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## Senate

The Senate met at 2 p.m. and was called to order by the Honorable CHUCK HAGEL, a Senator from the State of Nebraska.

The PRESIDING OFFICER. Our guest Chaplain, Rabbi Arnold E. Resnicoff, will lead us in prayer.

### PRAYER

The guest Chaplain offered the following prayer:

Let us pray.

O Lord, who hears our prayers as this session now begins and before the leaders here debate the issues they confront and with which our country and our people struggle, we begin united, united with a prayer, a reminder that even as we disagree on one course of action or the next, we do so in pursuit of common prayers, common dreams—liberty, dignity, and freedom—that unite us all. We sometimes call this starting prayer an invocation, but it is not Your presence we invoke, for You are always with us. No matter where we are or where we go, as we soar on eagle's wings toward heaven, as we search the deepest reaches of the sea, or as we seek to balance right and responsibility through the actions taken here in the Halls of Congress, we know we find Your hand. Instead, it is awareness of Your presence that we call forth, that we invoke a reminder of a plan or dream in which we might play a part, a promise of a better world, better time, a time of peace and justice that we might help to build. May Your presence touch our lives, and even shape our words, so that we might find the wisdom and the courage to do our part to keep our dreams and prayers alive and help make those dreams and prayers come true. And may we say, Amen.

### PLEDGE OF ALLEGIANCE

The Honorable CHUCK HAGEL 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 (Mr. VOINOVICH). The clerk will please read a communication to the Senate from the President pro tempore (Mr. STEVENS).

The legislative clerk read the following letter:

U.S. SENATE,  
PRESIDENT PRO TEMPORE,  
Washington, DC, May 19, 2003.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable GEORGE V. VOINOVICH, a Senator from the State of Ohio, to perform the duties of the Chair.

TED STEVENS,  
President pro tempore.

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

### RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

### SCHEDULE

#### ORDER OF PROCEDURE

Mr. FRIST. This afternoon, the Senate will be in a period of morning business until 2:30 p.m. At 2:30 the Senate will begin consideration of the Department of Defense authorization bill. Under the order, amendments will not be in order to the bill until 5:30 today. Under the previous order, our first roll-call vote is scheduled for 5:30 this afternoon, but due to a number of meetings, I ask unanimous consent that the vote on the confirmation of the nomination of S. Maurice Hicks, Jr., to be a United States District Judge for the Western District of Louisiana be moved until 5 p.m. today.

Mr. REID. Reserving the right to object, we have a number of speakers here now: Senator CONRAD wants to speak for 15 minutes, Senator DORGAN

for 15 minutes, and Senator HAGEL is in the Chamber and wishes to speak for 5 minutes. Could we extend morning business for 15 minutes equally divided?

Mr. FRIST. Mr. President, I am happy to extend it for 15 minutes. I have very few remarks to make, and then we will have the Senator go first.

Mr. REID. That should cover the time.

I ask that Senator CONRAD be recognized for 15 minutes, Senator DORGAN for 10 minutes, and Senator HAGEL for 5 minutes; you go first, then Senator CONRAD, and then Senator HAGEL.

Mr. FRIST. My remarks are going to be for 3 minutes; if I could have Senator HAGEL go first and then follow with—

Mr. REID. If he is speaking a short time, that will be fair.

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

Is there objection to moving the time for a vote?

Without objection, it is so ordered.

Mr. FRIST. Let me clarify, or add to that, because we are moving the time up. I understand a lot of people will be coming back this afternoon. Since we initially scheduled it for 5:30, we will extend that voting to, say, 6 p.m. So we will begin voting at 5 p.m. today, and the vote will be held open until 6 p.m. today since this is a change from Friday.

Following that vote, Members may offer amendments to the DOD authorization bill. The two managers will be encouraging any Senator who intends to offer an amendment to stay around after the vote to offer and debate their amendment. Any votes ordered on amendments that are debated this evening will be postponed to begin tomorrow morning. It is my hope that we will be able to complete Senate action on this bill early this week.

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



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This week, the Senate will also consider the debt limit extension legislation. We have an agreement for a limitation of amendments to that bill, although it is still my hope that the list of amendments can be pared down and we can pass that bill in a quick period of time.

Finally, I add that last week the Senate passed the jobs and economic growth package. At this point, it is unclear at what time the Houses can complete working out the differences. It is my hope to complete that prior to the Memorial Day recess. People have been meeting over the weekend, today, and will be meeting tonight. I will keep my colleagues posted. My intent is to complete that package before the Memorial Day recess. The language has to be worked out between both Houses. We will be talking about that as we go forward.

Mr. REID. Mr. President, before the majority leader leaves the floor, regarding the debt limit, we have entered into an agreement in good faith with the majority. However, I think we should expect this will take a day. I worked with Senator MCCONNELL last week. We had it down to a finite number of amendments. That did not work out. We have a Memorial Day recess with people giving graduation speeches and Memorial Day speeches, and we are going to get jammed toward the end of this week, as we do before a recess period. We are happy to work, but I don't think we can plan on finishing this bill in a couple of hours.

Mr. FRIST. Mr. President, I appreciate the comments of the assistant minority leader. I am hopeful we can pare down the number of amendments, but I understand from their perspective it will take more than a couple of hours. In that regard, the exact timing will be discussed as to when we actually bring that to the floor. It will be completed this week.

In a few moments I will talk about bioshield, as well, that I would like to complete this week. But absolutely for sure, DOD we are looking to complete, we will address the debt ceiling this week—we have to address it this week—and we will address, hopefully, the jobs and economic growth package in its final form as well as bioshield.

Putting that together will be, again, a very long week. People absolutely must plan to be here on Friday, voting on Friday before we begin the recess.

#### MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period of morning business with the time equally divided between the Democratic leader and the Senator from Nebraska.

#### PROJECT BIOSHIELD

Mr. FRIST. Mr. President, I am going to make just a few comments on bioshield and then will yield to the Sen-

ator from Nebraska. The comments I want to make are really a continuation of the statement of my intentions of a few minutes ago, and that is that the bioshield legislation must be addressed as soon as possible. I believe it has ramifications for the security of this Nation.

Today, Israel was rocked by a fifth suicide bombing in 4 days—5 dead, 14 or 15 injured in a blast outside a shopping mall. Just last Friday we had a suicide attack in Morocco claiming 42 lives. In Saudi Arabia last week: 3 simultaneous attacks, 34 people murdered including 7 Americans. Meanwhile, 15 European tourists are being held hostage in a bunker in Algeria.

This weekend, the Wall Street Journal reported that U.N. Weapons Inspector Hans Blix warns that:

Chemical and biological weapons might be within the reach of terrorists—whether these are groups or individuals.

He goes on to say:

Full guarantees against research and development are hardly attainable, and possible hidden stores of biological and chemical weapons may also be very hard to discover.

The threat is real. Biological and other dangerous agents every day get closer and closer and closer to being within the grasp of those who wish to do us or peoples around the world mortal harm. We have made tremendous progress in treating many serious naturally occurring diseases, but we still lag far behind where we should be in developing the medical treatments and responses against biological or potential biological and chemical attacks.

President Bush, in his State of the Union Message, proposed Project Bioshield, which is a comprehensive effort to develop and make available modern, up-to-date, effective countermeasures against such biological and chemical agents. It is a major cooperative effort which will be a joint activity of the new Department of Homeland Security and the Department of Health and Human Services.

We look, in this legislation, at the next generation of countermeasures. Over the next 10 years, the administration estimates that about \$6 billion will be available to purchase new countermeasures for conditions and illnesses and microbes like smallpox or anthrax or botulinum toxin or Ebola or plague.

Project Bioshield also expands research and development into medical treatments as well as making these promising treatments available, very quickly, rapidly, in response to an emergency.

My colleague, the Senator from New Hampshire, Mr. GREGG, introduced a comprehensive measure which incorporated the President's bioshield initiative into S. 15, the Biodefense Improvement and Treatment for America Act. That bill was introduced on March 11. Portions of that legislation incorporating the President's bioshield initiative passed the Senate Health, Edu-

cation, Labor and Pensions Committee on March 25. A slightly modified version passed the committee with the support of the ranking Democrat member, Senator KENNEDY, as well as the support of all Republicans and all Democrats on the committee. The bill was placed on the Senate calendar on March 25, but now it is 2 months later and despite repeated attempts to pass the legislation, the minority, the Democrats, have objected to passing the bill by unanimous consent or even to debating the bill under a time agreement.

We simply cannot continue to wait. Every day we wait is a day too long. We cannot forget the terrible video footage of the potential of these terrorist agents being used against us or other people.

I hope the Senate will be able to meet Democratic objections and move this legislation this week before the Memorial Day recess. As I said in my opening comments earlier, none of us here doubts the potential danger that is out there. We need bioshield passed, and we need it passed as soon as possible.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Nebraska.

Mr. HAGEL. I thank the Chair.

(The remarks of Mr. HAGEL pertaining to the introduction of S. 1076 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

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

#### TAX LEGISLATION

Mr. CONRAD. Mr. President, last week the Senate and House passed tax measures. I want to take a moment to comment on those tax measures. My personal belief is that they are fundamentally flawed, that they are ineffective as stimulus, irresponsible as tax policy, and ultimately unfair. In terms of stimulus, the plan that passed the Senate last week will provide \$45 billion of stimulus the first year; the House plan, \$48 billion—that in an economy that is \$10.5 trillion in size.

Most economists say that small a measure will do virtually nothing to give a lift to the economy. The proposal by Senator DASCHLE, which provided \$125 billion of stimulus, is the minimum size most economists say is necessary to give any serious lift to a \$10.5 trillion economy.

But the bigger flaw is in the long-term cost of the proposals advanced by our colleagues in both the Senate and the House. In the Senate, the 10-year cost of the plan is \$350 billion; in the House, \$550 billion. But that substantially understates the true cost of these measures.

We can look at the Wall Street Journal, which did an analysis. They concluded: "Caution: Tax Cuts Are Bigger Than They Appear In The Budget." That is because of this phony sunset

that has been adopted in both the House and the Senate to substantially understate the cost.

If the sunsets were not present, what we find is that the House bill, which is advertised to cost \$550 billion, would actually cost \$1.1 trillion. So when they say they have a tax measure that costs \$550 billion, the true cost, without sunsets, is \$1.1 trillion on the House side. In the Senate, they say they have a package that costs \$350 billion. The true cost, without the sunset gimmick, is \$660 billion.

Some will say: Well, a sunset may be a valid thing. They may actually end that tax cut at the end of the time. Well, let's just look back 2 years ago. Two years ago, they passed tax measures filled with sunsets, and now what are they saying? Now they are saying: If you allow them to sunset, it will be a tax increase. So they are saying, oh, no, they can't be sunset, they have to be continued.

You know, fool me once, shame on you. Fool me twice, shame on me. Look, how can any of us be fooled about what is to come? It is very clear what they are going to do. They are going to insist on eliminating these sunsets and the costs will explode. Well, what difference does that make? The difference it makes, of course, is that we are already in record deficit. With these additional tax cuts, and with the increased spending provided for in the President's budget, we are headed for deficits that are utterly unsustainable.

Not only that, this policy of sunseting means you have a come-and-go tax policy that is bewildering and will have an adverse effect on the economy. As the chart says: "Sunset and Phase-in Gimmicks Produce Bad Tax Policy." Here is just one example. The marriage penalty comes and goes, and it comes again under the policy adopted in the Senate just last week. It is really quite stunning what they have done.

For couples who incur a marriage penalty because of the standard deduction, that marriage penalty would be eliminated when the standard deduction equals \$9,500 for the year 2003. Under the plan passed last week in the Senate—and using constant 2003 dollars—we will have \$9,267 this year, \$9,500 next year, and then it goes down to \$8,265 the year after that. That will mean a tax increase on married couples. And then it goes up to \$8,740, \$8,883—all of these standard deduction amounts over the 4 years after 2004 are below the amount necessary to address the marriage penalty. It is really a giant hoax on the American people. But look what happens in 2011 and 2012 and 2013. Then it goes down to less than \$8,000—a significant tax increase on married couples.

This is consistent, unfortunately, throughout the package passed last week. It is true of the dividend tax measure. What a bizarre thing that is. It is phased in with a 50 percent exclu-

sion the first year, then it goes up to 100 percent for a few years, and then it is eliminated. One prominent Republican analyst, an economist who has testified repeatedly before Congress, called it the most patently absurd tax policy offered ever. I don't know if it is the most absurd offered ever, but it is pretty farfetched. And he is not alone in that view. Here is what he said:

Administration sources admit that dividends will likely decline relative to today under this plan between now and 2005. How can that be a harmless event given that increases in dividend payments are viewed to be so wonderful? Clearly, this proposal is one of the most patently absurd tax policies ever proposed.

As I say, he is not alone in that analysis. Here are two economists who say the Senate GOP dividend tax plan will not help the economy:

[Mr.] Timothy M. Koller and Susan Nolen Foushee, consultants at McKinsey & Co., noted in a recent report that as of last year owners of 61 percent of all common stock were not subject to tax, so markets are driven by investors who are not concerned with tax treatment of dividends. Thus, "the proposed tax cut" on dividends "seems unlikely to have a significant or lasting effect on U.S. share prices," [they] said.

That is from the Washington Post.

What is even more bizarre is the President went around this country and told people this policy was to eliminate double taxation. His argument was that corporate profits are first taxed at the corporate level and then taxed again when they are paid out into dividends.

So his initial proposal included a corporate accounting provision that guaranteed that taxes on profits were paid at the corporate level before those profits could be paid out to shareholders on a tax-free basis. Do you know what? Here in the Senate they took that provision out. So now you can have a circumstance where the money is not taxed either at the corporate level or when it is paid out as dividends. That is not a matter of eliminating double taxation, that is a matter of eliminating all taxation on corporate earnings.

Now, if that isn't an utterly preposterous outcome, I don't know what is. That is what this Senate passed last week. I expect a lot of Members who voted for it did not even know that provision was taken out. I expect they did not know you are going to have a circumstance in which corporations do not pay taxes at the corporate level and then get to pay the dividends out completely tax free—well, at least for a few years until it is all restored and we face a massive tax increase on dividends that would do real damage to the economy of this country.

As shown on this chart, here is a Republican tax analyst who ridicules the Senate GOP dividend tax plan:

"I can understand the political reasons why they put it in that way, but it's such an incredibly bad idea," said Norbert Michel, a tax policy analyst at the Heritage Foundation, a conservative research group in Washington.

That is from the New York Times.

I think Mr. Michel had it right.

This next chart shows that economists say the Senate GOP dividend tax plan makes little sense:

Many economists say a temporary reduction of the dividend tax makes little economic sense, blunting the goal of boosting companies' stock prices and leaving them more money to invest. "Phasing something in but letting it go away doesn't have a very large economic impact," said Christopher Wiegand, economist for Citigroup Inc.

This is according to the Associated Press.

The evidence is mounting that what was passed here last week makes no earthly sense. It does not make economic sense. It makes no fiscal sense because the deficits of this country are already at a record level. This year some have said it would be a small deficit. Let the American people make the judgment if they think it is small.

The deficit this year, on an operating basis, is going to be between \$500 and \$600 billion on a budget of \$2.2 trillion.

Some say that is a small deficit. What would they call a large deficit? A \$500 to \$600 billion deficit on an operating basis on a \$12.2 trillion budget, and you know that is just the beginning. Once the President's plan is put in place, that increase is spent. That cuts revenue, and when we already have record deficits, you can only have one result; that is, deficits that multiply. It will also occur at the worst possible time because these deficits are coming at us right before the baby boomers retire.

When I talk about a tax plan that makes no sense, it is not just people on our side of the aisle saying that. You have Republicans saying what was passed in the Senate makes no sense. Here is another lawmaker who says he considers the bill a bad idea. It is the Speaker of the House, DENNIS HASTERT, who described the plan as an "all of a sudden you see it, and now you don't" idea. He went on to say:

If the dividend tax is 50 percent and then nothing, and all of a sudden it is back to 100 percent or whatever it is, my feeling is that it does not solve the problem.

But he did not mention that his Chamber's bill also sunsets a half-dozen major provisions.

Rarely have we seen tax bills so riddled with gimmicks and false assumptions.

This is what the Joint Committee on Taxation found when they did a "dynamic analysis" of the bill passed in the House of Representatives. They concluded that the increased deficits that will be created will eventually outweigh the benefits of tax cuts.

This is what a number of us have been saying repeatedly. These are not tax cuts offset by spending reductions; these are offsets paid for by borrowing money from the Social Security trust fund. In fact, virtually every penny of Social Security trust fund surpluses over the entire next decade are being taken to pay for these tax cuts. And people think that is a good idea.

The President says this is the people's money. He is exactly right about that. This is the people's money. But do you know what? It is also the people's debt. It is also the people's Social Security. It is also the people's Medicare. All of those are the people's. The policy he has fashioned is taking Social Security trust fund surpluses from the people in order to pay for a tax cut; taking from a circumstance in which people are paying payroll taxes—by the way, 80 percent of American taxpayers pay more in payroll tax than they pay in income tax—it is going to take from their trust fund surpluses and use it to give an income tax cut that flows overwhelmingly to the wealthiest among us. You talk about Robin Hood in reverse, this is it. It is not good economic policy, it is not good tax policy, it is not good fiscal policy, and it is going to put us in a deeper and deeper hole.

The Joint Committee on Taxation said this about the plan:

This stimulus is reduced over time because the consumption, labor, and investment incentives are temporary, and because the positive business investment incentives arising from the tax policy are eventually likely to be outweighed by the reduction in national savings due to increased Federal Government deficits.

That is exactly what is wrong with this plan. It is not the economic growth plan, it is a plan to borrow from the future and to take Social Security trust fund surpluses and give a big tax cut to those who are the wealthiest among us.

This plan also flunks the fairness test. The plan benefits the wealthiest in a way that is truly stunning. Taxpayers with income over \$1 million will get a benefit of \$73,790 in this tax year alone. The typical taxpayers—those in the middle income in this country, the 20 percent of taxpayers who are in the middle of the income distribution—will have an average benefit of \$245.

Let me conclude by saying I hope my colleagues will take a second look at what was passed. I think it is going to prove to be a serious mistake for our fiscal future.

I thank the Chair and yield the floor.

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

Mr. DORGAN. Mr. President, am I recognized for 10 minutes?

The ACTING PRESIDENT pro tempore. The Senator is recognized for 10 minutes.

#### GLOBAL AIDS

Mr. DORGAN. Mr. President, last Thursday and early Friday morning, the Senate was in session for I believe 17 hours, and it took 36 rollcall votes. Many of us arrived at our homes at 1:30 or 2 in the morning. I had trouble sleeping despite the hour because of what happened on that day. I want to describe something that has bothered me all weekend.

In the middle of discussing the tax vote that came to us from the Finance

Committee, the majority leader brought up the global AIDS bill. I guess it was about 10 o'clock at night. Those of us who prepared to offer amendments were told by the majority leader twice on the floor of the Senate that we would be able to offer our amendments and they would defeat them. Understand that this is a global AIDS bill that was done in committee, and none of us who do not serve on that committee had an opportunity to deal with that subject.

Yet we were told in the Senate we would be able to offer our amendments and they would defeat them. This was about 10 o'clock at night. We were, by the way, at that moment debating a \$430 billion or \$450 billion tax cut. And I proposed an amendment to the global AIDS bill to spend \$250 million—one-fourth of a billion dollars—to address a famine, particularly in central and sub-Saharan Africa, that threatens 11 million people. But before we had a debate about the substance of that, we were told: Your amendments will be defeated. Why? Because they are not a priority.

We had already passed the level of food aid that was proposed in my amendment previously. That \$250 million was already passed by the Senate in the omnibus bill and taken out by the House of Representatives in conference. But we were told we didn't have the capability in the Senate to do it last Thursday. So we had a record vote. I lost 49 to 51.

Just so we understand this is not about some abstract theory, let me read Nicholas Kristof's piece in the New York Times of May 13.

Ladawi is a 16-month-old girl with twigs for limbs, blotched skin, labored breathing, eyes that roll back and skin stretched tautly over shoulder blades that look as if they belong to a survivor of Auschwitz. She is so malnourished that she cannot brush away the flies that land on her eyes, and she does not react when a medical trainee injects drugs into her hip in a race to save her life.

"She's concerned only with trying to breathe," says the trainee, the closest thing to a doctor at a remote medical center here in southern Ethiopia. "Most likely she will not survive."

I don't understand this. I just do not understand. We have people dying, children dying, and we have substantial food in this country and the most productive farmers in the world. They are told at the grain elevator that food has no value. If you produce it in such abundance, it has no value. And then a young girl in Boricha, Ethiopia, lies on her bed dying because she doesn't have food.

I served on the Hunger Committee when I served in the House. I have traveled to many spots in the world to refugee camps. I have seen desperate hunger. I have held in my arms children who were dying because they didn't have enough to eat. We live in a world of plenty—at least here in the United States. Obesity is a major problem. A substantial part of our country is on a diet. Our farmers can't make a

living because they are told their food has no value. Yet we have 11 million people at risk. This Senate says no to the food aid that needs to go to those kids, to help those kids. I just do not understand it.

Let me read further from the Nicholas Kristof piece:

We've all been distracted by Iraq, but an incipient famine in the Horn of Africa has been drastically worsening just in the last few weeks. It has garnered almost no attention in the West, partly because it's not generally realized that people are already dying here in significant numbers. But they are. And unless the West mobilizes further assistance immediately to Ethiopia, Eritrea and Somalia, the toll could be catastrophic. . . .

"We've been overwhelmed by this, especially in the last three weeks," said Tigist Esatu, a nurse at the Yirba Health Center, crowded with mothers carrying starving children. "Some families come and say, 'We've lost two children already, three children already, so you must save this one.'"

He continues:

Since weapons of mass destruction haven't turned up so far in Iraq, there's been a revisionist suggestion that the American invasion was worthwhile because of humanitarian gains for the liberated Iraqi people. Fair enough. But as long as we're willing to send hundreds of thousands of troops to help Iraqis, what about offering much more modest assistance to save the children dying here?

"How is it that we routinely accept a level of suffering and hopelessness in Africa that we would never accept in any other part of the world?" asks James Morris, the executive director of the World Food Program. . . .

Fair enough. But as long as we're willing to send hundreds of thousands of troops to help Iraqis, what about offering much more modest assistance to save the children dying here?

Later in the article he quotes a mother:

"Now I worry about my other children," said Tadilech Yuburo, a young woman who lost one child last month and has three left. In her village, Duressa, population 300, five children have died in the last month. In nearby Falamu, population 400, six children have died. This famine has not yet registered on the world's conscience.

I offered an amendment to provide some food aid which we have in abundance. We have plenty of food aid to give. I offered an amendment at 10, 11 at night. We didn't have the time to do that, didn't have the willingness to do that. We didn't have the votes to do that. We were way too busy providing tax cuts, the majority of which will go to upper income Americans.

I had a friend who died of a car crash in 1981. He was a wonderful man, a singer, named Harry Chapin, who dedicated most of his life to fighting rural hunger. Harry wrote a song I want to read that describes why I feel so passionately about this. The song is called "The Shortest Story."

I am born today. The sun burns its promise in my eyes. Momma strikes me and I draw a breath to cry. Far above a cloud tumbles softly through the sky. It is now my seventh day. I taste the hunger and I cry. Brother and sister cling to momma's side. She squeezes her breast, but it has nothing to provide. Someone weeps. I fall asleep. It is 20

days today. Momma does not hold me anymore. I open my mouth but I am too weak to cry. Far above a bird slowly crawls across the sky. Why is there nothing left to do but die?

Those were lyrics by the late Harry Chapin. Harry was a terrific friend. He dedicated the proceeds from one-half of his concerts every year to fight world hunger. He used to say, if one night 45,000 people died of hunger in New Jersey, it would make headlines around the world, giant headlines in every paper in the world. But the winds of hunger blow every day, every hour, every minute, and 45,000 people, mostly children, die every day, and it doesn't make the newspaper.

Now we have a gripping famine in a part of the world that some of us believe we have a moral responsibility to address in a much more aggressive way than we have been willing to address previously. Yet a relatively small amendment I offered on Thursday was defeated by two votes, and I was told before I offered it: Go ahead and offer your amendment. We will defeat it. And this was before they knew what the amendment was about.

That is not the kind of priority you would expect from the Senate. I regret very much that we passed this global AIDS bill and did not attach the \$250 million in food aid to which the Senate had previously agreed. We don't have much time if we care about world hunger. If we care about saving these children, if we care about doing what we need to do, what our responsibility would call us to do at this moment, then we must regroup and pass legislation of the type I offered Thursday night.

Again, it was hard to sleep, and this weekend I thought a lot about that, wondering why was the Senate so much more interested in providing tax cuts than it was in providing assistance to those starving in other parts of the world.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Virginia.

#### CONCLUSION OF MORNING BUSINESS

Mr. WARNER. Parliamentary inquiry: Would the Chair advise the Senate with regard to the time remaining in morning business?

The ACTING PRESIDENT pro tempore. There are 9 minutes remaining to the majority in morning business.

Mr. WARNER. I judge no time remaining for the minority.

The ACTING PRESIDENT pro tempore. That is correct.

Mr. WARNER. On behalf of the majority leader, I ask now that all time be yielded back on behalf of the majority.

The ACTING PRESIDENT pro tempore. The time is yielded back. Morning business is closed.

#### NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2004

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now proceed to consideration of S. 1050, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 1050) to authorize appropriations for fiscal year 2004 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes.

Mr. WARNER. Mr. President, I ask unanimous consent that William Buhrow, a legislative fellow in the office of Senator GEORGE ALLEN, be granted the privilege of the floor during consideration of S. 1050.

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

Mr. WARNER. Mr. President, I ask unanimous consent that Jason Hamm, of the staff of the Committee on Foreign Relations, be granted the privilege of the floor for the duration of the debate on the fiscal year 2004 defense authorization.

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

Mr. WARNER. Mr. President, I ask unanimous consent that the staff members of the Committee on Armed Services, majority and minority, appearing on the list I send to the desk be granted the privilege of the floor during consideration of S. 1050.

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

The list is as follows:

Judith A. Ansley; Richard D. DeBobs; Charles W. Alsop; Kenneth Barbee; Michael N. Berger; June M. Borawski; Leah C. Brewer; Jennifer D. Cave; L. David Cherington; Christine E. Cowart; Daniel J. Cox, Jr.; Madelyn R. Creedon; Kenneth M. Crosswait; Marie Fabrizio Dickinson; Gabriella Eisen; Evelyn N. Farkas.

Richard W. Fieldhouse; Andrew W. Florell; Brian R. Green; Creighton Greene; William C. Greenwalt; Carolyn M. Hanna; Mary Alice A. Hayward; Jeremy L. Hekhuis; Ambrose R. Hock; Gary J. Howard; R. Andrew Kent; Jennifer Key; Gregory T. Kiley; Maren R. Leed; Gerald J. Leeling; Peter K. Levine.

Patricia L. Lewis; Thomas L. MacKenzie; Sara R. Mareno; Ann M. Mittermeyer; Lucian L. Niemeyer; Cindy Pearson; Paula J. Philbin; Lynn F. Rusten; Arun A. Seraphin; Joseph T. Sixeas; Christina D. Still; Scott W. Stucky; Mary Louise Wagner; Richard F. Walsh; Nicholas W. West; Bridget M. Whalan; Pendred K. Wilson.

Mr. WARNER. Mr. President, I ask unanimous consent that Senator MCCAIN's legislative fellow, Navy Commander Edward Cowan, be granted privilege of the floor during consideration of S. 1050.

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

Mr. WARNER. Mr. President, I see the distinguished Senator from Michi-

gan on the floor. I advise my good friend and partner on this venture that I will proceed for some 10 minutes and then yield the floor, on the assumption that he will proceed, and then I will resume with the remainder of my statement.

On behalf of the Armed Services Committee, I am pleased and honored to bring the National Defense Authorization Act for Fiscal Year 2004 to the Senate for consideration. The bill was reported out of the committee with overwhelming bipartisan support. I may say, as a tribute to excellent staff work and excellent work by the chairman and ranking members of the subcommittees and, indeed, by the full cooperation of my distinguished colleague, the ranking member, we achieved this markup in what is regarded to be record time. I didn't keep the time, but I certainly recognize that we did it in a very brief period; basically over a 2-day period, where many times heretofore it has been 3, 4, and 5 days for markup.

I think the committee, both members and staff, were aware of the tremendous support across this Nation by the people for the men and women of the Armed Forces today and a recognition of the responsibilities of the Congress of the United States—in this case the Senate—to provide for those men and women of the Armed Forces.

Having said that, I believe that contributed to the swift action we had on our bill in committee markup, and I anticipate—I say this respectfully—in the Chamber a number of amendments will come forth, but I believe we will be able to complete this bill in a relatively short period of time, owing again to the support in the Chamber for the men and women of the Armed Forces and the desire to have a strong bill in place to go to conference with the House.

As we stand here beginning the debate on this bill today, over 300,000 soldiers, sailors, airmen and marines, Active Guard and Reserve, and countless civilians who support them, are serving bravely in not just the Persian Gulf region but Afghanistan.

It is remarkable. I want to mention the civilians. I recently said to the Secretary of Defense, Mr. Rumsfeld, when we talked about the total force concept, I remembered so well that that concept was originated when Melvin Laird was Secretary of Defense and I was privileged to serve as the Secretary of the Navy during the Vietnam war. I said to Mr. Rumsfeld recently that we really ought to broaden the term "total force" now to incorporate the many civilians who quite often are in positions of personal risk and other situations not unlike those of the men and women of the Armed Forces, right up on the point of the spear of military action.

In my judgment, they are just as much a part of the total force as the uniformed contingent, and I think the uniformed contingent would want me

to state that. This total force is there to secure peace and freedom for the people, specifically of Afghanistan and Iraq. Other men and women in the Armed Forces, as we all fully recognize, are serving in outposts and at sea across this world. How proud we are of our forces who are deployed throughout the world. Some of those personnel are assuming personal risks as great as those who have been fighting in Afghanistan and in the Persian Gulf. All Americans are proud of the Armed Forces of the United States.

We also want to pay recognition to the various nations that have joined us in these military operations in Afghanistan and Iraq and around the world and that stand guard with us to enforce the principles of freedom throughout this globe.

We are engaged in an international war on terrorism. The principal battlefronts are Afghanistan and Iraq, but indeed there is no less of a challenge in many other parts of the world away. Therefore, we are very thankful to all those who make possible this total force in the cause of not only combating terrorism but other military objectives we have to fulfill in the cause of freedom throughout the world.

I will pause now a moment to reflect on perhaps the most serious consequence of military life. I went back in history and gathered a few statistics. We will, throughout the course of this deliberation in the Senate, as we go about our daily responsibilities, have in mind those who paid the ultimate sacrifice with their loss of life and those who were wounded in the course of serving the cause of freedom in Afghanistan, Iraq, and other places in the world. I went back in history, and I would like to recite the following figures:

The total casualties in the Iraq campaign thus far have been approximately 612, of whom 117 were killed in direct combat and 495 were wounded. A total of 151 have lost their lives as part of operation Iraqi Freedom. In Afghanistan: Total casualties, 252, of whom 31 lost their lives and 221 suffered wounds. I think it is important to bear those casualty figures in mind as we think with reference to previous engagements. Vietnam: 211,000 casualties, 58,000 killed, 153,000 wounded. Korea: 139,000 total casualties, 36,000 killed, 103,000 wounded. World War II: 1,077,000 casualties, 405,000 killed, 671,000 wounded. We still have missing. I know the Korean conflict alone has some 8,000 American individuals who remain unaccounted for.

Whatever we do, we all join in mourning their loss and resolve to forever remember their service. We care for their families as best we can. We are blessed truly as a nation to have this new generation of great Americans, those who have recently suffered as casualties in the Afghanistan and Iraq operations, and indeed many others throughout the world in other actions. This new generation of great

Americans is so committed to the traditions, mindful of the sacrifices of their forebears, and they have performed their services in exemplary fashion in keeping with the tradition of the military men and women who have gone before them—indeed, their values and their ideals and likewise the suffering of the families.

I will bet all of us here in the last few days have attended graduations and spoken at them. I have been privileged to do them myself. Each time I look at these young graduates, I say the casualties in Afghanistan and Iraq and elsewhere around the world are young men and young women of the same age basically—from the years 18 through 24. Some are older, but basically those generations graduating today, looking upon the joys of their college or university careers, should pause for a moment to reflect on those who are elsewhere in the world enabling them to achieve their goals and their respective graduations.

The stunning and very swift military success we had in Operation Iraqi Freedom, achieving the military goals laid out in the plan devised by the Commander, U.S. Central Command, General Tommy Franks and the Joint Chiefs of Staff, in consultation with the joint staffs of the coalition nations, and in approval with that of the President and the Secretary of Defense primarily, and I expect to some extent the Secretary of State—those achievements are a testament to the dedication and professionalism of the men and women in the Armed Forces. The precision and the skill with which recent operations have been conducted are a tribute not only to their bravery and commitment, and indeed their sacrifice, but also to the industrial base of America, which is providing the weaponry, providing the means by which they pass through each day, and the requirements for human existence and human protection. So we pay tribute to that industrial base today, for the American technology and ingenuity, which has made a definite contribution to the welfare and the survival of the men and women in the Armed Forces.

Those statistics I gave about earlier military engagements—obviously high in contrast to the current losses—tell a story of how high-tech weaponry can save lives—not just the smart bombs and smart ordnance but indeed the very uniforms and protection devices the Armed Forces wear today. We had, in the course of our update briefings, a visit by several soldiers who came in and showed us the armored vests, the night vision, the special scopes on their weapons. It is far different from what this humble person witnessed in Korea, in World War II, and in training commands. Today's weapons bear little resemblance to the basic weapons that fought through the battles of World War II and Korea and, to a lesser extent, Vietnam, because we had a transition of the basic weapon in Vietnam. This is a magnificent tribute to the in-

dustrial base of this country that has provided this weaponry. That is what this bill is about: the need to have ever-changing technology to afford even greater protection to the men and women of the Armed Forces as we face the uncertain, uncharted, and unknown threats that face us in this century.

Military strategists and historians will study the Afghanistan and Iraqi military campaigns for years to come and will recognize them as a total new chapter in military history in many ways. Without a doubt, the U.S. military is the most capable military force in the world today, a model of excellence and the standard by which others are measured.

Senator LEVIN and I visited Afghanistan on Thanksgiving almost two years ago, as those operations were just beginning to get underway. We witnessed how small units, anywhere from 15 to 25 individuals, would get in their helicopters and go in to the darkness of night, all enlisted, save one officer, and perform extraordinary feats of heroism and professional courage in achieving their objectives.

We witnessed it again, just weeks before the start of military operations in Iraq, in its full measure, when we both visited Qatar and Kuwait in February of this year.

It is precisely for this reason we must send a strong message of support to our men and women in uniform by passing this important bill this week. This bill contains much deserved pay raises and benefits for our military personnel, for their families, needed increases in family housing and quality of life projects on military installations, as well as prudent investments in the equipment and technology our military needs to deal with the future in uncertain and ever-changing threats.

I urge my colleagues to participate in the debate of this bill to the fullest measure desired, to come forward with such amendments that they may have to improve and strengthen this bill, and hopefully to gather together and support the final and swift passage of this bill.

The President's budget request for defense for fiscal year 2004 continues the momentum of recent years in making real increases in defense spending to sustain readiness and enhance the quality of life for our military personnel and their families, and to modernize and transform the U.S. Armed Forces to meet current and future threats.

The bill before us would provide \$400.5 billion for defense, an increase of \$17.9 billion, or 3.2 percent in real terms, over the amount appropriated for fiscal year 2003.

Since the beginning of the 108th Congress, the Armed Services Committee has conducted 44 hearings and received numerous policy and operational briefings on the President's budget request for fiscal year 2004 and related defense

issues. As a result of these deliberations, we identified six priorities to guide our work on the National Defense Authorization Act for Fiscal Year 2004.

First, to enhance the ability of the Department of Defense to fulfill its homeland defense responsibilities by providing the resources and the authorities necessary for the department to assist in protecting this Nation against all current and anticipated forms of attack, primarily terrorist attacks, at home.

I mention at home, and I will repeat it several times because it is so important, because our President has quite wisely put as his top priority homeland defense. The Congress, and most particularly the Senate, went through long debates about the creation of the Department of Homeland Security which is now up and running.

Homeland defense, however, in my humble judgment, does not start here at home. It starts on the farflung outposts of the world on land and at sea where the men and women of the Armed Forces are serving. To the extent they can deter, interdict, and defeat imminent threats to the U.S., especially terrorist operations, it lessens the chances of that operation finding its way to homeland USA—right here at home.

That is my definition of homeland defense, and this bill is constructed to do everything we can to equip and protect those men and women of the Armed Forces in their role of homeland defense beyond our shores and, indeed, their role in homeland defense, those who are stationed in the continental limits of the United States, Hawaii, and Alaska.

Second, to continue our committee's commitment to improving the quality of life for the men and women of the Armed Forces—Active, Reserve, Guard, Retired—and their families.

Third, to provide the men and women in uniform with the resources, training, technology, and equipment they need to safely and successfully perform their missions both now and in the future.

Fourth, to sustain the readiness of our Armed Forces to conduct the full spectrum of military operations against all current and anticipated threats.

Fifth, to support the Department of Defense efforts to build the innovative capabilities necessary to continue the transformation of the Armed Forces to enable them to successfully confront future threats, particularly by enhancing technological advances in areas such as unmanned systems. That is an initiative on which this committee has placed great emphasis for some several years now.

Sixth, and final, to improve the efficiency of the Department's programs and operations to reduce the cost and time required to develop and acquire the new capabilities and needed services in the entirety of this bill.

I will yield the floor. This is a suitable point at which I can return to my opening remarks. I assume my colleague from Michigan will seek recognition.

I thank my colleague, Mr. President, for all his hard work, not only on this bill but for the now quarter of a century we have been together working on this committee. How many times we have been on the floor together on our respective bills.

Mr. LEVIN. Mr. President, I look forward to many more times.

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

Mr. LEVIN. Mr. President, first, I congratulate Senator WARNER for shepherding the Defense authorization bill to the floor again. I do not know how many times he has led the effort—I lost count—but each time he has handled the very difficult duties with great fairness and, I think, timely, perhaps with record dispatch. He is always efficient and, it seems to me—and I agree with Senator WARNER—this may set a record in the committee, for many of the reasons our chairman mentioned, including the determination that we be together totally as a body in support of the men and women in the Armed Forces who are in so many dangerous places in the world as we speak.

I also join Chairman WARNER in commending all of the committee members for their hard work; our staffs, for the long hours they put in to produce this bill. As always, it is a complicated bill, a detailed bill and, more than ever perhaps, a critically important bill.

As we begin the consideration of this bill this afternoon, our men and women of the U.S. Armed Forces, both Active and Reserve who are deployed in harm's way in many areas of the globe, are being subjected almost daily to armed attack in Afghanistan and Iraq.

Our Armed Forces have demonstrated extraordinary military prowess. Their success is a tribute first and foremost to their own skill, dedication, and professionalism, and to the skill of their leaders. It is also the result of the investments in national defense that many administrations and Congresses have made over the years.

Our success on the battlefields of the future will depend on the investments we make today to prepare, train, and equip our military. The bill provides our Armed Forces with the means they need to meet today's challenges and it makes the investments that will be needed to respond to the challenges of this century.

It also continues the increases in compensation and quality of life for our service men and women and their families.

Chairman WARNER has described in some detail what is contained in the bill, and I will not attempt to duplicate his summary, but I would like to make a few general comments and point out a couple of matters where there is a divergence of view within the committee.

This is a good bill. It is a balanced bill. It is balanced for many reasons. It

equips the Armed Forces to deal with today's threats and it makes the investments necessary to transform our forces to meet the threats of the future. It is balanced in that it does not prematurely seek to apply lessons some may believe have been learned from Iraq even before the Department of Defense has had an opportunity to study and analyze that conflict and to report to us on what lessons they believe have been learned.

In his briefing of Senators in S-407 on May 8, General Franks specifically noted that it would take some time to identify the lessons learned from Operation Iraqi Freedom, and we could do harm to our national defense if we sought to apply the wrong lessons from those operations or if we too speedily determined what, in fact, were the lessons learned.

The bill is also balanced in that it seeks to incorporate those provisions of the Department of Defense's transformation proposals that provide appropriate flexibility for the operation of the Department in a manner that preserves congressional oversight responsibilities. For example, the bill contains provisions that would repeal dozens of reporting requirements, establishes a new defense modernization account to fund life cycle cost reduction initiatives. It authorizes a pilot program to test new procedures for conducting public/private competitions. It provides the Department with special pay authority to help it fill critical positions.

It is also balanced because of the provisions it does not include. The bill before us does not include provisions that would undermine the ability of the uniformed military to provide independent advice to the civilian chain of command, and to the Congress. It does not include provisions which would undermine congressional oversight by repealing the requirement that the Department of Defense provide us with basic information on the costs, schedule, and performance of major weapons programs.

The bill before us does not authorize the reorganization of the Department of Defense without regard to statutory requirements or establish a foreign military assistance program to be conducted by the Department of Defense rather than by the Department of State. The bill does not authorize the Department to move money from one program to another without congressional authorization.

Perhaps the most pointed evidence of the balanced nature of this bill is that it was reported out of committee with the unanimous support of all of the members of the Senate Armed Services Committee, a tribute to the balance of the bill but also to the leadership of our chairman.

That does not mean there are not any provisions in the bill on which there is disagreement, because there are. There are a number of areas that are troublesome and on which I expect there will



be significant debate this week. For example, there are provisions in report language that move us in the direction of developing new nuclear weapons and modifications of current nuclear weapons. Current U.S. law bans research and development of new nuclear weapons that could lead to their production. The specific weapons covered by the ban are so-called low yield nuclear weapons which have a nuclear explosive yield of 5 kilotons or less. Five kilotons is roughly a third the size of the nuclear bomb that was used at Hiroshima which immediately killed an estimated 140,000 people and left many more injured. The administration has asked this ban be repealed. If the ban is repealed, the purpose is to make nuclear weapons more usable.

As stated by Linton Brooks, the administrator of the National Nuclear Security Administration, in testimony before the Subcommittee on Strategic Forces of the Senate Armed Services Committee:

I have a bias in favor of the lowest usable yield because I have the bias in favor of something that is the minimum destruction. . . . I have a bias in favor of things that might be usable.

The language approved by the majority of the Armed Services Committee would repeal the ban on the development of low yield nuclear weapons. Without this ban, there is no impediment in law to research, development, testing, production, or deployment of new low yield nuclear weapons.

The bill also provides the National Nuclear Security Administration with funds the administration requested to continue work on a robust nuclear earth penetrator. This effort would modify one of two existing high yield nuclear weapons to create a nuclear weapon that will penetrate rock. Both weapons being looked at for possible modification are high yield nuclear weapons with yields approximating 30 and 70 times the nuclear explosive power of the Hiroshima bomb.

Without a requirement that that nuclear earth penetrator weapon be authorized by Congress, there is no legal impediment to its development, testing, production, or deployment.

At a time when the United States is trying to dissuade other countries from going forward with nuclear weapons development, when we strongly oppose North Korea pulling out of the nuclear nonproliferation treaty, and when we suggest that indeed we may use military force to prevent North Korea from acquiring nuclear weapons, when we are spending billions of dollars to prevent the spread of nuclear weapons, materials, and technology, these proposed actions by the administration would send the opposite message we are trying to give to the world. We are telling others not to go down the road to nuclear weapons, but instead of being a leader in the effort to prevent the proliferation of nuclear weapons, we are recklessly driving down that same road.

The United States should not follow a policy that we do not tolerate in others.

In the area of ballistic missile defense, one of the problems lies in what is not in the bill rather than what is in the bill. The missile defense program continues to move along, spending billions of dollars without performance criteria. Moreover, the Department of Defense has cancelled plans for 9 of the 20 ground-based midcourse interceptors that have been planned from 2003 to 2007. Surely we have an obligation to test the limited ballistic missile defense and to understand the extent to which it will or will not work. Yet one of the key tests the Department proposed to cancel is the most significant test. It was scheduled before the end of the fiscal year 2004. We restored that funding in committee.

If we want a missile defense system that actually works, rather than one that sits on the ground and soaks up money, we should not be cancelling tests. The administration actually requested that operational testing not be required on a limited missile defense system. We refused that request and we struck the language the administration had proposed. Again, thankfully, our bill restores an intercept test with a missile defense program in 2004. More needs to be done to assure that this system is tested adequately and proven to really work. The rest of the canceled tests should be restored. There will be debate on these and other areas relating to the Department of Defense authorization bill.

I conclude by stating, again, the bill the committee has reported out under the leadership of Chairman WARNER is a good bill. His leadership made it happen. I commend him.

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

Mr. WARNER. Mr. President, I thank the distinguished Senator from Michigan for his very fine statement, for his kind reference to the chairman.

The committee's first priority was to enhance the Department of Defense to fulfill its homeland defense responsibilities to combat terrorism both at home and abroad. In these areas, this bill authorized an increase of \$400 million over the budget request, including \$88.4 million for 12 additional civil support teams. Now, these are the teams that join with the first responders should we have the misfortune of a weapon of mass destruction, be it chemical, biological, or fissionable, utilized in the United States. That is a very important initiative that this committee has taken over several years now and the inclusion of this in the budget represents our strong unequivocal support of this program particularly by adding 12 additional teams, to get us closer to the goal of a team in every State and territory.

Likewise, we added \$181 million for the development and fielding of chemical and biological agent detection and protection technology. In addition, the

committee supports the President's request of \$9.1 billion for missile defense, a key component of homeland defense.

As we all know, our most valuable military asset is our people. We will always fulfill our commitment to improve the quality of life of the men and women in uniform and their families. This bill authorizes a 3.7-percent across-the-board pay increase for all uniformed service personnel as well as a targeted pay raise of up to 6.25 percent for certain senior noncommissioned officers and midcareer personnel. Those provisions are necessary in order for the Armed Forces to compete with the pay scales and the job opportunities in the private sector.

This bill also contains several key provisions to recognize unique sacrifices of the members of the Armed Forces and their families, including increases in the family separation allowance and hostile fire pay, designation of assignment incentive pay for those stationed in Korea, and approval of a "high tempo" allowance for those service members deployed away from home for extended periods of time. We have experienced this, particularly in the Navy.

I hope these provisions are acceptable to the Department of Defense. We are still working our way through that at this particular time.

The services all try very hard to limit the time of deployment away from home, particularly unaccompanied tours, for our service members, but there are isolated cases where you simply go beyond those times. One was recent, with a carrier setting one of the longest records in contemporary history for the away-from-home deployment of a carrier and its crew.

The administration requested \$9 billion for military construction and family housing due to pending realignments of overseas bases. This bill contains adjustments to the administration program which resulted in increased investment in installations in the United States and a reduced but prudent investment in overseas locations that will be of long-term value to the United States.

This bill contains an overall increase of approximately \$400 million in military construction, including increases of over \$200 million in quality-of-life projects such as barracks, family housing, and child development centers.

Over the past several years, my colleagues and I have encouraged the Department to increase procurement spending to a level that could sustain the timely recapitalization, modernization, and transformation of the Armed Forces. This year, the bill before the Senate authorizes \$75.6 billion in procurement funding, a \$1.1 billion increase over the budget request. Key procurement items include over \$12 billion in shipbuilding and conversions which will fund seven new ships just for the year 2004. That is in keeping with the Chief of Naval Operations's commitment to this body last year



that he, in conjunction with the whole Navy Secretariat, would increase the number of ships—not a very large number, but it is an increase over the past.

Further, we have the continued investment in aircraft programs, such as \$3.5 billion for 20 F/A-22 Raptor aircraft and over \$2 billion for 11 additional C-17 lift aircraft; and over \$1 billion for the Army's lighter, high-mobility stryker combat vehicle.

Additionally, it is critical we invest in future capability. This bill authorizes \$63.2 billion for research and development, test and evaluation, activities, an increase of over \$1.3 billion over the President's budget request. Key R&D funding items include \$1.7 billion for the future combat system, the Army's centerpiece of transformation, \$5.8 billion for development of various tactical aircraft, including \$4.4 billion for the continued development of the joint strike fighter, and \$10.7 billion for advanced science and technology initiatives, an increase of over \$500 million over the budget request.

This committee has strongly encouraged the Department to invest in unmanned systems. This bill fully funds the budget request of \$1.7 billion for major unmanned aerial vehicle programs and adds \$130 billion to enhance unmanned technologies.

Together, the investments in procurement necessary to sustain current capabilities and research and development needed to transform to a more capable force would give the men and women of the Armed Forces the equipment they need to deter threats, and if deterrence fails, to prevail across the full spectrum of military operations both now and in the future.

The sustained readiness of the Armed Forces is what protects America. The success of recent military operations represents the real return on added investments made by the Congress in recent years in training, munitions, maintenance, and spare parts. As the force reconstitutes after operations in Afghanistan and Iraq, we must closely monitor whether additional funds are needed for those items not covered by supplemental funding to pay for these operations and to ensure the overall readiness of the Armed Forces.

Readiness accounts funds were increased to address currently identified shortfalls such as equipment maintenance and testing, depot maintenance, technical assistance, corrosion control, and systems testing as well as additional funding for Active and Reserve Forces to accelerate fielding and replacing personal and field equipment.

Transformation of the Department of Defense will depend on effective management and stewardship of DOD resources. This bill contains numerous legislative provisions to improve the management of the Department. Some of these provisions will streamline the acquisition process, provide for greater personnel flexibility to manage the acquisition workforce, and ensure that joint requirements can be more rapidly

achieved. Acquisition authorities to facilitate the war on terrorism, and support contingency operations were extended, and proposed new authorities will give State and local governments rapid access to antiterrorism technologies and services available to the Department. Again, that is another very important contribution to homeland defense.

The Department of Defense and the Congress have been and must continue to be good stewards of the environment. Military readiness and prudent conservation can and must be complementary principles. This bill assures access to military training ranges in a way that safeguards the protection of endangered species and contributes to the readiness of the Armed Forces.

Some will argue we have not covered all the subjects that were brought before the committee. Indeed, the committee did delete a number of items from the President's request, but that is the judgment that the committee must render. We are an independent but coequal branch of the Federal Government. While we have great respect for the President's budget, some of those provisions were deleted from his budget and not incorporated in this bill.

While I am proud of this legislation and the remarkable spirit of bipartisanship that enabled our committee to move this bill to the floor, we did have areas of disagreement within the committee, which will be revisited during the floor debate.

With our Armed Forces poised on distant battlefields and countless others standing watch at home, we are committed to providing the resources needed for the men and women of the armed forces, and their families. The Congress's past support for increased defense spending has proven to be a wise investment. There is no greater evidence than the successes witnessed on the battlefield of Iraq.

I strongly believe that this National Defense Authorization Act for Fiscal Year 2004 builds on the advances made in recent years. I urge my colleagues to join me in sending a strong message of bipartisan support for our troops at home and abroad: we honor your service, and we stand with you now, and in the future.

The PRESIDING OFFICER. Who yields time? The Senator from Michigan.

Mr. LEVIN. I know the Senator from Massachusetts wished to speak. Is Senator COLLINS ready to go? Perhaps the Chair could recognize whoever is ready to go.

Ms. COLLINS. I was trying to defer to my more senior colleague but, of course, I would be delighted to have the opportunity to proceed.

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

Ms. COLLINS. Madam President, I thank the Senator from Massachusetts, who, as always, is extremely gracious, and the Senator from Michigan, for al-

lowing me to proceed, and the chairman of our distinguished committee.

Madam President, I rise today in support of the Fiscal Year 2004 National Defense Authorization Act. As a member of the Senate Armed Services Committee, I would like to begin by expressing my appreciation to the chairman and the ranking member for their extraordinary efforts in producing this bill. The mark-up of this legislation was conducted in a true spirit of cooperation. While certain portions of this bill engendered spirited debate, the points of controversy are relatively few. It is tribute to both Senator WARNER and Senator LEVIN that we completed our mark-up in a remarkably short period of time.

This legislation includes authorization for the vital resources that the young men and women in our military require in defending our Nation. With terrorist attacks continuing across the globe, and our troops helping the Iraqi people to rebuild their country, this legislation will ensure that our military has the tools necessary to fight, and ultimately win, the war against terrorism.

Since joining the Armed Services Committee, I have been a member of the Personnel Subcommittee, which has jurisdiction over military pay, housing, and health care. In recent years, we have made tremendous progress in improving the quality of life not just for our soldiers, sailors, airmen, and marines, but also for their families. That is important. The old saying goes: we recruit the soldier but we retain the family. When our troops deploy, it's important that they have the peace of mind that comes from the knowledge that their families have good housing, quality health care, and a support network to help address any problems.

I am proud that the legislation before us builds on the efforts that we have made in previous years to ensure that our troops are the best paid, best housed, and best equipped in the world. It includes a 3.7 percent across-the-board pay raise for all uniformed personnel, and incorporates a targeted pay raise ranging from 5.25 percent to 6.25 percent for mid-career service members. We want to make an extra effort to retain their expertise. It also authorizes a significant increase in the rate of family separation allowance, from \$100 per month to \$250 per month.

There are two provisions affecting pay and benefits that I believe are particularly important. Last month, along with the majority leader and a number of my colleagues, I traveled to South Korea to meet with our troops at Osan Air Force Base and in the Demilitarized Zone. I was privileged to speak with two of my constituents, SS Jennifer Meuth of Thomaston and MS Jay Mason of China. As I always do when I meet with our troops, I asked if there was anything that the Congress could do to support them. Without hesitation, both of them asked me to support the establishment of Assignment

Pay for troops stationed in Korea. Our troops endure many hardships as part of their service in Korea. Most are separated from their families, the housing is often substandard, and they live under the constant threat of North Korean aggression.

I am proud to say that the legislation before us mandates the payment of \$100 per month in assignment incentive pay to the brave men and women serving our Nation in Korea. It is a tribute to the leadership of Senator SAXBY CHAMBLISS and Senator BEN NELSON, who lead the Personnel Subcommittee. Most of all, I want to thank Sergeants Meuth and Mason for bringing this important issue to my attention.

The second provision that I want to highlight is a bill that I introduced this year calling for an increase in what is called the military death gratuity. Currently, when a servicemember is killed while on active duty, his or her family receives a payment of \$6,000, usually within days after the death. While other long-term financial assistance is provided to support the family, this payment helps the survivors cover any short term expenses.

The bill I introduced earlier this year, S. 704, would increase this amount to \$12,000 and make it retroactive to September 11, 2001. So the families of those troops killed in Afghanistan will receive this additional benefit. The last time the Congress raised the death gratuity was during that last gulf war over a decade ago. Recognizing the importance of this issue, the Senate moved very quickly earlier this year to pass my legislation as a free-standing bill. The House, however, has not yet acted upon it. I am grateful to the Chairman of the Personnel Subcommittee, Senator CHAMBLISS, for incorporating this increase in the death gratuity in the Defense Authorization bill.

I would also like to express my congratulations to Senator TALENT, the new Chairman of the Seapower Subcommittee. The shipbuilding portion of this year's Defense Authorization represents a significant turning point. In previous years, the budget for ship construction proposed by the Department of Defense has been inadequate to sustain a large enough fleet to meet our Nation's requirements. The legislation before us today recognizes the challenge, and provides critically needed increases in shipbuilding funds.

It authorizes the construction of seven new ships, including three DDG-51 destroyers. I am pleased to report that two of those destroyers will be built at the world famous Bath Iron Works in my home State of Maine. Certainly, it will take more than 1 year's progress to address years of funding shortfalls. But this bill surely represents significant progress.

The committee also recognized the importance of modernizing the DDG-51 destroyers currently in the fleet. At my request, \$20 million has been allocated for a DDG-51 modernization pro-

gram. This funding will be used to examine ways to improve the effectiveness of these ships, while at the same time reducing their manpower requirements. That in turn will lead to lifetime savings for these ships. It will allow the Bath Iron Works to explore initiatives aimed at ensuring that these destroyers continue to be the backbone of our surface combatant fleet.

The seapower portion of the bill also includes \$248 million for the refueling and overhaul of the USS *Jacksonville*, a nuclear submarine that had been scheduled to be decommissioned by the Navy. If this were allowed to occur, the problem is that our submarine force would fall below the levels recommended by the 2001 Quadrennial Defense Review. Today, the requirements for submarines is increasing, especially given the growing role that they play in intelligence gathering. This refueling, which will take place at the Kittery-Portsmouth Naval Shipyard, will add years of useful life to the *Jacksonville*. It is good news for the Navy, and it is good news for the skilled workers at the shipyard.

Without question, some aspects of the bill reported from the Armed Services Committee are somewhat controversial, and I expect that they will be debated fully here on the Senate floor. But the overwhelming majority of this bill is the product of bipartisan consensus. There is an agreement that we should spare no resources in ensuring that the brave young men and women who proudly wear the uniform have the highest quality training available, the most advanced equipment in the world, and receive the best benefits we can offer. I am proud to say this bill accomplishes those goals.

Again, I express my appreciation to our chairman and our ranking member for their hard work and for their dedicated leadership. I am very proud to serve with them.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Madam President, on behalf of the whole committee, I express appreciation to our colleague from Maine. She no longer will be subcommittee chairman on our committee because she is the full chairman now of one of the major subcommittees of the Senate as a whole, but she is very active.

I wonder if I might ask the distinguished Senator from Maine, the issue of transformation by the Secretary of Defense was addressed in the House and to some extent addressed by our committee. But basically, the committee over which the distinguished Senator from Maine is chairman has the primary oversight responsibilities. In the course of the debate on the floor, I hope—if not now at some point—she will give some guidance to me as to how this committee can address such amendments as may be brought up in the context of responsibilities of our committee. If she could find some time

to consult with me on that, I would be very appreciative, as will the Senator from Michigan.

Ms. COLLINS. Madam President, if I could respond to the inquiry of the distinguished chairman of the committee, during the past several weeks, since the Secretary sent his plan to the Hill, my staff, in close cooperation with other staff members on the Committee on Governmental Affairs, including Senator LEVIN's committee staff and others, have been working to see if we could reach consensus on a proposal. Frankly, I believe the Secretary's initial proposal goes too far. It is overreaching.

But there are certain authorities that would be extremely helpful to the Secretary as he attempts to make sure we can reward civilian employees with higher pay and streamline the personnel process. We came up with a proposal. We are still assessing the import that the proposal might have. In addition, there may be some procedural barriers in our ability to bring forward the amendments. So we are continuing to work closely to see if we can come up with a consensus. I hope to have an answer shortly for the chairman.

Mr. WARNER. Madam President, I thank our colleague on this point. But bear in mind that there are some in the House bill. We will have to deal with them in conference.

To the extent we can have any interlocking on this bill with those provisions of the House bill, which the Senator's committee and our committee and the Senate as a whole feels should be incorporated into the bill, it would be helpful to do that.

I think in general the Secretary of Defense is on the right track in the sense that when you stop to think, today's military is so different than it was 2 or 3 years or even a decade ago.

As I mentioned earlier, before the Senator from Maine joined us on the floor, the total force today is not only the uniformed men and women of the Armed Forces, they are very much part of the civilian force. There are thousands of civilians over in the Iraqi situation and in Afghanistan right now taking risks commensurate with those of uniformed personnel and performing services to give infrastructure to the military to do their missions.

The Secretary of Defense has to have some flexibility in how he assigns and reassigns civilian personnel. I hope we could achieve some measure commensurate with what the wisdom of the Congress enabled the Secretary of Homeland Defense to have. It seems to me that is sort of the bar at which we ought to look.

Might I inquire, does the Senator share views similar to the Senator from Virginia?

Ms. COLLINS. I do. The Senator from Virginia has put it very well, and I am eager to craft legislation—and believe we have done so—that would give the Secretary the flexibility he needs for the Department to have an efficient,

effective, and fair personnel system for the civilian employees. I note, however, that the Department has some 700,000 civilian employees. So we need to make sure we are doing this in an appropriate manner. Some of the provisions submitted by the Secretary go far beyond the authority that we gave to the new Secretary of Homeland Security.

So we are looking at it, and we have come up with draft legislation language that we are sharing and have been sharing with the staff of the Senator from Virginia and with other interested parties. My hope—it may be a vague hope—is that we could have a consensus document that would provide bipartisan support and the support of some of the employee organizations. I don't know whether that is going to be the case. But that certainly is my hope.

If I might make one other point, I simply point out the obvious to all of us—that this legislation is the train moving through at this point in time. The probability of its passage by the Chamber is quite high. These provisions, as the Senator says, are of great concern to those groups, whether they are union or other groups, that act on behalf of the very courageous and wonderful cadre of civilians without which we couldn't have a defense.

The likelihood of a separate bill moving forward at a later point in this session has a question mark, which is obvious to my colleague from Maine and my colleague from Michigan. To the extent we can reach some consensus and attach it to this bill is the extent to which maybe we can make some progress at this point in a timely likelihood of making progress at this point in time.

I yield the floor.

Mr. LEVIN. Madam President, will the Senator yield before yielding the floor just for a question?

First of all, I join my good friend from Virginia in commending the Senator from Maine for her great work in both our committee and also as chair of the Governmental Affairs Committee where she is doing an absolutely superb job. Part of that job is to take a look at proposals that are as far-reaching as the one that was very suddenly dropped upon us by the Department of Defense.

This is a far-reaching proposal. We have had very little time, as these matters go, to look at it. This Senate is a body which deliberates over these kinds of changes. I would hope that we would, No. 1, try to fashion a draft for consideration which would give greater flexibility—and I know Senator COLLINS is working extremely hard to do just that—but I also commend her for her caution, it seems to me, in saying that we are going to put together a draft and then we are going to propose it. Because there are some procedures which really should be followed here to protect the men and women in our civilian force, just the way we have those procedures for our uniformed forces.

The quality of life, which we talk about all the time and we try to protect, is important, surely, for our uniformed men and women, but it is also important for the civilians, and they are entitled to have a proposal which they can look at, which they can comment on, and not one which is just suddenly sprung upon them by the Congress, whether it is the House, which acted very quickly on this far-ranging proposal, or by the Senate.

So I want to just suggest that we try to arrive at something which does give greater flexibility, but we do so in a way which shows the kind of deliberation and the kind of consideration which this body has been renowned for and which I know both my colleagues have been very supportive of throughout their careers.

Mr. WARNER. Mr. President, I thank both my colleagues. But before we conclude this very valuable and important colloquy, I ask the Senator from Maine, who speaks with such conviction if we are going try to do something on this bill or is the thought that it is just not achievable? Because we have an issue with the House right now.

And the question is, are we going to address that issue in part—maybe not all, but in part—in such a way that we can do constructive advancements in this field to assist the Secretary and the administration in this enormous Department with a diversity of responsibilities? Can we conclude we are going to give it a try, and that would move it along pretty quickly? Because hopefully this bill will be voted on early this week.

Ms. COLLINS. Mr. President, if I could respond to the Senator from Virginia, the chairman of the committee, we have been working for many weeks. We do have a draft. We have had come forth from the other side of the aisle some additional suggestions we are looking at and eager to incorporate. I personally think it would be good to add something to this bill because I think it would be good for the Senate to go on record with its own version which differs from what was done in the House.

So I think it strengthens the position of the Senate in conference for us to put forth our own proposal since, as the Senator points out, this issue is going to arise in conference given the House provisions. So it is not as if it is going to be left to another day. We have legislative language drafted. We have been meeting extensively during the last few weeks. On Friday we received some additional suggestions which we are looking at right now. I cannot predict for certain—I realize time is short—whether there will be bipartisan support for the final version, but there will be a version I am happy with. I do not know if that will be sufficient, however.

Mr. WARNER. I will have one more word, but I yield—not necessarily yield—to my colleague from Michigan if he wishes to reply to the Senator from Maine.

Mr. LEVIN. I think one of the important words in the question asked by the Senator from Virginia is the word “constructively.” I would just add the word “fairly.” So if we can do something that is constructive and fair for the people impacted—

Mr. WARNER. Right.

Mr. LEVIN. It seems to me we ought to give it a try. Those are important conditions, in my book.

Mr. WARNER. Do you think the provisions the Congress provided for in the Department of Homeland Security offer certain precedents we should achieve in this legislation?

Mr. LEVIN. There were precedents of many varieties, some good, some not so good.

Mr. WARNER. Well, as both my colleagues recognize, this will be, for the distinguished Senator from Michigan and myself, our 25th conference, and we know full well at this stage of deliberations on this bill we cannot predict what is going to come out of conference, nor can we take a stance that not one single one of these provisions which are in the House bill will not survive the conference. So having said that, time is of the essence, I hope, in the reconciliation of views.

Ms. COLLINS. I thank the chairman. And again I thank the Senator from Massachusetts.

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

Mr. KENNEDY. Mr. President, I listened carefully to the comments in the exchange between the Senator from Maine and our chairman and ranking member. I have heard through the outreaches of the Senator from Maine there has been a good-faith effort to try to deal with this issue. I am not carefully briefed on the various proposals, but at least there has been an outreach by the Senator from Maine to try to develop some common ground in this area. So I think this is important.

I think the seriousness with which she is addressing this issue, as well as the chairman and the ranking member, is, of course, of enormous importance because basically we are talking about the 650,000 to 700,000 civilians who work in the Defense Department. The basic concept was the development of the civil service so that we were going to have highly skilled, highly motivated, highly trained individuals who were going to work for all Americans and not be working for political parties, so to speak, not finding out, every time there is a change in administration, there could be a change in the way they are compensated for their work.

This is enormously important work. We are finding individuals who are going to be involved in the selection of various weapons systems in the whole areas of the development of command and control, communication, and intelligence. The jobs of many of these civilians are enormously important in terms of the security interests of this country.

So the caution which has been expressed by our chairman and ranking member, as well as by the Senator from Maine, is entirely appropriate. It is certainly reasonable to always try to find ways of strengthening and improving the system. But we do come back to the question that this was developed initially with all the kinds of challenges it is facing now, with the concept that we would have highly motivated, highly trained individuals, who would serve whatever administration was going to be successful at the polls. I think that basic and fundamental view is still a commendable one.

But I just want to indicate to the Senator, my friend from Maine, that she has approached this as she does all issues, with an openness and commitment and determination to try to make a very constructive contribution, and she has certainly been reaching out to the Members. So I am thankful for those efforts.

I am also concerned about contracting out, and that we are going to find those with the best lobbying opportunities are going to be able to get these contracts that are important and require high-quality work.

Mr. President, as we begin considering the fiscal year 2004 defense authorization bill, I, too, congratulate Chairman WARNER and Senator LEVIN for their skillful leadership in preparing this bill. It does reflect a thoughtful response to the ongoing and changing needs of our military in these difficult years for our country, and it clearly provides a strong national defense.

I also thank and commend Senator TALENT for his leadership on the seapower portions of the bill in his first year as the chairman of the Seapower Subcommittee. It is a privilege to work with him on that subcommittee, and I look forward to continuing that work in the years ahead to make sure we are going to keep our Navy strong, and, of course, the Marines strong as well.

In particular, this legislation contains numerous provisions to give additional support to the men and women who serve the Nation so well in the Armed Forces. Without their courage and their commitment, we could never achieve the brilliant military successes of the war in Iraq.

First, and most important, this bill is intended to improve the quality-of-life programs our soldiers and sailors and marines and members of the Air Force deserve in the areas of pay and allowance. It recognizes the special sacrifice military service often requires from the service members and their families.

For service members who are repeatedly deployed to assignments far from their home bases, including Reservists and Guard personnel, the bill authorizes a high deployment allowance, up to \$1,000 a month in additional compensation for the hardships imposed on them and their families. The bill also continues support for the significant

progress made in the past 4 years in reducing out-of-pocket housing expenses by improving the basic allowance for housing, and the bill also provides for strong national defense in the years ahead by investing in transformational technologies while ensuring that our military capabilities do not suffer any gap during the needed modernization that must take place in our forces.

My principal concern with this legislation involves the provisions that authorize the fateful change of course in our longstanding policy on nuclear weapons. Of all challenges our country has faced over the past half century, the prevention of nuclear war is by far the most important. It is no accident that in all the years and the half century since World War II, no nuclear weapon has ever been used in any of the conflicts that have taken place anywhere on Earth. Few in 1945 would have predicted that extraordinary success, and few today would disagree that the effective world leadership of the United States under Presidents of both political parties on nuclear arms control throughout those years has been primarily responsible for that success.

The danger today is that with the passing of the World War II generation in our own country and nations throughout the world, a new generation of leaders has been rising to power who did not live through the dawn of the nuclear age themselves and for whom the mushroom clouds over Hiroshima and Nagasaki are images from history, not vivid recollections from their own lives. Greater vigilance is clearly needed to continue the success of our nuclear arms control policy since 1945 and ensure that nuclear weapons are not used by any nation in the future.

Preventing the proliferation of nuclear weapons and other nuclear materials to other nations and to terrorists is the most urgent aspect of that challenge today. We all pray the Bush administration will be successful in the current negotiations with North Korea and that the tenuous progress made in recent weeks will improve so a successful conclusion can be achieved.

Many of us are increasingly concerned, however, that with Congress and the Nation preoccupied over the past year with the war against terrorism and the war in Iraq that the administration has been quietly laying the groundwork for a far-reaching and highly dangerous U turn in our longstanding policy against the first use of nuclear weapons.

Because of their unique and massive destructive power, nuclear weapons have always been kept separate from other weapons as part of our strong commitment to do all we can to see they are never used again. The Bush administration's proposal to veer away from that commitment should have been a wake-up call for Congress and the Nation many months ago.

In the decade after the first two nuclear bombs were used in World War II

and the nuclear arms race began with the Soviet Union, nations and peoples throughout the world began to realize both the danger posed by the use of nuclear weapons and the danger from the testing of nuclear weapons. To deal with those dangers, a remarkable series of international treaties was proposed, negotiated, and approved that had broad support in the world community, restrained the nuclear arms race between the United States and the Soviet Union, and dramatically reduced the spread of nuclear weapons to other nations.

An excellent chronology of the many significant events in the history of nuclear weapons, beginning with the discovery of radioactivity in 1896, is available on the Web sites of the Global Security Institute which was founded by our former colleague Senator Alan Cranston to enhance our understanding of these issues. I urge Members of the Senate to consult with it.

One of the landmark achievements in reducing the spread of nuclear weapons was the Nuclear Nonproliferation Treaty which came into effect in 1968 and under which nuclear and nonnuclear nations alike agreed to halt the development of these weapons. Currently 185 nations have signed the extension of the NPT. The reason the Nuclear Nonproliferation Treaty has been so successful is the presumption that nuclear weapons will not be used by the principal nuclear powers except in the most extreme circumstances. For 25 years Republican and Democratic administrations alike have emphasized our commitment not to use nuclear weapons against nonnuclear nations. This assurance to other nations that nuclear weapons will not be used against them has been a major factor in avoiding nuclear war, slowing the nuclear arms race, and preventing the proliferation of these weapons to other countries and to terrorists.

Control of current nuclear stockpiles is especially critical. The danger is very real that terrorists may be able to acquire nuclear material or even nuclear warheads. Even before 9/11, Congress and the administration had recognized this significant threat and, under the leadership of our former colleague Senator Nunn and our colleague Senator LUGAR, we enacted a threat reduction program in 1991 to safeguard and reduce the nuclear arsenals of Russia and other former Soviet states. The Nunn-Lugar program has been effective in deactivating or destroying literally thousands of nuclear warheads and intercontinental ballistic missiles and hundreds of tons of fissionable material. Nevertheless, we have done far from enough to prevent the proliferation of these weapons.

Shortly before President Bush's inauguration, a task force reported that the most urgent national security threat to the United States today is the danger that weapons of mass destruction or weapons-usable material in Russia could be stolen, sold to terrorists, or

hostile nation states, and used against American troops abroad or citizens at home. The 9/11 terrorists clearly demonstrated their willingness and ability to cause catastrophic damage to America. Yet the Bush administration continues to spend less on the Nunn-Lugar program than we did before 2001.

In January of 2002, the administration released a nuclear posture review that could take us in a new and far more dangerous direction. The review blurs the line between conventional and nuclear weapons. It suggests that certain events might compel the United States to use nuclear weapons first, even against nonnuclear nations. It also relies much more heavily on a nuclear threat by America in dealing with the difficult challenges we face in the world. The administration has even indicated it might use nuclear weapons in response to a chemical or biological attack. There is no justification for that kind of escalation. Our conventional weapons are more than adequate to deal with that threat. We gain no greater deterrence by threatening to go nuclear. It makes no sense to break down the firewall we have always maintained between nuclear weapons and other weapons and that has succeeded so well for so long in preventing nuclear war. Other nations have complied with this basic principle, too. A nuclear weapon is not just another item in our arsenal, and it is wrong to treat it as if it were. In fact, the Nuclear Posture Review specifically discusses circumstances in which the United States might engage in the first use of nuclear weapons, such as a North Korean attack on South Korea, or a military confrontation over the status of Taiwan.

The administration also appeared to be considering the use of nuclear weapons against Libya, Syria, Iraq, and Iran. We reap what we sow. If we brandish our own nuclear weapons, we only encourage other nations to do all they can to develop their own.

It is ominous as well that the administration is asking the Nation's weapons laboratories to consider the possibility of resuming nuclear testing in order to protect our current stockpile and meet new requirements in the future. They want funds in the budget to be used to prepare for testing new nuclear weapons and to cut in half the time needed to do so. They have asked the Department to consider global strike capabilities with new nuclear weapons, which would have to be tested as well. It makes no sense to abandon our moratorium on nuclear testing. That moratorium has stood for over a decade, and it has served us well.

The pending bill continues this dangerous shift in other ways as well. Last year, the administration received \$15 billion. The current bill proposes another \$15 billion this year to study the feasibility of modifying existing warheads to create what they call a robust nuclear earth penetrator, a bunker buster, with 10 times the size of the

Hiroshima blast, to be used to destroy hardened enemy targets buried deeply underground. It is difficult to believe that any administration in its right mind would propose such a weapon. A nuclear explosion in a bunker could spew tons of radioactive waste into the atmosphere, with a devastating plume that could poison huge areas in its path. Surely, if there is any need for such a weapon, we can develop a conventional weapon to achieve the purpose of the bunker buster.

In yet another far-out nuclear proposal, the Bush administration has proposed to lift the current statutory ban on low-yield nuclear weapons, which now prevents the development of weapons with yields under 5 kilotons—about half the size of the Hiroshima blast. The precision-guided conventional munitions and standoff weapons we have today make these many nukes unnecessary. They would be no more effective than conventional munitions and would be far more dangerous to our troops and to our planet.

In the debate in recent weeks on tax policy, President Bush has criticized the Senate and come out strongly against what he called "iddy-biddy" tax cuts. What we should be really against is iddy-biddy nukes.

The hardliners in the Bush administration seem to believe that the long-standing firewall between nuclear and conventional weapons is obsolete and is making us more vulnerable to nuclear blackmail. They claim that lowering the threshold for using nuclear weapons will make our own nuclear threat a stronger and more credible deterrent. That is the last thing we need.

The clear and present danger of the administration's change in nuclear policy is that it will encourage other nations to develop nuclear deterrents of their own. The entire world will be at greater risk that these weapons will be used—and used against us.

Unfortunately, the real debate on these all-important issues of nuclear policy is only just beginning. Certainly, these issues demand far more attention than Congress and the country have been giving them. They have been eclipsed for too long by the war on terrorism and the war against Iraq. We can ignore them no longer. We have an obligation to our Nation and our people, and to all nations and all peoples, to see that nuclear weapons are never used again.

In the debate in the coming days, I intend to offer an amendment to maintain the firewall between conventional and nuclear weapons. It strikes the provision repealing the prohibition on low-yield nuclear weapons that was put in place in the 1994 National Defense Authorization Act. That act prohibits research, testing, and development on low-yield nuclear weapons, and there is no reason to weaken it.

Some suggest we should compromise and allow at least a little research. I say to the Senate, don't let the administration even start down that road.

Don't feed the nuclear addiction. It is essential to continue to prohibit even the research on any such weapons. We do not want our descendants, surveying a devastated planet, to say that in this legislation the United States breached this firewall and took the decisive, shameful step that led to nuclear war.

UNANIMOUS CONSENT REQUEST S. 923

Mr. President, our men and women in uniform are committed to protecting the security of our Nation. They work hard and make sacrifices every day. And they are willing to give their lives for the country.

As many begin to return from Iraq and other places abroad, we owe it to them to protect their economic security and the economic security of our Nation.

These heroes are coming home to a failing economy—and for too many a loss of jobs. Today, more than 18,000 veterans are out of work. These are our Nation's fighting men and women, returning from Iraq, or who fought in the last gulf war. We owe it to them to protect them and their families' livelihood.

President Bush claims that tax cuts for the rich will create the jobs these former service men and women need. But we tried the Bush administration's approach in 2001, and we lost 2.5 million jobs. Surely, we can do better for our returning troops who are now trying to rejoin civilian life. We can do better for all Americans who are without jobs in this recession.

Today, nearly 9 million Americans are unemployed—2.8 million more than when President Bush first took office. This widespread unemployment has touched so many American lives, and it often seems the biggest in the face of those who have served their Nation in the Armed Forces.

There is good news for some. The law requires employers to take back reservists after their deployments. Many of the men and women currently in or returning from Iraq will continue their service in our Armed Forces. But too many recently discharged service members are facing the same fate as millions of other Americans—they just cannot find jobs.

We have an opportunity to extend the benefits for these brave Americans. We have an opportunity to make sure those ex-service members who still cannot find work after 9 months—the long-suffering and long-term unemployed—are not left without a safety net. They put years of their lives into serving their country. Now unemployed after only 9 months, we are going to say: Sorry, you have been out of work too long. We are going to stop your unemployment checks.

We must not, and we cannot, do that to these workers. We must ensure that those long-term unemployed continue to receive unemployment checks so they can meet their mortgages, put food on the table, and take care of their children.

The American people understand fairness. They understand that with

one hand we are providing billions of dollars to the wealthiest individuals in this country, and we ought to extend the other hand to our hard-working men and women who played by the rules, worked all their lives, and paid into the unemployment compensation fund. They need that assistance now.

For 80,000 workers a week, unemployment checks will stop coming at the end of this month if we take no action whatsoever—80,000 who have paid into the unemployment compensation fund, which currently has in it over \$20 billion.

Unemployment benefits are a lifeline available for millions of hard-working Americans. I urge my colleagues to put aside partisan politics and join to assist the unemployed—just as we have during recession for the past 50 years. We know the extension of unemployment compensation has been supported by President Reagan, President Nixon, President Eisenhower, as well as President Kennedy, President Clinton, President Bush, and President Ford—all of them. In the 5 years in the 1990s when we extended it, it had strong bipartisan support. Four of those votes were in excess of 90 votes. We want to take that same kind of action. We want to take it this evening before we go off for a Memorial Day recess.

Mr. President, I ask unanimous consent that the Finance Committee be discharged from further consideration of S. 923, a bill to provide for a 6-month extension of unemployment compensation, including 13 weeks of benefits for the long-term unemployed—exhaustees—and that the Senate then proceed to its immediate consideration; that the amendment that is at the desk to remove the temporary enhanced regular unemployment compensation provisions be considered and agreed to; that the bill, as amended, be read three times, passed, and the motion to reconsider be laid upon the table, without intervening action or debate.

The PRESIDING OFFICER. Is there objection?

Mr. SESSIONS. I object. We have only had a few moments to consider this Mr. President. We did not know the request was going to be offered. I register an objection.

The PRESIDING OFFICER. Objection is heard. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I hear the objection on the other side. Action is needed in these several days. Some 80,000 of our fellow citizens starting next week will begin to lose all of their coverage, for which they have paid into the fund.

This is a deplorable situation certainly for those Americans, and I think for all Americans. We are going to continue this battle throughout this week and beyond. I have heard an objection voiced.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. SUNUNU). The Senator from Alabama.

Mr. SESSIONS. Mr. President, I thank the Chair and look forward to

making some comments on the Defense bill. In previous years, I have been honored to work with Senator KENNEDY on the Seapower Subcommittee when he was chairman, and when I was able to chair the subcommittee. I will admit, he remained on message. We are on the Defense bill and somehow we segued into unemployment benefits. I think we would do well to stay on this Defense bill.

Briefly, Mr. President, we did talk about the nuclear posture of the United States. President Bush has proposed a reduction in nuclear weapons that is, in fact, reducing American nuclear weapons by one-half. That is a good direction.

Oddly, we remain the only nuclear power in the world that does not have the capacity at this point to build another nuclear weapon. Other nations are either building nuclear weapons or have the capability and have not eliminated it. First of all it would be unwise, in my view, to freeze ourselves at a low number and never be able to increase it, which simply sets out a target that any nation in the world, if they could reach that number, would then be a nuclear power on parity with the United States. We do not need to do that.

I think the President is wise to not renounce unequivocally that he would never use a nuclear weapon before it has been used on us, particularly when people have the ability to threaten us with biological and chemical weapons that could cause even more loss of life than a single nuclear weapon. We need to keep our poise here. The President is reducing nuclear weapons. He is not expanding our number of nuclear weapons. The Defense Department and the President have not allowed the politically correct crowd or other groups to pressure him into saying we would never use a weapon before it is used on us.

I believe this is a very good Defense bill. I remember when I came to the Senate a little over 6 years ago, the defense budget was somewhere around \$290 billion. In 1991, our defense budget was \$329 billion. We went from \$329 billion to \$278 billion in the mid-nineties, a huge reduction. We edged up only slightly in the last few years of the last decade of the century. We were not where we needed to be.

I remember when we passed a budget a few years ago that topped \$329 billion, the first time we had exceeded the defense budget in the early 1990s. During that period, we did two dramatic things; We reduced personnel in the Department of Defense by 40 percent and delayed confronting the bow wave of unmet recapitalization needs for our ships, aging aircraft, and other equipment. We delayed doing that, as we paired down our budget after the fall of the wall. It probably went too far. Not probably, we did go too far. Had we maintained just a few percentage points more of spending, we could have carried on the recapitalization program

that would have left us in a lot better position than we are today.

One of President Clinton's Service Secretaries used that phrase, "a bow wave of unmet needs," needs that we were pushing off, which we knew we had to address and we should have been addressing along the way but which is building in front of us. Now we have to address those needs, and I believe we are making progress.

This bill authorizes an expenditure of \$400.5 billion in defense spending. It is \$17.9 billion more than last year. That is in real terms, adjusted terms, a 3.2 percent increase. It is not a huge increase, but it is a significant increase, and I think it has been planned for and being managed by the Defense Department pretty well.

It includes some badly needed benefits for our service men and women. The family separation allowance is up. Incentive pay for places such as Korea are going to be up. Frankly, we did not do enough on Korea. It is a special case that is unfairly impacting the finances, the careers, and the lives of families when a person gets an assignment to Korea. We can do better, and we need to do better. I am continuing to look at that issue along with other Members such as Senator DAYTON and others in this body.

There is an increase in hostile fire pay. We increase the death benefit for all personnel. We double it to \$12,000. We should, and I will be offering legislation to do a much better job of providing a death benefit for the soldiers who represent the United States of America in a hostile environment and who lose their lives in combat. We have seen those who were victims of terrorist attacks receive a million or more dollars in benefits. It is embarrassing how little the families of our soldiers who answer the call to go into harm's way, who put their lives at risk for our freedoms, get in benefits from the Federal Government. The situation is better as far as the money.

We have demonstrated in the last conflicts in Iraq and Afghanistan that our military has modernized itself and is capable of innovation and creatively utilizing advanced technologies to apply the maximum pressure on our enemy, minimizing the risk to our own forces and minimizing the risk to civilians and to the basic infrastructure of the enemy nations that we are facing. It is a tremendous achievement.

I have pushed for transformation, and I think Secretary of Defense Rumsfeld is correct. We have to push and push to have the transformation we want in our Department of Defense. It will not occur if it is not being pushed from the top.

With regard to the Army, for example, we have made some tremendous progress. Part of that progress is the quality of the leadership we have in the military today. Those who watched the briefings and saw the interviews of our men and women, the leaders in the military, saw the high education level,

the technical expertise, and the leadership skill they have.

Our military officers do not just have undergraduate degrees today. They have masters degrees in business, engineering, and technology. They have management specialties. They have Ph.D.s. They are the finest kind of leaders one would find in any business or any other competitive enterprise in the country.

They do things such as study what happened previously. They call it "lessons learned." That is a healthy thing in America. We are quick to study our mistakes, and we learn from those mistakes.

I recall the book "Black Hawk Down," the movie that was made about the Somalian conflict, the mistakes that were made and the courage that was shown. That report has been studied. That event has been studied over and over again. It has gotten down to the most junior possible officers in our entire military. They know that story. They know what happened. They know the good things and they know the bad things.

Some might think that the author who wrote the book that was being critical—I did not really think so. I thought it was truthful and tried to be helpful. He has been invited to lecture our military forces time and again on his insights as an outsider into what happened to them. So we have an open and creative military. I believe that is the strength of it.

One of our leaders said we do not want a war; we want to resist a war, we want to avoid it at all possible costs, but when it can no longer be avoided, we want to fight it with violence, we want to fight it effectively, and we do not want it to be a fair fight. We want our enemies to know beforehand we do not want it to be a fair fight. We want to bring that force that we have to bear to win the war decisively and quickly, for this is the best way to create a safe environment afterwards and to preserve the lives of our service men and women. So we are working on that. This is not easy. We utilize the incredible technology that America develops. We utilize the management skills that Americans possess, and they are utilized routinely in this country.

It is not easy to develop highly effective technology and, more importantly, apply that technology effectively on the battlefield. We have to make sure our 19-year-old Privates understand the capabilities they are dealing with and be able to apply it, even though they may have been in the military a year or less even. It is a tremendous managerial task.

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

Mr. SESSIONS. I ask unanimous consent that I be allowed 2 minutes to wrap up.

The PRESIDING OFFICER. Is there objection?

Mr. LEVIN. I have no objection whatsoever. I am curious as to whether we are under time limits.

The PRESIDING OFFICER. The Senate is operating under time limits. The minority has 26 minutes remaining.

Mr. LEVIN. That is fine with me. I am happy to yield. How much time does my friend need?

Mr. SESSIONS. A couple of minutes would be fine. I did not know I was on a time limit.

Mr. LEVIN. That makes two of us. So I am happy to yield some additional time.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. I close by saying how proud I am of the troops and our defense capability. As one writer for the British magazine, *The Economist*, said, not only do Americans spend more money on defense than their European allies, they spend it more wisely. That is the reason they are so capable in matters of defense. He also added that if the Europeans were so afraid of the United States, why did they not spend more on defense?

I will be speaking later on a few more issues such as the Airland Subcommittee agenda, which I chair.

At this time, I express my appreciation to Senator JOHN WARNER, the chairman of our committee, for his superb leadership, his understanding of this country, his understanding of the defense needs of this country, and his willingness to work for it.

I, likewise, express my appreciation to Senator LEVIN, the ranking member. He is as capable, intelligent, and articulate as any Member of this body. He understands these issues. Although we talk at times about having differences of opinion, overwhelmingly the matters that went through our committee went through with bipartisan support and unanimous support.

I thank the Senator from Michigan for allowing me the extra time.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. AKAKA. Mr. President, I rise today in support of the Fiscal Year 2004 National Defense Authorization Act. As ranking member of the Readiness Subcommittee, I have greatly enjoyed working with the new subcommittee chairman, Senator ENSIGN, and I especially appreciate the efforts that the Senator from Nevada has made to work through some of this year's very difficult issues in a balanced and fair manner.

The readiness subcommittee is responsible for two areas that have the potential to be extremely controversial, and I believe both have been handled well.

First, we spent a fair amount of time in our committee reviewing Depart-

ment of Defense outsourcing policies. I continue to be troubled by the administration's insistence on outsourcing quotas, arbitrary timelines for conducting public-private competitions, and the use of direct conversions in place of competitive processes.

Nonetheless, I support the provision in the bill which would authorize a pilot program under which the Department of Defense could test a new approach to public-private competition. The provision would also require that any deadlines for public-private competitions conducted by the Department of Defense be based on the resources actually available to the department of conduct such competitions. I believe that this provision strikes an appropriate balance.

Second, our subcommittee held two hearings on environmental issues impacting military training and readiness. The administration has offered a series of legislative proposals to exempt the Department of Defense from some of our most important environmental statutes. I believe that these proposals go much farther than is needed to address the legitimate concerns of the military, and could do some real harm to the environment.

The bill includes one provision on these issues, which would exempt military lands from critical habitat designation if those lands are covered by an Integrated Natural Resources Management Plan, or INRMP. I am disappointed that the majority of the committee rejected my amendment to this provision, which would have established a more workable and precise test for the adequacy of INRMPs to address endangered species. Nonetheless, I appreciate the thoughtful manner in which Senator ENSIGN considered this issue and attempted to address my concerns. While I do not support the provision that was included in the bill, I believe that it is a significant improvement over the administration's proposal.

I also have some reservations about the reductions that we have taken in the operation and maintenance accounts, especially in the working capital funds. I am particularly concerned about the changes we have made within the Air Force working capital fund—as I understand it, the transfer of funds included in the markup package may actually create shortfalls of spare parts and harm readiness. I obviously hope that this does not come to pass, and I hope that we may be able to reverse some of these reductions as the bill progresses.

As always, this bill continues to support military construction and family housing needs that are so critical to quality of life for our service men and women. I believe that the package we have before us today is a positive step toward this goal. I am concerned, however, that our actions with respect to overseas facilities in particular may be out of step with ongoing initiatives by the Department of Defense. The reductions in this bill, which go beyond



those that the department itself recently proposed, undermine planned efficiencies that would improve both quality of life and training for Army forces who will remain in Germany. Currently, the department and the combatant commanders are working closely to create a comprehensive, integrated presence and basing strategy and to identify a new set of military construction requirements for the next decade. Moving forward, we must ensure that our decisions regarding military construction overseas support these future requirements so that we continue to support our servicemen and women to the best of our abilities.

Mr. President, I believe that the bill we have before us makes some positive steps toward improving the readiness of our Armed Forces, and I commend it to my colleagues.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. WARNER. It is my understanding that the Senate, at the hour of 5 o'clock, will proceed to a rollcall vote and that the vote will be held open for the period of 1 hour, until 6 o'clock; is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. WARNER. My distinguished colleague, the ranking member, and I hope Members could come up to see either of us, if we are here—and if we are not here, both staffs will be here—and indicate the possibility that they may have amendments that will be forthcoming and the time, say tomorrow, that would be convenient for them to bring up those amendments.

Tonight we will be addressing some amendments after 6 o'clock. We will resume with amendments in the morning. We have gotten excellent cooperation from those desiring to offer amendments. But by midday tomorrow, we should, at our respective caucuses, be able to give the Senate some idea during the caucuses of the progress of this bill and the likelihood of when final passage could be achieved. Am I not correct on that, I ask my colleague?

Mr. LEVIN. The Senator from Virginia is, of course, correct.

I join with him in asking Senators to share with us or our staffs at the 5 to 6 o'clock hour what amendment they would expect to be offering either tonight or tomorrow.

I also point out, I believe—I want to make sure I am correct—the vote that occurs at 5 will be the only vote today. I ask the Chair, is that correct?

The PRESIDING OFFICER. The Senator is correct—the Senator will suspend for a moment.

Mr. LEVIN. I thought that had already been agreed to. Am I incorrect on that?

Mr. WARNER. In any event, Mr. President, there have been some rumors to that effect.

Mr. LEVIN. I withdraw that. I thought an announcement had been made and it would be, of course, inappropriate for anyone other than the majority leader to make that announcement.

The PRESIDING OFFICER. A vote will occur at 5 o'clock.

Mr. WARNER. There is nothing in the RECORD as to post-6 o'clock as to further votes tonight. That is the case until we hear from the majority leader; is that correct?

The PRESIDING OFFICER. There is no order concerning votes.

Mr. WARNER. I yield the floor.

Mr. MCCONNELL. Mr. President, let me confirm the vote that will be between 5 and 6 is the only vote tonight.

Mr. WARNER. I thank our distinguished assistant leader.

Mr. LEVIN. The distinguished whip came to the floor just in time to save my reputation. I very much appreciate that.

Mr. WARNER. With respect to amendments, I urge colleagues to look at the daily calendar in which the reference is made, on the covering page, to the order with regard to this bill and the proviso:

Provided, That all first degree amendments be relevant and that any second degree amendment be relevant to the first degree amendment to which it is offered.

There are restrictions on the subject matter. We want to cooperate with our colleagues. But it is very clear that this is the order that has been adopted by the Senate.

I yield the floor.

#### EXECUTIVE SESSION

NOMINATION OF S. MAURICE HICKS, JR., OF LOUISIANA, TO BE UNITED STATES DISTRICT JUDGE FOR THE WESTERN DISTRICT OF LOUISIANA

The PRESIDING OFFICER. Under the previous order, the Senate will go into executive session to consider the Executive Calendar order No. 172. The clerk will report.

The legislative clerk read the nomination of S. Maurice Hicks, Jr., of Louisiana, to be United States District Judge for the Western District of Louisiana.

Mr. MCCONNELL. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is, Will the Senate advise and consent to the nomination of S. Maurice Hicks, Jr., of Louisiana, to be United States District Judge for the Western District of Louisiana?

The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. I announce that the Senator from Utah (Mr. BENNETT), the Senator from Idaho (Mr. CRAIG),

the Senator from Alaska (Ms. MURKOWSKI), the Senator from Oregon (Mr. SMITH), the Senator from Missouri (Mr. TALENT), and the Senator from Wyoming (Mr. THOMAS) are necessarily absent.

Mr. REID. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Illinois (Mr. DURBIN), the Senator from North Carolina (Mr. EDWARDS), the Senator from Florida (Mr. GRAHAM), the Senator from Hawaii (Mr. INOUE), the Senator from Massachusetts (Mr. KERRY), the Senator from New Jersey (Mr. LAUTENBERG), and the Senator from Connecticut (Mr. LIEBERMAN) are necessarily absent.

I further announce that, if present and voting, the Senator from Indiana (Mr. BAYH) and the Senator from Massachusetts (Mr. KERRY) would each vote "aye."

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

The result was announced—yeas 86, nays 0, as follows:

[Rollcall Vote No. 184 Ex.]

#### YEAS—86

Akaka	DeWine	Lott
Alexander	Dodd	Lugar
Allard	Dole	McCain
Allen	Domenici	McConnell
Baucus	Dorgan	Mikulski
Biden	Ensign	Miller
Bingaman	Enzi	Murray
Bond	Feingold	Nelson (FL)
Boxer	Feinstein	Nelson (NE)
Breaux	Fitzgerald	Nickles
Brownback	Frist	Pryor
Bunning	Graham (SC)	Reed
Burns	Grassley	Reid
Byrd	Gregg	Roberts
Campbell	Hagel	Rockefeller
Cantwell	Harkin	Santorum
Carper	Hatch	Sarbanes
Chafee	Hollings	Schumer
Chambliss	Hutchison	Sessions
Clinton	Inhofe	Shelby
Cochran	Jeffords	Snowe
Coleman	Johnson	Specter
Collins	Kennedy	Stabenow
Conrad	Kohl	Stevens
Cornyn	Kyl	Sununu
Corzine	Landrieu	Voinovich
Crapo	Leahy	Warner
Daschle	Levin	Wyden
Dayton	Lincoln	

#### NOT VOTING—14

Bayh	Graham (FL)	Murkowski
Bennett	Inouye	Smith
Craig	Kerry	Talent
Durbin	Lautenberg	Thomas
Edwards	Lieberman	

The nomination was confirmed.

Mr. DASCHLE. Mr. President, I move to reconsider the vote, and move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Under the previous order, the President will be notified of the Senate's action.

Mr. HATCH. Mr. President, I am pleased today to rise in support of S. Maurice Hicks, who has been confirmed to be a nominee to the U.S. District Court for the Western District of Louisiana.

Mr. Hicks has had a distinguished legal career. Upon graduation from Louisiana State University Law School, he worked for the Louisiana Legislative Council. Soon afterwards,

he began his 25-year career in private practice as an associate in a Shreveport law firm. He subsequently founded his own law firm and developed an expertise in commercial and insurance-related litigation in State and Federal courts, including general aviation accidents, automobile accidents, product liability, lender liability claims, construction disputes, intellectual property claims, and insurance coverage questions, as well as oil and gas accident and contamination claims. He also has a great deal of experience representing individuals on a wide variety of personal matters including estate planning, personal injury claims, contract negotiations, copyright issues, and general legal matters. All told, he has tried an estimated 150 cases to judgment, acting as sole or lead counsel in the vast majority of them. He has also devoted time in his legal career to pro bono work, including preparing wills for the elderly and working with adjudicated juveniles.

He is a member of the Louisiana State Bar, the American Bar Association, and the Shreveport Bar Association.

I am confident that Mr. Hicks's extensive litigation experience will make him an excellent addition to the Federal bench.

Mr. LEAHY. Mr. President, the Senate has confirmed the nomination of Maurice Hicks to be a United States District Court Judge for the Western District of Louisiana. Maurice Hicks has spent 25 years as a litigator in Shreveport, LA, where he has appeared frequently in State and Federal courts. He comes to us with the support of his home State Senators. Mr. Hicks is the seventh nominee of President Bush to be confirmed to the Federal courts in Louisiana. Just this year, the Senate already confirmed Dee Drell and Patricia Minaldi to the United States District Court for the Western District of Louisiana. With these confirmations, there are no longer any current vacancies in the Federal courts in Louisiana.

Under my chairmanship last Congress, the Senate Judiciary Committee held the first hearing for a Fifth Circuit nominee in 7 years. Judge Edith Brown Clement of Louisiana was promptly given a hearing in October 2001 and confirmed in November 2001, despite the fact that three of President Clinton's Fifth Circuit nominees never received a hearing, including H. Alston Johnson of Louisiana. The Democrats turned the other cheek on past obstruction by the Republicans in order to move forward. In fact, with Democratic support, the Senate recently confirmed another nominee to the Fifth Circuit Court of Appeals, Judge Edward Prado, despite the fact that President Clinton's Hispanic nominees to that court, Enrique Moreno and Jorge Rangel, never received a hearing or a vote.

With the confirmation of Mr. Hicks, the Senate will have confirmed 25 of President Bush's judicial nominees so

far this year and 125 overall. So far this year we have confirmed more judicial nominees of President Bush than the Republican majority was willing to confirm in the entire 1996 session when President Clinton was in the White House. That entire year only 17 judges were confirmed all year and that included none to the circuit courts, not one. In contrast, already this session, 5 circuit court nominees, including several highly controversial nominees, have been confirmed among the 25 judges the Senate has approved to date. Those confirmations—including two that had more negative votes than the required number to be filibustered but who were not filibustered never get acknowledged in partisan Republican talking points.

We are also almost 6 months ahead of the pace the Republican majority set in 1999 when it considered President Clinton's judicial nominees. It was not until October that the Senate confirmed as many as 25 judicial nominees in 1999.

In the 17 months when I chaired the Judiciary Committee, we were able to confirm 100 judges and vastly reduce the judicial vacancies that Republicans had stored up by refusing to allow scores of judicial nominees of President Clinton to be considered. We were able to do so despite the White House's refusal to work with Democrats on circuit court vacancies and many district court vacancies.

With Mr. Hicks' confirmation, the Senate will have succeeded in reducing the number of Federal judicial vacancies to the lowest level it has been in 13 years. The 110 vacancies that I inherited in the summer of 2001 have been more than cut in half. In the 17 months that I chaired the Judiciary Committee we not only kept up with attrition, but reduced those vacancies from 110 to 60 and with Mr. Hicks's confirmation we will only have 46 vacancies for the entire Federal judiciary. I congratulate Mr. Hicks and his family on his confirmation.

Republican talking points will likely focus on the impasse on 2 of the most extreme of the President's nominations rather than the 125 confirmations and the lowest judicial vacancy rate in 13 years. They will ignore their own recent filibusters against President Clinton's executive and judicial nominees in so doing and their own delays in considering some of this President's judicial nominees.

I continue to be disappointed that the Republican leadership has not found time to proceed to the nomination of Judge Consuelo Callahan to the United States Court of Appeals for the Ninth Circuit. This is another of the judicial nominees that Senate Democrats has strongly supported and whose consideration we had expedited through the Judiciary Committee weeks ago.

Just as Senate Democrats cleared the nomination of Judge Edward Prado to the United States Court of Appeals for

the Fifth Circuit without delay, so, too, the nomination of Judge Callahan, another Hispanic nominee to another circuit court, was cleared on the Democratic side. All Democratic Senators serving on the Judiciary Committee voted to report this nomination favorably. All Democratic Senators had indicated that they are prepared to proceed to this nomination and, after a reasonable period of debate, vote on the nomination. I am confident this nomination will be confirmed by an extraordinary majority—maybe unanimously.

It is most unfortunate that so many partisans in this administration and on the other side of the aisle insist on bogging down consensus matters and consensus nominees in order to focus exclusively on the most divisive and controversial of this President's nominees as he continues his efforts to pack the courts. Democratic Senators have worked very hard to cooperate with this administration in order to fill judicial vacancies. What the other side seeks to obscure is that effort, that fairness and the progress we have been able to achieve without much help from the other side or the administration. Judge Callahan's nomination has been delayed on the Senate Executive Calendar unnecessarily in my view. It is time to act on this nomination and make progress.

#### LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session.

#### NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2004—Continued

The PRESIDING OFFICER (Mr. CHAMBLISS). The Democratic leader.

AMENDMENT NO. 689

Mr. DASCHLE. I have an amendment at the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from South Dakota [Mr. DASCHLE] proposes an amendment numbered 689.

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

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

The amendment is as follows:

(Purpose: To ensure that members of the Ready Reserve of the Armed Forces are treated equitably in the provision of health care benefits under TRICARE and otherwise under the Defense Health Program)

On page 157, strike line 8 and all that follows through "time of war," on line 14, and insert the following:

"(f)(1) At any time after the Secretary concerned notifies members of the Ready Reserve that the members are to be called or ordered to active duty,

On page 157, line 19, strike "(2)" and insert the following:

“(2) The screening and care authorized under paragraph (1) shall include screening and care under TRICARE, pursuant to eligibility under paragraph (3), and continuation of care benefits under paragraph (4).

“(3)(A) Members of the Selected Reserve of the Ready Reserve and members of the Individual Ready Reserve described in section 10144(b) of this title are eligible, subject to subparagraph (I), to enroll in TRICARE.

“(B) A member eligible under subparagraph (A) may enroll for either of the following types of coverage:

“(i) Self alone coverage.

“(ii) Self and family coverage.

“(C) An enrollment by a member for self and family covers the member and the dependents of the member who are described in subparagraph (A), (D), or (I) of section 1072(2) of this title.

“(D) The Secretary of Defense shall provide for at least one open enrollment period each year. During an open enrollment period, a member eligible under subparagraph (A) may enroll in the TRICARE program or change or terminate an enrollment in the TRICARE program.

“(E) A member and the dependents of a member enrolled in the TRICARE program under this paragraph shall be entitled to the same benefits under this chapter as a member of the uniformed services on active duty or a dependent of such a member, respectively. Section 1074(c) of this title shall apply with respect to a member enrolled in the TRICARE program under this section.

“(F)(i) The Secretary of Defense shall charge premiums for coverage pursuant to enrollments under this paragraph. The Secretary shall prescribe for each of the TRICARE program options a premium for self alone coverage and a premium for self and family coverage.

“(ii) The monthly amount of the premium in effect for a month for a type of coverage under this paragraph shall be the amount equal to 28 percent of the total amount determined by the Secretary on an appropriate actuarial basis as being reasonable for the coverage.

“(iii) The premiums payable by a member under this subparagraph may be deducted and withheld from basic pay payable to the member under section 204 of title 37 or from compensation payable to the member under section 206 of such title. The Secretary shall prescribe the requirements and procedures applicable to the payment of premiums by members not entitled to such basic pay or compensation.

“(iv) Amounts collected as premiums under this subparagraph shall be credited to the appropriation available for the Defense Health Program Account under section 1100 of this title, shall be merged with sums in such Account that are available for the fiscal year in which collected, and shall be available under subparagraph (B) of such section for such fiscal year.

“(G) A person who receives health care pursuant to an enrollment in a TRICARE program option under this paragraph, including a member who receives such health care, shall be subject to the same deductibles, copayments, and other nonpremium charges for health care as apply under this chapter for health care provided under the same TRICARE program option to dependents described in subparagraph (A), (D), or (I) of section 1072(2) of this title.

“(H) A member enrolled in the TRICARE program under this paragraph may terminate the enrollment only during an open enrollment period provided under subparagraph (D), except as provided in subparagraph (I). An enrollment of a member for self alone or for self and family under this paragraph shall terminate on the first day of the first

month beginning after the date on which the member ceases to be eligible under subparagraph (A). The enrollment of a member under this paragraph may be terminated on the basis of failure to pay the premium charged the member under this paragraph.

“(I) A member may not enroll in the TRICARE program under this paragraph while entitled to transitional health care under subsection (a) of section 1145 of this title or while authorized to receive health care under subsection (c) of such section. A member who enrolls in the TRICARE program under this paragraph within 90 days after the date of the termination of the member's entitlement or eligibility to receive health care under subsection (a) or (c) of section 1145 of this title may terminate the enrollment at any time within one year after the date of the enrollment.

“(J) The Secretary of Defense, in consultation with the other administering Secretaries, shall prescribe regulations for the administration of this paragraph.

“(4)(A) The Secretary concerned shall pay the applicable premium to continue in force any qualified health benefits plan coverage for an eligible reserve component member for the benefits coverage continuation period if timely elected by the member in accordance with regulations prescribed under subparagraph (J).

“(B) A member of a reserve component is eligible for payment of the applicable premium for continuation of qualified health benefits plan coverage under subparagraph (A) while serving on active duty pursuant to a call or order issued under a provision of law referred to in section 101(a)(13)(B) of this title during a war or national emergency declared by the President or Congress.

“(C) For the purposes of this paragraph, health benefits plan coverage for a member called or ordered to active duty is qualified health benefits plan coverage if—

“(i) the coverage was in force on the date on which the Secretary notified the member that issuance of the call or order was pending or, if no such notification was provided, the date of the call or order;

“(ii) on such date, the coverage applied to the member and dependents of the member described in subparagraph (A), (D), or (I) of section 1072(2) of this title; and

“(iii) the coverage has not lapsed.

“(D) The applicable premium payable under this paragraph for continuation of health benefits plan coverage in the case of a member is the amount of the premium payable by the member for the coverage of the member and dependents.

“(E) The total amount that may be paid for the applicable premium of a health benefits plan for a member under this paragraph in a fiscal year may not exceed the amount determined by multiplying—

“(i) the sum of one plus the number of the member's dependents covered by the health benefits plan, by

“(ii) the per capita cost of providing TRICARE coverage and benefits for dependents under this chapter for such fiscal year, as determined by the Secretary of Defense.

“(F) The benefits coverage continuation period under this paragraph for qualified health benefits plan coverage in the case of a member called or ordered to active duty is the period that—

“(i) begins on the date of the call or order; and

“(ii) ends on the earlier of the date on which the member's eligibility for transitional health care under section 1145(a) of this title terminates under paragraph (3) of such section, or the date on which the member elects to terminate the continued qualified health benefits plan coverage of the dependents of the member.

“(G) Notwithstanding any other provision of law—

“(i) any period of coverage under a COBRA continuation provision (as defined in section 9832(d)(1) of the Internal Revenue Code of 1986) for a member under this paragraph shall be deemed to be equal to the benefits coverage continuation period for such member under this paragraph; and

“(ii) with respect to the election of any period of coverage under a COBRA continuation provision (as so defined), rules similar to the rules under section 4980B(f)(5)(C) of such Code shall apply.

“(H) A dependent of a member who is eligible for benefits under qualified health benefits plan coverage paid on behalf of a member by the Secretary concerned under this paragraph is not eligible for benefits under the TRICARE program during a period of the coverage for which so paid.

“(I) A member who makes an election under subparagraph (A) may revoke the election. Upon such a revocation, the member's dependents shall become eligible for benefits under the TRICARE program as provided for under this chapter.

“(J) The Secretary of Defense shall prescribe regulations for carrying out this paragraph. The regulations shall include such requirements for making an election of payment of applicable premiums as the Secretary considers appropriate.

“(5) For the purposes of this section, all members of the Ready Reserve who are to be called or ordered to active duty include all members of the Ready Reserve.

“(6) The Secretary concerned shall promptly notify all members of the Ready Reserve that they are eligible for screening and care under this section.

Mr. DASCHLE. Mr. President, this amendment would strengthen our National Guard, our Reserve force, and our Nation by offering these troops the option to receive year-round health coverage through TRICARE, the military health program. If approved, this would be the first fundamental change in Guard and Reserve benefits since the end of the Cold War.

This amendment not only honors the sacrifices that our Guard and Reserve troops have been making on our behalf for decades, but also recognizes that there has been a fundamental expansion in recent years in their roles and missions.

Since the fall of the Soviet Union, the military has increasingly relied on the skill and sacrifice of America's Reservists. When I go home to South Dakota and talk to the citizens of my State, I see and hear first-hand the impact this increasing reliance has on communities all across my State. Nearly 2,000 South Dakotan Guard and Reservists are currently on active duty serving their Nation. In addition to performing their traditional combat roles, Guard and Reserve personnel have assumed a larger share of the peacekeeping role in hot spots all around the world.

Since September 11, Guard and Reserve members have assisted in homeland security, including protecting our airports, and have provided force protection at bases at home and abroad. According to a recent GAO study, Guard and Reservist mobilizations increased by 700 percent in the aftermath

of the attacks on the Pentagon and World Trade Center.

So more frequently and for longer periods of time, Guard and Reserve personnel from South Dakota and all over the Nation have answered their Nation's call to duty, leaving behind their families, their jobs, and their communities.

While the demands we place on Reservists have grown markedly, the Federal Government's commitment to this dedicated group of men and women has not kept pace. As a result, leaders of the National Guard and Reserves are finding it increasingly difficult to recruit and retain top-notch individuals. Guard leaders tell me that offering health coverage would be the single most powerful tool we could give them to help with recruiting and retention.

This proposal offers a moderate, targeted, affordable proposal that deserves the bipartisan support of the Senate.

This amendment is the result of 2 years of work by myself and a bipartisan group of my colleagues from the Senate Guard Caucus. In 2001, we introduced S. 1119, calling for research into problems surrounding health coverage for the Guard and Reserve. For 2 years, we have been holding regular meetings with leaders from the guard and reserve community and soliciting grassroots input. We have made some modifications to reflect the experiences of reservists mobilized after September 11 and problems encountered by others mobilized for service in Bosnia and Iraq. Last fall, we received a helpful study on the issue from the General Accounting Office.

Incorporating the lessons from that report, last month we were able to introduce S. 852, the National Guard and Reserve Comprehensive Health Benefits Act of 2003, on which this amendment is based.

This amendment offers Reserve and National Guard members and their families the opportunity to participate in the same TRICARE program available to active duty service members and their families.

Reservists and their families will share the cost of premium payments with the Department of Defense, with the same cost distribution as used in the Federal Employees Health Benefit Plan.

The National Guard Association of the United States reports that the average cost of a family health care plan through a civilian HMO is \$7,541 per year.

In contrast, the Guard Association estimates that the TRICARE cost per family is only \$5,173 per year, even without government sharing any of the cost.

With government cost-sharing, this will be an attractively priced option for securing health coverage.

Beyond recruitment and retention, this program will improve readiness. More than 20 percent of the Ready Reserve—and as much as 40 percent of young enlisted personnel—do not currently have health insurance.

Providing access to quality health care during all phases of service can drastically reduce the chances that a unit is unable to deploy due to medical reasons.

Maintaining a healthy force is absolutely essential to maintaining a prepared force.

Our legislation will also address another problem that invariably occurs during mobilization.

When a reservist is called to active duty, he or she must leave their private-sector health plan and enter a wholly new plan, TRICARE. In March, I worked with the Secretary of Defense to end a nationwide problem among families of mobilized reservists. Simply put, they were being forced, unfairly and improperly, to join a more expensive TRICARE plan.

We did solve that problem, but many families spent weeks without knowing whether they should try to extend their private coverage or whether they could afford TRICARE. That is simply unacceptable.

At a time when a reservist is preparing for deployment to a war zone, the last thing he or she should have to worry about is health benefits.

This amendment is an affordable way to honor the commitment of our guard and reserve members. The bill before us provides the Defense Department with more than \$400 billion in FY2004.

According to the Congressional Budget Office, my amendment costs about \$300 million in that same period. For 7 months of a percent of the Pentagon budget, we can guarantee that all reservists have access to health care—either through civilian employers or TRICARE. We can ensure that this force is ready to fight at a moment's notice.

We can improve the readiness of the current reserve force and improve our ability to recruit and retain the best and brightest men and women for the National Guard and Reserves.

The high rate of reservist mobilizations will most likely continue. Indeed, with ongoing needs in Iraq and the upsurge in homeland defense activities, reservists will probably continue to be mobilized at record levels.

By providing access to quality, affordable health care for reservists and their families, this legislation will ensure that when we need them, they will be there, healthy and ready to go.

I yield the floor.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. I ask our distinguished colleague, the distinguished leader on the other side of the aisle, the cost implications.

Mr. DASCHLE. As I noted in my opening comments, the cost implications are very minimal given the extraordinary opportunities it presents for all of our Guard and Reserve personnel. The estimated cost for the first year is \$300 million—.7 of a percent of the entire defense budget.

Mr. WARNER. I say to my distinguished friend and colleague, there are

a number of provisions that will be addressed as we proceed to this bill to try to improve the compensation benefits for the Reserve and Guard. I generally recognize the need to do so, but I must say to my good friend, the regulars are beginning to say, well, what is the distinction between a Regular and a Guard and Reserves man? A Regular, the clearest distinction is he or she is subject to 365 days of service to country and probably moving from base to base every third year. Also, they do not have the benefit of both Reserve and Guard pay.

As someone said, and I hope the distinguished leader will not take this the wrong way, maybe everybody will leave the Regular Forces and join the Guard and Reserve because there is a little more flexibility and a little more pay and benefits.

We have to watch as we move along in this direction to not get out of balance what has been in balance for many years. I recognize that the Guard and Reserve are pulling heavily on the oars these days and they have the inconvenience of being called up at times as they have experienced in Afghanistan and the Iraqi operations and having to leave their families rather abruptly and depart their businesses, employers confronted with getting replacements in some instances but allowing them to return to their positions, which I think is the proper thing to do. We have not had any hearings. We do not know what the ramifications are.

I say to my distinguished colleague, at the moment I will have to indicate my intention to oppose.

Mr. DASCHLE. Mr. President, if I could respond briefly, first of all, I compliment the distinguished chair and ranking member for their work, once again, in producing a bill that passed out of committee, as I understand it, unanimously. That is a real tribute to their leadership and to the willingness that they continue to demonstrate to work in such a bipartisan and constructive manner in committee. That is laudable. I congratulate the chair and ranking member for their ability to do it consistently—not just on this occasion.

First, I recognize, as the distinguished chair has noted, we have to be appreciative of our active-duty personnel. They make a commitment second to none. We saw yet again a demonstration of that commitment in the battle in Iraq.

I don't know that an issue has been studied as much as this issue over the course of the last couple of years. I am happy to share the findings of many of the studies that have been done. One study that attracted me in particular was a study done by the General Accounting Office.

I ask unanimous consent the summary of the study be printed in the RECORD.

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

## BACKGROUND

Reserve components participate in military conflicts and peacekeeping missions in areas such as Bosnia, Kosovo, and southwest Asia, and assist in homeland security. From fiscal year 1996 through fiscal year 2001, an average of about 11,000, or 1 percent, of the roughly 900,000 reservists were mobilized each year. The length of mobilizations can be as long as 2 years with the mean length of mobilizations for the 6-year period we reviewed being 117 days. As of April 2002, about 80,000, or 8 percent, of reservists had been mobilized for 1 year for operations related to September 11, 2001. At the same time, additional reserve personnel continued to be deployed throughout the world on various peacekeeping and humanitarian missions. . . .

Overall, the percentage of reservists with health care coverage when they are not mobilized is similar to that found in the general population—and, like the general population, most reservists have coverage through their employers. According to DOD's 2000 Survey of Reserve Component Personnel, nearly 80 percent of reservists reported having health care coverage. In the general population, 81 percent of 18 to 65 year olds have health care coverage. Officers and senior enlisted personnel were more likely than junior enlisted personnel to have coverage. Only 60 percent of junior enlisted personnel, about 90 percent of whom are under age 35, had coverage—lower than the similarly aged group in the general population. Of reservists with dependents, about 86 percent reported having coverage. Of reservists without dependents, about 63 percent reported having coverage.

Mr. DASCHLE. The GAO noted since the attack on the World Trade Center—

Mr. WARNER. Could you give the date of the publication?

Mr. DASCHLE. The date was September of 2002, just in the last 6 months.

The GAO study noted that since the attacks on the Pentagon and the World Trade Center, utilization, mobilization of the Guard and Reserve has gone up 700 percent. We are not only seeing an increase in integration with Active-Duty Forces, but we are seeing a remarkable, continued mobilization of the Guard and Reserve for other roles having to do with the war on terror.

As these continued mobilizations arise, the disruption, the extraordinary pressures and demands put on the Guard and Reserve almost require that we look upon them as active-duty personnel because they play far more an active-duty role.

As I talk to the Guard and Reserve and the recruiters, it it has become increasingly clear that is one reason recruitment and retention has become much more of a challenge. We have done very well in South Dakota. We are at 106 percent, but that is not without a great deal of effort. We cannot say that nationally.

The fundamental question is, Do we owe them the right—not for additional compensation, no to be treated like Regulars—the right to buy health insurance so they have the coverage for their families and themselves both in war and in peace.

Why is it appropriate to buy coverage for war but not appropriate to buy cov-

erage for peace when they are purchasing it themselves? I don't know that it takes more study. I don't know that it takes any more analysis. You see the mobilization. You see the need. You see what I consider to be the disparity that exists today and what I would consider to be a certain extent an unfairness. I don't know that one has to go beyond that.

So I hope the distinguished chairman, the manager of the bill, might reconsider prior to the time we vote. But I will respect his point of view regardless of what ultimately he decides.

Mr. WARNER. If I could ask a further question?

I should examine this report. It is timely. But I am advised there is a provision in the report indicating that 80 percent to 90 percent of the Guard and Reserve have private sector health insurance. Are you familiar with that?

Mr. DASCHLE. Mr. President, I would say, if I recall what the report says, it is 80 percent or 90 percent of the Guard and Reserve who have coverage at some time during the year. We have as high as 30 percent of our recruits in the National Guard in South Dakota who do not have health insurance because younger people, younger personnel, oftentimes are not in a position to buy it. It is younger personnel who are currently the subject of recruitment and retention.

There is a great need out there. As I say, there are a large number, there is a significant percentage who are vastly underinsured, if you read further in the report.

I urge my colleague to take a good look at the report before he comes to any conclusions about the need.

Mr. WARNER. Mr. President, I will do that. I value the wisdom and initiative of our distinguished leader. So I will do that.

Mr. DASCHLE. If I could add one other—I apologize to the Senator from Vermont—I will just read from page 8 of the report.

Officers and enlisted personnel are more likely than junior personnel to have coverage. Only 60 percent of junior enlisted personnel, about 90 percent of whom are under age 35, had coverage.

That means 40 percent of the junior personnel had no coverage at all.

Of reservists and dependents, about 86 percent reported having coverage, but of reservists without dependents, only 63 percent reported having coverage. Again, about 40 percent have no coverage whatsoever.

Again, this becomes a recruiting, a retention, and, I believe, a fairness question that I hope this Senate will address this year with this bill.

Mr. WARNER. Mr. President, I thank our colleague.

I would just ask I be able to consult with the majority leader as to the time at which this vote should take place. He, of course, will consult with you. I thank the Chair.

Mr. LEAHY. Mr. President, if I might interject for a moment?

The distinguished chairman knows the great respect I have for what I

many times refer to as my Senator away from home because I spend part of the week—seems to be the longer part of the week, with the hours we have been putting in around here lately—in Northern Virginia. Of course my dear friend, the senior Senator from North Dakota, knows my respect for him.

I think this is a good amendment. Senator DEWINE of Ohio has taken a very active role in this, too. I hope the distinguished chairman would hold off making a snap judgment. I know he doesn't do that, in any event. But think about what the distinguished Senator from South Dakota has said.

The Senator from Ohio and I will speak on this matter at another time rather than hold the floor to do it. But there are a number—and the numbers are rather shocking—of those who are without health insurance, especially in the enlisted area. You have, so many times, this hiatus. They are leaving their job, getting called up, and being without it. It leaves families in this limbo.

I would rather, if they were being called up, they be concentrating on what they are going to be doing, not on whether they are covered by health care insurance. This is a matter we have raised with the health care committee.

I am a cochair of the National Guard caucus. We raised it within our caucus. We heard from Guard units all over the country of their needs. As the distinguished Democratic leader has said on the floor today, this is a case where we are asking they have the ability to pay into this and do this. So I hope maybe during the evening, before we come back in tomorrow, everybody might be able to look at it.

I know the distinguished Senator from Ohio, Mr. DEWINE, will also want to be speaking on it. I will withhold my further comments. There are Senators on the floor waiting to speak on this bill.

I totally concur with the distinguished Democratic leader on what he has said. His experiences with the brave men and women in South Dakota are very similar to what I hear in Vermont. I suspect most States are hearing it also from their Guard. So maybe we will keep our powder dry until tomorrow. We will get some of these facts and figures and see where they go.

Mr. WARNER. Mr. President, I thank our colleague for his kind remarks.

Mr. LEVIN. If the Senator will yield for a minute?

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. I point out one other fact for the consideration of my good friend, the chairman. The chairman, of course, makes an important point about the fact there is a distinction between Active Duty and Reserve and there are certain benefits that people in Active Duty have which make it a little more attractive, perhaps, than it

otherwise might be in comparison to being in the Reserves.

There is a distinction in this amendment, as I read it, which requires the reservists while not on active duty to pay the premium. It is 28 percent of the total amount determined by the Secretary. That is a distinction between Active Duty and Reserve, where the active-duty personnel, of course, do not have to pay their own share; whereas, under the amendment offered by Senator DASCHLE, the reservists while not on active duty would have to pay, as I understand it, the share of about 28 percent.

That does retain that important distinction, while it does clearly confer a benefit, which is an important benefit because of all the reservists we have who simply do not have health insurance. We want them to be in a healthy state if and when they are called up—and we ought to want them in a healthy state even if they are never called up—but surely if they are called up it is important they be in good health.

Having access here to what is equal to what Federal employees have, that is what the Senator from South Dakota and the cosponsors are attempting to do, to give reservists the same kind of health care Federal employees have. That includes paying their own part of the premium but again having access to health insurance, which is so important for us to have a healthy Reserve Corps.

Mr. WARNER. Mr. President, I will be in a better position tomorrow to reply to our distinguished colleagues. We have some material coming over from the Department of Defense. It has not been authenticated with a signature yet. Until such time as it is authenticated as accurate, in fact, this Senator is reluctant to draw any conclusions with respect to points about which he would be comfortable.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I ask unanimous consent a few remarks I make be as in morning business.

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

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

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. REED. I thank the Chair.

Mr. President, I rise to express my support for the Defense authorization bill that we are debating today and for the remainder of this week.

I first want to thank the chairman and the ranking member for their courtesy, for their thoughtfulness, and for their collegiality in the conduct of the committee in the preparation of this bill. They are two Senators I respect and admire greatly. I thank them for their help and participation.

This is, overall, a very good bill that meets the needs of our fighting men and women. I have some reservations

which I will talk about tonight, and during the course of the week I will suggest some improvements in the bill. But overall, this represents a thorough and consistent and appropriate discharge of our responsibility to ensure that the men and women of our Armed Forces are the best prepared and best cared for in the world.

Let me also say this year I had the privilege and the opportunity to serve as the ranking member of the Emerging Threat and Capability Subcommittee. I had the pleasure of working with Senator PAT ROBERTS of Kansas. I also want to thank Senator ROBERTS for his courtesy and thoughtfulness and for his collegiality. He created a cooperative spirit on the committee which resulted in legislation that is both thoughtful and which I think is a vast improvement for the men and women of our military services.

The package supported and presented by the subcommittee dealt with a range of subjects. The subcommittee itself was created 4 years ago to deal with new emerging threats and our response to these threats. The subcommittee looked at issues such as the proliferation of weapons of mass destruction, terrorism, and information warfare, and it also focused on ways in which we can respond to these threats.

One of the areas, for example, is the Defense Science and Technology Program—providing the research and the analysis that makes our forces the most technologically advanced in the world.

Another area we are concerned about is the Cooperative Threat Reduction Program. There is a rather simple and obvious point: If we can reduce the threats, that is a better way than to respond to those threats if they are poised against us.

We are also concerned about our special operations forces. I think we have all seen in the past few months how effective and how important these forces are. They really are the tip of the spear when it comes to our efforts on the war on terrorism.

Needless to say, the Emerging Threats Subcommittee is obviously involved in many issues that are of critical importance today.

Let me speak just briefly about some of the issues as we approach the committee markup.

Science and technology is a critical component of our warfighting capability. This was brought home to me graphically in August of 2001. About 20-plus years ago, I commanded an infantry company—a parachute company—of the 82nd Airborne Division. And in August of 2001, I went back to Fort Bragg to watch a live fire demonstration by a division of the 82nd Airborne Division. I was, of course, very pleased with the toughness and skills of the paratroopers. But I was also impressed with the technology. Each soldier had a night vision device, and each soldier had a laser-aiming device on their weapon. Twenty-five years ago, there

was one star-light scope for the whole platoon. It was a big, bulky device which we carried around and used sparingly. There was no laser-aiming device on their weapons.

These are graphic examples of the impact of science and technology on our ability to fight. They have made our soldiers, marines, and airmen the most formidable in the world because when we couple this technology with their skills and spirit and their courage, they are unstoppable.

I am pleased this bill includes provisions that strengthen the coordination between the Science and Technology Program. We really want to ensure that we get the maximum value from our technological investment.

I am also very pleased the bill includes Senator LIEBERMAN's legislation which will increase research on technologies to help improve communications and networking and to help address our bandwidth crisis in the field.

Again, 25 years ago when I commanded troops, bandwidth was a concept which no one talked about. Today, it is an item that is critical to the success of any military force.

When members of the committee go out—as I know my colleagues do—and visit troops and talk to commanding officers, one of their consistent complaints is, We just do not have enough bandwidth. We don't have enough space on the spectrum to push out all the digital information we have to all of our warfighters instantaneously.

So I think Senator LIEBERMAN's proposal will give us an added impetus to examine these issues of bandwidth and conductivity. It is literally the electronic backbone of our military forces. There are some issues of concern which I have with respect to science and technology. All of our experts looking at the appropriate level of funding for science and technology suggest that we should be investing about 3 percent of the defense budget in those programs. Secretary Rumsfeld has said the Quadrennial Defense Review made that point, and the Defense Science Board has endorsed this laudable goal of 3 percent expenditure on science and technology. However, last year the final defense budget did not reach 3 percent, and this year the President's request was \$1 billion below last year's vital defense budget.

While I am pleased to note that this bill adds nearly \$500 million to the Defense Science and Technology Program and supports significant investments in university research, advanced research to support special operations, and advanced undersea warfare technologies, the funding levels fall short of this 3 percent.

I think we have to maintain robust investment in our science and technology. We tried to close the gap, but there is still a gap. I hope in the next reauthorization—indeed in the conference—we can try to close this gap.

In the area of nonproliferation programs, we all understand that weapons

of mass destruction is one of the key threats, particularly if they get into the hands of terrorists. One of the most cost-effective ways to deal with this issue of nonproliferation is to support the Threat Reduction Program. I am pleased to report again that this bill authorizes full funding of these threat reduction and nonproliferation programs, including the Nunn-Lugar program.

This full funding is critical if we are going to eliminate the proliferation threat and if we are going to lower the danger that these materials pose to us, particularly if they get into the hands of terrorists.

Also, the bill includes authority to use Cooperative Threat Reduction Program funds outside the former Soviet Union under appropriate circumstances, as requested by the President.

Again, I think we have to recognize there are many places in the world, regrettably, where material could fall into the wrong hands. This gives the President authority for a much wider geographic approach on proliferation.

One of the problems we particularly worry about is the presence of a vast stockpile of lethal, chemical weapons—some of them small enough to fit into a briefcase—in Russia. This is the residue of years and years of Soviet research.

Under the Nunn-Lugar program, we have a project to destroy all those weapons so they cannot be used and do not fall into the hands of terrorists. There is a set of conditions that requires a Presidential certification before the money can be spent, but this bill provides the President a 1-year waiver of the certification so funds can be used to destroy these chemical weapons. Again, I thank Chairman ROBERTS, particularly, for his consideration of this request and for his willingness to provide this 1-year waiver.

As I said before, our special operations community each day demonstrates their incredible value in our war against terrorism. In recognition of the expanded role of the special operations forces, the Secretary of Defense has declared that rather than simply being a supporting command, special operations would be a command in itself.

Let me try to parse that. Before special operations command supported the CINCs, CENTCOM, SOUTHCOM. Today, they not only support these CINCs, but they are their own command in and of themselves with new responsibilities.

I applaud this decision, but I believe Congress should have a better appreciation of the new role that special operations command is taking on. Therefore, the committee included, at my suggestion, a recommendation so the Secretary of Defense can report to us information regarding this new role.

The information would include items such as the military strategy for utilizing special operations troops to fight the global war on terrorism and how

the proposal contributes to the overall national security strategy with regard to the war on terrorism; the scope of the authorities granted to the commander of the special operations command by the Secretary of Defense; the operational and legal parameters within which special operations forces will exercise these authorities; the impact on existing special operations missions; the decisionmaking mechanisms, to include consultation with Congress, that will be involved in authorizing, planning, and conducting these operations; and future organizational and resource requirements for conducting the global counterterrorism mission.

I believe the answers to these questions will help us frame our oversight responsibility, and I also think it will help provide the details for the special operations commander and the Department of Defense in relation to their responsibilities and their missions in this new responsibility they have been given.

These are just some of the highlights with respect to the Emerging Threats and Capabilities Subcommittee. I want my colleagues to know of these threats. There are other issues I would like to comment upon in addition to those related to my responsibilities on the subcommittee.

There was, in the committee, a proposal to, in my view, change the McKinney-Vento Homeless Assistance Act. I thank my colleagues because, through collaboration with Senators ENSIGN, ALLEN, and others, we were able to do what I think the committee wanted to do: to provide the opportunity to temporarily suspend these regulations if property is needed by a State for emergency purposes but not to undermine completely and irrevocably the responsibility we have to provide suitable excess Government facilities for homeless purposes. I am very pleased and proud the committee was so responsive and so cooperative in that regard.

I also included in the bill an amendment which again was adopted unanimously—I thank my colleagues—that would direct the Secretary of Defense to provide guidelines to the Defense Policy Board. This is an advisory committee consisting of distinguished Americans who provide advice and insight, without compensation, to the Secretary of Defense. It is a very important board but recently it has come under some criticism.

I think in order to dispel that criticism but also to convince and assure the public that access to information and access to key decisionmakers is not being used for profit-making purposes but solely is an exercise in the patriotism of the individual members of the board, I ask that the Secretary of Defense provide guidelines. I hope these guidelines are forthcoming. I think they will be useful. I am pleased they are now included within the bill.

Let me turn to several other topics quickly because I see my colleagues are also in the Chamber to speak.

Within the context of missile defense is an area of the bill that I have some grave reservations. We have decided to pursue missile defense. The President has made the decision, and it is his prerogative to do so, to withdraw from the ABM Treaty. The question before us today is, will we do this in a logical, thorough, systematic way? Will we do it in a way in which we can assure the American public we are proceeding with all deliberate speed but also in a way that we can justify a product that eventually will be useful to national defense? These are the basic issues that come before us today.

The President has announced, however, that he intends to field a national missile defense system by September 2004, despite the fact the Pentagon's Director of Operational Test and Evaluation concluded, in his fiscal year 2002 annual report, that the system "has yet to demonstrate significant operational capability." So the plan, in effect, is to field the system before we even know if it will work.

I think that raises grave questions about the usefulness of such a system and grave questions about the level of funding that is going to support a system if we are not ready to declare it operationally useful yet we are ready to declare it will be deployed.

We also understand after 9/11 there are other ways to attack the homeland of the United States and that it is not just through the use of long-range missiles. We have to, in our debate and our discussions and our decisions, be very careful with resources that could be spent in other ways to protect our country and our homeland, particularly.

One of the other aspects of the system that is proposed for deployment is that the decision has been made to field this system without a radar capable of distinguishing between a warhead and a decoy. The radar is a key aspect of any missile defense system.

Indeed, the Clinton administration was criticized very harshly for their national Missile Defense Program, yet this administration has decided to deploy a system that appears, at least on the surface, to be far less capable than the one proposed by President Clinton, particularly when it comes to the radar architecture.

Another issue, with respect to missile defense, is the decision to significantly reduce the number of tests. Ironically, it seems that one of the by-products of the President's decision to rapidly field a national missile defense is a concomitant reduction in the amount of testing. It seems to me that is sort of doing things exactly the wrong way; that if you are going to accelerate deployment, you would accelerate testing also.

I believe if we are going to have confidence in a system that we field, we have to make the investment in testing now, and not just simply reply upon our faith in technology that has not yet been adequately tested.



Originally, 20 national missile defense tests had been scheduled to occur between mid-2002 and 2007, but after the President's deployment decision, 9 of these 20 tests were canceled without explanation. Furthermore, the scheduled date to complete this new, very minimal test plan is now 2009 instead of 2007. That is 5 years after the advertised deployment of this system in 2004.

We have to recognize this Missile Defense Program is the largest single acquisition program in the Department of Defense, with a budget request of more than \$9 billion in fiscal year 2004 alone.

For perspective, this funding could buy 9 DDG-51-class destroyers, 45 F-22 Raptor fighter aircraft, or more than 2,800 Stryker armored vehicles. So the decisions we make are not without cost, not without opportunity costs.

The investment we make in missiles means, quite literally, we cannot buy new destroyers; today we cannot buy more F-22 Raptor fighter aircraft; we cannot buy more Stryker armored vehicles. So again, I think we have to look very carefully at the deployment, at the testing.

I think we are all committed to the notion of someday putting in place a missile defense system that will effectively defend the United States, but we cannot do it hastily, and we cannot do it simply on a wish that it works. I believe we have to prove it works before we deploy it or simply declare it is deployed.

Over the last several years, we have tried to put some structure, if you will, in the Missile Defense Program. For example, at the beginning of fiscal year 2002, Congress required that the Bush administration establish cost, schedule, testing, and performance goals for missile defense, and we directed the General Accounting Office to review whether progress was being made toward these established goals.

By the end of 2002, the Bush administration had still not established any meaningful goals for missile defense. Consequently, in November 2002, the Director of Acquisition and Sourcing Management at the GAO wrote to the committee to say that since no goals had been established, GAO could not complete its review.

I think, at a minimum, there should be costs, there should be schedules, there should be goals, certainly at a level so the GAO can at least offer a preliminary assessment of whether these goals are being achieved or what effort must be expended to achieve these goals. That is something that has not been done.

I support prudent research and development and testing on national missile defense, but I think ultimately we all want to assure the American people that when we put something in the field, it will work, and that we know precisely what it will do when it is in the field. I don't think that is too much to ask the administration.

Finally, let me cover a topic that will receive a great deal of attention

over the next couple days. That is the issue of nuclear policy. I have grave concerns over some of the provisions in the bill. Under the guise of maintaining flexibility and keeping all options open, this bill approves and encourages the administration to continue its push to develop, test, deploy, and possibly use nuclear weapons. I heard my colleague Senator LEVIN earlier today referencing the quote by former Ambassador Brooks, the head of NSSA, who said his bias is to something that can be used. For many decades, our bias was against even thinking about the use of nuclear weapons if we could avoid it.

One of the consequences of the proposal for a low-yield nuclear weapon, for a robust nuclear earth penetrator is, if not a fact, an observation that as you make weapons such that their collateral damage is minimal, there is a tendency to use them. We have to ask ourselves in our recent conflict in Baghdad, would we have dropped dumb bombs in the middle of crowded neighborhoods in an attempt to attack the leadership of Iraq? It would have been a much harder call. But because we had precision weapons with low collateral damage, as a result the call was much easier—a tough call, nevertheless, but easier.

I fear that as we move down this path for low-yield nuclear weapons, more usable nuclear weapons, the threshold, the inhibition against use will come down also. This is just not another tool in our tool kit. Nuclear weapons have been, since Hiroshima and Nagasaki, a weapon every nation has tried to avoid using in combat. I hope we can continue that effort, but I fear the language, the momentum, the incentives that have created these exceptions in the bill are driving us down the wrong path.

We should respond by amending the legislation to reflect the continuing desire to put nuclear weapons outside of use, to delegitimize their use in conflict. We will have opportunity over the next several days to debate in much more detail the issue of nuclear weapons, the issue of missile defense.

I believe this legislation overall is sound. If we could make successful amendments to some of the provisions with respect to missile defense and particularly the provisions with respect to nuclear weapons, we can send to conference a bill of which we will all be very proud. I hope in the next few days we can do that.

I thank the chairman and ranking member for their thoughtful approach and for their continued efforts over the next few days.

I yield the floor.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I thank the very valued member of the committee, a graduate of West Point, served on active duty. I am not sure I would want to be in that company you commanded; pretty rough character. You are too modest.

You referenced the \$500 million added to this bill for S&T, and it sort of came out of the subcommittee. You and Senator ROBERTS deserve a lot of credit for that. That is money well invested.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. LEVIN. I wonder if I could ask the Senator to yield for 30 seconds so I could add my thanks to the Senator from Rhode Island for his indispensable contribution to the Armed Services Committee. He mentioned a few issues where he had some very strong feelings. These issues are just a few of the many where he has made an extraordinary contribution by experience and by intellect. He is really in a position to add immeasurably to the work of our committee. We are all very much in his debt for it.

Mr. NELSON of Nebraska. Mr. President, I rise today to express my support for the Department of Defense Authorization Act for fiscal year 2004. I particularly thank Chairman WARNER and ranking member Senator LEVIN for the extraordinary job they do each and every day to ensure our national security priorities are adequately addressed. I also thank them both for continuing to work in a bipartisan way to ensure that decisions are made in the best interests of the country.

As the new ranking member for the Personnel Subcommittee, I have enjoyed working with the subcommittee chairman, Senator CHAMBLISS. I hope the President will take note of the complimentary remarks I am going to make about the chairman. I congratulate him for the outstanding leadership of this subcommittee. Together we have kept our focus on doing what we can to improve the quality of life of our service members, Active and Reserve, their families, our retirees, and civilian employees. I particularly appreciate his personal attention and cooperation with me.

I am particularly pleased about several provisions in the subcommittee mark that reflect our appreciation for the sacrifices of our service members and our desire to see they are adequately compensated when placed in harm's way. These include a minimum pay raise of 3.7 percent especially for the junior service members who have received less under the administration's proposal; a change in the high PERSTEMPO allowance that will actually put money in the pockets of our service members who deploy frequently; increases in imminent danger pay, family separation allowances and, as Senator COLLINS mentioned, the death gratuity; and authorization for full replacement coverage for lost or damaged household goods.

Our mark also includes provisions that address concerns and needs of our Reserve and National Guard service members who are serving so successfully. These include extending survivor benefit plan annuities to surviving spouses of reservists who died from an injury or illness incurred in the line of

duty during inactive duty training; a requirement for specially trained beneficiary counseling and assistance coordinators to help our National Guard and Reserve members and their families navigate the complex TRICARE health system; medical and dental screening and care for Reserve component members as soon as they are alerted for deployment; and a requirement for the Secretary of Defense to report on the mobilization of the reserves that will give us the data we need to make needed changes in the force mix and use of our Guard and Reserve personnel.

I am also pleased the committee responded to legislation I introduced to provide a special pay incentive for Reservists, National Guard, and Active Duty service members who deploy for long durations. This incentive will help alleviate some of the hardships suffered by military families when their loved ones are called up for lengthy or numerous deployments. With the Armed Forces depending on military reserves for such a large percentage of troops, more and more sailors, soldiers, air personnel, and marines are facing long call-ups that keep them away from their regular employment. These call-ups produce a severe financial hardship for the troops as their normal employment lives and income are disrupted, often for months, and in some cases for up to 2 years.

Finally, I fully endorse the supplemental impact aid contained in our mark. We simply have to ensure the schools that educate our sons and daughters of military personnel have adequate funding to provide for a quality education. Our service members will leave, and we will be unable to recruit if we don't provide this for their families.

I greatly appreciate the bipartisan manner in which the chairman, Senator CHAMBLISS, has chaired the Personnel Subcommittee, and I believe we have worked as a team and with a common goal of improving the lives of our soldiers, sailors, airmen, marines, DOD civilians, retirees, and the families of all these groups. I thank him for his excellent leadership, and also thank his staff, Dick Walsh and Mrs. Lewis, and Mr. Gary Leeling from the Democratic staff.

I again thank Chairman WARNER and Senator LEVIN for their leadership.

I yield the floor.

Mr. WARNER. Mr. President, I thank the Senator for his work on the committee. We value very much his contributions. He is very fair and open-minded in the manner in which he makes decisions.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Mr. LEVIN. Mr. President, it is very appropriate that our Presiding Officer is the chairman of the Personnel Subcommittee. He and Senator BEN NELSON have worked closely together to give us a product of which we can be proud. We are very indebted to the two of you.

With that, I yield the floor.

The PRESIDING OFFICER. The Senator from South Carolina.

AMENDMENT NO. 696 TO AMENDMENT NO. 689

Mr. GRAHAM. Mr. President, I have an amendment to the pending amendment, and I send it to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from South Carolina [Mr. GRAHAM] proposes an amendment numbered 696 to amendment No. 689.

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

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

The amendment is as follows:

On page 157, line 8:

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

"(f)(1) At any time after the Secretary concerned notifies the commander of a unit of the Selected Reserve of the Ready Reserve that all members of the unit are to be called or ordered to active duty under a provision of law referred to in section 101(a)(13)(B) in support of an operation mission or contingency operation during a natural emergency or in time of war. This shall become effective one day after enactment of the bill.

On page 157, line 19 in lieu of the matter to be inserted insert the following:

"(2) A member provided medical or dental screening or care under paragraph (1) may not be charged for the screening or care. This section shall become effective two days after enactment.

**SEC. —. EXPANDED ELIGIBILITY OF READY RESERVISTS FOR TRICARE.**

(a) ELIGIBILITY.—Chapter 55 of title 10, United States Code, is amended by inserting after section 1097b the following new section:

**"§ 1097c. TRICARE program: Reserves not on active duty**

"(a) ELIGIBILITY.—A member of the Selected Reserve of the Ready Reserve of the armed forces not otherwise eligible for enrollment in the TRICARE program under this chapter for the same benefits as a member of the armed forces eligible under section 1074(a) of this title may enroll for self or for self and family for the same benefits under this section.

"(b) PREMIUMS.—(1) An enlisted member of the armed forces enrolled in the TRICARE program under this section shall pay an annual premium of \$330 for self only coverage and \$560 for self and family coverage for which enrolled under this section.

"(2) An officer of the armed forces enrolled in the TRICARE program under this section shall pay an annual premium of \$380 for self only coverage and \$610 for self and family coverage for which enrolled under this section."

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 1097b the following new item:

"1097c. Section 101 head."

Mr. GRAHAM. Mr. President, I ask unanimous consent that Senator ZELL MILLER be added as a cosponsor to my amendment.

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

Mr. GRAHAM of South Carolina. Mr. President, I compliment Senator

DASCHLE and the folks he worked with to try to come up with the solution to the retention problem we are going to have. It is inevitable because these forces are being utilized at such rates.

Senator DASCHLE put forward an amendment that would basically allow Guard and Reserve personnel the benefit of health care as a condition of membership. I congratulate him for doing that. I have an amendment that has a little bit different approach to it. We have similar cosponsors. The reason I am doing this is to get my amendment out so we can have two looks at the same problem and see if we can address the concerns that are growing in the country regarding the utilization rates of Guard and Reserve personnel.

The comment the chairman had about Senator DASCHLE's amendment he will have about this amendment. We need to look at it. There is no money in the budget resolution for it. But I think what we are trying to do, in a bipartisan fashion, is put on the table for the country to digest, as well as the Senate, House, and Department of Defense, what it is going to be like 10 or 20 years from now if we keep using Guard and Reserve members at the level we are doing it now.

The honest answer is, if you are in the Guard and Reserve, you are going to be called on more and not less because the war on terrorism will go on for a while. It is not anywhere near over. Iraq has a component to it for the Guard and Reserve. People are in Bosnia, and that is a Guard function. This amendment, along with what Senator DASCHLE is trying to do, puts some new programs on the table to make it more attractive to enlist in the Reserve or Guard and to stay.

Senator WARNER's concerns are very legitimate. The force has changed. The utilization rates of Guard and Reserve forces have changed. In the last gulf war, I was serving at MacIntire National Guard base as a staff judge advocate for the base. During that service, it was eye opening for me. When a Guard member is called to active duty, as our units were, half of the people went over to the desert; the other half stayed behind. I stayed behind to provide legal services to the members and their families.

When you are called to active duty, more times than not the pay you receive versus that as a civilian goes down. There are provisions under the Soldiers and Sailors Civil Relief Act to allow renegotiation of interest payments, and to do some short-term things to make the burden of being called to active duty for a Guard or Reserve family a bit easier to bear. But more times than not, there is a dramatic reduction in income for the Guard and Reserve member called to active duty. Sometimes these tours can last a year or more.

What we are trying to do is create a benefit package that is not better than the Active Forces and that complements the Guard and Reserve forces

and provides an incentive that will make it more attractive to stay. If you are a small business owner, as a Guard or Reserve member, sometimes your business suffers greatly. As a lawyer, I was called to active duty for about 100 days, so my partners had to take over my obligations. If I had been a sole practitioner, it would have been tough. But that is what you sign up for—to help your country.

We are suggesting to create a benefit package more like that of the Active Forces, and one that is more user friendly. When a Guard or Reserve member is called to active duty, family counseling is not usually available at those bases. Some are at civilian airports. Military families have counseling available. They have many assets available on Air Force and Army bases that provide support for the families. Literally, the Guard and Reserve families have to make it up as they go.

Our Presiding Officer is a cosponsor of the bill. He has been a great advocate of the Guard and Reserve and Active Forces.

We have to understand this is one big family. The Guard and Reserve component serves in a unique way, but it is vital to the overall mission. What we are trying to do—Senator DASCHLE and myself and others, in a bipartisan fashion—is address the health care problem. Here is what happens. If you are called to active duty and you are in the civilian community, you have one set of doctors and health care network available to you. When you are activated, you have to change systems. So we are trying to create continuity of health care.

My main goal is to allow a Guard or Reserve member to access health care in a fashion that makes health care better for the overall military family unit. This is the difference between our approach and Senator DASCHLE's. His bill has two ways that a Guard or Reserve family can have access to health care. One is that they can sign up for TRICARE at the same participation rate as Federal employees, and that would be \$420 for a single individual, \$1,446 for a Guard or Reserve family.

Our bill allows you to be a member of TRICARE as an active-duty military family, and your premiums would be \$330 for a single enlisted person, \$560 for enlisted families, \$380 for a single officer, \$610 for an officer's family. Basically, we have taken what a military retiree would pay in premiums to be a member of TRICARE and added \$100 in additional costs for an enlisted person, \$150 for an officer. That is still a great deal. It lowers the cost. It is cheaper to the military families in Senator DASCHLE's approach.

The big difference between our amendments is that, under Senator DASCHLE's amendment, the Federal Government—the military could pay a subsidy to the private sector health insurance company covering the military person, the Guard or Reserve person.

My concern with that is the study that we have seen suggests it may be

that up to 90 percent Guard or Reserve people will choose an option where the Government subsidizes health care in the private sector. My goal is to get more people into TRICARE to make it better for the overall military family, and at affordable rates.

It is a distinction that matters somewhat. But the point of both of these amendments is to provide health care to Guard and Reserve families that has a continuity component and that is affordable. We need to address this as a nation because you have given some numbers on the other side about how many Guard or Reserve families don't have health care or adequate health care. Both bills take us in that direction. The key difference is, under my proposal, it would work in a bipartisan fashion with Senator CLINTON and others. A Guard or Reserve family, or military person, would be in the TRICARE system like their active-duty component, giving a boost to TRICARE overall.

I wanted to bring this amendment to the floor. I congratulate Senator DASCHLE and all the Republicans and Democrats, including both of my colleagues from Georgia, Senators MILLER and CHAMBLISS. Senator CLINTON appeared at a news conference when we unveiled the bill. Let me tell you, she has been terrific to work with. We are probably polar opposites in terms of political ideology most times, but to have her join this cause and help push this bill is a testament to the power of this bill and of this issue.

With that said, I offer the amendment. I hope our colleagues will look at what both amendments do. I hope colleagues will look seriously at this body trying to provide, as soon as possible in the future, in a responsible way, health care to the entire military family unit.

That unit does include in a substantial way Guard and Reserve members, and they are part of the military family. We cannot do a mission without the Guard and Reserve. We do not want to have a better benefits package. We want to have an attractive benefits package that will be good for retention and recruitment. That is the spirit in which this amendment is offered.

The chairman's concerns are legitimate. This has been scored at \$1.4 billion a year. Senator DASCHLE's amendment is \$1.2 billion a year, but they are not taking into account that under their proposal, many people would not go into TRICARE but ask for payments for their health care in the private sector.

I appreciate the opportunity to discuss this issue.

Mr. WARNER. Will the Senator yield?

Mr. GRAHAM of South Carolina. Absolutely.

Mr. WARNER. I feel obligated to be consistent, even though there is a very clear difference between Senator GRAHAM's amendment and that of the distinguished Democratic leader. There is no offset; is that my understanding?

Mr. GRAHAM of South Carolina. That is correct. It is not paid for.

Mr. WARNER. The Senator clearly has indicated the first year may be \$400 million to \$500 million.

Mr. GRAHAM of South Carolina. Yes, \$400 million.

Mr. WARNER. Mr. President, in the event this is carried by the Senate, goes to conference and survives, conferees will have to search within the confines of the bill to raise that money. My understanding is it is about \$2 billion in the outyears per year; is that correct?

Mr. GRAHAM of South Carolina. I think it is \$1.4 billion, and Senator DASCHLE's amendment is \$1.2 billion, but the points are well made.

Mr. WARNER. At this time, I have to indicate my opposition. Regrettably, I do that, but I wish to be consistent and fair to all Senators. I am fearful if we do not carefully evaluate the whole panoply of amendments that are likely to come forward to improve the benefits for the Guard and Reserve, we are going to end up with a bill that might go tilt.

I must say, though, I certainly share the Senator's views that the Guard and Reserve have done wonderful service, together with their families. It is exceedingly hard for these families to let their loved ones go on these missions. We shall look at it on the morrow. I thank the Senator for his courtesies.

(Mr. ENSIGN assumed the chair.)

Mr. LEVIN. I wonder if the Senator will yield—we are trying to figure out the numbers on this—just for a question?

Mr. GRAHAM of South Carolina. Yes.

Mr. LEVIN. Perhaps we can get the numbers clarified overnight. Senator DASCHLE's estimate, after the first few years, where, I guess, there is a phase-in of some kind, is \$1.2 billion, as the Senator from South Carolina indicated. I am trying to understand why that number might be lower than the number of the Senator from South Carolina, given the fact that under Senator DASCHLE's approach, the service members could keep their private insurance and then have it reimbursed by the Defense Department, which would seem to be a better deal for the service member. The service member has an option to maintain his private insurance but, on the other hand, might have a larger cost to the Government. I wonder if the numbers of the two amendments come from the same place and looking at the same time.

Mr. GRAHAM of South Carolina. That is a very good question. Here is my understanding of how those numbers relate to each other.

The cost to the Government under Senator DASCHLE's package is \$1.2 billion per year. The package I am offering is \$1.4 billion. So it is more costly to the Government with the way it is constructed at this point. To the military member, it is several hundred dollars a month and more advantageous with our proposal.

Senator DASCHLE's proposal takes a 78-percent participation rate that all of us pay in the Federal health care program. What I do is take the retiree contribution to TRICARE and add \$100 for enlisted and \$150 for officers.

Here is the big difference: By having the second option where the Federal Government will pay an unknown amount of the premium that a Reserve or Guard member has in the private sector and is not identified how much we will pay, that changes the participation rates dramatically.

We have been told, under our proposal, it is a 70-percent participation rate. Under Senator DASCHLE's proposal, it is 50 percent. When you include the component of where we would pay to subsidize the private health care, it could go up to 90 percent in terms of that component, and nobody knows what that cost is.

Mr. LEVIN. Is the Senator indicating the cost of maintaining the private care option is not included in the estimates that Senator DASCHLE received?

Mr. GRAHAM of South Carolina. The participation rates are at 80,000. They are basing the current numbers on the 2002, 80,000 reservists mobilized. They are telling us that is not a true number; that, in reality, if this second option were offered, they would go from 80,000 to almost 350,000, and that has to be included.

Mr. LEVIN. So the Senator is suggesting—it is important to get these numbers straightened out overnight—that the cost to the Government of the second option that Senator DASCHLE offers, which is to maintain private insurance, that cost is not included in the estimate which was given to Senator DASCHLE?

Mr. GRAHAM of South Carolina. It is not included in the true form. It has as a cost estimate using 80,000 reservists when, in fact, they tell us the participation rates will be three times higher than that.

Mr. LEVIN. In which case the estimate would not be accurate.

Mr. GRAHAM of South Carolina. That is correct.

Mr. LEVIN. We are going to ask our staffs to take a look at this issue overnight. There is a real difference.

Mr. GRAHAM of South Carolina. I understand.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. CHAMBLISS. Mr. President, I rise in strong support of S. 1050, the National Defense Authorization Act for fiscal year 2004. Before talking about this bill, I wish to comment on what my colleague from South Carolina just talked about with respect to his amendment on health care.

I commend both he and Senator DASCHLE for their leadership on this particular issue. We are in some very difficult times in America from a military perspective. We are calling on our Guard and Reserve more and more every single day. We want to do more to provide the benefits to attract high-

quality men and women into the Guard and Reserve and retain them once we get them there.

We are getting our fair share of America's finest into the Guard and Reserve, and anything we can do from a benefits standpoint to make sure we continue to do that and to keep them there are issues we certainly need to look at.

I personally like the concept of Senator GRAHAM a little better than Senator DASCHLE's, although I am not in any way critical of Senator DASCHLE's amendment. What I like about Senator GRAHAM's amendment is that we have a health care benefit within the active military that is called TRICARE. TRICARE is a fairly new health program which provides health care benefits to our active-duty personnel.

We have had some problems with TRICARE in getting it implemented, but we have gotten most of those kinks in TRICARE worked out. What Senator GRAHAM's amendment will do versus Senator DASCHLE's amendment is to strengthen TRICARE, and I think anything we can do to strengthen TRICARE and have it benefit the active duty, as well as the Guard and Reserve, is an approach we ought to use.

I commend both Senators. Senator GRAHAM has particularly taken a leadership role with regard to this issue. I certainly have enjoyed working with him on it.

As chairman of the Subcommittee on Personnel within the Armed Services Committee, it has been a distinct honor and privilege for this freshman Senator to work with Senator WARNER and Senator LEVIN. They are two men during my 8 years in the House of Representatives for whom I came to have great respect and great admiration, not just for their leadership on armed services issues, but on other matters as well, and to have the opportunity to work with them in the very close way I have had the chance to do over the last several months since becoming a member of the Armed Services Committee has been a distinct pleasure for me. They have certainly worked well together and worked in a bipartisan way within the committee to make sure we did produce a bipartisan bill.

America's defense is not a political issue. It is not a Republican issue or a Democratic issue. It is an American issue. These two gentlemen have provided the type of leadership America so desperately likes to see when it comes to any issue, but particularly with respect to defense issues.

I commend my ranking member, Senator BEN NELSON of Nebraska. First of all, Senator NELSON is a very gracious and grand American gentleman. The Senator from Nebraska has a number of military installations he represents, and to have the chance to visit with him on issues that are unique to Nebraska versus issues that are unique to Georgia has really been a delight for me.

What I have enjoyed doing most of all in working with Senator NELSON is

talking about issues that are of concern to our men and women in the military with respect to quality of life, educating their children, paying them greater benefits, whether it is pay raises or health care benefits or whatever. There is no greater champion for the men and women in our military uniforms than Senator BEN NELSON. I have truly enjoyed working with him and am very pleased we were able to craft a section of the Defense Authorization Act for 2004 together, and to do so in a very bipartisan way.

The committee recommended authorization of \$99.2 billion for military personnel, an increase of \$4.8 billion over the fiscal year 2003 authorization. It also approved several key provisions I will outline that fulfill our committee's express goal of continuing our commitment to improving the quality of life for the men and women of the Armed Forces—active duty, Reserve, Guard, and Retired—and their families.

S. 1050 authorizes an across-the-board pay raise of 3.7 percent for all military personnel. Additionally, targeted pay raises ranging from 5.25 percent to 6.25 percent are authorized for warrant officers and the Service's most experienced noncommissioned officers. These pay raises, along with existing incentive pays and bonuses, will continue to make careers in the military more attractive and send the message to all active and Reserve component personnel that their service in uniform is invaluable.

Following up on the initiative taken by the Senate in the Emergency Wartime Supplemental Appropriations Act for fiscal year 2003, the committee recommended permanent increases in the family separation allowance, from \$100 to \$250 a month, and in hostile fire, imminent danger pay from \$150 a month to \$250 a month. The subcommittee also supported legislative changes to high deployment pay proposed by DoD that will require close tracking of individual deployments and appropriately compensate those members who are repeatedly called away from their home bases for extended periods of time. These increases recognize the sacrifices made by military personnel and their loved ones who endure separations and the harsh realities of defending the Nation in the global war on terrorism.

The committee approved an incentive pay of \$100 a month for military personnel stationed in Korea. Arduous working conditions, substandard housing, and tours of duty unaccompanied by family members are hallmarks of duty in Korea. As the Nation marks the fourth and final year of the United States' 50th Anniversary of the Korean War Commemoration, and as the need for continuing vigilance on the Korean Peninsula becomes ever clear, thus additional compensation for service members in Korea is fully justified.

The subcommittee members were very concerned about the welfare of

survivors of all deceased military personnel—active duty, Reserve, and Retired. The committee accepted our recommendations to double the death gratuity from \$6,000 to \$12,000 retroactive to 9/11, 2001, and to extend automatic survivor benefit plan benefits to survivors of inactive duty Reservists who die while serving on active duty.

The committee responded to requests from the Department of Defense for assistance in force shaping by authorizing a new incentive pay for military personnel in overmanned ratings to encourage them to accept the challenge of converting to ratings and military occupational specialties that are experiencing shortages.

The committee responded to concerns about the operation of TRICARE standard, directing the Secretary of Defense to take necessary measures to ensure the adequacy of this TRICARE option.

The committee approved a proposal that will authorize unlimited use of military commissaries by qualifying members of the Ready Reserve. The "citizen soldiers" of the Guard and Reserve, who have so ably answered the Nation's call, before and after the attack of September 2001, deserve full access to this important benefit of service.

The committee authorized additional Army National Guard and Air National Guard full-time support personnel to assist in fielding 12 additional weapons of mass destruction civil support teams. Upon implementation, this will raise the total number of teams nationwide to 44.

The committee included a provision that will facilitate medical and dental screening and medical care for members of the Selected Reserve who are assigned to units that have been alerted for mobilization. The committee also included a provision that will ensure that Guard and Reserve leaders are eligible for command responsibility pay.

These are only a few highlights of S. 1050 which, I believe, indicate our sincere commitment to our troops and their families. As chairman of the Subcommittee on Personnel, I am proud to be a part of ensuring that we meet that commitment.

I will take a minute to commend our staff. As many hours as we put in—it is now 7:15 tonight and we will be going later than that—staff put in many more hours than we did. To my committee staffers, Dick Walsh and Patty Lewis, we say thank you for a great job and for all of your hard work and dedication to the men and women in uniform, and to Gary Leeling, who is the Democratic staffer who has worked so closely with Dick and Patty.

This has been a joint effort on the part of all three of these staffers. The same way Senator NELSON and I have worked in a bipartisan way, these folks have worked in a bipartisan way.

Gary, we say thanks to you for a terrific job on behalf of all of our men and women.

Again, I thank Senator NELSON for his outstanding work and his cooperation. It has been a pleasure to work with him. We cannot say enough about the great leadership Senator WARNER and Senator LEVIN, and their service to our country, particularly their service to the men and women who serve in uniform in every branch of our military. They are doing a terrific job of making sure the American military is second to no other military in the world.

I yield the floor.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, before our distinguished colleague departs the floor, I appreciate his thoughtful comments, but I guarantee him—Senator LEVIN and I have been doing this now for 25 years, but we are no stronger than the members we have on the committee. When the Senator from Georgia joined us, our strength increased. I intend to get that work product out of him 100 percent. I thank him for joining us, and for all he does on this committee and for the men and women in the Armed Forces.

Mr. CHAMBLISS. I thank the Senator.

Mr. WARNER. Mr. President, I thank the Members of the Senate who participated in the progress today. We have had good colloquies and strong statements. We have two pending amendments. I hope the respective leaders tomorrow can establish a time for voting on those amendments. Senator LEVIN and myself are going to be right here from roughly 10 a.m. on. I am hopeful that other amendments can be brought forward. We are anxious—and it is a bipartisan desire—to move this bill at its earliest time because we have important legislative measures that must be addressed this week prior to the recess that is scheduled.

One more of great significance is action on the debt limit. I am quite sure we are not going to leave town until that is in place.

AMENDMENT NO. 697

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. I send an amendment to the desk and I ask unanimous consent the pending amendment be set aside.

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

The clerk will report.

The legislative clerk read as follows:

The Senator from Nevada [Mr. REID], for himself, Mr. DORGAN, and Mr. NELSON of Florida, proposes an amendment numbered 697.

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

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

The amendment is as follows:

(Purpose: To permit retired members of the Armed Forces who have a service-connected disability to receive both military retired pay by reason of their years of military service and disability compensation from the Department of Veterans Affairs for their disability)

At the end of subtitle D of title VI, add the following:

**SEC. 644. FULL PAYMENT OF BOTH RETIRED PAY AND COMPENSATION TO DISABLED MILITARY RETIREES.**

(a) RESTORATION OF FULL RETIRED PAY BENEFITS.—Section 1414 of title 10, United States Code, is amended to read as follows:

**"§ 1414. Members eligible for retired pay who have service-connected disabilities: payment of retired pay and veterans' disability compensation**

**"(a) PAYMENT OF BOTH RETIRED PAY AND COMPENSATION.—**Except as provided in subsection (b), a member or former member of the uniformed services who is entitled to retired pay (other than as specified in subsection (c)) and who is also entitled to veterans' disability compensation is entitled to be paid both without regard to sections 5304 and 5305 of title 38.

**"(b) SPECIAL RULE FOR CHAPTER 61 CAREER RETIREES.—**The retired pay of a member retired under chapter 61 of this title with 20 years or more of service otherwise creditable under section 1405 of this title at the time of the member's retirement is subject to reduction under sections 5304 and 5305 of title 38, but only to the extent that the amount of the member's retired pay under chapter 61 of this title exceeds the amount of retired pay to which the member would have been entitled under any other provision of law based upon the member's service in the uniformed services if the member had not been retired under chapter 61 of this title.

**"(c) EXCEPTION.—**Subsection (a) does not apply to a member retired under chapter 61 of this title with less than 20 years of service otherwise creditable under section 1405 of this title at the time of the member's retirement.

**"(d) DEFINITIONS.—**In this section:

**"(1)** The term 'retired pay' includes retainer pay, emergency officers' retirement pay, and naval pension.

**"(2)** The term 'veterans' disability compensation' has the meaning given the term 'compensation' in section 101(13) of title 38."

**(b) REPEAL OF SPECIAL COMPENSATION PROGRAMS.—**Sections 1413 and 1413a of such title are repealed.

**(c) CLERICAL AMENDMENT.—**The table of sections at the beginning of such chapter is amended by striking the items relating to sections 1413, 1413a, and 1414 and inserting the following:

**"1414. Members eligible for retired pay who have service-connected disabilities: payment of retired pay and veterans' disability compensation."**

**(d) EFFECTIVE DATE.—**The amendments made by this section shall take effect on—

(1) the first day of the first month that begins after the date of the enactment of this Act; or

(2) the first day of the fiscal year that begins in the calendar year in which this Act is enacted, if later than the date specified in paragraph (1).

**(e) PROHIBITION ON RETROACTIVE BENEFITS.—**No benefits may be paid to any person by reason of section 1414 of title 10, United States Code, as amended by subsection (a), for any period before the effective date applicable under subsection (d).

Mr. REID. This is an amendment we have offered on a number of occasions.

We worked well with the two managers of the bill. This deals with concurrent receipts. This amendment is offered on my behalf and that of Senator DORGAN. I understand, with the strict rules we are working under this year, that this amendment may not be relevant according to the rule now before the Senate.

I ask the Chair to rule on whether or not this amendment is relevant.

The PRESIDING OFFICER. In the opinion of the Chair, the amendment is not relevant.

Mr. REID. I accept the ruling of the Chair. I am disappointed. This is a very important issue. As I say, Senator DORGAN and I feel very strongly about this, and the two managers of the bill have been most generous in their work in conference. In the past, we have gotten nothing in the House; everything we have done has been in the Senate.

I will look for another vehicle to move this forward in the future.

Mr. WARNER. I thank the distinguished leader. For many years now the Senator has taken strong leadership on this issue. At some point in time, the Senate and Congress as a whole will have to face this issue. I recognize that this is not a relevant amendment pursuant to the consent agreement and we cannot proceed.

Mr. LEVIN. Mr. President, let me add my thanks to the Senator from Nevada for two things: First, for his faithful commitment to this issue. Currently, we see it as an issue of the Senator from Nevada and the Senator from North Dakota and a number of other Senators who have joined to try to bring equity in this area. We made at least some progress; it is because of their energy we have made the progress we have.

Second, I thank him for his acceptance of the ruling of the Chair. It is very important he does that because all Members need to accept the rulings of the Chair in the absence, it seems to me, of some overwhelming unusual precedent that would allow us to try to overrule the Chair. The whip's, the Democratic whip's approach is one which I think reflects the best traditions and the best instincts of this body. I thank him.

It also helped Senator WARNER and I to complete this bill within the parameters of the unanimous consent agreement.

Mr. REID. I ask my amendment be withdrawn.

The PRESIDING OFFICER. The amendment is withdrawn.

The amendment (No. 697) was withdrawn.

#### MORNING BUSINESS

Mr. WARNER. Mr. President, I ask unanimous consent that the Senate now proceed to a period of morning business.

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

#### CONTROLLING FEDERAL SPENDING

Mr. NICKLES. Mr. President, the FY2004 budget resolution adopted last month includes a provision to uncover waste, fraud and abuse in Federal Government spending. Today marks the beginning of a transparent and deliberative process that will be undertaken by Committees in the House and Senate to control Federal spending.

Specifically, the budget resolution requires the Chairman of the Committee on the Budget in both the House and Senate to place in the CONGRESSIONAL RECORD specified levels of savings for each authorizing committee. Chairman NUSSLE and I have developed a joint set of targets that requests each authorizing committee to report back with recommended savings proposals amounting to 1 percent of the committee's total mandatory spending. I will work with Senate committees to ensure that the savings target meaningfully represents the opportunities to find improvements in the programs under each committee's jurisdiction.

Pursuant to section 301(b) of H. Con. Res. 95, I submit the following specified levels of savings for Senate Committees. Given these savings targets, the budget resolution further requires committees to submit, by September 2, 2003, to the Budget Committee their findings that identify changes in law within their jurisdiction that would produce the specified savings. The reports submitted by committees will guide us in the preparation of future budget resolutions and will help us all improve program oversight.

It is my hope that the committees will enthusiastically join Chairman NUSSLE and me in this effort to root out waste, fraud and abuse. As trustees of taxpayer dollars, Members of Congress must insist that limited resources not be squandered. Federal spending has been growing at unsustainable levels. Congress cannot become lax in its duty to perform the necessary oversight on Federal spending.

Often we find that Federal programs—ignored over time—become susceptible to waste, fraud or abuse. For example, according to a General Accounting Office report released in January of this year, Medicaid has been added for the first time to the GAO's high-risk list, "owing to the program's size, growth, diversity, and fiscal management weaknesses."

Limited oversight has afforded States and health care providers the opportunity to increase Federal funding inappropriately. States are able to take advantage of funding schemes which supplant State Medicaid dollars with Federal Medicaid dollars by overpaying State-owned facilities and requiring the local government to transfer the excess back to the State. These dollars are then siphoned away from Medicaid patients and often are used for other purposes. Without proper oversight this and other program abuses can persist for years.

Other recent examples of abuse include a finding by the Inspector General of the Department of Education that nearly 23 percent of student loan recipients whose loans were discharged due to disability claims were gainfully employed. Additionally, the Office of Management and Budget has estimated that more than \$8 billion in erroneous earned income tax payments are made each year. These situations are unacceptable. The work that the Senate and House will undertake will result in reforms in these and other instances of misspent Federal resources.

Chairman NUSSLE and I have put in place a project specifically designed to draw upon the knowledge and experience of Senate experts in these programs. The savings resulting from this effort will not be arbitrary; they will be developed through sound and thoughtful considerations by those who know the programs best. I look forward to working with all the committee chairmen who will be reporting their findings and am committed to making this a success.

I ask unanimous consent that the above-mentioned spending levels be printed in the RECORD.

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

#### SAVINGS FROM 1 PERCENTAGE POINT REDUCTION IN MANDATORY SPENDING BY AUTHORIZING COMMITTEE [By fiscal year in billions of dollars]

Senate:		2004	2004-08	2004-13
Agriculture, Nutrition and Forestry .....	BA	-0.603	-3.162	-6.568
	OT	-0.563	-2.982	-6.251
Armed Services .....	BA	-0.778	-4.201	-9.178
	OT	-0.777	-4.195	-9.165
Banking, Housing, and Urban Affairs .....	BA	-0.139	-0.719	-1.436
	OT	-0.017	-0.058	-0.092
Commerce, Science, and Transportation .....	BA	-0.117	-0.601	-1.244
	OT	-0.074	-0.382	-0.807
Energy and Natural Resources .....	BA	-0.027	-0.118	-0.218
	OT	-0.024	-0.108	-0.201
Environment and Public Works .....	BA	-0.264	-1.493	-3.018
	OT	-0.023	-0.106	-0.195
Finance .....	BA	-7.340	-41.323	-98.601
	OT	-7.379	-41.407	-98.735
Foreign Relations .....	BA	-0.100	-0.599	-1.289
	OT	-0.119	-0.563	-1.181
Governmental Affairs ....	BA	-0.831	-4.518	-10.042
	OT	-0.816	-4.446	-9.904
Health, Education, Labor and Pensions .....	BA	-0.080	-0.471	-1.016
	OT	-0.072	-0.433	-0.944
Judiciary .....	BA	-0.085	-0.324	-0.621
	OT	-0.079	-0.326	-0.618
Veterans' Affairs .....	BA	-0.342	-1.833	-3.864
	OT	-0.341	-1.827	-3.852
Total .....	BA	-10.706	-59.362	-137.095
	OT	-10.284	-56.833	-131.945

Note.—Section 301(d) of H. Con. Res. 95 does not include Senate Select Committee on Intelligence, the Committee on Rules and Administration, the Committee on Indian Affairs, and the Committee on Small Business.

#### UNFAIR RESTRICTIONS ON LEGAL SERVICES CORPORATION

Mr. KENNEDY. Mr. President, many of us are increasingly concerned about the unfair restrictions on non-profit legal services providers under current Federal law who receive both Federal funds and private funds.

In 1996, Congress severely weakened the ability of many legal service providers to represent needy clients.

Under the restrictions enacted that year, organizations that receive funds from the Legal Services Corporation are no longer permitted to use private funds to represent certain categories of low-income clients. The only way these providers now offer assistance to these clients is to set up a separate office that receives no Federal funds. To do so has turned out to be prohibitive for many for many grantees of the corporation.

The restrictions impose high costs on legal services providers and unwarranted governmental interference with their other charitable initiatives, and they undermine the promise of equal justice for their clients.

Often, the results of these restrictions have been devastating. Many faith-based organizations that represent the poor have decided not to accept funds from the corporation, so that they can continue to help low-income clients to meet their basic legal needs. In fact, the administration is now in court defending the law, even though it burdens the use of private philanthropy by grantees of the corporation. If the administration prevails in court, it will have created a legal precedent that jeopardizes the President's faith-based initiatives.

The corporation's grantees should be treated in the same way that all other non-profit organizations, both secular and faith-based, are treated. They should be allowed to use their private funds to alleviate the critical need for legal services. The restrictions are an unjust barrier for the Nation's neediest individuals and families who need our help the most. I urge my colleagues to remove these restrictions and to reopen the doors of justice for those who are unable to afford the legal representation they deserve in protecting their basic rights.

I ask unanimous consent that an article from the *Chronicle of Philanthropy* earlier this year and an article from the *Legal Times* last fall on this issue be printed in the *RECORD*.

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

[From the *Chronicle of Philanthropy* Feb. 20, 2003]

WHITE HOUSE TAKES OPPOSING VIEWS ON CHARITIES

(By Laura K. Abel)

President Bush's Budget for fiscal 2004, submitted to Congress this month, contains millions in federal dollars to help religious groups. That follows his executive order in December in which he commanded sweeping changes he said would "remove barriers that prevent faith-based and grass-roots groups from doing more to help Americans in need."

The executive order put in place many of the ideas Mr. Bush has been pressing Congress to pass, but which have been stalled by debate over the propriety of mixing government and religion. The executive order, which allows federally financed charities to display religious icons and follow the tenets of their faith in selecting employees, is almost certain to be challenged in federal court by people seeking to protect firm separation of church and state.

But Mr. Bush has even more to worry about than court action by his political opponents. His own administration is causing plenty of potential trouble by arguing in a New York court to establish a legal precedent that could lead to the unraveling of Mr. Bush's efforts to help religious groups.

The court case at issue involves the Legal Services Corporation, which uses federal funds to provide lawyers in civil cases to people who cannot afford them. The corporation is being sued by nonprofit legal-aid groups that hope to prove that a law Congress passed in 1996, and a regulation issued to carry out that law, are unconstitutional. Under the law and regulation, legal aid programs that receive even a dollar from the Legal Services Corporation are required to separate their government-financed activities from certain privately supported activities in ways that are both impractical and very costly to administer. Among the privately supported activities that must be kept separate: helping asylum seekers who need court protection against abusive spouses, helping victims of predatory lenders testify before their legislatures, and representing children seeking improved public schools.

The regulation the administration is defending requires legal-aid programs to keep those activities physically separate from their government-financed activities. It also limits the ability of legal-aid employees to divide their time between federally supported activities and activities the government won't support.

The result is that the programs' scarce private charitable donations must either be used only for programs that the federal government wants to support or be diverted to establishing separate facilities and employing separate personnel. Though the idea of keeping federally financed and charitably financed activities separate may seem appropriate to some, what it has meant in practice is that for nonprofit legal-aid groups to receive federal funds, they must give up doing some of the things that their clients most need. And foundations and other private donors that want to support legal-aid groups often find that some of the projects they most want to support can't be carried out.

For instance, when South Brooklyn Legal Services received a grant from the New York Foundation to help small groups that provide child care, it wanted to use some of the money to take New York City to court to protect the rights of those providers. The city, which reimburses the child-care providers for their services, had been short-changing them by calculating the reimbursement based on a four-week month rather than on the more accurate 4.3-week month. But because the South Brooklyn group receives some money from the Legal Services Corporation, it could not undertake such a lawsuit even with its money from the New York Foundation. To do so it would have had to set up two separate offices. It didn't have the money to do that, so it had to drop the idea of the lawsuit and instead use its foundation grant only in ways that the federal government allowed.

That is precisely the type of roadblock to charitable giving and nonprofit entrepreneurship that the Bush administration seeks to remove in its efforts to help religious groups. Last month, for instance, the administration said that churches, synagogues, and other houses of worship could obtain federal construction aid so long as at least part of the building was used to provide social services. To be sure, the administration said federal aid couldn't be used to construct sanctuaries or other parts of the building used for worship, but it did not require separate staff members or other administrative

approaches to separating the government-subsidized activities from those supported entirely by private sources. And in his executive order, the president allowed organizations to conduct federally financed activities in rooms with religious symbols hanging on the wall, and to permit employees to split time between religious and federally financed activities.

The president's goal is obvious: to avoid requiring nonprofit groups, like the religious ones he wants to help, to operate two entirely separate facilities in which to conduct their federally financed activities and their privately supported ones. If he wants to protect religious groups from having to operate entirely separate sets of facilities, even at the risk of being sued for violating the separation of church and state, why is he willing to impose such a requirement on legal-aid groups that serve the same needy people?

It's not just for consistency's sake that Mr. Bush should change his administration's position in the Legal Services Corporation case. In that case, the legal-aid programs argue that, because the activities they are forced to keep separate constitute "speech" protected by the First Amendment to the U.S. Constitution, the government is constitutionally prohibited from imposing a requirement that the activities be kept separate. What's more, they say the government isn't allowed to make those activities more expensive and more complicated unless it has sufficient justification. In its court filings, the government responds that it will seem to be endorsing the work of legal-aid programs unless activities the government supports are clearly separated from the charitably financed legal-aid activities the government does not want to support.

If that argument is upheld by the court, then won't the government be endorsing the views of religious groups unless it requires completely separate operations? To comply with the constitutional mandate not to endorse religion, the government will have to require the same amount of separation between the religious activities of charities and the activities that the federal government supports as it requires for legal-aid programs. Religious groups that receive any federal funds will then need to conduct their religious activities in separate offices, and to maintain tight limits on the ability of employees to split their time between federally financed and religious activities.

If the president really wants his faith-based plan to pass constitutional muster, he should change his strategy on the Legal Services Corporation case now and give legal-aid groups the freedom they deserve.

[From the *Legal Times*, Sept. 30, 2002]

DRAWING LINES FOR DOLLARS—SCIENTISTS GET FEDERAL AND PRIVATE FUNDING UNDER ONE ROOF. WHY CAN'T LEGAL AID LAWYERS?

(By Laura K. Abel)

No one has ever called the stem cell debate rational or straightforward. But when it comes to understanding how the government tries to control privately funded initiatives—even in seemingly unrelated areas like civil legal aid for the poor—the stem cell debate can be brilliantly illuminating.

In 2001, President George W. Bush warned that "a fundamental moral line" prevented the federal government from endorsing or funding stem cell research that would result in "further destruction of human embryos." Based on the president's directive, and on federal policy in place since 1994, scientists working on stem cell research had been compelled to establish two separate laboratories: one for their publicly funded stem cell research, the other for the privately funded stem cell research prohibited by the federal government.



Such duplication is incredibly expensive. Who can afford two sets of laboratory equipment? What scientist wants to squander precious time moving back and forth between labs? What edge in conquering disease is lost when scientists operate in relative isolation from each other, without the benefit of views routinely shared by colleagues occupying the same office space? How many talented scientists avoid the entire field of stem cell research because of these bureaucratic hurdles?

#### SIDE-BY-SIDE DOLLARS

Recognizing these concerns, this past spring the National Institutes of Health told government-funded scientists that it is OK to conduct privately funded stem cell research alongside their federally funded research, so long as they use rigorous book-keeping methods to ensure that only private dollars pay for the stem cell experiments. This directive follows governmentwide accounting standards that have been in place for more than a quarter-century.

Lawyers for the poor whose work is financed with both federal and private funding have been paying close attention to the NIH's instructions. In 1996, Congress prohibited these legal aid lawyers from using private funds to engage in a wide range of activities. These activities include representing low-income people in class actions, representing many documented immigrants, representing clients before legislatures and administrative agencies, and many other important activities. The Legal Services Corp., which funnels the federal money to the lawyers . . . order to engage in these activities they must set up physically separate offices that receive no federal funding.

Like the federally funded scientists, lawyers representing the poor have found operating out of two sets of offices to be wasteful, duplicative, and bureaucratic. Ultimately, it is vulnerable clients who suffer the consequences. Just as the forced duplication of research drains resources from efforts to cure diseases, the forced duplication of legal aid programs drains resources needed by low-income women seeking protection from domestic violence, children attempting to secure essential medical treatment, elderly citizens fighting predatory lenders, and farmers struggling to save their land.

Under the current rules, lawyers are forced to pay for two sets of offices, computer systems, and other equipment. Lawyers must spend time commuting between different offices, wasting time that their clients desperately need. And, perhaps most destructive of all is the effect on lawyers conducting class action litigation offering the prospect of relief to substantial numbers of individuals. Those lawyers paid for with private money find it hard to communicate with the lawyers working to meet day-to-day legal needs of individual clients with federal funding, making both sets of lawyers less effective.

Legal aid lawyers and their clients find hope in the NIH's common-sense policy clarification. The federal government wants neither to fund, nor to endorse, forbidden stem cell research. The NIH policy, which reflects cost principles that have been in place since at least the Reagan administration, recognizes that physically separate facilities are not needed to achieve these goals. All that is required is adherence to rigorous book-keeping practices that follow accepted accounting principles, so that auditors can determine that government funds were not spent on the disallowed activities.

#### THE SAME SOLUTION

It would seem that Congress should embrace this same solution for its concerns about LSC grantees, allowing the duplica-

tion and inefficiencies faced by legal aid to come to a stop. But instead, the government has spent the last five years in federal court, relentlessly resisting a constitutional challenge to the physical-separation requirement for legal aid lawyers.

The government's inconsistent positions in the stem cell research context and in the legal aid context are surprising. The importance of medical research weighs . . . unimpeded with private funding. There are equally strong (if not stronger) policy and constitutional arguments in favor of allowing legal aid lawyers to use their private funding to represent low-income clients who would otherwise have no access to our system of justice.

After all, there is no federal policy against using the class action mechanism. Indeed, Congress and the courts have recognized that class actions can have significant benefits for litigants and for the judicial system. Nor is there a federal policy against providing the representation that helps protect immigrants against exploitation (and in the process assists courts that would otherwise have to expend resources dealing with unrepresented litigants). Nor is there a federal policy against helping low-income individuals educate legislatures about the problems facing their communities. On the contrary, the interests of equal justice for all are better served when legal aid attorneys engage in each of these activities.

This lack of a policy justification for the physical-separation requirement is particularly appalling because the requirement intrudes on the constitutionally protected ability of legal aid lawyers and their clients to associate together in order to enforce the clients' rights. As the Supreme Court has warned, "Collective activity undertaken to obtain meaningful access to the courts is a fundamental right within the protection of the First Amendment."

For many thousands of poor people, legal aid offices that receive some federal funding offer the only avenue to justice. And, for many legal aid clients, it is about even more than justice. Like the patients who hope stem cell research will save their lives, they are focused on basic survival: a roof over their heads, escape from a batterer, the ability to buy food and protect their children. By requiring costly physical separation instead of the standard accounting practices that can ensure that federal dollars do not fund certain types of legal aid, Congress and the LSC have severely hobbled legal aid advocates, undermining their efficiency, interrupting their clients' lives, and impeding the goal of equal justice for all. Justice demands that the re-examine this decision.

#### ASBESTOS REFORM

Mr. HATCH. Mr. President, as everybody knows, I have been working for months—actually perhaps longer than that—on an asbestos reform bill to try to resolve the terrible asbestos problem we have in our society.

I have indicated various deadlines throughout these months which I have set.

I compliment the business community, the insurance community, the union community, and so many other companies that have been involved for their willingness to work with us. I think we are about there.

We have a bill I am going to print in the RECORD this evening so everybody who is interested in this issue can read it and review it because I intend to file

a formal bill this Thursday. I would like to have as many cosponsors as I can get on it because it will be the only way we will get this problem solved.

This draft bill is not a formal bill. But I want it to be printed in the RECORD for all to see. It is a very important draft bill. I hope those who are interested will go over it with a fine-toothed comb and get with us over the next 2 days, if there are substantive suggestions they have. We will be happy to look at those.

This is basically what I intend to file as a formal bill this next Thursday. I hope I will have a number of my colleagues on both sides of the floor join with me.

I ask unanimous consent this draft bill be printed in the RECORD.

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

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Fairness in Asbestos Injury Resolution Act of 2003" or the "FAIR Act of 2003".

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Purpose.

Sec. 3. Definitions.

#### TITLE I—ASBESTOS CLAIMS RESOLUTION

Subtitle A—United States Court of Asbestos Claims

Sec. 101. Establishment of Asbestos Court.

Subtitle B—Asbestos Injury Claims Resolution Procedures

Sec. 111. Filing of claims.

Sec. 112. General rule concerning no-fault compensation.

Sec. 113. Essential elements of eligible asbestos claim.

Sec. 114. Eligibility determinations and claim awards.

Sec. 115. Medical evidence auditing procedures.

Sec. 116. Claimant assistance program.

Subtitle C—Medical Criteria

Sec. 121. Essential elements of eligible asbestos claim.

Sec. 122. Diagnostic criteria requirements.

Sec. 123. Latency criteria requirements.

Sec. 124. Medical criteria requirements.

Sec. 125. Exposure criteria requirements.

Subtitle D—Awards

Sec. 131. Amount.

Sec. 132. Medical monitoring.

Sec. 133. Payments.

Sec. 134. Reduction in benefit payments for collateral sources.

Subtitle E—En Banc Review

Sec. 141. En banc review.

#### TITLE II—ASBESTOS INJURY CLAIMS RESOLUTION FUND

Subtitle A—Asbestos Defendants Funding Allocation

Sec. 201. Definitions.

Sec. 202. Authority and tiers.

Sec. 203. Subtier assessments.

Sec. 204. Assessment administration.

Subtitle B—Asbestos Insurers Commission

Sec. 211. Establishment of Asbestos Insurers Commission.

Sec. 212. Duties of Asbestos Insurers Commission.

- Sec. 213. Powers of Asbestos Insurers Commission.
- Sec. 214. Personnel matters.
- Sec. 215. Nonapplication of FOIA and confidentiality of information.
- Sec. 216. Termination of Asbestos Insurers Commission.
- Sec. 217. Authorization of appropriations.
- Subtitle C—Office of Asbestos Injury Claims Resolution
- Sec. 221. Establishment of the Office of Asbestos Injury Claims Resolution.
- Sec. 222. Powers of the Administrator and management of the Fund.
- Sec. 223. Asbestos Injury Claims Resolution Fund.
- Sec. 224. Enforcement of contributions.
- Sec. 225. Additional contributing participants.

#### TITLE III—JUDICIAL REVIEW

- Sec. 301. Judicial review of decisions of the Asbestos Court.
- Sec. 302. Judicial review of final determinations of the Asbestos Insurers Commission.
- Sec. 303. Exclusive review.
- Sec. 304. Private right of action against re-insurers.

#### TITLE IV—MISCELLANEOUS PROVISIONS

- Sec. 401. False information.
- Sec. 402. Effect on bankruptcy laws.
- Sec. 403. Effect on other laws and existing claims.

#### SEC. 2. PURPOSE.

The purpose of this Act is to create a privately funded, publicly administered fund to provide the necessary resources for an asbestos injury claims resolution program.

#### SEC. 3. DEFINITIONS.

In this Act, the following definitions shall apply:

- (1) ADMINISTRATOR.—The term “Administrator” means the Administrator of the Office of Asbestos Injury Claims Resolution appointed under section 221(c).
- (2) ASBESTOS.—The term “asbestos” includes—
  - (A) chrysotile;
  - (B) amosite;
  - (C) crocidolite;
  - (D) tremolite;
  - (E) winchite;
  - (F) richterite;
  - (G) anthophyllite;
  - (H) actinolite;
- (3) any of the minerals listed under subparagraphs (A) through (H) that has been chemically treated or altered, and any variety, type, or component thereof; and
- (J) asbestos-containing material, such as asbestos-containing products, automotive or industrial parts or components, equipment, improvements to real property, and any other material that contains asbestos in any physical or chemical form.

#### (3) ASBESTOS CLAIM.—

(A) IN GENERAL.—The term “asbestos claim” means any personal injury claim for damages or other relief presented in a civil action or bankruptcy proceeding, arising out of, based on, or related to the health effects of exposure to asbestos, including loss of consortium, wrongful death, and any derivative claim made by, or on behalf of, any exposed person or any representative, spouse, parent, child or other relative of any exposed person.

(B) EXCLUSION.—The term does not include claims for benefits under a workers’ compensation law or veterans’ benefits program, or claims brought by any person as a subrogee by virtue of the payment of benefits under a workers’ compensation law.

(4) ASBESTOS CLAIMANT.—The term “asbestos claimant” means an individual who files an asbestos claim under section 111.

(5) ASBESTOS COURT; COURT.—The terms “Asbestos Court” or “Court” means the United States Court of Asbestos Claims established under section 101.

(6) CIVIL ACTION.—The term “civil action” means all suits of a civil nature in State or Federal court, whether cognizable as cases at law or in equity or in admiralty, but does not include an action relating to any workers’ compensation law, or a proceeding for benefits under any veterans’ benefits program.

(7) COLLATERAL SOURCE.—The term “collateral source” means all collateral sources, including—

- (A) disability insurance;
- (B) health insurance;
- (C) medicare;
- (D) medicaid;
- (E) death benefit programs;
- (F) defendants;
- (G) insurers of defendants; and
- (H) compensation trusts.

(8) ELIGIBLE DISEASE OR CONDITION.—The term “eligible disease or condition” means, to the extent that the illness meets the medical criteria requirements established under subtitle C of title I, asbestosis/pleural disease, severe asbestosis disease, mesothelioma, lung cancer I, lung cancer II, other cancers, and qualifying non-malignant asbestos-related diseases.

(9) FUND.—The term “Fund” means the Asbestos Injury Claims Resolution Fund established under section 223.

(10) LAW.—The term “law” includes all law, judicial or administrative decisions, rules, regulations, or any other principle or action having the effect of law.

(11) PARTICIPANT.—The term “participant” means any person subject to the funding requirements of title II, including—

- (A) any defendant participant subject to an assessment for contribution under subtitle A of that title; and
- (B) any insurer participant subject to an assessment for contribution under subtitle B of that title.

(12) PERSON.—The term “person”—

(A) means an individual, trust, firm, joint stock company, partnership, association, insurance company, reinsurance company, or corporation; and

(B) does not include the United States, any State or local government, or subdivision thereof, including school districts and any general or special function governmental unit established under State law.

(13) STATE.—The term “State” means any State of the United States and also includes the District of Columbia, Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and any other territory or possession of the United States or any political subdivision of any of the entities under this paragraph.

(14) VETERANS’ BENEFITS PROGRAM.—The term “veterans’ benefits program” means any program for benefits in connection with military service administered by the Veterans’ Administration under title 38, United States Code.

(15) WORKER’S COMPENSATION LAW.—The term “worker’s compensation law”—

(A) means a law respecting a program administered by a State or the United States to provide benefits, funded by a responsible employer or its insurance carrier, for occupational diseases or injuries or for disability or death caused by occupational diseases or injuries;

(B) includes the Longshore and Harbor Workers’ Compensation Act (33 U.S.C. sections 901 et seq.) and chapter 81 of title 5, United States Code; and

(C) does not include the Federal Employers’ Liability Act (45 U.S.C. 51 et seq.) or

damages recovered by any employee in a liability action against an employer.

#### TITLE I—ASBESTOS CLAIMS RESOLUTION Subtitle A—United States Court of Asbestos Claims

#### SEC. 101. ESTABLISHMENT OF ASBESTOS COURT.

(a) IN GENERAL.—Part I of title 28, United States Code, is amended by inserting after chapter 7 the following:

#### “CHAPTER 9—UNITED STATES COURT OF ASBESTOS CLAIMS

“Sec.  
“201. Establishment of the United States Court of Asbestos Claims.

“202. Magistrates.

“203. Retirement of judges of the United States Court of Asbestos Claims.

#### “§201. Establishment of the United States Court of Asbestos Claims

“(a) ESTABLISHMENT AND APPOINTMENT OF JUDGES.—

“(1) IN GENERAL.—The President shall appoint, by and with the advice and consent of the Senate, 5 judges, who shall constitute a court of record known as the United States Court of Asbestos Claims.

“(2) ARTICLE I COURT.—The Court of Asbestos Claims is declared to be a court established under article I of the Constitution of the United States.

“(b) TERM; REMOVAL; COMPENSATION.—

“(1) TERM.—Each judge appointed under subsection (a) shall serve for a term of 15 years, except that judges initially appointed shall serve for staggered terms as the President shall determine appropriate to assure continuity.

“(2) REMOVAL.—Judges may be removed by the President only for good cause.

“(3) COMPENSATION.—Each judge shall receive a salary at the rate of pay, and in the same manner, as judges of the district courts of the United States.

“(c) CHIEF JUDGE.—

“(1) IN GENERAL.—The President shall designate 1 of the judges appointed under subsection (b)(1), who is less than 70 years of age, to serve as chief judge.

“(2) TERM.—The chief judge may continue to serve as such until—

“(A) he or she reaches the age of 70 years;

“(B) another judge is designated as chief judge by the President; or

“(C) the expiration of his or her term under subsection (b)(1).

“(3) CONTINUITY OF SERVICE.—Upon the designation by the President of another judge to serve as chief judge, the former chief judge may continue to serve as a judge of the Court of Asbestos Claims for the balance of the term to which he or she was appointed.

“(4) POWERS OF CHIEF JUDGE.—The chief judge is authorized to—

“(A) prescribe rules and procedures for hearings and appeals of the Court of Asbestos Claims and its magistrates;

“(B) appoint magistrates;

“(C) appoint or contract for the services of such personnel as may be necessary and appropriate to carry out the responsibilities of the Court of Asbestos Claims; and

“(D) make such expenditures as may be necessary and appropriate in the administration of the responsibilities of the Court of Asbestos Claims and the chief judge under this chapter and the Fairness in Asbestos Injury Resolution Act of 2003.

“(d) TIME AND PLACES OF HOLDING COURT.—

“(1) IN GENERAL.—The principal office of the Court of Asbestos Claims shall be in the District of Columbia, but the Court of Asbestos Claims may hold court at such times and in such places as the chief judge may prescribe by rule.

“(2) LIMITATION.—The times and places of the sessions of the Court of Asbestos Claims

shall be prescribed with a view to securing reasonable opportunity to citizens to appear before the Court of Asbestos Claims.

“(e) OFFICIAL DUTY STATION; RESIDENCE.—

“(1) DUTY STATION.—The official duty station of each judge of the Court of Asbestos Claims is the District of Columbia.

“(2) RESIDENCE.—After appointment and while in active service, each judge of the Court of Asbestos Claims shall reside within 50 miles of the District of Columbia.

#### “§202. Magistrates

“(a) APPOINTMENT.—The chief judge shall appoint such magistrates as necessary to facilitate the expeditious processing of claims.

“(b) COMPENSATION.—The compensation of magistrates shall be determined by the chief judge, but shall not exceed the annual rate of basic pay of level V of the Executive Schedule, as prescribed by section 5316 of title 5.

“(c) RETIREMENT.—For purposes of Federal laws relating to retirement, including chapters 83 and 84 of title 5, magistrates appointed under this section shall be deemed to be appointed under section 631 of this title.

“(d) REGULATIONS.—Except as provided under subsection (c), chapter 43 shall not apply to magistrates appointed under this chapter, except the chief judge may prescribe rules similar to the provisions of chapter 43 to apply to magistrates.

#### “§203. Retirement of judges of the United States Court of Asbestos Claims

“(a) IN GENERAL.—For purposes of Federal laws relating to retirement, judges of the Court of Asbestos Claims shall be treated in the same manner and to the same extent as judges of the Court of Federal Claims.

“(b) REGULATIONS.—In carrying out this section—

“(1) the Director of the Administrative Office of the United States Courts shall promulgate regulations to apply provisions similar to section 178 of this title (including the establishment of a Court of Asbestos Claims Judges Retirement Fund) to judges of the Court of Asbestos Claims; and

“(2) the Director of the Office of Personnel Management shall promulgate regulations to apply chapters 83 and 84 of title 5 to judges of the Court of Asbestos Claims.”.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of chapters for part I of title 28, United States Code, is amended by striking the item relating to chapter 9, and inserting after the item relating to chapter 7 the following:

“9. United States Court of Asbestos Claims.”.

#### Subtitle B—Asbestos Injury Claims Resolution Procedures

##### SEC. 111. FILING OF CLAIMS.

(a) WHO MAY SUBMIT.—

(1) GENERAL RULE.—Any individual who has suffered from an eligible disease or condition that is believed to meet the requirements established under subtitle C (or the spouse, parent, child, or other relative of such individual in a representative capacity, or the executor of the estate of such individual) may file a claim with the Asbestos Court for compensation with respect to such injury.

(2) RULES.—The Asbestos Court may issue procedural rules to specify individuals who may file an asbestos claim as a representative of another individual.

(3) LIMITATION.—An asbestos claim may not be filed by any person seeking contribution or indemnity.

(b) REQUIRED INFORMATION.—To be valid, an asbestos claim filed under subsection (a) shall be notarized and include—

(1) the name, social security number, gender, date of birth, and, if applicable, date of death of the claimant;

(2) information relating to the identity of dependents and beneficiaries of the claimant;

(3) a detailed description of the work history of the claimant, including social security records or a signed release permitting access to such records;

(4) a detailed description of the asbestos exposure of the claimant, including information on the identity of any product or manufacturer, site, or location of exposure, plant name, and duration and intensity of exposure;

(5) a detailed description of the tobacco product use history of the claimant, including frequency and duration;

(6) an identification and description of the asbestos-related diseases of the claimant, including a written report by the claimant's physician with medical diagnoses and test results necessary to make a determination of medical eligibility that complies with the applicable requirements of this subtitle and subtitle C;

(7) a description of any prior or pending civil action or other claim brought by the claimant for asbestos-related injury, including an identification of any recovery of compensation or damages through settlement, judgment, or otherwise; and

(8) any other information that is required to be included under procedural rules issued by the Court.

(c) STATUTE OF LIMITATIONS.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), if an individual fails to file an asbestos claim with the Asbestos Court under this section within 2 years after the date on which the individual first—

(A) received a medical diagnosis of an eligible disease or condition as provided for under this subtitle and subtitle C; or

(B) discovered facts that would have led a reasonable person to obtain a medical diagnosis with respect to an eligible disease or condition,

any claim relating to that injury, and any other asbestos claim related to that injury, shall be extinguished, and any recovery thereon shall be prohibited.

(2) EFFECT ON PENDING CLAIMS.—If an asbestos claimant has any claim for an asbestos-related injury that is pending in a Federal or State court or with a trust established under title 11, United States Code, on the date of enactment of this Act, such claimant shall file an asbestos claim under this section within 2 years after such date of enactment or be barred from receiving any compensation under this title.

(3) EFFECT OF MULTIPLE INJURIES.—An asbestos claimant who receives compensation under this title for an eligible disease or condition, and who subsequently develops another such injury, shall be eligible for additional compensation under this title (subject to appropriate setoffs for such prior recovery of compensation under this title and from any other collateral source) and the statute of limitations under paragraph (1) shall not begin to run with respect to such subsequent injury until such claimant obtains a medical diagnosis of such other injury or discovers facts that would have led a reasonable person to obtain such a diagnosis.

(4) RULE OF CONSTRUCTION.—Paragraph (2) shall be interpreted as a statute of limitations and be construed to the benefit of the Fund and of any person who might otherwise have been made subject to an asbestos claim to which such paragraph is applied.

##### SEC. 112. GENERAL RULE CONCERNING NO-FAULT COMPENSATION.

An asbestos claimant shall not be required to demonstrate that the asbestos-related injury for which the claim is being made resulted from the negligence or other fault of any other person.

##### SEC. 113. ESSENTIAL ELEMENTS OF ELIGIBLE ASBESTOS CLAIM.

To be eligible for compensation under this subtitle for an asbestos-related injury, an individual shall—

(1) file an asbestos claim in a timely manner in accordance with section 111; and

(2) prove, by a preponderance of the evidence that—

(A) the claimant suffers from an eligible disease or condition, as demonstrated by evidence (submitted as part of the claim) that meets the medical criteria requirements and diagnostic criteria requirements established under subtitle C; and

(B) the claimant meets the latency criteria requirements and the exposure criteria requirements established under subtitle C.

##### SEC. 114. ELIGIBILITY DETERMINATIONS AND CLAIM AWARDS.

(a) CLAIMS EXAMINERS.—

(1) IN GENERAL.—The Asbestos Court shall appoint, or contract for the services of, qualified individuals to assist magistrates by conducting eligibility reviews of asbestos claims filed with the Court.

(2) CRITERIA.—The Asbestos Court shall establish criteria with respect to the qualifications of individuals who are eligible to serve as claims examiners and, in developing such criteria, shall consult with such experts as the Court determines appropriate.

(b) REFERRAL OF ASBESTOS CLAIM.—Not later than 20 days after the filing of an asbestos claim with the Asbestos Court, the Court shall refer such claim to a magistrate.

(c) INITIAL REVIEW.—

(1) IN GENERAL.—Under the direction of a magistrate, a claims examiner shall make an initial review of an asbestos claim to determine whether all required information has been submitted by the claimant.

(2) NOTICE OF INCOMPLETE CLAIM.—If the claims examiner determines that all required information has not been submitted, the examiner—

(A) shall notify the claimant of such determination and require the submission of additional information necessary for a determination of eligibility;

(B) may compel the submission of any additional information;

(C) may request that the claimant undergo additional medical examinations and tests if information from such examinations or tests is necessary to enable the examiner to make a determination of medical eligibility; and

(D) may require any releases necessary to enable the examiner to obtain medical or other information relevant to the determination of eligibility.

(d) EXPEDITIOUS DETERMINATIONS.—The Asbestos Court shall prescribe rules to expedite claims for asbestos claimants with exigent circumstances.

(e) AUDIT AND PERSONNEL REVIEW PROCEDURES.—The Asbestos Court shall establish audit and personnel review procedures for evaluating the accuracy of eligibility recommendations of magistrates.

(f) ELIGIBILITY DETERMINATIONS.—

(1) IN GENERAL.—Not later than 60 days after the receipt by a magistrate of all required information and requested medical advice with respect to an asbestos claim, the magistrate shall transmit a recommendation of the compensation to which the claimant is entitled and findings of fact to a judge of the Asbestos Court.

(2) ADMISSIBILITY OF FINDINGS OF FACT.—A determination under paragraph (1) shall include relevant findings of fact and shall be admissible as evidence in any judicial review.

(g) DECISION OF JUDGE.—

(1) IN GENERAL.—Not later than 30 days after receipt of a recommendation of a magistrate, a judge of the Asbestos Court shall

make a final decision of any compensation to which the claimant is entitled.

(2) **WAIVER OF JUDICIAL REVIEW.**—The final decision under paragraph (1) shall include an acceptance form by which the claimant may waive the right to judicial review and expedite payment of compensation from the Fund.

(h) **AWARDING OF COMPENSATION.**—

(1) **IN GENERAL.**—If a judge of the Asbestos Court determines that an asbestos claimant is entitled to compensation, the Court shall notify the Administrator to award the claimant compensation from the Fund in the amount of the judge's decision.

(2) **CLAIM EXTINGUISHED.**—The acceptance of a payment under this Act shall extinguish all claims related to such payment.

#### **SEC. 115. MEDICAL EVIDENCE AUDITING PROCEDURES.**

(a) **DEVELOPMENT.**—The Asbestos Court shall develop methods for auditing the medical evidence submitted as part of an asbestos claim, including methods to ensure the independent reading of x-rays and results of pulmonary function tests. The Court may develop additional methods for auditing other types of evidence or information received by the Court.

(b) **REFUSAL TO CONSIDER CERTAIN EVIDENCE.**—

(1) **IN GENERAL.**—If the Asbestos Court determines that an audit conducted in accordance with the methods developed under subsection (a) demonstrates that the medical evidence submitted by a specific physician or medical facility is not consistent with prevailing medical practices or the applicable requirements of this Act, the Court shall notify claims examiners and the magistrates that any medical evidence from such physician or facility shall be unacceptable for purposes of establishing eligibility for compensation under this Act.

(2) **NOTIFICATION.**—Upon a determination by the Asbestos Court under paragraph (1), the Court shall notify the physician or medical facility involved of the results of the audit. Such physician or facility shall have a right to appeal the determination of the Court under procedures issued by the Court.

#### **SEC. 116. CLAIMANT ASSISTANCE PROGRAM.**

(a) **ESTABLISHMENT.**—The Asbestos Court shall establish an asbestos claimant assistance program to provide assistance to claimants in preparing and submitting asbestos claim applications and in responding to claimant inquiries.

(b) **LEGAL ASSISTANCE.**—

(1) **IN GENERAL.**—As part of the program established under subsection (a), the Asbestos Court shall establish a legal assistance program to provide assistance to asbestos claimants concerning legal representation issues.

(2) **LIST OF QUALIFIED ATTORNEYS.**—As part of the program, the Court shall maintain a roster of qualified attorneys who have agreed to provide pro bono services to asbestos claimants under rules established by the Court. The claimants shall not be required to use the attorneys listed on such roster.

#### **Subtitle C—Medical Criteria**

#### **SEC. 121. ESSENTIAL ELEMENTS OF ELIGIBLE ASBESTOS CLAIM.**

To be eligible for compensation under this title for an asbestos-related injury, an individual shall—

(1) file an asbestos claim under this title in a timely manner; and

(2) prove, by a preponderance of the evidence that—

(A) the claimant suffers from an eligible disease or condition, as demonstrated by evidence (submitted as part of the claim) that meets the diagnostic criteria requirements described in section 122 and the medical cri-

teria requirements described in section 124; and

(B) the claimant meets the latency criteria requirements described in section 123 and the exposure criteria requirements described in section 125.

#### **SEC. 122. DIAGNOSTIC CRITERIA REQUIREMENTS.**

(a) **IN GENERAL.**—To be eligible to receive compensation under this title for an asbestos-related injury, the claim submitted by the asbestos claimant shall demonstrate a medical diagnosis that meets the requirements of this section.

(b) **DIAGNOSIS.**—A medical diagnosis meets the requirements of this section if the diagnosis—

(1) is made by a physician who—

(A) treated, or is treating, the claimant;

(B) conducted an in-person medical examination of the claimant; and

(C) is licensed to practice medicine in the State in which the examination occurred and in which the diagnosis is rendered;

(2) includes a review by the physician of the work history, asbestos exposure pattern, and smoking history of the claimant, or other factors determined appropriate by the Asbestos Court;

(3) is independently verified with respect to the duration, proximity, regularity, and intensity of the asbestos exposure involved; and

(4) has excluded other more likely causes of the injury of the claimant.

(c) **RESULTS OF MEDICAL EXAMINATIONS AND TESTS.**—

(1) **IN GENERAL.**—In making the demonstration required under subsection (a), an asbestos claimant shall submit—

(A) x-rays (including both films and B-reader reports);

(B) detailed results of pulmonary function tests (including spirometric tracings);

(C) laboratory tests; and

(D) the results of medical examination or reviews of other medical evidence.

(2) **PROCEDURAL REQUIREMENTS.**—A submission under paragraph (1) shall comply with the requirements of this Act and recognized medical standards regarding equipment, testing methods, and procedures to ensure that such medical evidence is reliable.

(d) **SUFFICIENCY OF MEDICAL EVIDENCE.**—In making determinations under this section, a magistrate shall not make a determination unless the medical evidence provided in support of the asbestos claim is credible and consistent with this section, the medical criteria described in section 124, and recognized medical standards.

(e) **ATTORNEY RETENTION AGREEMENTS.**—An attorney retention agreement shall not be required as a prerequisite to a medical examination or medical screening for purposes of obtaining a medical diagnosis or other medical information under this section.

(f) **RULES.**—The Asbestos Court shall prescribe rules to implement the diagnostic criteria requirements to be used in applying this section.

#### **SEC. 123. LATENCY CRITERIA REQUIREMENTS.**

(a) **IN GENERAL.**—To be eligible to receive compensation under this title for an asbestos-related injury, the claim submitted by the asbestos claimant shall demonstrate that the claimant was exposed to asbestos—

(1) in a manner that meets the exposure requirements of sections 124 and 125;

(2) within the United States or its territories or possessions; and

(3) for at least 10 years before the initial diagnosis of any asbestos-related injury.

(b) **CONSISTENCY WITH MEDICAL CRITERIA.**—An asbestos claimant shall be required to demonstrate that any delay between asbestos exposure and the asbestos-related injury is consistent with medical criteria con-

cerning the latency periods typically associated with the disease category for which the claim is being made.

(c) **VARIATIONS IN LATENCY PERIODS.**—Latency periods under this section may vary based on the eligible disease or condition involved.

(d) **RULES.**—The Asbestos Court shall prescribe rules, based on the medical literature or other appropriate medical evidence concerning latency periods, for the purpose of implementing the criteria used in applying this section.

#### **SEC. 124. MEDICAL CRITERIA REQUIREMENTS.**

(a) **DEFINITIONS.**—In this section, the following definitions shall apply:

(1) **BILATERAL ASBESTOS-RELATED NON-MALIGNANT DISEASE.**—The term "bilateral asbestos-related nonmalignant disease" means a diagnosis of bilateral asbestos-related nonmalignant disease based on—

(A) an x-ray reading of  $\frac{1}{4}$  or higher on the ILO scale; or

(B) an x-ray showing bilateral pleural plaques or pleural thickening, bilateral interstitial fibrosis, or bilateral interstitial markings.

(2) **BILATERAL PLEURAL DISEASE OF B2.**—The term "bilateral pleural disease of B2" means a chest wall pleural thickening or plaque with a maximum width of at least 5 millimeters and a total length of at least  $\frac{1}{4}$  of the projection of the lateral chest wall.

(3) **FEV<sub>1</sub>.**—The term "FEV<sub>1</sub>" means forced expiratory volume (1 second), which is the maximal volume of air expelled in 1 second during performance of the spirometric test for forced vital capacity.

(4) **FVC.**—The term "FVC" means forced vital capacity, which is the maximal volume of air expired with a maximally forced effort from a position of maximal inspiration.

(5) **ILO GRADE.**—The term "ILO grade" means the radiological ratings for the presence of lung or pleural changes as determined from a chest x-ray, all as established from time to time by the International Labor Organization.

(6) **PATHOLOGICAL EVIDENCE OF ASBESTOSIS.**—The term "pathological evidence of asbestosis" means proof of asbestosis based on the pathological grading system for asbestosis described in the Special Issue of the Archives of Pathology and Laboratory Medicine, "Asbestos-associated Diseases", Vol. 106, No. 11, App. 3 (October 8, 1982).

(7) **PULMONARY FUNCTION TESTING.**—The term "pulmonary function testing" means spirometry testing that is in compliance with the quality criteria established from time to time by the American Thoracic Society and is performed on equipment which is in compliance with the standards of the American Thoracic Society for technical quality and calibration.

(8) **SIGNIFICANT OCCUPATIONAL EXPOSURE.**—The term "significant occupational exposure" means employment for a cumulative period of at least 5 years, in an industry and an occupation in which the claimant—

(A) handled raw asbestos fibers on a regular basis;

(B) fabricated asbestos-containing products so that the claimant in the fabrication process was exposed on a regular basis to raw asbestos fibers;

(C) altered, repaired, or otherwise worked with an asbestos-containing product such that the claimant was exposed on a regular basis to asbestos fibers; or

(D) was employed in an industry and occupation such that the claimant worked on a regular basis in close proximity to workers engaged in the activities described under subparagraph (A), (B), or (C).

(9) **TLC.**—The term "TLC" means total lung capacity, which is the volume of air in the lung after maximal inspiration.

(b) REQUIREMENT.—To be eligible for compensation or medical monitoring reimbursement under this title, a claimant shall establish that the claimant meets the medical criteria for 1 of the following categories:

(1) For Level I: Asymptomatic Exposure, the claimant shall provide—

(A) a diagnosis that meets the requirements of section 122 of a bilateral asbestos-related nonmalignant disease or an asbestos-related malignancy; and

(B) meaningful and credible evidence of—

(i) 6 months of occupational exposure to asbestos before December 31, 1982; and

(ii) 5 years cumulative occupational exposure to asbestos.

(2) For Level II: Asbestosis/Pleural Disease A, the claimant shall provide—

(A) a diagnosis that meets the requirements of section 122 of asbestosis by chest x-rays for which a B-reader report is furnished showing small irregular opacities of ILO Grade  $\frac{1}{4}$  or greater, or showing bilateral pleural disease of B2 or greater, or by pathological evidence of asbestosis; and

(B) meaningful and credible evidence of—

(i) 6 months of occupational exposure to asbestos before December 31, 1982; and

(ii) significant occupational exposure.

(3) For Level III: Asbestosis/Pleural Disease B, the claimant shall provide—

(A) a diagnosis that meets the requirements of section 122 of asbestosis by chest x-rays for which a B-reader report is furnished showing small irregular opacities of ILO Grade  $\frac{1}{4}$  or greater, or showing bilateral pleural disease of B2 or greater, or by pathological evidence of asbestosis;

(B) pulmonary function testing that shows—

(i) TLC less than 80 percent of predicted; or

(ii) FVC less than 80 percent of predicted, and a FEV1/FVC ratio of not less than 65 percent; and

(C) meaningful and credible evidence of—

(i) 6 months of occupational exposure to asbestos before December 31, 1982; and

(ii) significant occupational exposure.

(4) For Level IV: Severe Asbestosis, the claimant shall provide—

(A) a diagnosis that meets the requirements of section 122 of asbestosis by chest x-rays for which a B-reader report is furnished showing small irregular opacities of ILO Grade  $\frac{3}{4}$  or greater, or by pathological evidence of asbestosis;

(B) pulmonary function testing that shows—

(i) TLC less than 65 percent of predicted; or

(ii) FVC less than 65 percent of predicted, and a FEV1/FVC ratio greater than 65 percent; and

(C) meaningful and credible evidence of—

(i) 6 months of occupational exposure to asbestos before December 31, 1982; and

(ii) significant occupational exposure.

(5) For Level V: Other Cancer, the claimant shall provide—

(A) a diagnosis that meets the requirements of section 122 of a primary laryngeal, esophageal, pharyngeal, or stomach cancer;

(B) evidence of an underlying bilateral asbestos-related nonmalignant disease; and

(C) meaningful and credible evidence of—

(i) 6 months of occupational exposure to asbestos before December 31, 1982; and

(ii) significant occupational exposure.

(6) For Level VI: Lung Cancer One, the claimant shall provide—

(A) a diagnosis that meets the requirements of section 122 of a primary lung cancer; and

(B) meaningful and credible evidence of 6 months of occupational exposure to asbestos before December 31, 1982.

(7) For Level VII: Lung Cancer Two, the claimant shall provide—

(A) a diagnosis that meets the requirements of section 122 of a primary lung cancer;

(B) evidence of an underlying bilateral asbestos-related nonmalignant disease;

(C) meaningful and credible evidence of—

(i) 6 months of occupational exposure to asbestos before December 31, 1982; and

(ii) significant occupational exposure; and

(D) supporting medical documentation and certification by or on behalf of the claimant establishing asbestos exposure as a contributing factor causing the relevant lung cancer.

(8) For Level VIII: Mesothelioma, the claimant shall provide—

(A) a diagnosis that meets the requirements of section 122 of mesothelioma; and

(B) meaningful and credible evidence of exposure to asbestos.

#### SEC. 125. EXPOSURE CRITERIA REQUIREMENTS.

(a) REQUIREMENT.—To be eligible to receive compensation under this title for an asbestos-related injury, the claim submitted by the asbestos claimant shall contain information to demonstrate that the claimant meets the minimum exposure requirements under this subtitle.

(b) BURDEN OF PROOF.—

(1) IN GENERAL.—An asbestos claimant has the burden of demonstrating meaningful and credible exposure to asbestos for purposes of this subtitle.

(2) EVIDENCE.—The demonstration under paragraph (1) may be established by—

(A) an affidavit submitted by the claimant, a coworker of the claimant, or a family member, in the case of a deceased claimant;

(B) employment records;

(C) invoices;

(D) construction or other similar records; or

(E) other credible evidence.

(c) RULES.—

(1) EXPOSURE INFORMATION.—The Asbestos Court shall issue rules prescribing specific exposure information that shall be submitted to permit the Court to process an asbestos claim and prescribing a proof of claim form. Such rules may provide that a claims examiner or magistrate, as applicable, may require the submission of other or additional evidence of exposure when determined to be appropriate and necessary.

(2) REBUTTABLE PRESUMPTIONS.—The Asbestos Court may prescribe rules identifying specific industries, occupations within those industries, time periods, and employment periods for which significant occupational exposure (as defined under section 124) may be a rebuttable presumption for asbestos claimants who provide meaningful and credible evidence that the claimant worked in that industry and occupation for the requisite period of time. The Administrator may provide evidence to rebut this presumption.

#### Subtitle D—Awards

#### SEC. 131. AMOUNT.

(a) IN GENERAL.—An asbestos claimant who meets the requirements of section 113 shall be entitled to compensation in an amount determined by reference to the benefit table contained in subsection (b).

(b) BENEFIT TABLE.—

(1) IN GENERAL.—An asbestos claimant with an eligible disease or condition established in accordance with section 124, other than an injury described in paragraph (2), shall be eligible for compensation according to the following schedule:

Level	Scheduled Condition or Disease	Scheduled Value
I	Asymptomatic Exposure.	\$0
II	Asbestosis/Pleural Disease A.	\$0

Level	Scheduled Condition or Disease	Scheduled Value
III	Asbestosis/Pleural Disease B.	\$40,000
IV	Severe Asbestosis .....	\$400,000
V	Other Cancer .....	\$200,000
VI	Lung Cancer I (smoker).	\$50,000
VII	Lung Cancer II (nonsmoker).	\$400,000
VIII	Mesothelioma .....	\$750,000

(2) MEDICAL MONITORING.—An asbestos claimant with asymptomatic exposure or asbestosis/pleural disease A, based on the criteria under section 124(b)(1), shall only be eligible for medical monitoring reimbursement.

#### SEC. 132. MEDICAL MONITORING.

(a) RELATION TO STATUTE OF LIMITATIONS.—The filing of an asbestos claim that seeks reimbursement for medical monitoring shall not be considered as evidence that the claimant has discovered facts that would otherwise commence the period applicable for purposes of the statute of limitations under section 111(c).

(b) COSTS.—Reimbursable medical monitoring costs shall include the costs of a claimant not covered by health insurance for x-ray tests and pulmonary function tests every 3 years.

(c) REGULATIONS.—The Administrator shall promulgate regulations that establish—

(1) the reasonable costs for medical monitoring that is reimbursable; and

(2) the procedures applicable to asbestos claimants.

#### SEC. 133. PAYMENTS.

(a) STRUCTURED PAYMENTS.—

(1) IN GENERAL.—An asbestos claimant who is entitled to compensation shall receive such compensation through structured payments from the Fund, made over a period of not less than 3 years.

(2) ACCELERATED PAYMENTS.—The Administrator shall develop guidelines to provide for accelerated payments to asbestos claimants who are mesothelioma victims and who are alive on the date on which the administrator receives notice of the eligibility of the claimant. Such payments shall be credited against the first regular payment under the structured payment plan for the claimant.

(3) EXPEDITED PAYMENTS.—The Administrator shall develop guidelines to provide for expedited payments to asbestos claimants in cases of exigent circumstances or extreme hardship caused by asbestos-related injury.

(4) ANNUITY.—An asbestos claimant may elect to receive any payments to which they are entitled under this title in the form of an annuity.

(b) LIMITATION ON TRANSFERABILITY.—An asbestos claim shall not be assignable or otherwise transferable under this Act.

(c) CREDITORS.—An award of compensation under this title shall be exempt from all claims of creditors and from levy, execution, and attachment or other remedy for recovery or collection of a debt, and such exemption may not be waived.

(d) TREATMENT FOR INTERNAL REVENUE PURPOSES.—All compensation received under this subtitle shall be deemed to be compensation for personal physical injuries or physical sickness under section 104 of the Internal Revenue Code of 1986.

(e) MEDICARE AS SECONDARY PAYER.—No award of compensation under this title shall be deemed a payment for purposes of section 1862 of the Social Security Act (42 U.S.C. 1395y).

#### SEC. 134. REDUCTION IN BENEFIT PAYMENTS FOR COLLATERAL SOURCES.

(a) IN GENERAL.—The amount of compensation otherwise available to an asbestos

claimant under this title shall be reduced by the amount of collateral source compensation that the claimant received, or is entitled to receive, for the asbestos-related injury that is the subject of the compensation.

(b) EXCLUSIONS.—In no case shall statutory benefits under workers' compensation laws and veterans benefits programs be deemed as collateral source compensation for purposes of this section.

#### Subtitle E—En Banc Review

##### SEC. 141. EN BANC REVIEW.

(a) IN GENERAL.—

(1) EN BANC PANELS.—The chief judge of the Asbestos Court shall—

(A) establish en banc panels to carry out this subtitle; and

(B) assign 3 judges of the Asbestos Court to each en banc panel.

(2) FILING OF APPEAL.—Not later than 30 days after receiving notice of the decision of a judge under section 114, a claimant may file an appeal for review with an en banc panel of the Asbestos Court.

(b) DE NOVO REVIEW.—An Asbestos Court panel shall provide a de novo review of the magistrate's determination and the judge's decision.

(c) REPRESENTATION OF THE ADMINISTRATOR.—The Administrator may appoint counsel to represent the interests of the Fund and the Administrator in all proceedings before a panel, including oral arguments and the submission of briefs.

(d) FEDERAL RULES OF APPELLATE PROCEDURE.—An Asbestos Court panel shall apply the Federal Rules of Appellate Procedures to all proceedings before the panel.

(e) DECISION OF PANEL.—An Asbestos Court panel shall enter a final decision on an appeal on the earlier date occurring—

(1) not later than 30 days after the date of the conclusion of oral arguments; or

(2) not later than 60 days after an appeal is filed under this section.

#### TITLE II—ASBESTOS INJURY CLAIMS RESOLUTION FUND

##### Subtitle A—Asbestos Defendants Funding Allocation

##### SEC. 201. DEFINITIONS.

In this subtitle, the following definitions shall apply:

(1) AFFILIATED GROUP.—The term “affiliated group” means—

(A) with respect to any nonbankrupt defendant participant that is an ultimate parent or a person whose entire beneficial interest is owned on the date of enactment of this Act, directly or indirectly, by an ultimate parent, that set of nonbankrupt persons including the ultimate parent and all of the nonbankrupt persons whose entire beneficial interest shall be owned on December 31, 2002, directly or indirectly, by that ultimate parent; or

(B) with respect to any bankrupt defendant participant, the debtor and all of its direct and indirect majority owned subsidiaries, whether or not such subsidiaries are debtors.

(2) DEBTOR.—The term “debtor”—

(A) means all entities that are subject to a case pending under any chapter of title 11, United States Code, on the date of enactment of this Act; and

(B) shall not include an entity—

(i) subject to chapter 7 of title 11, United States Code, if a final decree closing the estate shall have been entered before the date of enactment of this Act; or

(ii) subject to chapter 11 of title 11, United States Code, if a plan of reorganization for such entity shall have been confirmed by a final judgment.

(3) INDEMNIFIABLE COST.—The term “indemnifiable cost” means a cost, expense, debt, judgment, or settlement incurred with

respect to an asbestos claim that, at any time before December 31, 2002, was or could have been subject to indemnification, contribution, surety, or guaranty.

(4) INDEMNITEE.—The term “indemnitee” means a person against whom any asbestos claim has been asserted before December 31, 2002, who has received from any other person, or on whose behalf a sum has been paid by such other person to any third person, in settlement, judgment, defense, or indemnity in connection with an alleged duty with respect to the defense or indemnification of such person concerning that asbestos claim, other than under a policy of insurance or reinsurance.

(5) INDEMNITOR.—The term “indemnitor” means a person who has paid under a written agreement at any time before December 31, 2002, a sum in settlement, judgment, defense, or indemnity to or on behalf of any person defending against an asbestos claim, in connection with an alleged duty with respect to the defense or indemnification of such person concerning that asbestos claim, except that payments by an insurer or reinsurer under a contract of insurance or reinsurance shall not make the insurer or reinsurer an indemnitor for purposes of this subtitle.

(6) PRIOR ASBESTOS EXPENDITURES.—The term “prior asbestos expenditures”—

(A) means the gross total amount paid by or on behalf of a person at any time before December 31, 2002, in settlement, judgment, defense, or indemnity costs related to all asbestos claims against that person;

(B) includes payments made by insurance carriers to or for the benefit of such person or on such person's behalf with respect to such asbestos claims, except as provided in section 204(g);

(C) shall not include any payment made by a person in connection with any activities or disputes related to insurance coverage matters for asbestos-related liabilities; and

(D) shall not include any payment made by or on behalf of persons who are common carriers by railroad for asbestos claims brought under the Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Federal Employers' Liability Act, including settlement, judgment, defense, or indemnity costs associated with these claims.

(7) TRUST.—The term “trust” means all persons or affiliated groups that formed under section 524(g) of title 11, United States Code, or formed under any plan under section 1129 of title 11, United States Code, for the purpose of administering and paying asbestos claims.

(8) ULTIMATE PARENT.—The term “ultimate parent” means a person—

(A) that owns, on the date of enactment of this Act, the entire beneficial interest, directly or indirectly, of at least 1 other person; and

(B) whose entire beneficial interest is not owned, on December 31, 2002, directly or indirectly, by any other single person.

##### SEC. 202. AUTHORITY AND TIERS.

(a) ASSESSMENT.—

(1) IN GENERAL.—The Administrator shall assess from defendant participants contributions to the Fund in accordance with this section based on tiers and subtiers assigned to defendant participants.

(2) AGGREGATE CONTRIBUTION LEVEL.—The total contribution required of all defendant participants over the life of the Fund shall be equal to \$45,000,000,000.

(b) TIER I.—The Administrator shall assign to Tier I all persons that are debtors or affiliated groups that include a person that—

(1) is a debtor on the date of enactment of this Act or at any time during the 1-year period preceding that date; and

(2) have paid a prior asbestos expenditure, irrespective of whether a related case under title 11, United States Code, is dismissed.

(c) TREATMENT OF TIER I BUSINESS ENTITIES IN BANKRUPTCY.—

(1) DEFINED TERM.—In this subsection, the term “bankrupt business entity” means a person that is not a natural person that—

(A) filed under chapter 11, of title 11, United States Code, before January 1, 2003;

(B) has not confirmed a plan of reorganization as of the date of enactment of this Act; and

(C) the Chief Executive Officer, Chief Financial Officer, or Chief Legal Officer of that business entity certifies in writing to the bankruptcy court presiding over the business entity's case, that asbestos liability was neither the sole nor precipitating cause for the filing under chapter 11.

(2) PROCEEDING WITH REORGANIZATION PLAN.—A bankrupt business entity may proceed with the filing, solicitation, and confirmation of a plan of reorganization that does not comply with the requirements of this Act, including a trust and channeling injunction under section 524(g) of title 11, United States Code, notwithstanding any other provisions of this Act, if—

(A) the bankruptcy court presiding over the chapter 11 case of the bankrupt business entity determines that—

(i) confirmation is necessary to permit the reorganization of that entity and assure that all creditors and that entity are treated fairly and equitably; and

(ii) confirmation is clearly favored by the balance of the equities; and

(B) an order confirming the plan of reorganization is entered by the bankruptcy court within 9 months after the date of enactment of this Act or such longer period of time approved by the bankruptcy court for cause shown.

(3) APPLICABILITY.—If the bankruptcy court does not make the required determination, or if an order confirming the plan is not entered within 9 months of the effective date of this Act or such longer period of time approved by the bankruptcy court for cause shown, the provisions of the Act shall apply to the bankrupt business entity notwithstanding the certification. Any timely appeal under title 11, United States Code, from a confirmation order entered during the applicable time period shall automatically extend the time during which this Act is inapplicable to the bankrupt business entity, until the appeal is fully and finally resolved.

(4) OFFSETS.—

(A) PAYMENTS BY INSURERS.—To the extent that a bankrupt business entity successfully confirms a plan of reorganization, including a trust under section 524(g) of title 11, United States Code, and channeling injunction that involves payments by insurers who are otherwise subject to this Act, an insurer who makes payments to the trust under section 524(g) of title 11, United States Code, shall obtain a dollar for dollar reduction in the amount otherwise payable by that insurer under this Act to the Fund.

(B) CONTRIBUTIONS TO FUND.—Any cash payments by a bankrupt business entity, if any, to a trust under section 524(g) of title 11, United States Code, may be counted as a contribution to the Fund.

(d) TIERS II THROUGH VI.—Except as provided in sections 202(b), 204(b), and 204(g), persons or affiliated groups shall be assigned to Tier II, III, IV, V, or VI according to the prior asbestos expenditures paid by such persons or affiliated groups as follows:

(1) Tier II: \$75,000,000 or greater.

(2) Tier III: \$50,000,000 or greater but less than \$75,000,000.

(3) Tier IV: \$10,000,000 or greater but less than \$50,000,000.

(4) Tier V: \$5,000,000 or greater but less than \$10,000,000.

(5) Tier VI: \$1,000,000 or greater but less than \$5,000,000.

(e) ASSIGNMENTS AND COSTS.—

(1) PERMANENT ASSIGNMENT.—Subject to section 204(d), after the Administrator has assigned a person or affiliated group to a tier under this section, such person or affiliated group shall remain in that tier throughout the life of the Fund, regardless of subsequent events, including—

(A) the filing of a petition under a chapter of title 11, United States Code;

(B) a discharge from bankruptcy;

(C) the confirmation of a plan of reorganization; or

(D) the sale or transfer of assets to any other person or affiliated group.

(2) COSTS.—The payment of contributions to the Fund by all persons or affiliated groups that include a person that is a debtor that is the subject of a case under a chapter of title 11, United States Code, after the date of enactment of this Act—

(A) shall constitute costs and expenses of administration of the case under section 503 of that title 11 and shall be payable in accordance with the payment provisions under this subtitle notwithstanding the pendency of the case under that title 11;

(B) shall not be stayed or affected as to enforcement or collection by any stay or injunction power of any court; and

(C) shall not be impaired or discharged in any current or future case under title 11, United States Code.

(f) SUPERSEDING PROVISIONS.—Any plan of reorganization with respect to any debtor assigned to Tier I and any agreement, understanding, or undertaking by any such debtor or any third party with respect to the treatment of any asbestos claim filed before the date of enactment of this Act and subject to confirmation of a plan under chapter 11 of title 11, United States Code, shall be superseded in their entirety by this Act. Any such plan of reorganization, agreement, understanding, or undertaking by any debtor or any third party shall be of no force or effect, and no person shall have any rights or claims with respect to any of the foregoing.

**SEC. 203. SUBTIER ASSESSMENTS.**

(a) IN GENERAL.—

(1) ASSESSMENTS.—Except as provided under subsections (a), (b), (d), (f), and (g) of section 204, the Administrator shall assess contributions to persons or affiliated groups within Tiers I through VII in accordance with this section.

(2) 2002 REVENUES.—The audited consolidated revenue for the year 2002 of each debtor (in this section referred to as “2002 revenues”) shall include the revenues for year 2002 of the debtor and all of its affiliated groups. The pro forma revenues of a person or affiliated group that are assigned to Subtier 3 shall not be included in calculating the 2002 revenues of any debtor that is a direct or indirect majority owner of such Subtier 3 person or affiliated group.

(3) GROSS REVENUES.—

(A) IN GENERAL.—For purposes of this section, gross revenues shall be determined in accordance with generally accepted accounting principles, consistently applied, using the amount reported as gross revenues in the annual report filed with the Securities and Exchange Commission in accordance with section 13(a)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a)(2)) for the year ending December 31, 2002, or, if applicable, the earlier fiscal year that ends during calendar year 2002, if such fiscal year is principally employed by the defendant participant.

(B) INSURANCE PREMIUMS.—Any portion of gross revenues of a defendant participant

that is derived from insurance premiums shall not be used to calculate the share of that defendant participant as a manufacturer non-insurer.

(C) PRIVATELY-HELD COMPANIES.—If the defendant participant is not required to file an earnings report with the Securities and Exchange Commission, gross revenues shall be the amount that the defendant participant would have reported as gross revenues in the event that it had been required to file the report described under subparagraph (A).

(b) TIER I SUBTIERS.—

(1) IN GENERAL.—Except as provided under subsections (a), (b), (d), (f), and (g) of section 204, the Administrator shall assign each person or affiliated group in Tier I to 1 of 4 Subtiers. Each person or affiliated group shall make contributions to the Fund as provided under this section.

(2) SUBTIER 1.—

(A) IN GENERAL.—All persons that are debtors or affiliated groups, which include a debtor with prior asbestos expenditures of \$10,000,000 or greater, shall be assigned to Subtier 1.

(B) ASSIGNMENT.—Each debtor assigned to Subtier 1 shall make annual payments based on a percentage of its 2002 revenues.

(C) PAYMENT.—Each debtor assigned to Subtier 1 shall pay on an annual basis the following with respect to the year of the establishment of the Fund:

(i) Years 1 through 5, 1.4533 percent of the debtor's 2002 revenues.

(ii) Years 6 through 8, 1.3080 percent of the debtor's 2002 revenues.

(iii) Years 9 through 11, 1.1772 percent of the debtor's 2002 revenues.

(iv) Years 12 through 14, 1.0595 percent of the debtor's 2002 revenues.

(v) Years 15 through 17, 0.9535 percent of the debtor's 2002 revenues.

(vi) Years 18 through 20, 0.8582 percent of the debtor's 2002 revenues.

(vii) Years 21 through 23, 0.7723 percent of the debtor's 2002 revenues.

(viii) Years 24 through 25, 0.6951 percent of the debtor's 2002 revenues.

(3) SUBTIER 2.—

(A) IN GENERAL.—All persons that are debtors or affiliated groups which include a debtor or that have no material continuing business operations but hold cash or other assets that have been allocated or earmarked for asbestos settlements shall be assigned to Subtier 2.

(B) ASSIGNMENT OF ASSETS.—Not later than 30 days after the date of enactment of this Act, each person or affiliated group assigned to Subtier 2 shall assign all of its assets to the Fund.

(4) SUBTIER 3.—

(A) IN GENERAL.—All persons that are debtors or affiliated groups that include a debtor, other than those included in Subtier 2, which have no material continuing business operations and no cash or other assets allocated or earmarked for the settlement of any asbestos claim, shall be assigned to Subtier 3.

(B) ASSIGNMENT OF UNENCUMBERED ASSETS.—Not later than 30 days after the date of enactment of this Act, each person or affiliated group assigned to Subtier 3 shall contribute an amount equal to 50 percent of its total unencumbered assets.

(C) CALCULATION OF UNENCUMBERED ASSETS.—Unencumbered assets shall be calculated as the Subtier 3 person or affiliated group's total assets, excluding insurance related assets, less—

(i) all allowed administrative expenses;

(ii) allowed priority claims under section 507 of title 11, United States Code; and

(iii) allowed secured claims.

(c) TIER II SUBTIERS.—

(1) IN GENERAL.—The Administrator shall assign each person or affiliated group in Tier

II to 1 of 5 subtiers, based on the person's or affiliated group's gross revenues. Such subtiers shall each contain as close to an equal number of total persons and affiliated groups as possible, with—

(A) those persons or affiliated groups with the highest gross revenues assigned to Subtier 1;

(B) those persons or affiliated groups with the next highest gross revenues assigned to Subtier 2;

(C) those persons or affiliated groups with the lowest gross revenues assigned to Subtier 5;

(D) those persons or affiliated groups with the next lowest gross revenues assigned to Subtier 4; and

(E) those persons or affiliated groups remaining assigned to Subtier 3.

(2) PAYMENT.—Each person or affiliated group within an assigned subtier shall pay, on an annual basis, the following:

(A) Subtier 1: \$25,000,000.

(B) Subtier 2: \$22,500,000.

(C) Subtier 3: \$20,000,000.

(D) Subtier 4: \$17,500,000.

(E) Subtier 5: \$15,000,000.

(d) TIER III SUBTIERS.—

(1) IN GENERAL.—The Administrator shall assign each person or affiliated group in Tier III to 1 of 5 subtiers, based on the person's or affiliated group's gross revenues. Such subtiers shall each contain as close to an equal number of total persons and affiliated groups as possible, with—

(A) those persons or affiliated groups with the highest gross revenues assigned to Subtier 1;

(B) those persons or affiliated groups with the next highest gross revenues assigned to Subtier 2;

(C) those persons or affiliated groups with the lowest gross revenues assigned to Subtier 5;

(D) those persons or affiliated groups with the next lowest gross revenues assigned to Subtier 4; and

(E) those persons or affiliated groups remaining assigned to Subtier 3.

(2) PAYMENT.—Each person or affiliated group within an assigned subtier shall pay, on an annual basis, the following:

(A) Subtier 1: \$15,000,000.

(B) Subtier 2: \$12,500,000.

(C) Subtier 3: \$10,000,000.

(D) Subtier 4: \$7,500,000.

(E) Subtier 5: \$5,000,000.

(e) TIER IV SUBTIERS.—

(1) IN GENERAL.—The Administrator shall assign each person or affiliated group in Tier IV to 1 of 4 subtiers, based on the person's or affiliated group's gross revenues. Such subtiers shall each contain as close to an equal number of total persons and affiliated groups as possible, with those persons or affiliated groups with the highest gross revenues in Subtier 1, those with the lowest gross revenues in Subtier 4. Those persons or affiliated groups with the highest gross revenues among those remaining will be assigned to Subtier 2 and the rest in Subtier 3.

(2) PAYMENT.—Each person or affiliated group within an assigned subtier shall pay, on an annual basis, the following:

(A) Subtier 1: \$3,500,000.

(B) Subtier 2: \$2,250,000.

(C) Subtier 3: \$1,500,000.

(D) Subtier 4: \$500,000.

(f) TIER V SUBTIERS.—

(1) IN GENERAL.—The Administrator shall assign each person or affiliated group in Tier V to 1 of 3 subtiers, based on the person's or affiliated group's gross revenues. Such subtiers shall each contain as close to an equal number of total persons and affiliated groups as possible, with those persons or affiliated groups with the highest gross revenues in Subtier 1, those with the lowest gross



revenues in Subtier 3, and those remaining in Subtier 2.

(2) **PAYMENT.**—Each person or affiliated group within an assigned subtier shall pay, on an annual basis, the following:

(A) Subtier 1: \$1,000,000.

(B) Subtier 2: \$500,000.

(C) Subtier 3: \$200,000.

(g) **TIER VI SUBTIERS.**—

(1) **IN GENERAL.**—The Administrator shall assign each person or affiliated group in Tier VI to 1 of 3 subtiers, based on the person's or affiliated group's gross revenues. Such subtiers shall each contain as close to an equal number of total persons and affiliated groups as possible, with those persons or affiliated groups with the highest gross revenues in Subtier 1, those with the lowest gross revenues in Subtier 3, and those remaining in Subtier 2.

(2) **PAYMENT.**—Each person or affiliated group within an assigned subtier shall pay, on an annual basis, the following:

(A) Subtier 1: \$500,000.

(B) Subtier 2: \$250,000.

(C) Subtier 3: \$100,000.

(h) **TIER VII.**—

(1) **IN GENERAL.**—Notwithstanding any assignment to Tiers II, III, IV, V, and VI based on prior asbestos expenditures under section 204(g), a person shall be assigned to Tier VII if the person—

(A) is a common carrier by railroad subject to asbestos claims brought under the Federal Employers' Liability Act (45 U.S.C. 51 et seq.); and

(B) have paid not less than \$5,000,000 in settlement, judgment, defense, or indemnity costs relating to such claims.

(2) **ADDITIONAL AMOUNT.**—The contribution requirement for persons assigned to Tier VII shall be in addition to any applicable contribution requirement that such person may be assessed under Tiers II through VI.

(3) **SUBTIER 1.**—The Administrator shall assign each person or affiliated group in Tier VII with gross revenues of not less than \$5,000,000,000 to Subtier 1 and shall require each such person or affiliated group to make annual payments of \$10,000,000 into the Fund.

(4) **SUBTIER 2.**—The Administrator shall assign each person or affiliated group in Tier VII with gross revenues of less than \$5,000,000,000, but not less than \$3,000,000,000 to Subtier 2, and shall require each such person or affiliated group to make annual payments of \$5,000,000 into the Fund.

(5) **SUBTIER 3.**—The Administrator shall assign each person or affiliated group in Tier VII with gross revenues of less than \$3,000,000,000, but not less than \$500,000,000 to Subtier 3, and shall require each such person or affiliated group to make annual payments of \$500,000 into the Fund.

(6) **JOINT VENTURE REVENUES AND LIABILITY.**—

(A) **REVENUES.**—For purposes of this subsection, the revenues of a joint venture shall be included on a pro rata basis reflecting relative joint ownership to calculate the revenues of the parents of that joint venture. The joint venture shall not be responsible for a contribution amount under this subsection.

(B) **LIABILITY.**—For purposes of this subsection, the liability under the Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Federal Employers' Liability Act, shall be attributed to the parent owners of the joint venture on a pro rata basis, reflecting their relative share of ownership. The joint venture shall not be responsible for a contribution amount under this provision.

#### SEC. 204. ASSESSMENT ADMINISTRATION.

(a) **REDUCTION ADJUSTMENTS.**—The Administrator shall assess contributions based on amounts provided under this subtitle for each person or affiliated group within Tiers

II, III, IV, V, VI, and VII for the first 5 years of the operation of the Fund. Beginning in year 6, and every 3 years thereafter, the Administrator shall reduce the contribution amount for each defendant participant in each of these tiers by 10 percent of the amount assessed in the prior year.

(b) **SMALL BUSINESS EXEMPTION.**—A person or affiliated group that is a small business concern (as defined under section 3 of the Small Business Act (15 U.S.C. 632)), on December 31, 2002, is exempt from any contribution requirement under this subsection.

(c) **PROCEDURES.**—The Administrator shall prescribe procedures on how contributions assessed under this subtitle are to be paid.

(d) **EXCEPTIONS.**—

(1) **IN GENERAL.**—Under expedited procedures established by the Administrator, a defendant participant may seek adjustment of the amount of its contribution based on severe financial hardship or demonstrated inequity. The Administrator may determine whether to grant an adjustment and the size of any such adjustment, in accordance with this subsection. Such determinations shall not prejudice the integrity of the Fund and shall not be subject to judicial review.

(2) **FINANCIAL HARDSHIP ADJUSTMENTS.**—

(A) **IN GENERAL.**—A defendant may apply for an adjustment based on financial hardship at any time during the life of the Fund and may qualify for such adjustment by demonstrating that the amount of its contribution under the statutory allocation would constitute a severe financial hardship.

(B) **TERM.**—A hardship adjustment under this subsection shall have a term of 3 years.

(C) **RENEWAL.**—A defendant may renew its hardship adjustment by demonstrating that it remains justified.

(D) **LIMITATION.**—The Administrator may not grant hardship adjustments under this subsection in any year that exceed, in the aggregate, 3 percent of the total annual contributions required of all defendant participants.

(3) **INEQUITY ADJUSTMENTS.**—

(A) **IN GENERAL.**—A defendant may qualify for an adjustment based on inequity by demonstrating that the amount of its contribution under the statutory allocation is exceptionally inequitable when measured against the amount of the likely cost to the defendant of its future liability in the tort system in the absence of the Fund.

(B) **TERM.**—Subject to the annual availability of funds in the Orphan Share Reserve Account established under section 223(e), an inequity adjustment granted by the Administrator under this subsection shall remain in effect for the life of the Fund.

(C) **LIMITATION.**—The Administrator may grant inequity adjustments only to the extent that—

(i) the financial condition of the Fund is sufficient to accommodate such adjustments;

(ii) the Orphan Share Reserve Account is sufficient to cover such adjustments for that year; and

(iii) such adjustments do not exceed 2 percent of the total annual contributions required of all defendant participants.

(4) **ADVISORY PANELS.**—

(A) **APPOINTMENT.**—The Administrator shall appoint a Financial Hardship Adjustment Panel and an Inequity Adjustment Panel to advise the Administrator in carrying out this subsection.

(B) **MEMBERSHIP.**—The membership of the panels appointed under subparagraph (A) may overlap.

(C) **COORDINATION.**—The panels appointed under subparagraph (A) shall coordinate their deliberations and recommendations.

(e) **LIMITATION ON LIABILITY.**—The liability of each defendant participant to contribute

to the Fund shall be limited to the payment obligations under this subtitle, and no defendant participant shall have any liability for the payment obligations of any other defendant participant.

(f) **CONSOLIDATION OF CONTRIBUTIONS.**—

(1) **IN GENERAL.**—For purposes of determining the contribution levels of defendant participants, any affiliated group including 1 or more defendant participants may irrevocably elect, as part of the submission to be made under subsection (i), to report on a consolidated basis all of the information necessary to determine the contribution level under this subtitle and contribute to the Fund on a consolidated basis.

(2) **ELECTION.**—If an affiliated group elects consolidation as provided in this subsection—

(A) for purposes of this Act other than this subsection, the affiliated group shall be treated as if it were a single participant, including without limitation with respect to the assessment of a single annual contribution under this subtitle for the entire affiliated group;

(B) the ultimate parent of the affiliated group shall prepare and submit the submission to be made under subsection (i), on behalf of the entire affiliated group and shall be solely liable, as between the Administrator and the affiliated group only, for the payment of the annual contribution assessed against the affiliated group, except that, if the ultimate parent does not pay when due any contribution for the affiliated group, the Administrator shall have the right to seek payment of all or any portion of the entire amount due from any member of the affiliated group;

(C) all members of the affiliated group shall be identified in the submission under subsection (i) and shall certify compliance with this subsection and the Administrator's regulations implementing this subsection; and

(D) the obligations under this subtitle shall not change even if, after the date of enactment of this Act, the beneficial ownership interest between any members of the affiliated group shall change.

(g) **DETERMINATION OF PRIOR ASBESTOS EXPENDITURES.**—

(1) **IN GENERAL.**—For purposes of determining a defendant participant's prior asbestos expenditure, the Administrator shall prescribe such rules as may be necessary or appropriate to assure that payments by indemnitors before December 31, 2002, shall be counted as part of the indemnitor's prior asbestos expenditure, rather than the indemnitee's prior asbestos expenditure, in accordance with this subsection.

(2) **INDEMNIFIABLE COSTS.**—If an indemnitor has paid or reimbursed to an indemnitee any indemnifiable cost or otherwise made a payment on behalf of or for the benefit of an indemnitee to a third party for an indemnifiable cost before December 31, 2002, the amount of such indemnifiable cost shall be solely for the account of the indemnitor for purposes under this Act.

(3) **INSURANCE PAYMENTS.**—When computing the prior asbestos expenditure with respect to an asbestos claim, any amount paid or reimbursed by insurance shall be solely for the account of the indemnitor, even if the indemnitor would have no direct right to the benefit of the insurance, if—

(A) such insurance has been paid or reimbursed to the indemnitor or the indemnitee, or paid on behalf of or for the benefit of the indemnitee, any indemnifiable cost related to the asbestos claim; and

(B) the indemnitor has either, with respect to such asbestos claim or any similar asbestos claim, paid or reimbursed to its indemnitee any indemnifiable cost or paid to

any third party on behalf of or for the benefit of the indemnitee any indemnifiable cost.

(h) **MINIMUM CONTRIBUTIONS.**—Minimum aggregate contributions of defendant participants to the Fund in any calendar year shall be as follows:

(1) For each of the first 5 years of the Fund, the aggregate contributions of defendant participants to the fund shall be at least \$2,500,000,000.

(2) After the 5th year, the minimum aggregate contribution shall be reduced by \$250,000,000 every 3 years as follows:

(A) For years 6 through 8, \$2,250,000,000.

(B) For years 9 through 11, \$2,000,000,000.

(C) For years 12 through 14, \$1,750,000,000.

(D) For years 15 through 17, \$1,500,000,000.

(E) For years 18 through 20, \$1,250,000,000.

(F) For years 21 through 23, \$1,000,000,000.

(G) For years 24 through 26, \$750,000,000.

(i) **PROCEDURES TO DETERMINE FUND CONTRIBUTION ASSESSMENTS.**—

(1) **NOTICE TO PARTICIPANTS.**—Not later than 60 days after his or her initial appointment, the Administrator shall—

(A) directly notify all reasonably identifiable defendant participants of the requirement to submit information necessary to calculate the amount of any required contribution to the Fund; and

(B) publish in the Federal Register a notice requiring any person who may be a defendant participant (as determined by criteria outlined in the notice) to submit such information.

(2) **RESPONSE REQUIRED.**—

(A) **IN GENERAL.**—Any person who receives notice under paragraph (1)(A), and any other person meeting the criteria specified in the notice published under paragraph (1)(B), shall respond by providing the Administrator with all the information requested in the notice at the earlier of—

(i) 30 days after the receipt of direct notice; or

(ii) 30 days after the publication of notice in the Federal Register.

(B) **CERTIFICATION.**—The response submitted under subparagraph (A) shall be signed by a responsible corporate officer, general partner, proprietor, or individual of similar authority, who shall certify under penalty of law the completeness and accuracy of the information submitted.

(3) **NOTICE OF INITIAL DETERMINATION.**—

(A) **IN GENERAL.**—Not later than 60 days after receiving a response under paragraph (2), the Administrator shall send the participant a notice of initial determination assessing a contribution to the Fund, which shall be based on the information received from the participant in response to the Administrator's request for information.

(B) **NO RESPONSE; INCOMPLETE RESPONSE.**—If no response is received from the participant, or if the response is incomplete, the initial determination assessing a contribution from the participant shall be based on the best information available to the Administrator.

(4) **CONFIDENTIALITY.**—Any Person may designate any information submitted under this subsection as confidential commercial or financial information for purposes of the Freedom of Information Act (5 U.S.C. 552). The Administrator shall adopt procedures for designating such information as confidential.

(5) **NEW INFORMATION.**—

(A) **EXISTING PARTICIPANT.**—The Administrator shall adopt procedures for revising initial assessments based on new information received after the initial assessments are calculated.

(B) **ADDITIONAL PARTICIPANT.**—If the Administrator, at any time, receives information that an additional person may qualify

as a participant, the Administrator shall require such person to submit information necessary to determine whether an initial determination assessing a contribution from that person should be issued, in accordance with the requirements of this subsection.

(6) **PAYMENT SCHEDULE.**—Any initial determination issued under this subsection may allow for periodic payments, provided that the full annual amount assessed is paid each year. Each participant shall pay its contribution to the Fund in the amount specified in the initial determination of assessment from the Administrator, according to the schedule specified in the initial determination.

(7) **SUBPOENAS.**—The Administrator may request the Attorney General to subpoena persons to compel testimony, records, and other information relevant to its responsibilities under this section. The Attorney General may enforce such subpoena in appropriate proceedings in the United States district court for the district in which the person to whom the subpoena was addressed resides, was served, or transacts business.

(8) **REHEARING.**—A Participant has a right to obtain rehearing of the Administrator's initial determination pursuant to section 202.

#### **Subtitle B—Asbestos Insurers Commission**

### **SEC. 211. ESTABLISHMENT OF ASBESTOS INSURERS COMMISSION.**

(a) **ESTABLISHMENT.**—There is established the Asbestos Insurers Commission (referred to in this subtitle as the "Commission") to carry out the duties described in section 212.

(b) **MEMBERSHIP.**—

(1) **APPOINTMENT.**—The Commission shall be composed of 5 members who shall be appointed by the President, after consultation with—

(A) the majority leader of the Senate;

(B) the minority leader of the Senate;

(C) the Speaker of the House of Representatives; and

(D) the minority leader of the House of Representatives.

(2) **QUALIFICATIONS.**—

(A) **EXPERTISE.**—Members of the Commission shall have sufficient expertise to fulfill their responsibilities under this subtitle.

(B) **CONFLICT OF INTEREST.**—No member of the Commission appointed under paragraph (1) may be an employee, former employee, or shareholder of any insurer participant, or an immediate family member of any such individual.

(C) **FEDERAL EMPLOYMENT.**—A member of the Commission may not be an officer or employee of the Federal Government, except by reason of membership on the Commission.

(3) **DATE.**—The appointments of the members of the Commission shall be made not later than 60 days after the date of enactment of this Act.

(4) **PERIOD OF APPOINTMENT.**—Members shall be appointed for the life of the Commission.

(5) **VACANCIES.**—Any vacancy in the Commission shall be filled in the same manner as the original appointment.

(6) **CHAIRMAN.**—The Commission shall select a Chairman from among its members.

(c) **MEETINGS.**—

(1) **INITIAL MEETING.**—Not later than 30 days after the date on which all members of the Commission have been appointed, the Commission shall hold its first meeting.

(2) **SUBSEQUENT MEETINGS.**—The Commission shall meet at the call of the Chairman as necessary to accomplish the duties under section 212.

(3) **QUORUM.**—No business may be conducted or hearings held without the participation of all of the members of the Commission.

### **SEC. 212. DUTIES OF ASBESTOS INSURERS COMMISSION.**

(a) **DETERMINATION OF INSURER LIABILITY FOR ASBESTOS INJURIES.**—

(1) **IN GENERAL.**—The Commission shall determine the amount that each insurer participant will be required to pay into the Fund to satisfy their contractual obligation to compensate claimants for asbestos injuries.

(2) **ALLOCATION AGREEMENT.**—

(A) **IN GENERAL.**—Not later than 30 days after the Commission issues its initial determination, the insurer participants may submit an allocation agreement, approved by all of the insurer participants, to—

(i) the Commission;

(ii) the Committee on the Judiciary of the Senate; and

(iii) the Committee on the Judiciary of the House of Representatives.

(B) **CERTIFICATION.**—The authority of the Commission under this subtitle shall terminate on the day after the Commission certifies that an allocation agreement submitted under subparagraph (A) meets the requirements of this subtitle.

(3) **GENERAL PROVISIONS.**—

(A) **AGGREGATE CONTRIBUTION LEVEL.**—The total contribution required of all insurer participants over the life of the Fund shall be equal to \$45,000,000,000.

(B) **DECLINING PAYMENTS.**—Since the payments from the Fund are expected to decline over time, the annual contributions from insurer participants is also expected to decline over time. The proportionate share of each insurer participant's contributions to the Fund will remain the same throughout the life of the Fund.

(C) **SEVERAL LIABILITY.**—Each insurer participant's obligation to contribute to the Fund is several. There is no joint liability and the future insolvency of any insurer participant shall not affect the assessment assigned to any other insurer participant.

(4) **ASSESSMENT CRITERIA.**—

(A) **MANDATORY PARTICIPANTS.**—Insurers that have paid, or been assessed by a legal judgment or settlement, at least \$1,000,000 in defense and indemnity costs before the date of enactment of this Act in response to claims for compensation for asbestos injuries shall be mandatory participants in the Fund. Other insurers shall be exempt from mandatory payments.

(B) **PARTICIPANT TIERS.**—Contributions shall be determined by assigning mandatory insurer participants into tiers, which shall be determined and defined based on—

(i) net written premiums received from policies covering asbestos that were in force at any time during the period beginning on January 1, 1940 and ending on December 31, 1986;

(ii) net paid losses for asbestos injuries compared to all such losses for the insurance industry;

(iii) net carried reserve level for asbestos claims on the most recent financial statement of the insurer participant; and

(iv) future liability.

(C) **PAYMENT SCHEDULE.**—Any final determination of assessment issued under subsection (b) may allow for periodic payments, provided that the full annual amount assessed is paid each year. Each insurer participant shall pay its contribution to the Fund in the amount specified in the final determination of assessment from the Commission, according to the schedule specified in the final determination.

(b) **PROCEDURE.**—

(1) **NOTICE TO PARTICIPANTS.**—Not later than 30 days after the initial meeting of the Commission, the Commission shall—

(A) directly notify all reasonably identifiable insurer participants of the requirement

to submit information necessary to calculate the amount of any required contribution to the Fund; and

(B) publish in the Federal Register a notice requiring any person who may be an insurer participant (as determined by criteria outlined in the notice) to submit such information.

(2) RESPONSE REQUIRED.—

(A) IN GENERAL.—Any person who receives notice under paragraph (1)(A), and any other person meeting the criteria specified in the notice published under paragraph (1)(B), shall respond by providing the Commission with all the information requested in the notice at the earlier of—

(i) 30 days after the receipt of direct notice; or

(ii) 30 days after the publication of notice in the Federal Register.

(B) CERTIFICATION.—The response submitted under subparagraph (A) shall be signed by a responsible corporate officer, general partner, proprietor, or individual of similar authority, who shall certify under penalty of law the completeness and accuracy of the information submitted.

(3) NOTICE OF INITIAL DETERMINATION.—

(A) IN GENERAL.—Not later than 120 days after the initial meeting of the Commission, the Commission shall send each insurer participant a notice of initial determination assessing a contribution to the Fund, which shall be based on the information received from the participant in response to the Commission's request for information.

(B) NO RESPONSE; INCOMPLETE RESPONSE.—If no response is received from an insurer participant, or if the response is incomplete, the initial determination assessing a contribution from the insurer participant shall be based on the best information available to the Commission.

(4) REVIEW PERIOD.—

(A) COMMENTS FROM INSURER PARTICIPANTS.—Not later than 30 days after receiving a notice of initial determination from the Commission, an insurer participant may provide the Commission with additional information to support limited adjustments to the assessment received to reflect exceptional circumstances.

(B) ADDITIONAL PARTICIPANTS.—If, before the final determination of the Commission, the Commission receives information that an additional person may qualify as an insurer participant, the Commission shall require such person to submit information necessary to determine whether a contribution from that person should be assessed, in accordance with the requirements of this subsection.

(C) REVISION PROCEDURES.—The Commission shall adopt procedures for revising initial assessments based on information received under subparagraphs (A) and (B). Any adjustments to assessment levels shall comply with the criteria under subsection (a).

(5) SUBPOENAS.—The Commission may request the Attorney General to subpoena persons to compel testimony, records, and other information relevant to its responsibilities under this section. The Attorney General may enforce such subpoena in appropriate proceedings in the United States district court for the district in which the person to whom the subpoena was addressed resides, was served, or transacts business.

(6) NOTICE OF FINAL DETERMINATION.—

(A) IN GENERAL.—Not later than 60 days after the notice of initial determination is sent to the insurer participants, the Commission shall send each insurer participant a notice of final determination.

(B) JUDICIAL REVIEW.—A participant has a right to obtain judicial review of the Commission's final determination under title III.

(c) DETERMINATION OF RELATIVE LIABILITY FOR ASBESTOS INJURIES.—The Commission shall determine the percentage of the total liability of each participant identified under subsection (a).

(d) REPORT.—

(1) RECIPIENTS.—Not later than 1 year after the date of enactment of this Act, the Commission shall submit a report, containing the information described under paragraph (2), to—

(A) the Committee on the Judiciary of the Senate;

(B) the Committee on the Judiciary of the House of Representatives; and

(C) the Court of Asbestos Claims.

(2) CONTENTS.—The report under paragraph (1) shall contain the amount that each insurer participant is required to contribute to the Fund, including the payment schedule for such contributions.

**SEC. 213. POWERS OF ASBESTOS INSURERS COMMISSION.**

(a) HEARINGS.—The Commission may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers advisable to carry out this Act.

(b) INFORMATION FROM FEDERAL AGENCIES.—The Commission may secure directly from any Federal department or agency such information as the Commission considers necessary to carry out this Act. Upon request of the Chairman of the Commission, the head of such department or agency shall furnish such information to the Commission.

(c) POSTAL SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(d) GIFTS.—The Commission may not accept, use, or dispose of gifts or donations of services or property.

**SEC. 214. PERSONNEL MATTERS.**

(a) COMPENSATION OF MEMBERS.—Each member of the Commission shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which such member is engaged in the performance of the duties of the Commission.

(b) TRAVEL EXPENSES.—The members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

(c) STAFF.—

(1) IN GENERAL.—The Chairman of the Commission may, without regard to the civil service laws and regulations, appoint and terminate an executive director and such other additional personnel as may be necessary to enable the Commission to perform its duties. The employment of an executive director shall be subject to confirmation by the Commission.

(2) COMPENSATION.—The Chairman of the Commission may fix the compensation of the executive director and other personnel without regard to chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay for the executive director and other personnel may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title.

(d) DETAIL OF GOVERNMENT EMPLOYEES.—Any Federal Government employee may be

detailed to the Commission without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(e) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Chairman of the Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals which do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of such title.

**SEC. 215. NONAPPLICATION OF FOIA AND CONFIDENTIALITY OF INFORMATION.**

(a) IN GENERAL.—Section 552 of title 5, United States Code (commonly referred to as the Freedom of Information Act) shall not apply to the Commission.

(b) CONFIDENTIALITY OF INFORMATION.—All information submitted to the Commission shall be privileged and confidential information and shall not be disclosed to any person outside the Commission, unless such privilege is knowingly and intentionally waived by the person submitting the information. An appeal of an assessment to the Fund under this subtitle shall be deemed a waiver for the purposes of this subsection unless the appellee participant makes a motion for an in camera review of its appeal.

**SEC. 216. TERMINATION OF ASBESTOS INSURERS COMMISSION.**

The Commission shall terminate 60 days after the date on which the Commission submits its report under section 212(c).

**SEC. 217. AUTHORIZATION OF APPROPRIATIONS.**

(a) IN GENERAL.—There are authorized to be appropriated to the Commission such sums as may be necessary for fiscal year 2004 to carry out the provisions of this subtitle.

(b) AVAILABILITY.—Any sums appropriated under the authorization contained in this section shall remain available, without fiscal year limitation, until expended.

**Subtitle C—Office of Asbestos Injury Claims Resolution**

**SEC. 221. ESTABLISHMENT OF THE OFFICE OF ASBESTOS INJURY CLAIMS RESOLUTION.**

(a) IN GENERAL.—There is established the Office of Asbestos Injury Claims Resolution.

(b) RESPONSIBILITIES.—The Office shall be responsible for—

(1) administering the Fund;

(2) providing compensation from the Fund to asbestos claimants who are determined to be eligible for such compensation; and

(3) carrying out other applicable provisions of this title and other activities determined appropriate by the Administrator.

(c) ADMINISTRATOR.—

(1) APPOINTMENT.—The Office shall be headed by an Administrator who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) TERM; REMOVAL.—The Administrator shall serve for a term of 5 years and may be removable by the President only for good cause.

**SEC. 222. POWERS OF THE ADMINISTRATOR AND MANAGEMENT OF THE FUND.**

(a) GENERAL POWERS.—The Administrator shall have the following general powers:

(1) To promulgate such regulations as the Administrator determines to be necessary to implement the provisions of this subtitle.

(2) To appoint employees or contract for the services of other personnel as may be necessary and appropriate to carry out the provisions of this subtitle, including entering into cooperative agreements with other Federal agencies.

(3) To make such expenditures as may be necessary and appropriate in the administration of this subtitle.

(4) To take all actions necessary to prudently manage the Fund, including—

(A) administering, in a fiduciary capacity, the assets of the Fund for the exclusive purpose of providing benefits to asbestos claimants and their beneficiaries;

(B) defraying the reasonable expenses of administering the Fund;

(C) investing the assets of the Fund in accordance with subsection (b)(2); and

(D) retaining advisers, managers, and custodians who possess the necessary facilities and expertise to provide for the skilled and prudent management of the Fund, to assist in the development, implementation and maintenance of the Fund's investment policies and investment activities, and to provide for the safekeeping and delivery of the Fund's assets.

(5) To have all other powers incidental, necessary, or appropriate to carrying out the functions of the Office.

**(b) REQUIREMENTS RELATING TO FUND ASSETS.—**

(1) **IN GENERAL.**—Amounts in the Fund shall be held for the exclusive purpose of providing benefits to asbestos claimants and their beneficiaries and to otherwise defray the reasonable expenses of administering the Fund.

**(2) INVESTMENTS.—**

(A) **IN GENERAL.**—Amounts in the Fund shall be administered and invested with the care, skill, prudence, and diligence, under the circumstances prevailing at the time of such investment, that a prudent person acting in a like capacity and manner would use.

(B) **STRATEGY.**—The Administrator shall invest amounts in the Fund in a manner that enables the Fund to make current and future distributions to or for the benefit of asbestos claimants. In pursuing an investment strategy under this subparagraph, the Administrator shall consider, to the extent relevant to an investment decision or action—

(i) the size of the Fund;

(ii) the nature and estimated duration of the Fund;

(iii) the liquidity and distribution requirements of the Fund;

(iv) general economic conditions at the time of the investment;

(v) the possible effect of inflation or deflation on Fund assets;

(vi) the role that each investment or course of action plays with respect to the overall assets of the Fund;

(vii) the expected amount to be earned (including both income and appreciation of capital) through investment of amounts in the Fund; and

(viii) the needs of asbestos claimants for current and future distributions authorized under this Act.

**SEC. 223. ASBESTOS INJURY CLAIMS RESOLUTION FUND.**

(a) **ESTABLISHMENT.**—There is established in the Office of Asbestos Injury Claims Resolution, the Asbestos Injury Claims Resolution Fund, which shall be available to pay—

(1) claims for compensation for an eligible disease or condition determined under title I;

(2) claims for reimbursement for medical monitoring determined under title I;

(3) principal and interest on borrowings under subsection (c); and

(4) administrative expenses to carry out this subtitle.

(b) **LIMITATIONS ON CONTRIBUTIONS BY MANDATORY PARTICIPANTS.**—The aggregate contributions of all mandatory participants to the Fund may not exceed \$5,000,000,000 in any calendar year.

(c) **BORROWING AUTHORITY.**—The Administrator is authorized to borrow, in any calendar year, an amount not to exceed anticipated contributions to the Fund in the following calendar year for purposes of carrying

out the obligations of the Fund under this Act.

**(d) GUARANTEED PAYMENT ACCOUNT.—**

(1) **IN GENERAL.**—The Administrator shall establish a guaranteed payment account within the Fund to insure payment of the total amount of contributions required to be paid into the Fund by all participants.

(2) **SURCHARGE.**—The Administrator shall impose, on each participant required to pay contributions into the Fund under this Act, in addition to the amount of such contributions, a reasonable surcharge to be paid into the guaranteed payment account in an amount that the Administrator determines appropriate to insure against the risk of nonpayment of required contributions by any such participant.

(3) **PROCEDURE.**—The surcharge required under this section shall be paid in such manner, at such times, and in accordance with such procedures as the Administrator determines appropriate.

(4) **USES OF GUARANTEED PAYMENT ACCOUNT.**—Amounts in the guaranteed payment account shall be used as necessary to pay claims from the Fund, to the extent that amounts in the Fund are insufficient to pay such claims due to nonpayment by any participant.

(5) **ENFORCEMENT.**—The enforcement of the payment of a surcharge under this subsection may be enforced in the same manner and to the same extent as the enforcement of a contribution under section 224.

**(e) ORPHAN SHARE RESERVE ACCOUNT.—**

(1) **IN GENERAL.**—To the extent the total amount of contributions of the participants in any given year exceed the minimum aggregate contribution under subsection (h), the excess monies shall be placed in an orphan share reserve account established within the Fund by the Administrator.

(2) **USE OF ACCOUNT MONIES.**—Monies from the orphan share reserve account shall be preserved and administered like the remainder of the Fund, but shall be reserved and may be used only—

(A) in the event that a petition for relief is filed and not withdrawn for the participant under title 11, United States Code, after the date of enactment of this Act and the participant cannot meet its obligations under this subtitle; and

(B) to the extent the Administrator grants a defendant participant relief for severe financial hardship or exigent circumstances under this section.

**SEC. 224. ENFORCEMENT OF CONTRIBUTIONS.**

(a) **DEFAULT.**—If any participant fails to make any payment in the amount and according to the schedule specified in a determination of assessment, after demand and 30 days opportunity to cure the default, there shall be a lien in favor of the United States for the amount of the delinquent payment (including interest) upon all property and rights to property, whether real or personal, belonging to such participant.

(b) **BANKRUPTCY.**—In the case of a bankruptcy or insolvency proceeding, the lien imposed under subsection (a) shall be treated in the same manner as a lien for taxes due and owing to the United States for purposes of the provisions of title 11, United States Code, or section 3713(a) of title 31, United States Code.

**(c) CIVIL ACTION.—**

(1) **IN GENERAL.**—In any case in which there has been a refusal or neglect to pay the liability imposed by the final determination under section 202 or 212, the Administrator may bring a civil action in the Federal district court for the District of Columbia to—

(A) enforce such liability and the lien of the United States under this section; or

(B) subject any property, of whatever nature, of the participant, or in which the par-

ticipant has any right, title, or interest, to the payment of such liability.

(2) **DEFENSE LIMITATION.**—In any proceeding under this subsection, the participant shall be barred from bringing any challenge to the assessment if such challenge could have been made during the review period under section 202(b)(4) or 212(b)(4), or a judicial review proceeding under title III.

**SEC. 225. ADDITIONAL CONTRIBUTING PARTICIPANTS.**

(a) **DEFINED TERM.**—In this section, the term “additional contributing participant” means any defendant in an asbestos claim that is not a mandatory participant under subtitle A and is likely to avoid future civil liability as a result of this Act.

(b) **ASSESSMENT.**—In addition to contributions assessed under subtitle A, the Administrator may assess additional contributing participants for contributions to the Fund. Any additional contributing participant assessed under this section shall be treated as a defendant participant for purposes of procedures and appeals under this Act.

(c) **ASSESSMENT LIMITATIONS.**—The Administrator may assess under subsection (b), over the life of the Fund, an amount not to exceed \$10,000,000,000 from all additional contributing participants.

**TITLE III—JUDICIAL REVIEW**

**SEC. 301. JUDICIAL REVIEW OF DECISIONS OF THE ASBESTOS COURT.**

(a) **EXCLUSIVE JURISDICTION.**—The United States Court of Appeals for the District of Columbia shall have exclusive jurisdiction over any action to review a final decision of the Asbestos Court.

**(b) PROCEDURE FOR APPEALS.—**

(1) **PERIOD FOR FILING APPEAL.**—An appeal under this section shall be filed not later than 30 days after the issuance of a final decision by the Asbestos Court.

(2) **TRANSMITTAL OF RECORD.**—Upon the filing of an appeal, a copy of the filing shall be transmitted by the clerk of the court to the Asbestos Court, and the Asbestos Court shall file in the court the record in the proceeding, as provided in section 2112 of title 28, United States Code.

**(3) STANDARD OF REVIEW.—**

(A) **IN GENERAL.**—The court shall uphold the decision of the Asbestos Court if the court determines, upon review of the record as a whole, that the decision is not arbitrary and capricious.

(B) **EFFECT OF DETERMINATION.**—If the court determines that a final decision of the Asbestos Court is arbitrary and capricious, the court shall remand the case to the Asbestos Court.

(4) **FINALITY OF DETERMINATION.**—The decision of the United States Court of Appeals for the District of Columbia shall be final, except that the same shall be subject to review by the Supreme Court of the United States, as provided in section 1254 of title 28, United States Code.

**SEC. 302. JUDICIAL REVIEW OF FINAL DETERMINATIONS OF THE ASBESTOS INSURERS COMMISSION.**

(a) **EXCLUSIVE JURISDICTION.**—The United States District Court for the District of Columbia shall have exclusive jurisdiction over any action to review a final determination by the Asbestos Insurers Commission regarding the assessment of a contribution to the Fund from a participant.

**(b) PROCEDURE FOR APPEAL.—**

(1) **PERIOD FOR FILING APPEAL.**—An appeal under this section shall be filed not later than 30 days after the issuance of a final determination by the Commission.

(2) **TRANSMITTAL OF RECORD.**—Upon the filing of an appeal, a copy of the filing shall be transmitted by the clerk of the court to the Commission.

(c) STANDARD OF REVIEW.—

(1) IN GENERAL.—The United States District Court for the District of Columbia shall uphold the final determination of the Commission with respect to the assessment of a contribution to the Fund from a participant if such determination is not arbitrary and capricious.

(2) EFFECT OF DETERMINATION.—If the court determines that a final determination with respect to the amount of a contribution to the Fund by a participant may not be upheld, the court shall remand the decision to the Commission, with instructions to modify the final determination.

(3) NO STAYS.—The court may not issue a stay of payment into the Fund pending its final judgment.

(4) FINALITY OF DETERMINATION.—The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court, as provided in section 1254 of title 28, United States Code.

#### SEC. 303. EXCLUSIVE REVIEW.

(a) EXCLUSIVITY OF REVIEW.—An action of the Asbestos Court or the Asbestos Insurers Commission for which review could have been obtained under section 301 or 302 shall not be subject to judicial review in any other proceeding, including proceedings before the Asbestos Court.

(b) CONSTITUTIONAL REVIEW.—

(1) IN GENERAL.—Notwithstanding any other provision of law, any interlocutory or final judgment, decree, or order of a Federal court holding this Act, or any provision or application thereof, unconstitutional shall be reviewable as a matter of right by direct appeal to the Supreme Court.

(2) PERIOD FOR FILING APPEAL.—Any such appeal shall be filed not more than 30 days after entry of such judgment, decree, or order.

#### SEC. 304. PRIVATE RIGHT OF ACTION AGAINST REINSURERS.

(a) IN GENERAL.—Any insurer participant may file a claim in the United States District Court for the District of Columbia against any reinsurer that is contractually obligated to reimburse such insurer participant for a portion of costs incurred as a result of payment of asbestos related claims.

(b) EXPEDITED PROCEDURES.—

(1) IN GENERAL.—A claim filed under subsection (a) shall be subject to expedited procedures, as prescribed by the United States District Court for the District of Columbia.

(2) EVIDENTIARY STANDARD.—The plaintiff shall not recover in a claim under subsection (a) unless the plaintiff demonstrates the right to recover by a preponderance of the evidence.

(3) FINAL JUDGMENT.—A final judgment shall be issued on a claim filed under subsection (a) not later than 30 days after such filing.

(c) APPEALS.—

(1) IN GENERAL.—An appeal from a decision under subsection (b) may be filed with the Court of Appeals for the District of Columbia.

(2) STANDARD OF REVIEW.—The final judgment of the district court shall be upheld unless the court of appeals finds the judgment to be arbitrary and capricious.

(3) FINAL JUDGMENT.—A final judgment shall be issued on an appeal filed under paragraph (1) not later than 30 days after such filing.

#### TITLE IV—MISCELLANEOUS PROVISIONS

##### SEC. 401. FALSE INFORMATION.

Any person who knowingly provides false information in connection with an assessment of contributions, a claim for compensation, or an audit under this Act shall be subject to—

(1) criminal prosecution under section 1001 of title 18, United States Code; and

(2) civil penalties under section 3729 of title 31, United States Code.

##### SEC. 402. EFFECT ON BANKRUPTCY LAWS.

(a) NO AUTOMATIC STAY.—Section 362(b) of title 11, United States Code, is amended—

(1) in paragraph (17), by striking “or” at the end;

(2) in paragraph (18), by striking the period at the end and inserting “; or”; and

(3) by inserting after paragraph (18) the following:

“(19) of the enforcement of any payment obligations under section 204 of the Fairness in Asbestos Injury Resolution Act of 2003, against a debtor, or the property of the estate of a debtor, that is a participant (as that term is defined in section 3 of that Act).”.

(b) ASSUMPTION OF EXECUTORY CONTRACTS.—Section 365 of title 11, United States Code, is amended by adding at the end the following:

“(q) If a debtor is a participant (as that term is defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2003), the trustee shall be deemed to have assumed all executory contracts entered into by the participant under section 204 of that Act. The trustee may not reject any such executory contract.”.

(c) ALLOWED ADMINISTRATIVE EXPENSES.—Section 503 of title 11, United States Code, is amended by adding at the end the following:

“(c)(1) Claims of the United States, the Attorney General, or the Administrator (as that term is defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2003) based upon the asbestos payment obligations of a debtor that is a Participant (as that term is defined in section 3 of that Act), shall be paid as an allowed administrative expense. The debtor shall not be entitled to either notice or a hearing with respect to such claims.

“(2) For purposes of paragraph (1), the term “asbestos payment obligation” means any payment obligation under subtitle B of title II of the Fairness in Asbestos Injury Resolution Act of 2003.”.

(d) NO DISCHARGE.—Section 523 of title 11, United States Code, is amended by adding at the end the following:

“(f) A discharge under section 727, 1141, 1228, or 1328 of this title does not discharge any debtor that is a participant (as that term is defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2003) of the payment obligations of the debtor under subtitle B of title II of that Act.”.

(e) PAYMENT.—Section 524 of title 11, United States Code, is amended by adding at the end the following:

“(i) PARTICIPANT DEBTORS.—

“(1) IN GENERAL.—Paragraphs (2) and (3) shall apply to a debtor who—

“(A) is a participant that has made prior asbestos expenditures (as such terms are defined in the Fairness in Asbestos Injury Resolution Act of 2003); and

“(B) is subject to a case under this title that is pending—

“(i) on the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2003; or

“(ii) at any time during the 1 year period preceding the date of enactment of that Act.

“(2) TIER I DEBTORS.—A debtor that has been assigned to tier I under section 202 of the Fairness in Asbestos Injury Resolution Act of 2003 shall make payments in accordance with sections 202 and 203 of that Act.

“(3) TREATMENT OF PAYMENT OBLIGATIONS.—All payment obligations of a debtor under sections 202 and 203 of the Fairness in Asbestos Injury Resolution Act of 2003 shall—

“(A) constitute costs and expenses of administration of a case under section 503 of this title;

“(B) notwithstanding any case pending under this title, be payable in accordance with section 202 of that Act;

“(C) not be stayed;

“(D) not be affected as to enforcement or collection by any stay or injunction of any court; and

“(E) not be impaired or discharged in any current or future case under this title.”.

(f) TREATMENT OF TRUSTS.—Section 524 of title 11, United States Code, as amended by this Act, is amended by adding at the end the following:

“(j) ASBESTOS TRUSTS.—

“(1) IN GENERAL.—A trust shall assign a portion of the corpus of the trust to the Asbestos Injury Claims Resolution Fund (referred to in this subsection as the ‘Fund’) as is required under section 202 of the Fairness in Asbestos Injury Resolution Act of 2003 if—

“(A) the trust was formed prior to October 22, 1994; and

“(B) the trust qualifies as a “trust” under section 201 of that Act.

“(2) TRANSFER OF TRUST ASSETS.—

“(A) IN GENERAL.—Except as provided under subparagraphs (B) and (C), the assets in any trust established to provide compensation for asbestos claims (as defined in section 3 of the FAIR Act of 2003) shall be transferred to the Fund not later than 6 months after the date of enactment of the FAIR Act of 2003. Except as provided under subparagraph (B), the Administrator of the Fund shall accept such assets and utilize them for any purposes of the Fund under section 223 of such Act, including the payment of claims for compensation under such Act to beneficiaries of the trust from which the assets were transferred. After such transfer, each trustee of such trust shall have no liability to any beneficiary of such trust.

“(B) AUTHORITY TO REFUSE ASSETS.—The Administrator of the Fund may refuse to accept any asset that the Administrator determines may create liability for the Fund in excess of the value of the asset.

“(C) ALLOCATION OF TRUST ASSETS.—If a trust under subparagraph (A) has beneficiaries with claims that are not asbestos claims, the assets transferred to the Fund under subparagraph (A) shall not include assets allocable to such beneficiaries. The trustees of any such trust shall determine the amount of such trust assets to be reserved for the continuing operation of the trust in processing and paying claims that are not asbestos claims. Such reserved amount shall not be greater than 3 percent of the total assets in the trust and shall not be transferred to the Fund.

“(D) SALE OF FUND ASSETS.—The investment requirements under section 222 of the FAIR Act of 2003 shall not be construed to require the Administrator of the Fund to sell assets transferred to the Fund under subparagraph (A).

“(E) LIQUIDATED CLAIMS.—A trust shall not make any payment relating to asbestos claims unless such claims were liquidated before the date of enactment of the FAIR Act of 2003.

“(3) INJUNCTION.—Any injunction issued as part of the formation of a trust described in paragraph (1) shall remain in full force and effect until the assignment required under paragraph (1) has been made.”.

(g) NO AVOIDANCE OF TRANSFER.—Section 546 of title 11, United States Code, is amended by adding at the end the following:

“(h) Notwithstanding the rights and powers of a trustee under section 544, 545, 547, 548, 549, and 550 of this title, if a debtor is a participant (as that term is defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2003), the trustee may not avoid a transfer made by the debtor pursuant

to its payment obligations under sections 202 or 203 of that Act.”.

(h) CONFIRMATION OF PLAN.—Section 1129(a) of title 11, United States Code, is amended by adding at the end the following:

“(14) If the debtor is a participant (as that term is defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2003), the plan provides for the continuation after its effective date of payment of all payment obligations under title II of that Act.”.

**SEC. 403. EFFECT ON OTHER LAWS AND EXISTING CLAIMS.**

(a) EFFECT ON FEDERAL AND STATE LAW.—The provisions of this Act shall supersede any and all State and Federal laws insofar as they may relate to any asbestos claim filed under this Act.

(b) EXCLUSIVE REMEDY.—The remedies provided under this Act shall be the exclusive remedy for any asbestos claim under any Federal or State law.

(c) BAR ON ASBESTOS CLAIMS.—

(1) IN GENERAL.—No asbestos claim may be pursued in any State or Federal court, except for enforcement of claims for which a final judgment is entered before the date of enactment of this Act.

(2) PREEMPTION.—Any action asserting an asbestos claim in a court of any State, except actions for which final judgment are entered before the date of enactment of this Act, is preempted by this Act.

(3) DISMISSAL.—No judgment other than a judgment of dismissal may be entered in any such action, including an action pending on appeal, or on petition or motion for discretionary review, on or after the date of enactment of this Act. A court may dismiss any such action on its motion. If the district court denies the motion to dismiss, it shall stay further proceedings until final disposition of any appeal taken under this Act.

(4) REMOVAL.—

(A) IN GENERAL.—If an action under paragraph (2) is not dismissed, or if an order entered after the date of enactment of this Act purporting to enter judgment or deny review is not rescinded and replaced with an order of dismissal within 30 days after the filing of a motion by any party to the action advising the court of the provisions of this Act, any party may remove the case to the district court of the United States for the district in which such action is pending.

(B) TIME LIMITS.—For actions originally filed after the date of enactment of this Act, the notice of removal shall be filed within the time limits specified in section 1441(b) of title 28, United States Code.

(C) PROCEDURES.—The procedures for removal and proceedings after removal shall be in accordance with sections 1446 through 1450 of title 28, United States Code, except as may be necessary to accommodate removal of any actions pending (including on appeal) on the date of enactment of this Act.

(D) JURISDICTION.—The jurisdiction of the district court shall be limited to—

(i) determining whether removal was proper; and

(ii) ruling on a motion to dismiss based on this Act.

**HONORING OUR ARMED FORCES**

Mr. GREGG. Mr. President, I rise today to pay tribute to a special person, Private First Class Andrew Stevens of Stratham, NH.

Andrew joined the United States Army after graduating from Exeter High School in 2001. He completed basic training and advanced individual training at Fort Benning, GA, and served proudly as an infantryman in Charlie

Company of the 4th Battalion, 31st Infantry Regiment, 10th Mountain Division, Light, United States Army. His awards include the Basic Marksman-ship Qualification Badge, Expert Infantry Badge, Army Achievement Medal, National Defense Service Medal, Army Service Ribbon, and the Army Meritorious Service Medal.

Tragically, on March 10, 2003, this young soldier, only 20 years old, gave the last full measure for our Nation when he and 10 comrades perished in the crash of their UH-60 Black Hawk helicopter during a training mission in the woods of Fort Drum, NY.

Patriots from the State of New Hampshire have served our Nation with honor and distinction from Bunker Hill to Iraq—and Andrew served in that fine tradition. Daniel Webster said, “God grants liberty only to those who love it, and are always ready to guard and defend it.” Andrew was one of those proud and dedicated volunteers who chose to serve our Nation and guard our precious liberty, and for that we will always owe our sincere gratitude.

The sudden death of a young person is especially difficult for family and friends. In November 1864, President Abraham Lincoln was informed by the War Department of a mother who had lost five sons in the Civil War. He wrote the mother:

I feel how weak and fruitless must be any word of mine which should attempt to beguile you from the grief of a loss so overwhelming. But I cannot refrain from tendering you the consolation that may be found in the thanks of the Republic they died to save.

I pray that our Heavenly Father may assuage the anguish of your bereavement, and leave you only the cherished memory of the loved and lost, and the solemn pride that must be yours to have laid so costly a sacrifice upon the altar of freedom.

Family, friends, and fellow soldiers will no longer be able to enjoy the company of Private First Class Andrew Stevens. Strangers will never have the opportunity to know his friendship. Yet memories of this young patriot will last forever with those who were fortunate enough to have had the opportunity to know him. May God bless Andrew Stevens.

Mr. President, I also rise today to pay tribute to a special person, SFC William J. Tracy, who grew up in Weare, and Webster, NH.

William joined the U.S. Marine Corps after graduating from Merrimack Valley High School in Penacook in 1993. He served as a field artillery fire controlman for 4 years and completed his enlistment as a corporal in April 1999.

Subsequently, he enlisted in the U.S. Army and attended the Utility Helicopter Maintainers Course at Fort Eustis, VA. There he earned his wings, and proudly became an air crewmember. Immediately afterwards, he was assigned to the 5th Battalion, 158th Aviation Regiment in Giebelstadt, Germany. In 3 years there, he deployed six times and logged over 500 hours flying.

In October 2002, William extended overseas and moved to his sister unit, B Company, of the 5th Battalion, 158th Aviation Regiment, in Aviano, Italy. In January 2003, he departed for Kuwait as part of the 11th Aviation Task Force.

In his U.S. Army career, he received the Army Achievement Medal, National Defense Service Ribbon, and the Good Conduct Medal. He was qualified as expert on the M9 semiautomatic pistol and on the helicopter-mounted M60 machine gun.

Tragically, on February 25, 2003, this young soldier, 1 day short of his 28th birthday, gave the last full measure for our Nation when he, and three crewmembers, perished in the crash of their UH-60 Black Hawk helicopter in the Kuwaiti desert. Their helicopter crashed 30 miles northwest of Kuwait City during night exercises.

Patriots from the State of New Hampshire have served our Nation with honor and distinction from Bunker Hill to Iraq—and William served in that fine tradition. Daniel Webster said: “God grants liberty only to those who love it, and are always ready to guard and defend it.” William was one of those proud and dedicated volunteers who chose to serve our Nation and guard our precious liberty, and for that we will always owe our sincere gratitude.

The sudden death of a young person is especially difficult for family and friends. In November 1864, President Abraham Lincoln was informed by the War Department of a mother who had lost five sons in the Civil War. He wrote the mother:

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I pray that our Heavenly Father may assuage the anguish of your bereavement, and leave you only the cherished memory of the loved and lost, and the solemn pride that must be yours to have laid so costly a sacrifice upon the altar of freedom.

Family, friends, and fellow soldiers will no longer be able to enjoy the company of SFC William Tracy. Strangers will never have the opportunity to know his friendship. Yet memories of this young patriot will last forever with those who were fortunate enough to have had the opportunity to know him. May God bless William Tracy.

**ON PASSAGE OF THE “HOMETOWN HEROES SURVIVORS BENEFITS ACT OF 2003”**

Mr. LEAHY. Mr. President, I rise today to express my happiness over the Senate passage of the “Hometown Heroes Survivors Benefits Act of 2003 in the early morning hours of last Friday. I thank Senators GRAHAM of South Carolina, COLLINS, JEFFORDS, SARBANES, SCHUMER, DURBIN, LANDRIEU, NELSON of Florida, CLINTON, SNOWE, KOHL, SMITH, STABENOW, KENNEDY, and

DAYTON for joining me as cosponsors of this multi-partisan legislation that will improve the Department of Justice's Public Safety Officers' Benefits, PSOB, Program by allowing families of public safety officers who suffer fatal heart attacks or strokes to qualify for federal survivor benefits. I also thank Senator Minority Leader TOM DASCHLE for his hard work to pass our bill through the Senate last Friday at 2:30 AM. Without his perseverance, passage of this bill would not have happened.

I also thank each of our Nation's brave firefighters, emergency medical rescuers and law enforcement officers for the jobs they do for the American public day in and day out. Our public safety officers are often the first to respond to any crime or emergency situation. On September 11, the Nation saw that the first on the scene at the World Trade Center were the heroic firefighters, police officers and emergency personnel of New York City. These real-life heroes, many of whom gave the ultimate sacrifice, remind us of how important it is to support our state and local public safety partners.

I commend Congressmen ETHERIDGE, WELDON, HOYER and OXLEY for their leadership and fortitude during the last Congress on an identical bill in the House. I look forward to working with them, as well as House Judiciary Chairman, SENSENBRENNER and Ranking Member CONYERS, to pass our Senate bill through the House and send it to the President's desk for passage into law as soon as possible.

Our legislation has received the endorsement of the Fraternal Order of Police, National Association of Police Organizations, International Brotherhood of Police Officers, Congressional Fire Services Institute, International Association of Arson Investigators, International Association of Fire Chiefs, International Association of Fire Fighters, National Fire Protection Association, National Volunteer Fire Council, North American Fire Training Directors, International Fire Buff Associates, National Association of Emergency Medical Technicians, American Ambulance Association, the American Federation of State, County and Municipal Employees, along with over 50 additional national organizations. I thank all of these organizations for their unwavering support for this legislation.

Public safety officers are our most brave and dedicated public servants. I applaud the efforts of all members of fire, law enforcement, and EMS providers nationwide who are the first to respond to more than 1.6 million emergency calls annually—whether those calls involve a crime, fire, medical emergency, spill of hazardous materials, natural disaster, act of terrorism, or transportation accident—without reservation. Those men and women act with an unwavering commitment to the safety and protection of their fellow citizens, and forever willing to selflessly sacrifice their own lives to pro-

vide safe and reliable emergency services to their communities.

Sadly, that kind of dedication can result in tragedy, which was reaped in abundance at the World Trade Center and the Pentagon on September 11, when scores of firefighters, police officers and medics raced into the jaws of danger with no other goal than to save lives. Every year, hundreds of public safety officers nationwide lose their lives and thousands more are injured while performing duties that subject them to great physical risks. And while we know that PSOB benefits can never be a substitute for the loss of a loved one, the families of all our fallen heroes deserve to collect these funds.

The PSOB Program was established in 1976 to authorize a one-time financial payment to the eligible survivors of Federal, State, and local public safety officers for all line of duty deaths. In 2001, Congress improved the PSOB Program by streamlining the process for families of public safety officers killed or injured in connection with prevention, investigation, rescue or recovery efforts related to a terrorist attack. We also retroactively increased the total benefits available by \$100,000 as part of the USA PATRIOT Act. The Program now provides approximately \$262,000 in benefits to the families of first responders killed in the line of duty.

Unfortunately, the issue of covering heart attack and stroke victims in the PSOB Program was not addressed at that time.

When establishing the PSOB Program, Congress placed only three limitations on the payment of benefits. No award could be paid, first, if the death was caused by the intentional misconduct of the officer or by such officer's intention to bring about his own death; second, if voluntary intoxication of the officer was the proximate cause of such officer's death; or, third, to any person otherwise entitled to a benefit if such person's action was a substantial contributing factor to the death of the officer.

In years following, however, the Justice Department began to interpret the Program's guidelines to exclude from benefits the survivors of public safety officer who die of a heart attack or stroke while acting in the line of duty, arguing that the attack must be accompanied by a traumatic injury, such as a wound or other condition of the body caused by external force, including injuries by bullets, smoke inhalation, explosives, sharp instruments, blunt objects or other physical blows, chemicals, electricity, climatic conditions, infectious diseases, radiation, and bacteria. Barred are those who suffer from occupational injuries, such as stress and strain.

Service-connected heart, lung, and hypertension conditions are silent killers of public safety officers nationwide. The numerous hidden health dangers dealt with by police officers, fire fighters and emergency medical personnel

are widely recognized, but officers face these dangers in order to carry out their sworn duty to serve and protect their fellow citizens.

Our multi-partisan bill would effectively erase any distinction between traumatic and occupational injuries. The Hometown Heroes bill will fix the loophole in the PSOB Program to ensure that the survivors of public safety officers who die of heart attacks or strokes in the line of duty or within 24 hours of a triggering effect while on duty—regardless of whether a traumatic injury is present at the time of the heart attack or stroke—are eligible to receive financial assistance. I was serving my first term in the Senate when the Program was established, and I firmly believe that this is what Congress meant for the survivors of our nation's first responders to receive through the Public Safety Officers Benefits Program.

Heart attacks and strokes are a reality of the high-pressure jobs of police officers, firefighters and medics. These are killers that first responders contend with in their jobs, just like speeding bullets and burning buildings. They put their lives on the line for us, and we owe their families our gratitude, our respect and our help. No amount of money can fill the void that is left by these losses, but ending this disparity can help these families keep food on the table and shelter over their heads. It helps them make the transition into their new lives.

The gap hits families hard when tragedy strikes. Earlier this year, two Vermont firefighters suffered heart attacks while responding to emergencies. According to the Federal Emergency Management Agency, 31 firefighters died of heart attacks relating to their jobs in 2002, and based on statistics from the Officer Down Memorial Page, 8 police officers suffered heart attacks while carrying out their duties. Due to the current loophole in the PSOB Program, though, the families of these individuals will not receive federal survivor benefits without the Hometown Heroes Survivors Benefit Act. For example, in January 1978, special Deputy Sheriff Bernard Demag of the Chittenden County Sheriff's Office in Vermont suffered a fatal heart attack within two hours of his chase and apprehension of an escaped juvenile whom he had been transporting. Mr. Demag's family spent nearly two decades fighting in court for workers' compensation death benefits all to no avail. Clearly, we should be treating surviving family members of officers who die in the line of duty with more decency and respect.

Public safety is dangerous, exhausting, and stressful work. A first responder's chances of suffering a heart attack or stroke greatly increase when he or she puts on heavy equipment and rushes into a burning building to fight a fire and save lives. The families of these brave public servants deserve to participate in the PSOB Program if



their loved ones die of a heart attack or other cardiac related ailments while selflessly protecting us from harm.

First responders across the country now face a new series of challenges as they respond to millions of emergency calls this year. They do this with an unwavering commitment to the safety of their fellow citizens, and are forever willing to selflessly sacrifice their own lives to protect the lives and property of their fellow citizens. I see no reason to hold up this important legislation—last Congress the House passed Congressman ETHERIDGE's identical language, and only a single, anonymous Republican hold in the Senate prevented its final passage. I am proud that the Senate has chosen to do the right thing and shown its support and appreciation for these extraordinarily brave and heroic public safety officers by passing the Hometown Heroes Survivors Benefit Act. I urge the leaders of the House to follow our lead and pass this legislation.

#### CLARIFICATION OF SECTION 307 OF H.R. 1298

Mr. GREGG. Mr. President, as chairman of the Health, Education, Labor and Pensions Committee, I want to clarify for the record the intent of Section 307 of H.R. 1298, which we debated and passed a few nights ago. Section 307 amends the Public Health Service Act to provide the Director of the Centers for Disease Control and Prevention the authority to ensure that health programs using injection equipment also work to ensure the safety of injections.

This section specifies only that when injections are involved in medical treatment programs of the U.S. Government, CDC should work hard to ensure that injection safety is maximized, including the use of single-use needles and training of health care workers in injection safety.

Since Federal law prohibits Federal funds from being used to provide needles to illegal drug users, I want to make clear that nothing in this section ought to be interpreted to suggest a change in that policy. Since the activities in this section fall under the jurisdiction of the HELP Committee, we will be monitoring the program with great interest.

#### THE ENFORCEMENT GAP

Mr. LEVIN. Mr. President, earlier this week, the Americans for Gun Safety Foundation released a report entitled the Enforcement Gap: Federal Gun Laws Ignored, analyzing the Justice Department's commitment to enforcing and prosecuting gun laws. The report examines prosecution data acquired under the Freedom of Information Act from the Justice Department for fiscal years 2000 through 2002. The AGS study reveals a significant gap between the number of Federal gun crimes committed and the number of Federal prosecutions initiated.

The report found that 20 of the 22 major Federal gun laws are rarely prosecuted. The two statutes consistently enforced by Federal prosecutors are laws against the use of a firearm in the commission of a Federal crime and a felon in possession of a firearm. The other 20 laws address other illegal firearm activity, including gun trafficking, firearm theft, lying on a criminal background check form, removing firearm serial numbers, and selling guns to minors.

The statistics in the AGS report are startling. According to AGS, in the fiscal year ending September 30, 2002, Federal prosecutors filed 197 cases for gun trafficking, despite 100,000 guns showing signs of trafficking. Only 27 cases were filed against corrupt gun dealers, even though AGS reports that gun dealers are the leading source of firearms recovered in gun trafficking operations. Prosecutors in 22 States filed no cases against individuals committing the 20 least prosecuted crimes. Across the country, only seven cases for illegally selling a gun to a minor were filed, even though more than 30,000 gun crimes were committed by youths age 17 or under. Only 202 cases were filed for possessing or selling a stolen firearm, despite nearly 140,000 reported gun thefts that year in which the make, model, and serial number of a stolen gun was reported to police. And a mere 98 cases for possessing or selling a firearm with an obliterated serial number were prosecuted, despite thousands of these guns being recovered in just a few cities in one year.

I believe vigorous law enforcement is a critical step toward reducing gun violence. I urge the Justice Department to step up its efforts to prosecute not only people who commit gun crimes but those corrupt dealers who put guns in criminal hands.

#### ARMED FORCES DAY

Mr. BURNS. Mr. President, I rise today to honor our military personnel on the occasion of Armed Forces Day.

As a veteran of the Marine Corps, I believe one of the most important things a person can do is serve this great country through the military. Our nation must honor those who take up the call to defend our freedoms and never take for granted those freedoms that all of us enjoy. These freedoms are only because of our veterans and military personnel.

Our active military forces have seen a lot of action as of late. The Guard and Reserve components have seen an increase in their operations as well. The performance of our military men and women has been outstanding. In my home State of Montana, as many as 750 men and women, Active Duty, Reservists and National Guard Personnel are supporting our ongoing operations, both in the United States and overseas. I am especially proud of these folks that have stepped up to the plate and have gone above and beyond the call to duty during these trying times.

Our military has performed honorably in the latest missions with which they have been tasked—the Global War on Terrorism, Operation Enduring Freedom and Operation Iraqi Freedom. We have seen Americans coming together to support these men and women and their families at home.

The men and women who wear our country's uniform are the keepers of the flame that has been passed down through generations. They are the bearers of our national memory. Each and every veteran and military member understands that the cost of freedom is steep. They were willing to accept that cost, so that we may live in peace. Arlington National Cemetery and veterans' cemeteries across this great land are full of those who understand that "freedom is not free." My thoughts and prayers go out to their loved ones for their loss.

I will continue to do my best to ensure that the United States military has the tools, skills and support needed to maintain its position as the finest fighting force in the world. I will also work to ensure that our veterans receive the benefits that they so richly deserve. It is because of their sacrifices each and every one of us are able to be here today.

God Bless our Military Personnel and God Bless America.

#### PROPOSED SENATE RULES CHANGE

Mr. LEAHY. Mr. President, Republican partisans are acting as if Senate Democrats were treating President Bush's judicial nominees the way Republicans treated President Clinton's. That is not the case. We have worked hard to repair much of the damage of Republican mistreatment of President Clinton's nominees. When we led the Senate we moved forward at twice the rate that Republicans had and during our leadership 100 of President Bush's judicial nominees were confirmed. This year we have proceeded to consider and confirm another 25 lifetime judicial appointments. I would understand the partisanship if Democrats had held up consideration of 125 judicial nominees and the Senate had only confirmed two, but just the opposite is true.

I understand the frustration that Senator FRIST feels regarding the continuing impasse over the nominations of Mr. Estrada and Judge Owen. I am sorry that the White House has chosen confrontation over cooperation with the Senate on these matters. It is too bad that this White House will not work with us, as Senator BENNETT and others have indicated was reasonable, in order to provide access to the materials we requested from Mr. Estrada and the Justice Department one year ago today. With respect to the renomination of Judge Owen, I have said that unprecedented renomination of a judicial nominee rejected after a hearing and a fair debate and vote before the Judiciary Committee was ill advised. It remains so.

Along with the other members of the Judiciary Committee, I have voted on the Estrada and Owen nominations. We have not taken the course of prior Republican leadership in which any Senator was allowed to block President Clinton's judicial nominees by use of a secret, anonymous hold. Instead, Democrats acted over the last few years to reform the confirmation process. We have added openness and accountability. What we have not been able to do is obtain a fair level of consultation and cooperation from this White House. We made home State Senators' "blue slips" matters of public record. When Republican Senators stymied Judiciary Committee consideration of President Clinton's judicial nominations, they were permitted to do so under the cloak of confidentiality. I changed that in 2001.

The Republican myth of a "crisis" in the Senate is punctured by the facts, which show the lowest judicial vacancy rate in 13 years—lower than the national jobless rate of 6 percent.

Court-packing by Presidents of either party is harmful, and I have spoken out often about the need to preserve the independence of our Federal judiciary. The world's emerging democracies envy the judicial independence in the American system, and we should make every effort to defend it, not to undermine it, as the escalating tactics of this administration would do. Just last month the administration and congressional Republicans turned a deaf ear when Chief Justice Rehnquist warned against the assault on the independence of the judiciary when so-called sentencing "reforms" were tacked on to a popular bill without hearings or careful consideration.

The White House says it opposes judicial activism, but the President sends the Senate activist nominees. The White House itself pushes results-oriented changes in the rules of the Senate, which is a separate branch of Government. This White House is not satisfied with its subjugation of the House and Senate to its will and removing Congress as a check on the Executive. They also want to pack the independent Federal courts. Republicans are not satisfied with means undermining the independence of the Senate, they are embarked on a course to undermine the independence of the Federal judiciary, as well. They already have convinced Senate Republicans to bend and even break the Judiciary Committee's rules in the handling of judicial nominees. Now they want to change the rules of the Senate itself in a raw bid for unitary government, directed by the White House. The American people and their representatives in the Senate should not let the Senate or the Federal judiciary become mere arms of any political party or any President.

The President's charges about obstruction would be easier to understand if the numbers themselves did not disprove them. The President and

some Republicans in the Senate seem to be suffering from confirmation amnesia. The Democratic-led Senate confirmed 100 of his judicial nominees, acting far faster than Republicans did with President Clinton's nominees. We have confirmed another 24 this year for a total so far of 125 and achieved the lowest judicial vacancy rate in 13 years. The vacancy rate on the Federal bench today is 5.3 percent, which is lower than the national jobless rate of 6 percent. Unemployment has soared, the deficit has soared, crime is on the rise for the first time in a decade—about the only thing that has gone down significantly over the last 2 years is Federal judicial vacancies. Yet the White House complains that it has not been able to bully the Senate into rubber-stamping every one of the White House's ideological choices. Democratic Senators have cooperated to improve the process so that it has worked much more smoothly for President Bush's nominees than Republicans allowed for President Clinton's nominees.

The fact is that 125 have been confirmed, and two have been held back. You would not know that by listening to the President's remarks last Friday or to Republican talking points or various attack ads now being broadcast around the country in a partisan effort to intimidate Senators.

Democrats held hearings on more nominees faster than Republicans had and proceeded on controversial nominations. We have cooperated this year in bringing many controversial nominations to the floor for votes. When Republicans controlled the Senate during the last Democratic administration, they blocked more than 60 judicial nominees. And they were blocked not with cloture votes in the light of day, but sometimes by a single, anonymous Republican objection. And yes, there were also Republican filibusters of President Clinton's nominees.

The answer for handling the remaining controversial nominees is not reckless rhetoric or undermining the Senate's independence by changing its rules so that the independence of the Federal judiciary can become a victim to partisan court-packing. The answer has to start with the President, where the process begins. Despite his earlier promises, the President has been a divider and not a uniter in choosing many of his nominees, who would roll back the hard-won rights of workers, women, minorities and consumers, and who would side with the big polluters over communities when it comes to clean air and water. Several of his choices have divided the American people, and they have divided the Senate. We have drawn a line with a few of his most extreme choices. Drawing that line has been the responsible response to this President's divisive nominations for lifetime positions on the Federal courts.

This President campaigned saying he wanted to change the tone in Wash-

ington. He has—for the worse. The White House has adopted the rabid partisanship of House Republicans. The President of the United States has sunk to name-calling, extreme rhetoric and partisan campaigning against the Senate and individual Senators, which is not helpful to the process or to the institutions of our government.

The answer is for the administration to work with the Senate, as earlier Presidents have done. The process starts with the President, and the buck stops with the President.

Here on the Senate floor, when Senators have opposed the most divisive of the President's nominees with whom he is seeking to pack the courts and ideologically tilt them, we have done so on the record. We have debated and put forth the considerations and reasons. That, too, was something all too often missing from the years in which Republicans defeated judicial nominees through stealth tactics. We have voted on the record in vote after vote required by Republican cloture petitions.

Unfortunately, in the case of Mr. Estrada, the administration has made no effort to work with us and resolve the impasse. Instead, there has been a series of votes on cloture petitions in which the opposition has grown and from time to time the support has waned. Recently, there have been press reports indicating that Mr. Estrada had asked the White House months ago to withdraw his nomination. I understand his frustration. If this administration is not going to follow the practice of every other administration and share with the Senate the government work papers of the nominee—the very practice this administration followed with an EPA nominee in 2001—then I can understand him not wanting to be used as a political pawn by the administration to score partisan, political points. That the administration has not acceded to his reported request but has plowed ahead to force a succession of unsuccessful cloture votes and to foment division in our Hispanic community for partisan gain is another example of how far this administration is willing to go to politicize the process at the expense of its own nominees.

The frustration with these two difficult nominations should not obscure the work that the Senate leadership has done to correct some of the abuses of power earlier this year and pave the way for votes on the nominations of Jeffrey Sutton and Judge Cook to the Sixth Circuit and John Roberts to the DC Circuit. There were more votes against the Sutton nomination than the number required for a filibuster, but there was no filibuster of that nomination. Just as there was no filibuster of the controversial nomination of Mr. Tymkovich to the Tenth Circuit or of the controversial nomination of Judge Dennis Shedd to the Fourth Circuit. All three of these circuit court nominations were controversial and opposed by many Americans and many Senators.

The President's recent comments took the Republican Chairman of the Judiciary Committee to task for, among other things, not holding a hearing on the nomination of Judge Terry Boyle. I understand that Chairman Hatch is following a longstanding tradition of the Senate in not proceeding with a nomination that is opposed by a home State Senator. After all, it was Senator Helms' opposition to Judge Beaty and Judge Wynn, as well as to Roger Gregory and a number of others, that has led to there being numerous vacancies on the Fourth Circuit. Having honored Senator Helms' objections, Chairman HATCH would be seen as hypocritical and partisan if he were to ignore the concerns of Democratic home State Senators. Among the difficulties the chairman of the Judiciary Committee has faced since 2001 are the high number of judicial nominees of this White House that do not have home State Senator support. So when the President attacks the Senate for not having acted on nominations that the White House knows does not have the support of home State Senators, he is not being fair to the Senate, to the chairman or to the nominees. The White House knows that judicial nominations do not proceed without the support of home State Senators. Yet this administration continues to belittle the role of home State Senators in the advice and consent process and ignore the important role they have long played in Senate consideration of judicial nominees.

Another example is the nomination of Judge Carolyn Kuhl to the Ninth Circuit. This is a nomination that is opposed by both home State Senators. Proceeding on such a nomination is unprecedented. Yet Senate Republicans have forced the nomination out of the Judiciary Committee on a party-line vote after knowing that Senator FEINSTEIN and Senator BOXER both oppose confirmation.

The last time the Senate voted on a nomination opposed by both home State Senators was only because the Republican caucus ambushed the nomination of Judge Ronnie White of Missouri on the Senate floor in 1999 after one of the Missouri Senators switched from supporting the nomination to opposing it the day of the vote. They proceeded without telling the administration, Senate Democrats or the nominee of the change of position and a number of Republican Senators who had previously voted in favor of the nomination changed their positions, as well, and the nomination was defeated on the only party-line vote to defeat a judicial nominee in Senate history of which I am aware.

With respect to Senator FRIST's resolution, S. Res. 138, I look forward to the work of the Rules Committee on this proposal. Initially, I would observe that voting on judicial nominations is unlike Senate consideration of legislation in the way that imposing capital punishment is unlike any other crimi-

nal sentence. It is final and irrevocable. A bad statute once enacted can be amended or repealed. A bad judge is on the bench for life and will continue to affect American's rights, our freedoms and our environment in case after case for decades to come, long after the President who appointed that judge is gone. Given that dimension, I believe Senator FRIST got his proposal upside down by seeking to exempt judicial nominations from Senate debate rules. It is more important that there be a higher level of confidence and certainty that a judicial nomination being considered for a lifetime appointment be the right person for the job, be a person of fairness, impartiality, judgment and someone committed to our constitutional values. The rights of women, minorities, consumers, workers and those concerned about the environment should not be sacrificed to political expediency and the independence of our federal courts should not be lost to ideological court packing by this administration.

Others will no doubt point out that Senator FRIST voted against a proposal in 1995 to revise the Senate filibuster rules. I have pointed out in other statements how many Republicans supported the filibusters against President Clinton's executive calendar nominees, including the judicial nominations of Judge Marsha Berzon and Judge Richard Paez, the last most recent double filibuster in 2000, and the nominations of Judge Rosemary Barkett and Judge H. Lee Sarokin. In addition, recent Republican filibusters succeeded in defeating the nominations of Dr. Henry Foster to be Surgeon General and Sam Brown to be an ambassador. Republicans have not been shy about using filibusters to defeat the nominees of the most recent Democratic President or stall legislation some of them oppose. Just last year, in their tributes to Senator Thurmond, Republicans extolled his use of the filibuster and his setting a record for the longest individual filibuster in Senate history. What they left out of their tributes was the fact that Senator Thurmond had filibustered civil rights legislation.

Others may also point out how many Republicans have proposed supermajority requirements. Not only have Republicans abandoned their commitment to fiscal responsibility and their call for a balanced budget, they have forgotten that they insisted in recent years on three-fifths requirements to raise the debt ceiling or have taxes apply retroactively. Senator CRAIG and Senator MILLER currently support a proposal, S.J. Res. 2, to require a balanced Federal budget that includes a three-fifths rollcall vote of each chamber to increase the debt limit. Last year Senator SESSIONS introduced a measure, S.J. Res. 11, cosponsored by Senators CRAPO, KYL, FITZGERALD, HAGEL, INHOFE and SHELBY to require a two-thirds vote of each House in order to increase any tax. Of course, in the 105th Congress, along with former Sen-

ators Ashcroft and Abraham, who are now Cabinet secretaries in this administration, Senators ALLARD, BENNETT, BOND, BROWNBACK, BURNS, CAMPBELL, COCHRAN, COLLINS, CRAIG, DEWINE, DOMENICI, ENZI, FRIST, GRASSLEY, GREGG, HAGEL, HUTCHISON, INHOFE, KYL, LOTT, LUGAR, MCCAIN, MCCONNELL, NICKLES, ROBERTS, SANTORUM, SESSIONS, SHELBY, SMITH, SNOWE, SPECTER, STEVENS, THOMAS and WARNER all cosponsored S.J. Res. 1 which would have required a three-fifths majority requirement to raise the debt ceiling.

The Senate was not designed by the founders or the Constitution to be a strictly majoritarian institution. To the contrary, the genius of the Framers at the Constitutional Convention was to construct a House of Representatives, structured on majoritarian principles with representatives voting on behalf of relatively equal numbers of constituents, and the Senate using different principles. The Senate has always had two Senators for each State regardless of size. Thus, small States like Vermont and Rhode Island and less populous States like Wyoming, Idaho and Alaska each have equal representation with California, Texas and New York. The Senate and the House are not the same and were not intended to be the same. They were designed to be complementary institutions of government to form a balanced legislature. I understand why proposals like S. Res. 138 might appeal to newer Republican Senators and to former House Members who are now Republican in the Senate but I fear it would represent another ill-advised step to change the Senate into a second House of Representatives. The Constitution did not assign the advice and consent role to the House but to our distinctive body, the Senate. The Senate has many distinctive traditions including, to me, one of the most significant—that smaller States have a larger role to play in the Senate than in the House.

It is a bit ironic, to say the least, that an administration that was selected with less popular vote than the Democratic Presidential candidate because of a court decision and the workings of the electoral college is now pressing so vociferously to change the Senate rules and allow judicial and executive branch confirmations approved by the barest of "majorities"—of only those Senators present and voting at the time the Republican Senate majority chooses to call the vote.

In addition, given the Senate's structure, the administration's pretense that somehow the votes of a majority of Senators shows that a majority of Americans favor a nomination may not be factually accurate. For example, Senate Republicans have complained bitterly and resentfully about the Senate's failure to end debate on the nomination of Judge Owen. But the Senators who have voted to end debate represent less than 50 percent of the population of the United States and the Senators who have voted not to end

that debate represent the majority of the American population. Now, put that way, the decision of the Senate on this controversial nominee hardly seem anti-democratic.

I respect the role of the Senate and the ways in which it has traditionally functioned on behalf of the American people. Any rule or practice can be used for ill, of course. For instance, the Senate grants significant authority to committees and to chairs of committees to determine the Senate's agenda and business. Traditionally, when a committee votes down a nominee, that nomination does not go forward. We have made one recent exception for the nomination of Judge Bork to the Supreme Court. That led to a heated battle on the Senate floor that resulted in that nomination ultimately being rejected by the Senate. Never in our history has the Senate or an administration simply overridden the judgment of the Judiciary Committee. That is what this administration chose to do when it renominated Judge Owen after her nomination had been thoroughly and fairly considered last year.

Finally, I am troubled that the administration and Senate Republicans are so intent on changing the rules and procedures and practices of the Senate in so many ways to gerrymandering the process in favor of the administration's most extreme, divisive and controversial nominees. That was not the motivation behind the amendment of rule 22 in 1975 that I supported. It used to be rare that judicial nominees would receive so many negative votes and engender so much opposition. In accordance with the consultation and cooperation that prevailed between administrations before this one and Senators from both parties, it was a rarity to have a contested nomination or to have close votes. That this administration is so fixated on forcing through the Senate nominees that do not have the support of more Senators is alarming in itself.

Consensus, mainstream, qualified nominees will get the support of not just a bare majority of Senators voting but the overwhelming majority of Senators. Thus, Judge Prado, and Judge Gregory, and Judge Raggi were confirmed with overwhelming bipartisan support. So, too, I am confident that Judge Consuelo Callahan will be the second Hispanic nominee of this administration to a circuit court to receive the strong support of Democratic Senators, when the leadership decides to schedule a vote on her confirmation. The 125 judicial confirmations to date are by and large conservative nominees but many enjoyed the strong bipartisan vote of Senators from both parties.

Yet Senate Republicans at the behest of the administration want to grant even more power to the administration by encouraging the President to nominate more controversial nominees. I respectfully suggest that the better way to proceed would be for the White

House to work more closely with Democrats and Republicans in the Senate to identify consensus nominees who will not generate a close vote and do not need special rules in order to be considered.

I thank the majority leader for working with the Democratic leader and assistant leader to make what he himself recognized as progress over the last weeks. With some cooperation and consideration from the administration we could accomplish so much more.

#### RECOGNITION OF NATIVE AMERICAN CODE TALKERS

Mr. JOHNSON. Mr. President, throughout the military history of the United States, Native Americans have served their country above and beyond the call of duty. Although they have served in many capacities, perhaps none has been more valuable than the services they have provided as code talkers. Today, I rise to support and cosponsor S. 540, a bill to authorize the presentation of gold medals on behalf of Congress to Native Americans who served as code talkers during foreign conflicts.

During World War II, the Sioux Indians volunteered their native languages, Dakota, Lakota, and Nakota Sioux, as codes. The Sioux code talkers worked tirelessly around the clock to provide information, such as the location of enemy troops and the number of enemy guns, which saved the lives of many Americans in war theaters in the Pacific and Europe. U.S. military commanders credit the Sioux with saving the lives of countless American soldiers and with being instrumental to the success of the United States in many battles during the war.

Today I would like to acknowledge the following distinguished gentlemen: Eddie Eagle Boy, Simon Brokenleg, Iver Crow Eagle Sr., Edmund St. John, Walter C. John Bear King, Phillip "Stoney" LaBlanc, Baptiste Pumpkinseed, Guy Rondell, Charles Whitepipe, and Clarence Wolfguts.

During the D-Day invasion and afterwards in the European theater, the 4th Signal Division employed Comanche code talkers to help the Army develop a code, which proved to be unbreakable by the Axis powers, and which was used extensively throughout Europe. This code was instrumental to winning the war in Europe and saved countless lives. The time has come to honor the Comanche code talkers for their valor and service to the United States. Today I would like to acknowledge the brave accomplishments of Charles Chibitty, Haddon Codynah, Robert Holder, Forrest Kassinovoid, Willington Mihecoby, Perry Noyebad, Clifford Otitivo, Simmons Parker, Melvin Permansu, Dick Red Elk, Elgin Red Elk, Larry Saupitty, Morris Sunrise, and Willie Yackeschi.

During the first year of World War I, when Germany had deciphered all Allied codes, and Allied forces were suf-

fering from heavy casualties, 18 Choctaw Indian soldiers were recruited on the battlefield to use their native language as a new code. This code, which was never successfully deciphered by the Germans, was thereafter used widely throughout the war and was instrumental in the movement of American soldiers, the protection of American supplies, and the preparation for assaults on German positions.

The Choctaw code talkers were highly successful and saved many lives and munitions. Their contribution is just another example of the commitment of Native Americans to the defense of the United States, as well as another example of the proud legacy of the Native Americans. The original 18 Choctaw code talkers have already been honored by a memorial bearing their names located at the entrance of the tribal complex in Durant, OK. Now I would like to continue to honor their legacy by urging my colleagues to vote affirmatively for S. 540.

#### MEMORIAL DAY

Ms. STABENOW. Mr. President, I rise today to reflect on this year's Memorial Day commemorations and the importance of this holiday in American life.

As I attend Memorial Day parades and commemorations, I'm struck by the spirit of national unity on display because I know that across Michigan—and across our Nation—our fellow Americans are taking part in similar gatherings where we take the time to reflect on our history and the sacrifice that brought us to where we are today.

Memorial Day is unique among American holidays. On Memorial Day we do not honor a particular date or event—a battle or the end of a war. On Memorial Day we do not honor an individual leader—a president or a general. On Memorial Day we do not even honor ourselves—at least not in the present tense.

On Memorial Day we pay homage to the thousands and thousands of individual acts of bravery and sacrifice that stretch back to the battlefields of our Revolution and are on display today in the deserts of Iraq and the mountains of Afghanistan.

We honor the brave men and women who answered their Nation's call to duty. And—making that ultimate sacrifice—never returned to their families and loved ones.

As part of this year's Memorial Day commemorations, I have been paying special respects to our Korean war veterans because this July marks the 50th Anniversary of the armistice that ended that war.

Notice I said Korean war. I did not say "the Korean Conflict." I did not call it a police action. I've met too many Korean war veterans. I've heard too many of their stories.

It was the Korean war.

About 2 million Americans served on active duty with the United States

Armed Forces during the Korean war. And nearly 55,000 never came home.

The Korean war is often called "the forgotten war." Well, it is not forgotten by me. I've met too many Korean war veterans and heard the stories of the hardships they endured defending—in the words of the plaque at the Korean War Memorial—"a country they never knew, and a people they never met."

So I think that one of the most fitting ways to pay homage to our fallen patriots is to treat their living comrades with the respect and honor they deserve.

Michigan is home to 875,000 veterans, and in personal conversations, letters, phone calls and e-mails I have heard from many who are not being treated fairly by the veterans' health care system or by present pension regulations.

Right now, we are underfunding veterans' health care by close to \$2 billion. This means it can take months to see a doctor and delays of a year or longer for some surgical procedures.

I am cosponsoring the Veterans Health Care Funding Guarantee Act of 2003—S. 50—that would order a 20 percent increase in funding for the Veteran's Health Administration by 2005, and adjust the amount upwards every year after that to take into account new enrollees.

Also, antiquated laws have also created an unfair situation wherein a veteran's pension can be reduced by the amount of their disability payment for a service-related disability. In some cases the pension can be wiped out entirely.

This is unfair. Pension and disability payments are two separate and distinct benefits. Our veterans have earned their pensions. And if they also suffered a service-related disability that has cut their ability to earn money outside the military, they are entitled to a separate disability payment as well.

I am cosponsoring the Retired Pay Restoration Act of 2003—S. 392. This bill would require that veterans receive their full pension plus all disability payments to which they are entitled. This issue is also known as full concurrent receipt.

As we observe this holiday we call Memorial Day, let us remember the centuries of sacrifice by thousands and thousands of men and women that this day represents. And let's make sure that all who served with honor are honored in return.

#### STATEMENT IN MEMORY OF MARY BOWERS

Ms. SNOWE. Mr. President, I rise today to pay tribute to one of the most extraordinary and courageous people I have ever had the privilege to know.

Mary Bowers was an integral and beloved member of my staff who sadly passed away on May 3 at the age of 28. My thoughts and prayers are with her husband, Wayne Rolland; her parents,

Betty and Chris Bowers of Hermon, ME; Mary's sister, Melissa; and her entire family who she loved so deeply. Mary's life was all too tragically brief, but how rich it was in experience and love—and how profoundly she taught us all about the art of living.

On a professional level, Mary was a tremendous asset to my staff, and I would be remiss not to recall the myriad ways in which she was the nucleus of the office. As my Maine scheduler and Assistant to the Chief of Staff, she was of extraordinary assistance, and it is no exaggeration to say that through her efforts the people of her home State of Maine—which she loved so dearly—were exceptionally well served. Yet, it should be said that Mary's most significant contributions sprang not from her work in my office—but instead from the positive and irrepressible force of her presence.

I first came to know Mary as a young volunteer on my campaigns for Congress. She was passionate even then about politics, and the role that government and elected officials could play in securing for America the blessings and ideals upon which our Nation was founded. In an era when so many of our young people feel disaffected and disenfranchised, Mary believed deeply that involvement in the process could make a very real difference—that it was a responsibility and an obligation in return for the fruits of freedom and opportunity provided by the basic tenets of this great Nation.

As her high school years drew to a close, Mary sought a nomination to the U.S. Military Academy at West Point. It was obvious by then she was not only a bright young woman, but possessed the kind of exceptional qualities that would make her a success both at the Academy and—even more importantly—in life—honesty, a commitment to service, an unassuming yet unmistakable confidence, and an intangible demeanor that inspired others to their better nature.

Indeed, even early on, Mary embodied the essence of a leader. Later, as a member of my staff, she always took charge without ever "taking over". She would have made a brilliant Army officer—people would have followed her anywhere, responding to the genuine persuasiveness of her personality and the clarity of her vision.

But Mary's greatest challenge was thrust upon her while at the Military Academy—one far greater than any obstacle course. Young, vibrant, full of promise—she learned she had cancer. In the months and years that followed, in all of the ways that truly count in this world, she would meet that challenge—and in the process forever change the lives of all who were blessed to know her.

Perhaps what was most heroic about Mary is that she never allowed herself to be defined by her disease—yet the way in which she comported herself while fighting her disease epitomized her very essence—and will surely be

the legacy that lives on in our hearts and the way in which we lead our own lives.

Quite simply, Mary was a diminutive dynamo. Tiny in stature, she was a giant in her soul. Even as cancer sapped her physical strength, she possessed a deep, more spiritual reserve from which to draw. Certainly, there appeared no rational explanation for her ability to muster energy. We could no more understand how she defied the realities that cancer imposes on the human body and spirit than we could determine how she summoned such extraordinary courage.

During her 4 years on my staff, she endured numerous, punishing treatments—none of which were subtle in their physical impact—even apologizing for having to go to doctor's appointments! Throughout it all, her attitude was unfailingly positive and gracious. Any of us would most certainly have excused Mary for any moodiness or bristling response, but the opportunity never arose. Rather, she was always more concerned for others than she was for herself.

With unfailing humor, she had a way of disarming even the most stressful of moments and deflating the small absurdities that creep into everyday life. The treats she baked and brought into the office—again, even when she was not feeling well—were a tangible gift from her heart. And while the rest of us would be affected by daily trials and tribulations of a much lesser nature, Mary was the one whose light shined into our lives and lifted our emotions. Indeed—her lifelong love of lighthouses was entirely appropriate, as she stood most firm when the seas were at their roughest . . . she was a beacon of brightness and hope . . . and her presence on the landscape of our lives will be enduring.

Particularly in our line of work, we have the opportunity to meet a great many people—some of high title, others who are the unsung heroes of our society. But the universe of those who truly change the course of our own lives by their example is much, much smaller. My staff and I will forever count Mary among those individuals.

In my own life, I have known adversity. And yet, Mary has taught me lessons in living I had not yet fully realized. I know it is the same for my staff—who, to a man and woman loved and respected Mary and the example for which she stood. All of us will now be the personal messengers of her indomitable spirit and, in turn, that part of Mary that lives on within all of us will continue to impact the world forever, for the better.

The measure of Mary's life will never be the crude yardstick of the number of years on earth, but rather the number of lives she touched while she was among us. In the words of the great American author Ralph Waldo Emerson, "to know even one life has breathed easier because you have lived—this is to have succeeded." I

could not agree more, and in that light Mary Bowers was most assuredly one of the most successful people one could ever hope to know. We love her and we will miss her more than words have the power to convey.

I ask unanimous consent that a retrospective on Mary's life published by the Portland Press Herald be printed in the RECORD, as well as a copy of the eulogy delivered at her funeral service by my former Chief of Staff, Kevin Raye.

[From the Portland Press Herald, May 6, 2003]

MARY BOWERS, 28, SMALL SENATE STAFFER  
WHO MADE GIANT IMPACT  
(By Joshua L. Weinstein)

BANGOR.—Ask Mary Bowers' husband if his wife had any subtle ways of letting him know she loved him, and you'll hear:

"There was nothing subtle about Mary. She just told me that she loved me all the time."

Mrs. Bowers, who died Saturday, was like a summer day in Maine: clear and sunny and not with us nearly long enough. She was only 28 when she died of ovarian cancer.

"She was courageous, she was funny and warm" said her boss, Jane Calderwood, the chief of staff to U.S. Sen. Olympia Snowe. "She's mom to all of us . . . She was really the heart of the place."

Mrs. Bowers doted on people, brought homemade chocolates to work, delighted in the little things.

But she could be fierce.

She was a tiny thing—maybe 5-foot-3, on her toes—but she had a way about her.

Before she got sick, she decided on a career in the military. She was accepted to the U.S. Military Academy at West Point, and studied there two years before being diagnosed with cancer. She rallied, and landed at the University of Maine, where she graduated with high honors in political science.

She worked briefly with Presidential Classroom, a Washington-based program for high school scholars, before joining Snowe's staff, where she was state scheduler and assistant to the chief of staff.

She was beloved in Snowe's office.

"You could tell by her eyes when she was up to no good," Calderwood said. "You could tell because there would be this glint. And if she walked into the room and she had that look, you'd be in trouble."

Bowers's husband, Wayne Rolland, said his wife loved her nieces, loved her job, loved the Republican Party, loved history, loved politics.

"One of the funny things that she used to say, and it sounds kind of funny coming from a cancer patient, but she used to always say, 'It's better to look good than to feel good.'"

Mrs. Bowers always looked good, Rolland said.

With her deep blue eyes and suits from Talbot's, maybe a few white daisies on her desk, Mrs. Bowers had style.

She was a vegetarian who loved chocolate and the occasional glass of wine.

She liked country music, especially Garth Brooks. She sang in the church choir when she was a girl, and one of her favorite gifts from her husband was a karaoke machine.

She always used to sing Brooks' "Friend in Low Places."

She even sang it at her wedding.

Mrs. Bowers loved the ocean, and collected lighthouses, along with Beanie Babies and candles.

Lighthouses and candles made sense, Calderwood said.

"She was always the bright light."

#### EULOGY FOR MARY BOWERS

(Offered by Kevin Raye at All Soul's  
Congregational Church, Bangor, Maine)

May 7, 2003

Good afternoon. Over the course of my life, I have often stood before a congregation to help lead services. I have often been called upon to speak in public. And like everyone in this sanctuary today, I have often shared in joys and sorrows with family and friends. But never in my life have these three things converged in such a profoundly difficult way for me as they do today.

When Wayne called me to convey Mary's request that I speak at her funeral, I was profoundly moved. And to be honest, I was overwhelmed by conflicting emotions. The desire to do absolutely anything in the world for Mary, crushing sadness that her death was now so imminent, a sense of inadequacy to do justice to her life and her courage, and the trepidation that I would not be able to maintain my composure at this moment.

But despite those swirling emotions, I embraced her request. Because finally there was something I could do for Mary.

And because it is an honor to pay tribute to this remarkable young woman whose strength and optimism, whose kindness and thoughtfulness, and whose happiness and loving nature deeply touched so many lives—more deeply than she ever knew.

And whose penchant for taking care of others and getting things in order never wavered. Even in her final weeks, Mary was firmly in charge, busy organizing, checking off her list of things to do, taking care of the details. As a co-worker said upon learning of her death, Mary's up there organizing heaven right now.

But even as she took care of the details, and the strength was ebbing from her body, her first thoughts were with others. At every juncture, she was concerned more about her family and her friends than herself. And when visitors were coming, she summoned every ounce of strength to be her bubbly smiling self and lift them up.

As she said over and over to Wayne, "It's better to look good than feel good." Of course Mary would think that. Because how she looked affected how others felt. She could deal with feeling bad herself, but she wanted others to feel good when they saw her.

My first memories of Mary are of the little girl who tagged along with her mother volunteering at Olympia's campaign office. A sweet and bright and eager and energetic girl.

Even at a young age, she knew how to get things done. Or should I say, get her own way?

Betty told me a great story the other day. When Mary was a little girl, it seems the family pastor had tried in vain to get Mary's father Chris to take on some task or another. When he declined, Mary piped up and said "You know, Dad's a push-over if you flutter your eyes . . . and if that doesn't work, all you have to do is give him a kiss."

Well, Mary saved that little tactic for her father—and later used it with great success on Wayne. But for the rest of us, Mary succeeded by working hard and being determined.

She knew at a very young age that she loved politics. Over the years, and during a succession of campaigns, Mary was there. She helped us organize lit drops, she worked in the office, she licked envelopes, she loved politics. In fact, she once told her mother that when she became President, she would have her mother dust the White House and her father trim the rose bushes.

Well not only did Mary love politics, but everybody in politics who met her, loved Mary.

And all of us were so proud of her—her appointment to West Point, her stellar academic accomplishments there and at the University of Maine, where she graduated magna cum laude—and to see what a fine young woman she grew to be.

But we were not only proud, we were humbled and awed by her grace, her dignity, her strength, her determination, her unwavering optimism and her enormous courage as she battled the cancer that invaded her young body. And how she never skipped a beat in her continued daily devotion to her family and friends, and to her work.

After Mary had grown up, and had survived her first bout with cancer, she moved to Washington to work for Presidential Classrooms. As it happened, I was also there, serving as Chief of Staff to Senator Snowe. And soon after learning that Mary was in town, I convinced her to leave her other job behind and come to work for Olympia.

Now, one thing that I have often observed about bright, talented and ambitious young people, college degree in hand, having landed their first job on Capitol Hill, is that they are sometimes disheartened to find themselves answering the phone or entering data, or saddled with other decidedly unglamorous responsibilities. You won't be surprised to know that Mary was different.

She was as bright, talented and ambitious as any young person I ever hired in nearly two decades with Olympia.

But Mary was also determined to be the best at whatever she did. No matter what the task, to Mary, it was important. Whether she was taking a phone call from a veteran in Passadumkeag, giving a tour of the Capitol to a family from Lubec, or greeting a member of the President's Cabinet, Mary accorded every person her full attention and her trademark kindness, genuine interest and sweet smile.

With her extraordinary organizational skills, and penchant for details, she did her work thoroughly and then looked around to see what else needed to be done.

As I observed her in action, I knew Mary was exactly the person I needed at my side to help me fulfill my responsibilities as Chief of Staff. So I made her my assistant—and also put her in charge of Olympia's Maine scheduling. She literally did the work of two people, and it was one of the best decisions I ever made.

As my wife Karen can attest, Mary's competence, her quiet unflappability, her uncanny ability to keep track of ten thousand things at once, and her mischievous sense of humor, combined to make her enormously valuable to me, to my successor who also came to depend on her, to Senator Snowe, and—while most of them never knew her, she was enormously valuable to the people of Maine—whom she served with a passion and commitment to the noble pursuit of public service.

Mary was the epitome of the old adage "never judge a book by its cover." Because this diminutive young woman, who appeared at first blush so small and delicate, and was in truth incredibly sweet, was also as tough as nails. She had a quick wit; she had her own opinions; and she could hold her own in any situation. If you don't think so, you need to see the photograph of her running across a field during her training at West Point, covered in mud, clutching an M-16.

Not much bothered her. In fact, on Monday, Wayne was interviewed by a reporter for the Portland Press Herald, who asked him many questions about Mary. After he hung up, Wayne turned to us and said "That guy did ask one question that I didn't answer."

"What was that?" we asked.

"He asked if there is anything that really drives her nuts. That was a hard question."

And I didn't answer because the only thing I could think of was "Yes, a Democrat." Quickly adding, "But even for Democrats, she had a place in her heart!"

Yes, that was Mary. She had her opinions, and she was passionate about them, but she had a heart big enough for everyone . . . and the only things that really drove her nuts were racism and sexism, two things for which she had zero tolerance.

On a personal level, I will always be deeply grateful for Mary's selflessness last year, when despite her illness, her loyal friendship brought her home to Maine to be at my side at crucial moments of my campaign for Congress—during the Republican Convention a year ago last weekend, and again during the hectic final weeks of the campaign last fall.

When it was crunch time, and everyone knew I needed someone to help keep me calm amidst the storm, it was Mary we turned to.

Knowing Mary was a joy in every respect. Her curious mind, her cheerful outlook and easy laugh, her grace under pressure, her steely determination and unflinching courage in the face of devastating illness, all combined to make this incredible young woman one of the most remarkable individuals I have ever met—or hope to meet—in my lifetime. They also made her much more than a co-worker. They made her a beloved friend—in the truest sense of the word.

And one of the joys of knowing Mary was that of getting to see her experience the wonder of true love. For that is what she found with Wayne.

No two people could ever have been more right for each other. And while Mary certainly made Wayne sweat it out for a long time before deeming him worthy of her affections, once she made up her mind, it was a true romance.

And it was the best decision of her life, for she got a life's partner who was there for her in every way—and who stayed at her side, giving her strength and support and love through every day of her life, and drawing his own strength and inspiration from Mary.

And while their days together were far too few, they brought each other great happiness and fulfillment.

Among the things Karen and I will always be grateful to Mary for is allowing us to get to know Wayne, and to share in the joy of their loving relationship, and other small joys like our shared passion for good food—especially Indian food. Of course, Mary's had to be vegetarian, while she tolerated Wayne, Karen and I indulging our basic carnivorous instincts.

And our mutual love of movies, cook-outs by the pool, enjoying special occasions together like the Inaugural Ball, the celebration of their long-awaited marriage, and being at their side during the up and down fight against Mary's cancer, and in the bittersweet journey of these last weeks.

Then, of course, there was that picture-perfect summer day in Bar Harbor last August, when Mary and Wayne were married at last. It was the wedding of Mary's dreams, and she was truly a radiant and beautiful bride.

Moments before the ceremony, when most brides are a nervous wreck, Mary took time to play ring-around-the-rosie with Alexa and another of the littlest guests.

At the reception, she danced, she laughed, she mingled and spent precious moments with every person there, and she entertained everyone by singing her trademark karaoke rendition of Garth Brooks's "I've Got Friends in Low-ow Places."

And in keeping with the nautical theme of the reception—so in keeping with Mary's love of the ocean and lighthouses, and Wayne's love of the sea—Wayne thoughtfully dubbed every table with the name of a ship.

Ours was, of course, the State of Maine. And the Bride's table? What else but the Queen Mary . . .

For that is what Mary was to Wayne—his Queen.

And she was able to rely on him always. His devotion to her was unwavering and it was boundless. She never made a decision without him, for they were partners in every way—even against cancer.

And through it all, in all the times we spent together, and all the discussions we had, through every hopeful sign, and with every setback, I never heard either one of them ask "Why me? Why us?" They just faced every day as a team, determined to get through it together.

That Mary found such a perfect love with Wayne was a very natural thing. Because Mary has been surrounded by love her entire life.

Especially Chris and Betty, the parents she cherished, and about whom she was so concerned throughout her illness. And if you have ever spent time with Chris and Betty Bowers, you will understand how Mary came to be so bright and cheerful and optimistic.

As we heard the beautiful trumpet solo of "Rock of Ages" a few moments ago, I couldn't help but think what rocks Chris and Betty have been for Mary. With their frequent journeys to Washington to be at Mary's side at crucial times in her battle against cancer, they were a constant source of support and love for Mary and for Wayne. And I know Mary was so grateful that she was able to spend her last days surrounded by their love.

And Mary took such comfort from the reassuring presence and tender care of her beloved sister Missy, with whom she was so very close, Missy's husband LeRoy, and such joy from time with her precious nieces Jordan and Alexa.

She had a very special bond with Jordan, to whom Mary entrusted the secret of fluttering eyes. Jordan used to say "Auntie, can I move in with you and Wayne?" And Mary would say "But your mother will miss you." And Jordan said "But we'd let her come visit!"

And Alexa, at a different phase in her life. So little, but so precious in her Auntie's eyes. Mary adored them both . . . and the feeling was mutual.

The circle of love that was Mary's family also included her grandmother Phyllis, who is too ill to be here today, but who faithfully traveled from Sherman to Bangor to spend time with Mary these past weeks, and is here in spirit, as well as her aunts and uncles and cousins, and Wayne's parents and grandparents and other family who became her own.

And as her days neared their end, she told Wayne she was looking forward to being reunited with her beloved grandfathers who passed away before her. And we know now in sure and certain faith that she is with them today, and her other grandmother she never knew in this life.

Two summers ago, as Karen and I began building our home in my hometown of Perry, Mary and Wayne and her Uncle Tony and Aunt Carmel bought from us a piece of land that my aunt and uncle had given me at my birth. At a beautiful place called Gin Cove on the Perry shore of Passamaquoddy Bay, overlooking St. Andrews, New Brunswick.

This spot has been near and dear to me for my entire life. It represents a family legacy, a place where I played as a child, learned to dig clams and experienced the joy of living in Maine. And while I knew selling it would be a big help in realizing the dream of building our home, I was reluctant to do so. But seeing how much Mary and Wayne loved it, and knowing that it would fulfill their dream

of being on the ocean, and provide us the bonus of bringing them regularly to Perry, made it just right.

Now that beautiful spot represents even more. Its beauty is just one more reminder of the beauty of Mary Bowers, and the legacy she leaves us all.

On Monday, Wayne came down to Perry to his and Mary's spot on Gin Cove, seeking peace and reflection at this place she loved so much.

May each of us find peace—and joy—as we reflect on Mary, and give thanks to God for sharing her with all of us these past 28 years. And while we're at it, let's whisper thanks to Mary for sharing her love and her spirit and her goodness with us.

Mary, to take some liberties at paraphrasing Garth Brooks in that song you loved to sing: now we know we have a friend in high places.

Mary, we love you, we will miss you, and we will never, never, never forget you, for you will be in our hearts until the day each of us join you in Heaven.

#### ADDITIONAL STATEMENTS

##### LCOAL LAW ENFORCEMENT ACT OF 2003

• Mr. SMITH. Mr. President, I rise today to speak about the need for hate crimes legislation. On May 1, 2003, Senator KENNEDY and I introduced the Local Law Enforcement Act, a bill that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society.

I would like to describe a terrible crime that occurred in Aloha, OR. On August 26, 2001, Lorenzo "Loni Kai" Okaruru was found dead in an overgrown field with her face smashed in and her fingertips cut off. A biological male born 28 years before in Saipan, Okaruru, Loni began living as a woman before she had migrated to Oregon. Given the savagery of the attack—a telltale sign of a probable hate crime—local police counted Loni's murder as the first official hate crime in the county's history.

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

##### HONORING MIKE MANGEOT

• Mr. BUNNING. Mr. President, I rise today in recognition of Mr. Mike Mangeot of Covington, KY. Mr. Mangeot is a recipient of the 2003 Covington Award presented by the Friends of Covington organization.

Each year the Friends of Covington take the opportunity to honor a business professional who places an equal amount of energy on community development as they place on professional success. Mr. Mangeot was selected for his strong dedication to community affairs and leadership in Covington.



This announcement adds to the long list of achievements that Mr. Mangeot has experienced through his career. Co-founder of the highly successful Century Construction, Mr. Mangeot focuses his attention on helping improve the Covington community through revitalization projects. Currently, Mr. Mangeot also assists several community civic groups, such as the Kiwanis, the Jaycees, and the Covington Business Council.

I am pleased that Mr. Mangeot's dedication to his hometown is being recognized by individuals who know him and his work best. I thank the Senate in allowing me to honor Mr. Mike Mangeot.●

#### TRIBUTE TO DANVILLE/BOYLE COUNTY CHAMBER OF COMMERCE

● Mr. BUNNING. Mr. President, I rise today to honor and pay tribute to the Danville/Boyle County Chamber of Commerce for earning the 2003 Afterschool Community Champion Award presented by the Afterschool Alliance. The Danville/Boyle County Chamber of Commerce has distinguished itself by creating a high quality afterschool program that implements President Bush's No Child Left Behind Act and the 21st Century Community Learning Centers initiative.

The success of the Danville/Boyle County Chamber of Commerce Business Mentoring Program in building the character and competence of Kentucky's middle school students can be attributed to the five main promises it made to its participants. The program promises to provide ongoing relationships with caring adults with a healthy start for a student's future, offers safe facilities and marketable skills through effective education, and gives opportunities to reciprocate through community service. The chamber's plan coincides with the 21st Century program by instilling mentoring programs in middle schools that provide students with the necessary attention they need to achieve academic success.

I am proud of the Danville/Boyle County Chamber of Commerce. It is a source of great pride to call attention to their excellence. The chamber's contributions have made all the difference in the lives of its participants. The citizens of Danville/Boyle County are fortunate to be served by such fine individuals. Their example should be followed in communities across Kentucky.●

#### HONORING LINCOLN, NEBRASKA MAYOR DON WESELY

● Mr. NELSON of Nebraska. Mr. President, I rise today to honor Mayor Don Wesely of Lincoln, Nebraska who on this day will relinquish his duties as leader of this great city in order to spend more time with his three children. After serving the Lincoln community for the past 25 years as mayor and a member of the Nebraska legisla-

ture, I believe Mayor Wesely has more than earned the opportunity.

Don Wesely began his career in public service in 1978 at the tender age of 24, when he became the third youngest person ever to serve in the unicameral legislature. While serving the 26th legislative district of northeast Lincoln for 20 years, Don sponsored or cosponsored over 300 initiatives that eventually became State law. His accomplishments as the chairman of the Health and Human Services Committee for 14 years have had a lasting effect on the State of Nebraska and his focus on those most in need has inspired his colleagues and constituents. When Don retired from the legislature in 1998, he was the eighth longest serving State senator in Nebraska history and he was only 44 years old.

As mayor, Don Wesely presided over the city during troubled economic times, but managed to leave the city on solid financial footing for his successors. Mayor Wesely is a strong supporter of the largest infrastructure project in the city's history the Antelope Valley Project and I can attest to his persistent advocacy of Federal assistance for all aspects of the project, including flood control, transportation improvements, and community development. Mayor Wesely was also instrumental in crafting a unique and historic public-private partnership that resulted in the baseball-softball complex that is now the home of the minor league Lincoln Salt Dogs baseball team. And in a true measurement of his success in office, Mayor Wesely was a tireless promoter of private investment in the Lincoln area. During his last 2 years in office, over 10,000 new jobs were created.

I had the pleasure and honor of working with Don Wesely both when I was Governor of Nebraska and now during my time in the United States Senate, so I can say with conviction that he has served Lincoln and the State with distinction. I am proud to call Don Wesely a friend, and I join the Senate and all Nebraskans in wishing he and his children Sarah, Amanda, and Andrew all the best as they begin an exciting new chapter in their lives.●

#### 6-MONTH PERIODIC REPORT ON THE NATIONAL EMERGENCY WITH RESPECT TO BURMA THAT WAS DECLARED IN EXECUTIVE ORDER 13047 OF MAY 20, 1997—PM 33

Under the authority of the order of the Senate of January 7, 2003, the Secretary of the Senate, on May 19, 2003, during the recess of the Senate, received the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Banking, Housing, and Urban Affairs:

#### *To the Congress of the United States:*

As required by section 401(c) of the National Emergencies Act, 50 U.S.C.

1641(c), and section 204(c) of the International Emergency Economic Powers Act, 50 U.S.C. 1703(c), I am providing a report prepared by my Administration, covering the 6-month period since November 20, 2002, on the national emergency with respect to Burma that was declared in Executive Order 13047 of May 20, 1997.

GEORGE W. BUSH.  
THE WHITE HOUSE, May 16, 2003.

#### NOTICE CONTINUING THE NATIONAL EMERGENCY WITH RESPECT TO BURMA THAT WAS DECLARED IN EXECUTIVE ORDER 13047 OF MAY 20, 1997—PM 34

Under the authority of the order of the Senate of January 7, 2003, the Secretary of the Senate, on May 19, 2003, during the recess of the Senate, received the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Banking, Housing, and Urban Affairs:

#### *To the Congress of the United States:*

Section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)) provides for the automatic termination of a national emergency unless, prior to the anniversary date of its declaration, the President publishes in the *Federal Register* and transmits to the Congress a notice stating that the emergency is to continue in effect beyond the anniversary date. I have sent the enclosed notice, stating that the Burma emergency is to continue beyond May 20, 2003, to the *Federal Register* for publication. The most recent notice continuing this emergency was published in the *Federal Register* on May 17, 2002.

The crisis between the United States and Burma that led to the declaration of a national emergency on May 20, 1997, has not been resolved. The actions and policies of the Government of Burma, including its policies of committing large-scale repression of the democratic opposition in Burma, are hostile to U.S. interests and pose a continuing unusual and extraordinary threat to the national security and foreign policy of the United States. For this reason, I have determined that it is necessary to continue the national emergency with respect to Burma and maintain in force the sanctions against Burma to respond to this threat.

GEORGE W. BUSH.  
THE WHITE HOUSE, May 16, 2003.

#### MEASURES READ THE FIRST TIME

The following bill was read the first time:

S. 1079. A bill to extend the Temporary Extended Unemployment Compensation Act of 2002.

#### EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with

accompanying papers, reports, and documents, and were referred as indicated:

EC-2388. A communication from the Secretary of Transportation, transmitting, pursuant to law, the report of a document entitled "Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2003 (SAFETEA)" received on May 14, 2003; to the Committee on Environment and Public Works.

EC-2389. A communication from the Administrator, Agricultural Marketing Service, Fruit and Vegetable Program, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled "Olives Grown in California; Increased Assessment Rate (Doc. No. FV03-932-1 FR)" received on May 14, 2003; to the Committee on Agriculture, Nutrition, and Forestry.

EC-2390. A communication from the Administrator, Agricultural Marketing Service, Fruit and Vegetable Program, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled "Winter Pears Grown in Oregon and Washington; Order Amending Marketing Agreement and Order No. 927 (Doc. No. FV00-927-03)" received on May 14, 2003; to the Committee on Agriculture, Nutrition, and Forestry.

EC-2391. A communication from the Administrator, Agricultural Marketing Service, Fruit and Vegetable Program, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled "Grapes Grown in a Designated Area of Southeastern California; Establishment of Safeguards and Procedures for Suspension of Packing Holidays (Doc. No. FV03-925-2 IFR)" received on May 14, 2003; to the Committee on Agriculture, Nutrition, and Forestry.

EC-2392. A communication from the Administrator, Agricultural Marketing Service, PACA Branch, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled "Perishable Agricultural Commodities Act (PACA): Amending Regulations to Extend PACA Coverage to Fresh and Frozen Fruits and Vegetables that are Coated or Battered (Doc. No. FV02-369)" received on May 14, 2003; to the Committee on Agriculture, Nutrition, and Forestry.

EC-2393. A communication from the Acting Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Pyraflufen-ethyl; Pesticide Tolerance (7306-1)" received on May 14, 2003; to the Committee on Agriculture, Nutrition, and Forestry.

EC-2394. A communication from the Acting Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Pyriproxyfen; Pesticide Tolerance (7305-9)" received on May 14, 2003; to the Committee on Agriculture, Nutrition, and Forestry.

EC-2395. A communication from the Acting Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Indoxacarb; Pesticide Tolerance for Emergency Exemptions (7305-2)" received on May 14, 2003; to the Committee on Agriculture, Nutrition, and Forestry.

EC-2396. A communication from the Chairman, Federal Energy Regulatory Commission, transmitting, pursuant to law, the report of a document entitled "Federal Energy Regulatory Commission's Annual Report for Fiscal Year 2002" received on May 13, 2003; to the Committee on Energy and Natural Resources.

EC-2397. A communication from the Assistant Secretary, Water and Science, Department of the Interior, transmitting, pursuant to law, the report of a document entitled

"Final Engineering Report (FER), Volumes I and II, for the Fort Peck Assiniboine and Sioux Water Supply System and the Dry Prairie Rural Water System" received on May 12, 2003; to the Committee on Energy and Natural Resources.

EC-2398. A communication from the Director, Office of Personnel Management, transmitting, pursuant to law, the report of a legislative proposal entitled "To amend title 28, United States Code, to eliminate the requirements for a separate system of pay and benefits for FBI police" received on May 14, 2003; to the Committee on the Judiciary.

EC-2399. A communication from the Deputy Assistant Administrator, Office of Diversion Control, transmitting, pursuant to law, the report of a rule entitled "Exemption of Chemical Mixtures Containing the List I Chemicals: Ephedrine, N-Methylephedrine, N-Methylpseudoephedrine, Nor-pseudoephedrine, Phenylpropanolamine, and Pseudoephedrine"; to the Committee on the Judiciary.

EC-2400. A communication from the Director, Administrative Office of the United States Courts, transmitting, pursuant to law, the report of two documents entitled "2002 Activities of the Administrative Office of the United States Courts" and "2002 Judicial Business of the United States Courts" received on May 14, 2003; to the Committee on the Judiciary.

EC-2401. A communication from the White House Liaison and Executive Director, White Commission on the National Moment of Remembrance, transmitting, pursuant to law, the first Annual Report of the White House Commission on the National Moment of Remembrance; to the Committee on the Judiciary.

EC-2402. A communication from the Director, Defense Finance and Accounting Service, Department of Defense, transmitting, pursuant to law, the report relative to the decision to perform a competition of the Marine Corps Accounting function, received on May 14, 2003; to the Committee on Armed Services.

EC-2403. A communication from the Under Secretary of Defense, Comptroller, Department of Defense, transmitting, pursuant to law, the report relative to the transfer of appropriated funds out of the Defense Working Capital Fund to the Operation and Maintenance appropriations of the Army, Navy, Marine Corps, Air Force, and Defense-wide, received on May 14, 2003; to the Committee on Appropriations.

EC-2404. A communication from the Director, Regulations Policy and Management, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled "Medical Devices; Exemptions From Premarket Notification; Class II Devices; Optical Impression System for Computer Assisted Design and Manufacturing (Doc. No. 02P-0494)" received on May 14, 2003; to the Committee on Health, Education, Labor, and Pensions.

EC-2405. A communication from the Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting, pursuant to law, the report relative to international agreements other than treaties entered into by the United States under the Case-Zablocki Act with Australia, Kazakhstan and Egypt, received on May 14, 2003; to the Committee on Foreign Relations.

New Jersey relative to the Municipal Council opposing any pre-emptive, unilateral United States military offensive against Iraq, without United Nations consensus; to the Committee on Foreign Relations.

POM-115. A resolution adopted by the Senate of the State of California relative to the Armenian Genocide; to the Committee on Foreign Relations.

#### SENATE JOINT RESOLUTION NO. 1

Whereas, the Armenian people, living in their 3,000 year historic homeland in eastern Asia Minor and throughout the Ottoman Empire, were subject to severe persecution and brutal injustice by the rulers of the Ottoman Empire before and after the turn of the twentieth century, including widespread massacres, usurpation of land and property, and acts of wanton destruction during the period from 1894 to 1896, and again in 1909; and

Whereas, the horrible experience of the Armenians at the hands of their oppressors culminated in 1915 in what is known by historians as the "First Genocide of the Twentieth Century," and as the prototype of modern-day mass killing; and

Whereas, the Armenian Genocide began with the arrest, exile, and murder of hundreds of Armenian intellectuals, and political, religious, and business leaders, starting on April 24, 1915; and

Whereas, the regime then in control of the empire, known as the "Young Turks," planned and executed the unspeakable atrocities committed against the Armenian people from 1915 through 1923, which included the torture, starvation, and murder of 1,500,000 Armenians, death marches into the Syrian desert, the forced exile of more than 500,000 innocent people, and the loss of the traditional Armenian homelands; and

Whereas, while there were some Turks and others who jeopardized their safety in order to protect Armenians from the crimes being perpetrated by the Young Turk regime, the genocide of the Armenian people constituted one of the most egregious violations of human rights in the history of the world; and

Whereas, the United States Ambassador to the Ottoman Empire, Henry Morgenthau, Sr., stated "Whatever crimes the most perverted instincts of the human mind can devise, and whatever refinements of persecutions and injustice the most debased imagination can conceive, became the daily misfortunes of this devoted people. I am confident that the whole history of the human race contains no such horrible episode as this. The great massacres and persecutions of the past seem almost insignificant when compared to the sufferings of the Armenian race in 1915. The killing of the Armenian people was accompanied by the systematic destruction of churches, schools, libraries, treasures of art, and cultural monuments in an attempt to eliminate all traces of a noble civilization with a history of more than 2,000 years"; and

Whereas, Winston Churchill wrote: "As for Turkish atrocities: . . . massacring uncounted thousands of helpless Armenians, men, women, and children together, whole districts blotted out in one administrative holocaust—these were beyond human redress"; and

Whereas, contemporary newspapers like the New York Times commonly carried headlines such as "tales of Armenian Horrors Confirmed," "Million Armenians Killed or in Exile," and "Wholesale Massacre of Armenians by Turks"; and

Whereas, Adolph Hitler, in persuading his army commanders on the eve of World War II that the merciless persecution and killing of Poles, Jews, and other peoples would bring no retribution, declared, "Who, after all,

#### PETITIONS AND MEMORIALS

The following petitions and memorials were laid before the Senate and were referred or ordered to lie on the table as indicated:

POM-114. A resolution adopted by the Municipal Council, City of Newark, State of

speaks today of the annihilation of the Armenians"; and

Whereas, unlike other peoples and governments that have admitted and denounced the abuses and crimes of predecessor regimes, and despite the overwhelming weight of evidence, the republic of Turkey has inexplicably and adamantly denied the occurrence of the crimes against humanity committed by the Young Turk rulers, and those denials compound the grief of the few remaining survivors of the atrocities, desecrate the memory of the victims, and cause continuing trauma and pain to the descendants of the victims; and

Whereas, nations that have officially recognized the Armenian Genocide have been subjected to retaliation and condemnation by Turkey; and

Whereas, there have been concerted efforts to revise history through the dissemination of propaganda suggesting that Armenians were responsible for their fate in the period from 1915 through 1923 and by the funding of programs at American educational institutions for the purpose of furthering the cause of this revisionism; and

Whereas, leaders of nations with strategic, commercial, and cultural ties to the Republic of Turkey should be reminded of their duty to encourage Turkish officials to desist from efforts to distort facts and deny the history of events surrounding the Armenian Genocide; and

Whereas, the accelerated level and scope of denial and revisionism, coupled with the passage of time and the fact that few survivors remain who serve as reminders of indescribable brutality and torment, compel a sense of urgency in efforts to solidify recognition and reaffirmation of historical truth; and

Whereas, by honoring the survivors and consistently remembering and forcefully condemning the atrocities committed against the Armenian people as well as the persecution of the Assyrian and Greek populations of the Ottoman Empire, we guard against repetition of the crime of genocide; and

Whereas, California has become home to the largest population of Armenians in the United States, and those citizens have enriched our state through leadership in the fields of academia, medicine, business, agriculture, government, and the arts and are proud and patriotic practitioners of American citizenship; and

Whereas, the State of California has been at the forefront in encouraging and promoting a curriculum relating to human rights and genocide in order to empower future generations to prevent recurrence of the crime of genocide: Now, therefore be it

*Resolved by the Senate and Assembly of the State of California, jointly,* That the Legislature of the State of California hereby designates April 24, 2003, as the "California Day of Remembrance for the Armenian Genocide of 1915-1923"; and be it further

*Resolved,* That the State of California commends its conscientious educators who teach about human rights and genocide; and be it further

*Resolved,* That the State of California respectfully memorializes the Congress of the United States to act likewise to commemorate the Armenian Genocide; and be it further

*Resolved,* That the Secretary of the Senate transmit copies of this resolution to the President of the United States, Members of the United States Congress, and the Governor.

POM-116. A resolution from the City Council of Boulder, State of Colorado relative to opposition to the war in Iraq; to the Committee on Foreign Relations.

POM-117. A resolution adopted by the Rapides Parish Police Jury of the State of Louisiana relative to the unwavering support of the United States Armed Forces; to the Committee on Armed Services.

POM-118. A resolution adopted by the Legislature of the State of Washington relative to state and local retail sales taxes for federal income tax purposes; to the Committee on Finance.

POM-119. A joint resolution adopted by the Senate of the State of California relative to immigrant military personnel; to the Committee on the Judiciary.

#### SENATE JOINT RESOLUTION NO. 13

Whereas, immigrants have a long history of service in the United States military, including service in major wars, including, but not limited to, World War I, World War II, the Korean War, the Vietnam War, Operation Desert Storm, and the current war in Iraq; and

Whereas, the number of immigrants serving in the United States military has grown from 28,000 in 2000 to more than 37,000 today, and to date, immigrants comprise nearly 5 percent of all enlisted personnel on active duty in the United States Armed Forces and more than 20 percent of Congressional Medal of Honor recipients; and

Whereas, at least one-half of the first 10 United States soldiers from California killed in Operation Iraqi Freedom were not United States citizens, and California contributes nearly one of every three immigrant soldiers, more than any other state; and

Whereas, Francisco A. Martinez Flores, Jose A. Garibay, Jose Gutierrez, and Joseph Menua, who were immigrant soldiers serving in the United States Marines, lost their lives in Operation Iraqi Freedom, and service in the United States military, particularly in times of conflict, is the ultimate act of patriotism and duty served to the United States; and

Whereas, many immigrants on active duty are trying to become naturalized citizens and are required by law to be available at all times for military service but are only allowed to apply for United States citizenship after completing three years of service; and

Whereas, President George W. Bush recently, issued an Executive order conferring immediate eligibility for citizenship to immigrants serving on active duty in the United States Armed Forces to reward immigrants serving during the post-September 11 war on terrorism; and

Whereas, Congress should explore implementing an expedited one-year naturalization process beginning on a soldier's first day of service, and granting immediate citizenship to those participating in a war and those who have been honorably discharged from the military: Now, therefore, be it

*Resolved by the Senate and Assembly of the State of California, jointly,* That the Legislature of the State of California urges the President and the Congress of the United States to amend federal selective service and immigration laws to grant the right of citizenship to any and all immigrants who honorably serve in the military; and be it further

*Resolved,* That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, and to each Senator and Representative from California in the Congress of the United States.

POM-120. A resolution adopted by the House of the Legislature of the State of Louisiana relative to the nomination of the Miguel A. Estrada; to the Committee on the Judiciary.

#### HOUSE RESOLUTION NO. 29

Whereas, on May 9, 2001, President Bush nominated Miguel A. Estrada to fill a va-

cancy on the United States Court of Appeals for the District of Columbia Circuit; and

Whereas, Mr. Estrada's credentials go uncontested beginning with his mastery of the English language and American culture upon his arrival to the United States as an immigrant from Honduras and his graduation magna cum laude from Columbia University and Harvard Law School; and

Whereas, over a year and a half has passed without a vote on the floor of the United States Senate on Mr. Estrada's nomination; and

Whereas, Mr. Estrada has received support from liberal and conservative colleagues alike who attest that he is one of the most brilliant and effective appellate lawyers in the country; and

Whereas, organizations who support Mr. Estrada include the League of United Latin American Citizens, the United States Hispanic Chamber of Commerce, the Hispanic National Bar Association, the Hispanic Business Roundtable, and the Latino Coalition; and

Whereas, Mr. Estrada would be the first Hispanic in the country to sit on the United States Court of Appeals District of Columbia Circuit, an important and prestigious position within the nation's judiciary: Therefore, be it

*Resolved,* That the House of Representatives of the State of Louisiana requests our United States senators in the United States Congress to support a floor vote in the United States Senate on the appointment of judicial nominee Miguel A. Estrada and to support his appointment; and be it further

*Resolved,* That a suitable copy of this Resolution be sent to the President of the United States Senate and to Senator JOHN BREAU and Senator MARY LANDRIEU.

POM-121. A concurrent resolution adopted by the Senate of the State of Louisiana relative to the funding for state and local homeland security activities; the Committee on Appropriations.

#### SENATE CONCURRENT RESOLUTION NO. 22

Whereas, a February, 2003 report issued by the National Conference of State Legislatures indicates that states, after already having reduced their FY 03 budgets by forty-nine billion dollars are facing additional budget cuts of twenty-six billion dollars before the end of the current fiscal year; and

Whereas, that same report indicates that states are facing a sixty-eight billion five hundred million dollar shortfall as they prepare their FY 04 budgets; and

Whereas, as states cope with this growing budget crisis they must also allocate additional resources to agencies engaged in homeland security activities; and

Whereas, local governments who are also facing budget shortfalls have already spent over three billion dollars to upgrade their police, fire, and emergency response agencies in response to growing threats of domestic terrorism; and

Whereas, the state of Louisiana and its political subdivisions, in particular, must be especially vigilant and prepared to combat terrorism because of Louisiana's strategic importance to the national economy stemming from the Mississippi River transportation corridor and its ports to the Gulf of Mexico; and

Whereas, the federal government has both the responsibility and the resources to help finance efforts by state and local governments to secure the homeland; and

Whereas, federal assistance for homeland security projects that was promised to state and local governments needs to be made available by the federal government through supplemental appropriations: Therefore, be it

*Resolved*, That the Legislature of Louisiana memorializes the Congress of the United States to appropriate for and expedite funding of state and local homeland defense activities; and be it further

*Resolved*, That a copy of this Resolution be transmitted to the secretary of the United States Senate and the clerk of the United States House of Representatives and to each member of the Louisiana delegation to the United States Congress.

POM-122. A joint resolution adopted by the Legislature of the State of Montana relative to appropriating just compensation to the State of Montana for the Impact of Federal Land Ownership on the State's Ability to Fund Public Education; to the Committee on Energy and Natural Resources.

#### SENATE JOINT RESOLUTION NO. 26

Whereas, for many years western states have grappled with the challenge of providing the best education for their citizens; and

Whereas, western states face unique challenges in achieving this goal; and

Whereas, from 1979 to 1998, the percentage change in expenditures per pupil in 13 western states was 28% compared to 57% in the remaining states; and

Whereas, in 2002 and 2001, the pupil-to-teacher ratio in 13 western states averaged 17.9 to 1 compared with 14.8 to 1 in the remaining states; and

Whereas, the conditions in western states are exacerbated by projections that enrollment will increase by an average of 7.1% compared to an average decrease of 2.6% in the rest of the nation; and

Whereas, despite the wide disparities in expenditures per pupil-to-teacher ratio, western states tax at a comparable rate and allocate as much of their budgets to public education as the rest of the nation; and

Whereas, the ability of western states to fund education is directly related to federal ownership of state lands; and

Whereas, the federal government owns an average of 51.9% of the land in 13 western states compared to 4.1% in the remaining states; and

Whereas, the enabling acts of most western states promise that 5% of the proceeds from the sale of federal lands will go to the states for public education; and

Whereas, a federal policy change in 1977 ended these sales, resulting in an estimated \$14 billion in lost public education funding for western states; and

Whereas, the ability of western states to fund public education is further impacted by the fact that state and local property taxes, which public education heavily relies upon to fund education, cannot be assessed on federal lands; and

Whereas, the estimated annual impact of this property tax prohibition on western states is over \$4 billion; and

Whereas, the federal government shares only half of its royalty revenue with the states; and

Whereas, royalties are further reduced because federal lands are less likely to be developed, and federal laws often place stipulations on the use of state royalty payments; and

Whereas, the estimated annual impact of royalty payment policies on western states is over \$1.86 billion; and

Whereas, much of the land that the federal government transferred to states upon statehood as a trust for public education is difficult to administer and to make productive because it is surrounded by federal land; and

Whereas, federal land ownership greatly hinders the ability of western states to fund public education; and

Whereas, the federal government should compensate western states for the significant impact federal land ownership has on the ability of western states to educate their citizens; and

Whereas, just compensation will allow western states to be on equal footing with the rest of the nation in their efforts to provide education for their citizens: Now, therefore, be it

*Resolved by the Senate and the House of Representatives of the State of Montana*, That the Montana Legislature strongly urge the United States Congress to appropriate just compensation to the State of Montana for the impact of federal land ownership on the State's ability to fund public education; and be it further

*Resolved*, That the Secretary of State send a copy of this resolution to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, and the Montana Congressional Delegation.

POM-123. A joint resolution adopted by the Legislature of the State of Washington relative to the Bonneville Power Administration rate increases; to the Committee on Energy and Natural Resources.

#### HOUSE JOINT MEMORIAL 4021

Whereas, the State of Washington's economy is constructed on affordable and reliable electricity; and

Whereas, energy prices in the Northwest are threatening businesses and industries, including aluminum companies; and

Whereas, the Bonneville Power Administration is proposing yet another rate increase to go into effect on October 1, 2003; and

Whereas, the proposed increase is 15% more than the current rates, which are already extremely high due to the more than 50% increase that has already occurred in the last couple of years; and

Whereas, this increase will cost the state's economy one billion dollars over the next three years; and

Whereas, many industries moved to Washington to take advantage of low-cost hydroelectric power. They are now paying more for power in Washington than in most of their other locations in the nation; and

Whereas, without affordable energy for these industries (aluminum, pulp and paper, aerospace, agriculture, etc.), thousands of family-wage jobs will be lost; and

Whereas, many of these jobs are in rural and economically challenged areas. These industries are at the core of many Northwest communities and provide the foundation for numerous secondary employment opportunities and also provide substantial tax revenues; and

Whereas, the proposed rate increase will do more than jeopardize high paying jobs. The nation is suffering a severe recession and the Pacific Northwest is already the hardest hit region in the country; and

Whereas, any increase in Bonneville Power Administration rates will only slow or prevent economic recovery as well as exacerbate the state's budget crisis; and

Whereas, the Bonneville Power Administration has the tools available to meet all of its legal obligations, including protecting fish and wildlife, without raising rates; and

Whereas, as a result of its \$500 million prepayments to Treasury to avoid a rate increase, the Bonneville Power Administration can cut costs (not just slow its rate of growth) and utilize its newly acquired additional borrowing authority and the flexibility it has garnered; and

Whereas, this region simply cannot support an additional billion dollar hit to its economy over the next three years: Now

therefore, your Memorialists respectfully communicate their request for the Bonneville Power Administration to refrain from adopting rate increases at this time, unless absolutely necessary to preserve its bond rating, and to use other tools at its disposal to manage costs until economic recovery is in sight; and be it

*Resolved*, That copies of this Memorial be immediately transmitted to the Honorable George W. Bush, President of the United States.

#### 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. HAGEL (for himself, Mr. MCCAIN, and Mr. KERRY):

S. 1076. A bill to authorize construction of an education center at or near the Vietnam Veterans Memorial; to the Committee on Energy and Natural Resources.

By Mr. SPECTER (for himself and Mr. SANTORUM):

S. 1077. A bill to direct the Secretary of Veterans Affairs to establish a national cemetery for veterans in southeastern Pennsylvania; to the Committee on Veterans' Affairs.

By Ms. LANDRIEU:

S. 1078. A bill to provide for military charters between military installations and local school districts, to provide credit enhancement initiatives to promote military charter school facility acquisition, construction, and renovation, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Ms. MURKOWSKI (for herself, Ms. COLLINS, Mr. FITZGERALD, Mr. GRASSLEY, Mr. SANTORUM, Ms. SNOWE, Mr. DEWINE, Mr. FRIST, Mr. MCCONNELL, Mr. SMITH, and Mr. STEVENS):

S. 1079. A bill to extend the Temporary Extended Unemployment Compensation Act of 2002; read the first time.

By Mr. HATCH (for himself and Mr. LEAHY):

S. 1080. A bill to make amendments to certain antitrust penalties, and for other purposes; to the Committee on the Judiciary.

By Mr. DOMENICI:

S. 1081. A bill to amend section 504(a) of the Higher Education Act of 1965 to eliminate the 2-year wait out period for grant recipients; to the Committee on Health, Education, Labor, and Pensions.

By Mr. BROWNBACK (for himself, Mr. CORNYN, Mr. COLEMAN, Mr. SANTORUM, and Mr. CAMPBELL):

S. 1082. A bill to provide support for democracy in Iran; to the Committee on Foreign Relations.

#### SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

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

By Mr. FITZGERALD (for himself and Mrs. FEINSTEIN):

S. Res. 145. A resolution designating June 2003, as "National Safety Month"; to the Committee on the Judiciary.

By Ms. LANDRIEU:

S. Con. Res. 45. A concurrent resolution expressing appreciation to the Government of Kuwait for the medical assistance it provided to Ali Ismaeel Abbas and other children of Iraq and for the additional humanitarian aid provided by the Government and

people of Kuwait, and for other purposes; to the Committee on Foreign Relations.

#### ADDITIONAL COSPONSORS

S. 98

At the request of Mr. ALLARD, the names of the Senator from Nevada (Mr. REID) and the Senator from Nevada (Mr. ENSIGN) were added as cosponsors of S. 98, a bill to amend the Bank Holding Company Act of 1956, and the Revised Statutes of the United States, to prohibit financial holding companies and national banks from engaging, directly or indirectly, in real estate brokerage or real estate management activities, and for other purposes.

S. 114

At the request of Mr. COCHRAN, the name of the Senator from Vermont (Mr. JEFFORDS) was added as a cosponsor of S. 114, a bill to amend title XVIII of the Social Security Act to remove the 20 percent inpatient limitation under the medicare program on the proportion of hospice care that certain rural hospice programs may provide.

S. 146

At the request of Mr. DEWINE, the names of the Senator from Tennessee (Mr. ALEXANDER) and the Senator from Mississippi (Mr. LOTT) were added as cosponsors of S. 146, a bill to amend titles 10 and 18, United States Code, to protect unborn victims of violence.

S. 171

At the request of Mr. DAYTON, the name of the Senator from New Mexico (Mr. BINGAMAN) was added as a cosponsor of S. 171, a bill to amend title XVIII of the Social Security Act to provide payment to medicare ambulance suppliers of the full costs of providing such services, and for other purposes.

S. 215

At the request of Mrs. FEINSTEIN, the names of the Senator from Wyoming (Mr. ENZI) and the Senator from Michigan (Ms. STABENOW) were added as cosponsors of S. 215, a bill to authorize funding assistance for the States for the discharge of homeland security activities by the National Guard.

S. 313

At the request of Mr. GREGG, the name of the Senator from Indiana (Mr. LUGAR) was added as a cosponsor of S. 313, a bill to amend the Federal Food, Drug, and Cosmetic Act to establish a program of fees relating to animal drugs.

S. 480

At the request of Mr. HARKIN, the name of the Senator from Alabama (Mr. SESSIONS) was added as a cosponsor of S. 480, a bill to provide competitive grants for training court reporters and closed captioners to meet requirements for realtime writers under the Telecommunications Act of 1996, and for other purposes.

S. 486

At the request of Mr. DOMENICI, the names of the Senator from North Dakota (Mr. CONRAD), the Senator from

Florida (Mr. GRAHAM) and the Senator from Arkansas (Mr. PRYOR) were added as cosponsors of S. 486, a bill to provide for equal coverage of mental health benefits with respect to health insurance coverage unless comparable limitations are imposed on medical and surgical benefits.

S. 489

At the request of Mr. DEWINE, the names of the Senator from Utah (Mr. HATCH) and the Senator from Nebraska (Mr. HAGEL) were added as cosponsors of S. 489, a bill to expand certain preferential trade treatment for Haiti.

S. 546

At the request of Mr. BUNNING, his name was added as a cosponsor of S. 546, a bill to provide for the protection of paleontological resources on Federal lands, and for other purposes.

S. 569

At the request of Mr. ENSIGN, the names of the Senator from Hawaii (Mr. INOUE) and the Senator from South Dakota (Mr. DASCHLE) were added as cosponsors of S. 569, a bill to amend title XVIII of the Social Security Act to repeal the medicare outpatient rehabilitation therapy caps.

S. 659

At the request of Mr. CRAIG, the name of the Senator from Ohio (Mr. VOINOVICH) was added as a cosponsor of S. 659, a bill to prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages resulting from the misuse of their products by others.

S. 852

At the request of Mr. DEWINE, the name of the Senator from Michigan (Ms. STABENOW) was added as a cosponsor of S. 852, a bill to amend title 10, United States Code, to provide limited TRICARE program eligibility for members of the Ready Reserve of the Armed Forces, to provide financial support for continuation of health insurance for mobilized members of reserve components of the Armed Forces, and for other purposes.

S. 856

At the request of Mr. ROCKEFELLER, the names of the Senator from Massachusetts (Mr. KERRY) and the Senator from Nevada (Mr. REID) were added as cosponsors of S. 856, a bill to amend the Internal Revenue Code of 1986 to expand the incentives for the construction and renovation of public schools.

S. 874

At the request of Mr. TALENT, the names of the Senator from Virginia (Mr. ALLEN) and the Senator from Georgia (Mr. CHAMBLISS) were added as cosponsors of S. 874, a bill to amend title XIX of the Social Security Act to include primary and secondary preventative medical strategies for children and adults with Sickle Cell Disease as medical assistance under the medicaid program, and for other purposes.

S. 875

At the request of Mr. KERRY, the names of the Senator from Nevada (Mr. REID) and the Senator from Virginia (Mr. ALLEN) were added as cosponsors of S. 875, a bill to amend the Internal Revenue Code of 1986 to allow an income tax credit for the provision of homeownership and community development, and for other purposes.

S. 887

At the request of Mr. KYL, the name of the Senator from Alabama (Mr. SESSIONS) was added as a cosponsor of S. 887, a bill to amend the Internal Revenue Code of 1986 to apply an excise tax to excessive attorneys fees for legal judgements, settlements, or agreements that operate as a tax.

S. 888

At the request of Mr. GREGG, the names of the Senator from Hawaii (Mr. AKAKA), the Senator from Iowa (Mr. HARKIN), the Senator from Virginia (Mr. ALLEN), the Senator from Florida (Mr. GRAHAM), the Senator from New Hampshire (Mr. SUNUNU) and the Senator from Arkansas (Mr. PRYOR) were added as cosponsors of S. 888, a bill to reauthorize the Museum and Library Services Act, and for other purposes.

S. 899

At the request of Mrs. HUTCHISON, the names of the Senator from Ohio (Mr. DEWINE), the Senator from Utah (Mr. BENNETT), the Senator from Missouri (Mr. BOND) and the Senator from Missouri (Mr. TALENT) were added as cosponsors of S. 899, a bill to amend title XVIII of the Social Security Act to restore the full market basket percentage increase applied to payments to hospitals for inpatient hospital services furnished to medicare beneficiaries, and for other purposes.

S. 936

At the request of Mr. BAUCUS, the name of the Senator from Michigan (Mr. LEVIN) was added as a cosponsor of S. 936, a bill to amend the Internal Revenue Code of 1986 to deny any deduction for certain fines, penalties, and other amounts.

S. 942

At the request of Mr. BROWNBACK, the name of the Senator from Oregon (Mr. SMITH) was added as a cosponsor of S. 942, a bill to amend title XVIII of the Social Security Act to provide for improvements in access to services in rural hospitals and critical access hospitals.

S. 973

At the request of Mr. NICKLES, the names of the Senator from Washington (Ms. CANTWELL), the Senator from Idaho (Mr. CRAPO) and the Senator from Kentucky (Mr. BUNNING) were added as cosponsors of S. 973, a bill to amend the Internal Revenue Code of 1986 to provide a shorter recovery period for the depreciation of certain restaurant buildings.

S. 982

At the request of Mrs. BOXER, the names of the Senator from Kentucky

(Mr. BUNNING), the Senator from Idaho (Mr. CRAPO), the Senator from Oregon (Mr. WYDEN) and the Senator from Arizona (Mr. KYL) were added as cosponsors of S. 982, a bill to halt Syrian support for terrorism, end its occupation of Lebanon, stop its development of weapons of mass destruction, cease its illegal importation of Iraqi oil, and hold Syria accountable for its role in the Middle East, and for other purposes.

S. 990

At the request of Ms. LANDRIEU, the name of the Senator from Alaska (Ms. MURKOWSKI) was added as a cosponsor of S. 990, a bill to amend title 32, United States Code, to increase the maximum Federal share of the costs of State programs under the National Guard Challenge Program, and for other purposes.

S. 1001

At the request of Mr. BIDEN, the name of the Senator from New Jersey (Mr. LAUTENBERG) was added as a cosponsor of S. 1001, a bill to make the protection of women and children who are affected by a complex humanitarian emergency a priority of the United States Government, and for other purposes.

S. 1036

At the request of Mr. ALLARD, the name of the Senator from Idaho (Mr. CRAPO) was added as a cosponsor of S. 1036, a bill to provide for a multi-agency cooperative effort to encourage further research regarding the causes of chronic wasting disease and methods to control the further spread of the disease in deer and elk herds, to monitor the incidence of the disease, to support State efforts to control the disease, and for other purposes.

S. 1046

At the request of Mr. HOLLINGS, the name of the Senator from Arkansas (Mrs. LINCOLN) was added as a cosponsor of S. 1046, a bill to amend the Communications Act of 1934 to preserve localism, to foster and promote the diversity of television programming, to foster and promote competition, and to prevent excessive concentration of ownership of the nation's television broadcast stations.

S. 1046

At the request of Mr. STEVENS, the name of the Senator from Hawaii (Mr. AKAKA) was added as a cosponsor of S. 1046, *supra*.

S. 1057

At the request of Mr. MCCAIN, the name of the Senator from Georgia (Mr. MILLER) was added as a cosponsor of S. 1057, a bill to modify the calculation of back pay for persons who were approved for promotion as members of the Navy and Marine Corps while interned as prisoners of war during World War II to take into account changes in the Consumer Price Index.

S. 1066

At the request of Mrs. HUTCHISON, the name of the Senator from Texas (Mr.

CORNYN) was added as a cosponsor of S. 1066, a bill to correct a technical error from Unit T-07 of the John H. Chafee Coastal Barrier Resources System.

S.J. RES. 4

At the request of Mr. HATCH, the name of the Senator from Oklahoma (Mr. NICKLES) was added as a cosponsor of S.J. Res. 4, a joint resolution proposing an amendment to the Constitution of the United States authorizing Congress to prohibit the physical desecration of the flag of the United States.

S. CON. RES. 14

At the request of Mr. SMITH, the name of the Senator from Illinois (Mr. FITZGERALD) was added as a cosponsor of S. Con. Res. 14, a concurrent resolution expressing the sense of Congress regarding the education curriculum in the Kingdom of Saudi Arabia.

S. CON. RES. 43

At the request of Mr. BROWNBACK, the name of the Senator from Maryland (Ms. MIKULSKI) was added as a cosponsor of S. Con. Res. 43, a concurrent resolution expressing the sense of Congress that Congress should participate in and support activities to provide decent homes for the people of the United States.

S. CON. RES. 44

At the request of Mr. AKAKA, the names of the Senator from Illinois (Mr. DURBIN), the Senator from Maryland (Mr. SARBANES) and the Senator from Pennsylvania (Mr. SPECTER) were added as cosponsors of S. Con. Res. 44, a concurrent resolution recognizing the contributions of Asian Pacific Americans to our Nation.

S. RES. 92

At the request of Mr. DEWINE, the name of the Senator from Utah (Mr. HATCH) was added as a cosponsor of S. Res. 92, a resolution designating September 17, 2003 as "Constitution Day".

S. RES. 133

At the request of Mr. DURBIN, the names of the Senator from Georgia (Mr. CHAMBLISS) and the Senator from Ohio (Mr. DEWINE) were added as cosponsors of S. Res. 133, a resolution condemning bigotry and violence against Arab Americans, Muslim Americans, South-Asian Americans, and Sikh Americans.

S. RES. 140

At the request of Mr. CAMPBELL, the name of the Senator from Washington (Ms. CANTWELL) was added as a cosponsor of S. Res. 140, a resolution designating the week of August 10, 2003, as "National Health Center Week".

AMENDMENT NO. 569

At the request of Mr. SPECTER, the name of the Senator from New Hampshire (Mr. SUNUNU) was added as a cosponsor of amendment No. 569 proposed to S. 1054, an original bill to provide for reconciliation pursuant to section 201 of the concurrent resolution on the budget for fiscal year 2004.

## STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. HAGEL (for himself, Mr. MCCAIN, and Mr. KERRY):

S. 1076. A bill to authorize construction of an education center at or near the Vietnam Veterans Memorial; to the Committee on Energy and Natural Resources.

Mr. HAGEL. Mr. President, I rise today to introduce the Vietnam Veterans Memorial Education Center Bill. I am joined by my colleagues and fellow Vietnam veterans, Senators MCCAIN and KERRY, in sponsoring this bill that would authorize the construction of an Education Center near the site of the Vietnam Veterans Memorial.

Twenty-one years ago, the Vietnam Veterans Memorial was built as a permanent testament to the sacrifice of over 58,000 veterans who died during the Vietnam War. It is a place of remembrance for Vietnam veterans and their families.

As the Vietnam War draws further into America's past, it is important for future generations to remember the sacrifices of those who gave their lives in Vietnam, and to understand the lessons learned in Vietnam.

Most visitors to the Wall today were not alive during the Vietnam War. The Education Center would serve as an access point for the next generation. By collecting historic documents, artifacts and the testimony of Vietnam veterans, the Education Center would provide visitors with a better understanding of the Memorial.

The Memorial was designed to accommodate expansion. Over the last two decades, the Wall's reach has extended; names of fallen soldiers have been added to the black granite. Building the Education Center underground would expand the memorial in a new direction—one that does not distract from the natural beauty of the Mall.

The names on the Wall must never become simple, empty etchings. Their individual and collective power must remain connected to the real human sacrifices of war. The Education Center would help preserve this bond. It would affirm the meaning of the Wall, not just as an acknowledgment of a war or a date to be remembered, but as a living memorial with lessons to offer those who come to learn.

Many educators, veterans, lawmakers and organizations have voiced strong support for the proposed Education Center. Like the Wall, the Center would be funded entirely by private donations—evidence of its broad-based public support. There would be no taxpayer money involved in building the Center.

Building an Education Center at the Vietnam Veterans Memorial would affirm the belief that we can inspire peace by educating our young people about the consequences of war. For there is no stronger advocate for peace than one who knows war.

I am proud to sponsor this bill authorizing the construction of the Vietnam Veterans Memorial Education Center. I ask my colleagues to join me and Senators KERRY and MCCAIN in support of this effort.

Mr. KERRY. Mr. President, the Vietnam Veterans Memorial is a special place on the national mall. Its design has proven moving to millions of visitors, offering a place of reflection, remembrance, and healing.

Despite the "Wall's" success in honoring those who fell in Vietnam, the memorial lacks an appropriate visitors center, a place where the broader story of America's involvement in Vietnam can be told. The legislation we introduce today would authorize the construction of such a center to provide information on the memorial, and to perform appropriate educational and interpretive activities relating to the memorial.

A Visitor's Center at the Vietnam Memorial is important, because the Vietnam War and the men and women who fought it are important. A Visitor's Center can provide a lasting gift of knowledge and understanding to those who visit the memorial, including students—for whom Vietnam is a passage in their history books—and their parents—for whom the memories of Vietnam remain immediate.

Adding a new structure to the national mall is not something we should do without consideration of the impact such an action will have on the open space we so cherish there. This legislation, however, specifies that the Visitor's Center be designed with those concerns in mind—and in fact we expect the structure to be built underground. In addition, the design, construction, and operation of this center will be borne by the Vietnam Veterans Memorial Fund. In this legislation, we seek only to authorize their work—not pay for it.

Vietnam left its imprint on a generation. It remains a touchstone of the American experience in the twentieth century. A Visitors Center at the Vietnam Veterans Memorial will help educate a new generation about the heroes who served their country in the Vietnam War, and I am delighted to introduce this legislation with my fellow Vietnam veterans, Senator HAGEL and Senator MCCAIN.

By Mr. SPECTER (for himself and Mr. SANTORUM):

S. 1077. A bill to direct the Secretary of Veterans' Affairs to establish a national cemetery for veterans in southeastern Pennsylvania; to the Committee on Veterans' Affairs.

Mr. SPECTER. Mr. President, I am introducing legislation today to direct the Department of Veterans Affairs, VA, to construct a national cemetery in southeastern Pennsylvania. In order to facilitate the construction of a cemetery, as mandated, this bill would also require VA to consult with Federal State, and local government entities,

and with Pennsylvania's veterans' service organizations, to locate land for a new cemetery in the Philadelphia area—a process of stakeholder collaboration that worked well to identify a site for a cemetery in southwestern Pennsylvania that is currently under construction—and require VA to report, no later than six months after enactment, on the status of its efforts to construct the cemetery.

It is clear to a number of observers—including, as I will discuss in a moment, the Secretary of Veterans Affairs—that Southeastern Pennsylvania needs a national cemetery. The Philadelphia area has one of the largest veterans' populations in the Nation, currently estimated at over 350,000. The fact that Pennsylvania has the second oldest veterans' population in the country makes the need for a new cemetery particularly acute. Yet the closest existing VA cemetery—the Philadelphia National Cemetery—has been closed to in-ground, casket burials since 1962 and, by 2005, will even lose the capacity to inurn or inter cremated remains, leaving area veterans with only one alternative: burial at Indiantown Gap National Cemetery, as a site as much as two hours removed, by car, from their loved ones' homes. This is not acceptable.

The VA is currently reassessing its needs for cemetery construction nationwide, and I have every expectation that VA will conclude that the Philadelphia area is a site that should be at, or near, the top of its listing of priorities. I draw this expectation from a statement made by VA Secretary Anthony J. Principi who testified at a hearing before the Senate Committee on Veterans' Affairs, which I chair, on February 26, 2003, that "there is clearly a need" for a national cemetery in the Philadelphia area. He stated further "that a national cemetery is necessary in that area to meet the interment needs of the veterans of Pennsylvania." Why, then, the need for legislation? This legislation is needed to assure that the Secretary's personal commitment becomes VA policy.

VA has compiled a list of areas where national cemeteries will be built over the next 20 years using a methodology which I, and the entire southeastern Pennsylvania delegation in Congress, believe is seriously flawed. The first flaw of VA's methodology is its assumption that a locality has a "need" for a cemetery if a veterans' population of more than 170,000 resides more than 75 miles from an open State or national cemetery. This assumption gives no consideration to the fact that heavily-congested areas, like southeastern Pennsylvania, may have thousands, or even ten of thousands, of veterans residing just under 75 miles from the nearest cemetery. The second flaw of VA's methodology is its assumption that veterans are adequately provided a burial option if a national cemetery is close proximity offers the option of inurning or interring cremated re-

mains. For many reasons, cremation is not an option. Indeed, while cremation is growing in popularity, it is not yet the preferred burial method among most Americans.

The entire southeastern Pennsylvania delegation to Congress has expressed these objections to Secretary Principi by a letter dated July 26, 2002, which I ask be printed in the RECORD. It is these objectionable VA policy impediments which cause me to introduce this bill despite Secretary Principi's statements of agreement on the need for a Philadelphia area cemetery. I hope—and I expect—that the mandate of this legislation will not need to be triggered, though I do anticipate that the consultation procedures specified in my bill will, in any case, be useful in identifying a proper site for a Philadelphia area cemetery.

One final note on the issue of proper siting of a cemetery. During the 107th Congress, I introduced a bill, S. 618, that would have designate lands within the boundaries of Valley Forge National Park as a national cemetery. In a development that was surprising to me, some argued that Valley Forge lands would be an inappropriate resting place for veterans. I believed then—and I believe now—that the sensitive designation of Valley Forge lands in areas, for example, north of the Schuylkill River that were not encampments for Washington's Army, would be entirely appropriate. In any case, the legislation I have introduced today would allow for—but not compel—the location of a national cemetery in Valley Forge.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

CONGRESS OF THE UNITED STATES,  
Washington, DC, July 26, 2002.

Hon. ANTHONY J. PRINCIPI,  
Secretary of Veterans Affairs,  
Washington DC.

DEAR MR. SECRETARY: We recently received volume one of VA's contractor-prepared "Study on Improvements to Veterans Cemeteries," a publication designed to guide VA and the Congress in identifying where national cemeteries should be constructed over the next 20 years. We understand that you have directed that National Cemetery Administration construction planning be guided by the study's underlying assumption that locales with an "unserved" veterans' population of 170,000 or more be given priority. The use of that assumption, it appears to us, might leave Philadelphia out of VA's plans. By this letter, we seek to point out flaws in the study, and to inform you of the unique circumstances in which Philadelphia veterans find themselves. We also seek to show you why exclusion of Philadelphia from national cemetery construction planning would be a mistake.

The study concludes—we think erroneously—that the need for cemetery space in the Philadelphia area is not imminent. It bases this conclusion on the observation that, until 2010, space will be available in two Philadelphia-area veterans cemeteries for the interment or inurning of cremated remains. We understand that cremation is



increasingly popular. But traditional, in-ground burial remains the preferred option—and it is an option that Philadelphia-area veterans do not now have. Moreover, Philadelphia has large Roman Catholic and Jewish populations whose respective faiths, at minimum, strongly encourage traditional burials. To state that Philadelphia-area veterans are now served by a burial option due to availability of cremation services is to disregard the preferences of most veterans—and the religious guidance respected by many veterans.

The study also underestimates the size of the Philadelphia-area population which is, in fact, “unserved.” It adopts the assumption that those who live within 75 miles of an open national cemetery—in this case, the Indiantown Gap National Cemetery—are “served” without taking into account local circumstances. While it may be true that some portions of Philadelphia—though not the Center City—are within 75 miles of Indiantown Gap, anyone who has driven from the Center City through the sprawl west of Philadelphia will tell you that the distance, in practical terms, far exceeds a “normal” 75 mile drive. More fundamentally, while it may be true (as VA’s contractor concludes) that “only” 152,000 Philadelphia-area veterans will be outside that 75 mile radius in 2010, over 173,000 veterans are outside that radius now—an it is those 21,000 veterans who Philadelphia will “lose” who will need to be buried. Further, given the fact that the five PA counties that comprise metropolitan Philadelphia alone contain over 340,000 veterans, you will not be surprised to learn that the number of currently “unserved” Philadelphia-area veterans swells to almost 290,000 if one measures by reference to a 65 mile radius from Indiantown Gap. And it is wholly reasonable to assume that had a radius of 73 or 74 miles from Indiantown Gap been adopted as the reference line, Philadelphia would have made the arbitrary “170,000-veterans-in-2010” cut.

We recognize that VA must have some standard by which to measure the need for national cemeteries. But we also believe that a rigid-based standard is inherently arbitrary if local circumstances and population patterns are not taken into account by the decision maker. We who know you understand that you do not inflexibly place form over substance when it would yield an absurd result. We ask that in assessing the need for national cemetery space, you maintain a degree of flexibility. If you do, we trust that you will conclude that, whatever the merits of the VA contractor’s methodology, Philadelphia needs a new national cemetery.

Sincerely,

Joe Hoeffel, Chaka Fattah, Rob A. Brady, Tim Holden, James Greenwood, Pat Toomey, Arlen Specter, Joseph R. Pitts, Curt Weldon, John P. Murtha, Robert A. Borski, Rick Santorum.

S. 1077

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### **SECTION 1. ESTABLISHMENT OF NATIONAL CEMETERY IN SOUTHEASTERN PENNSYLVANIA.**

(a) IN GENERAL.—The Secretary of Veterans Affairs shall establish, in accordance with chapter 24 of title 38, United States Code, a national cemetery in southeastern Pennsylvania to serve the needs of veterans and their families.

(b) CONSULTATION IN SELECTION OF SITE.—Before selecting the site for the national cemetery established under subsection (a), the Secretary shall consult with—

(1) appropriate officials of the State of Pennsylvania and local officials of southeastern Pennsylvania,

(2) appropriate officials of the United States, including the Administrator of General Services, with respect to land belonging to the United States in that area that would be suitable for the purpose of establishing the national cemetery under subsection (a); and

(3) representatives of veterans service organizations.

(c) REPORT.—Not later than six months after the date of the enactment of this Act, the Secretary shall submit to Congress a report on the establishment of the national cemetery under subsection (a). The report shall set forth a schedule for the establishment of such cemetery and an estimate of the costs associated with the establishment of such cemetery.

By Ms. LANDRIEU:

S. 1078. A bill to provide for military charters between military installations and local school districts, to provide credit enhancement initiatives to promote military charter school facility acquisition, construction, and renovation, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Ms. LANDRIEU. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 1078

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### **TITLE I—STABLE TRANSITIONS IN EDUCATION FOR ARMED SERVICES’ DEPENDENT YOUTH**

##### **SEC. 101. SHORT TITLE.**

This title may be cited as the “Stable Transitions in Education for Armed Services’ Dependent Youth Act”.

##### **SEC. 102. FINDINGS.**

Congress finds that—

(1) States are establishing new and higher academic standards for students in kindergarten through grade 12;

(2) no Federal funding streams are specifically designed to help States and school districts with the costs of providing military or mobile students who are struggling academically, with the extended learning time and accelerated curricula that the students need to meet high academic standards;

(3) forty-eight States now require State accountability tests to determine student grade-level performance and progress;

(4) nineteen States currently rate the performance of all schools or identify low-performing schools through State accountability tests;

(5) sixteen States now have the power to close, take over, or overhaul chronically failing schools on the basis of those tests;

(6) fourteen States provide high-performing schools with monetary rewards on the basis of those tests;

(7) nineteen States currently require students to pass State accountability tests to graduate from secondary school;

(8) six States currently link student promotion to results on State accountability tests;

(9) thirty-seven States have a process in place that allows charters to be a useful tool to bridge the gap created by frequent school changes;

(10) excessive percentages of students are not meeting their State standards and are failing to perform at high levels on State accountability tests; and

(11) among mobile students, a common thread is that school transcripts are not easily transferred and credits are not accepted between public school districts in the United States.

##### **SEC. 103. PURPOSE.**

The purpose of this title is to provide Federal support through a new demonstration program to States and local educational agencies, to enable the States and local educational agencies to develop models for high quality military charter schools that are specifically designed to help mobile military dependent students attending public school make a smooth transition from one school district to another, even across State lines, and achieve a symbiotic relationship between military installations and these school districts.

##### **SEC. 104. DEFINITIONS.**

In this title:

(1) ELEMENTARY SCHOOL; SECONDARY SCHOOL; LOCAL EDUCATIONAL AGENCY; STATE EDUCATIONAL AGENCY.—The terms “elementary school”, “secondary school”, “local educational agency”, and “State educational agency” have the meanings given such terms in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).

(2) MILITARY INSTALLATION.—The term “military installation” has the meaning given such term in section 2687(e)(1) of title 10, United States Code.

(3) MILITARY DEPENDENT STUDENT.—The term “military dependent student” means an elementary school or secondary school student who has a parent who is a member of the Armed Forces, including a member of a reserve component of the Armed Forces, without regard to whether the member is on active duty or full-time National Guard duty (as defined in section 101(d) of title 10, United States Code).

(4) SECRETARY.—The term “Secretary” means the Secretary of Defense.

(5) STUDENT.—The term “student” means an elementary school or secondary school student.

##### **SEC. 105. GRANTS TO STATES.**

(a) GRANTS AUTHORIZED.—

(1) IN GENERAL.—From amounts appropriated under section 110, the Secretary, in consultation with the Secretary of Education, shall establish a demonstration program through which the Secretary shall make grants to State educational agencies, on a competitive basis, to enable the State educational agencies to assist local educational agencies in establishing and maintaining high quality military charter schools.

(2) DISTRIBUTION RULE.—In awarding grants under this title the Secretary shall ensure that such grants serve not more than 10 States and not more than 35 local educational agencies with differing demographics.

(3) SPECIAL LOCAL RULE.—

(A) NONPARTICIPATING STATE.—If a State chooses not to participate in the demonstration program assisted under this title or does not have an application approved under subsection (c), then the Secretary may award a grant directly to a local educational agency in the State to assist the local educational agency in carrying out high quality military charter schools.

(B) LOCAL EDUCATIONAL AGENCY APPLICATION.—To be eligible to receive a grant under this paragraph, a local educational agency shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

(C) REGULATIONS.—The Secretary shall promulgate such regulations as the Secretary determines necessary to carry out this paragraph.

(b) ELIGIBILITY AND SELECTION.—

(1) ELIGIBILITY.—For a State educational agency to be eligible to receive a grant under subsection (a), the State served by the State educational agency shall—

(A) have in effect all standards and assessments required under section 1111 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311);

(B) compile and annually distribute to parents a public school report card that, at a minimum, includes information on student and school performance for each of the assessments required under section 1111 of the Elementary and Secondary Education Act of 1965;

(C) require each military charter school assisted under this title to be an independent public school;

(D) require each military charter school assisted under this title to operate under an initial 5-year charter granted by a State charter authority, with specified check points and renewal, as required by State law; and

(E) require each military charter school assisted under this title to participate in the State's testing program.

(2) SELECTION.—In selecting State educational agencies to receive grants under this section, the Secretary shall make the selections in a manner consistent with the purpose of this title.

(c) APPLICATION.—

(1) IN GENERAL.—To be eligible to receive a grant under this section, a State educational agency shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

(2) CONTENTS.—Such application shall include—

(A) information describing specific measurable goals and objectives to be achieved in the State through the military charter schools carried out under this title, which may include specific measurable annual educational goals and objectives relating to—

(i) increased student academic achievement;

(ii) decreased student dropout rates;

(iii) governance, parental involvement plans, and disciplinary policies;

(iv) a military charter school admissions policy that requires a minimum of 60 percent military dependent elementary school or secondary school students, and a maximum of 80 percent of military dependent students, except where such percentages are impossible to maintain because of the demographics of the area around the military installation;

(v) liability and other insurance coverage, business and accounting practices, and the procedures and methods employed by the chartering authority in monitoring the school; and

(vi) such other factors as the State educational agency may choose to measure; and

(B) information on criteria, established or adopted by the State, that—

(i) the State will use to select local educational agencies for participation in the military charter schools carried out under this title; and

(ii) at a minimum, will assure that grants provided under this title are provided to—

(I) the local educational agencies in the State that are sympathetic to, and take actions to ease the transition burden upon, such local educational agencies' military dependent students;

(II) the local educational agencies in the State that have the highest percentage of military dependent students impacting the local school system or not meeting basic or minimum required standards for State assessments required under section 1111 of the

Elementary and Secondary Education Act of 1965; and

(III) an assortment of local educational agencies serving urban, suburban, and rural areas, and impacted by a local military installation.

#### SEC. 106. GRANTS TO LOCAL EDUCATIONAL AGENCIES.

(a) IN GENERAL.—

(1) FIRST YEAR.—Except as provided in paragraph (3), for the first year that a State educational agency receives a grant under this title, the State educational agency shall use the funds made available through the grant to make grants to eligible local educational agencies in the State to pay for the Federal share of the cost of planning for or carrying out the military charter school programs.

(2) SUCCEEDING YEARS.—Except as provided in paragraph (3), for the second and third year that a State educational agency receives a grant under this title, the State educational agency shall use the funds made available through the grant to make grants to eligible local educational agencies in the State to pay for the Federal share of the cost of carrying out the military charter school programs.

(3) TECHNICAL ASSISTANCE AND PLANNING ASSISTANCE.—The State educational agency may use not more than 5 percent of the grant funds received under this title for a fiscal year—

(A) to provide to the local educational agencies technical assistance that is aligned with the curriculum of the local educational agencies for the programs;

(B) to enable the local educational agencies to obtain such technical assistance from entities other than the State educational agency that have demonstrated success in using the curriculum; and

(C) to assist the local educational agencies in evaluating activities carried out under this title.

(b) APPLICATION.—

(1) IN GENERAL.—To be eligible to receive a grant under this section, a local educational agency shall submit an application to the State educational agency at such time, in such manner, and containing such information as the Secretary or the State educational agency may require.

(2) CONTENTS.—Each such application shall include, to the greatest extent practicable—

(A) information that—

(i) demonstrates that the local educational agency will carry out a military charter school program funded under this section—

(I) that provides intensive high quality programs that are aligned with challenging State content and student performance standards, and that is focused on reinforcing and boosting the core academic skills and knowledge of students who are struggling academically, as determined by the State;

(II) that focuses on accelerated learning, rather than remediation, so that students served through the program will master the high level skills and knowledge needed to meet the highest State standards or to perform at high levels on all State assessments required under section 1111 of the Elementary and Secondary Education Act of 1965;

(III) that is based on, and incorporates best practices relating to the charter schools including practices relating to the "academic passport" concept, which would ease transitions for mobile students;

(IV) that has a proposed curriculum that is directly aligned with State student performance standards, and which may incorporate a curriculum from the Department of Defense Education Activity;

(V) for which only teachers who are certified and licensed, and are otherwise fully

qualified teachers, provide academic instruction to students enrolled in the program;

(VI) that offers to staff in the program professional development and technical assistance that are aligned with the approved curriculum for the program; and

(VII) that incorporates a parental involvement component that seeks to involve parents in the program's topics and students' daily activities; and

(ii) may include—

(I) the proposed curriculum for the military charter school program;

(II) the local educational agency's plan for recruiting highly qualified and highly effective teachers (including encouraging members of the Reserves and Guard who possess all required qualifications to serve as teachers) to participate in the program; and

(III) a schedule for the program that indicates that the program is of sufficient duration and intensity to achieve the State's goals and objectives described in section 105(c)(2)(A);

(B) an outline indicating how the local educational agency will utilize applicable Federal, State, local, or public funds, other than funds made available through the grant, to support the program;

(C) an explanation of how the local educational agency will ensure that the instruction provided through the program will be provided by qualified teachers;

(D) an explanation of the types of intensive training or professional development, aligned with the curriculum of the program, that will be provided for staff of the program;

(E) an explanation of the facilities to be used for the program;

(F) an explanation regarding the duration of the periods of time that students and teachers in the program will have contact for instructional purposes (such as the hours per day and days per week of that contact, and the total length of the program);

(G) an explanation of the proposed student-to-teacher ratio for the program, analyzed by grade level;

(H) an explanation of the grade levels that will be served by the program;

(I) an explanation of the approximate cost per student for the program;

(J) an explanation of the salary costs for teachers in the program;

(K) a description of a method for evaluating the effectiveness of the program at the local level;

(L) information describing specific measurable goals and objectives, for each academic subject in which the program will provide instruction, that are consistent with, or more rigorous than, the adequate yearly progress goals established by the State under section 1111 of the Elementary and Secondary Education Act of 1965;

(M) a description of how the local educational agency will involve parents and the community in the program in order to raise academic achievement;

(N) a description of how the local educational agency will acquire any needed technical assistance that is aligned with the curriculum of the local educational agency for the program, from the State educational agency or other entities with demonstrated success in using the curriculum; and

(O) a statement of a clearly defined goal for providing counseling and other transition burden relief for military dependent children.

(c) PRIORITY.—In making grants under this section, the State educational agency shall give priority to local educational agencies that demonstrate a high level of need for the military charter school programs.

(d) FEDERAL SHARE.—

(1) IN GENERAL.—The Federal share of the cost described in subsection (a) is 50 percent.

(2) NON-FEDERAL SHARE.—The non-Federal share of the cost may be provided in cash or in kind, fairly evaluated, including plant, equipment, or services.

#### SEC. 107. SUPPLEMENT NOT SUPPLANT.

Funds appropriated pursuant to the authority of this title shall be used to supplement and not supplant other Federal, State, local, or private funds expended to support military charter school programs.

#### SEC. 108. REPORTS.

(a) STATE REPORTS.—Each State educational agency that receives a grant under this title shall annually prepare and submit to the Secretary a report. The report shall describe—

(1) the method the State educational agency used to make grants to eligible local educational agencies and to provide assistance to schools under this title;

(2) the specific measurable goals and objectives described in section 105(c)(2)(A) for the State as a whole and the extent to which the State met each of the goals and objectives in the year preceding the submission of the report;

(3) the specific measurable goals and objectives described in section 106(b)(2)(L) for each of the local educational agencies receiving a grant under this title in the State and the extent to which each of the agencies met each of the goals and objectives in that preceding year;

(4) the steps that the State educational agency will take to ensure that any such local educational agency that did not meet the goals and objectives in that year will meet the goals and objectives in the year following the submission of the report, or the plan that the State educational agency has for revoking the grant awarded to such an agency and redistributing the grant funds to existing or new military charter school programs;

(5) how eligible local educational agencies and schools used funds provided by the State educational agency under this title;

(6) the degree to which progress has been made toward meeting the goals and objectives described in section 105(c)(2)(A); and

(7) best practices for the Secretary to share with interested parties.

(b) REPORT TO CONGRESS.—The Secretary shall annually prepare and submit to Congress a report. The report shall describe—

(1) the methods the State educational agencies used to make grants to eligible local educational agencies and to provide assistance to schools under this title;

(2) how eligible local educational agencies and schools used funds provided under this title; and

(3) the degree to which progress has been made toward meeting the goals and objectives described in sections 105(c)(2)(A) and 106(b)(2)(L).

(c) GOVERNMENT ACCOUNTING OFFICE REPORT TO CONGRESS.—The Comptroller General of the United States shall conduct a study regarding the demonstration program carried out under this title and the impact of the program on student achievement. The Comptroller General shall prepare and submit to Congress a report containing the results of the study.

#### SEC. 109. ADMINISTRATION.

(a) FEDERAL.—The Secretary shall develop program guidelines for and oversee the demonstration program carried out under this title.

(b) LOCAL.—The commander of each military installation served by a military charter school assisted under this title shall establish a nonprofit corporation or an oversight group to provide the applicable local

educational agency with oversight and guidance regarding the day-to-day operations of the military charter school.

#### SEC. 110. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to carry out this title—

- (1) \$5,000,000 for fiscal year 2004;
- (2) \$7,000,000 for fiscal year 2005;
- (3) \$9,000,000 for fiscal year 2006;
- (4) \$11,000,000 for fiscal year 2007; and
- (5) \$13,000,000 for fiscal year 2008.

#### SEC. 111. TERMINATION.

The authority provided by this title terminates 5 years after the date of the enactment of this Act.

### TITLE II—CREDIT ENHANCEMENT INITIATIVES TO PROMOTE MILITARY CHARTER SCHOOL FACILITY ACQUISITION, CONSTRUCTION, AND RENOVATION

#### SEC. 201. CREDIT ENHANCEMENT INITIATIVES TO PROMOTE MILITARY CHARTER SCHOOL FACILITY ACQUISITION, CONSTRUCTION, AND RENOVATION.

Title V of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7201 et seq.) is amended by adding at the end the following:

#### “PART E—CREDIT ENHANCEMENT INITIATIVES TO PROMOTE MILITARY CHARTER SCHOOL FACILITY ACQUISITION, CONSTRUCTION, AND RENOVATION.

##### “SEC. 5701. PURPOSE.

“The purpose of this part is to provide grants to eligible entities to permit the eligible entities to establish or improve innovative credit enhancement initiatives that assist military charter schools to address the cost of acquiring, constructing, and renovating facilities.

##### “SEC. 5702. GRANTS TO ELIGIBLE ENTITIES.

“(a) GRANTS FOR INITIATIVES.—

“(1) IN GENERAL.—The Secretary shall use 100 percent of the amount available to carry out this part to award grants to eligible entities that have applications approved under this part, to enable the eligible entities to carry out innovative initiatives for assisting military charter schools to address the cost of acquiring, constructing, and renovating facilities by enhancing the availability of loans or bond financing.

“(2) NUMBER OF GRANTS.—The Secretary shall award not less than 4 grants under this part in each fiscal year.

“(b) GRANTEE SELECTION.—

“(1) DETERMINATION.—The Secretary shall evaluate each application submitted, and shall determine which applications are of sufficient quality to merit approval and which are not.

“(2) MINIMUM GRANTS.—The Secretary shall award at least—

“(A) 1 grant to an eligible entity described in section 5710(1)(A);

“(B) 1 grant to an eligible entity described in section 5710(1)(B); and

“(C) 1 grant to an eligible entity described in section 5710(1)(C),

if applications are submitted that permit the Secretary to award the grants without approving an application that is not of sufficient quality to merit approval.

“(c) GRANT CHARACTERISTICS.—Grants under this part shall be in sufficient amounts, and for initiatives of sufficient scope and quality, so as to effectively enhance credit for the financing of military charter school acquisition, construction, or renovation.

“(d) SPECIAL RULE.—In the event the Secretary determines that the funds available to carry out this part are insufficient to permit the Secretary to award not less than 4 grants in accordance with subsections (a) through (c)—

“(1) subsections (a)(2) and (b)(2) shall not apply; and

“(2) the Secretary may determine the appropriate number of grants to be awarded in accordance with subsections (a)(1), (b)(1), and (c).

##### “SEC. 5703. APPLICATIONS.

“(a) IN GENERAL.—To receive a grant under this part, an eligible entity shall submit to the Secretary an application in such form as the Secretary may reasonably require.

“(b) CONTENTS.—An application submitted under subsection (a) shall contain—

“(1) a statement identifying the activities proposed to be undertaken with funds received under this part, including how the eligible entity will determine which military charter schools will receive assistance, and how much and what types of assistance the military charter schools will receive;

“(2) a description of the involvement of military charter schools in the application's development and the design of the proposed activities;

“(3) a description of the eligible entity's expertise in capital market financing;

“(4) a description of how the proposed activities will—

“(A) leverage private sector financing capital, to obtain the maximum amount of private sector financing capital, relative to the amount of government funding used, to assist military charter schools; and

“(B) otherwise enhance credit available to military charter schools;

“(5) a description of how the eligible entity possesses sufficient expertise in education to evaluate the likelihood of success of a military charter school program for which facilities financing is sought;

“(6) in the case of an application submitted by a State governmental entity, a description of the actions that the entity has taken, or will take, to ensure that military charter schools within the State receive the funding the schools need to have adequate facilities;

“(7) an assurance that the eligible entity will give priority to funding initiatives that assist military charter schools in which students have demonstrated academic excellence or improvement during the 2 consecutive academic years preceding submission of the application; and

“(8) such other information as the Secretary may reasonably require.

##### “SEC. 5704. MILITARY CHARTER SCHOOL OBJECTIVES.

“An eligible entity receiving a grant under this part shall use the funds received through the grant, and deposited in the reserve account established under section 5705(a), to assist 1 or more military charter schools to access private sector capital to accomplish 1 or more of the following objectives:

“(1) The acquisition (by purchase, lease, donation, or otherwise) of an interest (including an interest held by a third party for the benefit of a military charter school) in improved or unimproved real property that is necessary to commence or continue the operation of a military charter school.

“(2) The construction of new facilities, or the renovation, repair, or alteration of existing facilities, necessary to commence or continue the operation of a military charter school.

“(3) The payment of startup costs, including the costs of training teachers and purchasing materials and equipment, including instructional materials and computers, for a military charter school.

##### “SEC. 5705. RESERVE ACCOUNT.

“(a) IN GENERAL.—For the purpose of assisting military charter schools to accomplish the objectives described in section 5704, an eligible entity receiving a grant under this part shall deposit the funds received through the grant (other than funds used for

administrative costs in accordance with section 5706) in a reserve account established and maintained by the eligible entity for that purpose. The eligible entity shall make the deposit in accordance with State and local law and may make the deposit directly or indirectly, and alone or in collaboration with others.

"(b) USE OF FUNDS.—Amounts deposited in such account shall be used by the eligible entity for 1 or more of the following purposes:

"(1) Guaranteeing, insuring, and reinsuring bonds, notes, evidences of debt, loans, and interests therein, the proceeds of which are used for an objective described in section 5704.

"(2) Guaranteeing and insuring leases of personal and real property for such an objective.

"(3) Facilitating financing for such an objective by identifying potential lending sources, encouraging private lending, and carrying out other similar activities that directly promote lending to, or for the benefit of, military charter schools.

"(4) Facilitating the issuance of bonds by military charter schools, or by other public entities for the benefit of military charter schools, for such an objective, by providing technical, administrative, and other appropriate assistance (including the recruitment of bond counsel, underwriters, and potential investors and the consolidation of multiple military charter school projects within a single bond issue).

"(c) INVESTMENT.—Funds received under this part and deposited in the reserve account shall be invested in obligations issued or guaranteed by the United States or a State, or in other similarly low-risk securities.

"(d) REINVESTMENT OF EARNINGS.—Any earnings on funds received under this part shall be deposited in the reserve account established under subsection (a) and used in accordance with subsection (b).

**"SEC. 5706. LIMITATION ON ADMINISTRATIVE COSTS.**

"An eligible entity that receives a grant under this part may use not more than 0.25 percent of the funds received through the grant for the administrative costs of carrying out the eligible entity's responsibilities under this part.

**"SEC. 5707. AUDITS AND REPORTS.**

"(a) FINANCIAL RECORD MAINTENANCE AND AUDIT.—The financial records of each eligible entity receiving a grant under this part shall be maintained in accordance with generally accepted accounting principles and shall be subject to an annual audit by an independent public accountant.

"(b) REPORTS.—

"(1) ELIGIBLE ENTITY ANNUAL REPORTS.—Each eligible entity receiving a grant under this part annually shall submit to the Secretary a report of the eligible entity's operations and activities under this part.

"(2) CONTENTS.—Each such annual report shall include—

"(A) a copy of the eligible entity's most recent financial statements, and any accompanying opinion on such statements, prepared by the independent public accountant auditing the financial records of the eligible entity;

"(B) a copy of any report made on an audit of the financial records of the eligible entity that was conducted under subsection (a) during the reporting period;

"(C) an evaluation by the eligible entity of the effectiveness of the entity's use of the Federal funds provided under this part in leveraging private funds;

"(D) a listing and description of the military charter schools served by the eligible entity with such Federal funds during the reporting period;

"(E) a description of the activities carried out by the eligible entity to assist military charter schools in meeting the objectives set forth in section 5704; and

"(F) a description of the characteristics of lenders and other financial institutions participating in the activities undertaken by the eligible entity under this part during the reporting period.

"(3) SECRETARIAL REPORT.—The Secretary shall review the reports submitted under paragraph (1) and shall provide a comprehensive annual report to Congress on the activities conducted under this part.

**"SEC. 5708. NO FULL FAITH AND CREDIT FOR GRANTEE OBLIGATIONS.**

"No financial obligation of an eligible entity entered into pursuant to this part (such as an obligation under a guarantee, bond, note, evidence of debt, or loan) shall be an obligation of, or guaranteed in any respect by, the United States. The full faith and credit of the United States is not pledged to the payment of funds that may be required to be paid under any obligation made by an eligible entity pursuant to any provision of this part.

**"SEC. 5709. RECOVERY OF FUNDS.**

"(a) IN GENERAL.—The Secretary, in accordance with chapter 37 of title 31, United States Code, shall collect—

"(1) all of the funds in a reserve account established by an eligible entity under section 5705(a), if the Secretary determines, not earlier than 2 years after the date on which the entity first received funds under this part, that the entity has failed to make substantial progress in carrying out the purposes described in section 5705(b); or

"(2) all or a portion of the funds in a reserve account established by an eligible entity under section 5705(a), if the Secretary determines that the eligible entity has permanently ceased to use all or a portion of the funds in such account to accomplish any purpose described in section 5705(b).

"(b) EXERCISE OF AUTHORITY.—The Secretary shall not exercise the authority provided in subsection (a) to collect from any eligible entity any funds that are being properly used to achieve 1 or more of the purposes described in section 5705(b).

"(c) PROCEDURES.—The provisions of sections 451, 452, and 458 of the General Education Provisions Act (20 U.S.C. 1234, 1234a, 1234g) shall apply to the recovery of funds under subsection (a).

"(d) CONSTRUCTION.—This section shall not be construed to impair or affect the authority of the Secretary to recover funds under part D of the General Education Provisions Act (20 U.S.C. 1234 et seq.).

**"SEC. 5710. DEFINITIONS.**

"In this part:

"(1) ELIGIBLE ENTITY.—The term 'eligible entity' means—

"(A) a public entity, such as a military installation as defined in section 2687(e)(1) of title 10, United States Code;

"(B) a private nonprofit entity; or

"(C) a consortium of entities described in subparagraphs (A) and (B).

"(2) MILITARY CHARTER SCHOOL.—The term 'military charter school' has the meaning given such term by regulations promulgated by the Secretary of Defense.

**"SEC. 5711. AUTHORIZATION OF APPROPRIATIONS.**

"There are authorized to be appropriated to carry out this part \$10,000,000 for fiscal year 2004 and each succeeding fiscal year."

By Mr. HATCH (for himself and Mr. LEAHY):

S. 1080. A bill to make amendments to certain antitrust penalties, and for other purposes; to the Committee on the Judiciary.

Mr. HATCH. Mr. President, I rise today to introduce the "Antitrust Improvements Act of 2003." I want to thank the Ranking Democrat Member from the Judiciary Committee, Senator LEAHY, for joining me in introducing this measure as an original cosponsor. I hope that we can expeditiously report this measure from the Judiciary Committee and bring it to the Senate floor.

The Hatch-Leahy Antitrust Improvements Act of 2003 is long overdue. The bill updates the criminal penalties applicable to antitrust criminal violations and repeals the archaic Title VIII of the "Antidumping Act of 1916," as requested by the administration.

After careful examination and study of the current penalty structure for antitrust criminal offenses, Senator LEAHY and I have come to agreement that the law needs to be modernized in a number of areas. Under current law, a person who commits a criminal violation of the antitrust laws can be subject to maximum punishment of 3 years imprisonment, while a corporation can be fined a maximum of \$10 million. These punishments need to be updated to reflect changes in market conditions, as well as to make them consistent with other changes we enacted last year to white collar criminal offenses as part of the Sarbanes-Oxley bill. Under the Hatch-Leahy proposal, the maximum punishment for an individual would be raised to 10 years imprisonment, and for a corporation the maximum fine would be increased to \$100 million.

These changes are long overdue and will eliminate the huge disparity present in our laws between the treatment of criminal white collar offenses and antitrust criminal violations. The Sarbanes-Oxley Act passed last year raised the criminal penalties for a number of white collar offenses, but did not do so for antitrust criminal violations. An antitrust price-fixer who defrauds consumers for a total of \$5 million should be subject to a penalty which is more consistent with the penalty scheme for other white collar offenses. There is little difference, in my mind, between a market place criminal who takes advantage of consumers and a white collar cheater who steals money from his victims.

The Hatch-Leahy proposal also will raise the maximum fines applicable to corporations and other legal entities from \$10 million to \$100 million per violation. Such a change is needed to reflect the change in our economy and the importance of maintaining a credible deterrent against such conduct by corporations and other entities.

It is also essential to note that all criminal fines are paid into a Victims Fund, which is administered by the Justice Department, and ultimately disbursed to support victims' advocacy groups. Criminals who have assets must first pay restitution to any identifiable victims to compensate them for their suffering, and then must pay

finest to the Victims Fund. The increased criminal fines will enhance the Justice Department's ability to support advocacy groups who work so hard on behalf of the victims of crime across America.

The Antitrust Division's criminal enforcement program has been very successful in the past years, particularly in the area of criminal enforcement against international cartels affecting well over \$10 billion in commerce. With these new tools, the Antitrust Division can be even more effective in enforcing our antitrust criminal laws and deterring and preventing future offenses against American consumers.

This bill also repeals an archaic provision of law, enacted in 1916, that allows private lawsuits with potential of treble damages against importers or producers for unfair pricing provided they had the intent to injure a U.S. industry. The World Trade Organization, WTO, has ruled that this act violates the United States obligations to address unfair pricing through the specified administrative measures of the Antidumping Agreement. Repealing this statute is an important and necessary step in complying with our obligations under negotiated international treaties.

I urge my colleagues to support these important measures and support the Antitrust Improvements Act of 2003.

Mr. LEAHY. Mr. President, I am pleased to join Senator HATCH today in offering this bill to increase criminal penalties against those who monopolize or restrict the market using unfair and illegal business practices.

In an age that combines robust levels of international trade with the threats of Enron-style accounting, we must be increasingly vigilant to the threats of white-collar crime to our economy. Legitimate business can only thrive when bad actors realize that violations of antitrust law will be met with the strictest of penalties. Our bill increases the maximum sentence for a violation of the Sherman antitrust laws from 3 to 10 years. Fines to corporations are increased tenfold to a maximum of \$100 million per infraction. This increase will make it clear to corporate wrongdoers that no antitrust violation is affordable. These changes bring antitrust penalties in line with other white-collar crimes and send a clear message that the United States will not allow any company to abuse its consumers by misusing market power.

Our bill also repeals an old and rarely used provision, the Antidumping Act of 1916. Congress must eliminate this provision in order to come into compliance with a ruling by the World Trade Organization. The U.S. Trade Representative and the Department of Justice both support the repeal of this act, and indeed have made a joint request for such legislation to the Congress.

I am pleased to have worked with the chairman on this important legislation and urge my colleagues to support this bill.

I ask unanimous consent to print in the RECORD the joint request by the U.S. Trade Representative and the Department of Justice.

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

EXECUTIVE OFFICE OF THE PRESIDENT, THE UNITED STATES TRADE REPRESENTATIVE,

Washington, DC, July 20, 2001.

Hon. RICHARD B. CHENEY,  
President of the Senate,  
Washington, DC.

DEAR MR. PRESIDENT: We are transmitting the enclosed draft bill to repeal a provision of law enacted on September 8, 1916, regarding prevention of unfair methods of competition (15 U.S.C. § 72, c. 463, Title VIII, § 801, 39 Stat. 798). That provision provides for a private right of action for treble damages, as well as for criminal penalties in an action brought by the U.S. government, for international price discrimination.

The Administration proposes repeal of this provision because it is redundant of other U.S. laws providing remedies for international price discrimination. To our knowledge, during the past 85 years no plaintiff has obtained a final judgment on the merits under this rarely-invoked law and no government enforcement action has been taken. Furthermore, this provision is inconsistent with the obligations of the United States under the Marrakesh Agreement Establishing the World Trade Organization (WTO Agreement).

We would appreciate it if you would lay the draft bill before the Senate. An identical proposal is being transmitted to the Speaker of the House.

The Office of Management and Budget has advised that there is no objection to the presentation of this proposal to Congress and that its enactment would be in accord with the program of the President.

Sincerely,

JOHN ASHCROFT,  
Attorney General.

ROBERT B. ZOELLICK,  
United States Trade  
Representative.

By Mr. DOMENICI:

S. 1081. A bill to amend section 504(a) of the Higher Education Act of 1965 to eliminate the 2-year wait out period for grant recipients; to the Committee on Health, Education, Labor, and Pensions.

Mr. DOMENICI. Mr. President, I rise today to introduce a bill that will amend Title V of the Higher Education Act. Specifically, this bill will eliminate the 2-year wait-out period now required between applications by eligible Hispanic Serving Institutions for grants under Title V of the Higher Education Act.

Title V of the Higher Education Act is the primary vehicle used to target urgently needed funds to Hispanic Serving Institutions. Grants under this section can be used by higher education institutions to strengthen academic quality, institutional management, and financial stability. These grants are essential to institutions that provide and increase the number of educational opportunities available to Hispanic students.

Under current guidelines, in order to qualify for a grant under Title V, an in-

stitution must have at least 25 percent full time, Hispanic undergraduate student enrollment, and not less than 50 percent of its Hispanic student population must be low income. Title V grants are awarded for 5 years, with a minimum 2-year wait-out period after the termination of a grant period before eligibility to apply for another grant. During Fiscal Year 2002, 191 institutions were awarded grants.

Title V's 2-year wait-out period impedes Hispanic Serving Institutions' efforts to implement continuing programs with long range solutions to Hispanic higher education challenges. Eliminating the 2-year wait-out period will be of great importance to equipping our Nation's Hispanic Serving Institutions with the continuous funding that they need to best answer complex challenges. In 2000, Congress eliminated the wait-out period for Tribally Controlled Colleges and Universities, Alaskan Native and Native Hawaiian-serving institutions. Historically Black Colleges and Universities also do not have a wait-out period. It is now time for us to eliminate the wait-out period for Hispanic Serving Institutions.

Hispanic Serving Institutions provide the quality education essential to full participation in today's society. Many students in my home State of New Mexico have benefited from the academic excellence that Hispanic Serving Institutions seek to provide. Title V grants are intended to provide assistance to these less advantaged, developing institutions, and preventing these institutions from reapplying for grants for 2 successive years is obstructing their development.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 1081

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. ELIMINATION OF THE 2-YEAR WAIT OUT PERIOD FOR GRANT RECIPIENTS.**

Section 504(a) of the Higher Education Act of 1965 (20 U.S.C. 1101c(a)) is amended—

(1) by striking "PERIOD.—" and all that follows through "The Secretary" and inserting "PERIOD.—The Secretary"; and

(2) by striking paragraph (2).

**SUBMITTED RESOLUTIONS**

**SENATE RESOLUTION 145—DESIGNATING JUNE 2003 AS "NATIONAL SAFETY MONTH"**

Mr. FITZGERALD (for himself and Mrs. FEINSTEIN) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 145

Whereas the mission of the National Safety Council is to educate and influence society to adopt safety, health, and environmental policies, practices, and procedures

that prevent and mitigate human suffering and economic losses arising from preventable causes;

Whereas the National Safety Council works to protect lives and promote health with innovative programs;

Whereas the National Safety Council, founded in 1913, is celebrating its 90th anniversary in 2003 as the premier source of safety and health information, education, and training in the United States;

Whereas the National Safety Council was congressionally chartered in 1953, and is celebrating its 50th anniversary in 2003 as a congressionally chartered organization;

Whereas, even with advancements in safety that create a safer environment for Americans, such as improvements in technology and new legislation, the unintentional-injury death toll is still unacceptable;

Whereas citizens deserve a solution to nationwide safety and health threats;

Whereas such a solution requires the cooperation of all levels of government, as well as the general public; and

Whereas the summer season, traditionally a time of increased unintentional-injury fatalities, is an appropriate time to focus attention on both the problem and the solution: Now, therefore, be it

*Resolved*, That the Senate—

(1) designates June 2003, as "National Safety Month"; and

(2) requests that the President issue a proclamation calling upon the people of the United States to observe such month with appropriate ceremonies and activities that promote acknowledgement, gratitude, and respect for the advances of the National Safety Council and its mission.

Mr. FITZGERALD. Mr. President, I rise today to submit a resolution that would designate June 2003 as National Safety Month.

National Safety Month is not just a tribute to our Nation's advances in health and safety and our never-ending efforts to protect lives. It represents a standard of excellence in safety to which we as a Nation must continue to aspire. While our Nation has enjoyed great advances in safety, we must continue to work to reduce the number of unintentional and preventable injuries and deaths. As summer is traditionally a time in which the number of unintentional deaths increases, it is appropriate to dedicate a month at the beginning of the season to the improvement of safety and health in our country.

During National Safety Month, the National Safety Council will provide tips, articles and information to raise awareness and promote safe driving, home and community safety, general preparedness, and workplace safety.

I would like to commend the National Safety Council for the contributions that it has made to public safety. I am proud that the National Safety Council is headquartered in my home State of Illinois. The National Safety Council is celebrating its 90th anniversary as an organization this year, and its 50th anniversary as a federally chartered organization. Congress chartered the National Safety Council in 1953 to educate and influence society to adopt safety, health, and environmental policies, practices, and procedures that prevent and mitigate human

suffering and economic loss arising from preventable causes. The National Safety Council fulfills its mission through a network of approximately 50 local and regional chapters that provide safety and health programs and services to communities across the United States. The Council currently has 37,500 members.

I thank Senator FEINSTEIN for joining me to submit this resolution that declares June 2003 National Safety Month and recognizes the National Safety Council for its important work. During a time when homeland security is foremost on the minds of Americans, this month will continue to heighten public awareness of the ongoing quest to save and protect lives. I urge all of my colleagues to join me in supporting this resolution.

SENATE CONCURRENT RESOLUTION 45—EXPRESSING APPRECIATION TO THE GOVERNMENT OF KUWAIT FOR THE MEDICAL ASSISTANCE IT PROVIDED TO ALI ISMAEEL ABBAS AND OTHER CHILDREN OF IRAQ AND FOR THE ADDITIONAL HUMANITARIAN AID PROVIDED BY THE GOVERNMENT AND PEOPLE OF KUWAIT, AND FOR OTHER PURPOSES

Ms. LANDRIEU submitted the following concurrent resolution; which was referred to the Committee on Foreign Relations:

S. CON. RES. 45

Whereas the plight of Ali Ismaeel Abbas, 12, of Baghdad, Iraq, who lost his parents and several other relatives, suffered severe burns, and lost both his arms on March 29, 2003, during the military conflict in Iraq, has aroused concern on the part of people all around the world;

Whereas, with the approval of the Cabinet of the Government of Kuwait, First Deputy Prime Minister and Foreign Minister of Kuwait Shaykh Sabah al-Ahmed al-Jabir Al-Sabah personally called for Ali to receive medical treatment in Kuwait;

Whereas the Ministry of Health of Kuwait has agreed to care for the orphaned Ali;

Whereas Dr. Ahmad al-Shatti, spokesman for the Ibn Sina Hospital for Specialized Surgery, which has expertise in burn surgery, expressed welcome for Ali on behalf of the hospital;

Whereas Ali was successfully medically evacuated by United States military airlift from Baghdad, Iraq, to Nassiriya for medical tests and then to Kuwait City, Kuwait, on April 15, 2003;

Whereas doctors at the sophisticated Saud A. Alabtain Center for Burns and Plastic Surgery at Ibn Sina Hospital immediately provided medical care to stabilize Ali and then performed surgery to treat his burns; and

Whereas the Government and people of Kuwait are providing medical supplies and hospital assessment missions in Iraq, supplying water pumped through a pipeline they laid to the Iraqi city of Umm Qasr, and operating the Kuwait Humanitarian Operations Center, where the United States military coordinates relief operations with nongovernmental organizations, United Nations agencies, and the Government of Kuwait: Now, therefore, be it

*Resolved by the Senate (the House of Representatives concurring)*, That the Congress of the United States—

(1) formally expresses its gratitude to the Government of Kuwait for its magnanimity in receiving Ali Ismaeel Abbas, for providing Ali life-saving medical care, and for undertaking to provide for his long-term recuperation and rehabilitation;

(2) commends the Government and people of Kuwait for their support of and welcome for Ali and other wounded children of Iraq;

(3) conveys the goodwill of Congress and the people of the United States that has been engendered by the medical assistance, water, and other humanitarian aid that the Government and people of Kuwait have provided their neighbors;

(4) encourages the Government and people of Kuwait to continue their humanitarian efforts; and

(5) expresses firm confidence that such humanitarian action will not only help heal the wounds of Ali, but will also restore comity between Kuwait and Iraq and within the region and deepen the friendship between the peoples of Kuwait and the United States.

AMENDMENTS SUBMITTED AND PROPOSED

SA 687. Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill S. 1050, to authorize appropriations for fiscal year 2004 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes; which was ordered to lie on the table.

SA 688. Mr. KENNEDY (for himself, Mrs. FEINSTEIN, and Mr. FEINGOLD) submitted an amendment intended to be proposed by him to the bill S. 1050, supra; which was ordered to lie on the table.

SA 689. Mr. DASCHLE proposed an amendment to the bill S. 1050, supra.

SA 690. Mrs. CLINTON submitted an amendment intended to be proposed by her to the bill S. 1050, to authorize appropriations for fiscal year 2004 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes; which was ordered to lie on the table.

SA 691. Mrs. MURRAY (for herself, Ms. SNOWE, Mrs. BOXER, and Ms. CANTWELL) submitted an amendment intended to be proposed by her to the bill S. 1050, supra; which was ordered to lie on the table.

SA 692. Mr. SANTORUM submitted an amendment intended to be proposed by him to the bill S. 1050, supra; which was ordered to lie on the table.

SA 693. Mr. SANTORUM submitted an amendment intended to be proposed by him to the bill S. 1050, supra; which was ordered to lie on the table.

SA 694. Mr. SANTORUM submitted an amendment intended to be proposed by him to the bill S. 1050, supra; which was ordered to lie on the table.

SA 695. Mr. SANTORUM submitted an amendment intended to be proposed by him to the bill S. 1050, supra; which was ordered to lie on the table.

SA 696. Mr. GRAHAM, of South Carolina proposed an amendment to the bill S. 1050, supra.

SA 697. Mr. REID (for himself, Mr. DORGAN, and Mr. NELSON, of Florida) proposed an amendment to the bill S. 1050, supra.

SA 698. Mr. NELSON, of Florida (for himself and Mrs. BOXER) submitted an amendment intended to be proposed by him to the



bill S. 1050, supra; which was ordered to lie on the table.

SA 699. Mr. WARNER (for Mr. MCCONNELL) proposed an amendment to the resolution S. Res. 100, recognizing the 100th anniversary year of the founding of the Ford Motor Company, which has been a significant part of the social, economic, and cultural heritage of the United States and many other nations, and a revolutionary industrial and global institution, and congratulating Ford Motor Company for its achievements.

#### TEXT OF AMENDMENTS

**SA 687.** Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill S. 1050, to authorize appropriations for fiscal year 2004 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

#### **SEC. \_\_\_\_ . DEPARTMENT OF DEFENSE PAYMENT FOR CONTINUATION OF NON-TRICARE HEALTH BENEFITS COVERAGE FOR CERTAIN MOBILIZED RESERVES.**

(a) PAYMENT OF PREMIUMS.—

(1) REQUIREMENT TO PAY PREMIUMS.—Chapter 55 of title 10, United States Code, is amended by inserting after section 1078a the following new section:

#### **“§1078b. Continuation of non-TRICARE health benefits plan coverage for certain Reserves called or ordered to active duty and their dependents**

“(a) PAYMENT OF PREMIUMS.—The Secretary concerned shall pay the applicable premium to continue in force any qualified health benefits plan coverage for an eligible reserve component member for the benefits coverage continuation period if timely elected by the member in accordance with regulations prescribed under subsection (h).

“(b) ELIGIBLE MEMBER.—A member of a reserve component who is called or ordered to active duty for a period of more than 30 days under a provision of law referred to in section 101(a)(13)(B) of this title is eligible for payment of the applicable premium for continuation of qualified health benefits plan coverage under subsection (a).

“(c) QUALIFIED HEALTH BENEFITS PLAN COVERAGE.—For the purposes of this section, health benefits plan coverage for a member called or ordered to active duty is qualified health benefits plan coverage if—

“(1) the coverage was in force on the date on which the Secretary notified the member that issuance of the call or order was pending or, if no such notification was provided, the date of the call or order; and

“(2) on that date, the coverage applied to the member and dependents of the member.

“(d) APPLICABLE PREMIUM.—The applicable premium payable under this section for continuation of health benefits plan coverage in the case of a member is the amount of the premium payable by the member for the coverage of the member and dependents.

“(e) BENEFITS COVERAGE CONTINUATION PERIOD.—The benefits coverage continuation period under this section for qualified health benefits plan coverage in the case of a member called or ordered to active duty is the period that—

“(1) begins on the date of the call or order; and

“(2) ends on the earlier of the date on which—

“(A) the member's eligibility for transitional health care under section 1145(a) of this title terminates under paragraph (3) of such section;

“(B) the member or the dependents of the member eligible for benefits under the qualified health benefits plan coverage become covered by another health benefits plan that is not TRICARE; or

“(C) the member elects to terminate the continued qualified health benefits plan coverage of the dependents of the member.

“(f) EXTENSION OF PERIOD OF COBRA COVERAGE.—Notwithstanding any other provision of law—

“(1) any period of coverage under a COBRA continuation provision (as defined in section 9832(d)(1) of the Internal Revenue Code of 1986) for a member under this section shall be deemed to be equal to the benefits coverage continuation period for such member under this section; and

“(2) with respect to the election of any period of coverage under a COBRA continuation provision (as so defined), rules similar to the rules under section 4980B(f)(5)(C) of such Code shall apply.

“(g) SPECIAL RULE WITH RESPECT TO INDIVIDUAL HEALTH INSURANCE COVERAGE.—With respect to a member of a reserve component described in subsection (b) who was enrolled in individual health insurance coverage (as such term is defined in section 2791(b)(5) of the Public Health Service Act) on the date on which the member was called or ordered to active duty, the health insurance issuer may not—

“(1) decline to offer such coverage to, or deny re-enrollment of, such individual during the benefits coverage continuation period described in subsection (e);

“(2) impose any preexisting condition exclusion (as defined in section 2701(b)(1)(A) of the Public Health Service Act) with respect to the re-enrollment of such member for such coverage during such period; or

“(3) increase the premium rate for re-enrollment of such member under such coverage during such period above the rate that was paid for the coverage prior to the date of such call or order.

“(h) NONDUPLICATION OF BENEFITS.—A dependent of a member who is eligible for benefits under qualified health benefits plan coverage paid on behalf of a member by the Secretary concerned under this section is not eligible for benefits under TRICARE during a period of the coverage for which so paid.

“(i) REVOCABILITY OF ELECTION.—A member who makes an election under subsection (a) may revoke the election. Upon such a revocation, the member's dependents shall become eligible for TRICARE as provided for under this chapter.

“(j) REGULATIONS.—The Secretary of Defense shall prescribe regulations for carrying out this section. The regulations shall include such requirements for making an election of payment of applicable premiums as the Secretary considers appropriate.”

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 1078a the following new item:

“1078b. Continuation of non-TRICARE health benefits plan coverage for certain Reserves called or ordered to active duty and their dependents.”

(b) APPLICABILITY.—Section 1078b of title 10, United States Code (as added by subsection (a)), shall apply with respect to calls or orders of members of reserve components of the Armed Forces to active duty as described in subsection (b) of such section, that

are issued by the Secretary of a military department on or after the date of the enactment of this Act.

**SA 688.** Mr. KENNEDY (for himself, Mrs. FEINSTEIN, and Mr. FEINGOLD) submitted an amendment intended to be proposed by him to the bill S. 1050, to authorize appropriations for fiscal year 2004 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes; which was ordered to lie on the table; as follows:

Strike section 3131.

**SA 689.** Mr. DASCHLE proposed an amendment to the bill S. 1050, to authorize appropriations for fiscal year 2004 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes; as follows:

On page 157, strike line 8 and all that follows through “time of war,” on line 14, and insert the following:

“(f)(1) At any time after the Secretary concerned notifies members of the Ready Reserve that the members are to be called or ordered to active duty,

On page 157, line 19, strike ““(2)” and insert the following:

“(2) The screening and care authorized under paragraph (1) shall include screening and care under TRICARE, pursuant to eligibility under paragraph (3), and continuation of care benefits under paragraph (4).

“(3)(A) Members of the Selected Reserve of the Ready Reserve and members of the Individual Ready Reserve described in section 10144(b) of this title are eligible, subject to subparagraph (I), to enroll in TRICARE.

“(B) A member eligible under subparagraph (A) may enroll for either of the following types of coverage:

“(i) Self alone coverage.

“(ii) Self and family coverage.

“(C) An enrollment by a member for self and family covers the member and the dependents of the member who are described in subparagraph (A), (D), or (I) of section 1072(2) of this title.

“(D) The Secretary of Defense shall provide for at least one open enrollment period each year. During an open enrollment period, a member eligible under subparagraph (A) may enroll in the TRICARE program or change or terminate an enrollment in the TRICARE program.

“(E) A member and the dependents of a member enrolled in the TRICARE program under this paragraph shall be entitled to the same benefits under this chapter as a member of the uniformed services on active duty or a dependent of such a member, respectively. Section 1074(c) of this title shall apply with respect to a member enrolled in the TRICARE program under this section.

“(F)(i) The Secretary of Defense shall charge premiums for coverage pursuant to enrollments under this paragraph. The Secretary shall prescribe for each of the TRICARE program options a premium for self alone coverage and a premium for self and family coverage.

“(ii) The monthly amount of the premium in effect for a month for a type of coverage under this paragraph shall be the amount equal to 28 percent of the total amount determined by the Secretary on an appropriate



actuarial basis as being reasonable for the coverage.

“(iii) The premiums payable by a member under this subparagraph may be deducted and withheld from basic pay payable to the member under section 204 of title 37 or from compensation payable to the member under section 206 of such title. The Secretary shall prescribe the requirements and procedures applicable to the payment of premiums by members not entitled to such basic pay or compensation.

“(iv) Amounts collected as premiums under this subparagraph shall be credited to the appropriation available for the Defense Health Program Account under section 1100 of this title, shall be merged with sums in such Account that are available for the fiscal year in which collected, and shall be available under subparagraph (B) of such section for such fiscal year.

“(G) A person who receives health care pursuant to an enrollment in a TRICARE program option under this paragraph, including a member who receives such health care, shall be subject to the same deductibles, copayments, and other nonpremium charges for health care as apply under this chapter for health care provided under the same TRICARE program option to dependents described in subparagraph (A), (D), or (I) of section 1072(2) of this title.

“(H) A member enrolled in the TRICARE program under this paragraph may terminate the enrollment only during an open enrollment period provided under subparagraph (D), except as provided in subparagraph (I). An enrollment of a member for self alone or for self and family under this paragraph shall terminate on the first day of the first month beginning after the date on which the member ceases to be eligible under subparagraph (A). The enrollment of a member under this paragraph may be terminated on the basis of failure to pay the premium charged the member under this paragraph.

“(I) A member may not enroll in the TRICARE program under this paragraph while entitled to transitional health care under subsection (a) of section 1145 of this title or while authorized to receive health care under subsection (c) of such section. A member who enrolls in the TRICARE program under this paragraph within 90 days after the date of the termination of the member's entitlement or eligibility to receive health care under subsection (a) or (c) of section 1145 of this title may terminate the enrollment at any time within one year after the date of the enrollment.

“(J) The Secretary of Defense, in consultation with the other administering Secretaries, shall prescribe regulations for the administration of this paragraph.

“(4)(A) The Secretary concerned shall pay the applicable premium to continue in force any qualified health benefits plan coverage for an eligible reserve component member for the benefits coverage continuation period if timely elected by the member in accordance with regulations prescribed under subparagraph (J).

“(B) A member of a reserve component is eligible for payment of the applicable premium for continuation of qualified health benefits plan coverage under subparagraph (A) while serving on active duty pursuant to a call or order issued under a provision of law referred to in section 101(a)(13)(B) of this title during a war or national emergency declared by the President or Congress.

“(C) For the purposes of this paragraph, health benefits plan coverage for a member called or ordered to active duty is qualified health benefits plan coverage if—

“(i) the coverage was in force on the date on which the Secretary notified the member that issuance of the call or order was pend-

ing or, if no such notification was provided, the date of the call or order;

“(ii) on such date, the coverage applied to the member and dependents of the member described in subparagraph (A), (D), or (I) of section 1072(2) of this title; and

“(iii) the coverage has not lapsed.

“(D) The applicable premium payable under this paragraph for continuation of health benefits plan coverage in the case of a member is the amount of the premium payable by the member for the coverage of the member and dependents.

“(E) The total amount that may be paid for the applicable premium of a health benefits plan for a member under this paragraph in a fiscal year may not exceed the amount determined by multiplying—

“(i) the sum of one plus the number of the member's dependents covered by the health benefits plan, by

“(ii) the per capita cost of providing TRICARE coverage and benefits for dependents under this chapter for such fiscal year, as determined by the Secretary of Defense.

“(F) The benefits coverage continuation period under this paragraph for qualified health benefits plan coverage in the case of a member called or ordered to active duty is the period that—

“(i) begins on the date of the call or order; and

“(ii) ends on the earlier of the date on which the member's eligibility for transitional health care under section 1145(a) of this title terminates under paragraph (3) of such section, or the date on which the member elects to terminate the continued qualified health benefits plan coverage of the dependents of the member.

“(G) Notwithstanding any other provision of law—

“(i) any period of coverage under a COBRA continuation provision (as defined in section 9832(d)(1) of the Internal Revenue Code of 1986) for a member under this paragraph shall be deemed to be equal to the benefits coverage continuation period for such member under this paragraph; and

“(ii) with respect to the election of any period of coverage under a COBRA continuation provision (as so defined), rules similar to the rules under section 4980B(f)(5)(C) of such Code shall apply.

“(H) A dependent of a member who is eligible for benefits under qualified health benefits plan coverage paid on behalf of a member by the Secretary concerned under this paragraph is not eligible for benefits under the TRICARE program during a period of the coverage for which so paid.

“(I) A member who makes an election under subparagraph (A) may revoke the election. Upon such a revocation, the member's dependents shall become eligible for benefits under the TRICARE program as provided for under this chapter.

“(J) The Secretary of Defense shall prescribe regulations for carrying out this paragraph. The regulations shall include such requirements for making an election of payment of applicable premiums as the Secretary considers appropriate.

“(5) For the purposes of this section, all members of the Ready Reserve who are to be called or ordered to active duty include all members of the Ready Reserve.

“(6) The Secretary concerned shall promptly notify all members of the Ready Reserve that they are eligible for screening and care under this section.

**SA 690.** Mrs. CLINTON submitted an amendment intended to be proposed by her to the bill S. 1050, to authorize appropriations for fiscal year 2004 for military activities of the Department

of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle D of title XXXI, add the following:

**SEC. 3155. COVERAGE UNDER ENERGY EMPLOYEES OCCUPATIONAL ILLNESS COMPENSATION PROGRAM OF INDIVIDUALS EMPLOYED AT ATOMIC WEAPONS EMPLOYER FACILITIES DURING PERIODS OF RESIDUAL CONTAMINATION.**

Paragraph (3) of section 3621 of the Energy Employees Occupational Illness Compensation Program Act of 2000 (42 U.S.C. 7384l) is amended to read as follows:

“(3) The term ‘atomic weapons employee’ means an individual employed at an atomic weapons employer facility during a period when—

“(A) the employer was processing or producing, for the use by the United States, material that emitted radiation and was used in the production of an atomic weapon, excluding uranium mining and milling; or

“(B) as specified by the National Institute for Occupational Safety and Health in the final report required by section 3151(b)(2)(A)(ii) of the National Defense Authorization Act for Fiscal Year 2002 (42 U.S.C. 7384 note) or any supplement thereto or subsequent report, significant contamination (as that term is defined in section 3151(b)(4)(B) of that Act) remained after such facility discontinued activities described in subparagraph (A).”.

**SA 691.** Mrs. MURRAY (for herself, Ms. SNOWE, Mrs. BOXER, and Ms. CANTWELL) submitted an amendment intended to be proposed by her to the bill S. 1050, to authorize appropriations for fiscal year 2004 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes; which was ordered to lie on the table; as follows:

At the end of title VII, add the following:

**SEC. 708. RESTORATION OF PREVIOUS POLICY REGARDING RESTRICTIONS ON USE OF DEPARTMENT OF DEFENSE MEDICAL FACILITIES.**

Section 1093 of title 10, United States Code, is amended—

- (1) by striking subsection (b); and
- (2) in subsection (a), by striking “RESTRICTION ON USE OF FUNDS.—”.

**SA 692.** Mr. SANTORUM submitted an amendment intended to be proposed by him to the bill S. 1050, to authorize appropriations for fiscal year 2004 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle B of title III, add the following:

**SEC. 313. INFORMATION OPERATIONS SUSTAINMENT FOR LAND FORCES READINESS OF ARMY RESERVE.**

(a) IN GENERAL.—Of the amount authorized to be appropriated for fiscal year 2004 by section 301(6) for operation and maintenance for

the Army Reserve, \$3,000,000 may be available for Information Operations (Account #19640) for Land Forces Readiness-Information Operations Sustainment.

(b) **SUPPLEMENT NOT SUPPLANT.**—The amount made available under subsection (a) for the purpose specified in that subsection is in addition to any other amounts available for that purpose under this Act.

**SA 693.** Mr. SANTORUM submitted an amendment intended to be proposed by him to the bill S. 1050, to authorize appropriations for fiscal year 2004 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes; which was ordered to lie on the table; as follows:

In subtitle B of title I, add after the subtitle heading the following:

**SEC. 111. RAPID INFUSION PUMPS.**

(a) **AVAILABILITY OF FUNDS.**—(1) Of the amount authorized to be appropriated by section 101(5) for other procurement for the Army, \$2,000,000 may be available for medical equipment for the procurement of rapid infusion (IV) pumps.

(2) The amount available under paragraph (1) for the purpose specified in that paragraph is in addition to any other amounts available under this Act for that purpose.

(b) **OFFSET.**—Of the amount authorized to be appropriated by section 101(5) for other procurement for the Army, the amount available for the procurement of automated data processing equipment is hereby reduced by \$2,000,000.

**SA 694.** Mr. SANTORUM submitted an amendment intended to be proposed by him to the bill S. 1050, to authorize appropriations for fiscal year 2004 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle B of title II, add the following:

**SEC. 213. NON-THERMAL IMAGING SYSTEMS.**

(a) **AVAILABILITY OF FUNDS.**—(1) Of the amount authorized to be appropriated for fiscal year 2004 by section 201(2) for research, development, test, and evaluation, Navy, \$2,000,000 may be available for Power Projection Applied Research (PE 602114N) for non-thermal imaging systems.

(2) The amount available under paragraph (1) for the purpose specified in that paragraph is in addition to any other amounts available under this Act for that purpose.

(b) **OFFSET.**—Of the amount authorized to be appropriated for fiscal year 2004 by section 201(2) for research, development, test, and evaluation, Navy, the amount available for Retractable Maple (PE 603746N) is hereby reduced by \$2,000,000.

**SA 695.** Mr. SANTORUM submitted an amendment intended to be proposed by him to the bill S. 1050, to authorize appropriations for fiscal year 2004 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe per-

sonnel strengths for such fiscal year for the Armed Forces, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle B of title II, add the following:

**SEC. 213. PORTABLE MOBILE EMERGENCY BROADBAND SYSTEMS.**

(a) **AVAILABILITY OF FUNDS.**—(1) Of the amount authorized to be appropriated by section 201(1) for research, development, test, and evaluation for the Army, \$2,000,000 may be available for the development of Portable Mobile Emergency Broadband Systems (MEBS).

(2) The amount available under paragraph (1) for the purpose specified in that paragraph is in addition to any other amounts available under this Act for that purpose.

(b) **OFFSET.**—Of the amount authorized to be appropriated by section 201(1) for research, development, test, and evaluation for the Army, the amount made available for Missile and Rocket Advanced Technology (PE 603313A) is hereby reduced by \$2,000,000.

**SA 696.** Mr. GRAHAM of South Carolina proposed an amendment to the bill S. 1050, to authorize appropriations for fiscal year 2004 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes; as follows:

On page 157, line 8:

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

“(f)(1) At any time after the Secretary concerned notifies the commander of a unit of the Selected Reserve of the Ready Reserve that all members of the unit are to be called or ordered to active duty under a provision of law referred to in section 101(a)(13)(B) in support of an operation, mission, or contingency operation during a national emergency or in time of war. This shall become effective one day after enactment of the bill.

On page 157, line 19, in lieu of the matter to be inserted insert the following:

“(2) A member provided medical or dental screening or care under paragraph (1) may not be charged for the screening or dental care. This section shall become effective two days after enactment.

**SEC. . EXPANDED ELIGIBILITY OF READY RESERVISTS FOR TRICARE.**

(a) **ELIGIBILITY.**—Chapter 55 of title 10, United States Code, is amended by inserting after section 1097b the following new section:

**§ 1097c. TRICARE program: Reserves not on active duty**

“(a) **ELIGIBILITY.**—A member of the Selected Reserve of the Ready Reserve of the armed forces not otherwise eligible for enrollment in the TRICARE program under this chapter for the same benefits as a member of the armed forces eligible under section 1074(a) of this title may enroll for self or for self and family for the same benefits under this section.

“(b) **PREMIUMS.**—(1) An enlisted member of the armed forces enrolled in the TRICARE program under this section shall pay an annual premium of \$330 for self only coverage and \$560 for self and family coverage for which enrolled under this section.

“(2) An officer of the armed forces enrolled in the TRICARE program under this section shall pay an annual premium of \$380 for self only coverage and \$610 for self and family coverage for which enrolled under this section.”

(b) **CLERICAL AMENDMENT.**—The table of sections at the beginning of such chapter is

amended by inserting after the item relating to section 1097b the following new item:

“1097c. Section 101 head.”

**SA 697.** Mr. REID (for himself, Mr. DORGAN, and Mr. NELSON of Florida) proposed an amendment to the bill S. 1050, to authorize appropriations for fiscal year 2004 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes; as follows:

At the end of subtitle D of title VI, add the following:

**SEC. 644. FULL PAYMENT OF BOTH RETIRED PAY AND COMPENSATION TO DISABLED MILITARY RETIREES.**

(a) **RESTORATION OF FULL RETIRED PAY BENEFITS.**—Section 1414 of title 10, United States Code, is amended to read as follows:

**“§ 1414. Members eligible for retired pay who have service-connected disabilities: payment of retired pay and veterans' disability compensation**

“(a) **PAYMENT OF BOTH RETIRED PAY AND COMPENSATION.**—Except as provided in subsection (b), a member or former member of the uniformed services who is entitled to retired pay (other than as specified in subsection (c)) and who is also entitled to veterans' disability compensation is entitled to be paid both without regard to sections 5304 and 5305 of title 38.

“(b) **SPECIAL RULE FOR CHAPTER 61 CAREER RETIREES.**—The retired pay of a member retired under chapter 61 of this title with 20 years or more of service otherwise creditable under section 1405 of this title at the time of the member's retirement is subject to reduction under sections 5304 and 5305 of title 38, but only to the extent that the amount of the member's retired pay under chapter 61 of this title exceeds the amount of retired pay to which the member would have been entitled under any other provision of law based upon the member's service in the uniformed services if the member had not been retired under chapter 61 of this title.

“(c) **EXCEPTION.**—Subsection (a) does not apply to a member retired under chapter 61 of this title with less than 20 years of service otherwise creditable under section 1405 of this title at the time of the member's retirement.

“(d) **DEFINITIONS.**—In this section:

“(1) The term ‘retired pay’ includes re-tainer pay, emergency officers' retirement pay, and naval pension.

“(2) The term ‘veterans' disability compensation’ has the meaning given the term ‘compensation’ in section 101(13) of title 38.”

(b) **REPEAL OF SPECIAL COMPENSATION PROGRAMS.**—Sections 1413 and 1413a of such title are repealed.

(c) **CLERICAL AMENDMENT.**—The table of sections at the beginning of such chapter is amended by striking the items relating to sections 1413, 1413a, and 1414 and inserting the following:

“1414. Members eligible for retired pay who have service-connected disabilities: payment of retired pay and veterans' disability compensation.”

(d) **EFFECTIVE DATE.**—The amendments made by this section shall take effect on—

(1) the first day of the first month that begins after the date of the enactment of this Act; or

(2) the first day of the fiscal year that begins in the calendar year in which this Act is enacted, if later than the date specified in paragraph (1).

(e) PROHIBITION ON RETROACTIVE BENEFITS.—No benefits may be paid to any person by reason of section 1414 of title 10, United States Code, as amended by subsection (a), for any period before the effective date applicable under subsection (d).

**SA 698.** Mr. NELSON of Florida (for himself, and Mrs. BOXER) submitted an amendment intended to be proposed by him to the bill S. 1050, to authorize appropriations for fiscal year 2004 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes; which was ordered to lie on the table, as follows:

At the end of title VI, add the following:

**Subtitle F—Citizenship for Servicemembers**

**SEC. 661. SHORT TITLE.**

This subtitle may be cited as the "Citizenship for Servicemembers Act of 2003".

**SEC. 662. REQUIREMENTS FOR NATURALIZATION THROUGH SERVICE IN THE ARMED FORCES OF THE UNITED STATES.**

(a) REDUCTION OF PERIOD FOR REQUIRED SERVICE.—Section 328(a) of the Immigration and Nationality Act (8 U.S.C. 1439(a)) is amended by striking "three years" and inserting "2 years".

(b) PROHIBITION ON IMPOSITION OF FEES RELATING TO NATURALIZATION.—Title III of the Immigration and Nationality Act (8 U.S.C. 301 et seq.) is amended—

(1) in section 328(b)—

(A) in paragraph (3)—

(i) by striking "honorable. The" and inserting "honorable (the)"; and

(ii) by striking "discharge." and inserting "discharge); and"; and

(B) by adding at the end the following:

"(4) notwithstanding any other provision of law, no fee shall be charged or collected from the applicant for filing a petition for naturalization or for the issuance of a certificate of naturalization upon citizenship being granted to the applicant, and no clerk of any State court shall charge or collect any fee for such services unless the laws of the State require such charge to be made, in which case nothing more than the portion of the fee required to be paid to the State shall be charged or collected."; and

(2) in section 329(b)—

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

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

(C) by adding at the end the following:

"(4) notwithstanding any other provision of law, no fee shall be charged or collected from the applicant for filing a petition for naturalization or for the issuance of a certificate of naturalization upon citizenship being granted to the applicant, and no clerk of any State court shall charge or collect any fee for such services unless the laws of the State require such charge to be made, in which case nothing more than the portion of the fee required to be paid to the State shall be charged or collected.".

(c) NATURALIZATION PROCEEDINGS OVERSEAS FOR MEMBERS OF THE ARMED FORCES.—Notwithstanding any other provision of law, the Secretary of Homeland Security, the Secretary of State, and the Secretary of Defense shall ensure that any applications, interviews, filings, oaths, ceremonies, or other proceedings under title III of the Immigration and Nationality Act (8 U.S.C. 301 et seq.) relating to naturalization of members of the Armed Forces are available

through United States embassies, consulates, and as practicable, United States military installations overseas.

(d) TECHNICAL AND CONFORMING AMENDMENT.—Section 328(b)(3) of the Immigration and Nationality Act (8 U.S.C. 1439(b)(3)) is amended by striking "Attorney General" and inserting "Secretary of Homeland Security".

**SA 699.** Mr. WARNER (for Mr. MCCONNELL) proposed an amendment to the resolution S. Res. 100, recognizing the 100th anniversary year of the founding of the Ford Motor Company, which has been a significant part of the social, economic, and cultural heritage of the United States and many other nations, and a revolutionary industrial and global institution, and congratulating Ford Motor Company for its achievements; as follows:

In the third clause of the preamble, strike "which was advertised as the 'Fordmobile' and had" and insert "with".

In the ninth clause of the preamble, strike "completed in 1925,".

In the tenth clause of the preamble, strike "196" and insert "199".

In the twelfth clause of the preamble, strike "models through 1937 (Ford and Lincoln)" and insert "automotive brands (Ford and Lincoln) through 1937".

In the seventeenth clause of the preamble, strike "the first major change in a Ford body since 1922,".

In the seventeenth clause of the preamble, strike the comma after "1932".

In the eighteenth clause of the preamble, strike "Ford 'woodies'".

In the eighteenth clause of the preamble, strike "Galaxy" and insert "Galaxie".

**NOTICES OF HEARINGS/MEETINGS**

**COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY**

Mr. COCHRAN. Mr. President, I announce that the Committee on Agriculture, Nutrition, and Forestry will conduct a business meeting on May 21, 2003 in SR-328A at 9:30 a.m. The purpose of this meeting will be to consider the nominations of Glen Klippenstein, Julia Bartling, and Lowell Junkins to be members of the Board of Directors of the Federal Agricultural Mortgage Corporation and Tom Dorr to be a member of the Board of Directors of the Commodity Credit Corporation and to be Under Secretary of Agriculture for Rural Development.

**PRIVILEGES OF THE FLOOR**

Mr. SESSIONS. Mr. President, I ask unanimous consent that my legislative fellow, John Beaver, be granted the privilege of the floor for the remainder of the debate on the National Defense Authorization Act.

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

Mr. AKAKA. Mr. President, I ask unanimous consent that Carol Madonna, my legislative fellow, be allowed floor privileges for the duration of the debate on this bill.

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

**100TH ANNIVERSARY OF FORD MOTOR COMPANY**

Mr. WARNER. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further action on S. Res. 100 and the Senate proceed to its immediate consideration.

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. 100) recognizing the 100th anniversary of the founding of Ford Motor Company, which has been a significant part of the social, economic, and cultural heritage of the United States and many other nations, and a revolutionary industrial and global institution, and congratulating Ford Motor Company for its achievements.

There being no objection, the Senate proceeded to consider the resolution.

AMENDMENT NO. 699

Mr. WARNER. There is an amendment at the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Virginia [Mr. WARNER], for Mr. MCCONNELL, proposes an amendment numbered 699.

(Purpose: To make technical corrections)

In the third clause of the preamble, strike "which was advertised as the 'Fordmobile' and had" and insert "with".

In the ninth clause of the preamble, strike "completed in 1925,".

In the tenth clause of the preamble, strike "196" and insert "199".

In the twelfth clause of the preamble, strike "models through 1937 (Ford and Lincoln)" and insert "automotive brands (Ford and Lincoln) through 1937".

In the seventeenth clause of the preamble, strike "the first major change in a Ford body since 1922,".

In the seventeenth clause of the preamble, strike the comma after "1932".

In the eighteenth clause of the preamble, strike "Ford 'woodies'".

In the eighteenth clause of the preamble, strike "Galaxy" and insert "Galaxie".

Mr. WARNER. Mr. President, I ask unanimous consent that the resolution be agreed to, the amendment to the preamble be agreed to, the preamble, as amended, be agreed to, the motion to reconsider be laid upon the table, and any statements regarding this matter be printed in the RECORD.

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

The resolution (S. Res. 100) was agreed to.

The amendment (No. 699) was agreed to.

The preamble, as amended, was agreed to.

The resolution, with its preamble, as amended, reads as follows:

(The resolution will be printed in a future entry in the RECORD.)

**RECOGNIZING THE CONTRIBUTIONS OF ASIAN PACIFIC AMERICANS**

Mr. WARNER. Mr. President, I ask unanimous consent the Judiciary Committee be discharged from further consideration of S. Con. Res. 44, and that

the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the concurrent resolution by title.

The legislative clerk read as follows:

A concurrent resolution (S. Con. Res. 44) recognizing the contributions of Asian Pacific Americans to our Nation.

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. WARNER. I ask unanimous consent the concurrent resolution be agreed to, and the preamble be agreed to, and the motion to reconsider be laid on the table, with no intervening action or debate.

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

The concurrent resolution (S. Con. Res. 44), was agreed to.

The preamble was agreed to.

The concurrent resolution, with its preamble, reads as follows:

Whereas at the direction of Congress in 1978, the President proclaimed the week beginning May 4, 1979, as Asian Pacific American Heritage Week, providing the people of the United States with an opportunity to recognize the achievements, contributions, history, and concerns of Asian Pacific Americans;

Whereas the seven day period starting May 4 was designated Asian Pacific Heritage Week as it marks two historical dates—May 7, 1843, when the first Japanese immigrants arrived in the United States, and May 10, 1869, Golden Spike Day, when, with substantial contributions from Chinese immigrants, the first transcontinental railroad was completed;

Whereas the 102nd Congress by law designated that the month of May be annually observed as Asian Pacific American Heritage Month;

Whereas according to the U.S. Census Bureau an estimated 12.5 million United States residents trace their ethnic heritage, in full or in part, to Asia and the Pacific Islands;

Whereas Asian Americans and Pacific Islanders can list innovative contributions to all aspects of life in the United States ranging from the first transcontinental railroad to the Internet;

Whereas in the mid-1700's Filipino sailors formed the first Asian American and Pacific Islander communities in the bayous of Louisiana;

Whereas Asian Americans and Pacific Islanders have added to the vast cultural wealth of our Nation; and

Whereas Americans of Asian Pacific heritage, who include immigrant and indigenous populations, have honorably served to defend the United States in times of armed conflict from the Civil War to the present: Now, therefore, be it

*Resolved by the Senate (the House of Representatives concurring), That Congress—*

(1) recognizes that the United States draws its strength from its diversity, including contributions made by Asian Americans and Pacific Islanders;

(2) recognizes that the Asian American and Pacific Islander community is a thriving and integral part of American society and culture;

(3) supports the goals of Asian Pacific Heritage Month; and

(4) recognizes the prodigious contributions of Asian Americans and Pacific Islanders to the United States.

#### MEASURE READ THE FIRST TIME—S. 1079

Mr. WARNER. With regard to rule 14, I understand S. 1079, which was introduced earlier today by Senator MURKOWSKI, is at the desk. I ask for its first reading.

The PRESIDING OFFICER. The clerk will read the title of the bill for the first time.

The legislative clerk read as follows:

A bill (S. 1079) to extend the Temporary Extended Unemployment Compensation Act of 2002.

Mr. WARNER. Mr. President, I now ask for its second reading and object to further proceeding on this matter.

The PRESIDING OFFICER. Objection having been heard, the bill will receive its second reading on the next legislative day.

#### ORDER FOR STAR PRINT—S. 1040

Mr. WARNER. Mr. President, I ask unanimous consent that S. 1040 be star printed with the changes that are at the desk.

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

#### APPOINTMENTS

The PRESIDING OFFICER. The Chair, on behalf of the Vice President, in accordance with 22 U.S.C. 1928a-1928d, as amended, appoints the following Senators as members of the Senate Delegation to the NATO Parliamentary Assembly during the First Session of the 108th Congress, to be held in Prague, Czech Republic, May 23-26, 2003: Senator JEFF SESSIONS of Alabama; Senator GEORGE VOINOVICH of Ohio; Senator JOHN CORNYN of Texas; Senator ERNEST F. HOLLINGS of South Carolina; Senator CHRISTOPHER J. DODD of Connecticut.

#### UNANIMOUS CONSENT REQUEST—S. 1079

Mr. WARNER. Mr. President, I ask unanimous consent that the Senate now proceed to consideration of S. 1079, Senator MURKOWSKI's bill to extend the Temporary Extended Unemployment Compensation Act of 2002; provided further the Senate proceed to its consideration, the bill be read a third time and passed, and the motion to reconsider be laid upon the table.

Mr. REID. Reserving the right to object.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, this is a step in the right direction. We are very fortunate there has been movement by the majority toward doing something about unemployment insurance benefits. The problem with this as it now stands is with those people who have been so long unemployed that they are no longer on the unemployment rolls. They have been off so long that under statute and regulation they are no

longer part of the unemployed of this country.

We want to make sure they are helped also. They are in dire need of help. Everyone needs help. We hope in the next few days we could work something out so these people can also be covered.

As that is the case, I hope the two leaders can get together, as I have indicated, in the near future and work to have a bill both sides can agree on.

As a result of this statement, I object.

The PRESIDING OFFICER. Objection is heard.

#### ORDERS FOR TUESDAY, MAY 20, 2003

Mr. WARNER. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 9:30 a.m. Tuesday, May 20. I further ask that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day, and the Senate then begin a period of morning business with the time until 10 a.m. equally divided between Senator CORNYN and the minority leader or their designees, provided that at 10 a.m. the Senate resume consideration of S. 1050, the Department of Defense authorization bill.

I further ask consent that the Senate recess from 12:30 p.m. to 2:15 p.m. for the weekly party lunches.

Mr. REID. It is my understanding the two leaders are going to attempt to arrange votes on the two matters now pending before the Senate; that is, the Daschle amendment and the amendment offered by the Senator from South Carolina, and we would like to see if that be can be arranged prior to the recess Tuesday. That is not done yet, but Members should contemplate two votes before our noon recess.

Mr. WARNER. I understand the representation is accurate.

The PRESIDING OFFICER. Is there objection to the unanimous consent request?

Mr. REID. No objection.

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

#### PROGRAM

Mr. WARNER. For the information of all Senators, tomorrow the Senate will resume debate on the Department of Defense authorization bill. We have two amendments relating to TRICARE on the bill. I will be talking to the sponsors of those amendments and the ranking member, as stated by the distinguished minority whip.

We are encouraging other Members to come forward and work with the ranking member and myself in order to schedule consideration of amendments. Senators should expect rollcall votes on amendments throughout the day tomorrow.

May 19, 2003

CONGRESSIONAL RECORD—SENATE

S6639

I also think it could be into the night, Mr. President, because we are anxious to complete this bill.

ask unanimous consent the Senate stand adjourned under the previous order.

ADJOURNMENT UNTIL 9:30 A.M.  
TOMORROW

There being no objection, the Senate, at 7:32 p.m., adjourned until Tuesday, May 20, 2003, at 9:30 a.m.

Mr. WARNER. If there is no further business to come before the Senate, I

CONFIRMATION

Executive nomination confirmed by the Senate May 19, 2003:

THE JUDICIARY

S. MAURICE HICKS, JR., OF LOUISIANA, TO BE UNITED STATES DISTRICT JUDGE FOR THE WESTERN DISTRICT OF LOUISIANA.