labor-management and appeals has to do with the framework system by which you resolve disputes. If you control that process, you control everything else. Everything else has to go through it. So this is our difficulty.

When the Breaux-Chafee-Nelson amendment says we may not give the Secretary the authority to make any changes to labor-management relations or to appeals, it is simply a step too far or a step not far enough.

The President has said without this authority, the new Secretary would come in with his hands tied behind his back; he could not do all of the momentous things that are going to have to be done in terms of organizing and consolidating all these personnel systems without some flexibility in those areas as well.

The Nelson-Chafee-Breaux amendment also says—we were talking about six—we will give you four. But with regard to those four, you have to enter into negotiating agreements with the union. If the union refuses to enter into a negotiated agreement with you, you have to go to the Federal Services Impasses Panel.

I don't think it is as much a fact that we think the Federal Services Impasses Panel—whatever that is—is going to come up with terrible decisions; it is, again, do we really need to go through this kind of process with these kinds of decisions which other departments have the flexibility to go ahead and handle and take action on when we are dealing with homeland security, and we are dealing with the people who are going to be in charge of homeland security?

One of these areas has to do with classifications and pay rates and systems. I would like to think we could pay people better. I would like to think we could promote people more easily. I would like to think we could retain good people.

What if a union decides we are discriminating, we are taking this group of people and we want to give them more money, and we are taking another group of people and we don't want to give them any more money, and they represent all of them? So then we go through the Federal Services Impasses Panel. I cannot stand here and tell you how long it would take to go through this Federal Services Impasses Panel, but I can assure you it would be longer than it should.

So basically 17 unions are representing about one-fourth of the workforce of these 170,000 employees. Only 20,000 of them are in a union. Forty thousand of them are represented by unions, but 20,000 of them are in a union. About 25 percent of the workforce becomes the tail that wags the dog.

That is unnecessary. That is unwise. It, again, is placing restraints on this new Department that we have not placed on other Departments with much less serious mandates than we are giving this new Department.

There was one case where the union objected to a number of issues relating to the deployment of the National Guard to help in Customs' antiterrorism responsibilities. The union even demanded to bargain over arming the National Guardsmen. And they objected to Customs employees having any responsibility for storing National Guard weapons needed to fight terrorism.

In another example, the union has challenged Customs decisions to temporarily reassign inspectors to the northern border as the current union contract allows. Despite the continued terrorist threat after 9/11, the union has insisted on a new and time-consuming process that would require Customs to canvas thousands of employees nationwide for volunteers.

I guess most of us know by now that Customs has been sued because they put out a directive, pursuant to the President's direction, with regard to the color-coded warning system we have now: red, yellow, orange, whatever. So Customs was implementing that, and the labor union sued them because they said they should have negotiated that color system before it was put out.

So these are the kinds of things about which we are talking. None of them, in and of themselves, are the end of the world, but in case after case we have become consumed with procedure and process.

We can have due process. We can keep people from getting run over. I have spent most of my professional career trying to make sure that people didn't get run over. But you can do that without tying up the Government when it is trying to protect our borders. You can do it in less than a lifetime.

The Congress cannot do it. We cannot sit here and decide the details of a massive personnel system, and especially all the different personnel systems we are having to bring together. That is an administration job. They got elected. Let them come with a system that has a chance of getting the job done and working out the detail.

We will have oversight in this body. But I submit, we do not have the ability to micromanage a system such as that—which brings us to the President's national security authority. We have had a lot of discussion about that because a lot of people do not understand why, again, when we are creating a new Department that is going to be in charge of homeland security, we would give the President less authority with regard to this new Department not only than what other Presidents have had but than what other Departments have had and will have. So we will be taking the new Department, which needs the President's firm hand the most, and be providing him with less authority than other Departments have.

I think that perhaps it would be good if we considered the history of the President's authority in this regard. As we have been talking about now for several days on the floor, the law basically is that if a primary purpose of a particular agency or subdivision has to do with certain categories of work, such as intelligence, counterintelligence, investigative or national security, then the President can set aside collective bargaining agreements because national security is at stake and we simply do not have the time to go through some of this rigmarole I have been describing on the floor with regard to this limited number of areas.

The Nelson-Chafee-Breaux amendment would amend that and say that, No. 1, the President has to prove this work has to do with terrorism and not the broader definition of national security or he has to determine that; and, No. 2, the President has to also determine that the new people who are coming into the Department with regard to whom he is exercising this authority have had their jobs changed. In other words, additional requirements are being made upon the President to make additional determinations which could be challenged in court.

The President will have a presumption in his favor, for sure, with regard to the courts, but it will be a rebuttal presumption and it will be a situation where the President's representative has to decide to what extent, in a litigation situation, he wants to lay out these sensitive matters.

But any way you look at it, it is not the same authority that other Presidents have had. We are putting up additional hurdles for this President to overcome, for some reason. We are making additional requirements, additional determinations for this President to make, for some reason. We are not making it easier for him to exercise his national security authority because of September 11, we are making it more difficult.

There was an Executive order that President Kennedy signed, and it contained an exception for agencies and offices engaged in national security. But the exception did not even need to be invoked by the President. It could be invoked by a head of an agency.

Executive Order 109–88 said:

> This order shall not apply to the Federal Bureau of Investigation, the Central Intelligence Agency, or any other agency or other office, bureau, or entity within an agency primarily performing intelligence, investigative, or security functions if the head of the agency determines that the provisions of this order cannot be applied in a manner consistent with national security requirements and considerations when he deems it necessary in the national interest. And subject to such conditions as he may prescribe, the head of any agency may suspend any provision of this order with respect to any agency, installation, or activity which is located outside the United States.

President Kennedy's Executive order was based on the recommendations of a distinguished six-member task force chaired by then-Secretary of Labor Arthur Goldberg. It was known as the Goldberg Commission. The statement from the Goldberg Commission is the best rationale for the national security exception we have found. The felt need for such an exemption seems to have been so widely acknowledged that no extended argument was even necessary. The general point has been made by many others, however.

For example, President Franklin D Roosevelt said:

> All government employees should realize that the process of collective bargaining has its distinct and insurmountable limitations when applied to public personnel management because the obligation to serve the whole people is paramount.

President Kennedy, President Roosevelt. In 1969, President Nixon repealed the Kennedy order but recodified and expanded the rules of procedure for labor-management relations in

Federal service. That order also contained an exemption for agencies and offices doing national security work and allowed the head of the agency to invoke the exception. Not the President, but the head of an agency could do it.

The current statute then was signed by President Carter. He concurred with the language the House and Senate presented to him. But his own bill which he sent to Congress earlier in 1978 also contained an exemption for the work of national security.

This is a well-established need that all Presidents have seen fit to exercise; to the extent, evidently, that extended debate back then was hardly even necessary. I don't know that there has ever been extended debate on the authority the President should have with regard to setting aside collective bargaining agreements in situations pertaining to national security and these other categories until now.

Ironically, while the opponents of the Gramm-Miller substitute and the President's preferred course of action want the status quo with regard to all other aspects of this bill except the organizational part, but the status quo with regard to the managerial part, they do not want the status quo when it comes to giving the President the authorities that Presidents have traditionally received.

The President can't accept that. He has said so. I hope it is not presented to him like that because we know what the fate of this bill would be. That would not be good for the country. We all know that.

I am hopeful that in these waning days we will be able to, with regard to these two issues, which opponents of Gramm-Miller say are not very significant but which the President says are extremely significant, which you would think would cause a basis for some compromise right there, but I would hope we would be able to address this issue of some flexibility that we have given other departments that we must give the new Secretary on the one hand and, secondly, maintaining the President's traditional position with regard to his national security responsibilities having to do with collective bargaining agreements.

I yield the floor.

The PRESIDING OFFICER (Mr. WYDEN). The Senator from Nevada.

MORNING BUSINESS

Mr. REID. Mr. President, I ask unanimous consent the Senate now proceed to a period of morning business with Senators allowed to speak therein for a period of up to 10 minutes each and that this time extend until 5:15 today.

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

HOMELAND SECURITY ACT OF 2002—Continued

Mr. REID. Mr. President, the Senator from Pennsylvania is here and he wishes to speak on the bill. I ask unanimous consent we return to the homeland security bill and that there would be a period for debate only, and the Senator be recognized for whatever period of time he wishes to speak, and that when the Senator from Pennsylvania finishes his statement, we go back into morning business under the previous request.

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

The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, it is my hope that the Senate will complete action on the pending homeland security legislation, that we will go to conference with the House of Representatives, and that this bill will be passed, signed into law by the President, before we adjourn because, in my judgment, the most important business the Congress has is to legislate is on homeland security and to do our utmost to prevent a recurrence of 9/11.

The intelligence communities have advised that there will be another terrorist attack. It is not a matter of whether or if, but it is a matter of when. I am not prepared to accept that. I believe another terrorist attack can be prevented. I believe had all of the so-called dots been put together before September 11, 2001, that there was a good chance that terrorist attack could have been prevented.

I say that because there were very important leads which were never coalesced, analyzed, or brought together. I refer to the FBI report out of Phoenix, in July of 2000, about a man taking flight training, had a big picture of Osama bin Laden, very suspicious. That report never got to the upper echelons of the FBI. We had the CIA tracking two members of al-Qaida in Kuala Lumpur. They turned out to be hijackers, two of the pilots involved in September 11. But the CIA never told the FBI or never told INS, and they gained admittance to the country and were part of the suicide bombers.

Then there is the famous, or perhaps infamous, national security agency report on September 10 that something dire was about to happen the very next day. It wasn't translated until September 12. Further, the very important effort by the Minneapolis branch of the FBI to get a warrant under the Foreign Intelligence Surveillance Act for Zacarias Moussaoui, who was supposed to have been the 20th member of the hijackers and suicide bombers, was never pursued properly because the FBI used the wrong standard.

We know from the 13-page single-spaced letter written by Special Agent Colleen Rowley that the U.S. Attorney's office in Minneapolis was applying the wrong standard—a 75 to 80 percent probability—and that Agent Colleen Rowley thought it was a standard of more probable than not, which would have been 51 percent. The appropriate legal standard, as defined by the Supreme Court of the United States in Gates v. Illinois, in an opinion by then Justice Rehnquist, was that probable cause is established on the totality of the circumstances based on suspicion. Had the Zacarias Moussaoui matter been integrated, there was a great deal of information available in Moussaoui's computer which was not acquired. The Intelligence Committee hearings have disclosed that in the past two weeks. All of these dots were on the screen, and even more. Had they been brought together, then there is a possibility that 9–11 may have been prevented. At least they would have been on inquiry.

I believe this was a veritable blueprint. I believe we have a very heavy duty to see that this legislation is enacted and all of the intelligence agencies are brought under one umbrella. I tried to do that in 1996 when I chaired the Senate Intelligence Committee. I wanted to bring them all under the CIA. I think it is not really critical under which umbrella, but under one umbrella. Now we have the chance to accomplish that with homeland security.

We have two provisions under the Labor-Management Act that are, so far, providing a controversy that has held the measure from going further. It is my suggestion these two provisions are not too far apart. The law, as set forth in 5 United States Code 7103 says:

> The President may issue an order excluding any agency or subdivision thereof from coverage under this chapter [which is collective bargaining] if the President determines that (a) the agency or subdivision has a primary function, intelligence, counterintelligence, investigative, or national security work, and the provisions of this chapter cannot be applied to that agency or subdivision in a manner consistent with national security requirements and considerations.

That is the existing law which the President does not want changed, and there has been an effort by labor to what is called ''shore up'' those provisions of collective bargaining by this language in the Nelson-Chafee-Breaux amendment:

> The President could not use his authority without showing that (1) the mission and responsibilities of the agency or subdivision materially change, and (2) a majority of such employees within such agency or subdivision have as their primary duty, intelligence, counterintelligence, or investigative work directly related to terrorism investigation.

Now, there was a question on my mind as to whether the language of the Nelson amendment was in addition to or in substitution for the existing language on collective bargaining. We had an extensive discussion among Senator LIEBERMAN, Senator THOMPSON, Senator BREAUX, myself, and Senator NELSON was on the floor. At that time, the drafters of the amendment said it was not in substitution for, but in addition to.

Well, the main concern the President has expressed is he is concerned his authority under the provisions relating

to national security would be taken away. But the drafters of the amendment tell us that is not what is intended because the language is ''in addition to'' and not ''in place of.''

If you look at the specifics of the existing language about intelligence, counterintelligence, investigation, and the language of the amendment, the duties, primary duty, intelligence, counterintelligence, or investigative work, they are not too far apart. I think we can reach an accommodation there.

The other provision that has provided the controversy is the issue of the President wanting flexibility, and the provisions of the Gramm-Miller amendment have picked up the language of the House bill, which would give the President flexibility on these six categories: Performance appraisal, classification, pay rates and systems, labor-management relations, adverse actions, and appeals. The amendment provided by Senator NELSON and Senator BREAUX would give the President four of those six. It would give the President, No. 1, performance appraisal; No. 2, classification; 3, pay rates and systems; 4, adverse actions. But that would be subject to review by the Federal Services Impasses Panel, a seven-appointee panel, all of whose appointees are the President's.

It seems to me we are very close here. I voted against cloture on the Lieberman bill because we do not have in the bill, as it is presently drafted, an adequate provision as to the directorate to have all of the intelligence agencies under one umbrella, and an adequate provision giving the Secretary of Homeland Defense direction to coordinate all of those agencies, to put all those dots on one screen, to have the best likelihood of preventing another 9–11.

I ask unanimous consent that the full text of the amendment I have already filed and have ready to propose be printed at the conclusion of my statement today.

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

(See exhibit 1.)

Mr. SPECTER. Mr. President, I am opposed to cloture of the Lieberman bill until I have a chance to offer that amendment. I have also voted against cloture on the Gramm-Miller bill because, again, although I have had discussions with Senator GRAMM, as I have had discussions with Senator LIEBERMAN, we have not reached fruition. I want an opportunity to include this language about the intelligence directorate on the Gramm-Miller amendment.

While I have not taken a position, as I said on Thursday, on whether I will ultimately support the Nelson-Chafee-Breaux amendment, which is backed by labor, or whether I will support the Gramm-Miller amendment, which is the President's preference, it is my hope we can yet work out an accommodation. But I think it is much more important the Senate pass a bill and we go to conference with the House, whichever provisions are included. I grant the provisions labor wants included are important to labor, and I grant the provisions the President wants included are important to the President. But as important as all of those provisions are, they are not as important as getting a bill that can be conferenced with the House, which can be signed by the President, so we can set up this Department of Homeland Security and we can have, under one umbrella, all of the intelligence agencies. It is not that the Secretary is going to tell the CIA agents around the globe where to go, or the FBI agents where to go, or the National Security Agency what to do, or the Defense Intelligence Agency, but as to the analysis, they should all come under one umbrella. That really is the critical factor. That is why I believe the conclusion of this bill on that issue is of greater importance than any other matter in the bill and of greater importance than any other matter which the Congress will consider during this session. So I am prepared to vote for cloture on the Gramm-Miller amendment should I get the chance to offer my amendment.

I do not think, as the Senator from Texas said, that he is absolutely entitled to a vote on his proposal without amendment. The rules of the Senate provide that there can be amendments to the Gramm-Miller proposal, just as there can be amendments to the Lieberman bill, just as there can be amendments to any bill. To repeat, I have not yet taken a position as to whether I will favor what labor seeks through the Nelson-Chafee-Breaux proposal or what the President seeks through the Gramm-Miller proposal, but it is of greatest importance that this provision on the Directorate of Intelligence Analysis be adopted and everything be placed under one roof.

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

EXHIBIT 1

(Purpose: To give the Directorate of Intelligence the authority, subject to disapproval by the President, to direct the intelligence community to provide necessary intelligence-related information)

In section 132(b), add at the end the following:

(14) On behalf of the Secretary, subject to disapproval by the President, directing the agencies described under subsection (a)(1)(B) to provide intelligence information, analyses of intelligence information, and such other intelligence-related information as the Under Secretary for Intelligence determines necessary.

Mr. SPECTER. Mr. President, I ask unanimous consent that I may proceed for 5 minutes as in morning business.

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

REPORT ON TRIP TO AFRICA

Mr. SPECTER. Mr. President, during the month of August, Senator SHELBY and I made an extensive trip to Africa. In Africa, we visited many countries and noted some very material changes. For example, the Government of the Sudan finally wants to have good relations with the United States and is willing to make significant concessions to the rebels in the south Sudan. Through the good offices of the President's emissary, former Senator Danforth, a treaty has been worked out which has great promise if implemented and if enforced.

The Muslim-Islamic military has come down from the northern part of Sudan, invaded Christian cities, killed all the men and taken the women and children and sold them into slavery, a practice which is really hard to believe in the 21st century. The peace treaty brokered by Senator Danforth has the promise of ending that. But as we talked to clerics in both Khartoum, Sudan, and in Eritrea, it will have to be enforced by the United States.

We saw in South Africa great advances since my last trip there in 1993 when there was so much contention between the blacks and the whites on apartheid. A government was formed in the 1994 elections. President Mandela has become the national hero and a great many of those problems are on their way to resolution. Great progress has been made.

We saw in Mauritius, an island off the east coast of Africa, tremendous progress being made on trade with a sweater factory yielding compensation up to $300 a week, whereas in some countries in Africa they do not earn more than $250 a year.

To reiterate, in accordance with my custom of reporting on my foreign travel, this is a brief summary of a trip with Senator RICHARD SHELBY, R-Alabama, from August 6–22 to Rio de Janeiro, Brazil, South Africa, Mauritius, Tanzania, Kenya, Sudan, Ethiopia, Eritrea and Sicily, Italy. We explored the emerging trade relationship with Africa during implementation of the 2000 African Growth and Opportunity Act, AGOA, and the 2002 Trade Promotion Authority, TPA, legislation. We also looked at health issues—primarily the African HIV/AIDS crisis and poverty and famine that impact upon the U.S. foreign aid posture and the issue of ''trade versus aid.''

The delegation travel began on Tuesday, August 6, 2002, stopping overnightin Rio de Janeiro, Brazil, en route to South Africa. Brazil's economy outweighs that of all other South American countries and will be aided in this respect by the new TPA and a $30 billion loan guarantee by the World Bank. I spoke about this with U.S. Consul General Mark Boulware. He is optimistic that the TPA will help further expand the economy of Brazil now that the Brazilian currency, the real, is no longer pegged to the U.S. dollar. Despite open anti-American protests following comments by U.S. Treasury Secretary Paul H. O'Neill suggesting widescale corruption in the Brazilian

monetary system, our delegation was treated well and found the brief visit to Brazil informative.

The delegation proceeded to Cape Town, South Africa, where we were informed by U.S. Ambassador Cameron Hume that South Africa is a middle-income, developing country with an abundant supply of resources, well-developed financial, legal, communications, energy, and transport sectors, and a modern infrastructure supporting an efficient distribution of goods to major urban centers throughout the region. President Thabo Mbeki has vowed to promote economic growth and foreign investment, and to reduce poverty by relaxing restrictive labor laws, stepping up the pace of privatization, and cutting unneeded governmental spending.

However, President Mbeki has been disappointing in the battle against HIV/AIDS. Despite estimates that one in four South Africans is HIV-positive, Mbeki has refused to accept the premise that HIV causes AIDS, and did not attend this year's World HIV/AIDS Conference in New York City. Mbeki's inaction in the face of this crisis has recently been criticized by former South African President Nelson Mandela.

The United States continues to provide large sums of money and resources to confront this growing epidemic. In this year's supplemental appropriations bill, Senator RICHARD DURBIN, D-Illinois, and I proposed that $700 billion be allocated to confront AIDS in countries such as South Africa where it threatens large segments of the population. President Bush has proposed a compromised figure of $500 billion. The U.S. Centers for Disease Control, CDC, has assigned five employees to South Africa to work on the AIDS epidemic, and the National Institutes of Health has recently contributed $11 million. Ambassador Hume believes that we are essentially ''force feeding'' South Africa with assistance on this issue, suggesting that South Africa is still dragging its feet.

I questioned Ambassador Hume on the future of race relations in South Africa. Despite the existing divide, for the time being race relations are comparatively good, but the great conciliator Nelson Mandela is slowing down at age 84 and the technocrat Mbeki lacks his personal stature. Nonetheless, South Africa has come a long way with the assistance of the United States since the U.S. Senate voted to override President Reagan's 1986 veto of legislation forbidding certain U.S. corporate investments in South Africa's apartheid regime an important moment in the relationship between our two countries.

Our delegation also conducted discussions of a classified nature with U.S. officials in South Africa and other countries we visited.

South Africa's fledgling post-apartheid government was the topic of discussion at a dinner hosted by Ambassador Hume with parliamentarians from South Africa's National Assembly and National Council of Provinces. Progress is being made in governance and oversight. I discussed with Johnny de Lange, the Chair of the National Assembly's Judicial Committee, the extent of permissible electronic surveillance and physical search undertaken under South African law.

Our next series of meetings occurred in Durban, South Africa. There we met with Consul General Liam Humphreys and his staff to explore, among other things, post-September 11 security procedures. Durban is an important ''feeder port'' for U.S.-bound goods, and the crews that accompany them. As such, potentially lethal materials and individuals traveling under false credentials may enter U.S. ports if authorities in Durban are not vigilant. It is therefore imperative that individual visas—and not blanket crew visas—be issued to individuals only after cross-referencing U.S. Federal Bureau of Investigation files for potentially derogatory information. It is important to continue our oversight of FBI information sharing for this purpose and to ensure the proper coordination of visa and cargo manifest procedures—particularly as proposals take shape for our new Department of Homeland Security.

Durban is geographically located in the KwaZulu Natal province of South Africa, the only province in which the ANC is not in power. At a dinner hosted by Consul General Humphreys, Senator SHELBY and I exchanged views with two leaders of the provincial majority Inkatha Freedom Party, IFP: Provincial Minister of Agriculture and Environmental Affairs and delegate to the National Council of Provinces Narend Singh, and Reverend Musa Zondi, a member of the National Assembly and the Deputy Minister of Public Works.

Minister Singh noted the tremendous progress of South Africa and the KwaZulu Natal region when compared to the rest of sub-Saharan Africa, where land reform—or more appropriately, the lack thereof—has been an unyielding challenge.

I questioned Deputy Minister Zondi about the nature of race relations in South Africa. Minister Zondi is optimistic about race relations, and noted that relations in South Africa are far better than Saudi Arabia or Egypt where radical Islamic tensions place these societies on the cusp of ''a full-scale race war.'' Minister Zondi also noted with affection his friendship with the late Reverend Leon Sullivan of Philadelphia, a spiritual leader who promoted employment practice standards for U.S. companies doing business in South Africa. Zondi said that Reverend Sullivan did a great deal to make U.S. corporations more socially conscious. Minister Zondi visited Reverend Sullivan in Philadelphia in 1985 and believes strongly in the so-called ''Sullivan Principles,'' the labor code promoted by Reverend Sullivan.

From Durban the delegation traveled to Mauritius to explore trade and other issues in advance of the Presidential visit for the AGOA Conference in January 2003. Since independence in 1968, Mauritius has developed from a low-income, agriculturally based economy to a middle-income diversified economy with growing industrial, financial, and tourist sectors. Mauritius has the highest median income in sub-Saharan Africa and an unusually high literacy rate. Investment in the banking sector alone has reached over $1 billion. Employment in Mauritius is at or above 95 percent, according to our dinner guest Raouf Bundhun, the Vice President of Mauritius.

I asked the U.S. Ambassador to Mauritius, the Seychelles, and the Comoros, John Price, about the need for expanded commercial opportunities and enhanced security in the Indian Ocean region. I heard concern about the recent developments of official Seychelles passports reportedly being sold for $65,000 to those who wish to move freely in the Indian Ocean region. I also heard concern about aggressive recruitment in the Comoros by Islamic fundamentalists of young, impressionable individuals for schooling in radical theology and military training under the guise of Islamic education.

I also inquired about how the new TPA law and AGOA will help Mauritius further progress economically. Ambassador Price informed us that the new TPA will help entrepreneurs such as Sunil Hassamal, who showed us the sweater factory that he has built from the ground up and who now employs 2500 workers. On the labor front, we were assured by Ambassador Price that despite some recent unfavorable press coverage of the treatment of Chinese laborers at one problem factory, in Mauritius no child labor is being employed, that overtime is being paid, that working conditions are tolerable, and that a viable minimum wage is being paid along with appropriate benefits, and that a 60-hour work week is respected—as required by AGOA.

We met with Mauritian Prime Minister Sir Anerood Jugnauth and Deputy Prime Minister Paul Berenger to explore trade and security issues. Prime Minister Jugnauth is nearing the end of his term as Prime Minister, and will next year pass the reins to Deputy Prime Minister Berenger and assume the ceremonial role of President of Mauritius.

I questioned Prime Minister Jugnauth and Deputy Prime Minister Berenger about what the U.S. should do if Saddam Hussein does not respond to demands for inspections. Prime Minister Jugnauth responded that the U.S. should not attack Iraq without clear provocation, for this act would ''lose the respect of the world.'' Jugnauth said that the U.S. must be careful that it is the U.S., and not Saddam, who will be perceived as ''sympathetic.'' Berenger said that we should await a resolution to the Israeli-Palestinian crisis before addressing Iraq.

I asked Minister Berenger about U.S. security interests in the region. He seemed to qualify what we understood to be the official Mauritian position on the Chagossian island of Diego Garcia by stating that, in return for full sovereignty over all the other Chagossian islands, Mauritius would be willing to defer the issue of Diego Garcia—''agreeing to disagree'' over its final status while seeking to build U.S. confidence in the prospect of eventual Mauritian succession.

On the situation in the Mid-East, Berenger favored a new arrangement within the Palestinian Authority, PA—involving the establishment of a purely symbolic President of the PA such as Yasser Arafat but with all real power going to a new PA Prime Minister.

Our delegation next traveled to Tanzania, beginning our oversight of regional and broader security and trade issues in the lesser-developed countries of sub-Saharan Africa. At a luncheon meeting with U.S. Ambassador Robert Royall and the Tanzania country team, we learned that Tanzania is one of the poorest countries in the world, with $250 per capita annual income. The economy is heavily dependent upon agriculture, which provides 85 percent of exports, and employs 80 percent of the workforce. The World Bank, the International Monetary Fund, and bilateral donors have reportedly been awaiting meaningful Tanzanian land reform prior to investing more heavily in the country. Under the government's socialist land policy, true private ownership is unlawful and investors can acquire merely leaseholds forfeitable at the government's discretion.

I was disappointed to hear that Tanzania is not yet fully prepared to export commodities to the U.S. without further local economic reform and development. Tanzania has the potential to follow the example of Mauritius, a country with an 85 percent literacy rate, 95 percent employment, and an entrepreneurial spirit. I suggested that a Tanzanian delegation visit Mauritius and learn from its example. I also noted that with the passage of TPA, Congress expects real movement in the direction of ''trade rather than aid'' and I suggested to Ambassador Royall that he should provide President Bush with a list of achievable goals for Tanzania.

We also discussed the AIDS epidemic. A team of researchers from the Centers for Disease Control, CDC, in Atlanta, Georgia, recently completed test kit evaluation in Tanzania, and has acquired data on which AIDS tests are the best performers in statistical pools. New CDC offices are also being constructed in Dar es Salaam, to assist with the disbursement of $7 million in U.S. aid, including $2 million dedicated to blood safety.

We also explored the economic and political issues surrounding the tourism industry and the problems with refugees flowing into Tanzania from war-torn countries on its long western border. Tanzania currently has approximately 550,000 recent refugees—80 percent Burundian and 20 percent Congolese and Rwandan—and 400,000 ''old caseload'' refugees from relocations in the 1970s.

Ambassador Royall is working to help return these refugees as soon as possible in a fair manner. Ambassador Royall is also working closely with USAID, the U.S. Department of the Interior, and local U.S. non-governmental organizations to assure that the system of national parks that supports Tanzania's tourism industry, accounting for approximately 60 percent of GDP, can be sustained and expanded in conjunction with private sector support. Organizations with which we met, such as the African Wildlife Foundation, work closely with the Tanzanian national park system and the U.S. government. For example, USAID is providing assistance to the Tanzanian Park Service in maintaining roads and natural habitats in two national parks to protect this segment of the Tanzanian economy.

The delegation also visited the United Nations' International Criminal Tribunal for Rwanda, ICTR, which is hosted by Tanzania and located in Arusha. At the ICTR, we were briefed by Lovemore Munlo, the Deputy Registrar, and Kingsley Moghalu, who serves as Special Assistant to the Registrar. Our visit to the ICTR coincided with the arrest by Angolan authorities of Augustin Bizimungu, Rwanda's former armed forces chief who had been indicted by the ICTR for a major role in the 1994 Rwanda genocide. His arrest came less than a month after the U.S. offered up to $5 million under the Justice Department's ''Rewards for Justice'' program for tips leading to the arrest of eight Rwandan genocide suspects, including Bizimungu. Currently, 21 individuals suspected of genocide or complicity therein are on trial in the ICTR in eight separate trials. Former Prime Minister Jean Kambanda of Rwanda confessed in 2000 to war crimes and was convicted by the ICTR. He was subsequently sentenced to life imprisonment. Currently, two-thirds of the top leadership of the Kambanda government are on trial for genocide and related war crimes. For lower-ranking participants in the genocide, Rwandan courts have prosecuted over 6,000 individuals—many of whom face the death penalty, which is not available at the ICTR.

Later, I questioned U.S. Ambassador to Kenya Johnnie Carson as to whether the U.S. was late in responding to the 1994 Rwandan genocide. While conceding that we were not swift, he assured me that we acted as quickly as we could and that the genocide would have continued—and would have been much worse—if we had not acted when we did. He suggested that the French were in a much better position to intervene to prevent the genocide.

The ICTR is expected to remain in existence until 2008 or 2009, by which point the last of the appeals should have run their course. We were able to observe the proceedings of the trial of Eliezer Niyitegeka, former Minister of Information in the interim government of Rwanda in 1994.

From Tanzania, the delegation proceeded to Nairobi, Kenya for additional trade and security meetings. Ambassador Carson led a country team briefing focused upon political stability after nearly a quarter century of rule by current President Daniel Moi, security arrangements for the war on terrorism, HIV/AIDS, and related matters. Carson's team noted that Presidents Clinton and Bush and Secretaries of State Albright and Powell have all been privately assured by Moi at various points that he will step down after his term ends and that free elections will be called, likely in the period December 1, 2002 through March 31, 2003. Moi is now backing as his successor Uhuru Kenyatta, the 41 year-old son of Kenya's independence leader, Jomo Kenyatta, and a leader in the majority Kenya African National Union, KANU, party. If he can hold the traditional KANU coalitions together, Kenyatta is favored to succeed Moi.

Kenya is a strong security partner of the United States. For example, the United States is the only country with which Kenya has entered a ''Military Access Agreement,'' ''MAA'' allowing for U.S. military assets to be deployed there. Kenya appears well positioned to facilitate regional and other international security issues such as our global war against international terrorism.

I also asked whether we are doing enough to combat the AIDS epidemic in Kenya. According to Carson, the hard data shows that the rate of infection among adults appears to be decreasing in Kenya. The CDC is engaged in programs in West Kenya to find new vaccines, to provide education and awareness programs, and to support 40 counseling/testing centers. USAID is also active in AIDS education, prevention, and behavior change. The Peace Corps also plays a role in Kenyan public health projects relating to HIV/AIDS.

We next met with Kenya's Foreign Minister Marsden Madoka. Minister Madoka said that Kenya's cabinet had yet to discuss the Kenyan reaction if the U.S. were to move against Saddam Hussein for regime change. While noting that the cabinet would naturally have the final say, he did say, importantly, that ''chances are that Kenya would support the U.S. under these circumstances.'' On the issue of HIV/AIDS, I asked Minister Madoka how serious the problem is and what the United States can do to help. Minister Madoka said that Kenya has lowered the prevalence rate from 14 percent to 13 percent nationwide. There is, however, a long way to go in addressing this crisis and its collateral effects.

We then traveled to Sudan. Sudan has been ravaged by civil war since 1956

with intermittent breaks. The Sudan country team, led by Charge de Affairs Jeffrey Millington, contrasted the Bush policy of engaging Sudan in light of recent reform efforts contrasted with the Clinton Administration's approach to maintain sanctions because of human rights violations and religious suppression. With the Bush engagement policy, peace talks between the government of Sudanese President Omar el-Bashier and Sudanese Peoples Liberation Movement, SPLM, leader John Garange are moving forward in talks in Machakos, Kenya. Sudan is not only attempting to remedy its own civil strife with the Machakos negotiations, but its leadership is at least speaking in terms of engaging the United States in its views toward democracy, human rights, religious freedom, and suppressing international terrorism.

On the domestic side, the government of President Bashier is conducting ongoing peace talks with the SPLM, which controls much of the southern regions of the Sudan. Former Senator John Danforth, with whom we met in Nairobi on August 18 after returning from Khartoum, accepted his role as Special Envoy to negotiate this conflict on September 6, 2001, and first visited the region on November 6, 2001. Senator Danforth is working with a small team made up of veteran diplomats including Michael Miller from the National Security Council East Africa staff, Charge Millington and Deputy Assistant Secretary of State Charles Snyder.

Senator Danforth has been successful to date. On July 20, 2002, breakthrough agreements were reached leading to the ''famous handshake'' between Sudanese President Omar el Bashier and SPLM leader John Garange on July 27, 2002 in Kampala. The July 20 Machakos round produced an agreement in principle not to apply Sharia (Islamic law) in the post-reconciliation South, and would provide the people of the South the right to self-determination after 6½ years (including a referendum on secession). Still to be determined in further Machakos rounds will be the precise form of government in the South for the 6½ year trial period such as judiciary, infrastructure, security, and the ultimate status of the SPLM, including whether John Garange can keep a standing army. Senator Danforth, in preparation for upcoming rounds, has skillfully tested the two sides' willingness to come together on four vital humanitarian issues: (1) continuation of a ceasefire in the Nuba Mountain region between North and South, where Evangelicals working with Christian populations have been the target of religious persecution; (2) a polio vaccination program; (3) prevention of attacks against civilians; and (4) prevention of ''raiders,'' who with the encouragement of the government in Khartoum, have killed male populations and enslaved their women and children. Satisfaction of the four Danforth preconditions would lay the groundwork for final agreements in Machakos on a more permanent peace in the Sudan.

A key aspect of our trip involved gathering information on religious persecution. Persecution of religious minorities, focused particularly on Christians in Muslim countries such as Sudan, led in 1998 to the passage of the International Religious Freedom Act of 1998, ''IRFA'', which I introduced with Representative FRANK Wolf. The IRFA established the Office of International Religious Freedom and the U.S. Commission on International Religious Freedom with the mission of reviewing and making policy recommendations on religious freedom.

We met with Reverend Ezekiel Kondo, the Provincial Secretary of the Province of the Episcopal Church of the Sudan. Reverend Kondo raised the following issues: (1) the persecution of those who convert from Islam to Christianity, which is apparently continuing and is not covered by Machakos; (2) the withholding of permits to build new churches and to license existing churches, which remains a problem with non-Muslim clerics; (3) the refusal to grant visas for religious leaders to leave the country for professional conferences and for religious leaders from abroad to visit Sudan; and (4) the need for more precise coverage of the Nuba Mountain region dispute within the context of the Machakos agreements. Reverend Kondo is skeptical that Muslim attempts to reach out to non-Muslims will work if the basic rights for non-Muslims are not committed to in writing, implemented, monitored and enforced.

When I referenced this religious persecution with President Bashier's Peace Advisor, Dr. Ghazi Sulahaddin, and his Foreign Minister, Mustafa Ismail, I was told that the current Sudanese government should be given a chance to show the international community that the acts underlying the persecution have occurred during many years of civil war, and a process toward reconciliation only began in 1997. Both men assured us that Sudan is on the path to religious freedom and respect for human rights in general. President Bashier pledged that it is ''the obligation of Muslims to provide religious freedom,'' and that he has made this issue a priority and has commanded local officials to ''study this issue closely.''

Dr. Sulahaddin, and Foreign Minister Ismail highlighted for us their views on U.S.-Sudan relations. Sulahaddin said there is a ''huge'' potential for normalization and improvement of relations between our countries and Sudan does not engage in terrorism because the taking of innocent life is contrary to Islamic beliefs. He argued that the U.S. had no basis for concluding that the Sudanese plant that was targeted for missile strikes by the U.S. in 1998 actually produced nerve gas. He emphasized the positive aspects of the new interaction between U.S. and Sudanese intelligence agencies, and the resulting shift toward more engagement and intensification of dialogue with the Bush administration.

Foreign Minister Ismail stressed that the international community, particularly the United States, should be patient with Sudan since the real beginning of movement toward democracy, human rights, religious freedom and other elements of a free society only began in 1997–1998 with the drafting of the new Sudanese Constitution. This in combination with the debilitating effects of the North-South war has caused ''growing pains,'' according to Minister Ismail. Minister Ismail handed to Senator SHELBY a report that provides details that Sudan has done everything that it can to fight terrorism.

President Bashier stated his appreciation for the existing cooperation between the U.S. and Sudan, including the special role of our country and Senator Danforth in brokering the Machakos talks. In stressing the need for the ultimate unification of Sudan following the 6½ year trial period envisioned by Machakos, President Bashier drew an analogy between the Sudanese civil war and the U.S. Civil War. Bashier said that if the U.S. had not remained unified the Union could have ended up ''more like Canada or Mexico.''

On regime change in Iraq, Dr. Sulahaddin said, any attack on Iraq would fragment the Arab world, and urged the U.S. to seek a unified stance in the United Nations among various Arab countries. President Bashier said that he hopes that the U.S. will seek alternatives to military action because the Iraqi people have suffered enough.

Our delegation next moved to Addis Ababa, Ethiopia, to further explore trade, security and health issues. We met with the U.S. country team led by Charges de Affairs Thomas Hull. Hull briefed us about the state of Ethiopia in the wake of its two-year border war with Eritrea. The U.S. intelligence relationship with Ethiopia has grown even stronger after September 11. The Ethiopians believe that the war on terrorism serves their own domestic security interests, as Ethiopia must also contend with radical Islam as a constant threat. Other issues that were discussed included potential U.S. basing in Eritrea in preparation to act militarily against Saddam Hussein and the impact such basing might have on Ethiopian security concerns vis-à-vis Eritrea. Ethiopia is also concerned about cross border terrorist incursions into its country from Somalia.

We then met with Ethiopia's Prime Minister Meles Zanawi, who was quite articulate and spoke in depth about many subjects. He said that Ethiopia is a close ally in the war against terrorism, but for Ethiopian reasons. The

reasons to which he refers is the constant threat of radical Islam to Ethiopia and its African neighbors. He referred to the war on terrorism as something of a godsend for Ethiopia, because it has focused the world on the practices of radical Islam. Ethiopia, according to the Prime Minister, is at the epicenter of terrorism and a secular island in the sea of Islam.

We questioned Prime Minister Meles about the U.S. policy of regime change in Iraq. He responded that Saddam should be removed in order to force countries like Saudi Arabia with large Islamic populations to choose whether to allow radical Islam to take hold or to fight against that very radicalism. He calls this a fight for their very survival.

Regarding trade, Ethiopia stands to gain by the combination of the AGOA and the TPA, and Meles appreciates the role of the United States in engaging sub-Saharan Africa on trade. He said Ethiopia wants access to the U.S.'s trillion-dollar economy.

We also sought the Prime Minister's views on the Sudanese peace process and its effect upon Ethiopia. According to Meles, the Sudanese Muslim government has already taken anti-Islamic actions by agreeing in principle to non-application of Sharia in the South. This, according to Meles, will make it easier to achieve breakthroughs on other issues. The Prime Minister also sees the exploitation of oil and gas reserves in a stable Sudan, and the willingness of the United States to engage the peace process, as positive incentives for the Sudanese to move the peace process forward.

With regard to Somalia, Prime Minister Meles compared Somalia to Afghanistan and Yemen as a potential haven for terrorists. When I asked what the U.S. should do to address the situation, Meles noted that the United States must devote nonmilitary resources rather than attempting to broker a Machakos-type agreement. Somalia is not ready for a negotiated agreement because there are too many actors on that stage.

We also discussed the HIV/AIDS crisis and human suffering in Ethiopia. The Prime Minister linked solutions to both crises to United States assistance in bolstering Ethiopian infrastructure and institutions, providing access to U.S. markets through expansion of trade, and removal of Ethiopia from the cycle of reliance on foreign aid.

U.S. appropriations for HIV/AIDS projects in Ethiopia have increased from $4 million to $18 million in the past two years. At this time, both USAID and the CDC are active in Ethiopia. USAID focuses both on famine relief, drought issues and along with the CDC, HIV/AIDS prevention and education efforts. CDC has also opened HIV/AIDS diagnostic clinics in Addis Ababa. While the HIV/AIDS rate is 13 percent, consistent with Kenya prevalence percentages, actual numbers of those with HIV/AIDS is higher in Ethiopia as the population is higher.

From Ethiopia we moved to neighboring Eritrea. Ethiopia's annexation of Eritrea as a province in 1962 started a 30-year struggle for independence that ended in 1991 with Eritrean rebels defeating governmental forces. A two and a half year border war with Ethiopia that erupted in 1998 ended under UN auspices on December 12, 2000. Final lines of demarcation are being arbitrated.

According to U.S. Ambassador to Eritrea Donald McConnell, the relationship between the United States and Eritrea is sweet and sour. Ambassador McConnell gives Eritrea an ''A+'' grade in joining with the United States in the war against terrorism. Eritrea may soon be assisting the United States to change the regime in Iraq by allowing our troops to use bases in Eritrea. Eritrean President Isaias Afwerki said in our meeting with him that there must be a change altogether in the Iraqi regime if Iraqi behavior is to change.

In terms of promoting stability in the region, Ambassador McConnell told us that Eritrea might face greater challenges from radical fundamentalism. President Isaias is skeptical of Sudanese intentions and believes that the Bashier government will continue to quietly encourage radical fundamentalists to further destabilize the region. President Isaias said that the Sudanese leadership is committed to radical Islam and are worse than bin Laden, and that they preach hatred under the guise of Islam. He believes that the United States must remain constructively engaged in the region to prevent radical Islamic views from overtaking neighboring countries or threatening their security.

While in Eritrea, we continued to hear of religious persecution in Sudan and the importance of the United States in stopping it. In separate discussions with Abune Philipos Woldetensae, the Patriarch of the Eritrean Orthodox Church, and Abba Menghisteab Tesfamariam, the Bishop of the Catholic Church of Eritrea, we were told that the Sudanese are oppressing Christians in southern Sudan. Abune Philipos went so far as to say, Christian believers in Sudan will not exist if the U.S. Government does not bring pressure to resolve their persecution by Islam. Bishop Menghisteab recounted how five of his fellow Catholic Bishops from Sudan have told him as recently as July 28, 2002 of Christian women and children being sold into slavery.

The Sudanese Bishops also told him that President Bashier is attempting to Islamize the entire country by using Sharia law to suppress Christians. According to both clerics, some new Eritrean churches may be facing problems obtaining permits to worship. These two men stay in close contact with the head of the Eritrean Muslim community, as well as leading Protestants, which make up the traditional four churches in Eritrea. The new churches not belonging to this traditional group of four have been told in recent weeks that they must register with the government and provide information on their activities and source of funding, according to Ambassador McConnell.

We discussed other human rights issues such as the detention without charge of two Eritrean employees of the U.S. embassy due to national security concerns. There is just so much the U.S. can do as it relates to the internal affairs of a country like Eritea, and we remain hopeful of an acceptable resolution of the detention of the two employees.

The United States can help Eritrea by remaining engaged in the region. Among other things, we can assist Eritrea in becoming an exporter of valuable products by focusing foreign aid on building their infrastructure. Then Eritrea can take advantage of AGOA and TPA and become a viable U.S. trade partner and thus expand our bilateral relationship.

Our codel then traveled to Sicily for refueling the night before returning to the United States.

Mr. President, I ask unanimous consent that copies of op-ed pieces which I have written for the Morning Call and the Harrisburg Patriot and the Pittsburgh Post-Gazette also be printed in the CONGRESSIONAL RECORD.

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

[From The Morning, Call, Sept. 16, 2002]

PROSPERITY AND PEACE IN AFRICA WILL HELP FIGHT AIDS

(By Arlen Specter)

PHILADELPHIA—''I want access to America's trillion-dollar economy,'' Ethiopian Prime Minister Meles Zanawi told Sen. Richard Shelby, a Republican from Alabama, and me in our mid-August fact-finding travels through Africa. If the developing nations of Africa can stop the spread of HIV and AIDS and end their bloody wars, the continent stands at the brink of real economic development with expanded foreign aid and new U.S. trade laws, which will open our markets.

Wherever we went—South Africa, Tanzania, Sudan, Ethiopia, Mauritius, and Eritrea—we heard of the debilitating effects of the AIDS epidemic. In many African countries, the U.S. National Institutes of Health and Center for Disease Control are providing funding and personnel to combat AIDS. President Bush recently announced a new $5 billion aid package to Africa to spur economic development and AIDS control. This year's World HIV/AIDS Conference in New York City is promoting education, testing, and treatment. Follow-up action by African governments and increased foreign aid offer some promise, but winning the war against AIDS will be very difficult.

Prospects for ending civil wars are brighter. On July 20, a breakthrough agreement was reached between the Sudan government and the Sudanese Peoples Liberation Movement (SPLM) largely due to the mediation efforts of former Sen. John Danforth. Sudan's President Omar el-Bashier told us of his keen interest to improve relations with the U.S. and to have his country taken off the terrorist list. This has led Sudan to offer unlimited, surprise visits by U.S. intelligence agents to its weapons factories and laboratories to assure it is not developing weapons of mass destruction, and Sudan has

also agreed to grant religious freedom to Christians who have been persecuted and sold into slavery for decades by their Islamic oppressors. Much more needs to be done to, but our former colleague, Sen. Danforth, gave us a detailed report on the reasons for his optimism.

In Addis Ababa and Asmara, we heard assurances from Ethiopian Prime Minister Meles Zanawi and Eritrean President Isaias Afwerki that the war over their boundary dispute had been resolved. Both men, along with other regional leaders, were focusing on the conference for ''Samalia Reconciliation'' held in Kenya last week, sponsored by IGAD, the Intergovernmental Authority for Development. Anarchy in Somalia, with numerous war lords, causes regional instability and breeding grounds for al Qaeda.

In our visit to the Rwanda War Crimes Tribunal in Arusha, Tanzania, we observed a trial on charges of genocide. That Tribunal established an historic precedent in 2000 by convicting a head of state, former Prime Minister Jean Kambanda of Rwanda.

Perhaps the Rwanda criminal proceedings have even been a factor in ending the wars in Angola and Sierra Leone in the last few years. Peace negotiations are also now promising in Burundi and Congo. An optimistic note was sounded by Charles B. Snyder, deputy assistant secretary of state for Africa: ''I like to think peace is contagious.''

If answers can be found to war and AIDS, the isle of Mauritius, located 1,200 miles off the east coast of South Africa, is a prototype for economic prosperity. Mark Twain once said upon visiting the island that ''One gets the impression that God made Mauritius first, and then modeled Heaven after it.'' We visited a sweater factory that was started by a Mauritian in 1985 and now employs, 2,500 people using the most modern equipment. Some of the piece workers there earn $300 a week, a stark contrast from the $250 annual earnings in Tanzania. Our Ambassador John Price and the factory owner, Sunil Hassamal, expect those earnings to increase as a result of the U.S. African Growth and Opportunity Act passed in 2000 and the newly enacted legislation on Trade Promotion Authority.

Perhaps the most remarkable development since my last trip to South Africa in 1993 is what has happened to that country. With the election victory of the African National Congress in 1994, apartheid has given way to a stable government where blacks and whites work together and Nelson Mandela is everybody's hero.

[From the Patriot News, Sept. 1, 2002]

CHRISTIANS FACE MANY OBSTACLES IN SUDAN

(By Sen. Arlen Specter)

A peace agreement between the government of Sudan and the Sudanese Peoples Liberation Movement offers the prospect of ending slavery and the persecution of Christians in Sudan.

The civil war, which has raged since 1956 with only intermittent lapses, has seen governmental Muslim forces attack Christians in the south, kill the men and kidnap the women and children who are then sold into slavery.

In September 2001, President Bush appointed former Sen. John Danforth as his Special Envoy to broker a peace agreement between the warring factions. After intense negotiations, a break-through agreement was reached on July 20 leading to the ''famous handshake'' one week later between Sudanese President Omar el Bashier and SPLM leader John Garange.

Sen. Richard Shelby, R-Ala., and I traveled to Sudan in mid-August to discuss these issues with the parties with special emphasis on what was happening on religious persecution.

I tried to visit Sudan, but could not do so because of dangers from the civil war. Instead, I visited neighboring Eritrea where I met with Sudanese Christians in exile and I then traveled to Addis Ababa where I discussed religious persecution with Patriarch Abuna Paulos of the Ethiopian Orthodox Church.

These meetings plus fact finding in Egypt and Saudi Arabia in 1998 provided part of the bases for legislation that Rep. Frank Wolf, R-Va., and I introduced that later became the International Religious Freedom Act of 1998.

In Khartoum last month, Rev. Ezekiel Kondo, the Provincial Secretary of the Episcopal Church of Sudan, advised that persecution of Christians by the government of Sudan was continuing, but there was hope that a peace agreement would produce real change. Rev. Kondo said Christians weren't able to build churches, were denied visas to attend out-of-country conferences and Islam converts to Christianity faced death.

When we traveled to Asmara, Bishop Abba Menghisteab Tesfarmariam of the Eritrean Catholic Church told us about complaints of five Sudanese Catholic Bishops at a conference in Dar es Salaam, Tanzania in July, that Catholics were persecuted and sold into slavery by their Islam oppressors.

In Asmara, we also met with 97-year old Patriarch Abune Philipos Woldetensae of the Orthodox Church who emphasized that Christians will not be permitted to practice their religion even with guarantees in the peace agreement unless the U.S. makes it happen.

In our meetings with Sudan's top officials, Sen. Shelby and I stressed the importance of carrying out the guarantees for freedom of religion. President Omar el-Bashier, foreign Minister Mustafa Ismail and Peace Advisor Ghazi Sulahaddin all pledged to do so. When we discussed the issue with Eritrean President Isaias Afwerki, he scoffed at the prospects for Sudan to honor the commitment on religious freedom because Islam fundamentalists are fanatic about spreading their religious beliefs as part of gaining control of people and countries.

From meeting many people in the region and especially Sen. Danforth, it is my judgment that Sudan very much wants to gain favor from the U.S., which is the principal reason for a peace agreement with the SPLM.

Repeatedly, the Sudanese officials asked about being taken off the terrorist list.

Sudan's government has made other significant concessions such as giving U.S. intelligence agents unlimited access to weapons factories and laboratories for surprise ''visits'' to check for production of weapons of mass destruction.

The ''Strategic Paper on Just Peace in the Framework of Comprehensive Political Settlement in Sudan'' specifies ''Religious belief and cultural identity are natural aspirations at the individual and group level, but cannot be imposed on others by any single party.''

A final written agreement must spell out religious rights and deal with many specific pending issues.

Whatever the words, only the deeds matter.

Ultimately, U.S. pressure will be indispensable.

The International Religious Freedom Act of 1998 provides the mechanism to monitor and, where necessary, impose U.S. sanctions to guarantee religious freedom in Sudan and elsewhere.

[From the Pittsburgh Post-Gazette, Sept. 13, 2002]

TRY THE SUDAN MODEL FOR INSPECTIONS IN IRAQ

(By Arlen Specter)

WASHINGTON.—On a trip to Sudan in August, Sen. Richard Shelby and I learned about ''visits'' to Sudan's weapons factories and laboratories by U.S. intelligence agents that could provide a model for U.N. inspections in Iraq.

Sudan's president, Omar el-Bashir, told us his country was very eager to improve relations with the United States with a view to ultimately getting off the terrorist list. In addition to promising to stop persecuting Christians, Sudan is allowing U.S. agents unlimited, unannounced visits to any location—to break locks, inspect and photograph. Our agents told us they are confident that Sudan is not developing weapons of mass destruction at any of these installations.

Obviously, the situations between Iraq and Sudan are very different, so many questions would have to be answered. The first question is whether Saddam Hussein will ever honor his commitment to the United Nations to permit such inspections.

Last April, Secretary General Kofi Annan told me of his frustrations in dealing with Saddam's ''cat and mouse'' game. First, Saddam stalls, then his people say yes with qualifications, then another Iraqi official says no and meanwhile Saddam is free to do what he pleases. Since the United States downplays such inspections, there isn't much push to get them done. While it is true that no inspection regime can guard against factories or laboratories we don't know about, visits on the Sudan model would go a long way.

Then there is the doubt about whether the Bush administration really wants inspections. Inspections might delay a planned attack. In any event, Bush's team doubts their value. The President addressed the United Nations yesterday and stated that the U.N. Security Council resolutions must be adhered to by Iraq. Inspections are an integral part of those resolutions, and could be patterned after the inspections currently being used in Sudan. A very high-level expert in the U.S. intelligence community told me unrestricted, surprise inspections could provide adequate information on what Iraq is doing on WMD at those locations.

As President Bush has escalated the rhetoric for regime change, even his customary Republican allies have joined the international chorus in raising questions and insisting that he receive congressional authority to go to war against Iraq. Former National Security Adviser Brent Scowcroft, Republican Sen. Richard Lugar of Indiana, Jack Kemp and even columnist Robert Novak represent a strong conservative base in urging caution, restraint and even no action.

Former Secretary of State James Baker has proposed a U.N. resolution calling for the use of force to compel Saddam to honor his 1991 commitments to permit inspections. That could provide the basis for an international military coalition if the Security Council agrees and Iraq continues to resist. If the United Nations does not adopt the Baker idea, it gives the United States a strong reason to unilaterally enforce Iraq's inspection commitments if the United Nations won't.

In order to make the case for military action, President Bush will have to deal with other tough issues: the cost in casualties, who will replace Saddam and what will be the repercussions in the region and beyond. But if Saddam continues to turn away inspectors, this will raise the common-sense

conclusion that he has something to hide, like weapons of mass destruction. And as the risk looms large that Saddam is continuing to develop such weapons, those issues will be subordinated to avoiding another Sept. 11 or worse.

Mr. SPECTER. I thank the Chair and yield the floor.

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. AKAKA. Mr. President, I ask unanimous consent to speak as in morning business for 30 minutes.

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

HONORING CONGRESSWOMAN PATSY T. MINK

Mr. AKAKA. Mr. President, I rise to offer a few words in tribute to a distinguished colleague and dear friend, Congresswoman PATSY TAKEMOTO MINK, who passed away Saturday afternoon in Honolulu, HI. I am deeply saddened by the passing of my friend and colleague, PATSY MINK, and I join our Congressional delegation, and the people of Hawaii and the Nation in extending heartfelt sympathy to John and Wendy Mink, her husband and daughter, Eugene Takemoto, her brother, and all of PATSY's extended family and her loyal staff in Washington and Hawaii.

I feel a tremendous sense of loss at the untimely death of Congresswoman PATSY TAKEMOTO MINK. Her passing leaves a void in the House of Representatives, the Hawaii congressional delegation, and the political life of our Nation. It is difficult to put her spirit into words, but those that come immediately to mind as fitting characterizations of the woman we honor today include courageous, forthright, tenacious, gutsy, outspoken, bold, meticulous, and determined. She was my friend, a dedicated public servant for Hawaii, a strong pillar in our state's delegation, and an advocate for those in America who feel scared, small, alone, mistreated, neglected or forgotten.

PATSY was a petite woman with a powerful voice and a peerless reputation as a champion for equal opportunity, civil rights, and education. She was a courageous and tenacious leader whose lifetime of public service made Hawaii a better place. Her leadership in health, education, child welfare, and social services will endure and continue to benefit Hawaii's people and all Americans.

In the course of her life, PATSY was a pioneer, a trailblazer for women, workers, minorities, the poor, and the powerless. In the history of Hawaii and our Nation in the 20th century, PATSY MINK is one of the giants whose vision of hope and passion for justice led Hawaii to statehood and whose efforts broke down barriers and opened doors to opportunity for everyone, regardless of race, gender, or religion. Her passing silences a dynamic voice, but her many accomplishments, her unimpeachable integrity, and passion for justice stand as an incredible legacy to a magnificent woman.

I commend to my colleagues and all those interested in PATSY's remarkable life, a biography by Esther Arinaga and Rene Ojiri included in a book titled Called from Within: Early Women Lawyers of Hawaii, edited by Mari Matsuda. I wish to recap some of her brilliant life and career for the RECORD.

Born on December 6, 1927, in Paia, Maui, PATSY was independent and ambitious from the start. As an illustration, one family story recalls that she insisted at age four on beginning school a year early. She was driven throughout her young life, and was elected student body president at Maui High School. She graduated as valedictorian in 1944, a year marked by global strife and war.

PATSY's childhood curiosity about medicine led her to study zoology and chemistry at the University of Hawaii. After graduating in 1948, she applied to medical school, only to be rejected along with other bright young women aspiring to be doctors, in a time when women made up only 2 to 3 percent of an entering class. Another factor daunting her efforts was the return of our war veterans and a resulting boom in applications for graduate and postgraduate programs. Although discouraged, PATSY took wise counsel from a mentor and applied to law schools. She gained admission to the University of Chicago. It was during her years of law studies that she would meet and marry John Mink, a respected hydrologist and geologist, her loyal campaign advisor, and her lifelong companion. It was in Chicago that they would have their daughter, Wendy, a professor at Smith College.

Returning to Hawaii, PATSY gained admission to the Hawaii bar in 1953, but only after a successful challenge of a statute that required a woman to take the residency status of her husband, who was a native Pennsylvanian. Such an action represented only one of several challenges to sexism that she would undertake during her professional career. In being admitted to the bar, she also logged one of many firsts by becoming the first Japanese American woman to do so in Hawaii.

In the 1950s, PATSY began to take a serious interest in politics and make her mark on the Democratic Party by helping to build the party and draw many young people into its ranks. PATSY's first step into public elected office in the territorial legislature in 1956 awoke for Hawaii and the world a powerful voice that would only gain strength in its impact and not be silenced until the new millennium. From that moment forward, PATSY's professional and political record would run as if by perpetual motion.

The momentous year of 1959 brought Statehood for Hawaii, and by then, PATSY had easily won election to the territorial Senate. Leading up to Statehood, while the legislature worked on landmark issues that would lend shape to Hawaii's new society, PATSY authored an ''equal pay for equal work'' law and scrutinized the Department of Education toward improving education for Hawaii's children—a cause close to my heart, as one who previously served as a teacher and principal in Hawaii's schools.

In 1965, PATSY brought her views to the national stage when she became the first woman of color elected to the United States House of Representatives to represent Hawaii's 2nd Congressional District—a seat I was proud to hold for almost 14 years, before I entered the Senate. PATSY was articulate about the causes she tenaciously shepherded. President Franklin Delano Roosevelt's fireside chats, heard years ago on Maui by a young PATSY, had provided her with a foundation of ideals and rhetoric from which she would draw upon for many years in her political career.

During her first tenure in Congress, PATSY served her various constituencies, both in Hawaii and around this Nation, with a strong commitment to wide-ranging domestic issues, including education, the environment, child care, open Government, workers' rights, and equal opportunity. She introduced the first Early Childhood Education Act, authored the Women's Education Equity Act, supported strip mining regulation, and became an early critic of the Vietnam War. In 1971, she entered the Oregon Democratic Presidential primary. Her candidacy reflected her determined independence and frustration with Government cutbacks in social services spending and the ongoing war.

In 1971, in connection with planned underground nuclear tests at Amchitka Island in the Aleutian chain, she filed suit with 32 other Members of Congress to compel disclosure of reports under the Freedom of Information Act, FOIA. She took issue with alleged Presidential authority to exempt certain information from FOIA and withhold it from judicial or legislative review. In the final outcome, in what had been described by PATSY as a sort of Waterloo of the Freedom of Information Act, the U.S. Court of Appeals ruled that Congress could legislate new disclosure guidelines to permit judicial review of the President's actions. In the end, the case gained tremendous historical significance when the U.S. Supreme Court cited it as precedent for the release of the Watergate tapes.

In perhaps her farthest-reaching accomplishment, PATSY co-authored title IX of the Higher Education Act Amendments, which prohibits gender discrimination by educational institutions receiving Federal funds. The landmark provision was enacted in 1972 and has since, in its 30 years of existence, introduced equality in college sports and contributed greatly to the rise in women's athletics.

An unsuccessful Senate bid ended her first set of years in Federal office in 1977, but it did not quiet her political

involvement or public service. Indeed, in 1990 she returned to the House. In the interim, she assumed the position of Assistant Secretary of State for Ocean and International, Environmental, and Scientific Affairs, where she helped to strengthen environmental policies, particularly with regard to protection of whales, toxic chemical disposal and ocean mining. In 1980, she took the helm as the first woman president of the Americans for Democratic Action. Two years later, she returned to elected office in Hawaii by taking the gavel as chairperson of the Honolulu City Council. She twice ran unsuccessfully for other office, this time for Governor and mayor of Honolulu, then triumphed in 1990 in a special election for the remainder of my term in the other body, at the passing of our beloved colleague, Spark Matsunaga.

Since 1990, she continued in characteristic style, advocating and articulating the ideals that she had espoused during her first terms in the other body. I remember PATSY marching up the Capitol steps with vigor, alongside her other female colleagues, to show her support for Anita Hill in 1991. I was pleased to work with PATSY, the distinguished senior Senator from Hawaii, Senator DAN INOUYE, the honorable Secretary of Transportation, Norm Mineta, and my other colleagues in the establishment of a Congressional caucus to address the needs of Asian Americans and Pacific Islanders in 1994.

I recall her leadership in 1996 on a successful boycott of a joint session speech by French President Jacques Chirac, in protest of French nuclear testing in the Pacific, much in line with our shared commitment to championing the disenfranchised peoples of the Pacific in our respective bodies. As we hope to complete action on a welfare reauthorization bill in this session, I remember PATSY's steadfast efforts before the passage of the 1996 welfare reform law in keeping us mindful about the possible effects of social policy changes on children. She had continued the battle cry with the current welfare reauthorization and ensured that the voices of the smallest and most vulnerable were heard.

PATSY was one of the last Members of the 107th Congress who served in the historic 89th Congress that passed much of the landmark Great Society legislation. PATSY's lifelong efforts to open educational access to countless Americans and ensure them the best educational opportunities were the achievements that brought her the greatest satisfaction. ''Anything for the children,'' was PATSY's guiding conviction. I believe we shared the same view about education that this crucial area is where we can do the most good for the most people.

A great spirit has come and gone before us. PATSY's vigor and courage to tackle difficult issues in the wide realm of social policy will be sorely missed. There are fewer trails for women and minorities to blaze, thanks to PATSY's determination and spirit. Indeed, her trailblazing efforts will not end with her death, for the things she put into place will continue to benefit the lives of countless individuals, in our lifetime and for generations to come, in ways that may not ever be truly appreciated.

We are enjoined to carry forth the mission that my dear colleague pursued during her remarkable career. With great sadness, we bid a final farewell and aloha pumehana to a fearless and remarkable lady, the most honorable PATSY TAKEMOTO MINK.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. NELSON of Florida). Without objection, it is so ordered.

Mr. DORGAN. Mr. President, are we in morning business?

The PRESIDING OFFICER. The Senator is correct.

Mr. DORGAN. I ask unanimous consent to speak for as much time as I consume.

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

HOMELAND SECURITY

Mr. DORGAN. Mr. President, I have been hearing in recent days that, once again, the President is on the campaign trail across the country. Sometimes he does two, three, four, and five fundraisers a day. At most of these fundraisers, the President criticizes the Senate for not passing the homeland security bill exactly the way he would like it. I thought I might make a couple of comments about that.

First, we in the Senate are in the process of debating the homeland security bill. I hope the President will ultimately be willing to compromise with us on some key issues. I believe we will pass a homeland security bill, and I believe it will be soon if we get some willingness to compromise on the part of the White House. We will also, at the President's request, take up a resolution dealing with the question of Iraq and the use of force and the United Nations.

It is our intention on the majority side to have a good, aggressive debate on these issues, but at the same time work with the President and accommodate the President as much as possible.

But I want to make a few points that I think are important. Foremost among these is that I don't think it is appropriate for the President to be going around the country, doing multiple fundraisers every day and suggesting that the Senate or some Members of the Senate do not seem to care about national security. I think that is terribly inappropriate.

It is not inappropriate at all for the President to campaign. He certainly will and should do that, but I don't think he ought to use these campaign opportunities to do what he has been doing. I understand he has raised something like $130 million. He is a prodigious fundraiser, and he has every right to do that. But it is unfortunate that a President who has spoken of a desire to change the tone of political discourse in Washington, DC, is rushing around the country doing fundraisers and pointing the finger at the Democrats in the Senate, saying they don't care about the security of this country.

The fact of the matter is that Democrats proposed the creation of a Department of Homeland Security just one month after the terrorist attacks on September 11 of last year. Lest we forget, Senator LIEBERMAN—the prime sponsor—introduced in the Senate a bill to create a homeland security Cabinet agency exactly 30 days after the September 11 attacks.

The President opposed it. The White House opposed it. They said they didn't want it. They objected. Month after month after month, the White House opposed the creation of a Cabinet level agency dealing with Homeland Security.

In fact, when the legislation was marked up in the full committee chaired by Senator LIEBERMAN, the Republicans largely voted against it in the full committee because the White House opposed it, the President opposed it, the President didn't want it.

And then on June 6, a full 9 months after the September 11 attacks, the President did a 180 degree reversal and said: Now we want a new Department. And, by the way, we not only want this new Department, but we want the following provisions to apply to the 170,000 workers of the new Department, and we are not willing to compromise. We demand that it be done the way we intend it to be done. That was the message from the White House.

First, for 9 months they didn't want an agency. Now they not only want an agency, but they say we must have it their way and will not compromise. And then, in the middle of the Senate debate, the President goes on the campaign trail, and suggests that Democrats don't care about national security. That is nonsense.

The President said he wants to come to town to change the tone. There is precious little evidence of that in recent weeks, I would say. But I do think it is time to change the tone.

The right thing for the President and the Congress to do is to work together to reach a fair compromise and to find a way to do this in a thoughtful way. Changing the tone means you sit down together and try to get the best of what both sides have to offer. That is all we ask at this point.

We have been on this legislation for some 4 weeks. There is no reason we

cannot have thoughtful and satisfactory compromises so we can pass a Department, a Cabinet level agency on homeland security, through this Senate, go to conference, and get a bill to the Senate he can sign. There is no reason we cannot do that and do that soon.

I believe that is the goal of Senator LIEBERMAN. I know it is the goal of Senator DASCHLE. I just visited with him. We want this to happen.

I said the other day that I would never, ever, under any set of circumstances, question whether anyone in this Chamber supports this country's national security. Everyone does—liberal, conservative, Republican, Democrat; we all strongly support the security of the United States. We may come at it from different angles or different approaches and have different ideas, but I believe everyone really has the best interests of this country at heart. I believe that of the President as well.

I think it is now time for the President to sit down with us and reach agreements and reach some compromises and get this piece of legislation moving. And I think it is time, long past the time, for the President to stop going out on the fundraising trail and using this issue in a divisive and inappropriate way.

We need to get this right. This debate isn't about politics. This is about effectively protecting the interests of this country. And we are all in this together.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. Mr. President, I thank the Chair.

I thank my friend from North Dakota for what he said. It has gotten frustrating in the last couple of weeks, and all the more so because we agree on 90 to 95 percent of what ought to be in legislation creating a Department of Homeland Security.

The senior Senator from Texas, who is the lead advocate for the administration, for the White House, for the President, and for himself, has said the substitute he offered to the bipartisan bill that came out of our Governmental Affairs Committee is 95 percent the same as the Governmental Affairs Committee bill. We have a 5 to 10 percent difference, mostly focused on this question of how you protect and reassure Federal workers who are moved from other Departments to this new Department while not undercutting the President's authority over national security. Surely we can find a way to bridge that gap on a bipartisan basis. As my friend from North Dakota knows, Senator CHAFEE is taking a lead role in creating a bipartisan alternative to the parts of our committee bill that dealt with this question. And I accepted that compromise even though it wasn't the one our committee first adopted and I proposed, because I thought it was a way to break the logjam and allow us to create and enact into law that 95 percent which we all agree on. But the White House has remained unyielding.

Mr. DORGAN. Mr. President, if the Senator will yield for a question, is it not the case last week after several weeks where we had this impasse with the White House on this issue—the bipartisan proposal that tries to be the centrist proposal—it was once again blocked? The White House said, No, we are not interested in doing that either. It is either our way or no way. If it is not our way, we intend to go to fundraiser after fundraiser and criticize.

I have great respect for the President. I have supported him on many things. Especially in a political season with all of this discussion existing in this country about changing the tone, I am just not very happy seeing three to five fundraisers a day and using the opportunity to say, By the way, the Senate can't get this bill done. What is the bill? The bill is to create a Cabinet-level Department of Homeland Security proposition which the White House opposed for 9 straight months.

In fact, the ranking Member—I say to the Senator from Connecticut—voted against the proposal, and then, 2 weeks later, found out he was in favor of the proposal. He used a whimsical quote about being in favor of something which he voted against because the White House pivoted and said, No, we support it, but based on the notion of what we believe must happen. And, if that is not satisfactory to the Congress, we are going to go criticize the Congress rather than reach a compromise.

Once again, I would like to see a change in tone, but I haven't seen it, at least in recent weeks.

Mr. LIEBERMAN. In response to my friend from North Dakota, he is absolutely right on a few of the points involved. Words have consequences, both in our personal lives and in our public lives. When you take the good-faith dispute we have had here about this single question of Federal employees' rights to be transferred to the new Department and suggest people in the Senate are putting those concerns ahead of national security by which you are questioning their motives, and even their patriotism, to some extent, it has consequences. It has consequences because we naturally feel we have been treated unfairly. It is unfortunate; it has consequences beyond this bill. It began to have consequences last week on questions related to a resolution that would authorize the President to take military action in Iraq, if necessary.

I think what my friend from North Dakota has said is very important to remember here. We have tried and have not always succeeded. But when we come to questions of national security, foreign and defense policy, as we always say, partisanship ends at the Nation's borders. We are in a new world post-September 11, 2001, where national security is within our borders. The questions of national security are within our borders. We should strive for the same absence of partisanship and debate this as we do internationally. That is why we have all got to lower our voices a bit and try to focus on the very narrow area of difference we have so we can get this job done to protect the security of the American people.

The Senator from North Dakota is right. The truth is, Senator ARLEN SPECTER, our Republican colleague from Pennsylvania, and I and others introduced a bill to create a Department of Homeland Security in October of last year. The administration had what I always respected as a good-faith difference of opinion. They didn't feel it was necessary. They felt the Office of Homeland Security the President created by Executive Order could do the job. I always felt, and Senator SPECTER felt, we needed a Department with a strong Secretary with budgetary authority and line authority over people serving under them. That dispute went on for 8 months until the President endorsed the idea on June 6. I never would have thought to say or allege, because the President and we had this dispute about how best to protect homeland security, somehow the President was putting that bureaucratic or ideological vision—whatever you call it—ahead of his commitment to national security. Obviously, that would have been unfair, just as I think some of the statements the President has made in the last week are unfair.

It is Monday, and it is a new week. Hope springs eternal. I hope we can sit and reason together with the biblical ideal—the prophet's vision—in our minds.

There is a danger lurking out there. The terrorists are still out there. They hide in the shadows. But they are at work planning to strike us again. Shame on us if we don't get together and create a Department that can prevent them from doing that. Let us do it this week. We can break this logjam. It is that simple.

The PRESIDING OFFICER. The Senator from Utah.

Mr. BENNETT. Mr. President, I listened with interest while my two friends discussed this issue. I may as a footnote point out they really are my two friends. My mother used to say you could always tell how much a Senator hated another one by how many ''distinguished'' and ''great friend'' adjectives he used. But, in this case, it is genuine.

I think the Senator from North Dakota has raised a legitimate issue about the tone. I would like to do what I can to change the tone of this debate.

As I see it, speaking solely for myself as maybe the last Member of the committee, the fight here is about the President's ability—or, more appropriately, the new Secretary's ability—to manage the Department efficiently and effectively.

I do not see the history quite the same way in terms of the dispute,

Should we have a Department or should we not have a Department in the months leading up to the President's request.

I believe that within the administration there was always an assumption that a Department, at some point, made sense, but the administration was not willing to identify a specific set of recommendations as to how that Department would be formed until the President made his statement.

So I do not think it was a matter of resisting, resisting, resisting, and suddenly changing his mind. I think it was: We are going to keep our options open. We will not endorse anything. Therefore, we will not endorse the Lieberman bill until we have decided what it is we want.

I think the Senator from Connecticut has been more than generous in his willingness to grant good faith to the administration on that issue. I think that is correct on both sides.

Now, as I understand the issue, listening to members of the administration, as we meet in our meetings, and listening to the debate both in committee and on the floor, there is no desire, at least substantively within the true policymakers of the administration, to turn this into a partisan fight. I will grant there are those who are willing to grab for any partisan advantage they can find. I would suggest that people who have that inclination exist on both sides of the aisle, populate both parties, and, indeed, may even be found in the Green Party or some other party that likes to pose as being above searching for a partisan advantage.

But I believe the problem in this circumstance stems from the high stakes that are involved in making sure the Department is done right. I have addressed this on the floor before, and the Senator from Connecticut has heard me address it in committee. The challenge of putting together a Department such as this is so overwhelming, and the possibilities that it will go wrong if it is not properly constructed in the first instance are so great, that things that might have been resolved on a more normal legislative question become sticking points on this one.

I have said on the Senate floor before that I was involved in the creation of the Department of Transportation, which has some similarities to this. Because we took the Coast Guard out of the Treasury Department—I say ''we''; it was done in the Johnson administration. I was in the Nixon administration that inherited this shortly after it was created but while the problems still existed.

They took the Coast Guard out of the Treasury Department. They took the Highway Administration out of the Commerce Department. They took the FAA from its status as an independent agency. They took the Urban Mass Transit Administration out of the Department of Housing and Urban Development. And they took several other agencies of smaller stature, pasted them together into a single Department, and discovered major management challenges.

Whenever I address this issue in front of a group of business executives who say, Why can't we put this together very quickly, I always ask them the question, Have any of you ever been engaged in a major corporate merger? And when they nod their heads, I say, Do any of you have any thoughts that this will be easy?

It is at least twice as large as the challenge creating the Department of Transportation. This is not the same thing as creating the Department of Education, which simply took the Office of Education and slapped the ''Department'' label on it. It still had the same culture, the same work rules, the same procedures.

It is not the same thing as taking the Department of Veterans Affairs, which was simply taking an existing office, slapping a new label on it, and saying, OK, we are now going to take veterans and elevate them to Cabinet status. In this case, it is putting together so many disparate agencies, many of which have been functioning in an atmosphere where homeland security is a part, but almost an unimportant part, of their main mission, but because of where they are, they need to be pasted together in this new Department and have a major change.

As I listen to the White House individuals talk to us on the Republican side—as we talk about this, they say: This is not really a matter of union versus nonunion; this is a matter of the power of the President and, through the President, his delegate, the Secretary, to organize the Department in the most efficient way. And we are afraid—I am speaking now for the administration, which is maybe presumptuous on my part, but as I hear what they say, it is: We are afraid that if it comes in the form we are talking about here, we will end up with a Department that is unmanageable, and the President will have to go through so many hoops, laid out in departments that are not focused on homeland security, that it will be impossible for the new Secretary to function.

I ask all of my colleagues this rhetorical question—I have asked the Senator from Connecticut this question, and he has answered yes—but I ask all of the Senators this rhetorical question: Would you be willing to accept appointment as the new Secretary of this Department in the form in which it is being proposed to us under the Breaux-Chafee-Nelson amendment?

I have some management experience. I have been in the executive branch in a Cabinet-level Department. I could not honestly answer that question yes for myself because I watched as the first Republican Secretary of Transportation, John Volpe, wrestled with all of the problems of moving people around the Department. The Congress gave him, a high degree of management flexibility. He could move people around without asking congressional approval for a certain period of time. I should probably research the exact period. My memory is that it was 3 years after the creation of the Department. He could move people, almost capriciously, for 3 years.

Secretary Boyd, who was the first Secretary of Transportation, did it for 18 months. I know Secretary Volpe did it until the time came. It was absolutely essential for me, in the office I organized for the Secretary, to have that kind of flexibility. I was moving people around, violating what had been their traditional kinds of protections, simply because the whole thing would not function if we did not have that kind of flexibility.

The Congress put a time limit on it because they wanted to make sure that the Secretary would not abuse that power. I remember how concerned Secretary Volpe was that the clock was running, and he had to get the reorganization done before midnight struck and suddenly everything would be frozen again.

We were talking about a Department dealing with entirely domestic issues, having no national security implications, in a situation where there was no external pressure, such as a potential attack. And it took 3 years or more before that Department came together and functioned.

As I have reminded Senators before, an even larger example of this kind of organization, which is the closest parallel we have to creating the Department of Homeland Security, was the reorganization of the Department of Defense that came after the Second World War. That was in 1947.

The Department of Defense probably did not fully function until the Goldwater-Nichols Act of Congress stepped in, what, 15 years later? Certainly more than a decade later. And it is instructive to remember that the first Secretary of Defense, faced with all of these challenges, committed suicide.

There are those who say, well, there were other problems in his life. And I am sure that is true. I will not attribute his ultimate depression and decision to end his life to the difficulties of managing the Department of Defense, but it certainly can be said that those difficulties did not help.

So if the President were to call me and say: Bob, you have had experience at Transportation; you have been in the executive branch; you have been an appropriator; you have a unique background; I want you to be the Secretary of Homeland Security and serve the country; I would have to say to him: Mr. President, not under the terms of this bill. My ability as the CEO would be hamstrung.

The Senator from Connecticut is exactly right. Through his good efforts and his willingness to be open, which is his hallmark and his trademark as a Member of this body, he has worked with the White House in crafting something that is agreeable to both sides 95

percent, maybe even more than 95 percent. There is no point in putting a firm number on it because the two are now tremendously close.

The remaining issue is the kind of issue that would cause me to turn down service in this position. May I hasten to say, I am not running for the position, lest anybody have any mistakes about this. I enjoy the Senate too much.

As I have tried to look at it as objectively as possible, I have decided that the President's statement that he would veto this bill is a correct one. It is not rooted in a desire to embarrass the Senate or impugn the integrity or the ability of the Senator from Connecticut or his committee on which I serve. It is rooted in a firm belief that the management procedures of this Department, as structured in this bill and as they would remain structured under the proposed amendment, would prevent the next Secretary, whomever he or she may be, from having absolutely essential authority to organize the Department.

I have said this before—I will say it again; no one has taken me up on it—I would be willing to put a time limit on the kind of flexibility I think we need. If indeed there are those who are nervous that some future President, even if they give this one every benefit of the doubt, those who are nervous that some future President might abuse this power, I would say: Let's give the President the power he wants on management flexibility and put a time limit on it and say his ability to move people around would expire after 5 years, I would think would be more logical, if he had the experience of something like 3 at the Department of Transportation.

On the issue of his ability to designate people for national security, the President probably does not want a time limit on that. He probably believes that every President should be preserved in the rights they have had. That one might be negotiated as well.

But as I understand it, these are the two challenges: First, the flexibility factor which, frankly, we have not been talking about on the Senate floor because we have been so hung up on other ones. That would be the one that would give me the most pause if I were the potential Secretary. I would be willing to see if we couldn't work that one out with a time limit. And then the second issue, the right of the President to make a national security decision, maybe we could find a way around that one, too, in terms of some sort of time circumstance. I don't think just because it was done with Jimmy Carter means that it has to remain sacrosanct forever. We can look at it in view of the threat, get some experience under our belt as to how the new Department works, and say that Congress will relook at this at X particular point.

My bottom line, speaking solely for myself and not for the administration—because I am not authorized to do that—is that I hope we can, in fact, reach out in the spirit the Senator from Connecticut has always shown, find some solution, but recognize that it is not a political fight to determine who is protecting unions and who is the most patriotic. It is a serious, legitimate, important management challenge as to how much power this President and future Presidents, the newly appointed Secretary and future Secretaries, are going to have to manage the Department in the most efficient possible way to preserve our homeland against attacks.

The reality is that the attacks will come. The reality is that some of them will get through. No matter how well the Department is manned, no matter how well the Department is structured, no matter how vigilant the employees of the Department will be—and I will stipulate, I expect that all of them will be vigilant, whether they are union members or nonunion members or don't care—an attack will make it through somehow, somewhere.

And then we want to look back on it and say: We did the very best we could to see to it that the Secretary had all of the tools he or she might need. And, yes, this attack got through, but these didn't because we put the Department together intelligently in the first place.

I will be happy to enter into whatever discussion the Senator from Connecticut may want to have, knowing that I don't speak for the administration, but I speak as a member of his committee from the other side of the aisle who has always had the highest respect for his willingness to listen, his willingness to cooperate, acknowledge that he has helped me on some of the issues I believe strongly about to his own political peril because there are some Members on his side who did not want to do some of the things I wanted to do. I would hope in the same spirit that he has mentioned here that something can be worked out.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. Mr. President, I thank my friend from Utah. I return his respect and trust quite directly. I appreciate what he said. I appreciate the tone in which the Senator from Utah spoke, and just to get the nonsense of last week behind us, that we can obviously disagree on issues related to this bill or other bills without questioning, without impugning each other's motives or, Lord knows, questioning each other's patriotism.

I agree, when we create this Department of Homeland Security—and we will create a Department of Homeland Security; we are going to find a way to do it before long, I hope—it is going to be a massive undertaking: 170,000 employees, clearly the largest reorganization of the Federal Government since the end of the 1940s, the post-Second World War reorganization of our national security and foreign policy apparatus.

As the Senator from Utah said, this is not just putting a new name on the door, ''Department.'' This is taking a lot of different people from a lot of different places in our Government and bringing them together under a strong Secretary in focused divisions within that Department. Those are exactly the parts that are in common between the proposal from our committee and the White House proposal.

Why are we doing it? Simply because the current state of disorganization is dangerous. When you have three, four, or five different Federal Government agencies at a point of entry into the country at the border and they are each in separate offices—they may bump into each other, but they are not really working together in a coordinated way; they usually don't even have telecommunications equipment that speaks easily in a crisis to one another—that is dangerous disorganization.

If you have, as we know from the investigation of the Joint Intelligence Committees, a situation where there are bureaucratic barriers between the intelligence community, the law enforcement community, and information is not shared in a way that can put all the dots, as we keep saying, on a board so you can see the outlines of a potential terrorist attack so you can stop it, that is disorganization that is dangerous.

I could go on and on, to each of the five or six divisions of the new Department.

So that is why we are all proposing this step. It is going to be a big job. I want to make it clear. I know the Senator from Utah didn't mean to suggest this in reporting our conversation. I am not now, nor will I be a candidate for Secretary of the new Department of Homeland Security. When he asked me whether I would advise who was taking it to take it under the Nelson-Chafee-Breaux language—if they should accept—my answer was yes. I want to explain why, in the calm of a Monday afternoon. In this particular colloquy, we may have an opportunity to set more on the record as I see it than has gotten in to this point.

We have 170,000 employees to be moved to the new Department. The number I hear about union-represented employees is approximately 43,000 who will be moved to the new Department. There are two factors at work here. One is an anxiety among a lot of Federal workers that this existing statute, which has been referred to, that was adopted in the Carter administration, that gives the President of the United States extraordinary authority to declare that a particular category of Federal employees should not be allowed to belong to a union, an employee association, because that union membership would be inconsistent with national security—the existence of that statute applied 10 or 11 times since adoption in the late 1970s in the Carter administration, and usually in quite

narrow areas—the Defense Intelligence Agency and in similar groups—the existence of that statute used for the first time by the current administration in January to deprive several hundred employees of the U.S. attorneys' offices around the country of the right to collectively bargain, to join unions, created widespread anxiety among Federal employees.

Senator THOMPSON and I had some discussion on this last week. I don't need to get into the details of what the administration intended to do and what the employees thought. From the employees' point of view, they were worried that this statute would be used in a broader way than ever before to deny them the right to collectively bargain. I must say, again, that the right to collectively bargain among Federal employees is quite limited; most notably and, of course appropriately, Federal employees belonging to a union do not have the right to strike. That is a law. There are various other items that are normally negotiated between management and unions that are not negotiated in the Federal employee case—most notably salary. We are the managers, in that sense, who set salary levels—we in the Congress.

So now we come to a recommendation that the Department of Homeland Security be created. There is great anxiety—and it remains so—among the 43,000 employees currently represented by unions who, when they are moved to this Department, because the name of the Department is Homeland Security, they might well be deprived of their collective bargaining rights. Our committee considered that and we came up with a proposal which, to state it in summary, would have allowed employees to appeal such a decision, such an order denying them collective bargaining rights to the Federal Labor Relations Authority—two-thirds of whose members, incidentally, are appointed by the sitting President. So, presumably, it would not have been a hostile board. When we came to the floor, and after that measure was in our proposal, the White House was quite adamant on the point that it would represent a lessening of the President's national security authority. Though the lessening would have been small, literally that was true. That would have been true because we would have subjected the Presidential decision on national security grounds to review by this administrative body and appeal to the administrative body. That is why, when I saw the gridlock here, and understanding that we agree on more than 90 percent of the two proposals—one White House and one committee—before the Senate now, I encouraged our colleagues, Senators NELSON and BREAUX, to pursue a compromise. They engaged Senator CHAFEE in these discussions and they came up on this one with a proposal that the President would retain the authority he has, but would have to more clearly enumerate the reasons why he was invoking this authority; and, particularly, he would have to make clear, or give a statement, that the agency whose employees he was denying the right to collectively bargain had had its mission changed from the many years since the Carter administration, when no previous President had said that doing the work of that agency was inconsistent with the union membership to national security, with no right of appeal to an administrative agency. To me, that creates what I might call a kind of minimal due process for Federal employees, just to require the President who, by the one court case in this statute that had been decided, the President's authority here in that court case was held to be substantial. I mean, this is a case where President Reagan removed collective bargaining rights from a group of Federal employees for national security reasons and did not recite a determination as to why he did it. I believe the district court sided with the employees. It was appealed to a circuit court, and the district court said the President has to at least recite a determination rather than just issue an order.

The circuit court actually said—I am paraphrasing and probably making something more complicated, a little more direct—the circuit court said they accept a presumption that though the President did not recite a determination, when it came to national security, his judgment was determinative. It set a very high standard for anyone questioning how a President would exercise this power the statute gives him.

So my own feeling is that in the Nelson-Chafee-Breaux compromise, we have now put in a little language to require a statement of why the President did it, and the work of this Department, or agency, or office that changed since they moved to the new Department, but effectively no appeal from that. So I think we achieved a little measure of due process for the employees, without at all diminishing the national security authority of the President.

On the question of civil service reforms, or changes, and so-called management flexibility, when the President first introduced his proposal and embraced the idea of a Department of Homeland Security, I remember speaking to Governor Ridge. He is a good man, and he was good enough to bring this up himself in a conversation we had a couple weeks ago. He said to me: I remember, Senator, that, as soon as the bill came out and you saw some of the changes we wanted on civil service, you appealed to me, why can't we put this aside for 6 months? This Department is going to take months to get up and functioning. I remember saying this to Tom Ridge—that this is a trap, a web, and we are going to get so entangled in it that it is going to run the risk of making it hard for us to adopt legislation creating a Department of Homeland Security.

This is one of those rare cases where my prediction was correct. I say that with some understandable humility. I fear that is where we have ourselves now. In the committee bill, we adopted some bipartisan civil service reforms, worked on with great diligence by Senators AKAKA and VOINOVICH over many months. Other than that, we didn't change the existing civil service law, except that we said we required the new Secretary of the new Department, 6 months after the effective date of the legislation, to come back to Congress and tell us whether he or she thought we needed to do anything more about management flexibility as the Department was taking place, based on the experience they had.

So that is where our committee bill was. The President came in with a series of reductions in civil service protections for employees who are longstanding and that deepened the anxiety of the Federal employees that this Department was going to be used as a way to cut back on their protections, on the accountability, on the kinds of protections that, at their best, don't create rigid bureaucracy, but help to create the climate in which the best people are attracted to Federal service. The President's bill gutted that.

Now comes the Nelson-Chafee-Breaux compromise, and here, too, I think they did something quite reasonable and progressive, which is they itemized four different areas where the President can exercise broad management flexibility, but they did something that builds on the best labor-management relations in the private sector and some very hopeful experiences with similar labor-management relations in Federal Departments, particularly the Internal Revenue Service. They said in the Nelson-Chafee-Breaux compromise: Mr. Secretary, we are giving you this flexibility in these areas of current civil service protections, but we require, before you implement them, to attempt to negotiate them with your workers. That is why I say in the best of modern private-sector labor-management relations, the old hostility is not there. It is: Let's sit down around the table and figure out what works best for the company; you want jobs, we want to make a profit; let's figure out how we can best do this together. Let me mention, this is exactly the authority Congress gave the Internal Revenue Service a few years ago. It has worked quite well. In other words, in that legislation we said: Director of Internal Revenue, you have the authority to negotiate changes in the civil service, but you have to do it with your employees. In fact, they have negotiated some very progressive agreements with both sides agreeing once they sat down around the table.

In that legislation and in this Nelson-Chafee-Breaux proposal, so again we protect the authority of the President, we say if the Secretary of Homeland Security and the workers in the

Department cannot reach an agreement, then they have to take it to arbitration to the Federal Service Impasses Panel. This is a board, again, all of whose members are appointed by the current President, so it is not a hostile board, and that board makes the final decision.

I do believe that our colleagues, Senators BEN NELSON, LINCOLN CHAFEE, and JOHN BREAUX, have worked out a proposal, a genuine compromise that is different from what our committee reported out but provides a door opener both to management flexibility, to some progress in management, and does not diminish ultimately the authority of the President of the United States, certainly not with regard to his ability and capacity now to invoke national security with regard to union membership rights of Federal employees.

I am puzzled as to why the administration has not accepted this compromise proposal and the Senator from Texas is effectively involved in a filibuster of the overall bill. I remain open to discussion about parts of this. I appreciate what the Senator from Utah said about a time limit. Five years seems like a long time to me.

One of the issues we considered in the committee, and I know was considered in the negotiations, was the possibility, with regard to the civil service management flexibility, of giving—we call it demonstration authority, but the idea was for a limited period of time to give the President some of the authority he wanted, and then come back and see how it worked and consider whether we wanted to extend it.

I am grateful for the words of the Senator from Utah, and as we begin our new week, after some of the heat that was exchanged on the floor of the Senate, I am grateful for the coolness of his—in the best sense of that word—that is, the thoughtfulness of his remarks today. I will be glad to continue to talk with him to see if we can find common ground. We ought not to be in this gridlock on what I still consider to be a side issue from the main business of this Department: protecting the security of the American people.

As the Senator from Utah said, we never want to give the impression we do not think the employees who will move to this Department are as concerned about homeland security as we and the rest of the American people are. In fact, the evidence before us is quite ample that Federal employees are concerned.

The stories are legion and numerous of Federal employees—I think of FEMA employees—they were somewhere else and they rushed to the Pentagon to be of help; they flew to New York; they worked hours and hours of overtime. Of course, the most vivid demonstration of the way in which union membership is not inconsistent with national service or sacrifice is the firefighters in New York, several hundred of whom were off duty on September 11. When they heard what had happened, they just rushed to the scene. Nobody was thinking about whether this was supposed to be a day off under the collective bargaining agreement, what risks they were assuming, or they were going to be asked to do things that were not quite in their job description. Needless to say, a lot of them not only rushed into the building, but they never came out.

I hope we can find common ground. I offer anything I can do to supplement the extraordinary positive work of the previous triumvirate I mentioned, Senators NELSON, CHAFEE, and BREAUX, to get over this last big hurdle and get this bill adopted in the Senate, get it to a conference with the House, and then get it to the President's desk for signing.

Mr. LEAHY. Mr. President, I do not want to interrupt.

Mr. LIEBERMAN. The Senator's timing is good. That was the windup sentence.

Mr. LEAHY. I wonder if the Senator will yield to me? I wish to discuss another aspect of the war on terrorism, and that is what we can do through the Justice Department. I wonder if the President will allow me to speak about that.

Mr. LIEBERMAN. I will be happy to do so. I thank the Senator for coming to the floor and look forward to his remarks.

The PRESIDING OFFICER (Mrs. CLINTON). The Senator from Vermont.

DEPARTMENT OF JUSTICE AUTHORIZATION

Mr. LEAHY. Madam President, I know we are getting down toward the end of the session and sometimes legislation falls by the wayside, but I have seen something in the last couple of days different from anything I have seen in 28 years in the Senate.

Last Thursday the other body passed the Department of Justice Appropriations Authorization Act and we filed a bipartisan conference report. I mention this because it has been 20 years since there has been such an authorization act for the Department of Justice because it has been so hard to bring people from across the political spectrum together. The House passed this conference report—by a vote of 400 to 4. I am not sure the way things are these days that we could get a vote of 400 to 4 to agree the Sun rises in the east and sets in the west.

The very same day I checked with every single member on this side of the aisle, every Democrat, and asked if they were willing to have it pass the Senate by voice vote, if need be, or a rollcall vote—it does not make any difference, but to pass it.

Every single Democrat—the distinguished Senator from Connecticut, myself, everybody else—agreed, yes, sure, go ahead and pass it. We were told there is an anonymous hold on the Republican side. This bipartisan legislation to authorize the Department of Justice is blocked—legislation to strengthen our Justice Department and the FBI that by agreement of all Members across the political spectrum will increase our preparedness against terrorist attacks, but also prevent crime and drug abuse in our cities and in our rural areas. It improves our intellectual property and antitrust laws. It would strengthen and protect our judiciary. It would give our children a safe place to go after school.

This legislation is as motherhood as one could imagine and yet the Republicans have said, no, even though the Republican-controlled House passed it 400 to 4. And even though every single Democrat in the Senate is ready to vote for it, the Republicans have said, no, we want to put an anonymous Republican hold on it and not allow it to go forward, years of work by both the Republicans and Democrats. This bill not only has my support in the Judiciary Committee, it has Senator HATCH's support. It has the support of Chairman SENSENBRENNER in the other body, as well as Representative HYDE. Every one of the House and Senate conferees, Republican and Democrat, signed the conference report. That conference report includes significant portions of at least 25 legislative initiatives, all to be flushed down the drain by a Republican hold.

When people go home this year to campaign about why they want to stop drugs in their schools, why they want to fight terrorism, why they want their courts strengthened, why they want the Attorney General of the Department of Justice to be able to be strengthened in their fight, let them point out that the reason it was not done was a Republican Senator who wants to do it anonymously. They do not even want to step forward and say who he may be.

For too many years, Republican and Democrat administrations have allowed the Department of Justice to escape its accountability to the Senate and the House of Representatives and, through them, to the American people. Congress, the people's representatives, have a strong constitutional interest in restoring that accountability. The House has recognized this. It has done its job. We need to do ours. Senate Democrats are prepared to proceed. Senate Republicans apparently are not. So let me tell you some of the things that are in this bipartisan conference report.

First, the conference report provides Federal, State, and local governments with additional tools to battle terrorism. It fortifies our border security by authorizing over $20 billion for the administration and enforcement of the laws relating to immigration, naturalization, and alien registration. It authorizes funding for the Centers for Domestic Preparedness in Alabama, Texas, New Mexico, Louisiana, Nevada, Vermont, and Pennsylvania. It adds additional uses for grants from the Office

of Domestic Preparedness to support State and local law enforcement agencies.

Why would anybody on the Republican side oppose that? Another measure in the bill would correct a glitch in a law that helps prosecutors combat the international financing of terrorism. I worked closely with the Bush White House to pass this provision in order to bring the United States into compliance with a treaty that bans terrorist financing—and this is something the Bush administration wants—but without this technical, noncontroversial change, the provision may not be usable. As the President has pointed out, this law is vital in stopping the flow of money to those who would harm Americans. Every Democrat is ready to pass that. It is something President Bush has asked for in his fight against terrorism. Every single Democrat in this body is ready to vote for it, but the Republicans are blocking it from going forward.

Worse yet, at a time when the President is going before the U.N. emphasizing our enemies are not complying with international law, by blocking this minor fix—something the President has asked for, something every Democrat is ready to vote for, only the Republicans are blocking—we are leaving ourselves open to a charge that we also are not in compliance with an important antiterrorism treaty.

Secondly, this conference report improves our law enforcement efforts. Among other things, it pushes the FBI to reform its outdated computer system. Right now it is something that kids in school 10 years ago had better computer systems. It provides danger pay for FBI agents performing hazardous duty abroad. It provides for increased sentencing enhancements when criminals use body armor in crimes of violence or drug trafficking crimes, something for which every single police agency I have talked with from New York to Texas has asked.

I am told the administration supports this and every single Democratic Senator supports this, but it is blocked by the Republicans.

It includes Senator CARNAHAN's Law Enforcement Tribute Act, which authorized grants to States, local governments, and Indian tribes for memorials to honor those who were killed or disabled while serving as law enforcement safety officers. It has the Feinstein-Sessions James Guelff and Chris McCurley Body Armor Act. That is blocked. These are things that had overwhelming Republican and Democratic support, still has unanimous Democratic support but is blocked by the Republicans. I believe the conference report the Senate Republicans are blocking could help prevent crime from occurring in the first place. We reached a bipartisan agreement to give the Boys and Girls Clubs the funds they need to establish 1,200 additional clubs across the Nation. As a former prosecutor, I know how valuable these are to prevent crime from happening in the first place, to give teenagers and youngsters a place to go.

Just last week, I joined with Senator HATCH at the Boys and Girls Club congressional breakfast honoring regional youth of the year and also honoring Senator STROM THURMOND. Republican Senator after Republican Senator praised the work of the Boys and Girls Club, as did I, but now some Republican Senators are anonymously holding up the authorization for the money for the Boys and Girls Club.

Senate Republicans are also blocking funding that will put an additional Assistant U.S. attorney in every district in the Nation to implement the President's Project Safe Neighborhoods Initiative aimed at preventing school violence. The President goes out and speaks in favor of this. I happen to agree with the President on this. Everybody agrees with him, and now, when doing what the administration has asked for, we put these assistant U.S. attorneys in there, but that is not going anywhere. Every single Democratic Senator supports it. An anonymous Republican hold blocks it.

The conference report strengthens our efforts to prevent domestic violence and protect its victims. By creating a new Violence Against Women Office in the Justice Department, we ensure an increased Federal focus on this tragic and recurring problem. I do not know why preventing domestic violence should be a partisan issue.

In my experience as a prosecutor, the police never said we have to determine whether this person who is beaten up in domestic violence is a Democrat or a Republican. You try to save the life of the person who is being beaten and to protect them.

This legislation also authorizes programs to reduce drug abuse and recidivism, from adult and juvenile courts, to increased funding for drug treatment in prisons, to funding for police training in South and Central Asia to reduce the flow of drugs into our Nation. All of these proposals are bipartisan. Actually, most of them were in the Hatch-Leahy Drug Abuse Education, Prevention and Treatment Act. Every Democrat is ready to vote for them, but we cannot because the Republicans have an anonymous hold.

The conference report contains a number of important intellectual property provisions that will help American innovators and businesses, both big and small. There is a probusiness provision, which includes the Leahy-Hatch Madrid Protocol Implementation Act that has been held up for over 1 year. Every single business organization in the country, big or small, has asked us to pass it. Every single Democrat has said they will vote for it. It is being held by an anonymous Republican hold.

This legislation would implement a treaty and allow American businesses to obtain ''one stop'' international trademark registration, a process available only to countries signatory to the Protocol. This would benefit American businesses and companies who need to protect their trademarks when they sell their goods and services in international markets, particularly over the Internet.

I hear from companies as large as IBM and Intel. They want this legislation, down to the little mom-and-pop manufacturers in my own State. I tell them all, every single Democrat will vote for that. It is in this bill, as 400 House Members of both parties voted for it. But I also tell everyone in the businesses that ask, it is being held up by an anonymous Republican hold.

Another important intellectual property provision is the Hatch-Leahy TEACH Act, to clarify the educational-use exemption in the copyright law and all educators to use the same rich material for distance material over the Internet as they use in face-to-face classroom instructions. The Presiding Officer represents one of the most beautiful areas in upstate New York, where I visit often. I think of my rural Vermont or rural Utah. This allows people in these small schools to be able to have access to what is available in the large metropolitan areas. Every Democrat will vote for it. It is being held up by an anonymous Republican hold.

The conference report has a provision modernizing Patent and Trademark Office specifically authorizing friends to augment the investigation and prosecution of intellectual property crimes of privacy online. There is no member of the business community that does not support it, from the largest to the smallest. Every Democratic Senator is ready to vote for it tonight. It is being held up by an anonymous Republican hold.

This conference report creates or extends 20 Federal judgeships. Those are more than all the judgeships created during the 6-plus years the Republican party controlled the United States Senate and blocked both Clinton administration judicial nominations and the creation of new Federal judicial positions. We have included new Federal judges in Arizona, Alabama, Texas, New Mexico, among others. I have heard repeatedly from our Republican friends that although they have blocked the creation of the judges during the previous administration, they want them now. I put them in. Every single Democrat is ready to vote for it and the Republicans are blocking. It is amazing. These judges we have needed for years, blocked during the last administration when the Democrats had the Presidency, now we put them in. I supported putting them in, from northern New York to Alabama. The Republicans say they want them. They will not be appointed by a Democratic president. They will be appointed by a Republican president. I don't know what is going on unless they want to make it look like we are holding this up. Every Democrat will vote for the new judges. But they are being held up by an anonymous Republican hold.

I do not want to hear bleeding and caterwauling from the White House or the political mouthpieces from the Department of Justice, asking, Where are the judges. All 50 Democratic Senators will vote for them, as 400 Republicans and Democrats in the House voted for them. It is being held up by an anonymous Republican hold.

The conference report prohibits mandatory arbitration in a motor vehicle franchise contract between manufacturers and automobile dealers, to the same effect as the Hatch-Feingold-Leahy-Grassley Motor Vehicle Franchise Contract Arbitration Act, S. 1140. That legislation has more than 60 cosponsors, Republicans and Democrats. The automobile dealers lobbied strongly for it. All 50 Democrats are ready to vote for it. Their friends on the Republican side are holding it up.

The conference report includes an amendment to the Radiation Exposure Compensation Act to expand eligibility for compensation for injured uranium miners, mill workers and ore transporters. Many Senators from western States, on a bipartisan basis, such as Senators DASCHLE, HATCH, JOHNSON, DOMENICI, strongly support these changes. We are all ready to vote for them. Republicans are holding it up.

Finally, the conference report includes several important immigration provisions to help underserved rural areas with a critical shortage of medical doctors. Women die in childbirth. Teenagers in an accident die because they did not get care. Older people do not get the preventive medicine they need. This allows foreign doctors who are educated in the United States to remain here if they will agree to practice in the underserved areas. It extends H–1B status for certain working aliens and makes it possible for children whose sponsoring parent has died to apply for citizenship, nonetheless. I don't need to tell the Presiding Officer, representing the great State of New York, there were children whose sponsoring parents died in this country.

These are all noncontroversial provisions, for all over the country. Every single Democrat Senator said they will vote for it. We cannot bring it to a vote because the Republicans have an anonymous hold. I would not feel as bad about the holds if the Senator holding it up would come forward and state why. Instead, it is a stealth hold. It is a ''during the night'' hold. It is the quiet, anonymous phone call hold that stops it. It repeats an unfortunate pattern of anonymous Republican holds on bipartisan legislation designed to improve our Nation's national security law enforcement, immigration policies, and judicial branch of the government.

I am sure my colleagues are tired of hearing how much I enjoyed my earlier career in law enforcement. For 8½ years I proudly carried a badge, proudly served as chief law enforcement officer of my county. We prosecuted a lot of people. We saw a lot of tragic situations. We helped a lot of people in cases of domestic violence, stopped crimes from happening. Those we were not able to stop, we oftentimes successfully prosecuted afterwards. I never recall anyone, either those in my office or any of the law enforcement agencies we talked about, whether we were dealing with a Democrat or Republican, asking whether someone who was beaten or killed was Democrat or Republican. You never asked a police officer if they were Democrat or Republican. No one asked when sending officers out to protect citizens, facing the potential of death, their political party affiliation. In working with my colleagues, both in the Senate and in the House, we did not look at this as Democrat and Republican. We talked about good law enforcement. That is why every single Democratic Senator has said they will vote for this bill.

Our caucus spans the political spectrum. I suspect if we were allowed to bring it to a vote, almost all of my colleagues on the other side of the aisle would vote for it, yet an anonymous hold is stopping this help to the law enforcement agencies, ranging from the smallest of our towns to our statewide law enforcement agencies, to our Federal law enforcement agencies. Nobody has spoken of any substantive question or issue of any provisions in this conference report. And there are not any. It passed the Republican-controlled house by 400–4.

It has been suggested the holds are merely partisan blocking to hold up legislative action and then blame the Democratic Senate majority for inaction created by Republican holds. I repeat, as I have over and over again on this bill, I have checked with every single Democrat Senator; we are ready to vote. We are all ready to vote.

If Republicans allowed this bill to come to a vote, it would pass immediately. It should have been passed last Thursday. We had an opportunity. Senator DASCHLE asked permission to pass it—Senator HATCH said we didn't each have to speak on it, we would put our speeches in afterward—asked to pass it by unanimous consent, but was told the Republicans objected.

For the sake of the Justice Department, the Congress, and the American people, we ought to pass it today. Twenty-one years fighting to get it, and here is what is in there: Combating terrorism, improving law enforcement, preventing crime, fighting drug abuse, enhancing intellectual property protection, strengthening the judiciary—adding 20 new judgeships and improving judicial disciplinary procedures—improving civil justice, and improving immigration procedures.

The irony is item after item was worked out with the support of the Bush White House. I spent an awful lot of time on this bill. A lot of my Republican colleagues spent a lot of time on this bill. And our staffs spent 10 times more time on this bill. I think somebody down at the White House, if they take time out from the fundraising and the campaigning, could take a couple of minutes to pick up the phone and call the party, the Members on the other side of the aisle, and say the criminal justice system needs this, the fight against terrorism needs this.

This is not just something abstract, this is real. Let's pass it. That is why the Republican-controlled House passed it. I am sorry my friends on the Republican side of the aisle are blocking it. I hope when they think about it, they will come to their senses and let it go through.

Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mrs. CLINTON). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

EXTENSION OF MORNING BUSINESS

Mr. REID. Madam President, it is my understanding we are in a period of morning business; is that correct?

The PRESIDING OFFICER. The time for morning business was to have expired at 5:15.

Mr. REID. Madam President, I ask unanimous consent that the time be extended until 6:45 p.m.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. NELSON of Nebraska. Madam President, I ask unanimous consent the order for the quorum call be rescinded.

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

HOMELAND SECURITY

Mr. NELSON of Nebraska. Madam President, as we enter our 5th week of debate on this Senate floor on the homeland security bill, I rise today to ponder exactly where we have been, and, perhaps much more importantly, where we are going.

In recent weeks, Democrats and Republicans have made little progress on the bill. Some have identified particular provisions they would like to have changed; some have not. The President offered his own proposal for consideration, and, as the RECORD will reflect, the Senate obliged him by allowing it to come to the floor for consideration.

My good friends, Senator GRAMM of Texas and Senator MILLER of Georgia, are championing the President's bill. He could have no two more noble or respected Senators as his gatekeepers.

Let me describe for you what this bill does. It will establish a new Federal

Department, the largest Government reorganization since the establishment of the Department of Defense. It will affect 170,000 Federal employees and each and every American. It will restructure existing agencies and create new ones. It will relocate and reclassify employees and will establish the largest reaching intelligence-gathering operation in the history of civilization.

Is this the kind of legislation that Congress should approve blindly? Obviously not.

Some would have you believe that anyone who wants to make any change—no matter how slight—to this massive legislation is an opponent of the President.

I want to make a slight change to this bill, one I believe is supported by a majority of the Senate, but that does not make me an opponent, nor does my amendment make anyone an opponent. I support the President. I want to see him achieve his goal of establishing this new Federal bureaucracy.

What I do not support is sacrificing our constitutional responsibility for oversight of not just the Department, once it is established, but of the effort to create the Department in the first place.

Passing this bill comes down to one unresolved issue: the method of resolving differences as they pertain to labor-management in the new Department of Homeland Security.

I have joined together with my colleagues, Senator John Breaux and Senator LINCOLN CHAFEE, to put forth a compromise that has the support of a majority of the Senators, and should be embraced as a victory, not demagoged as a special interest protectionist measure.

The President's bill, the Gramm-Miller bill, does not have enough votes to pass, and it does not have enough votes to invoke cloture. The Lieberman bill does not have enough votes to pass, and it has not had enough votes to invoke cloture.

Without becoming unnecessarily bogged down with Senate procedure, it is important to point out that cloture means to shut off debate and a majority to pass a piece of legislation under these circumstances. Now, my amendment has enough to pass, but it does not have enough to shut off cloture. If my amendment were passed and passed on the Gramm-Miller bill, I believe that the bill would then have enough not only to shut off cloture but pass. That is what we are really trying to do.

Our compromise would give the President the authority he needs to hire and fire, promote or demote employees in the new Department. Indeed, it gives him exactly the authority he sought when Homeland Security Director Tom Ridge wrote the chairman of the Governmental Affairs Committee in early September.

I have here for everyone to see—even those watching through the electronic eye—Governor Ridge's comments to Senator LIEBERMAN. I will quote in part, but I can quote before or after. There is some question about the context of this particular legislation. It was in conjunction with explaining what the White House was interested in in terms of the flexibility that management would require over labor under this new agency. He said:

> Senator, the President seeks for this new department the same management prerogatives that Congress has provided other departments and agencies throughout the executive branch. For example—

Then he identifies a couple of other processes that are fairly innocuous. Then he says, relating to personnel flexibility:

> Personnel flexibility is currently enjoyed by the Federal Aviation Administration, the Internal Revenue Service, and the Transportation Security Administration.

We initially tried to embody the Federal Aviation Administration in our amendment, but it was ruled not to be germane. So we did the next obvious thing; we went to the Internal Revenue Service, which lays out under existing law—which made it germane—the nature of the flexibility, that personnel flexibility to which Governor Ridge had referred. We thought that would, in fact, do it.

Now, much to our surprise, that apparently does not do it because they have suggested that this is a nonstarter. It seemed to be starting back in September—the third of September—but it seems to be a nonstarter today. I don't know what has changed in that timeframe. My good friend, Senator GRAMM, said that everybody is entitled to their own opinion, but they are not entitled to their own set of facts. I think this is a set of facts that we have before us. It is hard to believe that there would be more than one opinion about what Governor Ridge had to say. There should be no more than one opinion about what his letter purported to deal with. So I think this is one set of facts, with one opinion. It is possible to mischaracterize facts, but I don't think there is any way to mischaracterize the plain and simple language when he said ''the same management prerogatives.'' He didn't say ''almost the same,'' or ''slightly different''; he said ''the same management prerogatives.''

I said the other day that there are times on this floor when you find out you are having a disagreement and you cannot understand why it is a disagreement; you are not sure what it is about, and you feel like Lewis Carroll must have felt when he wrote Alice in Wonderland. I have not seen the cheshire cat, but when winning is described as winning in the media about this issue, I feel as if we are in Alice in Wonderland.

Let me also suggest that there have been some news reports that I made reference to from the past few days that might shed some light on this situation. On Friday, Paul Light, of the respected Brookings Institution, told the Chicago Tribune that the differences between the two sides in this fight—he calls it a ''fight''—are relatively minor and that Democrats have already given the President almost everything he requested. I think Senator LIEBERMAN parenthetically has said he has given 95 percent. We have been looking for a way to close the gap. I quote from his story:

> I don't think the answer's in the legislation. I think it is a little bit about Iraq and a little bit about the election.

Mr. Light said the President should declare victory and move on. He said:

> Any President in history would celebrate the enormity of consensus that exists in Congress right now. The President has gotten 95 percent of what he wants.

I think it is closer to 99; obviously, it is not 100. Today's issue of Roll Call includes a news story and a column in which some Republican leaders outline a strategy to use the homeland security issue in the coming elections.

Mark Preston, a very able reporter from this respected publication, wrote:

> A disagreement over key labor issues in the homeland legislation might force this bill to be shelved until after November.

Mr. Preston quotes my good friend from Pennsylvania, the chairman of the Republican conference, Senator SANTORUM, as saying:

> There are issues not being acted upon here, and they would certainly be issues of great importance to the American people and therefore be of very great importance to a campaign.

Madam President, they are very important to the American people, and no more important for us to do today and tomorrow is to deal with national security as it relates to the American people, and put aside partisan politics, put aside this election and electioneering and resolve the differences and close the difference between 95 percent and 100 percent. The differences are, in fact, I think, as Mr. Light said, very small.

Accusations of obstructionism seem to be aimed at securing a campaign wedge, and what we really need to do is move away from obstructionism to constructionism. We can be constructive in developing this particular approach. There are some other issues besides the flexibility issue, and we thought we had pretty much closed the gap there as well.

The Morella amendment, as it was introduced in the House, relates to the question of collective bargaining. What this particular amendment does is go back and have Morella included in the amendment as it was introduced in the House. It may not be exactly what was requested, but we have suggested that if there are some particular questions or some particular interests in adding some language that would make this better, we are entirely interested in doing that.

The truth is that we have not had that opportunity to try to bring that about. We met Thursday, we met Friday, and we met today. I think it is time for us to stop meeting and time for us to find a way to solve the issue.

We are beyond meeting, I believe, when it comes to this particular amendment. Flexibility is important and making sure that what we do in terms of this legislation is that we not adversely impact job security for national security, and certainly not unintentionally.

The White House has made it clear they have no plans to go in and make major wholesale changes. I take them at their word. I think if that is the case—and I take them at their word—then we ought to find, if not this language, some language that will permit us to close the gap to move this forward. If, in fact, it is everybody's plan to achieve a result here, then I think we can achieve one.

I truly believe it is important to the national interest to be able to deal with the personnel flexibility of the President. There is no question he needs to have the capacity to hire and fire, to promote and demote, and do what is in the best interests. There is no question about that. And adding that there be some requirement regarding the changing of authority or the changing of position in mission of the personnel is a slight adjustment. It certainly is not any kind of major intrusion on the Presidential authority.

To include the Morella language, in terms of flexibility, simply adds to that. I hope we will be able to move beyond meetings to closing the gap, bridging this debate so it brings about the best result that we can, not simply for the White House but for the people of this great country. This should not be about Republicans or Democrats. It should not be about the legislative branch or the executive branch. It ought to be about what is in the best interest, the national interest of our people, and for those who share the same desire for freedom and are struggling to achieve it in other parts of the world.

We have a great responsibility to the American people, but we also have a responsibility that is now being questioned and challenged around the world. One of the best ways for us to begin to resolve these issues is to take care of business at home. I cannot think of a better way than to adopt this amendment so we can adopt the Gramm-Miller proposal and move forward for national defense and our own homeland security.

Madam President, I appreciate the opportunity to speak, and I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. NELSON of Nebraska. Madam 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. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

A TRIBUTE TO THE LIFE OF HOLLADAY JOHNSTON RICHARDSON

Mr. THURMOND. Mr. President, early this morning, I lost one of my closest friends and staff members, Holly Johnston Richardson, who succumbed after a difficult battle with cancer. For nearly 30 years, she was a member of my extended family in every sense of the word. She was my right hand. My trusted advisor. My vital link to literally thousands of South Carolina friends, constituents, and family members.

But more than anything else, Mr. President, Holly Richardson was one of my dearest friends, and I will miss her more than words can convey.

To her husband, Phil, to her two wonderful children, Anne and Emmett, and to Holly's mother and father, Joanne and Coy Johnston of Summerville, South Carolina. I extend my heartfelt sympathies. I know my colleagues—so many of whom knew Holly very well—join me in expressing their support and offering their prayers during this very difficult time.

But it is Holly Richardson's life, and the courage she demonstrated throughout her illness, that is most on my mind today. I know I speak for everyone who knew and loved Holly as I did in saying that we deeply mourn her passing, and yet celebrate her wonderful life, a life dedicated to God, to her family, to her fellow man, and to her State and Nation.

Like all trusted staff members, Holly Richardson had my ear. What she probably never knew fully is that she also had my heart. On a personal level, she was—for my entire family—an unofficial ''third daughter.'' Our confidant. Our friend. Our partner in so many aspects of our lives.

On a professional level, Holly and I were virtually inseparable. As anyone who has ever visited my Senate office knows, Holly's desk was always next to mine. We shared an office ever since she became my personal secretary in 1979. She could always be counted upon to work the longest hours, to handle the toughest jobs, and to render even-handed advice and counsel.

In fact, it was Holly who quietly bragged that she had broken in more than eight chiefs of staffs, five or six office press secretaries, eight committee chief counsels, and literally hundreds of staff assistants, aides and interns. She was, of course, correct. Holly was ''the standard'' when it came to professionalism, hard work, integrity and public service in a United States Senate office.

It is not an exaggeration to say that ''everyone'' knew Holly. Whether you were from South Carolina, or were a Washington, D.C. fixture, if you were around politics, you knew, and you came to love, Holly Richardson. From Presidents and First Ladies, to Senators and their spouses, to everyday working men and women who would call my office, Holly was beloved at every level of life.

Single-minded. Fiercely independent. Loyal and dedicated. She had the personal qualities that define what President Theodore Roosevelt once called the ''courageous life.''

But it was not until she was diagnosed with breast cancer less than a year ago, that people came to see just how courageous an individual Holly Richardson actually was.

Holly never wore her illness on her sleeve. She never asked you to feel sorry for her, share her burden, or wallow in her pity. In fact, few people outside of the office even knew Holly was sick. The reason was, of course, that she didn't feel sorry for herself. Holly summoned the courage of a warrior to fight her disease. And with quiet dignity and the help of the Almighty, she fought as bravely as any soldier I have ever known.

Her dedication to work, and to the people of South Carolina—whom she considered her ''real bosses''—paled only to her devotion as a wife and a mother. Holly always made time for what was truly important in life. She and her husband Phil together built a loving home and were blessed with two wonderful children. She was an active member of her parish, Saint Paul's Episcopal Church, in Virginia, and managed to make time to be scout helper, soccer Mom and, above all, role model.

Holly's life was truly a gift, which she shared without reservation with everyone she knew and loved. That gift now lives on in all of us—for she inspired our lives, strengthened our spirits, and touched our hearts.

VALUE OF PUBLIC LANDS, NATIONAL PUBLIC LANDS DAY, SEPTEMBER 28, 2002

Mr. CRAIG. Mr. President, last Saturday was National Public Lands Day. It was a time for volunteers in states and communities across the country to give something back to America's public lands. National Public Lands Day is the largest grassroots, volunteer effort mounted on behalf of America's public parks, rivers, lakes, forest, rangelands, and beaches.

This year's National Public Lands Day theme was ''Explore America's Backyard,'' recognizing that many volunteers go to nearby public lands for recreation and to enjoy the outdoors. These volunteers will put in a day of real work on needed projects ranging from trail construction and repairs to habitat restoration to making public lands more accessible for disabled visitors.

This year's signature event was held at Anacostia Park in Washington, D.C. where over 400 volunteers cleared brush, removed trash and debris, planted trees and grasses, and constructed benches and boardwalk trails. These volunteers were joined by key dignitaries: Washington, D.C. Mayor Anthony Williams, the current Miss USA, Shauntay Hinton, National Park Service Director Fran Mainella, Forest

Service Assistant Chief Sally Collins, and Army Corps of Engineers Brigadier General Carl Strock.

The first National Public Lands Day, in 1994, was sponsored by three Federal agencies and attracted 700 volunteers in three sites. This year marks the ninth annual event which involved approximately 70,000 volunteers, who performed over eight million dollar's worth of improvements to our public lands at nearly 500 locations in every state. This effort involved over 19 Federal, State, local, and private partners on sites identified by eight Federal agencies.

I believe National Public Lands Day is an opportunity to build a sense of ownership by Americans—through personal involvement and conservation education.

In recognition of National Public Lands Day and this sense of ownership we should all have for our public lands, I want to spend a few minutes today and reflect on the value of our public lands and on what the future holds for them.

There are around 650 million acres of public lands in the United States. This represents a major portion of our total land mass. However, most of these lands are concentrated in the West, where as much as 82 percent of a state can be composed of Federal land. In fact, 63 percent of my own home State of Idaho is owned by the Federal Government.

This can be beneficial, as our public lands have a lot to offer. For starters, there are numerous resources available on our public lands—from renewable forests to opportunities to raise livestock to oil and minerals beneath the surface—public lands hold a great deal of the resources we all depend on to live the lives we enjoy.

Having resources available on public lands affords us the opportunity for a return on those resources to help fund government services, from schools to roads to national defense, and ease the burden on taxpayers.

Just as important, though, are the recreation opportunities our public lands offer. Every day, people hike and pack into the solitude of wilderness areas, climb rocks, ski, camp, snowmobile, use off-road vehicles, hunt, fish, picnic, boat, swim, and the list goes on. Because the lands are owned by all of us, the opportunity has existed for everyone to use the land within reasonable limits.

However, times are changing. We are in the midst of a slow and methodical attack on our access to public lands. It started with the resources industries. It will not stop there. At the same time some radical groups are fighting to halt all resource management on our public lands, they are working to restrict and, in some cases, eliminate human access to our public lands for recreation.

Yes, we must manage our public lands responsibly, which includes restrictions on some activities in some areas. What we must not do is unreasonably restrict or eliminate certain activities. Some people like to hike in backcountry areas where they can find peace and solitude while others prefer to ride ATVs into the woods. Some prefer to camp in more developed facilities while others prefer primitive spots. The point is that recreational opportunities on our public lands should be as diverse as the American public's interests.

On the same note, we can use the natural resources we need in an environmentally responsible manner and still have plenty of opportunities to recreate. In fact, recreation, resource, and environmental interests can team together to help each other out. In my own State of Idaho, on the Nez Perce National Forest, representatives of these interests and many others have come together through a stewardship project. These groups are working with the Forest Service to implement a project that works for everyone and addresses all of their needs in some fashion. In order to achieve such success, each group has had to compromise to agree on a prescription that works for everyone. This is just one example of differing interests working together to help each other out and improve the opportunities on our public lands for everyone. We need to see more of this around the country.

Public land management has become embroiled in fights, appeals, and litigation. The result is that the only ones who are winning are those who want to ensure we don't use our public lands. This must stop. Differing interests have to come together and realize that we all have one common goal—use of the land in a responsible manner. We can not continue to make the same mistakes of the past on our public lands.

That being said, I would like each of my colleagues to think about how public lands benefit their state and how they might work to support the new generation that is working to make each day National Public Lands Day.

ADDITIONAL STATEMENTS

JOHN STALLWORTH

• Mr. SESSIONS. Mr. President, I rise today to recognize the achievements of John Stallworth on the occasion of his recent induction into the Pro Football Hall of Fame on August 4, 2002.

Mr. Stallworth was born on July 15, 1952 in Tuscaloosa, AL. At the age of 5 he was told by doctors that he had polio, later found to be a mis-diagnosis. Mr. Stallworth overcame that hurdle to excel at a number of sports. In high school, he served as captain of his school's football team and went on to play his college ball at Alabama A&M located in Normal, Alabama just outside of Huntsville. While at Alabama A&M, Mr. Stallworth was an All-Southern Intercollegiate Athletic Conference receiver in 1972 and 1973 and became the Bulldogs' all-time leading receiver. He was also the first Alabama A&M player to be selected to participate in the Senior Bowl, college football's premiere all-star game in Mobile.

He was selected by the NFL Pittsburgh Steelers in the fourth round of the 1974 NFL draft, the 82nd player taken that year. I think a few teams around the league kicked themselves later for passing him up when they saw what he could do on the football field. After spending his first year as an understudy, he became a starter in his second season and held that job with the Steelers for the rest of his 14 year, 165-game career. The 6–2, 191 pound receiver teamed first with Lynn Swann and later with Louis Lipps to give the Steelers unusually potent pass-receiving tandems. Stallworth caught 537 passes for 8,723 yards and 63 touchdowns, all Steelers team records. Stallworth won four Super Bowl championships playing in Super Bowls IX, X, XIII, and XIV. He played in six AFC championship games and had 12 touchdowns and 17 consecutive postseason games with at least one reception. Stallworth, who scored the winning touchdown on a 73-yard reception in Super Bowl XIV, holds Super Bowl records for career average per catch—24.4 yards—and single game average, 40.33 yards, in Super Bowl XIV. He was an All-Pro in 1979 and played in four Pro-Bowls. He was voted MVP by his teammates twice: in 1979 and 1984. Terry Bradshaw and Jack Lambert are the only other players who have received that honor two times. Stallworth was named to the Steelers' All-Time Team in 1982 and the Alabama Sports Hall of Fame in 1989.

Never known for excessive celebration or as one who sought individual attention, Hall of Fame Coach Chuck Noll said of Stallworth:

> John is a very special person. He is very much a team man and you need that to be successful.

Following his Hall of Fame football career, Mr. Stallworth returned to Huntsville, Alabama completed his MBA from Alabama A&M. Since then, he has achieved great success in the field of business. He is Cofounder, President, and Chief Executive Officer of Madison Research Corporation in Huntsville, Alabama. Under Mr. Stallworth's leadership, the Madison Research Corporation has emerged as one of the premier technology companies in the State of Alabama with 2001 revenues of over $60 million and a current staff of over 650 people. Some of his company's clients include: the Department of Defense, all the military services, the Department of Energy, NASA, the Defense Intelligence Agency, and a number of Fortune 500 companies. As a result of Mr. Stallworth's leadership, Washington Technology Magazine ranked Madison Research Company #11 of the nation's top 25 small, minority-owned technology companies. The company also received

the 1998 Better Business Bureau of North Alabama's Torch Award for market ethics. This award was presented in recognition of Madison Research's commitment to ethics in business. Mr. Stallworth also received the 1997 Region IV Minority Small Business Person of the Year Award, presented by the Small Business Administration.

Mr. Stallworth's dedication did not end with football or business. He has given of himself to the city of Huntsville and the people of Alabama and they recently recognized his accomplishments with ''John Stallworth Day in Huntsville''. At the celebration Mel Blount, himself a Hall of Famer, spoke of Stallworth:

John Stallworth exemplifies what a true professional is all about, not just in football but in the business world and in life.

Mr. Stallworth has served on a number of boards including the United Way, the Museum of Aviation, the Madison County Chamber of Commerce, the U.S. Space Camp, Harris Home for Underprivileged Children, and Alabama A&M University. He has been active with the Huntsville Boys and Girls Club, the United Negro College Fund, the Children's Advocacy Center, the Rotary Club of Huntsville, the Alzheimer's Association of Greater Huntsville, and Big Brothers/Big Sisters of North Alabama to name a few. He is also chairman of the Board of Directors of the John L. Stallworth Scholarship Foundation which helps to promote the education of our youth.

I have had the opportunity to get to know John Stallworth over the years and I can say that I am proud to call him my friend. He has served on my technology advisory committee and has been an asset to my work here in the Senate. He has never hesitated to provide me with expert counsel on important issues that have come before the Senate. It is very satisfying for me to see how he has overcome adversity in his life to achieve greatness as a professional and as a human being. His accomplishments on and off the field have inspired thousands of our young people to strive for excellence and I applaud his efforts. The People of the State of Alabama are proud to call him our native son.

I am proud to recognize the accomplishments of a great American and Alabamian, John Stallworth.●

TREATY TRIBES LOCATED IN THE STATE OF SOUTH DAKOTA

● Mr. JOHNSON. Mr. President, I am honored to represent a State that has nine treaty tribes. It has become increasingly clear that nothing is more important to the tribes of South Dakota than the recognition of the obligations this Nation has to the Indian people of South Dakota as spelled out by the treaties entered into by the United States Government and the tribes of South Dakota. Especially at the urging of President John Steele of the Oglala Sioux Tribe and Chairman Andrew Grey of the Sisseton-Wahpeton Sioux Tribe, I offer this statement pertaining to this issue of critical importance to the tribes located within my home State of South Dakota. As you know, the South Dakota tribes have a proud history of providing leadership to Indian issues. I thank President Steele and Chairman Grey for helping me understand this issue. It is with the utmost respect that I share with you some of our tribes' perspective on what treaties mean to them, as follows:

It is important to note that each of the Tribes located in the State of South Dakota have entered into treaties with the Federal Government. All federally recognized Indian tribes and villages are often categorized into the same class. However, important rights were guaranteed to the South Dakota tribes by treaty, and many of these rights continue to be enforceable today. From the first treaty with the Delawares in 1787 until the end of treaty-making in 1871, hundreds of agreements were entered between the Federal Government and various bands and tribes of Indians. Provisions of the treaties differ widely, but it was common to include a guarantee of peace, a delineation of boundaries, often with a cession of specific lands from the tribe to the Federal Government, a guarantee of Indian hunting and fishing rights, often applying to the ceded land, a statement that the tribe recognized the authority or placed itself under the protection of the United States, and an agreement regarding the regulation of trade and travel of persons in the Indian territory. Treaties also commonly included agreements by each side to punish and compensate for acts of depredation by ''bad men'' among their own number, a clause that still can support a claim against the Unites States. See Tsosie v. United States, 825 F.2d 393 (Fed.Cir. 1987).

Indian treaties stand on essentially the same footing as treaties with foreign nations. Because they are made pursuant to the Constitution, they take precedence over any conflicting State laws by reason of the Supremacy Clause. U.S. Const., Art. VI, Sec. 2; Worcester v. Georgia, 31 U.S. (6 Pet.) 515 (1832). They are also the exclusive prerogative of the Federal Government. The First Trade and Intercourse Act, 1 Stat. 137 (1790), forbade the transfer of Indian lands to individuals or States except by treaty ''under the authority of the United States.'' This provision, repeated in later Trade and Intercourse Acts, has become of tremendous importance in recent years, for several eastern States negotiated large land cessions from Indian tribes near the end of the eighteenth century. In County of Oneida v. Oneida Indian Nation, 470 U.S. 226, (1985), the Court held invalid a treaty entered in 1795 between the Oneidas and the State of New York. The treaty, which had been concluded without the participation of the Federal Government, transferred 100,000 acres of Indian lands to the state. The Court held that the tribe still had a viable claim for damages. Similar claims exist in other eastern states; in Maine, the likely invalidity of a 1795 state-tribal treaty clouded land titles covering about sixty percent of the State until legislation settled the issue. See *Joint Tribal Council of Passamaquoddy Tribe* v. *Morton*, 528 F.2d 370, 1st Cir.1975; Maine Indian Claims Settlement Act, P.L. 96–420, 94 Stat. 1785, 1980.

Not only is the treaty-making power exclusively federal, it is almost entirely presidential. While it is true that two-thirds of the Senate must concur in any treaty, the initiation of the process and the terms of negotiation are inevitably controlled by the executive branch. Indeed, there were many instances, especially in California, where executive officials negotiated treaties and acted upon them despite the failure of the Senate to ratify them. In the middle of the eighteenth century, Congress and particularly the House of Representatives grew increasingly resentful of being excluded from the direction of Indian affairs. The ultimate result was the passage in 1871 of a rider to an Indian appropriations act providing that ''No Indian nation or tribe . . . shall be acknowledged or recognized as an independent nation, tribe, or power with whom the United States may contract by treaty.'' 25 U.S.C.A. Sec. 71. The rider also specified that existing treaty obligations were not impaired. As an attempt to limit by statute the President's constitutional treaty-making power, the rider may well be invalid, but it accomplished its purpose nonetheless by making it clear that no further treaties would be ratified. Indian treaty-making consequently ended in 1871. Thereafter formal agreements made with the tribes were either approved by both houses of Congress or were simply embodied in statutes.

Congress, in declaring that Indian tribes should no longer be acknowledged as independent political entities with whom the Untied States might contract by treaty, did not end the tribal organization of Indian communities. The solution to the 1871 Act was the use of ''treaty substitutes that consisted of agreements that were directed and authorized by Congress. Yet, other agreements were negotiated by the Indian Office to solve particular needs or resulted from Indian initiative. Most concerned cessation of land or other modification of boundaries whereby the need to declare peace between two sovereign nations was no longer an essential goal. Although such agreements were similar to treaties, Tribal consent was no longer a prerequisite to establish a binding agreement.

Many reservations were established by Executive Order issued by the President of the United States. Although no general law existed authorizing set asides for Indian use, Congress and the public acquiesced and the Courts upheld the action. Executive orders differed from treaties wherefore they could be easily changed and a new one substituted as occasion demanded. They were neither uniform in terminology nor scope. In addition, a reservation could be established by administrative action prior to the issuance of an executive order and later sanctioned by the official action taken by the President. A 1952 Report by the Commissioner of Indian Affairs found that of the total of 42,785,935 acres of Tribal trust land only 9,471,081 acres had been established by Treaty

and the remaining 23,043,439 acres of trust land were established by executive order.

Federally-recognized Indian tribes in South Dakota signed the Treaty of Fort Laramie with the desire to declare peace and thereby perpetuate a Nation-to-Nation relationship with the Federal Government. The common misperception that most Tribes have entered into treaties with the United States serves as a great injustice to Tribes who have entered into such formal and solemn agreements. In 1890 there were 162 established Tribes; 56 of those were established by executive order, 6 by executive order under the authority of Congress, 28 by acts of Congress, 15 by treaty and executive order, 5 by treaty or agreement and an act of Congress, 1 by unratified treaty and 51 by treaty or agreement. The treaty establishing the South Dakota Tribes is a contract negotiated between sovereign nations, relating to peace and alliance formally acknowledged by the signatories of the nations. The United States entered into such agreement because they desired peace and cessions of land from the Sioux Tribes, and in return they made promises that must be upheld. In conclusion, it is appropriate to recognize the special status of the treaty tribes located in South Dakota.●

GUADALUPE MOUNTAINS NATIONAL PARK

● Mr. BINGAMAN. Mr. President I rise today to congratulate the staff and supporters of Guadalupe Mountains National Park as we mark the 30th anniversary of this great natural treasure. Thirty years ago, the National Park Service established the Guadalupe Mountains National Park along the southeastern border of New Mexico and west Texas.

Guadalupe Mountains National Park treasures and protects desert lowlands, canyons, and a relic forest of pines and firs. It also includes one of the world's greatest examples of a non-coral fossil reef. In addition, the rich cultural history and economic opportunities it provides to the region is part of the park's significance.

Throughout my time in the Senate I have worked to protect our natural, cultural, and historical resources. The Guadalupe Mountains National Park is a prime example of the natural beauty of the Southwest. I hope this refuge will provide enjoyment for many future generations.●

LOCAL LAW ENFORCEMENT ACT OF 2001

● Mr. SMITH of Oregon. Mr. President, I rise today to speak about hate crimes legislation I introduced with Senator KENNEDY in March of last year. The Local Law Enforcement Act of 2001 would add new categories to current hate crimes legislation sending a signal that violence of any kind is unacceptable in our society.

I would like to describe a terrible crime that occurred June 20, 2001 in Albany, NY. A gay man was beaten while sitting on a bench next to a bike path. The assailants, three teens, approached the victim, used anti-gay slurs, and repeatedly punched him in the head with their fists. Investigators believe the victim was targeted because of his sexual orientation.

I believe that Government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act of 2001 is now a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.●

WELCOMING TAIWAN'S FIRST LADY, WU SUE-JEN

● Mr. ALLEN. Mr. President, I want to welcome Madame Chen Wu Sue-jen, First Lady of Taiwan, to the United States.

Madame Chen is a great champion of democracy, both at home and abroad. I applaud her efforts to learn from America's experiences so that she can take those lessons back to Taiwan and its evolving democracy.

During her stay in the United States, Madame Chen has met with many of our nation's finest scholars and statesmen. She has brought with her a wonderful example of leadership, charity and devotion to the American people and continues to strive for human rights and justice at home.

I congratulate Madame Chen on her accomplishments and welcome her to the United States. We look forward to continued friendship with Madame Chen and the Taiwanese people.●

PEACEFUL END TO A TENSE BASEBALL SEASON

● Mr. LEAHY. Mr. President, yesterday marked the end of the Major League Baseball regular season. Fans everywhere have enjoyed a season with Barry Bonds leading the league in hitting, Alex Rodriguez hitting 57 home runs, and Randy Johnson and Curt Schilling combining as perhaps the greatest pitching duo ever. It has been a tremendous season of achievement for many teams. The Minnesota Twins, a team Commissioner Selig wanted to disband last off-season, won the American League Central Division. The Oakland A's set an American League record with a 20-game winning streak and won the American League's Western Division.

Eight teams, and fans from across the country and around the world, are now gearing up for an exciting playoff season. The Twins and the A's, as well as the Anaheim Angels, the St. Louis Cardinals and the San Francisco Giants, have earned the opportunity to continue into the playoffs, to compete for a pennant and even the World Series championship along with last year's champion Arizona Diamondbacks, the New York Yankees and the Atlanta Braves. They are not the eight teams with the highest payrolls or biggest markets. They do share a few things in common: talented players having outstanding seasons, great team play and exceptional management both on and off the field.

We are fortunate that this baseball season is being played to its rightful conclusion and that crisis was avoided on August 30, when negotiators for team owners and the Major League Baseball Players Union reached a new collective bargaining agreement. Announced just two hours before another work stoppage, this agreement saved professional baseball from a disastrous screeching halt to yet another baseball season.

With this agreement baseball can now go about the business of assessing the future of the sport in Montreal. It is unfortunate that this fine city, its team with a number of outstanding players, and its fans have been left in limbo for the past year over the future of the franchise. For a large number of Vermonters, Montreal provides the closest major league venue. This franchise is the major league affiliate for our own minor league Vermont Expos. There are many dedicated Expos fans in my State. Several local towns are doing their best to show their support for keeping the Expos in Montreal. I ask that a letter recently sent by the St. Albans Town Selectboard to the Mayor of Montreal be printed in the RECORD.

The letter follows:

AUGUST 12, 2002.

Mayor GERALD TREMBLAY,
Montreal, Quebec.

MAYOR TREMBLAY, the St. Albans Town Selectboard wishes to express our utmost hope that the city of Montreal tries everything possible to help retain the Montreal Expos.

Montreal is a beautiful international city with much diversity and many different types of cultures. We believe the Expos are a large part of the city and it serves to bring many people from Northern Vermont to your city every year.

With a downtown stadium, we believe the Expos can flourish once again and help attract many more tourists to your wonderful city. We hope that you and your government are trying everything possible to work with new-interested buyers.

If the Town of St. Albans can be of assistance please feel free to contact us.

Cordially Yours,

TAYT R. BROOKS,
Vice-Chair.

Mr. President, through repeated hearings in the Judiciary Committee, Congress has tried to help the major league baseball owners and players find common ground. After the last work stoppage, we culminated almost a decade of hearings examining labor strife and other problems in major league baseball, when we enacted the Curt Flood Act in 1998. Senator HATCH was the lead sponsor of that measure, and I was his principal cosponsor. It was a bipartisan effort to clarify the law. By that effort we hoped to promote labor peace in Major League Baseball.

The principle purpose of the law was to make clear that federal antitrust laws apply to the relationships

between major league team owners and players. Clarifying the law was intended to contribute to an atmosphere in which management and labor, owners and players would resolve their differences through collective bargaining rather than through work stoppages. I hope that the Curt Flood Act and our efforts over the last several years, including the hearing we held this Congress at the requests of Senators WELLSTONE, DAYTON, DORGAN and JOHNSON, contributed in some small way to creating a legal framework and atmosphere in which the parties could resolve their differences through agreement.

Fortunately, baseball has avoided its ninth work stoppage since 1972. During the previous eight work stoppages, 1,736 games were lost—including 938 that were wiped out because of the 1994–95 labor war. Clearly, another work stoppage would have had serious consequences for the professional game. I congratulate Commissioner Selig, Bob Dupuy and their team and Don Fehr and his team on reaching an accord.

Earlier this year Forbes Magazine estimated that the New York Yankees were worth $730 million. The New York Mets were the next-highest valued franchise at $482 million, followed by the Los Angeles Dodgers ($435 million) and the Boston Red Sox ($426 million). Even, the Montreal Expos franchise was valued at over $100 million. The average annual salary for major league players this season reportedly is $2.8 million.

We all hope the recent labor agreement marks a new era of cooperation in Major League Baseball. I remind both the owners and the players that the responsibility for preserving the best of our national pastime—and for restoring the faith and enthusiasm of the fans across the United States—is their opportunity in the coming months and years.

May all of the fans of professional baseball enjoy an exciting post-season, and I wish each of the playoffs teams well.●

RONALD REAGAN

● Mr. HAGEL. Mr. President, I rise today to recognize one of our greatest American Presidents and one of the most important world leaders of the 20th century, the 40th President of the United States, Ronald Reagan.

One year ago, Kyung Hee University in Korea awarded President Reagan the Great World Peace Award for his commitment to world peace.

President Reagan was a steadfast and true friend of South Korea. Former Secretary of State George Shultz wrote that ''To Ronald Reagan, South Korea was a stalwart ally and a valiant symbol of resistance to communism.'' The Soviet downing of the Korean Airlines flight 007 in September 1983, and the terrorist bombing the next month that killed 16 South Koreans, including Foreign Minister Lee Bum Suk and 3 Cabinet ministers, only reinforced President Reagan's determination to visit the Republic of Korea that November. President Reagan addressed the Korean National Assembly on November 12, 1983, and said to the people of South Korea: ''In these days of turmoil and testing, the American people are very thankful for such a constant and devoted ally. Today, America is grateful. to you.''

President Reagan and his administration stood by South Korea during a volatile and historic period, including the North Korean terrorist bombing of Korean Airlines flight 858 in November 1987, which killed 115 South Korean citizens; the first peaceful transfer of power from President Chun Doo Hwan to President Roh Tae Woo in February 1988; and the 1988 Summer Olympics in Seoul.

As we see both opportunity and risk on the Korean Peninsula, including the recent ground breaking visit of Japanese Prime Minister Junichiro Koizumi to Pyongyang, the commitment of President Reagan and the United States to peace through strength on the Korean peninsula and throughout Asia and the world remains strong.

Mr. President, I ask that the statement of Ambassador Joseph Verner Reed, who last year accepted the Great World Peace Award on behalf of President Reagan, be printed in the RECORD.

The statement follows.

REMARKS BY AMBASSADOR JOSEPH VERNER REED ON THE OCCASION OF THE AWARDING TO PRESIDENT RONALD W. REAGAN THE GREAT WORLD PEACE AWARD, KYUNG HEE UNIVERSITY, SEOUL, REPUBLIC OF KOREA, SEPTEMBER 27, 2001

AMERICA

''One flag,
one land,
one heart,
one hand,
one Nation,
evermore.''

—*Oliver Wendell Holmes*

Chancellor YOUNG SEEK CHOUE,

DISTINGUISHED FRIENDS: It is a signal honor for me to be in Seoul, the noble nation of the Republic of Korea to represent President Ronald W. Reagan and to accept on the President's behalf the Great World Peace Award from Keyung Hee University.

I have the highest regard for Chancellor Choue. I stand with great respect for the Chancellor's extraordinary achievements in the world of education and in his untiring quest to seek peace on our troubled planet. As the godfather of the International Day of Peace his legacy is assured by leaders around the globe. As a spirited leader in education in this great country of Korea his fame and presence in modern day Korean history is already set in granite. I salute the Chancellor.

President Reagan is a most deserving leader to receive this Award. The President's close friend and colleague Charles Z. Wick, who was a senior official in both Reagan Administrations, was to have journeyed to Seoul to accept the Award. The Day of Terror precluded that.

I stand humbly before you to accept the Award for the President. Having served in President Reagan's two Administrations—first as envoy to the Kingdom of Morocco and then as envoy to the United Nations, I appreciate and applaud what the President did in searching for peace—the President's vision brought stability to the globe. President Reagan defined and symbolized Peace—peace among mankind.

I stand before you as an American.

THE WAR AGAINST THE TERRORIST

September 11.—I was on my way to the United Nations to participate in the opening of the General Assembly on the very day when we should have been celebrating the International Day of Peace at the Parliament of Man.

8:48 a.m.—And the world as we knew it changed forever in a millisecond. The Day of Terror and the aftermath was, is and continues to be a shock for the world. Americans and friends around the globe are reeling from the attack on America's sovereignty.

As a diplomat working for you at your United Nations I have a perspective on the catastrophe. I am going to place my citizen of the United States hat on with these few observations—observations that I sincerely regret to make on an occasion when we should all be in celebration of Peace.

This war will be won or lost by the American citizens, not diplomats, politicians or soldiers.

In spite of what the media is telling us, this act was not committed by a group of mentally deranged fanatics. To dismiss them as such would be among the gravest of mistakes. This attack was committed by a ferocious, intelligent and dedicated adversary. Don't take this the wrong way. I don't admire these men and I deplore their tactics, but I respect their capabilities. The many parallels that have been made with the Japanese attack on Pearl Harbor are apropos. It was a brilliant sneak attack against a complacent America.

These men hate the United States with all of their being, and we must not underestimate the power of their moral commitment. Napoleon, perhaps the world's greatest combination of soldier and statesman, stated ''the moral is the physical as three is to one.'' Our enemies are willing—better said, anxious—to give their lives for their cause.

In addition to the demonstration of great moral conviction, the recent attack demonstrated a mastery of some of the basic fundamentals of warfare namely: simplicity, security and surprise.

This was not a random act of violence, and we can expect the same sort of military competence to be displayed in the battle to come.

This war will escalate, and a good portion of it may happen right in the United States.

These men will not go easily into the night. They do not fear us. We must not fear them. In spite of our overwhelming conventional strength as the world's only ''superpower'', we are the underdog in this fight. As you listen to the carefully scripted rhetoric designed to prepare us for the march for war, please realize that America is not equipped or seriously trained for the battle ahead. To be certain, our soldiers are much better than the enemy, and we have some excellent ''counter-terrorist'' organizations, but they are mostly trained for hostage rescues, airfield seizures, or the occasional ''body snatch,'' (Which may come in handy). We will be fighting a war of annihilation, because if their early efforts are any indication, our enemies are ready and willing to die to the last man. Eradicating the enemy will be costly and time consuming. They have already deployed their forces in as many as 20 countries. They are likely living the lives of everyday citizens as ''next door.'' Simply put, our soldiers will be tasked with a search and destroy mission on multiple foreign landscapes, and the public must be patient and supportive until the strategy and tactics can be worked out.

For the most part, our military is still in the process of redefining itself and presided over by men and women who grew up with, and were promoted because they excelled in—''The Cold War—doctrine, strategy and tactics. This will not be linear warfare, there will be no clear ''centers of gravity'' to strike with high technology weapons.

America's vast technological edge will certainly be helpful, but it will not be decisive. Perhaps the perfect metaphor for the coming battle was introduced by the terrorists themselves aboard the hijacked aircraft—this will be ''a knife fight'', it will be won or

lost by the ingenuity and will of citizens and soldiers, not by software or ''smart bombs'''.

Unlike Americans, who are eager to put this messy time behind us, our adversaries have time on their side, and they will use it. They plan to flight a battle of attrition, hoping to drag the battle out until the American public loses its will to fight.

It is clear to me that the will of the American citizenry is the center of gravity the enemy has targeted. It will be the fulcrum upon which victory or defeat will turn.

The Prussian General Carl von Clausewitz, says that there is a ''remarkable trinity of war'' that is composed of (1) the will of the people, (2) the political leadership of the government, and (3) the chance and probability that plays out on the field of battle—in that order. Every American citizen, not just those who were unfortunate enough to be in the World Trade Center or Pentagon, was in the crosshairs of last Tuesday's attack. The will of the American people will decide this war.

If America is to win, it will be because we have what it takes to persevere through a few more hits, learn from our mistakes, improvise and adapt. If we can do that, we will eventually prevail.

New York's remarkable response to the catastrophic attack at the World Trade Center has been well documented. Above the tragic din, at the very highest level of government, have come the essential voices of sanity. In closing, may I say that after all that has just passed, all the lives taken and all the possibilities and hopes that died with them, it is natural to wonder if America's future is one of fear. Some speak of an age of terror. With the obscene toll of those lost climbing above 6,000, it is hard to speak without rage.

In Korea and on this Peninsula you have known all too well the ravages of war and occupation. It is therefore why I have taken you time today to share my observations on the world we live in and what we may have to expect. I know there are struggles ahead and dangers to face. As an American and a friend of the Republic of Korea I can say frankly that I believe America will define our times, not be defined by them. As long as the United States of America is determined and strong, this will not be the age of terror. This will be the age of liberty in America and across the world.

I know you will join me in extending our deepest sympathies to the thousands affected by the tragic events of September 11. It was a Day of Terror and the aftermath has been of unspeakable pain. Our hearts and prayers extend to all—the victims, their families and all those who hold America so dear.

Chancellor Choue—on behalf of President Ronald W. Reagan I extend great thanks to you for offering the President this Award. With humbleness, with honor and with great pride, I accept on behalf of President Ronald Reagan, this most distinguished Award—The Great World Peace Award.

Chancellor Choue, ladies and gentleman, keep faith in America—the outcome of the battle is certain.

God Bless America!

Thank you!

Happy Chusok.●

HONORING BIODIESEL-FUELED DRAGSTER

● Mrs. CARNAHAN. Mr. President, I wish to take this opportunity to recognize a remarkable achievement receiving worldwide attention from farmers, environmentalists, and racing fans. The Smith family of Puxico, MO, has set repeated world records with its biodiesel-fueled dragster named ''Wild Thang.'' Wild Thang is a family affair for the Smiths. Mark Smith drives the dragster, assisted by his wife Shelia and sons Jared and Cannon. Their ingenuity has helped showcase the limitless potential of biofuels. They make me proud to be a Missourian.

Wild Thang is fueled 100 percent by biodiesel, a soybean-based renewable fuel that can help us rely on the Midwest, rather than the Middle East to meet our energy needs. The Smiths are proving in appearances across the Nation that soybean-based biodiesel can perform under the most rigorous conditions. Wild Thang produces 6,000 pounds of thrust and five g's of force against the driver's body while accelerating. In just 3.8 seconds, Wild Thang can travel ⅛ of a mile.

I commend the Smith family and their network of supporters for their hard work. They are tremendous ambassadors for rural Missouri and for biodiesel. I am confident that the future will prove that the efforts of the Smith family are playing a key role in promoting of farmer-produced biofuels. These fuels have unlimited potential to revitalize rural economies while preserving the environment. I commend the Smith family's achievements, and wish them continued success as they continue their exciting endeavor.●

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Ms. Evans, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the PRESIDING OFFICER laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

ENROLLED BILL SIGNED

Under the authority of the order of the Senate of January 3, 2001, the Secretary of the Senate, on September 30, 2002, during the recess of the Senate, received a message from the House of Representatives announcing that the Speaker has signed the following enrolled bill:

H.R. 1646. An act to authorize appropriations for the Department of State for fiscal year 2003, to authorize appropriations under the Arms Export Control Act and the Foreign Assistance Act of 1961 for security assistance for fiscal year 2003, and for other purposes.

Under the authority of the order of the Senate of January 3, 2001, the enrolled bill was signed by the President pro tempore (Mr. BYRD) on September 30, 2002.

ENROLLED BILL SIGNED

At 2:41 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the Speaker has signed the following enrolled bill:

S. 1325. An act to ratify an agreement between the Aleut Corporation and the United States of America to exchange land rights received under the Alaska Native Claims Settlement Act for certain land interests on Adak Island, and for other purposes.

The enrolled bill was signed subsequently by the President pro tempore (Mr. BYRD).

MEASURES PLACED ON THE CALENDAR

The following bills and joint resolution were read the second time, and placed on the calendar:

H.R. 4691. An act to prohibit certain abortion-related discrimination in governmental activities.

S. 3009. A bill to provide economic security for America's workers.

S.J. Res. 45. Joint resolution to authorize the use of United States Armed Forces against Iraq.

ENROLLED BILLS PRESENTED

The Secretary of the Senate announced that on today, September 30, 2002, she had presented to the President of the United States the following enrolled bill:

S. 238. An act to authorize the Secretary of the Interior to conduct feasibility studies on water optimization in the Burnt River basin, Malheur River basin, Owyhee River basin, and Powder River basin, Oregon.

S. 1175. An act to modify the boundary of Vicksburg National Military Park to include the property known as Pemberton's Headquarters, and for other purposes.

S. 1325. An act to ratify an agreement between the Aleut Corporation and the United States of America to exchange land rights received under the Alaska Native Claims Settlement Act for certain land interests on Adak Island, and for other purposes.—

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. KENNEDY, from the Committee on Health, Education, Labor, and Pensions, with amendments:

S. 2998: A bill to reauthorize the Child Abuse Prevention and Treatment Act, the Family Violence Prevention and Services Act, the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978, and the Abandoned Infants Assistance Act of 1988, and for other purposes. (Rept. No. 107–292).

By Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, with amendments:

S. 2949: A bill to provide for enhanced aviation security, and for other purposes. (Rept. No. 107–293).

By Mr. KENNEDY, from the Committee on Health, Education, Labor, and Pensions,

with an amendment in the nature of a substitute:

S. 1806: A bill to amend the Public Health Service Act with respect to health professions programs regarding the practice of pharmacy.

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. BINGAMAN (for himself and Mr. DOMENICI):

S. 3015. A bill to designate the United States courthouse at South Federal Place in Santa Fe, New Mexico, as the ''Santiago E. Campos United States Courthouse''; to the Committee on Environment and Public Works.

By Mr. DASCHLE:

S. 3016. A bill to amend the Farm Security and Rural Investment act of 2002 to require the Secretary of Agriculture to establish research, extension, and educational programs to implement biobased energy technologies, products, and economic diversification in rural areas of the United States; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. LEVIN:

S. 3017. A bill to amend title 18, United States Code, to provide retroactive effect to a sentencing safety valve provision; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. DASCHLE (for himself, Mr. LOTT, Mr. INOUYE, and Mr. AKAKA):

S. Res. 331. A resolution relative to the death of Representative Patsy T. Mink, of Hawaii; considered and agreed to.

ADDITIONAL COSPONSORS

S. 278

At the request of Mrs. MURRAY, her name was added as a cosponsor of S. 278, A bill to restore health care coverage to retired members of the uniformed services.

S. 710

At the request of Mr. KENNEDY, the name of the Senator from Montana (Mr. BAUCUS) was added as a cosponsor of S. 710, A bill to require coverage for colorectal cancer screenings.

S. 1712

At the request of Mr. GRASSLEY, the names of the Senator from Nebraska (Mr. HAGEL) and the Senator from Indiana (Mr. LUGAR) were added as cosponsors of S. 1712, A bill 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.

S. 2726

At the request of Mr. BINGAMAN, the names of the Senator from Louisiana (Ms. LANDRIEU) and the Senator from Michigan (Ms. STABENOW) were added as cosponsors of S. 2726, A bill to treat certain motor dealer transitional assistance as an involuntary conversion, and for other purposes.

S. 2770

At the request of Mr. DODD, the names of the Senator from Massachusetts (Mr. KERRY) and the Senator from Georgia (Mr. CLELAND) were added as cosponsors of S. 2770, A bill to amend the Federal Law Enforcement Pay Reform Act of 1990 to adjust the percentage differentials payable to Federal law enforcement officers in certain high-cost areas.

S. 2869

At the request of Mr. KERRY, the names of the Senator from Vermont (Mr. JEFFORDS), the Senator from Arkansas (Mr. HUTCHINSON), the Senator from Washington (Ms. CANTWELL) and the Senator from New York (Mr. SCHUMER) were added as cosponsors of S. 2869, A bill to facilitate the ability of certain spectrum auction winners to pursue alternative measures required in the public interest to meet the needs of wireless telecommunications consumers.

S. 2874

At the request of Mr. DAYTON, the name of the Senator from Washington (Mrs. MURRAY) was added as a cosponsor of S. 2874, A bill to provide benefits to domestic partners of Federal employees.

S. 2879

At the request of Mr. GRASSLEY, the name of the Senator from Arkansas (Mrs. LINCOLN) was added as a cosponsor of S. 2879, A bill to amend titles XVIII and XIV of the Social Security Act to improve the availability of accurate nursing facility staffing information, and for other purposes.

S. 2880

At the request of Mr. BINGAMAN, the name of the Senator from New Mexico (Mr. DOMENICI) was added as a cosponsor of S. 2880, A bill to designate Fort Bayard Historic District in the State of New Mexico as a National Historic Landmark, and for other purposes.

S. 2903

At the request of Mr. JOHNSON, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. 2903, A bill to amend title 38, United States Code, to provide for a guaranteed adequate level of funding for veterans health care.

S. 2933

At the request of Mr. BREAUX, the name of the Senator from Pennsylvania (Mr. SANTORUM) was added as a cosponsor of S. 2933, A bill to promote elder justice, and for other purposes.

S. 3005

At the request of Mr. AKAKA, the name of the Senator from Hawaii (Mr. INOUYE) was added as a cosponsor of S. 3005, A bill to revise the boundary of the Kaloko-Honokohau National Historical Park in the State of Hawaii, and for other purposes.

S. RES. 322

At the request of Mrs. LINCOLN, the name of the Senator from North Dakota (Mr. DORGAN) was added as a cosponsor of S. Res. 322, A resolution designating November 2002, as ''National Epilepsy Awareness Month''.

S. RES. 325

At the request of Mr. SESSIONS, the names of the Senator from Virginia (Mr. ALLEN) and the Senator from Oregon (Mr. WYDEN) were added as cosponsors of S. Res. 325, Resolution designating the month of September 2002 as ''National Prostate Cancer Awareness Month''.

S. CON. RES. 94

At the request of Mr. MILLER, his name was added as a cosponsor of S. Con. Res. 94, A concurrent resolution expressing the sense of Congress that public awareness and education about the importance of health care coverage is of the utmost priority and that a National Importance of Health Care Coverage Month should be established to promote that awareness and education.

S. CON. RES. 94

At the request of Mr. WYDEN, the name of the Senator from Arkansas (Mrs. LINCOLN) was added as a cosponsor of S. Con. Res. 94, supra.

S. CON. RES. 135

At the request of Mr. NICKLES, the name of the Senator from Rhode Island (Mr. REED) was added as a cosponsor of S. Con. Res. 135, A concurrent resolution expressing the sense of Congress regarding housing affordability and urging fair and expeditious review by international trade tribunals to ensure a competitive North American market for softwood lumber.

S. CON. RES. 138

At the request of Mr. REID, the name of the Senator from Oregon (Mr. WYDEN) was added as a cosponsor of S. Con. Res. 138, A concurrent resolution expressing the sense of Congress that the Secretary of Health And Human Services should conduct or support research on certain tests to screen for ovarian cancer, and Federal health care programs and group and individual health plans should cover the tests if demonstrated to be effective, and for other purposes.

S. CON. RES. 142

At the request of Mr. SMITH of Oregon, the names of the Senator from Massachusetts (Mr. KENNEDY), the Senator from Maine (Ms. SNOWE), the Senator from Arizona (Mr. MCCAIN), the Senator from Massachusetts (Mr. KERRY), the Senator from Kentucky (Mr. BUNNING) and the Senator from Idaho (Mr. CRAIG) were added as cosponsors of S. Con. Res. 142, A concurrent resolution expressing support for the goals and ideas of a day of tribute to all firefighters who have died in the line of duty and recognizing the important mission of the Fallen Firefighters Foundation in assisting family members to overcome the loss of their fallen heroes.

S. CON. RES. 143

At the request of Mr. INHOFE, the names of the Senator from North Dakota (Mr. DORGAN) and the Senator

from Colorado (Mr. CAMPBELL) were added as cosponsors of S. Con. Res. 143, A concurrent resolution designating October 6, 2002, through October 12, 2002, as ''National 4–H Youth Development Program Week''.

S. CON. RES. 146

At the request of Mrs. LINCOLN, the names of the Senator from Montana (Mr. BURNS) and the Senator from Illinois (Mr. DURBIN) were added as cosponsors of S. Con. Res. 146, A concurrent resolution supporting the goals and ideas of National Take Your Kids to Vote Day.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. BINGAMAN (for himself and Mr. DOMENICI):

S. 3015. A bill to designate the United States courthouse at South Federal Place in Santa Fe, New Mexico, as the ''Santiago E. Campos United States Courthouse''; to the Committee on Environment and Public Works.

Mr. BINGAMAN. Mr. President, I rise today with my colleague Senator DOMENICI to introduce a bill to designate the United States Courthouse in Santa Fe, NM, as the ''Honorable Santiago E. Campos United States Courthouse.'' Santiago Campos was appointed to the Federal Bench in 1978 by President Jimmy Carter and was the first Hispanic Federal judge in New Mexico. He held the title of Chief U.S. District Judge from February 5, 1987 to December 31, 1989, and took senior status in 1992. Judge Campos had his chambers in the courthouse in Santa Fe for over 22 years. He was also the prime mover in reestablishing Federal court judicial activity in Santa Fe and in renovating the courthouse there.

Sadly, Judge Campos passed away January 20, 2001 after a long battle with cancer. Judge Campos was not only a great man, but also a dedicated and passionate public servant who spent most of his life committed to working for the people of New Mexico and our Nation. Judge Campos was an extraordinary jurist and served as a role model and mentor to others in New Mexico. He was admired and respected by all that knew him. I believe that it would be an appropriate tribute to Judge Campos to have the courthouse in Santa Fe bear his name.

By Mr. DASCHLE:

S. 3016. A bill to amend the Farm Security and Rural Investment act of 2002 to require the Secretary of Agriculture to establish research, extension, and educational programs to implement biobased energy technologies, products, and economic diversification in rural areas of the United States; to the Committee on Agriculture, Nutrition, and Forestry.

Mr. DASHCLE. Mr. President, today, I am introducing the Sun Grant Initiative for Renewable Energy and Biobased Products Act. The Sun Grant Initiative, or SGI, reflects a dynamic vision for the future of agriculture and rural America—a vision that can reduce our dependence on foreign energy, provide environmentally-friendly biobased alternative products, and infuse needed economic development for our nation's rural communities. SGI will build upon what our nation does best by using the power of innovation to open up new avenues of opportunity.

Specifically, SGI would identify new methods of converting various crop varieties and biobased natural resources into energy and other value-added products and provide a technology transfer of those products by:

Establishing a national consortium of land-grant universities to lead the SGI effort in coordination with the U.S. Departments of Agriculture and Energy.

The mission of the consortium would be to make significant advances—not only in technological developments, but also in making sure those new technologies make it to market, therefore providing income alternatives to farmers and ranchers and providing opportunities for economic diversification to rural communities.

Increasing our nation's investment in renewable fuels and other products like pharmaculticals, building materials including bio-plastics, textiles, lubricants, solvents, and adhesives.

Providing a framework for new investments in necessary research, and for ensuring that producers, communities, and our nation as a whole benefit from the results of that research.

I am hopeful that Senators will review the legislation and consider cosponsoring this exciting effort to help build a biobased economy that can assist our nation in so many important ways.

By Mr. LEVIN:

S. 3017. A bill to amend title 18, United States Code, to provide retroactive effect to a sentencing safety valve provision; to the Committee on the Judiciary.

Mr. LEVIN. Mr. President, I am pleased to introduce the Safety Valve Fairness Act. This bill addresses inequities in sentencing that were created by the passage of ''safety valve'' provisions contained in the 1994 crime bill.

Mandatory minimum sentencing laws allow judges little or no discretion in making sentencing determinations. An unfortunate byproduct of this lack of discretion has been the imposition of disproportionately long sentences for some relatively low-level nonviolent offenders.

Congress acknowledged this in enacting so-called ''safety valve'' provisions as part of the 1994 crime bill. These provisions allowed a narrow class of offenders, that is individuals with no criminal history, who committed a nonviolent crime, were not leaders or organizers of the crime, and who cooperated fully with the government, to petition the court for a review of their sentence. However, the safety valve provisions did not apply to offenders sentenced before the bill became law in 1994. As a result, individuals who have arguably been most impacted by the mandatory minimum sentencing laws that the safety valve provisions sought to remedy, have been unable to benefit from their passage. This bill would rectify this situation by making the safety valve provisions retroactive to allow first-time nonviolent drug offenders convicted prior to the passage of the 1994 crime bill to petition the court for a reconsideration of their sentence.

The existing safety valve law is not a ''get out of jail free'' card. It simply allows prisoners to petition the courts for reconsideration. In order to have the mandatory minimum sentenced modified, offenders must first demonstrate to the court that they meet the criteria I mentioned earlier. It is up to the court to determine whether an individual is eligible to have their sentence modified and that a modification is appropriate in each case. I believe the original safety valve provisions appropriately restored discretion to the courts and it's only fair that the law be changed so it applies equally to all individuals without regard to when they were convicted.

Making the safety valve provisions retroactive would impact only an extremely small number of cases. According to the United States Sentencing Commission, only 25 to 40 currently incarcerated federal offenders would be eligible to petition the court to reconsider their sentences. All of these individuals have served at least eight years in prison and many have served significantly longer. Mr. President, I request unanimous consent to print a letter from the Sentencing Commission in the RECORD.

The same considerations that motivated the Senate's original passage of the safety valve legislation apply to those offenders who were sentenced before 1994. Fairness dictates that all those offenders who meet the criteria set out in the safety valve law should have their cases heard and I urge my colleagues to support this bill.

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

U.S. SENTENCING COMMISSION,
Washington, DC, June 24, 2002.

Hon. CARL LEVIN,
U.S. Senate,
Washington, D.C.

DEAR SENATOR LEVIN: Thank you for your June 14, 2002, letter inquiring about the number of federal offenders who would be affected if the ''safety valve'' provision enacted on September 13, 1994, were made retroactive. We estimate that 25 to 40 federal offenders currently incarcerated would benefit if the safety valve provision of the 1994 Crime Bill were made retroactive to cases sentenced prior to September 13, 1994.

We cannot provide a more exact figure because of a number of data limitations. In order for the safety valve to apply, the sentencing judge must find that the offender meets certain criteria defined by Congress. For example, one such criterion is whether the defendant truthfully provided to the Government all information and evidence the defendant had concerning the offense or offenses that were part of the same course of conduct or of a common scheme or plan. Because this criterion was not relevant to sentencing prior to the enactment of the safety valve provision, presentence reports for cases sentenced prior to September 13, 1994, do not

necessarily address this factor. As a result, to respond to your inquiry we had to use receipt of a sentencing reduction for acceptance of responsibility as a rough proxy for this particular safety valve criterion, which may overstate or understate the actual number of offenders who would meet this criterion if the safety value were made retroactive. Proxies for certain other safety valve criterion also had to be used. In addition, the Commission does not have complete data with respect to release dates for offenders.

I hope you find this information helpful.

Sincerely,

DIANA E. MURPHY.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 331—RELATIVE TO THE DEATH OF REPRESENTATIVE PATSY T. MINK OF HAWAII

Mr. DASCHLE (for himself, Mr. LOTT, Mr. INOUYE, and Mr. AKAKA) submitted the following resolution; which was considered and agreed to:

S. RES. 331

Resolved, That the Senate has heard with profound sorrow and deep regret the announcement of the death of the Honorable Patsy T. Mink, late a Representative from the State of Hawaii.

Resolved, That the Secretary communicate these resolutions to the House of Representatives and transmit an enrolled copy thereof to the family of the deceased.

Resolved, That when the Senate adjourns or recesses today, it stand adjourned or recessed as a further mark of respect to the memory of the deceased Representative.

AMENDMENTS SUBMITTED AND PROPOSED

SA 4839. Mr. DODD submitted an amendment intended to be proposed by him to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table.

SA 4840. Mr. CRAIG submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4841. Mr. ENZI submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4842. Mr. CRAIG submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the H.R. 5005, supra; which was ordered to lie on the table.

SA 4843. Mr. LIEBERMAN submitted an amendment intended to be proposed by him to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4844. Mr. SESSIONS submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4845. Mr. SESSIONS submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4846. Mr. SESSIONS submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 4839. Mr. DODD submitted an amendment intended to be proposed by him to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 338, insert between lines 2 and 3 the following:

SEC. 2205. ADJUSTED DIFFERENTIALS.

(a) IN GENERAL.—Paragraph (1) of section 404(b) of the Federal Law Enforcement Pay Reform Act of 1990 (5 U.S.C. 5305 note) is amended by striking the matter after ''follows:'' and inserting the following:

''Area	Differential
Atlanta Consolidated Metropolitan Statistical Area	17.21%
Boston-Worcester-Lawrence, MA-NH-ME-CT-RI Consolidated Metropolitan Statistical Area	24.43%
Chicago-Gary-Kenosha, IL-IN-WI Consolidated Metropolitan Statistical Area	25.34%
Cincinnati-Hamilton, OH-KY-IN Consolidated Metropolitan Statistical Area	21.21%
Cleveland Consolidated Metropolitan Statistical Area	18.46%
Columbus Consolidated Metropolitan Statistical Area	17.75%
Dallas Consolidated Metropolitan Statistical Area	19.06%
Dayton Consolidated Metropolitan Statistical Area	16.50%
Denver-Boulder-Greeley, CO Consolidated Metropolitan Statistical Area	23.08%
Detroit-Ann Arbor-Flint, MI Consolidated Metropolitan Statistical Area	25.28%
Hartford, CT Consolidated Metropolitan Statistical Area	23.78%
Houston-Galveston-Brazoria, TX Consolidated Metropolitan Statistical Area	31.55%
Los Angeles-Riverside-Orange County, CA Consolidated Metropolitan Statistical Area	27.19%
Miami-Fort Lauderdale, FL Consolidated Metropolitan Statistical Area	21.79%
Milwaukee Consolidated Metropolitan Statistical Area	18.03%
Minneapolis-St. Paul, MN-WI Consolidated Metropolitan Statistical Area	20.21%
New York-Northern New Jersey-Long Island, NY-NJ-CT-PA Consolidated Metropolitan Statistical Area	26.44%
Philadelphia-Wilmington-Atlantic City, PA-NJ-DE-MD Consolidated Metropolitan Statistical Area	21.14%
Pittsburgh Consolidated Metropolitan Statistical Area	15.97%
Portland-Salem, OR-WA Consolidated Metropolitan Statistical Area	20.90%
Richmond Consolidated Metropolitan Statistical Area	17.05%
RUS Consolidated Metropolitan Statistical Area	15.28%
Sacramento-Yolo, CA Consolidated Metropolitan Statistical Area	20.41%
San Diego, CA Consolidated Metropolitan Statistical Area	22.28%
San Francisco-Oakland-San Jose, CA Consolidated Metropolitan Statistical Area	33.06%
Seattle-Tacoma-Bremerton, WA Consolidated Metropolitan Statistical Area	20.99%
St. Louis Consolidated Metropolitan Statistical Area	15.65%
Washington-Baltimore, DC-MD-VA-WV Consolidated Metropolitan Statistical Area	20.01%''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a)—

(1) shall take effect as if included in the Federal Law Enforcement Pay Reform Act of 1990 on the date of the enactment of such Act; and

(2) shall be effective only with respect to pay for service performed in pay periods beginning on or after the date of enactment of this Act.

SA 4840. Mr. CRAIG submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. MODIFICATIONS TO AVIATION AND TRANSPORTATION SECURITY ACT.

(a) SECURITY SCREENING OPT-OUT PROGRAM.—Section 44919(d) of title 49, United States Code, is amended—

(1) by striking ''not more than 1 airport from each of the 5 airport security risk categories'' and inserting ''up to 40 airports equally distributed among the 5 airport security risk categories''; and

(2) by adding at the end the following: ''The Under Secretary shall encourage large and medium hub airports to participate in the program''.

(b) EXTENSION OF DEADLINE.—Section 110(c)(2) of the Aviation and Transportation Security Act is amended by striking ''1 year after the date of enactment of this Act'' and inserting ''December 31, 2002''.

SA 4841. Mr. ENZI submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert:

SEC. 1__. REQUIREMENT TO BUY CERTAIN ARTICLES FROM AMERICAN SOURCES.

(a) REQUIREMENT.—Except as provided in subsections (c) through (g), funds appropriated or otherwise available to the Department of Homeland Security may not be used

for the procurement of an item described in subsection (b) if the item is not grown, reprocessed, reused, or produced in the United States.

(b) COVERED ITEMS.—An item referred to in subsection (a) is any of the following:

(1) An article or item of—

(A) food;

(B) clothing;

(C) tents, tarpaulins, or covers;

(D) cotton and other natural fiber products, woven silk or woven silk blends, spun silk yarn for cartridge cloth, synthetic fabric or coated synthetic fabric (including all textile fibers and yarns that are for use in such fabrics), canvas products, or wool (whether in the form of fiber or yarn or contained in fabrics, materials, or manufactured articles); or

(E) any item of individual equipment manufactured from or containing such fibers, yarns, fabrics, or materials.

(2) Specialty metals, including stainless steel flatware.

(3) Hand or measuring tools.

(c) AVAILABILITY EXCEPTION.—Subsection (a) does not apply to the extent that the Secretary of Homeland Security determines that satisfactory quality and sufficient quantity of any such article or item described in subsection (b)(1) or specialty metals (including stainless steel flatware) grown, reprocessed, reused, or produced in the United States cannot be procured as and when needed at United States market prices.

(d) EXCEPTION FOR CERTAIN PROCUREMENTS OUTSIDE THE UNITED STATES.—Subsection (a) does not apply to the following:

(1) Procurements outside the United States in support of combat operations.

(2) Procurements by vessels in foreign waters.

(3) Emergency procurements or procurements of perishable foods by an establishment located outside the United States for the personnel attached to such establishment.

(e) EXCEPTION FOR SPECIALTY METALS AND CHEMICAL WARFARE PROTECTIVE CLOTHING.—Subsection (a) does not preclude the procurement of specialty metals or chemical warfare protective clothing produced outside the United States if—

(1) such procurement is necessary—

(A) to comply with agreements with foreign governments requiring the United States to purchase supplies from foreign sources for the purposes of offsetting sales made by the United States Government or United States firms under approved programs serving defense requirements; or

(B) in furtherance of agreements with foreign governments in which both such governments agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country; and

(2) any such agreement with a foreign government complies, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with section 2457 of title 10, United States Code.

(f) EXCEPTION FOR CERTAIN FOODS.—Subsection (a) does not preclude the procurement of foods manufactured or processed in the United States.

(g) EXCEPTION FOR SMALL PURCHASES.—Subsection (a) does not apply to purchases for amounts not greater than the simplified acquisition threshold (as defined in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11))).

(h) APPLICABILITY TO CONTRACTS AND SUBCONTRACTS FOR PROCUREMENT OF COMMERCIAL ITEMS.—This section is applicable to contracts and subcontracts for the procurement of commercial items notwithstanding section 34 of the Office of Federal Procurement Policy Act (41 U.S.C. 430).

(i) GEOGRAPHIC COVERAGE.—In this section, the term ''United States'' includes the possessions of the United States.

SA 4842. Mr. CRAIG submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place in **TITLE IX—CONFORMING AND TECHNICAL AMENDMENTS**, insert the following:

SEC. . NATIONAL CRITICAL INFRASTRUCTURE TESTBED.

There is established at the Idaho National Engineering and Environmental Laboratory a National Critical Infrastructure Testbed at which the Department of Homeland Security shall conduct necessary systems testing and demonstration of infrastructure target hardening methods.

SA 4843. Mr. LIEBERMAN submitted an amendment intended to be proposed by him to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

Strike all after the first word and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''National Homeland Security and Combating Terrorism Act of 2002''.

SEC. 2. ORGANIZATION OF ACT INTO DIVISIONS; TABLE OF CONTENTS.

(a) DIVISIONS.—This Act is organized into 5 divisions as follows:

(1) Division A—National Homeland Security and Combating Terrorism.

(2) Division B—Immigration Reform, Accountability, and Security Enhancement Act of 2002.

(3) Division C—Federal Workforce Improvement.

(4) Division D—E-Government Act of 2002.

(5) Division E—Flight and Cabin Security on Passenger Aircraft.

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

Sec. 1. Short title.
Sec. 2. Organization of Act into divisions; table of contents.
DIVISION A—NATIONAL HOMELAND SECURITY AND COMBATING TERRORISM
Sec. 100. Definitions.
TITLE I—DEPARTMENT OF HOMELAND SECURITY
Subtitle A—Establishment of the Department of Homeland Security
Sec. 101. Establishment of the Department of Homeland Security.
Sec. 102. Secretary of Homeland Security.
Sec. 103. Deputy Secretary of Homeland Security.
Sec. 104. Under Secretary for Management.
Sec. 105. Assistant Secretaries.
Sec. 106. Inspector General.
Sec. 107. Chief Financial Officer.
Sec. 108. Chief Information Officer.
Sec. 109. General Counsel.
Sec. 110. Civil Rights Officer.
Sec. 111. Privacy Officer.
Sec. 112. Chief Human Capital Officer.
Sec. 113. Office of International Affairs.
Sec. 114. Executive Schedule positions.
Subtitle B—Establishment of Directorates and Offices
Sec. 131. Directorate of Border and Transportation Protection.
Sec. 132. Directorate of Intelligence.
Sec. 133. Directorate of Critical Infrastructure Protection.
Sec. 134. Directorate of Emergency Preparedness and Response.
Sec. 135. Directorate of Science and Technology.
Sec. 136. Directorate of Immigration Affairs.
Sec. 137. Office for State and Local Government Coordination.
Sec. 138. United States Secret Service.
Sec. 139. Border Coordination Working Group.
Sec. 140. Office for National Capital Region Coordination.
Sec. 141. Executive Schedule positions.
Sec. 142. Preserving Coast Guard mission performance.
Subtitle C—National Emergency Preparedness Enhancement
Sec. 151. Short title.
Sec. 152. Preparedness information and education.
Sec. 153. Pilot program.
Sec. 154. Designation of National Emergency Preparedness Week.
Subtitle D—Miscellaneous Provisions
Sec. 161. National Bio-Weapons Defense Analysis Center.
Sec. 162. Review of food safety.
Sec. 163. Exchange of employees between agencies and State or local governments.
Sec. 164. Whistleblower protection for Federal employees who are airport security screeners.
Sec. 165. Whistleblower protection for certain airport employees.
Sec. 166. Bioterrorism preparedness and response division.
Sec. 167. Coordination with the Department of Health and Human Services under the Public Health Service Act.
Sec. 168. Rail security enhancements.
Sec. 169. Grants for firefighting personnel.
Sec. 170. Review of transportation security enhancements.
Sec. 171. Interoperability of information systems.
Sec. 172. Extension of customs user fees.
Sec. 173. Conforming amendments regarding laws administered by the Secretary of Veterans Affairs.
Sec. 174. Prohibition on contracts with corporate expatriates.
Sec. 175. Transfer of certain agricultural inspection functions of the Department of Agriculture.
Sec. 176. Coordination of information and information technology.
Subtitle E—Transition Provisions
Sec. 181. Definitions.
Sec. 182. Transfer of agencies.
Sec. 183. Transitional authorities.
Sec. 184. Incidental transfers and transfer of related functions.
Sec. 185. Implementation progress reports and legislative recommendations.
Sec. 186. Transfer and allocation.
Sec. 187. Savings provisions.
Sec. 188. Transition plan.
Sec. 189. Use of appropriated funds.
Subtitle F—Administrative Provisions
Sec. 191. Reorganizations and delegations.
Sec. 192. Reporting requirements.
Sec. 193. Environmental protection, safety, and health requirements.
Sec. 194. Labor standards.
Sec. 195. Procurement of temporary and intermittent services.
Sec. 196. Preserving non-homeland security mission performance.
Sec. 197. Future Years Homeland Security Program.

Sec. 198. Protection of voluntarily furnished confidential information.
Sec. 199. Establishment of human resources management system.
Sec. 199A. Labor-management relations.
Sec. 199B. Authorization of appropriations.

TITLE II—LAW ENFORCEMENT POWERS OF INSPECTOR GENERAL AGENTS

Sec. 201. Law enforcement powers of Inspector General agents.

TITLE III—FEDERAL EMERGENCY PROCUREMENT FLEXIBILITY

Subtitle A—Temporary Flexibility for Certain Procurements

Sec. 301. Definition.
Sec. 302. Procurements for defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack.
Sec. 303. Increased simplified acquisition threshold for procurements in support of humanitarian or peacekeeping operations or contingency operations.
Sec. 304. Increased micro-purchase threshold for certain procurements.
Sec. 305. Application of certain commercial items authorities to certain procurements.
Sec. 306. Use of streamlined procedures.
Sec. 307. Review and report by Comptroller General.

Subtitle B—Other Matters

Sec. 311. Identification of new entrants into the Federal marketplace.

TITLE IV—NATIONAL COMMISSION ON TERRORIST ATTACKS UPON THE UNITED STATES

Sec. 401. Establishment of Commission.
Sec. 402. Purposes.
Sec. 403. Composition of the Commission.
Sec. 404. Functions of the Commission.
Sec. 405. Powers of the Commission.
Sec. 406. Staff of the Commission.
Sec. 407. Compensation and travel expenses.
Sec. 408. Security clearances for Commission members and staff.
Sec. 409. Reports of the Commission; termination.
Sec. 410. Authorization of appropriations.

TITLE V—EFFECTIVE DATE

Sec. 501. Effective date.

DIVISION B—IMMIGRATION REFORM, ACCOUNTABILITY, AND SECURITY ENHANCEMENT ACT OF 2002

TITLE X—SHORT TITLE AND DEFINITIONS

Sec. 1001. Short title.
Sec. 1002. Definitions.

TITLE XI—DIRECTORATE OF IMMIGRATION AFFAIRS

Subtitle A—Organization

Sec. 1101. Abolition of INS.
Sec. 1102. Establishment of Directorate of Immigration Affairs.
Sec. 1103. Under Secretary of Homeland Security for Immigration Affairs.
Sec. 1104. Bureau of Immigration Services.
Sec. 1105. Bureau of Enforcement and Border Affairs.
Sec. 1106. Office of the Ombudsman within the Directorate.
Sec. 1107. Office of Immigration Statistics within the Directorate.
Sec. 1108. Clerical amendments.

Subtitle B—Transition Provisions

Sec. 1111. Transfer of functions.
Sec. 1112. Transfer of personnel and other resources.
Sec. 1113. Determinations with respect to functions and resources.
Sec. 1114. Delegation and reservation of functions.
Sec. 1115. Allocation of personnel and other resources.
Sec. 1116. Savings provisions.
Sec. 1117. Interim service of the Commissioner of Immigration and Naturalization.
Sec. 1118. Executive Office for Immigration review authorities not affected.
Sec. 1119. Other authorities not affected.
Sec. 1120. Transition funding.

Subtitle C—Miscellaneous Provisions

Sec. 1121. Funding adjudication and naturalization services.
Sec. 1122. Application of Internet-based technologies.
Sec. 1123. Alternatives to detention of asylum seekers.

Subtitle D—Effective Date

Sec. 1131. Effective date.

TITLE XII—UNACCOMPANIED ALIEN CHILD PROTECTION

Sec. 1201. Short title.
Sec. 1202. Definitions.

Subtitle A—Structural Changes

Sec. 1211. Responsibilities of the Office of Refugee Resettlement with respect to unaccompanied alien children.
Sec. 1212. Establishment of Interagency Task Force on Unaccompanied Alien Children.
Sec. 1213. Transition provisions.
Sec. 1214. Effective date.

Subtitle B—Custody, Release, Family Reunification, and Detention

Sec. 1221. Procedures when encountering unaccompanied alien children.
Sec. 1222. Family reunification for unaccompanied alien children with relatives in the United States.
Sec. 1223. Appropriate conditions for detention of unaccompanied alien children.
Sec. 1224. Repatriated unaccompanied alien children.
Sec. 1225. Establishing the age of an unaccompanied alien child.
Sec. 1226. Effective date.

Subtitle C—Access by Unaccompanied Alien Children to Guardians Ad Litem and Counsel

Sec. 1231. Right of unaccompanied alien children to guardians ad litem.
Sec. 1232. Right of unaccompanied alien children to counsel.
Sec. 1233. Effective date; applicability.

Subtitle D—Strengthening Policies for Permanent Protection of Alien Children

Sec. 1241. Special immigrant juvenile visa.
Sec. 1242. Training for officials and certain private parties who come into contact with unaccompanied alien children.
Sec. 1243. Effective date.

Subtitle E—Children Refugee and Asylum Seekers

Sec. 1251. Guidelines for children's asylum claims.
Sec. 1252. Unaccompanied refugee children.

Subtitle F—Authorization of Appropriations

Sec. 1261. Authorization of appropriations.

TITLE XIII—AGENCY FOR IMMIGRATION HEARINGS AND APPEALS

Subtitle A—Structure and Function

Sec. 1301. Establishment.
Sec. 1302. Director of the agency.
Sec. 1303. Board of Immigration Appeals.
Sec. 1304. Chief Immigration Judge.
Sec. 1305. Chief Administrative Hearing Officer.
Sec. 1306. Removal of judges.
Sec. 1307. Authorization of appropriations.

Subtitle B—Transfer of Functions and Savings Provisions

Sec. 1311. Transition provisions.

Subtitle C—Effective Date

Sec. 1321. Effective date.

DIVISION C—FEDERAL WORKFORCE IMPROVEMENT

TITLE XXI—CHIEF HUMAN CAPITAL OFFICERS

Sec. 2101. Short title.
Sec. 2102. Agency Chief Human Capital Officers.
Sec. 2103. Chief Human Capital Officers Council.
Sec. 2104. Strategic human capital management.
Sec. 2105. Effective date.

TITLE XXII—REFORMS RELATING TO FEDERAL HUMAN CAPITAL MANAGEMENT

Sec. 2201. Inclusion of agency human capital strategic planning in performance plans and program performance reports.
Sec. 2202. Reform of the competitive service hiring process.
Sec. 2203. Permanent extension, revision, and expansion of authorities for use of voluntary separation incentive pay and voluntary early retirement.
Sec. 2204. Student volunteer transit subsidy.

TITLE XXIII—REFORMS RELATING TO THE SENIOR EXECUTIVE SERVICE

Sec. 2301. Repeal of recertification requirements of senior executives.
Sec. 2302. Adjustment of limitation on total annual compensation.

TITLE XXIV—ACADEMIC TRAINING

Sec. 2401. Academic training.
Sec. 2402. Modifications to National Security Education Program.
Sec. 2403. Compensatory time off for travel.

DIVISION D—E-GOVERNMENT ACT OF 2002

TITLE XXX—SHORT TITLE; FINDINGS AND PURPOSES

Sec. 3001. Short title.
Sec. 3002. Findings and purposes.

TITLE XXXI—OFFICE OF MANAGEMENT AND BUDGET ELECTRONIC GOVERNMENT SERVICES

Sec. 3101. Management and promotion of electronic Government services.
Sec. 3102. Conforming amendments.

TITLE XXXII—FEDERAL MANAGEMENT AND PROMOTION OF ELECTRONIC GOVERNMENT SERVICES

Sec. 3201. Definitions.
Sec. 3202. Federal agency responsibilities.
Sec. 3203. Compatibility of executive agency methods for use and acceptance of electronic signatures.
Sec. 3204. Federal Internet portal.
Sec. 3205. Federal courts.
Sec. 3206. Regulatory agencies.
Sec. 3207. Accessibility, usability, and preservation of Government information.
Sec. 3208. Privacy provisions.
Sec. 3209. Federal information technology workforce development.
Sec. 3210. Common protocols for geographic information systems.
Sec. 3211. Share-in-savings program improvements.
Sec. 3212. Integrated reporting study and pilot projects.
Sec. 3213. Community technology centers.
Sec. 3214. Enhancing crisis management through advanced information technology.
Sec. 3215. Disparities in access to the Internet.
Sec. 3216. Notification of obsolete or counterproductive provisions.

TITLE XXXIII—GOVERNMENT INFORMATION SECURITY
Sec. 3301. Information security.
TITLE XXXIV—AUTHORIZATION OF APPROPRIATIONS AND EFFECTIVE DATES
Sec. 3401. Authorization of appropriations.
Sec. 3402. Effective dates.
DIVISION E—FLIGHT AND CABIN SECURITY ON PASSENGER AIRCRAFT
TITLE XLI—FLIGHT AND CABIN SECURITY ON PASSENGER AIRCRAFT
Sec. 4101. Short title.
Sec. 4102. Findings.
Sec. 4103. Federal flight deck officer program.
Sec. 4104. Cabin security.
Sec. 4105. Prohibition on opening cockpit doors in flight.

DIVISION A—NATIONAL HOMELAND SECURITY AND COMBATING TERRORISM

SEC. 100. DEFINITIONS.

Unless the context clearly indicates otherwise, the following shall apply for purposes of this division:

(1) AGENCY.—Except for purposes of subtitle E of title I, the term ''agency''—

(A) means—

(i) an Executive agency as defined under section 105 of title 5, United States Code;

(ii) a military department as defined under section 102 of title 5, United States Code;

(iii) the United States Postal Service; and

(B) does not include the General Accounting Office.

(2) ASSETS.—The term ''assets'' includes contracts, facilities, property, records, unobligated or unexpended balances of appropriations, and other funds or resources (other than personnel).

(3) DEPARTMENT.—The term ''Department'' means the Department of Homeland Security established under title I.

(4) ENTERPRISE ARCHITECTURE.—The term ''enterprise architecture''—

(A) means—

(i) a strategic information asset base, which defines the mission;

(ii) the information necessary to perform the mission;

(iii) the technologies necessary to perform the mission; and

(iv) the transitional processes for implementing new technologies in response to changing mission needs; and

(B) includes—

(i) a baseline architecture;

(ii) a target architecture; and

(iii) a sequencing plan.

(5) FEDERAL TERRORISM PREVENTION AND RESPONSE AGENCY.—The term ''Federal terrorism prevention and response agency'' means any Federal department or agency charged with responsibilities for carrying out a homeland security strategy.

(6) FUNCTIONS.—The term ''functions'' includes authorities, powers, rights, privileges, immunities, programs, projects, activities, duties, responsibilities, and obligations.

(7) HOMELAND.—The term ''homeland'' means the United States, in a geographic sense.

(8) LOCAL GOVERNMENT.—The term ''local government'' has the meaning given under section 102(6) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Public Law 93–288).

(9) PERSONNEL.—The term ''personnel'' means officers and employees.

(10) RISK ANALYSIS AND RISK MANAGEMENT.—The term ''risk analysis and risk management'' means the assessment, analysis, management, mitigation, and communication of homeland security threats, vulnerabilities, criticalities, and risks.

(11) SECRETARY.—The term ''Secretary'' means the Secretary of Homeland Security.

(12) UNITED STATES.—The term ''United States'', when used in a geographic sense, means any State (within the meaning of section 102(4) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Public Law 93–288)), any possession of the United States, and any waters within the jurisdiction of the United States.

TITLE I—DEPARTMENT OF HOMELAND SECURITY

Subtitle A—Establishment of the Department of Homeland Security

SEC. 101. ESTABLISHMENT OF THE DEPARTMENT OF HOMELAND SECURITY.

(a) IN GENERAL.—There is established the Department of National Homeland Security.

(b) EXECUTIVE DEPARTMENT.—Section 101 of title 5, United States Code, is amended by adding at the end the following:

''The Department of Homeland Security.''.

(c) MISSION OF DEPARTMENT.—

(1) HOMELAND SECURITY.—The mission of the Department is to—

(A) promote homeland security, particularly with regard to terrorism;

(B) prevent terrorist attacks or other homeland threats within the United States;

(C) reduce the vulnerability of the United States to terrorism, natural disasters, and other homeland threats; and

(D) minimize the damage, and assist in the recovery, from terrorist attacks or other natural or man-made crises that occur within the United States.

(2) OTHER MISSIONS.—The Department shall be responsible for carrying out the other functions, and promoting the other missions, of entities transferred to the Department as provided by law.

(d) SEAL.—The Secretary shall procure a proper seal, with such suitable inscriptions and devices as the President shall approve. This seal, to be known as the official seal of the Department of Homeland Security, shall be kept and used to verify official documents, under such rules and regulations as the Secretary may prescribe. Judicial notice shall be taken of the seal.

SEC. 102. SECRETARY OF HOMELAND SECURITY.

(a) IN GENERAL.—The Secretary of Homeland Security shall be the head of the Department. The Secretary shall be appointed by the President, by and with the advice and consent of the Senate.

(b) RESPONSIBILITIES.—The responsibilities of the Secretary shall be the following:

(1) To develop policies, goals, objectives, priorities, and plans for the United States for the promotion of homeland security, particularly with regard to terrorism.

(2) To administer, carry out, and promote the other established missions of the entities transferred to the Department.

(3) To develop a comprehensive strategy for combating terrorism and the homeland security response.

(4) To make budget recommendations relating to a homeland security strategy, border and transportation security, infrastructure protection, emergency preparedness and response, science and technology promotion related to homeland security, and Federal support for State and local activities.

(5) To plan, coordinate, and integrate those Federal Government activities relating to border and transportation security, critical infrastructure protection, all-hazards emergency preparedness, response, recovery, and mitigation.

(6) To serve as a national focal point to analyze all information available to the United States related to threats of terrorism and other homeland threats.

(7) To establish and manage a comprehensive risk analysis and risk management program that directs and coordinates the supporting risk analysis and risk management activities of the Directorates and ensures coordination with entities outside the Department engaged in such activities.

(8) To identify and promote key scientific and technological advances that will enhance homeland security.

(9) To include, as appropriate, State and local governments and other entities in the full range of activities undertaken by the Department to promote homeland security, including—

(A) providing State and local government personnel, agencies, and authorities, with appropriate intelligence information, including warnings, regarding threats posed by terrorism in a timely and secure manner;

(B) facilitating efforts by State and local law enforcement and other officials to assist in the collection and dissemination of intelligence information and to provide information to the Department, and other agencies, in a timely and secure manner;

(C) coordinating with State, regional, and local government personnel, agencies, and authorities and, as appropriate, with the private sector, other entities, and the public, to ensure adequate planning, team work, coordination, information sharing, equipment, training, and exercise activities;

(D) consulting State and local governments, and other entities as appropriate, in developing a homeland security strategy; and

(E) systematically identifying and removing obstacles to developing effective partnerships between the Department, other agencies, and State, regional, and local government personnel, agencies, and authorities, the private sector, other entities, and the public to secure the homeland.

(10)(A) To consult and coordinate with the Secretary of Defense and the governors of the several States regarding integration of the United States military, including the National Guard, into all aspects of a homeland security strategy and its implementation, including detection, prevention, protection, response, and recovery.

(B) To consult and coordinate with the Secretary of Defense and make recommendations concerning organizational structure, equipment, and positioning of military assets determined critical to executing a homeland security strategy.

(C) To consult and coordinate with the Secretary of Defense regarding the training of personnel to respond to terrorist attacks involving chemical or biological agents.

(11) To seek to ensure effective day-to-day coordination of homeland security operations, and establish effective mechanisms for such coordination, among the elements constituting the Department and with other involved and affected Federal, State, and local departments and agencies.

(12) To administer the Homeland Security Advisory System, exercising primary responsibility for public threat advisories, and (in coordination with other agencies) providing specific warning information to State and local government personnel, agencies and authorities, the private sector, other entities, and the public, and advice about appropriate protective actions and countermeasures.

(13) To conduct exercise and training programs for employees of the Department and other involved agencies, and establish effective command and control procedures for the full range of potential contingencies regarding United States homeland security, including contingencies that require the substantial support of military assets.

(14) To annually review, update, and amend the Federal response plan for homeland security and emergency preparedness with regard to terrorism and other manmade and natural disasters.

(15) To direct the acquisition and management of all of the information resources of the Department, including communications resources.

(16) To endeavor to make the information technology systems of the Department, including communications systems, effective, efficient, secure, and appropriately interoperable.

(17) In furtherance of paragraph (16), to oversee and ensure the development and implementation of an enterprise architecture for Department-wide information technology, with timetables for implementation.

(18) As the Secretary considers necessary, to oversee and ensure the development and implementation of updated versions of the enterprise architecture under paragraph (17).

(19) To report to Congress on the development and implementation of the enterprise architecture under paragraph (17) in—

(A) each implementation progress report required under section 185; and

(B) each biennial report required under section 192(b).

(c) VISA ISSUANCE BY THE SECRETARY.—

(1) DEFINITION.—In this subsection, the term ''consular officer'' has the meaning given that term under section 101(a)(9) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(9)).

(2) IN GENERAL.—Notwithstanding section 104(a) of the Immigration and Nationality Act (8 U.S.C. 1104(a)) or any other provision of law, and except as provided under paragraph (3), the Secretary—

(A) shall be vested exclusively with all authorities to issue regulations with respect to, administer, and enforce the provisions of such Act, and of all other immigration and nationality laws, relating to the functions of consular officers of the United States in connection with the granting or refusal of visas, which authorities shall be exercised through the Secretary of State, except that the Secretary shall not have authority to alter or reverse the decision of a consular officer to refuse a visa to an alien; and

(B)(i) may delegate in whole or part the authority under subparagraph (A) to the Secretary of State; and

(ii) shall have authority to confer or impose upon any officer or employee of the United States, with the consent of the head of the executive agency under whose jurisdiction such officer or employee is serving, any of the functions specified in subparagraph (A).

(3) AUTHORITY OF THE SECRETARY OF STATE.—

(A) IN GENERAL.—The Secretary of State may direct a consular officer to refuse a visa to an alien if the Secretary of State considers such refusal necessary or advisable in the foreign policy or security interests of the United States.

(B) STATUTORY CONSTRUCTION.—Nothing in this subsection shall be construed as affecting the authorities of the Secretary of State under the following provisions of law:

(i) Section 101(a)(15)(A) of the Immigration and Nationality Act (8 U.S.C. 1101(15)(A)).

(ii) Section 212(a)(3)(B)(i)(IV)(bb) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(i)(IV)(bb)).

(iii) Section 212(a)(3)(B)(i)(VI) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(i)(VI)).

(iv) Section 212(a)(3)(B)(vi)(II) of the Immigration and Nationality Act (8 U.S.C. 1182 (a)(3)(B)(vi)(II)).

(v) Section 212(a)(3)(C) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(C)).

(vi) Section 212(a)(10)(C) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(10)(C)).

(vii) Section 212(f) of the Immigration and Nationality Act (8 U.S.C. 1182(f)).

(viii) Section 219(a) of the Immigration and Nationality Act (8 U.S.C. 1189(a)).

(ix) Section 237(a)(4)(C) of the Immigration and Nationality Act (8 U.S.C. 1227(a)(4)(C)).

(x) Section 104 of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 (22 U.S.C. 6034).

(xi) Section 616 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1999 (Public Law 105–277).

(xii) Section 103(f) of the Chemical Weapons Convention Implementation Act of 1998 (112 Stat. 2681–865).

(xiii) Section 801 of the Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2002 and 2001 (113 Stat. 1501A–468).

(xiv) Section 568 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2002 (Public Law 107–115).

(xv) Section 51 of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2723).

(xvi) Section 204(d)(2) of the Immigration and Nationality Act (8 U.S.C. 1154) (as it will take effect upon the entry into force of the Convention on Protection of Children and Cooperation in Respect to Inter-Country Adoption).

(4) CONSULAR OFFICERS AND CHIEFS OF MISSIONS.—Nothing in this subsection may be construed to alter or affect—

(A) the employment status of consular officers as employees of the Department of State; or

(B) the authority of a chief of mission under section 207 of the Foreign Service Act of 1980 (22 U.S.C. 3927).

(5) ASSIGNMENT OF HOMELAND SECURITY EMPLOYEES TO DIPLOMATIC AND CONSULAR POSTS.—

(A) IN GENERAL.—The Secretary is authorized to assign employees of the Department to diplomatic and consular posts abroad to perform the following functions:

(i) Provide expert advice to consular officers regarding specific security threats relating to the adjudication of individual visa applications or classes of applications.

(ii) Review any such applications, either on the initiative of the employee of the Department or upon request by a consular officer or other person charged with adjudicating such applications.

(iii) Conduct investigations with respect to matters under the jurisdiction of the Secretary.

(B) PERMANENT ASSIGNMENT; PARTICIPATION IN TERRORIST LOOKOUT COMMITTEE.—When appropriate, employees of the Department assigned to perform functions described in subparagraph (A) may be assigned permanently to overseas diplomatic or consular posts with country-specific or regional responsibility. If the Secretary so directs, any such employee, when present at an overseas post, shall participate in the terrorist lookout committee established under section 304 of the Enhanced Border Security and Visa Entry Reform Act of 2002 (8 U.S.C. 1733).

(C) TRAINING AND HIRING.—

(i) IN GENERAL.—The Secretary shall ensure that any employees of the Department assigned to perform functions described under subparagraph (A) and, as appropriate, consular officers, shall be provided all necessary training to enable them to carry out such functions, including training in foreign languages, in conditions in the particular country where each employee is assigned, and in other appropriate areas of study.

(ii) FOREIGN LANGUAGE PROFICIENCY.—Before assigning employees of the Department to perform the functions described under subparagraph (A), the Secretary shall promulgate regulations establishing foreign language proficiency requirements for employees of the Department performing the functions described under subparagraph (A) and providing that preference shall be given to individuals who meet such requirements in hiring employees for the performance of such functions.

(iii) USE OF CENTER.—The Secretary is authorized to use the National Foreign Affairs Training Center, on a reimbursable basis, to obtain the training described in clause (i).

(6) REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary and the Secretary of State shall submit to Congress—

(A) a report on the implementation of this subsection; and

(B) any legislative proposals necessary to further the objectives of this subsection.

(7) EFFECTIVE DATE.—This subsection shall take effect on the earlier of—

(A) the date on which the President publishes notice in the Federal Register that the President has submitted a report to Congress setting forth a memorandum of understanding between the Secretary and the Secretary of State governing the implementation of this section; or

(B) the date occurring 1 year after the date of enactment of this Act.

(d) MEMBERSHIP ON THE NATIONAL SECURITY COUNCIL.—Section 101(a) of the National Security Act of 1947 (50 U.S.C. 402(a)) is amended in the fourth sentence by striking paragraphs (5), (6), and (7) and inserting the following:

''(5) the Secretary of Homeland Security; and

''(6) each Secretary or Under Secretary of such other executive department, or of a military department, as the President shall designate.''.

SEC. 103. DEPUTY SECRETARY OF HOMELAND SECURITY.

(a) IN GENERAL.—There shall be in the Department a Deputy Secretary of Homeland Security, who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) RESPONSIBILITIES.—The Deputy Secretary of Homeland Security shall—

(1) assist the Secretary in the administration and operations of the Department;

(2) perform such responsibilities as the Secretary shall prescribe; and

(3) act as the Secretary during the absence or disability of the Secretary or in the event of a vacancy in the office of the Secretary.

SEC. 104. UNDER SECRETARY FOR MANAGEMENT.

(a) IN GENERAL.—There shall be in the Department an Under Secretary for Management, who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) RESPONSIBILITIES.—The Under Secretary for Management shall report to the Secretary, who may assign to the Under Secretary such functions related to the management and administration of the Department as the Secretary may prescribe, including—

(1) the budget, appropriations, expenditures of funds, accounting, and finance;

(2) procurement;

(3) human resources and personnel;

(4) information technology and communications systems;

(5) facilities, property, equipment, and other material resources;

(6) security for personnel, information technology and communications systems, facilities, property, equipment, and other material resources; and

(7) identification and tracking of performance measures relating to the responsibilities of the Department.

SEC. 105. ASSISTANT SECRETARIES.

(a) IN GENERAL.—There shall be in the Department not more than 5 Assistant Secretaries (not including the 2 Assistant Secretaries appointed under division B), each of

whom shall be appointed by the President, by and with the advice and consent of the Senate.

(b) RESPONSIBILITIES.—

(1) IN GENERAL.—Whenever the President submits the name of an individual to the Senate for confirmation as an Assistant Secretary under this section, the President shall describe the general responsibilities that such appointee will exercise upon taking office.

(2) ASSIGNMENT.—Subject to paragraph (1), the Secretary shall assign to each Assistant Secretary such functions as the Secretary considers appropriate.

SEC. 106. INSPECTOR GENERAL.

(a) IN GENERAL.—There shall be in the Department an Inspector General. The Inspector General and the Office of Inspector General shall be subject to the Inspector General Act of 1978 (5 U.S.C. App.).

(b) ESTABLISHMENT.—Section 11 of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) in paragraph (1), by inserting ''Homeland Security,'' after ''Health and Human Services,''; and

(2) in paragraph (2), by inserting ''Homeland Security,'' after ''Health and Human Services,''.

(c) REVIEW OF THE DEPARTMENT OF HOMELAND SECURITY.—The Inspector General shall designate 1 official who shall—

(1) review information and receive complaints alleging abuses of civil rights and civil liberties by employees and officials of the Department;

(2) publicize, through the Internet, radio, television, and newspaper advertisements—

(A) information on the responsibilities and functions of the official; and

(B) instructions on how to contact the official; and

(3) on a semi-annual basis, submit to Congress, for referral to the appropriate committee or committees, a report—

(A) describing the implementation of this subsection;

(B) detailing any civil rights abuses under paragraph (1); and

(C) accounting for the expenditure of funds to carry out this subsection.

(d) ADDITIONAL PROVISIONS WITH RESPECT TO THE INSPECTOR GENERAL OF THE DEPARTMENT OF HOMELAND SECURITY.—The Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) by redesignating section 8I as section 8J; and

(2) by inserting after section 8H the following:

SPECIAL PROVISIONS CONCERNING THE DEPARTMENT OF HOMELAND SECURITY

''SEC. 8I. (a)(1) Notwithstanding the last 2 sentences of section 3(a), the Inspector General of the Department of Homeland Security (in this section referred to as the ''Inspector General'') shall be under the authority, direction, and control of the Secretary of Homeland Security (in this section referred to as the ''Secretary'') with respect to audits or investigations, or the issuance of subpoenas, which require access to sensitive information concerning—

''(A) intelligence or counterintelligence matters;

''(B) ongoing criminal investigations or proceedings;

''(C) undercover operations;

''(D) the identity of confidential sources, including protected witnesses;

''(E) other matters the disclosure of which would constitute a serious threat to the protection of any person or property authorized protection by—

''(i) section 3056 of title 18, United States Code;

''(ii) section 202 of title 3, United States Code; or

''(iii) any provision of the Presidential Protection Assistance Act of 1976 (18 U.S.C. 3056 note); or

''(F) other matters the disclosure of which would constitute a serious threat to national security.

''(2) With respect to the information described under paragraph (1), the Secretary may prohibit the Inspector General from carrying out or completing any audit or investigation, or from issuing any subpoena, after such Inspector General has decided to initiate, carry out, or complete such audit or investigation or to issue such subpoena, if the Secretary determines that such prohibition is necessary to—

''(A) prevent the disclosure of any information described under paragraph (1);

''(B) preserve the national security; or

''(C) prevent significant impairment to the national interests of the United States.

''(3) If the Secretary exercises any power under paragraph (1) or (2), the Secretary shall notify the Inspector General in writing (appropriately classified, if necessary) within 7 calendar days stating the reasons for such exercise. Within 30 days after receipt of any such notice, the Inspector General shall transmit a copy of such notice, together with such comments concerning the exercise of such power as the Inspector General considers appropriate, to—

''(A) the President of the Senate;

''(B) the Speaker of the House of Representatives;

''(C) the Committee on Governmental Affairs of the Senate;

''(D) the Committee on Government Reform of the House of Representatives; and

''(E) other appropriate committees or subcommittees of Congress.

''(b)(1) In carrying out the duties and responsibilities under this Act, the Inspector General shall have oversight responsibility for the internal investigations and audits performed by any other office performing internal investigatory or audit functions in any subdivision of the Department of Homeland Security.

''(2) The head of each other office described under paragraph (1) shall promptly report to the Inspector General the significant activities being carried out by such office.

''(3) Notwithstanding paragraphs (1) and (2), the Inspector General may initiate, conduct, and supervise such audits and investigations in the Department (including in any subdivision referred to in paragraph (1)) as the Inspector General considers appropriate.

''(4) If the Inspector General initiates an audit or investigation under paragraph (3) concerning a subdivision referred to in paragraph (1), the Inspector General may provide the head of the other office performing internal investigatory or audit functions in the subdivision with written notice that the Inspector General has initiated such an audit or investigation. If the Inspector General issues such a notice, no other audit or investigation shall be initiated into the matter under audit or investigation by the Inspector General, and any other audit or investigation of such matter shall cease.

''(c) Any report required to be transmitted by the Secretary to the appropriate committees or subcommittees of Congress under section 5(d) shall also be transmitted, within the 7-day period specified under that subsection, to—

''(1) the President of the Senate;

''(2) the Speaker of the House of Representatives;

''(3) the Committee on Governmental Affairs of the Senate; and

''(4) the Committee on Government Reform of the House of Representatives.''.

(e) TECHNICAL AND CONFORMING AMENDMENTS.—The Inspector General Act of 1978 (5 U.S.C. appendix) is amended—

(1) in section 4(b), by striking ''8F'' each place it appears and inserting ''8G''; and

(2) in section 8J (as redesignated by subsection (c)(1)), by striking ''or 8H'' and inserting '', 8H, or 8I''.''

SEC. 107. CHIEF FINANCIAL OFFICER.

(a) IN GENERAL.—There shall be in the Department a Chief Financial Officer, who shall be appointed or designated in the manner prescribed under section 901(a)(1) of title 31, United States Code.

(b) ESTABLISHMENT.—Section 901(b)(1) of title 31, United States Code, is amended—

(1) by redesignating subparagraphs (G) through (P) as subparagraphs (H) through (Q), respectively; and

(2) by inserting after subparagraph (F) the following:

''(G) The Department of Homeland Security.''.

SEC. 108. CHIEF INFORMATION OFFICER.

(a) IN GENERAL.—There shall be in the Department a Chief Information Officer, who shall be designated in the manner prescribed under section 3506(a)(2)(A) of title 44, United States Code.

(b) RESPONSIBILITIES.—The Chief Information Officer shall assist the Secretary with Department-wide information resources management and perform those duties prescribed by law for chief information officers of agencies.

SEC. 109. GENERAL COUNSEL.

(a) IN GENERAL.—There shall be in the Department a General Counsel, who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) RESPONSIBILITIES.—The General Counsel shall—

(1) serve as the chief legal officer of the Department;

(2) provide legal assistance to the Secretary concerning the programs and policies of the Department; and

(3) advise and assist the Secretary in carrying out the responsibilities under section 102(b).

SEC. 110. CIVIL RIGHTS OFFICER.

(a) IN GENERAL.—There shall be in the Department a Civil Rights Officer, who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) RESPONSIBILITIES.—The Civil Rights Officer shall be responsible for—

(1) ensuring compliance with all civil rights and related laws and regulations applicable to Department employees and participants in Department programs;

(2) coordinating administration of all civil rights and related laws and regulations within the Department for Department employees and participants in Department programs;

(3) assisting the Secretary, directorates, and offices with the development and implementation of policies and procedures that ensure that civil rights considerations are appropriately incorporated and implemented in Department programs and activities;

(4) overseeing compliance with statutory and constitutional requirements related to the civil rights of individuals affected by the programs and activities of the Department; and

(5) notifying the Inspector General of any matter that, in the opinion of the Civil Rights Officer, warrants further investigation.

SEC. 111. PRIVACY OFFICER.

(a) IN GENERAL.—There shall be in the Department a Privacy Officer, who shall be appointed by the Secretary.

(b) RESPONSIBILITIES.—The Privacy Officer shall—

(1) oversee compliance with section 552a of title 5, United States Code (commonly referred to as the Privacy Act of 1974) and all other applicable laws relating to the privacy of personal information;

(2) assist the Secretary, directorates, and offices with the development and implementation of policies and procedures that ensure that—

(A) privacy considerations and safeguards are appropriately incorporated and implemented in Department programs and activities; and

(B) any information received by the Department is used or disclosed in a manner that minimizes the risk of harm to individuals from the inappropriate disclosure or use of such materials;

(3) assist Department personnel with the preparation of privacy impact assessments when required by law or considered appropriate by the Secretary; and

(4) notify the Inspector General of any matter that, in the opinion of the Privacy Officer, warrants further investigation.

SEC. 112. CHIEF HUMAN CAPITAL OFFICER.

(a) IN GENERAL.—The Secretary shall appoint or designate a Chief Human Capital Officer, who shall—

(1) advise and assist the Secretary and other officers of the Department in ensuring that the workforce of the Department has the necessary skills and training, and that the recruitment and retention policies of the Department allow the Department to attract and retain a highly qualified workforce, in accordance with all applicable laws and requirements, to enable the Department to achieve its missions;

(2) oversee the implementation of the laws, rules and regulations of the President and the Office of Personnel Management governing the civil service within the Department; and

(3) advise and assist the Secretary in planning and reporting under the Government Performance and Results Act of 1993 (including the amendments made by that Act), with respect to the human capital resources and needs of the Department for achieving the plans and goals of the Department.

(b) RESPONSIBILITIES.—The responsibilities of the Chief Human Capital Officer shall include—

(1) setting the workforce development strategy of the Department;

(2) assessing workforce characteristics and future needs based on the mission and strategic plan of the Department;

(3) aligning the human resources policies and programs of the Department with organization mission, strategic goals, and performance outcomes;

(4) developing and advocating a culture of continuous learning to attract and retain employees with superior abilities;

(5) identifying best practices and benchmarking studies;

(6) applying methods for measuring intellectual capital and identifying links of that capital to organizational performance and growth; and

(7) providing employee training and professional development.

SEC. 113. OFFICE OF INTERNATIONAL AFFAIRS.

(a) ESTABLISHMENT.—There is established within the Office of the Secretary, an Office of International Affairs. The Office shall be headed by a Director who shall be appointed by the Secretary.

(b) RESPONSIBILITIES OF THE DIRECTOR.—The Director shall have the following responsibilities:

(1) To promote information and education exchange with foreign nations in order to promote sharing of best practices and technologies relating to homeland security. Such information exchange shall include—

(A) joint research and development on countermeasures;

(B) joint training exercises of first responders; and

(C) exchange of expertise on terrorism prevention, response, and crisis management.

(2) To identify areas for homeland security information and training exchange.

(3) To plan and undertake international conferences, exchange programs, and training activities.

(4) To manage activities under this section and other international activities within the Department in consultation with the Department of State and other relevant Federal officials.

(5) To initially concentrate on fostering cooperation with countries that are already highly focused on homeland security issues and that have demonstrated the capability for fruitful cooperation with the United States in the area of counterterrorism.

SEC. 114. EXECUTIVE SCHEDULE POSITIONS.

(a) EXECUTIVE SCHEDULE LEVEL I POSITION.—Section 5312 of title 5, United States Code, is amended by adding at the end the following:

''Secretary of Homeland Security.''.

(b) EXECUTIVE SCHEDULE LEVEL II POSITION.—Section 5313 of title 5, United States Code, is amended by adding at the end the following:

''Deputy Secretary of Homeland Security.''.

(c) EXECUTIVE SCHEDULE LEVEL III POSITION.—Section 5314 of title 5, United States Code, is amended by adding at the end the following:

''Under Secretary for Management, Department of Homeland Security.''.

(d) EXECUTIVE SCHEDULE LEVEL IV POSITIONS.—Section 5315 of title 5, United States Code, is amended by adding at the end the following:

''Assistant Secretaries of Homeland Security (5).

''Inspector General, Department of Homeland Security.

''Chief Financial Officer, Department of Homeland Security.

''Chief Information Officer, Department of Homeland Security.

''General Counsel, Department of Homeland Security.''.

Subtitle B—Establishment of Directorates and Offices

SEC. 131. DIRECTORATE OF BORDER AND TRANSPORTATION PROTECTION.

(a) ESTABLISHMENT.—

(1) DIRECTORATE.—There is established within the Department the Directorate of Border and Transportation Protection.

(2) UNDER SECRETARY.—There shall be an Under Secretary for Border and Transportation, who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) RESPONSIBILITIES.—The Directorate of Border and Transportation Protection shall be responsible for the following:

(1) Securing the borders, territorial waters, ports, terminals, waterways and air, land (including rail), and sea transportation systems of the United States, including coordinating governmental activities at ports of entry.

(2) Receiving and providing relevant intelligence on threats of terrorism and other homeland threats.

(3) Administering, carrying out, and promoting other established missions of the entities transferred to the Directorate.

(4) Using intelligence from the Directorate of Intelligence and other Federal intelligence organizations under section 132(a)(1)(B) to establish inspection priorities to identify products and other goods imported from suspect locations recognized by the intelligence community as having terrorist activities, unusual human health or agriculture disease outbreaks, or harboring terrorists.

(5) Providing agency-specific training for agents and analysts within the Department, other agencies, and State and local agencies and international entities that have established partnerships with the Federal Law Enforcement Training Center.

(6) Assisting and supporting the Secretary, in coordination with other Directorates and entities outside the Department, in conducting appropriate risk analysis and risk management activities consistent with the mission and functions of the Directorate.

(7) Consistent with section 175, conducting agricultural import and entry inspection functions transferred under section 175.

(8) Performing such other duties as assigned by the Secretary.

(c) TRANSFER OF AUTHORITIES, FUNCTIONS, PERSONNEL, AND ASSETS TO THE DEPARTMENT.—Except as provided under subsection (d), the authorities, functions, personnel, and assets of the following entities are transferred to the Department:

(1) The United States Customs Service, which shall be maintained as a distinct entity within the Department.

(2) The Transportation Security Administration of the Department of Transportation.

(3) The Federal Law Enforcement Training Center of the Department of the Treasury.

(d) EXERCISE OF CUSTOMS REVENUE AUTHORITY.—

(1) IN GENERAL.—

(A) AUTHORITIES NOT TRANSFERRED.—Notwithstanding subsection (c), authority that was vested in the Secretary of the Treasury by law to issue regulations related to customs revenue functions before the effective date of this section under the provisions of law set forth under paragraph (2) shall not be transferred to the Secretary by reason of this Act. The Secretary of the Treasury, with the concurrence of the Secretary, shall exercise this authority. The Commissioner of Customs is authorized to engage in activities to develop and support the issuance of the regulations described in this paragraph. The Secretary shall be responsible for the implementation and enforcement of regulations issued under this section.

(B) REPORT.—Not later than 60 days after the date of enactment of this Act, the Secretary of the Treasury shall submit a report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives of proposed conforming amendments to the statutes set forth under paragraph (2) in order to determine the appropriate allocation of legal authorities described under this subsection. The Secretary of the Treasury shall also identify those authorities vested in the Secretary of the Treasury that are exercised by the Commissioner of Customs on or before the effective date of this section.

(C) LIABILITY.—Neither the Secretary of the Treasury nor the Department of the Treasury shall be liable for or named in any legal action concerning the implementation and enforcement of regulations issued under this paragraph on or after the date on which the United States Customs Service is transferred under this division.

(2) APPLICABLE LAWS.—The provisions of law referred to under paragraph (1) are those sections of the following statutes that relate to customs revenue functions:

(A) The Tariff Act of 1930 (19 U.S.C. 1304 et seq.).

(B) Section 249 of the Revised Statutes of the United States (19 U.S.C. 3).

(C) Section 2 of the Act of March 4, 1923 (19 U.S.C. 6).

(D) Section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c).

(E) Section 251 of the Revised Statutes of the United States (19 U.S.C. 66).

(F) Section 1 of the Act of June 26, 1930 (19 U.S.C. 68).

(G) The Foreign Trade Zones Act (19 U.S.C. 81a et seq.).

(H) Section 1 of the Act of March 2, 1911 (19 U.S.C. 198).

(I) The Trade Act of 1974 (19 U.S.C. 2101 et seq.).

(J) The Trade Agreements Act of 1979 (19 U.S.C. 2502 et seq.).

(K) The North American Free Trade Agreement Implementation Act (19 U.S.C. 3301 et seq.).

(L) The Uruguay Round Agreements Act (19 U.S.C. 3501 et seq.).

(M) The Caribbean Basin Economic Recovery Act (19 U.S.C. 2701 et seq.).

(N) The Andean Trade Preference Act (19 U.S.C. 3201 et seq.).

(O) The African Growth and Opportunity Act (19 U.S.C. 3701 et seq.).

(P) Any other provision of law vesting customs revenue functions in the Secretary of the Treasury.

(3) DEFINITION OF CUSTOMS REVENUE FUNCTIONS.—In this subsection, the term ''customs revenue functions'' means—

(A) assessing, collecting, and refunding duties (including any special duties), excise taxes, fees, and any liquidated damages or penalties due on imported merchandise, including classifying and valuing merchandise and the procedures for ''entry'' as that term is defined in the United States Customs laws;

(B) administering section 337 of the Tariff Act of 1930 and provisions relating to import quotas and the marking of imported merchandise, and providing Customs Recordations for copyrights, patents, and trademarks;

(C) collecting accurate import data for compilation of international trade statistics; and

(D) administering reciprocal trade agreements and trade preference legislation.

(e) CONTINUATION OF CERTAIN FUNCTIONS OF THE CUSTOMS SERVICE.—

(1) IN GENERAL.—

(A) PRESERVATION OF CUSTOMS FUNDS.—Notwithstanding any other provision of this Act, no funds available to the United States Customs Service or collected under paragraphs (1) through (8) of section 13031(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(a)(1) through (8)) may be transferred for use by any other agency or office in the Department.

(B) CUSTOMS AUTOMATION.—Section 13031(f) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(f)) is amended—

(i) in paragraph (1), by striking subparagraph (B) and inserting the following:

''(B) amounts deposited into the Customs Commercial and Homeland Security Automation Account under paragraph (5).'';

(ii) in paragraph (4), by striking ''(other than the excess fees determined by the Secretary under paragraph (5))''; and

(iii) by striking paragraph (5) and inserting the following:

''(5)(A) There is created within the general fund of the Treasury a separate account that shall be known as the 'Customs Commercial and Homeland Security Automation Account'. In each of fiscal years 2003, 2004, and 2005 there shall be deposited into the Account from fees collected under subsection (a)(9)(A), $350,000,000.

''(B) There is authorized to be appropriated from the Customs Commercial and Homeland Security Automation Account for each of fiscal years 2003 through 2005 such amounts as are available in that Account for the development, establishment, and implementation of the Automated Commercial Environment computer system for the processing of merchandise that is entered or released and for other purposes related to the functions of the Department of Homeland Security. Amounts appropriated pursuant to this subparagraph are authorized to remain available until expended.

''(C) In adjusting the fee imposed by subsection (a)(9)(A) for fiscal year 2006, the Secretary of the Treasury shall reduce the amount estimated to be collected in fiscal year 2006 by the amount by which total fees deposited to the Customs Commercial and Homeland Security Automation Account during fiscal years 2003, 2004, and 2005 exceed total appropriations from that Account.''.

(2) ADVISORY COMMITTEE ON COMMERCIAL OPERATIONS OF THE UNITED STATES CUSTOMS SERVICE.—Section 9503(c) of the Omnibus Budget Reconciliation Act of 1987 (Public Law 100–203; 19 U.S.C. 2071 note) is amended—

(A) in paragraph (1), by inserting ''in consultation with the Secretary of Homeland Security'' after ''Secretary of the Treasury'';

(B) in paragraph (2)(A), by inserting ''in consultation with the Secretary of Homeland Security'' after ''Secretary of the Treasury'';

(C) in paragraph (3)(A), by inserting ''and the Secretary of Homeland Security'' after ''Secretary of the Treasury''; and

(D) in paragraph (4)—

(i) by inserting ''and the Under Secretary of Homeland Security for Border and Transportation'' after ''for Enforcement''; and

(ii) by inserting ''jointly'' after ''shall preside''.

(3) CONFORMING AMENDMENT.—Section 311(b) of the Customs Border Security Act of 2002 (Public Law 107–210) is amended by striking paragraph (2).

SEC. 132. DIRECTORATE OF INTELLIGENCE.

(a) ESTABLISHMENT.—

(1) DIRECTORATE.—

(A) IN GENERAL.—There is established a Directorate of Intelligence which shall serve as a national-level focal point for information available to the United States Government relating to the plans, intentions, and capabilities of terrorists and terrorist organizations for the purpose of supporting the mission of the Department.

(B) SUPPORT TO DIRECTORATE.—The Directorate of Intelligence shall communicate, coordinate, and cooperate with—

(i) the Federal Bureau of Investigation;

(ii) the intelligence community, as defined under section 3 of the National Security Act of 1947 (50 U.S.C. 401a), including the Office of the Director of Central Intelligence, the National Intelligence Council, the Central Intelligence Agency, the National Security Agency, the Defense Intelligence Agency, the National Imagery and Mapping Agency, the National Reconnaissance Office, and the Bureau of Intelligence and Research of the Department of State; and

(iii) other agencies or entities, including those within the Department, as determined by the Secretary.

(C) INFORMATION ON INTERNATIONAL TERRORISM.—

(i) DEFINITIONS.—In this subparagraph, the terms ''foreign intelligence'' and ''counterintelligence'' shall have the meaning given those terms in section 3 of the National Security Act of 1947 (50 U.S.C. 401a).

(ii) PROVISION OF INFORMATION TO COUNTERTERRORIST CENTER.—In order to ensure that the Secretary is provided with appropriate analytical products, assessments, and warnings relating to threats of terrorism against the United States and other threats to homeland security, the Director of Central Intelligence (as head of the intelligence community with respect to foreign intelligence and counterintelligence), the Attorney General, and the heads of other agencies of the Federal Government shall ensure that all intelligence and other information relating to international terrorism is provided to the Director of Central Intelligence's Counterterrorist Center.

(iii) ANALYSIS OF INFORMATION.—The Director of Central Intelligence shall ensure the analysis by the Counterterrorist Center of all intelligence and other information provided the Counterterrorist Center under clause (ii).

(iv) ANALYSIS OF FOREIGN INTELLIGENCE.—The Counterterrorist Center shall have primary responsibility for the analysis of foreign intelligence relating to international terrorism.

(2) UNDER SECRETARY.—There shall be an Under Secretary for Intelligence who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) RESPONSIBILITIES.—The Directorate of Intelligence shall be responsible for the following:

(1)(A) Receiving and analyzing law enforcement and other information from agencies of the United States Government, State and local government agencies (including law enforcement agencies), and private sector entities, and fusing such information and analysis with analytical products, assessments, and warnings concerning foreign intelligence from the Director of Central Intelligence's Counterterrorist Center in order to—

(i) identify and assess the nature and scope of threats to the homeland; and

(ii) detect and identify threats of terrorism against the United States and other threats to homeland security.

(B) Nothing in this paragraph shall be construed to prohibit the Directorate from conducting supplemental analysis of foreign intelligence relating to threats of terrorism against the United States and other threats to homeland security.

(2) Ensuring timely and efficient access by the Directorate to—

(A) information from agencies described under subsection (a)(1)(B), State and local governments, local law enforcement and intelligence agencies, private sector entities; and

(B) open source information.

(3) Representing the Department in procedures to establish requirements and priorities in the collection of national intelligence for purposes of the provision to the executive branch under section 103 of the National Security Act of 1947 (50 U.S.C. 403–3) of national intelligence relating to foreign terrorist threats to the homeland.

(4) Consulting with the Attorney General or the designees of the Attorney General, and other officials of the United States Government to establish overall collection priorities and strategies for information, including law enforcement information, relating to domestic threats, such as terrorism, to the homeland.

(5) Disseminating information to the Directorate of Critical Infrastructure Protection, the agencies described under subsection (a)(1)(B), State and local governments, local law enforcement and intelligence agencies, and private sector entities to assist in the deterrence, prevention, preemption, and response to threats of terrorism against the United States and other threats to homeland security.

(6) Establishing and utilizing, in conjunction with the Chief Information Officer of the Department and the appropriate officers of the agencies described under subsection

(a)(1)(B), a secure communications and information technology infrastructure, and advanced analytical tools, to carry out the mission of the Directorate.

(7) Developing, in conjunction with the Chief Information Officer of the Department and appropriate officers of the agencies described under subsection (a)(1)(B), appropriate software, hardware, and other information technology, and security and formatting protocols, to ensure that Federal Government databases and information technology systems containing information relevant to terrorist threats, and other threats against the United States, are—

(A) compatible with the secure communications and information technology infrastructure referred to under paragraph (6); and

(B) comply with Federal laws concerning privacy and the prevention of unauthorized disclosure.

(8) Ensuring, in conjunction with the Director of Central Intelligence and the Attorney General, that all material received by the Department is protected against unauthorized disclosure and is utilized by the Department only in the course and for the purpose of fulfillment of official duties, and is transmitted, retained, handled, and disseminated consistent with—

(A) the authority of the Director of Central Intelligence to protect intelligence sources and methods from unauthorized disclosure under the National Security Act of 1947 (50 U.S.C. 401 et seq.) and related procedures; or

(B) as appropriate, similar authorities of the Attorney General concerning sensitive law enforcement information, and the privacy interests of United States persons as defined under section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801).

(9) Providing, through the Secretary, to the appropriate law enforcement or intelligence agency, information and analysis relating to threats.

(10) Coordinating, or where appropriate providing, training and other support as necessary to providers of information to the Department, or consumers of information from the Department, to allow such providers or consumers to identify and share intelligence information revealed in their ordinary duties or utilize information received from the Department, including training and support under section 908 of the USA PATRIOT Act of 2001 (Public Law 107–56).

(11) Reviewing, analyzing, and making recommendations through the Secretary for improvements in the policies and procedures governing the sharing of law enforcement, intelligence, and other information relating to threats of terrorism against the United States and other threats to homeland security within the United States Government and between the United States Government and State and local governments, local law enforcement and intelligence agencies, and private sector entities.

(12) Assisting and supporting the Secretary, in coordination with other Directorates and entities outside the Department, in conducting appropriate risk analysis and risk management activities consistent with the mission and functions of the Directorate.

(13) Performing other related and appropriate duties as assigned by the Secretary.

(c) ACCESS TO INFORMATION.—

(1) IN GENERAL.—Unless otherwise directed by the President, the Secretary shall have access to, and United States Government agencies shall provide, all reports, assessments, analytical information, and information, including unevaluated intelligence, relating to the plans, intentions, capabilities, and activities of terrorists and terrorist organizations, and to other areas of responsibility as described in this division, that may be collected, possessed, or prepared, by any other United States Government agency.

(2) ADDITIONAL INFORMATION.—As the President may further provide, the Secretary shall receive additional information requested by the Secretary from the agencies described under subsection (a)(1)(B).

(3) OBTAINING INFORMATION.—All information shall be provided to the Secretary consistent with the requirements of subsection (b)(8), unless otherwise determined by the President.

(4) COOPERATIVE ARRANGEMENTS.—The Secretary may enter into cooperative arrangements with agencies described under subsection (a)(1)(B) to share material on a regular or routine basis, including arrangements involving broad categories of material, and regardless of whether the Secretary has entered into any such cooperative arrangement, all agencies described under subsection (a)(1)(B) shall promptly provide information under this subsection.

(d) AUTHORIZATION TO SHARE LAW ENFORCEMENT INFORMATION.—The Secretary shall be deemed to be a Federal law enforcement, intelligence, protective, national defense, or national security official for purposes of information sharing provisions of—

(1) section 203(d) of the USA PATRIOT Act of 2001 (Public Law 107–56);

(2) section 2517(6) of title 18, United States Code; and

(3) rule 6(e)(3)(C) of the Federal Rules of Criminal Procedure.

(e) ADDITIONAL RISK ANALYSIS AND RISK MANAGEMENT RESPONSIBILITIES.—The Under Secretary for Intelligence shall, in coordination with the Office of Risk Analysis and Assessment in the Directorate of Science and Technology, be responsible for—

(1) developing analysis concerning the means and methods terrorists might employ to exploit vulnerabilities in the homeland security infrastructure;

(2) supporting experiments, tests, and inspections to identify weaknesses in homeland defenses;

(3) developing countersurveillance techniques to prevent attacks;

(4) conducting risk assessments to determine the risk posed by specific kinds of terrorist attacks, the probability of successful attacks, and the feasibility of specific countermeasures.

(f) MANAGEMENT AND STAFFING.—

(1) IN GENERAL.—The Directorate of Intelligence shall be staffed, in part, by analysts as requested by the Secretary and assigned by the agencies described under subsection (a)(1)(B). The analysts shall be assigned by reimbursable detail for periods as determined necessary by the Secretary in conjunction with the head of the assigning agency. No such detail may be undertaken without the consent of the assigning agency.

(2) EMPLOYEES ASSIGNED WITHIN DEPARTMENT.—The Secretary may assign employees of the Department by reimbursable detail to the Directorate.

(3) SERVICE AS FACTOR FOR SELECTION.—The President, or the designee of the President, shall prescribe regulations to provide that service described under paragraph (1) or (2), or service by employees within the Directorate, shall be considered a positive factor for selection to positions of greater authority within all agencies described under subsection (a)(1)(B).

(4) PERSONNEL SECURITY STANDARDS.—The employment of personnel in the Directorate shall be in accordance with such personnel security standards for access to classified information and intelligence as the Secretary, in conjunction with the Director of Central Intelligence, shall establish for this subsection.

(5) PERFORMANCE EVALUATION.—The Secretary shall evaluate the performance of all personnel detailed to the Directorate, or delegate such responsibility to the Under Secretary for Intelligence.

(g) INTELLIGENCE COMMUNITY.—Those portions of the Directorate of Intelligence under subsection (b)(1), and the intelligence-related components of agencies transferred by this division to the Department, including the United States Coast Guard, shall be—

(1) considered to be part of the United States intelligence community within the meaning of section 3 of the National Security Act of 1947 (50 U.S.C. 401a); and

(2) for budgetary purposes, within the National Foreign Intelligence Program.

SEC. 133. DIRECTORATE OF CRITICAL INFRASTRUCTURE PROTECTION.

(a) ESTABLISHMENT.—

(1) DIRECTORATE.—There is established within the Department the Directorate of Critical Infrastructure Protection.

(2) UNDER SECRETARY.—There shall be an Under Secretary for Critical Infrastructure Protection, who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) RESPONSIBILITIES.—The Directorate of Critical Infrastructure Protection shall be responsible for the following:

(1) Receiving relevant intelligence from the Directorate of Intelligence, law enforcement information, and other information in order to comprehensively assess the vulnerabilities of the key resources and critical infrastructures in the United States.

(2) Integrating relevant information, intelligence analysis, and vulnerability assessments (whether such information, analyses, or assessments are provided by the Department or others) to identify priorities and support protective measures by the Department, by other agencies, by State and local government personnel, agencies, and authorities, by the private sector, and by other entities, to protect the key resources and critical infrastructures in the United States.

(3) As part of a homeland security strategy, developing a comprehensive national plan for securing the key resources and critical infrastructure in the United States.

(4) Assisting and supporting the Secretary, in coordination with other Directorates and entities outside the Department, in conducting appropriate risk analysis and risk management activities consistent with the mission and functions of the Directorate. This shall include, in coordination with the Office of Risk Analysis and Assessment in the Directorate of Science and Technology, establishing procedures, mechanisms, or units for the purpose of utilizing intelligence to identify vulnerabilities and protective measures in—

(A) public health infrastructure;

(B) food and water storage, production and distribution;

(C) commerce systems, including banking and finance;

(D) energy systems, including electric power and oil and gas production and storage;

(E) transportation systems, including pipelines;

(F) information and communication systems;

(G) continuity of government services; and

(H) other systems or facilities the destruction or disruption of which could cause substantial harm to health, safety, property, or the environment.

(5) Enhancing the sharing of information regarding cyber security and physical security of the United States, developing appropriate security standards, tracking vulnerabilities, proposing improved risk management policies, and delineating the

roles of various Government agencies in preventing, defending, and recovering from attacks.

(6) Acting as the Critical Information Technology, Assurance, and Security Officer of the Department and assuming the responsibilities carried out by the Critical Infrastructure Assurance Office and the National Infrastructure Protection Center before the effective date of this division.

(7) Coordinating the activities of the Information Sharing and Analysis Centers to share information, between the public and private sectors, on threats, vulnerabilities, individual incidents, and privacy issues regarding homeland security.

(8) Working closely with the Department of State on cyber security issues with respect to international bodies and coordinating with appropriate agencies in helping to establish cyber security policy, standards, and enforcement mechanisms.

(9) Establishing the necessary organizational structure within the Directorate to provide leadership and focus on both cyber security and physical security, and ensuring the maintenance of a nucleus of cyber security and physical security experts within the United States Government.

(10) Performing such other duties as assigned by the Secretary.

In this subsection, the term ''key resources'' includes National Park Service sites identified by the Secretary of the Interior that are so universally recognized as symbols of the United States and so heavily visited by the American and international public that such sites would likely be identified as targets of terrorist attacks, including the Statue of Liberty, Independence Hall and the Liberty Bell, the Arch in St. Louis, Missouri, Mt. Rushmore, and memorials and monuments in Washington, D.C.

(c) TRANSFER OF AUTHORITIES, FUNCTIONS, PERSONNEL, AND ASSETS TO THE DEPARTMENT.—The authorities, functions, personnel, and assets of the following entities are transferred to the Department:

(1) The Critical Infrastructure Assurance Office of the Department of Commerce.

(2) The National Infrastructure Protection Center of the Federal Bureau of Investigation (other than the Computer Investigations and Operations Section).

(3) The National Communications System of the Department of Defense.

(4) The Computer Security Division of the National Institute of Standards and Technology of the Department of Commerce.

(5) The National Infrastructure Simulation and Analysis Center of the Department of Energy.

(6) The Federal Computer Incident Response Center of the General Services Administration.

(7) The Energy Security and Assurance Program of the Department of Energy.

(8) The Federal Protective Service of the General Services Administration.

SEC. 134. DIRECTORATE OF EMERGENCY PREPAREDNESS AND RESPONSE.

(a) ESTABLISHMENT.—

(1) DIRECTORATE.—There is established within the Department the Directorate of Emergency Preparedness and Response.

(2) UNDER SECRETARY.—There shall be an Under Secretary for Emergency Preparedness and Response, who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) RESPONSIBILITIES.—The Directorate of Emergency Preparedness and Response shall be responsible for the following:

(1) Carrying out all emergency preparedness and response activities carried out by the Federal Emergency Management Agency before the effective date of this division.

(2) Assuming the responsibilities carried out by the National Domestic Preparedness Office before the effective date of this division.

(3) Organizing and training local entities to respond to emergencies and providing State and local authorities with equipment for detection, protection, and decontamination in an emergency involving weapons of mass destruction.

(4) Overseeing Federal, State, and local emergency preparedness training and exercise programs in keeping with intelligence estimates and coordinating Federal assistance for any emergency, including emergencies caused by natural disasters, manmade accidents, human or agricultural health emergencies, or terrorist attacks.

(5) Creating a National Crisis Action Center to act as the focal point for—

(A) monitoring emergencies;

(B) notifying affected agencies and State and local governments; and

(C) coordinating Federal support for State and local governments and the private sector in crises.

(6) Managing and updating the Federal response plan to ensure the appropriate integration of operational activities of the Department of Defense, the National Guard, and other agencies, to respond to acts of terrorism and other disasters.

(7) Coordinating activities among private sector entities, including entities within the medical community, and animal health and plant disease communities, with respect to recovery, consequence management, and planning for continuity of services.

(8) Developing and managing a single response system for national incidents in coordination with all appropriate agencies.

(9) Coordinating with other agencies necessary to carry out the functions of the Office of Emergency Preparedness.

(10) Collaborating with, and transferring funds to, the Centers for Disease Control and Prevention or other agencies for administration of the Strategic National Stockpile transferred under subsection (c)(5).

(11) Collaborating with the Under Secretary for Science and Technology, Secretary of Agriculture, and the Director of the Centers for Disease Control and Prevention in establishing and updating the list of potential threat agents or toxins relating to the functions described in subsection (c)(6)(B).

(12) Developing a plan to address the interface of medical informatics and the medical response to terrorism that address—

(A) standards for interoperability;

(B) real-time data collection;

(C) ease of use for health care providers;

(D) epidemiological surveillance of disease outbreaks in human health and agriculture;

(E) integration of telemedicine networks and standards;

(F) patient confidentiality; and

(G) other topics pertinent to the mission of the Department.

(13) Activate and coordinate the operations of the National Disaster Medical System as defined under section 102 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Public Law 107–188).

(14) Assisting and supporting the Secretary, in coordination with other Directorates and entities outside the Department, in conducting appropriate risk analysis and risk management activities consistent with the mission and functions of the Directorate.

(15) Performing such other duties as assigned by the Secretary.

(c) TRANSFER OF AUTHORITIES, FUNCTIONS, PERSONNEL, AND ASSETS TO THE DEPARTMENT.—The authorities, functions, personnel, and assets of the following entities are transferred to the Department:

(1) The Federal Emergency Management Agency, the 10 regional offices of which shall be maintained and strengthened by the Department, which shall be maintained as a distinct entity within the Department.

(2) The National Office of Domestic Preparedness of the Federal Bureau of Investigation of the Department of Justice.

(3) The Office of Domestic Preparedness of the Department of Justice.

(4) The Office of Emergency Preparedness within the Office of the Assistant Secretary for Public Health Emergency Preparedness of the Department of Health and Human Services, including—

(A) the Noble Training Center;

(B) the Metropolitan Medical Response System;

(C) the Department of Health and Human Services component of the National Disaster Medical System;

(D) the Disaster Medical Assistance Teams, the Veterinary Medical Assistance Teams, and the Disaster Mortuary Operational Response Teams;

(E) the special events response; and

(F) the citizen preparedness programs.

(5) The Strategic National Stockpile of the Department of Health and Human Services including all functions and assets under sections 121 and 127 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Public Law 107–188).

(6)(A) Except as provided in subparagraph (B)—

(i) the functions of the Select Agent Registration Program of the Department of Health and Human Services, including all functions of the Secretary of Health and Human Services under title II of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Public Law 107–188); and

(ii) the functions of the Department of Agriculture under the Agricultural Bioterrorism Protection Act of 2002 (7 U.S.C. 8401 et seq.).

(B)(i) The Secretary shall collaborate with the Secretary of Health and Human Services in determining the biological agents and toxins that shall be listed as ''select agents'' in Appendix A of part 72 of title 42, Code of Federal Regulations, pursuant to section 351A of the Public Health Service Act (42 U.S.C. 262a).

(ii) The Secretary shall collaborate with the Secretary of Agriculture in determining the biological agents and toxins that shall be included on the list of biological agents and toxins required under section 212(a) of the Agricultural Bioterrorism Protection Act of 2002 (7 U.S.C. 8401).

(C) In promulgating regulations pursuant to the functions described in subparagraph (A), the Secretary shall act in collaboration with the Secretary of Health and Human Services and the Secretary of Agriculture.

(d) APPOINTMENT AS UNDER SECRETARY AND DIRECTOR.—

(1) IN GENERAL.—An individual may serve as both the Under Secretary for Emergency Preparedness and Response and the Director of the Federal Emergency Management Agency if appointed by the President, by and with the advice and consent of the Senate, to each office.

(2) PAY.—Nothing in paragraph (1) shall be construed to authorize an individual appointed to both positions to receive pay at a rate of pay in excess of the rate of pay payable for the position to which the higher rate of pay applies.

(e) REPORT.—Not later than 1 year after the date of enactment of this Act, the Under Secretary for Emergency Preparedness and Response shall submit a report to Congress

on the status of a national medical informatics system and an agricultural disease surveillance system, and the capacity of such systems to meet the goals under subsection (b)(12) in responding to a terrorist attack.

SEC. 135. DIRECTORATE OF SCIENCE AND TECHNOLOGY.

(a) PURPOSE.—The purpose of this section is to establish a Directorate of Science and Technology that will support the mission of the Department and the directorates of the Department by—

(1) establishing, funding, managing, and supporting research, development, demonstration, testing, and evaluation activities to meet national homeland security needs and objectives;

(2) setting national research and development goals and priorities pursuant to the mission of the Department, and developing strategies and policies in furtherance of such goals and priorities;

(3) coordinating and collaborating with other Federal departments and agencies, and State, local, academic, and private sector entities, to advance the research and development agenda of the Department;

(4) advising the Secretary on all scientific and technical matters relevant to homeland security; and

(5) facilitating the transfer and deployment of technologies that will serve to enhance homeland security goals.

(b) DEFINITIONS.—In this section:

(1) COUNCIL.—The term ''Council'' means the Homeland Security Science and Technology Council established under this section.

(2) FUND.—The term ''Fund'' means the Acceleration Fund for Research and Development of Homeland Security Technologies established under this section.

(3) HOMELAND SECURITY RESEARCH AND DEVELOPMENT.—The term ''homeland security research and development'' means research and development applicable to the detection of, prevention of, protection against, response to, and recovery from homeland security threats, particularly acts of terrorism.

(4) OSTP.—The term ''OSTP'' means the Office of Science and Technology Policy.

(5) SARPA.—The term ''SARPA'' means the Security Advanced Research Projects Agency established under this section.

(6) TECHNOLOGY ROADMAP.—The term ''technology roadmap'' means a plan or framework in which goals, priorities, and milestones for desired future technological capabilities and functions are established, and research and development alternatives or means for achieving those goals, priorities, and milestones are identified and analyzed in order to guide decisions on resource allocation and investments.

(7) UNDER SECRETARY.—The term ''Under Secretary'' means the Under Secretary for Science and Technology.

(c) DIRECTORATE OF SCIENCE AND TECHNOLOGY.—

(1) ESTABLISHMENT.—There is established a Directorate of Science and Technology within the Department.

(2) UNDER SECRETARY.—There shall be an Under Secretary for Science and Technology, who shall be appointed by the President, by and with the advice and consent of the Senate. The principal responsibility of the Under Secretary shall be to effectively and efficiently carry out the purposes of the Directorate of Science and Technology under subsection (a). In addition, the Under Secretary shall undertake the following activities in furtherance of such purposes:

(A) Coordinating with the OSTP and other appropriate entities in developing and executing the research and development agenda of the Department.

(B) Developing a technology roadmap that shall be updated biannually for achieving technological goals relevant to homeland security needs.

(C) Instituting mechanisms to promote, facilitate, and expedite the transfer and deployment of technologies relevant to homeland security needs, including dual-use capabilities.

(D) Assisting the Secretary and the Director of OSTP to ensure that science and technology priorities are clearly reflected and considered in a homeland security Strategy.

(E) Establishing mechanisms for the sharing and dissemination of key homeland security research and technology developments and opportunities with appropriate Federal, State, local, and private sector entities.

(F) Establishing, in coordination with the Under Secretary for Critical Infrastructure Protection and the Under Secretary for Emergency Preparedness and Response and relevant programs under their direction, a National Emergency Technology Guard, comprised of teams of volunteers with expertise in relevant areas of science and technology, to assist local communities in responding to and recovering from emergency contingencies requiring specialized scientific and technical capabilities. In carrying out this responsibility, the Under Secretary shall establish and manage a database of National Emergency Technology Guard volunteers, and prescribe procedures for organizing, certifying, mobilizing, and deploying National Emergency Technology Guard teams.

(G) Chairing the Working Group established under section 108 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Public Law 107–188).

(H) Assisting the Secretary in developing a homeland security strategy for Countermeasure Research described under subsection (k).

(I) Assisting the Secretary and acting on behalf of the Secretary in contracting with, commissioning, or establishing federally funded research and development centers determined useful and appropriate by the Secretary for the purpose of providing the Department with independent analysis and support.

(J) Assisting the Secretary and acting on behalf of the Secretary in entering into joint sponsorship agreements with the Department of Energy regarding the use of the national laboratories or sites.

(K) Assisting and supporting the Secretary, in coordination with other Directorates and entities outside the Department, in conducting appropriate risk analysis and risk management activities consistent with the mission and functions of the Directorate.

(L) Carrying out other appropriate activities as directed by the Secretary.

(3) RESEARCH AND DEVELOPMENT-RELATED AUTHORITIES.—The Secretary shall exercise the following authorities relating to the research, development, testing, and evaluation activities of the Directorate of Science and Technology:

(A) With respect to research and development expenditures under this section, the authority (subject to the same limitations and conditions) as the Secretary of Defense may exercise under section 2371 of title 10, United States Code (except for subsections (b) and (f)), for a period of 5 years beginning on the date of enactment of this Act. Competitive, merit-based selection procedures shall be used for the selection of projects and participants for transactions entered into under the authority of this paragraph. The annual report required under subsection (h) of such section, as applied to the Secretary by this subparagraph, shall—

(i) be submitted to the President of the Senate, the Speaker of the House of Representatives, the Committee on Governmental Affairs of the Senate, the Committee on Government Reform of the House of Representatives, the Committee on Appropriations of the Senate, and the Committee on Appropriations of the House of Representatives; and

(ii) report on other transactions entered into under subparagraph (B).

(B) Authority to carry out prototype projects in accordance with the requirements and conditions provided for carrying out prototype projects under section 845 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160), for a period of 5 years beginning on the date of enactment of this Act. In applying the authorities of such section 845, subsection (c) of that section shall apply with respect to prototype projects under this paragraph, and the Secretary shall perform the functions of the Secretary of Defense under subsection (d) of that section. Competitive, merit-based selection procedures shall be used for the selection of projects and participants for transactions entered into under the authority of this paragraph.

(C) In hiring personnel to assist in research, development, testing, and evaluation activities within the Directorate of Science and Technology, the authority to exercise the personnel hiring and management authorities described in section 1101 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (5 U.S.C. 3104 note; Public Law 105–261), with the stipulation that the Secretary shall exercise such authority for a period of 7 years commencing on the date of enactment of this Act, that a maximum of 100 persons may be hired under such authority, and that the term of appointment for employees under subsection (c)(1) of that section may not exceed 5 years before the granting of any extensions under subsection (c)(2) of that section.

(D) With respect to such research, development, testing, and evaluation responsibilities under this section (except as provided in subparagraph (E)) as the Secretary may elect to carry out through agencies other than the Department (under agreements with their respective heads), the Secretary may transfer funds to such heads. Of the funds authorized to be appropriated under subsection (d)(4) for the Fund, not less than 10 percent of such funds for each fiscal year through 2005 shall be authorized only for the Under Secretary, through joint agreement with the Commandant of the Coast Guard, to carry out research and development of improved ports, waterways, and coastal security surveillance and perimeter protection capabilities for the purpose of minimizing the possibility that Coast Guard cutters, aircraft, helicopters, and personnel will be diverted from non-homeland security missions to the ports, waterways, and coastal security mission.

(E) The Secretary may carry out human health biodefense-related biological, biomedical, and infectious disease research and development (including vaccine research and development) in collaboration with the Secretary of Health and Human Services. Research supported by funding appropriated to the National Institutes of Health for bioterrorism research and related facilities development shall be conducted through the National Institutes of Health under joint strategic prioritization agreements between the Secretary and the Secretary of Health and Human Services. The Secretary shall have the authority to establish general research priorities, which shall be embodied in the joint strategic prioritization agreements with the Secretary of Health and Human

Services. The specific scientific research agenda to implement agreements under this subparagraph shall be developed by the Secretary of Health and Human Services, who shall consult the Secretary to ensure that the agreements conform with homeland security priorities. All research programs established under those agreements shall be managed and awarded by the Director of the National Institutes of Health consistent with those agreements. The Secretary may transfer funds to the Department of Health and Human Services in connection with those agreements.

(d) ACCELERATION FUND.—

(1) ESTABLISHMENT.—There is established an Acceleration Fund to support research and development of technologies relevant to homeland security.

(2) FUNCTION.—The Fund shall be used to stimulate and support research and development projects selected by SARPA under subsection (f), and to facilitate the rapid transfer of research and technology derived from such projects.

(3) RECIPIENTS.—Fund monies may be made available through grants, contracts, cooperative agreements, and other transactions under subsection (c)(3) (A) and (B) to—

(A) public sector entities, including Federal, State, or local entities;

(B) private sector entities, including corporations, partnerships, or individuals; and

(C) other nongovernmental entities, including universities, federally funded research and development centers, and other academic or research institutions.

(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $200,000,000 for the Fund for fiscal year 2003, and such sums as are necessary in subsequent fiscal years.

(e) SCIENCE AND TECHNOLOGY COUNCIL.—

(1) ESTABLISHMENT.—There is established the Homeland Security Science and Technology Council within the Directorate of Science and Technology. The Under Secretary shall chair the Council and have the authority to convene meetings. At the discretion of the Under Secretary and the Director of OSTP, the Council may be constituted as a subcommittee of the National Science and Technology Council.

(2) COMPOSITION.—The Council shall be composed of the following:

(A) Senior research and development officials representing agencies engaged in research and development relevant to homeland security and combating terrorism needs. Each representative shall be appointed by the head of the representative's respective agency with the advice and consent of the Under Secretary.

(B) The Director of SARPA and other appropriate officials within the Department.

(C) The Director of the OSTP and other senior officials of the Executive Office of the President as designated by the President.

(3) RESPONSIBILITIES.—The Council shall—

(A) provide the Under Secretary with recommendations on priorities and strategies, including those related to funding and portfolio management, for homeland security research and development;

(B) facilitate effective coordination and communication among agencies, other entities of the Federal Government, and entities in the private sector and academia, with respect to the conduct of research and development related to homeland security;

(C) recommend specific technology areas for which the Fund and other research and development resources shall be used, among other things, to rapidly transition homeland security research and development into deployed technology and reduce identified homeland security vulnerabilities;

(D) assist and advise the Under Secretary in developing the technology roadmap referred to under subsection (c)(2)(B); and

(E) perform other appropriate activities as directed by the Under Secretary.

(4) ADVISORY PANEL.—The Under Secretary may establish an advisory panel consisting of representatives from industry, academia, and other non-Federal entities to advise and support the Council.

(5) WORKING GROUPS.—At the discretion of the Under Secretary, the Council may establish working groups in specific homeland security areas consisting of individuals with relevant expertise in each articulated area. Working groups established for bioterrorism and public health-related research shall be fully coordinated with the Working Group established under section 108 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Public Law 107–188).

(f) SECURITY ADVANCED RESEARCH PROJECTS AGENCY.—

(1) ESTABLISHMENT.—There is established the Security Advanced Research Projects Agency within the Directorate of Science and Technology.

(2) RESPONSIBILITIES.—SARPA shall—

(A) undertake and stimulate basic and applied research and development, leverage existing research and development, and accelerate the transition and deployment of technologies that will serve to enhance homeland defense;

(B) identify, fund, develop, and transition high-risk, high-payoff homeland security research and development opportunities that—

(i) may lie outside the purview or capabilities of the existing Federal agencies; and

(ii) emphasize revolutionary rather than evolutionary or incremental advances;

(C) provide selected projects with single or multiyear funding, and require such projects to provide interim progress reports, no less often than annually;

(D) administer the Acceleration Fund to carry out the purposes of this paragraph;

(E) advise the Secretary and Under Secretary on funding priorities under subsection (c)(3)(E); and

(F) perform other appropriate activities as directed by the Under Secretary.

(g) OFFICE OF RISK ANALYSIS AND ASSESSMENT.—

(1) ESTABLISHMENT.—There is established an Office of Risk Analysis and Assessment within the Directorate of Science and Technology.

(2) FUNCTIONS.—The Office of Risk Analysis and Assessment shall assist the Secretary, the Under Secretary, and other Directorates with respect to their risk analysis and risk management activities by providing scientific or technical support for such activities. Such support shall include, as appropriate—

(A) identification and characterization of homeland security threats;

(B) evaluation and delineation of the risk of these threats;

(C) pinpointing of vulnerabilities or linked vulnerabilities to these threats;

(D) determination of criticality of possible threats;

(E) analysis of possible technologies, research, and protocols to mitigate or eliminate threats, vulnerabilities, and criticalities;

(F) evaluation of the effectiveness of various forms of risk communication; and

(G) other appropriate activities as directed by the Secretary.

(3) METHODS.—In performing the activities described under paragraph (2), the Office of Risk Analysis and Assessment may support or conduct, or commission from federally funded research and development centers or other entities, work involving modeling, statistical analyses, field tests and exercises (including red teaming), testbed development, development of standards and metrics.

(h) OFFICE FOR TECHNOLOGY EVALUATION AND TRANSITION.—

(1) ESTABLISHMENT.—There is established an Office for Technology Evaluation and Transition within the Directorate of Science and Technology.

(2) FUNCTION.—The Office for Technology Evaluation and Transition shall, with respect to technologies relevant to homeland security needs—

(A) serve as the principal, national point-of-contact and clearinghouse for receiving and processing proposals or inquiries regarding such technologies;

(B) identify and evaluate promising new technologies;

(C) undertake testing and evaluation of, and assist in transitioning, such technologies into deployable, fielded systems;

(D) consult with and advise agencies regarding the development, acquisition, and deployment of such technologies;

(E) coordinate with SARPA to accelerate the transition of technologies developed by SARPA and ensure transition paths for such technologies; and

(F) perform other appropriate activities as directed by the Under Secretary.

(3) TECHNICAL SUPPORT WORKING GROUP.—The functions described under this subsection may be carried out through, or in coordination with, or through an entity established by the Secretary and modeled after, the Technical Support Working Group (organized under the April, 1982, National Security Decision Directive Numbered 30) that provides an interagency forum to coordinate research and development of technologies for combating terrorism.

(i) OFFICE OF LABORATORY RESEARCH.—

(1) ESTABLISHMENT.—There is established an Office of Laboratory Research within the Directorate of Science and Technology.

(2) RESEARCH AND DEVELOPMENT FUNCTIONS TRANSFERRED.—There shall be transferred to the Department, to be administered by the Under Secretary, the functions, personnel, assets, and liabilities of the following programs and activities:

(A) Within the Department of Energy (but not including programs and activities relating to the strategic nuclear defense posture of the United States) the following:

(i) The chemical and biological national security and supporting programs and activities supporting domestic response of the nonproliferation and verification research and development program.

(ii) The nuclear smuggling programs and activities, and other programs and activities directly related to homeland security, within the proliferation detection program of the nonproliferation and verification research and development program, except that the programs and activities described in this clause may be designated by the President either for transfer to the Department or for joint operation by the Secretary and the Secretary of Energy.

(iii) The nuclear assessment program and activities of the assessment, detection, and cooperation program of the international materials protection and cooperation program.

(iv) The Environmental Measurements Laboratory.

(B) Within the Department of Defense, the National Bio-Weapons Defense Analysis Center established under section 161.

(3) RESPONSIBILITIES.—The Office of Laboratory Research shall—

(A) supervise the activities of the entities transferred under this subsection;

(B) administer the disbursement and undertake oversight of research and development funds transferred from the Department to other agencies outside of the Department, including funds transferred to the Department of Health and Human Services consistent with subsection (c)(3)(E);

(C) establish and direct new research and development facilities as the Secretary determines appropriate;

(D) include a science advisor to the Under Secretary on research priorities related to biological and chemical weapons, with supporting scientific staff, who shall advise on and support research priorities with respect to—

(i) research on countermeasures for biological weapons, including research on the development of drugs, devices, and biologics; and

(ii) research on biological and chemical threat agents; and

(E) other appropriate activities as directed by the Under Secretary.

(j) OFFICE FOR NATIONAL LABORATORIES.—

(1) ESTABLISHMENT.—There is established within the Directorate of Science and Technology an Office for National Laboratories, which shall be responsible for the coordination and utilization of the Department of Energy national laboratories and sites in a manner to create a networked laboratory system for the purpose of supporting the missions of the Department.

(2) JOINT SPONSORSHIP ARRANGEMENTS.—

(A) NATIONAL LABORATORIES.—The Department may be a joint sponsor, under a multiple agency sponsorship arrangement with the Department of Energy, of 1 or more Department of Energy national laboratories in the performance of work on behalf of the Department.

(B) DEPARTMENT OF ENERGY SITE.—The Department may be a joint sponsor of Department of Energy sites in the performance of work as if such sites were federally funded research and development centers and the work were performed under a multiple agency sponsorship arrangement with the Department.

(C) PRIMARY SPONSOR.—The Department of Energy shall be the primary sponsor under a multiple agency sponsorship arrangement entered into under subparagraph (A) or (B).

(D) CONDITIONS.—A joint sponsorship arrangement under this subsection shall—

(i) provide for the direct funding and management by the Department of the work being carried out on behalf of the Department; and

(ii) include procedures for addressing the coordination of resources and tasks to minimize conflicts between work undertaken on behalf of either Department.

(E) LEAD AGENT AND FEDERAL ACQUISITION REGULATION.—

(i) LEAD AGENT.—The Secretary of Energy shall act as the lead agent in coordinating the formation and performance of a joint sponsorship agreement between the Department and a Department of Energy national laboratory or site for work on homeland security.

(ii) COMPLIANCE WITH FEDERAL ACQUISITION REGULATION.—Any work performed by a national laboratory or site under this section shall comply with the policy on the use of federally funded research and development centers under section 35.017 of the Federal Acquisition Regulation.

(F) FUNDING.—The Department shall provide funds for work at the Department of Energy national laboratories or sites, as the case may be, under this section under the same terms and conditions as apply to the primary sponsor of such national laboratory under section 303(b)(1)(C) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253 (b)(1)(C)) or of such site to the extent such section applies to such site as a federally funded research and development center by reason of subparagraph (B).

(3) OTHER ARRANGEMENTS.—The Office for National Laboratories may enter into other arrangements with Department of Energy national laboratories or sites to carry out work to support the missions of the Department under applicable law, except that the Department of Energy may not charge or apply administrative fees for work on behalf of the Department.

(4) TECHNOLOGY TRANSFER.—The Office for National Laboratories may exercise the authorities in section 12 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a) to permit the Director of a Department of Energy national laboratory to enter into cooperative research and development agreements, or to negotiate licensing agreements, pertaining to work supported by the Department at the Department of Energy national laboratory.

(5) ASSISTANCE IN ESTABLISHING DEPARTMENT.—At the request of the Under Secretary, the Department of Energy shall provide for the temporary appointment or assignment of employees of Department of Energy national laboratories or sites to the Department for purposes of assisting in the establishment or organization of the technical programs of the Department through an agreement that includes provisions for minimizing conflicts between work assignments of such personnel.

(k) STRATEGY FOR COUNTERMEASURE RESEARCH.—

(1) IN GENERAL.—The Secretary, acting through the Under Secretary for Science and Technology, shall develop a comprehensive, long-term strategy and plan for engaging non-Federal entities, particularly including private, for-profit entities, in the research, development, and production of homeland security countermeasures for biological, chemical, and radiological weapons.

(2) TIMEFRAME.—The strategy and plan under this subsection, together with recommendations for the enactment of supporting or enabling legislation, shall be submitted to the Congress within 270 days after the date of enactment of this Act.

(3) COORDINATION.—In developing the strategy and plan under this subsection, the Secretary shall consult with—

(A) other agencies with expertise in research, development, and production of countermeasures;

(B) private, for-profit entities and entrepreneurs with appropriate expertise and technology regarding countermeasures;

(C) investors that fund such entities;

(D) nonprofit research universities and institutions;

(E) public health and other interested private sector and government entities; and

(F) governments allied with the United States in the war on terrorism.

(4) PURPOSE.—The strategy and plan under this subsection shall evaluate proposals to assure that—

(A) research on countermeasures by non-Federal entities leads to the expeditious development and production of countermeasures that may be procured and deployed in the homeland security interests of the United States;

(B) capital is available to fund the expenses associated with such research, development, and production, including Government grants and contracts and appropriate capital formation tax incentives that apply to non-Federal entities with and without tax liability;

(C) the terms for procurement of such countermeasures are defined in advance so that such entities may accurately and reliably assess the potential countermeasures market and the potential rate of return;

(D) appropriate intellectual property, risk protection, and Government approval standards are applicable to such countermeasures;

(E) Government-funded research is conducted and prioritized so that such research complements, and does not unnecessarily duplicate, research by non-Federal entities and that such Government-funded research is made available, transferred, and licensed on commercially reasonable terms to such entities for development; and

(F) universities and research institutions play a vital role as partners in research and development and technology transfer, with appropriate progress benchmarks for such activities, with for-profit entities.

(5) REPORTING.—The Secretary shall report periodically to the Congress on the status of non-Federal entity countermeasure research, development, and production, and submit additional recommendations for legislation as needed.

(l) CLASSIFICATION OF RESEARCH.—

(1) IN GENERAL.—To the greatest extent practicable, research conducted or supported by the Department shall be unclassified.

(2) CLASSIFICATION AND REVIEW.—The Under Secretary shall—

(A)(i) decide whether classification is appropriate before the award of a research grant, contract, cooperative agreement, or other transaction by the Department; and

(ii) if the decision under clause (i) is one of classification, control the research results through standard classification procedures; and

(B) periodically review all classified research grants, contracts, cooperative agreements, and other transactions issued by the Department to determine whether classification is still necessary.

(3) RESTRICTIONS.—No restrictions shall be placed upon the conduct or reporting of federally funded fundamental research that has not received national security classification, except as provided under applicable provisions of law.

(m) OFFICE OF SCIENCE AND TECHNOLOGY POLICY.—The National Science and Technology Policy, Organization, and Priorities Act is amended in section 204(b)(1) (42 U.S.C. 6613(b)(1)), by inserting ''homeland security,'' after ''national security,''.

SEC. 136. DIRECTORATE OF IMMIGRATION AFFAIRS.

The Directorate of Immigration Affairs shall be established and shall carry out all functions of that Directorate in accordance with division B of this Act.

SEC. 137. OFFICE FOR STATE AND LOCAL GOVERNMENT COORDINATION.

(a) ESTABLISHMENT.—There is established within the Office of the Secretary the Office for State and Local Government Coordination, to be headed by a director, which shall oversee and coordinate departmental programs for and relationships with State and local governments.

(b) RESPONSIBILITIES.—The Office established under subsection (a) shall—

(1) coordinate the activities of the Department relating to State and local government;

(2) assess, and advocate for, the resources needed by State and local government to implement the national strategy for combating terrorism;

(3) provide State and local government with regular information, research, and technical support to assist local efforts at securing the homeland;

(4) develop a process for receiving meaningful input from State and local government to assist the development of homeland security activities; and

(5) prepare an annual report, that contains—

(A) a description of the State and local priorities in each of the 50 States based on discovered needs of first responder organizations, including law enforcement agencies, fire and rescue agencies, medical providers, emergency service providers, and relief agencies;

(B) a needs assessment that identifies homeland security functions in which the Federal role is duplicative of the State or local role, and recommendations to decrease or eliminate inefficiencies between the Federal Government and State and local entities;

(C) recommendations to Congress regarding the creation, expansion, or elimination of any program to assist State and local entities to carry out their respective functions under the Department; and

(D) proposals to increase the coordination of Department priorities within each State and between the States.

(c) HOMELAND SECURITY LIAISON OFFICERS.—

(1) DESIGNATION.—The Secretary shall designate in each State and the District of Columbia not less than 1 employee of the Department to serve as the Homeland Security Liaison Officer in that State or District.

(2) DUTIES.—Each Homeland Security Liaison Officer designated under paragraph (1) shall—

(A) provide State and local government officials with regular information, research, and technical support to assist local efforts at securing the homeland;

(B) provide coordination between the Department and State and local first responders, including—

(i) law enforcement agencies;

(ii) fire and rescue agencies;

(iii) medical providers;

(iv) emergency service providers; and

(v) relief agencies;

(C) notify the Department of the State and local areas requiring additional information, training, resources, and security;

(D) provide training, information, and education regarding homeland security for State and local entities;

(E) identify homeland security functions in which the Federal role is duplicative of the State or local role, and recommend ways to decrease or eliminate inefficiencies;

(F) assist State and local entities in priority setting based on discovered needs of first responder organizations, including law enforcement agencies, fire and rescue agencies, medical providers, emergency service providers, and relief agencies;

(G) assist the Department to identify and implement State and local homeland security objectives in an efficient and productive manner;

(H) serve as a liaison to the Department in representing State and local priorities and concerns regarding homeland security;

(I) consult with State and local government officials, including emergency managers, to coordinate efforts and avoid duplication; and

(J) coordinate with Homeland Security Liaison Officers in neighboring States to—

(i) address shared vulnerabilities; and

(ii) identify opportunities to achieve efficiencies through interstate activities .

(d) FEDERAL INTERAGENCY COMMITTEE ON FIRST RESPONDERS AND STATE, LOCAL, AND CROSS-JURISDICTIONAL ISSUES.—

(1) IN GENERAL.—There is established an Interagency Committee on First Responders and State, Local, and Cross-jurisdictional Issues (in this section referred to as the ''Interagency Committee'', that shall—

(A) ensure coordination, with respect to homeland security functions, among the Federal agencies involved with—

(i) State, local, and regional governments;

(ii) State, local, and community-based law enforcement;

(iii) fire and rescue operations; and

(iv) medical and emergency relief services;

(B) identify community-based law enforcement, fire and rescue, and medical and emergency relief services needs;

(C) recommend new or expanded grant programs to improve community-based law enforcement, fire and rescue, and medical and emergency relief services;

(D) identify ways to streamline the process through which Federal agencies support community-based law enforcement, fire and rescue, and medical and emergency relief services; and

(E) assist in priority setting based on discovered needs.

(2) MEMBERSHIP.—The Interagency Committee shall be composed of—

(A) a representative of the Office for State and Local Government Coordination;

(B) a representative of the Health Resources and Services Administration of the Department of Health and Human Services;

(C) a representative of the Centers for Disease Control and Prevention of the Department of Health and Human Services;

(D) a representative of the Federal Emergency Management Agency of the Department;

(E) a representative of the United States Coast Guard of the Department;

(F) a representative of the Department of Defense;

(G) a representative of the Office of Domestic Preparedness of the Department;

(H) a representative of the Directorate of Immigration Affairs of the Department;

(I) a representative of the Transportation Security Agency of the Department;

(J) a representative of the Federal Bureau of Investigation of the Department of Justice; and

(K) representatives of any other Federal agency identified by the President as having a significant role in the purposes of the Interagency Committee.

(3) ADMINISTRATION.—The Department shall provide administrative support to the Interagency Committee and the Advisory Council, which shall include—

(A) scheduling meetings;

(B) preparing agenda;

(C) maintaining minutes and records;

(D) producing reports; and

(E) reimbursing Advisory Council members.

(4) LEADERSHIP.—The members of the Interagency Committee shall select annually a chairperson.

(5) MEETINGS.—The Interagency Committee shall meet—

(A) at the call of the Secretary; or

(B) not less frequently than once every 3 months.

(e) ADVISORY COUNCIL FOR THE INTERAGENCY COMMITTEE.—

(1) ESTABLISHMENT.—There is established an Advisory Council for the Interagency Committee (in this section referred to as the ''Advisory Council'').

(2) MEMBERSHIP.—

(A) IN GENERAL.—The Advisory Council shall be composed of not more than 13 members, selected by the Interagency Committee.

(B) DUTIES.—The Advisory Council shall—

(i) develop a plan to disseminate information on first response best practices;

(ii) identify and educate the Secretary on the latest technological advances in the field of first response;

(iii) identify probable emerging threats to first responders;

(iv) identify needed improvements to first response techniques and training;

(v) identify efficient means of communication and coordination between first responders and Federal, State, and local officials;

(vi) identify areas in which the Department can assist first responders; and

(vii) evaluate the adequacy and timeliness of resources being made available to local first responders.

(C) REPRESENTATION.—The Interagency Committee shall ensure that the membership of the Advisory Council represents—

(i) the law enforcement community;

(ii) fire and rescue organizations;

(iii) medical and emergency relief services; and

(iv) both urban and rural communities.

(3) CHAIRPERSON.—The Advisory Council shall select annually a chairperson from among its members.

(4) COMPENSATION OF MEMBERS.—The members of the Advisory Council shall serve without compensation, but shall be eligible for reimbursement of necessary expenses connected with their service to the Advisory Council.

(5) MEETINGS.—The Advisory Council shall meet with the Interagency Committee not less frequently than once every 3 months.

SEC. 138. UNITED STATES SECRET SERVICE.

There are transferred to the Department the authorities, functions, personnel, and assets of the United States Secret Service, which shall be maintained as a distinct entity within the Department.

SEC. 139. BORDER COORDINATION WORKING GROUP.

(a) DEFINITIONS.—In this section:

(1) BORDER SECURITY FUNCTIONS.—The term ''border security functions'' means the securing of the borders, territorial waters, ports, terminals, waterways, and air, land, and sea transportation systems of the United States.

(2) RELEVANT AGENCIES.—The term ''relevant agencies'' means any department or agency of the United States that the President determines to be relevant to performing border security functions.

(b) ESTABLISHMENT.—The Secretary shall establish a border security working group (in this section referred to as the ''Working Group''), composed of the Secretary or the designee of the Secretary, the Under Secretary for Border and Transportation Protection, and the Under Secretary for Immigration Affairs.

(c) FUNCTIONS.—The Working Group shall meet not less frequently than once every 3 months and shall—

(1) with respect to border security functions, develop coordinated budget requests, allocations of appropriations, staffing requirements, communication, use of equipment, transportation, facilities, and other infrastructure;

(2) coordinate joint and cross-training programs for personnel performing border security functions;

(3) monitor, evaluate and make improvements in the coverage and geographic distribution of border security programs and personnel;

(4) develop and implement policies and technologies to ensure the speedy, orderly, and efficient flow of lawful traffic, travel and commerce, and enhanced scrutiny for high-risk traffic, travel, and commerce; and

(5) identify systemic problems in coordination encountered by border security agencies and programs and propose administrative, regulatory, or statutory changes to mitigate such problems.

(d) RELEVANT AGENCIES.—The Secretary shall consult representatives of relevant

agencies with respect to deliberations under subsection (c), and may include representatives of such agencies in Working Group deliberations, as appropriate.

SEC. 140. OFFICE FOR NATIONAL CAPITAL REGION COORDINATION.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—There is established within the Office of the Secretary the Office of National Capital Region Coordination, to oversee and coordinate Federal programs for and relationships with State, local, and regional authorities in the National Capital Region, as defined under section 2674(f)(2) of title 10, United States Code.

(2) DIRECTOR.—The Office established under paragraph (1) shall be headed by a Director, who shall be appointed by the Secretary.

(3) COOPERATION.—The Secretary shall cooperate with the Mayor of the District of Columbia, the Governors of Maryland and Virginia, and other State, local, and regional officers in the National Capital Region to integrate the District of Columbia, Maryland, and Virginia into the planning, coordination, and execution of the activities of the Federal Government for the enhancement of domestic preparedness against the consequences of terrorist attacks.

(b) RESPONSIBILITIES.—The Office established under subsection (a)(1) shall—

(1) coordinate the activities of the Department relating to the National Capital Region, including cooperation with the Homeland Security Liaison Officers for Maryland, Virginia, and the District of Columbia within the Office for State and Local Government Coordination;

(2) assess, and advocate for, the resources needed by State, local, and regional authorities in the National Capital Region to implement efforts to secure the homeland;

(3) provide State, local, and regional authorities in the National Capital Region with regular information, research, and technical support to assist the efforts of State, local, and regional authorities in the National Capital Region in securing the homeland;

(4) develop a process for receiving meaningful input from State, local, and regional authorities and the private sector in the National Capital Region to assist in the development of the homeland security plans and activities of the Federal Government;

(5) coordinate with Federal agencies in the National Capital Region on terrorism preparedness, to ensure adequate planning, information sharing, training, and execution of the Federal role in domestic preparedness activities;

(6) coordinate with Federal, State, local, and regional agencies, and the private sector in the National Capital Region on terrorism preparedness to ensure adequate planning, information sharing, training, and execution of domestic preparedness activities among these agencies and entities; and

(7) serve as a liaison between the Federal Government and State, local, and regional authorities, and private sector entities in the National Capital Region to facilitate access to Federal grants and other programs.

(c) ANNUAL REPORT.—The Office established under subsection (a) shall submit an annual report to Congress that includes—

(1) the identification of the resources required to fully implement homeland security efforts in the National Capital Region;

(2) an assessment of the progress made by the National Capital Region in implementing homeland security efforts; and

(3) recommendations to Congress regarding the additional resources needed to fully implement homeland security efforts in the National Capital Region.

(d) LIMITATION.—Nothing contained in this section shall be construed as limiting the power of State and local governments.

SEC. 141. EXECUTIVE SCHEDULE POSITIONS.

Section 5314 of title 5, United States Code, is amended by adding at the end the following:

''Under Secretary for Border and Transportation, Department of Homeland Security.

''Under Secretary for Critical Infrastructure Protection, Department of Homeland Security.

''Under Secretary for Emergency Preparedness and Response, Department of Homeland Security.

''Under Secretary for Immigration, Department of Homeland Security.

''Under Secretary for Intelligence, Department of Homeland Security.

''Under Secretary for Science and Technology, Department of Homeland Security.''.

SEC. 142. PRESERVING COAST GUARD MISSION PERFORMANCE.

(a) DEFINITIONS.—In this section:

(1) NON-HOMELAND SECURITY MISSIONS.—The term ''non-homeland security missions'' means the following missions of the Coast Guard:

(A) Marine safety.

(B) Search and rescue.

(C) Aids to navigation.

(D) Living marine resources (e.g., fisheries law enforcement).

(E) Marine environmental protection.

(F) Ice operations.

(2) HOMELAND SECURITY MISSIONS.—The term ''homeland security missions'' means the following missions of the Coast Guard:

(A) Ports, waterways and coastal security.

(B) Drug interdiction.

(C) Migrant interdiction.

(D) Defense readiness.

(E) Other law enforcement.

(b) TRANSFER.—There are transferred to the Department the authorities, functions, personnel, and assets of the Coast Guard, which shall be maintained as a distinct entity within the Department, including the authorities and functions of the Secretary of Transportation relating thereto.

(c) MAINTENANCE OF STATUS OF FUNCTIONS AND ASSETS.—Notwithstanding any other provision of this Act, the authorities, functions, assets, organizational structure, units, personnel, and non-homeland security missions of the Coast Guard shall be maintained intact and without reduction after the transfer of the Coast Guard to the Department, except as specified in subsequent Acts. Nothing in this paragraph shall prevent the Coast Guard from replacing or upgrading any asset with an asset of equivalent or greater capabilities.

(d) CERTAIN TRANSFERS PROHIBITED.—

(1) IN GENERAL.—None of the missions, functions, personnel, and assets (including ships, aircraft, helicopters, and vehicles) of the Coast Guard may be transferred to the operational control of, or diverted to the principal and continuing use of, any other organization, unit, or entity of the Department.

(2) APPLICABILITY.—The restrictions in paragraph (1) shall not apply—

(A) to any joint operation of less than 90 days between the Coast Guard and other entities and organizations of the Department; or

(B) to any detail or assignment of any individual member or civilian employee of the Coast Guard to any other entity or organization of the Department for the purposes of ensuring effective liaison, coordination, and operations of the Coast Guard and that entity or organization, except that the total number of individuals detailed or assigned in this capacity may not exceed 50 individuals during any fiscal year.

(e) CHANGES TO NON-HOMELAND SECURITY MISSIONS.—

(1) PROHIBITION.—The Secretary may not make any substantial or significant change to any of the non-homeland security missions of the Coast Guard, or to the capabilities of the Coast Guard to carry out each of the non-homeland security missions, without the prior approval of Congress as expressed in a subsequent Act. With respect to a change to the capabilities of the Coast Guard to carry out each of the non-homeland security missions, the restrictions in this paragraph shall not apply when such change shall result in an increase in those capabilities.

(2) WAIVER.—The President may waive the restrictions under paragraph (1) for a period of not to exceed 90 days upon a declaration and certification by the President to Congress that a clear, compelling, and immediate state of national emergency exists that justifies such a waiver. A certification under this paragraph shall include a detailed justification for the declaration and certification, including the reasons and specific information that demonstrate that the Nation and the Coast Guard cannot respond effectively to the national emergency if the restrictions under paragraph (1) are not waived.

(f) ANNUAL REVIEW.—

(1) IN GENERAL.—The Inspector General of the Department shall conduct an annual review that shall assess thoroughly the performance by the Coast Guard of all missions of the Coast Guard (including non-homeland security missions and homeland security missions) with a particular emphasis on examining the non-homeland security missions.

(2) REPORT.—The Inspector General shall submit the detailed results of the annual review and assessment required by paragraph (1) not later than March 1 of each year directly to—

(A) the Committee on Governmental Affairs of the Senate;

(B) the Committee on Government Reform of the House of Representatives;

(C) the Committees on Appropriations of the Senate and the House of Representatives;

(D) the Committee on Commerce, Science, and Transportation of the Senate; and

(E) the Committee on Transportation and Infrastructure of the House of Representatives.

(g) DIRECT REPORTING TO SECRETARY.—Upon the transfer of the Coast Guard to the Department, the Commandant shall report directly to the Secretary without being required to report through any other official of the Department.

(h) OPERATION AS A SERVICE IN THE NAVY.—None of the conditions and restrictions in this section shall apply when the Coast Guard operates as a service in the Navy under section 3 of title 14, United States Code.

Subtitle C—National Emergency Preparedness Enhancement

SEC. 151. SHORT TITLE.

This subtitle may be cited as the ''National Emergency Preparedness Enhancement Act of 2002''.

SEC. 152. PREPAREDNESS INFORMATION AND EDUCATION.

(a) ESTABLISHMENT OF CLEARINGHOUSE.—There is established in the Department a National Clearinghouse on Emergency Preparedness (referred to in this section as the ''Clearinghouse''). The Clearinghouse shall be headed by a Director.

(b) CONSULTATION.—The Clearinghouse shall consult with such heads of agencies, such task forces appointed by Federal officers or employees, and such representatives of the private sector, as appropriate, to collect information on emergency preparedness, including information relevant to a homeland security strategy.

(c) DUTIES.—

(1) DISSEMINATION OF INFORMATION.—The Clearinghouse shall ensure efficient dissemination of accurate emergency preparedness information.

(2) CENTER.—The Clearinghouse shall establish a one-stop center for emergency preparedness information, which shall include a website, with links to other relevant Federal websites, a telephone number, and staff, through which information shall be made available on—

(A) ways in which States, political subdivisions, and private entities can access Federal grants;

(B) emergency preparedness education and awareness tools that businesses, schools, and the general public can use; and

(C) other information as appropriate.

(3) PUBLIC AWARENESS CAMPAIGN.—The Clearinghouse shall develop a public awareness campaign. The campaign shall be ongoing, and shall include an annual theme to be implemented during the National Emergency Preparedness Week established under section 154. The Clearinghouse shall work with heads of agencies to coordinate public service announcements and other information-sharing tools utilizing a wide range of media.

(4) BEST PRACTICES INFORMATION.—The Clearinghouse shall compile and disseminate information on best practices for emergency preparedness identified by the Secretary and the heads of other agencies.

SEC. 153. PILOT PROGRAM.

(a) EMERGENCY PREPAREDNESS ENHANCEMENT PILOT PROGRAM.—The Department shall award grants to private entities to pay for the Federal share of the cost of improving emergency preparedness, and educating employees and other individuals using the entities' facilities about emergency preparedness.

(b) USE OF FUNDS.—An entity that receives a grant under this subsection may use the funds made available through the grant to—

(1) develop evacuation plans and drills;

(2) plan additional or improved security measures, with an emphasis on innovative technologies or practices;

(3) deploy innovative emergency preparedness technologies; or

(4) educate employees and customers about the development and planning activities described in paragraphs (1) and (2) in innovative ways.

(c) FEDERAL SHARE.—The Federal share of the cost described in subsection (a) shall be 50 percent, up to a maximum of $250,000 per grant recipient.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $5,000,000 for each of fiscal years 2003 through 2005 to carry out this section.

SEC. 154. DESIGNATION OF NATIONAL EMERGENCY PREPAREDNESS WEEK.

(a) NATIONAL WEEK.—

(1) DESIGNATION.—Each week that includes September 11 is ''National Emergency Preparedness Week''.

(2) PROCLAMATION.—The President is requested every year to issue a proclamation calling on the people of the United States (including State and local governments and the private sector) to observe the week with appropriate activities and programs.

(b) FEDERAL AGENCY ACTIVITIES.—In conjunction with National Emergency Preparedness Week, the head of each agency, as appropriate, shall coordinate with the Department to inform and educate the private sector and the general public about emergency preparedness activities, resources, and tools, giving a high priority to emergency preparedness efforts designed to address terrorist attacks.

Subtitle D—Miscellaneous Provisions

SEC. 161. NATIONAL BIO-WEAPONS DEFENSE ANALYSIS CENTER.

(a) ESTABLISHMENT.—There is established within the Department of Defense a National Bio-Weapons Defense Analysis Center (in this section referred to as the ''Center'').

(b) MISSION.—The mission of the Center is to develop countermeasures to potential attacks by terrorists using biological or chemical weapons that are weapons of mass destruction (as defined under section 1403 of the Defense Against Weapons of Mass Destruction Act of 1996 (50 U.S.C. 2302(1))) and conduct research and analysis concerning such weapons.

SEC. 162. REVIEW OF FOOD SAFETY.

(a) REVIEW OF FOOD SAFETY LAWS AND FOOD SAFETY ORGANIZATIONAL STRUCTURE.—The Secretary shall enter into an agreement with and provide funding to the National Academy of Sciences to conduct a detailed, comprehensive study which shall—

(1) review all Federal statutes and regulations affecting the safety and security of the food supply to determine the effectiveness of the statutes and regulations at protecting the food supply from deliberate contamination; and

(2) review the organizational structure of Federal food safety oversight to determine the efficiency and effectiveness of the organizational structure at protecting the food supply from deliberate contamination.

(b) REPORT.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the National Academy of Sciences shall prepare and submit to the President, the Secretary, and Congress a comprehensive report containing—

(A) the findings and conclusions derived from the reviews conducted under subsection (a); and

(B) specific recommendations for improving—

(i) the effectiveness and efficiency of Federal food safety and security statutes and regulations; and

(ii) the organizational structure of Federal food safety oversight.

(2) CONTENTS.—In conjunction with the recommendations under paragraph (1), the report under paragraph (1) shall address—

(A) the effectiveness with which Federal food safety statutes and regulations protect public health and ensure the food supply remains free from contamination;

(B) the shortfalls, redundancies, and inconsistencies in Federal food safety statutes and regulations;

(C) the application of resources among Federal food safety oversight agencies;

(D) the effectiveness and efficiency of the organizational structure of Federal food safety oversight;

(E) the shortfalls, redundancies, and inconsistencies of the organizational structure of Federal food safety oversight; and

(F) the merits of a unified, central organizational structure of Federal food safety oversight.

(c) RESPONSE OF THE SECRETARY.—Not later than 90 days after the date on which the report under this section is submitted to the Secretary, the Secretary shall provide to the President and Congress the response of the Department to the recommendations of the report and recommendations of the Department to further protect the food supply from contamination.

SEC. 163. EXCHANGE OF EMPLOYEES BETWEEN AGENCIES AND STATE OR LOCAL GOVERNMENTS.

(a) FINDINGS.—Congress finds that—

(1) information sharing between Federal, State, and local agencies is vital to securing the homeland against terrorist attacks;

(2) Federal, State, and local employees working cooperatively can learn from one another and resolve complex issues;

(3) Federal, State, and local employees have specialized knowledge that should be consistently shared between and among agencies at all levels of government; and

(4) providing training and other support, such as staffing, to the appropriate Federal, State, and local agencies can enhance the ability of an agency to analyze and assess threats against the homeland, develop appropriate responses, and inform the United States public.

(b) EXCHANGE OF EMPLOYEES.—

(1) IN GENERAL.—The Secretary may provide for the exchange of employees of the Department and State and local agencies in accordance with subchapter VI of chapter 33 of title 5, United States Code.

(2) CONDITIONS.—With respect to exchanges described under this subsection, the Secretary shall ensure that—

(A) any assigned employee shall have appropriate training or experience to perform the work required by the assignment; and

(B) any assignment occurs under conditions that appropriately safeguard classified and other sensitive information.

SEC. 164. WHISTLEBLOWER PROTECTION FOR FEDERAL EMPLOYEES WHO ARE AIRPORT SECURITY SCREENERS.

Section 111(d) of the Aviation and Transportation Security Act (Public Law 107–71; 115 Stat. 620; 49 U.S.C. 44935 note) is amended—

(1) by striking ''(d) SCREENER PERSONNEL.—Notwithstanding any other provision of law,'' and inserting the following:

''(d) SCREENER PERSONNEL.—

''(1) IN GENERAL.—Notwithstanding any other provision of law (except as provided under paragraph (2)),''; and

(2) by adding at the end the following:

''(2) WHISTLEBLOWER PROTECTION.—

''(A) DEFINITION.—In this paragraph, the term ''security screener'' means—

''(i) any Federal employee hired as a security screener under subsection (e) of section 44935 of title 49, United States Code; or

''(ii) an applicant for the position of a security screener under that subsection.

''(B) IN GENERAL.—Notwithstanding paragraph (1)—

''(i) section 2302(b)(8) of title 5, United States Code, shall apply with respect to any security screener; and

''(ii) chapters 12, 23, and 75 of that title shall apply with respect to a security screener to the extent necessary to implement clause (i).

''(C) COVERED POSITION.—The President may not exclude the position of security screener as a covered position under section 2302(a)(2)(B)(ii) of title 5, United States Code, to the extent that such exclusion would prevent the implementation of subparagraph (B) of this paragraph.''.

SEC. 165. WHISTLEBLOWER PROTECTION FOR CERTAIN AIRPORT EMPLOYEES.

(a) IN GENERAL.—Section 42121(a) of title 49, United States Code, is amended—

(1) by striking ''(a) DISCRIMINATION AGAINST AIRLINE EMPLOYEES.—No air carrier or contractor or subcontractor of an air carrier'' and inserting the following:

''(a) DISCRIMINATION AGAINST EMPLOYEES.—

''(1) IN GENERAL.—No air carrier, contractor, subcontractor, or employer described under paragraph (2)'';

(2) by redesignating paragraphs (1) through (4) as subparagraphs (A) through (D), respectively; and

(3) by adding at the end the following:

''(2) APPLICABLE EMPLOYERS.—Paragraph (1) shall apply to—

''(A) an air carrier or contractor or subcontractor of an air carrier;

''(B) an employer of airport security screening personnel, other than the Federal Government, including a State or municipal government, or an airport authority, or a contractor of such government or airport authority; or

''(C) an employer of private screening personnel described in section 44919 or 44920 of this title.''.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—Section 42121(b)(2)(B) of title 49, United States Code, is amended—

(1) in clause (i), by striking ''paragraphs (1) through (4) of subsection (a)'' and inserting ''subparagraphs (A) through (D) of subsection (a)(1)''; and

(2) in clause (iii), by striking ''paragraphs (1) through (4) of subsection (a)'' and inserting ''subparagraphs (A) through (D) of subsection (a)(1)''.

SEC. 166. BIOTERRORISM PREPAREDNESS AND RESPONSE DIVISION.

Section 319D of the Public Health Service Act (42 U.S.C. 2472–4) is amended—

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

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

''(c) BIOTERRORISM PREPAREDNESS AND RESPONSE DIVISION.—

''(1) ESTABLISHMENT.—There is established within the Office of the Director of the Centers for Disease Control and Prevention a Bioterrorism Preparedness and Response Division (in this subsection referred to as the 'Division').

''(2) MISSION.—The Division shall have the following primary missions:

''(A) To lead and coordinate the activities and responsibilities of the Centers for Disease Control and Prevention with respect to countering bioterrorism.

''(B) To coordinate and facilitate the interaction of Centers for Disease Control and Prevention personnel with personnel from the Department of Homeland Security and, in so doing, serve as a major contact point for 2-way communications between the jurisdictions of homeland security and public health.

''(C) To train and employ a cadre of public health personnel who are dedicated full-time to the countering of bioterrorism.

''(3) RESPONSIBILITIES.—In carrying out the mission under paragraph (2), the Division shall assume the responsibilities of and budget authority for the Centers for Disease Control and Prevention with respect to the following programs:

''(A) The Bioterrorism Preparedness and Response Program.

''(B) The Strategic National Stockpile.

''(C) Such other programs and responsibilities as may be assigned to the Division by the Director of the Centers for Disease Control and Prevention.

''(4) DIRECTOR.—There shall be in the Division a Director, who shall be appointed by the Director of the Centers for Disease Control and Prevention, in consultation with the Secretary of Health and Human Services and the Secretary of Homeland Security.

''(5) STAFFING.—Under agreements reached between the Director of the Centers for Disease Control and Prevention and the Secretary of Homeland Security—

''(A) the Division may be staffed, in part, by personnel assigned from the Department of Homeland Security by the Secretary of Homeland Security; and

''(B) the Director of the Centers for Disease Control and Prevention may assign some personnel from the Division to the Department of Homeland Security.''.

SEC. 167. COORDINATION WITH THE DEPARTMENT OF HEALTH AND HUMAN SERVICES UNDER THE PUBLIC HEALTH SERVICE ACT.

(a) IN GENERAL.—The annual Federal response plan developed by the Secretary under sections 102(b)(14) and 134(b)(7) shall be consistent with section 319 of the Public Health Service Act (42 U.S.C. 247d).

(b) DISCLOSURES AMONG RELEVANT AGENCIES.—

(1) IN GENERAL.—Full disclosure among relevant agencies shall be made in accordance with this subsection.

(2) PUBLIC HEALTH EMERGENCY.—During the period in which the Secretary of Health and Human Services has declared the existence of a public health emergency under section 319(a) of the Public Health Service Act (42 U.S.C. 247d(a)), the Secretary of Health and Human Services shall keep relevant agencies, including the Department of Homeland Security, the Department of Justice, and the Federal Bureau of Investigation, fully and currently informed.

(3) POTENTIAL PUBLIC HEALTH EMERGENCY.—In cases involving, or potentially involving, a public health emergency, but in which no determination of an emergency by the Secretary of Health and Human Services under section 319(a) of the Public Health Service Act (42 U.S.C. 247d(a)), has been made, all relevant agencies, including the Department of Homeland Security, the Department of Justice, and the Federal Bureau of Investigation, shall keep the Secretary of Health and Human Services and the Director of the Centers for Disease Control and Prevention fully and currently informed.

SEC. 168. RAIL SECURITY ENHANCEMENTS.

(a) IN GENERAL.—There are authorized to be appropriated to the Department, for the benefit of Amtrak, for the 2-year period beginning on the date of enactment of this Act—

(1) $375,000,000 for grants to finance the cost of enhancements to the security and safety of Amtrak rail passenger service;

(2) $778,000,000 for grants for life safety improvements to 6 New York Amtrak tunnels built in 1910, the Baltimore and Potomac Amtrak tunnel built in 1872, and the Washington, D.C. Union Station Amtrak tunnels built in 1904 under the Supreme Court and House and Senate Office Buildings; and

(3) $55,000,000 for the emergency repair, and returning to service of Amtrak passenger cars and locomotives.

(b) AVAILABILITY OF FUNDS.—Amounts appropriated under subsection (a) shall remain available until expended.

(c) COORDINATION WITH EXISTING LAW.—Amounts made available to Amtrak under this section shall not be considered to be Federal assistance for purposes of part C of subtitle V of title 49, United States Code.

SEC. 169. GRANTS FOR FIREFIGHTING PERSONNEL.

(a) Section 33 of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2229) is amended—

(1) by redesignating subsections (c), (d), and (e) as subsections (d), (e), and (f), respectively;

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

''(c) PERSONNEL GRANTS.—

''(1) IN GENERAL.—In addition to the grants authorized under subsection (b)(1), the Director may award grants to fire departments of a State for the purpose of hiring 'employees engaged in fire protection' as that term is defined in section 3 of the Fair Labor Standards Act (29 U.S.C. 203).

''(2) DURATION.—Grants awarded under this subsection shall be for a 3-year period.

''(3) MAXIMUM AMOUNT.—The total amount of grants awarded under this subsection shall not exceed $100,000 per firefighter, indexed for inflation, over the 3-year grant period.

''(4) FEDERAL SHARE.—

''(A) IN GENERAL.—The Federal share of a grant under this subsection shall not exceed 75 percent of the total salary and benefits cost for additional firefighters hired.

''(B) WAIVER.—The Director may waive the 25 percent non-Federal match under subparagraph (A) for a jurisdiction of 50,000 or fewer residents or in cases of extreme hardship.

''(5) APPLICATION.—An application for a grant under this subsection, shall—

''(A) meet the requirements under subsection (b)(5);

''(B) include an explanation for the applicant's need for Federal assistance; and

''(C) contain specific plans for obtaining necessary support to retain the position following the conclusion of Federal support.

''(6) MAINTENANCE OF EFFORT.—Grants awarded under this subsection shall only be used to pay the salaries and benefits of additional firefighting personnel, and shall not be used to supplant funding allocated for personnel from State and local sources.''; and

(3) in subsection (f) (as redesignated by paragraph (1)), by adding at the end the following:

''(3) $1,000,000,000 for each of fiscal years 2003 and 2004, to be used only for grants under subsection (c).''.

SEC. 170. REVIEW OF TRANSPORTATION SECURITY ENHANCEMENTS.

(a) REVIEW OF TRANSPORTATION VULNERABILITIES AND FEDERAL TRANSPORTATION SECURITY EFFORTS.—The Comptroller General shall conduct a detailed, comprehensive study which shall—

(1) review all available intelligence on terrorist threats against aviation, seaport, rail, motor carrier, motor coach, pipeline, highway, and transit facilities and equipment;

(2) review all available information on vulnerabilities of the aviation, seaport, rail, motor carrier, motor coach, pipeline, highway, and transit modes of transportation to terrorist attack; and

(3) review the steps taken by public and private entities since September 11, 2001, to improve aviation, seaport, rail, motor carrier, motor coach, pipeline, highway, and transit security to determine their effectiveness at protecting passengers, freight (including hazardous materials), and transportation infrastructure from terrorist attack.

(b) REPORT.—

(1) CONTENT.—Not later than 1 year after the date of enactment of this Act, the Comptroller General shall prepare and submit to Congress, the Secretary, and the Secretary of Transportation a comprehensive report without compromising national security, containing—

(A) the findings and conclusions from the reviews conducted under subsection (a); and

(B) proposed steps to improve any deficiencies found in aviation, seaport, rail, motor carrier, motor coach, pipeline, highway, and transit security, including, to the extent possible, the cost of implementing the steps.

(2) FORMAT.—The Comptroller General may submit the report in both classified and redacted format if the Comptroller General determines that such action is appropriate or necessary.

(c) RESPONSE OF THE SECRETARY.—

(1) IN GENERAL.—Not later than 90 days after the date on which the report under this section is submitted to the Secretary, the Secretary shall provide to the President and Congress—

(A) the response of the Department to the recommendations of the report; and

(B) recommendations of the Department to further protect passengers and transportation infrastructure from terrorist attack.

(2) FORMATS.—The Secretary may submit the report in both classified and redacted formats if the Secretary determines that such action is necessary or appropriate.

(d) REPORTS PROVIDED TO COMMITTEES.—In furnishing the report required by subsection (b), and the Secretary's response and recommendations under subsection (c), to the Congress, the Comptroller General and the Secretary, respectively, shall ensure that the report, response, and recommendations are transmitted to the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Environment and Public Works of the Senate, and the Committee on Transportation and Infrastructure of the House of Representatives.

SEC. 171. INTEROPERABILITY OF INFORMATION SYSTEMS.

(a) IN GENERAL.—The Director of the Office of Management and Budget, in consultation with the Secretary and affected entities, shall develop—

(1) a comprehensive enterprise architecture for information systems, including communications systems, to achieve interoperability between and among information systems of agencies with responsibility for homeland security; and

(2) a plan to achieve interoperability between and among information systems, including communications systems, of agencies with responsibility for homeland security and those of State and local agencies with responsibility for homeland security.

(b) TIMETABLES.—The Director of the Office of Management and Budget, in consultation with the Secretary and affected entities, shall establish timetables for development and implementation of the enterprise architecture and plan referred to in subsection (a).

(c) IMPLEMENTATION.—The Director of the Office of Management and Budget, in consultation with the Secretary and acting under the responsibilities of the Director under law (including the Clinger-Cohen Act of 1996), shall ensure the implementation of the enterprise architecture developed under subsection (a)(1), and shall coordinate, oversee, and evaluate the management and acquisition of information technology by agencies with responsibility for homeland security to ensure interoperability consistent with the enterprise architecture developed under subsection (a)(1).

(d) AGENCY COOPERATION.—The head of each agency with responsibility for homeland security shall fully cooperate with the Director of the Office of Management and Budget in the development of a comprehensive enterprise architecture for information systems and in the management and acquisition of information technology consistent with the comprehensive enterprise architecture developed under subsection (a)(1).

(e) CONTENT.—The enterprise architecture developed under subsection (a)(1), and the information systems managed and acquired under the enterprise architecture, shall possess the characteristics of—

(1) rapid deployment;

(2) a highly secure environment, providing data access only to authorized users; and

(3) the capability for continuous system upgrades to benefit from advances in technology while preserving the integrity of stored data.

(f) UPDATED VERSIONS.—The Director of the Office of Management and Budget, in consultation with the Secretary, shall oversee and ensure the development of updated versions of the enterprise architecture and plan developed under subsection (a), as necessary.

(g) REPORT.—The Director of the Office of Management and Budget, in consultation with the Secretary, shall annually report to Congress on the development and implementation of the enterprise architecture and plan referred to under subsection (a).

(h) CONSULTATION.—The Director of the Office of Management and Budget shall consult with information systems management experts in the public and private sectors, in the development and implementation of the enterprise architecture and plan referred to under subsection (a).

(i) PRINCIPAL OFFICER.—The Director of the Office of Management and Budget shall designate, with the approval of the President, a principal officer in the Office of Management and Budget whose primary responsibility shall be to carry out the duties of the Director under this section.

SEC. 172. EXTENSION OF CUSTOMS USER FEES.

Section 13031(j)(3) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(j)(3)) is amended by striking ''September 30, 2003'' and inserting ''March 31, 2004''.

SEC. 173. CONFORMING AMENDMENTS REGARDING LAWS ADMINISTERED BY THE SECRETARY OF VETERANS AFFAIRS.

(a) TITLE 38, UNITED STATES CODE.—

(1) SECRETARY OF HOMELAND SECURITY AS HEAD OF COAST GUARD.—Title 38, United States Code, is amended by striking ''Secretary of Transportation'' and inserting ''Secretary of Homeland Security'' in each of the following provisions:

(A) Section 101(25)(D).

(B) Section 1974(a)(5).

(C) Section 3002(5).

(D) Section 3011(a)(1)(A)(ii), both places it appears.

(E) Section 3012(b)(1)(A)(v).

(F) Section 3012(b)(1)(B)(ii)(V).

(G) Section 3018A(a)(3).

(H) Section 3018B(a)(1)(C).

(I) Section 3018B(a)(2)(C).

(J) Section 3018C(a)(5).

(K) Section 3020(m)(4).

(L) Section 3035(d).

(M) Section 6105(c).

(2) DEPARTMENT OF HOMELAND SECURITY AS EXECUTIVE DEPARTMENT OF COAST GUARD.—Title 38, United States Code, is amended by striking ''Department of Transportation'' and inserting ''Department of Homeland Security'' in each of the following provisions:

(A) Section 1560(a).

(B) Section 3035(b)(2).

(C) Section 3035(c).

(D) Section 3035(d).

(E) Section 3035(e)(2)(C).

(F) Section 3680A(g).

(b) SOLDIERS' AND SAILORS' CIVIL RELIEF ACT OF 1940.—The Soldiers' and Sailors' Civil Relief Act of 1940 is amended by striking ''Secretary of Transportation'' and inserting ''Secretary of Homeland Security'' in each of the following provisions:

(1) Section 105 (50 U.S.C. App. 515), both places it appears.

(2) Section 300(c) (50 U.S.C. App. 530).

(c) OTHER LAWS AND DOCUMENTS.—(1) Any reference to the Secretary of Transportation, in that Secretary's capacity as the head of the Coast Guard when it is not operating as a service in the Navy, in any law, regulation, map, document, record, or other paper of the United States administered by the Secretary of Veterans Affairs shall be considered to be a reference to the Secretary of Homeland Security.

(2) Any reference to the Department of Transportation, in its capacity as the executive department of the Coast Guard when it is not operating as a service in the Navy, in any law, regulation, map, document, record, or other paper of the United States administered by the Secretary of Veterans Affairs shall be considered to be a reference to the Department of Homeland Security.

SEC. 174. PROHIBITION ON CONTRACTS WITH CORPORATE EXPATRIATES.

(a) IN GENERAL.—The Secretary may not enter into any contract with a foreign incorporated entity which is treated as an inverted domestic corporation under subsection (b), or any subsidiary of such entity.

(b) INVERTED DOMESTIC CORPORATION.—For purposes of this section, a foreign incorporated entity shall be treated as an inverted domestic corporation if, pursuant to a plan (or a series of related transactions)—

(1) the entity has completed the direct or indirect acquisition of substantially all of the properties held directly or indirectly by a domestic corporation or substantially all of the properties constituting a trade or business of a domestic partnership,

(2) after the acquisition at least 50 percent of the stock (by vote or value) of the entity is held—

(A) in the case of an acquisition with respect to a domestic corporation, by former shareholders of the domestic corporation by reason of holding stock in the domestic corporation, or

(B) in the case of an acquisition with respect to a domestic partnership, by former partners of the domestic partnership by reason of holding a capital or profits interest in the domestic partnership, and

(3) the expanded affiliated group which after the acquisition includes the entity does not have substantial business activities in the foreign country in which or under the law of which the entity is created or organized when compared to the total business activities of such expanded affiliated group.

(c) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

(1) RULES FOR APPLICATION OF SUBSECTION (b).—In applying subsection (b) for purposes of subsection (a), the following rules shall apply:

(A) CERTAIN STOCK DISREGARDED.—There shall not be taken into account in determining ownership for purposes of subsection (b)(2)—

(i) stock held by members of the expanded affiliated group which includes the foreign incorporated entity, or

(ii) stock of such entity which is sold in a public offering related to the acquisition described in subsection (b)(1).

(B) PLAN DEEMED IN CERTAIN CASES.—If a foreign incorporated entity acquires directly or indirectly substantially all of the properties of a domestic corporation or partnership during the 4-year period beginning on the date which is 2 years before the ownership requirements of subsection (b)(2) are met, such actions shall be treated as pursuant to a plan.

(C) CERTAIN TRANSFERS DISREGARDED.—The transfer of properties or liabilities (including by contribution or distribution) shall be disregarded if such transfers are part of a plan a principal purpose of which is to avoid the purposes of this section.

(D) SPECIAL RULE FOR RELATED PARTNERSHIPS.—For purposes of applying subsection (b) to the acquisition of a domestic partnership, except as provided in regulations, all partnerships which are under common control (within the meaning of section 482 of the Internal Revenue Code of 1986) shall be treated as 1 partnership.

(E) TREATMENT OF CERTAIN RIGHTS.—The Secretary shall prescribe such regulations as may be necessary—

(i) to treat warrants, options, contracts to acquire stock, convertible debt instruments, and other similar interests as stock, and

(ii) to treat stock as not stock.

(2) EXPANDED AFFILIATED GROUP.—The term ''expanded affiliated group'' means an affiliated group as defined in section 1504(a) of the

Internal Revenue Code of 1986 (without regard to section 1504(b) of such Code), except that section 1504(a) of such Code shall be applied by substituting ''more than 50 percent'' for ''at least 80 percent'' each place it appears.

(3) FOREIGN INCORPORATED ENTITY.—The term ''foreign incorporated entity'' means any entity which is, or but for subsection (b) would be, treated as a foreign corporation for purposes of the Internal Revenue Code of 1986.

(4) OTHER DEFINITIONS.—The terms ''person'', ''domestic'', and ''foreign'' have the meanings given such terms by paragraphs (1), (4), and (5) of section 7701(a) of the Internal Revenue Code of 1986, respectively.

(d) WAIVER.—The President may waive subsection (a) with respect to any specific contract if the President certifies to Congress that the waiver is required in the interest of national security.

(e) EFFECTIVE DATE.—This section shall take effect 1 day after the date of the enactment of this Act.

SEC. 175. TRANSFER OF CERTAIN AGRICULTURAL INSPECTION FUNCTIONS OF THE DEPARTMENT OF AGRICULTURE.

(a) DEFINITION OF COVERED LAW.—In this section, the term ''covered law'' means—

(1) the first section of the Act of August 31, 1922 (commonly known as the ''Honeybee Act'') (7 U.S.C. 281);

(2) title III of the Federal Seed Act (7 U.S.C. 1581 et seq.);

(3) the Plant Protection Act (7 U.S.C. 7701 et seq.);

(4) the Animal Health Protection Act (7 U.S.C. 8301 et seq.);

(5) section 11 of the Endangered Species Act of 1973 (16 U.S.C. 1540).

(6) the Lacey Act Amendments of 1981 (16 U.S.C. 3371 et seq.); and

(7) the eighth paragraph under the heading ''BUREAU OF ANIMAL INDUSTRY'' in the Act of March 4, 1913 (commonly known as the ''Virus-Serum-Toxin Act'') (21 U.S.C. 151 et seq.);

(b) TRANSFER.—

(1) IN GENERAL.—Subject to paragraph (2), there is transferred to the Secretary of Homeland Security the functions of the Secretary of Agriculture relating to agricultural import and entry inspection activities under each covered law.

(2) QUARANTINE ACTIVITIES.—The functions transferred under paragraph (1) shall not include any quarantine activity carried out under a covered law.

(c) EFFECT OF TRANSFER.—

(1) COMPLIANCE WITH DEPARTMENT OF AGRICULTURE REGULATIONS.—The authority transferred under subsection (b) shall be exercised by the Secretary of Homeland Security in accordance with the regulations, policies, and procedures issued by the Secretary of Agriculture regarding the administration of each covered law.

(2) RULEMAKING COORDINATION.—The Secretary of Agriculture shall coordinate with the Secretary of Homeland Security in any case in which the Secretary of Agriculture prescribes regulations, policies, or procedures for administering the functions transferred under subsection (b) under a covered law.

(3) EFFECTIVE ADMINISTRATION.—The Secretary of Homeland Security, in consultation with the Secretary of Agriculture, may issue such directives and guidelines as are necessary to ensure the effective use of personnel of the Department of Homeland Security to carry out the functions transferred under subsection (b).

(d) TRANSFER AGREEMENT.—

(1) IN GENERAL.—Before the completion of the transition period (as defined in section 181), the Secretary of Agriculture and the Secretary of Homeland Security shall enter into an agreement to carry out this section.

(2) REQUIRED TERMS.—The agreement required by this subsection shall provide for—

(A) the supervision by the Secretary of Agriculture of the training of employees of the Secretary of Homeland Security to carry out the functions transferred under subsection (b);

(B) the transfer of funds to the Secretary of Homeland Security under subsection (e);

(C) authority under which the Secretary of Homeland Security may perform functions that—

(i) are delegated to the Animal and Plant Health Inspection Service of the Department of Agriculture regarding the protection of domestic livestock and plants; but

(ii) are not transferred to the Secretary of Homeland Security under subsection (b); and

(D) authority under which the Secretary of Agriculture may use employees of the Department of Homeland Security to carry out authorities delegated to the Animal and Plant Health Inspection Service regarding the protection of domestic livestock and plants.

(3) REVIEW AND REVISION.—After the date of execution of the agreement described in paragraph (1), the Secretary of Agriculture and the Secretary of Homeland Security—

(A) shall periodically review the agreement; and

(B) may jointly revise the agreement, as necessary.

(e) PERIODIC TRANSFER OF FUNDS TO DEPARTMENT OF HOMELAND SECURITY.—

(1) TRANSFER OF FUNDS.—Subject to paragraph (2), out of any funds collected as fees under sections 2508 and 2509 of the Food, Agriculture, Conservation, and Trade Act of 1990 (21 U.S.C. 136, 136a), the Secretary of Agriculture shall periodically transfer to the Secretary of Homeland Security, in accordance with the agreement under subsection (d), funds for activities carried out by the Secretary of Homeland Security for which the fees were collected.

(2) LIMITATION.—The proportion of fees collected under sections 2508 and 2509 of the Food, Agriculture, Conservation, and Trade Act of 1990 (21 U.S.C. 136, 136a) that are transferred to the Secretary of Homeland Security under paragraph (1) may not exceed the proportion that—

(A) the costs incurred by the Secretary of Homeland Security to carry out activities funded by those fees; bears to

(B) the costs incurred by the Federal Government to carry out activities funded by those fees.

(f) TRANSFER OF DEPARTMENT OF AGRICULTURE EMPLOYEES.—Not later than the completion of the transition period (as defined in section 181), the Secretary of Agriculture shall transfer to the Department of Homeland Security not more than 3,200 full-time equivalent positions of the Department of Agriculture.

(g) PROTECTION OF INSPECTION ANIMALS.—

(1) DEFINITION OF SECRETARY CONCERNED.—Title V of the Agricultural Risk Protection Act of 2000 is amended—

(A) by redesignating sections 501 and 502 (7 U.S.C. 2279e, 2279f) as sections 502 and 503, respectively; and

(B) by inserting before section 502 (as redesignated by subparagraph (A)) the following:

''SEC. 501. DEFINITION OF SECRETARY CONCERNED.

''In this title, the term 'Secretary concerned' means—

''(1) the Secretary of Agriculture, with respect to an animal used for purposes of official inspections by the Department of Agriculture; and

''(2) the Secretary of Homeland Security, with respect to an animal used for purposes of official inspections by the Department of Homeland Security.''.

(2) CONFORMING AMENDMENTS.—

(A) Section 502 of the Agricultural Risk Protection Act of 2000 (as redesignated by paragraph (1)(A)) is amended—

(i) in subsection (a)—

(I) by inserting ''or the Department of Homeland Security'' after ''Department of Agriculture''; and

(II) by inserting ''or the Secretary of Homeland Security'' after ''Secretary of Agriculture''; and

(ii) by striking ''Secretary'' each place it appears (other than in subsections (a) and (e)) and inserting ''Secretary concerned''.

(B) Section 503 of the Agricultural Risk Protection Act of 2000 (as redesignated by paragraph (1)(A)) is amended by striking ''501'' each place it appears and inserting ''502''.

(C) Section 221 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (7 U.S.C. 8411) is repealed.

SEC. 176. COORDINATION OF INFORMATION AND INFORMATION TECHNOLOGY.

(a) DEFINITION OF AFFECTED AGENCY.—In this section, the term ''affected agency'' means—

(1) the Department of Homeland Security;

(2) the Department of Agriculture;

(3) the Department of Health and Human Services; and

(4) any other department or agency determined to be appropriate by the Secretary of Homeland Security.

(b) COORDINATION.—Consistent with section 171, the Secretary of Homeland Security, in coordination with the Secretary of Agriculture, the Secretary of Health and Human Services, and the head of each other department or agency determined to be appropriate by the Secretary of Homeland Security, shall ensure that appropriate information (as determined by the Secretary of Homeland Security) concerning inspections of articles that are imported or entered into the United States, and are inspected or regulated by 1 or more affected agencies, is timely and efficiently exchanged between the affected agencies.

(c) REPORT AND PLAN.—Not later than 18 months after the date of enactment of this Act, the Secretary of Homeland Security, in consultation with the Secretary of Agriculture, the Secretary of Health and Human Services, and the head of each other department or agency determined to be appropriate by the Secretary of Homeland Security, shall submit to Congress—

(1) a report on the progress made in implementing this section; and

(2) a plan to complete implementation of this section.

Subtitle E—Transition Provisions

SEC. 181. DEFINITIONS.

In this subtitle:

(1) AGENCY.—The term ''agency'' includes any entity, organizational unit, or function transferred or to be transferred under this title.

(2) TRANSITION PERIOD.—The term ''transition period'' means the 1-year period beginning on the effective date of this division.

SEC. 182. TRANSFER OF AGENCIES.

The transfer of an agency to the Department, as authorized by this title, shall occur when the President so directs, but in no event later than the end of the transition period.

SEC. 183. TRANSITIONAL AUTHORITIES.

(a) PROVISION OF ASSISTANCE BY OFFICIALS.—Until an agency is transferred to the Department, any official having authority

over, or functions relating to, the agency immediately before the effective date of this division shall provide to the Secretary such assistance, including the use of personnel and assets, as the Secretary may reasonably request in preparing for the transfer and integration of the agency into the Department.

(b) SERVICES AND PERSONNEL.—During the transition period, upon the request of the Secretary, the head of any agency (as defined under section 2) may, on a reimbursable basis, provide services and detail personnel to assist with the transition.

(c) ACTING OFFICIALS.—

(1) DESIGNATION.—During the transition period, pending the nomination and advice and consent of the Senate to the appointment of an officer required by this division to be appointed by and with such advice and consent, the President may designate any officer whose appointment was required to be made by and with such advice and consent, and who continues as such an officer, to act in such office until the office is filled as provided in this division.

(2) COMPENSATION.—While serving as an acting officer under paragraph (1), the officer shall receive compensation at the higher of the rate provided—

(A) under this division for the office in which that officer acts; or

(B) for the office held at the time of designation.

(3) PERIOD OF SERVICE.—The person serving as an acting officer under paragraph (1) may serve in the office for the periods described under section 3346 of title 5, United States Code, as if the office became vacant on the effective date of this division.

(d) EXCEPTION TO ADVICE AND CONSENT REQUIREMENT.—Nothing in this Act shall be construed to require the advice and consent of the Senate to the appointment by the President to a position in the Department of any officer—

(1) whose agency is transferred to the Department under this Act;

(2) whose appointment was by and with the advice and consent of the Senate;

(3) who is proposed to serve in a directorate or office of the Department that is similar to the transferred agency in which the officer served; and

(4) whose authority and responsibilities following such transfer would be equivalent to those performed prior to such transfer.

SEC. 184. INCIDENTAL TRANSFERS AND TRANSFER OF RELATED FUNCTIONS.

(a) INCIDENTAL TRANSFERS.—The Director of the Office of Management and Budget, in consultation with the Secretary, shall make such additional incidental dispositions of personnel, assets, and liabilities held, used, arising from, available, or to be made available, in connection with the functions transferred by this title, as the Director determines necessary to accomplish the purposes of this title.

(b) ADJUDICATORY OR REVIEW FUNCTIONS.—

(1) IN GENERAL.—At the time an agency is transferred to the Department, the President may also transfer to the Department any agency established to carry out or support adjudicatory or review functions in relation to the transferred agency.

(2) EXCEPTION.—The President may not transfer the Executive Office of Immigration Review of the Department of Justice under this subsection.

(c) TRANSFER OF RELATED FUNCTIONS.—The transfer, under this title, of an agency that is a subdivision of a department before such transfer shall include the transfer to the Secretary of any function relating to such agency that, on the date before the transfer, was exercised by the head of the department from which such agency is transferred.

(d) REFERENCES.—A reference in any other Federal law, Executive order, rule, regulation, delegation of authority, or other document pertaining to an agency transferred under this title that refers to the head of the department from which such agency is transferred is deemed to refer to the Secretary.

SEC. 185. IMPLEMENTATION PROGRESS REPORTS AND LEGISLATIVE RECOMMENDATIONS.

(a) IN GENERAL.—In consultation with the President and in accordance with this section, the Secretary shall prepare implementation progress reports and submit such reports to—

(1) the President of the Senate and the Speaker of the House of Representatives for referral to the appropriate committees; and

(2) the Comptroller General of the United States.

(b) REPORT FREQUENCY.—

(1) INITIAL REPORT.—As soon as practicable, and not later than 6 months after the date of enactment of this Act, the Secretary shall submit the first implementation progress report.

(2) SEMIANNUAL REPORTS.—Following the submission of the report under paragraph (1), the Secretary shall submit additional implementation progress reports not less frequently than once every 6 months until all transfers to the Department under this title have been completed.

(3) FINAL REPORT.—Not later than 6 months after all transfers to the Department under this title have been completed, the Secretary shall submit a final implementation progress report.

(c) CONTENTS.—

(1) IN GENERAL.—Each implementation progress report shall report on the progress made in implementing titles I and XI, including fulfillment of the functions transferred under this Act, and shall include all of the information specified under paragraph (2) that the Secretary has gathered as of the date of submission. Information contained in an earlier report may be referenced, rather than set out in full, in a subsequent report. The final implementation progress report shall include any required information not yet provided.

(2) SPECIFICATIONS.—Each implementation progress report shall contain, to the extent available—

(A) with respect to the transfer and incorporation of entities, organizational units, and functions—

(i) the actions needed to transfer and incorporate entities, organizational units, and functions into the Department;

(ii) a projected schedule, with milestones, for completing the various phases of the transition;

(iii) a progress report on taking those actions and meeting the schedule;

(iv) the organizational structure of the Department, including a listing of the respective directorates, the field offices of the Department, and the executive positions that will be filled by political appointees or career executives;

(v) the location of Department headquarters, including a timeframe for relocating to the new location, an estimate of cost for the relocation, and information about which elements of the various agencies will be located at headquarters;

(vi) unexpended funds and assets, liabilities, and personnel that will be transferred, and the proposed allocations and disposition within the Department; and

(vii) the costs of implementing the transition;

(B) with respect to human capital planning—

(i) a description of the workforce planning undertaken for the Department, including the preparation of an inventory of skills and competencies available to the Department, to identify any gaps, and to plan for the training, recruitment, and retention policies necessary to attract and retain a workforce to meet the needs of the Department;

(ii) the past and anticipated future record of the Department with respect to recruitment and retention of personnel;

(iii) plans or progress reports on the utilization by the Department of existing personnel flexibility, provided by law or through regulations of the President and the Office of Personnel Management, to achieve the human capital needs of the Department;

(iv) any inequitable disparities in pay or other terms and conditions of employment among employees within the Department resulting from the consolidation under this division of functions, entities, and personnel previously covered by disparate personnel systems; and

(v) efforts to address the disparities under clause (iv) using existing personnel flexibility;

(C) with respect to information technology—

(i) an assessment of the existing and planned information systems of the Department; and

(ii) a report on the development and implementation of enterprise architecture and of the plan to achieve interoperability;

(D) with respect to programmatic implementation—

(i) the progress in implementing the programmatic responsibilities of this division;

(ii) the progress in implementing the mission of each entity, organizational unit, and function transferred to the Department;

(iii) recommendations of any other governmental entities, organizational units, or functions that need to be incorporated into the Department in order for the Department to function effectively; and

(iv) recommendations of any entities, organizational units, or functions not related to homeland security transferred to the Department that need to be transferred from the Department or terminated for the Department to function effectively.

(d) LEGISLATIVE RECOMMENDATIONS.—

(1) INCLUSION IN REPORT.—The Secretary, after consultation with the appropriate committees of Congress, shall include in the report under this section, recommendations for legislation that the Secretary determines is necessary to—

(A) facilitate the integration of transferred entities, organizational units, and functions into the Department;

(B) reorganize agencies, executive positions, and the assignment of functions within the Department;

(C) address any inequitable disparities in pay or other terms and conditions of employment among employees within the Department resulting from the consolidation of agencies, functions, and personnel previously covered by disparate personnel systems;

(D) enable the Secretary to engage in procurement essential to the mission of the Department;

(E) otherwise help further the mission of the Department; and

(F) make technical and conforming amendments to existing law to reflect the changes made by titles I and XI.

(2) SEPARATE SUBMISSION OF PROPOSED LEGISLATION.—The Secretary may submit the proposed legislation under paragraph (1) to Congress before submitting the balance of the report under this section.

SEC. 186. TRANSFER AND ALLOCATION.

Except as otherwise provided in this title, the personnel employed in connection with, and the assets, liabilities, contracts, property, records, and unexpended balance of appropriations, authorizations, allocations,

and other funds employed, held, used, arising from, available to, or to be made available in connection with the agencies transferred under this title, shall be transferred to the Secretary for appropriate allocation, subject to the approval of the Director of the Office of Management and Budget and to section 1531 of title 31, United States Code. Unexpended funds transferred under this subsection shall be used only for the purposes for which the funds were originally authorized and appropriated.

SEC. 187. SAVINGS PROVISIONS.

(a) CONTINUING EFFECT OF LEGAL DOCUMENTS.—All orders, determinations, rules, regulations, permits, agreements, grants, contracts, recognitions of labor organizations, collective bargaining agreements, certificates, licenses, registrations, privileges, and other administrative actions—

(1) which have been issued, made, granted, or allowed to become effective by the President, any Federal agency or official thereof, or by a court of competent jurisdiction, in the performance of functions which are transferred under this title; and

(2) which are in effect at the time this division takes effect, or were final before the effective date of this division and are to become effective on or after the effective date of this division,

shall, to the extent related to such functions, continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, the Secretary or other authorized official, or a court of competent jurisdiction, or by operation of law.

(b) PROCEEDINGS NOT AFFECTED.—The provisions of this title shall not affect any proceedings, including notices of proposed rulemaking, or any application for any license, permit, certificate, or financial assistance pending before an agency at the time this title takes effect, with respect to functions transferred by this title but such proceedings and applications shall continue. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this title had not been enacted, and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law. Nothing in this subsection shall be deemed to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this title had not been enacted.

(c) SUITS NOT AFFECTED.—The provisions of this title shall not affect suits commenced before the effective date of this division, and in all such suits, proceedings shall be had, appeals taken, and judgments rendered in the same manner and with the same effect as if this title had not been enacted.

(d) NONABATEMENT OF ACTIONS.—No suit, action, or other proceeding commenced by or against an agency, or by or against any individual in the official capacity of such individual as an officer of an agency, shall abate by reason of the enactment of this title.

(e) ADMINISTRATIVE ACTIONS RELATING TO PROMULGATION OF REGULATIONS.—Any administrative action relating to the preparation or promulgation of a regulation by an agency relating to a function transferred under this title may be continued by the Department with the same effect as if this title had not been enacted.

(f) EMPLOYMENT AND PERSONNEL.—

(1) TERMS AND CONDITIONS OF EMPLOYMENT.—The transfer of an employee to the Department under this Act shall not alter the terms and conditions of employment, including compensation, of any employee so transferred.

(2) CONDITIONS AND CRITERIA FOR APPOINTMENT.—Any qualifications, conditions, or criteria required by law for appointments to a position in an agency, or subdivision thereof, transferred to the Department under this title, including a requirement that an appointment be made by the President, by and with the advice and consent of the Senate, shall continue to apply with respect to any appointment to the position made after such transfer to the Department has occurred.

(3) WHISTLEBLOWER PROTECTION.—The President may not exclude any position transferred to the Department as a covered position under section 2302(a)(2)(B)(ii) of title 5, United States Code, to the extent that such exclusion subject to that authority was not made before the date of enactment of this Act.

(g) NO EFFECT ON INTELLIGENCE AUTHORITIES.—The transfer of authorities, functions, personnel, and assets of elements of the United States Government under this title, or the assumption of authorities and functions by the Department under this title, shall not be construed, in cases where such authorities, functions, personnel, and assets are engaged in intelligence activities as defined in the National Security Act of 1947, as affecting the authorities of the Director of Central Intelligence, the Secretary of Defense, or the heads of departments and agencies within the intelligence community.

SEC. 188. TRANSITION PLAN.

(a) IN GENERAL.—Not later than September 15, 2002, the President shall submit to Congress a transition plan as set forth in subsection (b).

(b) CONTENTS.—

(1) IN GENERAL.—The transition plan under subsection (a) shall include a detailed—

(A) plan for the transition to the Department and implementation of this title and division B; and

(B) proposal for the financing of those operations and needs of the Department that do not represent solely the continuation of functions for which appropriations already are available.

(2) FINANCING PROPOSAL.—The financing proposal under paragraph (1)(B) may consist of any combination of specific appropriations transfers, specific reprogrammings, and new specific appropriations as the President considers advisable.

SEC. 189. USE OF APPROPRIATED FUNDS.

(a) APPLICABILITY OF THIS SECTION.—Notwithstanding any other provision of this Act or any other law, this section shall apply to the use of any funds, disposal of property, and acceptance, use, and disposal of gifts, or donations of services or property, of, for, or by the Department, including any agencies, entities, or other organizations transferred to the Department under this Act.

(b) AUTHORIZATION OF APPROPRIATIONS TO CREATE DEPARTMENT.—There is authorized to be appropriated $160,000,000 for the Office of Homeland Security in the Executive Office of the President to be transferred without delay to the Department upon its creation by enactment of this Act, notwithstanding subsection (c)(1)(C) such funds shall be available only for the payment of necessary salaries and expenses associated with the initiation of operations of the Department.

(c) USE OF TRANSFERRED FUNDS.—

(1) IN GENERAL.—Except as may be provided in this subsection or in an appropriations Act in accordance with subsection (e), balances of appropriations and any other funds or assets transferred under this Act—

(A) shall be available only for the purposes for which they were originally available;

(B) shall remain subject to the same conditions and limitations provided by the law originally appropriating or otherwise making available the amount, including limitations and notification requirements related to the reprogramming of appropriated funds; and

(C) shall not be used to fund any new position established under this Act.

(2) TRANSFER OF FUNDS.—

(A) IN GENERAL.—After the creation of the Department and the swearing in of its Secretary, and upon determination by the Secretary that such action is necessary in the national interest, the Secretary is authorized to transfer, with the approval of the Office of Management and Budget, not to exceed $140,000,000 of unobligated funds from organizations and entities transferred to the new Department by this Act.

(B) LIMITATION.—Notwithstanding paragraph (1)(C), funds authorized to be transferred by subparagraph (A) shall be available only for payment of necessary costs, including funding of new positions, for the initiation of operations of the Department and may not be transferred unless the Committees on Appropriations are notified at least 15 days in advance of any proposed transfer and have approved such transfer in advance.

(C) NOTIFICATION.—The notification required in subparagraph (B) shall include a detailed justification of the purposes for which the funds are to be used and a detailed statement of the impact on the program or organization that is the source of the funds, and shall be submitted in accordance with reprogramming procedures to be established by the Committees on Appropriations.

(D) USE FOR OTHER ITEMS.—The authority to transfer funds established in this section may not be used unless for higher priority items, based on demonstrated homeland security requirements, than those for which funds originally were appropriated and in no case where the item for which funds are requested has been denied by Congress.

(d) NOTIFICATION REGARDING TRANSFERS.—The President shall notify Congress not less than 15 days before any transfer of appropriations balances, other funds, or assets under this Act.

(e) ADDITIONAL USES OF FUNDS DURING TRANSITION.—Subject to subsections (c) and (d), amounts transferred to, or otherwise made available to, the Department may be used during the transition period, as defined in section 801(2), for purposes in addition to those for which such amounts were originally available (including by transfer among accounts of the Department), but only to the extent such transfer or use is specifically permitted in advance in an appropriations Act and only under the conditions and for the purposes specified in such appropriations Act.

(f) DISPOSAL OF PROPERTY.—

(1) STRICT COMPLIANCE.—If specifically authorized to dispose of real property in this or any other Act, the Secretary shall exercise this authority in strict compliance with subchapter IV of chapter 5 of title 40, United States Code.

(2) DEPOSIT OF PROCEEDS.—The Secretary shall deposit the proceeds of any exercise of property disposal authority into the miscellaneous receipts of the Treasury in accordance with section 3302(b) of title 31, United States Code.

(g) GIFTS.—Gifts or donations of services or property of or for the Department may not be accepted, used, or disposed of unless specifically permitted in advance in an appropriations Act and only under the conditions and for the purposes specified in such appropriations Act.

(h) BUDGET REQUEST.—Under section 1105 of title 31, United States Code, the President

shall submit to Congress a detailed budget request for the Department for fiscal year 2004, and for each subsequent fiscal year.

Subtitle F—Administrative Provisions

SEC. 191. REORGANIZATIONS AND DELEGATIONS.

(a) REORGANIZATION AUTHORITY.—

(1) IN GENERAL.—The Secretary may, as necessary and appropriate—

(A) allocate, or reallocate, functions among officers of the Department; and

(B) establish, consolidate, alter, or discontinue organizational entities within the Department.

(2) LIMITATION.—Paragraph (1) does not apply to—

(A) any office, bureau, unit, or other entity established by law and transferred to the Department;

(B) any function vested by law in an entity referred to in subparagraph (A) or vested by law in an officer of such an entity; or

(C) the alteration of the assignment or delegation of functions assigned by this Act to any officer or organizational entity of the Department.

(b) DELEGATION AUTHORITY.—

(1) SECRETARY.—The Secretary may—

(A) delegate any of the functions of the Secretary; and

(B) authorize successive redelegations of functions of the Secretary to other officers and employees of the Department.

(2) OFFICERS.—An officer of the Department may—

(A) delegate any function assigned to the officer by law; and

(B) authorize successive redelegations of functions assigned to the officer by law to other officers and employees of the Department.

(3) LIMITATIONS.—

(A) INTERUNIT DELEGATION.—Any function assigned by this title to an organizational unit of the Department or to the head of an organizational unit of the Department may not be delegated to an officer or employee outside of that unit.

(B) FUNCTIONS.—Any function vested by law in an entity established by law and transferred to the Department or vested by law in an officer of such an entity may not be delegated to an officer or employee outside of that entity.

SEC. 192. REPORTING REQUIREMENTS.

(a) ANNUAL EVALUATIONS.—The Comptroller General of the United States shall monitor and evaluate the implementation of this title and title XI. Not later than 15 months after the effective date of this division, and every year thereafter for the succeeding 5 years, the Comptroller General shall submit a report to Congress containing—

(1) an evaluation of the implementation progress reports submitted to Congress and the Comptroller General by the Secretary under section 185;

(2) the findings and conclusions of the Comptroller General of the United States resulting from the monitoring and evaluation conducted under this subsection, including evaluations of how successfully the Department is meeting—

(A) the homeland security missions of the Department; and

(B) the other missions of the Department; and

(3) any recommendations for legislation or administrative action the Comptroller General considers appropriate.

(b) BIENNIAL REPORTS.—Every 2 years the Secretary shall submit to Congress—

(1) a report assessing the resources and requirements of executive agencies relating to border security and emergency preparedness issues; and

(2) a report certifying the preparedness of the United States to prevent, protect against, and respond to natural disasters, cyber attacks, and incidents involving weapons of mass destruction.

(c) POINT OF ENTRY MANAGEMENT REPORT.—Not later than 1 year after the effective date of this division, the Secretary shall submit to Congress a report outlining proposed steps to consolidate management authority for Federal operations at key points of entry into the United States.

(d) COMBATING TERRORISM AND HOMELAND SECURITY.—Not later than 270 days after the date of enactment of this Act, the Secretary shall—

(1) in consultation with the head of each department or agency affected by titles I, II, III, and XI, develop definitions of the terms ''combating terrorism'' and ''homeland security'' for purposes of those titles and shall consider such definitions in determining the mission of the Department; and

(2) submit a report to Congress on such definitions.

(e) RESULTS-BASED MANAGEMENT.—

(1) STRATEGIC PLAN.—

(A) IN GENERAL.—Not later than September 30, 2003, consistent with the requirements of section 306 of title 5, United States Code, the Secretary, in consultation with Congress, shall prepare and submit to the Director of the Office of Management and Budget and to Congress a strategic plan for the program activities of the Department.

(B) PERIOD; REVISIONS.—The strategic plan shall cover a period of not less than 5 years from the fiscal year in which it is submitted and it shall be updated and revised at least every 3 years.

(C) CONTENTS.—The strategic plan shall describe the planned results for the non-homeland security related activities of the Department and the homeland security related activities of the Department.

(2) PERFORMANCE PLAN.—

(A) IN GENERAL.—In accordance with section 1115 of title 31, United States Code, the Secretary shall prepare an annual performance plan covering each program activity set forth in the budget of the Department.

(B) CONTENTS.—The performance plan shall include—

(i) the goals to be achieved during the year;

(ii) strategies and resources required to meet the goals; and

(iii) the means used to verify and validate measured values.

(C) SCOPE.—The performance plan should describe the planned results for the non-homeland security related activities of the Department and the homeland security related activities of the Department.

(3) PERFORMANCE REPORT.—

(A) IN GENERAL.—In accordance with section 1116 of title 31, United States Code, the Secretary shall prepare and submit to the President and Congress an annual report on program performance for each fiscal year.

(B) CONTENTS.—The performance report shall include the actual results achieved during the year compared to the goals expressed in the performance plan for that year.

SEC. 193. ENVIRONMENTAL PROTECTION, SAFETY, AND HEALTH REQUIREMENTS.

The Secretary shall—

(1) ensure that the Department complies with all applicable environmental, safety, and health statutes and requirements; and

(2) develop procedures for meeting such requirements.

SEC. 194. LABOR STANDARDS.

(a) IN GENERAL.—All laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed in whole or in part with assistance authorized under this Act shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code (commonly known as the ''Davis-Bacon Act'').

(b) SECRETARY OF LABOR.—The Secretary of Labor shall have, with respect to the enforcement of labor standards under subsection (a), the authority and functions set forth in Reorganization Plan Number 14 of 1950 (5 U.S.C. App.) and section 3145 of title 40, United States Code.

SEC. 195. PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.

The Secretary may—

(1) procure the temporary or intermittent services of experts or consultants (or organizations thereof) in accordance with section 3109(b) of title 5, United States Code; and

(2) whenever necessary due to an urgent homeland security need, procure temporary (not to exceed 1 year) or intermittent personal services, including the services of experts or consultants (or organizations thereof), without regard to the pay limitations of such section 3109.

SEC. 196. PRESERVING NON-HOMELAND SECURITY MISSION PERFORMANCE.

(a) IN GENERAL.—For each entity transferred into the Department that has non-homeland security functions, the respective Under Secretary in charge, in conjunction with the head of such entity, shall report to the Secretary, the Comptroller General, and the appropriate committees of Congress on the performance of the entity in all of its missions, with a particular emphasis on examining the continued level of performance of the non-homeland security missions.

(b) CONTENTS.—The report referred to in subsection (a) shall—

(1) to the greatest extent possible, provide an inventory of the non-homeland security functions of the entity and identify the capabilities of the entity with respect to those functions, including—

(A) the number of employees who carry out those functions;

(B) the budget for those functions; and

(C) the flexibilities, personnel or otherwise, currently used to carry out those functions;

(2) contain information related to the roles, responsibilities, missions, organizational structure, capabilities, personnel assets, and annual budgets, specifically with respect to the capabilities of the entity to accomplish its non-homeland security missions without any diminishment; and

(3) contain information regarding whether any changes are required to the roles, responsibilities, missions, organizational structure, modernization programs, projects, activities, recruitment and retention programs, and annual fiscal resources to enable the entity to accomplish its non-homeland security missions without diminishment.

(c) TIMING.—Each Under Secretary shall provide the report referred to in subsection (a) annually, for the 5 years following the transfer of the entity to the Department.

SEC. 197. FUTURE YEARS HOMELAND SECURITY PROGRAM.

(a) IN GENERAL.—Each budget request submitted to Congress for the Department under section 1105 of title 31, United States Code, and each budget request submitted to Congress for the National Terrorism Prevention and Response Program shall be accompanied by a Future Years Homeland Security Program.

(b) CONTENTS.—The Future Years Homeland Security Program under subsection (a) shall be structured, and include the same type of information and level of detail, as the Future Years Defense Program submitted to Congress by the Department of Defense under section 221 of title 10, United States Code.

(c) EFFECTIVE DATE.—This section shall take effect with respect to the preparation and submission of the fiscal year 2005 budget request for the Department and the fiscal year 2005 budget request for the National Terrorism Prevention and Response Program, and for any subsequent fiscal year.

SEC. 198. PROTECTION OF VOLUNTARILY FURNISHED CONFIDENTIAL INFORMATION.

(a) DEFINITIONS.—In this section:

(1) CRITICAL INFRASTRUCTURE.—The term ''critical infrastructure'' has the meaning given that term in section 1016(e) of the USA PATRIOT ACT of 2001 (42 U.S.C. 5195(e)).

(2) FURNISHED VOLUNTARILY.—

(A) DEFINITION.—The term ''furnished voluntarily'' means a submission of a record that—

(i) is made to the Department in the absence of authority of the Department requiring that record to be submitted; and

(ii) is not submitted or used to satisfy any legal requirement or obligation or to obtain any grant, permit, benefit (such as agency forbearance, loans, or reduction or modifications of agency penalties or rulings), or other approval from the Government.

(B) BENEFIT.—In this paragraph, the term ''benefit'' does not include any warning, alert, or other risk analysis by the Department.

(b) IN GENERAL.—Notwithstanding any other provision of law, a record pertaining to the vulnerability of and threats to critical infrastructure (such as attacks, response, and recovery efforts) that is furnished voluntarily to the Department shall not be made available under section 552 of title 5, United States Code, if—

(1) the provider would not customarily make the record available to the public; and

(2) the record is designated and certified by the provider, in a manner specified by the Department, as confidential and not customarily made available to the public.

(c) RECORDS SHARED WITH OTHER AGENCIES.—

(1) IN GENERAL.—

(A) RESPONSE TO REQUEST.—An agency in receipt of a record that was furnished voluntarily to the Department and subsequently shared with the agency shall, upon receipt of a request under section 552 of title 5, United States Code, for the record—

(i) not make the record available; and

(ii) refer the request to the Department for processing and response in accordance with this section.

(B) SEGREGABLE PORTION OF RECORD.—Any reasonably segregable portion of a record shall be provided to the person requesting the record after deletion of any portion which is exempt under this section.

(2) DISCLOSURE OF INDEPENDENTLY FURNISHED RECORDS.—Notwithstanding paragraph (1), nothing in this section shall prohibit an agency from making available under section 552 of title 5, United States Code, any record that the agency receives independently of the Department, regardless of whether or not the Department has a similar or identical record.

(d) WITHDRAWAL OF CONFIDENTIAL DESIGNATION.—The provider of a record that is furnished voluntarily to the Department under subsection (b) may at any time withdraw, in a manner specified by the Department, the confidential designation.

(e) PROCEDURES.—The Secretary shall prescribe procedures for—

(1) the acknowledgement of receipt of records furnished voluntarily;

(2) the designation, certification, and marking of records furnished voluntarily as confidential and not customarily made available to the public;

(3) the care and storage of records furnished voluntarily;

(4) the protection and maintenance of the confidentiality of records furnished voluntarily; and

(5) the withdrawal of the confidential designation of records under subsection (d).

(f) EFFECT ON STATE AND LOCAL LAW.—Nothing in this section shall be construed as preempting or otherwise modifying State or local law concerning the disclosure of any information that a State or local government receives independently of the Department.

(g) REPORT.—

(1) REQUIREMENT.—Not later than 18 months after the date of the enactment of this Act, the Comptroller General of the United States shall submit to the committees of Congress specified in paragraph (2) a report on the implementation and use of this section, including—

(A) the number of persons in the private sector, and the number of State and local agencies, that furnished voluntarily records to the Department under this section;

(B) the number of requests for access to records granted or denied under this section; and

(C) such recommendations as the Comptroller General considers appropriate regarding improvements in the collection and analysis of sensitive information held by persons in the private sector, or by State and local agencies, relating to vulnerabilities of and threats to critical infrastructure, including the response to such vulnerabilities and threats.

(2) COMMITTEES OF CONGRESS.—The committees of Congress specified in this paragraph are—

(A) the Committees on the Judiciary and Governmental Affairs of the Senate; and

(B) the Committees on the Judiciary and Government Reform and Oversight of the House of Representatives.

(3) FORM.—The report shall be submitted in unclassified form, but may include a classified annex.

SEC. 199. ESTABLISHMENT OF HUMAN RESOURCES MANAGEMENT SYSTEM.

(a) AUTHORITY.—

(1) SENSE OF CONGRESS.—It is the sense of Congress that—

(A) it is extremely important that employees of the Department be allowed to participate in a meaningful way in the creation of any human resources management system affecting them;

(B) such employees have the most direct knowledge of the demands of their jobs and have a direct interest in ensuring that their human resources management system is conducive to achieving optimal operational efficiencies;

(C) the 21st century human resources management system envisioned for the Department should be one that benefits from the input of its employees; and

(D) this collaborative effort will help secure our homeland.

(2) IN GENERAL.—Subpart I of part III of title 5, United States Code, is amended by adding at the end the following:

''CHAPTER 97—DEPARTMENT OF HOMELAND SECURITY

''Sec.
''9701. Establishment of human resources management system.

''§ 9701. Establishment of human resources management system

''(a) IN GENERAL.—Notwithstanding any other provision of this part, the Secretary of Homeland Security may, in regulations prescribed jointly with the Director of the Office of Personnel Management, establish, and from time to time adjust, a human resources management system for some or all of the organizational units of the Department of Homeland Security.

''(b) SYSTEM REQUIREMENTS.—Any system established under subsection (a) shall—

''(1) be flexible;

''(2) be contemporary;

''(3) not waive, modify, or otherwise affect—

''(A) the public employment principles of merit and fitness set forth in section 2301, including the principles of hiring based on merit, fair treatment without regard to political affiliation or other nonmerit considerations, equal pay for equal work, and protection of employees against reprisal for whistleblowing;

''(B) any provision of section 2302, relating to prohibited personnel practices;

''(C)(i) any provision of law referred to in section 2302(b)(1); or

''(ii) any provision of law implementing any provision of law referred to in section 2302(b)(1) by—

''(I) providing for equal employment opportunity through affirmative action; or

''(II) providing any right or remedy available to any employee or applicant for employment in the civil service;

''(D) any other provision of this part (as described in subsection (c)); or

''(E) any rule or regulation prescribed under any provision of law referred to in any of the preceding subparagraphs of this paragraph;

''(4) ensure that employees may organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them, subject to any exclusion from coverage or limitation on negotiability established by law; and

''(5) permit the use of a category rating system for evaluating applicants for positions in the competitive service.

''(c) OTHER NONWAIVABLE PROVISIONS.—The other provisions of this part as referred to in subsection (b)(3)(D), are (to the extent not otherwise specified in subparagraph (A), (B), (C), or (D) of subsection (b)(3))—

''(1) subparts A, B, E, G, and H of this part; and

''(2) chapters 41, 45, 47, 55, 57, 59, 71, 72, 73, 77, and 79, and this chapter.

''(d) LIMITATIONS RELATING TO PAY.—Nothing in this section shall constitute authority—

''(1) to modify the pay of any employee who serves in—

''(A) an Executive Schedule position under subchapter II of chapter 53 of this title; or

''(B) a position for which the rate of basic pay is fixed in statute by reference to a section or level under subchapter II of chapter 53 of this title;

''(2) to fix pay for any employee or position at an annual rate greater than the maximum amount of cash compensation allowable under section 5307 of this title in a year; or

''(3) to exempt any employee from the application of such section 5307.

''(e) PROVISIONS TO ENSURE COLLABORATION WITH EMPLOYEE REPRESENTATIVES.—

''(1) IN GENERAL.—In order to ensure that the authority of this section is exercised in collaboration with, and in a manner that ensures the direct participation of employee representatives in the planning development, and implementation of any human resources management system or adjustments under this section, the Secretary and the Director of the Office of Personnel Management shall provide for the following:

''(A) NOTICE OF PROPOSAL.— The Secretary and the Director shall, with respect to any proposed system or adjustment—

''(i) provide to each employee representative representing any employees who might be affected, a written description of the proposed system or adjustment (including the reasons why it is considered necessary);

''(ii) give each representative at least 60 days (unless extraordinary circumstances require earlier action) to review and make recommendations with respect to the proposal; and

''(iii) give any recommendations received from any such representatives under clause (ii) full and fair consideration in deciding whether or how to proceed with the proposal.

''(B) PREIMPLEMENTATION REQUIREMENTS.—If the Secretary and the Director decide to implement a proposal described in subparagraph (A), they shall before implementation—

''(i) give each representative details of the decision to implement the proposal, together with the information upon which the decision is based;

''(ii) give each representative an opportunity to make recommendations with respect to the proposal; and

''(iii) give such recommendation full and fair consideration, including the providing of reasons to an employee representative if any of its recommendations are rejected.

''(C) CONTINUING COLLABORATION.—If a proposal described in subparagraph (A) is implemented, the Secretary and the Director shall—

''(i) develop a method for each employee representative to participate in any further planning or development which might become necessary; and

''(ii) give each employee representative adequate access to information to make that participation productive.

''(2) PROCEDURES.—Any procedures necessary to carry out this subsection shall be established by the Secretary and the Director jointly. Such procedures shall include measures to ensure—

''(A) in the case of employees within a unit with respect to which a labor organization is accorded exclusive recognition, representation by individuals designated or from among individuals nominated by such organization;

''(B) in the case of any employees who are not within such a unit, representation by any appropriate organization which represents a substantial percentage of those employees or, if none, in such other manner as may be appropriate, consistent with the purposes of the subsection; and

''(C) the selection of representatives in a manner consistent with the relative number of employees represented by the organizations or other representatives involved.

''(3) WRITTEN AGREEMENT.—Notwithstanding any other provision of this part, employees within a unit to which a labor organization is accorded exclusive recognition under chapter 71 shall not be subject to any system provided under this section unless the exclusive representative and the Secretary have entered into a written agreement, which specifically provides for the inclusion of such employees within such system. Such written agreement may be imposed by the Federal Service Impasses Panel under section 7119, after negotiations consistent with section 7117.

''(f) PROVISIONS RELATING TO APPELLATE PROCEDURES.—

(1) SENSE OF CONGRESS.—It is the sense of Congress that—

''(A) employees of the Department are entitled to fair treatment in any appeals that they bring in decisions relating to their employment; and

''(B) in prescribing regulations for any such appeals procedures, the Secretary and the Director of the Office of Personnel Management—

''(i) should ensure that employees of the Department are afforded the protections of due process; and

''(ii) toward that end, should be required to consult with the Merit Systems Protection Board before issuing any such regulations.

''(2) REQUIREMENTS.—Any regulations under this section which relate to any matters within the purview of chapter 77—

''(A) shall be issued only after consultation with the Merit Systems Protection Board;

''(B) shall ensure the availability of procedures which shall—

''(i) be consistent with requirements of due process; and

''(ii) provide, to the maximum extent practicable, for the expeditious handling of any matters involving the Department; and

''(C) shall modify procedures under chapter 77 only insofar as such modifications are designed to further the fair, efficient, and expeditious resolution of matters involving the employees of the Department.

''(g) SUNSET PROVISION.—Effective 5 years after the conclusion of the transition period defined under section 181 of the Homeland Security Act of 2002, all authority to issue regulations under this section (including regulations which would modify, supersede, or terminate any regulations previously issued under this section) shall cease to be available.''.

(3) CLERICAL AMENDMENT.—The table of chapters for part III of title 5, United States Code, is amended by adding at the end of the following:

''97. Department of Homeland Security ..... 9701''.

(b) EFFECT ON PERSONNEL.—

(1) NONSEPARATION OR NONREDUCTION IN GRADE OR COMPENSATION OF FULL-TIME PERSONNEL AND PART-TIME PERSONNEL HOLDING PERMANENT POSITIONS.—Except as otherwise provided in this Act, the transfer pursuant to this act of full-time personnel (except special Government employees) and part-time personnel holding permanent positions shall not cause any such employee to be separated or reduced in grade or compensation for one year after the date of transfer to the Department.

(2) POSITIONS COMPENSATED IN ACCORDANCE WITH EXECUTIVE SCHEDULE.—Any person who, on the day preceding such person's date of transfer pursuant to this Act, held a position compensated in accordance with the Executive Schedule prescribed in chapter 53 of title 5, United States Code, and who, without a break in service, is appointed in the Department to a position having duties comparable to the duties performed immediately preceding such appointment shall continue to be compensated in such new position at not less than the rate provided for such position, for the duration of the service of such person in such new position.

(3) COORDINATION RULE.—Any exercise of authority under chapter 97 of title 5, United States Code (as amended by subsection (a)), including under any system established under such chapter, shall be in conformance with the requirements of this subsection.

SEC. 199A. LABOR-MANAGEMENT RELATIONS.

(a) LIMITATION ON EXCLUSIONARY AUTHORITY.—

(1) IN GENERAL.—No agency or subdivision of an agency which is transferred to the Department pursuant to this Act shall be excluded from the coverage of chapter 71 of title 5, United States Code, as a result of any order issued under section 7103(b)(1) of such title 5 after June 18, 2002, unless—

(A) the mission and responsibilities of the agency (or subdivision) materially change; and

(B) a majority of the employees within such agency (or subdivision) have as their primary duty intelligence, counterintelligence, or investigative work directly related to terrorism investigation.

(2) EXCLUSIONS ALLOWABLE.—Nothing in paragraph (1) shall affect the effectiveness of any order to the extent that such order excludes any portion of an agency or subdivision of an agency as to which—

(A) recognition as an appropriate unit has never been conferred for purposes of chapter 71 of title 5, United States Code; or

(B) any such recognition has been revoked or otherwise terminated as a result of a determination under subsection (b)(1).

(b) PROVISIONS RELATING TO BARGAINING UNITS.—

(1) LIMITATION RELATING TO APPROPRIATE UNITS.—Each unit which is recognized as an appropriate unit for purposes of chapter 71 of title 5, United States Code, as of the day before the effective date of this Act (and any subdivision of any such unit) shall, if such unit (or subdivision) is transferred to the Department pursuant to this Act, continue to be so recognized for such purposes, unless—

(A) the mission and responsibilities of such unit (or subdivision) materially change; and

(B) a majority of the employees within such unit (or subdivision) have as their primary duty intelligence, counterintelligence, or investigative work directly related to terrorism investigation.

(2) LIMITATION RELATING TO POSITIONS OR EMPLOYEES.—No position or employee within a unit (or subdivision of a unit) as to which continued recognition is given in accordance with paragraph (1) shall be excluded from such unit (or subdivision), for purposes of chapter 71 of title 5, United States Code, unless the primary job duty of such position or employee—

(A) materially changes; and

(B) consists of intelligence, counterintelligence, or investigative work directly related to terrorism investigation.

In the case of any positions within a unit (or subdivision) which are first established on or after the effective date of this Act and any employee first appointed on or after such date, the preceding sentence shall be applied disregarding subparagraph (A).

(c) COORDINATION RULE.—No other provision of this Act or of any amendment made by this Act may be construed or applied in a manner so as to limit, supersede, or otherwise affect the provisions of this section, except to the extent that it does so by specific reference to this section.

SEC. 199B. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to—

(1) enable the Secretary to administer and manage the Department; and

(2) carry out the functions of the Department other than those transferred to the Department under this Act.

TITLE II—LAW ENFORCEMENT POWERS OF INSPECTOR GENERAL AGENTS

SEC. 201. LAW ENFORCEMENT POWERS OF INSPECTOR GENERAL AGENTS.

(a) IN GENERAL.—Section 6 of the Inspector General Act of 1978 (5 U.S.C. App.) is amended by adding at the end the following:

''(e)(1) In addition to the authority otherwise provided by this Act, each Inspector General appointed under section 3, any Assistant Inspector General for Investigations under such an Inspector General, and any special agent supervised by such an Assistant Inspector General may be authorized by the Attorney General to—

''(A) carry a firearm while engaged in official duties as authorized under this Act or other statute, or as expressly authorized by the Attorney General;

''(B) make an arrest without a warrant while engaged in official duties as authorized under this Act or other statute, or as expressly authorized by the Attorney General,

for any offense against the United States committed in the presence of such Inspector General, Assistant Inspector General, or agent, or for any felony cognizable under the laws of the United States if such Inspector General, Assistant Inspector General, or agent has reasonable grounds to believe that the person to be arrested has committed or is committing such felony; and

''(C) seek and execute warrants for arrest, search of a premises, or seizure of evidence issued under the authority of the United States upon probable cause to believe that a violation has been committed.

''(2) The Attorney General may authorize exercise of the powers under this subsection only upon an initial determination that—

''(A) the affected Office of Inspector General is significantly hampered in the performance of responsibilities established by this Act as a result of the lack of such powers;

''(B) available assistance from other law enforcement agencies is insufficient to meet the need for such powers; and

''(C) adequate internal safeguards and management procedures exist to ensure proper exercise of such powers.

''(3) The Inspector General offices of the Department of Commerce, Department of Education, Department of Energy, Department of Health and Human Services, Department of Homeland Security, Department of Housing and Urban Development, Department of the Interior, Department of Justice, Department of Labor, Department of State, Department of Transportation, Department of the Treasury, Department of Veterans Affairs, Agency for International Development, Environmental Protection Agency, Federal Deposit Insurance Corporation, Federal Emergency Management Agency, General Services Administration, National Aeronautics and Space Administration, Nuclear Regulatory Commission, Office of Personnel Management, Railroad Retirement Board, Small Business Administration, Social Security Administration, and the Tennessee Valley Authority are exempt from the requirement of paragraph (2) of an initial determination of eligibility by the Attorney General.

''(4) The Attorney General shall promulgate, and revise as appropriate, guidelines which shall govern the exercise of the law enforcement powers established under paragraph (1).

''(5) Powers authorized for an Office of Inspector General under paragraph (1) shall be rescinded or suspended upon a determination by the Attorney General that any of the requirements under paragraph (2) is no longer satisfied or that the exercise of authorized powers by that Office of Inspector General has not complied with the guidelines promulgated by the Attorney General under paragraph (4).

''(6) A determination by the Attorney General under paragraph (2) or (5) shall not be reviewable in or by any court.

''(7) To ensure the proper exercise of the law enforcement powers authorized by this subsection, the Offices of Inspector General described under paragraph (3) shall, not later than 180 days after the date of enactment of this subsection, collectively enter into a memorandum of understanding to establish an external review process for ensuring that adequate internal safeguards and management procedures continue to exist within each Office and within any Office that later receives an authorization under paragraph (2). The review process shall be established in consultation with the Attorney General, who shall be provided with a copy of the memorandum of understanding that establishes the review process. Under the review process, the exercise of the law enforcement powers by each Office of Inspector General shall be reviewed periodically by another Office of Inspector General or by a committee of Inspectors General. The results of each review shall be communicated in writing to the applicable Inspector General and to the Attorney General.

''(8) No provision of this subsection shall limit the exercise of law enforcement powers established under any other statutory authority, including United States Marshals Service special deputation.''.

(b) PROMULGATION OF INITIAL GUIDELINES.—

(1) DEFINITION.—In this subsection, the term ''memoranda of understanding'' means the agreements between the Department of Justice and the Inspector General offices described under section 6(e)(3) of the Inspector General Act of 1978 (5 U.S.C. App) (as added by subsection (a) of this section) that—

(A) are in effect on the date of enactment of this Act; and

(B) authorize such offices to exercise authority that is the same or similar to the authority under section 6(e)(1) of such Act.

(2) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Attorney General shall promulgate guidelines under section 6(e)(4) of the Inspector General Act of 1978 (5 U.S.C. App) (as added by subsection (a) of this section) applicable to the Inspector General offices described under section 6(e)(3) of that Act.

(3) MINIMUM REQUIREMENTS.—The guidelines promulgated under this subsection shall include, at a minimum, the operational and training requirements in the memoranda of understanding.

(4) NO LAPSE OF AUTHORITY.—The memoranda of understanding in effect on the date of enactment of this Act shall remain in effect until the guidelines promulgated under this subsection take effect.

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Subsection (a) shall take effect 180 days after the date of enactment of this Act.

(2) INITIAL GUIDELINES.—Subsection (b) shall take effect on the date of enactment of this Act.

TITLE III—FEDERAL EMERGENCY PROCUREMENT FLEXIBILITY

Subtitle A—Temporary Flexibility for Certain Procurements

SEC. 301. DEFINITION.

In this title, the term ''executive agency'' has the meaning given that term under section 4(1) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(1)).

SEC. 302. PROCUREMENTS FOR DEFENSE AGAINST OR RECOVERY FROM TERRORISM OR NUCLEAR, BIOLOGICAL, CHEMICAL, OR RADIOLOGICAL ATTACK.

The authorities provided in this subtitle apply to any procurement of property or services by or for an executive agency that, as determined by the head of the executive agency, are to be used to facilitate defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack, but only if a solicitation of offers for the procurement is issued during the 1-year period beginning on the date of the enactment of this Act.

SEC. 303. INCREASED SIMPLIFIED ACQUISITION THRESHOLD FOR PROCUREMENTS IN SUPPORT OF HUMANITARIAN OR PEACEKEEPING OPERATIONS OR CONTINGENCY OPERATIONS.

(a) TEMPORARY THRESHOLD AMOUNTS.—For a procurement referred to in section 302 that is carried out in support of a humanitarian or peacekeeping operation or a contingency operation, the simplified acquisition threshold definitions shall be applied as if the amount determined under the exception provided for such an operation in those definitions were—

(1) in the case of a contract to be awarded and performed, or purchase to be made, inside the United States, $250,000; or

(2) in the case of a contract to be awarded and performed, or purchase to be made, outside the United States, $500,000.

(b) SIMPLIFIED ACQUISITION THRESHOLD DEFINITIONS.—In this section, the term ''simplified acquisition threshold definitions'' means the following:

(1) Section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)).

(2) Section 309(d) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 259(d)).

(3) Section 2302(7) of title 10, United States Code.

(c) SMALL BUSINESS RESERVE.—For a procurement carried out pursuant to subsection (a), section 15(j) of the Small Business Act (15 U.S.C. 644(j)) shall be applied as if the maximum anticipated value identified therein is equal to the amounts referred to in subsection (a).

SEC. 304. INCREASED MICRO-PURCHASE THRESHOLD FOR CERTAIN PROCUREMENTS.

In the administration of section 32 of the Office of Federal Procurement Policy Act (41 U.S.C. 428) with respect to a procurement referred to in section 302, the amount specified in subsections (c), (d), and (f) of such section 32 shall be deemed to be $10,000.

SEC. 305. APPLICATION OF CERTAIN COMMERCIAL ITEMS AUTHORITIES TO CERTAIN PROCUREMENTS.

(a) AUTHORITY.—

(1) IN GENERAL.—The head of an executive agency may apply the provisions of law listed in paragraph (2) to a procurement referred to in section 302 without regard to whether the property or services are commercial items.

(2) COMMERCIAL ITEM LAWS.—The provisions of law referred to in paragraph (1) are as follows:

(A) Sections 31 and 34 of the Office of Federal Procurement Policy Act (41 U.S.C. 427, 430).

(B) Section 2304(g) of title 10, United States Code.

(C) Section 303(g) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(g)).

(b) INAPPLICABILITY OF LIMITATION ON USE OF SIMPLIFIED ACQUISITION PROCEDURES.—

(1) IN GENERAL.—The $5,000,000 limitation provided in section 31(a)(2) of the Office of Federal Procurement Policy Act (41 U.S.C. 427(a)(2)), section 2304(g)(1)(B) of title 10, United States Code, and section 303(g)(1)(B) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(g)(1)(B)) shall not apply to purchases of property or services to which any of the provisions of law referred to in subsection (a) are applied under the authority of this section.

(2) OMB GUIDANCE.—The Director of the Office of Management and Budget shall issue guidance and procedures for the use of simplified acquisition procedures for a purchase of property or services in excess of $5,000,000 under the authority of this section.

(c) CONTINUATION OF AUTHORITY FOR SIMPLIFIED PURCHASE PROCEDURES.—Authority under a provision of law referred to in subsection (a)(2) that expires under section 4202(e) of the Clinger-Cohen Act of 1996 (divisions D and E of Public Law 104–106; 10 U.S.C. 2304 note) shall, notwithstanding such section, continue to apply for use by the head of an executive agency as provided in subsections (a) and (b).

SEC. 306. USE OF STREAMLINED PROCEDURES.

(a) REQUIRED USE.—The head of an executive agency shall, when appropriate, use

streamlined acquisition authorities and procedures authorized by law for a procurement referred to in section 302, including authorities and procedures that are provided under the following provisions of law:

(1) FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES ACT OF 1949.—In title III of the Federal Property and Administrative Services Act of 1949:

(A) Paragraphs (1), (2), (6), and (7) of subsection (c) of section 303 (41 U.S.C. 253), relating to use of procedures other than competitive procedures under certain circumstances (subject to subsection (e) of such section).

(B) Section 303J (41 U.S.C. 253j), relating to orders under task and delivery order contracts.

(2) TITLE 10, UNITED STATES CODE.—In chapter 137 of title 10, United States Code:

(A) Paragraphs (1), (2), (6), and (7) of subsection (c) of section 2304, relating to use of procedures other than competitive procedures under certain circumstances (subject to subsection (e) of such section).

(B) Section 2304c, relating to orders under task and delivery order contracts.

(3) OFFICE OF FEDERAL PROCUREMENT POLICY ACT.—Paragraphs (1)(B), (1)(D), and (2) of section 18(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 416(c)), relating to inapplicability of a requirement for procurement notice.

(b) WAIVER OF CERTAIN SMALL BUSINESS THRESHOLD REQUIREMENTS.—Subclause (II) of section 8(a)(1)(D)(i) of the Small Business Act (15 U.S.C. 637(a)(1)(D)(i)) and clause (ii) of section 31(b)(2)(A) of such Act (15 U.S.C. 657a(b)(2)(A)) shall not apply in the use of streamlined acquisition authorities and procedures referred to in paragraphs (1)(A) and (2)(A) of subsection (a) for a procurement referred to in section 302.

SEC. 307. REVIEW AND REPORT BY COMPTROLLER GENERAL.

(a) REQUIREMENTS.—Not later than March 31, 2004, the Comptroller General shall—

(1) complete a review of the extent to which procurements of property and services have been made in accordance with this subtitle; and

(2) submit a report on the results of the review to the Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives.

(b) CONTENT OF REPORT.—The report under subsection (a)(2) shall include the following matters:

(1) ASSESSMENT.—The Comptroller General's assessment of—

(A) the extent to which property and services procured in accordance with this title have contributed to the capacity of the workforce of Federal Government employees within each executive agency to carry out the mission of the executive agency; and

(B) the extent to which Federal Government employees have been trained on the use of technology.

(2) RECOMMENDATIONS.—Any recommendations of the Comptroller General resulting from the assessment described in paragraph (1).

(c) CONSULTATION.—In preparing for the review under subsection (a)(1), the Comptroller shall consult with the Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives on the specific issues and topics to be reviewed. The extent of coverage needed in areas such as technology integration, employee training, and human capital management, as well as the data requirements of the study, shall be included as part of the consultation.

Subtitle B—Other Matters

SEC. 311. IDENTIFICATION OF NEW ENTRANTS INTO THE FEDERAL MARKETPLACE.

The head of each executive agency shall conduct market research on an ongoing basis to identify effectively the capabilities, including the capabilities of small businesses and new entrants into Federal contracting, that are available in the marketplace for meeting the requirements of the executive agency in furtherance of defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack. The head of the executive agency shall, to the maximum extent practicable, take advantage of commercially available market research methods, including use of commercial databases, to carry out the research.

TITLE IV—NATIONAL COMMISSION ON TERRORIST ATTACKS UPON THE UNITED STATES

SEC. 401. ESTABLISHMENT OF COMMISSION.

There is established the National Commission on Terrorist Attacks Upon the United States (in this title referred to as the ''Commission'').

SEC. 402. PURPOSES.

The purposes of the Commission are to—

(1) examine and report upon the facts and causes relating to the terrorist attacks of September 11, 2001, occurring at the World Trade Center in New York, New York and at the Pentagon in Virginia;

(2) ascertain, evaluate, and report on the evidence developed by all relevant governmental agencies regarding the facts and circumstances surrounding the attacks;

(3) build upon the investigations of other entities, and avoid unnecessary duplication, by reviewing the findings, conclusions, and recommendations of—

(A) the Joint Inquiry of the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives regarding the terrorist attacks of September 11, 2001;

(B) other executive branch, congressional, or independent commission investigations into the terrorist attacks of September 11, 2001, other terrorist attacks, and terrorism generally;

(4) make a full and complete accounting of the circumstances surrounding the attacks, and the extent of the United States' preparedness for, and response to, the attacks; and

(5) investigate and report to the President and Congress on its findings, conclusions, and recommendations for corrective measures that can be taken to prevent acts of terrorism.

SEC. 403. COMPOSITION OF THE COMMISSION.

(a) MEMBERS.—The Commission shall be composed of 10 members, of whom—

(1) 3 members shall be appointed by the majority leader of the Senate;

(2) 3 members shall be appointed by the Speaker of the House of Representatives;

(3) 2 members shall be appointed by the minority leader of the Senate; and

(4) 2 members shall be appointed by the minority leader of the House of Representatives.

(b) CHAIRPERSON; VICE CHAIRPERSON.—

(1) IN GENERAL.—Subject to paragraph (2), the Chairperson and Vice Chairperson of the Commission shall be elected by the members.

(2) POLITICAL PARTY AFFILIATION.—The Chairperson and Vice Chairperson shall not be from the same political party.

(c) QUALIFICATIONS; INITIAL MEETING.—

(1) POLITICAL PARTY AFFILIATION.—Not more than 5 members of the Commission shall be from the same political party.

(2) NONGOVERNMENTAL APPOINTEES.—An individual appointed to the Commission may not be an officer or employee of the Federal Government or any State or local government.

(3) OTHER QUALIFICATIONS.—It is the sense of Congress that individuals appointed to the Commission should be prominent United States citizens, with national recognition and significant depth of experience in such professions as governmental service, law enforcement, the armed services, legal practice, public administration, intelligence gathering, commerce, including aviation matters, and foreign affairs.

(4) INITIAL MEETING.—If 60 days after the date of enactment of this Act, 6 or more members of the Commission have been appointed, those members who have been appointed may meet and, if necessary, select a temporary chairperson, who may begin the operations of the Commission, including the hiring of staff.

(d) QUORUM; VACANCIES.—After its initial meeting, the Commission shall meet upon the call of the chairperson or a majority of its members. Six members of the Commission shall constitute a quorum. Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner in which the original appointment was made.

SEC. 404. FUNCTIONS OF THE COMMISSION.

The functions of the Commission are to—

(1) conduct an investigation that—

(A) investigates relevant facts and circumstances relating to the terrorist attacks of September 11, 2001, including any relevant legislation, Executive order, regulation, plan, policy, practice, or procedure; and

(B) may include relevant facts and circumstances relating to—

(i) intelligence agencies;

(ii) law enforcement agencies;

(iii) diplomacy;

(iv) immigration, nonimmigrant visas, and border control;

(v) the flow of assets to terrorist organizations;

(vi) commercial aviation; and

(vii) other areas of the public and private sectors determined relevant by the Commission for its inquiry;

(2) identify, review, and evaluate the lessons learned from the terrorist attacks of September 11, 2001, regarding the structure, coordination, management policies, and procedures of the Federal Government, and, if appropriate, State and local governments and nongovernmental entities, relative to detecting, preventing, and responding to such terrorist attacks; and

(3) submit to the President and Congress such reports as are required by this title containing such findings, conclusions, and recommendations as the Commission shall determine, including proposing organization, coordination, planning, management arrangements, procedures, rules, and regulations.

SEC. 405. POWERS OF THE COMMISSION.

(a) IN GENERAL.—

(1) HEARINGS AND EVIDENCE.—The Commission or, on the authority of the Commission, any subcommittee or member thereof, may, for the purpose of carrying out this title—

(A) hold such hearings and sit and act at such times and places, take such testimony, receive such evidence, administer such oaths; and

(B) require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, and documents, as the Commission or such designated subcommittee or designated member may determine advisable.

(2) SUBPOENAS.—

(A) ISSUANCE.—Subpoenas issued under paragraph (1)(B) may be issued under the signature of the chairperson of the Commission,

the vice chairperson of the Commission, the chairperson of any subcommittee created by a majority of the Commission, or any member designated by a majority of the Commission, and may be served by any person designated by the chairperson, subcommittee chairperson, or member.

(B) ENFORCEMENT.—

(i) IN GENERAL.—In the case of contumacy or failure to obey a subpoena issued under paragraph (1)(B), the United States district court for the judicial district in which the subpoenaed person resides, is served, or may be found, or where the subpoena is returnable, may issue an order requiring such person to appear at any designated place to testify or to produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt of that court.

(ii) ADDITIONAL ENFORCEMENT.—In the case of any failure of any witness to comply with any subpoena or to testify when summoned under authority of this section, the Commission may, by majority vote, certify a statement of fact constituting such failure to the appropriate United States attorney, who may bring the matter before the grand jury for its action, under the same statutory authority and procedures as if the United States attorney had received a certification under sections 102 through 104 of the Revised Statutes of the United States (2 U.S.C. 192 through 194).

(b) CLOSED MEETINGS.—

(1) IN GENERAL.—Meetings of the Commission may be closed to the public under section 10(d) of the Federal Advisory Committee Act (5 U.S.C. App.) or other applicable law.

(2) ADDITIONAL AUTHORITY.—In addition to the authority under paragraph (1), section 10(a)(1) and (3) of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to any portion of a Commission meeting if the President determines that such portion or portions of that meeting is likely to disclose matters that could endanger national security. If the President makes such determination, the requirements relating to a determination under section 10(d) of that Act shall apply.

(c) CONTRACTING.—The Commission may, to such extent and in such amounts as are provided in appropriation Acts, enter into contracts to enable the Commission to discharge its duties under this title.

(d) INFORMATION FROM FEDERAL AGENCIES.—The Commission is authorized to secure directly from any executive department, bureau, agency, board, commission, office, independent establishment, or instrumentality of the Government information, suggestions, estimates, and statistics for the purposes of this title. Each department, bureau, agency, board, commission, office, independent establishment, or instrumentality shall, to the extent authorized by law, furnish such information, suggestions, estimates, and statistics directly to the Commission, upon request made by the chairperson, the chairperson of any subcommittee created by a majority of the Commission, or any member designated by a majority of the Commission.

(e) ASSISTANCE FROM FEDERAL AGENCIES.—

(1) GENERAL SERVICES ADMINISTRATION.—The Administrator of General Services shall provide to the Commission on a reimbursable basis administrative support and other services for the performance of the Commission's functions.

(2) OTHER DEPARTMENTS AND AGENCIES.—In addition to the assistance prescribed in paragraph (1), departments and agencies of the United States are authorized to provide to the Commission such services, funds, facilities, staff, and other support services as they may determine advisable and as may be authorized by law.

(f) GIFTS.—The Commission may accept, use, and dispose of gifts or donations of services or property.

(g) POSTAL SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as departments and agencies of the United States.

SEC. 406. STAFF OF THE COMMISSION.

(a) IN GENERAL.—

(1) APPOINTMENT AND COMPENSATION.—The chairperson, in accordance with rules agreed upon by the Commission, may appoint and fix the compensation of a staff director and such other personnel as may be necessary to enable the Commission to carry out its functions, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no rate of pay fixed under this subsection may exceed the equivalent of that payable for a position at level V of the Executive Schedule under section 5316 of title 5, United States Code.

(2) PERSONNEL AS FEDERAL EMPLOYEES.—

(A) IN GENERAL.—The executive director and any personnel of the Commission who are employees shall be employees under section 2105 of title 5, United States Code, for purposes of chapters 63, 81, 83, 84, 85, 87, 89, and 90 of that title.

(B) MEMBERS OF COMMISSION.—Subparagraph (A) shall not be construed to apply to members of the Commission.

(b) DETAILEES.—Any Federal Government employee may be detailed to the Commission without reimbursement from the Commission, and such detailee shall retain the rights, status, and privileges of his or her regular employment without interruption.

(c) CONSULTANT SERVICES.—The Commission is authorized to procure the services of experts and consultants in accordance with section 3109 of title 5, United States Code, but at rates not to exceed the daily rate paid a person occupying a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code.

SEC. 407. COMPENSATION AND TRAVEL EXPENSES.

(a) COMPENSATION.—Each member of the Commission may be compensated at not to exceed the daily equivalent of the annual rate of basic pay in effect for a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day during which that member is engaged in the actual performance of the duties of the Commission.

(b) TRAVEL EXPENSES.—While away from their homes or regular places of business in the performance of services for the Commission, members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of title 5, United States Code.

SEC. 408. SECURITY CLEARANCES FOR COMMISSION MEMBERS AND STAFF.

The appropriate executive departments and agencies shall cooperate with the Commission in expeditiously providing to the Commission members and staff appropriate security clearances in a manner consistent with existing procedures and requirements, except that no person shall be provided with access to classified information under this section who would not otherwise qualify for such security clearance.

SEC. 409. REPORTS OF THE COMMISSION; TERMINATION.

(a) INITIAL REPORT.—Not later than 6 months after the date of the first meeting of the Commission, the Commission shall submit to the President and Congress an initial report containing such findings, conclusions, and recommendations for corrective measures as have been agreed to by a majority of Commission members.

(b) ADDITIONAL REPORTS.—Not later than 1 year after the submission of the initial report of the Commission, the Commission shall submit to the President and Congress a second report containing such findings, conclusions, and recommendations for corrective measures as have been agreed to by a majority of Commission members.

(c) TERMINATION.—

(1) IN GENERAL.—The Commission, and all the authorities of this title, shall terminate 60 days after the date on which the second report is submitted under subsection (b).

(2) ADMINISTRATIVE ACTIVITIES BEFORE TERMINATION.—The Commission may use the 60-day period referred to in paragraph (1) for the purpose of concluding its activities, including providing testimony to committees of Congress concerning its reports and disseminating the second report.

SEC. 410. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Commission to carry out this title $3,000,000, to remain available until expended.

TITLE V—EFFECTIVE DATE

SEC. 501. EFFECTIVE DATE.

This division shall take effect 30 days after the date of enactment of this Act or, if enacted within 30 days before January 1, 2003, on January 1, 2003.

DIVISION B—IMMIGRATION REFORM, ACCOUNTABILITY, AND SECURITY ENHANCEMENT ACT OF 2002

TITLE X—SHORT TITLE AND DEFINITIONS.

SEC. 1001. SHORT TITLE.

This division may be cited as the ''Immigration Reform, Accountability, and Security Enhancement Act of 2002''.

SEC. 1002. DEFINITIONS.

In this division:

(1) ENFORCEMENT BUREAU.—The term ''Enforcement Bureau'' means the Bureau of Enforcement and Border Affairs established in section 114 of the Immigration and Nationality Act, as added by section 1105 of this Act.

(2) FUNCTION.—The term ''function'' includes any duty, obligation, power, authority, responsibility, right, privilege, activity, or program.

(3) IMMIGRATION ENFORCEMENT FUNCTIONS.—The term ''immigration enforcement functions'' has the meaning given the term in section 114(b)(2) of the Immigration and Nationality Act, as added by section 1105 of this Act.

(4) IMMIGRATION LAWS OF THE UNITED STATES.—The term ''immigration laws of the United States'' has the meaning given the term in section 111(e) of the Immigration and Nationality Act, as added by section 1102 of this Act.

(5) IMMIGRATION POLICY, ADMINISTRATION, AND INSPECTION FUNCTIONS.—The term ''immigration policy, administration, and inspection functions'' has the meaning given the term in section 112(b)(3) of the Immigration and Nationality Act, as added by section 1103 of this Act.

(6) IMMIGRATION SERVICE FUNCTIONS.—The term ''immigration service functions'' has the meaning given the term in section 113(b)(2) of the Immigration and Nationality Act, as added by section 1104 of this Act.

(7) OFFICE.—The term ''office'' includes any office, administration, agency, bureau, institute, council, unit, organizational entity, or component thereof.

(8) SECRETARY.—The term ''Secretary'' means the Secretary of Homeland Security.

(9) SERVICE BUREAU.—The term ''Service Bureau'' means the Bureau of Immigration Services established in section 113 of the Immigration and Nationality Act, as added by section 1104 of this Act.

(10) UNDER SECRETARY.—The term ''Under Secretary'' means the Under Secretary of Homeland Security for Immigration Affairs appointed under section 112 of the Immigration and Nationality Act, as added by section 1103 of this Act.

TITLE XI—DIRECTORATE OF IMMIGRATION AFFAIRS

Subtitle A—Organization

SEC. 1101. ABOLITION OF INS.

(a) IN GENERAL.—The Immigration and Naturalization Service is abolished.

(b) REPEAL.—Section 4 of the Act of February 14, 1903, as amended (32 Stat. 826; relating to the establishment of the Immigration and Naturalization Service), is repealed.

SEC. 1102. ESTABLISHMENT OF DIRECTORATE OF IMMIGRATION AFFAIRS.

(a) ESTABLISHMENT.—Title I of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended—

(1) by inserting ''**CHAPTER 1—DEFINITIONS AND GENERAL AUTHORITIES**'' after ''**TITLE I—GENERAL**''; and

(2) by adding at the end the following:

''CHAPTER 2—DIRECTORATE OF IMMIGRATION AFFAIRS

''SEC. 111. ESTABLISHMENT OF DIRECTORATE OF IMMIGRATION AFFAIRS.

''(a) ESTABLISHMENT.—There is established within the Department of Homeland Security the Directorate of Immigration Affairs.

''(b) PRINCIPAL OFFICERS.—The principal officers of the Directorate are the following:

''(1) The Under Secretary of Homeland Security for Immigration Affairs appointed under section 112.

''(2) The Assistant Secretary of Homeland Security for Immigration Services appointed under section 113.

''(3) The Assistant Secretary of Homeland Security for Enforcement and Border Affairs appointed under section 114.

''(c) FUNCTIONS.—Under the authority of the Secretary of Homeland Security, the Directorate shall perform the following functions:

''(1) Immigration policy, administration, and inspection functions, as defined in section 112(b).

''(2) Immigration service and adjudication functions, as defined in section 113(b).

''(3) Immigration enforcement functions, as defined in section 114(b).

''(d) AUTHORIZATION OF APPROPRIATIONS.—

''(1) IN GENERAL.—There are authorized to be appropriated to the Department of Homeland Security such sums as may be necessary to carry out the functions of the Directorate.

''(2) AVAILABILITY OF FUNDS.—Amounts appropriated pursuant to paragraph (1) are authorized to remain available until expended.

''(e) IMMIGRATION LAWS OF THE UNITED STATES DEFINED.—In this chapter, the term 'immigration laws of the United States' means the following:

''(1) This Act.

''(2) Such other statutes, Executive orders, regulations, or directives, treaties, or other international agreements to which the United States is a party, insofar as they relate to the admission to, detention in, or removal from the United States of aliens, insofar as they relate to the naturalization of aliens, or insofar as they otherwise relate to the status of aliens.''.

(b) CONFORMING AMENDMENTS.—(1) The Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended—

(A) by striking section 101(a)(34) (8 U.S.C. 1101(a)(34)) and inserting the following:

''(34) The term 'Directorate' means the Directorate of Immigration Affairs established by section 111.'';

(B) by adding at the end of section 101(a) the following new paragraphs:

''(51) The term 'Secretary' means the Secretary of Homeland Security.

''(52) The term 'Department' means the Department of Homeland Security.'';

(C) by striking ''Attorney General'' and ''Department of Justice'' each place it appears and inserting ''Secretary'' and ''Department'', respectively;

(D) in section 101(a)(17) (8 U.S.C. 1101(a)(17)), by striking ''The'' and inserting ''Except as otherwise provided in section 111(e), the; and

(E) by striking ''Immigration and Naturalization Service'', ''Service'', and ''Service's'' each place they appear and inserting ''Directorate of Immigration Affairs'', ''Directorate'', and ''Directorate's'', respectively.

(2) Section 6 of the Act entitled ''An Act to authorize certain administrative expenses for the Department of Justice, and for other purposes'', approved July 28, 1950 (64 Stat. 380), is amended—

(A) by striking ''Immigration and Naturalization Service'' and inserting ''Directorate of Immigration Affairs'';

(B) by striking clause (a); and

(C) by redesignating clauses (b), (c), (d), and (e) as clauses (a), (b), (c), and (d), respectively.

(c) REFERENCES.—Any reference in any statute, reorganization plan, Executive order, regulation, agreement, determination, or other official document or proceeding to the Immigration and Naturalization Service shall be deemed to refer to the Directorate of Immigration Affairs of the Department of Homeland Security, and any reference in the immigration laws of the United States (as defined in section 111(e) of the Immigration and Nationality Act, as added by this section) to the Attorney General shall be deemed to refer to the Secretary of Homeland Security, acting through the Under Secretary of Homeland Security for Immigration Affairs.

SEC. 1103. UNDER SECRETARY OF HOMELAND SECURITY FOR IMMIGRATION AFFAIRS.

(a) IN GENERAL.—Chapter 2 of title I of the Immigration and Nationality Act, as added by section 1102 of this Act, is amended by adding at the end the following:

''SEC. 112. UNDER SECRETARY OF HOMELAND SECURITY FOR IMMIGRATION AFFAIRS.

''(a) UNDER SECRETARY OF IMMIGRATION AFFAIRS.—The Directorate shall be headed by an Under Secretary of Homeland Security for Immigration Affairs who shall be appointed in accordance with section 103(c) of the Immigration and Nationality Act.

''(b) RESPONSIBILITIES OF THE UNDER SECRETARY.—

''(1) IN GENERAL.—The Under Secretary shall be charged with any and all responsibilities and authority in the administration of the Directorate and of this Act which are conferred upon the Secretary as may be delegated to the Under Secretary by the Secretary or which may be prescribed by the Secretary.

''(2) DUTIES.—Subject to the authority of the Secretary under paragraph (1), the Under Secretary shall have the following duties:

''(A) IMMIGRATION POLICY.—The Under Secretary shall develop and implement policy under the immigration laws of the United States. The Under Secretary shall propose, promulgate, and issue rules, regulations, and statements of policy with respect to any function within the jurisdiction of the Directorate.

''(B) ADMINISTRATION.—The Under Secretary shall have responsibility for—

''(i) the administration and enforcement of the functions conferred upon the Directorate under section 1111(c) of this Act; and

''(ii) the administration of the Directorate, including the direction, supervision, and coordination of the Bureau of Immigration Services and the Bureau of Enforcement and Border Affairs.

''(C) INSPECTIONS.—The Under Secretary shall be directly responsible for the administration and enforcement of the functions of the Directorate under the immigration laws of the United States with respect to the inspection of aliens arriving at ports of entry of the United States.

''(3) ACTIVITIES.—As part of the duties described in paragraph (2), the Under Secretary shall do the following:

''(A) RESOURCES AND PERSONNEL MANAGEMENT.—The Under Secretary shall manage the resources, personnel, and other support requirements of the Directorate.

''(B) INFORMATION RESOURCES MANAGEMENT.—Under the direction of the Secretary, the Under Secretary shall manage the information resources of the Directorate, including the maintenance of records and databases and the coordination of records and other information within the Directorate, and shall ensure that the Directorate obtains and maintains adequate information technology systems to carry out its functions.

''(C) COORDINATION OF RESPONSE TO CIVIL RIGHTS VIOLATIONS.—The Under Secretary shall coordinate, with the Civil Rights Officer of the Department of Homeland Security or other officials, as appropriate, the resolution of immigration issues that involve civil rights violations.

''(D) RISK ANALYSIS AND RISK MANAGEMENT.—Assisting and supporting the Secretary, in coordination with other Directorates and entities outside the Department, in conducting appropriate risk analysis and risk management activities consistent with the mission and functions of the Directorate.

''(3) DEFINITION.—In this chapter, the term ''immigration policy, administration, and inspection functions'' means the duties, activities, and powers described in this subsection.

''(c) GENERAL COUNSEL.—

''(1) IN GENERAL.—There shall be within the Directorate a General Counsel, who shall be appointed by the Secretary of Homeland Security, in consultation with the Under Secretary.

''(2) FUNCTION.—The General Counsel shall—

''(A) serve as the chief legal officer for the Directorate; and

''(B) be responsible for providing specialized legal advice, opinions, determinations, regulations, and any other assistance to the Under Secretary with respect to legal matters affecting the Directorate, and any of its components.

''(d) FINANCIAL OFFICERS FOR THE DIRECTORATE OF IMMIGRATION AFFAIRS.—

''(1) CHIEF FINANCIAL OFFICER.—

''(A) IN GENERAL.—There shall be within the Directorate a Chief Financial Officer. The position of Chief Financial Officer shall be a career reserved position in the Senior Executive Service and shall have the authorities and functions described in section 902 of title 31, United States Code, in relation to financial activities of the Directorate. For purposes of section 902(a)(1) of such title, the Under Secretary shall be deemed to be an agency head.

''(B) FUNCTIONS.—The Chief Financial Officer shall be responsible for directing, supervising, and coordinating all budget formulas and execution for the Directorate.

''(2) DEPUTY CHIEF FINANCIAL OFFICER.—The Directorate shall be deemed to be an agency for purposes of section 903 of such title (relating to Deputy Chief Financial Officers).

''(e) CHIEF OF POLICY.—

''(1) IN GENERAL.—There shall be within the Directorate a Chief of Policy. Under the authority of the Under Secretary, the Chief of Policy shall be responsible for—

''(A) establishing national immigration policy and priorities;

''(B) performing policy research and analysis on issues arising under the immigration laws of the United States; and

''(C) coordinating immigration policy between the Directorate, the Service Bureau, and the Enforcement Bureau.

''(2) WITHIN THE SENIOR EXECUTIVE SERVICE.—The position of Chief of Policy shall be a Senior Executive Service position under section 5382 of title 5, United States Code.

''(f) CHIEF OF CONGRESSIONAL, INTERGOVERNMENTAL, AND PUBLIC AFFAIRS.—

''(1) IN GENERAL.—There shall be within the Directorate a Chief of Congressional, Intergovernmental, and Public Affairs. Under the authority of the Under Secretary, the Chief of Congressional, Intergovernmental, and Public Affairs shall be responsible for—

''(A) providing to Congress information relating to issues arising under the immigration laws of the United States, including information on specific cases;

''(B) serving as a liaison with other Federal agencies on immigration issues; and

''(C) responding to inquiries from, and providing information to, the media on immigration issues.

''(2) WITHIN THE SENIOR EXECUTIVE SERVICE.—The position of Chief of Congressional, Intergovernmental, and Public Affairs shall be a Senior Executive Service position under section 5382 of title 5, United States Code.''.

(b) COMPENSATION OF THE UNDER SECRETARY.—Section 5314 of title 5, United States Code, is amended by adding at the end the following:

''Under Secretary of Immigration Affairs, Department of Justice.''.

(c) COMPENSATION OF GENERAL COUNSEL AND CHIEF FINANCIAL OFFICER.—Section 5316 of title 5, United States Code, is amended by adding at the end the following:

''General Counsel, Directorate of Immigration Affairs, Department of Homeland Security.

''Chief Financial Officer, Directorate of Immigration Affairs, Department of Homeland Security.''.

(d) REPEALS.—The following provisions of law are repealed:

(1) Section 7 of the Act of March 3, 1891, as amended (26 Stat. 1085; relating to the establishment of the office of the Commissioner of Immigration and Naturalization).

(2) Section 201 of the Act of June 20, 1956 (70 Stat. 307; relating to the compensation of assistant commissioners and district directors).

(3) Section 1 of the Act of March 2, 1895 (28 Stat. 780; relating to special immigrant inspectors).

(e) CONFORMING AMENDMENTS.—(1)(A) Section 101(a)(8) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(8)) is amended to read as follows:

''(8) The term 'Under Secretary' means the Under Secretary of Homeland Security for Immigration Affairs who is appointed under section 103(c).''.

(B) Except as provided in subparagraph (C), the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended by striking ''Commissioner of Immigration and Naturalization'' and ''Commissioner'' each place they appear and inserting ''Under Secretary of Homeland Security for Immigration Affairs'' and ''Under Secretary'', respectively.

(C) The amendments made by subparagraph (B) do not apply to references to the ''Commissioner of Social Security'' in section 290(c) of the Immigration and Nationality Act (8 U.S.C. 1360(c)).

(2) Section 103 of the Immigration and Nationality Act (8 U.S.C. 1103) is amended—

(A) in subsection (c), by striking ''Commissioner'' and inserting ''Under Secretary'';

(B) in the section heading, by striking ''COMMISSIONER'' and inserting ''UNDER SECRETARY'';

(C) in subsection (d), by striking ''Commissioner'' and inserting ''Under Secretary''; and

(D) in subsection (e), by striking ''Commissioner'' and inserting ''Under Secretary''.

(3) Sections 104 and 105 of the Immigration and Nationality Act (8 U.S.C. 1104, 1105) are amended by striking ''Director'' each place it appears and inserting ''Assistant Secretary of State for Consular Affairs''.

(4) Section 104(c) of the Immigration and Nationality Act (8 U.S.C. 1104(c)) is amended—

(A) in the first sentence, by striking ''Passport Office, a Visa Office,'' and inserting ''a Passport Services office, a Visa Services office, an Overseas Citizen Services office,''; and

(B) in the second sentence, by striking ''the Passport Office and the Visa Office'' and inserting ''the Passport Services office and the Visa Services office''.

(5) Section 5315 of title 5, United States Code, is amended by striking the following:

''Commissioner of Immigration and Naturalization, Department of Justice.''.

(f) REFERENCES.—Any reference in any statute, reorganization plan, Executive order, regulation, agreement, determination, or other official document or proceeding to the Commissioner of Immigration and Naturalization shall be deemed to refer to the Under Secretary of Homeland Security for Immigration Affairs.

SEC. 1104. BUREAU OF IMMIGRATION SERVICES.

(a) IN GENERAL.—Chapter 2 of title I of the Immigration and Nationality Act, as added by section 1102 and amended by section 1103, is further amended by adding at the end the following:

''SEC. 113. BUREAU OF IMMIGRATION SERVICES.

''(a) ESTABLISHMENT OF BUREAU.—

''(1) IN GENERAL.—There is established within the Directorate a bureau to be known as the Bureau of Immigration Services (in this chapter referred to as the 'Service Bureau').

''(2) ASSISTANT SECRETARY.—The head of the Service Bureau shall be the Assistant Secretary of Homeland Security for Immigration Services (in this chapter referred to as the 'Assistant Secretary for Immigration Services'), who—

''(A) shall be appointed by the Secretary of Homeland Security, in consultation with the Under Secretary; and

''(B) shall report directly to the Under Secretary.

''(b) RESPONSIBILITIES OF THE ASSISTANT SECRETARY.—

''(1) IN GENERAL.—Subject to the authority of the Secretary and the Under Secretary, the Assistant Secretary for Immigration Services shall administer the immigration service functions of the Directorate.

''(2) IMMIGRATION SERVICE FUNCTIONS DEFINED.—In this chapter, the term 'immigration service functions' means the following functions under the immigration laws of the United States:

''(A) Adjudications of petitions for classification of nonimmigrant and immigrant status.

''(B) Adjudications of applications for adjustment of status and change of status.

''(C) Adjudications of naturalization applications.

''(D) Adjudications of asylum and refugee applications.

''(E) Adjudications performed at Service centers.

''(F) Determinations concerning custody and parole of asylum seekers who do not have prior nonpolitical criminal records and who have been found to have a credible fear of persecution, including determinations under section 236B.

''(G) All other adjudications under the immigration laws of the United States.

''(c) CHIEF BUDGET OFFICER OF THE SERVICE BUREAU.—There shall be within the Service Bureau a Chief Budget Officer. Under the authority of the Chief Financial Officer of the Directorate, the Chief Budget Officer of the Service Bureau shall be responsible for monitoring and supervising all financial activities of the Service Bureau.

''(d) QUALITY ASSURANCE.—There shall be within the Service Bureau an Office of Quality Assurance that shall develop procedures and conduct audits to—

''(1) ensure that the Directorate's policies with respect to the immigration service functions of the Directorate are properly implemented; and

''(2) ensure that Service Bureau policies or practices result in sound records management and efficient and accurate service.

''(e) OFFICE OF PROFESSIONAL RESPONSIBILITY.—There shall be within the Service Bureau an Office of Professional Responsibility that shall have the responsibility for ensuring the professionalism of the Service Bureau and for receiving and investigating charges of misconduct or ill treatment made by the public.

''(f) TRAINING OF PERSONNEL.—The Assistant Secretary for Immigration Services, in consultation with the Under Secretary, shall have responsibility for determining the training for all personnel of the Service Bureau.''.

(b) COMPENSATION OF ASSISTANT SECRETARY OF SERVICE BUREAU.—Section 5315 of title 5, United States Code, is amended by adding at the end the following:

''Assistant Secretary of Homeland Security for Immigration Services, Directorate of Immigration Affairs, Department of Homeland Security.''.

(c) SERVICE BUREAU OFFICES.—

(1) IN GENERAL.—Under the direction of the Secretary, the Under Secretary, acting through the Assistant Secretary for Immigration Services, shall establish Service Bureau offices, including suboffices and satellite offices, in appropriate municipalities and locations in the United States. In the selection of sites for the Service Bureau offices, the Under Secretary shall consider the location's proximity and accessibility to the community served, the workload for which that office shall be responsible, whether the location would significantly reduce the backlog of cases in that given geographic area, whether the location will improve customer service, and whether the location is in a geographic area with an increase in the population to be served. The Under Secretary shall conduct periodic reviews to assess whether the location and size of the respective Service Bureau offices adequately serve customer service needs.

(2) TRANSITION PROVISION.—In determining the location of Service Bureau offices, including suboffices and satellite offices, the Under Secretary shall first consider maintaining and upgrading offices in existing geographic locations that satisfy the provisions of paragraph (1). The Under Secretary shall also explore the feasibility and desirability of establishing new Service Bureau offices, including suboffices and satellite offices, in new geographic locations where there is a demonstrated need.

SEC. 1105. BUREAU OF ENFORCEMENT AND BORDER AFFAIRS.

(a) IN GENERAL.—Chapter 2 of title I of the Immigration and Nationality Act, as added

by section 1102 and amended by sections 1103 and 1104, is further amended by adding at the end the following:

"SEC. 114. BUREAU OF ENFORCEMENT AND BORDER AFFAIRS.

''(a) ESTABLISHMENT OF BUREAU.—

''(1) IN GENERAL.—There is established within the Directorate a bureau to be known as the Bureau of Enforcement and Border Affairs (in this chapter referred to as the 'Enforcement Bureau').

''(2) ASSISTANT SECRETARY.—The head of the Enforcement Bureau shall be the Assistant Secretary of Homeland Security for Enforcement and Border Affairs (in this chapter referred to as the 'Assistant Secretary for Immigration Enforcement'), who—

''(A) shall be appointed by the Secretary of Homeland Security, in consultation with the Under Secretary; and

''(B) shall report directly to the Under Secretary.

''(b) RESPONSIBILITIES OF THE ASSISTANT SECRETARY.—

''(1) IN GENERAL.—Subject to the authority of the Secretary and the Under Secretary, the Assistant Secretary for Immigration Enforcement shall administer the immigration enforcement functions of the Directorate.

''(2) IMMIGRATION ENFORCEMENT FUNCTIONS DEFINED.—In this chapter, the term 'immigration enforcement functions' means the following functions under the immigration laws of the United States:

''(A) The border patrol function.

''(B) The detention function, except as specified in section 113(b)(2)(F).

''(C) The removal function.

''(D) The intelligence function.

''(E) The investigations function.

''(c) CHIEF BUDGET OFFICER OF THE ENFORCEMENT BUREAU.—There shall be within the Enforcement Bureau a Chief Budget Officer. Under the authority of the Chief Financial Officer of the Directorate, the Chief Budget Officer of the Enforcement Bureau shall be responsible for monitoring and supervising all financial activities of the Enforcement Bureau.

''(d) OFFICE OF PROFESSIONAL RESPONSIBILITY.—There shall be within the Enforcement Bureau an Office of Professional Responsibility that shall have the responsibility for ensuring the professionalism of the Enforcement Bureau and receiving charges of misconduct or ill treatment made by the public and investigating the charges.

''(e) OFFICE OF QUALITY ASSURANCE.—There shall be within the Enforcement Bureau an Office of Quality Assurance that shall develop procedures and conduct audits to—

''(1) ensure that the Directorate's policies with respect to immigration enforcement functions are properly implemented; and

''(2) ensure that Enforcement Bureau policies or practices result in sound record management and efficient and accurate recordkeeping.

''(f) TRAINING OF PERSONNEL.—The Assistant Secretary for Immigration Enforcement, in consultation with the Under Secretary, shall have responsibility for determining the training for all personnel of the Enforcement Bureau.''.

(b) COMPENSATION OF ASSISTANT SECRETARY OF ENFORCEMENT BUREAU.—Section 5315 of title 5, United States Code, is amended by adding at the end the following:

''Assistant Security of Homeland Security for Enforcement and Border Affairs, Directorate of Immigration Affairs, Department of Homeland Security.''.

(c) ENFORCEMENT BUREAU OFFICES.—

(1) IN GENERAL.—Under the direction of the Secretary, the Under Secretary, acting through the Assistant Secretary for Immigration Enforcement, shall establish Enforcement Bureau offices, including suboffices and satellite offices, in appropriate municipalities and locations in the United States. In the selection of sites for the Enforcement Bureau offices, the Under Secretary shall make selections according to trends in unlawful entry and unlawful presence, alien smuggling, national security concerns, the number of Federal prosecutions of immigration-related offenses in a given geographic area, and other enforcement considerations. The Under Secretary shall conduct periodic reviews to assess whether the location and size of the respective Enforcement Bureau offices adequately serve enforcement needs.

(2) TRANSITION PROVISION.—In determining the location of Enforcement Bureau offices, including suboffices and satellite offices, the Under Secretary shall first consider maintaining and upgrading offices in existing geographic locations that satisfy the provisions of paragraph (1). The Under Secretary shall also explore the feasibility and desirability of establishing new Enforcement Bureau offices, including suboffices and satellite offices, in new geographic locations where there is a demonstrated need.

SEC. 1106. OFFICE OF THE OMBUDSMAN WITHIN THE DIRECTORATE.

(a) IN GENERAL.—Chapter 2 of title I of the Immigration and Nationality Act, as added by section 1102 and amended by sections 1103, 1104, and 1105, is further amended by adding at the end the following:

"SEC. 115. OFFICE OF THE OMBUDSMAN FOR IMMIGRATION AFFAIRS.

''(a) IN GENERAL.—There is established within the Directorate the Office of the Ombudsman for Immigration Affairs, which shall be headed by the Ombudsman.

''(b) OMBUDSMAN.—

''(1) APPOINTMENT.—The Ombudsman shall be appointed by the Secretary of Homeland Security, in consultation with the Under Secretary. The Ombudsman shall report directly to the Under Secretary.

''(2) COMPENSATION.—The Ombudsman shall be entitled to compensation at the same rate as the highest rate of basic pay established for the Senior Executive Service under section 5382 of title 5, United States Code, or, if the Secretary of Homeland Security so determines, at a rate fixed under section 9503 of such title.

''(c) FUNCTIONS OF OFFICE.—The functions of the Office of the Ombudsman for Immigration Affairs shall include—

''(1) to assist individuals in resolving problems with the Directorate or any component thereof;

''(2) to identify systemic problems encountered by the public in dealings with the Directorate or any component thereof;

''(3) to propose changes in the administrative practices or regulations of the Directorate, or any component thereof, to mitigate problems identified under paragraph (2);

''(4) to identify potential changes in statutory law that may be required to mitigate such problems; and

''(5) to monitor the coverage and geographic distribution of local offices of the Directorate.

''(d) PERSONNEL ACTIONS.—The Ombudsman shall have the responsibility and authority to appoint local or regional representatives of the Ombudsman's Office as in the Ombudsman's judgment may be necessary to address and rectify problems.

''(e) ANNUAL REPORT.—Not later than December 31 of each year, the Ombudsman shall submit a report to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate on the activities of the Ombudsman during the fiscal year ending in that calendar year. Each report shall contain a full and substantive analysis, in addition to statistical information, and shall contain—

''(1) a description of the initiatives that the Office of the Ombudsman has taken on improving the responsiveness of the Directorate;

''(2) a summary of serious or systemic problems encountered by the public, including a description of the nature of such problems;

''(3) an accounting of the items described in paragraphs (1) and (2) for which action has been taken, and the result of such action;

''(4) an accounting of the items described in paragraphs (1) and (2) for which action remains to be completed;

''(5) an accounting of the items described in paragraphs (1) and (2) for which no action has been taken, the reasons for the inaction, and identify any Agency official who is responsible for such inaction;

''(6) recommendations as may be appropriate to resolve problems encountered by the public;

''(7) recommendations as may be appropriate to resolve problems encountered by the public, including problems created by backlogs in the adjudication and processing of petitions and applications;

''(8) recommendations to resolve problems caused by inadequate funding or staffing; and

''(9) such other information as the Ombudsman may deem advisable.

''(f) AUTHORIZATION OF APPROPRIATIONS.—

''(1) IN GENERAL.—There are authorized to be appropriated to the Office of the Ombudsman such sums as may be necessary to carry out its functions.

''(2) AVAILABILITY OF FUNDS.—Amounts appropriated pursuant to paragraph (1) are authorized to remain available until expended.''.

SEC. 1107. OFFICE OF IMMIGRATION STATISTICS WITHIN THE DIRECTORATE.

(a) IN GENERAL.—Chapter 2 of title I of the Immigration and Nationality Act, as added by section 1102 and amended by sections 1103, 1104, and 1105, is further amended by adding at the end the following:

"SEC. 116. OFFICE OF IMMIGRATION STATISTICS.

''(a) ESTABLISHMENT.—There is established within the Directorate an Office of Immigration Statistics (in this section referred to as the 'Office'), which shall be headed by a Director who shall be appointed by the Secretary of Homeland Security, in consultation with the Under Secretary. The Office shall collect, maintain, compile, analyze, publish, and disseminate information and statistics about immigration in the United States, including information and statistics involving the functions of the Directorate and the Executive Office for Immigration Review (or its successor entity).

''(b) RESPONSIBILITIES OF DIRECTOR.—The Director of the Office shall be responsible for the following:

''(1) STATISTICAL INFORMATION.—Maintenance of all immigration statistical information of the Directorate of Immigration Affairs.

''(2) STANDARDS OF RELIABILITY AND VALIDITY.—Establishment of standards of reliability and validity for immigration statistics collected by the Bureau of Immigration Services, the Bureau of Enforcement, and the Executive Office for Immigration Review (or its successor entity).

''(c) RELATION TO THE DIRECTORATE OF IMMIGRATION AFFAIRS AND THE EXECUTIVE OFFICE FOR IMMIGRATION REVIEW.—

''(1) OTHER AUTHORITIES.—The Directorate and the Executive Office for Immigration Review (or its successor entity) shall provide statistical information to the Office from the operational data systems controlled by

the Directorate and the Executive Office for Immigration Review (or its successor entity), respectively, as requested by the Office, for the purpose of meeting the responsibilities of the Director of the Office.

''(2) DATABASES.—The Director of the Office, under the direction of the Secretary, shall ensure the interoperability of the databases of the Directorate, the Bureau of Immigration Services, the Bureau of Enforcement, and the Executive Office for Immigration Review (or its successor entity) to permit the Director of the Office to perform the duties of such office.''.

(b) TRANSFER OF FUNCTIONS.—There are transferred to the Directorate of Immigration Affairs for exercise by the Under Secretary through the Office of Immigration Statistics established by section 116 of the Immigration and Nationality Act, as added by subsection (a), the functions performed by the Statistics Branch of the Office of Policy and Planning of the Immigration and Naturalization Service, and the statistical functions performed by the Executive Office for Immigration Review (or its successor entity), on the day before the effective date of this title.

SEC. 1108. CLERICAL AMENDMENTS.

The table of contents of the Immigration and Nationality Act is amended—

(1) by inserting after the item relating to the heading for title I the following:

''CHAPTER 1—DEFINITIONS AND GENERAL AUTHORITIES'';

(2) by striking the item relating to section 103 and inserting the following:

''Sec. 103. Powers and duties of the Secretary of Homeland Security and the Under Secretary of Homeland Security for Immigration Affairs.'';

and

(3) by inserting after the item relating to section 106 the following:

''CHAPTER 2—DIRECTORATE OF IMMIGRATION AFFAIRS

''Sec. 111. Establishment of Directorate of Immigration Affairs.
''Sec. 112. Under Secretary of Homeland Security for Immigration Affairs.
''Sec. 113. Bureau of Immigration Services.
''Sec. 114. Bureau of Enforcement and Border Affairs.
''Sec. 115. Office of the Ombudsman for Immigration Affairs.
''Sec. 116. Office of Immigration Statistics.''.

Subtitle B—Transition Provisions

SEC. 1111. TRANSFER OF FUNCTIONS.

(a) IN GENERAL.—

(1) FUNCTIONS OF THE ATTORNEY GENERAL.—All functions under the immigration laws of the United States vested by statute in, or exercised by, the Attorney General, immediately prior to the effective date of this title, are transferred to the Secretary on such effective date for exercise by the Secretary through the Under Secretary in accordance with section 112(b) of the Immigration and Nationality Act, as added by section 1103 of this Act.

(2) FUNCTIONS OF THE COMMISSIONER OR THE INS.—All functions under the immigration laws of the United States vested by statute in, or exercised by, the Commissioner of Immigration and Naturalization or the Immigration and Naturalization Service (or any officer, employee, or component thereof), immediately prior to the effective date of this title, are transferred to the Directorate of Immigration Affairs on such effective date for exercise by the Under Secretary in accordance with section 112(b) of the Immigration and Nationality Act, as added by section 1103 of this Act.

(b) EXERCISE OF AUTHORITIES.—Except as otherwise provided by law, the Under Secretary may, for purposes of performing any function transferred to the Directorate of Immigration Affairs under subsection (a), exercise all authorities under any other provision of law that were available with respect to the performance of that function to the official responsible for the performance of the function immediately before the effective date of the transfer of the function under this title.

SEC. 1112. TRANSFER OF PERSONNEL AND OTHER RESOURCES.

Subject to section 1531 of title 31, United States Code, upon the effective date of this title, there are transferred to the Under Secretary for appropriate allocation in accordance with section 1115—

(1) the personnel of the Department of Justice employed in connection with the functions transferred under this title; and

(2) the assets, liabilities, contracts, property, records, and unexpended balance of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to, or to be made available to the Immigration and Naturalization Service in connection with the functions transferred pursuant to this title.

SEC. 1113. DETERMINATIONS WITH RESPECT TO FUNCTIONS AND RESOURCES.

Under the direction of the Secretary, the Under Secretary shall determine, in accordance with the corresponding criteria set forth in sections 1112(b), 1113(b), and 1114(b) of the Immigration and Nationality Act (as added by this title)—

(1) which of the functions transferred under section 1111 are—

(A) immigration policy, administration, and inspection functions;

(B) immigration service functions; and

(C) immigration enforcement functions; and

(2) which of the personnel, assets, liabilities, grants, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds transferred under section 1112 were held or used, arose from, were available to, or were made available, in connection with the performance of the respective functions specified in paragraph (1) immediately prior to the effective date of this title.

SEC. 1114. DELEGATION AND RESERVATION OF FUNCTIONS.

(a) IN GENERAL.—

(1) DELEGATION TO THE BUREAUS.—Under the direction of the Secretary, and subject to section 112(b)(1) of the Immigration and Nationality Act (as added by section 1103), the Under Secretary shall delegate—

(A) immigration service functions to the Assistant Secretary for Immigration Services; and

(B) immigration enforcement functions to the Assistant Secretary for Immigration Enforcement.

(2) RESERVATION OF FUNCTIONS.—Subject to section 112(b)(1) of the Immigration and Nationality Act (as added by section 1103), immigration policy, administration, and inspection functions shall be reserved for exercise by the Under Secretary.

(b) NONEXCLUSIVE DELEGATIONS AUTHORIZED.—Delegations made under subsection (a) may be on a nonexclusive basis as the Under Secretary may determine may be necessary to ensure the faithful execution of the Under Secretary's responsibilities and duties under law.

(c) EFFECT OF DELEGATIONS.—Except as otherwise expressly prohibited by law or otherwise provided in this title, the Under Secretary may make delegations under this subsection to such officers and employees of the office of the Under Secretary, the Service Bureau, and the Enforcement Bureau, respectively, as the Under Secretary may designate, and may authorize successive redelegations of such functions as may be necessary or appropriate. No delegation of functions under this subsection or under any other provision of this title shall relieve the official to whom a function is transferred under this title of responsibility for the administration of the function.

(d) STATUTORY CONSTRUCTION.—Nothing in this division may be construed to limit the authority of the Under Secretary, acting directly or by delegation under the Secretary, to establish such offices or positions within the Directorate of Immigration Affairs, in addition to those specified by this division, as the Under Secretary may determine to be necessary to carry out the functions of the Directorate.

SEC. 1115. ALLOCATION OF PERSONNEL AND OTHER RESOURCES.

(a) AUTHORITY OF THE UNDER SECRETARY.—

(1) IN GENERAL.—Subject to paragraph (2) and section 1114(b), the Under Secretary shall make allocations of personnel, assets, liabilities, grants, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to, or to be made available in connection with the performance of the respective functions, as determined under section 1113, in accordance with the delegation of functions and the reservation of functions made under section 1114.

(2) LIMITATION.—Unexpended funds transferred pursuant to section 1112 shall be used only for the purposes for which the funds were originally authorized and appropriated.

(b) AUTHORITY TO TERMINATE AFFAIRS OF INS.—The Attorney General in consultation with the Secretary, shall provide for the termination of the affairs of the Immigration and Naturalization Service and such further measures and dispositions as may be necessary to effectuate the purposes of this division.

(c) TREATMENT OF SHARED RESOURCES.—The Under Secretary is authorized to provide for an appropriate allocation, or coordination, or both, of resources involved in supporting shared support functions for the office of the Under Secretary, the Service Bureau, and the Enforcement Bureau. The Under Secretary shall maintain oversight and control over the shared computer databases and systems and records management.

SEC. 1116. SAVINGS PROVISIONS.

(a) LEGAL DOCUMENTS.—All orders, determinations, rules, regulations, permits, grants, loans, contracts, recognition of labor organizations, agreements, including collective bargaining agreements, certificates, licenses, and privileges—

(1) that have been issued, made, granted, or allowed to become effective by the President, the Attorney General, the Commissioner of the Immigration and Naturalization Service, their delegates, or any other Government official, or by a court of competent jurisdiction, in the performance of any function that is transferred under this title; and

(2) that are in effect on the effective date of such transfer (or become effective after such date pursuant to their terms as in effect on such effective date);

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, any other authorized official, a court of competent jurisdiction, or operation of law, except that any collective bargaining agreement shall remain in effect until the date of termination specified in the agreement.

(b) PROCEEDINGS.—

(1) PENDING.—Sections 111 through 116 of the Immigration and Nationality Act, as added by subtitle A of this title, shall not affect any proceeding or any application for any benefit, service, license, permit, certificate, or financial assistance pending on the effective date of this title before an office whose functions are transferred under this title, but such proceedings and applications shall be continued.

(2) ORDERS.—Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this Act had not been enacted, and orders issued in any such proceeding shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law.

(3) DISCONTINUANCE OR MODIFICATION.—Nothing in this section shall be considered to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this section had not been enacted.

(c) SUITS.—This title, and the amendments made by this title, shall not affect suits commenced before the effective date of this title, and in all such suits, proceeding shall be had, appeals taken, and judgments rendered in the same manner and with the same effect as if this title, and the amendments made by this title, had not been enacted.

(d) NONABATEMENT OF ACTIONS.—No suit, action, or other proceeding commenced by or against the Department of Justice or the Immigration and Naturalization Service, or by or against any individual in the official capacity of such individual as an officer or employee in connection with a function transferred pursuant to this section, shall abate by reason of the enactment of this Act.

(e) CONTINUANCE OF SUIT WITH SUBSTITUTION OF PARTIES.—If any Government officer in the official capacity of such officer is party to a suit with respect to a function of the officer, and such function is transferred under this title to any other officer or office, then such suit shall be continued with the other officer or the head of such other office, as applicable, substituted or added as a party.

(f) ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW.—Except as otherwise provided by this title, any statutory requirements relating to notice, hearings, action upon the record, or administrative or judicial review that apply to any function transferred under this title shall apply to the exercise of such function by the head of the office, and other officers of the office, to which such function is transferred.

SEC. 1117. INTERIM SERVICE OF THE COMMISSIONER OF IMMIGRATION AND NATURALIZATION.

The individual serving as the Commissioner of Immigration and Naturalization on the day before the effective date of this title may serve as Under Secretary until the date on which an Under Secretary is appointed under section 112 of the Immigration and Nationality Act, as added by section 1103.

SEC. 1118. EXECUTIVE OFFICE FOR IMMIGRATION REVIEW AUTHORITIES NOT AFFECTED.

Nothing in this title, or any amendment made by this title, may be construed to authorize or require the transfer or delegation of any function vested in, or exercised by the Executive Office for Immigration Review of the Department of Justice (or its successor entity), or any officer, employee, or component thereof immediately prior to the effective date of this title.

SEC. 1119. OTHER AUTHORITIES NOT AFFECTED.

Nothing in this title, or any amendment made by this title, may be construed to authorize or require the transfer or delegation of any function vested in, or exercised by—

(1) the Secretary of State under the State Department Basic Authorities Act of 1956, or under the immigration laws of the United States, immediately prior to the effective date of this title, with respect to the issuance and use of passports and visas;

(2) the Secretary of Labor or any official of the Department of Labor immediately prior to the effective date of this title, with respect to labor certifications or any other authority under the immigration laws of the United States; or

(3) except as otherwise specifically provided in this division, any other official of the Federal Government under the immigration laws of the United States immediately prior to the effective date of this title.

SEC. 1120. TRANSITION FUNDING.

(a) AUTHORIZATION OF APPROPRIATIONS FOR TRANSITION.—

(1) IN GENERAL.—There are authorized to be appropriated to the Department of Homeland Security such sums as may be necessary—

(A) to effect—

(i) the abolition of the Immigration and Naturalization Service;

(ii) the establishment of the Directorate of Immigration Affairs and its components, the Bureau of Immigration Services, and the Bureau of Enforcement and Border Affairs; and

(iii) the transfer of functions required to be made under this division; and

(B) to carry out any other duty that is made necessary by this division, or any amendment made by this division.

(2) ACTIVITIES SUPPORTED.—Activities supported under paragraph (1) include—

(A) planning for the transfer of functions from the Immigration and Naturalization Service to the Directorate of Immigration Affairs, including the preparation of any reports and implementation plans necessary for such transfer;

(B) the division, acquisition, and disposition of—

(i) buildings and facilities;

(ii) support and infrastructure resources; and

(iii) computer hardware, software, and related documentation;

(C) other capital expenditures necessary to effect the transfer of functions described in this paragraph;

(D) revision of forms, stationery, logos, and signage;

(E) expenses incurred in connection with the transfer and training of existing personnel and hiring of new personnel; and

(F) such other expenses necessary to effect the transfers, as determined by the Secretary.

(b) AVAILABILITY OF FUNDS.—Amounts appropriated pursuant to subsection (a) are authorized to remain available until expended.

(c) TRANSITION ACCOUNT.—

(1) ESTABLISHMENT.—There is established in the general fund of the Treasury of the United States a separate account, which shall be known as the ''Directorate of Immigration Affairs Transition Account'' (in this section referred to as the ''Account'').

(2) USE OF ACCOUNT.—There shall be deposited into the Account all amounts appropriated under subsection (a) and amounts reprogrammed for the purposes described in subsection (a).

(d) REPORT TO CONGRESS ON TRANSITION.—Beginning not later than 90 days after the effective date of division A of this Act, and at the end of each fiscal year in which appropriations are made pursuant to subsection (c), the Secretary of Homeland Security shall submit a report to Congress concerning the availability of funds to cover transition costs, including—

(1) any unobligated balances available for such purposes; and

(2) a calculation of the amount of appropriations that would be necessary to fully fund the activities described in subsection (a).

(e) EFFECTIVE DATE.—This section shall take effect 1 year after the effective date of division A of this Act.

Subtitle C—Miscellaneous Provisions

SEC. 1121. FUNDING ADJUDICATION AND NATURALIZATION SERVICES.

(a) LEVEL OF FEES.—Section 286(m) of the Immigration and Nationality Act (8 U.S.C. 1356(m)) is amended by striking ''services, including the costs of similar services provided without charge to asylum applicants or other immigrants'' and inserting ''services''.

(b) USE OF FEES.—

(1) IN GENERAL.—Each fee collected for the provision of an adjudication or naturalization service shall be used only to fund adjudication or naturalization services or, subject to the availability of funds provided pursuant to subsection (c), costs of similar services provided without charge to asylum and refugee applicants.

(2) PROHIBITION.—No fee may be used to fund adjudication- or naturalization-related audits that are not regularly conducted in the normal course of operation.

(c) REFUGEE AND ASYLUM ADJUDICATION SERVICES.—

(1) AUTHORIZATION OF APPROPRIATIONS.—In addition to such sums as may be otherwise available for such purposes, there are authorized to be appropriated such sums as may be necessary to carry out the provisions of sections 207 through 209 of the Immigration and Nationality Act.

(2) AVAILABILITY OF FUNDS.—Funds appropriated pursuant to paragraph (1) are authorized to remain available until expended.

(d) SEPARATION OF FUNDING.—

(1) IN GENERAL.—There shall be established separate accounts in the Treasury of the United States for appropriated funds and other collections available for the Bureau of Immigration Services and the Bureau of Enforcement and Border Affairs.

(2) FEES.—Fees imposed for a particular service, application, or benefit shall be deposited into the account established under paragraph (1) that is for the bureau with jurisdiction over the function to which the fee relates.

(3) FEES NOT TRANSFERABLE.—No fee may be transferred between the Bureau of Immigration Services and the Bureau of Enforcement and Border Affairs for purposes not authorized by section 286 of the Immigration and Nationality Act, as amended by subsection (a).

(e) AUTHORIZATION OF APPROPRIATIONS FOR BACKLOG REDUCTION.—

(1) IN GENERAL.—There are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2003 through 2006 to carry out the Immigration Services and Infrastructure Improvement Act of 2000 (title II of Public Law 106–313).

(2) AVAILABILITY OF FUNDS.—Amounts appropriated under paragraph (1) are authorized to remain available until expended.

(3) INFRASTRUCTURE IMPROVEMENT ACCOUNT.—Amounts appropriated under paragraph (1) shall be deposited into the Immigration Services and Infrastructure Improvements Account established by section 204(a)(2) of title II of Public Law 106–313.

SEC. 1122. APPLICATION OF INTERNET-BASED TECHNOLOGIES.

(a) ESTABLISHMENT OF ON-LINE DATABASE.—

(1) IN GENERAL.—Not later than 2 years after the effective date of division A, the Secretary, in consultation with the Under Secretary and the Technology Advisory Committee, shall establish an Internet-based system that will permit an immigrant, nonimmigrant, employer, or other person who files any application, petition, or other request for any benefit under the immigration laws of the United States access to on-line information about the processing status of the application, petition, or other request.

(2) PRIVACY CONSIDERATIONS.—The Under Secretary shall consider all applicable privacy issues in the establishment of the Internet system described in paragraph (1). No personally identifying information shall be accessible to unauthorized persons.

(3) MEANS OF ACCESS.—The on-line information under the Internet system described in paragraph (1) shall be accessible to the persons described in paragraph (1) through a personal identification number (PIN) or other personalized password.

(4) PROHIBITION ON FEES.—The Under Secretary shall not charge any immigrant, nonimmigrant, employer, or other person described in paragraph (1) a fee for access to the information in the database that pertains to that person.

(b) FEASIBILITY STUDY FOR ON-LINE FILING AND IMPROVED PROCESSING.—

(1) ON-LINE FILING.—

(A) IN GENERAL.—The Under Secretary, in consultation with the Technology Advisory Committee, shall conduct a study to determine the feasibility of on-line filing of the documents described in subsection (a).

(B) STUDY ELEMENTS.—The study shall—

(i) include a review of computerization and technology of the Immigration and Naturalization Service (or successor agency) relating to immigration services and the processing of such documents;

(ii) include an estimate of the time-frame and costs of implementing on-line filing of such documents; and

(iii) consider other factors in implementing such a filing system, including the feasibility of the payment of fees on-line.

(2) REPORT.—Not later than 2 years after the effective date of division A, the Under Secretary shall submit to the Committees on the Judiciary of the Senate and the House of Representatives a report on the findings of the study conducted under this subsection.

(c) TECHNOLOGY ADVISORY COMMITTEE.—

(1) ESTABLISHMENT.—Not later than 1 year after the effective date of division A, the Under Secretary shall establish, after consultation with the Committees on the Judiciary of the Senate and the House of Representatives, an advisory committee (in this section referred to as the ''Technology Advisory Committee'') to assist the Under Secretary in—

(A) establishing the tracking system under subsection (a); and

(B) conducting the study under subsection (b).

(2) COMPOSITION.—The Technology Advisory Committee shall be composed of—

(A) experts from the public and private sector capable of establishing and implementing the system in an expeditious manner; and

(B) representatives of persons or entities who may use the tracking system described in subsection (a) and the on-line filing system described in subsection (b)(1).

SEC. 1123. ALTERNATIVES TO DETENTION OF ASYLUM SEEKERS.

(a) ASSIGNMENTS OF ASYLUM OFFICERS.—The Under Secretary shall assign asylum officers to major ports of entry in the United States to assist in the inspection of asylum seekers. For other ports of entry, the Under Secretary shall take steps to ensure that asylum officers participate in the inspections process.

(b) AMENDMENT OF THE IMMIGRATION AND NATIONALITY ACT.—Chapter 4 of title II of the Immigration and Nationality Act (8 U.S.C. 1221 et seq.) is amended by inserting after section 236A the following new section:

''SEC. 236B. ALTERNATIVES TO DETENTION OF ASYLUM SEEKERS.

''(a) DEVELOPMENT OF ALTERNATIVES TO DETENTION.—The Under Secretary shall—

''(1) authorize and promote the utilization of alternatives to the detention of asylum seekers who do not have nonpolitical criminal records; and

''(2) establish conditions for the detention of asylum seekers that ensure a safe and humane environment.

''(b) SPECIFIC ALTERNATIVES FOR CONSIDERATION.—The Under Secretary shall consider the following specific alternatives to the detention of asylum seekers described in subsection (a):

''(1) Parole from detention.

''(2) For individuals not otherwise qualified for parole under paragraph (1), parole with appearance assistance provided by private nonprofit voluntary agencies with expertise in the legal and social needs of asylum seekers.

''(3) For individuals not otherwise qualified for parole under paragraph (1) or (2), non-secure shelter care or group homes operated by private nonprofit voluntary agencies with expertise in the legal and social needs of asylum seekers.

''(4) Noninstitutional settings for minors such as foster care or group homes operated by private nonprofit voluntary agencies with expertise in the legal and social needs of asylum seekers.

''(c) REGULATIONS.—The Under Secretary shall promulgate such regulations as may be necessary to carry out this section.

''(d) DEFINITION.—In this section, the term 'asylum seeker' means any applicant for asylum under section 208 or any alien who indicates an intention to apply for asylum under that section.''.

(b) CLERICAL AMENDMENT.—The table of contents of the Immigration and Nationality Act is amended by inserting after the item relating to section 236A the following new item:

''Sec. 236B. Alternatives to detention of asylum seekers.''.

Subtitle D—Effective Date

SEC. 1131. EFFECTIVE DATE.

This title, and the amendments made by this title, shall take effect one year after the effective date of division A of this Act.

TITLE XII—UNACCOMPANIED ALIEN CHILD PROTECTION

SEC. 1201. SHORT TITLE.

This title may be cited as the ''Unaccompanied Alien Child Protection Act of 2002''.

SEC. 1202. DEFINITIONS.

(a) IN GENERAL.—In this title:

(1) DIRECTOR.—The term ''Director'' means the Director of the Office.

(2) OFFICE.—The term ''Office'' means the Office of Refugee Resettlement as established by section 411 of the Immigration and Nationality Act.

(3) SERVICE.—The term ''Service'' means the Immigration and Naturalization Service (or, upon the effective date of title XI, the Directorate of Immigration Affairs).

(4) UNACCOMPANIED ALIEN CHILD.—The term ''unaccompanied alien child'' means a child who—

(A) has no lawful immigration status in the United States;

(B) has not attained the age of 18; and

(C) with respect to whom—

(i) there is no parent or legal guardian in the United States; or

(ii) no parent or legal guardian in the United States is available to provide care and physical custody.

(5) VOLUNTARY AGENCY.—The term ''voluntary agency'' means a private, nonprofit voluntary agency with expertise in meeting the cultural, developmental, or psychological needs of unaccompanied alien children as licensed by the appropriate State and certified by the Director of the Office of Refugee Resettlement.

(b) AMENDMENTS TO THE IMMIGRATION AND NATIONALITY ACT.—Section 101(a) (8 U.S.C. 1101(a)) is amended by adding at the end the following new paragraphs:

''(53) The term 'unaccompanied alien child' means a child who—

''(A) has no lawful immigration status in the United States;

''(B) has not attained the age of 18; and

''(C) with respect to whom—

''(i) there is no parent or legal guardian in the United States; or

''(ii) no parent or legal guardian in the United States is able to provide care and physical custody.

''(54) The term 'unaccompanied refugee children' means persons described in paragraph (42) who—

''(A) have not attained the age of 18; and

''(B) with respect to whom there are no parents or legal guardians available to provide care and physical custody.''.

Subtitle A—Structural Changes

SEC. 1211. RESPONSIBILITIES OF THE OFFICE OF REFUGEE RESETTLEMENT WITH RESPECT TO UNACCOMPANIED ALIEN CHILDREN.

(a) IN GENERAL.—

(1) RESPONSIBILITIES OF THE OFFICE.—The Office shall be responsible for—

(A) coordinating and implementing the care and placement for unaccompanied alien children who are in Federal custody by reason of their immigration status; and

(B) ensuring minimum standards of detention for all unaccompanied alien children.

(2) DUTIES OF THE DIRECTOR WITH RESPECT TO UNACCOMPANIED ALIEN CHILDREN.—The Director shall be responsible under this title for—

(A) ensuring that the best interests of the child are considered in decisions and actions relating to the care and placement of an unaccompanied alien child;

(B) making placement, release, and detention determinations for all unaccompanied alien children in the custody of the Office;

(C) implementing the placement, release, and detention determinations made by the Office;

(D) convening, in the absence of the Assistant Secretary, Administration for Children and Families of the Department of Health and Human Services, the Interagency Task Force on Unaccompanied Alien Children established in section 1212;

(E) identifying a sufficient number of qualified persons, entities, and facilities to house unaccompanied alien children in accordance with sections 1222 and 1223;

(F) overseeing the persons, entities, and facilities described in sections 1222 and 1223 to ensure their compliance with such provisions;

(G) compiling, updating, and publishing at least annually a State-by-State list of professionals or other entities qualified to contract with the Office to provide the services described in sections 1231 and 1232;

(H) maintaining statistical information and other data on unaccompanied alien children in the Office's custody and care, which shall include—

(i) biographical information such as the child's name, gender, date of birth, country of birth, and country of habitual residence;

(ii) the date on which the child came into Federal custody, including each instance in which such child came into the custody of—

(I) the Service; or

(II) the Office;

(iii) information relating to the custody, detention, release, and repatriation of unaccompanied alien children who have been in the custody of the Office;

(iv) in any case in which the child is placed in detention, an explanation relating to the detention; and

(v) the disposition of any actions in which the child is the subject;

(I) collecting and compiling statistical information from the Service, including Border Patrol and inspections officers, on the unaccompanied alien children with whom they come into contact; and

(J) conducting investigations and inspections of facilities and other entities in which unaccompanied alien children reside.

(3) DUTIES WITH RESPECT TO FOSTER CARE.—In carrying out the duties described in paragraph (3)(F), the Director is encouraged to utilize the refugee children foster care system established under section 412(d)(2) of the Immigration and Nationality Act for the placement of unaccompanied alien children.

(4) POWERS.—In carrying out the duties under paragraph (3), the Director shall have the power to—

(A) contract with service providers to perform the services described in sections 1222, 1223, 1231, and 1232; and

(B) compel compliance with the terms and conditions set forth in section 1223, including the power to terminate the contracts of providers that are not in compliance with such conditions and reassign any unaccompanied alien child to a similar facility that is in compliance with such section.

(b) NO EFFECT ON SERVICE, EOIR, AND DEPARTMENT OF STATE ADJUDICATORY RESPONSIBILITIES.—Nothing in this title may be construed to transfer the responsibility for adjudicating benefit determinations under the Immigration and Nationality Act from the authority of any official of the Service, the Executive Office of Immigration Review (or successor entity), or the Department of State.

SEC. 1212. ESTABLISHMENT OF INTERAGENCY TASK FORCE ON UNACCOMPANIED ALIEN CHILDREN.

(a) ESTABLISHMENT.—There is established an Interagency Task Force on Unaccompanied Alien Children.

(b) COMPOSITION.—The Task Force shall consist of the following members:

(1) The Assistant Secretary, Administration for Children and Families, Department of Health and Human Services.

(2) The Under Secretary of Homeland Security for Immigration Affairs.

(3) The Assistant Secretary of State for Population, Refugees, and Migration.

(4) The Director.

(5) Such other officials in the executive branch of Government as may be designated by the President.

(c) CHAIRMAN.—The Task Force shall be chaired by the Assistant Secretary, Administration for Children and Families, Department of Health and Human Services.

(d) ACTIVITIES OF THE TASK FORCE.—In consultation with nongovernmental organizations, the Task Force shall—

(1) measure and evaluate the progress of the United States in treating unaccompanied alien children in United States custody; and

(2) expand interagency procedures to collect and organize data, including significant research and resource information on the needs and treatment of unaccompanied alien children in the custody of the United States Government.

SEC. 1213. TRANSITION PROVISIONS.

(a) TRANSFER OF FUNCTIONS.—All functions with respect to the care and custody of unaccompanied alien children under the immigration laws of the United States vested by statute in, or exercised by, the Commissioner of Immigration and Naturalization (or any officer, employee, or component thereof), immediately prior to the effective date of this subtitle, are transferred to the Office.

(b) TRANSFER AND ALLOCATIONS OF APPROPRIATIONS AND PERSONNEL.—The personnel employed in connection with, and the assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, used, held, arising from, available to, or to be made available in connection with the functions transferred by this section, subject to section 1531 of title 31, United States Code, shall be transferred to the Office. Unexpended funds transferred pursuant to this section shall be used only for the purposes for which the funds were originally authorized and appropriated.

(c) LEGAL DOCUMENTS.—All orders, determinations, rules, regulations, permits, grants, loans, contracts, recognition of labor organizations, agreements, including collective bargaining agreements, certificates, licenses, and privileges—

(1) that have been issued, made, granted, or allowed to become effective by the President, the Attorney General, the Commissioner of the Immigration and Naturalization Service, their delegates, or any other Government official, or by a court of competent jurisdiction, in the performance of any function that is transferred pursuant to this section; and

(2) that are in effect on the effective date of such transfer (or become effective after such date pursuant to their terms as in effect on such effective date);

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, any other authorized official, a court of competent jurisdiction, or operation of law, except that any collective bargaining agreement shall remain in effect until the date of termination specified in the agreement.

(d) PROCEEDINGS.—

(1) PENDING.—The transfer of functions under subsection (a) shall not affect any proceeding or any application for any benefit, service, license, permit, certificate, or financial assistance pending on the effective date of this subtitle before an office whose functions are transferred pursuant to this section, but such proceedings and applications shall be continued.

(2) ORDERS.—Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this Act had not been enacted, and orders issued in any such proceeding shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law.

(3) DISCONTINUANCE OR MODIFICATION.—Nothing in this section shall be considered to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this section had not been enacted.

(e) SUITS.—This section shall not affect suits commenced before the effective date of this subtitle, and in all such suits, proceeding shall be had, appeals taken, and judgments rendered in the same manner and with the same effect as if this section had not been enacted.

(f) NONABATEMENT OF ACTIONS.—No suit, action, or other proceeding commenced by or against the Department of Justice or the Immigration and Naturalization Service, or by or against any individual in the official capacity of such individual as an officer or employee in connection with a function transferred under this section, shall abate by reason of the enactment of this Act.

(g) CONTINUANCE OF SUIT WITH SUBSTITUTION OF PARTIES.—If any Government officer in the official capacity of such officer is party to a suit with respect to a function of the officer, and pursuant to this section such function is transferred to any other officer or office, then such suit shall be continued with the other officer or the head of such other office, as applicable, substituted or added as a party.

(h) ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW.—Except as otherwise provided by this title, any statutory requirements relating to notice, hearings, action upon the record, or administrative or judicial review that apply to any function transferred pursuant to any provision of this section shall apply to the exercise of such function by the head of the office, and other officers of the office, to which such function is transferred pursuant to such provision.

SEC. 1214. EFFECTIVE DATE.

This subtitle shall take effect one year after the effective date of division A of this Act.

Subtitle B—Custody, Release, Family Reunification, and Detention

SEC. 1221. PROCEDURES WHEN ENCOUNTERING UNACCOMPANIED ALIEN CHILDREN.

(a) UNACCOMPANIED CHILDREN FOUND ALONG THE UNITED STATES BORDER OR AT UNITED STATES PORTS OF ENTRY.—

(1) IN GENERAL.—Subject to paragraph (2), if an immigration officer finds an unaccompanied alien child who is described in paragraph (2) at a land border or port of entry of the United States and determines that such child is inadmissible under the Immigration and Nationality Act, the officer shall—

(A) permit such child to withdraw the child's application for admission pursuant to section 235(a)(4) of the Immigration and Nationality Act; and

(B) remove such child from the United States.

(2) SPECIAL RULE FOR CONTIGUOUS COUNTRIES.—

(A) IN GENERAL.—Any child who is a national or habitual resident of a country that is contiguous with the United States and that has an agreement in writing with the United States providing for the safe return and orderly repatriation of unaccompanied alien children who are nationals or habitual residents of such country shall be treated in accordance with paragraph (1), unless a determination is made on a case-by-case basis that—

(i) such child has a fear of returning to the child's country of nationality or country of last habitual residence owing to a fear of persecution;

(ii) the return of such child to the child's country of nationality or country of last habitual residence would endanger the life or safety of such child; or

(iii) the child cannot make an independent decision to withdraw the child's application for admission due to age or other lack of capacity.

(B) RIGHT OF CONSULTATION.—Any child described in subparagraph (A) shall have the right to consult with a consular officer from the child's country of nationality or country of last habitual residence prior to repatriation, as well as consult with the Office, telephonically, and such child shall be informed of that right.

(3) RULE FOR APPREHENSIONS AT THE BORDER.—The custody of unaccompanied alien

children not described in paragraph (2) who are apprehended at the border of the United States or at a United States port of entry shall be treated in accordance with the provisions of subsection (b).

(b) CUSTODY OF UNACCOMPANIED ALIEN CHILDREN FOUND IN THE INTERIOR OF THE UNITED STATES.—

(1) ESTABLISHMENT OF JURISDICTION.—

(A) IN GENERAL.—Except as otherwise provided under subsection (a) and subparagraphs (B) and (C), the custody of all unaccompanied alien children, including responsibility for their detention, where appropriate, shall be under the jurisdiction of the Office.

(B) EXCEPTION FOR CHILDREN WHO HAVE COMMITTED CRIMES.—Notwithstanding subparagraph (A), the Service shall retain or assume the custody and care of any unaccompanied alien child who—

(i) has been charged with any felony, excluding offenses proscribed by the Immigration and Nationality Act, while such charges are pending; or

(ii) has been convicted of any such felony.

(C) EXCEPTION FOR CHILDREN WHO THREATEN NATIONAL SECURITY.—Notwithstanding subparagraph (A), the Service shall retain or assume the custody and care of an unaccompanied alien child if the Secretary of Homeland Security has substantial evidence that such child endangers the national security of the United States.

(2) NOTIFICATION.—Upon apprehension of an unaccompanied alien child, the Secretary shall promptly notify the Office.

(3) TRANSFER OF UNACCOMPANIED ALIEN CHILDREN.—

(A) TRANSFER TO THE OFFICE.—The care and custody of an unaccompanied alien child shall be transferred to the Office—

(i) in the case of a child not described in paragraph (1) (B) or (C), not later than 72 hours after the apprehension of such child; or

(ii) in the case of a child whose custody has been retained or assumed by the Service pursuant to paragraph (1) (B) or (C), immediately following a determination that the child no longer meets the description set forth in such paragraph.

(B) TRANSFER TO THE SERVICE.—Upon determining that a child in the custody of the Office is described in paragraph (1) (B) or (C), the Director shall promptly make arrangements to transfer the care and custody of such child to the Service.

(c) AGE DETERMINATIONS.—In any case in which the age of an alien is in question and the resolution of questions about such alien's age would affect the alien's eligibility for treatment under the provisions of this title, a determination of whether such alien meets the age requirements of this title shall be made in accordance with the provisions of section 1225.

SEC. 1222. FAMILY REUNIFICATION FOR UNACCOMPANIED ALIEN CHILDREN WITH RELATIVES IN THE UNITED STATES.

(a) PLACEMENT AUTHORITY.—

(1) ORDER OF PREFERENCE.—Subject to the Director's discretion under paragraph (4) and section 1223(a)(2), an unaccompanied alien child in the custody of the Office shall be promptly placed with one of the following individuals in the following order of preference:

(A) A parent who seeks to establish custody, as described in paragraph (3)(A).

(B) A legal guardian who seeks to establish custody, as described in paragraph (3)(A).

(C) An adult relative.

(D) An entity designated by the parent or legal guardian that is capable and willing to care for the child's well-being.

(E) A State-licensed juvenile shelter, group home, or foster home willing to accept legal custody of the child.

(F) A qualified adult or entity seeking custody of the child when it appears that there is no other likely alternative to long-term detention and family reunification does not appear to be a reasonable alternative. For purposes of this subparagraph, the qualification of the adult or entity shall be decided by the Office.

(2) HOME STUDY.—Notwithstanding the provisions of paragraph (1), no unaccompanied alien child shall be placed with a person or entity unless a valid home-study conducted by an agency of the State of the child's proposed residence, by an agency authorized by that State to conduct such a study, or by an appropriate voluntary agency contracted with the Office to conduct such studies has found that the person or entity is capable of providing for the child's physical and mental well-being.

(3) RIGHT OF PARENT OR LEGAL GUARDIAN TO CUSTODY OF UNACCOMPANIED ALIEN CHILD.—

(A) PLACEMENT WITH PARENT OR LEGAL GUARDIAN.—If an unaccompanied alien child is placed with any person or entity other than a parent or legal guardian, but subsequent to that placement a parent or legal guardian seeks to establish custody, the Director shall assess the suitability of placing the child with the parent or legal guardian and shall make a written determination on the child's placement within 30 days.

(B) RULE OF CONSTRUCTION.—Nothing in this title shall be construed to—

(i) supersede obligations under any treaty or other international agreement to which the United States is a party, including The Hague Convention on the Civil Aspects of International Child Abduction, the Vienna Declaration and Programme of Action, and the Declaration of the Rights of the Child; or

(ii) limit any right or remedy under such international agreement.

(4) PROTECTION FROM SMUGGLERS AND TRAFFICKERS.—The Director shall take affirmative steps to ensure that unaccompanied alien children are protected from smugglers, traffickers, or others seeking to victimize or otherwise engage such children in criminal, harmful, or exploitative activity. Attorneys involved in such activities should be reported to their State bar associations for disciplinary action.

(5) GRANTS AND CONTRACTS.—Subject to the availability of appropriations, the Director is authorized to make grants to, and enter into contracts with, voluntary agencies to carry out the provisions of this section.

(6) REIMBURSEMENT OF STATE EXPENSES.—Subject to the availability of appropriations, the Director is authorized to reimburse States for any expenses they incur in providing assistance to unaccompanied alien children who are served pursuant to this title.

(b) CONFIDENTIALITY.—All information obtained by the Office relating to the immigration status of a person listed in subsection (a) shall remain confidential and may be used only for the purposes of determining such person's qualifications under subsection (a)(1).

SEC. 1223. APPROPRIATE CONDITIONS FOR DETENTION OF UNACCOMPANIED ALIEN CHILDREN.

(a) STANDARDS FOR PLACEMENT.—

(1) PROHIBITION OF DETENTION IN CERTAIN FACILITIES.—Except as provided in paragraph (2), an unaccompanied alien child shall not be placed in an adult detention facility or a facility housing delinquent children.

(2) DETENTION IN APPROPRIATE FACILITIES.—An unaccompanied alien child who has exhibited a violent or criminal behavior that endangers others may be detained in conditions appropriate to the behavior in a facility appropriate for delinquent children.

(3) STATE LICENSURE.—In the case of a placement of a child with an entity described in section 1222(a)(1)(E), the entity must be licensed by an appropriate State agency to provide residential, group, child welfare, or foster care services for dependent children.

(4) CONDITIONS OF DETENTION.—

(A) IN GENERAL.—The Director shall promulgate regulations incorporating standards for conditions of detention in such placements that provide for—

(i) educational services appropriate to the child;

(ii) medical care;

(iii) mental health care, including treatment of trauma;

(iv) access to telephones;

(v) access to legal services;

(vi) access to interpreters;

(vii) supervision by professionals trained in the care of children, taking into account the special cultural, linguistic, and experiential needs of children in immigration proceedings;

(viii) recreational programs and activities;

(ix) spiritual and religious needs; and

(x) dietary needs.

(B) NOTIFICATION OF CHILDREN.—Such regulations shall provide that all children are notified orally and in writing of such standards.

(b) PROHIBITION OF CERTAIN PRACTICES.—The Director and the Secretary of Homeland Security shall develop procedures prohibiting the unreasonable use of—

(1) shackling, handcuffing, or other restraints on children;

(2) solitary confinement; or

(3) pat or strip searches.

(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to supersede procedures favoring release of children to appropriate adults or entities or placement in the least secure setting possible, as defined in the Stipulated Settlement Agreement under Flores v. Reno.

SEC. 1224. REPATRIATED UNACCOMPANIED ALIEN CHILDREN.

(a) COUNTRY CONDITIONS.—

(1) SENSE OF CONGRESS.—It is the sense of Congress that, to the extent consistent with the treaties and other international agreements to which the United States is a party and to the extent practicable, the United States Government should undertake efforts to ensure that it does not repatriate children in its custody into settings that would threaten the life and safety of such children.

(2) ASSESSMENT OF CONDITIONS.—

(A) IN GENERAL.—In carrying out repatriations of unaccompanied alien children, the Office shall conduct assessments of country conditions to determine the extent to which the country to which a child is being repatriated has a child welfare system capable of ensuring the child's well being.

(B) FACTORS FOR ASSESSMENT.—In assessing country conditions, the Office shall, to the maximum extent practicable, examine the conditions specific to the locale of the child's repatriation.

(b) REPORT ON REPATRIATION OF UNACCOMPANIED ALIEN CHILDREN.—Beginning not later than 18 months after the date of enactment of this Act, and annually thereafter, the Director shall submit a report to the Judiciary Committees of the House of Representatives and Senate on the Director's efforts to repatriate unaccompanied alien children. Such report shall include at a minimum the following information:

(1) The number of unaccompanied alien children ordered removed and the number of such children actually removed from the United States.

(2) A description of the type of immigration relief sought and denied to such children.

(3) A statement of the nationalities, ages, and gender of such children.

(4) A description of the procedures used to effect the removal of such children from the United States.

(5) A description of steps taken to ensure that such children were safely and humanely repatriated to their country of origin.

(6) Any information gathered in assessments of country and local conditions pursuant to subsection (a)(2).

SEC. 1225. ESTABLISHING THE AGE OF AN UNACCOMPANIED ALIEN CHILD.

The Director shall develop procedures that permit the presentation and consideration of a variety of forms of evidence, including testimony of a child and other persons, to determine an unaccompanied alien child's age for purposes of placement, custody, parole, and detention. Such procedures shall allow the appeal of a determination to an immigration judge. Radiographs shall not be the sole means of determining age.

SEC. 1226. EFFECTIVE DATE.

This subtitle shall take effect one year after the effective date of division A of this Act.

Subtitle C—Access by Unaccompanied Alien Children to Guardians Ad Litem and Counsel

SEC. 1231. RIGHT OF UNACCOMPANIED ALIEN CHILDREN TO GUARDIANS AD LITEM.

(a) GUARDIAN AD LITEM.—

(1) APPOINTMENT.—The Director shall appoint a guardian ad litem who meets the qualifications described in paragraph (2) for each unaccompanied alien child in the custody of the Office not later than 72 hours after the Office assumes physical or constructive custody of such child. The Director is encouraged, wherever practicable, to contract with a voluntary agency for the selection of an individual to be appointed as a guardian ad litem under this paragraph.

(2) QUALIFICATIONS OF GUARDIAN AD LITEM.—

(A) IN GENERAL.—No person shall serve as a guardian ad litem unless such person—

(i) is a child welfare professional or other individual who has received training in child welfare matters; and

(ii) possesses special training on the nature of problems encountered by unaccompanied alien children.

(B) PROHIBITION.—A guardian ad litem shall not be an employee of the Service.

(3) DUTIES.—The guardian ad litem shall—

(A) conduct interviews with the child in a manner that is appropriate, taking into account the child's age;

(B) investigate the facts and circumstances relevant to such child's presence in the United States, including facts and circumstances arising in the country of the child's nationality or last habitual residence and facts and circumstances arising subsequent to the child's departure from such country;

(C) work with counsel to identify the child's eligibility for relief from removal or voluntary departure by sharing with counsel information collected under subparagraph (B);

(D) develop recommendations on issues relative to the child's custody, detention, release, and repatriation;

(E) ensure that the child's best interests are promoted while the child participates in, or is subject to, proceedings or actions under the Immigration and Nationality Act;

(F) ensure that the child understands such determinations and proceedings; and

(G) report findings and recommendations to the Director and to the Executive Office of Immigration Review (or successor entity).

(4) TERMINATION OF APPOINTMENT.—The guardian ad litem shall carry out the duties described in paragraph (3) until—

(A) those duties are completed,

(B) the child departs the United States,

(C) the child is granted permanent resident status in the United States,

(D) the child attains the age of 18, or

(E) the child is placed in the custody of a parent or legal guardian,

whichever occurs first.

(5) POWERS.—The guardian ad litem—

(A) shall have reasonable access to the child, including access while such child is being held in detention or in the care of a foster family;

(B) shall be permitted to review all records and information relating to such proceedings that are not deemed privileged or classified;

(C) may seek independent evaluations of the child;

(D) shall be notified in advance of all hearings involving the child that are held in connection with proceedings under the Immigration and Nationality Act, and shall be given a reasonable opportunity to be present at such hearings; and

(E) shall be permitted to consult with the child during any hearing or interview involving such child.

(b) TRAINING.—The Director shall provide professional training for all persons serving as guardians ad litem under this section in the circumstances and conditions that unaccompanied alien children face as well as in the various immigration benefits for which such a child might be eligible.

SEC. 1232. RIGHT OF UNACCOMPANIED ALIEN CHILDREN TO COUNSEL.

(a) ACCESS TO COUNSEL.—

(1) IN GENERAL.—The Director shall ensure that all unaccompanied alien children in the custody of the Office or in the custody of the Service who are not described in section 1221(a)(2) shall have competent counsel to represent them in immigration proceedings or matters.

(2) PRO BONO REPRESENTATION.—To the maximum extent practicable, the Director shall utilize the services of pro bono attorneys who agree to provide representation to such children without charge.

(3) GOVERNMENT FUNDED REPRESENTATION.—

(A) APPOINTMENT OF COMPETENT COUNSEL.—Notwithstanding section 292 of the Immigration and Nationality Act (8 U.S.C. 1362) or any other provision of law, when no competent counsel is available to represent an unaccompanied alien child without charge, the Director shall appoint competent counsel for such child at the expense of the Government.

(B) LIMITATION ON ATTORNEY FEES.—Counsel appointed under subparagraph (A) may not be compensated at a rate in excess of the rate provided under section 3006A of title 18, United States Code.

(C) ASSUMPTION OF THE COST OF GOVERNMENT-PAID COUNSEL.—In the case of a child for whom counsel is appointed under subparagraph (A) who is subsequently placed in the physical custody of a parent or legal guardian, such parent or legal guardian may elect to retain the same counsel to continue representation of the child, at no expense to the Government, beginning on the date that the parent or legal guardian assumes physical custody of the child.

(4) DEVELOPMENT OF NECESSARY INFRASTRUCTURES AND SYSTEMS.—In ensuring that legal representation is provided to such children, the Director shall develop the necessary mechanisms to identify entities available to provide such legal assistance and representation and to recruit such entities.

(5) CONTRACTING AND GRANT MAKING AUTHORITY.—

(A) IN GENERAL.—Subject to the availability of appropriations, the Director shall enter into contracts with or make grants to national nonprofit agencies with relevant expertise in the delivery of immigration-related legal services to children in order to carry out this subsection.

(B) INELIGIBILITY FOR GRANTS AND CONTRACTS.—In making grants and entering into contracts with such agencies, the Director shall ensure that no such agency is—

(i) a grantee or contractee for services provided under section 1222 or 1231; and

(ii) simultaneously a grantee or contractee for services provided under subparagraph (A).

(b) REQUIREMENT OF LEGAL REPRESENTATION.—The Director shall ensure that all unaccompanied alien children have legal representation within 7 days of the child coming into Federal custody.

(c) DUTIES.—Counsel shall represent the unaccompanied alien child all proceedings and actions relating to the child's immigration status or other actions involving the Service and appear in person for all individual merits hearings before the Executive Office for Immigration Review (or its successor entity) and interviews involving the Service.

(d) ACCESS TO CHILD.—

(1) IN GENERAL.—Counsel shall have reasonable access to the unaccompanied alien child, including access while the child is being held in detention, in the care of a foster family, or in any other setting that has been determined by the Office.

(2) RESTRICTION ON TRANSFERS.—Absent compelling and unusual circumstances, no child who is represented by counsel shall be transferred from the child's placement to another placement unless advance notice of at least 24 hours is made to counsel of such transfer.

(e) TERMINATION OF APPOINTMENT.—Counsel shall carry out the duties described in subsection (c) until—

(1) those duties are completed,

(2) the child departs the United States,

(3) the child is granted withholding of removal under section 241(b)(3) of the Immigration and Nationality Act,

(4) the child is granted protection under the Convention Against Torture,

(5) the child is granted asylum in the United States under section 208 of the Immigration and Nationality Act,

(6) the child is granted permanent resident status in the United States, or

(7) the child attains 18 years of age,

whichever occurs first.

(f) NOTICE TO COUNSEL DURING IMMIGRATION PROCEEDINGS.—

(1) IN GENERAL.—Except when otherwise required in an emergency situation involving the physical safety of the child, counsel shall be given prompt and adequate notice of all immigration matters affecting or involving an unaccompanied alien child, including adjudications, proceedings, and processing, before such actions are taken.

(2) OPPORTUNITY TO CONSULT WITH COUNSEL.—An unaccompanied alien child in the custody of the Office may not give consent to any immigration action, including consenting to voluntary departure, unless first afforded an opportunity to consult with counsel.

(g) ACCESS TO RECOMMENDATIONS OF GUARDIAN AD LITEM.—Counsel shall be afforded an opportunity to review the recommendation by the guardian ad litem affecting or involving a client who is an unaccompanied alien child.

SEC. 1233. EFFECTIVE DATE; APPLICABILITY.

(a) EFFECTIVE DATE.—This subtitle shall take effect one year after the effective date of division A of this Act.

(b) APPLICABILITY.—The provisions of this subtitle shall apply to all unaccompanied alien children in Federal custody on, before, or after the effective date of this subtitle.

Subtitle D—Strengthening Policies for Permanent Protection of Alien Children

SEC. 1241. SPECIAL IMMIGRANT JUVENILE VISA.

(a) J VISA.—Section 101(a)(27)(J) (8 U.S.C. 1101(a)(27)(J)) is amended to read as follows:

''(J) an immigrant under the age of 18 on the date of application who is present in the United States—

''(i) who has been declared dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, a department or agency of a State, or an individual or entity appointed by a State, and who has been deemed eligible by that court for long-term foster care due to abuse, neglect, or abandonment, or a similar basis found under State law;

''(ii) for whom it has been determined in administrative or judicial proceedings that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence; and

''(iii) for whom the Office of Refugee Resettlement of the Department of Health and Human Services has certified to the Under Secretary of Homeland Security for Immigration Affairs that the classification of an alien as a special immigrant under this subparagraph has not been made solely to provide an immigration benefit to that alien;

except that no natural parent or prior adoptive parent of any alien provided special immigrant status under this subparagraph shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act;''.

(b) ADJUSTMENT OF STATUS.—Section 245(h)(2) (8 U.S.C. 1255(h)(2)) is amended—

(1) by amending subparagraph (A) to read as follows:

''(A) paragraphs (1), (4), (5), (6), and (7)(A) of section 212(a) shall not apply,'';

(2) in subparagraph (B), by striking the period and inserting '', and''; and

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

''(C) the Secretary of Homeland Security may waive paragraph (2) (A) and (B) in the case of an offense which arose as a consequence of the child being unaccompanied.''.

(c) ELIGIBILITY FOR ASSISTANCE.—A child who has been granted relief under section 101(a)(27)(J) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(J)), as amended by subsection (a), and who is in the custody of a State shall be eligible for all funds made available under section 412(d) of such Act.

SEC. 1242. TRAINING FOR OFFICIALS AND CERTAIN PRIVATE PARTIES WHO COME INTO CONTACT WITH UNACCOMPANIED ALIEN CHILDREN.

(a) TRAINING OF STATE AND LOCAL OFFICIALS AND CERTAIN PRIVATE PARTIES.—The Secretary of Health and Human Services, acting jointly with the Secretary, shall provide appropriate training to be available to State and county officials, child welfare specialists, teachers, public counsel, and juvenile judges who come into contact with unaccompanied alien children. The training shall provide education on the processes pertaining to unaccompanied alien children with pending immigration status and on the forms of relief potentially available. The Director shall be responsible for establishing a core curriculum that can be incorporated into currently existing education, training, or orientation modules or formats that are currently used by these professionals.

(b) TRAINING OF SERVICE PERSONNEL.—The Secretary, acting jointly with the Secretary of Health and Human Services, shall provide specialized training to all personnel of the Service who come into contact with unaccompanied alien children. In the case of Border Patrol agents and immigration inspectors, such training shall include specific training on identifying children at the United States border or at United States ports of entry who have been victimized by smugglers or traffickers, and children for whom asylum or special immigrant relief may be appropriate, including children described in section 1221(a)(2).

SEC. 1243. EFFECTIVE DATE.

The amendment made by section 1241 shall apply to all eligible children who were in the United States before, on, or after the date of enactment of this Act.

Subtitle E—Children Refugee and Asylum Seekers

SEC. 1251. GUIDELINES FOR CHILDREN'S ASYLUM CLAIMS.

(a) SENSE OF CONGRESS.—Congress commends the Service for its issuance of its ''Guidelines for Children's Asylum Claims'', dated December 1998, and encourages and supports the Service's implementation of such guidelines in an effort to facilitate the handling of children's asylum claims. Congress calls upon the Executive Office for Immigration Review of the Department of Justice (or successor entity) to adopt the ''Guidelines for Children's Asylum Claims'' in its handling of children's asylum claims before immigration judges and the Board of Immigration Appeals.

(b) TRAINING.—The Secretary of Homeland Security shall provide periodic comprehensive training under the ''Guidelines for Children's Asylum Claims'' to asylum officers, immigration judges, members of the Board of Immigration Appeals, and immigration officers who have contact with children in order to familiarize and sensitize such officers to the needs of children asylum seekers. Voluntary agencies shall be allowed to assist in such training.

SEC. 1252. UNACCOMPANIED REFUGEE CHILDREN.

(a) IDENTIFYING UNACCOMPANIED REFUGEE CHILDREN.—Section 207(e) (8 U.S.C. 1157(e)) is amended—

(1) by redesignating paragraphs (3), (4), (5), (6), and (7) as paragraphs (4), (5), (6), (7), and (8), respectively; and

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

''(3) An analysis of the worldwide situation faced by unaccompanied refugee children, by region. Such analysis shall include an assessment of—

''(A) the number of unaccompanied refugee children, by region;

''(B) the capacity of the Department of State to identify such refugees;

''(C) the capacity of the international community to care for and protect such refugees;

''(D) the capacity of the voluntary agency community to resettle such refugees in the United States;

''(E) the degree to which the United States plans to resettle such refugees in the United States in the coming fiscal year; and

''(F) the fate that will befall such unaccompanied refugee children for whom resettlement in the United States is not possible.''.

(b) TRAINING ON THE NEEDS OF UNACCOMPANIED REFUGEE CHILDREN.—Section 207(f)(2) (8 U.S.C. 1157(f)(2)) is amended by—

(1) striking ''and'' after ''countries,''; and

(2) inserting before the period at the end the following: '', and instruction on the needs of unaccompanied refugee children''.

Subtitle F—Authorization of Appropriations

SEC. 1261. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this title.

(b) AVAILABILITY OF FUNDS.—Amounts appropriated pursuant to subsection (a) are authorized to remain available until expended.

TITLE XIII—AGENCY FOR IMMIGRATION HEARINGS AND APPEALS

Subtitle A—Structure and Function

SEC. 1301. ESTABLISHMENT.

(a) IN GENERAL.—There is established within the Department of Justice the Agency for Immigration Hearings and Appeals (in this title referred to as the ''Agency'').

(b) ABOLITION OF EOIR.—The Executive Office for Immigration Review of the Department of Justice is hereby abolished.

SEC. 1302. DIRECTOR OF THE AGENCY.

(a) APPOINTMENT.—There shall be at the head of the Agency a Director who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) OFFICES.—The Director shall appoint a Deputy Director, General Counsel, Pro Bono Coordinator, and other offices as may be necessary to carry out this title.

(c) RESPONSIBILITIES.—The Director shall—

(1) administer the Agency and be responsible for the promulgation of rules and regulations affecting the Agency;

(2) appoint each Member of the Board of Immigration Appeals, including a Chair;

(3) appoint the Chief Immigration Judge; and

(4) appoint and fix the compensation of attorneys, clerks, administrative assistants, and other personnel as may be necessary.

SEC. 1303. BOARD OF IMMIGRATION APPEALS.

(a) IN GENERAL.—The Board of Immigration Appeals (in this title referred to as the ''Board'') shall perform the appellate functions of the Agency. The Board shall consist of a Chair and not less than 14 other immigration appeals judges.

(b) APPOINTMENT.—Members of the Board shall be appointed by the Director, in consultation with the Chair of the Board of Immigration Appeals.

(c) QUALIFICATIONS.—The Chair and each other Member of the Board shall be an attorney in good standing of a bar of a State or the District of Columbia and shall have at least 7 years of professional legal expertise in immigration and nationality law.

(d) CHAIR.—The Chair shall direct, supervise, and establish the procedures and policies of the Board.

(e) JURISDICTION.—

(1) IN GENERAL.—The Board shall have such jurisdiction as was, prior to the date of enactment of this Act, provided by statute or regulation to the Board of Immigration Appeals (as in effect under the Executive Office of Immigration Review).

(2) DE NOVO REVIEW.—The Board shall have de novo review of any decision by an immigration judge, including any final order of removal.

(f) DECISIONS OF THE BOARD.—The decisions of the Board shall constitute final agency action, subject to review only as provided by the Immigration and Nationality Act and other applicable law.

(g) INDEPENDENCE OF BOARD MEMBERS.—The Members of the Board shall exercise their independent judgment and discretion in the cases coming before the Board.

SEC. 1304. CHIEF IMMIGRATION JUDGE.

(a) ESTABLISHMENT OF OFFICE.—There shall be within the Agency the position of Chief Immigration Judge, who shall administer the immigration courts.

(b) DUTIES OF THE CHIEF IMMIGRATION JUDGE.—The Chief Immigration Judge shall be responsible for the general supervision, direction, and procurement of resource and facilities and for the general management of immigration court dockets.

(c) APPOINTMENT OF IMMIGRATION JUDGES.—Immigration judges shall be appointed by

the Director, in consultation with the Chief Immigration Judge.

(d) QUALIFICATIONS.—Each immigration judge, including the Chief Immigration Judge, shall be an attorney in good standing of a bar of a State or the District of Columbia and shall have at least 7 years of professional legal expertise in immigration and nationality law.

(e) JURISDICTION AND AUTHORITY OF IMMIGRATION COURTS.—The immigration courts shall have such jurisdiction as was, prior to the date of enactment of this Act, provided by statute or regulation to the immigration courts within the Executive Office for Immigration Review of the Department of Justice.

(f) INDEPENDENCE OF IMMIGRATION JUDGES.—The immigration judges shall exercise their independent judgment and discretion in the cases coming before the Immigration Court.

SEC. 1305. CHIEF ADMINISTRATIVE HEARING OFFICER.

(a) ESTABLISHMENT OF POSITION.—There shall be within the Agency the position of Chief Administrative Hearing Officer.

(b) DUTIES OF THE CHIEF ADMINISTRATIVE HEARING OFFICER.—The Chief Administrative Hearing Officer shall hear cases brought under sections 274A, 274B, and 274C of the Immigration and Nationality Act.

SEC. 1306. REMOVAL OF JUDGES.

Immigration judges and Members of the Board may be removed from office only for good cause, including neglect of duty or malfeasance, by the Director, in consultation with the Chair of the Board, in the case of the removal of a Member of the Board, or in consultation with the Chief Immigration Judge, in the case of the removal of an immigration judge.

SEC. 1307. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Agency such sums as may be necessary to carry out this title.

Subtitle B—Transfer of Functions and Savings Provisions

SEC. 1311. TRANSITION PROVISIONS.

(a) TRANSFER OF FUNCTIONS.—All functions under the immigration laws of the United States (as defined in section 111(e) of the Immigration and Nationality Act, as added by section 1101(a)(2) of this Act) vested by statute in, or exercised by, the Executive Office of Immigration Review of the Department of Justice (or any officer, employee, or component thereof), immediately prior to the effective date of this title, are transferred to the Agency.

(b) TRANSFER AND ALLOCATIONS OF APPROPRIATIONS AND PERSONNEL.—The personnel employed in connection with, and the assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, used, held, arising from, available to, or to be made available in connection with the functions transferred by this section, subject to section 1531 of title 31, United States Code, shall be transferred to the Agency. Unexpended funds transferred pursuant to this section shall be used only for the purposes for which the funds were originally authorized and appropriated.

(c) LEGAL DOCUMENTS.—All orders, determinations, rules, regulations, permits, grants, loans, contracts, recognition of labor organizations, agreements, including collective bargaining agreements, certificates, licenses, and privileges—

(1) that have been issued, made, granted, or allowed to become effective by the Attorney General or the Executive Office of Immigration Review of the Department of Justice, their delegates, or any other Government official, or by a court of competent jurisdiction, in the performance of any function that is transferred under this section; and

(2) that are in effect on the effective date of such transfer (or become effective after such date pursuant to their terms as in effect on such effective date);

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the Agency, any other authorized official, a court of competent jurisdiction, or operation of law, except that any collective bargaining agreement shall remain in effect until the date of termination specified in the agreement.

(d) PROCEEDINGS.—

(1) PENDING.—The transfer of functions under subsection (a) shall not affect any proceeding or any application for any benefit, service, license, permit, certificate, or financial assistance pending on the effective date of this title before an office whose functions are transferred pursuant to this section, but such proceedings and applications shall be continued.

(2) ORDERS.—Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this Act had not been enacted, and orders issued in any such proceeding shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law.

(3) DISCONTINUANCE OR MODIFICATION.—Nothing in this section shall be considered to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this section had not been enacted.

(e) SUITS.—This section shall not affect suits commenced before the effective date of this title, and in all such suits, proceeding shall be had, appeals taken, and judgments rendered in the same manner and with the same effect as if this section had not been enacted.

(f) NONABATEMENT OF ACTIONS.—No suit, action, or other proceeding commenced by or against the Department of Justice or the Executive Office of Immigration Review, or by or against any individual in the official capacity of such individual as an officer or employee in connection with a function transferred under this section, shall abate by reason of the enactment of this Act.

(g) CONTINUANCE OF SUIT WITH SUBSTITUTION OF PARTIES.—If any Government officer in the official capacity of such officer is party to a suit with respect to a function of the officer, and pursuant to this section such function is transferred to any other officer or office, then such suit shall be continued with the other officer or the head of such other office, as applicable, substituted or added as a party.

(h) ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW.—Except as otherwise provided by this title, any statutory requirements relating to notice, hearings, action upon the record, or administrative or judicial review that apply to any function transferred pursuant to any provision of this section shall apply to the exercise of such function by the head of the office, and other officers of the office, to which such function is transferred pursuant to such provision.

Subtitle C—Effective Date

SEC. 1321. EFFECTIVE DATE.

This title shall take effect one year after the effective date of division A of this Act.

DIVISION C—FEDERAL WORKFORCE IMPROVEMENT

TITLE XXI—CHIEF HUMAN CAPITAL OFFICERS

SEC. 2101. SHORT TITLE.

This title may be cited as the ''Chief Human Capital Officers Act of 2002''.

SEC. 2102. AGENCY CHIEF HUMAN CAPITAL OFFICERS.

(a) IN GENERAL.—Part II of title 5, United States Code, is amended by inserting after chapter 13 the following:

''CHAPTER 14—AGENCY CHIEF HUMAN CAPITAL OFFICERS

''Sec.
''1401. Establishment of agency Chief Human Capital Officers.
''1402. Authority and functions of agency Chief Human Capital Officers.

''§ 1401. Establishment of agency Chief Human Capital Officers

''The head of each agency referred to under paragraphs (1) and (2) of section 901(b) of title 31 shall appoint or designate a Chief Human Capital Officer, who shall—

''(1) advise and assist the head of the agency and other agency officials in carrying out the agency's responsibilities for selecting, developing, training, and managing a high-quality, productive workforce in accordance with merit system principles;

''(2) implement the rules and regulations of the President and the Office of Personnel Management and the laws governing the civil service within the agency; and

''(3) carry out such functions as the primary duty of the Chief Human Capital Officer.

''§ 1402. Authority and functions of agency Chief Human Capital Officers

''(a) The functions of each Chief Human Capital Officer shall include—

''(1) setting the workforce development strategy of the agency;

''(2) assessing workforce characteristics and future needs based on the agency's mission and strategic plan;

''(3) aligning the agency's human resources policies and programs with organization mission, strategic goals, and performance outcomes;

''(4) developing and advocating a culture of continuous learning to attract and retain employees with superior abilities;

''(5) identifying best practices and benchmarking studies; and

''(6) applying methods for measuring intellectual capital and identifying links of that capital to organizational performance and growth.

''(b) In addition to the authority otherwise provided by this section, each agency Chief Human Capital Officer—

''(1) shall have access to all records, reports, audits, reviews, documents, papers, recommendations, or other material that—

''(A) are the property of the agency or are available to the agency; and

''(B) relate to programs and operations with respect to which that agency Chief Human Capital Officer has responsibilities under this chapter; and

''(2) may request such information or assistance as may be necessary for carrying out the duties and responsibilities provided by this chapter from any Federal, State, or local governmental entity.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of chapters for part II of title 5, United States Code, is amended by inserting after the item relating to chapter 13 the following:

''14. Chief Human Capital Officers ..... 1401''.

SEC. 2103. CHIEF HUMAN CAPITAL OFFICERS COUNCIL.

(a) ESTABLISHMENT.—There is established a Chief Human Capital Officers Council, consisting of—

(1) the Director of the Office of Personnel Management, who shall act as chairperson of the Council;

(2) the Deputy Director for Management of the Office of Management and Budget, who shall act as vice chairperson of the Council; and

(3) the Chief Human Capital Officers of Executive departments and any other members who are designated by the Director of the Office of Personnel Management.

(b) FUNCTIONS.—The Chief Human Capital Officers Council shall meet periodically to advise and coordinate the activities of the agencies of its members on such matters as modernization of human resources systems, improved quality of human resources information, and legislation affecting human resources operations and organizations.

(c) EMPLOYEE LABOR ORGANIZATIONS AT MEETINGS.—The Chief Human Capital Officers Council shall ensure that representatives of Federal employee labor organizations are present at a minimum of 1 meeting of the Council each year. Such representatives shall not be members of the Council.

(d) ANNUAL REPORT.—Each year the Chief Human Capital Officers Council shall submit a report to Congress on the activities of the Council.

SEC. 2104. STRATEGIC HUMAN CAPITAL MANAGEMENT.

Section 1103 of title 5, United States Code, is amended by adding at the end the following:

''(c)(1) The Office of Personnel Management shall design a set of systems, including appropriate metrics, for assessing the management of human capital by Federal agencies.

''(2) The systems referred to under paragraph (1) shall be defined in regulations of the Office of Personnel Management and include standards for—

''(A)(i) aligning human capital strategies of agencies with the missions, goals, and organizational objectives of those agencies; and

''(ii) integrating those strategies into the budget and strategic plans of those agencies;

''(B) closing skill gaps in mission critical occupations;

''(C) ensuring continuity of effective leadership through implementation of recruitment, development, and succession plans;

''(D) sustaining a culture that cultivates and develops a high performing workforce;

''(E) developing and implementing a knowledge management strategy supported by appropriate investment in training and technology; and

''(F) holding managers and human resources officers accountable for efficient and effective human resources management in support of agency missions in accordance with merit system principles.''.

SEC. 2105. EFFECTIVE DATE.

This title shall take effect 180 days after the date of enactment of this division.

TITLE XXII—REFORMS RELATING TO FEDERAL HUMAN CAPITAL MANAGEMENT

SEC. 2201. INCLUSION OF AGENCY HUMAN CAPITAL STRATEGIC PLANNING IN PERFORMANCE PLANS AND PROGRAM PERFORMANCE REPORTS.

(a) PERFORMANCE PLANS.—Section 1115 of title 31, United States Code, is amended—

(1) in subsection (a), by striking paragraph (3) and inserting the following:

''(3) provide a description of how the performance goals and objectives are to be achieved, including the operational processes, training, skills and technology, and the human, capital, information, and other resources and strategies required to meet those performance goals and objectives.'';

(2) by redesignating subsection (f) as subsection (g); and

(3) by inserting after subsection (e) the following:

''(f) With respect to each agency with a Chief Human Capital Officer, the Chief Human Capital Officer shall prepare that portion of the annual performance plan described under subsection (a)(3).''.

(b) PROGRAM PERFORMANCE REPORTS.—Section 1116(d) of title 31, United States Code, is amended—

(1) in paragraph (4), by striking ''and'' after the semicolon;

(2) by redesignating paragraph (5) as paragraph (6); and

(3) by inserting after paragraph (4) the following:

''(5) include a review of the performance goals and evaluation of the performance plan relative to the agency's strategic human capital management; and''.

SEC. 2202. REFORM OF THE COMPETITIVE SERVICE HIRING PROCESS.

(a) IN GENERAL.—Chapter 33 of title 5, United States Code, is amended—

(1) in section 3304(a)—

(A) in paragraph (1), by striking ''and'' after the semicolon;

(B) in paragraph (2), by striking the period and inserting ''; and''; and

(C) by adding at the end the following:

''(3) authority for agencies to appoint, without regard to the provisions of sections 3309 through 3318, candidates directly to positions for which—

''(A) public notice has been given; and

''(B) the Office of Personnel Management has determined that there exists a severe shortage of candidates or there is a critical hiring need.

The Office shall prescribe, by regulation, criteria for identifying such positions and may delegate authority to make determinations under such criteria.''; and

(2) by inserting after section 3318 the following:

''§ 3319. Alternative ranking and selection procedures

''(a)(1) the Office, in exercising its authority under section 3304; or

''(2) an agency to which the Office has delegated examining authority under section 1104(a)(2);

may establish category rating systems for evaluating applicants for positions in the competitive service, under 2 or more quality categories based on merit consistent with regulations prescribed by the Office of Personnel Management, rather than assigned individual numerical ratings.

''(b) Within each quality category established under subsection (a), preference-eligibles shall be listed ahead of individuals who are not preference eligibles. For other than scientific and professional positions at GS–9 of the General Schedule (equivalent or higher), qualified preference-eligibles who have a compensable service-connected disability of 10 percent or more shall be listed in the highest quality category.

''(c)(1) An appointing official may select any applicant in the highest quality category or, if fewer than 3 candidates have been assigned to the highest quality category, in a merged category consisting of the highest and the second highest quality categories.

''(2) Notwithstanding paragraph (1), the appointing official may not pass over a preference-eligible in the same category from which selection is made, unless the requirements of section 3317(b) or 3318(b), as applicable, are satisfied.

''(d) Each agency that establishes a category rating system under this section shall submit in each of the 3 years following that establishment, a report to Congress on that system including information on—

''(1) the number of employees hired under that system;

''(2) the impact that system has had on the hiring of veterans and minorities, including those who are American Indian or Alaska Natives, Asian, Black or African American, and native Hawaiian or other Pacific Islander; and

''(3) the way in which managers were trained in the administration of that system.

''(e) The Office of Personnel Management may prescribe such regulations as it considers necessary to carry out the provisions of this section.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 33 of title 5, United States Code, is amended by striking the item relating to section 3319 and inserting the following:

''3319. Alternative ranking and selection procedures.''.

SEC. 2203. PERMANENT EXTENSION, REVISION, AND EXPANSION OF AUTHORITIES FOR USE OF VOLUNTARY SEPARATION INCENTIVE PAY AND VOLUNTARY EARLY RETIREMENT.

(a) VOLUNTARY SEPARATION INCENTIVE PAYMENTS.—

(1) IN GENERAL.—

(A) AMENDMENT TO TITLE 5, UNITED STATES CODE.—Chapter 35 of title 5, United States Code, is amended by inserting after subchapter I the following:

''SUBCHAPTER II—VOLUNTARY SEPARATION INCENTIVE PAYMENTS

''§ 3521. Definitions

''In this subchapter, the term—

''(1) 'agency' means an Executive agency as defined under section 105; and

''(2) 'employee'—

''(A) means an employee as defined under section 2105 employed by an agency and an individual employed by a county committee established under section 8(b)(5) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)(5)) who—

''(i) is serving under an appointment without time limitation; and

''(ii) has been currently employed for a continuous period of at least 3 years; and

''(B) shall not include—

''(i) a reemployed annuitant under subchapter III of chapter 83 or 84 or another retirement system for employees of the Government;

''(ii) an employee having a disability on the basis of which such employee is or would be eligible for disability retirement under subchapter III of chapter 83 or 84 or another retirement system for employees of the Government;

''(iii) an employee who is in receipt of a decision notice of involuntary separation for misconduct or unacceptable performance;

''(iv) an employee who has previously received any voluntary separation incentive payment from the Federal Government under this subchapter or any other authority;

''(v) an employee covered by statutory reemployment rights who is on transfer employment with another organization; or

''(vi) any employee who—

''(I) during the 36-month period preceding the date of separation of that employee, performed service for which a student loan repayment benefit was or is to be paid under section 5379;

''(II) during the 24-month period preceding the date of separation of that employee, performed service for which a recruitment or relocation bonus was or is to be paid under section 5753; or

''(III) during the 12-month period preceding the date of separation of that employee, performed service for which a retention bonus was or is to be paid under section 5754.

''§ 3522. Agency plans; approval

''(a) Before obligating any resources for voluntary separation incentive payments, the head of each agency shall submit to the Office of Personnel Management a plan outlining the intended use of such incentive payments and a proposed organizational chart for the agency once such incentive payments have been completed.

''(b) The plan of an agency under subsection (a) shall include—

''(1) the specific positions and functions to be reduced or eliminated;

''(2) a description of which categories of employees will be offered incentives;

''(3) the time period during which incentives may be paid;

''(4) the number and amounts of voluntary separation incentive payments to be offered; and

''(5) a description of how the agency will operate without the eliminated positions and functions.

''(c) The Director of the Office of Personnel Management shall review each agency's plan and may make any appropriate modifications in the plan, in consultation with the Director of the Office of Management and Budget. A plan under this section may not be implemented without the approval of the Director of the Office of Personnel Management.

''§ 3523. Authority to provide voluntary separation incentive payments

''(a) A voluntary separation incentive payment under this subchapter may be paid to an employee only as provided in the plan of an agency established under section 3522.

''(b) A voluntary incentive payment—

''(1) shall be offered to agency employees on the basis of—

''(A) 1 or more organizational units;

''(B) 1 or more occupational series or levels;

''(C) 1 or more geographical locations;

''(D) skills, knowledge, or other factors related to a position;

''(E) specific periods of time during which eligible employees may elect a voluntary incentive payment; or

''(F) any appropriate combination of such factors;

''(2) shall be paid in a lump sum after the employee's separation;

''(3) shall be equal to the lesser of—

''(A) an amount equal to the amount the employee would be entitled to receive under section 5595(c) if the employee were entitled to payment under such section (without adjustment for any previous payment made); or

''(B) an amount determined by the agency head, not to exceed $25,000;

''(4) may be made only in the case of an employee who voluntarily separates (whether by retirement or resignation) under this subchapter;

''(5) shall not be a basis for payment, and shall not be included in the computation, of any other type of Government benefit;

''(6) shall not be taken into account in determining the amount of any severance pay to which the employee may be entitled under section 5595, based on any other separation; and

''(7) shall be paid from appropriations or funds available for the payment of the basic pay of the employee.

''§ 3524. Effect of subsequent employment with the Government

''(a) The term 'employment'—

''(1) in subsection (b) includes employment under a personal services contract (or other direct contract) with the United States Government (other than an entity in the legislative branch); and

''(2) in subsection (c) does not include employment under such a contract.

''(b) An individual who has received a voluntary separation incentive payment under this subchapter and accepts any employment for compensation with the Government of the United States within 5 years after the date of the separation on which the payment is based shall be required to pay, before the individual's first day of employment, the entire amount of the incentive payment to the agency that paid the incentive payment.

''(c)(1) If the employment under this section is with an agency, other than the General Accounting Office, the United States Postal Service, or the Postal Rate Commission, the Director of the Office of Personnel Management may, at the request of the head of the agency, waive the repayment if—

''(A) the individual involved possesses unique abilities and is the only qualified applicant available for the position; or

''(B) in the case of an emergency involving a direct threat to life or property, the individual—

''(i) has skills directly related to resolving the emergency; and

''(ii) will serve on a temporary basis only so long as that individual's services are made necessary by the emergency.

''(2) If the employment under this section is with an entity in the legislative branch, the head of the entity or the appointing official may waive the repayment if the individual involved possesses unique abilities and is the only qualified applicant available for the position.

''(3) If the employment under this section is with the judicial branch, the Director of the Administrative Office of the United States Courts may waive the repayment if the individual involved possesses unique abilities and is the only qualified applicant available for the position.

''§ 3525. Regulations

''The Office of Personnel Management may prescribe regulations to carry out this subchapter.''.

(B) TECHNICAL AND CONFORMING AMENDMENTS.—Chapter 35 of title 5, United States Code, is amended—

(i) by striking the chapter heading and inserting the following:

''CHAPTER 35—RETENTION PREFERENCE, VOLUNTARY SEPARATION INCENTIVE PAYMENTS, RESTORATION, AND REEMPLOYMENT''; and

(ii) in the table of sections by inserting after the item relating to section 3504 the following:

''SUBCHAPTER II—VOLUNTARY SEPARATION INCENTIVE PAYMENTS

''3521. Definitions.
''3522. Agency plans; approval.
''3523. Authority to provide voluntary separation incentive payments.
''3524. Effect of subsequent employment with the Government.
''3525. Regulations.''.

(2) ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS.—The Director of the Administrative Office of the United States Courts may, by regulation, establish a program substantially similar to the program established under paragraph (1) for individuals serving in the judicial branch.

(3) CONTINUATION OF OTHER AUTHORITY.—Any agency exercising any voluntary separation incentive authority in effect on the effective date of this subsection may continue to offer voluntary separation incentives consistent with that authority until that authority expires.

(4) EFFECTIVE DATE.—This subsection shall take effect 60 days after the date of enactment of this Act.

(b) FEDERAL EMPLOYEE VOLUNTARY EARLY RETIREMENT.—

(1) CIVIL SERVICE RETIREMENT SYSTEM.—Section 8336(d)(2) of title 5, United States Code, is amended to read as follows:

''(2)(A) has been employed continuously, by the agency in which the employee is serving, for at least the 31-day period ending on the date on which such agency requests the determination referred to in subparagraph (D);

''(B) is serving under an appointment that is not time limited;

''(C) has not been duly notified that such employee is to be involuntarily separated for misconduct or unacceptable performance;

''(D) is separated from the service voluntarily during a period in which, as determined by the Office of Personnel Management (upon request of the agency) under regulations prescribed by the Office—

''(i) such agency (or, if applicable, the component in which the employee is serving) is undergoing substantial delayering, substantial reorganization, substantial reductions in force, substantial transfer of function, or other substantial workforce restructuring (or shaping);

''(ii) a significant percentage of employees serving in such agency (or component) are likely to be separated or subject to an immediate reduction in the rate of basic pay (without regard to subchapter VI of chapter 53, or comparable provisions); or

''(iii) identified as being in positions which are becoming surplus or excess to the agency's future ability to carry out its mission effectively; and

''(E) as determined by the agency under regulations prescribed by the Office, is within the scope of the offer of voluntary early retirement, which may be made on the basis of—

''(i) 1 or more organizational units;

''(ii) 1 or more occupational series or levels;

''(iii) 1 or more geographical locations;

''(iv) specific periods;

''(v) skills, knowledge, or other factors related to a position; or

''(vi) any appropriate combination of such factors;''.

(2) FEDERAL EMPLOYEES' RETIREMENT SYSTEM.—Section 8414(b)(1) of title 5, United States Code, is amended by striking subparagraph (B) and inserting the following:

''(B)(i) has been employed continuously, by the agency in which the employee is serving, for at least the 31-day period ending on the date on which such agency requests the determination referred to in clause (iv);

''(ii) is serving under an appointment that is not time limited;

''(iii) has not been duly notified that such employee is to be involuntarily separated for misconduct or unacceptable performance;

''(iv) is separated from the service voluntarily during a period in which, as determined by the Office of Personnel Management (upon request of the agency) under regulations prescribed by the Office—

''(I) such agency (or, if applicable, the component in which the employee is serving) is undergoing substantial delayering, substantial reorganization, substantial reductions in force, substantial transfer of function, or other substantial workforce restructuring (or shaping);

''(II) a significant percentage of employees serving in such agency (or component) are likely to be separated or subject to an immediate reduction in the rate of basic pay (without regard to subchapter VI of chapter 53, or comparable provisions); or

''(III) identified as being in positions which are becoming surplus or excess to the agency's future ability to carry out its mission effectively; and

''(v) as determined by the agency under regulations prescribed by the Office, is within the scope of the offer of voluntary early retirement, which may be made on the basis of—

''(I) 1 or more organizational units;

''(II) 1 or more occupational series or levels;

''(III) 1 or more geographical locations;

''(IV) specific periods;

''(V) skills, knowledge, or other factors related to a position; or

''(VI) any appropriate combination of such factors;''.

(3) GENERAL ACCOUNTING OFFICE AUTHORITY.—The amendments made by this subsection shall not be construed to affect the authority under section 1 of Public Law 106–303 (5 U.S.C. 8336 note; 114 Stat. 1063).

(4) TECHNICAL AND CONFORMING AMENDMENT.—Section 7001 of the 1998 Supplemental Appropriations and Rescissions Act (Public Law 105–174; 112 Stat. 91) is repealed.

(5) REGULATIONS.—The Office of Personnel Management may prescribe regulations to carry out this subsection.

(c) SENSE OF CONGRESS.—It is the sense of Congress that the implementation of this section is intended to reshape the Federal workforce and not downsize the Federal workforce.

SEC. 2204. STUDENT VOLUNTEER TRANSIT SUBSIDY.

(a) IN GENERAL.—Section 7905(a)(1) of title 5, United States Code, is amended by striking ''and a member of a uniformed service'' and inserting '', a member of a uniformed service, and a student who provides voluntary services under section 3111''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 3111(c)(1) of title 5, United States Code, is amended by striking ''chapter 81 of this title'' and inserting ''section 7905 (relating to commuting by means other than single-occupancy motor vehicles), chapter 81''.

TITLE XXIII—REFORMS RELATING TO THE SENIOR EXECUTIVE SERVICE

SEC. 2301. REPEAL OF RECERTIFICATION REQUIREMENTS OF SENIOR EXECUTIVES.

(a) IN GENERAL.—Title 5, United States Code, is amended—

(1) in chapter 33—

(A) in section 3393(g) by striking ''3393a,'';

(B) by repealing section 3393a; and

(C) in the table of sections by striking the item relating to section 3393a;

(2) in chapter 35—

(A) in section 3592(a)—

(i) in paragraph (1), by inserting ''or'' at the end;

(ii) in paragraph (2), by striking ''or'' at the end;

(iii) by striking paragraph (3); and

(iv) by striking the last sentence;

(B) in section 3593(a), by striking paragraph (2) and inserting the following:

''(2) the appointee left the Senior Executive Service for reasons other than misconduct, neglect of duty, malfeasance, or less than fully successful executive performance as determined under subchapter II of chapter 43.''; and

(C) in section 3594(b)—

(i) in paragraph (1), by inserting ''or'' at the end;

(ii) in paragraph (2), by striking ''or'' at the end; and

(iii) by striking paragraph (3);

(3) in section 7701(c)(1)(A), by striking ''or removal from the Senior Executive Service for failure to be recertified under section 3393a'';

(4) in chapter 83—

(A) in section 8336(h)(1), by striking ''for failure to be recertified as a senior executive under section 3393a or''; and

(B) in section 8339(h), in the first sentence, by striking '', except that such reduction shall not apply in the case of an employee retiring under section 8336(h) for failure to be recertified as a senior executive''; and

(5) in chapter 84—

(A) in section 8414(a)(1), by striking ''for failure to be recertified as a senior executive under section 3393a or''; and

(B) in section 8421(a)(2), by striking '', except that an individual entitled to an annuity under section 8414(a) for failure to be recertified as a senior executive shall be entitled to an annuity supplement without regard to such applicable minimum retirement age''.

(b) SAVINGS PROVISION.—Notwithstanding the amendments made by subsection (a)(2)(A), an appeal under the final sentence of section 3592(a) of title 5, United States Code, that is pending on the day before the effective date of this section—

(1) shall not abate by reason of the enactment of the amendments made by subsection (a)(2)(A); and

(2) shall continue as if such amendments had not been enacted.

(c) APPLICATION.—The amendment made by subsection (a)(2)(B) shall not apply with respect to an individual who, before the effective date of this section, leaves the Senior Executive Service for failure to be recertified as a senior executive under section 3393a of title 5, United States Code.

SEC. 2302. ADJUSTMENT OF LIMITATION ON TOTAL ANNUAL COMPENSATION.

Section 5307(a) of title 5, United States Code, is amended by adding at the end the following:

''(3) Notwithstanding paragraph (1), the total payment referred to under such paragraph with respect to an employee paid under section 5372, 5376, or 5383 of title 5 or section 332(f), 603, or 604 of title 28 shall not exceed the total annual compensation payable to the Vice President under section 104 of title 3. Regulations prescribed under subsection (c) may extend the application of this paragraph to other equivalent categories of employees.''.

TITLE XXIV—ACADEMIC TRAINING

SEC. 2401. ACADEMIC TRAINING.

(a) ACADEMIC DEGREE TRAINING.—Section 4107 of title 5, United States Code, is amended to read as follows:

''§ 4107. Academic degree training

''(a) Subject to subsection (b), an agency may select and assign an employee to academic degree training and may pay or reimburse the costs of academic degree training from appropriated or other available funds if such training—

''(1) contributes significantly to—

''(A) meeting an identified agency training need;

''(B) resolving an identified agency staffing problem; or

''(C) accomplishing goals in the strategic plan of the agency;

''(2) is part of a planned, systematic, and coordinated agency employee development program linked to accomplishing the strategic goals of the agency; and

''(3) is accredited and is provided by a college or university that is accredited by a nationally recognized body.

''(b) In exercising authority under subsection (a), an agency shall—

''(1) consistent with the merit system principles set forth in paragraphs (2) and (7) of section 2301(b), take into consideration the need to—

''(A) maintain a balanced workforce in which women, members of racial and ethnic minority groups, and persons with disabilities are appropriately represented in Government service; and

''(B) provide employees effective education and training to improve organizational and individual performance;

''(2) assure that the training is not for the sole purpose of providing an employee an opportunity to obtain an academic degree or to qualify for appointment to a particular position for which the academic degree is a basic requirement;

''(3) assure that no authority under this subsection is exercised on behalf of any employee occupying or seeking to qualify for—

''(A) a noncareer appointment in the Senior Executive Service; or

''(B) appointment to any position that is excepted from the competitive service because of its confidential policy-determining, policymaking, or policy-advocating character; and

''(4) to the greatest extent practicable, facilitate the use of online degree training.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 41 of title 5, United States Code, is amended by striking the item relating to section 4107 and inserting the following:

''4107. Academic degree training.''.

SEC. 2402. MODIFICATIONS TO NATIONAL SECURITY EDUCATION PROGRAM.

(a) FINDINGS AND POLICIES.—

(1) FINDINGS.—Congress finds that—

(A) the United States Government actively encourages and financially supports the training, education, and development of many United States citizens;

(B) as a condition of some of those supports, many of those citizens have an obligation to seek either compensated or uncompensated employment in the Federal sector; and

(C) it is in the United States national interest to maximize the return to the Nation of funds invested in the development of such citizens by seeking to employ them in the Federal sector.

(2) POLICY.—It shall be the policy of the United States Government to—

(A) establish procedures for ensuring that United States citizens who have incurred service obligations as the result of receiving financial support for education and training from the United States Government and have applied for Federal positions are considered in all recruitment and hiring initiatives of Federal departments, bureaus, agencies, and offices; and

(B) advertise and open all Federal positions to United States citizens who have incurred service obligations with the United States Government as the result of receiving financial support for education and training from the United States Government.

(b) FULFILLMENT OF SERVICE REQUIREMENT IF NATIONAL SECURITY POSITIONS ARE UNAVAILABLE.— Section 802(b)(2) of the David L. Boren National Security Education Act of 1991 (50 U.S.C. 1902) is amended—

(1) in subparagraph (A), by striking clause (ii) and inserting the following:

''(ii) if the recipient demonstrates to the Secretary (in accordance with such regulations) that no national security position in an agency or office of the Federal Government having national security responsibilities is available, work in other offices or agencies of the Federal Government or in the field of higher education in a discipline relating to the foreign country, foreign language, area study, or international field of study for which the scholarship was awarded, for a period specified by the Secretary, which period shall be determined in accordance with clause (i); or''; and

(2) in subparagraph (B), by striking clause (ii) and inserting the following:

''(ii) if the recipient demonstrates to the Secretary (in accordance with such regulations) that no national security position is available upon the completion of the degree, work in other offices or agencies of the Federal Government or in the field of higher education in a discipline relating to the foreign country, foreign language, area study, or international field of study for which the fellowship was awarded, for a period specified by the Secretary, which period shall be established in accordance with clause (i); and''.

SEC. 2403. COMPENSATORY TIME OFF FOR TRAVEL.

Subchapter V of chapter 55 of title 5, United States Code, is amended by adding at end the following:

''§ 5550b. Compensatory time off for travel

''(a) An employee shall receive 1 hour of compensatory time off for each hour spent by the employee in travel status away from the official duty station of the employee, to the extent that the time spent in travel status is not otherwise compensable.

''(b) Not later than 30 days after the date of enactment of this section, the Office of Personnel Management shall prescribe regulations to implement this section.''.

DIVISION D—E-GOVERNMENT ACT OF 2002

TITLE XXX—SHORT TITLE; FINDINGS AND PURPOSES

SEC. 3001. SHORT TITLE.

This division may be cited as the ''E-Government Act of 2002''.

SEC. 3002. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds the following:

(1) The use of computers and the Internet is rapidly transforming societal interactions and the relationships among citizens, private businesses, and the Government.

(2) The Federal Government has had uneven success in applying advances in information technology to enhance governmental functions and services, achieve more efficient performance, increase access to Government information, and increase citizen participation in Government.

(3) Most Internet-based services of the Federal Government are developed and presented separately, according to the jurisdictional boundaries of an individual department or agency, rather than being integrated cooperatively according to function or topic.

(4) Internet-based Government services involving interagency cooperation are especially difficult to develop and promote, in part because of a lack of sufficient funding mechanisms to support such interagency cooperation.

(5) Electronic Government has its impact through improved Government performance and outcomes within and across agencies.

(6) Electronic Government is a critical element in the management of Government, to be implemented as part of a management framework that also addresses finance, procurement, human capital, and other challenges to improve the performance of Government.

(7) To take full advantage of the improved Government performance that can be achieved through the use of Internet-based technology requires strong leadership, better organization, improved interagency collaboration, and more focused oversight of agency compliance with statutes related to information resource management.

(b) PURPOSES.—The purposes of this division are the following:

(1) To provide effective leadership of Federal Government efforts to develop and promote electronic Government services and processes by establishing an Administrator of a new Office of Electronic Government within the Office of Management and Budget.

(2) To promote use of the Internet and other information technologies to provide increased opportunities for citizen participation in Government.

(3) To promote interagency collaboration in providing electronic Government services, where this collaboration would improve the service to citizens by integrating related functions, and in the use of internal electronic Government processes, where this collaboration would improve the efficiency and effectiveness of the processes.

(4) To improve the ability of the Government to achieve agency missions and program performance goals.

(5) To promote the use of the Internet and emerging technologies within and across Government agencies to provide citizen-centric Government information and services.

(6) To reduce costs and burdens for businesses and other Government entities.

(7) To promote better informed decision-making by policy makers.

(8) To promote access to high quality Government information and services across multiple channels.

(9) To make the Federal Government more transparent and accountable.

(10) To transform agency operations by utilizing, where appropriate, best practices from public and private sector organizations.

(11) To provide enhanced access to Government information and services in a manner consistent with laws regarding protection of personal privacy, national security, records retention, access for persons with disabilities, and other relevant laws.

TITLE XXXI—OFFICE OF MANAGEMENT AND BUDGET ELECTRONIC GOVERNMENT SERVICES

SEC. 3101. MANAGEMENT AND PROMOTION OF ELECTRONIC GOVERNMENT SERVICES.

(a) IN GENERAL.—Title 44, United States Code, is amended by inserting after chapter 35 the following:

''CHAPTER 36—MANAGEMENT AND PROMOTION OF ELECTRONIC GOVERNMENT SERVICES

''Sec.
''3601. Definitions.
''3602. Office of Electronic Government.
''3603. Chief Information Officers Council.
''3604. E-Government Fund.
''3605. E-Government report.

''§ 3601. Definitions

''In this chapter, the definitions under section 3502 shall apply, and the term—

''(1) 'Administrator' means the Administrator of the Office of Electronic Government established under section 3602;

''(2) 'Council' means the Chief Information Officers Council established under section 3603;

''(3) 'electronic Government' means the use by the Government of web-based Internet applications and other information technologies, combined with processes that implement these technologies, to—

''(A) enhance the access to and delivery of Government information and services to the public, other agencies, and other Government entities; or

''(B) bring about improvements in Government operations that may include effectiveness, efficiency, service quality, or transformation;

''(4) 'enterprise architecture'—

''(A) means—

''(i) a strategic information asset base, which defines the mission;

''(ii) the information necessary to perform the mission;

''(iii) the technologies necessary to perform the mission; and

''(iv) the transitional processes for implementing new technologies in response to changing mission needs; and

''(B) includes—

''(i) a baseline architecture;

''(ii) a target architecture; and

''(iii) a sequencing plan;

''(5) 'Fund' means the E-Government Fund established under section 3604;

''(6) 'interoperability' means the ability of different operating and software systems, applications, and services to communicate and exchange data in an accurate, effective, and consistent manner;

''(7) 'integrated service delivery' means the provision of Internet-based Federal Government information or services integrated according to function or topic rather than separated according to the boundaries of agency jurisdiction; and

''(8) 'tribal government' means the governing body of any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

''§ 3602. Office of Electronic Government

''(a) There is established in the Office of Management and Budget an Office of Electronic Government.

''(b) There shall be at the head of the Office an Administrator who shall be appointed by the President, by and with the advice and consent of the Senate.

''(c) The Administrator shall assist the Director in carrying out—

''(1) all functions under this chapter;

''(2) all of the functions assigned to the Director under title XXXII of the E-Government Act of 2002; and

''(3) other electronic government initiatives, consistent with other statutes.

''(d) The Administrator shall assist the Director and the Deputy Director for Management and work with the Administrator of the Office of Information and Regulatory Affairs in setting strategic direction for implementing electronic Government, under relevant statutes, including—

''(1) chapter 35;

''(2) division E of the Clinger-Cohen Act of 1996 (division E of Public Law 104–106; 40 U.S.C. 1401 et seq.);

''(3) section 552a of title 5 (commonly referred to as the Privacy Act);

''(4) the Government Paperwork Elimination Act (44 U.S.C. 3504 note);

''(5) the Government Information Security Reform Act; and

''(6) the Computer Security Act of 1987 (40 U.S.C. 759 note).

''(e) The Administrator shall work with the Administrator of the Office of Information and Regulatory Affairs and with other offices within the Office of Management and Budget to oversee implementation of electronic Government under this chapter, chapter 35, the E-Government Act of 2002, and other relevant statutes, in a manner consistent with law, relating to—

''(1) capital planning and investment control for information technology;

''(2) the development of enterprise architectures;

''(3) information security;

''(4) privacy;

''(5) access to, dissemination of, and preservation of Government information;

''(6) accessibility of information technology for persons with disabilities; and

''(7) other areas of electronic Government.

''(f) Subject to requirements of this chapter, the Administrator shall assist the Director by performing electronic Government functions as follows:

''(1) Advise the Director on the resources required to develop and effectively operate and maintain Federal Government information systems.

''(2) Recommend to the Director changes relating to Governmentwide strategies and priorities for electronic Government.

''(3) Provide overall leadership and direction to the executive branch on electronic Government by working with authorized officials to establish information resources management policies and requirements, and by reviewing performance of each agency in acquiring, using, and managing information resources.

''(4) Promote innovative uses of information technology by agencies, particularly initiatives involving multiagency collaboration, through support of pilot projects, research, experimentation, and the use of innovative technologies.

''(5) Oversee the distribution of funds from, and ensure appropriate administration and coordination of, the E-Government Fund established under section 3604.

''(6) Coordinate with the Administrator of General Services regarding programs undertaken by the General Services Administration to promote electronic government and the efficient use of information technologies by agencies.

''(7) Lead the activities of the Chief Information Officers Council established under section 3603 on behalf of the Deputy Director for Management, who shall chair the council.

''(8) Assist the Director in establishing policies which shall set the framework for information technology standards for the Federal Government under section 5131 of the Clinger-Cohen Act of 1996 (40 U.S.C. 1441), to be developed by the National Institute of Standards and Technology and promulgated by the Secretary of Commerce, taking into account, if appropriate, recommendations of the Chief Information Officers Council, experts, and interested parties from the private and nonprofit sectors and State, local, and tribal governments, and maximizing the use of commercial standards as appropriate, as follows:

''(A) Standards and guidelines for interconnectivity and interoperability as described under section 3504.

''(B) Consistent with the process under section 3207(d) of the E-Government Act of 2002, standards and guidelines for categorizing Federal Government electronic information to enable efficient use of technologies, such as through the use of extensible markup language.

''(C) Standards and guidelines for Federal Government computer system efficiency and security.

''(9) Sponsor ongoing dialogue that—

''(A) shall be conducted among Federal, State, local, and tribal government leaders on electronic Government in the executive, legislative, and judicial branches, as well as leaders in the private and nonprofit sectors, to encourage collaboration and enhance understanding of best practices and innovative approaches in acquiring, using, and managing information resources;

''(B) is intended to improve the performance of governments in collaborating on the use of information technology to improve the delivery of Government information and services; and

''(C) may include—

''(i) development of innovative models—

''(I) for electronic Government management and Government information technology contracts; and

''(II) that may be developed through focused discussions or using separately sponsored research;

''(ii) identification of opportunities for public-private collaboration in using Internet-based technology to increase the efficiency of Government-to-business transactions;

''(iii) identification of mechanisms for providing incentives to program managers and other Government employees to develop and implement innovative uses of information technologies; and

''(iv) identification of opportunities for public, private, and intergovernmental collaboration in addressing the disparities in access to the Internet and information technology.

''(10) Sponsor activities to engage the general public in the development and implementation of policies and programs, particularly activities aimed at fulfilling the goal of using the most effective citizen-centered strategies and those activities which engage multiple agencies providing similar or related information and services.

''(11) Oversee the work of the General Services Administration and other agencies in developing the integrated Internet-based system under section 3204 of the E-Government Act of 2002.

''(12) Coordinate with the Administrator of the Office of Federal Procurement Policy to ensure effective implementation of electronic procurement initiatives.

''(13) Assist Federal agencies, including the General Services Administration, the Department of Justice, and the United States Access Board in—

''(A) implementing accessibility standards under section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d); and

''(B) ensuring compliance with those standards through the budget review process and other means.

''(14) Oversee the development of enterprise architectures within and across agencies.

''(15) Assist the Director and the Deputy Director for Management in overseeing agency efforts to ensure that electronic Government activities incorporate adequate, risk-based, and cost-effective security compatible with business processes.

''(16) Administer the Office of Electronic Government established under section 3602.

''(17) Assist the Director in preparing the E-Government report established under section 3605.

''(g) The Director shall ensure that the Office of Management and Budget, including the Office of Electronic Government, the Office of Information and Regulatory Affairs, and other relevant offices, have adequate staff and resources to properly fulfill all functions under the E-Government Act of 2002.

''§ 3603. Chief Information Officers Council

''(a) There is established in the executive branch a Chief Information Officers Council.

''(b) The members of the Council shall be as follows:

''(1) The Deputy Director for Management of the Office of Management and Budget, who shall act as chairperson of the Council.

''(2) The Administrator of the Office of Electronic Government.

''(3) The Administrator of the Office of Information and Regulatory Affairs.

''(4) The chief information officer of each agency described under section 901(b) of title 31.

''(5) The chief information officer of the Central Intelligence Agency.

''(6) The chief information officer of the Department of the Army, the Department of the Navy, and the Department of the Air Force, if chief information officers have been designated for such departments under section 3506(a)(2)(B).

''(7) Any other officer or employee of the United States designated by the chairperson.

''(c)(1) The Administrator of the Office of Electronic Government shall lead the activities of the Council on behalf of the Deputy Director for Management.

''(2)(A) The Vice Chairman of the Council shall be selected by the Council from among its members.

''(B) The Vice Chairman shall serve a 1-year term, and may serve multiple terms.

''(3) The Administrator of General Services shall provide administrative and other support for the Council.

''(d) The Council is designated the principal interagency forum for improving agency practices related to the design, acquisition, development, modernization, use, operation, sharing, and performance of Federal Government information resources.

''(e) In performing its duties, the Council shall consult regularly with representatives of State, local, and tribal governments.

''(f) The Council shall perform functions that include the following:

''(1) Develop recommendations for the Director on Government information resources management policies and requirements.

''(2) Share experiences, ideas, best practices, and innovative approaches related to information resources management.

''(3) Assist the Administrator in the identification, development, and coordination of multiagency projects and other innovative initiatives to improve Government performance through the use of information technology.

''(4) Promote the development and use of common performance measures for agency information resources management under this chapter and title XXXII of the E-Government Act of 2002.

''(5) Work as appropriate with the National Institute of Standards and Technology and the Administrator to develop recommendations on information technology standards developed under section 20 of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3) and promulgated under section 5131 of the Clinger-Cohen Act of 1996 (40 U.S.C. 1441), as follows:

''(A) Standards and guidelines for interconnectivity and interoperability as described under section 3504.

''(B) Consistent with the process under section 3207(d) of the E-Government Act of 2002, standards and guidelines for categorizing Federal Government electronic information to enable efficient use of technologies, such as through the use of extensible markup language.

''(C) Standards and guidelines for Federal Government computer system efficiency and security.

''(6) Work with the Office of Personnel Management to assess and address the hiring, training, classification, and professional development needs of the Government related to information resources management.

''(7) Work with the Archivist of the United States to assess how the Federal Records Act can be addressed effectively by Federal information resources management activities.

''§ 3604. E-Government Fund

''(a)(1) There is established in the Treasury of the United States the E-Government Fund.

''(2) The Fund shall be administered by the Administrator of the General Services Administration to support projects approved by the Director, assisted by the Administrator

of the Office of Electronic Government, that enable the Federal Government to expand its ability, through the development and implementation of innovative uses of the Internet or other electronic methods, to conduct activities electronically.

''(3) Projects under this subsection may include efforts to—

''(A) make Federal Government information and services more readily available to members of the public (including individuals, businesses, grantees, and State and local governments);

''(B) make it easier for the public to apply for benefits, receive services, pursue business opportunities, submit information, and otherwise conduct transactions with the Federal Government; and

''(C) enable Federal agencies to take advantage of information technology in sharing information and conducting transactions with each other and with State and local governments.

''(b)(1) The Administrator shall—

''(A) establish procedures for accepting and reviewing proposals for funding;

''(B) consult with interagency councils, including the Chief Information Officers Council, the Chief Financial Officers Council, and other interagency management councils, in establishing procedures and reviewing proposals; and

''(C) assist the Director in coordinating resources that agencies receive from the Fund with other resources available to agencies for similar purposes.

''(2) When reviewing proposals and managing the Fund, the Administrator shall observe and incorporate the following procedures:

''(A) A project requiring substantial involvement or funding from an agency shall be approved by a senior official with agency-wide authority on behalf of the head of the agency, who shall report directly to the head of the agency.

''(B) Projects shall adhere to fundamental capital planning and investment control processes.

''(C) Agencies shall identify in their proposals resource commitments from the agencies involved and how these resources would be coordinated with support from the Fund, and include plans for potential continuation of projects after all funds made available from the Fund are expended.

''(D) After considering the recommendations of the interagency councils, the Director, assisted by the Administrator, shall have final authority to determine which of the candidate projects shall be funded from the Fund.

''(E) Agencies shall assess the results of funded projects.

''(c) In determining which proposals to recommend for funding, the Administrator—

''(1) shall consider criteria that include whether a proposal—

''(A) identifies the group to be served, including citizens, businesses, the Federal Government, or other governments;

''(B) indicates what service or information the project will provide that meets needs of groups identified under subparagraph (A);

''(C) ensures proper security and protects privacy;

''(D) is interagency in scope, including projects implemented by a primary or single agency that—

''(i) could confer benefits on multiple agencies; and

''(ii) have the support of other agencies; and

''(E) has performance objectives that tie to agency missions and strategic goals, and interim results that relate to the objectives; and

''(2) may also rank proposals based on criteria that include whether a proposal—

''(A) has Governmentwide application or implications;

''(B) has demonstrated support by the public to be served;

''(C) integrates Federal with State, local, or tribal approaches to service delivery;

''(D) identifies resource commitments from nongovernmental sectors;

''(E) identifies resource commitments from the agencies involved;

''(F) uses web-based technologies to achieve objectives;

''(G) identifies records management and records access strategies;

''(H) supports more effective citizen participation in and interaction with agency activities that further progress toward a more citizen-centered Government;

''(I) directly delivers Government information and services to the public or provides the infrastructure for delivery;

''(J) supports integrated service delivery;

''(K) describes how business processes across agencies will reflect appropriate transformation simultaneous to technology implementation; and

''(L) is new or innovative and does not supplant existing funding streams within agencies.

''(d) The Fund may be used to fund the integrated Internet-based system under section 3204 of the E-Government Act of 2002.

''(e) None of the funds provided from the Fund may be transferred to any agency until 15 days after the Administrator of the General Services Administration has submitted to the Committees on Appropriations of the Senate and the House of Representatives, the Committee on Governmental Affairs of the Senate, the Committee on Government Reform of the House of Representatives, and the appropriate authorizing committees of the Senate and the House of Representatives, a notification and description of how the funds are to be allocated and how the expenditure will further the purposes of this chapter.

''(f)(1) The Director shall report annually to Congress on the operation of the Fund, through the report established under section 3605.

''(2) The report under paragraph (1) shall describe—

''(A) all projects which the Director has approved for funding from the Fund; and

''(B) the results that have been achieved to date for these funded projects.

''(g)(1) There are authorized to be appropriated to the Fund—

''(A) $45,000,000 for fiscal year 2003;

''(B) $50,000,000 for fiscal year 2004;

''(C) $100,000,000 for fiscal year 2005;

''(D) $150,000,000 for fiscal year 2006; and

''(E) such sums as are necessary for fiscal year 2007.

''(2) Funds appropriated under this subsection shall remain available until expended.

''§ 3605. E-Government report

''(a) Not later than March 1 of each year, the Director shall submit an E-Government status report to the Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives.

''(b) The report under subsection (a) shall contain—

''(1) a summary of the information reported by agencies under section 3202(f) of the E-Government Act of 2002;

''(2) the information required to be reported by section 3604(f); and

''(3) a description of compliance by the Federal Government with other goals and provisions of the E-Government Act of 2002.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of chapters for title 44, United States Code, is amended by inserting after the item relating to chapter 35 the following:

''36. Management and Promotion of Electronic Government Services .. 3601''.

SEC. 3102. CONFORMING AMENDMENTS.

(a) ELECTRONIC GOVERNMENT AND INFORMATION TECHNOLOGIES.—

(1) IN GENERAL.—Chapter 3 of title 40, United States Code, is amended by inserting after section 304 the following:

''SEC. 305. ELECTRONIC GOVERNMENT AND INFORMATION TECHNOLOGIES.

''The Administrator of General Services shall consult with the Administrator of the Office of Electronic Government on programs undertaken by the General Services Administration to promote electronic Government and the efficient use of information technologies by Federal agencies.''.

(2) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 5 of title 40, United States Code, is amended by inserting after the item relating to section 304 the following:

''Sec. 305. Electronic Government and information technologies.''.

(b) MODIFICATION OF DEPUTY DIRECTOR FOR MANAGEMENT FUNCTIONS.—Section 503(b) of title 31, United States Code, is amended—

(1) by redesignating paragraphs (5), (6), (7), (8), and (9), as paragraphs (6), (7), (8), (9), and (10), respectively; and

(2) by inserting after paragraph (4) the following:

''(5) Chair the Chief Information Officers Council established under section 3603 of title 44.''.

(c) OFFICE OF ELECTRONIC GOVERNMENT.—

(1) IN GENERAL.—Chapter 5 of title 31, United States Code, is amended by inserting after section 506 the following:

''§ 507. Office of Electronic Government

''The Office of Electronic Government, established under section 3602 of title 44, is an office in the Office of Management and Budget.''.

(2) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 5 of title 31, United States Code, is amended by inserting after the item relating to section 506 the following:

''507. Office of Electronic Government.''.

TITLE XXXII—FEDERAL MANAGEMENT AND PROMOTION OF ELECTRONIC GOVERNMENT SERVICES

SEC. 3201. DEFINITIONS.

Except as otherwise provided, in this title the definitions under sections 3502 and 3601 of title 44, United States Code, shall apply.

SEC. 3202. FEDERAL AGENCY RESPONSIBILITIES.

(a) IN GENERAL.—The head of each agency shall be responsible for—

(1) complying with the requirements of this division (including the amendments made by this Act), the related information resource management policies and guidance established by the Director of the Office of Management and Budget, and the related information technology standards promulgated by the Secretary of Commerce;

(2) ensuring that the information resource management policies and guidance established under this division by the Director, and the information technology standards promulgated under this division by the Secretary of Commerce are communicated promptly and effectively to all relevant officials within their agency; and

(3) supporting the efforts of the Director and the Administrator of the General Services Administration to develop, maintain, and promote an integrated Internet-based

system of delivering Federal Government information and services to the public under section 3204.

(b) PERFORMANCE INTEGRATION.—

(1) Agencies shall develop performance measures that demonstrate how electronic government enables progress toward agency objectives, strategic goals, and statutory mandates.

(2) In measuring performance under this section, agencies shall rely on existing data collections to the extent practicable.

(3) Areas of performance measurement that agencies should consider include—

(A) customer service;

(B) agency productivity; and

(C) adoption of innovative information technology, including the appropriate use of commercial best practices.

(4) Agencies shall link their performance goals to key groups, including citizens, businesses, and other governments, and to internal Federal Government operations.

(5) As appropriate, agencies shall work collectively in linking their performance goals to groups identified under paragraph (4) and shall use information technology in delivering Government information and services to those groups.

(c) AVOIDING DIMINISHED ACCESS.—When promulgating policies and implementing programs regarding the provision of Government information and services over the Internet, agency heads shall consider the impact on persons without access to the Internet, and shall, to the extent practicable—

(1) ensure that the availability of Government information and services has not been diminished for individuals who lack access to the Internet; and

(2) pursue alternate modes of delivery that make Government information and services more accessible to individuals who do not own computers or lack access to the Internet.

(d) ACCESSIBILITY TO PEOPLE WITH DISABILITIES.—All actions taken by Federal departments and agencies under this division shall be in compliance with section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d).

(e) SPONSORED ACTIVITIES.—Agencies shall sponsor activities that use information technology to engage the public in the development and implementation of policies and programs.

(f) CHIEF INFORMATION OFFICERS.—The Chief Information Officer of each of the agencies designated under chapter 36 of title 44, United States Code (as added by this Act) shall be responsible for—

(1) participating in the functions of the Chief Information Officers Council; and

(2) monitoring the implementation, within their respective agencies, of information technology standards promulgated under this division by the Secretary of Commerce, including common standards for interconnectivity and interoperability, categorization of Federal Government electronic information, and computer system efficiency and security.

(g) E-GOVERNMENT STATUS REPORT.—

(1) IN GENERAL.—Each agency shall compile and submit to the Director an annual E-Government Status Report on—

(A) the status of the implementation by the agency of electronic government initiatives;

(B) compliance by the agency with this Act; and

(C) how electronic Government initiatives of the agency improve performance in delivering programs to constituencies.

(2) SUBMISSION.—Each agency shall submit an annual report under this subsection—

(A) to the Director at such time and in such manner as the Director requires;

(B) consistent with related reporting requirements; and

(C) which addresses any section in this title relevant to that agency.

(h) USE OF TECHNOLOGY.—Nothing in this division supersedes the responsibility of an agency to use or manage information technology to deliver Government information and services that fulfill the statutory mission and programs of the agency.

(i) NATIONAL SECURITY SYSTEMS.—

(1) INAPPLICABILITY.—Except as provided under paragraph (2), this title does not apply to national security systems as defined in section 11103 of title 40, United States Code.

(2) APPLICABILITY.—Sections 3202, 3203, 3210, and 3214 of this title do apply to national security systems to the extent practicable and consistent with law.

SEC. 3203. COMPATIBILITY OF EXECUTIVE AGENCY METHODS FOR USE AND ACCEPTANCE OF ELECTRONIC SIGNATURES.

(a) PURPOSE.—The purpose of this section is to achieve interoperable implementation of electronic signatures for appropriately secure electronic transactions with Government.

(b) ELECTRONIC SIGNATURES.—In order to fulfill the objectives of the Government Paperwork Elimination Act (Public Law 105–277; 112 Stat. 2681–749 through 2681–751), each Executive agency (as defined under section 105 of title 5, United States Code) shall ensure that its methods for use and acceptance of electronic signatures are compatible with the relevant policies and procedures issued by the Director.

(c) AUTHORITY FOR ELECTRONIC SIGNATURES.—The Administrator of General Services shall support the Director by establishing a framework to allow efficient interoperability among Executive agencies when using electronic signatures, including processing of digital signatures.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the General Services Administration, to ensure the development and operation of a Federal bridge certification authority for digital signature compatibility, or for other activities consistent with this section, $8,000,000 in fiscal year 2003, and such sums as are necessary for each fiscal year thereafter.

SEC. 3204. FEDERAL INTERNET PORTAL.

(a) IN GENERAL.—

(1) PUBLIC ACCESS.—The Director shall work with the Administrator of the General Services Administration and other agencies to maintain and promote an integrated Internet-based system of providing the public with access to Government information and services.

(2) CRITERIA.—To the extent practicable, the integrated system shall be designed and operated according to the following criteria:

(A) The provision of Internet-based Government information and services directed to key groups, including citizens, business, and other governments, and integrated according to function or topic rather than separated according to the boundaries of agency jurisdiction.

(B) An ongoing effort to ensure that Internet-based Government services relevant to a given citizen activity are available from a single point.

(C) Access to Federal Government information and services consolidated, as appropriate, with Internet-based information and services provided by State, local, and tribal governments.

(D) Access to Federal Government information held by 1 or more agencies shall be made available in a manner that protects privacy, consistent with law.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the General Services Administration $15,000,000 for the maintenance, improvement, and promotion of the integrated Internet-based system for fiscal year 2003, and such sums as are necessary for fiscal years 2004 through 2007.

SEC. 3205. FEDERAL COURTS.

(a) INDIVIDUAL COURT WEBSITES.—The Chief Justice of the United States, the chief judge of each circuit and district, and the chief bankruptcy judge of each district shall establish with respect to the Supreme Court or the respective court of appeals, district, or bankruptcy court of a district, a website that contains the following information or links to websites with the following information:

(1) Location and contact information for the courthouse, including the telephone numbers and contact names for the clerk's office and justices' or judges' chambers.

(2) Local rules and standing or general orders of the court.

(3) Individual rules, if in existence, of each justice or judge in that court.

(4) Access to docket information for each case.

(5) Access to the substance of all written opinions issued by the court, regardless of whether such opinions are to be published in the official court reporter, in a text searchable format.

(6) Access to all documents filed with the courthouse in electronic form, described under subsection (c).

(7) Any other information (including forms in a format that can be downloaded) that the court determines useful to the public.

(b) MAINTENANCE OF DATA ONLINE.—

(1) UPDATE OF INFORMATION.—The information and rules on each website shall be updated regularly and kept reasonably current.

(2) CLOSED CASES.—Electronic files and docket information for cases closed for more than 1 year are not required to be made available online, except all written opinions with a date of issuance after the effective date of this section shall remain available online.

(c) ELECTRONIC FILINGS.—

(1) IN GENERAL.—Except as provided under paragraph (2), each court shall make any document that is filed electronically publicly available online. A court may convert any document that is filed in paper form to electronic form. To the extent such conversions are made, all such electronic versions of the document shall be made available online.

(2) EXCEPTIONS.—Documents that are filed that are not otherwise available to the public, such as documents filed under seal, shall not be made available online.

(3) PRIVACY AND SECURITY CONCERNS.—The Judicial Conference of the United States may promulgate rules under this subsection to protect important privacy and security concerns.

(d) DOCKETS WITH LINKS TO DOCUMENTS.—The Judicial Conference of the United States shall explore the feasibility of technology to post online dockets with links allowing all filings, decisions, and rulings in each case to be obtained from the docket sheet of that case.

(e) COST OF PROVIDING ELECTRONIC DOCKETING INFORMATION.—Section 303(a) of the Judiciary Appropriations Act, 1992 (28 U.S.C. 1913 note) is amended in the first sentence by striking ''shall hereafter'' and inserting ''may, only to the extent necessary,''.

(f) TIME REQUIREMENTS.—Not later than 2 years after the effective date of this title, the websites under subsection (a) shall be established, except that access to documents filed in electronic form shall be established not later than 4 years after that effective date.

(g) DEFERRAL.—

(1) IN GENERAL.—

(A) ELECTION.—

(i) NOTIFICATION.—The Chief Justice of the United States, a chief judge, or chief bankruptcy judge may submit a notification to the Administrative Office of the United States Courts to defer compliance with any requirement of this section with respect to the Supreme Court, a court of appeals, district, or the bankruptcy court of a district.

(ii) CONTENTS.—A notification submitted under this subparagraph shall state—

(I) the reasons for the deferral; and

(II) the online methods, if any, or any alternative methods, such court or district is using to provide greater public access to information.

(B) EXCEPTION.—To the extent that the Supreme Court, a court of appeals, district, or bankruptcy court of a district maintains a website under subsection (a), the Supreme Court or that court of appeals or district shall comply with subsection (b)(1).

(2) REPORT.—Not later than 1 year after the effective date of this title, and every year thereafter, the Judicial Conference of the United States shall submit a report to the Committees on Governmental Affairs and the Judiciary of the Senate and the Committees on Government Reform and the Judiciary of the House of Representatives that—

(A) contains all notifications submitted to the Administrative Office of the United States Courts under this subsection; and

(B) summarizes and evaluates all notifications.

SEC. 3206. REGULATORY AGENCIES.

(a) PURPOSES.—The purposes of this section are to—

(1) improve performance in the development and issuance of agency regulations by using information technology to increase access, accountability, and transparency; and

(2) enhance public participation in Government by electronic means, consistent with requirements under subchapter II of chapter 5 of title 5, United States Code, (commonly referred to as the Administrative Procedures Act).

(b) INFORMATION PROVIDED BY AGENCIES ONLINE.—To the extent practicable as determined by the agency in consultation with the Director, each agency (as defined under section 551 of title 5, United States Code) shall ensure that a publicly accessible Federal Government website includes all information about that agency required to be published in the Federal Register under section 552(a)(1) of title 5, United States Code.

(c) SUBMISSIONS BY ELECTRONIC MEANS.—To the extent practicable, agencies shall accept submissions under section 553(c) of title 5, United States Code, by electronic means.

(d) ELECTRONIC DOCKETING.—

(1) IN GENERAL.—To the extent practicable, as determined by the agency in consultation with the Director, agencies shall ensure that a publicly accessible Federal Government website contains electronic dockets for rulemakings under section 553 of title 5, United States Code.

(2) INFORMATION AVAILABLE.—Agency electronic dockets shall make publicly available online to the extent practicable, as determined by the agency in consultation with the Director—

(A) all submissions under section 553(c) of title 5, United States Code; and

(B) other materials that by agency rule or practice are included in the rulemaking docket under section 553(c) of title 5, United States Code, whether or not submitted electronically.

(e) TIME LIMITATION.—Agencies shall implement the requirements of this section consistent with a timetable established by the Director and reported to Congress in the first annual report under section 3605 of title 44 (as added by this Act).

SEC. 3207. ACCESSIBILITY, USABILITY, AND PRESERVATION OF GOVERNMENT INFORMATION.

(a) PURPOSE.—The purpose of this section is to improve the methods by which Government information, including information on the Internet, is organized, preserved, and made accessible to the public.

(b) DEFINITIONS.—In this section, the term—

(1) ''Committee'' means the Interagency Committee on Government Information established under subsection (c); and

(2) ''directory'' means a taxonomy of subjects linked to websites that—

(A) organizes Government information on the Internet according to subject matter; and

(B) may be created with the participation of human editors.

(c) INTERAGENCY COMMITTEE.—

(1) ESTABLISHMENT.—Not later than 90 days after the date of enactment of this title, the Director shall establish the Interagency Committee on Government Information.

(2) MEMBERSHIP.—The Committee shall be chaired by the Director or the designee of the Director and—

(A) shall include representatives from—

(i) the National Archives and Records Administration;

(ii) the offices of the Chief Information Officers from Federal agencies; and

(iii) other relevant officers from the executive branch; and

(B) may include representatives from the Federal legislative and judicial branches.

(3) FUNCTIONS.—The Committee shall—

(A) engage in public consultation to the maximum extent feasible, including consultation with interested communities such as public advocacy organizations;

(B) conduct studies and submit recommendations, as provided under this section, to the Director and Congress; and

(C) share effective practices for access to, dissemination of, and retention of Federal information.

(4) TERMINATION.—The Committee may be terminated on a date determined by the Director, except the Committee may not terminate before the Committee submits all recommendations required under this section.

(d) CATEGORIZING OF INFORMATION.—

(1) COMMITTEE FUNCTIONS.—Not later than 1 year after the date of enactment of this Act, the Committee shall submit recommendations to the Director on—

(A) the adoption of standards, which are open to the maximum extent feasible, to enable the organization and categorization of Government information—

(i) in a way that is searchable electronically, including by searchable identifiers; and

(ii) in ways that are interoperable across agencies;

(B) the definition of categories of Government information which should be classified under the standards; and

(C) determining priorities and developing schedules for the initial implementation of the standards by agencies.

(2) FUNCTIONS OF THE DIRECTOR.—Not later than 180 days after the submission of recommendations under paragraph (1), the Director shall issue policies—

(A) requiring that agencies use standards, which are open to the maximum extent feasible, to enable the organization and categorization of Government information—

(i) in a way that is searchable electronically, including by searchable identifiers;

(ii) in ways that are interoperable across agencies; and

(iii) that are, as appropriate, consistent with the standards promulgated by the Secretary of Commerce under section 3602(f)(8) of title 44, United States Code;

(B) defining categories of Government information which shall be required to be classified under the standards; and

(C) determining priorities and developing schedules for the initial implementation of the standards by agencies.

(3) MODIFICATION OF POLICIES.—After the submission of agency reports under paragraph (4), the Director shall modify the policies, as needed, in consultation with the Committee and interested parties.

(4) AGENCY FUNCTIONS.—Each agency shall report annually to the Director, in the report established under section 3202(g), on compliance of that agency with the policies issued under paragraph (2)(A).

(e) PUBLIC ACCESS TO ELECTRONIC INFORMATION.—

(1) COMMITTEE FUNCTIONS.—Not later than 1 year after the date of enactment of this Act, the Committee shall submit recommendations to the Director and the Archivist of the United States on—

(A) the adoption by agencies of policies and procedures to ensure that chapters 21, 25, 27, 29, and 31 of title 44, United States Code, are applied effectively and comprehensively to Government information on the Internet and to other electronic records; and

(B) the imposition of timetables for the implementation of the policies and procedures by agencies.

(2) FUNCTIONS OF THE ARCHIVIST.—Not later than 180 days after the submission of recommendations by the Committee under paragraph (1), the Archivist of the United States shall issue policies—

(A) requiring the adoption by agencies of policies and procedures to ensure that chapters 21, 25, 27, 29, and 31 of title 44, United States Code, are applied effectively and comprehensively to Government information on the Internet and to other electronic records; and

(B) imposing timetables for the implementation of the policies, procedures, and technologies by agencies.

(3) MODIFICATION OF POLICIES.—After the submission of agency reports under paragraph (4), the Archivist of the United States shall modify the policies, as needed, in consultation with the Committee and interested parties.

(4) AGENCY FUNCTIONS.—Each agency shall report annually to the Director, in the report established under section 3202(g), on compliance of that agency with the policies issued under paragraph (2)(A).

(f) AVAILABILITY OF GOVERNMENT INFORMATION ON THE INTERNET.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, each agency shall—

(A) consult with the Committee and solicit public comment;

(B) determine which Government information the agency intends to make available and accessible to the public on the Internet and by other means;

(C) develop priorities and schedules for making that Government information available and accessible;

(D) make such final determinations, priorities, and schedules available for public comment;

(E) post such final determinations, priorities, and schedules on the Internet; and

(F) submit such final determinations, priorities, and schedules to the Director, in the report established under section 3202(g).

(2) UPDATE.—Each agency shall update determinations, priorities, and schedules of the

agency, as needed, after consulting with the Committee and soliciting public comment, if appropriate.

(g) ACCESS TO FEDERALLY FUNDED RESEARCH AND DEVELOPMENT.—

(1) DEVELOPMENT AND MAINTENANCE OF GOVERNMENTWIDE REPOSITORY AND WEBSITE.—

(A) REPOSITORY AND WEBSITE.—The Director of the National Science Foundation, working with the Director of the Office of Science and Technology Policy and other relevant agencies, shall ensure the development and maintenance of—

(i) a repository that fully integrates, to the maximum extent feasible, information about research and development funded by the Federal Government, and the repository shall—

(I) include information about research and development funded by the Federal Government and performed by—

(aa) institutions not a part of the Federal Government, including State, local, and foreign governments; industrial firms; educational institutions; not-for-profit organizations; federally funded research and development center; and private individuals; and

(bb) entities of the Federal Government, including research and development laboratories, centers, and offices; and

(II) integrate information about each separate research and development task or award, including—

(aa) the dates upon which the task or award is expected to start and end;

(bb) a brief summary describing the objective and the scientific and technical focus of the task or award;

(cc) the entity or institution performing the task or award and its contact information;

(dd) the total amount of Federal funds expected to be provided to the task or award over its lifetime and the amount of funds expected to be provided in each fiscal year in which the work of the task or award is ongoing;

(ee) any restrictions attached to the task or award that would prevent the sharing with the general public of any or all of the information required by this subsection, and the reasons for such restrictions; and

(ff) such other information as may be determined to be appropriate; and

(ii) 1 or more websites upon which all or part of the repository of Federal research and development shall be made available to and searchable by Federal agencies and non-Federal entities, including the general public, to facilitate—

(I) the coordination of Federal research and development activities;

(II) collaboration among those conducting Federal research and development;

(III) the transfer of technology among Federal agencies and between Federal agencies and non-Federal entities; and

(IV) access by policymakers and the public to information concerning Federal research and development activities.

(B) OVERSIGHT.—The Director of the Office of Management and Budget shall issue any guidance determined necessary to ensure that agencies provide all information requested under this subsection.

(2) AGENCY FUNCTIONS.—Any agency that funds Federal research and development under this subsection shall provide the information required to populate the repository in the manner prescribed by the Director of the Office of Management and Budget.

(3) COMMITTEE FUNCTIONS.—Not later than 18 months after the date of enactment of this Act, working with the Director of the Office of Science and Technology Policy, and after consultation with interested parties, the Committee shall submit recommendations to the Director on—

(A) policies to improve agency reporting of information for the repository established under this subsection; and

(B) policies to improve dissemination of the results of research performed by Federal agencies and federally funded research and development centers.

(4) FUNCTIONS OF THE DIRECTOR.—After submission of recommendations by the Committee under paragraph (3), the Director shall report on the recommendations of the Committee and Director to Congress, in the E-Government report under section 3605 of title 44 (as added by this Act).

(5) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the National Science Foundation for the development, maintenance, and operation of the Governmentwide repository and website under this subsection—

(A) $2,000,000 in each of the fiscal years 2003 through 2005; and

(B) such sums as are necessary in each of the fiscal years 2006 and 2007.

(h) PUBLIC DOMAIN DIRECTORY OF PUBLIC FEDERAL GOVERNMENT WEBSITES.—

(1) ESTABLISHMENT.—Not later than 2 years after the effective date of this title, the Director and each agency shall—

(A) develop and establish a public domain directory of public Federal Government websites; and

(B) post the directory on the Internet with a link to the integrated Internet-based system established under section 3204.

(2) DEVELOPMENT.—With the assistance of each agency, the Director shall—

(A) direct the development of the directory through a collaborative effort, including input from—

(i) agency librarians;

(ii) information technology managers;

(iii) program managers;

(iv) records managers;

(v) Federal depository librarians; and

(vi) other interested parties; and

(B) develop a public domain taxonomy of subjects used to review and categorize public Federal Government websites.

(3) UPDATE.—With the assistance of each agency, the Administrator of the Office of Electronic Government shall—

(A) update the directory as necessary, but not less than every 6 months; and

(B) solicit interested persons for improvements to the directory.

(i) STANDARDS FOR AGENCY WEBSITES.—Not later than 18 months after the effective date of this title, the Director shall promulgate guidance for agency websites that include—

(1) requirements that websites include direct links to—

(A) descriptions of the mission and statutory authority of the agency;

(B) the electronic reading rooms of the agency relating to the disclosure of information under section 552 of title 5, United States Code (commonly referred to as the Freedom of Information Act);

(C) information about the organizational structure of the agency; and

(D) the strategic plan of the agency developed under section 306 of title 5, United States Code; and

(2) minimum agency goals to assist public users to navigate agency websites, including—

(A) speed of retrieval of search results;

(B) the relevance of the results;

(C) tools to aggregate and disaggregate data; and

(D) security protocols to protect information.

SEC. 3208. PRIVACY PROVISIONS.

(a) PURPOSE.—The purpose of this section is to ensure sufficient protections for the privacy of personal information as agencies implement citizen-centered electronic Government.

(b) PRIVACY IMPACT ASSESSMENTS.—

(1) RESPONSIBILITIES OF AGENCIES.—

(A) IN GENERAL.—An agency shall take actions described under subparagraph (B) before—

(i) developing or procuring information technology that collects, maintains, or disseminates information that includes any identifier permitting the physical or online contacting of a specific individual; or

(ii) initiating a new collection of information that—

(I) will be collected, maintained, or disseminated using information technology; and

(II) includes any identifier permitting the physical or online contacting of a specific individual, if the information concerns 10 or more persons.

(B) AGENCY ACTIVITIES.—To the extent required under subparagraph (A), each agency shall—

(i) conduct a privacy impact assessment;

(ii) ensure the review of the privacy impact assessment by the Chief Information Officer, or equivalent official, as determined by the head of the agency; and

(iii) if practicable, after completion of the review under clause (ii), make the privacy impact assessment publicly available through the website of the agency, publication in the Federal Register, or other means.

(C) SENSITIVE INFORMATION.—Subparagraph (B)(iii) may be modified or waived for security reasons, or to protect classified, sensitive, or private information contained in an assessment.

(D) COPY TO DIRECTOR.—Agencies shall provide the Director with a copy of the privacy impact assessment for each system for which funding is requested.

(2) CONTENTS OF A PRIVACY IMPACT ASSESSMENT.—

(A) IN GENERAL.—The Director shall issue guidance to agencies specifying the required contents of a privacy impact assessment.

(B) GUIDANCE.—The guidance shall—

(i) ensure that a privacy impact assessment is commensurate with the size of the information system being assessed, the sensitivity of personally identifiable information in that system, and the risk of harm from unauthorized release of that information; and

(ii) require that a privacy impact assessment address—

(I) what information is to be collected;

(II) why the information is being collected;

(III) the intended use of the agency of the information;

(IV) with whom the information will be shared;

(V) what notice or opportunities for consent would be provided to individuals regarding what information is collected and how that information is shared;

(VI) how the information will be secured; and

(VII) whether a system of records is being created under section 552a of title 5, United States Code, (commonly referred to as the Privacy Act).

(3) RESPONSIBILITIES OF THE DIRECTOR.—The Director shall—

(A) develop policies and guidelines for agencies on the conduct of privacy impact assessments;

(B) oversee the implementation of the privacy impact assessment process throughout the Government; and

(C) require agencies to conduct privacy impact assessments of existing information systems or ongoing collections of personally identifiable information as the Director determines appropriate.

(c) PRIVACY PROTECTIONS ON AGENCY WEBSITES.—

(1) PRIVACY POLICIES ON WEBSITES.—

(A) GUIDELINES FOR NOTICES.—The Director shall develop guidance for privacy notices on agency websites used by the public.

(B) CONTENTS.—The guidance shall require that a privacy notice address, consistent with section 552a of title 5, United States Code—

(i) what information is to be collected;

(ii) why the information is being collected;

(iii) the intended use of the agency of the information;

(iv) with whom the information will be shared;

(v) what notice or opportunities for consent would be provided to individuals regarding what information is collected and how that information is shared;

(vi) how the information will be secured; and

(vii) the rights of the individual under section 552a of title 5, United States Code (commonly referred to as the Privacy Act), and other laws relevant to the protection of the privacy of an individual.

(2) PRIVACY POLICIES IN MACHINE-READABLE FORMATS.—The Director shall issue guidance requiring agencies to translate privacy policies into a standardized machine-readable format.

SEC. 3209. FEDERAL INFORMATION TECHNOLOGY WORKFORCE DEVELOPMENT.

(a) PURPOSE.—The purpose of this section is to improve the skills of the Federal workforce in using information technology to deliver Government information and services.

(b) IN GENERAL.—In consultation with the Director, the Chief Information Officers Council, and the Administrator of General Services, the Director of the Office of Personnel Management shall—

(1) analyze, on an ongoing basis, the personnel needs of the Federal Government related to information technology and information resource management;

(2) oversee the development of curricula, training methods, and training priorities that correspond to the projected personnel needs of the Federal Government related to information technology and information resource management; and

(3) assess the training of Federal employees in information technology disciplines, as necessary, in order to ensure that the information resource management needs of the Federal Government are addressed.

(c) EMPLOYEE PARTICIPATION.—Subject to information resource management needs and the limitations imposed by resource needs in other occupational areas, and consistent with their overall workforce development strategies, agencies shall encourage employees to participate in occupational information technology training.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Office of Personnel Management for the implementation of this section, $7,000,000 in fiscal year 2003, and such sums as are necessary for each fiscal year thereafter.

SEC. 3210. COMMON PROTOCOLS FOR GEOGRAPHIC INFORMATION SYSTEMS.

(a) PURPOSES.—The purposes of this section are to—

(1) reduce redundant data collection and information; and

(2) promote collaboration and use of standards for government geographic information.

(b) DEFINITION.—In this section, the term ''geographic information'' means information systems that involve locational data, such as maps or other geospatial information resources.

(c) IN GENERAL.—

(1) COMMON PROTOCOLS.—The Secretary of the Interior, working with the Director and through an interagency group, and working with private sector experts, State, local, and tribal governments, commercial and international standards groups, and other interested parties, shall facilitate the development of common protocols for the development, acquisition, maintenance, distribution, and application of geographic information. If practicable, the Secretary of the Interior shall incorporate intergovernmental and public private geographic information partnerships into efforts under this subsection.

(2) INTERAGENCY GROUP.—The interagency group referred to under paragraph (1) shall include representatives of the National Institute of Standards and Technology and other agencies.

(d) DIRECTOR.—The Director shall oversee—

(1) the interagency initiative to develop common protocols;

(2) the coordination with State, local, and tribal governments, public private partnerships, and other interested persons on effective and efficient ways to align geographic information and develop common protocols; and

(3) the adoption of common standards relating to the protocols.

(e) COMMON PROTOCOLS.—The common protocols shall be designed to—

(1) maximize the degree to which unclassified geographic information from various sources can be made electronically compatible and accessible; and

(2) promote the development of interoperable geographic information systems technologies that shall—

(A) allow widespread, low-cost use and sharing of geographic data by Federal agencies, State, local, and tribal governments, and the public; and

(B) enable the enhancement of services using geographic data.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Department of the Interior such sums as are necessary to carry out this section, for each of the fiscal years 2003 through 2007.

SEC. 3211. SHARE-IN-SAVINGS PROGRAM IMPROVEMENTS.

Section 11521 of title 40, United States Code, is amended—

(1) in subsection (a)—

(A) by striking ''the heads of two executive agencies to carry out'' and inserting ''heads of executive agencies to carry out a total of 5 projects under'';

(B) by striking ''and'' at the end of paragraph (1);

(C) by striking the period at the end of paragraph (2) and inserting ''; and''; and

(D) by adding at the end the following:

''(3) encouraging the use of the contracting and sharing approach described in paragraphs (1) and (2) by allowing the head of the executive agency conducting a project under the pilot program—

''(A) to retain, until expended, out of the appropriation accounts of the executive agency in which savings computed under paragraph (2) are realized as a result of the project, up to the amount equal to half of the excess of—

''(i) the total amount of the savings; over

''(ii) the total amount of the portion of the savings paid to the private sector source for such project under paragraph (2); and

''(B) to use the retained amount to acquire additional information technology.'';

(2) in subsection (b)—

(A) by inserting ''a project under'' after ''authorized to carry out''; and

(B) by striking ''carry out one project and''; and

(3) in subsection (c), by inserting before the period ''and the Administrator for the Office of Electronic Government''; and

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

''(d) REPORT.—

''(1) IN GENERAL.—After 5 pilot projects have been completed, but no later than 3 years after the effective date of this subsection, the Director shall submit a report on the results of the projects to the Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives.

''(2) CONTENTS.—The report under paragraph (1) shall include—

''(A) a description of the reduced costs and other measurable benefits of the pilot projects;

''(B) a description of the ability of agencies to determine the baseline costs of a project against which savings would be measured; and

''(C) recommendations of the Director relating to whether Congress should provide general authority to the heads of executive agencies to use a share-in-savings contracting approach to the acquisition of information technology solutions for improving mission-related or administrative processes of the Federal Government.''.

SEC. 3212. INTEGRATED REPORTING STUDY AND PILOT PROJECTS.

(a) PURPOSES.—The purposes of this section are to—

(1) enhance the interoperability of Federal information systems;

(2) assist the public, including the regulated community, in electronically submitting information to agencies under Federal requirements, by reducing the burden of duplicate collection and ensuring the accuracy of submitted information; and

(3) enable any person to integrate and obtain similar information held by 1 or more agencies under 1 or more Federal requirements without violating the privacy rights of an individual.

(b) DEFINITIONS.—In this section, the term—

(1) ''agency'' means an Executive agency as defined under section 105 of title 5, United States Code; and

(2) ''person'' means any individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, interstate body, or agency or component of the Federal Government.

(c) REPORT.—

(1) IN GENERAL.—Not later than 3 years after the date of enactment of this Act, the Director shall oversee a study, in consultation with agencies, the regulated community, public interest organizations, and the public, and submit a report to the Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives on progress toward integrating Federal information systems across agencies.

(2) CONTENTS.—The report under this section shall—

(A) address the integration of data elements used in the electronic collection of information within databases established under Federal statute without reducing the quality, accessibility, scope, or utility of the information contained in each database;

(B) address the feasibility of developing, or enabling the development of, software, including Internet-based tools, for use by reporting persons in assembling, documenting, and validating the accuracy of information electronically submitted to agencies under nonvoluntary, statutory, and regulatory requirements;

(C) address the feasibility of developing a distributed information system involving, on a voluntary basis, at least 2 agencies, that—

(i) provides consistent, dependable, and timely public access to the information holdings of 1 or more agencies, or some portion of such holdings, including the underlying raw data, without requiring public users to know which agency holds the information; and

(ii) allows the integration of public information held by the participating agencies;

(D) address the feasibility of incorporating other elements related to the purposes of this section at the discretion of the Director; and

(E) make recommendations that Congress or the executive branch can implement, through the use of integrated reporting and information systems, to reduce the burden on reporting and strengthen public access to databases within and across agencies.

(d) PILOT PROJECTS TO ENCOURAGE INTEGRATED COLLECTION AND MANAGEMENT OF DATA AND INTEROPERABILITY OF FEDERAL INFORMATION SYSTEMS.—

(1) IN GENERAL.—In order to provide input to the study under subsection (c), the Director shall designate, in consultation with agencies, a series of no more than 5 pilot projects that integrate data elements. The Director shall consult with agencies, the regulated community, public interest organizations, and the public on the implementation of the pilot projects.

(2) GOALS OF PILOT PROJECTS.—

(A) IN GENERAL.—Each goal described under subparagraph (B) shall be addressed by at least 1 pilot project each.

(B) GOALS.—The goals under this paragraph are to—

(i) reduce information collection burdens by eliminating duplicative data elements within 2 or more reporting requirements;

(ii) create interoperability between or among public databases managed by 2 or more agencies using technologies and techniques that facilitate public access; and

(iii) develop, or enable the development of, software to reduce errors in electronically submitted information.

(3) INPUT.—Each pilot project shall seek input from users on the utility of the pilot project and areas for improvement. To the extent practicable, the Director shall consult with relevant agencies and State, tribal, and local governments in carrying out the report and pilot projects under this section.

(e) PRIVACY PROTECTIONS.—The activities authorized under this section shall afford protections for—

(1) confidential business information consistent with section 552(b)(4) of title 5, United States Code, and other relevant law;

(2) personal privacy information under sections 552(b) (6) and (7)(C) and 552a of title 5, United States Code, and other relevant law; and

(3) other information consistent with section 552(b)(3) of title 5, United States Code, and other relevant law.

SEC. 3213. COMMUNITY TECHNOLOGY CENTERS.

(a) PURPOSES.—The purposes of this section are to—

(1) study and enhance the effectiveness of community technology centers, public libraries, and other institutions that provide computer and Internet access to the public; and

(2) promote awareness of the availability of on-line government information and services, to users of community technology centers, public libraries, and other public facilities that provide access to computer technology and Internet access to the public.

(b) STUDY AND REPORT.—Not later than 2 years after the effective date of this title, the Secretary of Education, in consultation with the Secretary of Housing and Urban Development, the Secretary of Commerce, the Director of the National Science Foundation, and the Director of the Institute of Museum and Library Services, shall—

(1) conduct a study to evaluate the best practices of community technology centers that have received Federal funds; and

(2) submit a report on the study to—

(A) the Committee on Governmental Affairs of the Senate;

(B) the Committee on Health, Education, Labor, and Pensions of the Senate;

(C) the Committee on Government Reform of the House of Representatives; and

(D) the Committee on Education and the Workforce of the House of Representatives.

(c) CONTENTS.—The report under subsection (b) may consider—

(1) an evaluation of the best practices being used by successful community technology centers;

(2) a strategy for—

(A) continuing the evaluation of best practices used by community technology centers; and

(B) establishing a network to share information and resources as community technology centers evolve;

(3) the identification of methods to expand the use of best practices to assist community technology centers, public libraries, and other institutions that provide computer and Internet access to the public;

(4) a database of all community technology centers that have received Federal funds, including—

(A) each center's name, location, services provided, director, other points of contact, number of individuals served; and

(B) other relevant information;

(5) an analysis of whether community technology centers have been deployed effectively in urban and rural areas throughout the Nation; and

(6) recommendations of how to—

(A) enhance the development of community technology centers; and

(B) establish a network to share information and resources.

(d) COOPERATION.—All agencies that fund community technology centers shall provide to the Department of Education any information and assistance necessary for the completion of the study and the report under this section.

(e) ASSISTANCE.—

(1) IN GENERAL.—The Secretary of the Department of Education shall work with other relevant Federal agencies, and other interested persons in the private and nonprofit sectors to—

(A) assist in the implementation of recommendations; and

(B) identify other ways to assist community technology centers, public libraries, and other institutions that provide computer and Internet access to the public.

(2) TYPES OF ASSISTANCE.—Assistance under this subsection may include—

(A) contribution of funds;

(B) donations of equipment, and training in the use and maintenance of the equipment; and

(C) the provision of basic instruction or training material in computer skills and Internet usage.

(f) ONLINE TUTORIAL.—

(1) IN GENERAL.—The Secretary of Education, in consultation with the Director of the Institute of Museum and Library Services, the Director of the National Science Foundation, other relevant agencies, and the public, shall develop an online tutorial that—

(A) explains how to access Government information and services on the Internet; and

(B) provides a guide to available online resources.

(2) DISTRIBUTION.—The Secretary of Education shall distribute information on the tutorial to community technology centers, public libraries, and other institutions that afford Internet access to the public.

(g) PROMOTION OF COMMUNITY TECHNOLOGY CENTERS.—In consultation with other agencies and organizations, the Department of Education shall promote the availability of community technology centers to raise awareness within each community where such a center is located.

(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Department of Education for the study of best practices at community technology centers, for the development and dissemination of the online tutorial, and for the promotion of community technology centers under this section—

(1) $2,000,000 in fiscal year 2003;

(2) $2,000,000 in fiscal year 2004; and

(3) such sums as are necessary in fiscal years 2005 through 2007.

SEC. 3214. ENHANCING CRISIS MANAGEMENT THROUGH ADVANCED INFORMATION TECHNOLOGY.

(a) PURPOSE.—The purpose of this section is to improve how information technology is used in coordinating and facilitating information on disaster preparedness, response, and recovery, while ensuring the availability of such information across multiple access channels.

(b) IN GENERAL.—

(1) STUDY ON ENHANCEMENT OF CRISIS RESPONSE.—Not later than 90 days after the date of enactment of this Act, the Federal Emergency Management Agency shall enter into a contract to conduct a study on using information technology to enhance crisis preparedness, response, and consequence management of natural and manmade disasters.

(2) CONTENTS.—The study under this subsection shall address—

(A) a research and implementation strategy for effective use of information technology in crisis response and consequence management, including the more effective use of technologies, management of information technology research initiatives, and incorporation of research advances into the information and communications systems of—

(i) the Federal Emergency Management Agency; and

(ii) other Federal, State, and local agencies responsible for crisis preparedness, response, and consequence management; and

(B) opportunities for research and development on enhanced technologies into areas of potential improvement as determined during the course of the study.

(3) REPORT.—Not later than 2 years after the date on which a contract is entered into under paragraph (1), the Federal Emergency Management Agency shall submit a report on the study, including findings and recommendations to—

(A) the Committee on Governmental Affairs of the Senate; and

(B) the Committee on Government Reform of the House of Representatives.

(4) INTERAGENCY COOPERATION.—Other Federal departments and agencies with responsibility for disaster relief and emergency assistance shall fully cooperate with the Federal Emergency Management Agency in carrying out this section.

(5) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Federal Emergency Management Agency for research under this subsection, such sums as are necessary for fiscal year 2003.

(c) PILOT PROJECTS.—Based on the results of the research conducted under subsection (b), the Federal Emergency Management Agency shall initiate pilot projects or report to Congress on other activities that further the goal of maximizing the utility of information technology in disaster management.

The Federal Emergency Management Agency shall cooperate with other relevant agencies, and, if appropriate, State, local, and tribal governments, in initiating such pilot projects.

SEC. 3215. DISPARITIES IN ACCESS TO THE INTERNET.

(a) STUDY AND REPORT.—

(1) STUDY.—Not later than 90 days after the date of enactment of this Act, the Director of the National Science Foundation shall request that the National Academy of Sciences, acting through the National Research Council, enter into a contract to conduct a study on disparities in Internet access for online Government services.

(2) REPORT.—Not later than 2 years after the date of enactment of this Act, the Director of the National Science Foundation shall submit to the Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives a final report of the study under this section, which shall set forth the findings, conclusions, and recommendations of the National Research Council.

(b) CONTENTS.—The report under subsection (a) shall include a study of—

(1) how disparities in Internet access influence the effectiveness of online Government services, including a review of—

(A) the nature of disparities in Internet access;

(B) the affordability of Internet service;

(C) the incidence of disparities among different groups within the population; and

(D) changes in the nature of personal and public Internet access that may alleviate or aggravate effective access to online Government services;

(2) how the increase in online Government services is influencing the disparities in Internet access and how technology development or diffusion trends may offset such adverse influences; and

(3) related societal effects arising from the interplay of disparities in Internet access and the increase in online Government services.

(c) RECOMMENDATIONS.—The report shall include recommendations on actions to ensure that online Government initiatives shall not have the unintended result of increasing any deficiency in public access to Government services.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the National Science Foundation $950,000 in fiscal year 2003 to carry out this section.

SEC. 3216. NOTIFICATION OF OBSOLETE OR COUNTERPRODUCTIVE PROVISIONS.

If the Director of the Office of Management and Budget makes a determination that any provision of this division (including any amendment made by this division) is obsolete or counterproductive to the purposes of this Act, as a result of changes in technology or any other reason, the Director shall submit notification of that determination to—

(1) the Committee on Governmental Affairs of the Senate; and

(2) the Committee on Government Reform of the House of Representatives.

TITLE XXXIII—GOVERNMENT INFORMATION SECURITY

SEC. 3301. INFORMATION SECURITY.

(a) ADDITION OF SHORT TITLE.—Subtitle G of title X 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–266) is amended by inserting after the heading for the subtitle the following new section:

''SEC. 1060. SHORT TITLE.

''This subtitle may be cited as the 'Government Information Security Reform Act'.''.

(b) CONTINUATION OF AUTHORITY.—

(1) IN GENERAL.—Section 3536 of title 44, United States Code, is repealed.

(2) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 35 of title 44, United States Code, is amended by striking the item relating to section 3536.

TITLE XXXIV—AUTHORIZATION OF APPROPRIATIONS AND EFFECTIVE DATES

SEC. 3401. AUTHORIZATION OF APPROPRIATIONS.

Except for those purposes for which an authorization of appropriations is specifically provided in title XXXI or XXXII, including the amendments made by such titles, there are authorized to be appropriated such sums as are necessary to carry out titles XXXI and XXXII for each of fiscal years 2003 through 2007.

SEC. 3402. EFFECTIVE DATES.

(a) TITLES XXXI AND XXXII.—

(1) IN GENERAL.—Except as provided under paragraph (2), titles XXXI and XXXII and the amendments made by such titles shall take effect 120 days after the date of enactment of this Act.

(2) IMMEDIATE ENACTMENT.—Sections 3207, 3214, 3215, and 3216 shall take effect on the date of enactment of this Act.

(b) TITLES XXXIII AND XXXIV.—Title XXXIII and this title shall take effect on the date of enactment of this Act.

DIVISION E—FLIGHT AND CABIN SECURITY ON PASSENGER AIRCRAFT

TITLE XLI—FLIGHT AND CABIN SECURITY ON PASSENGER AIRCRAFT

SECTION 4101. SHORT TITLE.

This title may be cited as the ''Arming Pilots Against Terrorism and Cabin Defense Act of 2002''.

SEC. 4102. FINDINGS.

Congress makes the following findings:

(1) Terrorist hijackers represent a profound threat to the American people.

(2) According to the Federal Aviation Administration, between 33,000 and 35,000 commercial flights occur every day in the United States.

(3) The Aviation and Transportation Security Act (public law 107–71) mandated that air marshals be on all high risk flights such as those targeted on September 11, 2001.

(4) Without air marshals, pilots and flight attendants are a passenger's first line of defense against terrorists.

(5) A comprehensive and strong terrorism prevention program is needed to defend the Nation's skies against acts of criminal violence and air piracy. Such a program should include—

(A) armed Federal air marshals;

(B) other Federal agents;

(C) reinforced cockpit doors;

(D) properly-trained armed pilots;

(E) flight attendants trained in self-defense and terrorism prevention; and

(F) electronic communications devices, such as real-time video monitoring and hands-free wireless communications devices to permit pilots to monitor activities in the cabin.

SEC. 4103. FEDERAL FLIGHT DECK OFFICER PROGRAM.

(a) IN GENERAL.—Subchapter I of chapter 449 of title 49, United States Code, is amended by adding at the end the following:

''§ 44921. Federal flight deck officer program

''(a) ESTABLISHMENT.—Not later than 90 days after the date of enactment of the Arming Pilots Against Terrorism and Cabin Defense Act of 2002, the Under Secretary of Transportation for Security shall establish a program to deputize qualified pilots of commercial cargo or passenger aircraft who volunteer for the program as Federal law enforcement officers to defend the flight decks of commercial aircraft of air carriers engaged in air transportation or intrastate air transportation against acts of criminal violence or air piracy. Such officers shall be known as 'Federal flight deck officers'. The program shall be administered in connection with the Federal air marshal program.

''(b) QUALIFIED PILOT.—Under the program described in subsection (a), a qualified pilot is a pilot of an aircraft engaged in air transportation or intrastate air transportation who—

''(1) is employed by an air carrier;

''(2) has demonstrated fitness to be a Federal flight deck officer in accordance with regulations promulgated pursuant to this title; and

''(3) has been the subject of an employment investigation (including a criminal history record check) under section 44936(a)(1).

''(c) TRAINING, SUPERVISION, AND EQUIPMENT.—The Under Secretary of Transportation for Security shall provide or make arrangements for training, supervision, and equipment necessary for a qualified pilot to be a Federal flight deck officer under this section at no expense to the pilot or the air carrier employing the pilot. Such training, qualifications, curriculum, and equipment shall be consistent with and equivalent to those required of Federal law enforcement officers and shall include periodic re-qualification as determined by the Under Secretary. The Under Secretary may approve private training programs which meet the Under Secretary's specifications and guidelines. Air carriers shall make accommodations to facilitate the training of their pilots as Federal flight deck officers and shall facilitate Federal flight deck officers in the conduct of their duties under this program.

''(d) DEPUTIZATION.—

''(1) IN GENERAL.—The Under Secretary of Transportation for Security shall train and deputize, as a Federal flight deck officer under this section, any qualified pilot who submits to the Under Secretary a request to be such an officer.

''(2) INITIAL DEPUTIZATION.—Not later than 120 days after the date of enactment of this section, the Under Secretary shall deputize not fewer than 500 qualified pilots who are former military or law enforcement personnel as Federal flight deck officers under this section.

''(3) FULL IMPLEMENTATION.—Not later than 24 months after the date of enactment of this section, the Under Secretary shall deputize any qualified pilot as a Federal flight deck officer under this section.

''(e) COMPENSATION.—Pilots participating in the program under this section shall not be eligible for compensation from the Federal Government for services provided as a Federal flight deck officer.

''(f) AUTHORITY TO CARRY FIREARMS.—The Under Secretary of Transportation for Security shall authorize a Federal flight deck officer under this section to carry a firearm to defend the flight deck of a commercial passenger or cargo aircraft while engaged in providing air transportation or intrastate air transportation. No air carrier may prohibit a Federal flight deck officer from carrying a firearm in accordance with the provisions of the Arming Pilots Against Terrorism and Cabin Defense Act of 2002.

''(g) AUTHORITY TO USE FORCE.—Notwithstanding section 44903(d), a Federal flight deck officer may use force (including lethal force) against an individual in the defense of a commercial aircraft in air transportation or intrastate air transportation if the officer reasonably believes that the security of the aircraft is at risk.

''(h) LIMITATION ON LIABILITY.—

''(1) LIABILITY OF AIR CARRIERS.—An air carrier shall not be liable for damages in any

action brought in a Federal or State court arising out of the air carrier employing a pilot of an aircraft who is a Federal flight deck officer under this section or out of the acts or omissions of the pilot in defending an aircraft of the air carrier against acts of criminal violence or air piracy.

''(2) LIABILITY OF FEDERAL FLIGHT DECK OFFICERS.—A Federal flight deck officer shall not be liable for damages in any action brought in a Federal or State court arising out of the acts or omissions of the officer in defending an aircraft against acts of criminal violence or air piracy unless the officer is guilty of gross negligence or willful misconduct.

''(3) EMPLOYEE STATUS OF FEDERAL FLIGHT DECK OFFICERS.—A Federal flight deck officer shall be considered an 'employee of the Government while acting within the scope of his office or employment' with respect to any act or omission of the officer in defending an aircraft against acts of criminal violence or air piracy, for purposes of sections 1346(b), 2401(b), and 2671 through 2680 of title 28 United States Code.

''(i) REGULATIONS.—Not later than 90 days after the date of enactment of this section, the Under Secretary of Transportation for Security, in consultation with the Firearms Training Unit of the Federal Bureau of Investigation, shall issue regulations to carry out this section.

''(j) PILOT DEFINED.—In this section, the term 'pilot' means an individual who is responsible for the operation of an aircraft, and includes a co-pilot or other member of the flight deck crew.''.

(b) CONFORMING AMENDMENTS.—

(1) CHAPTER ANALYSIS.—The analysis for such chapter 449 is amended by inserting after the item relating to section 44920 the following new item:

''44921. Federal flight deck officer program.''.

(2) EMPLOYMENT INVESTIGATIONS.—Section 44936(a)(1)(B) is amended—

(A) by aligning clause (iii) with clause (ii);

(B) by striking ''and'' at the end of clause (iii);

(C) by striking the period at the end of clause (iv) and inserting ''; and''; and

(D) by adding at the end the following:

''(v) qualified pilots who are deputized as Federal flight deck officers under section 44921.''.

(3) FLIGHT DECK SECURITY.—Section 128 of the Aviation and Transportation Security Act (49 U.S.C. 44903 note) is repealed.

SEC. 4104. CABIN SECURITY.

(a) TECHNICAL AMENDMENTS.—Section 44903, of title 49, United States Code, is amended—

(1) by redesignating subsection (h) (relating to authority to arm flight deck crew with less-than-lethal weapons, as added by section 126(b) of public law 107–71) as subsection (j); and

(2) by redesignating subsection (h) (relating to limitation on liability for acts to thwart criminal violence or aircraft piracy, as added by section 144 of public law 107–71) as subsection (k).

(b) AVIATION CREWMEMBER SELF-DEFENSE DIVISION.—Section 44918 of title 49, United States Code, is amended—

(1) by striking subsection (a) and inserting the following new subsection:

''(a) IN GENERAL.—

''(1) REQUIREMENT FOR AIR CARRIERS.—Not later than 60 days after the date of enactment of the Arming Pilots Against Terrorism and Cabin Defense Act of 2002, the Under Secretary of Transportation for Security, shall prescribe detailed requirements for an air carrier cabin crew training program, and for the instructors of that program as described in subsection (b) to prepare crew members for potential threat conditions. In developing the requirements, the Under Secretary shall consult with appropriate law enforcement personnel who have expertise in self-defense training, security experts, and terrorism experts, and representatives of air carriers and labor organizations representing individuals employed in commercial aviation.

''(2) AVIATION CREWMEMBER SELF-DEFENSE DIVISION.—Not later than 60 days after the date of enactment of the Arming Pilots Against Terrorism and Cabin Defense Act of 2002, the Under Secretary of Transportation for Security shall establish an Aviation Crew Self-Defense Division within the Transportation Security Administration. The Division shall develop and administer the implementation of the requirements described in this section. The Under Secretary shall appoint a Director of the Aviation Crew Self-Defense Division who shall be the head of the Division. The Director shall report to the Under Secretary. In the selection of the Director, the Under Secretary shall solicit recommendations from law enforcement, air carriers, and labor organizations representing individuals employed in commercial aviation. The Director shall have a background in self-defense training, including military or law enforcement training with an emphasis in teaching self-defense and the appropriate use force. Regional training supervisors shall be under the control of the Director and shall have appropriate training and experience in teaching self-defense and the appropriate use of force.'';

(2) by striking subsection (b), and inserting the following new subsection:

''(b) PROGRAM ELEMENTS.—

''(1) IN GENERAL.—The requirements prescribed under subsection (a) shall include, at a minimum, 28 hours of self-defense training that incorporates classroom and situational training that contains the following elements:

''(A) Determination of the seriousness of any occurrence.

''(B) Crew communication and coordination.

''(C) Appropriate responses to defend oneself, including a minimum of 16 hours of hands-on training, with reasonable and effective requirements on time allotment over a 4 week period, in the following levels of self-defense:

''(i) awareness, deterrence, and avoidance;

''(ii) verbalization;

''(iii) empty hand control;

''(iv) intermediate weapons and self-defense techniques; and

''(v) deadly force.

''(D) Use of protective devices assigned to crewmembers (to the extent such devices are approved by the Administrator or Under Secretary).

''(E) Psychology of terrorists to cope with hijacker behavior and passenger responses.

''(F) Live situational simulation joint training exercises regarding various threat conditions, including all of the elements required by this section.

''(G) Flight deck procedures or aircraft maneuvers to defend the aircraft.

''(2) PROGRAM ELEMENTS FOR INSTRUCTORS.—The requirements prescribed under subsection (a) shall contain program elements for instructors that include, at a minimum, the following:

''(A) A certification program for the instructors who will provide the training described in paragraph (1).

''(B) A requirement that no training session shall have fewer than 1 instructor for every 12 students.

''(C) A requirement that air carriers provide certain instructor information, including names and qualifications, to the Aviation Crew Member Self-Defense Division within 30 days after receiving the requirements described in subsection (a).

''(D) Training course curriculum lesson plans and performance objectives to be used by instructors.

''(E) Written training bulletins to reinforce course lessons and provide necessary progressive updates to instructors.

''(3) RECURRENT TRAINING.—Each air carrier shall provide the training under the program every 6 months after the completion of the initial training.

''(4) INITIAL TRAINING.—Air carriers shall provide the initial training under the program within 24 months of the date of enactment of the Arming Pilots Against Terrorism and Cabin Defense Act of 2002.

''(5) COMMUNICATION DEVICES.—The requirements described in subsection (a) shall include a provision mandating that air carriers provide flight and cabin crew with a discreet, hands-free, wireless method of communicating with the flight deck.

''(6) REAL-TIME VIDEO MONITORING.—The requirements described in subsection (a) shall include a program to provide flight deck crews with real-time video surveillance of the cabins of commercial airline flights. In developing this program, the Under Secretary shall consider—

''(A) maximizing the security of the flight deck;

''(B) enhancing the safety of the flight deck crew;

''(C) protecting the safety of the passengers and crew;

''(D) preventing acts of criminal violence or air piracy;

''(E) the cost of the program;

''(F) privacy concerns; and

''(G) the feasibility of installing such a device in the flight deck.''; and

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

''(f) RULEMAKING AUTHORITY.—Notwithstanding subsection (j) (relating to authority to arm flight deck crew with less than-lethal weapons) of section 44903, of this title, within 180 days after the date of enactment of the Arming Pilots Against Terrorism and Cabin Defense Act of 2002, the Under Secretary of Transportation for Security, in consultation with persons described in subsection (a)(1), shall prescribe regulations requiring air carriers to—

''(1) provide adequate training in the proper conduct of a cabin search and allow adequate duty time to perform such a search; and

''(2) conduct a preflight security briefing with flight deck and cabin crew and, when available, Federal air marshals or other authorized law enforcement officials.

''(g) LIMITATION ON LIABILITY.—

''(1) AIR CARRIERS.—An air carrier shall not be liable for damages in any action brought in a Federal or State court arising out of the acts or omissions of the air carrier's training instructors or cabin crew using reasonable and necessary force in defending an aircraft of the air carrier against acts of criminal violence or air piracy.

''(2) TRAINING INSTRUCTORS AND CABIN CREW.—An air carrier's training instructors or cabin crew shall not be liable for damages in any action brought in a Federal or State court arising out of an act or omission of a training instructor or a member of the cabin crew regarding the defense of an aircraft against acts of criminal violence or air piracy unless the crew member is guilty of gross negligence or willful misconduct.''.

(c) NONLETHAL WEAPONS FOR FLIGHT ATTENDANTS.—

(1) STUDY.—The Under Secretary of Transportation for Security shall conduct a study

to determine whether possession of a nonlethal weapon by a member of an air carrier's cabin crew would aid the flight deck crew in combating air piracy and criminal violence on commercial airlines.

(2) REPORT.—Not later than 6 months after the date of enactment of this Act, the Under Secretary of Transportation for Security shall prepare and submit to Congress a report on the study conducted under paragraph (1).

SEC. 4105. PROHIBITION ON OPENING COCKPIT DOORS IN FLIGHT.

(a) IN GENERAL.—Subchapter I of chapter 449 of title 49, United States Code, is amended by adding at the end the following:

"§ 44917. Prohibition on opening cockpit doors in flight

''(a) IN GENERAL.—The door to the flight deck of any aircraft engaged in passenger air transportation or interstate air transportation that is required to have a door between the passenger and pilot compartment under title 14, Code of Federal Regulations, shall remain closed and locked at all times during flight, except for mechanical or physiological emergencies.

''(b) MANTRAP DOOR EXCEPTION.—It shall not be a violation of subsection (a) for an authorized person to enter or leave the flight deck during flight of any aircraft described in subsection (a) that is equipped with double doors between the flight deck and the passenger compartment that are designed so that—

''(1) any person entering or leaving the flight deck is required to lock the first door through which that person passes before the second door can be opened; and

''(2) the flight crew is able to monitor by remote camera the area between the 2 doors and prevent the door to the flight deck from being unlocked from that area.''.

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 449 of title 49, United States Code, is amended by inserting after the item relating to section 44916 the following:

''44917. Prohibition on opening cockpit doors in flight.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect 1 day after the date of enactment of this Act.

SA 4844. Mr. SESSIONS submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. TREATMENT OF CHARITABLE TRUSTS FOR MEMBERS OF THE ARMED FORCES OF THE UNITED STATES AND OTHER GOVERNMENTAL ORGANIZATIONS.

(a) FINDINGS.—Congress finds the following:

(1) Members of the Armed Forces of the United States defend the freedom and security of our Nation.

(2) Members of the Armed Forces of the United States have lost their lives while battling the evils of terrorism around the world.

(3) Personnel of the Central Intelligence Agency (CIA) charged with the responsibility of covert observation of terrorists around the world are often put in harm's way during their service to the United States.

(4) Personnel of the Central Intelligence Agency have also lost their lives while battling the evils of terrorism around the world.

(5) Employees of the Federal Bureau of Investigation (FBI) and other Federal agencies charged with domestic protection of the United States put their lives at risk on a daily basis for the freedom and security of our Nation.

(6) United States military personnel, CIA personnel, FBI personnel, and other Federal agents in the service of the United States are patriots of the highest order.

(7) CIA officer Johnny Micheal Spann became the first American to give his life for his country in the War on Terrorism launched by President George W. Bush following the terrorist attacks of September 11, 2001.

(8) Johnny Micheal Spann left behind a wife and children who are very proud of the heroic actions of their patriot father.

(9) Surviving dependents of members of the Armed Forces of the United States who lose their lives as a result of terrorist attacks or military operations abroad receive a $6,000 death benefit, plus a small monthly benefit.

(10) The current system of compensating spouses and children of American patriots is inequitable and needs improvement.

(b) DESIGNATION OF JOHNNY MICHEAL SPANN PATRIOT TRUSTS.—Any charitable corporation, fund, foundation, or trust (or separate fund or account thereof) which otherwise meets all applicable requirements under law with respect to charitable entities and meets the requirements described in subsection (c) shall be eligible to characterize itself as a ''Johnny Micheal Spann Patriot Trust''.

(c) REQUIREMENTS FOR THE DESIGNATION OF JOHNNY MICHEAL SPANN PATRIOT TRUSTS.—The requirements described in this subsection are as follows:

(1) Not taking into account funds or donations reasonably necessary to establish a trust, at least 85 percent of all funds or donations (including any earnings on the investment of such funds or donations) received or collected by any Johnny Micheal Spann Patriot Trust must be distributed to (or, if placed in a private foundation, held in trust for) surviving spouses, children, or dependent parents, grandparents, or siblings of 1 or more of the following:

(A) members of the Armed Forces of the United States;

(B) personnel, including contractors, of elements of the intelligence community, as defined in section 3(4) of the National Security Act of 1947;

(C) employees of the Federal Bureau of Investigation; and

(D) officers, employees, or contract employees of the United States Government,

whose deaths occur in the line of duty and arise out of terrorist attacks, military operations, intelligence operations, law enforcement operations, or accidents connected with activities occurring after September 11, 2001, and related to domestic or foreign efforts to curb international terrorism, including the Authorization for Use of Military Force (Public Law 107–40; 115 Stat. 224).

(2) Other than funds or donations reasonably necessary to establish a trust, not more than 15 percent of all funds or donations (or 15 percent of annual earnings on funds invested in a private foundation) may be used for administrative purposes.

(3) No part of the net earnings of any Johnny Micheal Spann Patriot Trust may inure to the benefit of any individual based solely on the position of such individual as a shareholder, an officer or employee of such Trust.

(4) No part of the activities of any Johnny Micheal Spann Patriot Trust shall be used for distributing propaganda or otherwise attempting to influence legislation.

(5) No Johnny Micheal Spann Patriot Trust may participate in or intervene in any political campaign on behalf of (or in opposition to) any candidate for public office, including by publication or distribution of statements.

(6) Each Johnny Micheal Spann Patriot Trust shall comply with the instructions and directions of the Director of Central Intelligence, the Attorney General, or the Secretary of Defense relating to the protection of intelligence sources and methods, sensitive law enforcement information, or other sensitive national security information, including methods for confidentially disbursing funds.

(7) Each Johnny Micheal Spann Patriot Trust that receives annual contributions totaling more than $1,000,000 must be audited annually by an independent certified public accounting firm. Such audits shall be filed with the Internal Revenue Service, and shall be open to public inspection, except that the conduct, filing, and availability of the audit shall be consistent with the protection of intelligence sources and methods, of sensitive law enforcement information, and of other sensitive national security information.

(8) Each Johnny Micheal Spann Patriot Trust shall make distributions to beneficiaries described in paragraph (1) at least once every calendar year, beginning not later than 12 months after the formation of such Trust, and all funds and donations received and earnings not placed in a private foundation dedicated to such beneficiaries must be distributed within 36 months after the end of the fiscal year in which such funds, donations, and earnings are received.

(9)(A) When determining the amount of a distribution to any beneficiary described in paragraph (1), a Johnny Micheal Spann Patriot Trust should take into account the amount of any collateral source compensation that the beneficiary has received or is entitled to receive as a result of the death of an individual described in subsection (c)(1).

(B) Collateral source compensation includes all compensation from collateral sources, including life insurance, pension funds, death benefit programs, and payments by Federal, State, or local governments related to the death of an individual described in subsection (c)(1).

(d) TREATMENT OF JOHNNY MICHEAL SPANN PATRIOT TRUSTS.—Each Johnny Micheal Spann Patriot Trust shall refrain from conducting the activities described in clauses (i) and (ii) of section 301(20)(A) of the Federal Election Campaign Act of 1971 so that a general solicitation of funds by an individual described in paragraph (1) of section 323(e) of such Act will be permissible if such solicitation meets the requirements of paragraph (4)(A) of such section.

(e) NOTIFICATION OF TRUST BENEFICIARIES.—Notwithstanding any other provision of law, and in a manner consistent with the protection of intelligence sources and methods, sensitive law enforcement information, and other sensitive national security information, the Secretary of Defense, the Director of the Federal Bureau of Investigation, or the Director of Central Intelligence, or their designees, as applicable, may forward information received from an executor, administrator, or other legal representative of the estate of a decedent described in subparagraph (A), (B), (C), or (D) of subsection (c)(1), to a Johnny Micheal Spann Patriot Trust on how to contact individuals eligible for a distribution under subsection (c)(1) for the purpose of providing assistance from such Trust; provided that, neither forwarding nor failing to forward any information under this subsection shall create any cause of action against any Federal department, agency, officer, agent, or employee.

(f) REGULATIONS.—Not later than 90 days after the date of enactment of this Act, the Secretary of Defense, in coordination with the Attorney General, the Director of the Federal Bureau of Investigation, and the Director of Central Intelligence, shall prescribe regulations to carry out this section.

SA 4845. Mr. SESSIONS submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 220 of the amendment, after the item inserted by line 15, insert the following:

SEC. 1124. PILOT PROGRAM.

(a) ESTABLISHMENT OF PILOT PROGRAM.—The Commissioner of Immigration and Naturalization shall establish a pilot program of cooperation between inspectors of the Immigration and Naturalization Service and State and local law enforcement officials that uses video conferencing—

(1) to evaluate the legal status of aliens in the custody of State and local law enforcement; and

(2) to initiate deportation proceedings under the Immigration and Nationality Act where warranted.

(b) IMPLEMENTATION.—The pilot program described in subsection (a) shall include at least ten States. States selected to participate should be those with the largest number of violations of the Immigration and Nationality Act.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2003 to 2007 to carry out this section.

SA 4846. Mr. SESSIONS submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 220 of the amendment, after the item inserted by line 15, insert the following:

SEC. 1124. TAKING CUSTODY OF ILLEGAL ALIENS DETAINED BY STATE OR LOCAL LAW ENFORCEMENT OFFICIALS.

(a) IN GENERAL.—Chapter 4 of title II of the Immigration and Nationality Act (8 U.S.C. 1221 et seq.), as amended by this Act, is further amended by inserting after section 236B the following new section:

"SEC. 236C. TAKING CUSTODY OF ILLEGAL ALIENS DETAINED BY STATE OR LOCAL LAW ENFORCEMENT OFFICIALS.

''(a) IN GENERAL.—Whenever a State or local law enforcement official detains an individual with reasonable belief that the individual is removable from the United States under section 237 and immediately notifies the Service of such detention, the Commissioner shall, within 48 hours of that notification—

''(1) inform the State or local law enforcement official in writing that the individual is not unlawfully present in the United States and does not pose a danger to the public; or

''(2) take physical custody of the individual from the State or local law enforcement official.

''(b) TRANSPORTATION.—If the Service fails to comply with subsection (a) within 48 hours of notification, the Commissioner shall—

''(1) accept custody of the individual at the nearest regional office of the Service; and

''(2) promptly reimburse the State or local law enforcement official for the cost of transporting the individual to the regional office by public or private means.''.

(b) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There is authorized to be appropriated to the Secretary $1,000,000 for each of the fiscal years 2003 through 2007 to carry out section 236C of the Immigration and Nationality Act, as added by subsection (a).

(2) AVAILABILITY OF APPROPRIATIONS.—Amounts appropriated pursuant to paragraph (1) are authorized to remain available until expended.

(c) CONFORMING AMENDMENT.—The table of content for the Immigration and Nationality Act is amended by inserting after the item relating to section 236B the following new item:

''Sec. 236C. Taking custody of aliens detained by State or local law enforcement officials.''.

BUSINESS OF THE SENATE

Mr. REID. Mr. President, we have had another unproductive day. As you know, we are starting the fifth week on homeland security and the Interior appropriations bill. As I said a few weeks ago, it appears the other side does not want us to pass these two bills, and they are accomplishing what they set out to do. We are not doing the work of the country.

As the Presiding Officer knows, we have lost 2 million jobs in the last 18 months. We have had the weakest economic growth in some 50 years. Business investment has been down in each of the last six quarters, the weakest trend in 50 years. There has been a $4.5 trillion loss in stock market wealth, the sharpest decline since President Hoover—$440 billion lost in 401(k) and IRA retirement savings this past year—and the median family income was down last year, the first decrease in 12 years. The Nasdaq stock exchange was down to its lowest level in 6 years. Of course, it dropped again today. The Dow Jones dropped again today. The poverty rate is up for the first time in 10 years.

We have a lot of problems with the economy, and we are not addressing them. We are focused on Iraq. I have no problem focusing on Iraq, but we can focus on more than one issue, and we have not done that. I do not think that is good for the people of the State I represent, the people the Presiding Officer represents, or anyplace else in the country.

I hope we can change direction from what we are doing now.

A FOND FAREWELL

Mr. REID. Mr. President, I came to the Congress 10 years ago. One of the people with whom I came was BOB TORRICELLI. He and I have been friends for 20 years now. I didn't know him before he and I were elected to the House of Representatives. Today, he announced he was not going to continue in his election, and I feel terrible about it. It shows the class he has. I talked to Senator TORRICELLI this afternoon. He recognizes the Senate seat in New Jersey is more important than him. As a result of that, he knows it would be better for the institution, the Senate, that he not continue in his election contest.

For me, the memories of having served with this fine man are very significant. The work he did first as the assistant to Senator BOB KERRY's campaign committee and then as chairman of the campaign committee will be written in the history books. He did the impossible. He did what only he said could be done. Most of us did not believe he could do what he did, and that is elect all the Democrats he was responsible for because he made us competitive. He was a voracious fundraiser.

I extend my best wishes to BOB TORRICELLI. I congratulate him for the 20 years of service to the State of New Jersey and the country as a Member of the U.S. Congress. I do hope his great talents will be used. He is a fine speaker. He has a great mind. His knowledge of foreign affairs is unsurpassed.

He and I served together on that committee in the House of Representatives. I wish I had words to describe the affection I have for Senator TORRICELLI and the expression I would like to make of the courage he showed this afternoon.

REMOVAL OF INJUNCTION OF SECRECY—TREATY DOCUMENT NO. 107–17

Mr. REID. Mr. President, I ask unanimous consent the injunction of secrecy be removed from the following treaty transmitted to the Senate on September 30, 2002, by the President of the United States:

Partial Revision of Radio Regulations (Treaty Document No. 107–17).

I further ask the treaty be considered as having been read the first time; that it be referred, with accompanying papers, to the Committee on Foreign Relations and ordered to be printed; and that the President's message be printed in the RECORD.

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

The President's message is as follows:

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the 1992 Partial Revision of the Radio Regulations (Geneva, 1979), with appendices, signed by the United States at Malaga-Torremolinos on March 3, 1992 (the ''1992 Partial Revision''), together with declarations and reservations of the

United States as contained in the Final Acts of the World Administrative Radio Conference for Dealing with Frequency Allocations in Certain Parts of the Spectrum (WARC–92). I transmit also, for the information of the Senate, the report of the Department of State concerning these revisions.

The 1992 Partial Revision, which was adopted at WARC–92, constitutes a revision of the International Telecommunication Union (ITU) Radio Regulations (Geneva, 1979), as revised, to which the United States is a party. It provides for additional spectrum for new or expanding telecommunication services, primarily terrestrial and satellite broadcasting, terrestrial and satellite mobile and space services and is consistent with the proposals and positions taken by the United States at the conference.

Subject to the U.S. declarations and reservations mentioned above, I believe that the United States should become a party to the 1992 Partial Revision, which provides additional spectrum for existing and new telecommunication services in which the United States plays a significant leadership role. It is my hope that the Senate will take early action on this matter and give its advice and consent to ratification.

GEORGE W. BUSH.

THE WHITE HOUSE, *September 30, 2002*.

EXECUTIVE SESSION

NOMINATIONS DISCHARGED

Mr. REID. Mr. President, I ask unanimous consent the Senate proceed to executive session and the Commerce Committee filing of nomination No. 1047 and the nominations placed on the Secretary's desk be vitiated; that the Committee be discharged from further consideration of these nominations; that the nominations be confirmed, the motions to reconsider be laid on the table, the President be immediately notified of the Senate's action; that any statements relating thereto be printed in the RECORD; and that the Senate resume legislative session, with the preceding occurring without intervening action or debate.

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

The nominations were considered and confirmed as follows:

COAST GUARD

The following named officer for appointment to the grade indicated under Title 14, U.S.C., Section 271 and to serve as the Director of the Coast Guard Reserve pursuant to Title 14, U.S.C. Section 53:

PN2194 Coast Guard nominations (2) beginning Kurt J. Colella, and ending Lucretia Flammang, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of September 24, 2002.

PN2195 Coast Guard nominations (120) beginning Alan N Arsenault, and ending Matthew J Zamary, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of September 24, 2002.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session.

DEATH OF REPRESENTATIVE PATSY T. MINK OF HAWAII

Mr. REID. I ask unanimous consent the Senate proceed to the consideration of S. Res. 331 submitted earlier today by the majority and the Republican leaders.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 331) relative to the death of Representative Patsy T. Mink of Hawaii.

There being no objection, the Senate proceeded to the consideration of the resolution.

Mr. REID. I ask unanimous consent the resolution be agreed to and the motion to reconsider laid on the table, with no intervening action or debate.

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

The resolution (S. Res. 331) was agreed to, as follows:

S. RES. 331

Resolved, That the Senate has heard with profound sorrow and deep regret the announcement of the death of the Honorable Patsy T. Mink, late a Representative from the State of Hawaii.

Resolved, That the Secretary communicate these resolutions to the House of Representatives and transmit an enrolled copy thereof to the family of the deceased.

Resolved, That when the Senate adjourns or recesses today, it stand adjourned or recessed as a further mark of respect to the memory of the deceased Representative.

NATIONAL PROSTATE CANCER AWARENESS MONTH

Mr. REID. I ask unanimous consent the Judiciary Committee be discharged from further consideration of S. Res. 325 and the Senate now proceed to that matter.

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

The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 325) designating the month of September as ''National Prostate Cancer Awareness Month.''

There being no objection, the Senate proceeded to consider the resolution.

Mr. REID. I ask unanimous consent the resolution and preamble be agreed to, the motion to reconsider be laid on the table, and any statements relating thereto be printed in the RECORD.

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

The resolution (S. Res. 325) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

Whereas over 1,000,000 American families live with prostate cancer;

Whereas 1 American man in 6 will be diagnosed with prostate cancer in his lifetime;

Whereas over the past decade prostate cancer has been the most commonly diagnosed nonskin cancer and the second most common cancer killer of American men;

Whereas 189,000 American men will be diagnosed with prostate cancer and 30,200 American men will die of prostate cancer in 2002, according to American Cancer Society estimates;

Whereas fully ¼ of new cases of prostate cancer occur in men during their prime working years;

Whereas African-Americans have the highest incidence and mortality rates of prostate cancer in the world;

Whereas screening by both digit rectal examination and prostate-specific antigen blood test (PSA) can diagnose the disease in earlier and more treatable stages and has reduced prostate cancer mortality;

Whereas the research pipeline promises further improvements in prostate cancer prevention, early detection, and treatments; and

Whereas educating Americans, including health care providers, about prostate cancer and early detection strategies is crucial to saving the lives of men and preserving and protecting our families: Now, therefore, be it

Resolved,That the Senate—

(1) designates the month of September 2002 as ''National Prostate Cancer Awareness Month'';

(2) declares that the Federal Government has a responsibility—

(A) to raise awareness about the importance of screening methods and treatment of prostate cancer;

(B) to increase research funding that is commensurate with the burden of the disease so that the causes of, and improved methods for screening, treating, and curing prostate cancer may be discovered; and

(C) to continue to consider ways for improving access to, and the quality of, health care services for detecting and treating prostate cancer; and

(3) requests the President to issue a proclamation calling upon the people of the United States, interested groups, and affected persons to promote awareness of prostate cancer, to take an active role in the fight to end the devastating effects of prostate cancer on individuals, their families, and the economy, and to observe the month of September 2002 with appropriate ceremonies and activities.

ORDERS FOR TUESDAY, OCTOBER 1, 2002

Mr. REID. I ask unanimous consent that when the Senate completes its business today, it adjourn until 9:30 a.m. tomorrow morning, Tuesday, October 1st; that following the prayer and pledge, the morning hour be deemed expired, the Journal of Proceedings be approved to date, the time for the two leaders be reserved for their use later in the day, and there be a period of morning business until 11 a.m., with Senators permitted to speak for up to 10 minutes each, with the first half of the time under the control of the Republican leader or his designee, and the second half of the time under the control of Senator DASCHLE or his designee; that at 11 a.m. the Senate resume consideration of the Homeland Security Act with 1 hour of debate equally divided between the two leaders or their designees, prior to a 12

noon vote on cloture on the Gramm-Miller amendment to homeland security; further, that the Senate recess from 12:30 to 2:15 p.m. for the weekly party conferences.

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

PROGRAM

Mr. REID. Senators have until 11 a.m. tomorrow to file second-degree amendments to the Homeland Security Act.

ADJOURNMENT UNTIL 9:30 A.M., TOMORROW

Mr. REID. If there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the parameters of S. Res. 331, as a further mark of respect to the memory of the deceased PATSY MINK.

There being no objection, the Senate, at 6:16 p.m., adjourned until Tuesday, October 1, 2002, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate September 30, 2002:

DEPARTMENT OF AGRICULTURE

THOMAS C. DORR, OF IOWA, TO BE UNDER SECRETARY OF AGRICULTURE FOR RURAL DEVELOPMENT, VICE JILL L. LONG, RESIGNED, TO WHICH POSITION HE WAS APPOINTED DURING THE LAST RECESS OF THE SENATE.

THOMAS C. DORR, OF IOWA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE COMMODITY CREDIT CORPORATION, VICE JILL L. LONG, RESIGNED, TO WHICH POSITION HE WAS APPOINTED DURING THE LAST RECESS OF THE SENATE.

EXPORT-IMPORT BANK OF THE UNITED STATES

PHILIP MERRILL, OF MARYLAND, TO BE PRESIDENT OF THE EXPORT-IMPORT BANK OF THE UNITED STATES FOR THE REMAINDER OF THE TERM EXPIRING JANUARY 20, 2005, VICE JOHN E. ROBSON.

CORPORATION FOR PUBLIC BROADCASTING

CHERYL FELDMAN HALPERN, OF NEW JERSEY, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE CORPORATION FOR PUBLIC BROADCASTING FOR A TERM EXPIRING JANUARY 31, 2008, VICE HEIDI H. SCHULMAN, TERM EXPIRED, TO WHICH POSITION SHE WAS APPOINTED DURING THE LAST RECESS OF THE SENATE.

MERIT SYSTEMS PROTECTION BOARD

SUSANNE T. MARSHALL, OF VIRGINIA, TO BE CHAIRMAN OF THE MERIT SYSTEMS PROTECTION BOARD, VICE BETH SUSAN SLAVET, TO WHICH POSITION SHE WAS APPOINTED DURING THE LAST RECESS OF THE SENATE.

POSTAL RATE COMMISSION

TONY HAMMOND, OF VIRGINIA, TO BE A COMMISSIONER OF THE POSTAL RATE COMMISSION FOR THE REMAINDER OF THE TERM EXPIRING OCTOBER 14, 2004, VICE EDWARD JAY GLEIMAN, RESIGNED, TO WHICH POSITION HE WAS APPOINTED DURING THE LAST RECESS OF THE SENATE.

UNITED STATES POSTAL SERVICE

ALBERT CASEY, OF TEXAS, TO BE A GOVERNOR OF THE UNITED STATES POSTAL SERVICE FOR A TERM EXPIRING DECEMBER 8, 2009, VICE TIRSO DEL JUNCO, TERM EXPIRED, TO WHICH POSITION HE WAS APPOINTED DURING THE LAST RECESS OF THE SENATE.

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

W. SCOTT RAILTON, OF VIRGINIA, TO BE A MEMBER OF THE OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION FOR A TERM EXPIRING APRIL 27, 2007, VICE GARY L. VISSCHER, TERM EXPIRED, TO WHICH POSITION HE WAS APPOINTED DURING THE LAST RECESS OF THE SENATE.

CONFIRMATIONS

Executive nominations confirmed by the Senate September 30, 2002:

IN THE COAST GUARD

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED UNDER TITLE 14, U.S.C., SECTION 271 AND TO SERVE AS THE DIRECTOR OF THE COAST GUARD RESERVE PURSUANT TO TITLE 14, U.S.C. SECTION 53:

To be rear admiral (lower half)

REAR ADM. (SELECTEE) ROBERT J. PAPP

THE ABOVE NOMINATION WAS APPROVED SUBJECT TO THE NOMINEE'S COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.

COAST GUARD NOMINATIONS BEGINNING KURT J. COLELLA AND ENDING LUCRETIA FLAMMANG, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON SEPTEMBER 24, 2002.

COAST GUARD NOMINATIONS BEGINNING ALAN N. ARSENAULT AND ENDING MATTHEW J. ZAMARY, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON SEPTEMBER 24, 2002.