United States
of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE *110th* CONGRESS, FIRST SESSION

Vol. 153 WASHINGTON, WEDNESDAY, JANUARY *24*, 2007 *No. 14*

Senate

The Senate met at 9:30 a.m. and was called to order by the Honorable SHELDON WHITEHOUSE, a Senator from the State of Rhode Island.

PRAYER

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

Let us pray.

Move deeply in our hearts today, O Lord, so that we will conform to Your ways. Help us to understand Your purposes and submit to Your providence.

Empower our lawmakers to do Your will. Make them hungry and thirsty for Your spirit and power. Show them Your plan. Teach them Your paths. Instruct them on how to make our world a better place so that the sacrifices of those who die for our freedoms will not be in vain.

Open doors of greater opportunity for service as our Senators seek to be instruments for Your glory. May pleasing You become the primary aim of their labors. We pray in Your righteous Name. Amen.

PLEDGE OF ALLEGIANCE

The Honorable SHELDON WHITEHOUSE led the Pledge of Allegiance, as follows:

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

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, January 24, 2007.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable SHELDON WHITEHOUSE, a Senator from the State of Rhode Island, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mr. WHITEHOUSE 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

Mr. REID. Mr. President, morning business this morning will not be the full hour. When the Republican leader and I complete our brief statements to the body, the time will be divided 50–50, with the first half of the time being controlled by the Democrats and the second half of the time being controlled by the Republicans.

At 10:30, we will resume consideration of H.R. 2, the minimum wage bill. The time until 11:30 will be equally divided or controlled between the two leaders or their designees regarding the Gregg amendment. The cloture vote will occur at 11:30.

ORDER OF PROCEDURE

I ask unanimous consent that the majority time prior to the cloture vote with respect to the Gregg amendment be equally divided between Senators CONRAD and KENNEDY, and I also indicate that following the cloture vote, if cloture is not invoked on the Gregg amendment, there will be an immediate vote on the motion to invoke cloture on H.R. 2, the minimum wage bill. Members have until 10:30 this morning to file second-degree amendments.

Progress was made yesterday. The Sessions amendments were disposed of—voted upon, modified, or withdrawn. That was good progress. There are seven amendments pending presently. As I recall, there are three by Senator ENSIGN, most dealing with Social Security; Senator BUNNING has one dealing with Social Security; Senator KYL has one dealing with depreciation; Senator SUNUNU has one dealing with women's business centers. I think those are the only amendments now pending. So we ask that Senators continue to work through this bill. We are going to agree to set aside the pending amendments so Senators can offer other amendments so we can move through this bill as quickly as possible.

I hope Senators realize there must come an end to this process. We will see what happens after the two cloture votes as to what we will do for the rest of the week.

The ACTING PRESIDENT pro tempore. Is there objection?

Without objection, it is so ordered.

RECOGNITION OF THE REPUBLICAN LEADER

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

FINISHING H.R. 2

Mr. MCCONNELL. Mr. President, we encourage all Members who may have amendments on this side to come down. As the majority leader indicated, we will make progress on the bill this morning, and we look forward to finishing this bill some time in the future.

RESERVATION OF LEADER TIME

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

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction

of morning business until 10:30 a.m., with Senators permitted to speak therein for up to 10 minutes each, with the first half of the time under the control of the majority leader or his designee, and the second half of the time under the control of the minority leader or his designee.

The Senator from Illinois is recognized.

ENERGY

Mr. DURBIN. Mr. President, last night in the State of the Union Address, President Bush, for the seventh year running, raised the issue of energy. I am glad he did because I think everybody across America understands we are in a dangerous position. We are entirely dependent upon imports from foreign countries when it comes to our energy needs and our economy.

It is true that we produce our own oil and gas in this country, but we don't produce enough to fuel our economy. So we find ourselves buying oil from countries far and wide across the globe. We find ourselves in positions where we are compromised sometimes by that dependence. Many of us have felt that the President's first goal or task should be to establish the reduction of our dependence upon foreign oil. I think that is a worthy goal and one I wish the President had quantified last night a little more specifically than he did.

The reason, of course, is if we can find a way to reduce dependence upon foreign oil, for example, we might have several positive impacts: first, not entangling ourselves in the foreign policy goals of countries we don't share many values with; second, it is good for our security interests to have sources of fuel that are reliable closer to home; third, of course, we are dealing with an environmental issue here. The more gasoline we burn to move a mile or two miles down the road, the more emissions and the more global warming; the more global warming, the more climate change and a disastrous environmental impact.

So many of us believe that though the President continues to refer to the problem, he has never quite moved us as we would like in the direction of a solution.

Last night, he said two things that were more encouraging. As I said, this is the seventh year the President has brought up the issue. He made a famous statement last year about America's addiction to oil. In the ensuing 12 months, we did little or nothing in Washington to address that addiction.

Assuming the same addiction today, the President said we should move toward alternative fuels, which I heartily support, not just biofuels, such as ethanol and biodiesel, but other alternative fuels that could make a big difference in the way we drive our cars, heat our homes, and fuel our businesses.

The second issue the President talked about, which is long overdue, is addressing the CAFE standards. These, of course, were standards created in 1975 by Congress. At the time, we knew we had a problem. The problem was obvious—that we had too much dependence on foreign oil and prices were going up. By today's standards, they were not going up that high, but by the standards of those days they were.

In addition, the cars and trucks we were driving were inefficient. In fact, the average miles per gallon in 1975 for cars and trucks was about 13, 14 miles per gallon. At that point, Congress worked up the courage, with the cooperation of the President, to set a new goal and said that in 10 years, we will virtually double the fuel efficiency of the cars and trucks in America.

The negotiations got underway, and they decided to exempt trucks—we will go after cars and we will go after the fleet average of cars.

It worked. In a span of 10 years, we went from 13 or 14 miles a gallon average mileage to 27, 28 miles a gallon. So we clearly showed that when given incentives and mandates, the automobile manufacturers could respond with a product that was more fuel efficient.

What happened after 1985, after we hit the 27, 28 miles a gallon average? We did nothing. For 21 straight years, we did nothing. What happened in addition, that little loophole we created for trucks, letting them off the hook, the SUVs drove right through it. They produced these big, heavy vehicles that became extremely popular with Americans. They classified them as trucks, and they had no requirements to be fuel efficient. So the overall use of gasoline continued to increase, and the overall efficiency of the cars and trucks we drive went down as more and more SUVs and trucks were built that were exempt from the CAFE standards. Twenty-one years passed and things got progressively worse as we imported more and more fuel—dramatically more and more fuel—to burn in cars and trucks that were significantly more inefficient than those we had in 1985.

I have tried, on the floor of this Senate, three different times to reimpose CAFE standards on cars and trucks, to close loopholes and to move us back in the direction of more efficient cars and trucks, and I failed every time. Maybe things have changed. I credit a lot of people for this new debate.

What troubled me last night was the President, I felt, acknowledged the energy issue but gave scant attention to the environmental aspect. It is true that most of us understand we are going through a climate change in America. If you have seen Al Gore's documentary ''An Inconvenient Truth,'' he documents and brings the facts forward to make the argument that this climate change is changing the world we live in on a permanent basis.

I recently returned from an official trip with my colleagues to South America, where leaders in that region of the world said, when asked, they saw ample evidence of climate change—glacier melt and changes in things they thought would never change. We have seen it in America. We have seen it in the weather we find in different regions of our country, the extremes which we have witnessed and experienced.

My point is I hope we can take the President's invitation in his speech last night to the next level. I hope we can start talking about an energy policy that does make sense. The starting point ought to be a realistic goal for reducing our dependence on foreign oil. We ought to understand, if we can move forward with more efficient cars and trucks, give consumers in America more choices, that they will, given those choices, make the right choice, time and again.

Sadly, the production of these fuel-efficient cars has been led by foreign manufacturers and not by the United States. That has to come to an end.

I might say, although I support biofuels, ethanol, and biodiesel, although I believe flexible fuel vehicles are sensible for people to own and drive, it is not enough, and we shouldn't delude ourselves into believing it is enough. We need to move toward those hybrid vehicles that truly burn less fuel and move people in America to the places they need to go. We can do that, but we need to move in a sensible way.

Let me give two examples. There are two companies in my State of Illinois. One is Firefly. Firefly is a spinoff of Caterpillar Tractor company. It is an independent company that is trying to design a new battery for cars and trucks. The lead-acid battery, which most use today, is ancient and heavy and inefficient and in extreme temperatures doesn't work well. They are investing in research to find a new battery that is lighter and has a longer life. I don't know if theirs will be the breakthrough technology, but we need to encourage companies such as Firefly to develop the new batteries that can lead to better hybrid cars and more fuel efficiency.

Secondly, one of the biggest problems we have with fuel efficiency is the weight of the vehicle. If we can reduce the weight of the vehicle without compromising safety, we can get more fuel efficiency. I happen to have another company in Illinois—I am certainly proud of my State and what we do; these happen to be two companies relevant to the discussion—this company in Illinois has now a new titanium alloy that can be derived at a much lower cost.

Titanium holds the promise of being stronger than steel and lighter than aluminum. So this could be the answer to a car chassis that is safe and lighter. Combining those two items might offer a prospect for a vehicle in the future which would be much more fuel efficient.

Why aren't we promoting companies such as those companies? If we truly

want to reach energy independence and energy inefficiency, we need to move beyond where we are today. We need to move the discussion. We need to say to automobile manufacturers that it isn't good enough to keep producing those SUVs and trucks, fuel-inefficient vehicles, and giving consumers fewer choices. It isn't enough to always come in second to the Japanese, when it comes to production of newer and forward looking technology. It isn't enough to let the airline and airplane industry look for these new alloys and new batteries and ignore their need for our automobile industry as well.

The President has pointed us in the right direction. I hope that now he will join us. We need to cooperate. We need to work together, Republicans and Democrats—give some ground, if necessary, but keep our eye on that goal to clean up this environment for our kids, reduce our dependence on foreign oil, push the kind of technology and innovation that will create great new American companies with great new American jobs that pay a decent income to those who work there.

Mr. President, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Colorado.

Mr. SALAZAR. Mr. President, in each State of the Union Address that President Bush has given to our country over the last 6 years, he has talked about the importance of energy independence for our Nation.

In 2001, he said loudly and clearly that we as America ''must become more energy independent.''

In 2002, he said:

We need to encourage conservation, promote technology, and build infrastructure.

And again last year, most of us remember the President loudly and clearly telling the people of America, the people of this world, that America is addicted to oil and we need to do something about it.

I was pleased last night that the President revisited an issue he had talked about before—our energy independence. In my view, this is a signature issue for all of us in the 21st century. Encompassed in this issue of energy security for our Nation, we see the national security of America because today the way we approach the energy issue, where we now import 70 percent of our oil from foreign countries, we end up funding both ends of the war on terror. We do it when we put gasoline in our tanks in America and it ends up funding Iran and Iran ends up buying the rockets for Hezbollah that rain over Israel and funds the 10,000 members of the Hezbollah militia. That is crazy. So our national security requires us to move forward with energy independence.

As far as our economic independence at home, we saw what happened when gasoline went up over $3 a gallon, when farmers and ranchers were suffering, having to pay $3.50 a gallon for diesel to fill up their tractors, their combines, and their trucks. We know the economic security of our country depends on having a steady supply of energy.

Finally, the environmental security of our country, knowing what global warming is doing to the North Pole and to the climate changes all around the world, is something we need to get our hands around. We need to deal with the energy issue in an effective way.

So I was pleased that the President of the United States last night came before the Congress and the Nation and said we needed to do some more work on energy. He said we needed to more than double, we need to quintuple the renewable fuel standard, which hopefully will get us to the 35 million gallons per day in 10 years. And he said we need to reduce the gasoline we are currently using in this country in 10 years by 20 percent.

At the end of the day, what we do on energy will depend on how we take those concepts and how we, with the President, walk the talk toward getting us to energy independence.

When we look back on what has happened in the last 6 years in the United States, the opposite has happened. Instead of becoming less dependent on foreign sources of oil, we have become more dependent on foreign sources of oil. So the rhetoric simply has not matched the deeds. We need to make sure the words that were spoken last night are matched by the deeds of the administration in terms of the budget, the leadership of the Department of Energy in investing in technology, in the National Renewable Energy Lab, and moving forward with an aggressive agenda on renewable energy and new technologies.

I wish to illustrate two points that tell the history of what has happened over the last 6 years in Washington. First, with respect to renewable energy investments, if one takes a look at this chart, 2001 to 2006, one would think, as we were on this trajectory of getting ourselves energy independent, that this red line would show us increasing investments in renewable energy in America. And yet the exact opposite has happened.

We started in 2001 investing about $350 million a year into renewable energy. By the time we got to 2006, we were at about $375 million. So we actually dropped about $25 million in what we were investing in renewable energies. This is not walking the talk as we embrace the future of renewable energy.

I would like to illustrate what we have done with efficiency. We talk about energy independence. We know it is a complex issue, but frankly, as my good friend from Tennessee and others know, it is not as complex as some of the other issues we face in America today. It certainly is not as complex, in my mind, as the health care issue which dogs the businesses and families of America every day because we know how we can get to energy independence.

If the country of Brazil, a Third World country, could declare itself to be energy independent, why not the most powerful Nation on Earth, the Nation with the greatest technology? Why couldn't we have done the same thing? The answer to that is that we have not had a sustained commitment to get us to energy independence.

If we look at the low-hanging fruit with respect to energy efficiency, we again see the story of our walking away from embracing a true ethic of energy independence. If we look at the investments that have been made from 2001 to 2006, we see a dramatic decline, again, in terms of what we are doing with energy efficiency. That is not the way to go. It is the wrong way to go because the experts and scientists at the Department of Energy, the National Renewable Energy Lab tell us that we waste about 62 percent of the energy we consume. We waste 62 percent of the energy that we consume. So if we can become much more efficient with respect to how we use energy, we can help deal with this issue of energy dependence, which is essentially strangling our economy and strangling our national security.

As I react to the President's State of the Union Address, I am delighted with the fact that he has given us this challenge. Now we need to work as a Congress and have the administration work with us so we are able to put the resources and the ideas on the table to come up with what is truly a bipartisan package that will help us move forward with the kind of energy independence that is achievable.

In my view, we can be even bolder and go beyond what the President has said. There is a group of Senators in this Chamber—some 25 of us, half Republicans, half Democrats—that last year sponsored legislation called 2025. This year it has another number. We talk about alternative fuels and how we incentivize moving forward with alternative fuels. We have in the Senate as well incentives for higher efficiencies and how we use oil. Our goal in that legislation is to reduce the consumption in the imports of oil in a very dramatic fashion by the year 2016 and then beyond, by the year 2026. It is a bipartisan agenda.

At the end of the day, and in conclusion, we have an opportunity to work together as a Senate, as a Congress, by bringing Republicans and Democrats together to achieve true energy independence and surpass even the President's vision of what we can do. When you think about Senators such as SESSIONS and BROWNBACK and then on the Democratic side BAYH and LIEBERMAN, a whole host of us who are involved in the set America free agenda, it is an important opportunity we have to move forward. But, at the end of the day, the way we will achieve this milestone of energy independence for our country, which is so essential, is by making sure the administration itself, the President of the United States,

walks the talk in terms of what we can do to achieve this goal of energy independence.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Tennessee.

Mr. ALEXANDER. Mr. President, I ask unanimous consent to be allowed to speak for 10 minutes in morning business.

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

Mr. ALEXANDER. Will the Chair please let me know when I have a minute remaining?

The ACTING PRESIDENT pro tempore. The Chair will do so.

STATE OF THE UNION AND WASTEFUL SPENDING

Mr. ALEXANDER. Mr. President, I wish to talk about two things this morning: No. 1, the President's State of the Union Address last night, and No. 2, Senator GREGG's proposal to reduce wasteful spending.

I appreciate the comments of the Senator from Colorado, who has been a leader on renewable energy and energy independence. I want to point this out. The President last night did his job. It was a truly Presidential speech, in my opinion. I used to work in the White House, and a wise man there told me: Lamar, our job here on the White House staff is to consider everything that comes to the White House as important. We need to push those things out and reserve for the President those things which are truly Presidential.

The President talked about truly Presidential issues last night, and he did what Presidents are supposed to do. He did not give us a laundry list. He talked about Iraq, terrorism, energy independence, and health care costs. He said: Pick up immigration and deal with it. He said reduce the budget in 5 years. He gave us a strategy in each case, he tried to persuade us that he is right, and then he handed the ball to us.

We are independent of the President. We have a Democratic Congress, closely divided, and a Republican President, so I don't think we can criticize the President. I think we should applaud the President and say: Mr. President, you did your job. You identified the issues, you gave us a strategy, and you handed the ball to us.

The biggest news last night, it seemed to me, was on energy independence and health care costs. Starting with energy independence, the President said let's set a goal to reduce our use of gasoline 20 percent in 10 years. That is a big, serious proposal. This country uses 25 percent of all the energy in the world. If we reduce our use of gasoline by 20 percent in 10 years, it will help clean the air, it will help reduce dependence on foreign oil, it will create a big market for agricultural products in this country to help create biodiesel alternative fuels, and it will force innovation in such things as electric batteries.

The President's proposals will require a change in the so-called fuel efficiency CAFE standards. It will require these new technologies. It is a big step, and it is the kind of thing that Democrats as well as Republicans can take, improve, and pass. We don't need to be saying to the President: Mr. President, you walk the walk. He talked. Now it is up to us to act.

The same with health care. His proposal on health care is a big, serious proposal. There is probably no subject Tennesseans talk to me about more in their daily lives than: How do I pay for my health care costs? The President had an answer last night. He said: For 80 percent of working Americans, I will give you an average of $3,600 in savings from your taxes which you can spend to buy yourself health care insurance. That means if you are a family of four, making $60,000 a year, you might have $4,000 or $5,000 in tax savings to use to pay for health care costs.

Now, 20 percent of us would pay a little more for health care. Mine would go up. But 80 percent of all of us who work would get significant savings to pay for health care insurance. This would help us afford it. This would help more people who do not have it pay for it. This would help hospitals whose emergency rooms fill up with people who cannot pay for health care. It is a big, serious proposal.

The President has done his job. It is up to us now to have a hearing, improve it, and enact it.

I salute the President for doing his job last night with what I felt was a truly Presidential speech. Much of it was about Iraq. Iraq is being talked about today in many different bodies, but much of it is about what is happening at home. If we take up immigration and don't stop until we are finished, if we balance the budget in 5 years, if we reduce the amount of oil we are using by 20 percent in 10 years, if we give 80 percent of working Americans several thousand dollars to help pay for health care insurance, that will be a great big step forward. So it is up to us, now, to pick up the ball and run with it. He has handed it to us. Let's go. Let's talk about it. Let's do it. If we have a better idea, fine; if not, let's just pass his proposal.

Second, I wish to speak for just a moment about the proposal of Senator GREGG that would give the President a new tool for cutting wasteful spending. I believe it should have been enacted with our reforms last week on lobby reform because it would help rein in wasteful spending and earmark abuse. But I commend Senator MCCONNELL and Senator GREGG, and I thank Senator REID for working it out so we can have a vote on this important amendment.

We need to get our fiscal house in order. Yesterday, 25 of us attended a breakfast. The Chair and I were there. It wasn't a breakfast where we talked about how Democrats could beat Republicans and vice versa; we talked about how we can put our fiscal house in order. The Presiding Officer had some very good ideas to express, but the whole 40 minutes was about the unsustainable growth of Federal spending here, especially in the entitlement area. There are several things we need to do about it, but this amendment by Senator GREGG is one. It is not the same thing as a line-item veto, but it goes in that direction.

I would support amending the Constitution to give the President a line-item veto. I don't think that is in derogation of our authority to appropriate. The Supreme Court thinks it does that, so we have to respect that. But this is a little different way to let the President have a way of letting us take a second look at appropriations we passed which may not have been wise.

Under current law, the President has the power, for example, to propose cuts in spending after appropriations bills have been passed by Congress. Then we can pass those cuts in the same form and send them back or we can ignore them. So the idea would be, under the Gregg amendment, that the President could submit four packages of rescission proposals each year. We couldn't ignore the proposals. We would have to vote on them in a short period of time, if any Member wanted us to. If the majority of the Senate and the House agreed with the President's recommendations for cutting spending, then the spending or targeted tax breaks would get cut and the money would be used to reduce the deficit. But if a simple majority of either House disagreed, then the cuts would not go into effect.

It is pretty much the same amendment Senator Daschle and Senator BYRD offered in 1995, which was supported by 21 of my Democratic colleagues who are still serving in the Senate. It is not the same thing as the traditional line-item veto, but it is an opportunity to put the spotlight on wasteful spending.

Senator GREGG went one step further to make his amendment more closely reflect the Daschle-Byrd proposal. Senator GREGG's amendment allows us in the Congress, if the President makes a rescission proposal, to strike out an individual part of his proposal. There are plenty of forces here in this city for increasing spending. There are not enough forces that push to reduce spending. The Gregg proposal would be one tool the President and the Congress can use to reduce spending.

I know when I was Governor I had this authority and 43 Governors currently have the line-item veto. In Tennessee, it is not much of a line-item veto because the Governor's veto can be overridden by a majority of the legislature. But just because I had the veto and the fact that I might have used it, and occasionally did use it, helped me put the spotlight on wasteful spending and gave the legislature a

chance to reconsider or think twice about what they might do.

As a new member of the Senate Appropriations Committee, I can assure my colleagues, I don't take lightly proposals to alter the Congress's power of the purse. For Congress to appropriate is as natural as for Johnny Cash to sing or for the President to nominate Supreme Court Justices. But I don't think this interferes with that because both the Senate and House must vote to adopt the President's proposed cuts; second, we can strike portions of his proposed cuts; and third, the power to do all this would sunset after 4 years, giving us in the Congress a chance to evaluate how well it is working.

There are some other things I think we can do. A biennial budget would help. Passing a 2-year budget, so we can focus all of the first year on the budget and all the next year on oversight over programs to help them work better, avoid duplication, and get rid of some programs—all of that would help control spending. We also ought to have a commission on accountability and review of Federal agencies, which would help reorganize duplicative and unnecessary programs.

I am honored to sponsor the Gregg second look at waste amendment because it gives the President and the Congress one tool to reduce wasteful spending at a time when we urgently need to do that and the country knows that.

Mr. President, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from New Hampshire.

Mr. GREGG. Mr. President, I understand we are in morning business at this time?

The ACTING PRESIDENT pro tempore. The Senator is correct.

SECOND LOOK AT WASTE

Mr. GREGG. Mr. President, I rise to thank the Senator from Tennessee for his support at this second look at waste amendment which I have offered. The Senator's arguments, as always, are extraordinarily cogent and logical. He makes the point—which I think is very valid, as a former Governor who had the line-item veto, which is a much stronger authority than what we have in this amendment—that this is important, managing the fiscal house, to making sure that items which get into legislation as a result of being put in arbitrarily by some individual Member of Congress but which are not subject to the light of day in the traditional way—by being brought across the floor as individual items but, rather, are put into major pieces of legislation, sometimes representing hundreds of billions of dollars in spending—that those items can be reviewed again and get a vote as to their credibility and as to their appropriateness and whether they represent something on which American tax dollars should be spent.

This proposal, this fast-track rescission, which is what it really is, is not a partisan proposal. In fact, as proposed in my amendment, second look at waste, it would actually be primarily under the control of the next President. It has a 4-year window of activity and then it is sunsetted. By the time it would get into law, should it pass the Senate and then pass the House, it is likely that this President will only have, probably, a year and a half to use this authority, and then the next President, whoever that President may be—maybe a Republican, maybe a Democrat—will have the authority to use this rescission ability for 2½ years. So it is not partisan.

Second, it was drafted, as the Senator from Tennessee noted, basically to mirror a proposal that was put forward by Senator Daschle. In fact, I have called this amendment daughter of Daschle. It is essentially the Daschle amendment as offered back in 1995, which was cosponsored by Senator BYRD. There are only two major changes—well, three major changes, and I have already said to those who have asked me that I am willing to adjust those changes to bring it even more in line with Daschle.

One of the changes in this bill from the Daschle bill was that the President would have 300 days to send up his rescission notice. Some people have expressed concern that that gives the President the ability to use that rescission notice as a club over people's heads. The reason we gave the President 300 days in this amendment was we had reduced the number of rescission notices in the Daschle amendment. There were potentially 13 rescission actions available to the President, and in this amendment, there are only 4 available to the President. Therefore, in the Daschle amendment, it was required that the rescission notice be sent up soon after the bill was signed. But, of course, with 13 different opportunities, it could go on all year long. We felt that since we were reducing it to four, we should give the President more leeway as to when he sent up those rescission notices.

But I can understand the argument. In fact, I accept the argument that maybe that is too much authority in the sense it gives the President too much leverage over the Congress. So when, I hope—I am using the term ''when''—when this amendment comes forward in an amendable form, I will offer an amendment to reduce the 300 days back to 30 days. So the President would have to send up his rescission notices within 30 days of it being signed, or at least asking us to take a second look at it, and that should adjust that problem and bring it directly in line, pretty much in line with what the Daschle amendment was originally.

The other area which was different from the Daschle amendment is the issue that deals with mandatory spending. Some people have said new mandatory spending—not existing programs, not existing veterans programs or farm programs or Medicare or Medicaid, but if there is a new mandatory program, that can also be subjected to the President asking for a second look at it. It has been argued by some on the other side that this would undermine the ability to reach a comprehensive settlement on entitlement reform. That is really a straw argument. That argument has no legs.

The practical matter is, if a President reaches an agreement with the Congress on something as extraordinarily important as major entitlement reform, part of that agreement is going to be that the President signed off on it. So this argument of, well, but the President might come back and change it later on with a rescission notice really has no legs. It is just being made for the purpose of giving comfort to folks who believe they want to vote against this amendment. If people want to vote against it, that is their right. But don't use that as an excuse.

What this amendment essentially does is it allows the Congress to fulfill its obligation to make sure that money which is sent by our taxpayers is spent effectively, honestly, appropriately, and without waste. And, it gives the executive branch a role in asking the question of Congress: Did you really mean to spend this money?

I have to say, I have been here for a while—14 years in the Senate—and I have seen a lot of bills come across this floor which were fairly large, and when I took a look at them after I maybe had voted for it, I realized there were some things in them that I wished weren't in them. I didn't happen to vote for the highway bill which had the bridge to nowhere—the famous highway bill. But had I voted for it, I think I would have wanted to take a second look at some of the projects in that bill.

The same is true of a lot of our appropriations bills when we get to the end of the year and we haven't gotten our appropriations process completed effectively, so we lump 3 or 4 different appropriations bills, sometimes 5 or 6, occasionally 10, appropriations bills into 1 and we call it an Omnibus appropriations bill. Those bills tend to get items in them which have received no scrutiny, which are simply the result of an earmark for the purpose of accomplishing something which some Member of the Senate or the House feels is appropriate but which one suspects, if the entire House or the Senate were to take a look at, we would say: Well, better to put that money toward reducing the deficit than toward spending the money in this specific area.

So this bill is, as I have said and as the Senator from Tennessee so eloquently said, a second look at waste. The purpose is to give us, the Congress, another tool to manage waste.

Now, I wish it had come up last week because, quite honestly, I thought it was much more appropriate to last week's debate when we were debating earmarks and when about 50 percent of the debate time was spent on earmarks

because that is what it is really about. But it has now been put on this bill as a result of an agreement I reached with the Senator from Nevada, the majority leader. I respected his position. I admire his leadership. I didn't want to create a situation where the lobbying bill got tied up forever over this issue, and the Senator from West Virginia said he would do that if I kept this amendment on the lobbying bill. So I agreed to put the amendment off and bring it forward at this time. So, hopefully, no one, when we get to this issue of cloture, is going to vote against cloture on the theory that it is not appropriate to this bill because, as I said earlier, I think people are stopped from making that position. It is a technical legal term that basically says, out of fairness: You can't make that case because, basically, the reason this amendment is on this bill is because I was asked to put it on this bill by the majority leader. Therefore, that is why we are going forward at this time.

So this is going to be the opportunity for Members of the Senate to vote on whether they believe a tool which will significantly improve our capacity to manage earmarks, to manage waste, is going to have a chance to be passed. It is a tool which has been offered by myself but which was actually offered by Senator Daschle and which was actually voted for by 37 members of the Democratic Party at that time, 20 of whom are still serving in the Senate. So it does seem to me that it is not unreasonable to ask that we take it up and pass it at this time and move it forward.

When we get to the cloture debate, I will have more to say on the matter, but I did want to come down and express my appreciation to the Senator from Tennessee for supporting the amendment.

Mr. ALEXANDER. Mr. President, I wonder if the Senator from New Hampshire would allow me to ask him a question or two.

Mr. GREGG. Of course.

Mr. ALEXANDER. Mr. President, the Senator from New Hampshire was Governor, as I was, and my sense of this amendment is that it understands human nature pretty well. Is it not the Senator's experience as Governor, and as a member of the Appropriations Committee for a long time, that sometimes items slip through, and that the idea here would be for the President to be able to just send it back to Congress and say: Don't you want to take a second look at this before you actually spend taxpayers' money? Is that not the general idea that is expressed by this amendment?

Mr. GREGG. I thank the Senator for his question. He is absolutely right. The essence of his question is that the power is retained with the legislative branch. This is not a line-item veto. This is not a veto. This is just the President saying to us, the legislators who have the power of the purse, take another look at this, which is why Senator BYRD supported it the last time it was on the floor of the Senate.

Mr. ALEXANDER. If the President sends a package of proposals back and asks: Do you really want to spend this money, and if a majority of the Senate decides that it did, and a majority of the House decides that it didn't, what happens then?

Mr. GREGG. Well, answering the Senator through the Chair, then the money gets spent. If either House does not agree with the rescission, then the rescission fails. So the power of the legislative branch is retained, which is its constitutional authority, to spend money as it deems appropriate, and the President has no capacity to override that under this bill. All he has is the capacity to say to the legislative branch: Do you think you want to do this? If either House says, yes, we do, then the money is spent.

Mr. ALEXANDER. One final question, Mr. President. Does the Senator from New Hampshire believe that Federal spending is one of the most difficult challenges we have here and is a matter that will need a bipartisan approach? And that we need to employ all the reasonable tools that we can to try to bring Federal spending under control? Otherwise, we are going to create a massive crisis for our children and our grandchildren, and this proposal would be one such reasonable tool.

Mr. GREGG. I thank the Senator from Tennessee for his question, which may have been rhetorical, and certainly I agree with that. To put this in context, we have to remember we are going to spend close to $3 trillion—we probably will spend $3 trillion this year in the appropriating accounts and in our budgets. There is no way we can manage all that efficiently, but certainly every tool that we can get that helps us manage it efficiently we should have. This is just another tool in the tool box to make sure we don't waste the taxpayers' money.

Mr. ALEXANDER. I thank the Senator.

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

STATE OF THE UNION ADDRESS

Mr. BOND. Mr. President, today I rise to talk about a portion of the President's address last night that I think is extremely important. I have heard from many of my colleagues in this body and on the talk shows that there are serious concerns about the war in Iraq. Primarily, they are saying we need to change our strategy; we shouldn't be involved in a civil war. We should be involving the Iraqis themselves in taking care of the civil war. We ought to be providing more—we ought to ensure the Iraqi Government cuts the Sunnis in on the oil revenues and makes them full economic partners. We need to bring in the friendly neighbors in the region, those countries that want to see a peaceful and stable Iraq, and we ought to be following the Baker-Hamilton report.

As I listened to the President's speech last night, that is precisely what he did. This is a new strategy we have in Iraq. We have heard in our open Intelligence Committee hearings that now, for the first time, we believe Prime Minister al-Maliki and his Sunni and Kurdish fellow elected leaders believe they can take over and restore order in that country, and they are willing to crack down on the Shia death squads, such as Muqtada al-Sadr. We have seen reports of that in the media. They report that the neighboring countries are willing now to come in and help with reconstruction, provide job opportunities for young unemployed men to keep them from becoming insurgents or terrorists, and this, they say, is our best chance.

Frankly, for Prime Minister al-Maliki and his government, this is probably their last chance. This is an opportunity where al-Maliki said: If you will provide some additional support as we go in, get our troops up to speed and clear and hold Baghdad, we will take over the country.

That is what we need to do to bring a successful conclusion to this war and to draw out our military. We are probably going to have our military in the region for a long time because, as the President said, this is a generational war against radical Islam and the terror they bring.

I wanted to just briefly note a comment. Last night we heard that the military is against the war. Well, there may be some in the military who are against the war, but I can tell my colleagues, I have spent a lot of time listening to Missouri soldiers and marines, people who have been on the ground. I have gotten reports from them continually. I have seen newspaper reports about the people who have come back, the soldiers who have come back.

For example, one woman has written a book. She served with the Army's 101st Airborne. She lost her husband in the war. She says:

> It is hard to stay positive about Iraq because of what you see on the news. But I was able to be there and I know what a difference we are making there.

Others, such as 1SG Stephanie Leonard, was moved to tears, saying that they are heroes for helping the Iraqi people. She said:

> It is not a 24-hour war. We want things to be in a hurry. As soon as the Iraqi police are able to secure their own country, that is when the window begins to open.

These are just some of the many comments I have seen in print in Missouri and heard people express. They want to see us win. They know they are doing the job. They believe the liberal national media has painted a very unflattering and untrue picture, and that is why our troops think they are not getting a fair shake.

But in that context, in the context of what the President did, let's talk about

the resolutions which are being discussed. If the President is on the track to respond to all of the ideas about how we ought to change our direction in Iraq—and I believe he is—what will the resolutions do?

Well, proponents of the resolutions say they want to support the troops, but the resolutions don't do that. Clearly, I believe there is an agreement now that we are not going to try to use the congressional power of the purse to cut off funding and force an immediate withdrawal from Iraq because that would be madness. The Director of National Intelligence told our committee:

Precipitous withdrawal could lead to a collapse of the government of that country and a collapse of their security forces because we simply don't think they are ready to take over, to assume full control of their fiscal responsibilities.

To simply withdraw now would have catastrophic effects, and that is a quite widely held view inside of Iraq itself. If we were to cut off funds, the CIA Director said it would lead, No. 1, to increased killing of Iraqi civilians.

No. 2, the establishment by al-Zawahiri and Osama bin Laden of the base of operations for their war to establish a worldwide caliphate beginning in the Middle East, taking over the areas of Iraq which would be out of control and would bring people in from other countries in a possible civil war.

If we remember, that is what happened in Vietnam. When Congress cut off the purse, we saw our allies slaughtered in Vietnam, and some 2 to 2.5 million people in Cambodia, Laos, and Vietnam were killed. A possible slaughter of people in the Middle East who have supported us would ensue.

General Maples, the Director of the Defense Intelligence Agency, told our committee 2 weeks ago:

. . . A failure in Iraq would empower the jihadist movement. It would give that base of operations from which the jihadist movement would extend. And it's consistent with the goals of Al Qaida in Iraq to establish that Islamic state, and then to expand it into the caliphate. I also think that there, of course, will be very significant regional impacts both in terms of stability to other countries—

I ask unanimous consent to speak an additional 4 minutes.

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

The PRESIDING OFFICER (Mr. TESTER). The time for morning business has expired.

Mr. GREGG. The Senator from Missouri is asking for 4 additional minutes?

Mr. BOND. I ask for 4 additional minutes.

Mr. GREGG. I have no objection to the Senator proceeding.

The PRESIDING OFFICER. Without objection, it is so ordered. It will be charged against the minority side.

Mr. BOND. General Maples also told the Senate Intelligence Committee that a withdrawal from Iraq could leave Iraq's vast oil reserves in the hands of jihadists. We can imagine what trouble that would lead to.

If we are not using our power to cut off the funds and force a hasty withdrawal, what are we doing? Are we telling the 21,000 brave men and women who are going to Iraq we are uncomfortable with the dangerous mission they are about to undertake but not offering any alternative? I am sure they will find that very encouraging. They will be delighted to know we don't like what they are doing but they will have to do it anyhow.

If the goal of the resolution is to let the American people know we are uncomfortable with the situation in Iraq, I guess that makes for good politics. But, personally, I think it is wrong and irresponsible. It is irresponsible because if we approve this resolution, the whole world will be listening, including the worst actors in Iraq. We will be telling the Sunni terror cells and the Shia militias that America's political will is wavering.

If the members of al-Qaida in Iraq are finding themselves discouraged by the United States military's relentless pursuit, I am sure they will take comfort from these political gestures. If the Iraqis who support and encourage the Shia death squads are feeling the heat of United States-led and supported operations and are contemplating a compromise that might bring sectarian killing to an end, I am sure they will take comfort from the political gesture to hold on a little longer.

One of the keys to a successful counterinsurgency campaign is to wear down the enemy's resolve. This resolution will do the opposite. It will encourage Sunni terrorists and Shia death squads, letting them know if they hang on longer, the United States will not have the political will to outlast them.

One of the ironies of the resolution is that it condemns a recommendation that comes from a group the Senate requested in legislation. The Iraq Study Group's report recommended that the Iraqi government:

. . . accelerate assuming responsibility for Iraqi security by increasing the number and quality of Iraqi Army brigades. While this process is underway, and to facilitate it, the United States should significantly increase the number of U.S. military personnel, including combat troops, imbedded in and supporting Iraqi Army units. As these actions proceed, U.S. combat forces could begin to move out of Iraq.

So let me make sure I have this right. The Senate demanded the legislation. The Iraq Study Group put together recommendations. The study group came forward and made recommendations and the President had the temerity to accept some of them, and now we are going to vote out a resolution condemning them for accepting those recommendations?

General Petraeus said this week to the Committee on Armed Services that he needs the 21,000 troops to get the job done. Are we telling him we don't think we should have those troops?

I have to confess, even as a Senator, I can't tell you exactly what we are trying to say in these resolutions. Are we expressing concern and discomfort with the situation in Iraq? I can't imagine how that would help. But more importantly, I can imagine lots of ways in which it will not help.

Look at the confusion within our Government in 1993 when the military had concerns about congressional intentions over our involvement in Somalia and how they prevented a request for armor that could have saved the lives of American soldiers. It is not a perfect analogy, of course, but I think it offers an important warning of the danger of mixed message like the one we will send with this resolution.

Our commander on the ground in Somalia in 1993, General Montgomery, requested a small unit of tanks and armored vehicles, as a quick reaction force in case our troops got bogged down or surrounded in the dense urban sprawl of Mogadishu, as they eventually did.

Les Aspin, the Secretary of Defense at the time, denied the commander's request. He told the Senate Armed Services Committee that ''Congressional concerns about U.S. military involvement in Somalia were a factor in his decision to deny General Montgomery's request for armor.''

General Montgomery also told the Armed Services Committee that he would have used that armor in October 1993 ''Blackhawk Down'' incident to rescue our troops who were bogged down in urban combat with Somali militia men. General Montgomery said that if he had that armor, ''we would have gotten there faster. We would have taken fewer casualties.''

My fear is that, in addition to the message this resolution will send to our enemies about our lack of resolve, it will also send a wrong and confusing message to our military commanders.

Just like we did in Somalia in 1993, we are pretty much saying that while the President should not pull our military out of Iraq, they shouldn't bother asking for what they need to get the job done and protect themselves while they are there.

General Petraeus raised this very same issue in his testimony this week in front of the Senate Armed Services Committee. He said that he worried about what message this resolution. would send to his soldiers and himself.

If we are going to leave our troops in Iraq, as we should, we should also give them everything they need to protect themselves and get their job done. Just as importantly, we should not leave them with the mistaken impression that they shouldn't bother to ask for what they need.

Congress cannot, and should not micromanage the war in Iraq—the troops in the field like to call that the 8,000 mile screwdriver. If any Senator wants to propose legislation to compel a withdrawal from Iraq, so be it, and let's vote on the matter.

If not, let's stop trying to micromanage by resolution, suggestion and

gesture, put away the 8,000 mile screwdriver, and give the President's plan a chance to succeed.

The Deputy Director of National Intelligence, Tom Fingar, told the Senate Intelligence Committee this week that gains in stability in Iraq could open a window for gains in sectarian reconciliation. I agree, and we have to give the President's plan a chance to succeed if we want to open that window.

Mr. President, I ask unanimous consent to have two pertinent articles printed in the RECORD.

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

[From the St. Louis Post-Dispatch, July 12, 2005]

BRONZE STAR WINNER SEES FRUIT OF HER EFFORTS

(By Mary Delach Leonard)

Last January, Sgt. 1st Class Stephanie Leonard was moved to tears as she watched news reports of the national elections in Iraq.

''When I saw people running around with their ink-colored fingers, I cried. I knew it was worth it. And I realized something important: Without soldiers and without people who support their soldiers, that day would have never come,'' she said.

''People overuse the word hero, but I felt like a hero that day.''

Leonard, 43, of Normandy, served in Iraq two years ago, shortly after the start of the war. She was assigned to the 135th Military History Detachment of the Missouri National Guard, and her job was to gather stories of war. Her three-soldier unit crisscrossed the Sunni Triangle from April to August 2003 interviewing and photographing members of the Third Corps Support Command.

The information they gathered will eventually be stored at the Center for Military History in Washington.

''Believe it or not, the military really does like to learn from its successes and failures, and this is one way we can do that,'' Leonard says.

She performed her duty so well, she was awarded the Bronze Star for meritorious service; she was the first female soldier of the Missouri Guard to earn the honor.

Leonard says people are always curious about the medal and are often surprised to discover that the Bronze Star is awarded not only for valor but, as in her case, for doing an outstanding job.

''It was all about the mission,'' she said.

WOMEN ARE IN COMBAT

Leonard is manager of information technology at Aramark in St. Louis—she calls herself a computer geek—and says that her life is pretty well back to normal. But she is concerned for her friends in Guard units currently serving in Iraq. She is aware that Americans are growing impatient and that some politicians have called for a timetable to begin withdrawing U.S. troops.

''It's not a 24-hour war, and, as Americans, we want things in a hurry,'' she said. ''We have to be patient. As soon as the Iraqi police are able to secure their own country, then that's when the window begins to open.''

On the day Leonard was interviewed for this story, the news was grim: Six American troops had been killed and 13 injured during a suicide attack on a convoy in Fallujah. The headlines focused on the fact that four of the dead were female Marines, and that 11 of the injured were also women. Some political commentators questioned the assignments of women in Iraq.

Although Pentagon policy excludes women from ground combat units, they are allowed to serve in support units, such as transportation, engineers and military police.

''If women are in support roles everywhere in Iraq, then women are in combat,'' Leonard said.

Some people are bothered by the thought of women kicking in doors or assuming the role of the aggressor, she said.

''But we have female firefighters and women police officers, and they are trained to kick in doors.''

Loss of life is tragic, whether male or female, Leonard said.

''Bullets don't differentiate.''

Although her unit traveled in unsecured combat zones in Iraq, Leonard said she never felt as though male soldiers treated her differently or tried to protect her.

''I think I was more protective of them,'' she said. ''They knew I could take care of myself.''

MAKING CHOICES

Since returning from Iraq, Leonard has been invited to speak about her experiences before various civic groups. Recently, she addressed Junior ROTC students at Beaumont High School. She told them that life is all about options, choices and decisions.

''As you get older, choices don't get easier; they get harder,'' she said.

Leonard points to her own life as an example. She joined the National Guard 16 years ago after graduating from St. Louis University because she wanted a challenge. She found one in Iraq.

She said she embraced the U.S. mission in Iraq because, as she traveled the countryside, she discovered how bad conditions were for the people.

Leonard said she has thought about returning to Iraq—she thinks she could make a contribution—but she would do so reluctantly because of her family. She is particularly concerned about her mother who took it hard when her youngest child went to war.

Recently, Leonard has been thinking a lot about her time in Iraq because she has been answering a detailed questionnaire from the National Guard about her service.

''It's a real shock to the system,'' she said. ''It can bring up all sorts of memories.''

[From the St. Louis Post-Dispatch, Apr. 2, 2006]

THE HEART OF A SOLDIER

MISSOURI VETERAN OF IRAQ WAR REFLECTS ON LIFE, LOVE AND GRIEF IN HER NEW BOOK

(By Mary Delach Leonard)

Kate Blaise is back home in northeastern Missouri, an hour's drive from just about anywhere and a lifetime away from the desert of northern Iraq, where she served for a year with the Army's 101st Airborne Division.

These days, her life is an open book, told in candid detail in her recently published autobiography ''The Heart of a Soldier: A True Story of Love, War and Sacrifice.'' But the residents of Macon, her hometown of 5,500, already knew the basic plot line:

How the former Kate Decker, who grew up wanting to join the Army, completed ROTC training in college and then rose to the rank of captain.

How, as a logistics officer, she convoyed across Iraq during the opening days of the war.

How she married her high school sweetheart, Mike Blaise, who would become a chief warrant officer with the 101st He was a pilot who loved flying Kiowa helicopters and who saw his share of combat.

How they served together in Iraq and how she made it home safely—but he did not.

''Some people tell me that they know how it ends, and yet they hope for a different ending,'' Blaise says.

An ending where a Kiowa won't crash in the desert on a dark, windy January night in 2004, the eve of her unit's departure for home.

Others have told her that although they didn't know her husband, they feel like they do after reading her story.

''That's why I wrote the book,'' she says simply.

A STORY TO TELL

Since the book's publication in January, Blaise, who just turned 30, has gracefully accepted her new role as author, along with all of the trimmings—public appearances and media interviews.

On this spring morning, she was in neighboring Atlanta, a town of about 500 people, to speak at Atlanta C–3, a well-used brick complex that houses all of the district's 220 students, from kindergarten through high school.

Mike Blaise attended this school through eighth grade, until his family moved to Macon.

''Your teachers asked me to come today to speak about attitude. I had the attitude that nobody was going to tell me that I couldn't do what I wanted to accomplish,'' Blaise told the students who lined the wooden bleachers of the gymnasium—third-graders to her left, high schoolers to her right.

''Life takes a lot of turns you don't expect. Bad stuff happens. I've lived the life I've somewhat planned. I did join the Army. I also wrote a book. And I certainly never thought I would write a book.''

Dressed in khakis and an olive green Harley-Davidson shirt, Blaise stood before the microphone looking at ease, although she admitted to being nervous about speaking in public. So she made herself more comfortable, perching on a table where she would later sign copies of her book.

The students listened respectfully, their hands waving in the air when she asked if they had questions. The third-graders wanted to know what it was like in Iraq. So she talked about the gritty sand, camel spiders and heat that can reach beyond 120 degrees.

The high schoolers wanted to know whether she still believes in the war. And, on this issue, she stands as solid as a storm cellar during a tornado.

''It's hard to stay positive about Iraq because of what you see on the news, but I was able to be there, and I know what a difference we are making there,'' she says firmly. ''The main thing is that we gave the Iraqi people the power to make their own decisions.''

Though much of this was serious talk, she kept the mood light, particularly when the questions had to do with her writing.

''I don't have to worry about my dad finding out about anything I've done—I've written a book,'' she said with a smile.

Getting published was the result of a series of right-place-at-the-right-time moments, starting when a women's golfing magazine asked her to write about a makeshift course at her Army base in Iraq.

''I am blessed,'' she says. ''I didn't have to work nearly as hard as most authors have to work.''

But the material for her story—the living of it—was hard-earned and paid for in full.

A TIME TO HEAL

After leaving the Army, Blaise came home to heal.

She grew up on Crestview Street in a newer section of Macon, the seat of Macon County, about 150 miles from St. Louis. Not

far from her old neighborhood, Blaise found her perfect house, though it needed some fixing, too.

Her father, Steve Decker, a former civil engineer for the state, lives nearby on a 250-acre farm that has been in the Decker family for generations.

Blaise has slowly remodeled the house, painting the rooms in deep, rich colors, and the kitchen a cheery 1950s red and white. Walls hold framed photos with military themes—she is an avid student of military history—and photos of Mike Blaise. His Air Cavalry hat is in the living room, resting atop the triangular case that holds his medals and the American flag that draped his casket.

It was in this home that Blaise came to terms with her loss. For the better part of a year, she spent hours in her office, writing chapters and e-mailing them to Dana White, a writer-editor in New York, who co-authored her book.

She says the toughest part wasn't writing about the night in Iraq when she was told of her husband's helicopter accident.

''It's easy to be sad about the sad things,'' she says. ''It was the happy parts that were the hardest. They made me miss him more.''

The Mike Blaise she loved was a big guy who took her deer hunting and made her laugh and liked to sing country songs in karaoke bars.

The book is, in fact, full of happy times, a tribute to growing up in small-town America.

She tells tales on her younger brother and three older sisters—in particular her sister Lindsey, who served in Iraq with the Missouri National Guard.

Blaise writes that her mother's injury in a car accident was the day that changed everything for her. Marie Decker survived but now lives in a long-term care facility.

The book is also a tribute to the tenacity of women who have found homes and carved out careers in the predominantly male world of the military. Blaise has little patience with recent political skirmishes that would have limited the roles of servicewomen in Iraq and Afghanistan.

''This genie is out of the bottle, and no amount of coaxing will get her back in,'' she says in her book.

But mostly, the book is a tribute to the life and love of a devoted couple who struggled to maintain their marriage through long separations and their share of disappointments. She says her late husband would have insisted on such honesty.

''Mike would have been uncomfortable being glorified,'' she says.

She still has Scout, the dog the Blaises adopted while serving in Korea. He is a prize, with his baby-seal face and Yodalike ears, a black and white softie who warily eyes strangers and barks at the Amish buggies that pass by their house on U.S. Highway 36.

Though writing the book was an emotional ordeal, it also helped her come to grips with her sadness, she says.

''The day I finished writing, I felt an overwhelming sense of peace,'' she says.

THE NEXT CHAPTER

Blaise jokes that some people in Macon feared she was writing a tell-all. And, in effect, that's what she did—she told it all, as it related to her life.

''I think her experience growing up was all of our experiences. Nothing could shock us,'' said Sharon Pennington, who teaches business and computer classes at Atlanta and remembers Mike Blaise as a shy youngster, two years younger than she is.

Kathy Baker, the school superintendent's secretary, was first in line to have Blaise autograph her book.

''I haven't read it. I can't,'' said Baker, her eyes growing moist. ''It's too close.''

Baker knows many of Blaise's relatives, including Mike's grandfather, Virgil, whom everyone called Grampy. He died while the Blaises were still in Iraq, and Mike Blaise is buried next to him in Shelby Memorial Cemetery.

Blaise says she's not really sure what she will do with the rest of her life. She says she would consider writing another book, perhaps about grief, which she knows a lot about. Though people gave her books on grief, she found them less than helpful with their flowery sentiments. Her book would be more real.

''It's hard to grieve,'' she says. ''It sucks, and it's going to suck for a long time.''

In the meantime, Blaise has joined the Missouri National Guard's 175th Military Police, based in Columbia, because being in the military remains important to her.

''It's the one thing that I do that's for the greater good,'' she says.

When the unit was sent to New Orleans after Hurricane Katrina, she found the deployment satisfying in a new way.

''I had never done anything that helped Americans,'' Blaise said.

Blaise recently got engaged to a helicopter pilot who knew her late husband in flight school. Ironically, it was Mike Blaise's affection for his Harley-Davidson motorcycle that brought this new love into her life. They met while riding their Harleys to the Sturgis Motorcycle Rally in South Dakota, fulfilling a wish that Mike had made to attend the event after the war.

Blaise says she wasn't looking for romance, and neither was her fianceé. It was an unexpected gift, another of those life's blessings she often talks about.

''Knowing that Mike knew him somehow eases the guilt,'' she says. ''God doesn't always agree with what you set for yourself. ''

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

FAIR MINIMUM WAGE ACT OF 2007

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of H.R. 2, which the clerk will report.

The bill clerk read as follows:

A bill (H.R. 2) to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage.

Pending:

Reid (for Baucus) amendment No. 100, in the nature of a substitute.

McConnell (for Gregg) amendment No. 101 (to amendment No. 100), to provide Congress a second look at wasteful spending by establishing enhanced recission authority under fast-track procedures.

Sununu amendment No. 112 (to amendment No. 100), to prevent the closure and defunding of certain women's business centers.

Kyl amendment No. 115 (to amendment No. 100), to extend through December 31, 2008, the depreciation treatment of leasehold, restaurant, and retail space improvements.

Bunning amendment No. 119 (to amendment No. 100), to amend the Internal Revenue Code of 1986 to repeal the 1993 income tax increase on Social Security benefits.

Enzi (for Ensign/Inhofe) amendment No. 152 (to amendment No. 100), to reduce document fraud, prevent identity theft, and preserve the integrity of the Social Security system.

Enzi (for Ensign) amendment No. 153 (to amendment No. 100), to preserve and protect Social Security benefits of American workers, including those making minimum wage, and to help ensure greater congressional oversight of the Social Security system by requiring that both Houses of Congress approve a totalization agreement before the agreement, giving foreign workers Social Security benefits, can go into effect.

Enzi (for Ensign) amendment No. 154 (to amendment No. 100), to improve access to affordable health care.

The PRESIDING OFFICER. Under the previous order, the hour of 10:37 having arrived, there will be 1 hour of debate in relation to amendment No. 101.

The Senator from New Hampshire.

Mr. GREGG. I ask unanimous consent that during quorum calls in this hour, the time be equally divided on both sides.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. KENNEDY. 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. KENNEDY. How much time is left and how is it divided?

The PRESIDING OFFICER. The majority controls 26 minutes, half of which belongs to the Senator from Massachusetts. The other half belongs to the Senator from North Dakota.

Mr. GREGG. Mr. President, could you tell us the entire allotted time?

The PRESIDING OFFICER. The Republicans control 21 minutes.

Mr. KENNEDY. Mr. President, I yield myself 5 minutes.

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

Mr. KENNEDY. Mr. President, we are going to be voting on the minimum wage this morning. Hopefully, the Senate will vote for what I consider to be a clean bill—a clean bill being legislation that will increase the minimum wage to $7.25 over a 2-year period.

There will be another measure that will be voted on that Senator GREGG and Senator CONRAD will address, which is a line-item veto. But the fundamental issue we have before the Senate is the issue of an increase in the minimum wage—an increase in the minimum wage which has not taken place over the period of the last 10 years, and which I am very hopeful we will get strong bipartisan support for.

If you look over the history of the minimum wage, the nine different times we have raised the minimum wage, we have had bipartisan support for that increase. It has only been in the very recent years that Republican leadership has led the fight against it. We now have new leadership in the

House and the Senate and the Democratic leadership that brought this matter forward. We offer an open hand to our Republican friends to support this program, which is so important to so many working families.

From our earliest days, we have been a nation of strong values—particularly fairness and opportunity and concern for our fellow citizens. While we are a country of individualists, we have always recognized that America is strongest when we all prosper together. One of the earliest governing documents in our history, the Mayflower Compact, talked about laws that would support ''the general good.'' Later, in the preamble to our Constitution, we pledged that our Government would ''promote the general welfare.''

That is our proud history. Our Nation has thrived because we have made a commitment to shared prosperity. The vote we will cast today is a measure of our commitment to these values.

Minimum wage workers have been waiting for a raise for 10 long and difficult years. They have worked more than one job. They have saved every penny they can for the future of their children. They have decided each day what food they can afford and what bills they can pay.

Americans understand fairness, and they know this is unfair. They have called on us time and again to raise the minimum wage, but time and again—year after year—this Congress has turned its back on working families.

It is wrong that hard-working men and women cannot afford to put food on the table or heat their homes. It is wrong that our productivity soars, but our lowest paid workers fall further and further behind. And it would be wrong to demand a price of more and more tax breaks before these hard-working families get the raise they have earned.

Congress has voted itself a raise eight times over the past 10 years, while minimum wage workers have received nothing. Congress never demanded a price for increasing its wages. So why should we demand a price for giving minimum wage workers a raise? What is good enough for Congress surely is good enough for American workers. I say Congress should do unto others what it has done for itself. And we have not just been doing for ourselves. Over the last 10 years, we have done a whole lot for corporate America. We have given them $276 billion in corporate tax breaks. We have done a lot for the wealthiest Americans, who have seen their incomes skyrocket with generous tax giveaways. Why can't we do one thing for minimum wage workers? No strings attached, no giveaways for the powerful—why can't we do this one simple thing because it is the right thing to do?

Minimum wage workers are men and women of dignity. They do some of the most difficult back-breaking jobs in our society. They clean our offices. They serve our food. They take care of our children in preschools, and care for our elderly in nursing homes. They deserve a fair wage that respects the dignity of their work, and they should not have to live in poverty.

President Kennedy once said:

If a free society cannot help the many who are poor, it cannot save the few who are rich.

We are a rich nation, but unless we do more to help the poorest Americans, we will not be able to save ourselves.

We have an opportunity today to take one bold step toward solving the problem of poverty in this great Nation. Today—right now—we can pass the House bill and send it to the President. We can raise the minimum wage and give 13 million hard-working people hope for a brighter future.

I hope my colleagues on the other side of the aisle will join me in voting for minimum wage workers today. This should not be a partisan issue. It is about standing behind our values. It is long past time to do the right thing and give minimum wage workers a raise.

Mr. President, I withhold the remainder of my time.

The PRESIDING OFFICER. Who yields time?

The Senator from Texas.

Mr. CORNYN. Mr. President, I see the floor manager from our side, Senator GREGG, on the floor. I talked to him about yielding me 10 minutes from our time. I ask if that is still acceptable.

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

Mr. CORNYN. Thank you, Mr. President.

AMENDMENT NO. 101

Mr. President, I want to talk specifically about the second-look-at-wasteful-spending amendment which is pending and that we will vote on here in a few moments. I hope to come back later today, perhaps, and talk more generally about the minimum wage bill that is pending, the underlying bill, and talk about how I hope our goal would be to train and educate American workers to fill good, high-paying jobs that currently go wanting for lack of a trained workforce. I would hope we would spend at least as much of our efforts on training them, providing them the alternatives to earn those higher, good wages as we spend focusing on the 2.5 percent of the workforce who actually earn the minimum wage—generally people who are starting into the workforce: teenagers, part-time workers, and the like—and how, notwithstanding our best of intentions, some of our actions here, by Government actually setting a minimum wage, may actually put some of them out of work.

But I would focus on the second-look-at-wasteful-spending amendment and challenge our colleagues on the other side of the aisle, in a good way.

Since we have come back after the election, and we have this new 110th Congress, we have heard a lot of very appropriate commentary on both sides of the aisle about the importance of our working together in order to solve some of the Nation's most serious problems. The President talked about that last night. One of the areas the President spoke about last night in his State of the Union Message—and I hear an awful lot about from my constituents—is concern about wasteful spending.

Indeed, a lot of what we did on a bipartisan basis this last week on lobbying and ethics reform was to turn the bright light of public scrutiny on the earmark process—special appropriations stuck in bills that frequently benefit individuals and groups—to turn the bright light on those, offer greater transparency, so the public can know how their tax dollars are being spent and, hopefully, people understanding that whatever they do will be exposed to public scrutiny, they will make sure their conduct in doing so conforms with the highest ethical standards they have a right to expect from us.

But the fact is that Presidents on both sides of the aisle—President Clinton, when he was President; now President Bush—have sought the authority of the line-item veto or, in this instance, what we are talking about is the so-called enhanced rescission. It is a process where the President, once an appropriations bill is sent over to him, highlights a concern he or she has about an appropriations bill, and sends it back over to the Congress to reconsider.

This is a way to provide the kind of laser-like focus we need to have on wasteful spending projects that occasionally—some might say more than occasionally—creep into our Federal appropriations process.

In the spirit of bipartisanism that I think the American people would like to see when confronting some of our biggest challenges, my hope would be that Members of this Congress—Members of this Senate—on a bipartisan basis, would support the very kind of bill this represents, and that they were advocating for when Senator Daschle, the Democratic leader, offered and sponsored with the support of at least 21 Democrats when President Clinton was in office.

I hold up a chart. I showed this yesterday, but I think it is worth looking at again. This chart is a comparison of the Daschle and Gregg expedited rescission amendments. You can see in all respects the Daschle amendment—here, again, Tom Daschle, the Senator from South Dakota, the leader of the Democrats in the Senate, offered an amendment which in all respects, except two—I will talk about that in a minute—is the same as Senator GREGG is proposing, the so-called second-look-at-wasteful-spending amendment.

The only two ways they differ is that the Gregg amendment does permit rescission of new mandatory spending. If you look at the places where money is being spent fastest in the Federal budget, it is in mandatory or entitlement

programs, which are going up at the rate of 8 percent or more a year, on autopilot. I applaud Senator GREGG for including a provision that permits rescission of new mandatory spending programs.

But that and permitting four rescission packages annually, those are the two areas where the Gregg amendment differs, albeit in a relatively minor way, from what Senator Daschle proposed in 1995.

You will see on this next chart, here is a list of the current Senate Democrats who supported the Daschle amendment in 1995. My hope would be, with this little refresher for our colleagues who actually supported this good policy back in 1995, that they would see fit to vote to close off debate and to actually have an up-or-down vote on the Gregg amendment.

As I said, if it was good policy in 1995, supported by these good Democratic colleagues, I think they would agree—I would hope they would agree—it is a good policy in 2007 or, if it is not, I would hope they would come to the floor and explain their change of heart because I think it would represent a change in position.

So this amendment goes to the heart of what I hear people express their concerns about most as I travel back in my State and as I read and listen to people's concerns, as expressed through the media, that Federal spending and our failure to be good trustees of the Federal tax dollar is one of their biggest concerns, along, obviously, with national security issues such as the war in Iraq. The other issue I hear a lot about—the President talked about it last night—is immigration reform.

Mr. President, I see the budget chairman on the floor, and I know he and Senator GREGG have committed to work on a bipartisan basis to try to deal with not just these issues, such as earmarks that abuse the public trust, and which somehow slip into our appropriations process, but to look at the larger picture and try to figure out how we can sustain some of the most important programs the American people have come to rely upon, things such as Social Security and Medicare, and that we not continue to spend in a way that imposes a financial burden for those programs on our children and grandchildren. That raises a profound moral issue that I believe we must confront.

So I do appreciate the efforts that are being made to try to deal with some of our hardest problems. I think there is a great opportunity provided here. Some might find this a little surprising for me to say being a Republican, but I think divided Government provides an opportunity for this body to do some very big and important and significant things. I do not think politics has to be a zero-sum game where Democrats win and Republicans lose, or Republicans win and Democrats lose in the public policymaking process. I think we can all win, and in so doing the American people can win, if we will simply come together in a commonsense, result-oriented sort of way and try to solve some of these problems.

I think Senator GREGG's amendment picks up on the wisdom of Senator Daschle's amendment back in 1995. And I frankly would be perplexed if we were unable to get the kind of bipartisan support to close off debate, to have an up-or-down vote on the floor, and demonstrate to the American people that, you know what, we heard the message on November 7, and you know what, we get it. We understand what you were telling us. You wanted us to work together, and we are working together to try to solve some of our Nation's biggest problems.

We reserve the remainder of our time, and I yield the floor.

The PRESIDING OFFICER. Who yields time?

The Senator from North Dakota.

Mr. CONRAD. How much time remains on either side?

The PRESIDING OFFICER. The Senator from North Dakota controls 13 minutes, the Senator from Massachusetts controls 7½ minutes, and the Republicans control 11 minutes.

Mr. CONRAD. I thank the Chair. I ask the Chair to inform me when I have consumed 10 minutes.

Mr. President, I thank my colleague from Texas for his remarks about Senator GREGG and me and our proposal to try to work on the overall major challenges facing us, which are long-term fiscal imbalances that are especially affected by the entitlement programs and the baby boom generation and the existing structural deficit we confront. We are engaged in a good-faith effort to try to address these long-term challenges. We were at breakfast together yesterday discussing those. I appreciate the Senator from Texas mentioning that.

With respect to this specific proposal, I don't think it merits our support. In fact, it is a very serious mistake to go in this direction. This amendment is actually dangerous. I say that with great respect to the former chairman of the Budget Committee who has offered the amendment. I believe it is dangerous because this transfers power in a way the Founding Fathers did not envision and would not have supported. The power of the purse resides in the Congress of the United States because the Founding Fathers recognized that putting too much power in the hands of one person was a dangerous matter.

Here are the things that are wrong with this line-item veto proposal. I will go on to address the big differences between the Daschle proposal and this one, but here is what is wrong with this line-item veto proposal: It represents an abdication of congressional responsibility; it shifts too much power to the executive branch, with very little impact on the deficit; it provides the President up to a year to submit rescission requests; requires Congress to vote within 10 days; provides no opportunity for extended debate; and allows the President to cancel new mandatory spending passed by Congress, such as those dealing with Social Security, Medicare, veterans, and agriculture. That is breathtaking power. In fact, we could have this negotiation that the Senator from Texas was referencing between Democrats and Republicans on what has to be done to the long-term circumstance with Social Security and Medicare, we could reach a bipartisan conclusion, and then the President would have the unilateral power to come back and cherry-pick those provisions he didn't like. No President should be given that power.

Let's talk about the line-item veto. This is what USA Today said in an editorial last year: It is a convenient distraction.

> The vast bulk of the deficit is not the result of self-aggrandizing line items, infuriating as they are. The deficit is primarily caused by unwillingness to make hard choices on benefit programs or to levy the taxes to pay for the true costs of government.

This is an article from the Roanoke Times last year:

> [T]he President already has the only tool he needs: The veto.

He has veto power. He can veto any one of these spending bills.

> He has chosen not to veto a single one. That Bush has declined to challenge Congress in five-plus years is his choice. The White House no doubt sees reviving this debate as a means of distracting people from the missteps, miscalculations, mistruths and mistakes that have dogged Bush and sent his approval rating south.
>
> The current problems are not systemic; they are ideological. A line-item veto will not magically grant lawmakers fiscal discipline and economic sense.

On the question of whether this has any effect on the deficit, this is the Acting CBO Director last year before the Congress, his testimony:

> Such tools, however, cannot establish fiscal discipline unless there is political consensus to do so . . . In the absence of that consensus, the proposed changes to the rescission process . . . are unlikely to greatly affect the budget's bottom line.

This is from CQ, Congressional Quarterly, again of last year:

> Passage of [the line item veto] legislation would be ''a political victory that would not address long-term problems posed by growing entitlement programs,'' Gregg said.

Senator GREGG himself said this would be ''a political victory that would not address long-term problems posed by growing entitlement programs.''

He also said this last year in a separate publication:

> Senator Gregg said it would have ''very little impact on the budget deficit.''

He is right. The impact it would have is to transfer enormous power to the President. I am not just talking about this President, I am talking about any future President.

This is what George Will, a conservative commentator, said:

> It would aggravate an imbalance in our constitutional system that has been growing

for seven decades: The expansion of executive power at the expense of the legislature.

Here is what an American Enterprise Institute scholar said about the line-item veto last year:

The larger reality is that this proposal gives the President a great additional mischief making capability, to pluck out items to punish lawmakers he doesn't like, or to threaten individual lawmakers to get votes on other things, without having any noticeable impact on budget growth or restraint.

He went on to say:

More broadly, it simply shows the lack of institutional integrity and patriotism by the majority in Congress. They have lots of ways to put the responsibility on budget restraint where it belongs—on themselves. Instead, they willingly, even eagerly, try to turn their most basic power over to the President. Shameful, just shameful.

On the question of the previous Daschle proposal, the suggestion that they are the same is not true. They are fundamentally different. The context is totally different as well. The Daschle amendment was offered in juxtaposition to another line-item veto proposal that was clearly unconstitutional—in fact, was judged to be so by the U.S. Supreme Court. So the Daschle proposal was an attempt to defeat a proposal which was clearly unconstitutional and which has been subsequently judged unconstitutional.

But the further claim that the Gregg proposal before us now and the Daschle proposal are the same is clearly not correct. Let me ask three questions and give answers with respect to how the two differ.

Can the President propose to rescind new mandatory items such as Social Security and Medicare reforms? Under the Gregg proposal, yes; under the Daschle proposal, no. That is a profound difference. Can you imagine if we were to reach an accommodation and agreement on long-term differences on these mandatory programs—Medicare, Social Security, agriculture, veterans—and then the President has the unilateral ability to go change it? I don't think so. That is not a direction we should take if we are going to have good-faith negotiation.

No. 2, can the President propose rescissions from multiple bills in one rescissions package? Under the Gregg proposal, the answer to that question is yes. Under the Daschle proposal, the answer was no. Why does that matter? The President could take something that was very unpopular—for example, the bridge to nowhere—remember that? We had the debate last year about the bridge to nowhere. A handful of us voted against that bridge to nowhere, by the way. I voted against it. The President could have taken that proposal and combined it with a proposal that was important to an individual Member and that might have great merit, and he could combine the two and kill the one with the other.

Let's be blunt. The President would have the ability to call a Member or have his staff call a Member and say: Look, I have a very controversial judge up there. I need your vote. And by the way, I am considering a project in your State that is critically important to you. I am going to have to line-item veto that. But I might be persuaded not to if I could have your support on this other matter. That is exactly what the Founding Fathers were concerned about—handing that kind of power to a President, that kind of power over an individual Member. That is a dangerous notion. It has been ruled unconstitutional in the past. I believe this would be ruled unconstitutional.

I thank the Chair and yield the floor.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. DEMINT. Mr. President, I, too, would like to speak on the line-item veto amendment. This body has made a lot of progress in being much more transparent in how we spend America's money. We can see, if we look back over the last couple of weeks, that America appreciates what we have tried to do to take these earmarks or these pet projects or designated spending, whatever we call it, and make it available for every American to see. We could tell from our e-mails and letters and the reports in the media that this was something which made Congress look as if we were genuinely trying to be much more open and honest about how we spend America's money. The amendment before us now, what we refer to as the line-item veto or line-item rescission, would actually make this whole process much more accountable.

I was interested in hearing my colleague make his point that the President could take one good item and put it with a really bad item and send it over to us and force us to make a decision. But let's think about what the President's options are now. We can send thousands of earmarks over in a bill to the President, and he only has two choices—to take it or leave it, to take the whole thing or veto the whole thing—and work that has been done here and in the House for months either has to be accepted in total or thrown out in total. That doesn't make any sense.

I will use the exact argument my colleague did. We should not be able to package all this good with all this bad and try to force it down the President's throat without the ability to have the checks and balances, the discussions that are needed so the American people can see we have thoroughly vetted these ideas and we are spending their money wisely.

This line-item rescission package I support because this Congress needs the interaction with the President and the working relationship that would be caused by this particular bill. It allows the President, no more than four times a year, to go through our spending bills and to send those things back which he thinks are not national priorities. This is not real complicated. He does not veto what we send him; he just gets a recommendation in the process. And since his agencies in the executive branch are charged with carrying this out and spending this money, the President needs to be engaged in the process in more than a take-it-or-leave-it type of relationship. So no more than four times a year, the President can put together those things which he thinks are not national priorities and send them to the Congress. And all this bill does is guarantee that they get a vote.

If the President tries to use this against individual Members, I know this body well enough to know that we are not going to pass his request.

Any President that tries to do that for political purposes will find his rescission package, or that his recommendations to Congress will be dispensed with very quickly.

This is important not only for this President but for many Presidents in the future. We know as Senators and Congressmen that over the next several decades this country is going to be faced with incredible fiscal crises. We have no idea how we are going to pay for Medicare and Medicaid in the future or Social Security. It is going to become more important every year that we cut wasteful spending and that we work with the President and with the House to do everything we can to cut those things that are not necessary.

In many bills—and we know it happens—many items, earmarks, are voted on for political reasons, and it is a good idea to allow the President to package those things and send them back to us so that we can vote on them and move them out if they are not national priorities.

This is not dissimilar at all to the BRAC process we created to eliminate unnecessary military bases. We found that Congressmen and Senators were not going to vote on an individual basis to eliminate a base in one State because we knew that then the Congressmen or Senators could vote to eliminate one in our State. It was a political dilemma that caused us for years to leave bases open that should have been closed.

It is the same with Federal programs and spending year after year. One project might be in my State and one in another Senator's State. None of us are willing to step up and eliminate projects one at a time. We cannot vote on them that way. This line-item rescission opportunity is for the President to take those things that we know are not national priorities, put them in a package, and send them back over for us to vote on. We should not lose this opportunity.

We need the President working with the Congress to eliminate wasteful spending—not this year or next year but for decades to come. This may be our only opportunity in a long time to make it happen. We have made tremendous progress on identifying the problems with corruption, wasteful spending, identifying earmarks, and all this

does is allow us to take it a step further and make sure we have the checks and balances from Congress and the executive branch to eliminate those things we know should not be in there and the President knows should not be in there.

Mr. FEINGOLD. Mr. President, I will oppose the amendment offered by our colleague, the senior Senator from New Hampshire, Mr. GREGG. I support the concept of what is called a ''line item veto,'' more accurately described as an expedited Presidential rescission. But the proposal offered today has some fundamental flaws that prevent me from voting for it.

There are a number of problems with the amendment before us, but let me call the body's attention to two of these flaws. First, the proposal goes far beyond the supposed target of this newly proposed authority; namely, unauthorized earmarks. When the line item veto is discussed, invariably it is the unauthorized earmark that is held up as the principal rationale justifying this new Presidential authority, and rightly so. The explosion in unauthorized earmarks over the last decade and more is a strong argument in favor of providing the President with additional authority in this area. But the amendment before us goes far beyond targeting earmarks. The Gregg amendment would allow the President to use the proposed expedited rescission authority to eliminate new provisions of programs like Medicare and Social Security, hardly measures that anyone would consider an earmark.

Second, the proposal has too great a potential for political gaming. The amendment allows the President to wait a full year after initial enactment before submitting an expedited rescission. If we are going to craft new Presidential authority in this area, the goal ought to be to eliminate the potential wasteful spending, and to do so in a straightforward manner. There is no good reason for significant delay. Permitting the President to wait a year before submitting a proposed rescission opens the door for inappropriate use of potential rescissions as a political hammer to hold over individual Members.

Mr. President, as I noted earlier, I support granting the President some additional authority in this area, but we need to be especially careful in crafting that authority. The Gregg amendment, however well intended, needs substantial improvement, and until that is done, I will oppose it.

Mrs. MURRAY. Mr. President, I rise today to speak against the line-item veto. This misguided proposal will hurt the communities we are here to represent. It will strip them of the voice they have today in Congress through each of us, and it will hand even more legislative power to the executive branch.

As I saw in my own experiences, both here in the Senate and in the Washington State Legislature, a line-item veto is subject to abuse, pressure and horse-trading, and it violates the delicate balance of power that the Founders so carefully designed.

Now I recognize that the idea sounds attractive. It suggests that we could cut spending and control the deficit without having to make any tough choices. Well, like a lot of ideas that sound good at first, once you look into it, the painful impact becomes clear.

More importantly, I think all of us need to do the hard work of crafting responsible budgets. We need to legislate and govern and take the needs of the country and our States into consideration. We need to make the tough decisions—not pass the buck to the White House.

I oppose the line-item veto today for the same reasons I opposed it in the 1990s. I voted against this gimmick when Congress handed that power to a Democratic President. And today I fight another attempt to hand that same power to a Republican President.

For me, it is not about the party of the Chief Executive; it is about making sure that the constituents I represent have a voice in the budget decisions that affect their lives. The line-item veto is the wrong approach for three reasons.

First, it would cede a tremendous amount of power from Congress to the executive branch. The Constitution is very clear that Congress has the power of the purse. The Framers of our Constitution carefully divided the powers of our Government between the three branches.

When Congress tried this before, it was ruled unconstitutional. This time around, the sponsors have tweaked the bill to try to address those concerns, but the underlying problem still remains. We should not be handing our legislative power over to the executive branch. I made that argument in 1995—and it is even truer today. We have seen the Bush administration aggressively try to expand Presidential power and limit congressional input and oversight. We should stand our ground as the Founders intended—not surrender our constitutional authority to the executive branch.

Second, the line item veto would hurt the constituents we represent. They rely on us to fight for their needs and priorities. Through the budget and appropriations process, we work to meet the needs in our local communities—needs that the administration would ignore. If we give up our ability to fight for our communities, our constituents will lose their voice because I can tell you, the communities we represent will not get fair consideration from a budget official sitting in Washington, DC.

Last week, a group of constituents came to see me about a local road that needs to be improved. The changes they are seeking will improve safety, support economic development, and provide access to critically needed housing. I represent that community, so I know firsthand those improvements are needed. That community has me fighting for them and pushing for their needs. The administration is not going to do that. They are not going to send someone from Washington, DC to check out the road and see that it is unsafe. In fact, these constituents had just come from a meeting with an administration official who basically told them that, in regard to the continuing resolution, ''Good luck, we will be making the decisions this year.''

That is just wrong. If we hand this power to the administration, we will surrender our voices, and our constituents will lose their voices in advocating for their communities. The families I represent know that if they have a problem, they can come and talk to me. But if you tell them that they have to track down someone at OMB and convince them to care about their local needs, our communities will suffer.

I came to the Senate to represent the people of my home State of Washington. They elected me to be their voice on a wide array of issues affecting everything from their safety to their health, education, and economic well-being. I am not going to transfer my ability to fight for the people of Washington State to this or any other President. That is what this bill proposal would do, and I strongly oppose it.

Third, experience has shown that the line-item veto is subject to abuse and may be applied unfairly by an administration. I have experience with line-item veto authority. I served in my State legislature and saw firsthand the kind of horse-trading that can occur when the Executive has this power.

When President Clinton exercised the line-item veto in 1997, we saw serious problems in the way it was applied. The White House put forward standards for deciding which projects would be targeted. But then it attacked projects that actually met the standards. In 1997, I stood here on the Senate floor and detailed the mistakes the Clinton administration made in unfairly targeting projects for elimination. I don't want to see a repeat of those mistakes.

Mr. President, crafting a responsible budget takes hard work. It requires tough choices. There is no gimmick or trick that will make the hard decisions go away. Handing our power and our constituents' power over to the White House certainly won't do it. So I say, rather than spending our time on a distraction, let's work on a real budget and on the real and difficult choices that are before us.

Let's do the job that voters sent us here to do—without gimmicks and without trampling the Constitution.

Mrs. CLINTON. Mr. President, in crafting our delicate system of checks and balances, our Founding Fathers vested in Congress what is commonly referred to as the ''power of the purse''—control over raising revenue and appropriating funds. While the virtue of Congress abdicating some of its

budget responsibility to the president is a subject of worthwhile debate, the construct of Senator GREGG's Second Look at Wasteful Spending Act of 2007 does little to return much needed fiscal discipline to our budget process. And while I support efforts to rein in our spending and to solve our Nation's budget woes, Senator GREGG's amendment would create a system far too susceptible to abuse.

The Gregg amendment's weakness is in its construction. Up to four times a year, the President could package his or her proposed rescissions in any manner he or she chooses, selecting and combining provisions from any number of bills. Among the Gregg amendment's most significant flaws are the timetables it imposes. The amendment would give the President up to 1 full year after enactment of a provision to submit a rescission request. Even in the event that Congress rejects the President's request, the legislation still gives the President the power to defy the congressional vote and withhold spending for a program for up to 45 days. This formulation would effectively allow a President to hold hostage spending measures and force congressional votes on new bundles of spending provisions, injecting chaos into our budget process and wreaking havoc in countless other ways.

There is no debate that we need to curb our spending. The Bush administration has run up a record debt and an unprecedented deficit, endangering our Nation's long-term financial health and our children's future. Unfortunately, as noted by the nonpartisan Congressional Budget Office, Senator GREGG's amendment does little to return much needed fiscal discipline to our budget process. I am open to considering a different proposal, keeping in mind that what we need is measured reform coupled with strong leadership that will exercise fiscal responsibility.

Mr. ENZI. Mr. President, I rise today in support of Senator GREGG and Senator MCCONNELL's ''Second Look at Wasteful Spending'' amendment. While I would prefer that this issue be addressed on a separate bill, I understand the procedural reasons behind why my colleague from New Hampshire is offering this amendment to the minimum wage package. I am treating this amendment as separate from the rest of the minimum wage debate and I hope my colleagues will do the same. I am pleased, however, that the Senate is able to debate this important issue on the floor.

This amendment is a responsible step towards spending accountability. It provides for a greater level of accountability which is critical to enhance the fiscal well-being of the country. Senator GREGG's proposal allows both Congress and the President the opportunity to seriously reconsider both mandatory and discretionary spending. By allowing the President to single out wasteful spending and giving Congress the final say through vote on a rescission package, this amendment will help eliminate waste, rather than perpetuate the current out of control spending habits.

By forcing Congress to take another look at spending, this amendment gives the President the ability to send up to four rescission packages a year. Congress then has up to 8 days to act on the President's proposal through a fast track process. However, a simple majority of both Houses of Congress must approve before any of the rescission package can become law. Finally, any savings from the rescissions must go to deficit reduction.

I believe that ''A Second Look at Wasteful Spending'' is a simple, clear-cut proposal that stands within the parameters of the U.S. Constitution. This amendment includes the same principles of fiscal responsibility that have received bipartisan support since the passage of a comprehensive veto in 1992, and strongly echo the Daschle-Byrd proposal of 1995. Here is a chance for both Republicans and Democrats to help restrain frivolous spending.

I emphasize the gravity of fiscal responsibility because it sets the standard for the success or failure of our Nation. We need to take action now to avert an even larger economic crisis in the future. ''A Second Look at Wasteful Spending'' is a step in the right direction, though there is more work to be done. Many of my colleagues in this Chamber have supported this concept in the past, and I urge my colleagues to support the Gregg amendment.

As I stated in my maiden speech in 1997, the American people continue to demand an end to runaway spending. We need to show the American people that we are responsible. I said those words about the balanced budget amendment in 1997, and they also hold true for this amendment today. By adopting the ''Second Look at Wasteful Spending,'' we would show that Congress is willing to take a much needed step toward fiscal restraint.

I stand in full support of this amendment and am proud to be a cosponsor. This outstanding amendment is worthy of your consideration and support.

Mr. MCCAIN. Mr. President, I am pleased to join Senator GREGG and others in supporting this fiscally responsible amendment to provide the President authority to perform rescissions to legislation passed by Congress. Congress would then be required to review the President's recommendation within 8 days and affirm or reject the recommendation. Additionally, this amendment correctly requires the money from rescissions to be put toward deficit reduction.

Congress has grappled with the issue of providing the President with line-item veto or rescission authority since the original law was overturned by the Supreme Court in 1998. In the last Congress, there were at least eight bills introduced, including one I authored, attempting to provide the President with the authority to review and reject objectionable sections of legislation passed by Congress. It is my hope that during the 110th Congress we will provide the President with this important tool to combat porkbarrel spending and to reduce the deficit.

Just last night, President Bush delivered the annual State of the Union Address in which he stressed the need to impose spending discipline here in Washington by cutting the number earmarks. He is not the only President to address the country about the need to curtail wasteful porkbarrel spending.

In 1988, during his final State of the Union Address, President Ronald Reagan discussed the growth of earmarks and asked for line-item veto authority for future Presidents. On that evening, President Reagan carried with him three pieces of legislation: an appropriations bill that was 1,053 pages long and weighed 14 pounds; a budget reconciliation bill that was 1,186 pages long and weighed 15 pounds; and a continuing resolution that was 1,057 pages long and weighed 14 pounds.

In reference to the continuing resolution, President Reagan chided Congress, stating, ''Most of you in this Chamber didn't know what was in this catch-all bill and report.'' President Reagan then explained that millions of dollars for items such as cranberry research, blueberry research, the study of crawfish, and the commercialization of wild flowers were included in the continuing resolution ''tucked away behind a little comma here and there.''

In 1987, Ronald Reagan vetoed a highway bill because it had 157 earmarks. In the last Congress, a highway bill with 6,371 special projects costing the taxpayers $24 billion was enacted, despite my strong opposition. Those and other earmarks passed by Congress included $50 million for an indoor rainforest, $500,000 for a teapot museum, $350,000 for an Inner Harmony Foundation and Wellness Center, and $223 million for a ''Bridge to Nowhere.''

Unfortunately, this earmarking has not been limited to the highway bill. Nothing can compare to the out of control earmarking that has occurred in the annual appropriations measures during recent years. According to data gathered by Congressional Research Service, there were 4,126 earmarks in 1994. In 2005, there were 15,877—an increase of nearly 400 percent. There was a little good news in 2006, solely due to the fact that the Labor-HHS appropriations bill was approved almost entirely free of earmarks—an amazing feat given that there were over 3,000 earmarks the prior year in that bill. Despite this first reduction in 12 years, it doesn't change the fact that 2004, 2005, and 2006 produced the greatest number of earmarks in history.

Now, let's consider the level of funding associated with those earmarks. The amount of earmarked funding increased from $23.2 billion in 1994 to $64 billion in fiscal year 2006. Remarkably, it rose by 34 percent from 2005 to 2006, even though the number of earmarks

decreased. Earmarked dollars have doubled just since 2000 and more than tripled in the last 10 years. This is wrong and disgraceful, and we urgently need to curtail this seemingly out of control porkbarreling practice that has become the norm around here.

President Reagan would be deeply disturbed to know that almost 20 years later, the size of spending bills has gotten much, much larger as we put more money toward porkbarrel projects. These earmarks have allowed the national debt to grow from over $5 trillion when President Reagan left office in January 1989 to over $8 trillion today. These statistics demonstrate clearly that the need for rescission authority is much greater than when President Reagan was in office.

President Reagan said to Congress during his 1988 State of the Union Address, ''Let's help ensure our future of prosperity by giving the President a tool that, though I will not get to use, is one I know future Presidents of either party must have. Give the President . . . the right to reach into massive appropriation bills, pare away the waste, and enforce budget discipline.'' This amendment would do just that. It would provide the President authority to identify wasteful items of spending and move to eliminate them from the Federal budget. This would be a significant and, unfortunately, all too rare move in Washington, DC, toward fiscal discipline.

Rescission authority alone is not the solution to the fiscal crisis we face in our Nation's Capitol. We also desperately need to reform our earmarking process and our lobbying practices and the legislation the Senate passed last week makes a number of positive improvements in those areas. But above all, we must remember that it is ultimately Congress's responsibility to control spending. However, granting the President line-item veto authority would go a long way toward restoring credibility to a system ravaged by congressional waste and special interest pork.

I urge my colleagues to support the Gregg amendment.

The PRESIDING OFFICER. The Senator from New Hampshire is recognized.

Mr. GREGG. Mr. President, what is the time status?

The PRESIDING OFFICER. The Senator has 4 minutes 45 seconds.

Mr. GREGG. And the other side?

The PRESIDING OFFICER. They have 9½ minutes.

Who yields time?

Mr. KENNEDY. Mr. President, I understand we have 7½ minutes; is that correct?

The PRESIDING OFFICER. The Senator from Massachusetts has 7½ minutes.

Mr. CONRAD. Mr. President, will the Chair inform me how much time is left on the Republican side?

The PRESIDING OFFICER. Four and three-quarter minutes.

Mr. CONRAD. Would the Senator from Massachusetts like to go first?

Mr. KENNEDY. I would like to wait. I yield to the Senator from North Dakota.

Mr. CONRAD. Mr. President, I urge my colleagues to oppose cloture on this matter. I think this is a well-intentioned amendment, but it does virtually nothing about the deficit. What it does do is transfer power from the Congress of the United States to the White House. What it will set up, I say to my colleagues, with this President perhaps, and with some future President for certain, is a circumstance in which the President will be able to leverage Members of this body on completely unrelated issues because of his unchecked power to line-item veto provisions in appropriations bills.

That is a profound mistake for this body. The Founding Fathers set up this separation of power very carefully. They put the power of the purse in the Congress. They did that because they were concerned about the extraordinary power that the Kings had in Europe. They never wanted to replicate that here.

Mr. President, that is exactly the formula that has helped America be the preeminent power in the world—the strongest economic power and the strongest military power. We should not alter that relationship by granting this increased power to this President or any future President.

I urge my colleagues to oppose cloture.

The PRESIDING OFFICER. Who yields time?

Mr. GREGG. Mr. President, I wonder if the Senator from Massachusetts would give me the courtesy of closing the debate since it is my amendment.

Mr. KENNEDY. Mr. President, I thought it was about our debate on the minimum wage, but that is fine. I have 7½, and the Senator has how much?

The PRESIDING OFFICER. The Senator from Massachusetts has 7 minutes, and the other side has a little over 4½ minutes.

Mr. KENNEDY. Mr. President, I ask the Chair to let me know when I have a minute and a half.

The PRESIDING OFFICER. The Chair will do so.

Mr. KENNEDY. We are at a very important moment for millions of working families in this country. It has been 10 long years since we have seen an increase in the minimum wage. During that period of time, I don't think anybody in this body could really understand the kind of pain and sacrifice these families have experienced and the kind of anxiety they have had every day, wondering if they are going to be able to provide for themselves and their families, and particularly for their children.

I welcome the fact that it was our Democratic leaders who have this now before the Senate. We had a majority in the Senate for an increase, but we had the opposition of Republican leadership in the Senate and also in the White House. But now we have had 80 Republicans in the House of Representatives voting for a stripped-down bill. That is a reflection of the bipartisanship we used to have.

We have seen historically where we had both Republican and Democratic Presidents who fought for an increase, including Presidents Roosevelt, Truman, Eisenhower, Kennedy, Johnson, Nixon, Carter, the first President Bush, and Bill Clinton. That is the roster of American Presidents in the postwar period. But we have had the strong opposition of this President and the Republicans. Its impact has been devastating on families.

If you look at what has happened to families, you will find out that the purchasing power of the minimum wage over the period of these recent years has just collapsed—almost to the lowest point it has ever been in terms of purchasing power. Look into the sixties, seventies, and the 1980s. With the Democrats in power, with the help of some Republicans, we helped keep it up. It was at the poverty level and it collapsed in recent years and we are trying to get it up to $7.25. That is still not adequate; nonetheless, it will make a big difference to working families, the 41 million Americans—28 percent—who work more than 40 hours a week. Nearly one in six workers work more than 50 hours a week. People are working longer and harder than ever before.

If you look at what is happening in the industrial nations, look at the United States, we have increased more than any other industrial nation in the world. What happened? The wages of the poorest of the poor who are out there working 40 hours a week have collapsed, and what happened? They have been working longer and harder than ever before.

What has been happening? They increased productivity for the American economy. Look at the past, where you had productivity and the minimum wage related year after year. But not now. We have seen the explosion of productivity, but do you think any of that has been passed on to hard-working people? Absolutely not. We are not going to let those who increased the productivity of the American economy share in it. That has not been the case.

We also see the continued loss of workers. What has happened on the other side? Who has gotten the increase in the productivity. Imagine who: corporate profits grew 65 percent more over this period of time. They are the ones who have taken the benefit of the productivity. It used to be shared between the workers and corporations. Not anymore. They have been the ones who have opposed the increase in the minimum wage.

We have seen what happened, as I pointed out, when we had productivity related to the minimum wage. We saw that the minimum wage was at the poverty level, and now we have seen it virtually collapse. What has been the

impact on the American families? We have now seen that 4.1 million more American families have gone into poverty since 5 years ago. And, naturally, we have seen an increased number of children who have gone into poverty; 1.2 million more children have gone into poverty over the last 5 years, with no raise in the minimum wage.

Increased numbers of families are struggling and working hard, working longer and harder than in any other industrial nation in the world, and still they cannot get out of poverty. As a result, we find this extraordinary achievement in the United States of America, and we have the highest poverty rate of children of any industrialized nation in the world. The list goes on.

We can see this is reflected in the increased number of individuals who are suffering in terms of hunger in our country. You can go to food banks in my city of Boston—and we have food banks throughout Massachusetts and you hear the same thing. We are having to give more assistance to families who are working, and more and more of those are children living in poverty. It doesn't have to be this way. We are not going to answer all of the problems of poverty with this increase. We are telling hard-working Americans who work hard and take pride and produce that we in the Congress at this time are going to give you a very modest raise. They are entitled to it. It is saying to proud men and women who are doing a decent job that we recognize that and we believe in a society where people move along together.

This is going to make a difference to children in our society because so many children are the children of individuals who work hard and are working at minimum wage. It will make a difference to women because the great majority of people who benefit from the minimum wage are women. So it will benefit women, and it will benefit children, and those people who go into the entry level, men and women of color who are getting a job. This is a family issue, a values issue, an American issue, and it is a fairness issue.

That is why we want to have a strong vote here with the bare bill that sends a very clear message: $7.25 an hour for working families is not too much in the richest country in the world.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. Mr. President, I thank the Senator for allowing me to proceed in this manner. I think people listening may get confused. In our discussions, the Senator from Massachusetts is addressing the second cloture vote. I am addressing the first one. The second one addresses the issue of minimum wage. I am talking about the second look at the waste amendment, or enhanced rescission amendment, which is the first cloture vote.

This is not a line-item veto. That pejorative is being thrown at it by people who think the line-item veto is inappropriate and transfers too much power to the President. That was settled in the 1990s when President Clinton was given it, and then it was ruled unconstitutional. This is the daughter of Daschle amendment. It is essentially rescission language that allows us to take a second look at waste and mismanagement that may occur as a result of earmarks being put in omnibus bills.

We talk around here about earmarks and the inappropriateness of some of them. This is another opportunity for us to look at inappropriate earmarks and to eliminate waste as a result of that. It tracks very closely the Daschle language.

The Senator from North Dakota mentioned three areas where it differs from the Daschle language. I don't think any of those three areas are substantive.

The first was on the issue of entitlements. Of course, entitlements have to be on the table. The argument that for some reason a global agreement on entitlements is going to be undermined by this opportunity to take a second look at wasteful spending is a total straw dog. No such global agreement would be reached unless this language was also addressed and the question of the President's power was addressed.

Secondly, the idea that a packaging of rescissions will put undue pressure on Members to vote for a bad rescission in favor of a good rescission because they will be put together is totally specious or inaccurate because of the fact that the motion to strike is retained so that packages can be broken up.

As I said earlier, I am going to take the 300 days, if we get this to the amendment process, and move it back to 30 days, so that is not an issue either.

This is a question of how we better manage the taxpayers' dollars. It is that simple. There is no reason why we should allow inappropriate spending to be buried in omnibus bills, as mentioned by the Senator from South Carolina, and then never have an opportunity to go back and take a look at that inappropriate spending.

It is such a logical idea that it was voted for by 37 Members of the Democratic Party the last time it was on the floor, 20 of whom still serve in the Senate. Individuals who voted for essentially this exact proposal—not exact, but it is so close it is hard to differentiate—are still serving in the Senate.

I hope those individuals will vote for cloture so that we can move on and do this very significant piece of reform.

Is it going to dramatically affect the deficit? I have said it isn't. What it is going to do is give us an opportunity to effectively address waste mismanagement and inappropriate earmarks that will help the deficit because I put the money toward the deficit. I acknowledge it is not going to be dramatic sums, but it is better management of the American taxpayers' money, and that is our goal.

It is not unconstitutional. It does not have a constitutional issue with it. It has been addressed. In fact, it is a proposal that is so reasonable in the area of constitutionality that Senator BYRD, the last time this proposal was put forward, said:

> I have no problem with giving the President another opportunity to select from appropriation bills certain items which he feels, for his reasons, whatever they may be, they may be political or for whatever reasons, I have no problem with his sending them to the two Houses and our giving him a vote.

He is being reasonable. It is a reasonable approach. The idea is simply to allow the President to say to us: Listen, I looked at this bill; it is spending $400 billion or $500 billion. There is some money in here that I don't think should be spent. Why don't you take a another look at this, Congress, and if either House says no, we are going to spend that money, they can spend it, or if either House strikes an item, it gets struck and it is not part of the rescission package.

This is good management. It has been voted out of this Senate before. I hope it will be voted out again.

Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. Time is up.

Mr. GREGG. Mr. President, I guess I will end my statement and ask people to vote for cloture.

CLOTURE MOTION

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

The bill clerk read as follows:

CLOTURE MOTION

> We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the pending Gregg amendment No. 101 to the substitute amendment to H.R. 2, a bill to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage.
>
> Harry Reid, Mitch McConnell, Judd Gregg, Craig Thomas, John E. Sununu, James Inhofe, Jon Kyl, Johnny Isakson, Tom Coburn, Mike Crapo, Wayne Allard, Lamar Alexander, John Cornyn, Jim Bunning, John Ensign, David Vitter, Bob Corker.

The PRESIDING OFFICER (Ms. KLOBUCHAR). By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on amendment No. 101, offered by the Senator from New Hampshire, Mr. GREGG, an amendment to provide Congress a second look at wasteful spending by establishing enhanced rescission authority under fast-track procedures, shall be brought to a close?

The yeas and nays are mandatory under the rule. The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Delaware (Mr. CARPER) and the Senator from South Dakota (Mr. JOHNSON) are necessarily absent.

Mr. LOTT. The following Senator was necessarily absent: the Senator from Kansas (Mr. BROWNBACK).

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

The result was announced—yeas 49, nays 48, as follows:

[Rollcall Vote No. 22 Leg.]

YEAS—49

Alexander	Dole	McCain
Allard	Domenici	McConnell
Bayh	Ensign	Murkowski
Bennett	Enzi	Roberts
Bond	Graham	Sessions
Bunning	Grassley	Smith
Burr	Gregg	Snowe
Chambliss	Hagel	Specter
Coburn	Hatch	Stevens
Cochran	Hutchison	Sununu
Coleman	Inhofe	Thomas
Collins	Isakson	Thune
Corker	Kyl	Vitter
Cornyn	Lieberman	Voinovich
Craig	Lott	Warner
Crapo	Lugar	
DeMint	Martinez	

NAYS—48

Akaka	Feinstein	Nelson (FL)
Baucus	Harkin	Nelson (NE)
Biden	Inouye	Obama
Bingaman	Kennedy	Pryor
Boxer	Kerry	Reed
Brown	Klobuchar	Reid
Byrd	Kohl	Rockefeller
Cantwell	Landrieu	Salazar
Cardin	Lautenberg	Sanders
Casey	Leahy	Schumer
Clinton	Levin	Shelby
Conrad	Lincoln	Stabenow
Dodd	McCaskill	Tester
Dorgan	Menendez	Webb
Durbin	Mikulski	Whitehouse
Feingold	Murray	Wyden

NOT VOTING—3

Brownback	Carper	Johnson

The PRESIDING OFFICER. On this vote, the yeas are 49, the nays are 48. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

The majority leader is recognized.

Mr. REID. Madam President, I move to reconsider and table that vote.

The motion to lay on the table was agreed to.

Mr. REID. I ask unanimous consent that prior to this vote there be 2 minutes for debate equally divided.

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

Who yields time?

Mr. KENNEDY. Madam President, what is the issue now that is before the Senate?

The PRESIDING OFFICER. There is now 2 minutes of debate before the vote on the cloture motion on H.R. 2, a bill to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage.

Mr. KENNEDY. I yield myself 1 minute.

Madam President, we have the opportunity for the first time in 10 years to pass an increase in the minimum wage that will affect a million of our fellow citizens. The workers who work for the minimum wage are people of dignity. They take pride in their work. They work hard and try to do a job.

This is a women's issue because the great majority of those who work and receive the minimum wage are women. It is a children's issue because so many of those women have children. Therefore, it is a family issue, it is a value issue, and it is a civil rights issue, because so many of those who enter with the minimum wage are men and women of color. Most of all, it is a fairness issue. In the United States of America, we understand fairness. With the strongest economy in the world, for men and women who are going to play by the rules, work 40 hours a week, they should not live in poverty in the United States of America.

Vote yea on this amendment and we will make a downpayment in bringing children, women, and others out of poverty in this Nation.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. ENZI. Madam President, for those who have been listening for the last 2 days, the argument has not been about whether we would raise the minimum wage. There seems to be agreement to raise the minimum wage. The difficulty has been how do we take care of some of the impact to small business that will result.

The Senator from Massachusetts, Mr. KENNEDY, has mentioned that the last time we passed the minimum wage, there was a small business tax package in it. That somewhat set a little different level for doing this kind of action. Incidentally, it was Senator Simpson from Wyoming who headed up that effort at that time.

This bill could have happened earlier if we had some assurance that there was going to be this tax package. I congratulate the Senator from Montana, Mr. BAUCUS, and the Senator from Iowa, Mr. GRASSLEY, for the way they have worked together and the way their committee worked together to put together a tax package that will benefit small business and reduce some of the impacts of the increase in minimum wage. The minority just needs some kind of a sense that will be a part of the bill, and we can move forward with the whole thing. We are trying to make sure we don't put the mom-and-pop businesses and their employees out of work and their services lost to the community.

Madam President, I ask unanimous consent to submit a letter from the Coalition For Job Opportunities supporting it.

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

COALITION FOR JOB OPPORTUNITIES,
January 23, 2007.

U.S. Senate,
Washington, DC.

DEAR SENATOR: As members of the Coalition for Job Opportunities (COJO), we are writing in opposition to the cloture motion filed on H.R. 2 which calls for a federal minimum wage increase to $7.25/hour without any offsetting small business tax provisions. We are very concerned that this 41% increase to the starting wage would severely impact small businesses and cost our economy jobs. While no package of small business measures can completely mitigate the negative impact of a wage hike, we are supportive of the small business tax package approved unanimously in committee last week and believe it must be included with the wage proposal before the Senate.

A mandated wage hike of this magnitude will cause many small employers to make difficult staffing decisions, in terms of eliminating current positions and postponing plans to create new ones. Due to the last minimum wage increase, our economy experienced significant job losses across multiple sectors.

Many small businesses operate under a very small profit margin, and a 41% mandated wage hike would have a severe impact on employers at a time they are experiencing other difficult cost challenges. Small employers continue to face steady double-digit health care premium increases, and rising energy costs have also had an impact. Just this month, it was reported that commercial electricity prices have risen nearly 10% during the first 10 months of 2006.

We urge you to strongly consider the vital role that small employers play in our economy as job providers. An increase in the starting wage will stifle job creation, directly affecting employment opportunities for low-skilled, entry level workers. We therefore urge you to oppose this mandated wage increase and to allow market forces to create and sustain more jobs.

Sincerely,

National Restaurant Association, National Federation of Independent Business, National Retail Federation, National Association of Convenience Stores, American Hotel and Lodging Association, American Beverage Licensees, Bowling Proprietors' Association of America, Coalition of Licensed Beverage Associations, Food Marketing Institute, International Association of Amusement Parks and Attractions, International Foodservice Distributors Association, International Franchise Association, International Pizza Hut Franchise Holders Association, Kentucky Fried Chicken Franchisee Association, National Association of Chain Drug Stores, National Association of Theatre Owners, National Club Association, National Council of Agricultural Employers, National Council of Chain Restaurants, National Franchisee Association, National Grocers Association, Printing Industries of America, Small Business & Entrepreneurship Council, Society of American Florists, Tire Industry Association.

U.S. HISPANIC CHAMBER OF COMMERCE,
Washington, DC, January 23, 2007.

DEAR SENATOR: The U.S. Hispanic Chamber of Commerce, as the nation's leading voice for over 2 million Hispanic-owned businesses and over 200 chambers nationwide, urges your support for providing significant small business tax relief as a key component of S. 2, the Minimum Wage Act of 2007.

Small and disadvantaged businesses create 75 percent of new U.S. jobs annually, but they are also responsible for the majority of job losses each year. These important statistics demonstrate why we must provide assistance to these struggling businesses. According to the Small Business Administration, 590,000 new businesses were established in 1998, and 565,000 of them employed fewer than 20 workers. However, 541,000 firms went

out of business that year, and more than 94 percent of them had 20 workers or less. Small businesses already encounter a growing number of rising costs for doing business such as double digit health care premium increases and increased energy costs.

As an organization that understands and represents the interests and concerns of Hispanic-owned businesses, we urge you to provide a comprehensive response that includes small business tax relief as an integral part of this legislation. We look forward to working with you to achieve this goal.

Sincerely,

DAVID C. LIZARRAGA,
Chairman, Board of Directors.
MICHAEL L. BARRERA,
President and CEO.

NFIB,
January 22, 2007.

Sen. HARRY REID,
Majority Leader, U.S. Senate,
Capitol Building, Washington, DC.
Sen. MITCH MCCONNELL,
Republican Leader, U.S. Senate,
Capitol Building, Washington, DC.

DEAR MAJORITY LEADER REID AND REPUBLICAN LEADER MCCONNELL: On behalf of the National Federation of Independent Business (NFIB), the nation's leading small-business advocacy group, I am writing to urge you to include critical small-business relief as part of any minimum-wage legislation that passes the U.S. Senate.

During Senate consideration of H.R. 2, a bill that raises the minimum wage by $2.10, please be mindful that small-business owners oppose the wage hike because it would leave them with fewer choices in how they compensate their employees and when they decide to hire new ones. Wage hikes historically have had a negative impact on certain industries that offer the most entry-level jobs—including restaurants, grocery, and retail stores—many of which are run by small-business owners.

We were encouraged that the Senate Finance Committee took an important step in this debate by passing the Small Business and Work Opportunity Act of 2007. This bill contains growth-oriented tax relief that allows small businesses to invest and stay competitive. We hope that you can continue in this direction during debate on the floor.

In addition, should you decide to consider any additional revenue offsets, I hope you will be mindful of the consequences of any tax increases on small businesses. While revenue offsets may serve to restrain fiscal spending, any other possible burdens on small businesses—in addition to the wage hike—will be harmful to the continued growth of this very important industry.

Thank you for your leadership on this issue, and we look forward to working with you as the 110th Congress moves forward.

Sincerely,

DAN DANNER,
Executive Vice President.

NATIONAL RESTAURANT ASSOCIATION,
January 23, 2007.

DEAR SENATOR: On behalf of the National Restaurant Association and the 935,000 restaurant locations nationwide, we are writing in opposition to cloture on H.R. 2 the underlying minimum wage bill which does not include the small business tax package unanimously approved in committee last week. Our association cannot support a wage increase given its impact on jobs in our industry, and we strongly believe that any minimum wage increase must include small business tax relief in order to mitigate the negative impact of a mandated wage hike. The cloture vote on the underlying ''clean'' minimum wage bill will be considered a ''key vote'' by the National Restaurant Association.

Restaurants are acutely impacted by an increase to the starting wage, and it is important to protect the jobs our industry provides. Nearly half of all adults have worked in the restaurant industry at some point during their lives, and 32 percent of adults got their first job experience in a restaurant. For many, restaurant jobs lead to management and ownership opportunities: 8 out of 10 salaried employees have started as hourly employees.

The restaurant industry plays a critical role in providing jobs to the U.S. economy. By the year 2017, we are expected to create an additional 2 million positions. If we are to fulfill this expectation, we urge you to include relief targeted to those industries that pay the starting wage.

We urge you to oppose cloture on the underlying base minimum wage bill (H.R. 2). The cloture vote on H.R. 2 will be treated as a key vote by the National Restaurant Association.

Sincerely,

STEVEN C. ANDERSON,
President and Chief Executive Officer.
JOHN GAY,
Senior Vice President, Government Affairs and Public Policy.

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

Mr. ENZI. I ask my colleagues to vote no on cloture.

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order and pursuant to rule XXII, the clerk will report the motion to invoke cloture.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close the debate on Calendar No. 5, H.R. 2, providing for an increase in the Federal minimum wage.

Ted Kennedy, Barbara A. Mikulski, Daniel Inouye, Byron L. Dorgan, Jeff Bingaman, Frank R. Lautenberg, Jack Reed, Barbara Boxer, Daniel K. Akaka, Max Baucus, Patty Murray, Maria Cantwell, Tom Harkin, Debbie Stabenow, Robert Menendez, Tom Carper, Harry Reid, Charles Schumer, Richard Durbin.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on H.R. 2, a bill to amend the Fair Labor Standards Act of 1938, to provide for an increase in the Federal minimum wage, shall be brought to a close?

The yeas and nays are mandatory under the rule. The clerk will call the roll.

The bill clerk called the roll.

Mr. DURBIN. I announce that the Senator from Delaware (Mr. CARPER) and the Senator from South Dakota (Mr. JOHNSON) are necessarily absent.

Mr. LOTT. The following Senator was necessarily absent: the Senator from Kansas (Mr. BROWNBACK).

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

The yeas and nays resulted—yeas 54, nays 43, as follows:

[Rollcall Vote No. 23 Leg.]

YEAS—54

Akaka	Feingold	Nelson (FL)
Baucus	Feinstein	Nelson (NE)
Bayh	Harkin	Obama
Biden	Inouye	Pryor
Bingaman	Kennedy	Reed
Boxer	Kerry	Reid
Brown	Klobuchar	Rockefeller
Byrd	Kohl	Salazar
Cantwell	Landrieu	Sanders
Cardin	Lautenberg	Schumer
Casey	Leahy	Snowe
Clinton	Levin	Specter
Coleman	Lieberman	Stabenow
Collins	Lincoln	Tester
Conrad	McCaskill	Warner
Dodd	Menendez	Webb
Dorgan	Mikulski	Whitehouse
Durbin	Murray	Wyden

NAYS—43

Alexander	Domenici	McCain
Allard	Ensign	McConnell
Bennett	Enzi	Murkowski
Bond	Graham	Roberts
Bunning	Grassley	Sessions
Burr	Gregg	Shelby
Chambliss	Hagel	Smith
Coburn	Hatch	Stevens
Cochran	Hutchison	Sununu
Corker	Inhofe	Thomas
Cornyn	Isakson	Thune
Craig	Kyl	Vitter
Crapo	Lott	Voinovich
DeMint	Lugar	
Dole	Martinez	

NOT VOTING—3

Brownback	Carper	Johnson

The PRESIDING OFFICER. On this question, the yeas are 54, the nays are 43. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

Mr. REID. I move to reconsider the vote and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. REID. Madam President, the time is moving on. If people wish to offer amendments, this is the time to do it. I know there are Members tied up in committees. If someone feels strongly about an amendment, someone managing on the minority side can offer it, someone here can offer amendments for the majority, if there are amendments they wish to offer and simply can't be here. We would like to get this set up so we can start voting on amendments. Vote on a Democrat amendment, a Republican amendment or vice versa. Let's move on.

Some of these votes are not pleasant. They are tough votes. That is why we are here. The sooner we move to start voting, the better off we are going to be. If it comes to a period in the next 24 hours that Members are not going to offer amendments, there is little alternative but I will have to offer another cloture motion.

The PRESIDING OFFICER. The Republican leader is recognized.

Mr. MCCONNELL. Let me say to my good friend, the majority leader, there are two Senators, Senator ALLARD and Senator SMITH, in the Chamber prepared to offer amendments now.

I concur with him. Those who have amendments should come forward and offer them. We have two Republican Senators ready to do that as we speak.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oregon is recognized.

Mr. WYDEN. Madam President, I ask unanimous consent to be able, after Senator SMITH and Senator ALLARD have offered their amendments, and also Senator REED, who was here earlier than I, to be able to offer a bipartisan amendment on a matter of critical importance to all from timber-producing States that deals with funding for schools and roads. I ask unanimous consent to be able to offer that bipartisan amendment after Senator SMITH has offered his amendment, after Senator ALLARD has offered his amendment and after Senator REED has had an opportunity to speak.

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

The Senator from Oregon is recognized.

AMENDMENT NO. 113 TO AMENDMENT NO. 100

Mr. SMITH. Madam President, I call up amendment numbered 113, and I ask for its immediate consideration.

The PRESIDING OFFICER. The pending amendment is set aside.

The clerk will report.

The legislative clerk read as follows:

The Senator from Oregon [Mr. SMITH] proposes an amendment numbered 113.

Mr. SMITH. Madam President, I ask unanimous consent the reading of the amendment be dispensed with.

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

The amendment is as follows:

AMENDMENT NO. 113

(Purpose: To make permanent certain education-related tax incentives)

At the appropriate place, insert the following:

SEC. ___. PERMANENT EXTENSION OF CERTAIN EDUCATION-RELATED TAX INCENTIVES.

(a) REPEAL OF SUNSET ON AFFORDABLE EDUCATION PROVISIONS.—Title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001 (relating to sunset of provisions of such Act) shall not apply to title IV of such Act (relating to affordable education provisions).

(b) PERMANENT EXTENSION OF ABOVE-THE-LINE DEDUCTION FOR CERTAIN EXPENSES OF ELEMENTARY AND SECONDARY SCHOOL TEACHERS.—Subparagraph (D) of section 62(a)(2) of the Internal Revenue Code of 1986 is amended by striking ''In the case of taxable years beginning during 2002, 2003, 2004, 2005, 2006, or 2007, the deductions'' and inserting ''The deductions''.

Mr. SMITH. Madam President, I rise today to offer an amendment to H.R. 2, the Fair Minimum Wage Act. My amendment would make permanent existing education tax benefits that are set to expire in the near future.

I am a big supporter of the Republican progrowth tax policies that have been implemented over the past few years. These policies have had a tremendous impact on our economy. Since August 2003, more than 7.2 million jobs have been created.

Our unemployment rate remains low at 4.5 percent, which is well below the 5.1 percent average rate for 2005, and below the average of each of the past four decades.

And thanks to our strong economic growth, tax revenues continue to pour in. Tax receipts in December were $18 billion higher than a year earlier.

My amendment focuses on an important component of the Bush tax cuts—education tax benefits. This amendment would make permanent a number of important tax provisions that make it easier for Americans to save for college and pay for their children's education expenses.

Educating our citizens is critical if we want to remain competitive in the global economy. But as tuition costs continue to escalate, it has become more and more difficult for American families to cover these expenses on their own.

The education tax benefits that have been enacted over the past few years will help American families meet these obligations. Therefore, it is important that we don't let these tax benefits expire.

My amendment would make permanent the deduction for qualified tuition and related expenses which is set to expire at the end of 2007. The 2001 tax act created this new deduction which allows middle-income Americans to take a deduction for higher education expenses of up to $4,000.

In 2004, over 4.5 million American families took advantage of this deduction. And in my home state of Oregon, almost 65,000 families used the deduction.

In addition, if certain requirements are satisfied, an employee can exclude from gross income up to $5,250 annually of educational assistance provided by an employer. This exclusion applies to both graduate and undergraduate courses.

Because of this favorable tax treatment, many employers provide their employees with educational assistance. However, the exclusion will not be available after December 31, 2010. My amendment would make this provision permanent.

Coverdell education savings accounts are an important tool for Americans to save for future education expenses. The 2001 tax act made a number of reforms to enhance these accounts. For example, it increased the annual contribution limit to $2,000 from $500 and expanded the definition of qualified expenses to include elementary and secondary school expenses.

However, like the exclusion for employer provided educational assistance, these enhancements expire after 2010. My amendment would make these enhancements permanent.

Finally, the recently enacted tax extenders package extended the deduction for educator expenses through 2007. This provision provides a $250 per year above-the-line deduction for teachers for expenses paid for supplies, such as books and computer equipment.

Teaching is one of the most important professions in our society. And this provision provides teachers with a little help in purchasing the supplies they need to be good teachers.

In Oregon, over 33,000 teachers benefited from this deduction in 2003. And my amendment would make this provision permanent.

I yield the floor.

The PRESIDING OFFICER. The Senator from Colorado is recognized.

AMENDMENT NO. 116 TO AMENDMENT NO. 100

Mr. ALLARD. Madam President, I ask unanimous consent the pending amendment be set aside and I call up amendment numbered 116 and ask for its immediate consideration.

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

The clerk will report.

The bill clerk read as follows:

The Senator from Colorado [Mr. ALLARD] proposes an amendment numbered 116.

Mr. ALLARD. I ask unanimous consent the reading of the amendment be dispensed with.

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

The amendment is as follows:

AMENDMENT NO. 116

(Purpose: To afford States the rights and flexibility to determine minimum wage)

At the end of section 2, add the following:

(c) STATE FLEXIBILITY.—Section 6 of the Fair Labor Standards Act of 1938 (29 U.S.C. 206) is amended by adding at the end the following:

''(h) STATE FLEXIBILITY.—Notwithstanding any other provision of this section, an employer shall not be required to pay an employee a wage that is greater than the minimum wage provided for by the law of the State in which the employee is employed and not less than the minimum wage in effect in that State on January 1, 2007.''.

Mr. ALLARD. Madam President, I rise today to ask my colleagues to support amendment No. 116, which I will discuss.

This amendment allows States the rights and flexibility to determine a minimum wage that works for them. Every State has its own microeconomy, and the voters and legislatures in those areas have decided what works best.

This is reflected in a map I have for demonstration purposes, reflecting the number of States in green that have higher wage rates than the minimum Federal rate. It reflects in blue the States with wage rates the same as the Federal rate. We have American Samoa, which has a special minimum wage rate, and States with no minimum wage rate, which are very few, by the way. They rely on the Federal, in that case, where they do not have one. And States with a minimum wage rate lower than the Federal, again, the State is preempted.

I rise to point out that the merits of increasing the Federal minimum wage, for better or for worse, for days on end—there is no debate on the cost of living, and wages greatly differ from State to state.

In its current form, the bill attempts to blindly blanket the Nation with a new Federal minimum wage without

regard to unique economic conditions of each individual State. Effective on January 1 of this year, my own home State of Colorado increased its wage from $5.15 an hour to $6.85 an hour. But they went further than that. This new wage will adjust annually with inflation as measured by the Consumer Price Index in my own State—in this case, the State of Colorado.

During the course of the 109th Congress, the Senate considered a range of different minimum wage proposes. I evaluated each on a case-by-case basis. As a former small business owner, I recognize the financial challenges many families face, both those who are employed by the small business, as well as those struggling to keep their small business working. I also recognize the importance of small business to our Nation's economy and the chilling effect that increasing operating costs can have on the growth and ability to create jobs.

In my small business, for example, I hired a large percentage of employees whose first job was working for me. I was able to incorporate them into my business because, in some cases, because of their lack of job experience, I was willing to bring them in at a relatively low wage, give them an opportunity to improve themselves, which usually didn't take long—a month, 2 or maybe 3 months—and then begin to increase their wages as they increased their performance. This helped for morale in the business, and they felt like they were treated fairly. And it worked out very well.

We ran into problems when I was forced to raise the minimum wage, and I had to look at those employees in my small business who were full-time employees and expand the responsibilities of what my expectations were during their time of employment, at the expense of part-timers, and I laid off a few part-timers in the process, until I was able to grow the business a little more and I was able to begin to bring on some of the part-time employees again.

That is my personal experience and that reflects my view on increasing the minimum wage and why I think it has an adverse effect, particularly on those trying to move into the workforce. I have long been a supporter of legislation to help small businesses, and I do not wish to overburden our small businesses. Last year, I supported Senator ENZI's small business health plan legislation to give small business and their employees relief from health care costs. I supported this bill as a way to help small business and will continue to support such good ideas in the future.

In my view, in order to stimulate economic growth and create better paying jobs, Congress should implement programs aimed at reducing taxes and Government regulations on small business. Less Government intervention, at all levels, enables the private sector to attract, recruit, and retain the best possible employees and reward increased productivity and responsibility with higher compensation.

Although I believe the market is capable of setting wages, States are better equipped than the Federal Government to determine what is a fair and equitable standard wage for their workforce because of their own economy within that State.

As my chart shows, letting States take the lead on this issue is working. According to the Department of Labor, as of January 1, 2007, the majority of States have opted to increase the minimum wage over the federally mandated $5.15 an hour.

According to the Economic Policy Institute, 28 States plus the District of Columbia have minimum wages above the Federal level in 2007. Washington State has the highest minimum wage at $7.93 an hour. Several States, including Connecticut, Massachusetts, and Oregon, have raised their minimum wage beyond $7.50 an hour.

If we are going to do this and do this right, we should be cautious in Federally mandating a one-size-fits-all minimum wage. We should allow States to take into consideration the needs of their economy. We should give States the rights and flexibility to set their own minimum wage. Costs of living and wages vary dramatically State to State. What is right for Wyoming is not necessarily what is right for Massachusetts. Imposing dramatic increases to the minimum wage on States poses a threat to local economies. States are better positioned than the Federal Government to set a wage that works best for their workforce. Whether the need is above or below the proposed $2.10 increase, State officials should have the right to decide. Local legislators are in touch with the business community and I think better represent the needs of the local labor markets. Allowing the minimum wage to be set by State legislatures is a better alternative to a Federal mandate. My amendment simply affirms the traditional definition of States rights and allows respective State legislatures the flexibility to determine employee pay benefits.

Let's allow the States to have a say and decide what is right for them. They are the closest to the people. Let's give States the right and flexibility to regulate minimum wage. A one-size-fits-all unfunded Federal mandate is not the answer to protecting America's economic security. I urge my colleagues to join me in supporting this amendment which gives States the flexibility to determine what is best for their citizens.

Thank you, Madam President.

The PRESIDING OFFICER. The Senator from Oregon is recognized.

AMENDMENT NO. 104 TO AMENDMENT NO. 100

Mr. WYDEN. Madam President, if the distinguished Senator from Colorado is finished, I ask unanimous consent to set aside his amendment and call up an amendment I offer with Senator SMITH and Senator FEINSTEIN and Senator BOXER and ask for its immediate consideration.

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

The clerk will report.

The bill clerk read as follows:

The Senator from Oregon [Mr. WYDEN], for himself, Mr. SMITH, Mrs. FEINSTEIN, and Mrs. BOXER, proposes an amendment numbered 104 to amendment No. 100.

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

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

The amendment is as follows:

(Purpose: To reauthorize the Secure Rural Schools and Community Self-Determination Act of 2000)

At the appropriate place, insert the following:

SEC. _____. EXTENSION OF SECURE RURAL SCHOOLS AND COMMUNITY SELF-DETERMINATION ACT.

(a) IN GENERAL.—The Secure Rural Schools and Community Self-Determination Act of 2000 (16 U.S.C. 500 note; Public Law 106–393) is amended in sections 101(a), 102(b)(2), 103(b)(1), 203(a)(1), 207(a), 208, 303, and 401 by striking ''2006'' each place it appears and inserting ''2007''.

(b) TERMINATION OF AUTHORITY.—

(1) SPECIAL PROJECTS ON FEDERAL LANDS.—Section 208 of the Secure Rural Schools and Community Self-Determination Act of 2000 (16 U.S.C. 500 note; Public Law 106–393) is amended in the second sentence by striking ''2007'' and inserting ''2008''.

(2) COUNTY PROJECTS.—Section 303 of the Secure Rural Schools and Community Self-Determination Act of 2000 (16 U.S.C. 500 note; Public Law 106–393) is amended in the second sentence by striking ''2007'' and inserting ''2008''.

Mr. WYDEN. Madam President, in much of our country that is dependent on natural resources, there is a world of hurt today. There are tremendous concerns in many of our rural communities about how we are going to finance their schools and roads. In my State, more than 50 percent of the land is owned by the Federal Government. So we are not in a position to pay for schools and roads and essential services the way much of the rest of the country does because there, through transactions that occur on private property, they are able to generate the funds they need to pay for essential services.

When Senator SMITH and I go home, we are faced with a very different situation. Because a law I wrote a number of years ago with Mr. CRAIG, the distinguished Senator from Idaho, expired at the end of the year, we are seeing a number of our local communities face Draconian cuts in essential services.

The layoff announcements are going on right now as local districts and local communities come together and wrestle with how they are going to make the difficult choices with respect to funding essential services. Cuts in excess of 70 percent of discretionary funding are going to cripple one of our counties in rural Oregon, southern Oregon, Douglas County, which currently receives about 43 percent of its annual

budget from the law I authored with Senator CRAIG.

Another of our counties, Jackson County, again in southern Oregon, is prepared to shut down all of its libraries. That will be coming up very shortly.

In Curry County, they are looking at the prospect of laying off all nonessential workers, including patrol officers, some of whom would be left to perform only the mandated corrections duties. By June, 20 percent of the county workforce in Curry County will have been cut. So it is not clear with these cuts whether the county will even be able to continue to be a county, as it will not be able to provide a minimum level of services.

Road department levels are going to be reduced in areas such as Josephine County and Linn County.

I am going to be having community meetings this weekend on the Oregon coast.

Tillamook County is looking at layoffs in the sheriff's department and cuts to its road maintenance, jeopardizing roads that are critical to getting sawlogs to the mills and having family-wage jobs for workers in my State.

Senator FEINSTEIN and Senator BOXER join me in this. There are stories like this from across the country. Over 700 counties in 39 States have received critical funding from the county payments program. The fact is, in a State such as ours, where the Federal Government owns more than 50 percent of the land in many of these small communities with tiny populations, they are not going to be able to make it without these funds that are a lifeline in terms of law enforcement and schools and essential road and transportation services.

This is my top priority—my top priority—for my State in this session, to try to make sure these funds are reauthorized. In this particular amendment, Senator SMITH and Senator BOXER and Senator FEINSTEIN and I want to reauthorize the program for 1 year. But I am also introducing legislation for a long-term reauthorization because I think we ought to get these counties off the roller coaster once and for all.

This is based on an approach that was adopted many years ago with States that had widespread Federal ownership getting funds that related to timber receipts. As a result of the environmental laws, those receipts went down, and we needed this law to ensure that those counties would survive.

So the county payments legislation is supported by a diverse coalition, including the National Association of Counties and a number of labor organizations.

If Senators, particularly in rural communities, look now—as I have been in townhall meetings and other kinds of gatherings—at how we are going to support schools and roads and basic local government, I would only say that without this program, this will hit local communities like a wrecking ball. It is something that should not be abided by this Senate.

I see my colleague from Oregon, my partner in this and many other issues, standing, and I would like to yield at this time. After Senator SMITH has completed his remarks, I will wrap up very briefly. I would also note that Senator REED was here earlier, and I was not aware that he was in the queue as well, and I want him to be able to speak soon in a way that is convenient for him.

So I yield the floor.

The PRESIDING OFFICER (Mr. BROWN). The Senator from Oregon.

Mr. SMITH. I thank my colleague, Mr. President.

I join Senator WYDEN in saying this is my No. 1 priority as well. It is an emergency. It is not a natural disaster, but it is related to natural resources. It is a disaster that has been in the making through the course of a decade and more of Congresses, courts, and, obviously, the effort of the Clinton administration to reduce timber harvest on public lands in the Pacific Northwest. That has created a circumstance in the Pacific Northwest that Senator WYDEN and I seek to address. We do so because it is such an emergency. We have to look for every opportunity, every train that is leaving the station, to bring this to the attention of Congress and to get it to President Bush, who has said he will sign an extension.

For the benefit of the record, let me indicate some of the history of this issue. All of this was done with the best of intentions as it relates to natural resources and the management of public lands. It was done to benefit the spotted owl, threatened species under the Endangered Species Act. I should add that after 15 years of negligible harvest on public lands, the owl is still not recovering and its habitat is being incinerated by catastrophic wildfire.

Whether tacit or intentional, those management decisions have caused severe costs that are borne on the backs of those who can least afford it. These people and communities need relief as much as those burdened by other disasters, such as hurricanes or tidal waves.

The timber war has had many casualties. It has been a catastrophe for rural communities. County governments, colleagues, receive a share of timber receipts from Federal lands—25 percent from the Forest Service and 50 percent from BLM. The State Senator WYDEN and I represent is more than 50 percent owned by the Federal Government. What you have, therefore, is timber-locked communities.

For generations, these timber receipts have provided funds to offset the fact that local communities cannot tax the Federal Government. It makes up the vast majority of their funds to operate their counties, their schools, public safety. When timber harvest evaporated, so did county budgets.

In 1999, my colleague from Oregon, Senator CRAIG from Idaho, myself, and others came to this floor to describe what was happening to rural Oregon. Schools went to 4 days a week. They dropped sports and extracurricular activities and curtailed other programs. Communities were forced to make heartbreaking decisions over whether to cut social service programs or school funding or to sharply reduce sheriffs' patrols and close jails.

Fortunately, Congress created a safety net in the Secure Rural Schools and Community Self-Determination Act of 2000. This provided funding to counties based on historic rather than current timber harvest levels, and it kept them afloat until the Federal timber program stabilized—a stabilization for which we are still awaiting.

I realize other States may think Oregon receives too much assistance under this program; however, I would ask, what other Federal disaster assistance is not allocated based on the intensity and location of the disaster? You go where the problem exists. Between 1987 and 2002, Federal timber harvest in Oregon dropped 96 percent. That is an annual shortfall of enough wood to build over 235,000 homes.

Without a county payment safety net, here is an example of what my county commissioners are facing. Curry County, located on the southern Oregon coast, has an annual general fund of $7.7 million. The safety net accounts for over $4 million of that $7 million. The county is not legally able to raise property taxes, but it is constitutionally bound to fund administrative and law enforcement functions. Curry County has 11,000 homes. To replace the safety net funding with new property taxes, it would need over 35,000 new homes valued at $345,000 each. That is not going to happen. With only 22,000 residents and 1.43 percent of its land available for development, this is simply an impossibility.

But the safety net is not just about Oregon counties. In the life of the legislation, California received $308 million; Idaho, $102 million; Montana, $63.4 million.

That program expired on our watch 4 months ago. Now rural counties across the Nation are dangling on an economic tightrope without a safety net to catch them. My colleague from Oregon and I have left no stone unturned to find money for an extension. Those efforts have been unsuccessful. We stand here with our timber-dependent counties at the mercy, once more, of the Federal Government. If we do not extend the safety net, many counties in my State stand to lose nearly 70 percent of their general and road funds.

Preparations are already underway to close public libraries, pink slips to thousands of county employees will soon be in the mail, vital search-and-rescue operations will be curtailed. The Nation has seen these search-and-rescue operations go tragically in several cases recently on national TV.

Oregon has lived with devastating Federal mandates on our forests, but

we cannot live with an instant evisceration of our public services. That cannot be the rural legacy of this Congress.

My colleague from Oregon and I have filed this amendment to the minimum wage bill to provide a 1-year extension of the safety net. It is only fitting that as we consider raising wages for workers in the private sector, we address the very future of jobs and services in the public sector.

We are also introducing legislation for a full reauthorization, and we will make every attempt at every opportunity in this Congress to turn back the tide that is quickly approaching rural communities and counties across the Nation. We can prevent this natural disaster, a natural disaster that has a human component. I join with my colleague to express our determination and thank him for his leadership, his authorship of this in the first instance, and of our mutual determination for the sake of our State to right this wrong.

The PRESIDING OFFICER. The Senator from Oregon is recognized.

Mr. WYDEN. I thank my colleague for his comments and his thoughtfulness. Before I make my concluding remarks on our amendment, I ask unanimous consent for Senator JACK REED to speak after I have concluded.

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

Mr. WYDEN. To wrap up briefly, Senator SMITH has stated it well. I am very honored to represent Oregon in the Senate. I have been able to get into a host of issues that I think are important, particularly as a member of the Finance Committee, to fix health care and fix the out-of-whack American tax system. I serve on the Intelligence Committee. But Senator SMITH and I have said this is our most important issue for our State for this session because, without this funding, there is a real question about whether these local communities can hang on. They simply have no other options. You are not going to be able to go to a small resource-dependent community in eastern Oregon and set up a biotechnology company in the next few weeks. It is not going to happen. I support those kinds of industries and economic development, as does my colleague. It has been a big part of our bipartisan agenda. But we are talking about survival for these rural communities. This will be our top priority for this session.

This has also made a great contribution in terms of bringing together people of differing views on natural resources. As part of the legislation that I authored with Senator CRAIG a number of years ago—as Senator SMITH has noted—we set up resource advisory committees so that you now have folks in the timber industry talking to environmentalists who in the past were, for the most part, spending their days in the courthouses suing each other. Now they are working together to cooperate through the legislation that we have put in place. This has been recognized as a wildly successful natural resources law, bringing about cooperation that, prior to this law going into effect, was seen virtually nowhere.

It is a stable, consistent source of funding for communities that have nowhere else to turn, affecting communities in 39 States, but it is also a program that has brought together a unique kind of cooperation between people in the natural resources area who in the past would spend an awful lot of time running what I call a lawyers full employment program, essentially suing each other in the Federal courthouse.

We are going to be back on the floor for whatever number of times it takes to get this program reauthorized and take these rural communities off this roller coaster. They ought to be able to know that they can survive, and they can survive as they have over many years through a program that was tied to the unique consideration that the Federal Government owns most of our land. That is what this is all about. This is different than how people may pay for schools and roads and essential services in parts of the eastern United States where there is little Federal ownership.

We ask that the Senate not ignore the plight of rural America, particularly the rural West, as we continue forward with the legislative calendar.

AMENDMENT NO. 104 WITHDRAWN

I ask unanimous consent that this bipartisan amendment be withdrawn. We will be back another day. But I ask unanimous consent that the amendment I have offered be withdrawn.

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

The amendment is withdrawn.

The Senator from Rhode Island is recognized.

Mr. REED. Mr. President, I thank Senator WYDEN for arranging for my time. I rise to address my strong support for the increase in the minimum wage that we are debating today in this Chamber. Minimum wage workers deserve this long overdue raise. The minimum wage, which today stands at $5.15 per hour under Federal law, hasn't increased since 1997. Since then, inflation has entirely eroded that pay raise. In the meantime, the pay of CEOs of large corporations has increased to an average of $10.5 billion per year, about 369 times the average wages of a worker and 821 times the average wage of a minimum wage worker. That discrepancy, that disparity, that growing bifurcation between the very well compensated and struggling families in America cannot be tolerated any longer.

This legislation would raise the minimum wage to $7.25 over the next 2 years. This measure is important because workers have been left out of the economic growth that we have seen so far in this limited recovery that we are experiencing. Strong productivity growth has translated into higher profits for businesses, not more take-home pay for workers. And this is not just the low, entry-level workers. This is very far up the income range for working Americans. The stagnation of earnings in the face of soaring prices for health care, education, and food is squeezing the ability of families to meet their demands, of providing opportunities for the children. In fact, for the first time in my lifetime, I am beginning to sense that so many people are worried whether their children will be able to enjoy the same level of progress of income, of housing that they have, a fact that they took for granted.

No one who works full time should have to live in poverty, but the current minimum wage is not enough to bring even a single parent with one child over the poverty line, even if the parent works full time 52 weeks a year. That should never be the case in this country.

Five million more Americans have fallen into poverty since President Bush took office; 37 million Americans are now living in poverty, including 13 million children. And we know what the effects of poverty on children are. It impedes their ability to succeed in school. It deprives them of some of the experiences that we think are essential for their progress. Ultimately, it impairs their ability to contribute to this country as workers but, more importantly, as citizens, to fully participate, to bear the responsibilities of this great country. An unacceptably low minimum wage is a key factor in the problem of poverty in our country. This measure would go right to that problem in a very efficient way.

People who are working deserve to be rewarded for their work, deserve to be out of poverty. Congress is failing to catch up with reality. Many States have taken it upon themselves to raise their minimum wage. During the election this past November, six States passed ballot initiatives—not just a legislative effort but the voice of the people of those States—to raise the minimum wage. Today 29 States and the District of Columbia have minimum wages above the Federal level, anywhere from $6.15 per hour to $7.93 per hour. In addition, the States of Washington, Oregon, Vermont, and Florida have gone so far as to index the minimum wage to the rate of inflation, allowing workers to share in the benefits of a growing economy.

Raising the minimum wage will make a real difference for working families, putting an additional $4,400 per year in their pockets. Almost two-thirds of those who would benefit are adult workers, more than a third of whom are the sole breadwinners for their families. More than 6 million children would benefit from this raise that their parents would receive.

One of the fundamental principles of our country and our economy is that people should be able to support their families by their efforts, by their labors, by their works. That is when the

economy is working well. That is the reality. Here we have a situation where there are people working two jobs sometimes, working 40 and 50 hours a week, who still don't have sufficient income to meet the demands of the family. Here in this country we should at least be able to guarantee to someone that if they are working that hard, they should at least be able to support their family out of poverty. That is at the core of what we are trying to do today.

While the minimum wage has remained stagnant—because it is not just a question of how much a family earns; it is also a question of how much they must pay to support the basic demands of life—we have seen, for example, health insurance premiums increase 87 percent since 2000 alone. How does one afford health care if your wages don't go up? These premiums now average roughly $11,000 per year, and that is more than the annual wages of a full-time minimum wage worker. Clearly, they are not going to be buying health insurance policies. And, by the way, I don't think they are going to be able to take advantage of the President's proposal for a tax deduction because, simply, they are not able to buy the health insurance in the first place, nor are they able to wait a year to get a tax deduction on a tax liability that is probably close to zero, if not, in fact, zero.

Additionally, if you look at college tuition, another aspect of family life which is part of the American dream, the notion, again, that you can go ahead and ensure or help at least your children to do better, to go to college, one of the things that recent economic studies have shown is that because we do not have the full access and affordability of college, the class structure is becoming more rigid. Back in the 1950s and 1960s, if you were predicting the income of a son based on his father's income, the correlation was somewhere at 20, 30, 40 percent. Today it is 60 percent. If you are a wealthy parent, you will probably have wealthy children. But the reverse is also true; if you are a low-income worker, the chances of your son or daughter rising to the top in this economy are much less than they were 40 and 50 years ago. Horatio Alger is not alive and well in America today as he once was.

This economy has to be more representative of giving people a chance to move up. The key to that, or one of the significant keys, is access to higher education. We have to do more. One thing at least we can do, if the prices of higher education are rising so much, is certainly to at least raise wages and raise the minimum wage.

Every day the minimum wage is not increased it continues to leave workers behind because inflation continues unabated at levels that are modest in terms of historical comparisons, but it still is eating away at that existing minimum wage. Today the real value of the minimum wage is more than $4 below what it was in 1968. Think of that. In 1968, we could afford to pay much higher wages to those people engaged in minimum wage work, and it didn't upset our economy. To have the purchasing power that it had in 1968, the minimum wage would have to be more than $9.37 an hour, not $5.15 as it is today, or even $7.25. If we could do it in 1968, why can't we do it today?

History also suggests that raising the minimum wage does not have a negative impact on jobs. You will hear a lot of people say this is going to distort the employment numbers, and it is going to inhibit employment.

In the 4 years after the last minimum wage increase passed in 1997, the economy experienced the strongest growth in over three decades. We have not seen that kind of growth since the late nineties or during this administration. But following the last increase, nearly 12 million new jobs were added, at a pace of about 248,000 a month. In contrast, in the most recent 4-year period, the minimum wage has remained stagnant and only a small fraction of that number of jobs has been created. Because of the increase in productivity, because of the fact that workers are more effective, they should be able to be compensated more. That is not happening as it should.

Working families are struggling to meet their most basic needs, and a fair increase in the wage floor is the right direction to take for this Congress. I am disappointed that our most recent efforts to clearly and simply raise the minimum wage are being linked to other provisions. American families deserve the much needed boost that this raise will provide. They deserve to hear a clear signal from this Senate that we are on their side, they are not an afterthought to be added to other provisions.

Mr. President, this is long overdue. I urge my colleagues to work as quickly as possible to pass the minimum wage increase.

I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota is recognized.

Ms. KLOBUCHAR. Mr. President, I am proud today to rise in support of the working men and women of this country. I am proud to speak for an idea whose time has long since come: Our lowest paid workers—people who drive this economy—deserve a raise. I will be proud to vote for a bill that gives them a raise, a bill that increases the minimum wage from $5.15 an hour to $7.25 an hour.

This raise is years overdue. Right now, the purchasing power of the minimum wage is at its lowest level in more than half a century, since Dwight Eisenhower was President and Bill Haley and the Comets topped the charts. The value of the current wage is 30 percent lower than it was 25 years ago.

I know a little something about earning minimum wage. I have had a number of minimum wage-type jobs—as a carhop, a highway worker, and as a pie cutter. If there are other pie cutters in the Senate, I would like to meet them. Of course, I was also a waitress to help pay for school. My career as a waitress came to an abrupt end when I spilled 12 ice teas on one customer. That is when I decided to go to law school. But I can tell you that job taught me how important it is for our leaders to look out for minimum wage workers.

Today, nearly 15 million American workers—more than 10 percent of the workforce—are counting on us to help them get a fairer wage. Almost 7 million of them would directly benefit because their hourly pay is below $7.25 an hour. Another 8 million with wages slightly above this level would also get a much needed boost.

In my State, Minnesota, more than 200,000 people are waiting for Congress to do its job.

Lifting the minimum wage is the fair thing to do. Working class families are getting left behind, even as corporations see record profits and corporate executives and the superwealthy see record salaries. If the minimum wage had increased at the same rate as the salary increases for CEOs, the rate would now be more than $23 an hour.

This is not just about kids working at fast food places, though they certainly deserve a better deal, too. Eighty percent of workers who would benefit from this bill are age 20 or older. More than half work full time. More than a third are their family's sole earners.

The bill we are debating today provides real relief to these workers and their families. Even as the purchasing power of the minimum wage has gone down, costs for working families have gone up, and they are still rising. Health care costs in our State have gone up 80 percent in the last 6 years. College tuition at the University of Minnesota has gone up 80 percent in the past 7 years. It is getting tougher to afford a house and to go to school. And gas prices are always a concern.

Wherever I go in Minnesota, I see people struggling with the brutal combination of declining real wages and increasing costs. At the lunch counters, gas stations, in the big cities, and at county fairs they talk about the need for help. This is the time for us to give them that help.

Lifting the minimum wage is also the principled thing to do. A raise means more money to these working families, and it sends a signal that we, as a community, value hard work and we insist on a fair deal for all Americans. That is a signal that the old leadership in Washington failed to send. With this bipartisan bill, we can tell our workers that we stand for the hard-working people of America.

Lifting the minimum wage is also the smart thing to do. It will decrease poverty, increase family buying power, and strengthen the consumer base in our communities. Some like to say that a minimum wage increase kills

jobs. People have consistently made this argument when the minimum wage is debated. They have consistently been wrong. States that have raised their own minimum wages have not seen job losses, and many have actually outperformed the rest of the country in job creation.

A raise would not only have positive economic effects, it will also have positive social effects. As a prosecutor, I saw firsthand how crime took over communities where people could not make ends meet. When people struggled, even after working hard, they often turned to drugs or violence or both. I learned how good jobs that pay fair wages can be the best crime-fighting tool.

Lifting the minimum wage is the fair, principled, and smart thing to do across the board. But it will also have a particularly powerful effect on women. Women make up less than half of the workforce, but they make up roughly 60 percent of those who will directly gain from this raise. More than 40 percent of these working women have full-time jobs.

Three million working mothers will see a benefit from this legislation, including hundreds of thousands of single moms. Many of these women work in demanding retail and hospitality jobs—waitresses, store clerks, hotel maids—where they are on their feet or running around all day.

Despite their hard work, they have an almost impossible time making ends meet. They struggle to afford health care or college tuition for their kids or even basics such as gas and groceries. I am in awe of these women. I am a working mother and wife, and I have worked at minimum wage, but I have never had to do both at the same time. Today, you can do something for them.

The challenges of working in the hospitality industry raise the final issue I would like to talk about today—the so-called tip credit.

Under current Federal law, tipped employees, including waitresses, bellhops, and maids, are entitled to a Federal minimum wage of only $2.13 an hour. They have to make up the difference between $2.13 and the real minimum wage with their tips.

States have always been allowed to change this rule. My State, Minnesota, similar to several others, has done that. The people of Minnesota decided that tipped workers should receive the same minimum wage as all other workers. That is now the law of Minnesota and six other States. Tipped workers earn the State minimum wage and pay taxes on both their wages and their tips.

Last year, the old Congress tried to take away Minnesota's right to enforce this law. The minimum wage bill proposed back then would have preempted State law and would have caused Minnesota's tipped wage workers' wages to immediately fall by about $4 per hour.

Thankfully, this provision didn't become law. Unfortunately, some people in Congress have talked about trying it again this year. They are seeking to pass a provision that limits Minnesota's future right to fix a fair wage for tipped workers. They think Washington knows better than the people of Minnesota what our State's wage policy should be.

I oppose these efforts. For one thing, the people of Minnesota had good reasons when they eliminated the tip penalty. They saw that tips are uncertain income, given at the discretion of the consumer. They recognize the hard work and long hours that tipped employees put in. They determined that customers give tips to reward service, not to directly pay the wages of the people who serve them. They wanted the State wage law to reflect these facts.

The people of Minnesota know about women such as Marie Hanson of Rochester. I have spoken with Marie, and her story is the best argument I can think of for making sure our tipped workers get fair wages. Marie has been a waitress at the Cahler Grand Grill in Rochester for many years. She has put two kids through school on her waitress salary, and now she is looking to save for her own retirement. If her wages are cut, or if she had been paid lower wages these past few years, her already difficult task of raising kids and making ends meet would have become impossible. For too long, Congress has favored corporations and billionaires who stash money in tax shelters in the Cayman Islands. Now it is time for Congress to pay attention to women such as Marie Hanson.

Against this backdrop, Washington should not undo the will of the people of Minnesota. States have always had the sovereign right to set their own wage policy above a Federal floor and for good reason. We all know that States understand the unique conditions and challenges they face in a way that Washington never can. And many States, including mine, have crafted their own minimum wage laws that are stronger and fairer than the current Federal law.

That is how it should be. If we take away Minnesota's right to determine wages for tipped workers, what is next? Will the people who are pushing this proposal seek to stop States from setting their own higher minimum wages? Will they subvert the will of the people in more than 25 States that have stronger laws than the Federal law?

People who would require Minnesota and like States to impose a tip penalty say they are doing it to help small businesses in these States compete against small businesses in neighboring States. But the exact same argument can be made of a Federal law forbidding all States from setting higher minimum wages. Is that the next step? I don't think so.

As somebody who visited all 87 counties in Minnesota last year, I understand very well the importance of small businesses to our communities. I wish to make sure that small businesses remain a vibrant driver of our economy. I know that the tip penalty concerns of small businesses in Minnesota, especially those in towns bordering other States, are real and they should not be ignored. But they are not best resolved here; they are best resolved much closer to home, in the State capital. Washington cannot possibly understand, let alone balance, all of the competing concerns that arise in this aspect of State wage policy. St Paul, MN, can. That is how it has always worked, and it should continue to work this way.

This is not to say that there are not small business issues common to all States that this Congress can address. I have talked with small business owners in Rochester and Duluth and Wilmer about the challenges they face, including high health care costs. I see the value of giving some relief and some incentives to small businesses trying to thrive. But Congress should not stop States from protecting tipped workers.

With all of this in mind, I urge this Chamber to fight for working families and especially the working women of this country. I urge this Chamber to pass a long-overdue minimum wage increase that doesn't deny or limit States historical right to pursue their own wage policy.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

RECESS SUBJECT TO THE CALL OF THE CHAIR

Mr. ENZI. Mr. President, I ask unanimous consent that the Senate stand in recess subject to the call of the Chair.

There being no objection, the Senate, at 1:28 p.m., recessed until 1:36 p.m. and reassembled when called to order by the Presiding Officer (Mr. MENENDEZ).

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BYRD. 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. BYRD. Mr. President, I ask unanimous consent that I may yield to the distinguished Senator from Maryland for—how much time?

Ms. MIKULSKI. For 5 minutes.

Mr. BYRD. For 5 minutes, or whatever time she desires, without losing my right to the floor.

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

Mr. BYRD. I yield to the Senator from Maryland.

Ms. MIKULSKI. Mr. President, I wish to thank the distinguished chairman of

the Appropriations Committee for so courteously yielding me these 5 minutes. I know he is eager to bring his own thoughts to the Senate floor, and we, of course, are always mesmerized when Senator BYRD speaks.

I rise as an enthusiastic cosponsor of the fair minimum wage legislation. Right now, it pays $5.15 an hour. If you add that all up, 40 hours a week, 52 weeks a year, that comes out to $10,700 a year. That is $6,000 below the national poverty line. That is a phrase we throw around glibly, easily, and in a very facile way. When we use the term poverty line—I remember when it was invented by a wonderful woman at the Social Security Administration, Molly Orshansky. When we were truly fighting a war against poverty, she said: What is the line between being able to live a decent, sufficient life? She set it at that time, 40 years ago, at $3,000. Now the national poverty line is $16,060 for a family of three. That means bare minimum necessities to live in the United States of America. It doesn't allow for school trips. It doesn't allow for vacations. It is certainly not a latte-drinking, Volvo-driving minimum wage.

On top of asking the people who work at this, we are now saying: It is OK if a full-time job in the United States of America means full-time poverty. Where are our guts? Where is our grit? Where is our reward for saying that hard work is worth it? That is what we are saying now. Hard work should be worth it.

Now we are raising the minimum wage, and I salute the Senator from Massachusetts for his steadfast advocacy on this issue and for speaking up on how this is a woman's issue. There is a lot of hand-wringing over this raise, and I don't know why, because even when we raise it to what the Senate is proposing, to $7.25 an hour over a 2-year period, it still means workers will earn $15,080 a year. We are still going to be below the national poverty line. I would raise it more.

There are those who say: Let the market forces work. You bet, let the market forces work. But at the same time know that this has to be a minimum fair wage.

I am very distressed about the fact of the impact this has on women. If ever there was a woman's issue, wow, it is the minimum wage. Women are especially hurt by Congress's failure to raise the minimum wage. Forget that we don't increase equal pay for equal work, and we still make 75 cents for every dollar men make. Forget that we don't even enforce the wage laws that are on the books. But if we do recall, what my colleagues need to know is two-thirds of all of the minimum wage workers in America are women—two-thirds—meaning a full-time job, full-time poverty. Women account for full-time workers in the lowest paid jobs: maids and housekeepers, food servers and, most of all, childcare workers. What does that mean?

Mr. KENNEDY. Mr. President, would the Senator yield on that point?

Ms. MIKULSKI. Of course, I yield to the Senator from Massachusetts.

Mr. KENNEDY. If I could ask the Senator—I know we are on a short time and perhaps the Senator from West Virginia would yield us 3 more minutes? Would the Senator do that?

Mr. BYRD. Mr. President, I yield as much time as the Senators may desire.

Mr. KENNEDY. I thank, as always, my friend and colleague. But on this point the Senator from Maryland makes about the lowest paying jobs, the lowest paying jobs in America are predominantly filled by women is the point the Senator was making. We find 87 percent of maids are women; food servers, 66 percent; cashiers, 75 percent; and childcare, the point the Senator was making, is 93 percent.

The point the Senator has so eloquently made is that women have an interest in raising the minimum wage because of the enormous impact it has on women generally. I hope the Senator in her time will comment about the impact on the children of these women.

Ms. MIKULSKI. I say to my colleague from Massachusetts, other Senate women will be coming to the Senate today on this issue.

The Senator is absolutely right, raising the minimum wage will impact women. Our data analysis says 7 million women will benefit from the proposed increase in the minimum wage; 7 million women will take one more step out of poverty. We need to remember that many of these women are also single moms and get a double whammy. Not only are they working in a full-time job that guarantees full-time poverty, but often they don't get their child support.

We are asking them to raise their children below the poverty line in the United States of America. Then we diddle and dawdle and ditz around in terms of helping them collect their child support, yet we want them to give full-time energy to being a mom. We ask them for more parental involvement. These mothers want to have more parental involvement, but there has to be more Senate involvement getting these women out of poverty. Getting these women out of poverty will not come only from raising the minimum wage, but it is a very important step forward.

We want to ensure that if you work in the United States of America, it should be worth it. No. 2, when you do work and get paid, again, you were not below the poverty line.

The impact on families is astounding. If a family is poor, they will not have enough to eat. Nutrition plays a big role in child development and learning ability. You are not going to feel warm, you will not feel safe, you are not going to feel secure, and you also are going to wonder about this country regarding rewarding work.

The women of the United States of America deserve better. For those women doing well, we want to do right by those who aren't. A childcare worker right now working in Baltimore, working on the Eastern Shore, in the western Maryland mountains, or in Bethesda is working as hard as those working in the Senate or those downtown at law firms. We want to say to the women of the United States of America, we are on your side.

We want to make sure we pass this minimum wage. And to 7 million women, we hope you will sleep better and be able to live better because of what we are doing.

I yield the floor.

The PRESIDING OFFICER (Mr. CARDIN). The Senator from West Virginia.

Mr. BYRD. How much time do I have, may I ask the Chair?

The PRESIDING OFFICER. There is no limit on the Senator's time.

Mr. BYRD. I thank the Chair.

(The remarks of Mr. BYRD pertaining to the submission of S. Res. 39 are located in today's RECORD under ''Submission of Concurrent and Senate Resolutions.'')

The PRESIDING OFFICER. The Senator from Washington.

Mrs. MURRAY. Mr. President, I ask unanimous consent that the Senator from Louisiana be allocated 10 minutes; that following the Senator from Louisiana, I be allocated 10 minutes; and following my comments the Senator from Massachusetts, Mr. KERRY, be allocated 20 minutes.

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

The Senator from Louisiana.

Mr. VITTER. Thank you, Mr. President.

AMENDMENT NO. 110 TO AMENDMENT NO. 100

Mr. President, I ask unanimous consent that the pending amendment be set aside and that the Vitter amendment No. 110 be called up.

The PRESIDING OFFICER. Without objection, the pending amendment will be set aside.

The clerk will report.

The bill clerk read as follows:

The Senator from Louisiana [Mr. VITTER], for himself and Mr. VOINOVICH, proposes an amendment numbered 110 to amendment No. 100.

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

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

The amendment is as follows:

(Purpose: To amend title 44 of the United States Code, to provide for the suspension of fines under certain circumstances for first-time paperwork violations by small business concerns)

At the appropriate place, insert the following:

SEC. ___. SUSPENSION OF FINES FOR FIRST-TIME PAPERWORK VIOLATIONS BY SMALL BUSINESS CONCERNS.

Section 3506 of title 44, United States Code (commonly referred to as the ''Paperwork Reduction Act''), is amended by adding at the end the following:

''(j) SMALL BUSINESSES.—

''(1) SMALL BUSINESS CONCERN.—In this subsection, the term 'small business concern' means a business concern that meets the requirements of section 3(a) of the Small Business Act (15 U.S.C. 632(a)) and the regulations promulgated under that section.

''(2) IN GENERAL.—In the case of a first-time violation by a small business concern of a requirement regarding the collection of information by an agency, the head of that agency shall not impose a civil fine on the small business concern unless the head of the agency determines that—

''(A) the violation has the potential to cause serious harm to the public interest;

''(B) failure to impose a civil fine would impede or interfere with the detection of criminal activity;

''(C) the violation is a violation of an internal revenue law or a law concerning the assessment or collection of any tax, debt, revenue, or receipt;

''(D) the violation was not corrected on or before the date that is 6 months after the date of receipt by the small business concern of notification of the violation in writing from the agency; or

''(E) except as provided in paragraph (3), the violation presents a danger to the public health or safety.

''(3) DANGER TO PUBLIC HEALTH OR SAFETY.—

''(A) IN GENERAL.—In any case in which the head of an agency determines under paragraph (2)(E) that a violation presents a danger to the public health or safety, the head of the agency may, notwithstanding paragraph (2)(E), determine not to impose a civil fine on the small business concern if the violation is corrected not later than 24 hours after receipt by the small business owner of notification of the violation in writing.

''(B) CONSIDERATIONS.—In determining whether to provide a small business concern with 24 hours to correct a violation under subparagraph (A), the head of an agency shall take into account all of the facts and circumstances regarding the violation, including—

''(i) the nature and seriousness of the violation, including whether the violation is technical or inadvertent or involves willful or criminal conduct;

''(ii) whether the small business concern has made a good faith effort to comply with applicable laws and to remedy the violation within the shortest practicable period of time; and

''(iii) whether the small business concern has obtained a significant economic benefit from the violation.

''(C) NOTICE TO CONGRESS.—In any case in which the head of an agency imposes a civil fine on a small business concern for a violation that presents a danger to the public health or safety and does not provide the small business concern with 24 hours to correct the violation under subparagraph (A), the head of that agency shall notify Congress regarding that determination not later than the date that is 60 days after the date that the civil fine is imposed by that agency.

''(4) LIMITED TO FIRST-TIME VIOLATIONS.—

''(A) IN GENERAL.—This subsection shall not apply to any violation by a small business concern of a requirement regarding collection of information by an agency if that small business concern previously violated any requirement regarding collection of information by that agency.

''(B) OTHER AGENCIES.—For purposes of making a determination under subparagraph (A), the head of an agency shall not take into account any violation of a requirement regarding collection of information by another agency.''.

Mr. VITTER. Mr. President, I rise in support of this amendment No. 110. It is very simple, very straightforward, very basic, but also very important. It is to reduce, in a meaningful way, the excessive paperwork burden facing small businesses.

As I begin, I also want to thank Senator VOINOVICH for cosponsoring this amendment. As have I, he has long been at work on this issue and has offered great leadership. I thank him for joining with me in this effort.

Businesses face enormous hurdles and obstacles and challenges, particularly small business. Unfortunately, one of them has become the enormous paperwork burden created by all levels of government. A small business in Louisiana, depending on the nature and location of the business, has to deal with myriad Federal agencies. Just off the top of my head, these include the EPA, U.S. Army Corps of Engineers, Coast Guard, SBA, Labor, Commerce, IRS, and Customs, to name a few. That doesn't include—and my amendment doesn't pertain to—all of the State agencies with which they similarly have to deal and file paperwork because of regulations from local entities at the governmental level.

The compounded effect of this is enormous. All of those requirements, paperwork and others, can be absolutely suffocating. There has been some quantification of this enormous compliance cost. In September 2005, the SBA Office of Advocacy released a study that gave us a glimpse into this. It said businesses with fewer than 20 employees spend more than $7,600 per employee just to comply with Federal regulations. That is a staggering cost. To a truly small business that doesn't have a vice president in charge of compliance, doesn't have a team of lawyers or a team of paper filers in the back office to take care of it, that is a real burden. It distracts the principals of the business from doing what they set out to do, the main focus and mission of the business.

All too often, the way those regulations and requirements are administered is in the tone of a ''gotcha'' game, fining small businesses for paperwork violations just to say ''gotcha,'' just for the sake of doing it, of issuing those violations and in some cases of gaining revenue for the department of government. All of that is wrong, and we need to change it.

Nobody here—myself included—is arguing that we don't need a legitimate layer of regulation to protect and promote health and safety, the environment, worker safety, et cetera. Nobody is arguing against that. That is not what we are talking about. What we are talking about today is an amendment I offer on the minimum wage bill which includes provisions I introduced separately as the Small Business Paperwork Relief Act of 2007. I thank Mr. NEUGEBAUER of Texas in the House for introducing identical companion legislation, as we both did in the last Congress. Again, this is basic, straightforward, simple, but very important to small business.

This is exactly how it would work. It would direct Federal agencies not to impose civil fines for a first-time violation of their agency's paperwork requirements by a small business unless the head of the agency determines the following: the violation has the potential to cause serious harm to the public interest; not issuing a fine may impair criminal investigations; the violation is a violation of Internal Revenue law; the violation is not corrected within 6 months; or the violation presents a danger to public health or safety. In addition, the amendment says that fines can be waived in the case of a violation that could potentially present a danger, if the violation is corrected within 24 hours of the small business receiving notification of the violation. It is important that the first list of those possibilities are mandatory. An agency can't issue civil fines for a first-time violation unless one of those things happens. But the second part of it—fines can be waived unless corrected within 24 hours—is discretionary. A fine doesn't have to be waived in that instance by the appropriate Federal regulatory agency.

This is very constrained, very limited, very common sense. Again, the most important part of the provision is, it is first-time violations. It is a small business. It is civil penalties only. We are not talking criminal. We are not talking a big business with a big compliance section. We are not talking a mandatory waiving of fines for health and safety violations where it goes to public health.

This is not only a reasonable thing to do, it is long overdue considering the enormous compliance costs I alluded to before—$7,600 per worker for a small business of 20 employees or less—just to take care of Federal requirements. That doesn't count State or local. We are only dealing with Federal because we are the Federal legislature.

This bill is particularly relevant to my home following the devastation of Hurricanes Rita and Katrina. The small business base in Louisiana was devastated by those horrific events. In many areas, small businesses are starting from scratch, and the whole community of small businesses is starting from scratch as it begins to recover from that destruction. Particularly in that context, they need this sort of reasonable relief—limited, focused civil fines only, first-time violations only, small business only, only mandatory waiver when it doesn't involve a threat to public health and safety, all of the very strenuous and carefully outlined requirements I set out.

I hope everybody in this Chamber can come together to support this commonsense proposal. In a broader vein, I hope this is a part—not the only element but a part—of our coming together to pass a minimum wage increase with small business regulatory

and other relief. We should not do one or the other in this context; we should do both. That is the reasonable bipartisan compromise which I hope we are moving to on the Senate floor—yes, a minimum wage increase; yes, real and meaningful regulatory and other relief for small business such as the commonsense paperwork reduction act.

In addition, I hope that small business relief involves relief in an area that is most important to small business and so many millions of Americans; that is, the ability to access and afford health insurance. We will have amendments about that as well.

I urge all Members of the Senate to support this modest commonsense but important measure. I urge all Members of the Senate to come together to support a minimum wage increase with real relief for small business, whether it is dealing with paperwork, whether it is affording or accessing health care insurance—all of those important things small businesses face while continuing to be the engine of job creation, the backbone of our Louisiana and American economy.

I yield the floor.

The PRESIDING OFFICER. The Senator from Washington is recognized.

Mrs. MURRAY. Mr. President, America's workers deserve a raise, and that is why I rise in strong support of S. 2, the Fair Minimum Wage Act of 2007. America's workers have helped our country make tremendous gains in productivity and economic growth, and they deserve to share in the prosperity they have created. I am very proud to represent a State that has a high minimum wage, and I want to share some of the lessons we have learned about providing a living wage in the State of Washington.

We need to do the right thing and pass a clean minimum wage bill now, without any of the antiworker amendments that may be offered on the other side. As we have heard, it has been almost 10 years since this Congress last raised the minimum wage. During that time, the real value of that wage has fallen by more than 21 percent. At the same time, the costs of health care, energy, and housing have all gone up significantly. As a result, many of our middle-class workers have been squeezed. I can only imagine the challenges minimum wage workers face every day while trying to maintain their families and their dignity on $10,000 a year. We can be proud that America's businesses have prospered over the last decade, thanks to a 31-percent increase in worker productivity and a huge 47-percent increase in profits. Now it is time for the least paid of America's workers to share in those gains.

During this debate, we have heard the usual claims that raising the minimum wage hurts businesses. In my State, that has not been the experience. Washington State, in fact, has the highest minimum wage in the country. We are living proof that a livable minimum wage is good for our State economy, good for small businesses, and it is good for our citizens. In 2006, our State's average unemployment rate was 4.9 percent, the lowest since 1999. We created 79,000 new jobs. Our poverty rate is 11.9 percent, which is lower than the national average. And our median household income stands at $49,000, much higher than the national average.

Our State minimum wage, which is indexed to inflation, has helped make for good labor productivity and a healthy economy. We have heard from my esteemed colleague, Senator KENNEDY, chairman of the HELP Committee, that States with higher minimum wages create more small businesses and more jobs. Last year, the Fiscal Policy Institute reported that States with a higher minimum wage created nearly 10 percent more jobs and 5 percent more small businesses. A May 2006 Gallup Poll found that 86 percent of small business owners thought that raising the minimum wage did not affect their businesses. I could cite statistics like that all day, but I think the best evidence is really what continues to happen in my State compared with a neighboring State that has a much lower minimum wage.

Washington State's minimum wage is $7.39 an hour. Right next door to us, Idaho has a minimum wage at the Federal level of $5.15 per hour. Since 1998, when our voters in Washington State passed our minimum wage law, Washington employers have been flooded with job applicants from Idaho. Now Washington companies can pick the best qualified workers from the entire region. On January 11, the New York Times reported that Washington State businesses have seen great benefits, while Idaho businesses have not.

I ask unanimous consent to print this New York Times article by Timothy Egan in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mrs. MURRAY. This article quotes Don Brunell, president of the Association of Washington Business. He says that raising the Federal minimum wage is ''almost a no-brainer.'' Washington's strong economy is proof that even with the highest minimum wage in the United States, as Mr. Brunell put it—and he is president of the Association of Washington Business—''Washington is a great place to do business.''

Some people predicted that small businesses would be hurt in my State. But instead, as the article notes, they have prospered beyond their expectations. So we have a lot of opportunity to do good here, not just for our workers but for our businesses and for our economy. But to do the most good, we have to pass a clean bill, one that is free from unrelated tax provisions and one that rejects antiworker amendments.

Historically, Congress has not found it necessary to pair a minimum wage increase with a package of tax giveaways. In fact, since 1936, Congress has raised the minimum wage nine times. But only once has such an increase been paired with a tax rollback. We should pass a clean bill that gives workers the raise they are long overdue.

In addition, we should not let this bill be used to weaken the rights of American workers. As the chairman of the HELP Subcommittee on Employment and Workplace Safety, I am troubled by a number of the amendments being floated now by our Republican colleagues, proposals to attack the 40-hour workweek, to take away workers' overtime, and to force a pay cut on workers who earn their living from tips. There is also a deeply flawed proposal that would change the treatment of professional employer organizations under the Tax Code.

This week, while we try to raise the wages of one group of workers, we have to fend off the Republican attacks on working families and their right to earn overtime. We all know how the demands of work and family pull two-career parents away from their loved ones all too often. For parents getting their kids to and from school and to afterschool activity is not easy, especially when you are forced to work uncertain hours. The uncertainty of having to work, say, 50 to 60 hours this week and then 20 or 30 hours next week will put incredible strains on many of our overburdened families.

Taking away their workplace rights and their ability to collect overtime would be a cruel and unwarranted double hit on America's working families. The Senate should, once again, reject the Republican comp time and 40-hour work week proposals, because they would force a pay cut on millions of middle-class workers. We know, for those workers who are eligible, overtime can amount to as much as 25 percent of their yearly income. We should not undermine the ability of working parents to balance their lives and share in the American dream.

The Republican comp time proposal would force our workers to take comp time instead of pay. On top of that pay cut, workers would be at the mercy of their employer when it came to asking to use that accumulated comp time. We all know that comp time often disappears under employer pressures of deadlines and other productivity needs.

I believe it is important that this Congress protect the rights of these hard-working families from an erosion of their quality of life and their ability to spend time with their families. We have to stop these attacks on working families and start moving in the right direction, like expanding the Family and Medical Leave Act.

I hope we also work to protect our workers who rely on tips. As we have heard from my female colleagues on this floor already, nearly two-thirds of

our minimum wage workers in this country are women. Many of them are single parents. Raising the minimum wage can give them a small measure of economic security and the ability to better support their families. Many of these low-wage workers are service workers, people such as hairdressers, maids, and waitresses. Many in Washington State rely on tips as a significant part of their livelihood. We should not support amendments that would undermine the tips our workers rely on. In my State of Washington, that would mean a pay cut of some $12,000 annually for over 120,000 of our tipped workers.

Finally, I want to say I am very concerned about the proposed tax changes for professional employer organizations. I fear that this change could undermine the fiscal stability of our State unemployment insurance and worker compensation fund. It would also put more burdens on our employers who are already playing by the rules.

Further, it would reduce worker health and safety protections by undermining incentives for companies to maintain safe and healthy workplaces. By the way, it could also provide an opening for those seeking to change the well-established rules of the employer-employee relationship under the Fair Labor Standards Act. I believe there should be serious thought and debate in the Congress before we make such fundamental changes in our labor laws.

In conclusion, we can do this right by passing a clean bill that finally gives American workers the raise they have earned. Over the last 8 years, Washington State has proven that a minimum wage increase is good for our State's economy and helps our economic development. It increases small business ownership and, of course, it helps our workers maintain their quality of life.

I join my colleagues to urge a vote in favor of this bill to increase the minimum wage so that we can finally, and importantly, give our low-income workers the raise they so richly deserve.

I yield the floor.

EXHIBIT 1

[From the New York Times, Jan. 11, 2007]

FOR $7.93 AN HOUR, IT'S WORTH A TRIP ACROSS A STATE LINE

(By Timothy Egan)

LIBERTY LAKE, WA. Jan. 9.—Just eight miles separate this town on the Washington side of the state border from Post Falls on the Idaho side. But the towns are nearly $3 an hour apart in the required minimum wage. Washington pays the highest in the nation, just under $8 an hour, and Idaho has among the lowest, matching 21 states that have not raised the hourly wage beyond the federal minimum of $5.15.

Nearly a decade ago, when voters in Washington approved a measure that would give the state's lowest-paid workers a raise nearly every year, many business leaders predicted that small towns on this side of the state line would suffer.

But instead of shriveling up, small-business owners in Washington say they have prospered far beyond their expectations. In fact, as a significant increase in the national minimum wage heads toward law, businesses here at the dividing line between two economies—a real-life laboratory for the debate—have found that raising prices to compensate for higher wages does not necessarily lead to losses in jobs and profits.

Idaho teenagers cross the state line to work in fast-food restaurants in Washington, where the minimum wage is 54 percent higher. That has forced businesses in Idaho to raise their wages to compete.

Business owners say they have had to increase prices somewhat to keep up. But both states are among the nation's leaders in the growth of jobs and personal income, suggesting that an increase in the minimum wage has not hurt the overall economy.

''We're paying the highest wage we've ever had to pay, and our business is still up more than 11 percent over last year,'' said Tom Singleton, who manages a Papa Murphy's takeout pizza store here, with 13 employees.

His store is flooded with job applicants from Idaho, Mr. Singleton said. Like other business managers in Washington, he said he had less turnover because the jobs paid more.

By contrast, an Idaho restaurant owner, Rob Elder, said he paid more than the minimum wage because he could not find anyone to work for the Idaho minimum at his Post Falls restaurant, the Hot Rod Cafe.

''At $5.15 an hour, I get zero applicants—or maybe a guy with one leg who wouldn't pass a drug test and wouldn't show up on Saturday night because he wants to get drunk with his buddies,'' Mr. Elder said.

For years, economists have debated the effect that raising the minimum wage would have on business. While the federal minimum wage has not gone up for 10 years, 29 states have raised their wage beyond the federal minimum.

These increases, according to critics like Brendan Flanagan of the National Restaurant Association, are a burden on the small, mostly family-run businesses in fast food and agriculture that employ workers at the lowest end of the pay scale.

''We see the political momentum for this,'' said Mr. Flanagan, a vice president at the association, ''but we cannot ignore what our members are telling us, which is that it will lead to job losses.''

But the state's major business lobby, the Association of Washington Business, is no longer fighting the minimum-wage law, which is adjusted every year in line with the consumer price index.

''You don't see us screaming out loud about this,'' said Don Brunell, president of the trade group, which represents 6,300 members.

''It's almost a no-brainer,'' Mr. Brunell said, that the federal minimum should go higher. Association officials say they would like to see some flexibility for rural and small-town businesses, however.

Washington's robust economy, which added nearly 90,000 jobs last year, is proof that even with the country's highest minimum wage, ''this is a great place to do business,'' Mr. Brunell said.

During a recession five years ago, the same group had argued that Washington's high minimum wage law would send businesses fleeing to Idaho. The group sent out a news release with a criticism of the law from John Fazzari, who owns a family-run pizza business in Clarkston, Wash., just minutes from the Idaho town of Lewiston.

But now Mr. Fazzari says business has never been better, and he has no desire to move to Idaho.

''To tell you the truth, my business is fantastic,'' he said in an interview. ''I've never done as much business in my life.''

Mr. Fazzari employs 42 people at his pizza parlor. New workers make the Washington minimum, $7.93 an hour, but veteran employees make more. To compensate for the required annual increase in the minimum wage, Mr. Fazzari said he raises prices slightly. But he said most customers barely notice.

He sells more pizza, he said, because he has a better product, and because his customers are loyal.

''If you look 10 years down the road, we will probably have no minimum wage jobs on this side of the border, and lots of higher-income jobs,'' Mr. Fazzari said.

Job figures from both states tend to support his point. While Idaho leads the nation in new job growth, it has a far higher percentage of minimum-wage jobs than Washington. Minimum-wage positions make up just 2.4 percent of the jobs in Washington, while about 13 percent of the jobs in Idaho pay at or less than the proposed federal minimum wage, according to a study done for the state last year.

Part of the difference could be accounted for by a lower cost of living in Idaho and the higher percentage of technology, manufacturing and government jobs in Washington, economists say. Still, it is hard to find a teenager in Idaho who lives anywhere near Washington who is willing to work for $5.15 an hour.

''Are you kidding? There are so many jobs nearby that pay way more than minimum wage,'' said Jennifer Stadtfeldt, who is 17 and lives in Coeur d'Alene, which is just a few minutes from Washington. She pointed out that Taco Bell, McDonald's and other fast-food outlets in her town were posting signs trying to entice entry-level workers with a starting pay of $7 an hour.

The House today passed a bill increasing the minimum wage, and about 13 million workers would see a pay raise if the Senate and President Bush approve it. Mr. Bush has said he would approve the wage increase so long as concerns of small-business owners were taken into account; the Senate has not yet taken up the bill.

Several studies have concluded that modest changes in the minimum wage have little effect on employment. A study two months ago by an economist at Washington State University seemed to back the experience of Clarkston and other border towns in Washington. The economist, David Holland, said job loss was minimal when higher wages were forced on all businesses. About 97 percent of all minimum-wage workers were better off when wages went up, he wrote.

But other business groups argue that an increase would hurt consumers and workers at the low end.

In a survey released on the eve of the November elections—in which voters in six states considered raising their minimum wages—the National Restaurant Association said restaurants expected to raise their prices and eliminate some jobs if the voters approved the measures. The initiatives all passed.

Here on this border, business owners have found small ways to raise their prices, and customers say they have barely noticed.

''We used to have a coupon, $3 off on any family-size pizza, and we changed that to $2 off,'' said Mr. Singleton, of Papa Murphy's. ''I haven't heard a single complaint.''

The PRESIDING OFFICER. The Senator from Massachusetts, Mr. KERRY, is recognized under the unanimous consent agreement.

Mr. KERRY. Mr. President, I thank my colleague Senator KENNEDY for his courtesy in helping to make it possible for me to have some time.

Mr. KENNEDY. Mr. President, parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. KENNEDY. Mr. President, I know my colleague has already been recognized. There is no time limitation, is there?

The PRESIDING OFFICER. It was up to 20 minutes.

Mr. KENNEDY. Mr. President, I ask unanimous consent that he may be able to speak for as long as he needs to.

Mr. ENZI. There is no objection. I ask unanimous consent that following the majority's speakers, we give time for Senator DEMINT and Senator SUNUNU.

Mr. REID. Mr. President, I ask unanimous consent that I be recognized for a couple minutes, also. I would appreciate that.

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

The Senator from Massachusetts is recognized.

THE STRATEGY IN IRAQ

Mr. KERRY. Mr. President, last November, the American people sent an unmistakable and incredibly important message to their elected leaders. They didn't ask for it, they demanded a change of course in Iraq. The American people understand that the current strategy is not working. They have demanded that we honor the extraordinary effort of our troops by providing a strategy for Iraq that is actually worthy of their sacrifice. They don't consider more of the same—additional troops essentially doing what they have been doing before—they don't consider that anything other than an escalation of our military involvement, linked to the same mistakes and same illusions of the past. They don't consider that an acceptable strategy.

This new Congress comes here with a mandate, as well as a moral obligation, to find not just a new way forward in Iraq but the right way forward. That is what we owe the families; that is what we owe those fighting forces.

It is clear the administration's litany of mistakes has made an incredibly difficult task that much harder and has reduced what we can reasonably expect to accomplish. As the saying goes around here, we are where we are. The mistakes of the past do not change the fact that Congress bears some responsibility for getting us into this war and, therefore, must take responsibility for getting us out.

That responsibility starts by having a real bipartisan dialog on where we go from here. I believe we are finally at the point where that can happen. We all agree about the nobility of the service of our troops. We all agree about the incredible bravery of the men and women of our Armed Forces who put their lives on the line every single day in Iraq. We all want to see a stable Iraq. We all know Iraqis want to see it, too. We all agree on the need to preserve our vital national security interests in the region, and we all agree on the importance of preventing the violence in Iraq from spreading into a broader regional conflict. We all understand the need to prevent Iraq from becoming a safe haven for al-Qaida and like-minded terrorists. We all understand the potential of regional chaos and of failed states spreading one to the other.

In order to understand, however, where we go from here, we have to remind ourselves of the real nature of this conflict. It is not enough to sort of find some safe haven in rhetoric that points out all of the downsides but continues to pursue a policy that, in fact, increases those downsides, invites those downsides, actually makes matters worse.

The civil war we are in the middle of now didn't begin when we went there. It had been tamped down, quashed by a dictatorship and by history. Before I went back to visit the Middle East, I had the chance to read a book by Vali Nasr, called ''The Shia Revival,'' in which he traces the history of Shiaism and what is happening in the Middle East today. What we learned from that is instructive and critical to determining whether troops will make a difference on how we resolve what is happening in Iraq today.

When the Prophet Mohammed died, Ali, who was his cousin and stepson and virtual son, was passed over at that time to be the caliph. In fact, three people were chosen in between him. Ultimately, he did become the caliph, but that was the beginning of the difference of the separation, if you will, within Islam. That became far more pronounced about 1,300 years ago, around 680, when the grandson of Ali was slaughtered in the desert along with 72 of his followers—72, a number that comes back to haunt us today, because that was indeed an event in Karballah in 682 that defined martyrdom, which we see played to by the extreme religious efforts that are taking place today in the Middle East.

Why do I mention this today? Because that is where the great Shia-Sunni divide began. Ali and his followers were beheaded in the desert, their bodies left to rot in the sun. Their heads were posted, first in Najaf, and later in Damascus. That began to instill a depth of both anger and suppression that has gone on all of these centuries.

The fact is that we, through our invasion and our election, have given the Shia at the ballot box what they never could achieve all of those years, and the Sunni, who have continually been the dominant, more secular faction that managed the affairs of state, are suddenly finding themselves in the minority; many believe they were born to the right to rule and are determined to restore it. This is the civil conflict we have put ourselves in the middle of, with American troops who don't speak the language going door to door and house to house, attempting to somehow make sense of an alien environment they have been plunged into—from California, Kansas, Missouri, Massachusetts, and all of our States. We are doing precisely what Secretary Rumsfeld said we would not do—putting our troops in the middle of a civil war.

On my recent trip to the Middle East, I heard grave concerns expressed by Sunni leaders, Mubarak and others, about the Shia resurgence and Iran's growing influence in the region. Indeed, Iran's influence has grown, and we are partly responsible, if not significantly responsible, for that growth. We need to stand up for our allies in the region, our Sunni friends, yes. But we can and must do it in a way that doesn't exacerbate the Sunni-Shia rift in the region. That is why we have to ask more of our Sunni allies when it comes to pressuring the Sunnis in Iraq to accept that, with this turn of events called an election, they will no longer—absent a revolution, which some are planning on—be running the country, and that they must lay down their arms and join the political process.

We must make clear that countries such as Saudi Arabia can and must do more to crack down on support for those Sunni insurgents coming into Iraq from their country. We dare not forget that it is the Sunni insurgents who are killing many of our troops. Most of those troops have died in Anbar Province. We have a right to demand more from the Sunni neighbors to quell that insurgency. We must encourage those Sunni neighbors to step up in terms of providing debt relief and reconstruction assistance, and we must make clear that threatening to intervene in Iraq in a way that is perceived as being on behalf of the Sunni minority only serves to exacerbate the Sunni-Shia complexity, the tension that is causing so much of the violence today.

Now here in Washington, a combination of events on the ground and the November election results are beginning to produce a bipartisan resolve to genuinely change course. Many on both sides of the aisle now agree that the administration's plan to escalate the war in Iraq by sending in some 21,500 additional troops would represent a tragic mistake. It won't end the violence; it won't provide security; it won't turn back the clock and avoid the civil war that is in fact already underway; it won't deter terrorists who have a completely different agenda; it won't rein in the militias who are viewed as the protectors of the general population. It will simply postpone the political solution that is the only solution in Iraq, while further damaging our prestige and credibility in the region. Unfortunately, it will also expose our troops to unnecessary death and injury.

Our generals understand this. General Abizaid said clearly in his testimony before the Armed Services Committee that more U.S. troops will not

solve the security problem. In fact, he said they would only slow the process of getting Iraqi security forces to take more responsibility. The Joint Chiefs of Staff unanimously oppose this escalation. In fact, according to recent news reports, the Pentagon warned that any short-term mission may only set up the United States for bigger problems when it ends.

A short-term mission could give an enormous edge to virtually all the armed factions in Iraq, including al-Qaida's foreign fighters, Sunni insurgents and Sunni and Shiite militias, without giving an enduring boost to the U.S. military mission or the Iraqi Army. And it is not just the advice of his military commanders in Iraq the President is ignoring, it is the bipartisan counsel of the Iraq Study Group appointed for the very purpose of defining a new course.

Mr. President, what kind of arrogance so willfully kicks to the curb the work product of two former Secretaries of State, Republicans, a former Attorney General and Chief of Staff, Republican, a former Senator and member of the leadership, Republican, and a group of moderates, a former Secretary of Defense, and others respected for the moderation of their views on foreign policy and security issues? What kind of arrogance avoids almost all of those recommendations and moves in a different direction?

Rather than change course, this administration chose to ignore the generals. In fact, it chose to change the generals. The folly of this escalation is so clear that we have a bipartisan responsibility to do everything in our power to say no.

I ask my colleagues: Is there one colleague here who believes that 21,500 troops is going to pacify Iraq? Is there a colleague here who believes that 100,000 troops will pacify Iraq? It is not enough for Congress simply to go on record opposing the President's reckless plan. That is why I support the resolution submitted by my colleague, Senator KENNEDY, that requires a new congressional authorization, which is appropriate because the prior authorization only applies to the weapons of mass destruction and to the threat that Iraq poses to us based on the presence of Saddam Hussein. This is a new Iraq, and it is an Iraq with a civil war, and the Congress of the United States has a responsibility and a moral obligation to make certain that if our troops from each of our States are going to fight and die, we stand up and be counted as to what the force structure is to be, as to what their mission should be because this administration has proven unwilling to get it right.

Stopping this escalation, however, is not enough. I believe Congress has to provide a responsible exit strategy that preserves our interests in the region, preserves our ability to continue to protect the security of the United States, and honors the sacrifice our troops have made. I believe those are tests we need to pass.

Six months ago in the Senate, we stood against appeals to politics and pride and demanded a date to bring our troops home, to make Iraqis stand up for Iraq and fight a more effective war on terror. But while we lost that rollcall, I still believe it was the right policy to put in place, to demand benchmarks, to demand accountability, and to leverage action.

That is why I will again introduce legislation, slightly different this time, in order to try to offer a comprehensive strategy for achieving a political solution. I believe the strategy I will set forth is the best way forward for America and for Iraq. We have to find a way to end this misguided war and bring our troops home, and the legislation, while protecting all the interests I described, I believe can do that.

I believe the Iraq Study Group's recommendations can form the basis for finding a bipartisan way forward. Many of those proposals, which are consistent with proposals that some in the Senate have long advocated, are incorporated in the legislation I will offer, including launching a major diplomatic initiative, enforcing a series of benchmarks for meeting key political objectives, shifting the military mission to training Iraqi security forces and conducting targeted counterterrorism operations, maintaining an over-the-horizon presence to protect our interests supported by a concerted effort to disarm, demobilize, and reintegrate the militias which must be undertaken by Iraqis.

This legislation includes an additional provision that is a critical component of the strategy. I know a lot of colleagues were nervous about setting a date. Fewer are as nervous today. But I believe there is a way to require the President to set that date, negotiate that exit, a way to do it constitutionally and also within the context of the reauthorization.

I think that is not an arbitrary deadline. In fact, the Iraq Study Group report effectively sets a goal of withdrawing U.S. combat forces from Iraq by the first quarter of 2008, or within approximately 1 year. This date was based on the timeframe for transferring responsibility to Iraqi security forces set forth by General Casey and on the schedule agreed upon with the Iraqi Government itself for achieving key political security objectives.

The President even said that under that new strategy, responsibility for security would be transferred to Iraqis before the end of this year. That is how unarbitrary it is. The President has said it, our generals have said it, the Iraq Study Group has said it.

I wish to repeat this because it is important because it is continually distorted. We all want success, but we have to examine the realities of the road to success. An effort that combines diplomacy with smart deployment of our troops is the only road to success.

I ask my colleagues: Where is the diplomacy? Many of us can remember, under a Republican President, Henry Kissinger shuttling back and forth day and night working to bring an end to the Vietnam war. Many of us can remember Jim Baker, at the beginning of the decade in the nineties, when he took 15 trips to Syria alone, and on the final trip got President Asad to actually agree to support what we were doing. That is diplomacy.

We don't have that kind of diplomacy. We lack even a special envoy there day to day, hour to hour, leveraging the Arab League, leveraging the United Nations, working with the U.N. Perm Five, working with the neighboring countries, doing the kinds of significant, heavy diplomatic lifting our sons and daughters who are dying deserve.

As our combat troop levels wind down, we can have sufficient forces to confront the Sunni insurgency. We can still continue to prosecute al-Qaida, but our core security interests—the security interests of preventing another terrorist attack on our country—those interests lie where our troops can still play a positive role in confronting Sunni insurgents and their al-Qaida allies. That will happen when we focus on Al Anbar Province, not Baghdad.

It is time for Iraqis to assume responsibility for their country, and that is not just a statement. It has been 4 years, 300,000 troops are trained. When I talk with the military people, they don't tell me training is the problem. They tell me motivation is the problem. Those 300,000 troops are not prepared to die for an Iraq yet, and they are mostly local militia and/or local tribe affiliated, which is their true allegiance at this point in time.

We need a timetable which forces Iraqi politicians to confront this reality. Americans should not be dying because Iraqi politicians refuse to compromise and come together. If they are not willing to do it today with thousands of people dying around them, with this kind of sectarian violence, what will make them more willing to do that in a year? They are using the security blanket of American presence in order to avoid making those compromises, and we need to understand that and get about the business of leveraging the compromise that is the only solution to what is happening in Iraq.

I believe a deadline will actually help provide the Iraqis with the motivation and the pressure to step up and take control. General Abizaid made it clear that is essential to our strategy. The key to providing the motivation is making sure they, in fact, begin to take control and begin to define their own future.

As we give the Iraqis more control over their own destiny, we also have to hold them accountable for the fundamentals of leading their country on the construction, as well as the basic resolution, the political differences within the oil revenues, the federalism

issue, which are the two great stumbling blocks fundamental to a resolution.

Why the President didn't make the condition of providing additional security and putting additional Americans online, why he didn't make their resolution of those issues a precondition is beyond me. But American forces are now going to be put at greater risk, more kids at harm, without the fundamentals that are essential and that are completely out of the power of any squad or company or battalion to be able to resolve.

When Prime Minister Maliki took power in May, General Casey and Ambassador Khalilzad said the new Government had 6 months to make the political compromises necessary to win public confidence and unify the country—6 months last May. They were right. And yet with no real deadline to force the Government's hand, that period passed without any meaningful action, and we are now seeing the disastrous results.

To ensure history does not repeat itself, we need to put those benchmarks in place, and we need to have those benchmarks agreed upon. That is the least, again, we can ask on behalf of our troops.

I, also, believe a deadline is essential to getting Iraq's neighbors to face up to the realities of the security needs of the region. If we are going to be concerned about Iran, it should not be surreptitiously based on them using us. It should be all of us together defining a new security arrangement for the region. General Zinni has talked about that many times. He is one of the most respected hands in that region.

In addition, our own intelligence agencies tell us that the war in Iraq is fanning the flames of jihad, and we have to stop serving as an al-Qaida recruitment tool. When are we going to take that seriously in the Senate? We spent a lot of time and energy to reorganize the intelligence community. We supposedly have the best intelligence now, and that intelligence in the conglomerate is telling us that this current policy is putting America at greater risk because we are creating more terrorists, fanning the flames of unrest in the region, and creating a recruitment tool for al-Qaida in that region.

We can see the results. Hamas is more powerful now. Hezbollah and Nasrallah are more powerful today. Iran is more powerful today. Syria is more than willing to play with Iran than care about what the concerns might be of the rest of the region.

We have gone backward because of this policy. How can this administration stand up and say to us that we have to fear the security interests of the future, when the security interests of the present are moving in the wrong direction?

Afghanistan, where the diversion of resources to Iraq has already allowed the Taliban to rise again, is increasing as a threat to those long-term security interests. Osama bin Laden roams free while a regenerated al-Qaida continues to plot attacks on American interests, and the flourishing opium trade has turned the country into a virtual narcostate, funding insurgents and warlords and threatening the viability of the Karzai Government.

Now our generals in Afghanistan are warning, in the darkest possible terms, that the Taliban is poised to launch a major new offensive in Afghanistan, and they have issued an urgent appeal for more U.S. troops to fight back. Instead of sending 20,000 troops over to Iraq, we ought to be listening to our military commanders and give them the few thousand more troops they desperately need to deal with the Taliban in Afghanistan.

On the broader regional front, we clearly need to come to grips with the need to engage Iran in a way that not only deters Iran from nuclear and other military adventurism, but does not create another disastrous war that is not in our national security interest. I want to take one moment before closing to speak to that point.

I am hardly the only one in the Senate who is concerned about a terrible byproduct of the administration's escalation plan for Iraq. That byproduct could be movement towards a calculated military conflict with Iran, which would further destabilize the Middle East, fan the flames of intra-Muslim and Muslim-Western violence. In fact, many Americans are increasingly concerned that the administration's rhetoric regarding Iran sounds eerily familiar.

Congress must make it absolutely certain that we do not make the same mistake we made in rushing to war with Iraq, starting by making it clear President Bush does not have the authority to engage Iran militarily, excepting, of course, an immediate attack on our troops or a definable and palpable emergency. He does not have the authority to engage them without express congressional authorization.

Looking at recent developments, it is not hard to see why people are concerned. In the President's speech introducing his new Iraq strategy, he issued a thinly veiled threat that sounded as though the administration was at least contemplating military operations on the Iranian side of the border. In the last few weeks we have arrested Iranian nationals in two separate incidents in Iraq. The initial operations against Shiite militias in Baghdad at a minimum are bound to exacerbate tensions with Iran even further, and we recently sent another aircraft carrier to the region, ratcheting up our aggressive posture.

Taken alone, individually, there is a certain logic to each of those actions. Taken on the whole, however, they have created an impression in the region, and as we all know impressions are what ultimately push leaders to make judgments about threat and to make determinations about their own actions. The impression in the region is that we have taken the side of the Sunnis in the conflict with Iraq. Whether that is true or not, we must never forget that in the Middle East especially, perception is reality. If we are seen to be favoring the Sunnis, we run the risk of alienating the Shiite majority that will ultimately be running Iraq—that is the reality—and inflaming extremism throughout the region. It is essential that we remain even-handed in our own actions as well as our words in our efforts to bring stability to Iraq.

There is another reason, as the Iraqi Study Group suggested, we should engage Iran and Syria. Leadership means talking to countries who are not our friends. President Kennedy reminded us: Never fear to negotiate but never negotiate out of fear. We need to engage directly when our vital national security interests are at stake. We have done it all through our history. Richard Nixon sent Henry Kissinger to China. President Reagan went to meet with Miguel Gorbachev and came to an agreement on arms after defining the ''evil empire.'' The conversation that I had recently in the Middle East with Senator DODD, when we traveled there together with President Asad of Syria, led us to believe that a dialog could, in fact, be constructed in working toward a goal that we share with Syria: creating a stable, secular, Arab Iraq. That is at least what President Asad said he would like. It seems to me, given the morass we are in, it is worth putting that to the test.

We cannot turn back the clock and reverse the decisions that brought us to this pass in Iraq and the Middle East. We cannot achieve the kind of clear and simple victory the administration promised the American people so often even as the conditions in Iraq grew worse and worse. But we can avoid an outright defeat. We can avoid creating the chaos we say we want to avoid. We can avoid a victory for our adversaries by identifying specifically what we can and cannot accomplish in Iraq.

With a new Congress comes a new responsibility: to get this policy right. That starts with preventing the President from going forward with this senseless escalation. And it has to end with finding an exit strategy that preserves our core interests in Iraq, in the region, and throughout the world.

I look forward to having a real debate. I hope we can find that way.

I might mention, when Senator DODD and I were about to helicopter out of Baghdad, we were at Landing Zone Washington, which is right in the Green Zone. Many Senators are familiar with it. In the darkness of night, as we were leaving, a young man came up to us to talk to us and he identified himself as an officer in the Army. He was going home for leave and was hitching a ride on the helicopter to go home. He went home, visited his 14-

month-old daughter and, I think, his 4-year-old son, if I am correct. His name was Brian Freeman and he was intelligent and thoughtful and bright and he talked about his future and talked with us animatedly about what was going on in Iraq and how he disagreed with what he was being asked to do and how others did. He went home, and we just learned that this Friday he was killed. So he went back. He did his duty as so many have.

I know when I returned from war, almost 40 years ago now, I stood up and spoke from my heart and my gut about what I thought was wrong. To this day that has been controversial in some quarters, but I am proud that I told the truth. And that truth has been documented again and again from Army training manuals to books that have been written to the statements of our own Secretary of Defense at that time, Robert McNamara. But, before I finish, I want to make it clear that that is my motivation in talking about this war now and this predicament that so many of these soldiers find themselves in.

I asked the question in 1971: How do you ask a man to be the last man to die for a mistake? Although I knew going into public service I wanted to be in a place where I could have an impact should there be a choice of war in the future, but I never thought that I would be reliving the need to ask that question again.

We are there. Most of our colleagues understand this is a mistake. Most of our colleagues understand that 21,000 troops is not going to pacify Iraq. So all of us have a deep-rooted obligation, a deep moral obligation to ask ourselves what we can do to further the interests of our Nation and honor the sacrifices of those troops themselves. I think it is to get this policy right. I hope the President will truly listen to us in these next days because we want to work in good faith to do that.

Before I finish, I want to add a note, both personal and political. Two years ago I sought the Presidency to lead us on a different course. I am proud of the campaign we ran, proud of the fact that 3 years ago I said that Iraq was the wrong war, in the wrong place, at the wrong time; proud that we defined energy independence and made it, for the first time, part of the Presidential race; proud of a health care plan that we laid out that to this moment remains viable and waiting to be used in order to lower the health care costs for our fellow Americans.

We came close, certainly close enough, to be tempted to try again. There are powerful reasons to want to continue that fight now. But I have concluded this is not the time for me to mount a Presidential campaign. It is time to put my energy to work as part of the majority in the Senate to do all I can to end this war and strengthen our security and our ability to fight the real war on terror.

The people of Massachusetts have given me an incredible privilege to serve, and I intend to work here to change a policy in Iraq that threatens all that I have cared about and fought for since I came home from Vietnam.

The fact is, what happens here in the next 2 years may irrevocably shape or terribly distort the administration of whichever candidate is next elected President. Decisions are being taken and put into effect today and in the days to come that may leave to the next President a wider war, a war even more painful, more difficult, more prolonged than the war we already have.

Iraq, if we Senators force a change of course, may yet bring stability and an exit with American security intact or it may bring our efforts in the region to a failure that we will all recognize as a catastrophe.

I don't want the next President to find that he or she has inherited a nation still divided and a policy destined to end as Vietnam did, in a bitter or sad legacy. I intend to devote all my efforts and energies over the next 2 years, not to the race for the Presidency for myself but for doing whatever I can to ensure that the next President can take the oath with a reasonable prospect of success for him or her—for the United States. And I intend to speak the truth as I find it without regard for political correctness or partisan advantage, to advise my colleagues and my fellow citizens to the best of my ability and judgment, and to support every action the Senate may reasonably and constitutionally take to guide and direct the ship of state.

This mission, this responsibility, is something all of us must accept, and as someone who made the mistake of voting for the resolution that gave the President the authority to go to war, I feel the weight of a personal responsibility to act, to devote time and energy to the national dialog in an effort to limit this war and bring our participation to a conclusion.

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

Mr. KENNEDY. Mr. President, I know how difficult of a decision this is for Senator KERRY to make. And today, I say to the people of the country how proud all of us in Massachusetts are of JOHN KERRY, and his outstanding service in the United States Senate for our State and for our country. Throughout his career, he has been a true hero in every sense of the word.

He has been my colleague since 1984, and I have deeply valued the opportunity to work side-by-side with him, but most of all I'm proud to call him my friend. Over the years, Vicki and I have grown so close to JOHN and his wonderful wife Teresa and his loving daughters Vanessa and Alexandra. They are a special family, and their friendship is one we cherish.

We heard just a few moments ago why he was able to galvanize the country, and earn such tremendous support, in the 2004 Presidential campaign. The eloquence, the passion, the insight, the knowledge of history, and awareness of public events—these qualities we saw on display just moments ago in this Chamber—these are the qualities that characterize and define the career of JOHN KERRY.

Now JOHN has decided to continue to devote his passion, his interest, and his energies toward bringing our troops home from Iraq safely, and how fortunate they are to know that he will devote all of his energies to that cause over the next months—hopefully not years. All of us in Massachusetts look forward to his continued service in the United States Senate for years to come and to his voice and his vote working here for the working people of Massachusetts, for their jobs, for their health care, for the education of their children, for the betterment of their environment, and for their hope for a better quality of life. He's been there for us in the past on so many of these critical concerns, and we take comfort in knowing he'll be there for all of us in the future as well.

I know this has been a difficult time for JOHN. I congratulate him on an outstanding presentation this afternoon, and for his courage and determination. I congratulate him for continuing to want to make a very important difference on the overarching and overriding issue of our time, and that is how we can remedy this catastrophic mistake of Iraq and bring our servicemen home safely.

I'm grateful to be able to call JOHN KERRY my colleague and friend, and look forward to working with him for years to come.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I have had the good fortune in my lifetime, my adult life, to see people for whom I have developed a tremendous respect and admiration, and certainly one of those people is JOHN KERRY. Why? Why would I say that about JOHN KERRY? Why would I say that as I have traveled through life he is one of those people who has meant so much to me in being a role model for the things that I do and the things that I think the American people should focus on?

He has a tremendous educational background—Yale, Boston College. He was a prosecutor. He was a war hero. A war hero—multiple awards, fighting in the jungles of Vietnam, for heroism. We saw someone last night stand in the House Chamber whom the President directed, who received the Silver Star, and that is wonderful. We all looked at him with admiration. JOHN KERRY has had a Silver Star, multiple Purple Hearts—I repeat, multiple awards for bravery. He is a political activist, someone who at great sacrifice decided to do gallant things after his heroic efforts in Vietnam. He came home and continued being a hero politically. The people of Massachusetts elected him to Lieutenant Governor, a job I also had,

and I have some understanding about that job. He came to Congress the year I did. In 1982, we both came here. He is a cancer survivor. His wife is one of the most remarkable people I have ever met. Teresa Heinz is a real fighter in her own way. I knew her before the Presidential election, but I got to know her very well during the Presidential election, and I like her so much.

JOHN KERRY was my nominee for President of the United States. I worked hard for JOHN KERRY. I believed in JOHN KERRY. I believed JOHN KERRY would change the direction of this country and the world. I still believe that. JOHN KERRY came within a few votes of being President of the United States in one of the dirtiest, most negative, unfair campaigns I have ever witnessed. I am not going to go into all the things they did to JOHN KERRY other than to say that to try to take away from this man, his gallantry as a warfighter, was beyond the pale, but they did it.

JOHN KERRY and I have shared heartache together. We have done it recently. I will always have admiration and respect for JOHN KERRY. The mere fact that he announced he is not running for President speaks well of this gallant man, this heroic man, because he could run for President. He has money in the bank, so to speak. He knows people all over America. He has the best e-mail addresses in the country. He has chosen that this is not the time. But I will continue to look to JOHN KERRY for his leadership in foreign affairs. He is a man who knows this world. Listen to the speech he just gave on the conflict in Iraq, a textbook address about the ills of the present status of what we are doing in Iraq. He will approach whatever he does with a sense of morality. He will proceed to be one of the leaders, as he has been for decades, on the environment. He has a book coming out soon with his wife, and I am sure it will lay out things he has believed in for so long, such as health care. He is the chairman of the Small Business Committee.

So I say to JOHN KERRY: I love you, JOHN KERRY. I am so sorry things didn't work out for our country, but that doesn't take away from the fact that I will always care about you greatly and remember the times we have spent together. We have a lot more to do for Massachusetts, Nevada, and the country.

The PRESIDING OFFICER. The Senator from South Carolina is recognized.

Mr. DEMINT. Mr. President, before I engage in my business, I also would like to say to Senator KERRY that I, too, am honored to serve with you, and I appreciate the remarks that have been made about you today.

AMENDMENTS NOS. 155, 156, 157, 158, 159, 160, 161, AND 162, EN BLOC, TO AMENDMENT NO. 100

Mr. DEMINT. Mr. President, I ask unanimous consent that the pending amendment be temporarily set aside and that I be permitted to offer amendments Nos. 155 through 162, en bloc.

The PRESIDING OFFICER. Is there objection?

Mr. KENNEDY. Mr. President, as I understand, there are two speakers. I would like to ask unanimous consent that following the two speakers, Senator ENZI identify the Senator from Colorado, Mr. SALAZAR, to be recognized.

The PRESIDING OFFICER. The Senator from South Carolina has a unanimous consent request pending. Is there objection to that request? Without objection, it is so ordered.

Mr. KENNEDY. Mr. President, if the Senator would be kind enough to permit me to ask unanimous consent that following the next two speakers, the Senator from Colorado, Mr. SALAZAR, be recognized.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. KENNEDY. I thank the Chair.

The PRESIDING OFFICER. The clerk will report the amendments.

The legislative clerk read as follows:

The Senator from South Carolina [Mr. DEMINT] proposes en bloc amendments numbered 155 through 162.

Mr. DEMINT. Mr. President, I ask unanimous consent that the reading of the amendments be dispensed with.

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

The amendments are as follows:

AMENDMENT NO. 155

(The amendment is printed in the RECORD of Tuesday, January 23, 2007 under ''Text of Amendments.'')

AMENDMENT NO. 156

(Purpose: To amend the Internal Revenue code of 1986 regarding the disposition of unused health benefits in cafeteria plans and flexible spending arrangements)

At the appropriate place, insert the following:

SEC. ___. DISPOSITION OF UNUSED HEALTH BENEFITS IN CAFETERIA PLANS AND FLEXIBLE SPENDING ARRANGEMENTS.

(a) IN GENERAL.—Section 125 of the Internal Revenue Code of 1986 (relating to cafeteria plans) is amended by redesignating subsections (h) and (i) as subsections (i) and (j), respectively, and by inserting after subsection (g) the following:

''(h) CONTRIBUTIONS OF CERTAIN UNUSED HEALTH BENEFITS.—

''(1) IN GENERAL.—For purposes of this title, a plan or other arrangement shall not fail to be treated as a cafeteria plan solely because qualified benefits under such plan include a health flexible spending arrangement under which not more than $500 of unused health benefits may be—

''(A) carried forward to the succeeding plan year of such health flexible spending arrangement, or

''(B) to the extent permitted by section 106(d), contributed by the employer to a health savings account (as defined in section 223(d)) maintained for the benefit of the employee.

''(2) HEALTH FLEXIBLE SPENDING ARRANGEMENT.—For purposes of this subsection, the term 'health flexible spending arrangement' means a flexible spending arrangement (as defined in section 106(c)) that is a qualified benefit and only permits reimbursement for expenses for medical care (as defined in section 213(d)(1), without regard to subparagraphs (C) and (D) thereof).

''(3) UNUSED HEALTH BENEFITS.—For purposes of this subsection, with respect to an employee, the term 'unused health benefits' means the excess of—

''(A) the maximum amount of reimbursement allowable to the employee for a plan year under a health flexible spending arrangement, over

''(B) the actual amount of reimbursement for such year under such arrangement.''.

(b) REPEAL OF FSA TERMINATION PROVISION.—

(1) IN GENERAL.—Subsection (e) of section 106 of the Internal Revenue Code of 1986, as added by the Tax Relief and Health Care Act of 2006, is amended by striking ''health flexible spending arrangement or'' each place it appears.

(2) CONFORMING AMENDMENTS.—

(A) The heading of section 106(e) of such Code is amended by striking ''FSA OR''.

(B) Section 223(c)(1)(B)(iii)(II) of such Code, as added by the Tax Relief and Health Care Act of 2006, is amended to read as follows:

''(II) the balance of such arrangement is contributed by the employer to a health savings account of the individual under section 125(h)(1)(B), in accordance with rules prescribed by the Secretary.''.

(c) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to taxable years beginning after December 31, 2010.

AMENDMENT NO. 157

(Purpose: To increase The Federal minimum wage by an amount that is based on applicable State minimum wages)

In section 2 of the bill, strike subsection (a) and insert the following:

(a) IN GENERAL.—Section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) is amended to read as follows:

''(1) except as otherwise provided in this section, not less than—

''(A) beginning on the 60th day after the date of enactment of the Fair Minimum Wage Act of 2007, an amount equal to the minimum wage in effect on such date in the State in which such employee is employed (whether as a result of the application of Federal or State law) increased by $0.70;

''(B) beginning 12 months after that 60th day, the amount that would be determined under subparagraph (A) by substituting '$1.40' for '$0.70'; and

''(C) beginning 24 months after that 60th day, the amount that would be determined under subparagraph (A) by substituting '$2.10' for '$0.70';''.

AMENDMENT NO. 158

(Purpose: To increase the Federal minimum wage by an amount that is based on applicable State minimum wages)

In section 101 of the amendment, strike subsection (a) and insert the following:

(a) IN GENERAL.—Section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) is amended to read as follows:

''(1) except as otherwise provided in this section, not less than—

''(A) beginning on the 60th day after the date of enactment of the Fair Minimum Wage Act of 2007, an amount equal to the minimum wage in effect on such date in the State in which such employee is employed (whether as a result of the application of Federal or State law) increased by $0.70;

''(B) beginning 12 months after that 60th day, the amount that would be determined under subparagraph (A) by substituting '$1.40' for '$0.70'; and

''(C) beginning 24 months after that 60th day, the amount that would be determined under subparagraph (A) by substituting '$2.10' for '$0.70';''.

AMENDMENT NO. 159

(Purpose: To protect individuals from having their money involuntarily collected and used for lobbying by a labor organization)

At the appropriate place, insert the following:

SEC. ___. PROTECTION OF WORKERS' POLITICAL RIGHTS.

Title III of the Labor Management Relations Act, 1947 (29 U.S.C. 185 et seq.) is amended by adding at the end the following:

"SEC. 304. PROTECTION OF WORKER'S POLITICAL RIGHTS.

''(a) PROHIBITION.—Except with the separate, prior, written, voluntary authorization of an individual, it shall be unlawful for any labor organization to collect from or assess its members or nonmembers any dues, initiation fee, or other payment if any part of such dues, fee, or payment will be used to lobby members of Congress or Congressional staff for the purpose of influencing legislation.

''(b) AUTHORIZATION.—An authorization described in subsection (a) shall remain in effect until revoked and may be revoked at any time.''.

AMENDMENT NO. 160

(Purpose: To amend the Internal Revenue Code of 1986 to allow certain small businesses to defer payment of tax)

At the appropriate place, insert the following:

SEC. ___. DEFERRED PAYMENT OF TAX BY CERTAIN SMALL BUSINESSES.

(a) IN GENERAL.—Subchapter B of chapter 62 (relating to extensions of time for payment of tax) is amended by adding at the end the following new section:

"SEC. 6168. EXTENSION OF TIME FOR PAYMENT OF TAX FOR CERTAIN SMALL BUSINESSES.

''(a) IN GENERAL.—An eligible small business may elect to pay the tax imposed by chapter 1 in 4 equal installments.

''(b) LIMITATION.—The maximum amount of tax which may be paid in installments under this section for any taxable year shall not exceed whichever of the following is the least:

''(1) The tax imposed by chapter 1 for the taxable year.

''(2) The amount contributed by the taxpayer into a BRIDGE Account during such year.

''(3) The excess of $250,000 over the aggregate amount of tax for which an election under this section was made by the taxpayer (or any predecessor) for all prior taxable years.

''(c) ELIGIBLE SMALL BUSINESS.—For purposes of this section—

''(1) IN GENERAL.—The term 'eligible small business' means, with respect to any taxable year, any person if—

''(A) such person meets the active business requirements of section 1202(e) throughout such taxable year,

''(B) the taxpayer has gross receipts of $10,000,000 or less for the taxable year,

''(C) the gross receipts of the taxpayer for such taxable year are at least 10 percent greater than the average annual gross receipts of the taxpayer (or any predecessor) for the 2 prior taxable years, and

''(D) the taxpayer uses an accrual method of accounting.

''(2) CERTAIN RULES TO APPLY.—Rules similar to the rules of paragraphs (2) and (3) of section 448(c) shall apply for purposes of this subsection.

''(d) DATE FOR PAYMENT OF INSTALLMENTS; TIME FOR PAYMENT OF INTEREST.—

''(1) DATE FOR PAYMENT OF INSTALLMENTS.—

''(A) IN GENERAL.—If an election is made under this section for any taxable year, the first installment shall be paid on or before the due date for such installment and each succeeding installment shall be paid on or before the date which is 1 year after the date prescribed by this paragraph for payment of the preceding installment.

''(B) DUE DATE FOR FIRST INSTALLMENT.—The due date for the first installment for a taxable year shall be whichever of the following is the earliest:

''(i) The date selected by the taxpayer.

''(ii) The date which is 2 years after the date prescribed by section 6151(a) for payment of the tax for such taxable year.

''(2) TIME FOR PAYMENT OF INTEREST.—If the time for payment of any amount of tax has been extended under this section—

''(A) INTEREST FOR PERIOD BEFORE DUE DATE OF FIRST INSTALLMENT.—Interest payable under section 6601 on any unpaid portion of such amount attributable to the period before the due date for the first installment shall be paid annually.

''(B) INTEREST DURING INSTALLMENT PERIOD.—Interest payable under section 6601 on any unpaid portion of such amount attributable to any period after such period shall be paid at the same time as, and as a part of, each installment payment of the tax.

''(C) INTEREST IN THE CASE OF CERTAIN DEFICIENCIES.—In the case of a deficiency to which subsection (e)(3) applies for a taxable year which is assessed after the due date for the first installment for such year, interest attributable to the period before such due date, and interest assigned under subparagraph (B) to any installment the date for payment of which has arrived on or before the date of the assessment of the deficiency, shall be paid upon notice and demand from the Secretary.

''(e) SPECIAL RULES.—

''(1) APPLICATION OF LIMITATION TO PARTNERS AND S CORPORATION SHAREHOLDERS.—

''(A) IN GENERAL.—In applying this section to a partnership which is an eligible small business—

''(i) the election under subsection (a) shall be made by the partnership,

''(ii) the amount referred to in subsection (b)(1) shall be the sum of each partner's tax which is attributable to items of the partnership and assuming the highest marginal rate under section 1, and

''(iii) the partnership shall be treated as the taxpayer referred to in paragraphs (2) and (3) of subsection (b).

''(B) OVERALL LIMITATION ALSO APPLIED AT PARTNER LEVEL.—In the case of a partner in a partnership, the limitation under subsection (b)(3) shall be applied at the partnership and partner levels.

''(C) SIMILAR RULES FOR S CORPORATIONS.—Rules similar to the rules of subparagraphs (A) and (B) shall apply to shareholders in an S corporation.

''(2) ACCELERATION OF PAYMENT IN CERTAIN CASES.—

''(A) IN GENERAL.—If—

''(i) the taxpayer ceases to meet the requirement of subsection (c)(1)(A), or

''(ii) there is an ownership change with respect to the taxpayer,

then the extension of time for payment of tax provided in subsection (a) shall cease to apply, and the unpaid portion of the tax payable in installments shall be paid on or before the due date for filing the return of tax imposed by chapter 1 for the first taxable year following such cessation.

''(B) OWNERSHIP CHANGE.—For purposes of subparagraph, in the case of a corporation, the term 'ownership change' has the meaning given to such term by section 382. Rules similar to the rules applicable under the preceding sentence shall apply to a partnership.

''(3) PRORATION OF DEFICIENCY TO INSTALLMENTS.—Rules similar to the rules of section 6166(e) shall apply for purposes of this section.

''(f) BRIDGE ACCOUNT.—For purposes of this section—

''(1) IN GENERAL.—The term 'BRIDGE Account' means a trust created or organized in the United States for the exclusive benefit of an eligible small business, but only if the written governing instrument creating the trust meets the following requirements:

''(A) No contribution will be accepted for any taxable year in excess of the amount allowed as a deferral under subsection (b) for such year.

''(B) The trustee is a bank (as defined in section 408(n)) or another person who demonstrates to the satisfaction of the Secretary that the manner in which such person will administer the trust will be consistent with the requirements of this section.

''(C) The assets of the trust consist entirely of cash or of obligations which have adequate stated interest (as defined in section 1274(c)(2)) and which pay such interest not less often than annually.

''(D) The assets of the trust will not be commingled with other property except in a common trust fund or common investment fund.

''(E) Amounts in the trust may be used only—

''(i) as security for a loan to the business or for repayment of such loan, or

''(ii) to pay the installments under this section.

''(2) ACCOUNT TAXED AS GRANTOR TRUST.—The grantor of a BRIDGE Account shall be treated for purposes of this title as the owner of such Account and shall be subject to tax thereon in accordance with subpart E of part I of subchapter J of this chapter (relating to grantors and others treated as substantial owners).

''(3) TIME WHEN PAYMENTS DEEMED MADE.—For purposes of this section, a taxpayer shall be deemed to have made a payment to a BRIDGE Account on the last day of a taxable year if such payment is made on account of such taxable year and is made within 3½ months after the close of such taxable year.

''(g) REPORTS.—The Secretary may require such reporting as the Secretary determines to be appropriate to carry out this section.

''(h) APPLICATION OF SECTION.—This section shall apply to taxes imposed for taxable years beginning after December 31, 2010, and before January 1, 2015.''

(b) PRIORITY OF LENDER.—Subsection (b) of section 6323 is amended by adding at the end the following new paragraph:

''(11) LOANS SECURED BY BRIDGE ACCOUNTS.—With respect to a BRIDGE account (as defined in section 6168(f)) with any bank (as defined in section 408(n)), to the extent of any loan made by such bank without actual notice or knowledge of the existence of such lien, as against such bank, if such loan is secured by such account.''

(c) CLERICAL AMENDMENT.—The table of sections for subchapter B of chapter 62 is amended by adding at the end the following new item:

''Sec. 6168. Extension of time for payment of tax for certain small businesses.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2010.

(e) STUDY BY GENERAL ACCOUNTING OFFICE.—

(1) STUDY.—In consultation with the Secretary of the Treasury, the Comptroller General of the United States shall undertake a study to evaluate the applicability (including administrative aspects) and impact of the BRIDGE Act of 2007 including how it affects the capital funding needs of businesses

under the Act and number of businesses benefitting.

(2) REPORT.—Not later than March 31, 2014, the Comptroller General shall transmit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a written report presenting the results of the study conducted pursuant to this subsection, together with such recommendations for legislative or administrative changes as the Comptroller General determines are appropriate.

AMENDMENT NO. 161

(Purpose: To prohibit the use of flexible schedules by Federal employees unless such flexibl schedule benefits are made available to private sector employees not later than 1 year after the date of enactment of the Fair Minimum Wage Act of 2007)

At the appropriate place, insert the following:

SEC. ___. FLEXIBLE SCHEDULE PROGRAMS.

(a) PROHIBITION OF USE OF FLEXIBLE SCHEDULES FOR FEDERAL EMPLOYEES UNTIL FLEXIBLE SCHEDULES ARE AVAILABLE TO PRIVATE EMPLOYEES.—

(1) PROHIBITION OF USE OF FLEXIBLE SCHEDULES FOR FEDERAL EMPLOYEES.—Notwithstanding any provision of subchapter II of chapter 61 of title 5, United States Code, no agency may establish, administer, or use any flexible schedule program authorized under section 6122 of that title.

(2) EFFECTIVE DATE.—Paragraph (1) shall take effect 1 year after the date of enactment of this Act, unless during such 1 year period, the Secretary of Labor submits certification to the Office of Personnel Management that a statute has been enacted that allows employers covered by the Fair Labor Standards Act of 1938 to provide for the use of a flexible schedule similar to the flexible schedule program authorized under section 6122 of title 5, United States Code, for employees engaged in commerce or in the production of goods for commerce.

(b) TERMINATION OF PROHIBITION.—If the prohibition under subsection (a) takes effect, that subsection shall cease to have any force or effect on the date that the Secretary of Labor submits a certification described in subsection (a)(2) to the Office of Personnel Management.

AMENDMENT NO. 162

(Purpose: To amend the Fair Labor Standards Act of 1938 regarding the minimum wage)

At the appropriate place, insert the following:

SEC. ___. ENTERPRISE ENGAGED IN COMMERCE.

(a) ANNUAL GROSS VOLUME OF SALES.—Section 3(s)(1)(A)(ii) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(s)(1)(A)(ii)) is amended by striking ''$500,000'' and inserting ''$1,080,000''.

(b) APPLICABILITY OF MINIMUM WAGE.—Section 6 of the Fair Labor Standards Act of 1938 (20 U.S.C. 206) is amended—

(1) in subsection (a), by striking ''is engaged in commerce or in the production of goods for commerce, or''; and

(2) in subsection (b), by striking ''is engaged in commerce or in the production of goods for commerce, or''.

Mr. DEMINT. Mr. President, I thank my colleagues here on the floor for allowing me to offer these amendments. I know the leadership on the other side is anxious to end debate on this bill and move on to other things, so I will keep any remarks as brief as possible. I would be happy to work with the managers of the bill, the Senators from Massachusetts and Wyoming, to work out additional time for debate if that is necessary.

The minimum wage is a debate about fairness. Many Americans see a minimum wage as a fundamental right and something that should be increased to keep up with rising costs. Many economists see it differently. They understand it is only an entry wage and that with on-the-job training, most people do not stay at the minimum wage for very long. Economists also understand that very few people in America actually earn the minimum wage which is currently at $5.15 per hour. Those who do are mostly teenagers, part-time workers, second earners in a home, or workers with very limited skills.

Nevertheless, this debate has become a measure of how much we care for workers, and that is what this debate should be about. If we are going to be serious about helping Americans earn higher wages and helping them keep more of what they earn, we must consider additional measures to ensure American prosperity.

That is why I am offering these amendments today. They will not only ensure fairness for workers, they will also help protect small businesses that employ them. Americans realize that if we pass laws here in Washington that are aimed at helping workers but end up eliminating their jobs, we have done more harm than good.

My first amendment, No. 158, would raise the effective minimum wage in each State by $2.10 per hour. Now, I know most people listening believe that is what this amendment does, but far from it. Without this amendment, the underlying legislation will partially exempt minimum wage workers in high-cost States that already have State minimum wage rates greater than $5.15 per hour, and it will completely exempt minimum wage workers in the highest cost States that have State minimum wage rates greater than $7.25. Many States—actually, 29 States—have already recognized that their cost of living is much higher than other States, and these States have passed their own minimum wage increases. So the cost of living all around the country is quite different.

If you look at some high-cost cities and States, such as Boston, MA, for instance—35 percent higher cost of living than the national average—and contrast that with Alabama, Mobile, AL—it is minus 11 percent of the national average—you have a large swing in the cost of living. Effectively, what we have is while Massachusetts now has a minimum wage of $7.50 an hour, that does not do a worker as much good in Massachusetts as $5.15 does for a worker in Alabama; the cost of living is significantly different.

As we look around the country, we see the highest cost States are Massachusetts and Connecticut and Vermont and New York. You can go over to Illinois at 17 percent. We get down in the Southern States, and we see minus 10 percent of the national average in Texas or minus 11 in Arkansas or minus 12 in Oklahoma. The States and the cost of living across our country are very different. Thankfully, a number of States—29 of them—have recognized that and raised their minimum wage.

But if we are going to make a promise to American workers that we are going to raise their salary, particularly minimum wage workers, then I believe we should do it for all workers. We should look at how this underlying bill is really going to affect workers. The blue States here are States that get a small increase or less than 10 cents from this $2.10 we are talking about.

A few minutes ago, the Senator from Washington State was giving a passionate plea that minimum wage workers get an increase, but Washington State minimum wage workers will get no increase from this bill. The same for Oregon and California. Our dear colleague from Massachusetts, Senator KENNEDY, is one of the most passionate advocates of increasing the minimum wage. Yet this bill we are going to pass today will not give one minimum wage worker in Massachusetts an increase. They get nothing. All of the blue States, the high-cost States where an increase is the most important—Vermont, Massachusetts, Connecticut, Rhode Island—they get no increase. Illinois gets less than 10 cents from the $2.10 increase. So the blue States where workers really could use an additional increase, particularly minimum wage workers, get little or nothing.

When we look at the white States, these are the States which don't get the whole $2.10 increase. The red States are the only States where the whole $2.10 increase will actually go to minimum wage workers.

So in effect, we are making a lot of false promises here today. A lot of the debate, the most passionate debate, is coming from Senators who represent States which will get little or nothing from this minimum wage increase.

I believe we should do what the States do and recognize that the cost of living is different. My amendment is very simple. It says: Let's make all of the States the same color. Let's make them red or blue. But every minimum wage worker in this country should get a $2.10 increase, and that is what my amendment would do. It would be fair to all workers.

That first amendment was actually my first and second amendment. We have two versions of that, Nos. 158 and 159.

My third amendment, No. 155, would expand access to affordable health care to millions of Americans. It would do three things. And we do need to keep in mind that one of the biggest costs for workers, particularly those working at the minimum wage level, is health care. Very few have health insurance. Many are part-time workers. This amendment would do three things:

First, it would allow workers to purchase less expensive coverage anywhere in the country. It would also allow them to use the funds in their health savings accounts to pay for their health insurance policy, and it would allow them to roll over, or keep, $500 in unspent benefits in their flexible spending accounts. Many Federal employees now have flexible spending accounts, and they are starting to realize that even though it is their own money, the way this law is set up, if they don't spend it all, they lose what is left at the end of the year. This amendment would fix that.

If Congress is serious about helping American workers, it must do something to address the rising costs of health care. By allowing Americans to purchase health coverage across State lines, they would gain access to less expensive health plans.

My fourth amendment would pick up on part of the other amendment and focus specifically on flexible spending accounts, allowing workers to keep up the $500 that is unspent in those accounts at the end of the year so they do not have to spend it on something they do not need or actually lose it. Again, it is their money. We should not take it from them.

My fifth amendment is tax deferment for high-growth small business companies. Most of the jobs in this country are actually created by small companies that are growing at a 10-percent rate or higher. We have identified—and this is something we have been working on for years—what is called a capital funding gap that prevents a lot of small businesses from getting the capital they need to continue their growth. Actually, if you go back to the 107th Congress, I worked on this when I was on the House side with Senator KERRY and Senator SNOWE who introduced this same legislation to help small businesses keep some of their cash in order to grow their business. It simply allows them to defer Federal taxes if they are plowing it into the growth of their companies. This is very relevant to low-income workers because many low-income workers, even minimum wage workers, work for small businesses that are growing.

This would help those companies grow by deferring taxes. They have to pay all this money back with interest, but it allows them to continue to grow, using their own cash flow.

My sixth amendment, No. 159, is an important amendment for a lot of hourly workers who are union members. It prevents labor unions from using members' union dues to lobby Congress without prior separate and written consent of that member. Union dues, like taxes, are compulsory for union workers. This is the same amendment I offered to the lobby reform legislation, but since it was not given consideration, I am offering it again. This is not only an ethics and lobbying issue but a fairness issue for millions of union members in America. If they were not forced to pay for things they do not support, they could save a lot of money with lower union dues.

My seventh amendment is updating the small business minimum wage exemption. The last time this exemption was raised, the minimum wage was $3.35. This simply allows small companies not to pay the minimum wage, particularly those offering other benefits—tips or health benefits—and gives an exemption. Right now, it is only $500,000 a year. We raise that to $1 million with this amendment, allowing the small businesses some flexibility in hiring teenagers and other workers at the trainee level.

The last amendment, my eighth amendment, and the final amendment, repeals flextime benefits for Federal employees after 1 year if comparable benefits are not extended to private sector workers. A lot of people who are opposed to this flextime idea don't point out in the Senate that all Federal workers have this flextime benefit. Most will say it is truly a benefit. So it gets back to an issue of fairness. This amendment simply says if we do not apply this same benefit to all American workers in the private sector, we should not grant it to Federal workers. Americans are tired of us giving special benefits to Federal workers that are not offered in the private sector.

In conclusion, I thank the managers of this bill, again, for allowing me to offer these amendments. I am happy to work out other items and debate them individually, if that is necessary.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mrs. MCCASKILL). Without objection, it is so ordered.

The Senator from Alabama.

Mr. SESSIONS. Madam President, I want to share some general thoughts about workers in America, the salaries they get paid, the money they take home, and some of the problems relative to that. I will not be offering any amendments at this point. I think there are some others who will be down in a little bit who are scheduled to be on the floor at this time but have not arrived.

I will note I would like to have a vote on an amendment I have offered, which is an amendment that will say that if an employer hires a person illegally in the country, contrary to the law, the fine will no longer be as little as $250 but will be raised to a fine sufficient to deter that business from carrying on that activity: $5,000 and up.

But I want to take a moment now to share some thoughts of a very serious nature about what we are dealing with. This bill that is on the floor today would raise the minimum wage from $5.15 an hour to $7.25 an hour. I am uneasy with Government dictating a contract between two private persons. But I have supported minimum wage increases on a number of occasions, and I think we will see one pass this time in some fashion. I hope it will be passed in a manner that I will be able to support final passage.

But I share the concern of a lot of people who support this legislation; and that concern is, the incomes and the salaries of lower wage workers have not kept up with the salaries of higher income workers. I know the free marketeers argue that later on wages will increase for low-income workers, but I am not satisfied with that argument. The economy is doing very well. Bonuses and salaries for top-wage people have surged. We have not seen sufficient increases in salaries for lower income workers.

I am going to share some numbers with this body that I believe will put a finger on the real problem. It is not that George Bush does not want people to have salaries. George Bush and Members of this Senate have supported policies that, without their knowledge, perhaps, are having an adverse impact on wages. Maybe there are a lot of reasons we are having an adverse impact on wages, but I am going to talk about one.

We can be certain that illegal immigration is suppressing workers' wages. Significant economic evidence indicates the presence of large amounts of illegal labor in low-skilled job sectors—that is low-income workers—is depressing the wages of American workers. Harvard economists George Borjas and Lawrence Katz—Professor Borjas has written a fabulous book on immigration, ''Heaven's Door.'' I am sure my friend Senator KENNEDY knows of Harvard. He needs to introduce himself to Professor Borjas, I would suggest. Harvard economists George Borjas and Lawrence Katz estimate that the influx of low-skilled, low-wage immigration from 1980 to 2000 has resulted in a 3-percent decrease in wages for the average American worker—not just low-income workers. The average American worker has seen a 3-percent decline in his wages, and it has cut wages for native-born high school dropouts—those are the people most often being paid near minimum wage; the poorest 10 percent of the workforce—by 8 percent.

That is a lot. The 3 percent amounts to, assuming they made $10 an hour, $12 a week or $600 a year. For the poorer worker, the 8 percent amounts to more than $1,200 a year in income. Now, that is $100 a month extra money they could be paid, but they are not being paid because of the large influx of illegal workers or immigrant workers into the country.

According to Alan Tonelson, another expert, a research fellow at the U.S. Business and Industry Council Educational Foundation—this is his quote—

[T]he most important statistics available show conclusively that, far from easing shortages, illegal immigrants are adding to labor gluts in America. Specifically, wages in sectors highly dependent on illegals, when adjusted for inflation, are either stagnant or have actually fallen.

Wages have gone down, not even gone up a little bit. They have gone down. Think about it.

Tonelson is referring to Labor Department data and information from the Pew Hispanic Center that—Mr. Tonelson says—''provide compelling evidence illegal immigrants have been used deliberately to force down wages.''

For example, he cites data from the U.S. Bureau of Labor Statistics for the following information.

Madam President, I see Senator SALAZAR is here. And, as I indicated, I say to Senator SALAZAR, I will yield. I will wrap up briefly and yield to you because I know you were previously approved to speak next.

As I was saying, for example, Tonelson cites data from the U.S. Bureau of Labor Statistics for the following information: Inflation-adjusted wages for the broad food and services and drinking establishments category—that is the Labor Department category—between the years 2000 and 2005 fell 1.65 percent. Pew estimates that illegal immigrants comprise 17 percent of food preparation workers, 20 percent of cooks, and 23 percent of dishwashers.

So they say: Well, you cannot get people to work and be cooks and dishwashers in restaurants. You cannot get them. Well, if they were paid a little better wage, maybe they could get them. Instead of cutting wages from 2000 to 2005, maybe some people would be willing to work.

He goes on to note: Inflation-adjusted wages for the food manufacturing industry—the Pew Hispanic Center estimates that illegal immigrants comprise 14 percent of that workforce—fell 2.24 percent from 2000 to 2005.

He also goes on to note: Inflation-adjusted wages for hotel workers—the Pew Hispanic Center estimates that illegal immigrants make up 10 percent of that workforce—fell 1 percent from 2000 to 2005.

So, Madam President, I will wrap up at this point but will talk about it some more later. We need to create a lawful immigration system that does allow workers to come to our country, but the number and skill sets they bring ought to be such that they do not aversely impact to a significant degree the wages of American citizens. How more basic can it be than that, see? I am afraid we need to confront that.

So my amendment is just one important step I will ask for a vote on that will allow workers to come legally, but if they come illegally, the employers who hire them can be punished to a degree more commensurate with the seriousness of the offense.

Madam President, I thank the Chair. I see my good friend from Colorado, former attorney general. We worked together on a number of issues. I will be proud to yield to him at this time.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. SALAZAR. Madam President, I thank my friend from Alabama. And at the outset, before I make a comment about the matter that is pending before the Senate today, I want to also commend him for his work on energy independence. I think it demonstrates how we are able in this body to bring together Republicans and conservatives, Democrats and progressives, on what is one of the signature issues of our time. I very much look forward to working with him, as well as with my other colleagues on this very important agenda in this 110th Congress.

Madam President, I rise today to speak on behalf of the Reid substitute amendment that is a very important matter that is now before this body. I applaud the leadership of the floor managers, Senator KENNEDY and Senator ENZI. I very much look forward to a successful conclusion of this legislation.

The Fair Minimum Wage Act of 2007 would raise the Federal minimum wage from $5.15 an hour to $7.25 an hour over a period of 2 years. I am proud to be a supporter and a cosponsor of this measure which will help lift millions of Americans into a better way of life.

The Federal minimum wage was first established through the Fair Labor Standards Act of 1938. At that time, the Federal Government set the Federal minimum wage at 25 cents an hour, which would amount to $3.22 an hour in today's dollars. Since then, Congress has used its wisdom and increased the minimum wage eight times under both Democratic and Republican administrations.

Unfortunately, American workers have now had to wait 10 years since the last increase—the longest that workers have gone without an increase in the entire history our Nation has had a minimum wage law.

American workers, in my view, have waited long enough for their raise. The minimum wage is not just about fairness. It is also about economic necessity. While Congress has neglected to raise the minimum wage, the cost of living has continued to skyrocket. Since we last raised the minimum wage, take the following examples on the escalation of the cost of living: Gas prices have increased by 36 percent. Health insurance rates have gone up by 33 percent. College tuition rates have gone up by 35 percent. And housing costs have gone up by 38 percent. There have been all of those increases during all of that time, and the minimum wage for Americans has gone unchanged.

Without any increase in their wages, these rising costs will force many minimum wage workers to make very difficult choices. Sometimes they must ask themselves: Should they pay the rent or buy groceries? Should they pay the heating bill or buy diapers? Some of the very basic, essential questions of life have to be answered by some of these minimum wage workers every day.

Indeed, desperate times often have called for desperate measures. Our inaction here in Washington has spurred a number of different States, including my State of Colorado, to take action on their own. In November, the people of my State voted to increase the State's minimum wage by a very substantial margin. Twenty-eight other States and the District of Columbia have also taken action to raise wages above the Federal minimum of $5.15 an hour.

In my view, unless we act as a Congress, what will end up happening is we will continue to see a hodgepodge of minimum wage increases in the 50 States of our Nation. I think it would be much preferable to business as well as to the people of America to have a Federal minimum wage that applies across the entire country.

The House of Representatives has already acted quickly on this legislation. It is simple and straightforward. It is now time for the Senate to act, and for this long overdue increase to finally become law.

Make no mistake, we all know this legislation will make a significant difference in the lives of working families. The increase will directly impact 13 million Americans and nearly 6 million children.

Do you hear that, Madam President? It will impact 13 million Americans and nearly 6 million children who would see their parents' earnings increase.

In Colorado, raising the Federal minimum wage to $7.25 an hour would directly raise the pay of 87,000 workers and benefit 251,000 workers overall.

This increase will mean an additional $4,400 in annual wages. That money is money that could be used for a number of great essentials: Almost 2 years of childcare, more than full tuition for a community college degree, a year and a half of heat and electricity, more than a year of groceries, and more than 8 months of rent.

I support doing everything we can to help these workers. As we help these workers, I also believe we must do everything we can to help the small businesses of America. That is why I am supporting the Reid substitute amendment that has the targeted tax relief to help small businesses thrive.

Having had a history of working as a small business person for a long time, I know the struggle small businesses engage in every day. I also know that it is small businesses that are the engine of most of the job creation in America today. That is true whether it is in Colorado or in the States of Wyoming or Massachusetts. Small businesses are, in fact, the backbone of job creation. In my State alone, we have 500,000 small businesses. And 98 percent of the businesses that hire workers in Colorado are, in fact, small businesses. These

businesses create jobs. They fuel our economy. They provide the livelihood for millions of workers, many of them low-wage earners. We must ensure that these small businesses continue to serve this vital purpose.

In my first hearing as a new member of the Senate Finance Committee, under the leadership of Chairman BAUCUS and Ranking Member GRASSLEY, we heard from small business owners who testified that an increase in the minimum wage would, in some cases, force them to consider whether to eliminate some workers or cut back the hours of others. They also testified that some of the costs of the increase could be defrayed through specific tax incentives to help them meet the expenses associated with improving and expanding their businesses through construction and renovation and tax credits to help them hire more low-wage workers.

Last week I introduced legislation called the Business RAISE Act to help small businesses with business tax relief. My bill contains some of the tax incentives we heard about in the Finance Committee hearing. Specifically, my legislation, now incorporated into the Reid substitute, would allow 15 year depreciation periods for restaurant improvements, new restaurant construction, and improvements to business property that is owned as opposed to leased. That simply makes economic sense. When you buy equipment or build a restaurant, you know that a 39-year depreciation does not reflect economic reality. You know that those changes that have to be made will have to be made in 5 or 10 years. So allowing these items to be expensed over a 15-year period will be a great incentive and of great assistance to small businesses and restaurants to do what they have to do to improve their businesses.

I also have proposed—and it has been included in the Reid substitute amendment—the expansion of the eligibility for the work opportunity tax credit to all disabled veterans. This legislation would expand the eligibility for the work opportunity tax credit to all disabled veterans. In these days of Afghanistan and Iraqi veteran forces returning back to our Nation with the kinds of injuries that many of them have sustained and some of the disabilities they have to suffer through, it is important for us as a nation to do everything we can to provide them with an opportunity. These work opportunity tax credits that would apply to all disabled veterans in America would be part of our Nation's promise to make sure we are taking care of the veterans of America.

I am proud to have worked with Chairman BAUCUS and Senator GRASSLEY, with Republicans and Democratic Senators in the Finance Committee, to have many of these provisions included in the legislation that was reported unanimously out of committee. Those recommendations have now been included in the Reid substitute amendment which is currently pending. But we could have dealt with these issues separately. The political reality is that we will do two good things at the same time. We will raise the minimum wage for Americans, which has been on hold for far too long, and we will provide incentives to allow small businesses to continue to thrive with the tax incentives we are creating in this legislation. Toward that end, I am hopeful that this body of Senators will move quickly and expeditiously in approving the provisions of the Reid substitute amendment.

I yield the floor.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. KENNEDY. For the information of our Members, we will have a consent agreement offered in a short while. It is the intention of Senator ENZI and myself to have two votes, one on the Sununu-Kerry amendment on small business and one on Feingold, which is the ''Buy American'' amendment. We will have voice votes on those two items and then rollcall votes on an Allard amendment and a rollcall vote on a DeMint amendment in the range of 5 o'clock, for the benefit of our colleagues. We will offer a consent agreement shortly to that effect. But for the information of our colleagues, that is the intention. We are making good progress on other amendments as well.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. BAUCUS. Madam President, since the Fair Labor Standards Act of 1938, Congress has required employers to pay a minimum wage. Congress enacted the current general minimum wage of $5.15 an hour in 1996. That works out to be about $10,712 a year. Currently, about 2 million workers get paid the Federal minimum wage or less.

A decade has passed since the last increase. That marks the longest period in history without an adjustment to the minimum wage. During that time, a majority of States have enacted minimum wages higher than the current Federal level. This includes my home State of Montana.

Montanans recognized that the minimum wage must be increased. I am proud that in November our State voted to raise that State's minimum wage from $5.15 an hour to $6.15 an hour. It was a step in the right direction.

An increase in the minimum wage would affect millions more than those who earn minimum wage because many workers earn slightly more than minimum wage and may also see an increase.

Some worry that an increase in the minimum wage will burden small businesses. Small businesses create jobs, economic opportunity, and technological innovation.

Smaller businesses employ a disproportionate share of workers earning the minimum wage. Representatives of small businesses have, therefore, argued that any increase should be accompanied by tax incentives targeted for small businesses in order to lower their costs.

There are about 23 million small businesses in our country. Businesses with fewer than 500 employees represent more than 99.9 percent of all American businesses. They pay nearly half the total American private payroll. They have generated 60 to 80 percent of the new jobs annually over the last decade, and they employ 41 percent of high-tech workers.

Small business is particularly important in rural States such as Montana. Rural communities generally do not have large employers. Rural families rely on small businesses for jobs.

The Finance Committee has jurisdiction over taxes. The committee held a hearing on January 10 of this year entitled ''Tax Incentives for Businesses in Response to a Minimum Wage Increase.'' The committee heard from a variety of witnesses, including labor economists, small business owners, and tax experts.

Following that hearing, the committee held a markup on January 17. The committee considered an original bill called the Small Business and Work Opportunity Act of 2007. That bill is a revenue-neutral bill containing a number of tax incentives for small businesses and businesses that hire minimum wage workers. The committee favorably reported that bill by unanimous voice vote, and the majority leader included that bill in its entirety in his amendment to the bill before us today.

The substitute would help business owners to afford new equipment and property for their businesses by extending section 179 expensing for another year.

In order to carry out day-to-day activities, small business owners are often required to invest significant amounts of money in depreciable property, such as machinery. While these large purchases are necessary to operate a business, they generally require depreciation across a number of years. But depreciation requires additional bookkeeping. Section 179 expensing allows for immediate 100 percent deduction of the cost of most personal property purchased for use in a business. In

2007, small business owners could deduct up to $112,000 of equipment expenses.

When small business owners are able to expense equipment, they no longer have to keep depreciation records on that equipment. So extending section 179 expensing would ease small business bookkeeping burdens.

The substitute would allow small business owners to quickly recover the cost of improvements to their establishments through extension and expansion of the 15-year straight line appreciation period for leaseholds and restaurant improvements.

Allowing retailers and restaurants to use a 15-year straight line depreciation period means that when an entrepreneur opens a business and remodels the property, that investment could be recovered over a period of time more closely reflecting wear and tear. It used to be 39 years.

In 2004, the American Jobs Creation Act shortened the cost recovery of certain leasehold improvements and restaurant property for 39 years to 15 years for the remainder of 2004 and 2005. The Tax Relief and Health Care Act of 2006 extended this provision to the end of 2007.

At the Finance Committee minimum wage hearing held January 10, small business owners testified that a shorter 15-year recovery period for restaurant and building leasehold property reflects the true economic life of the improvements. And they testified that businesses put more money into their operations if they know they can recover their improvement costs over 15 years instead of 39.

The substitute would extend the 15-year recovery period for leasehold and restaurant improvements and would also broaden the provision to allow retail owners and new restaurants to take advantage of this shortened depreciation period.

These are changes that Senator CONRAD, Senator KERRY, Senator SNOWE, and Senator KYL have championed.

The substitute would simplify the way that small businesses keep records for tax purposes. The cash method of accounting is often the easiest method of accounting. Allowing small business to use the cash method reduces the administrative and tax compliance burden of these businesses. The substitute would let more businesses take advantage of this method. Businesses with gross receipts up to $10 million would be able to use the cash method.

The substitute would also help businesses provide jobs for workers who have experienced barriers to entering the workforce by extending and expanding the work opportunity tax credit.

WOTC, otherwise known as the work opportunity tax credit, encourages business to hire workers who might not otherwise find work. These employers teach workers new skills and how to be a good employee. The workers serve our food, sell us goods, paint our houses, and provide care to our sick and elderly.

WOTC, the work opportunity tax credit, has been remarkably successful. By reducing expenditures on public assistance, WOTC is highly cost effective. The business community is highly supportive of these credits. Especially industries such as retail and restaurants that hire many low-skilled workers find it useful.

The substitute would extend WOTC for 5 years, and the substitute would expand the credit to make it available to employers who hire veterans disabled after 9/11, something I think is very important for us to do.

As of July 2006, nearly 20,000 members of our Armed Forces were wounded in action in Operation Iraqi Freedom and Operation Enduring Freedom. Many of these soldiers are now permanently disabled and do not know what they are going to do once they return home. We need to help these young men and women, and a modest tax incentive to get them back in the workforce is a good place to start.

This is an issue the Senator from Colorado, Mr. SALAZAR, championed.

I think we should make WOTC permanent. Senator SNOWE and I introduced a bill to do just that. But to accommodate other Senators' priorities, the committee agreed to a 5-year extension in the bill that is now included in the substitute.

The substitute helps small businesses by modifying S corporation rules. These modifications reduce the effect of what some call the sting tax; that is, these modifications improve the viability of community banks.

These are changes that Senator LINCOLN and Senator HATCH have championed.

These are all important ways to help small businesses succeed. These provisions will spur investment and, thus, create jobs. They will provide greater opportunity for workers looking for a job. They all enjoy strong support.

Senator GRASSLEY, members of the Finance Committee, and I have worked to develop a balanced package, and I believe we have done just that.

The language included in the substitute is a responsible package that will ensure the continued growth and success of small businesses. And we have also paid for it. Most of the offsets are proposals the Senate has supported several times before. The offsets include a proposal to end future tax benefits for abusive sale-in-lease-out tax shelters, known as SILOs. These deals are foreign tax-exempt entities to generate sham tax deductions.

Even after Congress shut these deals down in 2004, some taxpayers continue to take excessive, unwarranted depreciation deductions on German sewer systems and the like. The Internal Revenue Service says it has 1,500 of these deals under audit involving billions—yes, billions—of dollars. At a minimum, it is time to shut these foreign deals down. There are domestic deals, too, but this provision only affects foreign deals.

Another offset doubles fines, penalties, and interest on taxes owed as a result of using certain abusive offshore financial arrangements to avoid paying taxes. Taxpayers will hide their money from the IRS through offshore credit cards and other shady financial arrangements need to get the message that this Congress is serious about ending these abuses.

The substitute closes a corporate loophole used by companies that reinvented themselves as foreign corporations to avoid paying taxes in our country. In March 2002, Senator GRASSLEY and I made it clear to those who put profits ahead of patriotism did so at their own peril. The substitute would treat those who moved offshore after that date like a U.S. company, and the substitute would make those companies pay U.S. taxes.

Further, under the substitute, companies that paid to settle Government investigations or that paid punitive damages ordered by the courts will be prohibited from taking tax deductions for those payments.

Deducting these amounts can reduce the true cost of these settling by as much as a third. Deducting these amounts would effectively shift the tax burden onto the backs of other taxpayers who pay what they rightfully owe. Those deductions should, therefore, be prohibited.

The hard-working American taxpayers we are trying to help in this substitute should not have to pay more taxes because some taxpayers are abusing the tax system through tax shelters. They also should not have to bear the burden of civil settlements and punitive damages paid by companies that engage in questionable behavior.

Another offset would limit the annual amount of nonqualified deferred compensation for corporate executives. Rank-and-file workers generally have to pay taxes on their compensation when they earn it. The exception is deferred compensation provided through qualified retirement plans with statutory limits on contributions and benefits. A 401(k) is the best example.

Management, on the other hand, has no limit on the amount that can be deferred to nonqualified arrangements—no limit. The substitute sets the annual limit at the lesser of 100 percent of taxable compensation or $1 million.

These are sound changes. I urge my colleagues to support the substitute.

I yield the floor.

The PRESIDING OFFICER. The Senator from Colorado.

AMENDMENT NO. 116

Mr. ALLARD. Madam President, I want to take a moment to explain my amendment No. 116. This amendment gives the States the rights and the flexibility to determine a minimum wage that works best for them. My provision does not allow States to go any lower than the minimum wage they currently operate within their State.

This is an important amendment for small business, an important amendment as far as the States are concerned because cost of living and wages vary dramatically from State to State. A one-size-fits-all federally imposed minimum wage does not take into account the economic realities that exist in each State.

The States are already fulfilling their responsibilities of regulating wages. Currently, 28 States and DC have minimum wage rates above the Federal level. Because the minimum wage varies by State, this legislation threatens to impose a 41-percent increase on some States and a 0-percent increase on others.

Let's give the States the right and flexibility to regulate minimum wage. State legislatures are closer to the people and are better situated than the Federal Government to set a minimum wage. A one-size-fits-all solution under Federal mandate is not the answer to protecting America's economic security.

I urge my colleagues to join me in supporting this amendment that gives the States the flexibility to determine what is best for its own citizens.

When it is appropriate, Madam President, I will call for the yeas and nays.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Madam President, I ask unanimous consent that at 5:10 p.m. today the Senate proceed to a vote in relation to Allard amendment No. 116, and that the time until 5:10 p.m. be equally divided and controlled in the usual form, with no second-degree amendments in order to the amendment prior to the vote; further, that upon disposition of the Allard amendment, the Senate then resume Sununu amendment No. 112 and that Kerry amendment No. 187 to the Sununu amendment be considered and agreed to, the Sununu amendment, as amended, be agreed to, and the motion to reconsider be laid upon the table; provided, that the Senate then consider Feingold amendment No. 127 and that the amendment be modified with the language at the desk, and that it be agreed to, and the motion to reconsider be laid upon the table, all without intervening action or debate.

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

AMENDMENT NO. 128 TO AMENDMENT NO. 100

(Purpose: To direct the Administrator of the Small Business Administration to establish a pilot program to provide regulatory compliance assistance to small business concerns, and for other purposes)

Mr. KENNEDY. Mr. President, I ask unanimous consent to call up amendment No. 128 and ask that it be set aside.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The bill clerk read as follows:

The Senator from Massachusetts [Mr. KENNEDY], for Mr. KERRY, proposes an amendment numbered 128 to amendment No. 100.

Mr. KENNEDY. 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 printed in today's RECORD under ''Text of Amendments.'')

Mr. KENNEDY. I ask that the amendment be set aside.

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

Mr. KENNEDY. Mr. President, just for the information of our colleagues, the Feingold amendment is an amendment that has been accepted by the Senate on a number of different occasions. It provides information-reporting on the buying of American goods. This is an effort to increase and support American workers. It has been accepted. We welcome that amendment.

The other amendment which my friend and colleague will speak to, Senators KERRY, SNOWE, and SUNUNU, I strongly support. This deals with the women's business center amendment. Our friends on the Small Business Committee have worked long and hard on this. It is a very interesting, innovative, and creative program that has created thousands of jobs and millions of dollars in wages, and it deserves favorable consideration. My colleague will speak to that in just a few moments.

On the Allard amendment, Members should understand what the effect of the Allard amendment is, and that is effectively to repeal the minimum wage for any States among the 50 States. That effectively is what the Allard amendment does. It says:

Notwithstanding, any employer should not be required to pay an employee the wage that is greater than the minimum wage provided by law of the State in which the employee is employed, and not less than the minimum wage in effect in that State.

So effectively it eliminates the minimum wage.

It is true we have had the minimum wage at $5.15 an hour. The underlying bill raises it to $7.25, with a very modest tax offset. Hopefully we will have an opportunity to vote on that.

It is true that the existing minimum wage is $5.15 an hour and a number of States have gone above this, but the concept of the minimum wage was that it was going to be a minimum payment, a minimum standard. What was accepted at the time of the minimum wage is that in this country, we didn't want to accelerate a rush to the bottom so that we would have competition in the various States to pay the lowest possible wages—sweat labor—in order to try to attract industries into those particular States, but to provide a minimum standard. Hopefully it was going to be a living standard for workers who worked 40 hours a week, 52 weeks of the year.

I respect the Senator from Colorado, his view on this issue, but if we accepted the amendment of the Senator, it would effectively eliminate the minimum wage as we know it.

I think the reason for the minimum wage, as we have tried to point out during the course of this debate in discussion, was to establish a basic floor as a standard for payment for individuals who worked long and hard in some of the most difficult jobs in this country. We have eliminated child labor. We have established laws with regard to overtime. We have tried to be not only the strongest economy in the world but one that is going to respect workers and workers' rights and workers' interests and workers' families. The minimum wage does not do so at the present time, but many of us will continue to battle to try to make sure it does. The Allard amendment brings us all in the opposite direction.

If I have any time left, I will reserve it. I know the Senator from Colorado will use his time.

Mr. ALLARD. Mr. President, I reiterate, my amendment gives flexibility to States to set their own minimum wage. What is an appropriate minimum wage level for one State does not apply for another, and has different potential effects on the ability for economic growth in that State. When you vote for my amendment, you are voting for State flexibility. The States are already fulfilling their responsibilities of regulating wages. My amendment does not allow the States to set a minimum wage lower than their current operating minimum wage as of January 1, 2007.

I ask my colleagues to join me in voting for the Allard amendment.

I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays are ordered.

Who yields time?

The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, if there are no further speakers—

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. I am glad to yield a couple of minutes. I understand we have 3 or 4 minutes.

The PRESIDING OFFICER. The Senator from Massachusetts controls 1 minute.

Mr. DEMINT. I understand we just have a few minutes. A few minutes ago, we thought we would be voting on one of the DeMint amendments, and we are still not sure if that is going to happen.

Mr. KENNEDY. If the Senator will yield, I find that there is strong support. We are just having difficulty getting a final time to be able to slot it in at this particular time. I am very hopeful we will be able to have that sometime in the very near future, and I will keep in close touch with the Senator. I thank him for his cooperation. I hope we will be able to.

AMENDMENT NO. 158

Mr. DEMINT. Mr. President, I will take a couple of moments to reexplain the amendment just in case we get to vote on it tonight or early in the morning.

We just heard Senator ALLARD talk about the need for State flexibility because of the different costs of living, the different economies, the different situations. In the United States today, we have 29 States that have set a minimum wage higher than the Federal minimum wage. That action really reflects the cost of living in different parts of our country.

The PRESIDING OFFICER. The remainder of the time is controlled by the Senator from Colorado.

Mr. DEMINT. Does the Senator yield?

Mr. ALLARD. The Senator from South Carolina seeks time? I yield time to the Senator.

Mr. DEMINT. We will talk until the next vote, how about that? What time is the next vote?

The PRESIDING OFFICER. The next vote is in 3½ minutes.

Mr. ALLARD. If the Senator from South Carolina will yield, Senator ENZI would also like to speak briefly on this amendment, if you will allow him at least a minute.

The PRESIDING OFFICER. The Senator from South Carolina has 2 minutes.

Mr. DEMINT. Two minutes.

Senator ALLARD has made a good case for the need for States to have flexibility to adapt the minimum wage to their particular State's cost of living. That is one option.

The amendment I have is quite different. It recognizes that we do have very different costs of living, such as in Massachusetts, Boston is 35 percent above the national average cost of living. If you go south to Mobile, AL, it is 11 percent less than the average cost of living. So the current $5.15 minimum wage which is in Alabama actually has more buying power than the $7.50 minimum wage which is now in effect in Massachusetts.

We are proposing that we be fair with this Federal minimum wage increase. The Senator from Massachusetts knows that, despite his passion for low-income workers and raising the minimum wage for workers, workers in 29 States will not get the full benefit. In fact, workers in Massachusetts will get no raise at all. Workers in Washington, Oregon, or California will get no raise, as will the minimum wage workers in Vermont or Connecticut or Rhode Island. All the States here in blue, the highest cost of living States in our country, will get either no increase or less than a 10-cent increase from this $2.10. The States in the white get some increase but, again, not the full increase. Really, most of the States that would get the full $2.10 increase are low-cost-of-living States around our country, again where the cost of living is more in tune with the $5.15 minimum wage.

Frankly, I would like every worker to be making a lot more money, and there are a lot of other things we can do to make that happen. But if we are going to have a Federal minimum wage, let it reflect the cost of living in every State. Let's give every minimum wage worker in this country a raise when we pass this bill.

I yield the floor.

The PRESIDING OFFICER. The Senator from Wyoming has 1 minute under the previous order.

Mr. ENZI. Mr. President, I listened to the Senator from Minnesota earlier today, Ms. KLOBUCHAR, and thought she had some very convincing comments regarding the tip credit. In conjunction with that, she suggested that States ought to be able to do what they want to do. That is what this bill does.

Even if one accepts the idea that the minimum wage should be used as a tool of economic policy, it is quite obviously a tool that should be used with precision, not indiscriminately wielded like a sledge hammer.

State and local economies are vastly different, however, one-size-fits-all Federal legislation totally dismisses those important differences. It also misses the point that states are in a far better position to determine what is best for their local economies. Federal ''solutions'' often ignore local and regional experience and judgment, or worse still, just arrogantly cast it aside.

There is just no room for debate over the fact that there is a vast difference from State to State in terms of the cost of living, the cost of doing business, and the purchasing power of a dollar. A nationally based minimum wage adjustment simply ignores these important differences. It discriminates against both employees and employers based solely upon where they choose to live and work or to establish their businesses.

Proponents of an across-the-board Federal minimum wage increase might be able to ignore these realities and claim that somehow the Federal Government was ''forced'' to act because States ''refused'' to do so. Unfortunately for those who make this argument, nothing could be further from the truth.

State legislatures have been, and continue to be extremely active in considering minimum wage legislation that is appropriately tailored to the economic realities of their respective States. Consider that 6 states this year have passed ballot initiatives raising their State's minimum wage law, and 29 States now have minimum wage rates higher than the current Federal level. I urge my colleagues to consider that States and localities may have a better idea of what their appropriate minimum wage level should be than the Federal Government. When the Federal level does not fit, States and localities act.

I urge my colleagues to support the Allard amendment.

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

The Senator from New Hampshire is recognized.

Mr. SUNUNU. Mr. President, I recognize that all or nearly all time under control has expired, but I ask unanimous consent to speak for 1 minute on an amendment on which the chairman and ranking member have come to agreement.

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

AMENDMENT NO. 112

Mr. SUNUNU. Mr. President, Senator KERRY spoke earlier about the importance of women's business centers. I offered an amendment at the beginning of the debate a couple of days ago that would ensure continuation of funding for some of the high-performing women's business centers across the country, one of them being in Portsmouth, NH, a small facility that manages to serve 1,300 women. It covers Maine, covers northeastern Massachusetts, as well as clients across New Hampshire. Senator KERRY and Senator SNOWE offered a modification to the amendment which we have agreed to accept, I think. I hope that is going to be passed on a voice vote and then my amendment with his improvements will be voted on by voice.

I thank Chairman KENNEDY, Senator KERRY, Ranking Member Enzi, and my dear friend from Maine, Senator SNOWE for working with me to ensure that this can get done in a timely way. This continuation of funding will make a difference for, of course, dozens of business centers, but that translates into thousands of women entrepreneurs across the country. Those small firms in New Hampshire and across the country are the ones that really drive economic growth. I appreciate the work they have done, Senator SNOWE and Senator KERRY.

VOTE ON AMENDMENT NO. 116

The PRESIDING OFFICER. All time is consumed. The question is on agreeing to amendment No. 116. The yeas and nays have been ordered.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Hawaii (Mr. INOUYE) and the Senator from South Dakota (Mr. JOHNSON) are necessarily absent.

Mr. LOTT. The following Senator was necessarily absent: the Senator from Alaska (Mr. STEVENS).

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

The result was announced—yeas 28, nays 69, as follows:

[Rollcall Vote No. 24 Leg.]

YEAS—28

Alexander	Cornyn	Inhofe
Allard	Craig	Isakson
Bennett	Crapo	Kyl
Bond	DeMint	Lott
Brownback	Ensign	McCain
Bunning	Enzi	McConnell
Burr	Graham	Sununu
Chambliss	Gregg	Thomas
Coburn	Hagel	
Cochran	Hatch	

NAYS—69

Akaka	Bingaman	Cantwell
Baucus	Boxer	Cardin
Bayh	Brown	Carper
Biden	Byrd	Casey

Clinton	Landrieu	Roberts
Coleman	Lautenberg	Rockefeller
Collins	Leahy	Salazar
Conrad	Levin	Sanders
Corker	Lieberman	Schumer
Dodd	Lincoln	Sessions
Dole	Lugar	Shelby
Domenici	Martinez	Smith
Dorgan	McCaskill	Snowe
Durbin	Menendez	Specter
Feingold	Mikulski	Stabenow
Feinstein	Murkowski	Tester
Grassley	Murray	Thune
Harkin	Nelson (FL)	Vitter
Hutchison	Nelson (NE)	Voinovich
Kennedy	Obama	Warner
Kerry	Pryor	Webb
Klobuchar	Reed	Whitehouse
Kohl	Reid	Wyden

NOT VOTING—3

Inouye	Johnson	Stevens

The amendment (No. 116) was rejected.

Mr. KENNEDY. I believe under the consent agreement we were going to act now on the Sununu amendment 112 and the Kerry amendment 187; is that correct?

The PRESIDING OFFICER. The amendment has not been sent up yet.

AMENDMENT NO. 187 TO AMENDMENT NO. 112

Mr. KENNEDY. Madam President, I call up amendment No. 187.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Massachusetts [Mr. KENNEDY], for Mr. KERRY, for himself, Ms. SNOWE, and Mr. SUNUNU, proposes an amendment numbered 187 to amendment No. 112.

The amendment is as follows:

AMENDMENT NO. 187

(Purpose: To provide a complete substitute)

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

SEC. ___. RENEWAL GRANTS FOR WOMEN'S BUSINESS CENTERS.

(a) IN GENERAL.—Section 29 of the Small Business Act (15 U.S.C. 656) is amended by adding at the end the following:

''(m) CONTINUED FUNDING FOR CENTERS.—

''(1) IN GENERAL.—A nonprofit organization described in paragraph (2) shall be eligible to receive, subject to paragraph (3), a 3-year grant under this subsection.

''(2) APPLICABILITY.—A nonprofit organization described in this paragraph is a nonprofit organization that has received funding under subsection (b) or (l).

''(3) APPLICATION AND APPROVAL CRITERIA.—

''(A) CRITERIA.—Subject to subparagraph (B), the Administrator shall develop and publish criteria for the consideration and approval of applications by nonprofit organizations under this subsection.

''(B) CONTENTS.—Except as otherwise provided in this subsection, the conditions for participation in the grant program under this subsection shall be the same as the conditions for participation in the program under subsection (l), as in effect on the date of enactment of this Act.

''(C) NOTIFICATION.—Not later than 60 days after the date of the deadline to submit applications for each fiscal year, the Administrator shall approve or deny any application under this subsection and notify the applicant for each such application.

''(4) AWARD OF GRANTS.—

''(A) IN GENERAL.—Subject to the availability of appropriations, the Administrator shall make a grant for the Federal share of the cost of activities described in the application to each applicant approved under this subsection.

''(B) AMOUNT.—A grant under this subsection shall be for not more than $150,000, for each year of that grant.

''(C) FEDERAL SHARE.—The Federal share under this subsection shall be not more than 50 percent.

''(D) PRIORITY.—In allocating funds made available for grants under this section, the Administrator shall give applications under this subsection or subsection (l) priority over first-time applications under subsection (b).

''(5) RENEWAL.—

''(A) IN GENERAL.—The Administrator may renew a grant under this subsection for additional 3-year periods, if the nonprofit organization submits an application for such renewal at such time, in such manner, and accompanied by such information as the Administrator may establish.

''(B) UNLIMITED RENEWALS.—There shall be no limitation on the number of times a grant may be renewed under subparagraph (A).

''(n) PRIVACY REQUIREMENTS.—

''(1) IN GENERAL.—A women's business center may not disclose the name, address, or telephone number of any individual or small business concern receiving assistance under this section without the consent of such individual or small business concern, unless—

''(A) the Administrator is ordered to make such a disclosure by a court in any civil or criminal enforcement action initiated by a Federal or State agency; or

''(B) the Administrator considers such a disclosure to be necessary for the purpose of conducting a financial audit of a women's business center, but a disclosure under this subparagraph shall be limited to the information necessary for such audit.

''(2) ADMINISTRATION USE OF INFORMATION.—This subsection shall not—

''(A) restrict Administration access to program activity data; or

''(B) prevent the Administration from using client information (other than the information described in subparagraph (A)) to conduct client surveys.

''(3) REGULATIONS.—The Administrator shall issue regulations to establish standards for requiring disclosures during a financial audit under paragraph (1)(B).''.

(b) REPEAL.—Section 29(l) of the Small Business Act (15 U.S.C. 656(l)) is repealed effective October 1 of the first full fiscal year after the date of enactment of this Act.

(c) TRANSITIONAL RULE.—Notwithstanding any other provision of law, a grant or cooperative agreement that was awarded under subsection (l) of section 29 of the Small Business Act (15 U.S.C. 656), on or before the day before the date described in subsection (b) of this section, shall remain in full force and effect under the terms, and for the duration, of such grant or agreement.

Mr. KENNEDY. Madam President, I support this amendment offered by Senators KERRY, SNOWE and SUNUNU. This amendment provides essential ongoing support to Women Business Centers and has received bipartisan support in the small business committee and I urge my colleagues to support it.

Women small business entrepreneurs are making gains in today's economy and have grown dramatically over the last few decades. In my State of Massachusetts women-owned small businesses have grown by 13 percent since 1997. But they still account for only one-third of all small businesses in the State. Nationally, they make up only 28 percent of all small businesses.

Women Business Centers provide essential training and support to women of all incomes, and of all races to help them start and grow their small business. These centers even the playing field for women entrepreneurs who still face significant obstacles in the world of business.

The Center for Women and Enterprise in Massachusetts, has served over 12,000 women who created 16,000 new jobs and generated more than $470 million in wages since 1995.

We must make this program permanent and make sure that women can participate in small business that is so vital to our national economic growth.

Women entrepreneurs are precious national assets that employ millions of workers and generate billions in wages. We should not limit their potential.

I urge my colleagues to support this amendment to support our women entrepreneurs.

Mr. KERRY. Madam President, I rise to speak about amendment No. 187. I offer this amendment along with my colleagues Senators SNOWE and SUNUNU to keep open our Nation's most experienced and successful women's business centers. These centers—including those in Boston and Worcester in my home State of Massachusetts, in Portsmouth, NH, and in Wiscasset, ME—provide business counseling and financial literacy training to women who want to start or grow a business. We need to pass this amendment so that the women's business centers have access to the Federal matching money that is necessary to raise private sector capital.

For several years now Senator SNOWE and I have been working on a solution to keep open the most experienced centers. Last summer our committee passed a bill that would keep these centers open, though it did not become law. I want to thank Senator SNOWE and her staff for their collaboration on this important issue, and I also want to thank Senator SUNUNU for working with us to incorporate changes into his original amendment that reflect our committee's work. I thank the very able and resourceful executive directors of the women's business centers for working with us all these years to keep their centers going, providing women with the tools they need to make their businesses succeed. In my home State, that includes our current leader, Ms. Donna Good, and her predecessor, Andrea Silbert, who started the Center for Women & Enterprise.

In my 21 years on the Committee on Small Business and Entrepreneurship, I have consistently promoted women entrepreneurs and fought for adequate funding for the women's business centers. As chairman of the committee in the 110th Congress, I will do the same and urge my colleagues on both sides of the aisle to support this amendment. This important legislation will allow established women's business centers to receive renewability grants after their initial grant cycle of matching funds has expired.

The concept of sustainability grants is something I originally introduced in 1999 with my Women's Business Center

Sustainability Pilot Program—a bill that garnered widespread bipartisan support and was instrumental in securing additional funding to allow successful and effective centers keep their doors open for women entrepreneurs in their community. And last Congress Senator SNOWE and I introduced the Women's Small Business Ownership Programs Act, which allowed proven centers with a successful track record to receive additional 3-year renewal grants beyond an initial 4-year grant cycle.

The amendment we introduced today builds upon our previous legislative proposals by giving established women's business centers the ability to apply for 3-year grants on an ongoing basis. It would provide women's business centers with a permanent funding stream in the future.

By adopting this amendment today, we will ensure that successful and experienced centers are able to continue serving entrepreneurs by giving women-owned small businesses the tools they need to grow and flourish.

Madam President, I ask my colleagues to vote in favor of this amendment.

Ms. SNOWE. Madam President, I rise to speak to the second-degree amendment currently pending today that Senator KERRY and I have introduced along with Senator SUNUNU. I would first like to commend my colleague Senator SUNUNU for taking the initiative and offering the original women's business center amendment that includes critical legislation to keep this longstanding program operating.

This second-degree amendment expands upon Senator SUNUNU's amendment by addressing the continuation of the women's business center sustainability program, a 5-year pilot program that expired in October 2003. I am pleased to have worked closely with Senator KERRY, the original author of this program, to find a permanent solution to keep the most experienced centers funded and operating.

We cannot afford to ignore, or minimize, the extraordinary contributions America's businesswomen are making to our economy, our culture, and our future. The achievements of women entrepreneurs are undeniable. Women-owned firms generate almost $2.5 trillion in revenues. They employ more than 19 million workers and are the fastest growing segment of today's economy. In my home State of Maine alone, more an 63,000 women-owned firms generate an astounding $9 billion in sales. That is truly a record we can all be proud of.

There can be no doubt the Small Business Administration's, SBA, women's business center program has been an indispensable party on the path to success. In 2006, the 99 women's business centers nationwide served more than 144,000 clients across the country. Whether focused on expanding access to more affordable employee health coverage—enhancing Federal contract procurement opportunities for women-owned businesses—or improving access to capital, the women's business center program has been an invaluable resource to women-owned businesses in my home State of Maine and across the Nation.

The fact is, since the program was created in 1988, Congress renewed the program seven times, and made it permanent in 1997. The women's business centers' unique training and counseling has helped clients generate more than $235 million in revenue and create or retain over 6,500 jobs in 2003. This program clearly has a record of success, fostering job growth and providing American small businesses with the opportunity to thrive.

Women entrepreneurs continue to face tremendous challenges—access to business assistance, access to capital, and access to Federal Government contracting opportunities. The ''glass ceiling'' in corporate America that led many women to start a small business has been transformed into another obstacle—a ''glass doorway''—between women who want to start and grow businesses and the lending and Federal contract markets these women entrepreneurs seek to enter. Overcoming these obstacles requires that women are provided the business assistance tools they need, which we here in Congress can ensure through the programs and services established within the Small Business Administration.

Over the past 4 years as chair of the Small Business Committee and now as ranking member, I have carefully examined the SBA's programs with a particular focus on the agency's initiatives that are intended to foster women-owned businesses. I introduced numerous bills in the 108th and 109th Congress to improve and revitalize these programs.

In fact, in July 2006, I led the Small Business Committee in unanimously reporting out the Small Business Reauthorization and Improvements Act, S. 3778. This reauthorization package incorporated a bill, the Women's Small Business Ownership Programs Act of 2006, S. 3659, that I, along with Senator KERRY, introduced and which was cosponsored by Senator SUNUNU.

The issue before us today is whether to renew and make permanent the Women's Business Centers Sustainability Grants Program, which unfortunately expired in 2003. This amendment is designed to address these issues and improve the programs and services that the SBA delivers across the Nation for women business owners. The need and the impressive record of the women's business centers only supports the reasons for making the program permanent. The centers have proven to be a great value to the communities they serve, so we must ensure their programs and services continue to be available.

Two years ago, the funding for the women's business center in my home State of Maine expired. This center, Coastal Enterprises, has struggled since then to find funding necessary to continue providing vital assistance to women entrepreneurs across the State of Maine. Coastal Enterprises has helped women entrepreneurs succeed for over 10 years, and we must ensure the center receives this critical assistance to continue its operation.

The duty rests upon us to foster an environment favorable to economic expansion so that each business can travel down their road of success. This amendment achieves that goal—and not by establishing costly new initiatives but by building on successful established programs within the SBA and improving their delivery for the benefit of current and future women entrepreneurs.

My responsibility as ranking member of the committee includes ensuring that every woman who owns a small business—or any woman who dreams of owning one—has the resources, the support, and the opportunities they need to embark on their next great entrepreneurial adventure.

I ask my colleagues to support our bipartisan amendment.

The PRESIDING OFFICER. Under the previous order, that amendment is agreed to.

The amendment (No. 187) was agreed to.

The PRESIDING OFFICER. The Sununu amendment as thus amended is agreed to.

The amendment (No. 112), as amended, was agreed to.

AMENDMENT NO. 127, AS MODIFIED, TO AMENDMENT NO. 100

Mr. KENNEDY. Madam President, I send to the desk the modified Feingold amendment numbered 127.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Massachusetts [Mr. KENNEDY], for Mr. FEINGOLD, proposes an amendment numbered 127, as modified, to amendment No. 100.

The amendment is as follows:

AMENDMENT NO. 127, AS MODIFIED

(Purpose: To amend the Buy American Act to require each Federal agency to submit reports regarding purchases of items made outside of the United States, and for other purposes)

At the end, add the following:

SEC. _____. REPORTS ON ACQUISITIONS OF ARTICLES, MATERIALS, AND SUPPLIES MANUFACTURED OUTSIDE THE UNITED STATES.

Section 2 of the Buy American Act (41 U.S.C. 10a) is amended—

(1) by striking ''Notwithstanding'' and inserting the following:

''(a) IN GENERAL.—Notwithstanding''; and

(2) by adding at the end the following:

''(b) REPORTS.—

''(1) IN GENERAL.—Not later than 180 days after the end of each of fiscal years 2007 through 2011, the head of each Federal agency shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Government Reform of the House of Representatives a report on the amount of the acquisitions made by the agency in that fiscal year of articles, materials, or supplies

purchased from entities that manufacture the articles, materials, or supplies outside of the United States.

''(2) CONTENTS OF REPORT.—The report required by paragraph (1) shall separately include, for the fiscal year covered by such report—

''(A) the dollar value of any articles, materials, or supplies that were manufactured outside the United States;

''(B) an itemized list of all waivers granted with respect to such articles, materials, or supplies under this Act, and a citation to the treaty, international agreement, or other law under which each waiver was granted;

''(C) if any articles, materials, or supplies were acquired from entities that manufacture articles, materials, or supplies outside the United States, the specific exception under this section that was used to purchase such articles, materials, or supplies; and

''(D) a summary of—

''(i) the total procurement funds expended on articles, materials, and supplies manufactured inside the United States; and

''(ii) the total procurement funds expended on articles, materials, and supplies manufactured outside the United States.

''(3) PUBLIC AVAILABILITY.—The head of each Federal agency submitting a report under paragraph (1) shall make the report publicly available to the maximum extent practicable.

''(4) EXCEPTION FOR INTELLIGENCE COMMUNITY.—This subsection shall not apply to acquisitions made by an agency, or component thereof, that is an element of the intelligence community as specified in, or designated under, section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).''.

The PRESIDING OFFICER. Under the previous order, that amendment is agreed to.

The amendment (No. 127), as modified, was agreed to.

Mr. KENNEDY. Madam President, for the benefit of the Members, we have today disposed of six amendments. We have 18 other amendments pending. The staffs will work over the evening. Some look like we can move along early tomorrow. We are planning a full day tomorrow. We have had a total of over 90 amendments that have actually been filed. We thank all of our colleagues for their cooperation. We are expecting a full day, with a number of votes tomorrow. We are looking forward in the near future to getting final action on an increase in the minimum wage.

I yield the floor.

Mr. WARNER. Madam President, I wish to proceed as in morning business.

The PRESIDING OFFICER. The Senate is not in morning business.

Mr. KENNEDY. If the Senator desires to speak as in morning business, I don't think there would be any objection.

Mr. WARNER. I hope there would not be any objection.

Madam President, may I suggest the Senator from Idaho be recognized and I be recognized following his remarks.

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

The Senator from Idaho is recognized.

Mr. CRAPO. Madam President, I will take 5 minutes or less to speak on a matter of importance, in terms of the process we are following as we consider the Small Business and Work Opportunity Act.

The concern I raise is regarding compensation-related tax increases that came out of the Senate Committee on Finance as part of this package.

The Small Business and Work Opportunity Act includes $8.3 billion worth of business tax reductions that are paid for with offsetting tax increases. Two of these tax increases relating to the tax treatment of compensation are brandnew proposals that have never been examined by either the Committee on Finance or the full Senate. In fact, the legislative language was not even available when H.R. 2 was brought to the Senate.

The concern I have about the process is this: Almost half of the business tax cuts in the package we are considering are extensions of current tax law provisions that Congress has previously passed with broad bipartisan support without offsetting tax increases.

I understand the desire to offset the cost of new tax policies, but I am concerned about increasing taxes on individuals and employers to offset extensions of current policy. Mandatory spending programs, which are the real source of budgetary pressure, are automatically extended every year. These automatic extensions are not paid for because they represent extensions of current law. The same standard should apply to current tax policy.

We will engage in a debate over the pay-as-you-go budget requirements when a pay-go proposal is submitted to the Senate. Until that time, I urge my colleagues, we should not raise taxes to offset current tax law, particularly if the tax increase proposals have never been vetted. Making major changes to the tax law without full examination of the policy proposals will lead to unintended consequences and create real burdens on many of the employers that this bill seeks to help.

I will point out a few of the concerns these new proposals do raise that, as I said, were not raised in the Committee on Finance as we did not have time to review them carefully.

One of the proposals, the new limits on deferred compensation, limits the amount of compensation an employee can save in a nonqualified deferred compensation plan or an NQDC plan. I know we are getting into acronyms and some of the complications of the code, but these things have real consequences in the business of our country. I have several significant concerns with this proposal which were not addressed during the Committee on Finance consideration of the bill.

First, the proposal does not target executives. NQDC plans benefit a wide range of workers, including nonmanagerial employees. The Committee on Finance proposal affects all employees in the plan, not just executives. As a result, the proposal would limit the amount that mid-level workers can set aside for retirement, attacking one of the objectives that we in America need to be paying strong attention to, the ability of Americans to begin saving assets for retirement.

Second, the proposal does not target multimillion dollar salaries—again, one of the justifications for the proposal. It is said that this is the million-dollar salary provision. Yet the cap on annual deferrals is set at the lesser of $1 million or a 5-year average of past compensation. This could have negative consequences on employees at a much lower salary level.

For example, consider a nonmanagerial employee who worked at a manufacturing plant for 13 years at an average salary of $60,000 over the past 5 years. In the process of downsizing, this employee may be offered a severance package that includes 1 year of health benefits plus 2 years of severance pay for every year on the job. A severance package of this size would add up to $141,000 paid over a number of years. The present value of this package—in other words, the value stream of the payments in today's dollars—is $125,000. Since the employee is bound by a $60,000 cap on deferrals, this severance would be taxed and hit with a 20-percent tax penalty. This is hardly the result we would want.

This proposal does nothing to create parity in compensation between executives and rank-and-file workers and, in fact, does not limit the amount that executives can be paid as, again, is the stated intention behind the inclusion of this proposal in the bill. It simply requires them to pay taxes on their compensation sooner rather than later. Yet it has that unintended consequence that we often speak so much about in the Senate of reaching much more broadly than the payment of high salaries to the high-paid executives and hitting the mid-level managers in the businesses around our country who will pay tax penalties because we did not take the time to pay close attention to the kinds of provisions contained in the bill.

All of us have been contacted by those in the country who are concerned about this, organizations such as the American Bankers Association, the American Benefits Council, the American Council of Life Insurers, the Association for Advanced Life Underwriting, the ERISA Industry Committee, FEI's Committee on Benefit Finance, FEI's Committee on Taxation, the HR Policy Association, the National Association of Manufacturers, the Securities Industry and Financial Markets Association, the Financial Services Roundtable, and, of course, the U.S. Chamber of Commerce. These groups which represent businesses of all sizes around the country, which seek to provide benefits and support for their employees, are asking us to pay attention to the process by which we put proposals of this kind into the Tax Code without the kind of due deliberation they deserve.

Hopefully, during the process of the consideration of this bill, we will have

an opportunity to correct these unintended consequences and make sure that the midlevel managers and others who are involved in NQDC plans—nonqualified deferred compensation plans—do not face these tax penalties we never intended them to face.

I thank the Chair.

Mr. SPECTER. Madam President, I seek recognition to speak in support of S.2, the Fair Minimum Wage Act of 2007, of which I am a cosponsor, to increase the Federal minimum wage to $7.25 per hour by 2009. The last time Congress voted to raise the minimum wage was in 1996, raising it from $4.25 to $4.75 to eventually $5.15 in 1997.

History clearly demonstrates that raising the minimum wage has no adverse impact on jobs, employment, or inflation. In the 4 years after the last minimum wage increase passed, the economy experienced its strongest growth in over three decades. More than 11 million new jobs were added, at the pace of 232,000 per month. We need to ensure that hard working Americans that are paid the minimum wage are given an increase because there has been no increase for almost 10 years, while cost-of-living adjustments have been provided to others.

In my home State of Pennsylvania, the State minimum wage was increased from $5.15 per hour to $6.25 per hour on January 1, 2007. On July 1, 2007, the State minimum wage will increase to $7.15 per hour. Many States surrounding the Commonwealth of Pennsylvania, including New York, New Jersey, Maryland, and Ohio, have already increased their State minimum wage above the Federal minimum wage with a State wage rate of $7.93 per hour. With 29 states, including Pennsylvania, passing laws to increase their state minimum wage above the Federal wage, it is crucial for this body and this Congress to pass legislation to increase the Federal wage rate to have consistency across the entire United States.

The official poverty rate in the United States increased from a 26-year low of 11.3 percent in 2000 to 12.6 percent in 2005, including 12.9 million children. The nonprofit, nonpartisan think tank, the Economic Policy Institute, EPI, estimates that 11 percent of the work force, or about 14.9 million workers, would receive an increase in their hourly wages if the Federal minimum wage was increased to $7.25 by 2008. Also, 59 percent of those workers likely to benefit are women and 9 percent are single parents. Further, evidence from an analysis of the 1996–97 minimum wage increase shows that the average minimum wage worker brings home more than half, 54 percent, of his or her family's weekly earnings.

Increasing the Federal wage would enable a working family to afford almost 2 more years of childcare, full tuition for a community college degree, and many other staples for a healthy standard of living. Unfortunately, the current minimum wage fails to meet these standards. Congress needs to act. The longer there is inaction, the more behind minimum wage earners get in paying expenses just to survive.

Since taking office in 1981, I have consistently supported increasing the Federal minimum wage. I understand the importance of ensuring that the minimum wage keeps better pace with inflation. The real value of the minimum wage has declined steadily in recent years and it is long past due for an increase. America's working families work hard every day, sometimes at two or three jobs, just to make ends meet. We need to pass this legislation to give these families leverage to compensate for the increased costs of living over time.

The U.S. Department of Labor's Bureau of Labor Statistics defines inflation as ''the overall general upward price movement of goods and services in an economy.'' The Bureau compiles statistics, called the Consumer Price Index, CPI, to measure the rate of inflation on a yearly December to December basis. CPI is measured by utilizing prices of a ''market basket'' of goods and services purchased by an urban family, in which a market basket is individual items weighted by how much the urban family spent on those same items in a base year period—currently 1982–1984. By any measure, the current minimum wage does not have the same buying power as it did in 1997, the last time the Federal minimum wage was increased.

According to the Department of Labor, the rate of inflation from 1997 at 1.7 percent has increased at least 2.7 times to 4.7 percent in 2006. While the price of items has increased almost three times what they had cost in 1997, America's working families who depend on the Federal minimum wage have not seen any increase at all in the wages they take home.

The Congressional Research Service of the Library of Congress has done nonpartisan research regarding the Federal minimum wage. They have found that those who earned below $7.25 an hour in 2005 were more than likely to have been women, 7 out of 11 million, of Hispanic origin, young, i.e., age 16–14; over fifty percent, or old, i.e. age 65 and above; 3.6 percent, lacking a high school degree, 38.1 percent, working part-time, i.e. less than 35 hours a week; 35.1 percent, and not represented by a labor union, 16.7 percent. Continuing, the report states that the families of these workers were more than likely than other families in 2005 to have been poor, receiving welfare, and lacking health insurance. As a frame of reference, in the private sector in 2005, the average wage of nonmanagement employees was $16.11 an hour according to the Bureau of Labor Statistics survey of employers.

While I do support increasing the Federal minimum wage, I am very much concerned about the impact on small businesses. In my travels throughout Pennsylvania, I have heard from many small business owners about the unfairness in our tax laws and the burden placed upon them in comparison to large corporations. These complaints have been coupled by minimum wage earners who have struggled to make ends meet on just $5.15 per hour.

After reviewing the available data, I believe that increasing the minimum wage will help those in need and will not adversely affect small businesses. A 1998 EPI study did not find any significant job loss associated with the 1996–1997 Federal minimum wage increase. On the other hand, the low-wage labor market—i.e. lower unemployment rates and increased average hourly wages—had performed better than in previous years. Small business owners in those states with higher minimum wage rates than the Federal minimum wage rate, such as the State of Washington at $7.93 per hour, appeared to have prospered. The New York Times reported on January 11, 2007 that small business owners in Washington's neighboring State of Idaho are hurting because of the State's low minimum wage rate of $5.15 per hour. Many residents living near Washington seek jobs in the Evergreen State, forcing small business owners to offer more than Idaho's minimum wage in order to hire new employees.

Small businesses are recognized as an integral part of a powerful economic engine in America. As a critical job creator, they have helped build the prosperity that our country has shared. Nationwide, small businesses employ 52 percent of the private work force and contribute to 47 percent of all sales, spending over $1.4 trillion in annual payrolls. We need to strike a balance between the needs of these employees and their employers, who will be tasked with paying for any increase in the minimum wage.

To counter balance the increase in the minimum wage, I have supported many significant measures to help small businesses in recent years. In the 109th Congress, I was a cosponsor of S. 406, the Small Business Health Fairness Act and introduced my own bill in the 108th Congress, S. 2767, the Small Business Economic Stimulus Act, which would have enabled small businesses to join together to form associated health plans.

Further, on May 9, 2006, I voted to invoke cloture (to end debate) on S. 1955, the Small Business Health Plans bill. Further, in 2005, I supported S.2020, the Tax Relief Act of 2005, which passed the Senate 64–33. Among other provisions, this bill sought to extend various tax relief provisions for businesses including bonus depreciation and increased expensing for small business property. I have also consistently supported the U.S. Small Business Administration, SBA, and funding for the Small Business Development Center, SBDC, program, which operates in partnership with 16 Pennsylvania colleges and universities and assists entrepreneurs and

small businesses through consulting, education and business information. This program received $89 million in fiscal year 2006.

It is my expectation that the small business incentives proposed by the Senate Finance Committee will ultimately become law in legislation which increases the minimum wage.

Mrs. FEINSTEIN. Mr. President, I rise today in support of a minimum wage increase that provides American workers a raise with no strings attached. It has been nearly a decade since the minimum wage was last increased. We can no longer afford to delay action, and millions of hard-working Americans deserve better.

The Federal minimum wage today is only $5.15 per hour. Someone who works at this rate for 40 hours a week, 52 weeks a year takes home less than $11,000 annually far below the poverty line for families.

Increasing the Federal minimum wage to $7.25 per hour would impact nearly 13 million Americans, the majority of whom are women, 59 percent, and people of color, 40 percent. Eighty percent of those impacted would be adult workers, and most are full-time employees.

The consequences of nearly a decade of inaction are clear.

Almost 40 million Americans live in poverty, 13 million of whom are children.

Increasing the Federal minimum wage to $7.25 would add nearly $4,400 to a minimum wage worker's annual income, representing, for many families, the difference between self-sufficiency or living below the poverty line.

For most Americans, the choice is clear. In the last election, voters in six States Arizona, Colorado, Missouri, Montana, Nevada, and Ohio supported initiatives to increase their State minimum wages. In fact, 29 States, nearly 60 percent, have a minimum wage above the Federal level.

I am proud that my own State of California has one of the highest minimum wages in the country, at $7.50 per hour, increasing to $8.00 per hour next year. Many California cities and counties stipulate that workers must be paid a living wage, which in some cases guarantees an additional $3 or $4 per hour.

There are two options before the Senate today. This body can act swiftly and stand behind nearly 13 million workers, Or we can delay action, by modifying the legislation before us to include $8.3 billion in tax breaks for small businesses.

Packaging the minimum wage bill with these tax cuts is disadvantageous to businesses and minimum wage workers. Adding a tax package creates procedural hurdles that could significantly delay implementation of this wage increase.

The U.S. Chamber of Commerce opposes linking these small business tax breaks to this legislation because many of the tax provisions are only temporary extensions. They do not provide the long-term relief that businesses seek.

Considering the package of small business tax cuts separately would facilitate a more robust discussion of how small businesses the primary job creators in this country can receive genuine relief from the rising costs of operations.

Many small business owners would suffer no adverse impact if the minimum wage were increased. A recent Gallup Poll in the Sacramento Business Journal showed that 86 percent of small business owners surveyed do not believe that an increase in the minimum wage would harm their businesses.

Nearly 75 percent of small business owners thought that a 10 percent minimum wage increase would have no impact on their businesses at all. More than half of those polled thought the minimum wage should actually be increased.

The evidence shows that increasing the minimum wage does not adversely affect the economy. In fact, in Los Angeles and San Francisco, raising wages added stability to many businesses and the local economy.

In San Francisco, turnover for home-care workers fell by 57 percent after the city implemented its living wage policies.

The average job tenure of workers in fast food restaurants increased by 3.5 months.

In Los Angeles, businesses affected by a living wage ordinance had one-third less turnover among low wage earners, and absenteeism declined.

Higher wages improve worker loyalty and increase employee retention, while decreasing employee hiring and training costs.

Let me be clear: I support many of the tax cuts for small businesses. I think they should be considered, with the proper offsets, as part of a separate revenue-neutral tax bill. But they should not be included in this must-pass minimum wage bill.

Ensuring that all American workers receive fair pay for a hard day's work should not be a partisan issue. The House overwhelmingly passed this legislation by a vote of 315 to 116, with more than 80 Republicans crossing party lines to support this cause.

Congress has increased the minimum wage nine times since the enactment of the Fair Labor Standards Act, under both Republican and Democratic administrations. Only once, in 1996, was a minimum wage increase paired with tax cuts.

The purchasing power of the minimum wage is at its lowest level since 1955. The cost of living is up 26 percent since the last minimum wage increase in 1997.

It is unfair to punish hard working people and make them wait for an increase. We must not delay. We must not bog down this bill with procedural tactics.

American workers deserve better. I urge my colleagues to do what is fair and just: Pass a clean minimum wage bill. Let's provide immediate relief to those who need it most.

I thank the Chair.

The PRESIDING OFFICER (Mr. OBAMA). The Senator from Virginia is recognized.

MORNING BUSINESS

Mr. WARNER. Mr. President, I ask unanimous consent that we now proceed to a period of morning business, with Senators permitted to speak for up to 5 minutes each.

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

Mr. WARNER. Mr. President, I desire to address the Senate at this time. It would be my hope that my colleague, the Senator from Nebraska, could follow me and, indeed, following the Senator from Nebraska, the Senator from Maine. I put that in the form of a unanimous consent request at this time.

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

(The remarks of Mr. WARNER, Mr. NELSON of Nebraska, Ms. COLLINS, and Mr. SALAZAR pertaining to the submission of S. Con. Res. 4 are printed in today's RECORD under ''Submitted Resolutions.'')

Mr. WARNER. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Ms. CANTWELL). The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

REQUEST FOR SEQUENTIAL REFERRAL

Mr. REID. Mr. President, I ask unanimous consent to have printed in the RECORD a letter addressed to me dated January 24, 2007, from Senator LEVIN.

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

U.S. SENATE,
COMMITTEE ON ARMED SERVICES,
Washington, DC, January 24, 2007.

Hon. HARRY REID,
Majority Leader, U.S. Senate,
Washington, DC.

DEAR SENATOR REID: Pursuant to paragraph 3(b) of S. Res. 400 of the 94th Congress, as amended by S. Res. 445 of the 108th Congress, I request that the Intelligence Authorization Act for Fiscal Year 2007, as filed by the Select Committee on Intelligence on January 24, 2007, be sequentially referred to the Committee on Armed Services for a period of 10 days. This request is without prejudice to any request for an additional extension of five days, as provided for under the resolution.

S. Res. 400, as amended by S. Res. 445 of the 108th Congress, makes the running of the period for sequential referrals of proposed legislation contingent upon the receipt of that

legislation ''in its entirety and including annexes'' by the standing committee to which it is referred. Past intelligence authorization bills have included an unclassified portion and one or more classified annexes.

I request that I be consulted with regard to any unanimous consent or time agreements regarding this bill.

Thank you for your assistance.

Sincerely,

CARL LEVIN,
Chairman.

VOTE EXPLANATION

Mr. BROWNBACK. Mr. President, I regret that I was unable to vote the evening of January 18 on a very significant amendment offered by my colleague from Utah. During consideration of S. 1 last week, I was concerned with section 220 of the bill, which would have severely undermined the ability of Americans to be informed about what is happening here in the Capitol and, thereby, to petition the Congress with their thoughts. I applaud Senator BENNETT for offering his amendment to strike these so-called grassroots lobbying provisions from the ethics reform bill, and I thank Senate Republican Leader MCCONNELL and Senator BENNETT for their leadership in ensuring this amendment's success. I ask that the RECORD reflect that, had I been here, I would have voted in favor of Senator BENNETT's amendment No. 20 last Thursday night.

Additionally, I applaud the Senate's careful consideration and passage of S. 1, the Legislative Transparency and Accountability Act. Although I was unable to attend the vote on final passage of S. 1, I support the bill and hope that a conference to resolve differences between the House and Senate passed bills is convened soon. Scandals involving lobbyists and members of Congress from both sides of the aisle have shaken the American public's confidence in Congress's ability to do business objectively and judiciously. Although S. 1 fails to address transparency for so-called 527 organizations and fails to provide the President the authority to veto wasteful pork projects, passage of this bill is an important step toward broadening transparency in the legislative process, and I look forward to sending a balanced bill to the President's desk. I ask that the RECORD reflect that, had I been here, I would have voted for the bill, just as I voted for a similar ethics reform bill on March 29, 2006.

HONORING OUR ARMED FORCES

CAPTAIN BRIAN FREEMAN

Mr. DODD. Mr. President, a month ago, I traveled to Iraq to meet there with our men and women in uniform. One soldier in particular stood out to me, a bright young West Point graduate, CPT Brian Freeman. Our conversation lasted for no more than 5 minutes, and yet I was immediately struck by his outspoken intelligence. ''Senator, it is nuts over here. Soldiers are being asked to do work we're not trained to do,'' he told me. ''I'm doing work that State Department people are far more prepared to do in fostering democracy, but they're not allowed to come off the bases because it's too dangerous here. It doesn't make any sense.''

Now those words have taken on a tragic resonance. Four days ago, according to media accounts, 30 gunmen disguised as U.S. officials penetrated an Iraqi checkpoint in Karbala. Once inside the Army compound, the reports say, they opened fire and mortally wounded five American soldiers.

On Sunday, Charlotte Freeman was visiting her family in Utah when she found a message on her cell phone. Army chaplains had been to her house in California. The daily e-mails from her husband Brian had stopped. I imagine that few things have more anguish in them than waiting, in suspended fear, for the news of a loved one's death. Late that afternoon, the news came.

So I rise to honor Captain Freeman and to add my voice to his family's prayers. His giving spirit and his self-sacrifice embodied all the best of our Armed Forces, whether he was working to take the son of a Karbala policeman to America for heart surgery or fighting to secure death benefits for the family of his murdered interpreter or organizing a charity to fund medical care for Iraqi children. In his duty as a liaison between the Army and the Government of Karbala Province, he proved every day his dedication to the Iraqi people; the Governor of Karbala praised him as ''a soldier and a statesman.''

But the virtues we saw in Brian shone through even clearer to those who loved him: Charlotte, his wife; his 3-year-old son Gunnar and his 14-month-old daughter Ingrid; his father Randy and his stepmother Kathy; his mother and his stepfather, Kathleen and Albert Snyder. ''Brian is a beautiful man,'' his mother-in-law, Ginny Mills, wrote to me shortly after his death.

''He is loving, funny, and intelligent. He had a spirit in him that saw the good in life. A man who put his life on the line to help those less fortunate than himself. A man who was a loving husband and a devoted father. A man whose daughter will never know him first-hand.''

In the place of a husband and father who will never see his children grow up, Brian Freeman's young family will have to live on with the warm memories of the man who loved them and who risked his life in the service of his country. Memories and words of comfort are so insufficient, so small, next to the flesh and blood. But there is nothing else to put in their place.

I have nothing else to add—except to note that the scenes of grief and comfort in the home of Charlotte Freeman have played themselves out, in some form or another, 3,000 times, in 3,000 families, for 3,000 lives. ''Each story is the same,'' wrote Ginny Mills. ''A wonderful, beautiful soul sacrificed.''

''I cannot understand that this war goes on and on,'' she wrote. ''It has to stop. It has to stop now and I need to know how to do that.''

May God send comfort to her and to all of Captain Freeman's family and to every family that is bereaved. And may we remember, in every hour of our deliberations, the young lives that bear the burden of the choices we make in this Chamber.

COMMITTEE ON ENERGY AND NATURAL RESOURCES RULES OF PROCEDURE

Mr. BINGAMAN. Mr. President, in accordance with rule XXVI, paragraph 2, of the Standing Rules of the Senate, I submit the rules governing the procedure of the Committee on Energy and Natural Resources, which the committee adopted earlier today, for publication in the CONGRESSIONAL RECORD.

I ask unanimous consent that they be printed in the RECORD.

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

RULES OF THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES

GENERAL RULES

Rule 1. The Standing Rules of the Senate, as supplemented by these rules, are adopted as the rules of the Committee and its Subcommittees.

MEETINGS OF THE COMMITTEE

Rule 2. (a) The Committee shall meet on the third Wednesday of each month while the Congress is in session for the purpose of conducting business, unless, for the convenience of Members, the Chairman shall set some other day for a meeting. Additional meetings may be called by the Chairman as he may deem necessary.

(b) Hearings of any Subcommittee may be called by the Chairman of such Subcommittee, Provided, That no Subcommittee hearing other than a field hearing, shall be scheduled or held concurrently with a full Committee meeting or hearing, unless a majority of the Committee concurs in such concurrent hearing.

OPEN HEARINGS AND MEETINGS

Rule 3. (a) All hearings and business meetings of the Committee and all the hearings of any of its Subcommittees shall be open to the public unless the Committee or Subcommittee involved, by majority vote of all the Members of the Committee or such Subcommittee, orders the hearing or meeting to be closed in accordance with paragraph 5(b) of Rule XXVI of the Standing Rules of the Senate.

(b) A transcript shall be kept of each hearing of the Committee or any Subcommittee.

(c) A transcript shall be kept of each business meeting of the Committee unless a majority of all the Members of the Committee agrees that some other form of permanent record is preferable.

HEARING PROCEDURE

Rule 4. (a) Public notice shall be given of the date, place, and subject matter of any hearing to be held by the Committee or any Subcommittee at least one week in advance of such hearing unless the Chairman of the full Committee or the Subcommittee involved determines that the hearing is non-

controversial or that special circumstances require expedited procedures and a majority of all the Members of the Committee or the Subcommittee involved concurs. In no case shall a hearing be conducted with less than twenty-four hours notice. Any document or report that is the subject of a hearing shall be provided to every Member of the Committee or Subcommittee involved at least 72 hours before the hearing unless the Chairman and Ranking Member determine otherwise.

(b) Each witness who is to appear before the Committee or any Subcommittee shall file with the Committee or Subcommittee, at least 24 hours in advance of the hearing, a written statement of his or her testimony in as many copies as the Chairman of the Committee or Subcommittee prescribes.

(c) Each Member shall be limited to five minutes in the questioning of any witness until such time as all Members who so desire have had an opportunity to question the witness.

(d) The Chairman and Ranking Minority Member of the Committee or Subcommittee or the Ranking Majority and Minority Members present at the hearing may each appoint one Committee staff member to question each witness. Such staff member may question the witness only after all Members present have completed their questioning of the witness or at such other time as the Chairman and the Ranking Majority and Minority Members present may agree. No staff member may question a witness in the absence of a quorum for the taking of testimony.

BUSINESS MEETING AGENDA

Rule 5. (a) A legislative measure, nomination, or other matter shall be included on the agenda of the next following business meeting of the full Committee if a written request for such inclusion has been filed with the Chairman of the Committee at least one week prior to such meeting. Nothing in this rule shall be construed to limit the authority of the Chairman of the Committee to include a legislative measure, nomination, or other matter on the Committee agenda in the absence of such request.

(b) The agenda for any business meeting of the Committee shall be provided to each Member and made available to the public at least three days prior to such meeting, and no new items may be added after the agenda is so published except by the approval of a majority of all the Members of the Committee on matters not included on the public agenda. The Staff Director shall promptly notify absent Members of any action taken by the Committee on matters not included on the published agenda.

QUORUMS

Rule 6. (a) Except as provided in subsections (b) and (c), eight Members shall constitute a quorum for the conduct of business of the Committee.

(b) No measure or matter shall be ordered reported from the Committee unless twelve Members of the Committee are actually present at the time such action is taken.

(c) One Member shall constitute a quorum for the purpose of conducting a hearing or taking testimony on any measure or matter before the Committee or any Subcommittee.

VOTING

Rule 7. (a) A rollcall of the Members shall be taken upon the request of any Member. Any Member who does not vote on any rollcall at the time the roll is called, may vote (in person or by proxy) on that rollcall at any later time during the same business meeting.

(b) Proxy voting shall be permitted on all matters, except that proxies may not be counted for the purpose of determining the presence of a quorum. Unless further limited, a proxy shall be exercised only upon the date for which it is given and upon the items published in the agenda for that date.

(c) Each Committee report shall set forth the vote on the motion to report the measure or matter involved. Unless the Committee directs otherwise, the report will not set out any votes on amendments offered during Committee consideration. Any Member who did not vote on any rollcall shall have the opportunity to have his position recorded in the appropriate Committee record or Committee report.

(d) The Committee vote to report a measure to the Senate shall also authorize the staff of the Committee to make necessary technical and clerical corrections in the measure.

SUBCOMMITTEES

Rule 8. (a) The number of Members assigned to each Subcommittee and the division between Majority and Minority Members shall be fixed by the Chairman in consultation with the Ranking Minority Member.

(b) Assignment of Members to Subcommittees shall, insofar as possible, reflect the preferences of the Members. No Member will receive assignment to a second Subcommittee until, in order of seniority, all Members of the Committee have chosen assignments to one Subcommittee, and no Member shall receive assignment to a third Subcommittee until, in order of seniority, all Members have chosen assignments to two Subcommittees.

(c) Any Member of the Committee may sit with any Subcommittee during its hearings but shall not have the authority to vote on any matters before the Subcommittee unless he is a Member of such Subcommittee.

NOMINATIONS

Rule 9. At any hearing to confirm a Presidential nomination, the testimony of the nominee and, at the request of any Member, any other witness shall be under oath. Every nominee shall submit a statement of his financial interests, including those of his spouse, his minor children, and other members of his immediate household, on a form approved by the Committee, which shall be sworn to by the nominee as to its completeness and accuracy. A statement of every nominee's financial interest shall be made available to the public on a form approved by the Committee unless the Committee in executive session determines that special circumstances require a full or partial exception to this rule.

INVESTIGATIONS

Rule 10. (a) Neither the Committee nor any of its Subcommittees may undertake an investigation or preliminary inquiry unless specifically authorized by a majority of all the Members of the Committee.

(b) A witness called to testify in an investigation or inquiry shall be informed of the matter or matters under investigation, given a copy of these rules, given the opportunity to make a brief and relevant oral statement before or after questioning, and be permitted to have counsel of his or her choosing present during his or her testimony at any public or closed hearing, or at any unsworn interview, to advise the witness of his or her legal rights.

(c) For purposes of this rule, the terms ''investigation'' and ''preliminary inquiry'' shall not include a review or study undertaken pursuant to paragraph 8 of Rule XXVI of the Standing Rules of the Senate or an initial review of any allegation of wrongdoing intended to determine whether there is substantial credible evidence that would warrant a preliminary inquiry or an investigation.

SWORN TESTIMONY

Rule 11. Witnesses in Committee or Subcommittee hearings may be required to give testimony under oath whenever the Chairman or Ranking Minority Member of the Committee or Subcommittee deems such to be necessary. If one or more witnesses at a hearing are required to testify under oath, all witnesses at such hearing shall be required to testify under oath.

SUBPOENAS

Rule 12. No subpoena for the attendance of a witness or for the production of any document, memorandum, record, or other material may be issued unless authorized by a majority of all the Members of the Committee, except that a resolution adopted pursuant to Rule 10(a) may authorize the Chairman, with the concurrence of the Ranking Minority Member, to issue subpoenas within the scope of the authorized investigation.

CONFIDENTIAL TESTIMONY

Rule 13. No confidential testimony taken by or any report of the proceedings of a closed Committee or Subcommittee meeting shall be made public, in whole or in part or by way of summary, unless authorized by a majority of all the Members of the Committee at a business meeting called for the purpose of making such a determination.

DEFAMATORY STATEMENTS

Rule 14. Any person whose name is mentioned or who is specifically identified in, or who believes that testimony or other evidence presented at, an open Committee or Subcommittee hearing tends to defame him or otherwise adversely affect his reputation may file with the Committee for its consideration and action a sworn statement of facts relevant to such testimony or evidence.

BROADCASTING OF HEARINGS OR MEETINGS

Rule 15. Any meeting or hearing by the Committee or any Subcommittee which is open to the public may be covered in whole or in part by television broadcast, radio broadcast, or still photography. Photographers and reporters using mechanical recording, filming, or broadcasting devices shall position their equipment so as not to interfere with the seating, vision, and hearing of Members and staff on the dais or with the orderly process of the meeting or hearing.

AMENDING THE RULES

Rule 16. These rules may be amended only by vote of a majority of all the Members of the Committee in a business meeting of the Committee: Provided, That no vote may be taken on any proposed amendment unless such amendment is reproduced in full in the Committee agenda for such meeting at least three days in advance of such meeting.

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS RULES OF PROCEDURE

Mr. LIEBERMAN. Mr. President, pursuant to the requirements of rule XXVI, section 2, of the Standing Rules of the Senate, I ask unanimous consent to have printed in the RECORD the rules of the Committee on Homeland Security and Governmental Affairs for the 110th Congress adopted by the committee on January 24, 2007.

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

RULES OF PROCEDURE OF THE COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS PURSUANT TO RULE XXVI, SEC. 2, STANDING RULES OF THE SENATE

RULE 1. MEETINGS AND MEETING PROCEDURES OTHER THAN HEARINGS

A. Meeting dates. The Committee shall hold its regular meetings on the first Thursday of each month, when the Congress is in session, or at such other times as the Chairman shall determine. Additional meetings may be called by the Chairman as he/she deems necessary to expedite Committee business. (Rule XXVI, Sec. 3, Standing Rules of the Senate.)

B. Calling special Committee meetings. If at least three Members of the Committee desire the Chairman to call a special meeting, they may file in the offices of the Committee a written request therefor, addressed to the Chairman. Immediately thereafter, the clerk of the Committee shall notify the Chairman of such request. If, within 3 calendar days after the filing of such request, the Chairman fails to call the requested special meeting, which is to be held within 7 calendar days after the filing of such request, a majority of the Committee Members may file in the offices of the Committee their written notice that a special Committee meeting will be held, specifying the date and hour thereof, and the Committee shall meet on that date and hour. Immediately upon the filing of such notice, the Committee Clerk shall notify all Committee Members that such special meeting will be held and inform them of its date and hour. (Rule XXVI, Sec. 3, Standing Rules of the Senate.)

C. Meeting notices and agenda. Written notices of Committee meetings, accompanied by an agenda, enumerating the items of business to be considered, shall be sent to all Committee Members at least 3 days in advance of such meetings, excluding Saturdays, Sundays, and legal holidays in which the Senate is not in session. The written notices required by this Rule may be provided by electronic mail. In the event that unforeseen requirements or Committee business prevent a 3-day notice of either the meeting or agenda, the Committee staff shall communicate such notice and agenda, or any revisions to the agenda, as soon as practicable by telephone or otherwise to Members or appropriate staff assistants in their offices.

D. Open business meetings. Meetings for the transaction of Committee or Subcommittee business shall be conducted in open session, except that a meeting or series of meetings on the same subject for a period of no more than 14 calendar days may be closed to the public on a motion made and seconded to go into closed session to discuss only whether the matters enumerated in clauses (1) through (6) below would require the meeting to be closed, followed immediately by a record vote in open session by a majority of the Committee or Subcommittee Members when it is determined that the matters to be discussed or the testimony to be taken at such meeting or meetings—

(1) will disclose matters necessary to be kept secret in the interests of national defense or the confidential conduct of foreign relations of the United States;

(2) will relate solely to matters of Committee or Subcommittee staff personnel or internal staff management or procedure;

(3) will tend to charge an individual with crime or misconduct, to disgrace or injure the professional standing of an individual, or otherwise expose an individual to public contempt or obloquy or will represent a clearly unwarranted invasion of the privacy of an individual;

(4) will disclose the identity of an informer or law enforcement agent or will disclose any information relating to the investigation or prosecution of a criminal offense that is required to be kept secret in the interests of effective law enforcement;

(5) will disclose information relating to the trade secrets of financial or commercial information pertaining specifically to a given person if—

(A) an Act of Congress requires the information to be kept confidential by Government officers and employees; or

(B) the information has been obtained by the Government on a confidential basis, other than through an application by such person for a specific Government financial or other benefit, and is required to be kept secret in order to prevent undue injury to the competitive position of such person; or

(6) may divulge matters required to be kept confidential under other provisions of law or Government regulations. (Rule XXVI, Sec. 5(b), Standing Rules of the Senate.)

Notwithstanding the foregoing, whenever disorder arises during a Committee or Subcommittee meeting that is open to the public, or any demonstration of approval or disapproval is indulged in by any person in attendance at any such meeting, it shall be the duty of the Chairman to enforce order on his or her own initiative and without any point of order being made by a Member of the Committee or Subcommittee; provided, further, that when the Chairman finds it necessary to maintain order, he/she shall have the power to clear the room, and the Committee or Subcommittee may act in closed session for so long as there is doubt of the assurance of order. (Rule XXVI, Sec. (d), Standing Rules of the Senate.)

E. Prior notice of first degree amendments. It shall not be in order for the Committee, or a Subcommittee thereof, to consider any amendment in the first degree proposed to any measure under consideration by the Committee or Subcommittee unless a written copy of such amendment has been delivered to each Member of the Committee or Subcommittee, as the case may be, and to the office of the Committee or Subcommittee, at least 24 hours before the meeting of the Committee or Subcommittee at which the amendment is to be proposed. The written copy of amendments in the first degree required by this Rule may be provided by electronic mail. This subsection may be waived by a majority of the Members present. This subsection shall apply only when at least 72 hours written notice of a session to mark-up a measure is provided to the Committee or Subcommittee.

F. Meeting transcript. The Committee or Subcommittee shall prepare and keep a complete transcript or electronic recording adequate to fully record the proceeding of each meeting whether or not such meeting or any part thereof is closed to the public, unless a majority of the Committee or Subcommittee Members vote to forgo such a record. (Rule XXVI, Sec. 5(e), Standing Rules of the Senate.)

RULE 2. QUORUMS

A. Reporting measures and matters. A majority of the Members of the Committee shall constitute a quorum for reporting to the Senate any measures, matters or recommendations. (Rule XXVI, Sec. 7(a)(1), Standing Rules of the Senate.)

B. Transaction of routine business. One-third of the membership of the Committee shall constitute a quorum for the transaction of routine business, provided that one Member of the Minority is present. For the purpose of this paragraph, the term ''routine business'' includes the convening of a meeting and the consideration of any business of the Committee other than reporting to the Senate any measures, matters or recommendations. (Rule XXVI, Sec. 7(a)(1), Standing Rules of the Senate.)

C. Taking testimony. One Member of the Committee shall constitute a quorum for taking sworn or unsworn testimony. (Rule XXVI, Sec. 7(a)(2) and 7(c)(2), Standing Rules of the Senate.)

D. Subcommittee quorums. Subject to the provisions of sections 7(a)(1) and (2) of Rule XXVI of the Standing Rules of the Senate, the Subcommittees of this Committee are authorized to establish their own quorums for the transaction of business and the taking of sworn testimony.

E. Proxies prohibited in establishment of quorum. Proxies shall not be considered for the establishment of a quorum.

RULE 3. VOTING

A. Quorum required. Subject to the provisions of subsection (E), no vote may be taken by the Committee, or any Subcommittee thereof, on any measure or matter unless a quorum, as prescribed in the preceding section, is actually present.

B. Reporting measures and matters. No measure, matter or recommendation shall be reported from the Committee unless a majority of the Committee Members are actually present, and the vote of the Committee to report a measure or matter shall require the concurrence of a majority of those Members who are actually present at the time the vote is taken. (Rule XXVI, Sec. 7(a)(1) and (3), Standing Rules of the Senate.)

C. Proxy voting. Proxy voting shall be allowed on all measures and matters before the Committee, or any Subcommittee thereof, except that, when the Committee, or any Subcommittee thereof, is voting to report a measure or matter, proxy votes shall be allowed solely for the purposes of recording a Member's position on the pending question. Proxy voting shall be allowed only if the absent Committee or Subcommittee Member has been informed of the matter on which he or she is being recorded and has affirmatively requested that he or she be so recorded. All proxies shall be filed with the chief clerk of the Committee or Subcommittee thereof, as the case may be. All proxies shall be in writing and shall contain sufficient reference to the pending matter as is necessary to identify it and to inform the Committee or Subcommittee as to how the Member establishes his or her vote to be recorded thereon. (Rule XXVI, Sec. 7(a)(3) and 7(c)(1), Standing Rules of the Senate.)

D. Announcement of vote. (1) Whenever the Committee by roll call vote reports any measure or matter, the report of the Committee upon such a measure or matter shall include a tabulation of the votes cast in favor of and the votes cast in opposition to such measure or matter by each Member of the Committee. (Rule XXVI, Sec. 7(c), Standing Rules of the Senate.)

(2) Whenever the Committee by roll call vote acts upon any measure or amendment thereto, other than reporting a measure or matter, the results thereof shall be announced in the Committee report on that measure unless previously announced by the Committee, and such announcement shall include a tabulation of the votes cast in favor of and the votes cast in opposition to each such measure and amendment thereto by each Member of the Committee who was present at the meeting. (Rule XXVI, Sec. 7(b), Standing Rules of the Senate.)

(3) In any case in which a roll call vote is announced, the tabulation of votes shall state separately the proxy vote recorded in favor of and in opposition to that measure, amendment thereto, or matter. (Rule XXVI, Sec. 7(b) and (c), Standing Rules of the Senate.)

E. Polling. (1) The Committee, or any Subcommittee thereof, may poll (a) internal

Committee or Subcommittee matters including the Committee's or Subcommittee's staff, records and budget; (b) steps in an investigation, including issuance of subpoenas, applications for immunity orders, and requests for documents from agencies; and (c) other Committee or Subcommittee business other than a vote on reporting to the Senate any measures, matters or recommendations or a vote on closing a meeting or hearing to the public.

(2) Only the Chairman, or a Committee Member or staff officer designated by him/her, may undertake any poll of the Members of the Committee. If any Member requests, any matter to be polled shall be held for meeting rather than being polled. The chief clerk of the Committee shall keep a record of polls; if a majority of the Members of the Committee determine that the polled matter is in one of the areas enumerated in subsection (D) of Rule 1, the record of the poll shall be confidential. Any Committee Member may move at the Committee meeting following the poll for a vote on the polled decision, such motion and vote to be subject to the provisions of subsection (D) of Rule 1, where applicable.

RULE 4. CHAIRMANSHIP OF MEETINGS AND HEARINGS

The Chairman shall preside at all Committee meetings and hearings except that he or she shall designate a temporary Chairman to act in his or her place if he or she is unable to be present at a scheduled meeting or hearing. If the Chairman (or his or her designee) is absent 10 minutes after the scheduled time set for a meeting or hearing, the Ranking Majority Member present shall preside until the Chairman's arrival. If there is no Member of the Majority present, the Ranking Minority Member present, with the prior approval of the Chairman, may open and conduct the meeting or hearing until such time as a Member of the Majority arrives.

RULE 5. HEARINGS AND HEARING PROCEDURES

A. Announcement of hearings. The Committee, or any Subcommittee thereof, shall make public announcement of the date, time, and subject matter of any hearing to be conducted on any measure or matter at least 1 week in advance of such hearing, unless the Committee, or Subcommittee, determines that there is good cause to begin such hearing at an earlier date. (Rule XXVI, Sec. 4(a), Standing Rules of the Senate.)

B. Open hearings. Each hearing conducted by the Committee, or any Subcommittee thereof, shall be open to the public, except that a hearing or series of hearings on the same subject for a period of no more than 14 calendar days may be closed to the public on a motion made and seconded to go into closed session to discuss only whether the matters enumerated in clauses (1) through (6) below would require the hearing to be closed, followed immediately by a record vote in open session by a majority of the Committee or Subcommittee Members when it is determined that the matters to be discussed or the testimony to be taken at such hearing or hearings—

(1) will disclose matters necessary to be kept secret in the interests of national defense or the confidential conduct of foreign relations of the United States;

(2) will relate solely to matters of Committee or Subcommittee staff personnel or internal staff management or procedure;

(3) will tend to charge an individual with crime or misconduct, to disgrace or injure the professional standing of an individual, or otherwise expose an individual to public contempt or obloquy or will represent a clearly unwarranted invasion of the privacy of an individual;

(4) will disclose the identity of an informer or law enforcement agent or will disclose any information relating to the investigation or prosecution of a criminal offense that is required to be kept secret in the interests of effective law enforcement;

(5) will disclose information relating to the trade secrets of financial or commercial information pertaining specifically to a given person if—

(A) an Act of Congress requires the information to be kept confidential by Government officers and employees; or

(B) the information has been obtained by the Government on a confidential basis, other than through an application by such person for a specific Government financial or other benefit, and is required to be kept secret in order to prevent undue injury to the competitive position of such person; or (6) may divulge matters required to be kept confidential under other provisions of law or Government regulations. (Rule XXVI, Sec. 5(b), Standing Rules of the Senate.)

Notwithstanding the foregoing, whenever disorder arises during a Committee or Subcommittee meeting that is open to the public, or any demonstration of approval or disapproval is indulged in by any person in attendance at any such meeting, it shall be the duty of the Chairman to enforce order on his or her own initiative and without any point of order being made by a Member of the Committee or Subcommittee; provided, further, that when the Chairman finds it necessary to maintain order, he or she shall have the power to clear the room, and the Committee or Subcommittee may act in closed session for so long as there is doubt of the assurance of order. (Rule XXVI, Sec. 5(d), Standing Rules of the Senate.)

C. Full Committee subpoenas. The Chairman, with the approval of the Ranking Minority Member of the Committee, is authorized to subpoena the attendance of witnesses or the production of memoranda, documents, records, or any other materials at a hearing or deposition, provided that the Chairman may subpoena attendance or production without the approval of the Ranking Minority Member where the Chairman or a staff officer designated by him/her has not received notification from the Ranking Minority Member or a staff officer designated by him/her of disapproval of the subpoena within 72 hours, excluding Saturdays and Sundays, of being notified of the subpoena. If a subpoena is disapproved by the Ranking Minority Member as provided in this subsection, the subpoena may be authorized by vote of the Members of the Committee. When the Committee or Chairman authorizes subpoenas, subpoenas may be issued upon the signature of the Chairman or any other Member of the Committee designated by the Chairman.

D. Witness counsel. Counsel retained by any witness and accompanying such witness shall be permitted to be present during the testimony of such witness at any public or executive hearing or deposition to advise such witness while he or she is testifying, of his or her legal rights; provided, however, that in the case of any witness who is an officer or employee of the government, or of a corporation or association, the Committee Chairman may rule that representation by counsel from the government, corporation, or association or by counsel representing other witnesses, creates a conflict of interest, and that the witness may only be represented during interrogation by staff or during testimony before the Committee by personal counsel not from the government, corporation, or association or by personal counsel not representing other witnesses. This subsection shall not be construed to excuse a witness from testifying in the event his or her counsel is ejected for conducting himself or herself in such manner so as to prevent, impede, disrupt, obstruct or interfere with the orderly administration of the hearings; nor shall this subsection be construed as authorizing counsel to coach the witness or answer for the witness. The failure of any witness to secure counsel shall not excuse such witness from complying with a subpoena or deposition notice.

Witness transcripts. An accurate electronic or stenographic record shall be kept of the testimony of all witnesses in executive and public hearings. The record of his or her testimony whether in public or executive session hall be made available for inspection by the witness or his or her counsel under Committee supervision; a copy of any testimony given in public session or that part of the testimony given by the witness in executive session and subsequently quoted or made part of the record in a public session shall be provided to any witness at his or her expense if he or she so requests. Upon inspecting his or her transcript, within a time limit set by the chief clerk of the Committee, a witness may request changes in the transcript to correct errors of transcription and grammatical errors; the Chairman or a staff officer designated by him/her shall rule on such requests.

F. Impugned persons. Any person whose name is mentioned or is specifically identified, and who believes that evidence presented, or comment made by a Member of the Committee or staff officer, at a public hearing or at a closed hearing concerning which there have been public reports, tends to impugn his or her character or adversely affect his or her reputation may:

(a) File a sworn statement of facts relevant to the evidence or comment, which statement shall be considered for placement in the hearing record by the Committee;

(b) Request the opportunity to appear personally before the Committee to testify in his or her own behalf, which request shall be considered by the Committee; and

(c) Submit questions in writing which he or she requests be used for the cross-examination of other witnesses called by the Committee, which questions shall be considered for use by the Committee.

G. Radio, television, and photography. The Committee, or any Subcommittee thereof, may permit the proceedings of hearings which are open to the public to be photographed and broadcast by radio, television or both, subject to such conditions as the Committee, or Subcommittee, may impose. (Rule XXVI, Sec. 5(c), Standing Rules of the Senate.)

H. Advance statements of witnesses. A witness appearing before the Committee, or any Subcommittee thereof, shall provide 100 copies of a written statement and an executive summary or synopsis of his or her proposed testimony at least 48 hours prior to his or her appearance. This requirement may be waived by the Chairman and the Ranking Minority Member following their determination that there is good cause for failure of compliance. (Rule XXVI, Sec. 4(b), Standing Rules of the Senate.)

I. Minority witnesses. In any hearings conducted by the Committee, or any Subcommittee thereof, the Minority Members of the Committee or Subcommittee shall be entitled, upon request to the Chairman by a majority of the Minority Members, to call witnesses of their selection during at least 1 day of such hearings. (Rule XXVI, Sec. 4(d), Standing Rules of the Senate.)

J. Full Committee depositions. Depositions may be taken prior to or after a earing as provided in this subsection.

(1) Notices for the taking of depositions shall be authorized and issued by the Chairman, with the approval of the Ranking Minority Member of the Committee, provided

that the Chairman may initiate depositions without the approval of the Ranking Minority Member where the Chairman or a staff officer designated by him/her has not received notification from the Ranking Minority Member or a staff officer designated by him/her of disapproval of the deposition within 72 hours, excluding Saturdays and Sundays, of being notified of the deposition notice. If a deposition notice is disapproved by the Ranking Minority Member as provided in this subsection, the deposition notice may be authorized by a vote of the Members of the Committee. Committee deposition notices shall specify a time and place for examination, and the name of the Committee Member or Members or staff officer or officers who will take the deposition. Unless otherwise specified, the deposition shall be in private. The Committee shall not initiate procedures leading to criminal or civil enforcement proceedings for a witness's failure to appear or produce unless the deposition notice was accompanied by a Committee subpoena.

(2) Witnesses may be accompanied at a deposition by counsel to advise them of their legal rights, subject to the provisions of Rule 5D.

(3) Oaths at depositions may be administered by an individual authorized by local law to administer oaths. Questions shall be propounded orally by Committee Member or Members or staff. If a witness objects to a question and refuses to testify, the objection shall be noted for the record and the Committee Member or Members or staff may proceed with the remainder of the deposition.

(4) The Committee shall see that the testimony is transcribed or electronically recorded (which may include audio or audio/video recordings). If it is transcribed, the transcript shall be made available for inspection by the witness or his or her counsel under Committee supervision. The witness shall sign a copy of the transcript and may request changes to it, which shall be handled in accordance with the procedure set forth in subsection (E). If the witness fails to sign a copy, the staff shall note that fact on the transcript. The individual administering the oath shall certify on the transcript that the witness was duly sworn in his or her presence, the transcriber shall certify that the transcript is a true record of the testimony, and the transcript shall then be filed with the chief clerk of the committee. The Chairman or a staff officer designated by him/her may stipulate with the witness to changes in the procedure; deviations from this procedure which do not substantially impair the reliability of the record shall not relieve the witness from his or her obligation to testify truthfully.

RULE 6. COMMITTEE REPORTING PROCEDURES

A. Timely filing. When the Committee has ordered a measure or matter reported, following final action, the report thereon shall be filed in the Senate at the earliest practicable time. (Rule XXVI, Sec. 10(b), Standing Rules of the Senate.)

B. Supplemental, Minority, and additional views. A Member of the Committee who gives notice of his or her intention to file supplemental, Minority or additional views at the time of final Committee approval of a measure or matter, shall be entitled to not less than 3 calendar days in which to file such views, in writing, with the chief clerk of the Committee. Such views shall then be included in the Committee report and printed in the same volume, as a part thereof, and their inclusion shall be noted on the cover of the report. In the absence of timely notice, the Committee report may be filed and printed immediately without such views. (Rule XXVI, Sec. 10(c), Standing Rules of the Senate.)

C. Notice by Subcommittee Chairmen. The Chairman of each Subcommittee shall notify the Chairman in writing whenever any measure has been ordered reported by such Subcommittee and is ready for consideration by the full Committee.

D. Draft reports of Subcommittees. All draft reports prepared by Subcommittees of this Committee on any measure or matter referred to it by the Chairman, shall be in the form, style, and arrangement required to conform to the applicable provisions of the Standing Rules of the Senate, and shall be in accordance with the established practices followed by the Committee. Upon completion of such draft reports, copies thereof shall be filed with the chief clerk of the Committee at the earliest practicable time.

E. Impact statements in reports. All Committee reports, accompanying a bill or joint resolution of a public character reported by the Committee, shall contain (1) an estimate, made by the Committee, of the costs which would be incurred in carrying out the legislation for the then current fiscal year and for each of the next 5 years thereafter (or for the authorized duration of the proposed legislation, if less than 5 years); and (2) a comparison of such cost estimates with any made by a Federal agency; or (3) in lieu of such estimate or comparison, or both, a statement of the reasons for failure by the Committee to comply with these requirements as impracticable, in the event of inability to comply therewith. (Rule XXVI, Sec. 11(a), Standing Rules of the Senate.)

Each such report shall also contain an evaluation, made by the Committee, of the regulatory impact which would be incurred in carrying out the bill or joint resolution. The evaluation shall include (a) an estimate of the numbers of individuals and businesses who would be regulated and a determination of the groups and classes of such individuals and businesses, (b) a determination of the economic impact of such regulation on the individuals, consumers, and businesses affected, (c) a determination of the impact on the personal privacy of the individuals affected, and (d) a determination of the amount of paperwork that will result from the regulations to be promulgated pursuant to the bill or joint resolution, which determination may include, but need not be limited to, estimates of the amount of time and financial costs required of affected parties, showing whether the effects of the bill or joint resolution could be substantial, as well as reasonable estimates of the recordkeeping requirements that may be associated with the bill or joint resolution. Or, in lieu of the forgoing evaluation, the report shall include a statement of the reasons for failure by the Committee to comply with these requirements as impracticable, in the event of inability to comply therewith. (Rule XXVI, Sec. 11(b), Standing Rules of the Senate.)

RULE 7. SUBCOMMITTEES AND SUBCOMMITTEE PROCEDURES

A. Regularly established Subcommittees. The Committee shall have three regularly established Subcommittees. The Subcommittees are as follows:

Permanent Subcommittee on Investigations;

Oversight of Government Management, the Federal Workforce, and the District of Columbia;

Financial Management, Government Information, Federal Services, and International Security.

B. Ad hoc Subcommittees. Following consultation with the Ranking Minority Member, the Chairman shall, from time to time, establish such ad hoc Subcommittees as he/she deems necessary to expedite Committee business.

C. Subcommittee membership. Following consultation with the Majority Members, and the Ranking Minority Member of the Committee, the Chairman shall announce selections for membership on the Subcommittees referred to in paragraphs A and B, above.

D. Subcommittee meetings and hearings. Each Subcommittee of this Committee is authorized to establish meeting dates and adopt rules not inconsistent with the rules of the Committee except as provided in Rules 2(D) and 7(E).

E. Subcommittee subpoenas. Each Subcommittee is authorized to adopt rules concerning subpoenas which need not be consistent with the rules of the Committee; provided, however, that in the event the Subcommittee authorizes the issuance of a subpoena pursuant to its own rules, a written notice of intent to issue the subpoena shall be provided to the Chairman and Ranking Minority Member of the Committee, or staff officers designated by them, by the Subcommittee Chairman or a staff officer designated by him/her immediately upon such authorization, and no subpoena shall be issued for at least 48 hours, excluding Saturdays and Sundays, from delivery to the appropriate offices, unless the Chairman and Ranking Minority Member waive the 48-hour waiting period or unless the Subcommittee Chairman certifies in writing to the Chairman and Ranking Minority Member that, in his or her opinion, it is necessary to issue a subpoena immediately.

F. Subcommittee budgets. During the first year of a new Congress, each Subcommittee that requires authorization for the expenditure of funds for the conduct of inquiries and investigations, shall file with the chief clerk of the Committee, by a date and time prescribed by the Chairman, its request for funds for the two (2) 12-month periods beginning on March 1 and extending through and including the last day of February of the 2 following years, which years comprise that Congress. Each such request shall be submitted on the budget form prescribed by the Committee on Rules and Administration, and shall be accompanied by a written justification addressed to the Chairman of the Committee, which shall include (1) a statement of the Subcommittee's area of activities, (2) its accomplishments during the preceding Congress detailed year by year, and (3) a table showing a comparison between (a) the funds authorized for expenditure during the preceding Congress detailed year by year, (b) the funds actually expended during that Congress detailed year by year, (c) the amount requested for each year of the Congress, and (d) the number of professional and clerical staff members and consultants employed by the Subcommittee during the preceding Congress detailed year by year and the number of such personnel requested for each year of the Congress. The Chairman may request additional reports from the Subcommittees regarding their activities and budgets at any time during a Congress. (Rule XXVI, Sec. 9, Standing Rules of the Senate.)

RULE 8. CONFIRMATION STANDARDS AND PROCEDURES

A. Standards. In considering a nomination, the Committee shall inquire into the nominee's experience, qualifications, suitability, and integrity to serve in the position to which he or she has been nominated. The Committee shall recommend confirmation, upon finding that the nominee has the necessary integrity and is affirmatively qualified by reason of training, education, or experience to carry out the functions of the office to which he or she was nominated.

B. Information concerning the Nominee. Each nominee shall submit the following information to the Committee:

(1) A detailed biographical resume which contains information relating to education, employment, and achievements;

(2) Financial information, in such specificity as the Committee deems necessary, including a list of assets and liabilities of the nominee and tax returns for the 3 years preceding the time of his or her nomination, and copies of other relevant documents requested by the Committee, such as a proposed blind trust agreement, necessary for the Committee's consideration; and,

(3) Copies of other relevant documents the Committee may request, such as responses to questions concerning the policies and programs the nominee intends to pursue upon taking office. At the request of the Chairman or the Ranking Minority Member, a nominee shall be required to submit a certified financial statement compiled by an independent auditor. Information received pursuant to this subsection shall be made available for public inspection; provided, however, that tax returns shall, after review by persons designated in subsection (C) of this rule, be placed under seal to ensure confidentiality.

C. Procedures for Committee inquiry. The Committee shall conduct an inquiry into the experience, qualifications, suitability, and integrity of nominees, and shall give particular attention to the following matters:

(1) A review of the biographical information provided by the nominee, including, but not limited to, any professional activities related to the duties of the office to which he or she is nominated;

(2) A review of the financial information provided by the nominee, including tax returns for the 3 years preceding the time of his or her nomination;

(3) A review of any actions, taken or proposed by the nominee, to remedy conflicts of interest; and

(4) A review of any personal or legal matter which may bear upon the nominee's qualifications for the office to which he or she is nominated. For the purpose of assisting the Committee in the conduct of this inquiry, a Majority investigator or investigators shall be designated by the Chairman and a Minority investigator or investigators shall be designated by the Ranking Minority Member. The Chairman, Ranking Minority Member, other Members of the Committee, and designated investigators shall have access to all investigative reports on nominees prepared by any Federal agency, except that only the Chairman, the Ranking Minority Member, or other Members of the Committee, upon request, shall have access to the report of the Federal Bureau of Investigation. The Committee may request the assistance of the General Accounting Office and any other such expert opinion as may be necessary in conducting its review of information provided by nominees.

D. Report on the Nominee. After a review of all information pertinent to the nomination, a confidential report on the nominee shall be made in the case of judicial nominees and may be made in the case of non-judicial nominees by the designated investigators to the Chairman and the Ranking Minority Member and, upon request, to any other Member of the Committee. The report shall summarize the steps taken by the Committee during its investigation of the nominee and the results of the Committee inquiry, including any unresolved matters that have been raised during the course of the inquiry.

E. Hearings. The Committee shall conduct a public hearing during which the nominee shall be called to testify under oath on all matters relating to his or her suitability for office, including the policies and programs which he or she will pursue while in that position. No hearing shall be held until at least 72 hours after the following events have occurred: The nominee has responded to prehearing questions submitted by the Committee; and, if applicable, the report described in subsection (D) has been made to the Chairman and Ranking Minority Member, and is available to other Members of the Committee, upon request.

F. Action on confirmation. A mark-up on a nomination shall not occur on the same day that the hearing on the nominee is held. In order to assist the Committee in reaching a recommendation on confirmation, the staff may make an oral presentation to the Committee at the mark-up, factually summarizing the nominee's background and the steps taken during the pre-hearing inquiry.

G. Application. The procedures contained in subsections (C), (D), (E), and (F) of this rule shall apply to persons nominated by the President to positions requiring their full-time service. At the discretion of the Chairman and Ranking Minority Member, those procedures may apply to persons nominated by the President to serve on a part-time basis.

RULE 9. PERSONNEL ACTIONS AFFECTING COMMITTEE STAFF

In accordance with Rule XLII of the Standing Rules of the Senate and the Congressional Accountability Act of 1995 (P.L. 104–1), all personnel actions affecting the staff of the Committee shall be made free from any discrimination based on race, color, religion, sex, national origin, age, state of physical handicap, or disability.

TRIBUTE TO WESLEY AUTREY

Mrs. CLINTON. Mr. President, I rise today to discuss a resolution I submitted on January 8 in recognition of the uncommon valor and tremendous bravery demonstrated by New York City resident Wesley Autrey.

On January 2, 2007, Mr. Autrey and others stood on a platform in the 137th Street subway station in Harlem, and watched as a young man suffering from a seizure fell onto the train tracks. Terrified by what he saw, Mr. Autrey heroically dove down onto the tracks, putting his own life in grave danger to save that of a stranger. Mr. Autrey covered the young man in the trough between the tracks as the incoming train screamed to a halt just inches above his head.

Later, when asked about the courageous rescue, Mr. Autrey responded humbly, saying, ''I'm not looking at this like I'm the hero, cause the real heroes are the young men and women that are fighting in Iraq now. What I did is something that any New Yorker should do . . . if you see somebody in distress, do the right thing.''

We could all learn from Wesley Autrey's example. A proud member of the Construction and General Building Laborers' Local 79, a veteran of the United States Navy, and a father of two young girls, Mr. Autrey—in both his heroic actions and his humble conduct in the midst of his newfound fame—represents values that all Americans should cherish and respect. His selflessness should be held up as an example to those in his community, his state and his country.

Indeed, this resolution is just one fitting way in which to honor the uncommon valor and tremendous bravery demonstrated by Wesley Autrey when he dove in front of an incoming train to save the life of a stranger on January 2. I am hopeful that my Senate colleagues from both sides of the aisle will join me in honoring Mr. Autrey by moving this legislation as expeditiously as possible.

ADDITIONAL STATEMENTS

TRIBUTE TO MADELEINE COOPER TAYLOR

• Mr. BIDEN. Mr. President, today I wish to publicly congratulate Ms. Madeleine Cooper Taylor on her recent appointment as a member of the city council of Memphis, TN. Last Tuesday, she was appointed unanimously by the council to serve the remaining term of council member TaJuan Stout Mitchell.

Ms. Taylor has worked as a program coordinator for the Memphis branch of the NAACP since 1991 and is a lifelong Memphian.

Now, I am not normally in the habit of coming to the Senate floor to congratulate a new city council member, especially one who is not from my home State of Delaware. But this is no normal circumstance. Madeleine Cooper Taylor is the mother of Reagan Taylor, an attorney and presidential management fellow whom I have been fortunate enough to have on my staff for the past 6 months.

During her rotation on my Judiciary Committee staff, Reagan has made an invaluable contribution to legal and drug policy for our country. Thanks to her efforts, we have succeeded in reauthorizing the Office of National Drug Control Policy, and our fight against the scourge of methamphetamine has been bolstered. And even though she is scheduled to rotate out of my office at the end of this month, as we speak she is hard at work improving security for our State and local courts and better utilizing DNA as a powerful tool in solving horrendous crimes.

While Reagan tirelessly works to make our communities safer through her efforts on the Subcommittee on Crime and Drugs, Councilwoman Taylor stated in one of her first public statements after her appointment that she is concerned about crime in her community. As the old saying goes, the apple does not fall far from the tree.

It has been my pleasure to have Reagan Taylor on my staff over these past months, and it is my distinct honor to congratulate Madeleine Cooper Taylor on her new public office. I wish them both the best of luck in their future endeavors.•

LIEUTENANT COLONEL DAVID MEUNIER

• Mr. HAGEL. Mr. President, I rise to honor David Russell Meunier of Bellevue, NE.

David Russell Meunier was born in Peshtigo, WI, on December 13, 1940, and passed away on November 22, 2006, in Rochester, MN. Lieutenant Colonel Meunier served his country as an officer in the Strategic Air Command of the U.S. Air Force. He was a highly decorated officer and veteran of the Vietnam war. At Offutt Air Force Base in Bellevue, Lieutenant Colonel Meunier served as a battle staff intelligence chief. He retired from the Air Force on January 23, 1989.

Lieutenant Colonel Meunier leaves behind his wife Constance Bennet Muenier; sisters Patricia Jeske, Diane Hazlewood, and her husband Thomas; brothers, Gary and his wife Sally, and Paul and his wife Patricia. Our thoughts and prayers are with all of them at this difficult time. America is proud of Lieutenant Colonel Meunier and mourns his loss.

For his service, bravery, and commitment to our country, I ask my colleagues to join me and all Americans in honoring LTC David Russell Meunier.●

RECOGNIZING MURPHY OIL CORPORATION

● Mr. PRYOR. Mr. President, it is with great pleasure that I commend an outstanding Arkansas company for a truly amazing gift. Murphy Oil Corporation, an El Dorado, AR, based company, has always been a national leader in philanthropy by providing substantial donations for many very worthwhile causes, especially education. Murphy Oil's recent announcement to establish the El Dorado Promise may be one of the most significant and groundbreaking gifts of any business to any group of people in recent years.

El Dorado Promise is an extraordinary scholarship program. The Promise will provide the opportunity for every graduate of El Dorado High School to pursue higher education by granting a scholarship to these students to be used at community colleges or public universities around the country. This scholarship will cover tuition and other expenses for many of these students for up to 5 years. The leadership at Murphy Oil has shown that they truly understand that in order to adequately prepare for the future we must make significant investments in the children of today. This gift represents that significant investment.

I would like to congratulate the students, families, teachers, and community of El Dorado, AR. This is a wonderful gift that you truly deserve, and I am excited for the tremendous prospects it will create for you.

I also want to take this opportunity to commend the actions of Claiborne Deming, president and CEO of Murphy Oil. A great business leader known for his strong support of education, Mr. Deming has served on the Arkansas Board of Education, helped found the Arkansans for Education Reform Foundation, is president of the El Dorado Education Foundation, and continues to be a strong catalyst for investment in education. I have no doubt he was instrumental in providing these students and families the ability to fulfill their ambitions.

Finally, I would like to personally thank Murphy Oil Corporation, Mr. Claiborne Deming, and members of the Murphy family for their unwavering support of El Dorado, the State of Arkansas, and the education system. There is no doubt the gift of the El Dorado Promise will better many lives and shape the future of Arkansas and the country in a brighter way.●

MESSAGES FROM THE HOUSE

At 1:45 p.m., a message from the House of Representatives, delivered by Mr. Hayes, one of its reading clerks, announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 323. An act to amend section 5313 of title 31, United States Code, to reform certain requirements for reporting cash transactions, and for other purposes.

H.R. 392. An act to provide for a circulating quarter dollar coin program to honor the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands, and for other purposes.

H.R. 476. An act to amend title 5, United States Code, to make noncreditable for Federal retirement purposes any Member service performed by an individual who is convicted of any of certain offenses committed by that individual while serving as a Member of Congress, and for other purposes.

H.R. 599. An act to direct the Secretary of Homeland Security to streamline the SAFETY Act and anti-terrorism technology procurement processes.

The message also announced that pursuant to sections 5580 and 5581 of the revised statutes (20 U.S.C. 42–43), and the order of the House of January 4, 2007, the Speaker appoints the following Members of the House of Representatives to the Board of Regents of the Smithsonian Institution: Mr. BECERRA of California and Ms. MATSUI of California.

The message further announced that pursuant to sections 5580 and 5581 of the revised statutes (20 U.S.C. 42–43), and the order of the House of January 4, 2007, the Speaker appoints the following Member of the House of Representatives to the Board of Regents of the Smithsonian Institution: Mr. SAM JOHNSON of Texas.

ENROLLED BILL SIGNED

At 4:54 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the Speaker has signed the following enrolled bill:

H.R.475. An act to revise the composition of the House of Representatives Page Board to equalize the number of members representing the majority and minority parties and to include a member representing the parents of pages and a member representing former pages, and for other purposes.

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

MEASURES REFERRED

The following bills were read the first and the second times by unanimous consent, and referred as indicated:

H.R. 323. An act to amend section 5313 of title 31, United States Code, to reform certain requirements for reporting cash transactions, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

H.R. 392. An act to provide for a circulating quarter dollar coin program to honor the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

H.R. 476. An act to amend title 5, United States Code, to make noncreditable for Federal retirement purposes any Member service performed by an individual who is convicted of any of certain offenses committed by that individual while serving as a Member of Congress, and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

H.R. 599. An act to direct the Secretary of Homeland Security to streamline the SAFETY Act and anti-terrorism technology procurement processes; to the Committee on Homeland Security and Governmental Affairs.

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–442. A communication from the Under Secretary of Defense (Acquisition, Technology and Logistics), transmitting, pursuant to law, a report relative to the Department's task and delivery order contracts during fiscal year 2006; to the Committee on Armed Services.

EC–443. A communication from the Deputy Secretary, Division of Corporation Finance, Securities and Exchange Commission, transmitting, pursuant to law, the report of a rule entitled ''Internet Availability of Proxy Materials'' (RIN3235–AJ47) received on January 23, 2007; to the Committee on Banking, Housing, and Urban Affairs.

EC–444. A communication from the General Counsel, Office of Justice Programs, Department of Justice, transmitting, pursuant to law, the report of a rule entitled ''Grants for Correctional Facilities'' (RIN1121–AA41) received on January 23, 2007; to the Committee on the Judiciary.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. ROCKEFELLER, from the Select Committee on Intelligence, without amendment:

S. 372. An original bill to authorize appropriations for fiscal year 2007 for the intelligence and intelligence-related activities of the United States Government, the Intelligence Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes (Rept. No. 110–2).

By Mr. BINGAMAN, from the Committee on Energy and Natural Resources, without amendment:

S. Res. 38. An original resolution authorizing expenditures by the Committee on Energy and Natural Resources.

By Mr. BIDEN, from the Committee on Foreign Relations, with an amendment and with a preamble:

S. Con. Res. 2. A concurrent resolution expressing the bipartisan resolution on Iraq.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of nominations were submitted:

By Mr. LEVIN for the Committee on Armed Services.

Army nomination of Lt. Gen. David H. Petraeus to be General.

Army nomination of Lt. Gen. H. Steven Blum to be Lieutenant General.

Army nomination of Lt. Gen. Karl W. Eikenberry to be Lieutenant General.

Army nomination of Brig. Gen. George J. Smith to be Major General.

Marine Corps nominations beginning with Brig. Gen. Eugene G. Payne, Jr. and ending with Brig. Gen. Douglas M. Stone, which nominations were received by the Senate and appeared in the Congressional Record on January 11, 2007.

Mr. LEVIN. Mr. President, for the Committee on Armed Services I report favorably the following nomination lists which were printed in the RECORDS on the dates indicated, and ask unanimous consent, to save the expense of reprinting on the Executive Calendar that these nominations lie at the Secretary's desk for the information of Senators.

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

Air Force nomination of Wally G. Vaughn to be Colonel.

Air Force nomination of James E. Powell to be Colonel.

Air Force nomination of Jean M. Eagleton to be Lieutenant Colonel.

Air Force nomination of Jeffrey R. Colpitts to be Lieutenant Colonel.

Air Force nominations beginning with Gayanne Devry and ending with Neil R. Whittaker, which nominations were received by the Senate and appeared in the Congressional Record on January 10, 2007.

Air Force nomination of Laura S. Barchick to be Major.

Air Force nominations beginning with Paul T. Cory and ending with Rod L. Valentine, which nominations were received by the Senate and appeared in the Congressional Record on January 11, 2007.

Air Force nominations beginning with Beatrice Y. Brewington and ending with Deirdre M. Mccullough, which nominations were received by the Senate and appeared in the Congressional Record on January 11, 2007.

Air Force nomination of Anthony M. Durso to be Major.

Air Force nomination of William L. Tomson to be Lieutenant Colonel.

Air Force nominations beginning with Steven H. Helm and ending with Donald C. Tigchelaar, which nominations were received by the Senate and appeared in the Congressional Record on January 11, 2007.

Air Force nominations beginning with Robert E. Dunn and ending with Walter L. Smith, which nominations were received by the Senate and appeared in the Congressional Record on January 11, 2007.

Air Force nominations beginning with Ricardo E. Alivillar and ending with Mehdy Zarandy, which nominations were received by the Senate and appeared in the Congressional Record on January 11, 2007.

Air Force nominations beginning with Robert R. Baptist and ending with Christopher H. Wilkin, which nominations were received by the Senate and appeared in the Congressional Record on January 11, 2007.

Air Force nominations beginning with Robin Mark Adam and ending with Randall J. Zak, which nominations were received by the Senate and appeared in the Congressional Record on January 11, 2007.

Air Force nominations beginning with Sharon A. Andrews and ending with Donna M. F. Woike, which nominations were received by the Senate and appeared in the Congressional Record on January 11, 2007.

Air Force nominations beginning with Michael P. Adler and ending with Bert A. Silich, which nominations were received by the Senate and appeared in the Congressional Record on January 11, 2007.

Air Force nominations beginning with Mark Hugh Alexander and ending with Margaret D. Weatherman, which nominations were received by the Senate and appeared in the Congressional Record on January 11, 2007.

Air Force nominations beginning with Luisa Yvette Charbonneau and ending with Seferino S. Silva, Jr., which nominations were received by the Senate and appeared in the Congressional Record on January 11, 2007.

Air Force nominations beginning with Maiya D. Anderson and ending with Jeffrey L. Wisneski, which nominations were received by the Senate and appeared in the Congressional Record on January 11, 2007.

Air Force nominations beginning with Christine Lynn Barber and ending with Chung H. Yen, which nominations were received by the Senate and appeared in the Congressional Record on January 11, 2007.

Army nominations beginning with Stephen D. Hogan and ending with Phillip H. Williams, which nominations were received by the Senate and appeared in the Congressional Record on January 10, 2007.

Army nomination of Laurence W. Gebler to be Colonel.

Army nomination of John E. Markham to be Colonel.

Army nominations beginning with Ariel P. Abuel and ending with Scott C. Sheltz, which nominations were received by the Senate and appeared in the Congressional Record on January 10, 2007.

Army nomination of David W. Laflam to be Lieutenant Colonel.

Army nomination of Thomas P. Flynn to be Lieutenant Colonel.

Army nomination of Earl W. Shaffer to be Colonel.

Army nomination of Orsure W. Stokes to be Colonel.

Army nomination of Alvis Dunson to be Lieutenant Colonel.

Army nominations beginning with Jeffrey W. Weiser and ending with Leonard J. Grado, which nominations were received by the Senate and appeared in the Congressional Record on January 10, 2007.

Army nominations beginning with Kurt G. Bullington and ending with Jason M. Cates, which nominations were received by the Senate and appeared in the Congressional Record on January 10, 2007.

Army nominations beginning with Alton J. Luder, Jr. and ending with Douglas J. Mouton, which nominations were received by the Senate and appeared in the Congressional Record on January 10, 2007.

Army nomination of Gary L. Brewer to be Colonel.

Army nominations beginning with Michael J. Finger and ending with Robert T. Ruiz, which nominations were received by the Senate and appeared in the Congressional Record on January 10, 2007.

Army nomination of Philip Sundquist to be Major.

Army nominations beginning with Carrie G. Benton and ending with Carol A. Macgregordebarba, which nominations were received by the Senate and appeared in the Congressional Record on January 10, 2007.

Army nomination of Marivel Velazquezcrespo to be Major.

Army nominations beginning with Grace Northup and ending with Mary L. Sprague, which nominations were received by the Senate and appeared in the Congressional Record on January 10, 2007.

Army nominations beginning with Francis M. Belue and ending with Carl S. Young, Jr., which nominations were received by the Senate and appeared in the Congressional Record on January 10, 2007.

Army nominations beginning with James W. Adams and ending with X0393, which nominations were received by the Senate and appeared in the Congressional Record on January 10, 2007.

Army nominations beginning with Edward E. Agee, Jr. and ending with Cedric T. Wins, which nominations were received by the Senate and appeared in the Congressional Record on January 10, 2007.

Army nominations beginning with Timothy K. Buennemeyer and ending with D060262, which nominations were received by the Senate and appeared in the Congressional Record on January 10, 2007.

Army nominations beginning with Philip K. Abbott and ending with Jeffrey S. Wiltse, which nominations were received by the Senate and appeared in the Congressional Record on January 10, 2007.

Army nominations beginning with Cheryl E. Boone and ending with Francisco A. Vila, which nominations were received by the Senate and appeared in the Congressional Record on January 10, 2007.

Army nomination of Thomas F. King to be Lieutenant Colonel.

Army nomination of Mary P. Whitney to be Major.

Army nominations beginning with James W. Haliday and ending with Dimitry Y. Tsvetov, which nominations were received by the Senate and appeared in the Congressional Record on January 11, 2007.

Marine Corps nominations beginning with James D. Barich and ending with Gordon B. Overy, Jr., which nominations were received by the Senate and appeared in the Congressional Record on January 16, 2007.

Navy nomination of Timothy M. Greene to be Captain.

Navy nominations beginning with David J. Adams and ending with Chimi I. Zacot, which nominations were received by the Senate and appeared in the Congressional Record on January 10, 2007.

Navy nomination of Donald S. Hudson to be Commander.

Navy nomination of Jeffrey N. Saville to be Commander.

Navy nomination of Steven M. Dematteo to be Lieutenant Commander.

(Nominations without an asterisk were reported with the recommendation that they be confirmed.)

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. MARTINEZ (for himself and Mr. SESSIONS):

S. 371. A bill to amend the Fair Labor Standards Act of 1938 to clarify the house parent exemption to certain wage and hour requirements; to the Committee on Health, Education, Labor, and Pensions .

By Mr. ROCKEFELLER:

S. 372. An original bill to authorize appropriations for fiscal year 2007 for the intelligence and intelligence-related activities of the United States Government, the Intelligence Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes; from the Select Committee on Intelligence; placed on the calendar, to the Committee on Armed Services pursuant to section 3(b) of S. Res. 400, 94th Congress, as amended by S. Res. 445, 108th Congress, for a period not to exceed 10 days of session.

By Mr. BUNNING (for himself and Mr. ROCKEFELLER):

S. 373. A bill to facilitate and expedite direct refunds to coal producers and exporters of the excise tax unconstitutionally imposed on coal exported from the United States; to the Committee on Finance.

By Mr. DOMENICI (for himself, Mr. SCHUMER, Mr. CRAIG, Mrs. CLINTON, Mr. CRAPO, and Mr. ALLARD):

S. 374. A bill to amend the Internal Revenue Code of 1986 to provide the same capital gains treatment for art and collectibles as for other investment property and to provide that a deduction equal to fair market value shall be allowed for charitable contributions of literary, musical, artistic, or scholarly compositions created by the donor; to the Committee on Finance.

By Mr. SMITH (for himself and Mr. WYDEN):

S. 375. A bill to waive application of the Indian Self-Determination and Education Assistance Act to a specific parcel of real property transferred by the United States to 2 Indian tribes in the State of Oregon, and for other purposes; to the Committee on Indian Affairs.

By Mr. LEAHY (for himself, Mr. SPECTER, Mr. KYL, and Mr. CORNYN):

S. 376. A bill to amend title 18, United States Code, to improve the provisions relating to the carrying of concealed weapons by law enforcement officers, and for other purposes; to the Committee on the Judiciary.

By Mr. LUGAR:

S. 377. A bill to establish a United States-Poland parliamentary youth exchange program, and for other purposes; to the Committee on Foreign Relations.

By Mr. LEAHY (for himself, Mr. SPECTER, Mr. REID, Mr. DURBIN, Mr. CORNYN, Mr. KENNEDY, Ms. COLLINS, Mr. HATCH, and Mr. SCHUMER):

S. 378. A bill to amend title 18, United States Code, to protect judges, prosecutors, witnesses, victims, and their family members, and for other purposes; to the Committee on the Judiciary.

By Ms. LANDRIEU:

S. 379. A bill to support the establishment or expansion and operation of programs using a network of public and private community entities to provide mentoring for children in foster care; to the Committee on Finance.

By Mr. WYDEN (for himself, Mr. STEVENS, Mrs. MURRAY, Mr. SMITH, Ms. CANTWELL, Mrs. BOXER, Mrs. FEINSTEIN, and Mr. TESTER):

S. 380. A bill to reauthorize the Secure Rural Schools and Community Self-Determination Act of 2000, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. INOUYE (for himself, Mr. STEVENS, Mr. LEVIN, Mr. LEAHY, Ms. MURKOWSKI, Mr. AKAKA, and Mr. BENNETT):

S. 381. A bill to establish a fact-finding Commission to extend the study of a prior Commission to investigate and determine facts and circumstances surrounding the relocation, internment, and deportation to Axis countries of Latin Americans of Japanese descent from December 1941 through February 1948, and the impact of those actions by the United States, and to recommend appropriate remedies, and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

By Ms. COLLINS (for herself, Mr. HARKIN, Mr. KENNEDY, Mr. PRYOR, Mr. COLEMAN, Ms. CANTWELL, Mr. DURBIN, Ms. MIKULSKI, Mr. BINGAMAN, Mr. LAUTENBERG, and Mr. KERRY):

S. 382. A bill to amend the Public Health Service Act to establish a State family support grant program to end the practice of parents giving legal custody of their seriously emotionally disturbed children to State agencies for the purpose of obtaining mental health services for those children; to the Committee on Health, Education, Labor, and Pensions.

By Mr. AKAKA (for himself and Mr. ROCKEFELLER):

S. 383. A bill to amend title 38, United States Code, to extend the period of eligibility for health care for combat service in the Persian Gulf War or future hostilities from two years to five years after discharge or release; to the Committee on Veterans' Affairs.

By Ms. LANDRIEU (for herself, Mr. DURBIN, Mr. GRAHAM, and Mr. KERRY):

S. 384. A bill to provide pay protection for members of the Reserve and the National Guard, and for other purposes; to the Committee on Finance.

By Mr. INOUYE (for himself, Mr. STEVENS, Mr. KERRY, Mr. SMITH, and Ms. SNOWE):

S. 385. A bill to improve the interoperability of emergency communications equipment; to the Committee on Commerce, Science, and Transportation.

By Mr. CHAMBLISS:

S. 386. A bill to amend the Clean Air Act to require a higher volume of renewable fuel derived from cellulosic biomass, and for other purposes; to the Committee on Environment and Public Works.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

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

By Mr. BINGAMAN:

S. Res. 38. An original resolution authorizing expenditures by the Committee on Energy and Natural Resources; from the Committee on Energy and Natural Resources; to the Committee on Rules and Administration.

By Mr. BYRD:

S. Res. 39. A resolution expressing the sense of the Senate on the need for approval by the Congress before any offensive military action by the United States against another nation; to the Committee on Foreign Relations.

By Mr. WARNER (for himself, Mr. NELSON of Nebraska, Ms. COLLINS, Mr. COLEMAN, Mr. SALAZAR, Mr. BAYH, Mr. SMITH, Ms. LANDRIEU, Mr. NELSON of Florida, and Mrs. MCCASKILL):

S. Con. Res. 4. A concurrent resolution expressing the sense of Congress on Iraq; to the Committee on Foreign Relations.

ADDITIONAL COSPONSORS

S. 2

At the request of Mr. KENNEDY, the name of the Senator from Vermont (Mr. SANDERS) was added as a cosponsor of S. 2, a bill to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage.

S. 4

At the request of Mr. REID, the name of the Senator from Minnesota (Ms. KLOBUCHAR) was added as a cosponsor of S. 4, a bill to make the United States more secure by implementing unfinished recommendations of the 9/11 Commission to fight the war on terror more effectively, to improve homeland security, and for other purposes.

S. 10

At the request of Mr. NELSON of Florida, his name was added as a cosponsor of S. 10, a bill to reinstate the pay-as-you-go requirement and reduce budget deficits by strengthening budget enforcement and fiscal responsibility.

S. 65

At the request of Mr. INHOFE, the names of the Senator from Idaho (Mr. CRAIG) and the Senator from Arizona (Mr. MCCAIN) were added as cosponsors of S. 65, a bill to modify the age–60 standard for certain pilots and for other purposes.

S. 85

At the request of Mr. MCCAIN, the name of the Senator from Colorado (Mr. SALAZAR) was added as a cosponsor of S. 85, a bill to amend the Omnibus Crime Control and Safe Streets Act of 1968 to clarify that territories and Indian tribes are eligible to receive grants for confronting the use of methamphetamine.

S. 121

At the request of Mr. FEINGOLD, the name of the Senator from Vermont (Mr. LEAHY) was added as a cosponsor of S. 121, a bill to provide for the redeployment of United States forces from Iraq.

S. 166

At the request of Mr. MCCAIN, the name of the Senator from Florida (Mr. NELSON) was added as a cosponsor of S. 166, a bill to restrict any State from imposing a new discriminatory tax on cell phone services.

S. 206

At the request of Mr. LEAHY, his name was added as a cosponsor of S. 206, a bill to amend title II of the Social Security Act to repeal the Government pension offset and windfall elimination provisions.

At the request of Mrs. FEINSTEIN, the name of the Senator from Washington (Ms. CANTWELL) was added as a cosponsor of S. 206, supra.

S. 236

At the request of Mr. FEINGOLD, the name of the Senator from Massachusetts (Mr. KENNEDY) was added as a cosponsor of S. 236, a bill to require reports to Congress on Federal agency use of data mining.

S. 261

At the request of Ms. CANTWELL, the name of the Senator from Maryland (Ms. MIKULSKI) was added as a cosponsor of S. 261, a bill to amend title 18, United States Code, to strengthen prohibitions against animal fighting, and for other purposes.

S. 267

At the request of Mr. BINGAMAN, the names of the Senator from Utah (Mr. HATCH) and the Senator from Colorado (Mr. SALAZAR) were added as cosponsors of S. 267, a bill to amend the Omnibus Crime Control and Safe Streets Act of 1968 to clarify that territories and Indian tribes are eligible to receive grants for confronting the use of methamphetamine.

S. 287

At the request of Mr. KENNEDY, the name of the Senator from Oregon (Mr. WYDEN) was added as a cosponsor of S. 287, a bill to prohibit the use of funds for an escalation of United States military forces in Iraq above the numbers existing as of January 9, 2007.

S. 311

At the request of Ms. LANDRIEU, the names of the Senator from New Jersey (Mr. LAUTENBERG), the Senator from Maryland (Ms. MIKULSKI) and the Senator from Arizona (Mr. MCCAIN) were added as cosponsors of S. 311, a bill to amend the Horse Protection Act to prohibit the shipping, transporting, moving, delivering, receiving, possessing, purchasing, selling, or donation of horses and other equines to be slaughtered for human consumption, and for other purposes.

S. 315

At the request of Mr. WARNER, the name of the Senator from Mississippi (Mr. COCHRAN) was added as a cosponsor of S. 315, a bill to establish a digital and wireless network technology program, and for other purposes.

S. 357

At the request of Mrs. FEINSTEIN, the names of the Senator from Rhode Island (Mr. REED) and the Senator from Vermont (Mr. LEAHY) were added as cosponsors of S. 357, a bill to improve passenger automobile fuel economy and safety, reduce greenhouse gas emissions, reduce dependence on foreign oil, and for other purposes.

S. 358

At the request of Mr. LEAHY, his name was added as a cosponsor of S. 358, a bill to prohibit discrimination on the basis of genetic information with respect to health insurance and employment.

S. CON. RES. 2

At the request of Mr. SALAZAR, his name was added as a cosponsor of S. Con. Res. 2, a concurrent resolution expressing the bipartisan resolution on Iraq.

At the request of Mr. BIDEN, the name of the Senator from Florida (Mr. NELSON) was added as a cosponsor of S. Con. Res. 2, supra.

AMENDMENT NO. 106

At the request of Mr. SESSIONS, the name of the Senator from Oklahoma (Mr. INHOFE) was added as a cosponsor of amendment No. 106 proposed to H.R. 2, a bill to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage.

AMENDMENT NO. 112

At the request of Mr. SUNUNU, the names of the Senator from Maine (Ms. SNOWE) and the Senator from Alaska (Mr. STEVENS) were added as cosponsors of amendment No. 112 proposed to H.R. 2, a bill to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage.

AMENDMENT NO. 119

At the request of Mr. BUNNING, the name of the Senator from South Carolina (Mr. GRAHAM) was added as a cosponsor of amendment No. 119 proposed to H.R. 2, a bill to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage.

AMENDMENT NO. 121

At the request of Ms. SNOWE, the name of the Senator from Pennsylvania (Mr. SPECTER) was added as a cosponsor of amendment No. 121 intended to be proposed to H.R. 2, a bill to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. MARTINEZ (for himself and Mr. SESSIONS):

S. 371. A bill to amend the Fair Labor Standards Act of 1938 to clarify the house parent exemption to certain wage and hour requirements; to the Committee on Health, Education, Labor, and Pensions.

Mr. MARTINEZ. Mr. President, today I rise to discuss an issue that is near and dear to my heart, because it involves children and youth in our foster care system. Inconsistencies in our Federal wage laws, coupled with increases in the minimum wage, are financially crippling the private, nonprofit organizations and institutions that make up a necessary part of our communities' support systems for the most vulnerable in our society, the children.

More than 500,000 children are in America's foster care system at any given time, because their own families are in crisis or unable to provide for their essential well-being—most because they have been subject to abuse and neglect. Thankfully, most of these children are able to be placed with individual caring families. But for those children without a suitable or available foster family, they are placed in one of the many group homes associated with our foster care system.

Many of these group homes are specially tailored to the specific needs of foster care children by offering unique programs and on-site education to help heal the emotional scarring they have experienced.

These homes—often run by private, non-profit organizations—are dedicated to providing residential care and treatment for the ''orphans of the living,'' and they have long been a vital part of the social service networks in America's communities.

An essential component of the foster care network is the presence of caring parents in a family-like situation. And as in traditional parenting, the houseparents of group foster homes seek to provide the same love, care, and supervision of a traditional family for the five to eight children that reside with them.

Houseparents volunteer to permanently reside at the group home in order to create a family- like environment for those without a true sense of home—one that offers a structured atmosphere where these most vulnerable youth can heal, grow, and become productive members of society.

Foster care alumni studies show us that it is the consistent and life-long connection of caring foster parents that plays the biggest role in helping foster children transition into society.

However, our current laws are working against this cause, forcing group homes to move away from what they know is best for the children and preventing them from providing the most appropriate and consistent care. These youth so desperately need the stability that a family- like situation can provide. And this is what my amendment seeks to address.

Traditionally, in addition to a modest, fixed salary, houseparents have received food, lodging, insurance, and transportation free of charge.

In 1974, Congress recognized and confirmed the unique role houseparents serve when it passed the Hershey Exemption. This amended the Fair Labor Standards Act to preserve the appropriate method of compensation for houseparents—and allowed the lodging and food provided them to be considered when determining an appropriate salary for married houseparents serving with their spouse at nonprofit educational institutions.

Through this exemption, Congress supplied a way for these vital social services to continue to be provided by non-profit organizations in a way that is cost-effective, and at the same time appropriate and meaningful to both the children and the houseparents.

However, since the addition of this exemption, the demographics of America and of America's foster children have changed. Research now shows that due to the negative experiences some youth have faced, they may find a better environment for growth and healing in having a single houseparent of the same sex.

Our labor standards for these group homes have not kept pace with the ever-changing needs of these children.

Because the Hershey Exemption was only extended to married couples, group homes are now forced to choose between what is cheaper and what is best for the children. Unfortunately, the financial realities of the situation

place these facilities in a compromising situation.

You see, when a group home employs a single houseparent for a home, they are required to pay them as an hourly employee, whereas married houseparents serving together are allowed to be paid as salaried employees.

As a result, it costs a facility in Florida more than $74,000 annually at the current minimum wage rate to provide a full-time, single houseparent using the traditional live-in model.

In response, most facilities have resorted to teams of houseparents that work in 8 or 12 hour shifts—just to avoid the additional costs of overtime pay. Yet even this team model is pricey and means tough coordination and inconsistencies in care for these children. It also destroys the family-like arrangement of the home.

If the minimum wage bill—to which I am offering this bill as an amendment—passes, it will cost facilities across the U.S. in excess of $84,000 annually to house and employ a single, full-time houseparent in a foster care or educational group home. However, if it were a married couple serving in the same environment it would only require minimum wage guidelines being met.

Can you see how this inconsistency in our labor laws is, and will continue to be, crippling for the private, nonprofit facilities?

In order to enable group homes to provide the most appropriate and consistent care for foster and emotionally scarred youth, my amendment will extend the Hershey Exemption to single houseparents, allowing them to be treated as salaried employees when free lodging and board are provided.

Voting in favor of my amendment will enable private, non-profit group homes to continue providing these vital services for our communities, with a stronger atmosphere of love and growth for the children.

Voting against this amendment will—that is, allowing it not to pass—will mean that the already heavy financial burden for these facilities will continue to grow. Homes will be forced to close or have to scale back on the number of children they can help.

To vote against this amendment is to turn children out on the street at a time when they need us most.

As a loving parent and grandparent, I want what is best for my children and for my grandchildren—I want to make sure they have whatever they need to overcome the obstacles of life and succeed. This is also what we should seek for foster children and the hurting youth in our communities—to provide the loving homes and facilities for them that provide what they need most and in the most appropriate and consistent way possible.

I ask unanimous consent that the text of this bill be printed in the RECORD.

There being no objection, the text of the bill was ordered to be reprinted in the RECORD, as follows:

S. 371

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Appropriate and Consistent Care for Youth Act of 2007''.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) Private, nonprofit organizations dedicated to providing residential care and treatment for children have long been a vital part of the social service networks America's communities.

(2) No longer just serving orphans, these institutions tend to the needs of the ''orphans of the living'', children and youth who are unable to remain in their natural homes due to emotional conflicts, life adjustment problems, relationship disturbances, and spiritual and psychological scaring associated with sexual, physical, and emotional abuse.

(3) The effectiveness of these institutions in caring for these troubled and abused children has long been due to the love, care, and supervision provided by residential houseparents.

(4) These houseparents volunteer to permanently reside at the group home in which they work in order to create a family environment for those without a true sense of home, one that offers a structured atmosphere where these vulnerable youth can heal, grow, and become productive members of society.

(5) Traditionally, these houseparents have received food, lodging, insurance, and transportation free of charge, in addition to a fixed salary.

(6) Congress recognized the unique role houseparents serve, and passed the Hershey Exemption (section 13(b)(24) of the Fair Labor Standards Act of 1938 (29 U.S.C. 212(b)(24))) in 1974 to assist with the provision of houseparents for orphaned and disadvantaged youth by allowing for lodging and food provided free of cost to be considered when determining an appropriate salary for married houseparents serving with their spouse at nonprofit educational institutions.

(7) Since the addition of the Hershey Exemption, research shows that due to the negative experiences some troubled youth have faced, they find a better environment for growth in having a single houseparent of the same sex.

(8) Because the wage provision under the Hershey Exemption was extended only to married houseparents serving with their spouse, the Department of Labor has enforced a rule that single houseparents need to be reimbursed on a 24-hour-a-day basis, even for time they are sleeping or otherwise not directly caring for residents of the home, and regardless of the provision of free lodging, food, and other services.

(9) This has placed an undue financial burden on these nonprofit institutions who wish to provide the best possible care for their residents, forcing some homes to close and others to adopt an employment model where ''teams'' of houseparents work 8-hour sifts to care for residents. This ''team'' model drives up the cost and destroys the family-like arrangement of the home.

(10) In order to provide for a more appropriate and consistent care for these foster children and troubled youth, this Act seeks to extend the Hershey Exemption to single houseparents residing in educational institutions where they receive lodging and board free of charge.

SEC. 3. AMENDMENT TO THE FAIR LABOR STANDARDS ACT OF 1938.

Section 13(b)(24) of the Fair Labor Standards Act of 1938 (29 U.S.C. 212(b)(24)) is amended—

(1) in the matter preceding subparagraph (A), by striking ''and his spouse''; and

(2) in the matter following subparagraph (B)—

(A) by striking ''and his spouse reside'' and inserting ''resides'';

(B) by striking ''receive'' and inserting ''receives''; and

(C) by striking ''are together'' and inserting ''is''.

By Mr. DOMENICI (for himself, Mr. SCHUMER, Mr. CRAIG, Mrs. CLINTON, Mr. CRAPO, and Mr. ALLARD):

S. 374. A bill to amend the Internal Revenue Code of 1986 to provide the same capital gains treatment for art and collectibles as for other investment property and to provide that a deduction equal to fair market value shall be allowed for charitable contributions of literary, musical, artistic, or scholarly compositions created by the donor; to the Committee on Finance.

Mr. DOMENICI. Mr. President, I rise today to introduce again legislation to eliminate one of the great inconsistencies in the Internal Revenue Code. I would like to thank my colleague, the senior Senator from New York, Senator SCHUMER, for again working with me on this important piece of legislation.

The bill we are introducing today is designed to restore some internal consistency to the tax code as it applies to art and artists. No one has ever said that the tax code is fair even though it has always been a theoretical objective of the code to treat similar taxpayers similarly.

Our bill would address two areas where similarly situated taxpayers are not treated the same. These two areas are internal inconsistencies contained within the tax code. Internal inconsistency number one deals with the long-term capital gains tax treatment of investments in art and collectibles. The second internal inconsistency involves how charitable contributions of art by the artist are treated under the law.

Long-term capital gains tax treatment of art is inherently unfair. If a person invests in stocks or bonds and sells at a gain, the tax treatment is long term capital gains. The top capital gains tax rate is 15 percent. However, if the same person invests in art or collectibles the top rate is hiked up to 28 percent. Art for art's sake should not incur a higher tax rate simply for revenue's sake. That is a big impact on the pocketbook of the investor.

Art and collectibles are alternatives to financial instruments as an investment choice. To create a tax disadvantage with respect to one investment compared to another creates an artificial market and may lead to poor investment allocations. It also adversely impacts those who make their livelihood in the cultural sectors of the economy.

Santa Fe, NM, is the third largest art market in the country. We have a diverse colony of artists, collectors and

gallery owners. We have fabulous Native American rug weavers, potters and carvers. Creative giants like Georgia O'Keeffe, Maria Martinez, E. L. Blumenshein, Allan Houser, R.C. Gorman, and Glenna Goodacre have all chosen New Mexico as their home and as their artistic subject. John Nieto, Wilson Hurley, Clark Hulings, Veryl Goodnight, Bill Acheff, Susan Rothenberg, Bruce Nauman, Agnes Martin, Doug Hyde, Margaret Nez, and Dan Ostermiller are additional examples of living artists creating art in New Mexico.

Art, antiques, and collectibles are a $12 to $20 billion annual industry nationwide. In New Mexico, it has been estimated that art and collectible sales range between $500 million and one billion a year.

Economists have always been interested in the economics of the arts. Adam Smith is a well-known economist. He was also a serious, but little-known essayist on painting, dancing, and poetry. Similarly, Keynes was both a famous economist and a passionate devotee of painting. However, even artistically inclined economists have found it difficult to define art within the context of economic theory.

When asked to define jazz, Louis Armstrong replied: ''If you gotta ask, you ain't never going to know.'' A similar conundrum has challenged Galbraith and other economists who have grappled with the definitional issues associated with bringing art within the economic calculus. Original art objects are, as a commodity group, characterized by a set of attributes: every unit of output is differentiated from every other unit of output; art works can be copied but not reproduced; and the cultural capital of the nation has significant elements of public good.

Because art works can be resold, and their prices may rise over time, they have the characteristics of financial assets, and as such may be sought as a hedge against inflation, as a store of wealth, or as a source of speculative capital gain. A study by Keishiro Matsumoto, Samuel Andoh and James P. Hoban, Jr. assessed the risk-adjusted rates of return on art sold at Sotheby's during the 14-year period ending September 30, 1989. They concluded that art was a good investment in terms of average real rates of return. Several studies found that rates of return from the price appreciation on paintings, comic books, collectibles and modern prints usually made them very attractive long-term investments. Also, when William Goetzmann was at the Columbia Business School, he constructed an art index and concluded that painting price movements and stock market fluctuations are correlated.

I conclude that with art, as well as stocks, past performance is no guarantee of future returns, but the gains should be taxed the same.

In 1990, the editor of Art and Auction asked the question: ''Is there an 'efficient' art market?'' A well-known art dealer answered ''Definitely not. That's one of the things that makes the market so interesting.'' For everyone who has been watching world financial markets lately, the art market may be a welcome distraction.

Why do people invest in art and collectibles? Art and collectibles are something you can appreciate even if the investment doesn't appreciate. Art is less volatile. If buoyant and not so buoyant bond prices drive you berserk and spiraling stock prices scare you, art may be the appropriate investment for you. Because art and collectibles are investments, the long-term capital gains tax treatment should be the same as for stocks and bonds. This bill would accomplish that.

Artists will benefit. Gallery owners will benefit. Collectors will benefit. And museums benefit from collectors. About 90 percent of what winds up in museums like New York's Metropolitan Museum of Art comes from collectors.

Collecting isn't just for the hoyty toity. It seems that everyone collects something. Some collections are better investments than others. Some collections are just bizarre. The internet makes collecting big business, and flea market fanatics are avid collectors. In fact, people collect the darndest things. Books, duck decoys, chia pets, snowglobes, thimbles, handcuffs, spectacles, baseball cards, teddy bears, and guns are a few such ''collectibles''.

For most of these collections, capital gains isn't really an issue, but you never know. You may find that your collecting passion has created a tax predicament—to phrase it politely. Art and collectibles are tangible assets. When you sell them, capital gains tax is due on any appreciation over your purchase price.

The bill provides capital gains tax parity because it lowers the top capital gains rate from 28 percent to 15 percent.

As I stated earlier, the second internal inconsistency deals with the charitable deduction for artists donating their work to a museum or other charitable cause. When someone is asked to make a charitable contribution to a museum or to a fund raising auction, it shouldn't matter whether that person is an artist or not. Under current law, however, it makes a big difference. As the law stands now, an artist/creator can only take a deduction equal to the cost of the art supplies. Our bill will allow a fair market deduction for the artist.

It's important to note that our bill includes certain safeguards to keep the artist from ''painting himself a tax deduction.'' This bill applies to literary, musical, artistic, and scholarly compositions if the work was created at least 18 months before the donation was made, has been appraised, and is related to the purpose or function of the charitable organization receiving the donation. As with other charitable contributions, it is limited to 50 percent of adjusted gross income (AGI). If it is also a capital gain, there is a 30 percent of AGI limit. Mr. President, I believe these safeguards bring fairness back into the code and protect the Treasury against any potential abuse.

I hope my colleagues will help us put this internal consistency into the Internal Revenue Code.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 374

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Art and Collectibles Capital Gains Tax Treatment Parity Act''.

SEC. 2. CAPITAL GAINS TREATMENT FOR ART AND COLLECTIBLES.

(a) IN GENERAL.—Section 1(h) of the Internal Revenue Code of 1986 (relating to maximum capital gains rate) is amended by striking paragraphs (4) and (5) and inserting the following new paragraphs:

''(4) 28-PERCENT RATE GAIN.—For purposes of this subsection, the term '28-percent rate gain' means the excess (if any) of—

''(A) section 1202 gain, over

''(B) the sum of—

''(i) the net short-term capital loss, and

''(ii) the amount of long-term capital loss carried under section 1212(b)(1)(B) to the taxable year.

''(5) RESERVED.—.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2006.

SEC. 3. CHARITABLE CONTRIBUTIONS OF CERTAIN ITEMS CREATED BY THE TAXPAYER.

(a) IN GENERAL.—Subsection (e) of section 170 of the Internal Revenue Code of 1986 (relating to certain contributions of ordinary income and capital gain property) is amended by adding at the end the following new paragraph:

''(7) SPECIAL RULE FOR CERTAIN CONTRIBUTIONS OF LITERARY, MUSICAL, ARTISTIC, OR SCHOLARLY COMPOSITIONS.—

''(A) IN GENERAL.—In the case of a qualified artistic charitable contribution—

''(i) the amount of such contribution taken into account under this section shall be the fair market value of the property contributed (determined at the time of such contribution), and

''(ii) no reduction in the amount of such contribution shall be made under paragraph (1).

''(B) QUALIFIED ARTISTIC CHARITABLE CONTRIBUTION.—For purposes of this paragraph, the term 'qualified artistic charitable contribution' means a charitable contribution of any literary, musical, artistic, or scholarly composition, or similar property, or the copyright thereon (or both), but only if—

''(i) such property was created by the personal efforts of the taxpayer making such contribution no less than 18 months prior to such contribution,

''(ii) the taxpayer—

''(I) has received a qualified appraisal of the fair market value of such property in accordance with the regulations under this section, and

''(II) attaches to the taxpayer's income tax return for the taxable year in which such contribution was made a copy of such appraisal,

''(iii) the donee is an organization described in subsection (b)(1)(A),

''(iv) the use of such property by the donee is related to the purpose or function constituting the basis for the donee's exemption under section 501 (or, in the case of a governmental unit, to any purpose or function described under section 501(c)),

''(v) the taxpayer receives from the donee a written statement representing that the donee's use of the property will be in accordance with the provisions of clause (iv), and

''(vi) the written appraisal referred to in clause (ii) includes evidence of the extent (if any) to which property created by the personal efforts of the taxpayer and of the same type as the donated property is or has been—

''(I) owned, maintained, and displayed by organizations described in subsection (b)(1)(A), and

''(II) sold to or exchanged by persons other than the taxpayer, donee, or any related person (as defined in section 465(b)(3)(C)).

''(C) MAXIMUM DOLLAR LIMITATION; NO CARRYOVER OF INCREASED DEDUCTION.—The increase in the deduction under this section by reason of this paragraph for any taxable year—

''(i) shall not exceed the artistic adjusted gross income of the taxpayer for such taxable year, and

''(ii) shall not be taken into account in determining the amount which may be carried from such taxable year under subsection (d).

''(D) ARTISTIC ADJUSTED GROSS INCOME.—For purposes of this paragraph, the term 'artistic adjusted gross income' means that portion of the adjusted gross income of the taxpayer for the taxable year attributable to—

''(i) income from the sale or use of property created by the personal efforts of the taxpayer which is of the same type as the donated property, and

''(ii) income from teaching, lecturing, performing, or similar activity with respect to property described in clause (i).

''(E) PARAGRAPH NOT TO APPLY TO CERTAIN CONTRIBUTIONS.—Subparagraph (A) shall not apply to any charitable contribution of any letter, memorandum, or similar property which was written, prepared, or produced by or for an individual while the individual is an officer or employee of any person (including any government agency or instrumentality) unless such letter, memorandum, or similar property is entirely personal.

''(F) COPYRIGHT TREATED AS SEPARATE PROPERTY FOR PARTIAL INTEREST RULE.—In the case of a qualified artistic charitable contribution, the tangible literary, musical, artistic, or scholarly composition, or similar property and the copyright on such work shall be treated as separate properties for purposes of this paragraph and subsection (f)(3).''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to contributions made after the date of the enactment of this Act in taxable years ending after such date.

By Mr. LEAHY (for himself, Mr. SPECTER, Mr. KYL, and Mr. CORNYN):

S. 376. A bill to amend title 18, United States Code, to improve the provisions relating to the carrying of concealed weapons by law enforcement officers, and for other purposes; to the Committee on the Judiciary.

Mr. LEAHY. Mr. President, in 2003, Senator Campbell and I, joined by 68 other Senators, introduced a bill that allowed a qualified retired or current law enforcement officer to carry a concealed firearm across State lines. The Senate passed our bill by unanimous consent, which was signed into law in July 2004. Passage of the Law Enforcement Safety Officers Act was a resounding vote of confidence in the men and women who serve their communities as protectors of the peace, and their Nation as the first line of defense in any emergency.

But since enactment of the Law Enforcement Officers Safety Act, it has become clear that qualified retired officers have been subject to varying and complex certification procedures from State to State. In many cases, differing interpretations have complicated the implementation of the law, and retired officers have experienced significant frustration in getting certified to lawfully carry a firearm.

With the input of the law enforcement community, this bill proposes modest amendments to streamline the current law, which will give retired officers more flexibility in obtaining certification, and provides room for the variability in certification standards among the several States. For example, where a State has not set active duty standards, the retired officer can be certified pursuant to the standards set by any law enforcement agency in the State.

In addition to these adjustments, the bill also makes clear that Amtrak officers, along with officers of the Executive branch of the Federal Government, are covered by the law. The bill also reduces from 15 to 10 the years of service required for a retired officer to qualify under the law. Though these changes broaden the reach of the law, the requirements for eligibility still involve a significant term of service for a retired officer to qualify, and a demonstrated commitment to law enforcement.

This bill makes sensible improvements to existing law by providing the flexibility needed to permit qualified retired law enforcement officers to carry concealed firearms in a legal and responsible manner.

With the enactment of the Law Enforcement Officers Safety Act, Congress and the President also recognized that law enforcement officers are never ''off-duty.'' The dedicated public servants who are trained to uphold the law and keep the peace deserve our support not just in their professional lives, but also when they go off-duty or into retirement. Convicted criminals often have long and exacting memories, and to the extent we can, we must aid these public servants with the tools they need to keep themselves and their families safe. Because one thing we know for sure is that a law enforcement officer is a target, whether in uniform or out, and whether active or retired. We also act in our own interest when we help law enforcement officers with the ability to answer the call of duty wherever they may be. Society's trust in the men and women who serve should include the faith that the responsibilities we entrust to them do not disappear once State lines are crossed.

In 2004, Congress listened carefully to the concerns of the law enforcement community and responded appropriately. Let us do so again with these sensible improvements.

I ask for unanimous consent that the text of the bill be printed in the RECORD.

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

S. 376

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Law Enforcement Officers Safety Act of 2007''.

SEC. 2. AMENDMENTS TO LAW ENFORCEMENT OFFICER SAFETY PROVISIONS OF TITLE 18.

(a) IN GENERAL.—Section 926B of title 18, United States Code, is amended by adding at the end the following:

''(f) For purposes of this section, a law enforcement officer of the Amtrak Police Department or a law enforcement or police officer of the executive branch of the Federal Government qualifies as an employee of a governmental agency who is authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and has statutory powers of arrest.''.

(b) RETIRED LAW ENFORCEMENT OFFICERS.—Section 926C of title 18, United States Code, is amended—

(1) in subsection (c)—

(A) in paragraph (3)(A), by striking ''was regularly employed as a law enforcement officer for an aggregate of 15 years or more'' and inserting ''served as a law enforcement officer for an aggregate of 10 years or more'';

(B) by striking paragraphs (4) and (5) and inserting the following:

''(4) during the most recent 12-month period, has met, at the expense of the individual, the standards for qualification in firearms training for active law enforcement officers as set by the officer's former agency, the State in which the officer resides or a law enforcement agency within the State in which the officer resides;''; and

(C) by redesignating paragraphs (6) and (7) as paragraphs (5) and (6), respectively;

(2) in subsection (d)—

(A) in paragraph (1), by striking ''to meet the standards established by the agency for training and qualification for active law enforcement officers to carry a firearm of the same type as the concealed firearm; or'' and inserting ''to meet the active duty standards for qualification in firearms training as established by the agency to carry a firearm of the same type as the concealed firearm or''; and

(B) in paragraph (2)(B), by striking ''otherwise found by the State to meet the standards established by the State for training and qualification for active law enforcement officers to carry a firearm of the same type as the concealed firearm.'' and inserting ''otherwise found by the State or a certified firearms instructor that is qualified to conduct a firearms qualification test for active duty officers within that State to have met—

''(i) the active duty standards for qualification in firearms training as established by the State to carry a firearm of the same type as the concealed firearm; or

''(ii) if the State has not established such standards, standards set by any law enforcement agency within that State to carry a firearm of the same type as the concealed firearm.''; and

(3) by adding at the end the following:

''(f) In this section, the term 'service with a public agency as a law enforcement officer' includes service as a law enforcement officer of the Amtrak Police Department or as a law enforcement or police officer of the executive branch of the Federal Government.''.

By Mr. LUGAR:

S. 377. A bill to establish a United States-Poland parliamentary youth exchange program, and for other purposes; to the Committee on Foreign Relations.

Mr. LUGAR. Mr. President, I rise today to offer legislation urging the Administration to develop a United States-Poland Parliamentary Youth Exchange Program. I am pleased that my colleague from Indiana, Congressman PETE VISCLOSKY, has agreed to again introduce this important legislation in the House of Representatives. I appreciate his strong leadership in our continued joint efforts in this and many other areas.

The purpose of this exchange program is to demonstrate to the youth of the United States and Poland the benefits of friendly cooperation between the U.S. and Poland based on common political and cultural values. I have long been an active supporter of the Congress-Bundestag Exchange program and am hopeful that this new endeavor will make similarly important lasting contributions to the U.S.-Polish relationship.

As a Rhodes Scholar, I had the opportunity to discover international education at Pembroke College—my first trip outside of the United States. The parameters of my imagination expanded enormously during this time, as I gained a sense of how large the world was, how many talented people there were, and how many opportunities one could embrace. Student exchange programs do more than benefit individual scholars and advance human knowledge. Such programs expand ties between nations, improve international commerce, encourage cooperative solutions to global problems, prevent war, and give participants a chance to develop a sense of global service and responsibility.

Funding a great foreign exchange program is a sign of both national pride and national humility. Implicit in such a program is the view that people from other nations view one's country and educational system as a beacon of knowledge—as a place where international scholars would want to study and live. But it is also an admission that a nation does not have all the answers—that our national understanding of the world is incomplete. It is an admission that we are just a part of a much larger world that has intellectual, scientific, and moral wisdom that we need to learn.

The United States and Poland have enjoyed close bilateral relations since the end of the Cold War. Most recently, Poland has been a strong supporter of efforts led by the United States to combat global terrorism, and has contributed troops to and led coalitions in both Afghanistan and Iraq. Poland also cooperates closely with the United States on such issues as democratization, human rights, regional cooperation in Eastern Europe, and reform of the United Nations. As a member of the North Atlantic Treaty Organization (NATO) and the European Union (EU), Poland has demonstrated its commitment to democratic values and is a role model in its region.

I believe that it is important to invest in the youth of the United States and Poland in order to strengthen long-lasting ties between both societies. After receiving for many years international and U.S. financial assistance, Poland is now determined to invest its own resources toward funding a U.S.-Poland exchange program. To this end the Polish Foreign Minister unambiguously stated that Poland welcomed the opportunity to be an equal partner in funding important efforts.

Last year the Senate approved a similar version of this legislation by unanimous consent. I ask my colleagues to again support this resolution.

By Mr. LEAHY (for himself, Mr. SPECTER, Mr. REID, Mr. DURBIN, Mr. CORNYN, Mr. KENNEDY, Ms. COLLINS, Mr. HATCH, and Mr. SCHUMER):

S. 378. A bill to amend title 18, United States Code, to protect judges, prosecutors, witnesses, victims, and their family members, and for other purposes; to the Committee on the Judiciary.

Mr. LEAHY. Mr. President, I was disappointed at the end of last Congress that, like so much other urgent business of the American people left unattended, we did not pass a measure to improve court security. We made some progress on this important issue when the Senate passed a consensus bipartisan court security bill. Unfortunately we were unable to cross the finish line because the House Republican leadership did not take up this bill. And so that still eaves our Nation's judges and their families without the vital protections that bill would have provided.

Today, I join with other Senators on both sides of the aisle to try again. Along with the Majority Leader Senator REID; the Judiciary Committee's Ranking Member, Senator SPECTER; the Majority Whip, Senator DURBIN; and Senators KENNEDY, SCHUMER, CORNYN, HATCH and COLLINS, I introduce the Court Security Improvement Act of 2007, a consensus measure with bipartisan support nearly identical to the bill we passed in the Senate last December. House Judiciary Chairman CONYERS is introducing an identical measure in the House with bipartisan support. This bi-cameral, bi-partisan introduction sends a strong message that we intend finally to finish this difficult struggle and enact this bill that should have been enacted months ago to increase protections for the dedicated women and men throughout the Judiciary in this country.

This is an important issue, and one I plan to make a priority this Congress. I hope that we can have quick action on this bill to bring to fruition our efforts to provide increased security, an effort that gained new urgency after the tragedy that befell Judge Joan Lefkow of Chicago. She is the Federal judge whose mother and husband were murdered in their home. As we heard in her courageous testimony in May 2005 before the Judiciary Committee, this tragedy provided a terrible reminder not only of the vulnerable position of our judges and their families, but of the critical importance of protecting judges both where they work and where they and their families live. The shooting last summer of a State judge in Nevada provided another terrible reminder of the vulnerable position of our Nation's State and Federal judges. We cannot tolerate or excuse or justify violence or the threat of violence against judges.

In a speech last year, Justice Sandra Day O'Connor criticized the uncivil tone of attacks on the courts, noting that they pose a danger to the very independence of the Federal judiciary. It is most unfortunate that some in this country have chosen to use dangerous and irresponsible rhetoric when talking about judges, comparing judges to terrorists and threatening judges with punishment for decisions they do not like. This rhetoric can only foster unacceptable violence against judges and it must stop, for the sake of our judges and the independence of the judiciary. Judicial fairness and independence are essential if we are to maintain our freedoms. Our independent judiciary is the envy of the rest of the world and a great source of our national strength and resilience. Let no one say things that might bring about further threats against our judges. We ought to be protecting them physically and institutionally.

When I last chaired the Judiciary Committee, one of my first efforts was pushing for passage of the Judicial Protection Act, which toughened criminal penalties for assaults against judges and their families. In order to meet the continuing challenges of keeping the Federal judiciary safe, in the last Congress Chairman SPECTER and I introduced S. 1968, the Court Security Improvement Act of 2005.

The bill we are introducing today in the Senate and House is a consensus bipartisan bill. I hope that quick action and passage of this bill can serve as a model for what we can achieve with bipartisan cooperation in the 110th Congress. Its core provisions, which previously passed the Senate not only last December, but also in June as part of the managers' package of the ''John Warner National Defense Authorization Act for Fiscal Year 2007,'' S. 2766, come the Court Security Improvement Act of 2005.

The bill responds to the needs expressed by the Federal judiciary for a

greater voice in working with the United States Marshals Service to determine their security needs. It enacts new criminal penalties for the misuse of restricted personal information to harm or threaten to harm Federal judges, their families or other individuals performing official duties. It enacts criminal penalties for threatening Federal judges and Federal law enforcement officials by the malicious filing of false liens, and provides increased protections for witnesses. The bill also contains provisions making available to States new resources to improve security for State and local court systems as well as providing additional protections for law enforcement officers. I am pleased that the bill includes an extension of life insurance benefits to bankruptcy, magistrate and territorial judges.

Finally, the bill contains provisions that have passed the Senate several times extending and expanding to family members the authority of the Judicial Conference to redact certain information from a Federal judge's mandatory financial disclosure. This expired redaction authority was used in circumstances in which the release of the information could endanger the filer or the filer's family. I hope that we can reinstate and expand this much needed redaction authority.

These protections are crucial to the preservation of the independence of our Federal judiciary so that it can continue to serve as a bulwark protecting individual rights and liberty. Our Nation's Founders knew that without an independent judiciary to protect individual rights from the political branches of government, those rights and privileges would amount to nothing. It is the ultimate check and balance in our system of government in times of heated political rhetoric.

We owe it to our judges to better protect them and their families from violence and to ensure that they have the peace of mind necessary to do their vital and difficult jobs.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 378

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Court Security Improvement Act of 2007''.

TITLE I—JUDICIAL SECURITY IMPROVEMENTS AND FUNDING

SEC. 101. JUDICIAL BRANCH SECURITY REQUIREMENTS.

(a) ENSURING CONSULTATION WITH THE JUDICIARY.—Section 566 of title 28, United States Code, is amended by adding at the end the following:

''(i) The Director of the United States Marshals Service shall consult with the Judicial Conference of the United States on a continuing basis regarding the security requirements for the judicial branch of the United States Government, to ensure that the views of the Judicial Conference regarding the security requirements for the judicial branch of the Federal Government are taken into account when determining staffing levels, setting priorities for programs regarding judicial security, and allocating judicial security resources. In this paragraph, the term 'judicial security' includes the security of buildings housing the judiciary, the personal security of judicial officers, the assessment of threats made to judicial officers, and the protection of all other judicial personnel. The United States Marshals Service retains final authority regarding security requirements for the judicial branch of the Federal Government.''.

(b) CONFORMING AMENDMENT.—Section 331 of title 28, United States Code, is amended by adding at the end the following:

''The Judicial Conference shall consult with the Director of United States Marshals Service on a continuing basis regarding the security requirements for the judicial branch of the United States Government, to ensure that the views of the Judicial Conference regarding the security requirements for the judicial branch of the Federal Government are taken into account when determining staffing levels, setting priorities for programs regarding judicial security, and allocating judicial security resources. In this paragraph, the term 'judicial security' includes the security of buildings housing the judiciary, the personal security of judicial officers, the assessment of threats made to judicial officers, and the protection of all other judicial personnel. The United States Marshals Service retains final authority regarding security requirements for the judicial branch of the Federal Government.''.

SEC. 102. PROTECTION OF FAMILY MEMBERS.

Section 105(b)(3) of the Ethics in Government Act of 1978 (5 U.S.C. App.) is amended—

(1) in subparagraph (A), by inserting ''or a family member of that individual'' after ''that individual''; and

(2) in subparagraph (B)(i), by inserting ''or a family member of that individual'' after ''the report''.

SEC. 103. FINANCIAL DISCLOSURE REPORTS.

(a) EXTENSION OF AUTHORITY.—Section 105(b)(3) of the Ethics in Government Act of 1978 (5 U.S.C. App) is amended by striking ''2005'' each place that term appears and inserting ''2009''.

(b) REPORT CONTENTS.—Section 105(b)(3)(C) of the Ethics in Government Act of 1978 (5 U.S.C. App) is amended—

(1) in clause (ii), by striking ''and'' at the end;

(2) in clause (iii), by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following:

''(iv) the nature or type of information redacted;

''(v) what steps or procedures are in place to ensure that sufficient information is available to litigants to determine if there is a conflict of interest;

''(vi) principles used to guide implementation of redaction authority; and

''(vii) any public complaints received in regards to redaction.''.

SEC. 104. PROTECTION OF UNITED STATES TAX COURT.

(a) IN GENERAL.—Section 566(a) of title 28, United States Code, is amended by striking ''and the Court of International Trade'' and inserting '', the Court of International Trade, and any other court, as provided by law''.

(b) INTERNAL REVENUE CODE.—Section 7456(c) of the Internal Revenue Code of 1986 (relating to incidental powers of the Tax Court) is amended in the matter following paragraph (3), by striking the period at the end, and inserting ''and may otherwise provide for the security of the Tax Court, including the personal protection of Tax Court judges, court officers, witnesses, and other threatened person in the interests of justice, where criminal intimidation impedes on the functioning of the judicial process or any other official proceeding.''.

SEC. 105. ADDITIONAL AMOUNTS FOR UNITED STATES MARSHALS SERVICE TO PROTECT THE JUDICIARY.

In addition to any other amounts authorized to be appropriated for the United States Marshals Service, there are authorized to be appropriated for the United States Marshals Service to protect the judiciary, $20,000,000 for each of fiscal years 2007 through 2011 for—

(1) hiring entry-level deputy marshals for providing judicial security;

(2) hiring senior-level deputy marshals for investigating threats to the judiciary and providing protective details to members of the judiciary and assistant United States attorneys; and

(3) for the Office of Protective Intelligence, for hiring senior-level deputy marshals, hiring program analysts, and providing secure computer systems.

TITLE II—CRIMINAL LAW ENHANCEMENTS TO PROTECT JUDGES, FAMILY MEMBERS, AND WITNESSES

SEC. 201. PROTECTIONS AGAINST MALICIOUS RECORDING OF FICTITIOUS LIENS AGAINST FEDERAL JUDGES AND FEDERAL LAW ENFORCEMENT OFFICERS.

(a) OFFENSE.—Chapter 73 of title 18, United States Code, is amended by adding at the end the following:

''SEC. 1521. RETALIATING AGAINST A FEDERAL JUDGE OR FEDERAL LAW ENFORCEMENT OFFICER BY FALSE CLAIM OR SLANDER OF TITLE.

''Whoever files, attempts to file, or conspires to file, in any public record or in any private record which is generally available to the public, any false lien or encumbrance against the real or personal property of an individual described in section 1114, on account of the performance of official duties by that individual, knowing or having reason to know that such lien or encumbrance is false or contains any materially false, fictitious, or fraudulent statement or representation, shall be fined under this title or imprisoned for not more than 10 years, or both.''.

(b) CLERICAL AMENDMENT.—The chapter analysis for chapter 73 of title 18, United States Code, is amended by adding at the end the following new item:

''1521. Retaliating against a Federal judge or Federal law enforcement officer by false claim or slander of title.''.

SEC. 202. PROTECTION OF INDIVIDUALS PERFORMING CERTAIN OFFICIAL DUTIES.

(a) OFFENSE.—Chapter 7 of title 18, United States Code, is amended by adding at the end the following:

''§ 118. Protection of individuals performing certain official duties

''(a) IN GENERAL.—Whoever knowingly makes restricted personal information about a covered official, or a member of the immediate family of that covered official, publicly available—

''(1) with the intent to threaten, intimidate, or incite the commission of a crime of violence against that covered official, or a member of the immediate family of that covered official; or

''(2) with the intent and knowledge that the restricted personal information will be used to threaten, intimidate, or facilitate the commission of a crime of violence against that covered official, or a member of

the immediate family of that covered official,

shall be fined under this title, imprisoned not more than 5 years, or both.

''(b) DEFINITIONS.—In this section—

''(1) the term 'restricted personal information' means, with respect to an individual, the Social Security number, the home address, home phone number, mobile phone number, personal email, or home fax number of, and identifiable to, that individual;

''(2) the term 'covered official' means—

''(A) an individual designated in section 1114; or

''(B) a grand or petit juror, witness, or other officer in or of, any court of the United States, or an officer who may be serving at any examination or other proceeding before any United States magistrate judge or other committing magistrate;

''(3) the term 'crime of violence' has the meaning given the term in section 16; and

''(4) the term 'immediate family' has the meaning given the term in section 115(c)(2).''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 7 of title 18, United States Code, is amended by adding at the end the following new item:

''118. Protection of individuals performing certain official duties.''.

SEC. 203. PROHIBITION OF POSSESSION OF DANGEROUS WEAPONS IN FEDERAL COURT FACILITIES.

Section 930(e)(1) of title 18, United States Code, is amended by inserting ''or other dangerous weapon'' after ''firearm''.

SEC. 204. CLARIFICATION OF VENUE FOR RETALIATION AGAINST A WITNESS.

Section 1513 of title 18, United States Code, is amended by adding at the end the following:

''(g) A prosecution under this section may be brought in the district in which the official proceeding (whether pending, about to be instituted, or completed) was intended to be affected, or in which the conduct constituting the alleged offense occurred.''.

SEC. 205. MODIFICATION OF TAMPERING WITH A WITNESS, VICTIM, OR AN INFORMANT OFFENSE.

(a) CHANGES IN PENALTIES.—Section 1512 of title 18, United States Code, is amended—

(1) so that subparagraph (A) of subsection (a)(3) reads as follows:

''(A) in the case of a killing, the punishment provided in sections 1111 and 1112;'';

(2) in subsection (a)(3)—

(A) in the matter following clause (ii) of subparagraph (B) by striking ''20 years'' and inserting ''30 years''; and

(B) in subparagraph (C), by striking ''10 years'' and inserting ''20 years'';

(3) in subsection (b), by striking ''ten years'' and inserting ''20 years''; and

(4) in subsection (d), by striking ''one year'' and inserting ''3 years''.

SEC. 206. MODIFICATION OF RETALIATION OFFENSE.

Section 1513 of title 18, United States Code, is amended—

(1) in subsection (a)(1)(B)—

(A) by inserting a comma after ''probation''; and

(B) by striking the comma which immediately follows another comma;

(2) in subsection (a)(2)(B), by striking ''20 years'' and inserting ''30 years'';

(3) in subsection (b)—

(A) in paragraph (2)—

(i) by inserting a comma after ''probation''; and

(ii) by striking the comma which immediately follows another comma; and

(B) in the matter following paragraph (2), by striking ''ten years'' and inserting ''20 years''; and

(4) by redesignating the second subsection (e) as subsection (f).

SEC. 207. GENERAL MODIFICATIONS OF FEDERAL MURDER CRIME AND RELATED CRIMES.

Section 1112(b) of title 18, United States Code, is amended—

(1) by striking ''ten years'' and inserting ''20 years''; and

(2) by striking ''six years'' and inserting ''10 years''.

TITLE III—PROTECTING STATE AND LOCAL JUDGES AND RELATED GRANT PROGRAMS

SEC. 301. GRANTS TO STATES TO PROTECT WITNESSES AND VICTIMS OF CRIMES.

(a) IN GENERAL.—Section 31702 of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 13862) is amended—

(1) in paragraph (3), by striking ''and'' at the end;

(2) in paragraph (4), by striking the period and inserting ''; and''; and

(3) by adding at the end the following:

''(5) by a State, unit of local government, or Indian tribe to create and expand witness and victim protection programs to prevent threats, intimidation, and retaliation against victims of, and witnesses to, violent crimes.''.

(b) AUTHORIZATION OF APPROPRIATIONS.—Section 31707 of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 13867) is amended to read as follows:

''SEC. 31707. AUTHORIZATION OF APPROPRIATIONS.

''There are authorized to be appropriated $20,000,000 for each of the fiscal years 2007 through 2011 to carry out this subtitle.''.

SEC. 302. ELIGIBILITY OF STATE COURTS FOR CERTAIN FEDERAL GRANTS.

(a) CORRECTIONAL OPTIONS GRANTS.—Section 515 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3762a) is amended—

(1) in subsection (a)—

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

(B) in paragraph (3), by striking the period and inserting ''; and''; and

(C) by adding at the end the following:

''(4) grants to State courts to improve security for State and local court systems.''; and

(2) in subsection (b), by inserting after the period the following:

''Priority shall be given to State court applicants under subsection (a)(4) that have the greatest demonstrated need to provide security in order to administer justice.''.

(b) ALLOCATIONS.—Section 516(a) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3762b) is amended by—

(1) striking ''80'' and inserting ''70'';

(2) striking ''and 10'' and inserting ''10''; and

(3) inserting before the period the following: '', and 10 percent for section 515(a)(4)''.

(c) STATE AND LOCAL GOVERNMENTS TO CONSIDER COURTS.—The Attorney General may require, as appropriate, that whenever a State or unit of local government or Indian tribe applies for a grant from the Department of Justice, the State, unit, or tribe demonstrate that, in developing the application and distributing funds, the State, unit, or tribe—

(1) considered the needs of the judicial branch of the State, unit, or tribe, as the case may be;

(2) consulted with the chief judicial officer of the highest court of the State, unit, or tribe, as the case may be; and

(3) consulted with the chief law enforcement officer of the law enforcement agency responsible for the security needs of the judicial branch of the State, unit, or tribe, as the case may be.

(d) ARMOR VESTS.—Section 2501 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 379611) is amended—

(1) in subsection (a), by inserting ''and State and local court officers'' after ''tribal law enforcement officers''; and

(2) in subsection (b), by inserting ''State or local court,'' after ''government,''.

TITLE IV—LAW ENFORCEMENT OFFICERS

SEC. 401. REPORT ON SECURITY OF FEDERAL PROSECUTORS.

(a) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Attorney General shall submit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report on the security of assistant United States attorneys and other Federal attorneys arising from the prosecution of terrorists, violent criminal gangs, drug traffickers, gun traffickers, white supremacists, those who commit fraud and other white-collar offenses, and other criminal cases.

(b) CONTENTS.—The report submitted under subsection (a) shall describe each of the following:

(1) The number and nature of threats and assaults against attorneys handling prosecutions described in subsection (a) and the reporting requirements and methods.

(2) The security measures that are in place to protect the attorneys who are handling prosecutions described in subsection (a), including threat assessments, response procedures, availability of security systems and other devices, firearms licensing (deputations), and other measures designed to protect the attorneys and their families.

(3) The firearms deputation policies of the Department of Justice, including the number of attorneys deputized and the time between receipt of threat and completion of the deputation and training process.

(4) For each requirement, measure, or policy described in paragraphs (1) through (3), when the requirement, measure, or policy was developed and who was responsible for developing and implementing the requirement, measure, or policy .

(5) The programs that are made available to the attorneys for personal security training, including training relating to limitations on public information disclosure, basic home security, firearms handling and safety, family safety, mail handling, counter-surveillance, and self-defense tactics.

(6) The measures that are taken to provide attorneys handling prosecutions described in subsection (a) with secure parking facilities, and how priorities for such facilities are established—

(A) among Federal employees within the facility;

(B) among Department of Justice employees within the facility; and

(C) among attorneys within the facility.

(7) The frequency attorneys handling prosecutions described in subsection (a) are called upon to work beyond standard work hours and the security measures provided to protect attorneys at such times during travel between office and available parking facilities.

(8) With respect to attorneys who are licensed under State laws to carry firearms, the policy of the Department of Justice as to—

(A) carrying the firearm between available parking and office buildings;

(B) securing the weapon at the office buildings; and

(C) equipment and training provided to facilitate safe storage at Department of Justice facilities.

(9) The offices in the Department of Justice that are responsible for ensuring the security of attorneys handling prosecutions described in subsection (a), the organization and staffing of the offices, and the manner in which the offices coordinate with offices in specific districts.

(10) The role, if any, that the United States Marshals Service or any other Department of Justice component plays in protecting, or providing security services or training for, attorneys handling prosecutions described in subsection (a).

TITLE V—MISCELLANEOUS PROVISIONS

SEC. 501. EXPANDED PROCUREMENT AUTHORITY FOR THE UNITED STATES SENTENCING COMMISSION.

(a) IN GENERAL.—Section 995 of title 28, United States Code, is amended by adding at the end the following:

''(f) The Commission may—

''(1) use available funds to enter into contracts for the acquisition of severable services for a period that begins in 1 fiscal year and ends in the next fiscal year, to the same extent as executive agencies may enter into such contracts under the authority of section 303L of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253l);

''(2) enter into multi-year contracts for the acquisition of property or services to the same extent as executive agencies may enter into such contracts under the authority of section 304B of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254c); and

''(3) make advance, partial, progress, or other payments under contracts for property or services to the same extent as executive agencies may make such payments under the authority of section 305 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 255).''.

(b) SUNSET.—The amendment made by subsection (a) shall cease to have force and effect on September 30, 2010.

SEC. 502. BANKRUPTCY, MAGISTRATE, AND TERRITORIAL JUDGES LIFE INSURANCE.

(a) IN GENERAL.—Section 604(a)(5) of title 28, United States Code, is amended by inserting after ''hold office during good behavior,'' the following: ''bankruptcy judges appointed under section 152 of this title, magistrate judges appointed under section 631 of this title, and territorial district court judges appointed under section 24 of the Organic Act of Guam (48 U.S.C. 1424b), section 1(b) of the Act of November 8, 1877 (48 U.S.C. 1821), or section 24(a) of the Revised Organic Act of the Virgin Islands (48 U.S.C. 1614(a)),''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to any payment made on or after the first day of the first applicable pay period beginning on or after the date of enactment of this Act.

SEC. 503. ASSIGNMENT OF JUDGES.

Section 296 of title 28, United States Code, is amended by inserting at the end of the second undesignated paragraph the following new sentence: ''However, a judge who has retired from regular active service under section 371(b) of this title, when designated and assigned to the court to which such judge was appointed, shall have all the powers of a judge of that court, including participation in appointment of court officers and magistrates, rulemaking, governance, and administrative matters.''.

SEC. 504. SENIOR JUDGE PARTICIPATION IN THE SELECTION OF MAGISTRATES.

Section 631(a) of title 28, United States Code, is amended by striking ''Northern Mariana Islands'' the first place it appears and inserting ''Northern Mariana Islands (including any judge in regular active service and any judge who has retired from regular active service under section 371(b) of this title, when designated and assigned to the court to which such judge was appointed)''.

SEC. 505. REAUTHORIZATION OF THE ETHICS IN GOVERNMENT ACT.

Section 405 of the Ethics in Government Act of 1978 (5 U.S.C. App.) is amended by striking ''2006'' and inserting ''2011''.

Mr. KENNEDY. An independent judiciary is essential to the proper administration of justice. In order to maintain an independent judiciary, it is imperative that judges be protected from the threat of reprisal, so that fear does not influence their decisionmaking. This bill, which I am proud to cosponsor, is an opportunity to protect our judges and help guarantee their independence, and also protect the many other dedicated men and women who serve our judiciary and their families.

In recent years, the need for increased judicial security has been highlighted by a number of attacks. After an unfavorable trademark ruling in Chicago, a disgruntled litigant murdered a Federal judge's husband and mother in the judge's home. Two weeks later a State judge, a court reporter, and a sheriff's deputy were killed in an Atlanta courthouse. A year after that, death threats were made against U.S. Supreme Court Justices.

These attacks are not isolated incidents. On average, Federal judges receive 700 threats a year; threats that are becoming increasingly serious. As these threats and attacks indicate, judges are not currently safe within the walls of our courts, nor are they safe in their homes. We cannot tolerate violence or the threat of violence against judges, court personnel, or their families. Violence against our judiciary represents an assault on our system of government.

By statute, the U.S. Marshals Service in the Department of Justice has the primary responsibility for the security of the Federal judiciary. Currently, the Marshals Service is underfunded and understaffed. There is a lack of coordination and communication between the Service and the Judicial Conference of the United States, the Administrative Office of the United States Courts, and the Federal Protective Service in the Department of Homeland Security. As a result, the Marshals Service struggles to keep up with the security needs of the judiciary in this new high-risk age. There is no reason the system should continue to be so vulnerable.

The legislation we are introducing will enhance judicial security in several respects. First, it would require the Marshals Service to cooperate and coordinate with the Judicial Conference on judicial security on a continuing basis. This provision will give the judiciary a needed voice in assessing their security needs. The Marshals Service will receive additional funds to meet its responsibilities. It will have the ability to accurately assess threats in a timely manner, collect and share intelligence on threats among districts and representatives of the FBI, and achieve appropriate staffing levels.

In addition, the legislation punishes those who intrude into the personal lives of the judiciary and their families. It punishes those attempting to humiliate the judiciary or their families by recording a false lien or encumbrance against real or personal property and those who post personal information about public officials or their families with the intent to harm.

Equally important, the bill authorizes Federal grants to improve security for State and local court systems. The problem of judicial security is shared by all courts, State and Federal alike, and all courts deserve the best possible security protections.

To maintain our freedoms as a democratic society, judicial fairness and independence are essential. Threats and acts of violence against the judiciary are unacceptable. Its members must be fully protected. This bipartisan and bicameral bill aids in that protection, and I am honored to join my colleagues in urging that it be passed quickly by Congress and signed by the President.

By Mr. INOUYE (for himself, Mr. STEVENS, Mr. LEVIN, Mr. LEAHY, Ms. MURKOWSKI, Mr. AKAKA, and Mr. BENNETT):

S. 381. A bill to establish a fact-finding Commission to extend the study of a prior Commission to investigate and determine facts and circumstances surrounding the relocation, internment, and deportation to Axis countries of Latin Americans of Japanese descent from December 1941 through February 1948, and the impact of those actions by the United States, and to recommend appropriate remedies, and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

Mr. INOUYE. Mr. President, I rise to speak in support of the Commission on Wartime Relocation and Internment of Latin Americans of Japanese Descent Act.

The story of U.S. citizens taken from their homes on the west coast and confined in camps is a story that was made known after a fact-finding study by a Commission that Congress authorized in 1980. That study was followed by a formal apology by President Reagan and a bill for reparations. Far less known, and indeed, I myself did not initially know, is the story of Latin Americans of Japanese descent taken from their homes in Latin America, stripped of their passports, brought to the U.S., and interned in American camps.

This is a story about the U.S. government's act of reaching its arm across international borders, into a community that did not pose an immediate threat to our Nation, in order to use them, devoid of passports or any other proof of citizenship, for hostage exchange with Japan. Between the years 1941 and 1945, our government, with the

help of Latin American officials, arbitrarily arrested persons of Japanese descent from streets, homes, and workplaces. Approximately 2,300 undocumented persons were brought to camp sites in the U.S., where they were held under armed watch, and then held in reserve for prisoner exchange. Those used in an exchange were sent to Japan, a foreign country that many had never set foot on since their ancestors' immigration to Latin America.

Despite their involuntary arrival, Latin American internees of Japanese descent were considered by the Immigration and Naturalization Service as illegal entrants. By the end of the war, some Japanese Latin Americans had been sent to Japan. Those who were not used in a prisoner exchange were cast out into a new and English-speaking country, and subject to deportation proceedings. Some returned to Latin America. Others remained in the U.S., where their Latin American country of origin refused their re-entry because they were unable to present a passport.

When I first learned of the wartime experiences of Japanese Latin Americans, it seemed unbelievable, but indeed, it happened. It is a part of our national history, and it is a part of the living histories of the many families whose lives are forever tied to internment camps in our country.

The outline of this story was sketched out in a book published by the Commission on Wartime Relocation and Internment of Civilians formed in 1980. This Commission had set out to learn about Japanese Americans. Towards the close of their investigations, the Commissioners stumbled upon this extraordinary effort by the U.S. government to relocate, intern, and deport Japanese persons formerly living in Latin America. Because this finding surfaced late in its study, the Commission was unable to fully uncover the facts, but found them significant enough to include in its published study, urging a deeper investigation.

I rise today to introduce the Commission on Wartime Relocation and Internment of Latin Americans of Japanese Descent Act, which would establish a fact-finding Commission to extend the study of the 1980 Commission. This Commission's task would be to determine facts surrounding the U.S. government's actions in regards to Japanese Latin Americans subject to a program of relocation, interment, and deportation. I believe that examining this extraordinary program would give finality to, and complete the account of Federal actions to detain and intern civilians of Japanese ancestry.

Mr. President, I ask unanimous consent that the text of my bill be printed in the RECORD.

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

S. 381

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Commission on Wartime Relocation and Internment of Latin Americans of Japanese Descent Act''.

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Based on a preliminary study published in December 1982 by the Commission on Wartime Relocation and Internment of Civilians, Congress finds the following:

(1) During World War II, the United States—

(A) expanded its internment program and national security investigations to conduct the program and investigations in Latin America; and

(B) financed relocation to the United States, and internment, of approximately 2,300 Latin Americans of Japanese descent, for the purpose of exchanging the Latin Americans of Japanese descent for United States citizens held by Axis countries.

(2) Approximately 2,300 men, women, and children of Japanese descent from 13 Latin American countries were held in the custody of the Department of State in internment camps operated by the Immigration and Naturalization Service from 1941 through 1948.

(3) Those men, women, and children either—

(A) were arrested without a warrant, hearing, or indictment by local police, and sent to the United States for internment; or

(B) in some cases involving women and children, voluntarily entered internment camps to remain with their arrested husbands, fathers, and other male relatives.

(4) Passports held by individuals who were Latin Americans of Japanese descent were routinely confiscated before the individuals arrived in the United States, and the Department of State ordered United States consuls in Latin American countries to refuse to issue visas to the individuals prior to departure.

(5) Despite their involuntary arrival, Latin American internees of Japanese descent were considered to be and treated as illegal entrants by the Immigration and Naturalization Service. Thus, the internees became illegal aliens in United States custody who were subject to deportation proceedings for immediate removal from the United States. In some cases, Latin American internees of Japanese descent were deported to Axis countries to enable the United States to conduct prisoner exchanges.

(6) Approximately 2,300 men, women, and children of Japanese descent were relocated from their homes in Latin America, detained in internment camps in the United States, and in some cases, deported to Axis countries to enable the United States to conduct prisoner exchanges.

(7) The Commission on Wartime Relocation and Internment of Civilians studied Federal actions conducted pursuant to Executive Order 9066 (relating to authorizing the Secretary of War to prescribe military areas). Although the United States program of interning Latin Americans of Japanese descent was not conducted pursuant to Executive Order 9066, an examination of that extraordinary program is necessary to establish a complete account of Federal actions to detain and intern civilians of enemy or foreign nationality, particularly of Japanese descent. Although historical documents relating to the program exist in distant archives, the Commission on Wartime Relocation and Internment of Civilians did not research those documents.

(8) Latin American internees of Japanese descent were a group not covered by the Civil Liberties Act of 1988 (50 U.S.C. App. 1989b et seq.), which formally apologized and provided compensation payments to former Japanese Americans interned pursuant to Executive Order 9066.

(b) PURPOSE.—The purpose of this Act is to establish a fact-finding Commission to extend the study of the Commission on Wartime Relocation and Internment of Civilians to investigate and determine facts and circumstances surrounding the relocation, internment, and deportation to Axis countries of Latin Americans of Japanese descent from December 1941 through February 1948, and the impact of those actions by the United States, and to recommend appropriate remedies, if any, based on preliminary findings by the original Commission and new discoveries.

SEC. 3. ESTABLISHMENT OF THE COMMISSION.

(a) IN GENERAL.—There is established the Commission on Wartime Relocation and Internment of Latin Americans of Japanese descent (referred to in this Act as the ''Commission'').

(b) COMPOSITION.—The Commission shall be composed of 9 members, who shall be appointed not later than 60 days after the date of enactment of this Act, of whom—

(1) 3 members shall be appointed by the President;

(2) 3 members shall be appointed by the Speaker of the House of Representatives, on the joint recommendation of the majority leader of the House of Representatives and the minority leader of the House of Representatives; and

(3) 3 members shall be appointed by the President pro tempore of the Senate, on the joint recommendation of the majority leader of the Senate and the minority leader of the Senate.

(c) PERIOD OF APPOINTMENT; VACANCIES.—Members shall be appointed for the life of the Commission. A vacancy in the Commission shall not affect its powers, but shall be filled in the same manner as the original appointment was made.

(d) MEETINGS.—

(1) FIRST MEETING.—The President shall call the first meeting of the Commission not later than the later of—

(A) 60 days after the date of enactment of this Act; or

(B) 30 days after the date of enactment of legislation making appropriations to carry out this Act.

(2) SUBSEQUENT MEETINGS.—Except as provided in paragraph (1), the Commission shall meet at the call of the Chairperson.

(e) QUORUM.—Five members of the Commission shall constitute a quorum, but a lesser number of members may hold hearings.

(f) CHAIRPERSON AND VICE CHAIRPERSON.—The Commission shall elect a Chairperson and Vice Chairperson from among its members. The Chairperson and Vice Chairperson shall serve for the life of the Commission.

SEC. 4. DUTIES OF THE COMMISSION.

(a) IN GENERAL.—The Commission shall—

(1) extend the study of the Commission on Wartime Relocation and Internment of Civilians, established by the Commission on Wartime Relocation and Internment of Civilians Act—

(A) to investigate and determine facts and circumstances surrounding the United States' relocation, internment, and deportation to Axis countries of Latin Americans of Japanese descent from December 1941 through February 1948, and the impact of those actions by the United States; and

(B) in investigating those facts and circumstances, to review directives of the United States armed forces and the Department of State requiring the relocation, detention in internment camps, and deportation to Axis countries of Latin Americans of Japanese descent; and

(2) recommend appropriate remedies, if any, based on preliminary findings by the original Commission and new discoveries.

(b) REPORT.—Not later than 1 year after the date of the first meeting of the Commission pursuant to section 3(d)(1), the Commission shall submit a written report to Congress, which shall contain findings resulting from the investigation conducted under subsection (a)(1) and recommendations described in subsection (a)(2).

SEC. 5. POWERS OF THE COMMISSION.

(a) HEARINGS.—The Commission or, at its direction, any subcommittee or member of the Commission, may, for the purpose of carrying out this Act—

(1) hold such public hearings in such cities and countries, sit and act at such times and places, take such testimony, receive such evidence, and administer such oaths as the Commission or such subcommittee or member considers advisable; and

(2) require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, documents, tapes, and materials as the Commission or such subcommittee or member considers advisable.

(b) ISSUANCE AND ENFORCEMENT OF SUBPOENAS.—

(1) ISSUANCE.—Subpoenas issued under subsection (a) shall bear the signature of the Chairperson of the Commission and shall be served by any person or class of persons designated by the Chairperson for that purpose.

(2) ENFORCEMENT.—In the case of contumacy or failure to obey a subpoena issued under subsection (a), the United States district court for the judicial district in which the subpoenaed person resides, is served, or may be found may issue an order requiring such person to appear at any designated place to testify or to produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt of that court.

(c) WITNESS ALLOWANCES AND FEES.—Section 1821 of title 28, United States Code, shall apply to witnesses requested or subpoenaed to appear at any hearing of the Commission. The per diem and mileage allowances for witnesses shall be paid from funds available to pay the expenses of the Commission.

(d) INFORMATION FROM FEDERAL AGENCIES.—The Commission may secure directly from any Federal department or agency such information as the Commission considers necessary to perform its duties. Upon request of the Chairperson of the Commission, the head of such department or agency shall furnish such information to the Commission.

(e) 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.

SEC. 6. PERSONNEL AND ADMINISTRATIVE PROVISIONS.

(a) COMPENSATION OF MEMBERS.—Each member of the Commission who is not an officer or employee of the Federal Government 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. All members of the Commission who are officers or employees of the United States shall serve without compensation in addition to that received for their services as officers or employees of the United States.

(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 Chairperson of the Commission may, without regard to the civil service laws and regulations, appoint and terminate the employment of such personnel as may be necessary to enable the Commission to perform its duties.

(2) COMPENSATION.—The Chairperson of the Commission may fix the compensation of the 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 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 Chairperson of the Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals that 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.

(f) OTHER ADMINISTRATIVE MATTERS.—The Commission may—

(1) enter into agreements with the Administrator of General Services to procure necessary financial and administrative services;

(2) enter into contracts to procure supplies, services, and property; and

(3) enter into contracts with Federal, State, or local agencies, or private institutions or organizations, for the conduct of research or surveys, the preparation of reports, and other activities necessary to enable the Commission to perform its duties.

SEC. 7. TERMINATION.

The Commission shall terminate 90 days after the date on which the Commission submits its report to Congress under section 4(b).

SEC. 8. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated such sums as may be necessary to carry out this Act.

(b) AVAILABILITY.—Any sums appropriated under the authorization contained in this section shall remain available, without fiscal year limitation, until expended.

By Ms. COLLINS (for herself, Mr. HARKIN, Mr. KENNEDY, Mr. PRYOR, Mr. COLEMAN, Ms. CANTWELL, Mr. DURBIN, Ms. MIKULSKI, Mr. BINGAMAN, Mr. LAUTENBERG, and Mr. KERRY):

S. 382. A bill to amend the Public Health Service Act to establish a State family support grant program to end the practice of parents giving legal custody of their seriously emotionally disturbed children to State agencies for the purpose of obtaining mental health services for those children; to the Committee on Health, Education, Labor, and Pensions.

Ms. COLLINS. Mr. President, I am pleased to join my colleagues, Senators HARKIN, KENNEDY, COLEMAN, PRYOR, CANTWELL, DURBIN, MIKULSKI, BINGAMAN, LAUTENBERG and KERRY, in introducing the ''Keeping Families Together Act.'' This legislation is intended to reduce the barriers to care for children with serious mental illness so that their parents are no longer forced to give up custody solely for the purpose of securing mental health treatment.

Serious mental illness afflicts millions of our Nation's children and adolescents. It is estimated that as many as 20 percent of American children under the age of 17 suffer from a mental, emotional or behavioral illness. What I find most disturbing, however, is the fact that two-thirds of all young people who need mental health treatment are not getting it.

Behind each of these statistics is a family that is struggling to do the best it can to help a son or daughter with serious mental health needs to be just like every other kid—to develop friendships, to do well in school, and to get along with their siblings and other family members. These children are almost always involved with more than one social service agency, including the mental health, special education, child welfare, and juvenile justice systems. Yet no one agency, at either the State or the Federal level, is clearly responsible or accountable for helping these children and their families.

My interest in this issue was triggered by a compelling series of stories by Barbara Walsh in the Portland Press Herald which detailed the obstacles that many Maine families have faced in getting desperately needed mental health services for their children. Too many families in Maine and elsewhere have been forced to make wrenching decisions when they have been advised that the only way to get the care that their children so desperately need is to relinquish custody and place them in either the child welfare or juvenile justice system.

When a child has a serious physical health problem like diabetes or a heart condition, the family turns to their doctor. When the family includes a child with a serious mental illness, it is often forced to go to the child welfare or juvenile justice system to secure treatment.

Yet neither system is intended to serve children with serious mental illness. Child welfare systems are designed to protect children who have been abused or neglected. Juvenile justice systems are designed to rehabilitate children who have committed criminal or delinquent acts. While neither of these systems is equipped to care for a child with a serious mental illness, in far too many cases, there is nowhere else for the family to turn.

In some extreme cases, families feel forced to file charges against their child or to declare that they have abused or neglected them in order to get the care that they need. As one family advocate observed, ''Beat 'em up, lock 'em up, or give 'em up,'' characterizes the choices that some families face in their efforts to get help for their children's mental illness.

In 2003, the Government Accountability Office (GAO) issued a report that I requested with Representatives Pete Stark and Patrick Kennedy that found that, in 2001, parents placed more than 12,700 children into the child welfare or juvenile justice systems so that these children could receive mental health services. This likely is just the tip of the iceberg, since 32 States—including five States with the largest populations of children—did not provide the GAO with any data.

Other studies indicate that the problem is even more pervasive. A 1999 survey by the National Alliance on Mental Illness found that 23 percent—or one in four of the parents surveyed—had been told by public officials that they needed to relinquish custody of their children to get care, and that one in five of these families had done so.

Some States have passed laws to limit custody or prohibit custody relinquishment. Simply banning the practice is not a solution, however, since it can leave children with mental illness and their families without services and care. Custody relinquishment is merely a symptom of the much larger problem, which is the lack of available, affordable and appropriate mental health services and support systems for these children and their families.

In 2003 and 2004, I chaired a series of hearings in the Homeland Security and Governmental Affairs Committee to examine this issue further. We heard compelling testimony from mothers who told us that they were advised that the only way to get the intensive care and services that their children needed was to relinquish custody and place them in the child welfare or juvenile justice system. This is a wrenching decision that no family should be forced to make. No parent should have to give up custody of his or her child just to get the services that the child needs.

The mothers also described the barriers they faced in getting care for their children. They told us about the limitations in both public and private insurance coverage. They also talked about the lack of coordination and communication among the various agencies and programs that service children with mental health needs. One parent, desperate for help for her twin boys, searched for two years until she finally located a program—which she characterized as ''the best kept secret in Illinois''—that was able to help.

Parents should not be bounced from agency to agency, knocking on every door they come to, in the hope that they will happen upon someone who has an answer. It simply should not be such a struggle for parents to get services and treatment for their children.

We also need to question what happens to these children when they are turned over to the child welfare or juvenile justice authorities. I released a report in 2004 with Congressman Henry Waxman that found that all too often they are simply left to languish in juvenile detention centers, which are ill-equipped to meet their needs, while they wait for scarce mental health services.

Our report, which was based on a national survey of juvenile detention centers, found that the use of juvenile detention facilities to ''warehouse'' children with mental disorders is a serious national problem. It found that, over a six month period, nearly 15,000 young people—roughly seven percent of all of the children in the centers surveyed—were detained solely because they were waiting for mental health services outside the juvenile justice system. Many were held without any charges pending against them, and the young people incarcerated unnecessarily while waiting for treatment were as young as seven years old. Finally, the report estimated that juvenile detention facilities are spending an estimated $100 million of the taxpayers' money each year simply to warehouse children and teenagers while they are waiting for mental health services.

The Keeping Families Together Act, which we are introducing today, will help to improve access to mental health services and assist states in eliminating the practice of parents relinquishing custody of their children solely for the purpose of securing treatment.

The legislation authorizes $100 million over six years for competitive grants to states to create an infrastructure to support and sustain statewide systems of care to serve children who are in custody or at risk of entering custody of the State for the purpose of receiving mental health services. States already dedicate significant dollars to serve children in state custody. These Family Support Grants would help states to serve children more effectively and efficiently, while keeping them at home with their families.

In addition, the legislation calls for the creation of a federal interagency task force to examine mental health issues in the child welfare and juvenile justice systems and the role of those agencies in promoting access by children and youth to needed mental health services. The task force would also be charged with monitoring the Family Support grants, making recommendations to Congress on how to improve mental health services, and fostering interagency cooperation and removing interagency barriers that contribute to the problem of custody relinquishment.

The Keeping Families Together Act takes a critical step forward to meeting the needs of children with serious mental or emotional disorders. Our legislation has been endorsed by a broad coalition of mental health and children's groups, including the National Alliance on Mental Illness, the Bazelon Center for Mental Health Law, Mental Health America, the American Psychological Association, and the American Psychiatric Association. I ask unanimous consent that letters from these organizations endorsing the bill be printed in the RECORD.

The Keeping Families Together Act will help to reduce the barriers to care for children with serious mental illness, and I urge our colleagues to join us as cosponsors.

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

BAZELON CENTER,
Washington, DC, January 17, 2007.

Hon. SUSAN COLLINS
U.S. Senate,
Washington, DC.

DEAR SENATOR COLLINS: The Judge David L. Bazelon Center for Mental Health Law—the leading national legal-advocacy organization representing children and adults with mental disabilities who primarily rely on the public mental health system for treatment—is pleased to support the Keeping Families Together Act and commends your leadership on this important legislation.

A lack of access to appropriate mental health services and supports for children in both the private and public sectors is a significant barrier families across the country face when they are confronted with the horrific problem of custody relinquishment of a child solely to access necessary mental health treatment. Custody relinquishment for these purposes should not and does not need to happen. It is a symptom of a flawed children's mental health system that is in crisis.

The Keeping Families Together Act serves to address this fragmented system by assisting states in developing and expanding capacity to serve children with severe mental and emotional disorders so families have options when their child is in need of mental health care. With studies showing approximately two-thirds of children and adolescents are not receiving the mental health services they need, we welcome this vital legislation. Promoting early intervention, ensuring access to wide range of services and supports and helping to maintain family integrity are achievable goals supported by your legislation—goals we are confident will help reduce these appalling statistics.

The Bazelon Center looks forward to working closely with you and your staff throughout the legislative process to enact the Keeping Families Together Act. Thank you for your commitment to the health and mental health needs of our most vulnerable children.

Sincerely,

ROBERT BERNSTEIN, PH.D.,
Executive Director.

AMERICAN PSYCHOLOGICAL ASSOCIATION,
Washington, DC, January 19, 2007.

Hon. SUSAN M. COLLINS,
U.S. Senate,
Washington, DC.

DEAR SENATOR COLLINS: On behalf of the 145,000 members and affiliates of the American Psychological Association (APA), I am writing in support of the Keeping Families Together Act. This vital legislation would establish a state family support grant program to end the practice of parents needing to relinquish legal custody of their children to state agencies for the sole purpose of obtaining mental health services for their children.

As you know, the custody relinquishment problem stems from a paradox that exists in many states. Private healthcare plans frequently do not cover many services needed by children with physical, mental, or developmental disabilities. As a result, many parents turn to the child welfare or juvenile justice system for assistance. Neither of these

systems is intended nor equipped to care for a child with a serious mental health problem. Yet, as the law currently exists in many states, parents must relinquish custody to receive otherwise unaffordable specialized care for their children. Ironically, these children are frequently placed with foster families that receive full funding for the children's care, while competent parents lose contact with, influence over and decision making authority for their children. Custody relinquishment of a child solely so he or she may access necessary mental health services is a national tragedy.

The Keeping Families Together Act lays a strong foundation for needed reforms by promoting access to needed services and reducing fragmentation in service delivery. Some of the legislation's main provisions include providing grants to states to establish interagency systems of care for children and adolescents with serious mental health and emotional problems. Additionally, this legislation will establish a federal interagency task force to examine mental health issues in the child welfare and juvenile justice systems.

APA members are actively engaged in research and practice initiatives related to helping children and their families receive the mental health services they need. Please view APA as a resource to you for empirically-based research on child mental health matters when considering the enactment of the Keeping Families Together Act.

In closing, we would like to thank you once again for your efforts in developing the Keeping Families Together Act and to offer our association's assistance in furthering passage of this vital legislation. Please contact Annie Toro of our Public Policy Office if you would like any additional information.

Sincerely,

GWENDOLYN PURYEAR KEITA,
Executive Director,
Public Interest Directorate.

MENTAL HEALTH AMERICA,
Alexandria, VA., January 22, 2007.

Hon. SUSAN COLLINS,
U.S. Senate, Washington, DC.
Hon. PETE STARK,
House of Representatives, Washington, DC.
Hon. TOM HARKIN,
U.S. Senate, Washington, DC.
Hon. JIM RAMSTAD,
House of Representatives, Washington, DC.

DEAR SENATORS COLLINS AND HARKIN AND REPRESENTATIVES RAMSTAD AND STARK: On behalf of Mental Health America (formerly the National Mental Health Association), I am writing to commend you for reintroducing the Keeping Families Together Act in the 110th Congress.

As you know, thousands of families every year are forced to give up custody of their children to the state in order to secure vitally necessary mental health services. This custody relinquishment tears families apart, is devastating for parents and caregivers, and leaves children feeling abandoned in their hour of greatest need. Parents are often forced to take this tragic step because their private health care coverage imposes discriminatory and restrictive caps on mental health care or their insurers simply refuse to cover the required treatment. The majority of these families are not eligible for Medicaid coverage because of their income. Furthermore, there is a widespread lack of appropriate mental health services for children and adolescents in most states and communities which forces families to make desperate choices.

Your legislation promises to improve access to the services these families need to stay together by providing grants to states to establish interagency systems of care for children and adolescents with serious mental disorders. These grants will allow states to build more efficient and effective mental health systems for children and families. Your bill also calls for the creation of a federal interagency task force to examine mental health issues in the child welfare and juvenile justice systems. This analysis is greatly needed because, as you know, children who become wards of the state in order to receive mental health services are generally placed in the child welfare or juvenile justice systems even though neither system is designed or intended to serve as a mental health provider.

No family in our nation should ever be asked to make the heart-wrenching decision to give up parental rights of their seriously ill child in exchange for mental health treatment. We welcome this legislation as a critical step toward ending custody relinquishment and toward delivering more cost effective and appropriate services for children and families.

Once again, we thank you for your leadership and commitment to ending this practice and for continuing to stand up for children and families.

Sincerely,

DAVID L. SHERN, PH.D.,
President and CEO, Mental Health America.

NATIONAL ALLIANCE ON MENTAL ILLNESS,
Arlington, VA, January 18, 2007.

Hon. SUSAN COLLINS,
U.S. Senate,
Washington, DC.
Hon. TOM HARKIN,
U.S. Senate,
Washington, DC.

DEAR SENATORS COLLINS AND HARKIN: On behalf of the 210,000 members and 1,200 affiliates of the National Alliance on Mental Illness, NAMI, I am writing to offer our strong support for the Keeping Families Together Act, KFTA. As the nation's largest organization representing families of children and adolescents living with mental illness, NAMI is proud to offer our support for this important legislation.

The KFTA represents a major step forward in helping to end a national scandal that has lingered too long in states throughout our nation. As you know, thousands of families every year are forced to give up custody of a child to the state in order to secure vitally necessary mental illness treatment and support services. This unthinkable practice tears families apart, devastates parents and caregivers and leaves children feeling abandoned in their hour of greatest need.

This practice occurs because most families have discriminatory and restrictive caps on their private mental health coverage or insurers fail to cover the required treatment. The majority of these families are not eligible for Medicaid coverage because of their income and assets. This truly unfortunate practice also exists because of the lack of appropriate mental health services in many states and communities for children and adolescents with mental disorders. This was well documented in President Bush's 2003 New Freedom Initiative Mental Health Commission report.

Your legislation would help end this growing crisis by providing grants to states to establish interagency systems of care for children and adolescents with serious mental disorders. These grants would allow states to build more efficient and effective mental health systems for children and families. It would also. eliminate barriers to home and community-based care for children by enabling a greater number of children to receive mental health services under the Section 1915(c) Medicaid home- and community-based waiver. The waiver promises to make appropriate services available to children in their homes and communities and close to their loved ones at a considerable cost savings over providing those services in an institutional setting.

The KFTA also creates a federal interagency task force to examine how the child welfare and juvenile justice systems serve children and adolescents with mental illness. A GAO report released in April 2003 showed that when parents give up custody of their child to secure mental health services, those children are placed in one of these two systems—neither of which is designed to be a mental health service agency.

NAMI feels strongly that no family should ever be asked to make the heart-wrenching decision to give up parental rights of their seriously ill child in exchange for mental health treatment and services. Thank you for your leadership and commitment to ending this practice and for continuing to stand up for children, families and common sense.

Sincerely,

MICHAEL J. FITZPATRICK, M.S.W.,
Executive Director.

Mr. HARKIN. Mr. President, I am honored to join with the distinguished junior Senator from Maine, Ms. COLLINS, in introducing the Keeping Families Together Act. As a long-time advocate for people with disabilities, I believe that this legislation represents an important step forward in ensuring the health and wellbeing of our children, in particular those with mental illness.

One in five children has a diagnosable mental disorder, and one in ten children has a mental disorder serious enough to hinder their functioning at school, at the home, and in their communities. Regrettably, two-thirds of children in this latter group do not receive the treatment they need. Without treatment, mental illness negatively affects all areas of children's lives, and it can have dire consequences for their future, including their ability to become productive members of society. Children with mental health problems are at higher risk of chronic illness, academic difficulties and school discipline problems, delinquency, incarceration, and suicide.

The good news is that 90 percent of all mental health disorders are treatable by therapy and medication. Yet parents face a multitude of obstacles and challenges in finding appropriate services for a child with serious mental illness. Often, they find that their private insurance will not pay for necessary mental health services, or that they do not qualify for Medicaid. In their efforts to secure effective treatment, many parents exhaust their own financial resources and find that they have nowhere else to turn. Tragically, many dedicated, loving parents reach the point where they believe that they have no other option but to relinquish custody of their child to the State in order to access appropriate services. These out-of-home placements can be traumatic for children, and profoundly disruptive and heart-breaking for families that are already in crisis.

Making matters worse, state systems are often poorly equipped to serve the needs of these children. Many children end up being placed in expensive residential institutions, rather than less

costly home- and community-based services. Our juvenile justice system is overwhelmed by young people in need of mental health services. A congressional report authored by Senator COLLINS and Representative HENRY WAXMAN of California suggests that, every night, nearly 2,000 youths are placed in juvenile detention facilities not because they are criminals but because they do not have access to necessary mental health services. This results in a $100 million bill to the taxpayers. Not only is this a serious misuse of public funds, it is a tragic injustice to the children and families involved. We simply cannot allow children to languish in detention facilities when they are really in need of mental health treatment.

The Keeping Families Together Act lays a foundation for securing better access to mental health services for children. Consistent with recommendations by the President's New Freedom Commission on Mental Health, this legislation encourages interagency coordination in the provision of mental health services for children. The bill gives States incentives to remedy the fragmentation that now exists among child welfare, education, juvenile justice, and mental health agencies responsible for helping children. It ensures that States will improve access to mental health services and eliminate the practice of parents' relinquishing custody of their children solely for the purpose of securing mental health treatment. Our bill also promotes sustainable financing by requiring States to provide graduated matching funds.

In sum, by providing a sustainable, coordinated system of mental health care, children will be able to receive needed services within a stable, loving home environment. Families will be able to stay together.

In a decent, humane society, every family should have access to appropriate mental health services for their children. Parents should not have to surrender a child to the State as the price for obtaining access to mental health treatment. The Keeping Families Together Act offers a better way. It allows children with mental disorders to stay where they belong—in the custody and care of their loving family. I join with Senator COLLINS in urging our colleagues to support this urgent and important legislation.

By Mr. AKAKA (for himself and Mr. ROCKEFELLER):

S. 383. A bill to amend title 38, United States Code, to extend the period of eligibility for health care for combat service in the Persian Gulf War or future hostilities from 2 years to 5 years after discharge or release; to the Committee on Veterans' Affairs.

Mr. AKAKA. Mr. President, I today introduce legislation that, if enacted, will help ensure that returning servicemembers receive the care they need from VA in the 5 years immediately following detachment or deactivation, without having to meet strict eligibility rules. The changes this legislation would make will contribute to the ''seamless'' transition of military personnel from active duty to veteran status. This legislation is identical to the bill I introduced last Congress.

Today, any active duty servicemember who is discharged or separated from active duty following deployment to a theater of combat—including Reservists or Guard who stand down but remain on reserve duty—is eligible for VA health care for a 2-year period. In my view, it is vital that this period be extended to 5 years to provide a more appropriate window of time for servicemembers to access VA care. Since the start of OEF and OIF, an average of 157,800 servicemembers have been discharged or deactivated per year. This legislation will help the existing 315,600 veterans who have been inactive for more than 2 years but fewer than 5, and thousands more in the future.

Following the first Persian Gulf War, and partially in response to the unexplained illnesses among those who served, Congress enacted the Veterans Programs Enhancement Act of 1998. This law gave 2 years of priority eligibility for health care to any veteran who served in a theater of combat following discharge or deactivation from active duty. The original intent was to ensure health care for servicemembers after their active duty health care benefits ended. It is now clear this the 2 year window of eligibility is insufficient.

There are two primary reasons to amend the law to allow a greater period of eligibility: protection from budget cuts and access to care for conditions, including mental health conditions, that may not be readily apparent when a servicemember first leaves active duty. In recent years, funding for VA health care has been delayed or cut by the legislative and appropriations processes, leading to delayed or denied care to those veterans with lower priority for VA care. Those veterans who have served in a theater of combat operations deserve to have their health care guaranteed for at least the first 5 years immediately following their discharge or detachment.

With regard to mental health, 2 years is often insufficient time for symptoms related to PTSD and other mental illnesses to manifest. In many cases, it takes years for such symptoms to present themselves, and many servicemembers do not immediately seek care. Experts predict that up to 30 percent of OEF/OIF servicemembers will need some type of readjustment services. Five years would provide a bigger window to address these risks. We face a growing group of recently discharged veterans, and this legislation will help smooth their transition to civilian life.

One final reason, that I believe this legislation is necessary, is that extending the window of eligibility for VA health care services may also serve to prevent homelessness among veterans. We all know that veterans represent a disproportionate segment of the homeless population, and that is a national tragedy. While we continue to battle homelessness among older veterans from Vietnam and other conflicts, we must do all we can to ensure that none of the new veterans returning from Iraq and Afghanistan fall through the cracks. Providing more time for them to access VA's services is a key part of that effort.

I urge my colleagues to support this legislation, as I believe it is truly a way to honor the service of our men and women in uniform.

By Ms. LANDRIEU (for herself, Mr. DURBIN, Mr. GRAHAM, and Mr. KERRY):

S. 384. A bill to provide pay protection for members of the Reserve and the National Guard, and for other purposes; to the Committee on Finance.

Ms. LANDRIEU. Mr. President, today there are 91,555 members of the National Guard and our Reserve armed forces serving bravely in Iraq, Afghanistan, and any other part of the world our country calls them to serve. The President is sending an additional 21,500 troops to Iraq in one final push to bring stability to that country. Regardless of what we think about this plan, Americans stand by our troops. They have the best equipment and training for their mission and we would never deny them the support they need. But back at home, there is still a great deal that we can do to support our guard and reserves families.

When guardsmen and reservists are deployed they leave their families, their jobs, and their communities behind, causing tremendous stress on the home front and in the workplace. Families often lose the main bread winner when a citizen soldier gets deployed. They may have trouble paying bills, the rent, the mortgage, or buying medicine for their children.

The reason these families cannot make ends meet is because for Guardsmen and Reservists military pay is often less than civilian pay. We call that the ''pay gap.'' According to the most recent Status Forces Survey of Reserve Components, 51 percent of our citizen soldiers take a pay cut when they get deployed and 11 percent of them lose more than $2,500 per month.

To help provide relief from the pay gap for our Guard and Reserve, I am pleased to introduce, along with Senators DURBIN, GRAHAM and KERRY, the Helping Our Patriotic Employers at Helping our Military Employees Act of 2007. I call the bill by its nickname: HOPE at HOME. Our guard and reserve families have enough to worry about when a loved one gets called away, the least we can do is relieve some of their financial worry by encouraging employers to make up the pay gap. Let me describe for my colleagues how this legislation works.

HOPE at HOME will give a 50 percent tax credit to the thousands of employers around the country who have taken the patriotic step of continuing to pay the salary of their guard and reservists employees who have been called to active duty. There are literally thousands of employers out there who already take this noble step—they do it voluntarily, selflessly and at great sacrifice. The HOPE at HOME Act honors that sacrifice.

HOPE at HOME will also give companies that cannot afford to make up the pay-gap an incentive to do so. One survey found that only 173 of the Fortune 500 companies make up the pay gap. If the wealthiest companies cannot afford to help their active duty employees, imagine how difficult this is for smaller companies. HOPE at HOME will allow companies large and small to do the patriotic thing and reward those employees who are serving to keep us all free.

HOPE at HOME will also give small patriotic employers additional tax relief if they need to hire a worker to temporarily replace the active duty Guardsmen or Reservist. In addition, the bill clarifies the tax treatment of any pay-gap payments to make income tax filing easier for our Guard and Reservists.

I mentioned that thousands of employers make up the pay-gap for their employees. There is one employer, however, and it happens to be the Nation's largest, that does not make up the pay gap: Uncle Sam. The Federal Government, which should set the bar for patriotism in our country, does not do its part to help our citizen soldiers. We cannot ask the private sector to do more than they are doing if the Federal government is not willing to step up and do its part for our military men and women.

Today our Nation relies on the Guard and Reserve to meet our armed forces needs more than at any other time in our history. At times in the war on terror, 40 percent of our troops in Iraq and Afghanistan were citizen soldiers, if not more. Many of them performed multiple tours of duty or found their duties extended.

All of the experts tell us that our need for our Guard and Reserve troops will only get greater. During the Cold War, end strength of the U.S. military force never dropped below 2.0 million personnel and peaked at over 3.5 million during the Korean and Vietnam Wars. From 1989 to 1999, end strength dropped steadily from 2.1 million to 1.4 million, where it has remained. Our ground forces are stretched thin and the number of deployments has increased by over 300 percent. The Guard and Reserve have made it possible to meet these challenges. We still find ourselves stretched thin, but without the Guard and Reserve we would never be able to meet our obligation as guardians of freedom in the World.

But this over-reliance on the Guard and Reserve is starting to have a toll on our ability to recruit and retain these men and women. The top reasons for leaving the Guard and Reserve, according to the Status of Forces Survey of Reserve Components, are family stress, the number and lengths of deployments, income loss, and conflict with civilian employment.

HOPE at HOME recognizes that a soldier who is worrying about how his or her family is paying the bills is not focusing on the mission at hand. A soldier who is worrying about whether the family is paying the rent, is not going to reenlist. And every time one of our soldiers leaves, our nation loses the experience and service of a highly trained, capable professional. We need to make every effort to keep our citizen soldiers in service to their country. HOPE at HOME is a first step to addressing our military's larger recruitment and retention issues.

During the Cold War we built our strength on having the biggest, best equipped standing army in the World. Now our military gathers its strength from a large reserve of qualified men and women in the Guard and Reserve who are ready to fight at a moment's call. We will lose that strength if we do not give our guardsmen and Reservists and their families HOPE at HOME.

I hope my colleagues will join me in giving our Guard and Reserve HOPE at HOME Act.

By Mr. INOUYE (for himself, Mr. STEVENS, Mr. KERRY, Mr. SMITH, and Ms. SNOWE):

S. 385. A bill to improve the interoperability of emergency communications equipment; to the Committee on Commerce, Science, and Transportation.

Mr. INOUYE. Mr. President, I rise today to call attention to an important issue that the Congress has not adequately addressed since the painful events of September 11, 2001.

That issue is the inability of our first responders to speak to each other, a problem especially troubling during an emergency, when the ability to quickly and effectively communicate saves lives.

This is why I, with the cosponsorship of my colleagues, Senators STEVENS, KERRY, SMITH AND SNOWE, are introducing the Interoperable Emergency Communications Act.

After September 11, 2001, we heard heartbreaking stories of firefighters and police officers who went into harm's way because they lacked adequate information. These brave men and women were unable to reach victims because their systems could not communicate with one another.

At that time, the Congress began devoting greater attention to why many of our first responders lacked this ability to communicate with each other in the field. We asked what it would take to ensure communications equipment and facilities could withstand a natural disaster. We asked which equipment would be worthy of our investment.

Then Hurricane Katrina struck in August, 2006, and we found that our first responders faced the same communications failures. This is an unnecessary frustration that prevents our first responders from effectively doing their jobs.

Our bill provides needed direction to the National Telecommunications and Information Administration (NTIA) regarding its administration of the $1 billion grant program for interoperable communications systems for first responders, which was created by the Senate Commerce Committee early last year. It will be funded by money from the Digital Transition and Public Safety Fund and administered by the NTIA.

The bill designates grants for regional or statewide communications systems that will allow first responders to talk to one another during an emergency. It also sets aside funding for a technology reserve for immediate deployment of communications equipment in the event of an emergency or disaster.

To ensure a fair distribution of funds, the money will be distributed in accordance with guidelines outlined in the Patriot Act to ensure a fair distribution of funds, and grant allocations will be prioritized based on an ''all hazards'' approach that will take into account threat and risk factors associated with natural disasters—such as hurricanes, tsunamis, earthquakes, and tornadoes—as well as risks associated with terrorist attacks.

Every day we hear about potential threats against our Nation and it will not be long until we are again in the midst of hurricane season. I hope that history will not repeat itself and that the Congress can act quickly in directing the NTIA to give our first responders the tools they need to effectively do their jobs. I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 385

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Interoperable Emergency Communications Act''.

SEC. 2. INTEROPERABLE EMERGENCY COMMUNICATIONS.

(a) IN GENERAL.—Section 3006 of Public Law 109–171 (47 U.S.C. 309 note) is amended—

(1) by striking paragraphs (1) and (2) of subsection (a) and inserting the following:

''(1) may take such administrative action as is necessary to establish and implement a grant program to assist public safety agencies—

''(A) in conducting statewide or regional planning and coordination to improve the interoperability of emergency communications;

''(B) in supporting the design and engineering of interoperable emergency communications systems;

''(C) in supporting the acquisition or deployment of interoperable communications

equipment or systems that improve or advance the interoperability with public safety communications systems;

''(D) in obtaining technical assistance and conducting training exercises related to the use of interoperable emergency communications equipment and systems; and

''(E) in establishing and implementing a strategic technology reserve to pre-position or secure interoperable communications in advance for immediate deployment in an emergency or major disaster (as defined in section 102(2) of Public Law 93–288 (42 U.S.C. 5122); and

''(2) shall make payments of not to exceed $1,000,000,000, in the aggregate, through fiscal year 2010 from the Digital Television Transition and Public Safety Fund established under section 309(j)(8)(E) of the Communications Act of 1934 (47 U.S.C. 309(j)(8)(E)) to carry out the grant program established under paragraph (1), of which not more than $100,000,000, in the aggregate, may be allocated for grants under paragraph (1)(E).'';

(2) by redesignating subsections (b) and (c) as subsections (k) and (l), respectively, and inserting after subsection (a) the following:

''(b) EXPEDITED IMPLEMENTATION.—Pursuant to section 4 of the Call Home Act of 2006, no less than $1,000,000,000 shall be awarded for grants under subsection (a) no later than September 30, 2007, subject to the receipt of qualified applications as determined by the Assistant Secretary.

''(c) ALLOCATION OF FUNDS.—In awarding grants under subparagraphs (A) through (D) of subsection (a)(1), the Assistant Secretary shall ensure that grant awards—

''(1) result in distributions to public safety entities among the several States that are consistent with section 1014(c)(3) of the USA PATRIOT ACT (42 U.S.C. 3714(c)(3)); and

''(2) are prioritized based upon threat and risk factors that reflect an all-hazards approach to communications preparedness.

''(d) ELIGIBILITY.—To be eligible for assistance under the grant program established under subsection (a), an applicant shall submit an application, at such time, in such form, and containing such information as the Assistant Secretary may require, including—

''(1) a detailed explanation of how assistance received under the program would be used to improve regional, State, or local communications interoperability and ensure interoperability with other appropriate public safety agencies in an emergency or a major disaster; and

''(2) assurance that the equipment and system would—

''(A) be compatible with the communications architecture developed under section 7303(a)(1)(E) of the Intelligence Reform and Terrorism Prevention Act of 2004 (6 U.S.C. 194(a)(1)(E));

''(B) meet any voluntary consensus standards developed under section 7303(a)(1)(D) of that Act (6 U.S.C. 194(a)(1)(D); and

''(C) be consistent with the common grant guidance established under section 7303(a)(1)(H) of that Act (6 U.S.C. 194(a)(1)(H)).

''(e) CRITERIA FOR CERTAIN GRANTS.—In awarding grants under subparagraphs (A) through (D) of subsection (a)(1), the Assistant Secretary shall ensure that all grants funded are consistent with Federal grant guidance established by the SAFECOM Program within the Department of Homeland Security.

''(f) CRITERIA FOR STRATEGIC TECHNOLOGY RESERVE GRANTS.—

''(1) IN GENERAL.—In awarding grants under subsection (a)(1)(E), the Assistant Secretary shall consider the continuing technological evolution of communications technologies and devices, with its implicit risk of obsolescence, and shall ensure, to the maximum extent feasible, that a substantial part of the reserve involves prenegotiated contracts and other arrangements for rapid deployment of equipment, supplies, and systems rather than the warehousing or storage of equipment and supplies currently available at the time the reserve is established.

''(2) REQUIREMENTS AND CHARACTERISTICS.—A reserve established under paragraph (1) shall—

''(A) be capable of re-establishing communications when existing infrastructure is damaged or destroyed in an emergency or a major disaster;

''(B) include appropriate current, widely-used equipment, such as Land Mobile Radio Systems, cellular telephones and satellite equipment, Cells-On-Wheels, Cells-On-Light-Trucks, or other self-contained mobile cell sites that can be towed, backup batteries, generators, fuel, and computers;

''(C) include equipment on hand for the Governor of each State, key emergency response officials, and appropriate State or local personnel;

''(D) include contracts (including prenegotiated contracts) for rapid delivery of the most current technology available from commercial sources; and

''(E) include arrangements for training to ensure that personnel are familiar with the operation of the equipment and devices to be delivered pursuant to such contracts.

''(3) ADDITIONAL CHARACTERISTICS.—Portions of the reserve may be virtual and may include items donated on an in-kind contribution basis.

''(4) CONSULTATION.—In developing the reserve, the Assistant Secretary shall seek advice from the Secretary of Defense and the Secretary of Homeland Security, as well as national public safety organizations, emergency managers, State, local, and tribal governments, and commercial providers of such systems and equipment.

''(5) ALLOCATION AND USE OF FUNDS.—The Assistant Secretary shall allocate—

''(A) a portion of the reserve's funds for block grants to States to enable each State to establish a strategic technology reserve within its borders in a secure location to allow immediate deployment; and

''(B) a portion of the reserve's funds for regional Federal strategic technology reserves to facilitate any Federal response when necessary, to be held in each of the Federal Emergency Management Agency's regional offices, including Boston, Massachusetts (Region 1), New York, New York (Region 2), Philadelphia, Pennsylvania (Region 3), Atlanta, Georgia (Region 4), Chicago, Illinois (Region 5), Denton, Texas (Region 6), Kansas City, Missouri (Region 7), Denver, Colorado (Region 8), Oakland, California (Region 9), Bothell, Washington (Region 10), and each of the noncontiguous States for immediate deployment.

''(g) CONSENSUS STANDARDS.—In carrying out this section, the Assistant Secretary, in cooperation with the Secretary of Homeland Security shall identify and, if necessary, encourage the development and implementation of, consensus standards for interoperable communications systems to the greatest extent practicable.

''(h) USE OF ECONOMY ACT.—In implementing the grant program established under subsection (a)(1), the Assistant Secretary may seek assistance from other Federal agencies in accordance with section 1535 of title 31, United States Code.

''(i) INSPECTOR GENERAL REPORT.—Beginning with the first fiscal year beginning after the date of enactment of the Interoperable Emergency Communications Act, the Inspector General of the Department of Commerce shall conduct an annual assessment of the management of the grant program implemented under subsection (a)(1) and transmit a report containing the findings of that assessment and any recommendations related thereto to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce.

''(j) DEADLINE FOR IMPLEMENTATION PROGRAM RULES.—Within 90 days after the date of enactment of the Interoperable Emergency Communications Act, the Assistant Secretary, in consultation with the Secretary of Homeland Security and the Federal Communications Commission, shall promulgate program rules for the implementation of this section.''; and

(3) by striking paragraph (3) of subsection (l), as redesignated.

(b) FCC REPORT ON EMERGENCY COMMUNICATIONS BACK-UP SYSTEM.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Federal Communications Commission, in coordination with the Secretary of Homeland Security, shall evaluate the technical feasibility of creating a back-up emergency communications system that complements existing communications resources and takes into account next generation and advanced telecommunications technologies. The overriding objective for the evaluation shall be providing a framework for the development of a resilient interoperable communications system for emergency responders in an emergency. The Commission shall evaluate all reasonable options, including satellites, wireless, and terrestrial-based communications systems and other alternative transport mechanisms that can be used in tandem with existing technologies.

(2) FACTORS TO BE EVALUATED.—The evaluation under paragraph (1) shall include—

(A) a survey of all Federal agencies that use terrestrial or satellite technology for communications security and an evaluation of the feasibility of using existing systems for the purpose of creating such an emergency back-up public safety communications system;

(B) the feasibility of using private satellite, wireless, or terrestrial networks for emergency communications;

(C) the technical options, cost, and deployment methods of software, equipment, handsets or desktop communications devices for public safety entities in major urban areas, and nationwide; and

(D) the feasibility and cost of necessary changes to the network operations center of terrestrial-based or satellite systems to enable the centers to serve as emergency back-up communications systems.

(3) REPORT.—Upon the completion of the evaluation under subsection (a), the Commission shall submit a report to Congress that details the findings of the evaluation, including a full inventory of existing public and private resources most efficiently capable of providing emergency communications.

SEC. 3. RULE OF CONSTRUCTION.

(a) IN GENERAL.—Title VI of the Post-Katrina emergency Management Reform Act of 2006 (Public Law 109–295) is amended by adding at the end thereof the following:

''SEC. 699A. RULE OF CONSTRUCTION.

''Nothing in this title, including the amendments made by this title, may be construed to reduce or otherwise limit the authority of the Department of Commerce or the Federal Communications Commission.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect as though enacted as part of the Department of Homeland Security Appropriations Act, 2007.

Mr. CHAMBLISS:

S. 386. A bill to amend the Clean Air Act to require a higher volume of renewable fuel derived from cellulosic biomass, and for other purposes; to the Committee on Environment and Public Works.

Mr. CHAMBLISS. Mr. President, I rise today to discuss the connection between energy production and agriculture. Agriculture and energy policy are converging and unlike anytime in the past, farmers and ranchers are producing food, fiber, and fuel. As the country recognizes the danger of relying on imported oil, we need to develop an energy policy that is aggressive while at the same time thoughtful. Renewable fuels like ethanol and biodiesel are not the total solution to our problems, but they can help reduce our dependence on imported oil from unstable regions of the world.

In 2005, the Congress passed, and President Bush signed, the Energy Policy Act that established the Renewable Fuel Standard, RFS. The RFS requires minimum volumes of renewable fuels be used in America's motor fuels market annually, from 4 billion gallons in 2006 to 7.5 billion in 2012. On January 1, 2006, the Renewable Fuel Standard went into effect and since then, the United States has used more than 5 billion gallons of ethanol, outpacing RFS requirements by more than 25 percent. According to the Renewable Fuels Association, in the next 18 months the industry will add nearly 6 billion gallons of new production capacity. In short, in 2008, new capacity will exceed the minimum level as called for in the RFS.

This progress is astounding. However, the expansion has not come without some cost to the rest of the agriculture sector. For the first time in memory corn prices increased during the 2006 harvest season and exceeded a critical threshold of $4 per bushel on the Chicago Board of Trade and continue to do so.

If corn prices continue to set new highs over the next year, the broiler industry in my home State of Georgia and across the Southeast will come under increasing pressure. I fear continued price spikes will force some producers out of business. This is not unique to the poultry industry, but will also impact swine and cattle operations across the country as ethanol outbids livestock for corn.

We find ourselves in the position of encouraging an industry that directly competes with another that is important in all our States, and I hope the end result is not policy that encourages livestock operators to further integrate and consolidate. We need to continue to support the biofuels sector, but also do it in a way that has the least disruption on existing markets as possible.

For this reason, I am introducing the Cellulosic Ethanol Incentive Act of 2007. This act builds upon the success of the RFS and increases the target from 7.5 billion gallons in 2012 to 30 billion gallons in 2030. Central to the bill is a set-aside that will help commercialize cellulosic ethanol much faster than under current law. This is important in order to ensure Federal policy does not erode the profitability of the U.S. livestock sector by encouraging additional competition for available corn. The bill meets the challenge set forth by President Bush last night and mirrors the renewable fuel targets in his proposal.

Furthermore, the legislation promotes regional diversity in the production of biofuels. This is important in order to spread the benefits of renewable energy policy more evenly across all regions of the country. By recommending a minimum level of consumption within a particular region, we will provide a needed economic boost to rural areas, a new income stream for farmers and ranchers and a further acceleration in the production of cellulosic ethanol from a diverse resource base ranging from wood chips in the Southeast to wheat straw on the Great Plains.

Ever since the founding of our great country, farmers and ranchers have been an integral part in growing the safest, most affordable food supply in the world. Now we can build upon their success and we ask them to help grow an abundant source of energy. I am confident they are up to the task and the Cellulosic Ethanol Incentive Act is an important step to help promote this goal.

I urge my colleagues to join me in supporting the bill and I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 386

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Cellulosic Ethanol Incentive Act of 2007''.

SEC. 2. RENEWABLE FUEL PROGRAM.

Section 211(o) of the Clean Air Act (42 U.S.C. 7545(o)) is amended—

(1) in paragraph (2)(B)—

(A) in clause (i)—

(i) in the clause heading, by striking ''2012'' and inserting ''2030''; and

(ii) in the table, by striking the item relating to 2012 and inserting the following:

''2012	10
2013	11
2014	12.10
2015	13.31
2016	14.64
2017	16.11
2018	17.72
2019	19.49
2020	20.46
2021	21.48
2022	22.56
2023	23.69
2024	24.87
2025	26.11
2026	27.42
2027	28.79
2028	30.23
2029	31.74
2030	33.33.'';

(B) in clause (ii)—

(i) in the clause heading, by striking ''2013'' and inserting ''2031'';

(ii) by striking ''2013'' and inserting ''2031''; and

(iii) by striking ''2012'' and inserting ''2030'';

(C) by striking clause (iii) and inserting the following:

''(iii) MINIMUM QUANTITY DERIVED FROM CELLULOSIC BIOMASS.—

''(I) RATIO.—For calendar year 2010 and each calendar year thereafter, the 2.5-to-1 ratio referred to in paragraph (4) shall apply only to the quantity of cellulosic biomass ethanol sold or introduced into commerce during a calendar year that is in excess of the minimum quantity of renewable fuel derived from cellulosic biomass required for that calendar year.

''(II) MINIMUM QUANTITY.—For calendar year 2010 and each calendar year thereafter, the applicable volume referred to in clause (i) shall contain a minimum volume of renewable fuel derived from cellulosic biomass, as determined in accordance with the following table:

''Calendar year:	Minimum volume derived from cellulosic biomass (in billions of gallons):
2010	0.25
2011	0.25
2012	0.5
2013	0.65
2014	0.85
2015	1.10
2016	1.64
2017	3.11
2018	4.72
2019	6.49
2020	7.46
2021	8.48
2022	9.56
2023	10.69
2024	11.87
2025	13.11
2026	14.42
2027	15.79
2028	17.23
2029	18.74
2030	20.33.'';

(D) in clause (iv)—

(i) by striking ''2013'' and inserting ''2031''; and

(ii) in subclause (II)—

(I) in item (aa), by striking ''7,500,000,000'' and inserting ''33,330,000,000''; and

(II) in item (bb), by striking ''2012'' and inserting ''2030''; and

(E) by adding at the end the following:

''(v) REGIONAL REQUIREMENT.—

''(I) IN GENERAL.—Except as provided in subclause (II), not less than 30 percent of the total volume of renewable fuel required in a State under this subsection shall be derived from the region of the Environmental Protection Agency in which the State is located.

''(II) EXCEPTION.—The Administrator may reduce or waive the requirement in subclause (I) for a region if the Administrator determines that it would be impracticable for the region to produce the required volume of renewable fuel.''; and

(2) in paragraph (3)—

(A) in subparagraph (A), by striking ''2011'' and inserting ''2029''; and

(B) in subparagraph (B), by striking ''2012'' and inserting ''2029''.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 38—AUTHORIZING EXPENDITURES BY THE COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. BINGAMAN submitted the following resolution; from the Committee on Energy and Natural Resources; which was referred to the Committee on Rules and Administration;

S. RES. 38

Resolved, That, in carrying out its powers, duties, and functions under the Standing Rules of the Senate, in accordance with its jurisdiction under rule XXV of such rules, including holding hearings, reporting such hearings, and making investigations as authorized by paragraphs 1 and 8 of rule XXVI of the Standing Rules of the Senate, the Committee on Energy and Natural Resources is authorized from March 1, 2007, through September 30, 2007; October 1, 2007, through September 30, 2008; and October 1, 2008, through February 28, 2009, in its discretion (1) to make expenditures from the contingent fund of the Senate, (2) to employ personnel, and (3) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable or nonreimbursable basis the services of personnel of any such department or agency.

SEC. 2(a). The expenses of the committee for the period March 1, 2007, through September 30, 2007, under this resolution shall not exceed $3,083,641.

(b) For the period October 1, 2007, through September 30, 2008, expenses of the committee under this resolution shall not exceed $5,404,061.

(c) For the period October 1, 2008, through February 28, 2009, expenses of the committee under this resolution shall not exceed $2,295,042.

SEC. 3. The committee shall report its findings, together with such recommendations for legislation as it deems advisable, to the Senate at the earliest practicable date, but not later than February 28, 2007, respectively.

SEC. 4. Expenses of the committee under this resolution shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the committee, except that vouchers shall not be required (1) for the disbursement of salaries of employees paid at an annual rate, or (2) for the payment of telecommunications provided by the Office of the Sergeant at Arms and Doorkeeper, United States Senate, or (3) for the payment of stationery supplies purchased through the Keeper of the Stationery, United States Senate, or (4) for payments to the Postmaster, United States Senate, or (5) for the payment of metered charges on copying equipment provided by the Office of the Sergeant at Arms and Doorkeeper, United States Senate, or (6) for the payment of Senate Recording and Photographic Services, or (7) for payment of franked and mass mail costs by the Sergeant at Arms and Doorkeeper, United States Senate.

SENATE RESOLUTION 39—EXPRESSING THE SENSE OF THE SENATE ON THE NEED FOR APPROVAL BY THE CONGRESS BEFORE ANY OFFENSIVE MILITARY ACTION BY THE UNITED STATES AGAINST ANOTHER NATION

Mr. BYRD submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. 39

Whereas the United States has the best trained, most effective military in the world;

Whereas the United States military is made up of dedicated, patriotic men and women;

Whereas the men and women in the United States military reflect the highest values and the spirit of our Nation;

Whereas the United States Government has the responsibility to ensure that the men and women of the United States military are provided for to the fullest extent;

Whereas the United States Government has the responsibility to make certain that the lives of the men and women of the United States military are never put at risk without the utmost consideration;

Whereas military action by the United States must not be undertaken without the most careful preparation;

Whereas the Constitution of the United States is designed to meet the needs of the Nation in peace and in war and to meet any common danger to the Nation;

Whereas in time of war and periods of emergency, in particular, the constitutional principles of separation of powers and checks and balances are most critical; and

Whereas offensive military action by the United States must not be undertaken without full and thorough debate in the Congress: Now, therefore, be it

Resolved, That it is the sense of the Senate—

(1) that, under the Constitution of the United States, it is the Congress that has the power to take the country from a state of peace to a state of war against another nation;

(2) that the framers of the Constitution understood that the President, in an emergency, may act to defend the country and repel sudden attack, but reserved the matter of offensive war to the Congress as the representatives of the people;

(3) that the Senate affirms the requirement under the Constitution that the President seek approval of the Congress before the United States undertakes offensive military action against another nation;

(4) that consultation by the President with the Congress on any United States undertaking of offensive military action against another nation must allow sufficient time for the Congress to fully debate the matter and shape national policy; and

(5) that any offensive military action by the United States against another country shall occur only after the Congress has authorized such action.

Mr. BYRD. Mr. President, to many Americans, the word ''Vietnam'' has become a painful remainder of a bloody quagmire of a never-ending war without an exit strategy. Certainly, Vietnam is a reminder of failed leadership and two destroyed Presidencies. Like the Johnson and Nixon administrations during the Vietnam era, when their war policies were attacked, the Bush administration wraps itself in the American flag and often engages in tactics of impugning not only the integrity but the patriotism of its critics. President Bush has even said those who compared Iraq to Vietnam send the wrong message to our troops. Such a comparison, he suggests, harms our troops.

I continue to be alarmed that the war in Iraq shows all the signs of degenerating into an equally calamitous debacle as Vietnam. And that is the point. The war in Vietnam lasted more than 10 years. It took more than 58,000 American lives. That long, painful war could have been avoided. Thousands of American lives could have been saved. The blood of thousands of American sons and daughters could have been saved. It need not have been spilled. That is why references to Vietnam are being made when talking about the war in Iraq. I make the comparison because I am furious, absolutely furious, that this Government, after the bitter and bloody experience of Vietnam, has failed to heed the lessons of Vietnam.

How could we have failed to consider the lessons of Vietnam before stumbling into Iraq? I didn't vote to go into Iraq. I said, hell, no, I won't go. We are doing the wrong thing if we go into Iraq. Did they listen? Did they hear? The American people have a right, the public has a right, to ask this question.

As a Senator, I have an obligation both morally and politically to ask that question. How could we not think about the error this country made with respect to Vietnam before we invaded Iraq? The similarities were obvious. In opposing the Iraq war resolution, which I did, I and others expressed concern that the Iraq resolution was another Gulf of Tonkin resolution and could well lead to another Vietnam. As to the Tonkin Gulf resolution, S.J. Res. 46, I explained in this way:

> . . . have several things in common. Congress is again being asked to vote on the use of force without hard evidence that the country poses an immediate threat to the national security of the United States. We are being asked to vote on a resolution authorizing the use of force in a hyped up, politically charged atmosphere in an election year. Congress is again being rushed into a judgment.

And I quoted Senator Wayne Morse, one of the two Senators who opposed the Tonkin Gulf resolution, as he proclaimed:

> The resolution will pass, and Senators who voted for it will live to regret it.

How right he was.

Tragically, tragically, as the war in Iraq has progressed, the parallels with the Vietnam war continue to mount. We have learned that, once again, the American people were led down the primrose path in rallying support for a costly war. Congress and the American people were told about weapons of mass destruction in Iraq. Yes. They were told about Saddam Hussein's connections to al-Qaida. They were told about Iraq trying to purchase uranium from Africa.

The cost of the war was once estimated to be less then $100 billion. But the bill is now rising ever closer to half a trillion dollars. As a result, the National Journal pointed out, ''as with Vietnam, political support for [the war in] Iraq has proved to be fragile in part because it was secured by justification that has been discredited.''

In each of the two wars, American soldiers were placed in the treacherously difficult situation of having to fight an uncertain, indistinguishable

enemy, never knowing friend, never knowing foe, until they started shooting. As in Vietnam, our soldiers are once again confronted with the deadly situation of trying to ferret out insurgents in a population that is willing—listen—a population that is willing to hide them.

In each war, we went in thinking of ourselves as liberators. We came to be seen by the people we were supposed to be liberating as the invaders. In each war, where it was so necessary for us to win the hearts and minds of the people of the country, our presence there, instead, alienated the people of the country and turned them against us. In each war, both the White House, yes, and the Pentagon, yes, grossly and tragically underestimated the determination and the ferocity of our opponents.

Bring them on, bring them on, President Bush chided the Iraqis and terrorists on July 2, 2003. Do you remember that? I do. He said ''bring 'em on.''

In the time since he made that statement ''bring 'em on,'' we, the American people, have lost more than 2,800 troops in that war.

Yes, ''bring 'em on.'' ''Bring 'em on.'' And so they brought them on. We have lost more than 2,800 troops in that war. As of today, 3,062—get that—3,062 Americans in total have been killed in Iraq. And for what? And for what, I ask? As of today, 3,062 Americans in total have been killed in that war.

Yes, ''bring 'em on,'' President Bush chided the Iraqis and terrorists on July 2, 2003. So I will say it once more. We have lost more than 2,800 troops in that war since President Bush said: ''bring 'em on.''

Former Senator Max Cleland—do you remember him? I remember him. He used to sit right back there. Max Cleland, bless his heart, recently pointed out that American forces have now ''become sitting ducks in a shooting gallery for every terrorist in the Middle East.''

Although Congress should have learned important lessons from the Vietnam war, there are now ominous indications that a path to a new military confrontation is being created right before our eyes. Just this month, the President announced his intention to ''interrupt the flow of support from Iran and Syria'' into Iraq.

What does this saber-rattling comment really mean? Hear me. Does the President seek to expand the ongoing war beyond Iraq's borders? Does he? Does this comment really mean that? Or are we already on a course to another war in the Middle East? Are we? Will Syria or Iran be the Cambodia of a 21st century Vietnam? Will Syria or Iran be the Cambodia of a 21st century Vietnam?

In the State of the Union Address last night, the President called out Iran no less than seven times. Was the speech the first step in an effort to blame all that has gone wrong in the Middle East on Iran? Was the focus on Iran during the President's address an attempt to link Iran to the war on terrorism, and, by extension, start building a case that our response to the 9/11 attacks must include dealing with Iran?

I fear—and I hope I am wrong—that the machinery may have already been set in motion which may ultimately lead to a military attack inside Iran or perhaps Syria, despite the opposition of the American people, many in Congress, and even some within the President's administration.

Wise counsel from congressional leaders to step back from the precipice of all-out war in the Middle East is too easily disregarded. To forestall a looming disaster, Congress must act to save the checks and balances established by the Constitution.

Today I am introducing a resolution that clearly states that it is Congress—the Congress, the Congress, not the President—that is vested with the ultimate decision on whether to take this country to war against another country.

This resolution, which I hold in my hand—here it is—this resolution is a rejection—hear me—a rejection of the bankrupt, dangerous, and unconstitutional doctrine of preemption. Let me say that again. This resolution, which I hold in my hand, is a rejection of the bankrupt, dangerous, and unconstitutional doctrine of preemption, which proposes that the President—any President—may strike another country before that country threatens us, before that country threatens us. That is the doctrine of preemption: We may strike, we may attack, we may invade another country before it threatens us.

Now, this resolution, which I am going to introduce, returns our Government to the inspired intent of the Framers, God bless them, of the Constitution who so wisely placed the power to declare war in the hands of the elected representatives of the American people.

If there exists a reckless determination for a new war in the Middle East, I fear that the attorneys of the executive branch are already seeking ways to tie this war to the use of force resolution for Iraq, or the resolution passed in response to 9/11. But the American people need only be reminded about the untruths of Iraq's supposed ties to the 9/11 attacks to see how far the truth can be stretched in order to achieve the desired outcome.

If the executive branch were to try to prod, stretch, or rewrite the 9/11 or the Iraq use of force resolutions in an outrageous attempt to apply them to an attack on Iran, on Syria, or anywhere else, this resolution of mine is clear—clear as the noonday Sun in a cloudless sky—this resolution is clear: The Constitution says that Congress—we here and those over there on the other side of the Capitol—the Constitution says that Congress, not the President, must make the decision for war or peace. The power to declare war resides in Congress—resides here—and it is we—we, the elected representatives of the people—who are the ''deciders.''

Congress has an obligation to the people of the United States. With so many of our sons and daughters spilling their blood in one costly war, Senators and Representatives have a moral duty to question whether we are headed for an even more tragic conflict in the Middle East. But in order to question this administration—in order to fulfill the duties entrusted to us by the Constitution, to which we have sworn to support and defend—Congress must first insist that the powers given to this body—the Congress, the Senate and the House—are held sacrosanct. We must insist that these powers, including the power to declare war, are not usurped by this President or any other President who will follow.

The resolution, Mr. President, which I am submitting today, is an effort to protect the Constitution—an effort to protect the Constitution—from the zeal of the executive branch, whose very nature is to strive for more and more power during a time of war.

It is time now for Congress to put its foot down and stand up for the Constitution. Our Nation did not ask to be put into another Vietnam. Let us not deceive ourselves that we are somehow immune to another Cambodia. Let us stop a reckless, costly war in Iran or Syria before it begins by restoring the checks and balances that our Founders so carefully—so carefully—designed.

I send, Mr. President, the resolution to the desk.

The PRESIDING OFFICER. The resolution will be received and appropriately referred.

Mr. BYRD. I thank the Chair.

Mr. President, let the title be read, please.

The PRESIDING OFFICER. Without objection, the title will be read.

The bill clerk read as follows:

A resolution (S. Res. 39) expressing the sense of the Senate on the need for approval by the Congress before any offensive military action by the United States against another nation.

Mr. BYRD. I thank the Chair, and I thank the clerk.

I yield the floor.

SENATE CONCURRENT RESOLUTION 4—EXPRESSING THE SENSE OF CONGRESS ON IRAQ

Mr. WARNER (for himself, Mr. NELSON of Nebraska, Ms. COLLINS, Mr. COLEMAN, Mr. SALAZAR, Mr. BAYH, Ms. LANDRIEU, Mr. NELSON of Florida, and Mrs. MCCASKILL) submitted the following concurrent resolution; which was referred to the Committee on Foreign Relations:

S. CON. RES. 4

Whereas, we respect the Constitutional authorities given a President in Article II, Section 2, which states that ''The President shall be commander in chief of the Army and Navy of the United States;'' it is not the intent of this resolution to question or contravene such authority, but to accept the

offer to Congress made by the President on January 10, 2007 that, ''if members have improvements that can be made, we will make them. If circumstances change, we will adjust;''

Whereas, the United States' strategy and operations in Iraq can only be sustained and achieved with support from the American people and with a level of bipartisanship;

Whereas, over 137,000 American military personnel are currently serving in Iraq, like thousands of others since March 2003, with the bravery and professionalism consistent with the finest traditions of the United States armed forces, and are deserving of the support of all Americans, which they have strongly;

Whereas, many American service personnel have lost their lives, and many more have been wounded, in Iraq, and the American people will always honor their sacrifices and honor their families;

Whereas, the U.S. Army and Marine Corps, including their Reserve and National Guard organizations, together with components of the other branches of the military, are under enormous strain from multiple, extended deployments to Iraq and Afghanistan;

Whereas, these deployments, and those that will follow, will have lasting impacts on the future recruiting, retention and readiness of our nation's all volunteer force;

Whereas in the National Defense Authorization Act for Fiscal Year 2006, the Congress stated that ''calendar year 2006 should be a period of significant transition to full sovereignty, with Iraqi security forces taking the lead for the security of a free and sovereign Iraq;''

Whereas, United Nations Security Council Resolution 1723, approved November 28, 2006, ''determin[ed] that the situation in Iraq continues to constitute a threat to international peace and security;''

Whereas, a failed state in Iraq would present a threat to regional and world peace, and the long-term security interests of the United States are best served by an Iraq that can sustain, govern, and defend itself, and serve as an ally in the war against extremists;

Whereas, Iraq is experiencing a deteriorating and ever-widening problem of sectarian and intra-sectarian violence based upon political distrust and cultural differences between some Sunni and Shia Muslims;

Whereas, Iraqis must reach political settlements in order to achieve reconciliation, and the failure of the Iraqis to reach such settlements to support a truly unified government greatly contributes to the increasing violence in Iraq;

Whereas, the responsibility for Iraq's internal security and halting sectarian violence must rest primarily with the Government of Iraq and Iraqi Security Forces;

Whereas, U.S. Central Command Commander General John Abizaid testified to Congress on November 15, 2006, ''I met with every divisional commander, General Casey, the Corps Commander, [and] General Dempsey. We all talked together. And I said, in your professional opinion, if we were to bring in more American troops now, does it add considerably to our ability to achieve success in Iraq? And they all said no. And the reason is, because we want the Iraqis to do more. It's easy for the Iraqis to rely upon us to do this work. I believe that more American forces prevent the Iraqis from doing more, from taking more responsibility for their own future;''

Whereas, Iraqi Prime Minister Nouri al-Maliki stated on November 27, 2006 that ''The crisis is political, and the ones who can stop the cycle of aggravation and bloodletting of innocents are the politicians;''

Whereas, there is growing evidence that Iraqi public sentiment opposes the continued U.S. troop presence in Iraq, much less increasing the troop level;

Whereas, in the fall of 2006, leaders in the Administration and Congress, as well as recognized experts in the private sector, began to express concern that the situation in Iraq was deteriorating and required a change in strategy; and, as a consequence, the Administration began an intensive, comprehensive review of the Iraq strategy, by all components of the Executive branch;

Whereas, in December 2006, the bipartisan Iraq Study Group issued a valuable report, suggesting a comprehensive strategy that includes ''new and enhanced diplomatic and political efforts in Iraq and the region, and a change in the primary mission of U.S. forces in Iraq that will enable the United States to begin to move its combat forces out of Iraq responsibly;''

Whereas, on January 10, 2007, following consultations with the Iraqi Prime Minister, the President announced a new strategy (hereinafter referred to as the ''plan,'') the central element of which is an augmentation of the present U.S. military force structure through additional deployments of approximately 21,500 U.S. military troops to Iraq;

Whereas, this proposed level of troop augmentation far exceeds the expectations of many of us as to the reinforcements that would be necessary to implement the various options for a new strategy, and led many members to express outright opposition to augmenting our troops by 21,500;

Whereas, the Government of Iraq has promised repeatedly to assume a greater share of security responsibilities, disband militias, consider Constitutional amendments and enact laws to reconcile sectarian differences, and improve the quality of essential services for the Iraqi people; yet, despite those promises, little has been achieved;

Whereas, the President said on January 10, 2007 that ''I've made it clear to the Prime Minister and Iraq's other leaders that America's commitment is not open-ended'' so as to dispel the contrary impression that exists;

Whereas, the recommendations in this resolution should not be interpreted as precipitating any immediate reduction in, or withdrawal of, the present level of forces: Now therefore be it—

Resolved, by the Senate (the House of Representatives concurring), That it is the sense of Congress that—

(1) the Senate disagrees with the ''plan'' to augment our forces by 21,500, and urges the President instead to consider all options and alternatives for achieving the strategic goals set forth below with reduced force levels than proposed;

(2) The primary objective of the overall U.S. strategy in Iraq should be to encourage Iraqi leaders to make political compromises that will foster reconciliation and strengthen the unity government, ultimately leading to improvements in the security situation;

(3) The military part of this strategy should focus on maintaining the territorial integrity of Iraq, denying international terrorists a safe haven, conducting counterterrorism operations, promoting regional stability, and training and equipping Iraqi forces to take full responsibility for their own security;

(4) United States military operations should, as much as possible, be confined to these goals, and should charge the Iraqi military with the primary mission of combating sectarian violence;

(5) The military Rules of Engagement for this plan should reflect this delineation of responsibilities;

(6) The United States Government should transfer to the Iraqi military, in an expeditious manner, such equipment as is necessary;

(7) The Senate believes the United States should continue vigorous operations in Anbar province, specifically for the purpose of combating an insurgency, including elements associated with the Al Qaeda movement, and denying terrorists a safe haven;

(8) The United States Government should engage selected nations in the Middle East to develop a regional, internationally sponsored peace-and-reconciliation process for Iraq;

(9) The Administration should provide regular updates to the Congress, produced by the Commander of United States Central Command and his subordinate commanders, about the progress or lack of progress the Iraqis are making toward this end.

(10) our overall military, diplomatic and economic strategy should not be regarded as an ''open-ended'' or unconditional commitment, but rather as a new strategy that hereafter should be conditioned upon the Iraqi government's meeting benchmarks that must be specified by the Administration.

Mr. WARNER. Mr. President, Senator NELSON of Nebraska and Senator COLLINS and I have worked for some time to put forward a resolution embracing the very serious, heartfelt sentiments of Senators with regard to the President's plan that he enunciated on January 10.

That plan—and I credit the President for the in-depth study and preparation that went into it, the consultations; I was privileged to be a part of three consultations with the President in that period—it is that plan about which a number of us here in the Senate have some thoughts.

The President, in his statement on January 10, laid down the invitation for Members of Congress to come forward and provide their thoughts. And that is the vein in which the three of us, together with a series of cosponsors, have adopted this first draft, which is identical to the draft we put into the RECORD some nights ago. We purposely have not changed a comma or a period or any other word in it because a number of colleagues, in a very thoughtful and proper way, have come to us with suggestions and ideas. But at this time, we believe we should lay this down, such that other Senators who might wish to be cosponsors may do so. The Senate works its will each day, and we are always here to consider ideas from other colleagues, but at the present time this is the format. We purposely waited until after the Foreign Relations Committee worked on its resolution, which I understand will soon be working its way to the calendar.

So for that purpose, we put in ours. We find some differences—very significant, in my judgment—between ours and the resolution offered by the distinguished Senator, Mr. BIDEN, and others—Senator LEVIN, indeed, Senator HAGEL.

We believe we have put a greater emphasis on urging the President to consider other options, given that we have a general disagreement with the very

significant level of troops that are specifically set forth in the President's plan.

We also feel very strongly about the issue of sectarian violence and how that must be the primary mission of the Iraqi forces. The American GI simply should not be, in my judgment—whenever possible, the rules of engagement should provide that the Iraqi forces should deal with the sectarian violence issue. They understand the language. They understand the cultural differences, which precipitate the animosity between the Sunni and the Shia and, indeed, the most distressing aspects of it: the Shia upon Shia and Sunni upon Sunni. We recognize that sectarian violence is undermining, in many ways—the level of it—the efforts of this Government under Prime Minister Maliki to go forward and exercise the full reins of sovereignty and that it is in those interests that sectarian violence has to be dealt with. It is an important mission, but I believe strongly it is a mission that should be given primarily to the Iraqi forces.

We concur with the President, who said many times, including in his statement on January 10, that to allow this Government to fail and to allow the accomplishments toward sovereignty through free elections by the Iraqi people to be lost and this country to simply be plunged into chaotic situations is not in the interests of peace in that region and, indeed, peace in the world.

Our resolution does not provide for a reduction in any way or suggest the level of U.S. forces there now. It does not provide a timetable. It simply urges the President to consider all options and sets forth in there the primary missions as we interpret them to be in the interests of our country. Those primary missions track in large measure the Baker-Hamilton report.

We also stress the need for benchmarks to be spelled out with clarity. And should the operations in Baghdad go forward under the Commander in Chief—and we recognize fully and in no way try to contravene the authority of the President to act under the Constitution as Commander in Chief—should that go forward, it will be done in an incremental fashion, as we have been told by the Chairman of the Joint Chiefs and others.

So when the first operation takes place, we should carefully set forth the benchmarks and see if the Iraqi Government and the Iraqi armed forces fulfill those benchmarks; namely, do they all come in the numbers that they were supposed to under that plan? They failed to do that when a similar augmentation for the Baghdad operation was initiated this summer. Will the political structure in Iraq resist, refrain, and in every other way allow the military commanders, both U.S. and Iraqi, to carry out the missions as they see fit and employ such tactics as they deem necessary to achieve those missions without being called by the Government and told: Stop this, withdraw here, or do not take that prisoner, but if you have him, then release him. We cannot go in under that guise.

Thirdly and most importantly, we have to see how the Iraqis perform. Will they take the point? Will they take the lead? And in such tactics, will they then be the primary—the primary—if not the essential force that deals with sectarian violence, such that the rules of engagement spell out: Whenever necessary, the coalition forces and namely the United States shall not be utilized.

At this time, I would invite my colleagues to express their views, and I will ask each to name those cosponsors whom we have gotten from each side of the aisle.

I yield the floor.

The PRESIDING OFFICER. Under the previous order, the Senator from Nebraska is recognized.

Mr. NELSON of Nebraska. Mr. President, first of all, I thank the senior Senator from Virginia for his considerable work in drafting this resolution and working over the weekend with us and our staffs, who worked very closely together to prepare this Iraq resolution.

I think it is important to say as well that I respect the work done by the Senate Foreign Relations Committee today in considering the resolution submitted by, supported by their chairman, the distinguished Senator from Delaware, Mr. BIDEN. I have a great deal of respect for Senator BIDEN's work.

This is an area where there can be more than one idea about how to approach something, but at the end of the day, it is going to be important to have a resolution that has broad bipartisan support.

I also appreciate the work of Senator COLLINS, who, as our colleague, has worked very closely on this resolution together with her staff to be able to submit it today in this fashion by putting it not only into the RECORD but on the floor so it can become part of the business of the Senate.

There will be some who would say: Why is there a need for a second resolution? Well, this resolution offers a new set of ideas, more broadly worded, and in some cases, clearly, more likely to be bipartisan for Senators to consider. Given the fact that the Senate Foreign Relations Committee resolution came out on largely a partisan vote, we think this resolution, because it is picking up bipartisan support, will be, in terms of content and support, consistent with an effort to bring about a bipartisan resolution with broad support.

The recommendations of the Iraq Study Group have not been followed to any significant extent to date. In some respects, they have been almost on a skyhook for future consideration. It was our feeling that many of these recommendations of the Baker-Hamilton study group should be included in a resolution, and we included many of those recommendations in the body of our resolution.

We also worked very carefully to avoid political rhetoric or any kind of rhetoric that threatens the real objective. The real objective of this resolution is to stress to the White House that we disagree with the approach this plan takes by putting more men and women in our uniform in harm's way to fight, to do battle, to overcome the sectarian violence and the possible civil war of the Sunnis and the Shias and various subgroups within those religious and political elements. We also believed it was important to stress benchmarks and to empower the Prime Minister and the Iraqi Government to be able to meet certain objectives, certain goals, and to be able to deliver.

At the end of the day, we think it is important to send a strong but unified message to the White House and Iraq. The more support the resolution receives in the Senate, the stronger our message will be. So tonight I am very pleased and am certainly proud to be here with my colleagues to say that at the end of the day, we think the strength of this resolution to uphold our responsibility will be in the best interests of our country and our military and that our colleagues should join together with us in opposition to the surge of U.S. troops to be placed in Baghdad. It is the responsibility of the Iraqi Government and the Iraqi military to overcome the battles between sectarian groups within their own country and to seek less of a military resolution and certainly more of a political resolution to the problems that exist at the present time.

With that, let me say that I would like to see our unanimous consent be modified to include up to 10 minutes for Senator SALAZAR from Colorado to speak on the resolution afterward, if there is no objection.

The PRESIDING OFFICER. Is there objection?

Mr. WARNER. Mr. President, I certainly will not object. I wonder if I might have 2 minutes following Senator COLLINS to summarize before we receive the distinguished Senator from Colorado for his remarks. I ask unanimous consent that the unanimous consent agreement be modified so I can have about 2 minutes.

Mr. NELSON of Nebraska. Sure.

The PRESIDING OFFICER. Is there objection?

If not, without objection, the unanimous consent agreement is so modified.

Mr. NELSON of Nebraska. Mr. President, it is my pleasure to now turn to Senator COLLINS, who has worked very closely with us. Before I do, I should indicate the cosponsors from the Democratic side are Senator SALAZAR, Senator BILL NELSON, Senator LANDRIEU, Senator BAYH, and Senator MCCASKILL.

The PRESIDING OFFICER. The Senator from Maine.

Ms. COLLINS. Mr. President, I am pleased to join my two colleagues on the Senate floor this evening in submitting a very important resolution on what is perhaps the greatest challenge facing our country.

Let me first say it has been an honor and a privilege to work with the distinguished Senator from Virginia, the former chairman of the Senate Armed Services Committee, as well as my friend and colleague from Nebraska, Senator BEN NELSON. We have worked very hard on this resolution, spending many hours wordsmithing the language of it, trying to get exactly the kind of serious policy statement we could bring before our colleagues in the Senate.

I am very pleased that on the Republican side, we are joined by two leaders on this issue, Senator COLEMAN and Senator SMITH. They, too, have had input to the resolution. That brings the number of us who are joining tonight as original sponsors of our resolution to 10 Members of the Senate. I would also note that based on conversations I have had with our colleagues on both sides of the aisle, there are several more Senators who are very interested in our resolution and may well join in cosponsoring it at a later date or certainly in voting for it.

Yesterday the Senate Armed Services Committee held a very useful hearing on the nomination of an outstanding military officer, General Petraeus, whom the President has tapped to lead our forces in Iraq. Earlier today the Senate Armed Services Committee, I believe by unanimous vote, voted to report this vital nomination to the full Senate. General Petraeus is the ideal person to be taking over as commander of our troops in Iraq. If anyone can make what I believe to be a flawed strategy a success, it is he. But I had a very interesting exchange with General Petraeus. I talked to him about my concern that inserting more American troops into Iraq may well lessen the pressure on Iraqi leaders to take the long overdue steps that are needed to quell the sectarian violence.

I know the President believes the answer is more American troops, that that will provide the Prime Minister and other leaders with the space they need to take the reforms forward. I fear it is just the opposite. I believe it lessens the pressure on the Iraqi leaders.

Mr. WARNER. Would the Senator yield?

Ms. COLLINS. I am happy to yield.

Mr. WARNER. Did not the CENTCOM commander, who is still the CENTCOM commander, General Abizaid, testify before our committee and, in the precise words, said he felt that at this time added troops were not necessary, more troops would lessen the incentive of the Iraqis to pick up the burdens which we are trying to have them assume under sovereignty?

Ms. COLLINS. The distinguished Senator from Virginia is exactly correct. That is indeed the testimony that was brought before our committee a month ago. This was not ancient history. It was very reasoned testimony and it could not have been clearer testimony. Indeed, similar testimony was given by General Casey.

I asked General Petraeus if he felt we would be facing the widespread and deteriorating sectarian violence that threatens the entire country, but particularly the Baghdad region, if Iraqi leaders had amended their Constitution, had passed an oil revenue law that more equitably distributed oil proceeds among the groups in Iraq, if they had held provincial elections, if they had more fully integrated the Sunni minority into the Government power structures; would we be in the same place today? And he told me he did not believe we would be. I think that is significant, because I believe if Iraqi leaders had taken those steps, we would not be facing the widespread sectarian violence that has engulfed the Baghdad region.

I also talked to General Petraeus about a fascinating article he wrote a year ago in which he outlined 14 observations that he had, based on his previous tours in Iraq. The first and most important observation in this article in ''Military Review'' that General Petraeus had was to quote Lawrence of Arabia back in 1917, to say that it was a mistake for us to do too much, whoever the foreign force is, and that you had to let the Iraqis take the lead on these issues. Well, those words, true in 1917, are just as true today, as General Petraeus himself observed in this article.

The second observation in the same article, General Petraeus said an army like ours in a land like Iraq has a half life as liberators, that they are quickly seen as an army of occupiers. I believe that is what has happened in Iraq and that confirms what my own observations were during a trip a month ago to that land. Our delegation met with a British commander in Basra who described to us a declining consent line. He said at first when the British arrived in Basra, they were greeted as liberators. But as time has gone by, their presence is more and more resented and less and less tolerated.

The observations General Petraeus had in this article offer us good guidance and, indeed, reflect in many ways the concepts we have worked hard to include in this resolution.

There is one final point I want to make this evening. Some have said if we pass this resolution, we show that America is somehow divided and not supportive of our troops. Nothing could be further from the truth. The fact is every Member of this body is united in support of our troops. Every Member of this body wishes General Petraeus all the best and hopes he will succeed in this very difficult mission. But the fact is, Americans are deeply divided over the strategy we should pursue in Iraq. It is part of the health of our American democracy that we debate these issues, and we do so because we care about the brave men and women in uniform who are representing us in Iraq, who are on the front lines, who are sacrificing so much. That is exactly the motivation for the resolution that the 10 of us are introducing tonight.

Let me close my remarks by again saying it has been a wonderful experience to work so closely with the senior Senator from Virginia and the Senator from Nebraska, Mr. BEN NELSON. Both of them have worked so hard. They care so much about this issue. It has been a great pleasure to join with them.

I thank the Chair.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. I thank my colleagues, the Senator from Nebraska and Senator COLLINS. It is important that we have taken this initiative because a number of colleagues—10 now—wish to be recognized. But believe me, there are 10 more and 10 more who will soon come forward, hopefully, and support this resolution. I also want to stress, as both of my colleagues did, I hope as this debate progresses, it will not be a question of who is the most patriotic, who is the strongest supporter of the American troops. I pride myself with having had a relationship with the Armed Forces of the United States, modest though it may be, since late 1944–1945. I had the privilege of working and learning. I often feel the Armed Forces did far more for me than I have done for them. In my years, now 29 years, here in the Senate on the Armed Services Committee, I have done everything I could to repay the Armed Forces for what they did for this humble person, to provide for them in a way that meets the sincerity of their commitments and that of their families.

So it is not a question of who is the most patriotic or a question of who is trying to be confrontational with the President. These are heartfelt, closely held views we have about one of the most serious episodes in contemporary American history. I think the President has shown a measure of courage in this matter. But as has been acknowledged, we have made mistakes. And what we have tried to do is conscientiously say how we feel about the immediate future.

I asked for a change in strategy, I guess it was October, when I came back and said the situation, as I saw it, in Iraq was going sideways. That has been done. This is a change in strategy. I acknowledge that. We were invited by the President to make suggestions. We have done that in a courteous, respectful manner. I thank my colleagues.

I stress also the need for bipartisanship. I am not certain anyone can predict how this debate will go and what the outcome will be or how many resolutions come forward. I think it should be a healthy, strong debate and one in which the American public, which is

very much attuned to this situation and has strong views of its own—and we should respect those views—I hope that what debate and actions follow, whatever they may be by this Chamber on such final resolutions that may be voted on, earn the respect and the trust and the confidence not only of the Armed Forces but of the American public. Because we can only be successful in this operation to save the Government of Iraq, whether it is this one or a successor one, to save the people of Iraq so they can exercise sovereignty if there is strong public support and a strong and accurate bipartisan level of participation by the Congress of the United States. To have a vote all on one side and a vote all on the other side will not help this very situation at this time.

So one of the main goals—and we have achieved it—is bipartisanship, truly.

I thank my colleagues. I yield the floor. And I wish to, in so yielding, thank the distinguished Senator from Colorado for joining us in this matter.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. SALAZAR. Mr. President, let me first say I am pleased and honored to be here with Senator WARNER and Senator COLLINS and Senator NELSON. It was about a year or so ago that Senator LEVIN and Senator WARNER led a CODEL of Senators into Iraq and Afghanistan. I had the great fortune of traveling with both Senator WARNER and Senator LEVIN on that CODEL. I learned a tremendous amount from them in terms of what it is they had seen in Iraq and Afghanistan, the observations they made about where we were on the levels of violence in Iraq. I came away from that CODEL with them feeling as if they truly had the best interests of America at heart. As they have sponsored these resolutions today, what they are acting out here is in the best fashion of what a Senator should do, and that is trying to do the best for our country.

Let me say, first of all, with respect to the resolution that was heard earlier today in the Foreign Relations Committee, sponsored by Senator LEVIN and Senator BIDEN and Senator HAGEL, I very much appreciate their leadership and thinking and the passion they brought to the debate and to this issue.

When I sat down and compared the resolution considered in the Foreign Relations Committee to the resolution that is now being introduced by Senator WARNER and other colleagues, I thought there were a great number of similarities between the two resolutions.

Let me just comment about my own involvement and give part of my rationale for becoming an original sponsor of this resolution. First and foremost, I think what this country needs today more than anything else is a sense of unity. I think we have had a great deal of divisiveness in this country over the last 6 years. I think in the long run, when one looks 10, 20, 30, 40 years down the road at these very difficult times that are very challenging to our country—very challenging to our men and women in uniform and the other men and women of America—we will be judged as to whether we in this Congress were able to unify a direction in Iraq that ultimately was a successful direction in Iraq.

I have called for a new direction in Iraq because I believe we need that to get us to success there. I don't believe we can get to success in Iraq if we have a divided country in terms of how we move forward.

With respect to the resolution that is before us, in my own conversations with the President and with members of his administration in the past, I have told them that, in my view, with all due respect to our Commander in Chief, we need to move forward in a new direction.

When I returned from Iraq and Afghanistan with the Levin-Warner codel, one of the things I told the President we needed to do was to enhance our diplomatic efforts in the region; that the countries in the area have as much, if not more, at stake than the United States. I saw them doing very little.

Today, I see Saudi Arabia, with all its wealth, doing very little to help in the reconstruction of Iraq. The same thing could be said about Kuwait and many of the neighboring countries. That effort has to be enhanced because they simply, in my judgment, are not doing their part to contribute to a successful outcome in that region.

I have also spoken to the President and members of his administration about the importance of the effort of reconstruction and making sure that there are other countries besides the United States putting their shoulder to the wheel on the reconstruction efforts that are underway in Iraq.

The way I see this debate unfolding is that we essentially have the plan of the President, which I call plan A. His plan is that we do a lot of what we have been doing but, in addition, that we move forward and add an additional 21,500 troops to the war effort in Iraq. That would be what I call plan A. There is another plan out there, plan B, from some Members of Congress and others that say we ought to bring our troops home and bring our troops home right away; that we ought to engage in an immediate withdrawal from Iraq and from that region. My own view of that plan, plan B, is that is not a good plan either. At the end of the day, no matter what criticisms we make about the original decision to invade Iraq, about the way the war has been mishandled, the fact is we are in Iraq today; there is a mess in Iraq and in the Middle East. So the question for me becomes: How do we as the United States of America, working in the Senate, working in the House of Representatives, working with the President, how do we put Humpty-Dumpty together again? It seems to me that Humpty-Dumpty has fallen off the wall, and it is up to us to try to figure out, in some united way, under difficult circumstances, how to move forward together to create the unity that will allow us to succeed in Iraq.

When I look at the possibility of plan B, which is a precipitous withdrawal from Iraq, it seems to me that will create tremendous dangers not only to the Middle East but to the long-term interests of the United States. I, for one, want us very much to succeed in Iraq and, because I want to succeed, I want to see whether we can create a kind of unity on how we move forward.

I think this resolution introduced by the senior Senator from Virginia, the Senator from Nebraska, and the Senator from Maine is a good direction for us to go in. I want to point out what I consider to be four central points of this resolution which, in my view, are also reflected in the Biden-Levin-Hagel resolution. The first of those points is that there is a disagreement with the President's decision to move forward with a surge of 21,500 more troops. I think both resolutions say that equally and clearly. Why, in this resolution, is that conclusion reached? Why was it reached in the other resolution heard in the Foreign Relations Committee?

In my view, it is because of what our military commanders have said. General Abizaid said it a few weeks ago, in November. He said an increase in troops was not the way to go because it sends the wrong signal about the ultimate responsibility to quell the sectarian violence in Iraq. It is not the right way to go because when you look at what happened with the surges we have had over the last 6, 7 months in Iraq, they themselves did not work. When operations going forward started in June, there was a sense that it might quell some of the sectarian violence going on. It didn't work. We came back in August and did another operation going forward. It did not work.

The Iraq bipartisan study commission, chaired by former Secretary Baker and Lee Hamilton, found, in fact, that those surges created an escalation of violence by 43 percent during that time period. In a matter of 6 months we saw a 43-percent escalation of violence there. Regarding putting more troops in, it seems we have the laboratory of experience where it hasn't worked in the past, and there is nothing I have seen that indicates that moving forward in that direction will work at this time. I agree with the resolution and making a statement that we disagree with the President's decision moving forward in that regard.

As to the second part of this resolution, also reflected in the alternative resolution in the Foreign Relations Committee, I think there is unanimity of opinion. I bet you that we can get 100 Senators to vote for the position that the Iraqi Government needs to assume responsibility for a functioning government that will provide security

to the Iraqi nation and to the people of Iraq.

When Senator WARNER and I visited Iraq with Senator LEVIN, I still remember meeting with the Iraqi Ministers and with our own forces responsible for helping with the training of the Iraqi police. Mr. President, 2006 was supposed to be the year of the police in Iraq. This is the year where the Iraqi security was supposed to be taken to the point where they could move forward and assume the responsibility for their own security. Yet that handoff hasn't occurred and the sectarian violence has continued to increase.

I very much agree with the spirit of both resolutions that says if we are going to move forward and be successful on this issue, it is the Iraqi Government and people who need to move forward and assume responsibility for their security.

The third thing in this resolution that I think is important is that we contemplate that there is going to be some continuing involvement of the United States in Iraq, without limitation. Nobody knows for how long. But our efforts to engage in counterterrorism in that area will be a continuing and important role of the United States of America. Our efforts to attempt to restore the territorial integrity of Iraq and to stop the weapons flowing into Iraq from Iran and Syria are important measures that I believe the U.S. military can address. I agree with those aspects of the resolution as well.

Finally, as I said earlier in my comments, at the end of the day, this is not a United States of America problem alone. When one looks at the Gulf States and other countries in that area, such as Egypt, there is a huge problem that belongs to them as well. We have our hands on the tar baby as the United States of America. They, too, as countries have a huge stake in the success of Iraq and also have to get their hands on the tar baby. I believe the resolution put forward by Senator LEVIN and my other colleagues is a step in the right direction in that it creates a framework for how we ought to be moving forward in Iraq.

In conclusion, again, I say how much I respect the senior Senator from Virginia. I remember well the work that we did just a year or so ago in the so-called Gang of 14. I see that Senator NELSON and Senator COLLINS and Senator WARNER are back again trying to pull the Members of this body together on what is a very contentious issue. I wish them well, and I am delighted to be part of the effort.

I yield the floor.

Mr. WARNER. Mr. President, I wish to thank our colleague from Colorado and pick up on the theme that he closed and talked on earlier—unity.

Yes, there is great unity among the American people and a depth of concern about the loss of our forces and the wounding and suffering of the families. We have not lost our resolve. Our President has been firm. But this institution, the great Congress of the United States, a coequal branch of the Government, now must rise and show our commitment to fulfill the wishes and hopes and prayers of the American people, and do so in a bipartisan manner. That is the very heart of the effort of our 10 colleagues who thus far have come forward and put their names into the public domain as supporting the provisions of this resolution.

They do resemble, in many respects, the provisions in the Biden-Levin-Hagel resolution. When that first came out, so much of the rhetoric surrounding that resolution was disturbing to many people. That gave rise to the efforts that we have put forth, culminating in placing this document into the RECORD tonight.

I hope others will consider joining us because it is important to show unity and bipartisanship in the Congress in saying that we, in fact, understand the hopes, wishes, and prayers of the American people and the Armed Forces of the United States.

I thank my colleague and yield the floor.

AMENDMENTS SUBMITTED AND PROPOSED

SA 176. Mr. ENSIGN submitted an amendment intended to be proposed to amendment SA 152 submitted by Mr. ENSIGN (for himself and Mr. INHOFE) to the amendment SA 100 proposed by Mr. REID (for Mr. BAUCUS) to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; which was ordered to lie on the table.

SA 177. Mr. ENSIGN submitted an amendment intended to be proposed to amendment SA 153 submitted by Mr. ENSIGN (for himself, Mr. SESSIONS, Mr. CRAIG, Mrs. DOLE, Mr. THOMAS, Mr. CORNYN, Mr. INHOFE, Mr. ISAKSON, and Mr. COLEMAN) to the amendment SA 100 proposed by Mr. REID (for Mr. BAUCUS) to the bill H.R. 2, supra; which was ordered to lie on the table.

SA 178. Mr. ENSIGN submitted an amendment intended to be proposed to amendment SA 154 submitted by Mr. ENSIGN (for himself, Mr. DEMINT, Mr. GRAHAM, and Mr. COBURN) to the amendment SA 100 proposed by Mr. REID (for Mr. BAUCUS) to the bill H.R. 2, supra; which was ordered to lie on the table.

SA 179. Mr. THUNE submitted an amendment intended to be proposed to amendment SA 100 proposed by Mr. REID (for Mr. BAUCUS) to the bill H.R. 2, supra; which was ordered to lie on the table.

SA 180. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 143 submitted by Mr. SESSIONS and intended to be proposed to the bill H.R. 2, supra; which was ordered to lie on the table.

SA 181. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 144 submitted by Mr. SESSIONS and intended to be proposed to the amendment SA 100 proposed by Mr. REID (for Mr. BAUCUS) to the bill H.R. 2, supra; which was ordered to lie on the table.

SA 182. Mrs. HUTCHISON (for herself, Mr. CORNYN, and Mr. VOINOVICH) submitted an amendment intended to be proposed to amendment SA 100 proposed by Mr. REID (for Mr. BAUCUS) to the bill H.R. 2, supra; which was ordered to lie on the table.

SA 183. Mrs. HUTCHISON (for herself, Mr. CORNYN, and Mr. VOINOVICH) submitted an amendment intended to be proposed to amendment SA 100 proposed by Mr. REID (for Mr. BAUCUS) to the bill H.R. 2, supra; which was ordered to lie on the table.

SA 184. Mrs. HUTCHISON (for herself, Mr. CORNYN, Mr. VOINOVICH, and Mr. BROWN) submitted an amendment intended to be proposed to amendment SA 100 proposed by Mr. REID (for Mr. BAUCUS) to the bill H.R. 2, supra; which was ordered to lie on the table.

SA 185. Mr. CHAMBLISS submitted an amendment intended to be proposed to amendment SA 118 submitted by Mr. CHAMBLISS (for himself, Mr. ISAKSON, and Mr. BURR) and intended to be proposed to the bill H.R. 2, supra; which was ordered to lie on the table.

SA 186. Mr. CHAMBLISS submitted an amendment intended to be proposed by him to the bill H.R. 2, supra; which was ordered to lie on the table.

SA 187. Mr. KERRY (for himself, Ms. SNOWE, Mr. SUNUNU, Ms. LANDRIEU, and Mr. LIEBERMAN) submitted an amendment intended to be proposed to amendment SA 112 submitted by Mr. SUNUNU to the amendment SA 100 proposed by Mr. REID (for Mr. BAUCUS) to the bill H.R. 2, supra.

SA 188. Mr. OBAMA submitted an amendment intended to be proposed to amendment SA 100 proposed by Mr. REID (for Mr. BAUCUS) to the bill H.R. 2, supra; which was ordered to lie on the table.

SA 189. Mr. SESSIONS submitted an amendment intended to be proposed to amendment SA 141 submitted by Mr. SESSIONS and intended to be proposed to the bill H.R. 2, supra; which was ordered to lie on the table.

SA 190. Mr. SESSIONS submitted an amendment intended to be proposed to amendment SA 142 submitted by Mr. SESSIONS and intended to be proposed to the amendment SA 100 proposed by Mr. REID (for Mr. BAUCUS) to the bill H.R. 2, supra; which was ordered to lie on the table.

SA 191. Ms. COLLINS (for herself and Mr. WARNER) submitted an amendment intended to be proposed by her to the bill H.R. 2, supra; which was ordered to lie on the table.

SA 192. Ms. LANDRIEU submitted an amendment intended to be proposed to amendment SA 100 proposed by Mr. REID (for Mr. BAUCUS) to the bill H.R. 2, supra; which was ordered to lie on the table.

SA 193. Ms. LANDRIEU submitted an amendment intended to be proposed to amendment SA 100 proposed by Mr. REID (for Mr. BAUCUS) to the bill H.R. 2, supra; which was ordered to lie on the table.

SA 194. Ms. LANDRIEU submitted an amendment intended to be proposed to amendment SA 100 proposed by Mr. REID (for Mr. BAUCUS) to the bill H.R. 2, supra; which was ordered to lie on the table.

SA 195. Mr. BURR (for himself, Mr. DEMINT, and Mr. COBURN) submitted an amendment intended to be proposed to amendment SA 100 proposed by Mr. REID (for Mr. BAUCUS) to the bill H.R. 2, supra; which was ordered to lie on the table.

SA 196. Mr. GRASSLEY submitted an amendment intended to be proposed to amendment SA 100 proposed by Mr. REID (for Mr. BAUCUS) to the bill H.R. 2, supra; which was ordered to lie on the table.

SA 197. Mr. GRASSLEY submitted an amendment intended to be proposed to amendment SA 100 proposed by Mr. REID (for Mr. BAUCUS) to the bill H.R. 2, supra; which was ordered to lie on the table.

SA 198. Mr. COLEMAN submitted an amendment intended to be proposed to amendment SA 100 proposed by Mr. REID (for Mr. BAUCUS) to the bill H.R. 2, supra; which was ordered to lie on the table.

SA 199. Mr. VITTER submitted an amendment intended to be proposed by him to the bill H.R. 2, supra; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 716. Mr. ENSIGN submitted an amendment intended to be proposed to amendment SA 152 submitted by Mr. ENSIGN (for himself and Mr. INHOFE) to the amendment SA 100 proposed by Mr. REID (for Mr. BAUCUS) to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; which was ordered to lie on the table; as follows:

Strike after the first word, and insert the following:

SEC. ___. PRECLUSION OF SOCIAL SECURITY CREDITS PRIOR TO ENUMERATION.

(a) INSURED STATUS.—Section 214 of the Social Security Act (42 U.S.C. 414) is amended by adding at the end, the following new subsection:

''(d)(1) Except as provided in paragraph (2), no quarter of coverage shall be credited for purposes of this section if, with respect to any individual who is assigned a social security account number on or after the date of enactment of the Fair Minimum Wage Act of 2007, such quarter of coverage is earned prior to the year in which such social security account number is assigned.

''(2) Paragraph (1) shall not apply with respect to any quarter of coverage earned by an individual who, at such time such quarter of coverage is earned, satisfies the criterion specified in subsection (c)(2).''.

(b) BENEFIT COMPUTATION.—Section 215(e) of such Act (42 U.S.C. 415(e)) is amended—

(1) by striking ''and'' at the end of paragraph (1);

(2) by striking the period at the end of paragraph (2) and inserting ''; and''; and

(3) by adding at the end the following new paragraph:

''(3) in computing the average indexed monthly earnings of an individual who is assigned a social security account number on or after the date that is one day after the date of enactment of the Fair Minimum Wage Act of 2007, there shall not be counted any wages or self-employment income for which no quarter of coverage may be credited to such individual as a result of the application of section 214(d).''.

SA 177. Mr. ENSIGN submitted an amendment intended to be proposed to amendment SA 153 submitted by Mr. ENSIGN (for himself, Mr. SESSIONS, Mr. CRAIG, Mrs. DOLE, Mr. THOMAS Mr. CORNYN, Mr. INHOFE, Mr. ISAKSON, and Mr. COLEMAN) to the amendment SA 100 proposed by Mr. REID (for Mr. BAUCUS) to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; which was ordered to lie on the table; as follows:

Strike after the first word and insert the following:

SEC. ___. TRANSMITTAL AND APPROVAL OF TOTALIZATION AGREEMENTS.

(a) IN GENERAL.—Section 233(e) of the Social Security Act (42 U.S.C. 433(e)) is amended to read as follows:

''(e)(1) Any agreement to establish a totalization arrangement which is entered into with another country under this section shall enter into force with respect to the United States if (and only if)—

''(A) the President, at least 90 calendar days before the date on which the President enters into the agreement, notifies each House of Congress of the President's intention to enter into the agreement, and promptly thereafter publishes notice of such intention in the Federal Register,

''(B) the President transmits the text of such agreement to each House of Congress as provided in paragraph (2), and

''(C) an approval resolution regarding such agreement has passed both Houses of Congress and has been enacted into law.

''(2)(A) Whenever an agreement referred to in paragraph (1) is entered into, the President shall transmit to each House of Congress a document setting forth the final legal text of such agreement and including a report by the President in support of such agreement. The President's report shall include the following:

''(i) An estimate by the Chief Actuary of the Social Security Administration of the effect of the agreement, in the short term and in the long term, on the receipts and disbursements under the social security system established by this title.

''(ii) A statement of any administrative action proposed to implement the agreement and how such action will change or affect existing law.

''(iii) A statement describing whether and how the agreement changes provisions of an agreement previously negotiated.

''(iv) A statement describing how and to what extent the agreement makes progress in achieving the purposes, policies, and objectives of this title.

''(v) An estimate by the Chief Actuary of the Social Security Administration, working in consultation with the Comptroller General of the United States, of the number of individuals who may become eligible for any benefits under this title or who may otherwise be affected by the agreement.

''(vi) An assessment of the integrity of the retirement data and records (including birth, death, and marriage records) of the other country that is the subject of the agreement.

''(vii) An assessment of the ability of such country to track and monitor recipients of benefits under such agreement.

''(B) If any separate agreement or other understanding with another country (whether oral or in writing) relating to an agreement to establish a totalization arrangement under this section is not disclosed to Congress in the transmittal to Congress under this paragraph of the agreement to establish a totalization arrangement, then such separate agreement or understanding shall not be considered to be part of the agreement approved by Congress under this section and shall have no force and effect under United States law.

''(3) For purposes of this subsection, the term 'approval resolution' means a joint resolution, the matter after the resolving clause of which is as follows: 'That the proposed agreement entered into pursuant to section 233 of the Social Security Act between the United States and _____ establishing totalization arrangements between the social security system established by title II of such Act and the social security system of _____, transmitted to Congress by the President on _____, is hereby approved.', the first two blanks therein being filled with the name of the country with which the United States entered into the agreement, and the third blank therein being filled with the date of the transmittal of the agreement to Congress.

''(4) Whenever a document setting forth an agreement entered into under this section and the President's report in support of the agreement is transmitted to Congress pursuant to paragraph (2), copies of such document shall be delivered to both Houses of Congress on the same day and shall be delivered to the Clerk of the House of Representatives if the House is not in session and to the Secretary of the Senate if the Senate is not in session.

''(5) On the day on which a document setting forth the agreement is transmitted to the House of Representatives and the Senate pursuant to paragraph (1), an approval resolution with respect to such agreement shall be introduced (by request) in the House by the majority leader of the House, for himself or herself and the minority leader of the House, or by Members of the House designated by the majority leader and minority leader of the House; and shall be introduced (by request) in the Senate by the majority leader of the Senate, for himself or herself and the minority leader of the Senate, or by Members of the Senate designated by the majority leader and minority leader of the Senate. If either House is not in session on the day on which such an agreement is transmitted, the approval resolution with respect to such agreement shall be introduced in that House, as provided in the preceding sentence, on the first day thereafter on which that House is in session. The resolution introduced in the House of Representatives shall be referred to the Committee on Ways and Means and the resolution introduced in the Senate shall be referred to the Committee on Finance.''.

(b) ADDITIONAL REPORTS AND EVALUATIONS.—Section 233 of the Social Security Act (42 U.S.C. 433) is amended by adding at the end the following new subsections:

''(f) BIENNIAL SSA REPORT ON IMPACT OF TOTALIZATION AGREEMENTS.—

''(1) REPORT.—For any totalization agreement transmitted to Congress on or after January 1, 2007, the Commissioner of Social Security shall submit a report to Congress and the Comptroller General that—

''(A) compares the estimates contained in the report submitted to Congress under clauses (i) and (v) of subsection (e)(2)(A) with respect to that agreement with the actual number of individuals affected by the agreement and the actual effect of the agreement on social security system receipts and disbursements; and

''(B) contains recommendations for adjusting the methods used to make the estimates.

''(2) DATES FOR SUBMISSION.—The report required under this subsection shall be provided not later than 2 years after the effective date of the totalization agreement that is the subject of the report and biennially thereafter.

''(g) GAO EVALUATION AND REPORT.—

''(1) EVALUATION OF INITIAL REPORT ON IMPACT OF TOTALIZATION AGREEMENTS.—With respect to each initial report regarding a totalization agreement submitted under subsection (f), the Comptroller General of the United States shall conduct an evaluation of the report that includes—

''(A) an evaluation of the procedures used for making the estimates required by subsection (e)(2)(A);

''(B) an evaluation of the procedures used for determining the actual number of individuals affected by the agreement and the effects of the totalization agreement on receipts and disbursements under the social security system; and

''(C) such recommendations as the Comptroller General determines appropriate.

''(2) REPORT.—Not later than 1 year after the date of submission of an initial report regarding a totalization agreement under subsection (f), the Comptroller General shall submit to Congress a report setting forth the results of the evaluation conducted under paragraph (1).

''(3) DATA COLLECTION.—The Commissioner of Social Security shall collect and maintain

the data necessary for the Comptroller General of the United States to conduct the evaluation required by paragraph (1).''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to agreements establishing totalization arrangements entered into under section 233 of the Social Security Act which are transmitted to Congress on or after December 31, 2006.

SA 178. Mr. ENSIGN submitted an amendment intended to be proposed to amendment SA 154 submitted by Mr. ENSIGN (for himself, Mr. DEMINT, Mr. GRAHAM, and Mr. COBURN) to the amendment SA 100 proposed by Mr. REID (for Mr. BAUCUS) to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; which was ordered to lie on the table; as follows:

Strike after the first word and insert the following:

SEC. ___. NON-GROUP HIGH DEDUCTIBLE HEALTH PLAN PREMIUMS OPTIONS.

(a) IN GENERAL.—Section 223(d)(2)(C) of the Internal Revenue Code of 1986 (relating to exceptions) is amended by striking ''or'' at the end of clause (iii), by striking the period at the end of clause (iv) and inserting '', or'', and by adding at the end the following new clause:

''(v) a high deductible health plan, other than a group health plan (as defined in section 5000(b)(1)).''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning on January 1, 2008.

SA 179. Mr. THUNE submitted an amendment intended to be proposed to amendment SA 100 proposed by Mr. REID (for Mr. BAUCUS) to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; which was ordered to lie on the table; as follows:

At the end, add the following:

TITLE III—SMALL BUSINESS HEALTH COVERAGE

SEC. 301. SHORT TITLE.

This title may be cited as the ''Small Business Health Improvement Act of 2007''.

SEC. 302. RULES GOVERNING ASSOCIATION HEALTH PLANS.

(a) IN GENERAL.—Subtitle B of title I of the Employee Retirement Income Security Act of 1974 is amended by adding after part 7 the following new part:

''PART 8—RULES GOVERNING ASSOCIATION HEALTH PLANS

''SEC. 801. ASSOCIATION HEALTH PLANS.

''(a) IN GENERAL.—For purposes of this part, the term 'association health plan' means a group health plan whose sponsor is (or is deemed under this part to be) described in subsection (b).

''(b) SPONSORSHIP.—The sponsor of a group health plan is described in this subsection if such sponsor—

''(1) is organized and maintained in good faith, with a constitution and bylaws specifically stating its purpose and providing for periodic meetings on at least an annual basis, as a bona fide trade association, a bona fide industry association (including a rural electric cooperative association or a rural telephone cooperative association), a bona fide professional association, or a bona fide chamber of commerce (or similar bona fide business association, including a corporation or similar organization that operates on a cooperative basis (within the meaning of section 1381 of the Internal Revenue Code of 1986)), for substantial purposes other than that of obtaining or providing medical care;

''(2) is established as a permanent entity which receives the active support of its members and requires for membership payment on a periodic basis of dues or payments necessary to maintain eligibility for membership in the sponsor; and

''(3) does not condition membership, such dues or payments, or coverage under the plan on the basis of health status-related factors with respect to the employees of its members (or affiliated members), or the dependents of such employees, and does not condition such dues or payments on the basis of group health plan participation.

Any sponsor consisting of an association of entities which meet the requirements of paragraphs (1), (2), and (3) shall be deemed to be a sponsor described in this subsection.

''SEC. 802. CERTIFICATION OF ASSOCIATION HEALTH PLANS.

''(a) IN GENERAL.—The applicable authority shall prescribe by regulation a procedure under which, subject to subsection (b), the applicable authority shall certify association health plans which apply for certification as meeting the requirements of this part.

''(b) STANDARDS.—Under the procedure prescribed pursuant to subsection (a), in the case of an association health plan that provides at least one benefit option which does not consist of health insurance coverage, the applicable authority shall certify such plan as meeting the requirements of this part only if the applicable authority is satisfied that the applicable requirements of this part are met (or, upon the date on which the plan is to commence operations, will be met) with respect to the plan.

''(c) REQUIREMENTS APPLICABLE TO CERTIFIED PLANS.—An association health plan with respect to which certification under this part is in effect shall meet the applicable requirements of this part, effective on the date of certification (or, if later, on the date on which the plan is to commence operations).

''(d) REQUIREMENTS FOR CONTINUED CERTIFICATION.—The applicable authority may provide by regulation for continued certification of association health plans under this part.

''(e) CLASS CERTIFICATION FOR FULLY INSURED PLANS.—The applicable authority shall establish a class certification procedure for association health plans under which all benefits consist of health insurance coverage. Under such procedure, the applicable authority shall provide for the granting of certification under this part to the plans in each class of such association health plans upon appropriate filing under such procedure in connection with plans in such class and payment of the prescribed fee under section 807(a).

''(f) CERTIFICATION OF SELF-INSURED ASSOCIATION HEALTH PLANS.—An association health plan which offers one or more benefit options which do not consist of health insurance coverage may be certified under this part only if such plan consists of any of the following:

''(1) a plan which offered such coverage on the date of the enactment of the Small Business Health Improvement Act of 2007,

''(2) a plan under which the sponsor does not restrict membership to one or more trades and businesses or industries and whose eligible participating employers represent a broad cross-section of trades and businesses or industries, or

''(3) a plan whose eligible participating employers represent one or more trades or businesses, or one or more industries, consisting of any of the following: agriculture; equipment and automobile dealerships; barbering and cosmetology; certified public accounting practices; child care; construction; dance, theatrical and orchestra productions; disinfecting and pest control; financial services; fishing; foodservice establishments; hospitals; labor organizations; logging; manufacturing (metals); mining; medical and dental practices; medical laboratories; professional consulting services; sanitary services; transportation (local and freight); warehousing; wholesaling/distributing; or any other trade or business or industry which has been indicated as having average or above-average risk or health claims experience by reason of State rate filings, denials of coverage, proposed premium rate levels, or other means demonstrated by such plan in accordance with regulations.

''SEC. 803. REQUIREMENTS RELATING TO SPONSORS AND BOARDS OF TRUSTEES.

''(a) SPONSOR.—The requirements of this subsection are met with respect to an association health plan if the sponsor has met (or is deemed under this part to have met) the requirements of section 801(b) for a continuous period of not less than 3 years ending with the date of the application for certification under this part.

''(b) BOARD OF TRUSTEES.—The requirements of this subsection are met with respect to an association health plan if the following requirements are met:

''(1) FISCAL CONTROL.—The plan is operated, pursuant to a trust agreement, by a board of trustees which has complete fiscal control over the plan and which is responsible for all operations of the plan.

''(2) RULES OF OPERATION AND FINANCIAL CONTROLS.—The board of trustees has in effect rules of operation and financial controls, based on a 3-year plan of operation, adequate to carry out the terms of the plan and to meet all requirements of this title applicable to the plan.

''(3) RULES GOVERNING RELATIONSHIP TO PARTICIPATING EMPLOYERS AND TO CONTRACTORS.—

''(A) BOARD MEMBERSHIP.—

''(i) IN GENERAL.—Except as provided in clauses (ii) and (iii), the members of the board of trustees are individuals selected from individuals who are the owners, officers, directors, or employees of the participating employers or who are partners in the participating employers and actively participate in the business.

''(ii) LIMITATION.—

''(I) GENERAL RULE.—Except as provided in subclauses (II) and (III), no such member is an owner, officer, director, or employee of, or partner in, a contract administrator or other service provider to the plan.

''(II) LIMITED EXCEPTION FOR PROVIDERS OF SERVICES SOLELY ON BEHALF OF THE SPONSOR.—Officers or employees of a sponsor which is a service provider (other than a contract administrator) to the plan may be members of the board if they constitute not more than 25 percent of the membership of the board and they do not provide services to the plan other than on behalf of the sponsor.

''(III) TREATMENT OF PROVIDERS OF MEDICAL CARE.—In the case of a sponsor which is an association whose membership consists primarily of providers of medical care, subclause (I) shall not apply in the case of any service provider described in subclause (I) who is a provider of medical care under the plan.

''(iii) CERTAIN PLANS EXCLUDED.—Clause (i) shall not apply to an association health plan which is in existence on the date of the enactment of the Small Business Health Improvement Act of 2007.

''(B) SOLE AUTHORITY.—The board has sole authority under the plan to approve applications for participation in the plan and to contract with a service provider to administer the day-to-day affairs of the plan.

''(c) TREATMENT OF FRANCHISE NETWORKS.—In the case of a group health plan which is established and maintained by a franchiser for a franchise network consisting of its franchisees—

''(1) the requirements of subsection (a) and section 801(a) shall be deemed met if such requirements would otherwise be met if the franchiser were deemed to be the sponsor referred to in section 801(b), such network were deemed to be an association described in section 801(b), and each franchisee were deemed to be a member (of the association and the sponsor) referred to in section 801(b); and

''(2) the requirements of section 804(a)(1) shall be deemed met.

The Secretary may by regulation define for purposes of this subsection the terms 'franchiser', 'franchise network', and 'franchisee'.

''SEC. 804. PARTICIPATION AND COVERAGE REQUIREMENTS.

''(a) COVERED EMPLOYERS AND INDIVIDUALS.—The requirements of this subsection are met with respect to an association health plan if, under the terms of the plan—

''(1) each participating employer must be—

''(A) a member of the sponsor,

''(B) the sponsor, or

''(C) an affiliated member of the sponsor with respect to which the requirements of subsection (b) are met,

except that, in the case of a sponsor which is a professional association or other individual-based association, if at least one of the officers, directors, or employees of an employer, or at least one of the individuals who are partners in an employer and who actively participates in the business, is a member or such an affiliated member of the sponsor, participating employers may also include such employer; and

''(2) all individuals commencing coverage under the plan after certification under this part must be—

''(A) active or retired owners (including self-employed individuals), officers, directors, or employees of, or partners in, participating employers; or

''(B) the beneficiaries of individuals described in subparagraph (A).

''(b) COVERAGE OF PREVIOUSLY UNINSURED EMPLOYEES.—In the case of an association health plan in existence on the date of the enactment of the Small Business Health Improvement Act of 2007, an affiliated member of the sponsor of the plan may be offered coverage under the plan as a participating employer only if—

''(1) the affiliated member was an affiliated member on the date of certification under this part; or

''(2) during the 12-month period preceding the date of the offering of such coverage, the affiliated member has not maintained or contributed to a group health plan with respect to any of its employees who would otherwise be eligible to participate in such association health plan.

''(c) INDIVIDUAL MARKET UNAFFECTED.—The requirements of this subsection are met with respect to an association health plan if, under the terms of the plan, no participating employer may provide health insurance coverage in the individual market for any employee not covered under the plan which is similar to the coverage contemporaneously provided to employees of the employer under the plan, if such exclusion of the employee from coverage under the plan is based on a health status-related factor with respect to the employee and such employee would, but for such exclusion on such basis, be eligible for coverage under the plan.

''(d) PROHIBITION OF DISCRIMINATION AGAINST EMPLOYERS AND EMPLOYEES ELIGIBLE TO PARTICIPATE.—The requirements of this subsection are met with respect to an association health plan if—

''(1) under the terms of the plan, all employers meeting the preceding requirements of this section are eligible to qualify as participating employers for all geographically available coverage options, unless, in the case of any such employer, participation or contribution requirements of the type referred to in section 2711 of the Public Health Service Act are not met;

''(2) upon request, any employer eligible to participate is furnished information regarding all coverage options available under the plan; and

''(3) the applicable requirements of sections 701, 702, and 703 are met with respect to the plan.

''SEC. 805. OTHER REQUIREMENTS RELATING TO PLAN DOCUMENTS, CONTRIBUTION RATES, AND BENEFIT OPTIONS.

''(a) IN GENERAL.—The requirements of this section are met with respect to an association health plan if the following requirements are met:

''(1) CONTENTS OF GOVERNING INSTRUMENTS.—The instruments governing the plan include a written instrument, meeting the requirements of an instrument required under section 402(a)(1), which—

''(A) provides that the board of trustees serves as the named fiduciary required for plans under section 402(a)(1) and serves in the capacity of a plan administrator (referred to in section 3(16)(A));

''(B) provides that the sponsor of the plan is to serve as plan sponsor (referred to in section 3(16)(B)); and

''(C) incorporates the requirements of section 806.

''(2) CONTRIBUTION RATES MUST BE NONDISCRIMINATORY.—

''(A) The contribution rates for any participating small employer do not vary on the basis of any health status-related factor in relation to employees of such employer or their beneficiaries and do not vary on the basis of the type of business or industry in which such employer is engaged.

''(B) Nothing in this title or any other provision of law shall be construed to preclude an association health plan, or a health insurance issuer offering health insurance coverage in connection with an association health plan, from—

''(i) setting contribution rates based on the claims experience of the plan; or

''(ii) varying contribution rates for small employers in a State to the extent that such rates could vary using the same methodology employed in such State for regulating premium rates in the small group market with respect to health insurance coverage offered in connection with bona fide associations (within the meaning of section 2791(d)(3) of the Public Health Service Act),

subject to the requirements of section 702(b) relating to contribution rates.

''(3) FLOOR FOR NUMBER OF COVERED INDIVIDUALS WITH RESPECT TO CERTAIN PLANS.—If any benefit option under the plan does not consist of health insurance coverage, the plan has as of the beginning of the plan year not fewer than 1,000 participants and beneficiaries.

''(4) MARKETING REQUIREMENTS.—

''(A) IN GENERAL.—If a benefit option which consists of health insurance coverage is offered under the plan, State-licensed insurance agents shall be used to distribute to small employers coverage which does not consist of health insurance coverage in a manner comparable to the manner in which such agents are used to distribute health insurance coverage.

''(B) STATE-LICENSED INSURANCE AGENTS.—For purposes of subparagraph (A), the term 'State-licensed insurance agents' means one or more agents who are licensed in a State and are subject to the laws of such State relating to licensure, qualification, testing, examination, and continuing education of persons authorized to offer, sell, or solicit health insurance coverage in such State.

''(5) REGULATORY REQUIREMENTS.—Such other requirements as the applicable authority determines are necessary to carry out the purposes of this part, which shall be prescribed by the applicable authority by regulation.

''(b) ABILITY OF ASSOCIATION HEALTH PLANS TO DESIGN BENEFIT OPTIONS.—Subject to section 514(d), nothing in this part or any provision of State law (as defined in section 514(c)(1)) shall be construed to preclude an association health plan, or a health insurance issuer offering health insurance coverage in connection with an association health plan, from exercising its sole discretion in selecting the specific items and services consisting of medical care to be included as benefits under such plan or coverage, except (subject to section 514) in the case of (1) any law to the extent that it is not preempted under section 731(a)(1) with respect to matters governed by section 711, 712, or 713, or (2) any law of the State with which filing and approval of a policy type offered by the plan was initially obtained to the extent that such law prohibits an exclusion of a specific disease from such coverage.

''SEC. 806. MAINTENANCE OF RESERVES AND PROVISIONS FOR SOLVENCY FOR PLANS PROVIDING HEALTH BENEFITS IN ADDITION TO HEALTH INSURANCE COVERAGE.

''(a) IN GENERAL.—The requirements of this section are met with respect to an association health plan if—

''(1) the benefits under the plan consist solely of health insurance coverage; or

''(2) if the plan provides any additional benefit options which do not consist of health insurance coverage, the plan—

''(A) establishes and maintains reserves with respect to such additional benefit options, in amounts recommended by the qualified actuary, consisting of—

''(i) a reserve sufficient for unearned contributions;

''(ii) a reserve sufficient for benefit liabilities which have been incurred, which have not been satisfied, and for which risk of loss has not yet been transferred, and for expected administrative costs with respect to such benefit liabilities;

''(iii) a reserve sufficient for any other obligations of the plan; and

''(iv) a reserve sufficient for a margin of error and other fluctuations, taking into account the specific circumstances of the plan; and

''(B) establishes and maintains aggregate and specific excess/stop loss insurance and solvency indemnification, with respect to such additional benefit options for which risk of loss has not yet been transferred, as follows:

''(i) The plan shall secure aggregate excess/stop loss insurance for the plan with an attachment point which is not greater than 125 percent of expected gross annual claims. The applicable authority may by regulation provide for upward adjustments in the amount of such percentage in specified circumstances in which the plan specifically provides for and maintains reserves in excess of the amounts required under subparagraph (A).

''(ii) The plan shall secure specific excess/stop loss insurance for the plan with an attachment point which is at least equal to an amount recommended by the plan's qualified

actuary. The applicable authority may by regulation provide for adjustments in the amount of such insurance in specified circumstances in which the plan specifically provides for and maintains reserves in excess of the amounts required under subparagraph (A).

''(iii) The plan shall secure indemnification insurance for any claims which the plan is unable to satisfy by reason of a plan termination.

Any person issuing to a plan insurance described in clause (i), (ii), or (iii) of subparagraph (B) shall notify the Secretary of any failure of premium payment meriting cancellation of the policy prior to undertaking such a cancellation. Any regulations prescribed by the applicable authority pursuant to clause (i) or (ii) of subparagraph (B) may allow for such adjustments in the required levels of excess/stop loss insurance as the qualified actuary may recommend, taking into account the specific circumstances of the plan.

''(b) MINIMUM SURPLUS IN ADDITION TO CLAIMS RESERVES.—In the case of any association health plan described in subsection (a)(2), the requirements of this subsection are met if the plan establishes and maintains surplus in an amount at least equal to—

''(1) $500,000, or

''(2) such greater amount (but not greater than $2,000,000) as may be set forth in regulations prescribed by the applicable authority, considering the level of aggregate and specific excess/stop loss insurance provided with respect to such plan and other factors related to solvency risk, such as the plan's projected levels of participation or claims, the nature of the plan's liabilities, and the types of assets available to assure that such liabilities are met.

''(c) ADDITIONAL REQUIREMENTS.—In the case of any association health plan described in subsection (a)(2), the applicable authority may provide such additional requirements relating to reserves, excess/stop loss insurance, and indemnification insurance as the applicable authority considers appropriate. Such requirements may be provided by regulation with respect to any such plan or any class of such plans.

''(d) ADJUSTMENTS FOR EXCESS/STOP LOSS INSURANCE.—The applicable authority may provide for adjustments to the levels of reserves otherwise required under subsections (a) and (b) with respect to any plan or class of plans to take into account excess/stop loss insurance provided with respect to such plan or plans.

''(e) ALTERNATIVE MEANS OF COMPLIANCE.—The applicable authority may permit an association health plan described in subsection (a)(2) to substitute, for all or part of the requirements of this section (except subsection (a)(2)(B)(iii)), such security, guarantee, hold-harmless arrangement, or other financial arrangement as the applicable authority determines to be adequate to enable the plan to fully meet all its financial obligations on a timely basis and is otherwise no less protective of the interests of participants and beneficiaries than the requirements for which it is substituted. The applicable authority may take into account, for purposes of this subsection, evidence provided by the plan or sponsor which demonstrates an assumption of liability with respect to the plan. Such evidence may be in the form of a contract of indemnification, lien, bonding, insurance, letter of credit, recourse under applicable terms of the plan in the form of assessments of participating employers, security, or other financial arrangement.

''(f) MEASURES TO ENSURE CONTINUED PAYMENT OF BENEFITS BY CERTAIN PLANS IN DISTRESS.—

''(1) PAYMENTS BY CERTAIN PLANS TO ASSOCIATION HEALTH PLAN FUND.—

''(A) IN GENERAL.—In the case of an association health plan described in subsection (a)(2), the requirements of this subsection are met if the plan makes payments into the Association Health Plan Fund under this subparagraph when they are due. Such payments shall consist of annual payments in the amount of $5,000, and, in addition to such annual payments, such supplemental payments as the Secretary may determine to be necessary under paragraph (2). Payments under this paragraph are payable to the Fund at the time determined by the Secretary. Initial payments are due in advance of certification under this part. Payments shall continue to accrue until a plan's assets are distributed pursuant to a termination procedure.

''(B) PENALTIES FOR FAILURE TO MAKE PAYMENTS.—If any payment is not made by a plan when it is due, a late payment charge of not more than 100 percent of the payment which was not timely paid shall be payable by the plan to the Fund.

''(C) CONTINUED DUTY OF THE SECRETARY.—The Secretary shall not cease to carry out the provisions of paragraph (2) on account of the failure of a plan to pay any payment when due.

''(2) PAYMENTS BY SECRETARY TO CONTINUE EXCESS/STOP LOSS INSURANCE COVERAGE AND INDEMNIFICATION INSURANCE COVERAGE FOR CERTAIN PLANS.—In any case in which the applicable authority determines that there is, or that there is reason to believe that there will be: (A) a failure to take necessary corrective actions under section 809(a) with respect to an association health plan described in subsection (a)(2); or (B) a termination of such a plan under section 809(b) or 810(b)(8) (and, if the applicable authority is not the Secretary, certifies such determination to the Secretary), the Secretary shall determine the amounts necessary to make payments to an insurer (designated by the Secretary) to maintain in force excess/stop loss insurance coverage or indemnification insurance coverage for such plan, if the Secretary determines that there is a reasonable expectation that, without such payments, claims would not be satisfied by reason of termination of such coverage. The Secretary shall, to the extent provided in advance in appropriation Acts, pay such amounts so determined to the insurer designated by the Secretary.

''(3) ASSOCIATION HEALTH PLAN FUND.—

''(A) IN GENERAL.—There is established on the books of the Treasury a fund to be known as the 'Association Health Plan Fund'. The Fund shall be available for making payments pursuant to paragraph (2). The Fund shall be credited with payments received pursuant to paragraph (1)(A), penalties received pursuant to paragraph (1)(B); and earnings on investments of amounts of the Fund under subparagraph (B).

''(B) INVESTMENT.—Whenever the Secretary determines that the moneys of the fund are in excess of current needs, the Secretary may request the investment of such amounts as the Secretary determines advisable by the Secretary of the Treasury in obligations issued or guaranteed by the United States.

''(g) EXCESS/STOP LOSS INSURANCE.—For purposes of this section—

''(1) AGGREGATE EXCESS/STOP LOSS INSURANCE.—The term 'aggregate excess/stop loss insurance' means, in connection with an association health plan, a contract—

''(A) under which an insurer (meeting such minimum standards as the applicable authority may prescribe by regulation) provides for payment to the plan with respect to aggregate claims under the plan in excess of an amount or amounts specified in such contract;

''(B) which is guaranteed renewable; and

''(C) which allows for payment of premiums by any third party on behalf of the insured plan.

''(2) SPECIFIC EXCESS/STOP LOSS INSURANCE.—The term 'specific excess/stop loss insurance' means, in connection with an association health plan, a contract—

''(A) under which an insurer (meeting such minimum standards as the applicable authority may prescribe by regulation) provides for payment to the plan with respect to claims under the plan in connection with a covered individual in excess of an amount or amounts specified in such contract in connection with such covered individual;

''(B) which is guaranteed renewable; and

''(C) which allows for payment of premiums by any third party on behalf of the insured plan.

''(h) INDEMNIFICATION INSURANCE.—For purposes of this section, the term 'indemnification insurance' means, in connection with an association health plan, a contract—

''(1) under which an insurer (meeting such minimum standards as the applicable authority may prescribe by regulation) provides for payment to the plan with respect to claims under the plan which the plan is unable to satisfy by reason of a termination pursuant to section 809(b) (relating to mandatory termination);

''(2) which is guaranteed renewable and noncancellable for any reason (except as the applicable authority may prescribe by regulation); and

''(3) which allows for payment of premiums by any third party on behalf of the insured plan.

''(i) RESERVES.—For purposes of this section, the term 'reserves' means, in connection with an association health plan, plan assets which meet the fiduciary standards under part 4 and such additional requirements regarding liquidity as the applicable authority may prescribe by regulation.

''(j) SOLVENCY STANDARDS WORKING GROUP.—

''(1) IN GENERAL.—Within 90 days after the date of the enactment of the Small Business Health Improvement Act of 2007, the applicable authority shall establish a Solvency Standards Working Group. In prescribing the initial regulations under this section, the applicable authority shall take into account the recommendations of such Working Group.

''(2) MEMBERSHIP.—The Working Group shall consist of not more than 15 members appointed by the applicable authority. The applicable authority shall include among persons invited to membership on the Working Group at least one of each of the following:

''(A) a representative of the National Association of Insurance Commissioners;

''(B) a representative of the American Academy of Actuaries;

''(C) a representative of the State governments, or their interests;

''(D) a representative of existing self-insured arrangements, or their interests;

''(E) a representative of associations of the type referred to in section 801(b)(1), or their interests; and

''(F) a representative of multiemployer plans that are group health plans, or their interests.

''SEC. 807. REQUIREMENTS FOR APPLICATION AND RELATED REQUIREMENTS.

''(a) FILING FEE.—Under the procedure prescribed pursuant to section 802(a), an association health plan shall pay to the applicable authority at the time of filing an application for certification under this part a filing fee in the amount of $5,000, which shall be

available in the case of the Secretary, to the extent provided in appropriation Acts, for the sole purpose of administering the certification procedures applicable with respect to association health plans.

''(b) INFORMATION TO BE INCLUDED IN APPLICATION FOR CERTIFICATION.—An application for certification under this part meets the requirements of this section only if it includes, in a manner and form which shall be prescribed by the applicable authority by regulation, at least the following information:

''(1) IDENTIFYING INFORMATION.—The names and addresses of—

''(A) the sponsor; and

''(B) the members of the board of trustees of the plan.

''(2) STATES IN WHICH PLAN INTENDS TO DO BUSINESS.—The States in which participants and beneficiaries under the plan are to be located and the number of them expected to be located in each such State.

''(3) BONDING REQUIREMENTS.—Evidence provided by the board of trustees that the bonding requirements of section 412 will be met as of the date of the application or (if later) commencement of operations.

''(4) PLAN DOCUMENTS.—A copy of the documents governing the plan (including any bylaws and trust agreements), the summary plan description, and other material describing the benefits that will be provided to participants and beneficiaries under the plan.

''(5) AGREEMENTS WITH SERVICE PROVIDERS.—A copy of any agreements between the plan and contract administrators and other service providers.

''(6) FUNDING REPORT.—In the case of association health plans providing benefits options in addition to health insurance coverage, a report setting forth information with respect to such additional benefit options determined as of a date within the 120-day period ending with the date of the application, including the following:

''(A) RESERVES.—A statement, certified by the board of trustees of the plan, and a statement of actuarial opinion, signed by a qualified actuary, that all applicable requirements of section 806 are or will be met in accordance with regulations which the applicable authority shall prescribe.

''(B) ADEQUACY OF CONTRIBUTION RATES.—A statement of actuarial opinion, signed by a qualified actuary, which sets forth a description of the extent to which contribution rates are adequate to provide for the payment of all obligations and the maintenance of required reserves under the plan for the 12-month period beginning with such date within such 120-day period, taking into account the expected coverage and experience of the plan. If the contribution rates are not fully adequate, the statement of actuarial opinion shall indicate the extent to which the rates are inadequate and the changes needed to ensure adequacy.

''(C) CURRENT AND PROJECTED VALUE OF ASSETS AND LIABILITIES.—A statement of actuarial opinion signed by a qualified actuary, which sets forth the current value of the assets and liabilities accumulated under the plan and a projection of the assets, liabilities, income, and expenses of the plan for the 12-month period referred to in subparagraph (B). The income statement shall identify separately the plan's administrative expenses and claims.

''(D) COSTS OF COVERAGE TO BE CHARGED AND OTHER EXPENSES.—A statement of the costs of coverage to be charged, including an itemization of amounts for administration, reserves, and other expenses associated with the operation of the plan.

''(E) OTHER INFORMATION.—Any other information as may be determined by the applicable authority, by regulation, as necessary to carry out the purposes of this part.

''(c) FILING NOTICE OF CERTIFICATION WITH STATES.—A certification granted under this part to an association health plan shall not be effective unless written notice of such certification is filed with the applicable State authority of each State in which at least 25 percent of the participants and beneficiaries under the plan are located. For purposes of this subsection, an individual shall be considered to be located in the State in which a known address of such individual is located or in which such individual is employed.

''(d) NOTICE OF MATERIAL CHANGES.—In the case of any association health plan certified under this part, descriptions of material changes in any information which was required to be submitted with the application for the certification under this part shall be filed in such form and manner as shall be prescribed by the applicable authority by regulation. The applicable authority may require by regulation prior notice of material changes with respect to specified matters which might serve as the basis for suspension or revocation of the certification.

''(e) REPORTING REQUIREMENTS FOR CERTAIN ASSOCIATION HEALTH PLANS.—An association health plan certified under this part which provides benefit options in addition to health insurance coverage for such plan year shall meet the requirements of section 103 by filing an annual report under such section which shall include information described in subsection (b)(6) with respect to the plan year and, notwithstanding section 104(a)(1)(A), shall be filed with the applicable authority not later than 90 days after the close of the plan year (or on such later date as may be prescribed by the applicable authority). The applicable authority may require by regulation such interim reports as it considers appropriate.

''(f) ENGAGEMENT OF QUALIFIED ACTUARY.—The board of trustees of each association health plan which provides benefits options in addition to health insurance coverage and which is applying for certification under this part or is certified under this part shall engage, on behalf of all participants and beneficiaries, a qualified actuary who shall be responsible for the preparation of the materials comprising information necessary to be submitted by a qualified actuary under this part. The qualified actuary shall utilize such assumptions and techniques as are necessary to enable such actuary to form an opinion as to whether the contents of the matters reported under this part—

''(1) are in the aggregate reasonably related to the experience of the plan and to reasonable expectations; and

''(2) represent such actuary's best estimate of anticipated experience under the plan.

The opinion by the qualified actuary shall be made with respect to, and shall be made a part of, the annual report.

"SEC. 808. NOTICE REQUIREMENTS FOR VOLUNTARY TERMINATION.

''Except as provided in section 809(b), an association health plan which is or has been certified under this part may terminate (upon or at any time after cessation of accruals in benefit liabilities) only if the board of trustees, not less than 60 days before the proposed termination date—

''(1) provides to the participants and beneficiaries a written notice of intent to terminate stating that such termination is intended and the proposed termination date;

''(2) develops a plan for winding up the affairs of the plan in connection with such termination in a manner which will result in timely payment of all benefits for which the plan is obligated; and

''(3) submits such plan in writing to the applicable authority.

Actions required under this section shall be taken in such form and manner as may be prescribed by the applicable authority by regulation.

"SEC. 809. CORRECTIVE ACTIONS AND MANDATORY TERMINATION.

''(a) ACTIONS TO AVOID DEPLETION OF RESERVES.—An association health plan which is certified under this part and which provides benefits other than health insurance coverage shall continue to meet the requirements of section 806, irrespective of whether such certification continues in effect. The board of trustees of such plan shall determine quarterly whether the requirements of section 806 are met. In any case in which the board determines that there is reason to believe that there is or will be a failure to meet such requirements, or the applicable authority makes such a determination and so notifies the board, the board shall immediately notify the qualified actuary engaged by the plan, and such actuary shall, not later than the end of the next following month, make such recommendations to the board for corrective action as the actuary determines necessary to ensure compliance with section 806. Not later than 30 days after receiving from the actuary recommendations for corrective actions, the board shall notify the applicable authority (in such form and manner as the applicable authority may prescribe by regulation) of such recommendations of the actuary for corrective action, together with a description of the actions (if any) that the board has taken or plans to take in response to such recommendations. The board shall thereafter report to the applicable authority, in such form and frequency as the applicable authority may specify to the board, regarding corrective action taken by the board until the requirements of section 806 are met.

''(b) MANDATORY TERMINATION.—In any case in which—

''(1) the applicable authority has been notified under subsection (a) (or by an issuer of excess/stop loss insurance or indemnity insurance pursuant to section 806(a)) of a failure of an association health plan which is or has been certified under this part and is described in section 806(a)(2) to meet the requirements of section 806 and has not been notified by the board of trustees of the plan that corrective action has restored compliance with such requirements; and

''(2) the applicable authority determines that there is a reasonable expectation that the plan will continue to fail to meet the requirements of section 806,

the board of trustees of the plan shall, at the direction of the applicable authority, terminate the plan and, in the course of the termination, take such actions as the applicable authority may require, including satisfying any claims referred to in section 806(a)(2)(B)(iii) and recovering for the plan any liability under subsection (a)(2)(B)(iii) or (e) of section 806, as necessary to ensure that the affairs of the plan will be, to the maximum extent possible, wound up in a manner which will result in timely provision of all benefits for which the plan is obligated.

"SEC. 810. TRUSTEESHIP BY THE SECRETARY OF INSOLVENT ASSOCIATION HEALTH PLANS PROVIDING HEALTH BENEFITS IN ADDITION TO HEALTH INSURANCE COVERAGE.

''(a) APPOINTMENT OF SECRETARY AS TRUSTEE FOR INSOLVENT PLANS.—Whenever the Secretary determines that an association health plan which is or has been certified under this part and which is described in section 806(a)(2) will be unable to provide benefits when due or is otherwise in a financially

hazardous condition, as shall be defined by the Secretary by regulation, the Secretary shall, upon notice to the plan, apply to the appropriate United States district court for appointment of the Secretary as trustee to administer the plan for the duration of the insolvency. The plan may appear as a party and other interested persons may intervene in the proceedings at the discretion of the court. The court shall appoint such Secretary trustee if the court determines that the trusteeship is necessary to protect the interests of the participants and beneficiaries or providers of medical care or to avoid any unreasonable deterioration of the financial condition of the plan. The trusteeship of such Secretary shall continue until the conditions described in the first sentence of this subsection are remedied or the plan is terminated.

''(b) POWERS AS TRUSTEE.—The Secretary, upon appointment as trustee under subsection (a), shall have the power—

''(1) to do any act authorized by the plan, this title, or other applicable provisions of law to be done by the plan administrator or any trustee of the plan;

''(2) to require the transfer of all (or any part) of the assets and records of the plan to the Secretary as trustee;

''(3) to invest any assets of the plan which the Secretary holds in accordance with the provisions of the plan, regulations prescribed by the Secretary, and applicable provisions of law;

''(4) to require the sponsor, the plan administrator, any participating employer, and any employee organization representing plan participants to furnish any information with respect to the plan which the Secretary as trustee may reasonably need in order to administer the plan;

''(5) to collect for the plan any amounts due the plan and to recover reasonable expenses of the trusteeship;

''(6) to commence, prosecute, or defend on behalf of the plan any suit or proceeding involving the plan;

''(7) to issue, publish, or file such notices, statements, and reports as may be required by the Secretary by regulation or required by any order of the court;

''(8) to terminate the plan (or provide for its termination in accordance with section 809(b)) and liquidate the plan assets, to restore the plan to the responsibility of the sponsor, or to continue the trusteeship;

''(9) to provide for the enrollment of plan participants and beneficiaries under appropriate coverage options; and

''(10) to do such other acts as may be necessary to comply with this title or any order of the court and to protect the interests of plan participants and beneficiaries and providers of medical care.

''(c) NOTICE OF APPOINTMENT.—As soon as practicable after the Secretary's appointment as trustee, the Secretary shall give notice of such appointment to—

''(1) the sponsor and plan administrator;

''(2) each participant;

''(3) each participating employer; and

''(4) if applicable, each employee organization which, for purposes of collective bargaining, represents plan participants.

''(d) ADDITIONAL DUTIES.—Except to the extent inconsistent with the provisions of this title, or as may be otherwise ordered by the court, the Secretary, upon appointment as trustee under this section, shall be subject to the same duties as those of a trustee under section 704 of title 11, United States Code, and shall have the duties of a fiduciary for purposes of this title.

''(e) OTHER PROCEEDINGS.—An application by the Secretary under this subsection may be filed notwithstanding the pendency in the same or any other court of any bankruptcy, mortgage foreclosure, or equity receivership proceeding, or any proceeding to reorganize, conserve, or liquidate such plan or its property, or any proceeding to enforce a lien against property of the plan.

''(f) JURISDICTION OF COURT.—

''(1) IN GENERAL.—Upon the filing of an application for the appointment as trustee or the issuance of a decree under this section, the court to which the application is made shall have exclusive jurisdiction of the plan involved and its property wherever located with the powers, to the extent consistent with the purposes of this section, of a court of the United States having jurisdiction over cases under chapter 11 of title 11, United States Code. Pending an adjudication under this section such court shall stay, and upon appointment by it of the Secretary as trustee, such court shall continue the stay of, any pending mortgage foreclosure, equity receivership, or other proceeding to reorganize, conserve, or liquidate the plan, the sponsor, or property of such plan or sponsor, and any other suit against any receiver, conservator, or trustee of the plan, the sponsor, or property of the plan or sponsor. Pending such adjudication and upon the appointment by it of the Secretary as trustee, the court may stay any proceeding to enforce a lien against property of the plan or the sponsor or any other suit against the plan or the sponsor.

''(2) VENUE.—An action under this section may be brought in the judicial district where the sponsor or the plan administrator resides or does business or where any asset of the plan is situated. A district court in which such action is brought may issue process with respect to such action in any other judicial district.

''(g) PERSONNEL.—In accordance with regulations which shall be prescribed by the Secretary, the Secretary shall appoint, retain, and compensate accountants, actuaries, and other professional service personnel as may be necessary in connection with the Secretary's service as trustee under this section.

''SEC. 811. STATE ASSESSMENT AUTHORITY.

''(a) IN GENERAL.—Notwithstanding section 514, a State may impose by law a contribution tax on an association health plan described in section 806(a)(2), if the plan commenced operations in such State after the date of the enactment of the Small Business Health Improvement Act of 2007.

''(b) CONTRIBUTION TAX.—For purposes of this section, the term 'contribution tax' imposed by a State on an association health plan means any tax imposed by such State if—

''(1) such tax is computed by applying a rate to the amount of premiums or contributions, with respect to individuals covered under the plan who are residents of such State, which are received by the plan from participating employers located in such State or from such individuals;

''(2) the rate of such tax does not exceed the rate of any tax imposed by such State on premiums or contributions received by insurers or health maintenance organizations for health insurance coverage offered in such State in connection with a group health plan;

''(3) such tax is otherwise nondiscriminatory; and

''(4) the amount of any such tax assessed on the plan is reduced by the amount of any tax or assessment otherwise imposed by the State on premiums, contributions, or both received by insurers or health maintenance organizations for health insurance coverage, aggregate excess/stop loss insurance (as defined in section 806(g)(1)), specific excess/stop loss insurance (as defined in section 806(g)(2)), other insurance related to the provision of medical care under the plan, or any combination thereof provided by such insurers or health maintenance organizations in such State in connection with such plan.

''SEC. 812. DEFINITIONS AND RULES OF CONSTRUCTION.

''(a) DEFINITIONS.—For purposes of this part—

''(1) GROUP HEALTH PLAN.—The term 'group health plan' has the meaning provided in section 733(a)(1) (after applying subsection (b) of this section).

''(2) MEDICAL CARE.—The term 'medical care' has the meaning provided in section 733(a)(2).

''(3) HEALTH INSURANCE COVERAGE.—The term 'health insurance coverage' has the meaning provided in section 733(b)(1).

''(4) HEALTH INSURANCE ISSUER.—The term 'health insurance issuer' has the meaning provided in section 733(b)(2).

''(5) APPLICABLE AUTHORITY.—The term 'applicable authority' means the Secretary, except that, in connection with any exercise of the Secretary's authority regarding which the Secretary is required under section 506(d) to consult with a State, such term means the Secretary, in consultation with such State.

''(6) HEALTH STATUS-RELATED FACTOR.—The term 'health status-related factor' has the meaning provided in section 733(d)(2).

''(7) INDIVIDUAL MARKET.—

''(A) IN GENERAL.—The term 'individual market' means the market for health insurance coverage offered to individuals other than in connection with a group health plan.

''(B) TREATMENT OF VERY SMALL GROUPS.—

''(i) IN GENERAL.—Subject to clause (ii), such term includes coverage offered in connection with a group health plan that has fewer than 2 participants as current employees or participants described in section 732(d)(3) on the first day of the plan year.

''(ii) STATE EXCEPTION.—Clause (i) shall not apply in the case of health insurance coverage offered in a State if such State regulates the coverage described in such clause in the same manner and to the same extent as coverage in the small group market (as defined in section 2791(e)(5) of the Public Health Service Act) is regulated by such State.

''(8) PARTICIPATING EMPLOYER.—The term 'participating employer' means, in connection with an association health plan, any employer, if any individual who is an employee of such employer, a partner in such employer, or a self-employed individual who is such employer (or any dependent, as defined under the terms of the plan, of such individual) is or was covered under such plan in connection with the status of such individual as such an employee, partner, or self-employed individual in relation to the plan.

''(9) APPLICABLE STATE AUTHORITY.—The term 'applicable State authority' means, with respect to a health insurance issuer in a State, the State insurance commissioner or official or officials designated by the State to enforce the requirements of title XXVII of the Public Health Service Act for the State involved with respect to such issuer.

''(10) QUALIFIED ACTUARY.—The term 'qualified actuary' means an individual who is a member of the American Academy of Actuaries.

''(11) AFFILIATED MEMBER.—The term 'affiliated member' means, in connection with a sponsor—

''(A) a person who is otherwise eligible to be a member of the sponsor but who elects an affiliated status with the sponsor,

''(B) in the case of a sponsor with members which consist of associations, a person who is a member of any such association and elects an affiliated status with the sponsor, or

''(C) in the case of an association health plan in existence on the date of the enactment of the Small Business Health Improvement Act of 2007, a person eligible to be a member of the sponsor or one of its member associations.

''(12) LARGE EMPLOYER.—The term 'large employer' means, in connection with a group health plan with respect to a plan year, an employer who employed an average of at least 51 employees on business days during the preceding calendar year and who employs at least 2 employees on the first day of the plan year.

''(13) SMALL EMPLOYER.—The term 'small employer' means, in connection with a group health plan with respect to a plan year, an employer who is not a large employer.

''(b) RULES OF CONSTRUCTION.—

''(1) EMPLOYERS AND EMPLOYEES.—For purposes of determining whether a plan, fund, or program is an employee welfare benefit plan which is an association health plan, and for purposes of applying this title in connection with such plan, fund, or program so determined to be such an employee welfare benefit plan—

''(A) in the case of a partnership, the term 'employer' (as defined in section 3(5)) includes the partnership in relation to the partners, and the term 'employee' (as defined in section 3(6)) includes any partner in relation to the partnership; and

''(B) in the case of a self-employed individual, the term 'employer' (as defined in section 3(5)) and the term 'employee' (as defined in section 3(6)) shall include such individual.

''(2) PLANS, FUNDS, AND PROGRAMS TREATED AS EMPLOYEE WELFARE BENEFIT PLANS.—In the case of any plan, fund, or program which was established or is maintained for the purpose of providing medical care (through the purchase of insurance or otherwise) for employees (or their dependents) covered thereunder and which demonstrates to the Secretary that all requirements for certification under this part would be met with respect to such plan, fund, or program if such plan, fund, or program were a group health plan, such plan, fund, or program shall be treated for purposes of this title as an employee welfare benefit plan on and after the date of such demonstration.''.

(b) CONFORMING AMENDMENTS TO PREEMPTION RULES.—

(1) Section 514(b)(6) of such Act (29 U.S.C. 1144(b)(6)) is amended by adding at the end the following new subparagraph:

''(E) The preceding subparagraphs of this paragraph do not apply with respect to any State law in the case of an association health plan which is certified under part 8.''.

(2) Section 514 of such Act (29 U.S.C. 1144) is amended—

(A) in subsection (b)(4), by striking ''Subsection (a)'' and inserting ''Subsections (a) and (d)'';

(B) in subsection (b)(5), by striking ''subsection (a)'' in subparagraph (A) and inserting ''subsection (a) of this section and subsections (a)(2)(B) and (b) of section 805'', and by striking ''subsection (a)'' in subparagraph (B) and inserting ''subsection (a) of this section or subsection (a)(2)(B) or (b) of section 805'';

(C) by redesignating subsection (d) as subsection (e); and

(D) by inserting after subsection (c) the following new subsection:

''(d)(1) Except as provided in subsection (b)(4), the provisions of this title shall supersede any and all State laws insofar as they may now or hereafter preclude, or have the effect of precluding, a health insurance issuer from offering health insurance coverage in connection with an association health plan which is certified under part 8.

''(2) Except as provided in paragraphs (4) and (5) of subsection (b) of this section—

''(A) In any case in which health insurance coverage of any policy type is offered under an association health plan certified under part 8 to a participating employer operating in such State, the provisions of this title shall supersede any and all laws of such State insofar as they may preclude a health insurance issuer from offering health insurance coverage of the same policy type to other employers operating in the State which are eligible for coverage under such association health plan, whether or not such other employers are participating employers in such plan.

''(B) In any case in which health insurance coverage of any policy type is offered in a State under an association health plan certified under part 8 and the filing, with the applicable State authority (as defined in section 812(a)(9)), of the policy form in connection with such policy type is approved by such State authority, the provisions of this title shall supersede any and all laws of any other State in which health insurance coverage of such type is offered, insofar as they may preclude, upon the filing in the same form and manner of such policy form with the applicable State authority in such other State, the approval of the filing in such other State.

''(3) Nothing in subsection (b)(6)(E) or the preceding provisions of this subsection shall be construed, with respect to health insurance issuers or health insurance coverage, to supersede or impair the law of any State—

''(A) providing solvency standards or similar standards regarding the adequacy of insurer capital, surplus, reserves, or contributions, or

''(B) relating to prompt payment of claims.

''(4) For additional provisions relating to association health plans, see subsections (a)(2)(B) and (b) of section 805.

''(5) For purposes of this subsection, the term 'association health plan' has the meaning provided in section 801(a), and the terms 'health insurance coverage', 'participating employer', and 'health insurance issuer' have the meanings provided such terms in section 812, respectively.''.

(3) Section 514(b)(6)(A) of such Act (29 U.S.C. 1144(b)(6)(A)) is amended—

(A) in clause (i)(II), by striking ''and'' at the end;

(B) in clause (ii), by inserting ''and which does not provide medical care (within the meaning of section 733(a)(2)),'' after ''arrangement,'', and by striking ''title.'' and inserting ''title, and''; and

(C) by adding at the end the following new clause:

''(iii) subject to subparagraph (E), in the case of any other employee welfare benefit plan which is a multiple employer welfare arrangement and which provides medical care (within the meaning of section 733(a)(2)), any law of any State which regulates insurance may apply.''.

(4) Section 514(e) of such Act (as redesignated by paragraph (2)(C)) is amended—

(A) by striking ''Nothing'' and inserting ''(1) Except as provided in paragraph (2), nothing''; and

(B) by adding at the end the following new paragraph:

''(2) Nothing in any other provision of law enacted on or after the date of the enactment of the Small Business Health Improvement Act of 2007 shall be construed to alter, amend, modify, invalidate, impair, or supersede any provision of this title, except by specific cross-reference to the affected section.''.

(c) PLAN SPONSOR.—Section 3(16)(B) of such Act (29 U.S.C. 102(16)(B)) is amended by adding at the end the following new sentence: ''Such term also includes a person serving as the sponsor of an association health plan under part 8.''.

(d) DISCLOSURE OF SOLVENCY PROTECTIONS RELATED TO SELF-INSURED AND FULLY INSURED OPTIONS UNDER ASSOCIATION HEALTH PLANS.—Section 102(b) of such Act (29 U.S.C. 102(b)) is amended by adding at the end the following: ''An association health plan shall include in its summary plan description, in connection with each benefit option, a description of the form of solvency or guarantee fund protection secured pursuant to this Act or applicable State law, if any.''.

(e) SAVINGS CLAUSE.—Section 731(c) of such Act is amended by inserting ''or part 8'' after ''this part''.

(f) REPORT TO THE CONGRESS REGARDING CERTIFICATION OF SELF-INSURED ASSOCIATION HEALTH PLANS.—Not later than January 1, 2010, the Secretary of Labor shall report to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate the effect association health plans have had, if any, on reducing the number of uninsured individuals.

(g) CLERICAL AMENDMENT.—The table of contents in section 1 of the Employee Retirement Income Security Act of 1974 is amended by inserting after the item relating to section 734 the following new items:

''PART 8—RULES GOVERNING ASSOCIATION HEALTH PLANS

''Sec. 801. Association health plans
''Sec. 802. Certification of association health plans
''Sec. 803. Requirements relating to sponsors and boards of trustees
''Sec. 804. Participation and coverage requirements
''Sec. 805. Other requirements relating to plan documents, contribution rates, and benefit options
''Sec. 806. Maintenance of reserves and provisions for solvency for plans providing health benefits in addition to health insurance coverage
''Sec. 807. Requirements for application and related requirements
''Sec. 808. Notice requirements for voluntary termination
''Sec. 809. Corrective actions and mandatory termination
''Sec. 810. Trusteeship by the Secretary of insolvent association health plans providing health benefits in addition to health insurance coverage
''Sec. 811. State assessment authority
''Sec. 812. Definitions and rules of construction''.

SEC. 303. CLARIFICATION OF TREATMENT OF SINGLE EMPLOYER ARRANGEMENTS.

Section 3(40)(B) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(40)(B)) is amended—

(1) in clause (i), by inserting after ''control group,'' the following: ''except that, in any case in which the benefit referred to in subparagraph (A) consists of medical care (as defined in section 812(a)(2)), two or more trades or businesses, whether or not incorporated, shall be deemed a single employer for any plan year of such plan, or any fiscal year of such other arrangement, if such trades or businesses are within the same control group during such year or at any time during the preceding 1-year period,'';

(2) in clause (iii), by striking ''(iii) the determination'' and inserting the following:

''(iii)(I) in any case in which the benefit referred to in subparagraph (A) consists of medical care (as defined in section 812(a)(2)), the determination of whether a trade or business is under 'common control' with another trade or business shall be determined

under regulations of the Secretary applying principles consistent and coextensive with the principles applied in determining whether employees of two or more trades or businesses are treated as employed by a single employer under section 4001(b), except that, for purposes of this paragraph, an interest of greater than 25 percent may not be required as the minimum interest necessary for common control, or

''(II) in any other case, the determination'';

(3) by redesignating clauses (iv) and (v) as clauses (v) and (vi), respectively; and

(4) by inserting after clause (iii) the following new clause:

''(iv) in any case in which the benefit referred to in subparagraph (A) consists of medical care (as defined in section 812(a)(2)), in determining, after the application of clause (i), whether benefits are provided to employees of two or more employers, the arrangement shall be treated as having only one participating employer if, after the application of clause (i), the number of individuals who are employees and former employees of any one participating employer and who are covered under the arrangement is greater than 75 percent of the aggregate number of all individuals who are employees or former employees of participating employers and who are covered under the arrangement,''.

SEC. 304. ENFORCEMENT PROVISIONS RELATING TO ASSOCIATION HEALTH PLANS.

(a) CRIMINAL PENALTIES FOR CERTAIN WILLFUL MISREPRESENTATIONS.—Section 501 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1131) is amended—

(1) by inserting ''(a)'' after ''Sec. 501.''; and

(2) by adding at the end the following new subsection:

''(b) Any person who willfully falsely represents, to any employee, any employee's beneficiary, any employer, the Secretary, or any State, a plan or other arrangement established or maintained for the purpose of offering or providing any benefit described in section 3(1) to employees or their beneficiaries as—

''(1) being an association health plan which has been certified under part 8;

''(2) having been established or maintained under or pursuant to one or more collective bargaining agreements which are reached pursuant to collective bargaining described in section 8(d) of the National Labor Relations Act (29 U.S.C. 158(d)) or paragraph Fourth of section 2 of the Railway Labor Act (45 U.S.C. 152, paragraph Fourth) or which are reached pursuant to labor-management negotiations under similar provisions of State public employee relations laws; or

''(3) being a plan or arrangement described in section 3(40)(A)(i),

shall, upon conviction, be imprisoned not more than 5 years, be fined under title 18, United States Code, or both.''.

(b) CEASE ACTIVITIES ORDERS.—Section 502 of such Act (29 U.S.C. 1132) is amended by adding at the end the following new subsection:

''(n) ASSOCIATION HEALTH PLAN CEASE AND DESIST ORDERS.—

''(1) IN GENERAL.—Subject to paragraph (2), upon application by the Secretary showing the operation, promotion, or marketing of an association health plan (or similar arrangement providing benefits consisting of medical care (as defined in section 733(a)(2))) that—

''(A) is not certified under part 8, is subject under section 514(b)(6) to the insurance laws of any State in which the plan or arrangement offers or provides benefits, and is not licensed, registered, or otherwise approved under the insurance laws of such State; or

''(B) is an association health plan certified under part 8 and is not operating in accordance with the requirements under part 8 for such certification,

a district court of the United States shall enter an order requiring that the plan or arrangement cease activities.

''(2) EXCEPTION.—Paragraph (1) shall not apply in the case of an association health plan or other arrangement if the plan or arrangement shows that—

''(A) all benefits under it referred to in paragraph (1) consist of health insurance coverage; and

''(B) with respect to each State in which the plan or arrangement offers or provides benefits, the plan or arrangement is operating in accordance with applicable State laws that are not superseded under section 514.

''(3) ADDITIONAL EQUITABLE RELIEF.—The court may grant such additional equitable relief, including any relief available under this title, as it deems necessary to protect the interests of the public and of persons having claims for benefits against the plan.''.

(c) RESPONSIBILITY FOR CLAIMS PROCEDURE.—Section 503 of such Act (29 U.S.C. 1133) is amended by inserting ''(a) IN GENERAL.—'' before ''In accordance'', and by adding at the end the following new subsection:

''(b) ASSOCIATION HEALTH PLANS.—The terms of each association health plan which is or has been certified under part 8 shall require the board of trustees or the named fiduciary (as applicable) to ensure that the requirements of this section are met in connection with claims filed under the plan.''.

SEC. 305. COOPERATION BETWEEN FEDERAL AND STATE AUTHORITIES.

Section 506 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1136) is amended by adding at the end the following new subsection:

''(d) CONSULTATION WITH STATES WITH RESPECT TO ASSOCIATION HEALTH PLANS.—

''(1) AGREEMENTS WITH STATES.—The Secretary shall consult with the State recognized under paragraph (2) with respect to an association health plan regarding the exercise of—

''(A) the Secretary's authority under sections 502 and 504 to enforce the requirements for certification under part 8; and

''(B) the Secretary's authority to certify association health plans under part 8 in accordance with regulations of the Secretary applicable to certification under part 8.

''(2) RECOGNITION OF PRIMARY DOMICILE STATE.—In carrying out paragraph (1), the Secretary shall ensure that only one State will be recognized, with respect to any particular association health plan, as the State with which consultation is required. In carrying out this paragraph—

''(A) in the case of a plan which provides health insurance coverage (as defined in section 812(a)(3)), such State shall be the State with which filing and approval of a policy type offered by the plan was initially obtained, and

''(B) in any other case, the Secretary shall take into account the places of residence of the participants and beneficiaries under the plan and the State in which the trust is maintained.''.

SEC. 306. EFFECTIVE DATE AND TRANSITIONAL AND OTHER RULES.

(a) EFFECTIVE DATE.—The amendments made by this title shall take effect one year after the date of the enactment of this Act. The Secretary of Labor shall first issue all regulations necessary to carry out the amendments made by this title within one year after the date of the enactment of this Act.

(b) TREATMENT OF CERTAIN EXISTING HEALTH BENEFITS PROGRAMS.—

(1) IN GENERAL.—In any case in which, as of the date of the enactment of this Act, an arrangement is maintained in a State for the purpose of providing benefits consisting of medical care for the employees and beneficiaries of its participating employers, at least 200 participating employers make contributions to such arrangement, such arrangement has been in existence for at least 10 years, and such arrangement is licensed under the laws of one or more States to provide such benefits to its participating employers, upon the filing with the applicable authority (as defined in section 812(a)(5) of the Employee Retirement Income Security Act of 1974 (as amended by this subtitle)) by the arrangement of an application for certification of the arrangement under part 8 of subtitle B of title I of such Act—

(A) such arrangement shall be deemed to be a group health plan for purposes of title I of such Act;

(B) the requirements of sections 801(a) and 803(a) of the Employee Retirement Income Security Act of 1974 shall be deemed met with respect to such arrangement;

(C) the requirements of section 803(b) of such Act shall be deemed met, if the arrangement is operated by a board of directors which—

(i) is elected by the participating employers, with each employer having one vote; and

(ii) has complete fiscal control over the arrangement and which is responsible for all operations of the arrangement;

(D) the requirements of section 804(a) of such Act shall be deemed met with respect to such arrangement; and

(E) the arrangement may be certified by any applicable authority with respect to its operations in any State only if it operates in such State on the date of certification.

The provisions of this subsection shall cease to apply with respect to any such arrangement at such time after the date of the enactment of this Act as the applicable requirements of this subsection are not met with respect to such arrangement.

(2) DEFINITIONS.—For purposes of this subsection, the terms ''group health plan'', ''medical care'', and ''participating employer'' shall have the meanings provided in section 812 of the Employee Retirement Income Security Act of 1974, except that the reference in paragraph (7) of such section to an ''association health plan'' shall be deemed a reference to an arrangement referred to in this subsection.

SA 180. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 143 submitted by Mr. SESSIONS and intended to be proposed to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; which was ordered to lie on the table; as follows:

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

DIVISION B—IMMIGRATION REFORM

SECTION 1001. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This division may be cited as the ''Secure America and Orderly Immigration Act''.

(b) TABLE OF CONTENTS.—The table of contents for this division is as follows:

SEC. 1002. FINDINGS.

Congress makes the following findings:

(1) The Government of the United States has an obligation to its citizens to secure its borders and ensure the rule of law in its communities.

(2) The Government of the United States must strengthen international border security efforts by dedicating adequate and significant resources for technology, personnel, and training for border region enforcement.

(3) Federal immigration policies must adhere to the United States tradition as a nation of immigrants and reaffirm this Nation's commitment to family unity, economic opportunity, and humane treatment.

(4) Immigrants have contributed significantly to the strength and economic prosperity of the United States and action must be taken to ensure their fair treatment by employers and protection against fraud and abuse.

(5) Current immigration laws and the enforcement of such laws are ineffective and do not serve the people of the United States, the national security interests of the United States, or the economic prosperity of the United States.

(6) The United States cannot effectively carry out its national security policies unless the United States identifies undocumented immigrants and encourages them to come forward and participate legally in the economy of the United States.

(7) Illegal immigration fosters other illegal activity, including human smuggling, trafficking, and document fraud, all of which undermine the national security interests of the United States.

(8) Illegal immigration burdens States and local communities with hundreds of millions of dollars in uncompensated expenses for law enforcement, health care, and other essential services.

(9) Illegal immigration creates an underclass of workers who are vulnerable to fraud and exploitation.

(10) Fixing the broken immigration system requires a comprehensive approach that provides for adequate legal channels for immigration and strong enforcement of immigration laws which will serve the economic, social, and security interests of the United States.

(11) Foreign governments, particularly those that share an international border with the United States, must play a critical role in securing international borders and deterring illegal entry of foreign nationals into the United States.

(12) Federal immigration policy should foster economic growth by allowing willing workers to be matched with willing employers when no United States worker is available to take a job.

(13) Immigration reform is a key component to achieving effective enforcement and will allow for the best use of security and enforcement resources to be focused on the greatest risks.

(14) Comprehensive immigration reform and strong enforcement of immigration laws will encourage legal immigration, deter illegal immigration, and promote the economic and national security interests of the United States.

TITLE I—BORDER SECURITY

SEC. 1101. DEFINITIONS.

In this title:

(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term ''appropriate congressional committees'' means—

(A) the Committee on Homeland Security and Governmental Affairs of the Senate;

(B) the Committee on the Judiciary of the Senate;

(C) the Committee on Homeland Security of the House of Representatives; and

(D) the Committee on the Judiciary of the House of Representatives.

(2) INTERNATIONAL BORDER OF THE UNITED STATES.—The term ''international border of the United States'' means the international border between the United States and Canada and the international border between the United States and Mexico, including points of entry along such international borders.

(3) SECRETARY.—Except as otherwise provided, the term ''Secretary'' means the Secretary of Homeland Security.

(4) SECURITY PLAN.—The term ''security plan'' means a security plan developed as part of the National Strategy for Border Security set forth under section 111(a) for the Border Patrol and the field offices of the Bureau of Customs and Border Protection of the Department of Homeland Security that has responsibility for the security of any portion of the international border of the United States.

Subtitle A—Border Security Strategic Planning

SEC. 1111. NATIONAL STRATEGY FOR BORDER SECURITY.

(a) IN GENERAL.—In conjunction with strategic homeland security planning efforts, the Secretary shall develop, implement, and update, as needed, a National Strategy for Border Security that includes a security plan for the Border Patrol and the field offices of the Bureau of Customs and Border Protection of the Department of Homeland Security that has responsibility for the security of any portion of the international border of the United States.

(b) CONTENTS.—The National Strategy for Border Security shall include—

(1) the identification and evaluation of the points of entry and all portions of the international border of the United States that, in the interests of national security and enforcement, must be protected from illegal transit;

(2) a description of the most appropriate, practical, and cost-effective means of defending the international border of the United

States against threats to security and illegal transit, including intelligence capacities, technology, equipment, personnel, and training needed to address security vulnerabilities within the United States for the Border Patrol and the field offices of the Bureau of Customs and Border Protection that have responsibility for any portion of the international border of the United States;

(3) risk-based priorities for assuring border security and realistic deadlines for addressing security and enforcement needs identified in paragraphs (1) and (2);

(4) a strategic plan that sets out agreed upon roles and missions of Federal, State, regional, local, and tribal authorities, including appropriate coordination among such authorities, to enable security enforcement and border lands management to be carried out in an efficient and effective manner;

(5) a prioritization of research and development objectives to enhance the security of the international border of the United States and enforcement needs to promote such security consistent with the provisions of subtitle B;

(6) an update of the 2001 Port of Entry Infrastructure Assessment Study conducted by the United States Customs Service, in consultation with the General Services Administration;

(7) strategic interior enforcement coordination plans with personnel of Immigration and Customs Enforcement;

(8) strategic enforcement coordination plans with overseas personnel of the Department of Homeland Security and the Department of State to end human smuggling and trafficking activities;

(9) any other infrastructure or security plan or report that the Secretary determines appropriate for inclusion;

(10) the identification of low-risk travelers and how such identification would facilitate cross-border travel; and

(11) ways to ensure that the trade and commerce of the United States is not diminished by efforts, activities, and programs aimed at securing the homeland.

(c) PRIORITY OF NATIONAL STRATEGY.—The National Strategy for Border Security shall be the governing document for Federal security and enforcement efforts related to securing the international border of the United States.

SEC. 1112. REPORTS TO CONGRESS.

(a) NATIONAL STRATEGY.—

(1) INITIAL SUBMISSION.—Not later than 1 year after the date of enactment of this Act, the Secretary shall submit the National Strategy for Border Security, including each security plan, to the appropriate congressional committees. Such plans shall include estimated costs of implementation and training from a fiscal and personnel perspective and a cost-benefit analysis of any technological security implementations.

(2) SUBSEQUENT SUBMISSIONS.—After the submission required under paragraph (1), the Secretary shall submit to the appropriate congressional committees any revisions to the National Strategy for Border Security, including any revisions to a security plan, not less frequently than April 1 of each odd-numbered year. The plan shall include estimated costs for implementation and training and a cost-benefit analysis of technological security implementations that take place during the time frame under evaluation.

(b) PERIODIC PROGRESS REPORTS.—

(1) REQUIREMENT FOR REPORT.—Each year, in conjunction with the submission of the budget to Congress under section 1105(a) of title 31, United States Code, the Secretary shall submit to the appropriate congressional committees an assessment of the progress made on implementing the National Strategy for Border Security, including each security plan.

(2) CONTENT.—Each progress report submitted under this subsection shall include any recommendations for improving and implementing the National Strategy for Border Security, including any recommendations for improving and implementing a security plan.

(c) CLASSIFIED MATERIAL.—

(1) IN GENERAL.—Any material included in the National Strategy for Border Security, including each security plan, that includes information that is properly classified under criteria established by Executive order shall be submitted to the appropriate congressional committees in a classified form.

(2) UNCLASSIFIED VERSION.—As appropriate, an unclassified version of the material described in paragraph (1) shall be provided to the appropriate congressional committees.

SEC. 1113. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Secretary such sums as may be necessary to carry out this subtitle for each of the 5 fiscal years beginning with the fiscal year after the fiscal year in which this Act was enacted.

Subtitle B—Border Infrastructure, Technology Integration, and Security Enhancement

SEC. 1121. BORDER SECURITY COORDINATION PLAN.

(a) IN GENERAL.—The Secretary shall coordinate with Federal, State, local, and tribal authorities on law enforcement, emergency response, and security-related responsibilities with regard to the international border of the United States to develop and implement a plan to ensure that the security of such international border is not compromised—

(1) when the jurisdiction for providing such security changes from one such authority to another such authority;

(2) in areas where such jurisdiction is shared by more than one such authority; or

(3) by one such authority relinquishing such jurisdiction to another such authority pursuant to a memorandum of understanding.

(b) ELEMENTS OF PLAN.—In developing the plan, the Secretary shall consider methods to—

(1) coordinate emergency responses;

(2) improve data-sharing, communications, and technology among the appropriate agencies;

(3) promote research and development relating to the activities described in paragraphs (1) and (2); and

(4) combine personnel and resource assets when practicable.

(c) REPORT.—Not later than 1 year after implementing the plan developed under subsection (a), the Secretary shall transmit a report to the appropriate congressional committees on the development and implementation of such plan.

SEC. 1122. BORDER SECURITY ADVISORY COMMITTEE.

(a) ESTABLISHMENT.—The Secretary is authorized to establish a Border Security Advisory Committee (referred to in this section as the ''Advisory Committee'') to provide advice and recommendations to the Secretary on border security and enforcement issues.

(b) COMPOSITION.—

(1) IN GENERAL.—The members of the Advisory Committee shall be appointed by the Secretary and shall include representatives of—

(A) States that are adjacent to the international border of the United States;

(B) local law enforcement agencies; community officials, and tribal authorities of such States; and

(C) other interested parties.

(2) MEMBERSHIP.—The Advisory Committee shall be comprised of members who represent a broad cross section of perspectives.

SEC. 1123. PROGRAMS ON THE USE OF TECHNOLOGIES FOR BORDER SECURITY.

(a) AERIAL SURVEILLANCE TECHNOLOGIES PROGRAM.—

(1) IN GENERAL.—In conjunction with the border surveillance plan developed under section 5201 of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108–458), the Secretary, not later than 60 days after the date of enactment of this Act, shall develop and implement a program to fully integrate aerial surveillance technologies to enhance the border security of the United States.

(2) ASSESSMENT AND CONSULTATION REQUIREMENTS.—In developing the program under this subsection, the Secretary shall—

(A) consider current and proposed aerial surveillance technologies;

(B) assess the feasibility and advisability of utilizing such technologies to address border threats, including an assessment of the technologies considered best suited to address respective threats;

(C) consult with the Secretary of Defense regarding any technologies or equipment, which the Secretary may deploy along the international border of the United States; and

(D) consult with the Administrator of the Federal Aviation Administration regarding safety, airspace coordination and regulation, and any other issues necessary for implementation of the program.

(3) ADDITIONAL REQUIREMENTS.—

(A) IN GENERAL.—The program developed under this subsection shall include the utilization of a variety of aerial surveillance technologies in a variety of topographies and areas, including populated and unpopulated areas located on or near the international border of the United States, in order to evaluate, for a range of circumstances—

(i) the significance of previous experiences with such technologies in border security or critical infrastructure protection;

(ii) the cost and effectiveness of various technologies for border security, including varying levels of technical complexity; and

(iii) liability, safety, and privacy concerns relating to the utilization of such technologies for border security.

(B) USE OF UNMANNED AERIAL VEHICLES.—The aerial surveillance technologies utilized in the program shall include unmanned aerial vehicles.

(4) CONTINUED USE OF AERIAL SURVEILLANCE TECHNOLOGIES.—The Secretary may continue the operation of aerial surveillance technologies while assessing the effectiveness of their utilization and until such time the Secretary determines appropriate.

(5) REPORT.—

(A) REQUIREMENT.—Not later than 1 year after implementing the program under this subsection, the Secretary shall submit a report on such program to the appropriate congressional committees.

(B) CONTENT.—The Secretary shall include in the report required by subparagraph (A) a description of the program together with such recommendations as the Secretary finds appropriate for enhancing the program.

(b) DEMONSTRATION PROGRAMS.—The Secretary is authorized, as part of the development and implementation of the National Strategy for Border Security, to establish and carry out demonstration programs to strengthen communication, information sharing, technology, security, intelligence benefits, and enforcement activities that will protect the international border of the United States without diminishing international trade and commerce.

SEC. 1124. COMBATING HUMAN SMUGGLING.

(a) REQUIREMENT FOR PLAN.—The Secretary shall develop and implement a plan to improve coordination between the Bureau of Immigration and Customs Enforcement and the Bureau of Customs and Border Protection of the Department of Homeland Security and any other Federal, State, local, or tribal authorities, as determined appropriate by the Secretary, to improve coordination efforts to combat human smuggling.

(b) CONTENT.—In developing the plan required by subsection (a), the Secretary shall consider—

(1) the interoperability of databases utilized to prevent human smuggling;

(2) adequate and effective personnel training;

(3) methods and programs to effectively target networks that engage in such smuggling;

(4) effective utilization of—

(A) visas for victims of trafficking and other crimes; and

(B) investigatory techniques, equipment, and procedures that prevent, detect, and prosecute international money laundering and other operations that are utilized in smuggling;

(5) joint measures, with the Secretary of State, to enhance intelligence sharing and cooperation with foreign governments whose citizens are preyed on by human smugglers; and

(6) other measures that the Secretary considers appropriate to combating human smuggling.

(c) REPORT.—Not later than 1 year after implementing the plan described in subsection (a), the Secretary shall submit to Congress a report on such plan, including any recommendations for legislative action to improve efforts to combating human smuggling.

SEC. 1125. SAVINGS CLAUSE.

Nothing in this subtitle or subtitle A may be construed to provide to any State or local entity any additional authority to enforce Federal immigration laws.

Subtitle C—International Border Enforcement

SEC. 1131. NORTH AMERICAN SECURITY INITIATIVE.

(a) IN GENERAL.—The Secretary of State shall enhance the mutual security and safety of the United States, Canada, and Mexico by providing a framework for better management, communication, and coordination between the Governments of North America.

(b) RESPONSIBILITIES.—In implementing the provisions of this subtitle, the Secretary of State shall carry out all of the activities described in this subtitle.

SEC. 1132. INFORMATION SHARING AGREEMENTS.

The Secretary of State, in coordination with the Secretary of Homeland Security and the Government of Mexico, is authorized to negotiate an agreement with Mexico to—

(1) cooperate in the screening of third-country nationals using Mexico as a transit corridor for entry into the United States; and

(2) provide technical assistance to support stronger immigration control at the border with Mexico.

SEC. 1133. IMPROVING THE SECURITY OF MEXICO'S SOUTHERN BORDER.

(a) TECHNICAL ASSISTANCE.—The Secretary of State, in coordination with the Secretary of Homeland Security, the Canadian Department of Foreign Affairs, and the Government of Mexico, shall establish a program to—

(1) assess the specific needs of the governments of Central American countries in maintaining the security of the borders of such countries;

(2) use the assessment made under paragraph (1) to determine the financial and technical support needed by the governments of Central American countries from Canada, Mexico, and the United States to meet such needs;

(3) provide technical assistance to the governments of Central American countries to secure issuance of passports and travel documents by such countries; and

(4) encourage the governments of Central American countries to—

(A) control alien smuggling and trafficking;

(B) prevent the use and manufacture of fraudulent travel documents; and

(C) share relevant information with Mexico, Canada, and the United States.

(b) IMMIGRATION.—The Secretary of Homeland Security, in consultation with the Secretary of State and appropriate officials of the governments of Central American countries shall provide robust law enforcement assistance to such governments that specifically addresses migratory issues to increase the ability of such governments to dismantle human smuggling organizations and gain tighter control over the border.

(c) BORDER SECURITY BETWEEN MEXICO AND GUATEMALA OR BELIZE.—The Secretary of State, in consultation with the Secretary of Homeland Security, the Government of Mexico, and appropriate officials of the Governments of Guatemala, Belize, and neighboring contiguous countries, shall establish a program to provide needed equipment, technical assistance, and vehicles to manage, regulate, and patrol the international border between Mexico and Guatemala and between Mexico and Belize.

(d) TRACKING CENTRAL AMERICAN GANGS.—The Secretary of State, in coordination with the Secretary of Homeland Security, the Director of the Federal Bureau of Investigation, the Government of Mexico, and appropriate officials of the governments of Central American countries, shall—

(1) assess the direct and indirect impact on the United States and Central America on deporting violent criminal aliens;

(2) establish a program and database to track Central American gang activities, focusing on the identification of returning criminal deportees;

(3) devise an agreed-upon mechanism for notification applied prior to deportation and for support for reintegration of these deportees; and

(4) devise an agreement to share all relevant information with the appropriate agencies of Mexico and other Central American countries.

TITLE II—STATE CRIMINAL ALIEN ASSISTANCE

SEC. 1201. STATE CRIMINAL ALIEN ASSISTANCE PROGRAM AUTHORIZATION OF APPROPRIATIONS.

Section 241(i) of the Immigration and Nationality Act (8 U.S.C. 1231(i)) is amended by striking paragraphs (5) and (6) and inserting the following:

''(5) AUTHORIZATION OF APPROPRIATIONS.—

''(A) IN GENERAL.—There are authorized to be appropriated to carry out this subsection—

''(i) such sums as may be necessary for fiscal year 2005;

''(ii) $750,000,000 for fiscal year 2006;

''(iii) $850,000,000 for fiscal year 2007; and

''(iv) $950,000,000 for each of the fiscal years 2008 through 2011.

''(B) LIMITATION ON USE OF FUNDS.—Amounts appropriated pursuant to subparagraph (A) that are distributed to a State or political subdivision of a State, including a municipality, may be used only for correctional purposes.''.

SEC. 1202. REIMBURSEMENT OF STATES FOR INDIRECT COSTS RELATING TO THE INCARCERATION OF ILLEGAL ALIENS.

Section 501 of the Immigration Reform and Control Act of 1986 (8 U.S.C. 1365) is amended—

(1) in subsection (a)—

(A) by striking ''for the costs'' and inserting the following: ''for—

''(1) the costs''; and

(B) by striking ''such State.'' and inserting the following: ''such State; and

''(2) the indirect costs related to the imprisonment described in paragraph (1).''; and

(2) by striking subsections (c) through (e) and inserting the following:

''(c) MANNER OF ALLOTMENT OF REIMBURSEMENTS.—Reimbursements under this section shall be allotted in a manner that gives special consideration for any State that—

''(1) shares a border with Mexico or Canada; or

''(2) includes within the State an area in which a large number of undocumented aliens reside relative to the general population of that area.

''(d) DEFINITIONS.—As used in this section:

''(1) INDIRECT COSTS.—The term 'indirect costs' includes—

''(A) court costs, county attorney costs, detention costs, and criminal proceedings expenditures that do not involve going to trial;

''(B) indigent defense costs; and

''(C) unsupervised probation costs.

''(2) STATE.—The term 'State' has the meaning given such term in section 101(a)(36) of the Immigration and Nationality Act.

''(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $200,000,000 for each of the fiscal years 2005 through 2011 to carry out subsection (a)(2).''.

SEC. 1203. REIMBURSEMENT OF STATES FOR PRE-CONVICTION COSTS RELATING TO THE INCARCERATION OF ILLEGAL ALIENS.

Section 241(i)(3)(A) of the Immigration and Nationality Act (8 U.S.C. 1231(i)(3)(a) is amended by inserting ''charged with or'' before ''convicted.''

TITLE III—ESSENTIAL WORKER VISA PROGRAM

SEC. 1301. ESSENTIAL WORKERS.

Section 101(a)(15)(H) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)) is amended—

(1) by striking ''(H) an alien (i)(b)'' and inserting the following:

''(H) an alien—

''(i)(b)'';

(2) by striking ''or (ii)(a)'' and inserting the following:

''(ii)(a)'';

(3) by striking ''or (iii)'' and inserting the following:

''(iii)''; and

(4) by adding at the end the following:

''(v)(a) subject to section 218A, having residence in a foreign country, which the alien has no intention of abandoning, who is coming temporarily to the United States to initially perform labor or services (other than those occupation classifications covered under the provisions of clause (i)(b) or (ii)(a) or subparagraph (L), (O), (P), or (R)); or.''.

SEC. 1302. ADMISSION OF ESSENTIAL WORKERS.

(a) IN GENERAL.—Chapter 2 of title II of the Immigration and Nationality Act (8 U.S.C. 1181 et seq.) is amended by inserting after section 218 the following:

''ADMISSION OF TEMPORARY H–5A WORKERS

''SEC. 218A. (a) The Secretary of State may grant a temporary visa to a nonimmigrant described in section 101(a)(15)(H)(v)(a) who demonstrates an intent to perform labor or services in the United States (other than those occupational classifications covered

under the provisions of clause (i)(b) or (ii)(a) of section 101(a)(15)(H) or subparagraph (L), (O), (P), or (R)) of section 101(a)(15).

''(b) REQUIREMENTS FOR ADMISSION.—In order to be eligible for nonimmigrant status under section 101(a)(15)(H)(v)(a), an alien shall meet the following requirements:

''(1) ELIGIBILITY TO WORK.—The alien shall establish that the alien is capable of performing the labor or services required for an occupation under section 101(a)(15)(H)(v).

''(2) EVIDENCE OF EMPLOYMENT.—The alien's evidence of employment shall be provided through the Employment Eligibility Confirmation System established under section 274E or in accordance with requirements issued by the Secretary of State, in consultation with the Secretary of Homeland Security. In carrying out this paragraph, the Secretary may consider evidence from employers, employer associations, and labor representatives.

''(3) FEE.—The alien shall pay a $500 application fee to apply for the visa in addition to the cost of processing and adjudicating such application. Nothing in this paragraph shall be construed to affect consular procedures for charging reciprocal fees.

''(4) MEDICAL EXAMINATION.—The alien shall undergo a medical examination (including a determination of immunization status) at the alien's expense, that conforms to generally accepted standards of medical practice.

''(c) GROUNDS OF INADMISSIBILITY.—

''(1) IN GENERAL.—In determining an alien's admissibility as a nonimmigrant under section 101(a)(15)(H)(v)(a)—

''(A) paragraphs (5), (6) (except for subparagraph (E)), (7), (9), and (10)(B) of section 212(a) may be waived for conduct that occurred before the date on which the Secure America and Orderly Immigration Act was introduced;

''(B) the Secretary of Homeland Security may not waive—

''(i) subparagraph (A), (B), (C), (E), (G), (H), or (I) of section 212(a)(2) (relating to criminals);

''(ii) section 212(a)(3) (relating to security and related grounds); or

''(iii) subparagraph (A) or (C) of section 212(a)(10) (relating to polygamists and child abductors);

''(C) for conduct that occurred before the date on which the Secure America and Orderly Immigration Act was introduced, the Secretary of Homeland Security may waive the application of any provision of section 212(a) not listed in subparagraph (B) on behalf of an individual alien for humanitarian purposes, to ensure family unity, or when such waiver is otherwise in the public interest; and

''(D) nothing in this paragraph shall be construed as affecting the authority of the Secretary of Homeland Security to waive the provisions of section 212(a).

''(2) WAIVER FINE.—An alien who is granted a waiver under subparagraph (1) shall pay a $1,500 fine upon approval of the alien's visa application.

''(3) APPLICABILITY OF OTHER PROVISIONS.—Sections 240B(d) and 241(a)(5) shall not apply to an alien who initially seeks admission as a nonimmigrant under section 101(a)(15)(H)(v)(a).

''(4) RENEWAL OF AUTHORIZED ADMISSION AND SUBSEQUENT ADMISSIONS.—An alien seeking renewal of authorized admission or subsequent admission as a nonimmigrant under section 101(a)(15)(H)(v)(a) shall establish that the alien is not inadmissible under section 212(a).

''(d) PERIOD OF AUTHORIZED ADMISSION.—

''(1) INITIAL PERIOD.—The initial period of authorized admission as a nonimmigrant described in section 101(a)(15)(H)(v)(a) shall be 3 years.

''(2) RENEWALS.—The alien may seek an extension of the period described in paragraph (1) for 1 additional 3-year period.

''(3) LOSS OF EMPLOYMENT.—

''(A) IN GENERAL.—Subject to subsection (c), the period of authorized admission of a nonimmigrant alien under section 101(a)(15)(H)(v)(a) shall terminate if the nonimmigrant is unemployed for 45 or more consecutive days.

''(B) RETURN TO FOREIGN RESIDENCE.—Any alien whose period of authorized admission terminates under subparagraph (A) shall be required to return to the country of the alien's nationality or last residence.

''(C) PERIOD OF VISA VALIDITY.—Any alien, whose period of authorized admission terminates under subparagraph (A), who returns to the country of the alien's nationality or last residence under subparagraph (B), may reenter the United States on the basis of the same visa to work for an employer, if the alien has complied with the requirements of subsection (b)(1).

''(4) VISITS OUTSIDE UNITED STATES.—

''(A) IN GENERAL.—Under regulations established by the Secretary of Homeland Security, a nonimmigrant alien under section 101(a)(15)(H)(v)(a)—

''(i) may travel outside of the United States; and

''(ii) may be readmitted without having to obtain a new visa if the period of authorized admission has not expired.

''(B) EFFECT ON PERIOD OF AUTHORIZED ADMISSION.—Time spent outside the United States under subparagraph (A) shall not extend the period of authorized admission in the United States.

''(e) PORTABILITY.—A nonimmigrant alien described in this section, who was previously issued a visa or otherwise provided nonimmigrant status under section 101(a)(15)(H)(v)(a), may accept new employment with a subsequent employer.

''(f) WAIVER OF RIGHTS PROHIBITED.—A nonimmigrant alien described in section 101(a)(15)(H)(v)(a) may not be required to waive any rights or protections under the Secure America and Orderly Immigration Act.

''(g) CHANGE OF ADDRESS.—An alien having nonimmigrant status described in section 101(a)(15)(H)(v)(a) shall comply by either electronic or paper notification with the change of address reporting requirements under section 265.

''(h) BAR TO FUTURE VISAS FOR VIOLATIONS.—

''(1) IN GENERAL.—Any alien having the nonimmigrant status described in section 101(a)(15)(H)(v)(a) shall not be eligible to renew such nonimmigrant status if the alien willfully violates any material term or condition of such status.

''(2) WAIVER.—The alien may apply for a waiver of the application of subparagraph (A) for technical violations, inadvertent errors, or violations for which the alien was not at fault.

''(i) COLLECTION OF FEES.—All fees collected under this section shall be deposited in the Treasury in accordance with section 286(w).''.

(b) CONFORMING AMENDMENT REGARDING PRESUMPTION OF NONIMMIGRANT STATUS.—Section 214(b) of the Immigration and Nationality Act (8 U.S.C. 1184(b)) is amended by inserting ''(H)(v)(a),'' after ''(H)(i),''.

(c) CLERICAL AMENDMENT.—The table of contents for the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended by inserting after the item relating to section 218 the following:

''Sec. 218A. Admission of temporary H–5A workers.''.

SEC. 1303. EMPLOYER OBLIGATIONS.

Employers employing a nonimmigrant described in section 101(a)(15)(H)(v)(a) of the Immigration and Nationality Act, as added by section 1301, shall comply with all applicable Federal, State, and local laws, including—

(1) laws affecting migrant and seasonal agricultural workers; and

(2) the requirements under section 274E of such Act, as added by section 1402.

SEC. 1304. PROTECTION FOR WORKERS.

Section 218A of the Immigration and Nationality Act, as added by section 1302, is amended by adding at the end the following:

''(h) APPLICATION OF LABOR AND OTHER LAWS.—

''(1) DEFINITIONS.—As used in this subsection and in subsections (i) through (k):

''(A) EMPLOY; EMPLOYEE; EMPLOYER.—The terms 'employ', 'employee', and 'employer' have the meanings given such terms in section 3 of the Fair Labor Standards Act of 1938 (29 U.S.C. 203).

''(B) FOREIGN LABOR CONTRACTOR.—The term 'foreign labor contractor' means any person who for any compensation or other valuable consideration paid or promised to be paid, performs any foreign labor contracting activity.

''(C) FOREIGN LABOR CONTRACTING ACTIVITY.—The term 'foreign labor contracting activity' means recruiting, soliciting, hiring, employing, or furnishing, an individual who resides outside of the United States for employment in the United States as a nonimmigrant alien described in section 101(a)(15)(H)(v)(a).

''(2) COVERAGE.—Notwithstanding any other provision of law—

''(A) a nonimmigrant alien described in section 101(a)(15)(H)(v)(a) is prohibited from being treated as an independent contractor; and

''(B) no person may treat a nonimmigrant alien described in section 101(a)(15)(H)(v)(a) as an independent contractor.

''(3) APPLICABILITY OF LAWS.—A nonimmigrant alien described in section 101(a)(15)(H)(v)(a) shall not be denied any right or any remedy under Federal, State, or local labor or employment law that would be applicable to a United States worker employed in a similar position with the employer because of the alien's status as a nonimmigrant worker.

''(4) TAX RESPONSIBILITIES.—With respect to each employed nonimmigrant alien described in section 101(a)(15)(H)(v)(a), an employer shall comply with all applicable Federal, State, and local tax and revenue laws.

''(5) NONDISCRIMINATION IN EMPLOYMENT.—An employer shall provide nonimmigrants issued a visa under this section with the same wages, benefits, and working conditions that are provided by the employer to United States workers similarly employed in the same occupation and the same place of employment.

''(6) NO REPLACEMENT OF STRIKING EMPLOYEES.—An employer may not hire a nonimmigrant alien described in section 101(a)(15)(H)(v)(a) as a replacement worker if there is a strike or lockout in the course of a labor dispute in the occupational classification at the place of employment.

''(7) WAIVER OF RIGHTS PROHIBITED.—A nonimmigrant alien described in section 101(a)(15)(H)(v)(a) may not be required to waive any rights or protections under the Secure America and Orderly Immigration Act. Nothing under this provision shall be construed to affect the interpretation of other laws.

''(8) NO THREATENING OF EMPLOYEES.—It shall be a violation of this section for an employer who has filed a petition under section

203(b) to threaten the alien beneficiary of such a petition with withdrawal of the application, or to withdraw such a petition in retaliation for the beneficiary's exercise of a right protected by the Secure America and Orderly Immigration Act.

''(9) WHISTLEBLOWER PROTECTION.—It shall be unlawful for an employer or a labor contractor of a nonimmigrant alien described in section 101(a)(15)(H)(v)(a) to intimidate, threaten, restrain, coerce, retaliate, discharge, or in any other manner, discriminate against an employee or former employee because the employee or former employee—

''(A) discloses information to the employer or any other person that the employee or former employee reasonably believes demonstrates a violation of Secure America and Orderly Immigration Act.

''(B) cooperates or seeks to cooperate in an investigation or other proceeding concerning compliance with the requirements of the Secure America and Orderly Immigration Act.

''(i) LABOR RECRUITERS.—

''(1) IN GENERAL.—Each employer that engages in foreign labor contracting activity and each foreign labor contractor shall ascertain and disclose to each such worker who is recruited for employment the following information at the time of the worker's recruitment:

''(A) The place of employment.

''(B) The compensation for the employment.

''(C) A description of employment activities.

''(D) The period of employment.

''(E) Any other employee benefit to be provided and any costs to be charged for each benefit.

''(F) Any travel or transportation expenses to be assessed.

''(G) The existence of any labor organizing effort, strike, lockout, or other labor dispute at the place of employment.

''(H) The existence of any arrangement with any owner, employer, foreign contractor, or its agent where such person receives a commission from the provision of items or services to workers.

''(I) The extent to which workers will be compensated through workers' compensation, private insurance, or otherwise for injuries or death, including work related injuries and death, during the period of employment and, if so, the name of the State workers' compensation insurance carrier or the name of the policyholder of the private insurance, the name and the telephone number of each person who must be notified of an injury or death, and the time period within which such notice must be given.

''(J) Any education or training to be provided or required, including the nature and cost of such training, who will pay such costs, and whether the training is a condition of employment, continued employment, or future employment.

''(K) A statement, in a form specified by the Secretary of Labor, describing the protections of this Act for workers recruited abroad.

''(2) FALSE OR MISLEADING INFORMATION.—No foreign labor contractor or employer who engages in foreign labor contracting activity shall knowingly provide material false or misleading information to any worker concerning any matter required to be disclosed in paragraph (1).

''(3) LANGUAGES.—The information required to be disclosed under paragraph (1) shall be provided in writing in English or, as necessary and reasonable, in the language of the worker being recruited. The Department of Labor shall make forms available in English, Spanish, and other languages, as necessary, which may be used in providing workers with information required under this section.

''(4) FEES.—A person conducting a foreign labor contracting activity shall not assess any fee to a worker for such foreign labor contracting activity.

''(5) TERMS.—No employer or foreign labor contractor shall, without justification, violate the terms of any agreement made by that contractor or employer regarding employment under this program.

''(6) TRAVEL COSTS.—If the foreign labor contractor or employer charges the employee for transportation such transportation costs shall be reasonable.

''(7) OTHER WORKER PROTECTIONS.—

''(A) NOTIFICATION.—Every 2 years, each employer shall notify the Secretary of Labor of the identity of any foreign labor contractor engaged by the employer in any foreign labor contractor activity for or on behalf of the employer.

''(B) REGISTRATION OF FOREIGN LABOR CONTRACTORS.—

''(i) IN GENERAL.—No person shall engage in foreign labor recruiting activity unless such person has a certificate of registration from the Secretary of Labor specifying the activities that such person is authorized to perform. An employer who retains the services of a foreign labor contractor shall only use those foreign labor contractors who are registered under this subparagraph.

''(ii) ISSUANCE.—The Secretary shall promulgate regulations to establish an efficient electronic process for the investigation and approval of an application for a certificate of registration of foreign labor contractors not later than 14 days after such application is filed. Such process shall include requirements under paragraphs (1), (4), and (5) of section 1812 of title 29, United States Code, an expeditious means to update registrations and renew certificates and any other requirements the Secretary may prescribe.

''(iii) TERM.—Unless suspended or revoked, a certificate under this subparagraph shall be valid for 2 years.

''(iv) REFUSAL TO ISSUE; REVOCATION; SUSPENSION.—In accordance with regulations promulgated by the Secretary of Labor, the Secretary may refuse to issue or renew, or may suspend or revoke, a certificate of registration under this subparagraph. The justification for such refusal, suspension, or revocation may include the following:

''(I) The application or holder of the certification has knowingly made a material misrepresentation in the application for such certificate.

''(II) The applicant for or holder of the certification is not the real party in interest in the application or certificate of registration and the real party in interest is a person who has been refused issuance or renewal of a certificate, has had a certificate suspended or revoked, or does not qualify for a certificate under this paragraph.

''(III) The applicant for or holder of the certification has failed to comply with the Secure America and Orderly Immigration Act.

''(C) REMEDY FOR VIOLATIONS.—An employer engaging in foreign labor contracting activity and a foreign labor contractor that violates the provisions of this subsection shall be subject to remedies for foreign labor contractor violations under subsections (j) and (k). If a foreign labor contractor acting as an agent of an employer violates any provision of this subsection, the employer shall also be subject to remedies under subsections (j) and (k). An employer that violates a provision of this subsection relating to employer obligations shall be subject to remedies under this subsections (j) and (k).

''(D) EMPLOYER NOTIFICATION.—An employer shall notify the Secretary of Labor any time the employer becomes aware of a violation of this subsection by a foreign labor recruiter.

''(E) WRITTEN AGREEMENTS.—No foreign labor contractor shall violate the terms of any written agreements made with an employer relating to any contracting activity or worker protection under this subsection.

''(F) BONDING REQUIREMENT.—The Secretary of Labor may require a foreign labor contractor under this subsection to post a bond in an amount sufficient to ensure the protection of individuals recruited by the foreign labor contractor. The Secretary may consider the extent to which the foreign labor contractor has sufficient ties to the United States to adequately enforce this subsection.

''(j) ENFORCEMENT.—

''(1) IN GENERAL.—The Secretary of Labor shall prescribe regulations for the receipt, investigation, and disposition of complaints by an aggrieved person respecting a violation of this section.

''(2) DEFINITION.—As used in this subsection, an 'aggrieved person' is a person adversely affected by the alleged violation, including—

''(A) a worker whose job, wages, or working conditions are adversely affected by the violation; and

''(B) a representative for workers whose jobs, wages, or working conditions are adversely affected by the violation who brings a complaint on behalf of such worker.

''(3) FILING DEADLINE.—No investigation or hearing shall be conducted on a complaint concerning a violation under this section unless the complaint was filed not later than 12 months after the date of such violation.

''(4) REASONABLE CAUSE.—The Secretary of Labor shall conduct an investigation under this subsection if there is reasonable cause to believe that a violation of this section has occurred. The process established under this subsection shall provide that, not later than 30 days after a complaint is filed, the Secretary shall determine if there is reasonable cause to find such a violation.

''(5) NOTICE AND HEARING.—

''(A) IN GENERAL.—Not later than 60 days after the Secretary of Labor makes a determination of reasonable cause under paragraph (4), the Secretary shall issue a notice to the interested parties and offer an opportunity for a hearing on the complaint, in accordance with section 556 of title 5, United States Code.

''(B) COMPLAINT.—If the Secretary of Labor, after receiving a complaint under this subsection, does not offer the aggrieved party or organization an opportunity for a hearing under subparagraph (A), the Secretary shall notify the aggrieved party or organization of such determination and the aggrieved party or organization may seek a hearing on the complaint in accordance with such section 556.

''(C) HEARING DEADLINE.—Not later than 60 days after the date of a hearing under this paragraph, the Secretary of Labor shall make a finding on the matter in accordance with paragraph (6).

''(6) ATTORNEYS' FEES.—A complainant who prevails with respect to a claim under this subsection shall be entitled to an award of reasonable attorneys' fees and costs.

''(7) POWER OF THE SECRETARY.—The Secretary may bring an action in any court of competent jurisdiction—

''(A) to seek remedial action, including injunctive relief;

''(B) to recover the damages described in subsection (k); or

''(C) to ensure compliance with terms and conditions described in subsection (i).

''(8) SOLICITOR OF LABOR.—Except as provided in section 518(a) of title 28, United

States Code, the Solicitor of Labor may appear for and represent the Secretary of Labor in any civil litigation brought under this subsection. All such litigation shall be subject to the direction and control of the Attorney General.

''(9) PROCEDURES IN ADDITION TO OTHER RIGHTS OF EMPLOYEES.—The rights and remedies provided to workers under this section are in addition to, and not in lieu of, any other contractual or statutory rights and remedies of the workers, and are not intended to alter or affect such rights and remedies.

''(k) PENALTIES.—

''(1) IN GENERAL.—If, after notice and an opportunity for a hearing, the Secretary of Labor finds a violation of subsection (h) or (i), the Secretary may impose administrative remedies and penalties, including—

''(A) back wages;

''(B) fringe benefits; and

''(C) civil monetary penalties.

''(2) CIVIL PENALTIES.—The Secretary of Labor may impose, as a civil penalty—

''(A) for a violation of subsection (h)—

''(i) a fine in an amount not to exceed $2,000 per violation per affected worker;

''(ii) if the violation was willful violation, a fine in an amount not to exceed $5,000 per violation per affected worker;

''(iii) if the violation was willful and if in the course of such violation a United States worker was harmed, a fine in an amount not to exceed $25,000 per violation per affected worker; and

''(B) for a violation of subsection (i)—

''(i) a fine in an amount not less than $500 and not more than $4,000 per violation per affected worker;

''(ii) if the violation was willful, a fine in an amount not less than $2,000 and not more than $5,000 per violation per affected worker; and

''(iii) if the violation was willful and if in the course of such violation a United States worker was harmed, a fine in an amount not less than $6,000 and not more than $35,000 per violation per affected worker.

''(3) USE OF CIVIL PENALTIES.—All penalties collected under this subsection shall be deposited in the Treasury in accordance with section 286(w).

''(4) CRIMINAL PENALTIES.—If a willful and knowing violation of subsection (i) causes extreme physical or financial harm to an individual, the person in violation of such subsection may be imprisoned for not more than 6 months, fined not more than $35,000 fine, or both.''.

SEC. 1305. MARKET-BASED NUMERICAL LIMITATIONS.

Section 214(g) of the Immigration and Nationality Act (8 U.S.C. 1184(g)) is amended—

(1) in paragraph (1)—

(A) by striking ''(beginning with fiscal year 1992)'';

(B) in subparagraph (B), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(C) under section 101(a)(15)(H)(v)(a), may not exceed—

''(i) 400,000 for the first fiscal year in which the program is implemented;

''(ii) in any subsequent fiscal year—

''(I) if the total number of visas allocated for that fiscal year are allotted within the first quarter of that fiscal year, then an additional 20 percent of the allocated number shall be made available immediately and the allocated amount for the following fiscal year shall increase by 20 percent of the original allocated amount in the prior fiscal year;

''(II) if the total number of visas allocated for that fiscal year are allotted within the second quarter of that fiscal year, then an additional 15 percent of the allocated number shall be made available immediately and the allocated amount for the following fiscal year shall increase by 15 percent of the original allocated amount in the prior fiscal year;

''(III) if the total number of visas allocated for that fiscal year are allotted within the third quarter of that fiscal year, then an additional 10 percent of the allocated number shall be made available immediately and the allocated amount for the following fiscal year shall increase by 10 percent of the original allocated amount in the prior fiscal year;

''(IV) if the total number of visas allocated for that fiscal year are allotted within the last quarter of that fiscal year, then the allocated amount for the following fiscal year shall increase by 10 percent of the original allocated amount in the prior fiscal year; and

''(V) with the exception of the first subsequent fiscal year to the fiscal year in which the program is implemented, if fewer visas were allotted the previous fiscal year than the number of visas allocated for that year and the reason was not due to processing delays or delays in promulgating regulations, then the allocated amount for the following fiscal year shall decrease by 10 percent of the allocated amount in the prior fiscal year.''; and

(2) by adding at the end the following:

''(9)(A) Of the total number of visas allocated for each fiscal year under paragraph (1)(C)—

''(i) 50,000 visas shall be allocated to qualifying counties; and

''(ii) any of the visas allocated under clause (i) that are not issued by June 30 of such fiscal year, may be made available to any qualified applicant.

''(B) In this paragraph, the term 'qualifying county' means any county that—

''(i) that is outside a metropolitan statistical area; and

''(ii) during the 20-year-period ending on the last day of the calendar year preceding the date of enactment of the Secure America and Orderly Immigration Act, experienced a net out-migration of inhabitants from the county of at least 10 percent of the population of the county at the beginning of such period.

''(10) In allocating visas under this subsection, the Secretary of State may take any additional measures necessary to deter illegal immigration.''.

SEC. 1306. ADJUSTMENT TO LAWFUL PERMANENT RESIDENT STATUS.

Section 245 of the Immigration and Nationality Act (8 U.S.C. 1255) is amended by adding at the end the following:

''(n)(1) For purposes of adjustment of status under subsection (a), employment-based immigrant visas shall be made available to an alien having nonimmigrant status described in section 101(a)(15)(H)(v)(a) upon the filing of a petition for such a visa—

''(A) by the alien's employer; or

''(B) by the alien, if the alien has maintained such nonimmigrant status in the United States for a cumulative total of 4 years.

''(2) An alien having nonimmigrant status described in section 101(a)(15)(H)(v)(a) may not apply for adjustment of status under this section unless the alien—

''(A) is physically present in the United States; and

''(B) the alien establishes that the alien—

''(i) meets the requirements of section 312; or

''(ii) is satisfactorily pursuing a course of study to achieve such an understanding of English and knowledge and understanding of the history and government of the United States.

''(3) An alien who demonstrates that the alien meets the requirements of section 312 may be considered to have satisfied the requirements of that section for purposes of becoming naturalized as a citizen of the United States under title III.

''(4) Filing a petition under paragraph (1) on behalf of an alien or otherwise seeking permanent residence in the United States for such alien shall not constitute evidence of the alien's ineligibility for nonimmigrant status under section 101(a)(15)(H)(v)(a).

''(5) The limitation under section 302(d) regarding the period of authorized stay shall not apply to any alien having nonimmigrant status under section 101(a)(15)(H)(v)(a) if—

''(A) a labor certification petition filed under section 203(b) on behalf of such alien is pending; or

''(B) an immigrant visa petition filed under section 204(b) on behalf of such alien is pending.

''(6) The Secretary of Homeland Security shall extend the stay of an alien who qualifies for an exemption under paragraph (5) in 1-year increments until a final decision is made on the alien's lawful permanent residence.

''(7) Nothing in this subsection shall be construed to prevent an alien having nonimmigrant status described in section 101(a)(15)(H)(v)(a) from filing an application for adjustment of status under this section in accordance with any other provision of law.''.

SEC. 1307. ESSENTIAL WORKER VISA PROGRAM TASK FORCE.

(a) ESTABLISHMENT OF TASK FORCE.—

(1) IN GENERAL.—There is established a task force to be known as the Essential Worker Visa Program Task Force (referred to in this section as the ''Task Force'').

(2) PURPOSES.—The purposes of the Task Force are—

(A) to study the Essential Worker Visa Program (referred to in this section as the ''Program'') established under this title; and

(B) to make recommendations to Congress with respect to such program.

(3) MEMBERSHIP.—The Task Force shall be composed of 10 members, of whom—

(A) 1 shall be appointed by the President and shall serve as chairman of the Task Force;

(B) 1 shall be appointed by the leader of the Democratic Party in the Senate, in consultation with the leader of the Democratic Party in the House of Representatives, and shall serve as vice chairman of the Task Force;

(C) 2 shall be appointed by the majority leader of the Senate;

(D) 2 shall be appointed by the minority leader of the Senate;

(E) 2 shall be appointed by the Speaker of the House of Representatives; and

(F) 2 shall be appointed by the minority leader of the House of Representatives.

(4) QUALIFICATIONS.—

(A) IN GENERAL.—Members of the Task Force shall be—

(i) individuals with expertise in economics, demography, labor, business, or immigration or other pertinent qualifications or experience; and

(ii) representative of a broad cross-section of perspectives within the United States, including the public and private sectors and academia;

(B) POLITICAL AFFILIATION.—Not more than 5 members of the Task Force may be members of the same political party.

(C) NONGOVERNMENTAL APPOINTEES.—An individual appointed to the Task Force may not be an officer or employee of the Federal Government or of any State or local government.

(5) DEADLINE FOR APPOINTMENT.—All members of the Task Force shall be appointed not later than 6 months after the Program has been implemented.

(6) VACANCIES.—Any vacancy in the Task Force shall not affect its powers, but shall be

filled in the same manner in which the original appointment was made.

(7) MEETINGS.—

(A) INITIAL MEETING.—The Task Force shall meet and begin the operations of the Task Force as soon as practicable.

(B) SUBSEQUENT MEETINGS.—After its initial meeting, the Task Force shall meet upon the call of the chairman or a majority of its members.

(8) QUORUM.—Six members of the Task Force shall constitute a quorum.

(b) DUTIES.—The Task Force shall examine and make recommendations regarding the Program, including recommendations regarding—

(1) the development and implementation of the Program;

(2) the criteria for the admission of temporary workers under the Program;

(3) the formula for determining the yearly numerical limitations of the Program;

(4) the impact of the Program on immigration;

(5) the impact of the Program on the United States workforce and United States businesses; and

(6) any other matters regarding the Program that the Task Force considers appropriate.

(c) INFORMATION AND ASSISTANCE FROM FEDERAL AGENCIES.—

(1) INFORMATION FROM FEDERAL AGENCIES.—The Task Force may seek directly from any Federal department or agency such information, including suggestions, estimates, and statistics, as the Task Force considers necessary to carry out the provisions of this section. Upon request of the Task Force, the head of such department or agency shall furnish such information to the Task Force.

(2) ASSISTANCE FROM FEDERAL AGENCIES.—The Administrator of General Services shall, on a reimbursable base, provide the Task Force with administrative support and other services for the performance of the Task Force's functions. The departments and agencies of the United States may provide the Task Force with such services, funds, facilities, staff, and other support services as they determine advisable and as authorized by law.

(d) REPORTS.—

(1) INITIAL REPORT.—Not later than 2 years after the Program has been implemented, the Task Force shall submit a report to Congress, the Secretary of State, the Secretary of Labor, and the Secretary of Homeland Security that contains—

(A) findings with respect to the duties of the Task Force;

(B) recommendations for improving the Program; and

(C) suggestions for legislative or administrative action to implement the Task Force recommendations.

(2) FINAL REPORT.—Not later than 4 years after the submission of the initial report under paragraph (1), the Task Force shall submit a final report to Congress, the Secretary of State, the Secretary of Labor, and the Secretary of Homeland Security that contains additional findings, recommendations, and suggestions, as described in paragraph (1).

SEC. 1308. WILLING WORKER-WILLING EMPLOYER ELECTRONIC JOB REGISTRY.

(a) ESTABLISHMENT.—The Secretary of Labor shall direct the coordination and modification of the national system of public labor exchange services (commonly known as ''America's Job Bank'') in existence on the date of enactment of this Act to provide information on essential worker employment opportunities available to United States workers and nonimmigrant workers under section 101(a)(15)(H)(v)(a) of the Immigration and Nationality Act, as added by this Act.

(b) RECRUITMENT OF UNITED STATES WORKERS.—Before the completion of evidence of employment for a potential nonimmigrant worker under section 101(a)(15)(H)(v)(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(v)(a), an employer shall attest that the employer has posted in the Job Registry for not less than 30 days in order to recruit United States workers. An employer shall maintain records for not less than 1 year demonstrating why United States workers who applied were not hired.

(c) OVERSIGHT AND MAINTENANCE OF RECORDS.—The Secretary of Labor shall maintain electronic job registry records, as established by regulation, for the purpose of audit or investigation.

(d) ACCESS TO JOB REGISTRY.—

(1) CIRCULATION IN INTERSTATE EMPLOYMENT SERVICE SYSTEM.—The Secretary of Labor shall ensure that job opportunities advertised on the electronic job registry established under this section are accessible by the State workforce agencies, which may further disseminate job opportunity information to other interested parties.

(2) INTERNET.—The Secretary of Labor shall ensure that the Internet-based electronic job registry established or approved under this section may be accessed by workers, employers, labor organizations, and other interested parties.

SEC. 1309. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Secretary of State such sums as may be necessary to carry out this title and the amendments made by this title for the period beginning on the date of enactment of this Act and ending on the last day of the sixth fiscal year beginning after the effective date of the regulations promulgated by the Secretary to implement this title.

TITLE IV—ENFORCEMENT

SEC. 1401. DOCUMENT AND VISA REQUIREMENTS.

(a) IN GENERAL.—Section 221(a) of the Immigration and Nationality Act (8 U.S.C. 1201(a)) is amended by adding at the end the following:

''(3) VISAS AND IMMIGRATION RELATED DOCUMENT REQUIREMENTS.—

''(A) Visas issued by the Secretary of State and immigration related documents issued by the Secretary of State or the Secretary of Homeland Security shall comply with authentication and biometric standards recognized by domestic and international standards organizations.

''(B) Such visas and documents shall—

''(i) be machine-readable and tamper-resistant;

''(ii) use biometric identifiers that are consistent with the requirements of section 303 of the Enhanced Border Security and Visa Entry Reform Act of 2002 (8 U.S.C. 1732), and represent the benefits and status set forth in such section;

''(iii) comply with the biometric and document identifying standards established by the International Civil Aviation Organization; and

''(iv) be compatible with the United States Visitor and Immigrant Status Indicator Technology and the employment verification system established under section 274E.

''(C) The information contained on the visas or immigration related documents described in subparagraph (B) shall include—

''(i) the alien's name, date and place of birth, alien registration or visa number, and, if applicable, social security number;

''(ii) the alien's citizenship and immigration status in the United States; and

''(iii) the date that such alien's authorization to work in the United States expires, if appropriate.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date that is 6 months after the date of enactment of this Act.

SEC. 1402. EMPLOYMENT ELIGIBILITY CONFIRMATION SYSTEM.

(a) IN GENERAL.—Chapter 8 of title II of the Immigration and Nationality Act (8 U.S.C. 1321 et seq.) is amended by inserting after section 274D the following:

''EMPLOYMENT ELIGIBILITY

''SEC. 274E. (a) EMPLOYMENT ELIGIBILITY CONFIRMATION SYSTEM.—

''(1) IN GENERAL.—The Commissioner of Social Security, in consultation and coordination with the Secretary of Homeland Security, shall establish an Employment Eligibility Confirmation System (referred to in this section as the 'System') through which the Commissioner responds to inquiries made by employers who have hired individuals concerning each individual's identity and employment authorization.

''(2) MAINTENANCE OF RECORDS.—The Commissioner shall electronically maintain records by which compliance under the System may be verified.

''(3) OBJECTIVES OF THE SYSTEM.—The System shall—

''(A) facilitate the eventual transition for all businesses from the employer verification system established in section 274A with the System;

''(B) utilize, as a central feature of the System, machine-readable documents that contain encrypted electronic information to verify employment eligibility; and

''(C) provide for the evidence of employment required under section 218A.

''(4) INITIAL RESPONSE.—The System shall provide—

''(A) confirmation or a tentative nonconfirmation of an individual's identity and employment eligibility not later than 1 working day after the initial inquiry; and

''(B) an appropriate code indicating such confirmation or tentative nonconfirmation.

''(5) SECONDARY VERIFICATION PROCESS IN CASE OF TENTATIVE NONCONFIRMATION.—

''(A) ESTABLISHMENT.—For cases of tentative nonconfirmation, the Commissioner of Social Security, in consultation and coordination with the Secretary of Homeland Security, shall establish a secondary verification process. The employer shall make the secondary verification inquiry not later than 10 days after receiving a tentative nonconfirmation.

''(B) DISCREPANCIES.—If an employee chooses to contest a secondary nonconfirmation, the employer shall provide the employee with a referral letter and instruct the employee to visit an office of the Department of Homeland Security or the Social Security Administration to resolve the discrepancy not later than 10 working days after the receipt of such referral letter in order to obtain confirmation.

''(C) FAILURE TO CONTEST.—An individual's failure to contest a confirmation shall not constitute knowledge (as defined in section 274a.1(l) of title 8, Code of Federal Regulations.

''(6) DESIGN AND OPERATION OF SYSTEM.—The System shall be designed, implemented, and operated—

''(A) to maximize its reliability and ease of use consistent with protecting the privacy and security of the underlying information through technical and physical safeguards;

''(B) to allow employers to verify that a newly hired individual is authorized to be employed;

''(C) to permit individuals to—

''(i) view their own records in order to ensure the accuracy of such records; and

''(ii) contact the appropriate agency to correct any errors through an expedited process

established by the Commissioner of Social Security, in consultation and coordination with the Secretary of Homeland Security; and

''(D) to prevent discrimination based on national origin or citizenship status under section 274B.

''(7) UNLAWFUL USES OF SYSTEM.—It shall be an unlawful immigration-related employment practice—

''(A) for employers or other third parties to use the System selectively or without authorization;

''(B) to use the System prior to an offer of employment;

''(C) to use the System to exclude certain individuals from consideration for employment as a result of a perceived likelihood that additional verification will be required, beyond what is required for most job applicants;

''(D) to use the System to deny certain employment benefits, otherwise interfere with the labor rights of employees, or any other unlawful employment practice; or

''(E) to take adverse action against any person, including terminating or suspending an employee who has received a tentative nonconfirmation.

''(b) EMPLOYMENT ELIGIBILITY DATABASE.—

''(1) REQUIREMENT.—The Commissioner of Social Security, in consultation and coordination with the Secretary of Homeland Security and other appropriate agencies, shall design, implement, and maintain an Employment Eligibility Database (referred to in this section as the 'Database') as described in this subsection.

''(2) DATA.—The Database shall include, for each individual who is not a citizen or national of the United States, but is authorized or seeking authorization to be employed in the United States, the individual's—

''(A) country of origin;

''(B) immigration status;

''(C) employment eligibility;

''(D) occupation;

''(E) metropolitan statistical area of employment;

''(F) annual compensation paid;

''(G) period of employment eligibility;

''(H) employment commencement date; and

''(I) employment termination date.

''(3) REVERIFICATION OF EMPLOYMENT ELIGIBILITY.—The Commissioner of Social Security shall prescribe, by regulation, a system to annually reverify the employment eligibility of each individual described in this section—

''(A) by utilizing the machine-readable documents described in section 221(a)(3); or

''(B) if machine-readable documents are not available, by telephonic or electronic communication.

''(4) CONFIDENTIALITY.—

''(A) ACCESS TO DATABASE.—No officer or employee of any agency or department of the United States, other than individuals responsible for the verification of employment eligibility or for the evaluation of the employment verification program at the Social Security Administration, the Department of Homeland Security, and the Department of Labor, may have access to any information contained in the Database.

''(B) PROTECTION FROM UNAUTHORIZED DISCLOSURE.—Information in the Database shall be adequately protected against unauthorized disclosure for other purposes, as provided in regulations established by the Commissioner of Social Security, in consultation with the Secretary of Homeland Security and the Secretary of Labor.

''(5) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to design, implement, and maintain the Database.

''(c) GRADUAL IMPLEMENTATION.—The Commissioner of Social Security, in coordination with the Secretary of Homeland Security and the Secretary of Labor shall develop a plan to phase all workers into the Database and phase out the employer verification system established in section 274A over a period of time that the Commissioner determines to be appropriate.

''(d) EMPLOYER RESPONSIBILITIES.—Each employer shall—

''(1) notify employees and prospective employees of the use of the System and that the System may be used for immigration enforcement purposes;

''(2) verify the identification and employment authorization status for newly hired individuals described in section 101(a)(15)(H)(v)(a) not later than 3 days after the date of hire;

''(3) use—

''(A) a machine-readable document described in subsection (a)(3)(B); or

''(B) the telephonic or electronic system to access the Database;

''(4) provide, for each employer hired, the occupation, metropolitan statistical area of employment, and annual compensation paid;

''(5) retain the code received indicating confirmation or nonconfirmation, for use in investigations described in section 212(n)(2); and

''(6) provide a copy of the employment verification receipt to such employees.

''(e) GOOD-FAITH COMPLIANCE.—

''(1) AFFIRMATIVE DEFENSE.—A person or entity that establishes good faith compliance with the requirements of this section with respect to the employment of an individual in the United States has established an affirmative defense that the person or entity has not violated this section.

''(2) LIMITATION.—Paragraph (1) shall not apply if a person or entity engages in an unlawful immigration-related employment practice described in subsection (a)(7).''.

(b) INTERIM DIRECTIVE.—Before the implementation of the Employment Eligibility Confirmation System (referred to in this section as the ''System'') established under section 274E of the Immigration and Nationality Act, as added by subsection (a), the Commissioner of Social Security, in coordination with the Secretary of Homeland Security, shall, to the maximum extent practicable, implement an interim system to confirm employment eligibility that is consistent with the provisions of such section.

(c) REPORTS.—

(1) IN GENERAL.—Not later than 3 months after the last day of the second year and of the third year that the System is in effect, the Comptroller General of the United States shall submit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report on the System.

(2) CONTENTS.—Each report submitted under paragraph (1) shall include—

(A) an assessment of the impact of the System on the employment of unauthorized workers;

(B) an assessment of the accuracy of the Employment Eligibility Database maintained by the Department of Homeland Security and Social Security Administration databases, and timeliness and accuracy of responses from the Department of Homeland Security and the Social Security Administration to employers;

(C) an assessment of the privacy, confidentiality, and system security of the System;

(D) assess whether the System is being implemented in a nondiscriminatory manner; and

(E) include recommendations on whether or not the System should be modified.

SEC. 1403. IMPROVED ENTRY AND EXIT DATA SYSTEM.

Section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1365a) is amended—

(1) by striking ''Attorney General'' each place it appears and inserting ''Secretary of Homeland Security'';

(2) in subsection (b)—

(A) in paragraph (1)(C), by striking ''Justice'' and inserting ''Homeland Security'';

(B) in paragraph (4), by striking ''and'' at the end;

(C) in paragraph (5), by striking the period at the end and inserting ''; and''; and

(D) by adding at the end the following:

''(6) collects the biometric machine-readable information from an alien's visa or immigration-related document described in section 221(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1201(a)(3) at the time an alien arrives in the United States and at the time an alien departs from the United States to determine if such alien is entering, or is present in, the United States unlawfully.''; and

(3) in subsection (f)(1), by striking ''Departments of Justice and State'' and inserting ''Department of Homeland Security and the Department of State''.

SEC. 1404. DEPARTMENT OF LABOR INVESTIGATIVE AUTHORITIES.

Section 212(n)(2) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(2)) is amended—

(1) by redesignating subparagraph (H) as subparagraph (J); and

(2) by inserting after subparagraph (G) the following:

''(H)(i) The Secretary of Labor may initiate an investigation of any employer that employs nonimmigrants described in section 101(a)(15)(H)(v)(a) if the Secretary, or the Secretary's designee—

''(I) certifies that reasonable cause exists to believe that the employer is out of compliance with the Secure America and Orderly Immigration Act or section 274E; and

''(II) approves the commencement of the investigation.

''(ii) In determining whether reasonable cause exists to initiate an investigation under this section, the Secretary shall—

''(I) monitor the Willing Worker-Willing Employer Electronic Job Registry;

''(II) monitor the Employment Eligibility Confirmation System, taking into consideration whether—

''(aa) an employer's submissions to the System generate a high volume of tentative nonconfirmation responses relative to other comparable employers;

''(bb) an employer rarely or never screens hired individuals;

''(cc) individuals employed by an employer rarely or never pursue a secondary verification process as established in section 274E; or

''(dd) any other indicators of illicit, inappropriate or discriminatory use of the System, especially those described in section 274E(a)(6)(D), exist; and

''(III) consider any additional evidence that the Secretary determines appropriate.

''(iii) Absent other evidence of noncompliance, an investigation under this subparagraph should not be initiated for lack of completeness or obvious inaccuracies by the employer in complying with section 101(a)(15)(H)(v)(a).''.

SEC. 1405. PROTECTION OF EMPLOYMENT RIGHTS.

The Secretary and the Secretary of Homeland Security shall establish a process under which a nonimmigrant worker described in clause (ii)(b) or (v)(a) of section 101(a)(15)(H) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)) who files a nonfrivolous

complaint regarding a violation of this section and is otherwise eligible to remain and work in the United States may be allowed to seek other appropriate employment in the United States with an employer for a period not to exceed the maximum period of stay authorized for that nonimmigrant classification.

SEC. 1406. INCREASED FINES FOR PROHIBITED BEHAVIOR.

Section 274B(g)(2)(B)(iv) of the Immigration and Nationality Act (8 U.S.C. 1324b(g)(2)(B)(iv)) is amended—

(1) in subclause (I), by striking ''not less than $250 and not more than $2,000'' and inserting ''not less than $500 and not more than $4,000'';

(2) in subclause (II), by striking ''not less than $2,000 and not more than $5,000'' and inserting ''not less than $4,000 and not more than $10,000''; and

(3) in subclause (III), by striking ''not less than $3,000 and not more than $10,000'' and inserting ''not less than $6,000 and not more than $20,000''.

TITLE V—PROMOTING CIRCULAR MIGRATION PATTERNS

SEC. 1501. LABOR MIGRATION FACILITATION PROGRAMS.

(a) AUTHORITY FOR PROGRAM.—

(1) IN GENERAL.—The Secretary of State is authorized to enter into an agreement to establish and administer a labor migration facilitation program jointly with the appropriate official of a foreign government whose citizens participate in the temporary worker program authorized under section 101(a)(15)(H)(v)(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(v)(a)).

(2) PRIORITY.—In establishing programs under subsection (a), the Secretary of State shall place a priority on establishing such programs with foreign governments that have a large number of nationals working as temporary workers in the United States under such section 101(a)(15)(H)(v)(a). The Secretary shall enter into such agreements not later than 3 months after the date of enactment of this Act or as soon thereafter as is practicable.

(3) ELEMENTS OF PROGRAM.—A program established under paragraph (1) may provide for—

(A) the Secretary of State, in conjunction with the Secretary of Homeland Security and the Secretary of Labor, to confer with a foreign government—

(i) to establish and implement a program to assist temporary workers from such a country to obtain nonimmigrant status under such section 101(a)(15)(H)(v)(a);

(ii) to establish programs to create economic incentives for aliens to return to their home country;

(B) the foreign government to monitor the participation of its nationals in such a temporary worker program, including departure from and return to a foreign country;

(C) the foreign government to develop and promote a reintegration program available to such individuals upon their return from the United States;

(D) the foreign government to promote or facilitate travel of such individuals between the country of origin and the United States; and

(E) any other matters that the foreign government and United States find appropriate to enable such individuals to maintain strong ties to their country of origin.

SEC. 1502. BILATERAL EFFORTS WITH MEXICO TO REDUCE MIGRATION PRESSURES AND COSTS.

(a) FINDINGS.—Congress makes the following findings:

(1) Migration from Mexico to the United States is directly linked to the degree of economic opportunity and the standard of living in Mexico.

(2) Mexico comprises a prime source of migration to the United States.

(3) Remittances from Mexican citizens working in the United States reached a record high of nearly $17,000,000,000 in 2004.

(4) Migration patterns may be reduced from Mexico to the United States by addressing the degree of economic opportunity available to Mexican citizens.

(5) Many Mexican assets are held extra-legally and cannot be readily used as collateral for loans.

(6) A majority of Mexican businesses are small or medium size with limited access to financial capital.

(7) These factors constitute a major impediment to broad-based economic growth in Mexico.

(8) Approximately 20 percent of Mexico's population works in agriculture, with the majority of this population working on small farms and few on large commercial enterprises.

(9) The Partnership for Prosperity is a bilateral initiative launched jointly by the President of the United States and the President of Mexico in 2001, which aims to boost the social and economic standards of Mexican citizens, particularly in regions where economic growth has lagged and emigration has increased.

(10) The Presidents of Mexico and the United States and the Prime Minister of Canada, at their trilateral summit on March 23, 2005, agreed to promote economic growth, competitiveness, and quality of life in the agreement on Security and Prosperity Partnership of North America.

(b) SENSE OF CONGRESS REGARDING PARTNERSHIP FOR PROSPERITY.—It is the sense of Congress that the United States and Mexico should accelerate the implementation of the Partnership for Prosperity to help generate economic growth and improve the standard of living in Mexico, which will lead to reduced migration, by—

(1) increasing access for poor and under served populations in Mexico to the financial services sector, including credit unions;

(2) assisting Mexican efforts to formalize its extra-legal sector, including the issuance of formal land titles, to enable Mexican citizens to use their assets to procure capital;

(3) facilitating Mexican efforts to establish an effective rural lending system for small- and medium-sized farmers that will—

(A) provide long term credit to borrowers;

(B) develop a viable network of regional and local intermediary lending institutions; and

(C) extend financing for alternative rural economic activities beyond direct agricultural production;

(4) expanding efforts to reduce the transaction costs of remittance flows in order to increase the pool of savings available to help finance domestic investment in Mexico;

(5) encouraging Mexican corporations to adopt internationally recognized corporate governance practices, including anti-corruption and transparency principles;

(6) enhancing Mexican efforts to strengthen governance at all levels, including efforts to improve transparency and accountability, and to eliminate corruption, which is the single biggest obstacle to development;

(7) assisting the Government of Mexico in implementing all provisions of the Inter-American Convention Against Corruption (ratified by Mexico on May 27, 1997) and urging the Government of Mexico to participate fully in the Convention's formal implementation monitoring mechanism;

(8) helping the Government of Mexico to strengthen education and training opportunities throughout the country, with a particular emphasis on improving rural education; and

(9) encouraging the Government of Mexico to create incentives for persons who have migrated to the United States to return to Mexico.

(c) SENSE OF CONGRESS REGARDING BILATERAL PARTNERSHIP ON HEALTH CARE.—It is the sense of Congress that the Government of the United States and the Government of Mexico should enter into a partnership to examine uncompensated and burdensome health care costs incurred by the United States due to legal and illegal immigration, including—

(1) increasing health care access for poor and under served populations in Mexico;

(2) assisting Mexico in increasing its emergency and trauma health care facilities along the border, with emphasis on expanding prenatal care in the United States–Mexico border region;

(3) facilitating the return of stable, incapacitated workers temporarily employed in the United States to Mexico in order to receive extended, long-term care in their home country; and

(4) helping the Government of Mexico to establish a program with the private sector to cover the health care needs of Mexican nationals temporarily employed in the United States.

TITLE VI—FAMILY UNITY AND BACKLOG REDUCTION

SEC. 1601. ELIMINATION OF EXISTING BACKLOGS.

(a) FAMILY-SPONSORED IMMIGRANTS.—Section 201(c) of the Immigration and Nationality Act (8 U.S.C. 1151(c)) is amended to read as follows:

''(c) WORLDWIDE LEVEL OF FAMILY-SPONSORED IMMIGRANTS.—The worldwide level of family-sponsored immigrants under this subsection for a fiscal year is equal to the sum of—

''(1) 480,000;

''(2) the difference between the maximum number of visas authorized to be issued under this subsection during the previous fiscal year and the number of visas issued during the previous fiscal year; and

''(3) the difference between—

''(A) the maximum number of visas authorized to be issued under this subsection during fiscal years 2001 through 2005 minus the number of visas issued under this subsection during those years; and

''(B) the number of visas described in subparagraph (A) that were issued after fiscal year 2005.''.

(b) EMPLOYMENT-BASED IMMIGRANTS.—Section 201(d) of the Immigration and Nationality Act (8 U.S.C. 1151(d)) is amended to read as follows:

''(d) WORLDWIDE LEVEL OF EMPLOYMENT-BASED IMMIGRANTS.—The worldwide level of employment-based immigrants under this subsection for a fiscal year is equal to the sum of—

''(1) 290,000;

''(2) the difference between the maximum number of visas authorized to be issued under this subsection during the previous fiscal year and the number of visas issued during the previous fiscal year; and

''(3) the difference between—

''(A) the maximum number of visas authorized to be issued under this subsection during fiscal years 2001 through 2005 and the number of visa numbers issued under this subsection during those years; and

''(B) the number of visas described in subparagraph (A) that were issued after fiscal year 2005.''.

SEC. 1602. COUNTRY LIMITS.

Section 202(a) of the Immigration and Nationality Act (8 U.S.C. 1152(a)) is amended—

(1) in paragraph (2)—

(A) by striking '', (4), and (5)'' and inserting ''and (4)''; and

(B) by striking ''7 percent (in the case of a single foreign state) or 2 percent'' and inserting ''10 percent (in the case of a single foreign state) or 5 percent''; and

(2) by striking paragraph (5).

SEC. 1603. ALLOCATION OF IMMIGRANT VISAS.

(a) PREFERENCE ALLOCATION FOR FAMILY-SPONSORED IMMIGRANTS.—Section 203(a) of the Immigration and Nationality Act (8 U.S.C. 1153(a)) is amended to read as follows:

''(a) PREFERENCE ALLOCATIONS FOR FAMILY-SPONSORED IMMIGRANTS.—Aliens subject to the worldwide level specified in section 201(c) for family-sponsored immigrants shall be allocated visas as follows:

''(1) UNMARRIED SONS AND DAUGHTERS OF CITIZENS.—Qualified immigrants who are the unmarried sons or daughters of citizens of the United States shall be allocated visas in a quantity not to exceed 10 percent of such worldwide level plus any visas not required for the class specified in paragraph (4).

''(2) SPOUSES AND UNMARRIED SONS AND DAUGHTERS OF PERMANENT RESIDENT ALIENS.—Visas in a quantity not to exceed 50 percent of such worldwide level plus any visas not required for the class specified in paragraph (1) shall be allocated to qualified immigrants—

''(A) who are the spouses or children of an alien lawfully admitted for permanent residence, which visas shall constitute not less than 77 percent of the visas allocated under this paragraph; or

''(B) who are the unmarried sons or daughters of an alien lawfully admitted for permanent residence.

''(3) MARRIED SONS AND DAUGHTERS OF CITIZENS.—Qualified immigrants who are the married sons and daughters of citizens of the United States shall be allocated visas in a quantity not to exceed 10 percent of such worldwide level plus any visas not required for the classes specified in paragraphs (1) and (2).

''(4) BROTHERS AND SISTERS OF CITIZENS.—Qualified immigrants who are the brothers or sisters of citizens of the United States who are at least 21 years of age shall be allocated visas in a quantity not to exceed 30 percent of the worldwide level plus any visas not required for the classes specified in paragraphs (1) through (3).''.

(b) PREFERENCE ALLOCATION FOR EMPLOYMENT-BASED IMMIGRANTS.—Section 203(b) of the Immigration and Nationality Act (8 U.S.C. 1153(b)) is amended—

(1) in paragraph (1), by striking ''28.6 percent'' and inserting ''20 percent'';

(2) in paragraph (2)(A), by striking ''28.6 percent'' and inserting ''20 percent'';

(3) in paragraph (3)(A)—

(A) by striking ''28.6 percent'' and inserting ''35 percent''; and

(B) by striking clause (iii);

(4) by striking paragraph (4);

(5) by redesignating paragraph (5) as paragraph (4);

(6) in paragraph (4)(A), as redesignated, by striking ''7.1 percent'' and inserting ''5 percent'';

(7) by inserting after paragraph (4), as redesignated, the following:

''(5) OTHER WORKERS.—Visas shall be made available, in a number not to exceed 30 percent of such worldwide level, plus any visa numbers not required for the classes specified in paragraphs (1) through (4), to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing unskilled labor that is not of a temporary or seasonal nature, for which qualified workers are determined to be unavailable in the United States, or to nonimmigrants under section 101(a)(15)(H)(v)(a).''; and

(8) by striking paragraph (6).

(c) CONFORMING AMENDMENTS.—

(1) DEFINITION OF SPECIAL IMMIGRANT.—Section 101(a)(27)(M) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(M)) is amended by striking ''subject to the numerical limitations of section 203(b)(4),''.

(2) REPEAL OF TEMPORARY REDUCTION IN WORKERS' VISAS.—Section 203(e) of the Nicaraguan Adjustment and Central American Relief Act (8 U.S.C. 1153 note) is repealed.

SEC. 1604. RELIEF FOR CHILDREN AND WIDOWS.

(a) IN GENERAL.—Section 201(b)(2)(A)(i) of the Immigration and Nationality Act (8 U.S.C. 1151(b)(2)(A)(i)) is amended by striking ''spouses, and parents of a citizen of the United States'' and inserting ''(and their children who are accompanying or following to join them), the spouses (and their children who are accompanying or following to join them), and the parents of a citizen of the United States (and their children who are accompanying or following to join them)''.

(b) PETITION.—Section 204(a)(1)(A)(ii) of the Immigration and Nationality Act (8 U.S.C. 1154 (a)(1)(A)(ii) is amended by inserting ''or an alien child or alien parent described in the third sentence of section 201(b)(2)(A)(i)'' after ''section 201(b)(2)(A)(i)''.

(c) ADJUSTMENT OF STATUS.—Section 245 of the Immigration and Nationality Act (8 U.S.C. 1255) is amended by adding at the end the following:

''(n) APPLICATIONS FOR ADJUSTMENT OF STATUS BY SURVIVING SPOUSES, CHILDREN, AND PARENTS.—

''(1) IN GENERAL.—Notwithstanding subsections (a) and (c) (except subsection (c)(6)), any alien described in paragraph (2) who applied for adjustment of status prior to the death of the qualifying relative, may have such application adjudicated as if such death had not occurred.

''(2) ALIEN DESCRIBED.—An alien described in this paragraph is an alien who—

''(A) is an immediate relative (as defined in section 201(b)(2)(A)(i));

''(B) is a family-sponsored immigrant (as described in subsection (a) or (d) of section 203);

''(C) is a derivative beneficiary of an employment-based immigrant under section 203(b), as described in section 203(d); or

''(D) is a derivative beneficiary of a diversity immigrant (as described in section 203(c)).''.

(d) TRANSITION PERIOD.—Notwithstanding a denial of an application for adjustment of status not more than 2 years before the date of enactment of this Act, in the case of an alien whose qualifying relative died before the date of enactment of this Act, such application may be renewed by the alien through a motion to reopen, without fee, filed not later than 1 year after the date of enactment of this Act.

SEC. 1605. AMENDING THE AFFIDAVIT OF SUPPORT REQUIREMENTS.

Section 213A of the Immigration and Nationality Act (8 U.S.C. 1183a) is amended—

(1) in subsection (a)(1)(A), by striking ''125'' and inserting ''100''; and

(2) in subsection (f), by striking ''125'' each place it appears and inserting ''100''.

SEC. 1606. DISCRETIONARY AUTHORITY.

Section 212(i) of the Immigration and Nationality Act (8 U.S.C. 1182(i)) is amended—

(1) by redesignating paragraph (2) as paragraph (3); and

(2) by inserting after paragraph (1) the following:

''(2)(A) The Secretary of Homeland Security may waive the application of subsection (a)(6)(C)—

''(i) in the case of an immigrant who is the spouse, parent, son, or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if the Secretary of Homeland Security determines that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse, child, son, daughter, or parent of such an alien; or

''(ii) in the case of an alien granted classification under clause (iii) or (iv) of section 204(a)(1)(A) or clause (ii) or (iii) of section 204(a)(1)(B), the alien demonstrates extreme hardship to the alien or the alien's parent or child if, such parent or child is a United States citizen, a lawful permanent resident, or a qualified alien.

''(B) An alien who is granted a waiver under subparagraph (A) shall pay a $2,000 fine.''.

SEC. 1607. FAMILY UNITY.

Section 212(a)(9) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(9)) is amended—

(1) in subparagraph (B)(iii)(I), by striking ''18'' and inserting ''21''; and

(2) in subparagraph (C)(ii)—

(A) by redesignating subclauses (1) and (2) as subclauses (I) and (II); and

(B) in subclause (II), as redesignated, by redesignating items (A), (B), (C), and (D) as items (aa), (bb), (cc), and (dd); and

(3) by adding at the end the following:

''(D) WAIVER.—

''(i) IN GENERAL.—The Secretary may waive the application of subparagraphs (B) and (C) for an alien who is a beneficiary of a petition filed under sections 201 and 203 if such petition was filed on or before the date of introduction of Secure America and Orderly Immigration Act.

''(ii) FINE.—An alien who is granted a waiver under clause (i) shall pay a $2,000 fine.''.

TITLE VII—H–5B NONIMMIGRANTS

SEC. 1701. H–5B NONIMMIGRANTS.

(a) IN GENERAL.—Chapter 5 of title II of the Immigration and Nationality Act (8 U.S.C. 1255 et seq.) is amended by adding after section 250 the following:

''H–5B NONIMMIGRANTS

''SEC. 250A. (a) IN GENERAL.—The Secretary of Homeland Security shall adjust the status of an alien to that of a nonimmigrant under section 101(a)(15)(H)(v)(b) if the alien—

''(1) submits an application for such adjustment; and

''(2) meets the requirements of this section.

''(b) PRESENCE IN THE UNITED STATES.—The alien shall establish that the alien—

''(1) was present in the United States before the date on which the Secure America and Orderly Immigration Act was introduced, and has been continuously in the United States since such date; and

''(2) was not legally present in the United States on the date on which the Secure America and Orderly Immigration Act was introduced under any classification set forth in section 101(a)(15).

''(c) SPOUSES AND CHILDREN.—Notwithstanding any other provision of law, the Secretary of Homeland Security shall, if the person is otherwise eligible under subsection (b)—

''(1) adjust the status to that of a nonimmigrant under section 101(a)(15)(H)(v)(b) for, or provide a nonimmigrant visa to, the spouse or child of an alien who is provided nonimmigrant status under section 101(a)(15)(H)(v)(b); or

''(2) adjust the status to that of a nonimmigrant under section 101(a)(15)(H)(v)(b) for an alien who, before the date on which the Secure America and Orderly Immigration Act was introduced in Congress, was the spouse or child of an alien who is provided nonimmigrant status under section

101(a)(15)(H)(v)(b), or is eligible for such status, if—

''(A) the termination of the qualifying relationship was connected to domestic violence; and

''(B) the spouse or child has been battered or subjected to extreme cruelty by the spouse or parent alien who is provided nonimmigrant status under section 101(a)(15)(H)(v)(b).

''(d) OTHER CRITERIA.—

''(1) IN GENERAL.—An alien may be granted nonimmigrant status under section 101(a)(15)(H)(v)(b), or granted status as the spouse or child of an alien eligible for such status under subsection (c), if the alien establishes that the alien—

''(A) is not inadmissible to the United States under section 212(a), except as provided in paragraph (2); or

''(B) has not ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion.

''(2) GROUNDS OF INADMISSIBILITY.—In determining an alien's admissibility under paragraph (1)(A)—

''(A) paragraphs (5), (6)(A), (6)(B), (6)(C), (6)(F), (6)(G), (7), (9), and (10)(B) of section 212(a) shall not apply for conduct that occurred before the date on which the Secure America and Orderly Immigration Act was introduced;

''(B) the Secretary of Homeland Security may not waive—

''(i) subparagraph (A), (B), (C), (E), (G), (H), or (I) of section 212(a)(2) (relating to criminals);

''(ii) section 212(a)(3) (relating to security and related grounds); or

''(iii) subparagraph (A) or (C) of section 212(a)(10) (relating to polygamists and child abductors);

''(C) for conduct that occurred before the date on which the Secure America and Orderly Immigration Act was introduced, the Secretary of Homeland Security may waive the application of any provision of section 212(a) not listed in subparagraph (B) on behalf of an individual alien for humanitarian purposes, to ensure family unity, or when such waiver is otherwise in the public interest; and

''(D) nothing in this paragraph shall be construed as affecting the authority of the Secretary of Homeland Security other than under this paragraph to waive the provisions of section 212(a).

''(3) APPLICABILITY OF OTHER PROVISIONS.—Sections 240B(d) and 241(a)(5) shall not apply to an alien who is applying for adjustment of status in accordance with this title for conduct that occurred before the date on which the Secure America and Orderly Immigration Act was introduced.

''(e) EMPLOYMENT.—

''(1) IN GENERAL.—The Secretary of Homeland Security may not adjust the status of an alien to that of a nonimmigrant under section 101(a)(15)(H)(v)(b) unless the alien establishes that the alien—

''(A) was employed in the United States, whether full time, part time, seasonally, or self-employed, before the date on which the Secure America and Orderly Immigration Act was introduced; and

''(B) has been employed in the United States since that date.

''(2) EVIDENCE OF EMPLOYMENT.—

''(A) CONCLUSIVE DOCUMENTS.—An alien may conclusively establish employment status in compliance with paragraph (1) by submitting to the Secretary of Homeland Security records demonstrating such employment maintained by—

''(i) the Social Security Administration, Internal Revenue Service, or by any other Federal, State, or local government agency;

''(ii) an employer; or

''(iii) a labor union, day labor center, or an organization that assists workers in matters related to employment.

''(B) OTHER DOCUMENTS.—An alien who is unable to submit a document described in clauses (i) through (iii) of subparagraph (A) may satisfy the requirement in paragraph (1) by submitting to the Secretary at least 2 other types of reliable documents that provide evidence of employment, including—

''(i) bank records;

''(ii) business records;

''(iii) sworn affidavits from nonrelatives who have direct knowledge of the alien's work; or

''(iv) remittance records.

''(3) INTENT OF CONGRESS.—It is the intent of Congress that the requirement in this subsection be interpreted and implemented in a manner that recognizes and takes into account the difficulties encountered by aliens in obtaining evidence of employment due to the undocumented status of the alien.

''(4) BURDEN OF PROOF.—An alien described in paragraph (1) who is applying for adjustment of status under this section has the burden of proving by a preponderance of the evidence that the alien has satisfied the requirements of this subsection. An alien may meet such burden of proof by producing sufficient evidence to demonstrate such employment as a matter of reasonable inference.

''(f) SPECIAL RULES FOR MINORS AND INDIVIDUALS WHO ENTERED AS MINORS.—The employment requirements under this section shall not apply to any alien under 21 years of age.

''(g) EDUCATION PERMITTED.—An alien may satisfy the employment requirements under this section, in whole or in part, by full-time attendance at—

''(1) an institution of higher education (as defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001)); or

''(2) a secondary school (as defined in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801)).

''(h) SECURITY AND LAW ENFORCEMENT BACKGROUND CHECKS.—

''(1) SUBMISSION OF FINGERPRINTS.—An alien may not be granted nonimmigrant status under section 101(a)(15)(H)(v)(b), or granted status as the spouse or child of an alien eligible for such status under subsection (c), unless the alien submits fingerprints in accordance with procedures established by the Secretary of Homeland Security.

''(2) BACKGROUND CHECKS.—The Secretary of Homeland Security shall utilize fingerprints and other data provided by the alien to conduct a background check of such alien relating to criminal, national security, or other law enforcement actions that would render the alien ineligible for adjustment of status as described in this section.

''(3) EXPEDITIOUS PROCESSING.—The background checks required under paragraph (2) shall be conducted as expeditiously as possible.

''(i) PERIOD OF AUTHORIZED STAY AND APPLICATION FEE AND FINE.—

''(1) PERIOD OF AUTHORIZED STAY.—

''(A) IN GENERAL.—The period of authorized stay for a nonimmigrant described in section 101(a)(15)(H)(v)(b) shall be 6 years.

''(B) LIMITATION.—The Secretary of Homeland Security may not authorize a change from such nonimmigrant classification to any other immigrant or nonimmigrant classification until the termination of the 6-year period described in subparagraph (A). The Secretary may only extend such period to accommodate the processing of an application for adjustment of status under section 245B.

''(2) APPLICATION FEE.—The Secretary of Homeland Security shall impose a fee for filing an application for adjustment of status under this section. Such fee shall be sufficient to cover the administrative and other expenses incurred in connection with the review of such applications.

''(3) FINES.—

''(A) IN GENERAL.—In addition to the fee required under paragraph (2), the Secretary of Homeland Security may accept an application for adjustment of status under this section only if the alien pays a $1,000 fine.

''(B) EXCEPTION.—Fines paid under this paragraph shall not be required from an alien under the age of 21.

''(4) COLLECTION OF FEES AND FINES.—All fees and fines collected under this section shall be deposited in the Treasury in accordance with section 286(w).

''(j) TREATMENT OF APPLICANTS.—

''(1) IN GENERAL.—An alien who files an application under this section, including the alien's spouse or child—

''(A) shall be granted employment authorization pending final adjudication of the alien's application for adjustment of status;

''(B) shall be granted permission to travel abroad;

''(C) may not be detained, determined inadmissible or deportable, or removed pending final adjudication of the alien's application for adjustment of status, unless the alien, through conduct or criminal conviction, becomes ineligible for such adjustment of status; and

''(D) may not be considered an unauthorized alien (as defined in section 274A(h)(3)) until employment authorization under subparagraph (A) is denied.

''(2) BEFORE APPLICATION PERIOD.—If an alien is apprehended after the date of enactment of this section, but before the promulgation of regulations pursuant to this section, and the alien can establish prima facie eligibility as a nonimmigrant under section 101(a)(15)(H)(v)(b), the Secretary of Homeland Security shall provide the alien with a reasonable opportunity, after promulgation of regulations, to file an application for adjustment.

''(3) DURING CERTAIN PROCEEDINGS.—Notwithstanding any provision of this Act, an alien who is in removal proceedings shall have an opportunity to apply for adjustment of status under this title unless a final administrative determination has been made.

''(4) RELATIONSHIPS OF APPLICATION TO CERTAIN ORDERS.—An alien who is present in the United States and has been ordered excluded, deported, removed, or ordered to depart voluntarily from the United States under any provision of this Act may, notwithstanding such order, apply for adjustment of status in accordance with this section. Such an alien shall not be required to file a separate motion to reopen, reconsider, or vacate the exclusion, deportation, removal, or voluntary departure order. If the Secretary of Homeland Security grants the application, the Secretary shall cancel such order. If the Secretary of Homeland Security renders a final administrative decision to deny the application, such order shall be effective and enforceable to the same extent as if the application had not been made.

''(k) ADMINISTRATIVE AND JUDICIAL REVIEW.—

''(1) ADMINISTRATIVE REVIEW.—

''(A) SINGLE LEVEL OF ADMINISTRATIVE APPELLATE REVIEW.—The Secretary of Homeland Security shall establish an appellate authority within the United States Citizenship and Immigration Services to provide for

a single level of administrative appellate review of a determination respecting an application for adjustment of status under this section.

''(B) STANDARD FOR REVIEW.—Administrative appellate review referred to in subparagraph (A) shall be based solely upon the administrative record established at the time of the determination on the application and upon the presentation of additional or newly discovered evidence during the time of the pending appeal.

''(2) JUDICIAL REVIEW.—

''(A) IN GENERAL.—There shall be judicial review in the Federal courts of appeal of the denial of an application for adjustment of status under this section. Notwithstanding any other provision of law, the standard for review of such a denial shall be governed by subparagraph (B).

''(B) STANDARD FOR JUDICIAL REVIEW.—Judicial review of a denial of an application under this section shall be based solely upon the administrative record established at the time of the review. The findings of fact and other determinations contained in the record shall be conclusive unless the applicant can establish abuse of discretion or that the findings are directly contrary to clear and convincing facts contained in the record, considered as a whole.

''(C) JURISDICTION OF COURTS.—

''(i) IN GENERAL.—Notwithstanding any other provision of law, the district courts of the United States shall have jurisdiction over any cause or claim arising from a pattern or practice of the Secretary of Homeland Security in the operation or implementation of this section that is arbitrary, capricious, or otherwise contrary to law, and may order any appropriate relief.

''(ii) REMEDIES.—A district court may order any appropriate relief under clause (i) if the court determines that resolution of such cause or claim will serve judicial and administrative efficiency or that a remedy would otherwise not be reasonably available or practicable.

''(3) STAY OF REMOVAL.—Aliens seeking administrative or judicial review under this subsection shall not be removed from the United States until a final decision is rendered establishing ineligibility under this section.

''(l) CONFIDENTIALITY OF INFORMATION.—

''(1) IN GENERAL.—Except as otherwise provided in this subsection, no Federal agency or bureau, nor any officer, employee, or agent of such agency or bureau, may—

''(A) use the information furnished by the applicant pursuant to an application filed under this section for any purpose other than to make a determination on the application;

''(B) make any publication through which the information furnished by any particular applicant can be identified; or

''(C) permit anyone other than the sworn officers and employees of such agency or bureau to examine individual applications.

''(2) REQUIRED DISCLOSURES.—The Secretary of Homeland Security shall provide the information furnished pursuant to an application filed under this section, and any other information derived from such furnished information, to a duly recognized law enforcement entity in connection with a criminal investigation or prosecution or a national security investigation or prosecution, in each instance about an individual suspect or group of suspects, when such information is requested in writing by such entity.

''(3) CRIMINAL PENALTY.—Any person who knowingly uses, publishes, or permits information to be examined in violation of this subsection shall be fined not more than $10,000.

''(m) PENALTIES FOR FALSE STATEMENTS IN APPLICATIONS.—

''(1) CRIMINAL PENALTY.—

''(A) VIOLATION.—It shall be unlawful for any person—

''(i) to file or assist in filing an application for adjustment of status under this section and knowingly and willfully falsify, misrepresent, conceal, or cover up a material fact or make any false, fictitious, or fraudulent statements or representations, or make or use any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry; or

''(ii) to create or supply a false writing or document for use in making such an application.

''(B) PENALTY.—Any person who violates subparagraph (A) shall be fined in accordance with title 18, United States Code, imprisoned not more than 5 years, or both.

''(2) INADMISSIBILITY.—An alien who is convicted of a crime under paragraph (1) shall be considered to be inadmissible to the United States on the ground described in section 212(a)(6)(C)(i).

''(3) EXCEPTION.—Notwithstanding paragraphs (1) and (2), any alien or other entity (including an employer or union) that submits an employment record that contains incorrect data that the alien used in order to obtain such employment before the date on which the Secure America and Orderly Immigration Act is introduced, shall not, on that ground, be determined to have violated this section.''.

(b) CLERICAL AMENDMENT.—The table of contents for the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended by inserting after the item relating to section 250 the following:

''Sec. 250A. H–5B nonimmigrants.''.

SEC. 1702. ADJUSTMENT OF STATUS FOR H–5B NONIMMIGRANTS.

(a) IN GENERAL.—Chapter 5 of title II of the Immigration and Nationality Act (8 U.S.C. 1255 et seq.) is amended by inserting after section 245A the following:

''ADJUSTMENT OF STATUS OF FORMER H–5B NONIMMIGRANT TO THAT OF PERSON ADMITTED FOR LAWFUL PERMANENT RESIDENCE

''SEC. 245B. (a) REQUIREMENTS.—The Secretary shall adjust the status of an alien from nonimmigrant status under section 101(a)(15)(H)(v)(b) to that of an alien lawfully admitted for permanent residence under this section if the alien satisfies the following requirements:

''(1) COMPLETION OF EMPLOYMENT OR EDUCATION REQUIREMENT.—The alien establishes that the alien has been employed in the United States, either full time, part time, seasonally, or self-employed, or has met the education requirements of subsection (f) or (g) of section 250A during the period required by section 250A(e).

''(2) RULEMAKING.—The Secretary shall establish regulations for the timely filing and processing of applications for adjustment of status for nonimmigrants under section 101(a)(15)(H)(v)(b).

''(3) APPLICATION AND FEE.—The alien who applies for adjustment of status under this section shall pay the following:

''(A) APPLICATION FEE.—An alien who files an application under section 245B of the Immigration and Nationality Act, shall pay an application fee, set by the Secretary.

''(B) ADDITIONAL FINE.—Before the adjudication of an application for adjustment of status filed under this section, an alien who is at least 21 years of age shall pay a fine of $1,000.

''(4) ADMISSIBLE UNDER IMMIGRATION LAWS.—The alien establishes that the alien is not inadmissible under section 212(a), except for any provision of that section that is not applicable or waived under section 250A(d)(2).

''(5) MEDICAL EXAMINATION.—The alien shall undergo, at the alien's expense, an appropriate medical examination (including a determination of immunization status) that conforms to generally accepted professional standards of medical practice.

''(6) PAYMENT OF INCOME TAXES.—

''(A) IN GENERAL.—Not later than the date on which status is adjusted under this section, the alien shall establish the payment of all Federal income taxes owed for employment during the period of employment required by section 250A(e) by establishing that—

''(i) no such tax liability exists;

''(ii) all outstanding liabilities have been met; or

''(iii) the alien has entered into an agreement for payment of all outstanding liabilities with the Internal Revenue Service.

''(B) IRS COOPERATION.—The Commissioner of Internal Revenue shall provide documentation to an alien upon request to establish the payment of all income taxes required by this paragraph.

''(7) BASIC CITIZENSHIP SKILLS.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the alien shall establish that the alien—

''(i) meets the requirements of section 312; or

''(ii) is satisfactorily pursuing a course of study to achieve such an understanding of English and knowledge and understanding of the history and government of the United States.

''(B) RELATION TO NATURALIZATION EXAMINATION.—An alien who demonstrates that the alien meets the requirements of section 312 may be considered to have satisfied the requirements of that section for purposes of becoming naturalized as a citizen of the United States under title III.

''(8) SECURITY AND LAW ENFORCEMENT BACKGROUND CHECKS.—The Secretary shall conduct a security and law enforcement background check in accordance with procedures described in section 250A(h).

''(9) MILITARY SELECTIVE SERVICE.—The alien shall establish that if the alien is within the age period required under the Military Selective Service Act (50 U.S.C. App. 451 et seq.), that such alien has registered under that Act.

''(b) TREATMENT OF SPOUSES AND CHILDREN.—

''(1) ADJUSTMENT OF STATUS.—Notwithstanding any other provision of law, the Secretary of Homeland Security shall—

''(A) adjust the status to that of a lawful permanent resident under this section, or provide an immigrant visa to the spouse or child of an alien who adjusts status to that of a permanent resident under this section; or

''(B) adjust the status to that of a lawful permanent resident under this section for an alien who was the spouse or child of an alien who adjusts status or is eligible to adjust status to that of a permanent resident under section 245B in accordance with subsection (a), if—

''(i) the termination of the qualifying relationship was connected to domestic violence; and

''(ii) the spouse or child has been battered or subjected to extreme cruelty by the spouse or parent who adjusts status to that of a permanent resident under this section.

''(2) APPLICATION OF OTHER LAW.—In acting on applications filed under this subsection with respect to aliens who have been battered or subjected to extreme cruelty, the Secretary of Homeland Security shall apply the provisions of section 204(a)(1)(J) and the protections, prohibitions, and penalties under section 384 of the Illegal Immigration

Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1367).

''(c) JUDICIAL REVIEW; CONFIDENTIALITY; PENALTIES.—Subsections (n), (o), and (p) of section 250A shall apply to this section.''.

(b) CLERICAL AMENDMENT.—The table of contents for the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended by inserting after the item relating to section 245A the following:

''Sec. 245B. Adjustment of status of former H–5B nonimmigrant to that of person admitted for lawful permanent residence.''.

SEC. 1703. ALIENS NOT SUBJECT TO DIRECT NUMERICAL LIMITATIONS.

Section 201(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1151(b)(1)) is amended—

(1) in subparagraph (A), by striking ''subparagraph (A) or (B) of''; and

(2) by adding at the end the following:

''(F) Aliens whose status is adjusted from the status described in section 101(a)(15)(H)(v)(b).''.

SEC. 1704. EMPLOYER PROTECTIONS.

(a) IMMIGRATION STATUS OF ALIEN.—Employers of aliens applying for adjustment of status under section 245B or 250A of the Immigration and Nationality Act, as added by this title, shall not be subject to civil and criminal tax liability relating directly to the employment of such alien prior to such alien receiving employment authorization under this title.

(b) PROVISION OF EMPLOYMENT RECORDS.—Employers that provide unauthorized aliens with copies of employment records or other evidence of employment pursuant to an application for adjustment of status under section 245B or 250A of the Immigration and Nationality Act or any other application or petition pursuant to any other immigration law, shall not be subject to civil and criminal liability under section 274A of such Act for employing such unauthorized aliens.

(c) APPLICABILITY OF OTHER LAW.—Nothing in this section may be used to shield an employer from liability under section 274B of the Immigration and Nationality Act (8 U.S.C. 1324b) or any other labor or employment law.

SEC. 1705. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated to the Secretary of Homeland Security such sums as may be necessary to carry out this title and the amendments made by this title.

(b) AVAILABILITY OF FUNDS.—Funds appropriated pursuant subsection (a) shall remain available until expended.

(c) SENSE OF CONGRESS.—It is the sense of Congress that funds authorized to be appropriated under subsection (a) should be directly appropriated so as to facilitate the orderly and timely commencement of the processing of applications filed under sections 245B and 250A of the Immigration and Nationality Act, as added by this Act.

TITLE VIII—PROTECTION AGAINST IMMIGRATION FRAUD

SEC. 1801. RIGHT TO QUALIFIED REPRESENTATION.

Section 292 of the Immigration and Nationality Act (8 U.S.C. 1362) is amended to read as follows:

''RIGHT TO QUALIFIED REPRESENTATION IN IMMIGRATION MATTERS

''SEC. 292. (a) AUTHORIZED REPRESENTATIVES IN IMMIGRATION MATTERS.—Only the following individuals are authorized to represent an individual in an immigration matter before any Federal agency or entity:

''(1) An attorney.

''(2) A law student who is enrolled in an accredited law school, or a graduate of an accredited law school who is not admitted to the bar, if—

''(A) the law student or graduate is appearing at the request of the individual to be represented;

''(B) in the case of a law student, the law student has filed a statement that the law student is participating, under the direct supervision of a faculty member, attorney, or accredited representative, in a legal aid program or clinic conducted by a law school or nonprofit organization, and that the law student is appearing without direct or indirect remuneration from the individual the law student represents;

''(C) in the case of a graduate, the graduate has filed a statement that the graduate is appearing under the supervision of an attorney or accredited representative and that the graduate is appearing without direct or indirect remuneration from the individual the graduate represents; and

''(D) the law student's or graduate's appearance is—

''(i) permitted by the official before whom the law student or graduate wishes to appear; and

''(ii) accompanied by the supervising faculty member, attorney, or accredited representative, to the extent required by such official.

''(3) Any reputable individual, if—

''(A) the individual is appearing on an individual case basis, at the request of the individual to be represented;

''(B) the individual is appearing without direct or indirect remuneration and the individual files a written declaration to that effect, except as described in subparagraph (D);

''(C) the individual has a pre-existing relationship or connection with the individual entitled to representation, such as a relative, neighbor, clergyman, business associate, or personal friend, except that this requirement may be waived, as a matter of administrative discretion, in cases where adequate representation would not otherwise be available; and

''(D) if making a personal appearance on behalf of another individual, the appearance is permitted by the official before whom the individual wishes to appear, except that such permission shall not be granted with respect to any individual who regularly engages in immigration and naturalization practice or preparation, or holds himself or herself out to the public as qualified to do so.

''(4) An individual representing a recognized organization (as described in subsection (f)) who has been approved to serve as an accredited representative by the Board of Immigration Appeals under subsection (f)(2).

''(5) An accredited official, in the United States, of the government to which an alien owes allegiance, if the official appears solely in his or her official capacity and with the consent of the person to be represented.

''(6) An individual who is licensed to practice law and is in good standing in a court of general jurisdiction of the country in which the individual resides and who is engaged in such practice, if the person represents persons only in matters outside the United States and that the official before whom such person wishes to appear allows such representation, as a matter of discretion.

''(7) An attorney, or an organization represented by an attorney, may appear, on a case-by-case basis, as amicus curiae, if the Board of Immigration Appeals grants such permission and the public interest will be served by such appearance.

''(b) FORMER EMPLOYEES.—No individual previously employed by the Department of Justice, Department of State, Department of Labor, or Department of Homeland Security may be permitted to act as an authorized representative under this section, if such authorization would violate any other applicable provision of Federal law or regulation. In addition, any application for such authorization must disclose any prior employment by or contract with such agencies for services of any nature.

''(c) ADVERTISING.—Only an attorney or an individual approved under subsection (f)(2) as an accredited representative may advertise or otherwise hold themselves out as being able to provide representation in an immigration matter. This provision shall in no way be deemed to diminish any Federal or State law to regulate, control, or enforce laws regarding such advertisement, solicitation, or offer of representation.

''(d) REMOVAL PROCEEDINGS.—In any proceeding for the removal of an individual from the United States and in any appeal proceedings from such proceeding, the individual shall have the privilege, as the individual shall choose, of being represented (at no expense to the Government) by an individual described in subsection (a). Representation by an individual other than a person described in subsection (a) may cause the representative to be subject to civil penalties or such other penalties as may be applicable.

''(e) BENEFITS FILINGS.—In any filing or submission for an immigration related benefit or a determination related to the immigration status of an individual made to the Department of Homeland Security, the Department of Labor, or the Department of State, the individual shall have the privilege, as the individual shall choose, of being represented (at no expense to the Government) by an individual described in subsection (a). Representation by an individual other than an individual described in subsection (a) is cause for the representative to be subject to civil or criminal penalties, as may be applicable.

''(f) RECOGNIZED ORGANIZATIONS AND ACCREDITED REPRESENTATIVES.—

''(1) RECOGNIZED ORGANIZATIONS.—

''(A) IN GENERAL.—The Board of Immigration Appeals may determine that a person is a recognized organization if such person—

''(i) is a nonprofit religious, charitable, social service, or similar organization established in the United States that—

''(I) is recognized by the Board of Immigration Appeals; and

''(II) is authorized to designate a representative to appear in an immigration matter before the Department of Homeland Security or the Executive Office for Immigration Review of the Department of Justice; and

''(ii) demonstrates to the Board that such person—

''(I) makes only nominal charges and assesses no excessive membership dues for individuals given assistance; and

''(II) has at its disposal adequate knowledge, information, and experience.

''(B) BONDING.—The Board, in its discretion, may impose a bond requirement on new organizations seeking recognition.

''(C) REPORTING OBLIGATIONS.—Recognized organizations shall promptly notify the Board when the organization no longer meets the requirements for recognition or when an accredited representative employed by the recognized organization ceases to be employed by the recognized organization.

''(2) ACCREDITED REPRESENTATIVES.—The Board of Immigration Appeals shall approve any qualified individual designated by a recognized organization to serve as an accredited representative. Such individual must be employed by the recognized organization and must meet all requirements set forth in this section and in the accompanying regulations to be authorized to represent individuals in

an immigration matter. Accredited representatives, through their recognized organizations, must certify their continuing eligibility for accreditation every 3 years with the Board of Immigration Appeals. Accredited representatives who fail to comply with these requirements shall not have authority to represent persons in an immigration matter for the recognized organization.

''(g) PROHIBITED ACTS.—An individual, other than an individual authorized to represent an individual under this section, may not—

''(1) directly or indirectly provide or offer representation regarding an immigration matter for compensation or contribution;

''(2) advertise or solicit representation in an immigration matter;

''(3) retain any compensation provided for a prohibited act described in paragraph (1) or (2), regardless of whether any petition, application, or other document was filed with any government agency or entity and regardless of whether a petition, application, or other document was prepared or represented to have been prepared by such individual;

''(4) represent directly or indirectly that the individual is an attorney or supervised by or affiliated with an attorney, when such representation is false; or

''(5) violate any applicable civil or criminal statute or regulation of a State regarding the provision of representation by providing or offering to provide immigration or immigration-related assistance referenced in this subsection.

''(h) CIVIL ENFORCEMENT.—

''(1) IN GENERAL.—Any person, or any entity acting for the interests of itself, its members, or the general public (including a Federal law enforcement official or agency or law enforcement official or agency of any State or political subdivision of a State), that has reason to believe that any person is being or has been injured by reason of a violation of subsection (g) may commence a civil action in any court of competent jurisdiction.

''(2) REMEDIES.—

''(A) DAMAGES.—In any civil action brought under this subsection, if the court finds that the defendant has violated subsection (g), it shall award actual damages, plus the greater of—

''(i) an amount treble the amount of actual damages; or

''(ii) $1,000 per violation.

''(B) INJUNCTIVE RELIEF.—The court may award appropriate injunctive relief, including temporary, preliminary, or permanent injunctive relief, and restitution. Injunctive relief may include, where appropriate, an order temporarily or permanently enjoining the defendant from providing any service to any person in any immigration matter. The court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the commission of any act described in subsection (g).

''(C) ATTORNEY'S FEES.—The court shall also grant a prevailing plaintiff reasonable attorney's fees and costs, including expert witness fees.

''(D) CIVIL PENALTIES.—The court may also assess a civil penalty not exceeding $50,000 for a first violation, and not exceeding $100,000 for subsequent violations.

''(E) CUMULATIVE REMEDIES.—Unless otherwise expressly provided, the remedies or penalties provided under this paragraph are cumulative to each other and to the remedies or penalties available under all other Federal laws or laws of the jurisdiction where the violation occurred.

''(3) NONPREEMPTION.—Nothing in this subsection shall be construed to preempt any other private right of action or any right of action pursuant to the laws of any jurisdiction.

''(4) DISCOVERY.—Information obtained through discovery in a civil action under this subsection shall not be used in any criminal action. Upon the request of any party to a civil action under this subsection, any part of the court file that makes reference to information discovered in a civil action under this subsection may be sealed.

''(i) NONPREEMPTION OF MORE PROTECTIVE STATE AND LOCAL LAWS.—The provisions of this section supersede laws, regulations, and municipal ordinances of any State only to the extent such laws, regulations, and municipal ordinances impede the application of any provision of this section. Any State or political subdivision of a State may impose requirements supplementing those imposed by this section.

''(j) DEFINITIONS.—As used in this section—

''(1) the term 'attorney' means a person who—

''(A) is a member in good standing of the bar of the highest court of a State; and

''(B) is not under any order of any court suspending, enjoining, restraining, disbarring, or otherwise restricting such person in the practice of law;

''(2) the term 'compensation' means money, property, labor, promise of payment, or any other consideration provided directly or indirectly to an individual

''(3) the term 'immigration matter' means any proceeding, filing, or action affecting the immigration or citizenship status of any person, which arises under any immigration or nationality law, Executive order, Presidential proclamation, or action of any Federal agency;

''(4) the term 'representation', when used with respect to the representation of a person, includes—

''(A) the appearance, either in person or through the preparation or filing of any brief or other document, paper, application, or petition on behalf of another person or client, before any Federal agency or officer; and

''(B) the study of the facts of a case and the applicable laws, coupled with the giving of advice and auxiliary activities, including the incidental preparation of papers; and

''(5) the term 'State' includes a State or an outlying possession of the United States.''.

SEC. 1802. PROTECTION OF WITNESS TESTIMONY.

(a) DEFINITION.—Section 101(a)(15)(U)(i) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(i)) is amended—

(1) by inserting in subclause (I) after the phrase ''clause (iii)'' the following: ''or has suffered substantial financial, physical, or mental harm as the result of a prohibited act described in section 292;''

(2) by inserting in subclause (II) after the phrase ''clause (iii)'' the following: ''or section 292'';

(3) by inserting in subclause (III) after the phrase ''clause (iii)'' the following: ''or section 292''; and

(4) by inserting in subclause (IV) after the phrase ''clause (iii)'' the following: ''or section 292''.

(b) ADMISSION OF NONIMMIGRANTS.—Section 214(p) of the Immigration and Nationality Act of (8 U.S.C. 1184(p)) is amended—

(1) in paragraph (1), by inserting ''or section 274E'' after ''section 101(a)(15)(U)(iii)'' each place it appears; and

(2) in paragraph (2)(A), by striking ''10,000'' and inserting ''15,000''.

TITLE IX—CIVICS INTEGRATION

SEC. 1901. FUNDING FOR THE OFFICE OF CITIZENSHIP.

(a) AUTHORIZATION.—The Secretary of Homeland Security, acting through the Director of the Bureau of Citizenship and Immigration Services, is authorized to establish the United States Citizenship Foundation (referred to in this section as the ''Foundation''), an organization duly incorporated in the District of Columbia, exclusively for charitable and educational purposes to support the functions of the Office of Citizenship (as described in section 451(f)(2) of the Homeland Security Act of 2002 (6 U.S.C. 271(f)(2)).

(b) GIFTS.—

(1) TO FOUNDATION.—The Foundation may solicit, accept, and make gifts of money and other property in accordance with section 501(c)(3) of the Internal Revenue Code of 1986.

(2) FROM FOUNDATION.—The Office of Citizenship may accept gifts from the Foundation to support the functions of the Office.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out the mission of the Office of Citizenship.

SEC. 1902. CIVICS INTEGRATION GRANT PROGRAM.

(a) IN GENERAL.—The Secretary of Homeland Security shall establish a competitive grant program to fund—

(1) efforts by entities certified by the Office of Citizenship to provide civics and English as a second language courses; or

(2) other activities approved by the Secretary to promote civics and English as a second language.

(b) ACCEPTANCE OF GIFTS.—The Secretary may accept and use gifts from the United States Citizenship Foundation for grants under this section.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section.

TITLE X—PROMOTING ACCESS TO HEALTH CARE

SEC. 2001. FEDERAL REIMBURSEMENT OF EMERGENCY HEALTH SERVICES FURNISHED TO UNDOCUMENTED ALIENS.

Section 1011 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (42 U.S.C. 1395dd note) is amended—

(1) by striking ''2008'' and inserting ''2011''; and

(2) in subsection (c)(5), by adding at the end the following:

''(D) Nonimmigrants described in section 101(a)(15)(H)(v) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(v)''.

SEC. 2002. PROHIBITION AGAINST OFFSET OF CERTAIN MEDICARE AND MEDICAID PAYMENTS.

Payments made under section 1011 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (42 U.S.C. 1395dd note)—

(1) shall not be considered ''third party coverage'' for the purposes of section 1923 of the Social Security Act (42 U.S.C. 1396r–4); and

(2) shall not impact payments made under such section of the Social Security Act.

SEC. 2003. PROHIBITION AGAINST DISCRIMINATION AGAINST ALIENS ON THE BASIS OF EMPLOYMENT IN HOSPITAL-BASED VERSUS NONHOSPITAL-BASED SITES.

Section 214(l)(1)(C) of the Immigrant and Nationality Act (8 U.S.C. 1184(l)(1)(C) is amended—

(1) in clause (i), by striking ''and'' at the end; and

(2) by adding at the end the following:

''(iii) such interested Federal agency or interested State agency, in determining which aliens will be eligible for such waivers, does not utilize selection criteria, other than as described in this subsection, that discriminate on the basis of the alien's employment in a hospital-based versus nonhospital-based facility or organization; and''.

SEC. 2004. BINATIONAL PUBLIC HEALTH INFRASTRUCTURE AND HEALTH INSURANCE.

(a) STUDY.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall contract with the Institute of Medicine of the National Academies (referred to in this section as the ''Institute'') to study binational public health infrastructure and health insurance efforts.

(2) INPUT.—In conducting the study under paragraph (1), the Institute shall solicit input from border health experts and health insurance companies.

(b) REPORT.—

(1) IN GENERAL.—Not later than 1 year after the date on which the Secretary of Health and Human Services enters into a contract under subsection (a), the Institute shall submit a report concerning the study conducted under subsection (a) to the Secretary of Health and Human Services and the appropriate committees of Congress.

(2) CONTENTS.—The report submitted under paragraph (1) shall include the recommendations of the Institute on ways to expand or improve binational public health infrastructure and health insurance efforts.

TITLE XI—MISCELLANEOUS

SEC. 2101. SUBMISSION TO CONGRESS OF INFORMATION REGARDING H–5A NONIMMIGRANTS.

(a) ENSURING ACCURATE COUNT.—The Secretary of State and the Secretary of Homeland Security shall maintain an accurate count of the number of aliens subject to the numerical limitations under section 214(g)(1)(C) of the Immigration and Nationality Act (8 U.S.C. 1184(g)(1)(C)) who are issued visas or otherwise provided nonimmigrant status.

(b) PROVISION OF INFORMATION.—

(1) QUARTERLY NOTIFICATION.—Beginning with the first fiscal year after regulations are promulgated to implement this Act, the Secretary of State and the Secretary of Homeland Security shall submit quarterly reports to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives containing the numbers of aliens who were issued visas or otherwise provided nonimmigrant status under section 101(a)(15)(H)(v)(a) of the Immigrant and Nationality Act (8 U.S.C. 1101(a)(15)(H)(v)(a)) during the preceding 3-month period.

(2) ANNUAL SUBMISSION.—Beginning with the first fiscal year after regulations are promulgated to implement this Act, the Secretary of Homeland Security shall submit annual reports to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives, containing information on the countries of origin and occupations of, geographic area of employment in the United States, and compensation paid to, aliens who were issued visas or otherwise provided nonimmigrant status under such section 101(a)(15)(H)(v)(a). The Secretary shall compile such reports based on the data reported by employers to the Employment Eligibility Confirmation System established in section 402.

SEC. 2102. H–5 NONIMMIGRANT PETITIONER ACCOUNT.

Section 286 of the Immigration and Nationality Act (8 U.S.C. 1356) is amended by adding at the end the following:

''(w)(1) There is established in the general fund of the Treasury of the United States an account, which shall be known as the 'H–5 Nonimmigrant Petitioner Account'.

''(2) There shall be deposited as offsetting receipts into the H–5 Nonimmigrant Petitioners Account—

''(A) all fees collected under section 218A; and

''(B) all fines collected under section 212(n)(2)(I).

''(3) Of the fees and fines deposited into the H–5 Nonimmigrant Petitioner Account—

''(A) 53 percent shall remain available to the Secretary of Homeland Security for efforts related to the adjudication and implementation of the H–5 visa programs described in sections 221(a) and 250A and any other efforts necessary to carry out the provisions of the Secure America and Orderly Immigration Act and the amendments made by such Act, of which the Secretary shall allocate—

''(i) 10 percent shall remain available to the Secretary of Homeland Security for the border security efforts described in title I of the Secure America and Orderly Immigration Act.

''(ii) not more than 1 percent to promote public awareness of the H–5 visa program, to protect migrants from fraud, and to combat the unauthorized practice of law described in title III of the Secure America and Orderly Immigration Act;

''(iii) not more than 1 percent to the Office of Citizenship to promote civics integration activities described in section 901 of the Secure America and Orderly Immigration Act; and

''(iv) 2 percent for the Civics Integration Grant Program under section 902 of the Secure America and Orderly Immigration Act.

''(B) 15 percent shall remain available to the Secretary of Labor for the enforcement of labor standards in those geographic and occupational areas in which H–5A visa holders are likely to be employed and for other enforcement efforts under the Secure America and Orderly Immigration Act;

''(C) 15 percent shall remain available to the Commissioner of Social Security for the creation and maintenance of the Employment Eligibility Confirmation System described in section 402 of the Secure America and Orderly Immigration Act;

''(D) 15 percent shall remain available to the Secretary of State to carry out any necessary provisions of the Secure America and Orderly Immigration Act; and

''(E) 2 percent shall remain available to the Secretary of Health and Human Services for the reimbursement of hospitals serving individuals working under programs established in this Act.''.

SEC. 2103. ANTI-DISCRIMINATION PROTECTIONS.

Section 274B(a)(3)(B) of the Immigration and Nationality Act (8 U.S.C. 1324b(a)(3)(B)) is amended to read as follows:

''(B) is an alien who is—

''(i) lawfully admitted for permanent residence;

''(ii) granted the status of an alien lawfully admitted for temporary residence under section 210(a) or 245(a)(1);

''(iii) admitted as a refugee under section 207;

''(iv) granted asylum under section 208; or

''(v) granted the status of nonimmigrant under section 101(a)(15)(H)(v).''.

SEC. 2104. WOMEN AND CHILDREN AT RISK OF HARM.

(a) CERTAIN CHILDREN AND WOMEN AT RISK OF HARM.—Section 101(a)(27) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)) is amended—

(1) in subparagraph (L), by inserting a semicolon at the end;

(2) in subparagraph (M), by striking the period at the end and inserting ''; or''; and

(3) by adding at the end the following:

''(N) subject to subsection (j), an immigrant who is not present in the United States—

''(i) who is—

''(I) referred to a consular, immigration, or other designated official by a United States Government agency, an international organization, or recognized nongovernmental entity designated by the Secretary of State for purposes of such referrals; and

''(II) determined by such official to be a minor under 18 years of age (as determined under subsection (j)(5))—

''(aa) for whom no parent or legal guardian is able to provide adequate care;

''(bb) who faces a credible fear of harm related to his or her age;

''(cc) who lacks adequate protection from such harm; and

''(dd) for whom it has been determined to be in his or her best interests to be admitted to the United States; or

''(ii) who is—

''(I) referred to a consular or immigration official by a United States Government agency, an international organization or recognized nongovernmental entity designated by the Secretary of State for purposes of such referrals; and

''(II) determined by such official to be a female who has—

''(aa) a credible fear of harm related to her sex; and

''(bb) a lack of adequate protection from such harm.''.

(b) STATUTORY CONSTRUCTION.—Section 101 of the Immigration and Nationality Act (8 U.S.C. 1101) is amended by adding at the end the following:

''(j)(1) No natural parent or prior adoptive parent of any alien provided special immigrant status under subsection (a)(27)(N)(i) shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act.

''(2)(A) No alien who qualifies for a special immigrant visa under subsection (a)(27)(N)(ii) may apply for derivative status or petition for any spouse who is represented by the alien as missing, deceased, or the source of harm at the time of the alien's application and admission. The Secretary of Homeland Security may waive this requirement for an alien who demonstrates that the alien's representations regarding the spouse were bona fide.

''(B) An alien who qualifies for a special immigrant visa under subsection (a)(27)(N) may apply for derivative status or petition for any sibling under the age of 18 years or children under the age of 18 years of any such alien, if accompanying or following to join the alien. For purposes of this subparagraph, a determination of age shall be made using the age of the alien on the date the petition is filed with the Department of Homeland Security.

''(3) An alien who qualifies for a special immigrant visa under subsection (a)(27)(N) shall be treated in the same manner as a refugee solely for purposes of section 412.

''(4) The provisions of paragraphs (4), (5), and (7)(A) of section 212(a) shall not be applicable to any alien seeking admission to the United States under subsection (a)(27)(N), and the Secretary of Homeland Security may waive any other provision of such section (other than paragraph (2)(C) or subparagraph (A), (B), (C), or (E) of paragraph (3)) with respect to such an alien for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest. Any such waiver by the Secretary of Homeland Security shall be in writing and shall be granted only on an individual basis following an investigation. The Secretary of Homeland Security shall provide for the annual reporting to Congress of the number of waivers granted under this paragraph in the previous fiscal year and a summary of the reasons for granting such waivers.

''(5) For purposes of subsection (a)(27)(N)(i)(II), a determination of age shall be made using the age of the alien on the

date on which the alien was referred to the consular, immigration, or other designated official.

''(6) The Secretary of Homeland Security shall waive any application fee for a special immigrant visa for an alien described in section 101(a)(27)(N).''.

(c) ALLOCATION OF SPECIAL IMMIGRANT VISAS.—Section 203(b)(4) of the Immigration Nationality Act (8 U.S.C. 1153(b)(4)) is amended by striking ''(A) or (B) thereof'' and inserting ''(A), (B), or (N) of such section''.

(d) EXPEDITED PROCESS.—Not later than 45 days after the date of referral to a consular, immigration, or other designated official as described in section 101(a)(27)(N) of the Immigration and Nationality Act, as added by subsection (a), special immigrant status shall be adjudicated and, if granted, the alien shall be—

(1) paroled to the United States pursuant to section 212(d)(5) of that Act (8 U.S.C. 1182(d)(5)); and

(2) allowed to apply for adjustment of status to permanent residence under section 245 of that Act (8 U.S.C. 1255) not later than 1 year after the alien's arrival in the United States.

(e) REQUIREMENT PRIOR TO ENTRY INTO THE UNTIED STATES.—

(1) DATABASE SEARCH.—An alien may not be admitted to the United States under this section or an amendment made by this section until the Secretary of Homeland Security has ensured that a search of each database maintained by an agency or department of the United States has been conducted to determine whether such alien is ineligible to be admitted to the Untied States on criminal, security, or related grounds.

(2) COOPERATION AND SCHEDULE.—The Secretary of Homeland Security and the head of each appropriate agency or department of the United States shall work cooperatively to ensure that each database search required by paragraph (1) is completed not later than 45 days after the date on which an alien files a petition seeking a special immigration visa under section 101(a)(27)(N) of the Immigration and Nationality Act, as added by subsection (a).

(f) REQUIREMENT AFTER ENTRY INTO THE UNITED STATES.—

(1) REQUIREMENT TO SUBMIT FINGERPRINTS.—

(A) IN GENERAL.—Not later than 30 days after the date that an alien enters the United States under this section or an amendment made by this section, the alien shall be fingerprinted and submit to the Secretary of Homeland Security such fingerprints and any other personal biometric data required by the Secretary.

(B) OTHER REQUIREMENTS.—The Secretary of Homeland Security may prescribe regulations that permit fingerprints submitted by an alien under section 262 of the Immigration and Nationality Act (8 U.S.C. 1302) or any other provision of law to satisfy the requirement to submit fingerprints under subparagraph (A).

(2) DATABASE SEARCH.—The Secretary of Homeland Security shall ensure that a search of each database that contains fingerprints that is maintained by an agency or department of the United States be conducted to determine whether such alien is ineligible for an adjustment of status under any provision of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) on criminal, security, or related grounds.

(3) COOPERATION AND SCHEDULE.—The Secretary of Homeland Security and the head of each appropriate agency or department of the United States shall work cooperatively to ensure that each database search required under paragraph (2) is completed not later than 180 days after the date on which the alien enters the United States.

(4) ADMINISTRATIVE AND JUDICIAL REVIEW.—

(A) ADMINISTRATIVE REVIEW.—An alien who is admitted to the United States under this section or an amendment made by this section who is determined to be ineligible for an adjustment of status pursuant to section 212 of the Immigration and Nationality Act (8 U.S.C. 1182) may appeal such a determination through the Administrative Appeals Office of the Bureau of Citizenship and Immigration Services of the Department of Homeland Security. The Secretary of Homeland Security shall ensure that a determination on such appeal is made not later than 60 days after the date on which the appeal is filed.

(B) JUDICIAL REVIEW.—Nothing in this section, or in an amendment made by this section, may preclude application of section 242(a)(2)(B) of the Immigration and Nationality Act (8 U.S.C. 1252(a)(2)(B)).

(g) REPORT TO CONGRESS.—Not later than 1 year after the date of enactment of this Act, the Secretary of Homeland Security shall report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives on the progress of the implementation of this section and the amendments made by this section, including—

(1) data related to the implementation of this section and the amendments made by this section;

(2) data regarding the number of placements of females and children who faces a credible fear of harm as referred to in section 101(a)(27)(N) of the Immigration and Nationality Act, as added by subsection (a); and

(3) any other information that the Secretary of Homeland Security determines to be appropriate.

(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section and the amendments made by this section.

SEC. 2105. EXPANSION OF S VISA.

(a) EXPANSION OF S VISA CLASSIFICATION.—Section 101(a)(15)(S) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(S)) is amended—

(1) in clause (i)—

(A) by striking ''Attorney General'' each place that term appears and inserting ''Secretary of Homeland Security''; and

(B) by striking ''or'' at the end; and

(2) in clause (ii)—

(A) by striking ''Attorney General'' and inserting ''Secretary of Homeland Security''; and

(B) by striking ''1956,'' and all that follows through ''the alien;'' and inserting the following: ''1956; or

''(iii) who the Secretary of Homeland Security and the Secretary of State, in consultation with the Director of Central Intelligence, jointly determine—

''(I) is in possession of critical reliable information concerning the activities of governments or organizations, or their agents, representatives, or officials, with respect to weapons of mass destruction and related delivery systems, if such governments or organizations are at risk of developing, selling, or transferring such weapons or related delivery systems; and

''(II) is willing to supply or has supplied, fully and in good faith, information described in subclause (I) to appropriate persons within the United States Government;

and, if the Secretary of Homeland Security (or with respect to clause (ii), the Secretary of State and the Secretary of Homeland Security jointly) considers it to be appropriate, the spouse, married and unmarried sons and daughters, and parents of an alien described in clause (i), (ii), or (iii) if accompanying, or following to join, the alien;''.

(b) NUMERICAL LIMITATION.—Section 214(k)(1) of the Immigration and Nationality Act (8 U.S.C. 1184(k)(1)) is amended to read as follows:

''(1) The number of aliens who may be provided a visa as nonimmigrants under section 101(a)(15)(S) in any fiscal year may not exceed 3,500.''.

SEC. 2106. VOLUNTEERS.

It is not a violation of clauses (ii), (iii), or (iv) of subparagraph (A) for a religious denomination described in section 101(a)(27)(C)(i) or an affiliated religious organization described in section 101(a)(27)(C)(ii)(III), or their agents or officers, to encourage, invite, call, allow, or enable an alien, who is already present in the United States in violation of law to carry on the violation described in section 101(a)(27)(C)(ii)(I), as a volunteer who is not compensated as an employee, notwithstanding the provision of room, board, travel, and other basic living expenses.

SA 181. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 144 submitted by Mr. SESSIONS and intended to be proposed to the amendment SA 100 proposed by Mr. REID (for Mr. BAUCUS) to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; which was ordered to lie on the table; as follows:

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

DIVISION B—IMMIGRATION REFORM

SECTION 1001. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This division may be cited as the ''Secure America and Orderly Immigration Act''.

(b) TABLE OF CONTENTS.—The table of contents for this division is as follows:

SEC. 1002. FINDINGS.

Congress makes the following findings:

(1) The Government of the United States has an obligation to its citizens to secure its borders and ensure the rule of law in its communities.

(2) The Government of the United States must strengthen international border security efforts by dedicating adequate and significant resources for technology, personnel, and training for border region enforcement.

(3) Federal immigration policies must adhere to the United States tradition as a nation of immigrants and reaffirm this Nation's commitment to family unity, economic opportunity, and humane treatment.

(4) Immigrants have contributed significantly to the strength and economic prosperity of the United States and action must be taken to ensure their fair treatment by employers and protection against fraud and abuse.

(5) Current immigration laws and the enforcement of such laws are ineffective and do not serve the people of the United States, the national security interests of the United States, or the economic prosperity of the United States.

(6) The United States cannot effectively carry out its national security policies unless the United States identifies undocumented immigrants and encourages them to come forward and participate legally in the economy of the United States.

(7) Illegal immigration fosters other illegal activity, including human smuggling, trafficking, and document fraud, all of which undermine the national security interests of the United States.

(8) Illegal immigration burdens States and local communities with hundreds of millions of dollars in uncompensated expenses for law enforcement, health care, and other essential services.

(9) Illegal immigration creates an underclass of workers who are vulnerable to fraud and exploitation.

(10) Fixing the broken immigration system requires a comprehensive approach that provides for adequate legal channels for immigration and strong enforcement of immigration laws which will serve the economic, social, and security interests of the United States.

(11) Foreign governments, particularly those that share an international border with the United States, must play a critical role in securing international borders and deterring illegal entry of foreign nationals into the United States.

(12) Federal immigration policy should foster economic growth by allowing willing workers to be matched with willing employers when no United States worker is available to take a job.

(13) Immigration reform is a key component to achieving effective enforcement and will allow for the best use of security and enforcement resources to be focused on the greatest risks.

(14) Comprehensive immigration reform and strong enforcement of immigration laws will encourage legal immigration, deter illegal immigration, and promote the economic and national security interests of the United States.

TITLE I—BORDER SECURITY

SEC. 1101. DEFINITIONS.

In this title:

(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term ''appropriate congressional committees'' means—

(A) the Committee on Homeland Security and Governmental Affairs of the Senate;

(B) the Committee on the Judiciary of the Senate;

(C) the Committee on Homeland Security of the House of Representatives; and

(D) the Committee on the Judiciary of the House of Representatives.

(2) INTERNATIONAL BORDER OF THE UNITED STATES.—The term ''international border of the United States'' means the international border between the United States and Canada and the international border between the United States and Mexico, including points of entry along such international borders.

(3) SECRETARY.—Except as otherwise provided, the term ''Secretary'' means the Secretary of Homeland Security.

(4) SECURITY PLAN.—The term ''security plan'' means a security plan developed as part of the National Strategy for Border Security set forth under section 111(a) for the Border Patrol and the field offices of the Bureau of Customs and Border Protection of the Department of Homeland Security that has responsibility for the security of any portion of the international border of the United States.

Subtitle A—Border Security Strategic Planning

SEC. 1111. NATIONAL STRATEGY FOR BORDER SECURITY.

(a) IN GENERAL.—In conjunction with strategic homeland security planning efforts, the Secretary shall develop, implement, and update, as needed, a National Strategy for Border Security that includes a security plan for the Border Patrol and the field offices of the Bureau of Customs and Border Protection of the Department of Homeland Security that has responsibility for the security of any portion of the international border of the United States.

(b) CONTENTS.—The National Strategy for Border Security shall include—

(1) the identification and evaluation of the points of entry and all portions of the international border of the United States that, in the interests of national security and enforcement, must be protected from illegal transit;

(2) a description of the most appropriate, practical, and cost-effective means of defending the international border of the United States against threats to security and illegal transit, including intelligence capacities, technology, equipment, personnel, and training needed to address security vulnerabilities within the United States for the Border Patrol and the field offices of the Bureau of Customs and Border Protection that have responsibility for any portion of the international border of the United States;

(3) risk-based priorities for assuring border security and realistic deadlines for addressing security and enforcement needs identified in paragraphs (1) and (2);

(4) a strategic plan that sets out agreed upon roles and missions of Federal, State, regional, local, and tribal authorities, including appropriate coordination among such authorities, to enable security enforcement and border lands management to be carried out in an efficient and effective manner;

(5) a prioritization of research and development objectives to enhance the security of the international border of the United States and enforcement needs to promote such security consistent with the provisions of subtitle B;

(6) an update of the 2001 Port of Entry Infrastructure Assessment Study conducted by the United States Customs Service, in consultation with the General Services Administration;

(7) strategic interior enforcement coordination plans with personnel of Immigration and Customs Enforcement;

(8) strategic enforcement coordination plans with overseas personnel of the Department of Homeland Security and the Department of State to end human smuggling and trafficking activities;

(9) any other infrastructure or security plan or report that the Secretary determines appropriate for inclusion;

(10) the identification of low-risk travelers and how such identification would facilitate cross-border travel; and

(11) ways to ensure that the trade and commerce of the United States is not diminished by efforts, activities, and programs aimed at securing the homeland.

(c) PRIORITY OF NATIONAL STRATEGY.—The National Strategy for Border Security shall be the governing document for Federal security and enforcement efforts related to securing the international border of the United States.

SEC. 1112. REPORTS TO CONGRESS.

(a) NATIONAL STRATEGY.—

(1) INITIAL SUBMISSION.—Not later than 1 year after the date of enactment of this Act, the Secretary shall submit the National Strategy for Border Security, including each security plan, to the appropriate congressional committees. Such plans shall include estimated costs of implementation and training from a fiscal and personnel perspective and a cost-benefit analysis of any technological security implementations.

(2) SUBSEQUENT SUBMISSIONS.—After the submission required under paragraph (1), the Secretary shall submit to the appropriate congressional committees any revisions to the National Strategy for Border Security, including any revisions to a security plan, not less frequently than April 1 of each odd-numbered year. The plan shall include estimated costs for implementation and training and a cost-benefit analysis of technological security implementations that take place during the time frame under evaluation.

(b) PERIODIC PROGRESS REPORTS.—

(1) REQUIREMENT FOR REPORT.—Each year, in conjunction with the submission of the budget to Congress under section 1105(a) of title 31, United States Code, the Secretary shall submit to the appropriate congressional committees an assessment of the progress made on implementing the National Strategy for Border Security, including each security plan.

(2) CONTENT.—Each progress report submitted under this subsection shall include any recommendations for improving and implementing the National Strategy for Border Security, including any recommendations for improving and implementing a security plan.

(c) CLASSIFIED MATERIAL.—

(1) IN GENERAL.—Any material included in the National Strategy for Border Security, including each security plan, that includes information that is properly classified under criteria established by Executive order shall be submitted to the appropriate congressional committees in a classified form.

(2) UNCLASSIFIED VERSION.—As appropriate, an unclassified version of the material described in paragraph (1) shall be provided to the appropriate congressional committees.

SEC. 1113. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Secretary such sums as may be necessary to carry out this subtitle for each of the 5 fiscal years beginning with the fiscal year after the fiscal year in which this Act was enacted.

Subtitle B—Border Infrastructure, Technology Integration, and Security Enhancement

SEC. 1121. BORDER SECURITY COORDINATION PLAN.

(a) IN GENERAL.—The Secretary shall coordinate with Federal, State, local, and tribal authorities on law enforcement, emergency response, and security-related responsibilities with regard to the international border of the United States to develop and implement a plan to ensure that the security of such international border is not compromised—

(1) when the jurisdiction for providing such security changes from one such authority to another such authority;

(2) in areas where such jurisdiction is shared by more than one such authority; or

(3) by one such authority relinquishing such jurisdiction to another such authority pursuant to a memorandum of understanding.

(b) ELEMENTS OF PLAN.—In developing the plan, the Secretary shall consider methods to—

(1) coordinate emergency responses;

(2) improve data-sharing, communications, and technology among the appropriate agencies;

(3) promote research and development relating to the activities described in paragraphs (1) and (2); and

(4) combine personnel and resource assets when practicable.

(c) REPORT.—Not later than 1 year after implementing the plan developed under subsection (a), the Secretary shall transmit a report to the appropriate congressional committees on the development and implementation of such plan.

SEC. 1122. BORDER SECURITY ADVISORY COMMITTEE.

(a) ESTABLISHMENT.—The Secretary is authorized to establish a Border Security Advisory Committee (referred to in this section as the ''Advisory Committee'') to provide advice and recommendations to the Secretary on border security and enforcement issues.

(b) COMPOSITION.—

(1) IN GENERAL.—The members of the Advisory Committee shall be appointed by the Secretary and shall include representatives of—

(A) States that are adjacent to the international border of the United States;

(B) local law enforcement agencies; community officials, and tribal authorities of such States; and

(C) other interested parties.

(2) MEMBERSHIP.—The Advisory Committee shall be comprised of members who represent a broad cross section of perspectives.

SEC. 1123. PROGRAMS ON THE USE OF TECHNOLOGIES FOR BORDER SECURITY.

(a) AERIAL SURVEILLANCE TECHNOLOGIES PROGRAM.—

(1) IN GENERAL.—In conjunction with the border surveillance plan developed under section 5201 of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108–458), the Secretary, not later than 60 days after the date of enactment of this Act, shall develop and implement a program to fully integrate aerial surveillance technologies to enhance the border security of the United States.

(2) ASSESSMENT AND CONSULTATION REQUIREMENTS.—In developing the program under this subsection, the Secretary shall—

(A) consider current and proposed aerial surveillance technologies;

(B) assess the feasibility and advisability of utilizing such technologies to address border threats, including an assessment of the technologies considered best suited to address respective threats;

(C) consult with the Secretary of Defense regarding any technologies or equipment, which the Secretary may deploy along the international border of the United States; and

(D) consult with the Administrator of the Federal Aviation Administration regarding safety, airspace coordination and regulation, and any other issues necessary for implementation of the program.

(3) ADDITIONAL REQUIREMENTS.—

(A) IN GENERAL.—The program developed under this subsection shall include the utilization of a variety of aerial surveillance technologies in a variety of topographies and areas, including populated and unpopulated areas located on or near the international border of the United States, in order to evaluate, for a range of circumstances—

(i) the significance of previous experiences with such technologies in border security or critical infrastructure protection;

(ii) the cost and effectiveness of various technologies for border security, including varying levels of technical complexity; and

(iii) liability, safety, and privacy concerns relating to the utilization of such technologies for border security.

(B) USE OF UNMANNED AERIAL VEHICLES.—The aerial surveillance technologies utilized in the program shall include unmanned aerial vehicles.

(4) CONTINUED USE OF AERIAL SURVEILLANCE TECHNOLOGIES.—The Secretary may continue the operation of aerial surveillance technologies while assessing the effectiveness of their utilization and until such time the Secretary determines appropriate.

(5) REPORT.—

(A) REQUIREMENT.—Not later than 1 year after implementing the program under this subsection, the Secretary shall submit a report on such program to the appropriate congressional committees.

(B) CONTENT.—The Secretary shall include in the report required by subparagraph (A) a description of the program together with such recommendations as the Secretary finds appropriate for enhancing the program.

(b) DEMONSTRATION PROGRAMS.—The Secretary is authorized, as part of the development and implementation of the National Strategy for Border Security, to establish and carry out demonstration programs to strengthen communication, information sharing, technology, security, intelligence benefits, and enforcement activities that will protect the international border of the United States without diminishing international trade and commerce.

SEC. 1124. COMBATING HUMAN SMUGGLING.

(a) REQUIREMENT FOR PLAN.—The Secretary shall develop and implement a plan to improve coordination between the Bureau of Immigration and Customs Enforcement and the Bureau of Customs and Border Protection of the Department of Homeland Security and any other Federal, State, local, or tribal authorities, as determined appropriate by the Secretary, to improve coordination efforts to combat human smuggling.

(b) CONTENT.—In developing the plan required by subsection (a), the Secretary shall consider—

(1) the interoperability of databases utilized to prevent human smuggling;

(2) adequate and effective personnel training;

(3) methods and programs to effectively target networks that engage in such smuggling;

(4) effective utilization of—

(A) visas for victims of trafficking and other crimes; and

(B) investigatory techniques, equipment, and procedures that prevent, detect, and prosecute international money laundering and other operations that are utilized in smuggling;

(5) joint measures, with the Secretary of State, to enhance intelligence sharing and cooperation with foreign governments whose citizens are preyed on by human smugglers; and

(6) other measures that the Secretary considers appropriate to combating human smuggling.

(c) REPORT.—Not later than 1 year after implementing the plan described in subsection (a), the Secretary shall submit to Congress a report on such plan, including any recommendations for legislative action to improve efforts to combating human smuggling.

SEC. 1125. SAVINGS CLAUSE.

Nothing in this subtitle or subtitle A may be construed to provide to any State or local entity any additional authority to enforce Federal immigration laws.

Subtitle C—International Border Enforcement

SEC. 1131. NORTH AMERICAN SECURITY INITIATIVE.

(a) IN GENERAL.—The Secretary of State shall enhance the mutual security and safety of the United States, Canada, and Mexico by providing a framework for better management, communication, and coordination between the Governments of North America.

(b) RESPONSIBILITIES.—In implementing the provisions of this subtitle, the Secretary of State shall carry out all of the activities described in this subtitle.

SEC. 1132. INFORMATION SHARING AGREEMENTS.

The Secretary of State, in coordination with the Secretary of Homeland Security and the Government of Mexico, is authorized to negotiate an agreement with Mexico to—

(1) cooperate in the screening of third-country nationals using Mexico as a transit corridor for entry into the United States; and

(2) provide technical assistance to support stronger immigration control at the border with Mexico.

SEC. 1133. IMPROVING THE SECURITY OF MEXICO'S SOUTHERN BORDER.

(a) TECHNICAL ASSISTANCE.—The Secretary of State, in coordination with the Secretary of Homeland Security, the Canadian Department of Foreign Affairs, and the Government of Mexico, shall establish a program to—

(1) assess the specific needs of the governments of Central American countries in maintaining the security of the borders of such countries;

(2) use the assessment made under paragraph (1) to determine the financial and technical support needed by the governments of Central American countries from Canada, Mexico, and the United States to meet such needs;

(3) provide technical assistance to the governments of Central American countries to secure issuance of passports and travel documents by such countries; and

(4) encourage the governments of Central American countries to—

(A) control alien smuggling and trafficking;

(B) prevent the use and manufacture of fraudulent travel documents; and

(C) share relevant information with Mexico, Canada, and the United States.

(b) IMMIGRATION.—The Secretary of Homeland Security, in consultation with the Secretary of State and appropriate officials of the governments of Central American countries shall provide robust law enforcement assistance to such governments that specifically addresses migratory issues to increase the ability of such governments to dismantle human smuggling organizations and gain tighter control over the border.

(c) BORDER SECURITY BETWEEN MEXICO AND GUATEMALA OR BELIZE.—The Secretary of State, in consultation with the Secretary of Homeland Security, the Government of Mexico, and appropriate officials of the Governments of Guatemala, Belize, and neighboring contiguous countries, shall establish a program to provide needed equipment, technical assistance, and vehicles to manage, regulate, and patrol the international border between Mexico and Guatemala and between Mexico and Belize.

(d) TRACKING CENTRAL AMERICAN GANGS.—The Secretary of State, in coordination with the Secretary of Homeland Security, the Director of the Federal Bureau of Investigation, the Government of Mexico, and appropriate officials of the governments of Central American countries, shall—

(1) assess the direct and indirect impact on the United States and Central America on deporting violent criminal aliens;

(2) establish a program and database to track Central American gang activities, focusing on the identification of returning criminal deportees;

(3) devise an agreed-upon mechanism for notification applied prior to deportation and for support for reintegration of these deportees; and

(4) devise an agreement to share all relevant information with the appropriate agencies of Mexico and other Central American countries.

TITLE II—STATE CRIMINAL ALIEN ASSISTANCE

SEC. 1201. STATE CRIMINAL ALIEN ASSISTANCE PROGRAM AUTHORIZATION OF APPROPRIATIONS.

Section 241(i) of the Immigration and Nationality Act (8 U.S.C. 1231(i)) is amended by striking paragraphs (5) and (6) and inserting the following:

''(5) AUTHORIZATION OF APPROPRIATIONS.—

''(A) IN GENERAL.—There are authorized to be appropriated to carry out this subsection—

''(i) such sums as may be necessary for fiscal year 2005;

''(ii) $750,000,000 for fiscal year 2006;

''(iii) $850,000,000 for fiscal year 2007; and

''(iv) $950,000,000 for each of the fiscal years 2008 through 2011.

''(B) LIMITATION ON USE OF FUNDS.—Amounts appropriated pursuant to subparagraph (A) that are distributed to a State or political subdivision of a State, including a municipality, may be used only for correctional purposes.''.

SEC. 1202. REIMBURSEMENT OF STATES FOR INDIRECT COSTS RELATING TO THE INCARCERATION OF ILLEGAL ALIENS.

Section 501 of the Immigration Reform and Control Act of 1986 (8 U.S.C. 1365) is amended—

(1) in subsection (a)—

(A) by striking ''for the costs'' and inserting the following: ''for—

''(1) the costs''; and

(B) by striking ''such State.'' and inserting the following: ''such State; and

''(2) the indirect costs related to the imprisonment described in paragraph (1).''; and

(2) by striking subsections (c) through (e) and inserting the following:

''(c) MANNER OF ALLOTMENT OF REIMBURSEMENTS.—Reimbursements under this section shall be allotted in a manner that gives special consideration for any State that—

''(1) shares a border with Mexico or Canada; or

''(2) includes within the State an area in which a large number of undocumented aliens reside relative to the general population of that area.

''(d) DEFINITIONS.—As used in this section:

''(1) INDIRECT COSTS.—The term 'indirect costs' includes—

''(A) court costs, county attorney costs, detention costs, and criminal proceedings expenditures that do not involve going to trial;

''(B) indigent defense costs; and

''(C) unsupervised probation costs.

''(2) STATE.—The term 'State' has the meaning given such term in section 101(a)(36) of the Immigration and Nationality Act.

''(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $200,000,000 for each of the fiscal years 2005 through 2011 to carry out subsection (a)(2).''.

SEC. 1203. REIMBURSEMENT OF STATES FOR PRE-CONVICTION COSTS RELATING TO THE INCARCERATION OF ILLEGAL ALIENS.

Section 241(i)(3)(A) of the Immigration and Nationality Act (8 U.S.C. 1231(i)(3)(a) is amended by inserting ''charged with or'' before ''convicted.''

TITLE III—ESSENTIAL WORKER VISA PROGRAM

SEC. 1301. ESSENTIAL WORKERS.

Section 101(a)(15)(H) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)) is amended—

(1) by striking ''(H) an alien (i)(b)'' and inserting the following:

''(H) an alien—

''(i)(b)'';

(2) by striking ''or (ii)(a)'' and inserting the following:

''(ii)(a)'';

(3) by striking ''or (iii)'' and inserting the following:

''(iii)''; and

(4) by adding at the end the following:

''(v)(a) subject to section 218A, having residence in a foreign country, which the alien has no intention of abandoning, who is coming temporarily to the United States to initially perform labor or services (other than those occupation classifications covered under the provisions of clause (i)(b) or (ii)(a) or subparagraph (L), (O), (P), or (R)); or.''.

SEC. 1302. ADMISSION OF ESSENTIAL WORKERS.

(a) IN GENERAL.—Chapter 2 of title II of the Immigration and Nationality Act (8 U.S.C. 1181 et seq.) is amended by inserting after section 218 the following:

''ADMISSION OF TEMPORARY H–5A WORKERS

''SEC. 218A. (a) The Secretary of State may grant a temporary visa to a nonimmigrant described in section 101(a)(15)(H)(v)(a) who demonstrates an intent to perform labor or services in the United States (other than those occupational classifications covered under the provisions of clause (i)(b) or (ii)(a) of section 101(a)(15)(H) or subparagraph (L), (O), (P), or (R)) of section 101(a)(15).

''(b) REQUIREMENTS FOR ADMISSION.—In order to be eligible for nonimmigrant status under section 101(a)(15)(H)(v)(a), an alien shall meet the following requirements:

''(1) ELIGIBILITY TO WORK.—The alien shall establish that the alien is capable of performing the labor or services required for an occupation under section 101(a)(15)(H)(v).

''(2) EVIDENCE OF EMPLOYMENT.—The alien's evidence of employment shall be provided through the Employment Eligibility Confirmation System established under section 274E or in accordance with requirements issued by the Secretary of State, in consultation with the Secretary of Homeland Security. In carrying out this paragraph, the Secretary may consider evidence from employers, employer associations, and labor representatives.

''(3) FEE.—The alien shall pay a $500 application fee to apply for the visa in addition to the cost of processing and adjudicating such application. Nothing in this paragraph shall be construed to affect consular procedures for charging reciprocal fees.

''(4) MEDICAL EXAMINATION.—The alien shall undergo a medical examination (including a determination of immunization status) at the alien's expense, that conforms to generally accepted standards of medical practice.

''(c) GROUNDS OF INADMISSIBILITY.—

''(1) IN GENERAL.—In determining an alien's admissibility as a nonimmigrant under section 101(a)(15)(H)(v)(a)—

''(A) paragraphs (5), (6) (except for subparagraph (E)), (7), (9), and (10)(B) of section 212(a) may be waived for conduct that occurred before the date on which the Secure America and Orderly Immigration Act was introduced;

''(B) the Secretary of Homeland Security may not waive—

''(i) subparagraph (A), (B), (C), (E), (G), (H), or (I) of section 212(a)(2) (relating to criminals);

''(ii) section 212(a)(3) (relating to security and related grounds); or

''(iii) subparagraph (A) or (C) of section 212(a)(10) (relating to polygamists and child abductors);

''(C) for conduct that occurred before the date on which the Secure America and Orderly Immigration Act was introduced, the Secretary of Homeland Security may waive the application of any provision of section 212(a) not listed in subparagraph (B) on behalf of an individual alien for humanitarian purposes, to ensure family unity, or when such waiver is otherwise in the public interest; and

''(D) nothing in this paragraph shall be construed as affecting the authority of the Secretary of Homeland Security to waive the provisions of section 212(a).

''(2) WAIVER FINE.—An alien who is granted a waiver under subparagraph (1) shall pay a $1,500 fine upon approval of the alien's visa application.

''(3) APPLICABILITY OF OTHER PROVISIONS.—Sections 240B(d) and 241(a)(5) shall not apply to an alien who initially seeks admission as a nonimmigrant under section 101(a)(15)(H)(v)(a).

''(4) RENEWAL OF AUTHORIZED ADMISSION AND SUBSEQUENT ADMISSIONS.—An alien seeking renewal of authorized admission or subsequent admission as a nonimmigrant under section 101(a)(15)(H)(v)(a) shall establish that the alien is not inadmissible under section 212(a).

''(d) PERIOD OF AUTHORIZED ADMISSION.—

''(1) INITIAL PERIOD.—The initial period of authorized admission as a nonimmigrant described in section 101(a)(15)(H)(v)(a) shall be 3 years.

''(2) RENEWALS.—The alien may seek an extension of the period described in paragraph (1) for 1 additional 3-year period.

''(3) LOSS OF EMPLOYMENT.—

''(A) IN GENERAL.—Subject to subsection (c), the period of authorized admission of a nonimmigrant alien under section 101(a)(15)(H)(v)(a) shall terminate if the nonimmigrant is unemployed for 45 or more consecutive days.

''(B) RETURN TO FOREIGN RESIDENCE.—Any alien whose period of authorized admission terminates under subparagraph (A) shall be required to return to the country of the alien's nationality or last residence.

''(C) PERIOD OF VISA VALIDITY.—Any alien, whose period of authorized admission terminates under subparagraph (A), who returns to the country of the alien's nationality or last residence under subparagraph (B), may reenter the United States on the basis of the same visa to work for an employer, if the alien has complied with the requirements of subsection (b)(1).

''(4) VISITS OUTSIDE UNITED STATES.—

''(A) IN GENERAL.—Under regulations established by the Secretary of Homeland Security, a nonimmigrant alien under section 101(a)(15)(H)(v)(a)—

''(i) may travel outside of the United States; and

''(ii) may be readmitted without having to obtain a new visa if the period of authorized admission has not expired.

''(B) EFFECT ON PERIOD OF AUTHORIZED ADMISSION.—Time spent outside the United States under subparagraph (A) shall not extend the period of authorized admission in the United States.

''(e) PORTABILITY.—A nonimmigrant alien described in this section, who was previously issued a visa or otherwise provided nonimmigrant status under section 101(a)(15)(H)(v)(a), may accept new employment with a subsequent employer.

''(f) WAIVER OF RIGHTS PROHIBITED.—A nonimmigrant alien described in section 101(a)(15)(H)(v)(a) may not be required to waive any rights or protections under the Secure America and Orderly Immigration Act.

''(g) CHANGE OF ADDRESS.—An alien having nonimmigrant status described in section 101(a)(15)(H)(v)(a) shall comply by either electronic or paper notification with the change of address reporting requirements under section 265.

''(h) BAR TO FUTURE VISAS FOR VIOLATIONS.—

''(1) IN GENERAL.—Any alien having the nonimmigrant status described in section 101(a)(15)(H)(v)(a) shall not be eligible to renew such nonimmigrant status if the alien willfully violates any material term or condition of such status.

''(2) WAIVER.—The alien may apply for a waiver of the application of subparagraph (A) for technical violations, inadvertent errors, or violations for which the alien was not at fault.

''(i) COLLECTION OF FEES.—All fees collected under this section shall be deposited in the Treasury in accordance with section 286(w).''.

(b) CONFORMING AMENDMENT REGARDING PRESUMPTION OF NONIMMIGRANT STATUS.—Section 214(b) of the Immigration and Nationality Act (8 U.S.C. 1184(b)) is amended by inserting ''(H)(v)(a),'' after ''(H)(i),''.

(c) CLERICAL AMENDMENT.—The table of contents for the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended by inserting after the item relating to section 218 the following:

''Sec. 218A. Admission of temporary H–5A workers.''.

SEC. 1303. EMPLOYER OBLIGATIONS.

Employers employing a nonimmigrant described in section 101(a)(15)(H)(v)(a) of the Immigration and Nationality Act, as added by section 1301, shall comply with all applicable Federal, State, and local laws, including—

(1) laws affecting migrant and seasonal agricultural workers; and

(2) the requirements under section 274E of such Act, as added by section 1402.

SEC. 1304. PROTECTION FOR WORKERS.

Section 218A of the Immigration and Nationality Act, as added by section 1302, is amended by adding at the end the following:

''(h) APPLICATION OF LABOR AND OTHER LAWS.—

''(1) DEFINITIONS.—As used in this subsection and in subsections (i) through (k):

''(A) EMPLOY; EMPLOYEE; EMPLOYER.—The terms 'employ', 'employee', and 'employer' have the meanings given such terms in section 3 of the Fair Labor Standards Act of 1938 (29 U.S.C. 203).

''(B) FOREIGN LABOR CONTRACTOR.—The term 'foreign labor contractor' means any person who for any compensation or other valuable consideration paid or promised to be paid, performs any foreign labor contracting activity.

''(C) FOREIGN LABOR CONTRACTING ACTIVITY.—The term 'foreign labor contracting activity' means recruiting, soliciting, hiring, employing, or furnishing, an individual who resides outside of the United States for employment in the United States as a nonimmigrant alien described in section 101(a)(15)(H)(v)(a).

''(2) COVERAGE.—Notwithstanding any other provision of law—

''(A) a nonimmigrant alien described in section 101(a)(15)(H)(v)(a) is prohibited from being treated as an independent contractor; and

''(B) no person may treat a nonimmigrant alien described in section 101(a)(15)(H)(v)(a) as an independent contractor.

''(3) APPLICABILITY OF LAWS.—A nonimmigrant alien described in section 101(a)(15)(H)(v)(a) shall not be denied any right or any remedy under Federal, State, or local labor or employment law that would be applicable to a United States worker employed in a similar position with the employer because of the alien's status as a nonimmigrant worker.

''(4) TAX RESPONSIBILITIES.—With respect to each employed nonimmigrant alien described in section 101(a)(15)(H)(v)(a), an employer shall comply with all applicable Federal, State, and local tax and revenue laws.

''(5) NONDISCRIMINATION IN EMPLOYMENT.—An employer shall provide nonimmigrants issued a visa under this section with the same wages, benefits, and working conditions that are provided by the employer to United States workers similarly employed in the same occupation and the same place of employment.

''(6) NO REPLACEMENT OF STRIKING EMPLOYEES.—An employer may not hire a nonimmigrant alien described in section 101(a)(15)(H)(v)(a) as a replacement worker if there is a strike or lockout in the course of a labor dispute in the occupational classification at the place of employment.

''(7) WAIVER OF RIGHTS PROHIBITED.—A nonimmigrant alien described in section 101(a)(15)(H)(v)(a) may not be required to waive any rights or protections under the Secure America and Orderly Immigration Act. Nothing under this provision shall be construed to affect the interpretation of other laws.

''(8) NO THREATENING OF EMPLOYEES.—It shall be a violation of this section for an employer who has filed a petition under section 203(b) to threaten the alien beneficiary of such a petition with withdrawal of the application, or to withdraw such a petition in retaliation for the beneficiary's exercise of a right protected by the Secure America and Orderly Immigration Act.

''(9) WHISTLEBLOWER PROTECTION.—It shall be unlawful for an employer or a labor contractor of a nonimmigrant alien described in section 101(a)(15)(H)(v)(a) to intimidate, threaten, restrain, coerce, retaliate, discharge, or in any other manner, discriminate against an employee or former employee because the employee or former employee—

''(A) discloses information to the employer or any other person that the employee or former employee reasonably believes demonstrates a violation of Secure America and Orderly Immigration Act.

''(B) cooperates or seeks to cooperate in an investigation or other proceeding concerning compliance with the requirements of the Secure America and Orderly Immigration Act.

''(i) LABOR RECRUITERS.—

''(1) IN GENERAL.—Each employer that engages in foreign labor contracting activity and each foreign labor contractor shall ascertain and disclose to each such worker who is recruited for employment the following information at the time of the worker's recruitment:

''(A) The place of employment.

''(B) The compensation for the employment.

''(C) A description of employment activities.

''(D) The period of employment.

''(E) Any other employee benefit to be provided and any costs to be charged for each benefit.

''(F) Any travel or transportation expenses to be assessed.

''(G) The existence of any labor organizing effort, strike, lockout, or other labor dispute at the place of employment.

''(H) The existence of any arrangement with any owner, employer, foreign contractor, or its agent where such person receives a commission from the provision of items or services to workers.

''(I) The extent to which workers will be compensated through workers' compensation, private insurance, or otherwise for injuries or death, including work related injuries and death, during the period of employment and, if so, the name of the State workers' compensation insurance carrier or the name of the policyholder of the private insurance, the name and the telephone number of each person who must be notified of an injury or death, and the time period within which such notice must be given.

''(J) Any education or training to be provided or required, including the nature and cost of such training, who will pay such costs, and whether the training is a condition of employment, continued employment, or future employment.

''(K) A statement, in a form specified by the Secretary of Labor, describing the protections of this Act for workers recruited abroad.

''(2) FALSE OR MISLEADING INFORMATION.—No foreign labor contractor or employer who engages in foreign labor contracting activity shall knowingly provide material false or misleading information to any worker concerning any matter required to be disclosed in paragraph (1).

''(3) LANGUAGES.—The information required to be disclosed under paragraph (1) shall be provided in writing in English or, as necessary and reasonable, in the language of the worker being recruited. The Department of Labor shall make forms available in English, Spanish, and other languages, as necessary, which may be used in providing workers with information required under this section.

''(4) FEES.—A person conducting a foreign labor contracting activity shall not assess any fee to a worker for such foreign labor contracting activity.

''(5) TERMS.—No employer or foreign labor contractor shall, without justification, violate the terms of any agreement made by that contractor or employer regarding employment under this program.

''(6) TRAVEL COSTS.—If the foreign labor contractor or employer charges the employee for transportation such transportation costs shall be reasonable.

''(7) OTHER WORKER PROTECTIONS.—

''(A) NOTIFICATION.—Every 2 years, each employer shall notify the Secretary of Labor of the identity of any foreign labor contractor engaged by the employer in any foreign labor contractor activity for or on behalf of the employer.

''(B) REGISTRATION OF FOREIGN LABOR CONTRACTORS.—

''(i) IN GENERAL.—No person shall engage in foreign labor recruiting activity unless such person has a certificate of registration from the Secretary of Labor specifying the activities that such person is authorized to perform. An employer who retains the services of a foreign labor contractor shall only use those foreign labor contractors who are registered under this subparagraph.

''(ii) ISSUANCE.—The Secretary shall promulgate regulations to establish an efficient electronic process for the investigation and approval of an application for a certificate of registration of foreign labor contractors not later than 14 days after such application is filed. Such process shall include requirements under paragraphs (1), (4), and (5) of section 1812 of title 29, United States Code, an expeditious means to update registrations and renew certificates and any other requirements the Secretary may prescribe.

''(iii) TERM.—Unless suspended or revoked, a certificate under this subparagraph shall be valid for 2 years.

''(iv) REFUSAL TO ISSUE; REVOCATION; SUSPENSION.—In accordance with regulations promulgated by the Secretary of Labor, the Secretary may refuse to issue or renew, or may suspend or revoke, a certificate of registration under this subparagraph. The justification for such refusal, suspension, or revocation may include the following:

''(I) The application or holder of the certification has knowingly made a material misrepresentation in the application for such certificate.

''(II) The applicant for or holder of the certification is not the real party in interest in the application or certificate of registration and the real party in interest is a person who has been refused issuance or renewal of a certificate, has had a certificate suspended or revoked, or does not qualify for a certificate under this paragraph.

''(III) The applicant for or holder of the certification has failed to comply with the Secure America and Orderly Immigration Act.

''(C) REMEDY FOR VIOLATIONS.—An employer engaging in foreign labor contracting activity and a foreign labor contractor that violates the provisions of this subsection shall be subject to remedies for foreign labor contractor violations under subsections (j) and (k). If a foreign labor contractor acting as an agent of an employer violates any provision of this subsection, the employer shall also be subject to remedies under subsections (j) and (k). An employer that violates a provision of this subsection relating to employer obligations shall be subject to remedies under this subsections (j) and (k).

''(D) EMPLOYER NOTIFICATION.—An employer shall notify the Secretary of Labor any time the employer becomes aware of a violation of this subsection by a foreign labor recruiter.

''(E) WRITTEN AGREEMENTS.—No foreign labor contractor shall violate the terms of any written agreements made with an employer relating to any contracting activity or worker protection under this subsection.

''(F) BONDING REQUIREMENT.—The Secretary of Labor may require a foreign labor contractor under this subsection to post a bond in an amount sufficient to ensure the protection of individuals recruited by the foreign labor contractor. The Secretary may consider the extent to which the foreign labor contractor has sufficient ties to the United States to adequately enforce this subsection.

''(j) ENFORCEMENT.—

''(1) IN GENERAL.—The Secretary of Labor shall prescribe regulations for the receipt, investigation, and disposition of complaints by an aggrieved person respecting a violation of this section.

''(2) DEFINITION.—As used in this subsection, an 'aggrieved person' is a person adversely affected by the alleged violation, including—

''(A) a worker whose job, wages, or working conditions are adversely affected by the violation; and

''(B) a representative for workers whose jobs, wages, or working conditions are adversely affected by the violation who brings a complaint on behalf of such worker.

''(3) FILING DEADLINE.—No investigation or hearing shall be conducted on a complaint concerning a violation under this section unless the complaint was filed not later than 12 months after the date of such violation.

''(4) REASONABLE CAUSE.—The Secretary of Labor shall conduct an investigation under this subsection if there is reasonable cause to believe that a violation of this section has occurred. The process established under this subsection shall provide that, not later than 30 days after a complaint is filed, the Secretary shall determine if there is reasonable cause to find such a violation.

''(5) NOTICE AND HEARING.—

''(A) IN GENERAL.—Not later than 60 days after the Secretary of Labor makes a determination of reasonable cause under paragraph (4), the Secretary shall issue a notice to the interested parties and offer an opportunity for a hearing on the complaint, in accordance with section 556 of title 5, United States Code.

''(B) COMPLAINT.—If the Secretary of Labor, after receiving a complaint under this subsection, does not offer the aggrieved party or organization an opportunity for a hearing under subparagraph (A), the Secretary shall notify the aggrieved party or organization of such determination and the aggrieved party or organization may seek a hearing on the complaint in accordance with such section 556.

''(C) HEARING DEADLINE.—Not later than 60 days after the date of a hearing under this paragraph, the Secretary of Labor shall make a finding on the matter in accordance with paragraph (6).

''(6) ATTORNEYS' FEES.—A complainant who prevails with respect to a claim under this subsection shall be entitled to an award of reasonable attorneys' fees and costs.

''(7) POWER OF THE SECRETARY.—The Secretary may bring an action in any court of competent jurisdiction—

''(A) to seek remedial action, including injunctive relief;

''(B) to recover the damages described in subsection (k); or

''(C) to ensure compliance with terms and conditions described in subsection (i).

''(8) SOLICITOR OF LABOR.—Except as provided in section 518(a) of title 28, United States Code, the Solicitor of Labor may appear for and represent the Secretary of Labor in any civil litigation brought under this subsection. All such litigation shall be subject to the direction and control of the Attorney General.

''(9) PROCEDURES IN ADDITION TO OTHER RIGHTS OF EMPLOYEES.—The rights and remedies provided to workers under this section are in addition to, and not in lieu of, any other contractual or statutory rights and remedies of the workers, and are not intended to alter or affect such rights and remedies.

''(k) PENALTIES.—

''(1) IN GENERAL.—If, after notice and an opportunity for a hearing, the Secretary of Labor finds a violation of subsection (h) or (i), the Secretary may impose administrative remedies and penalties, including—

''(A) back wages;

''(B) fringe benefits; and

''(C) civil monetary penalties.

''(2) CIVIL PENALTIES.—The Secretary of Labor may impose, as a civil penalty—

''(A) for a violation of subsection (h)—

''(i) a fine in an amount not to exceed $2,000 per violation per affected worker;

''(ii) if the violation was willful violation, a fine in an amount not to exceed $5,000 per violation per affected worker;

''(iii) if the violation was willful and if in the course of such violation a United States

worker was harmed, a fine in an amount not to exceed $25,000 per violation per affected worker; and

''(B) for a violation of subsection (i)—

''(i) a fine in an amount not less than $500 and not more than $4,000 per violation per affected worker;

''(ii) if the violation was willful, a fine in an amount not less than $2,000 and not more than $5,000 per violation per affected worker; and

''(iii) if the violation was willful and if in the course of such violation a United States worker was harmed, a fine in an amount not less than $6,000 and not more than $35,000 per violation per affected worker.

''(3) USE OF CIVIL PENALTIES.—All penalties collected under this subsection shall be deposited in the Treasury in accordance with section 286(w).

''(4) CRIMINAL PENALTIES.—If a willful and knowing violation of subsection (i) causes extreme physical or financial harm to an individual, the person in violation of such subsection may be imprisoned for not more than 6 months, fined not more than $35,000 fine, or both.''.

SEC. 1305. MARKET-BASED NUMERICAL LIMITATIONS.

Section 214(g) of the Immigration and Nationality Act (8 U.S.C. 1184(g)) is amended—

(1) in paragraph (1)—

(A) by striking ''(beginning with fiscal year 1992)'';

(B) in subparagraph (B), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(C) under section 101(a)(15)(H)(v)(a), may not exceed—

''(i) 400,000 for the first fiscal year in which the program is implemented;

''(ii) in any subsequent fiscal year—

''(I) if the total number of visas allocated for that fiscal year are allotted within the first quarter of that fiscal year, then an additional 20 percent of the allocated number shall be made available immediately and the allocated amount for the following fiscal year shall increase by 20 percent of the original allocated amount in the prior fiscal year;

''(II) if the total number of visas allocated for that fiscal year are allotted within the second quarter of that fiscal year, then an additional 15 percent of the allocated number shall be made available immediately and the allocated amount for the following fiscal year shall increase by 15 percent of the original allocated amount in the prior fiscal year;

''(III) if the total number of visas allocated for that fiscal year are allotted within the third quarter of that fiscal year, then an additional 10 percent of the allocated number shall be made available immediately and the allocated amount for the following fiscal year shall increase by 10 percent of the original allocated amount in the prior fiscal year;

''(IV) if the total number of visas allocated for that fiscal year are allotted within the last quarter of that fiscal year, then the allocated amount for the following fiscal year shall increase by 10 percent of the original allocated amount in the prior fiscal year; and

''(V) with the exception of the first subsequent fiscal year to the fiscal year in which the program is implemented, if fewer visas were allotted the previous fiscal year than the number of visas allocated for that year and the reason was not due to processing delays or delays in promulgating regulations, then the allocated amount for the following fiscal year shall decrease by 10 percent of the allocated amount in the prior fiscal year.''; and

(2) by adding at the end the following:

''(9)(A) Of the total number of visas allocated for each fiscal year under paragraph (1)(C)—

''(i) 50,000 visas shall be allocated to qualifying counties; and

''(ii) any of the visas allocated under clause (i) that are not issued by June 30 of such fiscal year, may be made available to any qualified applicant.

''(B) In this paragraph, the term 'qualifying county' means any county that—

''(i) that is outside a metropolitan statistical area; and

''(ii) during the 20-year-period ending on the last day of the calendar year preceding the date of enactment of the Secure America and Orderly Immigration Act, experienced a net out-migration of inhabitants from the county of at least 10 percent of the population of the county at the beginning of such period.

''(10) In allocating visas under this subsection, the Secretary of State may take any additional measures necessary to deter illegal immigration.''.

SEC. 1306. ADJUSTMENT TO LAWFUL PERMANENT RESIDENT STATUS.

Section 245 of the Immigration and Nationality Act (8 U.S.C. 1255) is amended by adding at the end the following:

''(n)(1) For purposes of adjustment of status under subsection (a), employment-based immigrant visas shall be made available to an alien having nonimmigrant status described in section 101(a)(15)(H)(v)(a) upon the filing of a petition for such a visa—

''(A) by the alien's employer; or

''(B) by the alien, if the alien has maintained such nonimmigrant status in the United States for a cumulative total of 4 years.

''(2) An alien having nonimmigrant status described in section 101(a)(15)(H)(v)(a) may not apply for adjustment of status under this section unless the alien—

''(A) is physically present in the United States; and

''(B) the alien establishes that the alien—

''(i) meets the requirements of section 312; or

''(ii) is satisfactorily pursuing a course of study to achieve such an understanding of English and knowledge and understanding of the history and government of the United States.

''(3) An alien who demonstrates that the alien meets the requirements of section 312 may be considered to have satisfied the requirements of that section for purposes of becoming naturalized as a citizen of the United States under title III.

''(4) Filing a petition under paragraph (1) on behalf of an alien or otherwise seeking permanent residence in the United States for such alien shall not constitute evidence of the alien's ineligibility for nonimmigrant status under section 101(a)(15)(H)(v)(a).

''(5) The limitation under section 302(d) regarding the period of authorized stay shall not apply to any alien having nonimmigrant status under section 101(a)(15)(H)(v)(a) if—

''(A) a labor certification petition filed under section 203(b) on behalf of such alien is pending; or

''(B) an immigrant visa petition filed under section 204(b) on behalf of such alien is pending.

''(6) The Secretary of Homeland Security shall extend the stay of an alien who qualifies for an exemption under paragraph (5) in 1-year increments until a final decision is made on the alien's lawful permanent residence.

''(7) Nothing in this subsection shall be construed to prevent an alien having nonimmigrant status described in section 101(a)(15)(H)(v)(a) from filing an application for adjustment of status under this section in accordance with any other provision of law.''.

SEC. 1307. ESSENTIAL WORKER VISA PROGRAM TASK FORCE.

(a) ESTABLISHMENT OF TASK FORCE.—

(1) IN GENERAL.—There is established a task force to be known as the Essential Worker Visa Program Task Force (referred to in this section as the ''Task Force'').

(2) PURPOSES.—The purposes of the Task Force are—

(A) to study the Essential Worker Visa Program (referred to in this section as the ''Program'') established under this title; and

(B) to make recommendations to Congress with respect to such program.

(3) MEMBERSHIP.—The Task Force shall be composed of 10 members, of whom—

(A) 1 shall be appointed by the President and shall serve as chairman of the Task Force;

(B) 1 shall be appointed by the leader of the Democratic Party in the Senate, in consultation with the leader of the Democratic Party in the House of Representatives, and shall serve as vice chairman of the Task Force;

(C) 2 shall be appointed by the majority leader of the Senate;

(D) 2 shall be appointed by the minority leader of the Senate;

(E) 2 shall be appointed by the Speaker of the House of Representatives; and

(F) 2 shall be appointed by the minority leader of the House of Representatives.

(4) QUALIFICATIONS.—

(A) IN GENERAL.—Members of the Task Force shall be—

(i) individuals with expertise in economics, demography, labor, business, or immigration or other pertinent qualifications or experience; and

(ii) representative of a broad cross-section of perspectives within the United States, including the public and private sectors and academia;

(B) POLITICAL AFFILIATION.—Not more than 5 members of the Task Force may be members of the same political party.

(C) NONGOVERNMENTAL APPOINTEES.—An individual appointed to the Task Force may not be an officer or employee of the Federal Government or of any State or local government.

(5) DEADLINE FOR APPOINTMENT.—All members of the Task Force shall be appointed not later than 6 months after the Program has been implemented.

(6) VACANCIES.—Any vacancy in the Task Force shall not affect its powers, but shall be filled in the same manner in which the original appointment was made.

(7) MEETINGS.—

(A) INITIAL MEETING.—The Task Force shall meet and begin the operations of the Task Force as soon as practicable.

(B) SUBSEQUENT MEETINGS.—After its initial meeting, the Task Force shall meet upon the call of the chairman or a majority of its members.

(8) QUORUM.—Six members of the Task Force shall constitute a quorum.

(b) DUTIES.—The Task Force shall examine and make recommendations regarding the Program, including recommendations regarding—

(1) the development and implementation of the Program;

(2) the criteria for the admission of temporary workers under the Program;

(3) the formula for determining the yearly numerical limitations of the Program;

(4) the impact of the Program on immigration;

(5) the impact of the Program on the United States workforce and United States businesses; and

(6) any other matters regarding the Program that the Task Force considers appropriate.

(c) INFORMATION AND ASSISTANCE FROM FEDERAL AGENCIES.—

(1) INFORMATION FROM FEDERAL AGENCIES.—The Task Force may seek directly from any Federal department or agency such information, including suggestions, estimates, and statistics, as the Task Force considers necessary to carry out the provisions of this section. Upon request of the Task Force, the head of such department or agency shall furnish such information to the Task Force.

(2) ASSISTANCE FROM FEDERAL AGENCIES.—The Administrator of General Services shall, on a reimbursable base, provide the Task Force with administrative support and other services for the performance of the Task Force's functions. The departments and agencies of the United States may provide the Task Force with such services, funds, facilities, staff, and other support services as they determine advisable and as authorized by law.

(d) REPORTS.—

(1) INITIAL REPORT.—Not later than 2 years after the Program has been implemented, the Task Force shall submit a report to Congress, the Secretary of State, the Secretary of Labor, and the Secretary of Homeland Security that contains—

(A) findings with respect to the duties of the Task Force;

(B) recommendations for improving the Program; and

(C) suggestions for legislative or administrative action to implement the Task Force recommendations.

(2) FINAL REPORT.—Not later than 4 years after the submission of the initial report under paragraph (1), the Task Force shall submit a final report to Congress, the Secretary of State, the Secretary of Labor, and the Secretary of Homeland Security that contains additional findings, recommendations, and suggestions, as described in paragraph (1).

SEC. 1308. WILLING WORKER-WILLING EMPLOYER ELECTRONIC JOB REGISTRY.

(a) ESTABLISHMENT.—The Secretary of Labor shall direct the coordination and modification of the national system of public labor exchange services (commonly known as ''America's Job Bank'') in existence on the date of enactment of this Act to provide information on essential worker employment opportunities available to United States workers and nonimmigrant workers under section 101(a)(15)(H)(v)(a) of the Immigration and Nationality Act, as added by this Act.

(b) RECRUITMENT OF UNITED STATES WORKERS.—Before the completion of evidence of employment for a potential nonimmigrant worker under section 101(a)(15)(H)(v)(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(v)(a), an employer shall attest that the employer has posted in the Job Registry for not less than 30 days in order to recruit United States workers. An employer shall maintain records for not less than 1 year demonstrating why United States workers who applied were not hired.

(c) OVERSIGHT AND MAINTENANCE OF RECORDS.—The Secretary of Labor shall maintain electronic job registry records, as established by regulation, for the purpose of audit or investigation.

(d) ACCESS TO JOB REGISTRY.—

(1) CIRCULATION IN INTERSTATE EMPLOYMENT SERVICE SYSTEM.—The Secretary of Labor shall ensure that job opportunities advertised on the electronic job registry established under this section are accessible by the State workforce agencies, which may further disseminate job opportunity information to other interested parties.

(2) INTERNET.—The Secretary of Labor shall ensure that the Internet-based electronic job registry established or approved under this section may be accessed by workers, employers, labor organizations, and other interested parties.

SEC. 1309. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Secretary of State such sums as may be necessary to carry out this title and the amendments made by this title for the period beginning on the date of enactment of this Act and ending on the last day of the sixth fiscal year beginning after the effective date of the regulations promulgated by the Secretary to implement this title.

TITLE IV—ENFORCEMENT

SEC. 1401. DOCUMENT AND VISA REQUIREMENTS.

(a) IN GENERAL.—Section 221(a) of the Immigration and Nationality Act (8 U.S.C. 1201(a)) is amended by adding at the end the following:

''(3) VISAS AND IMMIGRATION RELATED DOCUMENT REQUIREMENTS.—

''(A) Visas issued by the Secretary of State and immigration related documents issued by the Secretary of State or the Secretary of Homeland Security shall comply with authentication and biometric standards recognized by domestic and international standards organizations.

''(B) Such visas and documents shall—

''(i) be machine-readable and tamper-resistant;

''(ii) use biometric identifiers that are consistent with the requirements of section 303 of the Enhanced Border Security and Visa Entry Reform Act of 2002 (8 U.S.C. 1732), and represent the benefits and status set forth in such section;

''(iii) comply with the biometric and document identifying standards established by the International Civil Aviation Organization; and

''(iv) be compatible with the United States Visitor and Immigrant Status Indicator Technology and the employment verification system established under section 274E.

''(C) The information contained on the visas or immigration related documents described in subparagraph (B) shall include—

''(i) the alien's name, date and place of birth, alien registration or visa number, and, if applicable, social security number;

''(ii) the alien's citizenship and immigration status in the United States; and

''(iii) the date that such alien's authorization to work in the United States expires, if appropriate.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date that is 6 months after the date of enactment of this Act.

SEC. 1402. EMPLOYMENT ELIGIBILITY CONFIRMATION SYSTEM.

(a) IN GENERAL.—Chapter 8 of title II of the Immigration and Nationality Act (8 U.S.C. 1321 et seq.) is amended by inserting after section 274D the following:

''EMPLOYMENT ELIGIBILITY

''SEC. 274E. (a) EMPLOYMENT ELIGIBILITY CONFIRMATION SYSTEM.—

''(1) IN GENERAL.—The Commissioner of Social Security, in consultation and coordination with the Secretary of Homeland Security, shall establish an Employment Eligibility Confirmation System (referred to in this section as the 'System') through which the Commissioner responds to inquiries made by employers who have hired individuals concerning each individual's identity and employment authorization.

''(2) MAINTENANCE OF RECORDS.—The Commissioner shall electronically maintain records by which compliance under the System may be verified.

''(3) OBJECTIVES OF THE SYSTEM.—The System shall—

''(A) facilitate the eventual transition for all businesses from the employer verification system established in section 274A with the System;

''(B) utilize, as a central feature of the System, machine-readable documents that contain encrypted electronic information to verify employment eligibility; and

''(C) provide for the evidence of employment required under section 218A.

''(4) INITIAL RESPONSE.—The System shall provide—

''(A) confirmation or a tentative nonconfirmation of an individual's identity and employment eligibility not later than 1 working day after the initial inquiry; and

''(B) an appropriate code indicating such confirmation or tentative nonconfirmation.

''(5) SECONDARY VERIFICATION PROCESS IN CASE OF TENTATIVE NONCONFIRMATION.—

''(A) ESTABLISHMENT.—For cases of tentative nonconfirmation, the Commissioner of Social Security, in consultation and coordination with the Secretary of Homeland Security, shall establish a secondary verification process. The employer shall make the secondary verification inquiry not later than 10 days after receiving a tentative nonconfirmation.

''(B) DISCREPANCIES.—If an employee chooses to contest a secondary nonconfirmation, the employer shall provide the employee with a referral letter and instruct the employee to visit an office of the Department of Homeland Security or the Social Security Administration to resolve the discrepancy not later than 10 working days after the receipt of such referral letter in order to obtain confirmation.

''(C) FAILURE TO CONTEST.—An individual's failure to contest a confirmation shall not constitute knowledge (as defined in section 274a.1(l) of title 8, Code of Federal Regulations.

''(6) DESIGN AND OPERATION OF SYSTEM.—The System shall be designed, implemented, and operated—

''(A) to maximize its reliability and ease of use consistent with protecting the privacy and security of the underlying information through technical and physical safeguards;

''(B) to allow employers to verify that a newly hired individual is authorized to be employed;

''(C) to permit individuals to—

''(i) view their own records in order to ensure the accuracy of such records; and

''(ii) contact the appropriate agency to correct any errors through an expedited process established by the Commissioner of Social Security, in consultation and coordination with the Secretary of Homeland Security; and

''(D) to prevent discrimination based on national origin or citizenship status under section 274B.

''(7) UNLAWFUL USES OF SYSTEM.—It shall be an unlawful immigration-related employment practice—

''(A) for employers or other third parties to use the System selectively or without authorization;

''(B) to use the System prior to an offer of employment;

''(C) to use the System to exclude certain individuals from consideration for employment as a result of a perceived likelihood that additional verification will be required, beyond what is required for most job applicants;

''(D) to use the System to deny certain employment benefits, otherwise interfere with the labor rights of employees, or any other unlawful employment practice; or

''(E) to take adverse action against any person, including terminating or suspending an employee who has received a tentative nonconfirmation.

''(b) EMPLOYMENT ELIGIBILITY DATABASE.—

''(1) REQUIREMENT.—The Commissioner of Social Security, in consultation and coordination with the Secretary of Homeland Security and other appropriate agencies, shall design, implement, and maintain an Employment Eligibility Database (referred to in this section as the 'Database') as described in this subsection.

''(2) DATA.—The Database shall include, for each individual who is not a citizen or national of the United States, but is authorized or seeking authorization to be employed in the United States, the individual's—

''(A) country of origin;

''(B) immigration status;

''(C) employment eligibility;

''(D) occupation;

''(E) metropolitan statistical area of employment;

''(F) annual compensation paid;

''(G) period of employment eligibility;

''(H) employment commencement date; and

''(I) employment termination date.

''(3) REVERIFICATION OF EMPLOYMENT ELIGIBILITY.—The Commissioner of Social Security shall prescribe, by regulation, a system to annually reverify the employment eligibility of each individual described in this section—

''(A) by utilizing the machine-readable documents described in section 221(a)(3); or

''(B) if machine-readable documents are not available, by telephonic or electronic communication.

''(4) CONFIDENTIALITY.—

''(A) ACCESS TO DATABASE.—No officer or employee of any agency or department of the United States, other than individuals responsible for the verification of employment eligibility or for the evaluation of the employment verification program at the Social Security Administration, the Department of Homeland Security, and the Department of Labor, may have access to any information contained in the Database.

''(B) PROTECTION FROM UNAUTHORIZED DISCLOSURE.—Information in the Database shall be adequately protected against unauthorized disclosure for other purposes, as provided in regulations established by the Commissioner of Social Security, in consultation with the Secretary of Homeland Security and the Secretary of Labor.

''(5) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to design, implement, and maintain the Database.

''(c) GRADUAL IMPLEMENTATION.—The Commissioner of Social Security, in coordination with the Secretary of Homeland Security and the Secretary of Labor shall develop a plan to phase all workers into the Database and phase out the employer verification system established in section 274A over a period of time that the Commissioner determines to be appropriate.

''(d) EMPLOYER RESPONSIBILITIES.—Each employer shall—

''(1) notify employees and prospective employees of the use of the System and that the System may be used for immigration enforcement purposes;

''(2) verify the identification and employment authorization status for newly hired individuals described in section 101(a)(15)(H)(v)(a) not later than 3 days after the date of hire;

''(3) use—

''(A) a machine-readable document described in subsection (a)(3)(B); or

''(B) the telephonic or electronic system to access the Database;

''(4) provide, for each employer hired, the occupation, metropolitan statistical area of employment, and annual compensation paid;

''(5) retain the code received indicating confirmation or nonconfirmation, for use in investigations described in section 212(n)(2); and

''(6) provide a copy of the employment verification receipt to such employees.

''(e) GOOD-FAITH COMPLIANCE.—

''(1) AFFIRMATIVE DEFENSE.—A person or entity that establishes good faith compliance with the requirements of this section with respect to the employment of an individual in the United States has established an affirmative defense that the person or entity has not violated this section.

''(2) LIMITATION.—Paragraph (1) shall not apply if a person or entity engages in an unlawful immigration-related employment practice described in subsection (a)(7).''.

(b) INTERIM DIRECTIVE.—Before the implementation of the Employment Eligibility Confirmation System (referred to in this section as the ''System'') established under section 274E of the Immigration and Nationality Act, as added by subsection (a), the Commissioner of Social Security, in coordination with the Secretary of Homeland Security, shall, to the maximum extent practicable, implement an interim system to confirm employment eligibility that is consistent with the provisions of such section.

(c) REPORTS.—

(1) IN GENERAL.—Not later than 3 months after the last day of the second year and of the third year that the System is in effect, the Comptroller General of the United States shall submit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report on the System.

(2) CONTENTS.—Each report submitted under paragraph (1) shall include—

(A) an assessment of the impact of the System on the employment of unauthorized workers;

(B) an assessment of the accuracy of the Employment Eligibility Database maintained by the Department of Homeland Security and Social Security Administration databases, and timeliness and accuracy of responses from the Department of Homeland Security and the Social Security Administration to employers;

(C) an assessment of the privacy, confidentiality, and system security of the System;

(D) assess whether the System is being implemented in a nondiscriminatory manner; and

(E) include recommendations on whether or not the System should be modified.

SEC. 1403. IMPROVED ENTRY AND EXIT DATA SYSTEM.

Section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1365a) is amended—

(1) by striking ''Attorney General'' each place it appears and inserting ''Secretary of Homeland Security'';

(2) in subsection (b)—

(A) in paragraph (1)(C), by striking ''Justice'' and inserting ''Homeland Security'';

(B) in paragraph (4), by striking ''and'' at the end;

(C) in paragraph (5), by striking the period at the end and inserting ''; and''; and

(D) by adding at the end the following:

''(6) collects the biometric machine-readable information from an alien's visa or immigration-related document described in section 221(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1201(a)(3) at the time an alien arrives in the United States and at the time an alien departs from the United States to determine if such alien is entering, or is present in, the United States unlawfully.''; and

(3) in subsection (f)(1), by striking ''Departments of Justice and State'' and inserting ''Department of Homeland Security and the Department of State''.

SEC. 1404. DEPARTMENT OF LABOR INVESTIGATIVE AUTHORITIES.

Section 212(n)(2) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(2)) is amended—

(1) by redesignating subparagraph (H) as subparagraph (J); and

(2) by inserting after subparagraph (G) the following:

''(H)(i) The Secretary of Labor may initiate an investigation of any employer that employs nonimmigrants described in section 101(a)(15)(H)(v)(a) if the Secretary, or the Secretary's designee—

''(I) certifies that reasonable cause exists to believe that the employer is out of compliance with the Secure America and Orderly Immigration Act or section 274E; and

''(II) approves the commencement of the investigation.

''(ii) In determining whether reasonable cause exists to initiate an investigation under this section, the Secretary shall—

''(I) monitor the Willing Worker-Willing Employer Electronic Job Registry;

''(II) monitor the Employment Eligibility Confirmation System, taking into consideration whether—

''(aa) an employer's submissions to the System generate a high volume of tentative nonconfirmation responses relative to other comparable employers;

''(bb) an employer rarely or never screens hired individuals;

''(cc) individuals employed by an employer rarely or never pursue a secondary verification process as established in section 274E; or

''(dd) any other indicators of illicit, inappropriate or discriminatory use of the System, especially those described in section 274E(a)(6)(D), exist; and

''(III) consider any additional evidence that the Secretary determines appropriate.

''(iii) Absent other evidence of noncompliance, an investigation under this subparagraph should not be initiated for lack of completeness or obvious inaccuracies by the employer in complying with section 101(a)(15)(H)(v)(a).''.

SEC. 1405. PROTECTION OF EMPLOYMENT RIGHTS.

The Secretary and the Secretary of Homeland Security shall establish a process under which a nonimmigrant worker described in clause (ii)(b) or (v)(a) of section 101(a)(15)(H) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)) who files a nonfrivolous complaint regarding a violation of this section and is otherwise eligible to remain and work in the United States may be allowed to seek other appropriate employment in the United States with an employer for a period not to exceed the maximum period of stay authorized for that nonimmigrant classification.

SEC. 1406. INCREASED FINES FOR PROHIBITED BEHAVIOR.

Section 274B(g)(2)(B)(iv) of the Immigration and Nationality Act (8 U.S.C. 1324b(g)(2)(B)(iv)) is amended—

(1) in subclause (I), by striking ''not less than $250 and not more than $2,000'' and inserting ''not less than $500 and not more than $4,000'';

(2) in subclause (II), by striking ''not less than $2,000 and not more than $5,000'' and inserting ''not less than $4,000 and not more than $10,000''; and

(3) in subclause (III), by striking ''not less than $3,000 and not more than $10,000'' and inserting ''not less than $6,000 and not more than $20,000''.

TITLE V—PROMOTING CIRCULAR MIGRATION PATTERNS

SEC. 1501. LABOR MIGRATION FACILITATION PROGRAMS.

(a) AUTHORITY FOR PROGRAM.—

(1) IN GENERAL.—The Secretary of State is authorized to enter into an agreement to establish and administer a labor migration facilitation program jointly with the appropriate official of a foreign government whose citizens participate in the temporary worker program authorized under section 101(a)(15)(H)(v)(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(v)(a)).

(2) PRIORITY.—In establishing programs under subsection (a), the Secretary of State shall place a priority on establishing such programs with foreign governments that have a large number of nationals working as temporary workers in the United States under such section 101(a)(15)(H)(v)(a). The Secretary shall enter into such agreements not later than 3 months after the date of enactment of this Act or as soon thereafter as is practicable.

(3) ELEMENTS OF PROGRAM.—A program established under paragraph (1) may provide for—

(A) the Secretary of State, in conjunction with the Secretary of Homeland Security and the Secretary of Labor, to confer with a foreign government—

(i) to establish and implement a program to assist temporary workers from such a country to obtain nonimmigrant status under such section 101(a)(15)(H)(v)(a);

(ii) to establish programs to create economic incentives for aliens to return to their home country;

(B) the foreign government to monitor the participation of its nationals in such a temporary worker program, including departure from and return to a foreign country;

(C) the foreign government to develop and promote a reintegration program available to such individuals upon their return from the United States;

(D) the foreign government to promote or facilitate travel of such individuals between the country of origin and the United States; and

(E) any other matters that the foreign government and United States find appropriate to enable such individuals to maintain strong ties to their country of origin.

SEC. 1502. BILATERAL EFFORTS WITH MEXICO TO REDUCE MIGRATION PRESSURES AND COSTS.

(a) FINDINGS.—Congress makes the following findings:

(1) Migration from Mexico to the United States is directly linked to the degree of economic opportunity and the standard of living in Mexico.

(2) Mexico comprises a prime source of migration to the United States.

(3) Remittances from Mexican citizens working in the United States reached a record high of nearly $17,000,000,000 in 2004.

(4) Migration patterns may be reduced from Mexico to the United States by addressing the degree of economic opportunity available to Mexican citizens.

(5) Many Mexican assets are held extra-legally and cannot be readily used as collateral for loans.

(6) A majority of Mexican businesses are small or medium size with limited access to financial capital.

(7) These factors constitute a major impediment to broad-based economic growth in Mexico.

(8) Approximately 20 percent of Mexico's population works in agriculture, with the majority of this population working on small farms and few on large commercial enterprises.

(9) The Partnership for Prosperity is a bilateral initiative launched jointly by the President of the United States and the President of Mexico in 2001, which aims to boost the social and economic standards of Mexican citizens, particularly in regions where economic growth has lagged and emigration has increased.

(10) The Presidents of Mexico and the United States and the Prime Minister of Canada, at their trilateral summit on March 23, 2005, agreed to promote economic growth, competitiveness, and quality of life in the agreement on Security and Prosperity Partnership of North America.

(b) SENSE OF CONGRESS REGARDING PARTNERSHIP FOR PROSPERITY.—It is the sense of Congress that the United States and Mexico should accelerate the implementation of the Partnership for Prosperity to help generate economic growth and improve the standard of living in Mexico, which will lead to reduced migration, by—

(1) increasing access for poor and under served populations in Mexico to the financial services sector, including credit unions;

(2) assisting Mexican efforts to formalize its extra-legal sector, including the issuance of formal land titles, to enable Mexican citizens to use their assets to procure capital;

(3) facilitating Mexican efforts to establish an effective rural lending system for small- and medium-sized farmers that will—

(A) provide long term credit to borrowers;

(B) develop a viable network of regional and local intermediary lending institutions; and

(C) extend financing for alternative rural economic activities beyond direct agricultural production;

(4) expanding efforts to reduce the transaction costs of remittance flows in order to increase the pool of savings available to help finance domestic investment in Mexico;

(5) encouraging Mexican corporations to adopt internationally recognized corporate governance practices, including anti-corruption and transparency principles;

(6) enhancing Mexican efforts to strengthen governance at all levels, including efforts to improve transparency and accountability, and to eliminate corruption, which is the single biggest obstacle to development;

(7) assisting the Government of Mexico in implementing all provisions of the Inter-American Convention Against Corruption (ratified by Mexico on May 27, 1997) and urging the Government of Mexico to participate fully in the Convention's formal implementation monitoring mechanism;

(8) helping the Government of Mexico to strengthen education and training opportunities throughout the country, with a particular emphasis on improving rural education; and

(9) encouraging the Government of Mexico to create incentives for persons who have migrated to the United States to return to Mexico.

(c) SENSE OF CONGRESS REGARDING BILATERAL PARTNERSHIP ON HEALTH CARE.—It is the sense of Congress that the Government of the United States and the Government of Mexico should enter into a partnership to examine uncompensated and burdensome health care costs incurred by the United States due to legal and illegal immigration, including—

(1) increasing health care access for poor and under served populations in Mexico;

(2) assisting Mexico in increasing its emergency and trauma health care facilities along the border, with emphasis on expanding prenatal care in the United States–Mexico border region;

(3) facilitating the return of stable, incapacitated workers temporarily employed in the United States to Mexico in order to receive extended, long-term care in their home country; and

(4) helping the Government of Mexico to establish a program with the private sector to cover the health care needs of Mexican nationals temporarily employed in the United States.

TITLE VI—FAMILY UNITY AND BACKLOG REDUCTION

SEC. 1601. ELIMINATION OF EXISTING BACKLOGS.

(a) FAMILY-SPONSORED IMMIGRANTS.—Section 201(c) of the Immigration and Nationality Act (8 U.S.C. 1151(c)) is amended to read as follows:

''(c) WORLDWIDE LEVEL OF FAMILY-SPONSORED IMMIGRANTS.—The worldwide level of family-sponsored immigrants under this subsection for a fiscal year is equal to the sum of—

''(1) 480,000;

''(2) the difference between the maximum number of visas authorized to be issued under this subsection during the previous fiscal year and the number of visas issued during the previous fiscal year; and

''(3) the difference between—

''(A) the maximum number of visas authorized to be issued under this subsection during fiscal years 2001 through 2005 minus the number of visas issued under this subsection during those years; and

''(B) the number of visas described in subparagraph (A) that were issued after fiscal year 2005.''.

(b) EMPLOYMENT-BASED IMMIGRANTS.—Section 201(d) of the Immigration and Nationality Act (8 U.S.C. 1151(d)) is amended to read as follows:

''(d) WORLDWIDE LEVEL OF EMPLOYMENT-BASED IMMIGRANTS.—The worldwide level of employment-based immigrants under this subsection for a fiscal year is equal to the sum of—

''(1) 290,000;

''(2) the difference between the maximum number of visas authorized to be issued under this subsection during the previous fiscal year and the number of visas issued during the previous fiscal year; and

''(3) the difference between—

''(A) the maximum number of visas authorized to be issued under this subsection during fiscal years 2001 through 2005 and the number of visa numbers issued under this subsection during those years; and

''(B) the number of visas described in subparagraph (A) that were issued after fiscal year 2005.''.

SEC. 1602. COUNTRY LIMITS.

Section 202(a) of the Immigration and Nationality Act (8 U.S.C. 1152(a)) is amended—

(1) in paragraph (2)—

(A) by striking '', (4), and (5)'' and inserting ''and (4)''; and

(B) by striking ''7 percent (in the case of a single foreign state) or 2 percent'' and inserting ''10 percent (in the case of a single foreign state) or 5 percent''; and

(2) by striking paragraph (5).

SEC. 1603. ALLOCATION OF IMMIGRANT VISAS.

(a) PREFERENCE ALLOCATION FOR FAMILY-SPONSORED IMMIGRANTS.—Section 203(a) of the Immigration and Nationality Act (8 U.S.C. 1153(a)) is amended to read as follows:

''(a) PREFERENCE ALLOCATIONS FOR FAMILY-SPONSORED IMMIGRANTS.—Aliens subject to the worldwide level specified in section 201(c) for family-sponsored immigrants shall be allocated visas as follows:

''(1) UNMARRIED SONS AND DAUGHTERS OF CITIZENS.—Qualified immigrants who are the unmarried sons or daughters of citizens of the United States shall be allocated visas in a quantity not to exceed 10 percent of such worldwide level plus any visas not required for the class specified in paragraph (4).

''(2) SPOUSES AND UNMARRIED SONS AND DAUGHTERS OF PERMANENT RESIDENT

ALIENS.—Visas in a quantity not to exceed 50 percent of such worldwide level plus any visas not required for the class specified in paragraph (1) shall be allocated to qualified immigrants—

''(A) who are the spouses or children of an alien lawfully admitted for permanent residence, which visas shall constitute not less than 77 percent of the visas allocated under this paragraph; or

''(B) who are the unmarried sons or daughters of an alien lawfully admitted for permanent residence.

''(3) MARRIED SONS AND DAUGHTERS OF CITIZENS.—Qualified immigrants who are the married sons and daughters of citizens of the United States shall be allocated visas in a quantity not to exceed 10 percent of such worldwide level plus any visas not required for the classes specified in paragraphs (1) and (2).

''(4) BROTHERS AND SISTERS OF CITIZENS.—Qualified immigrants who are the brothers or sisters of citizens of the United States who are at least 21 years of age shall be allocated visas in a quantity not to exceed 30 percent of the worldwide level plus any visas not required for the classes specified in paragraphs (1) through (3).''.

(b) PREFERENCE ALLOCATION FOR EMPLOYMENT-BASED IMMIGRANTS.—Section 203(b) of the Immigration and Nationality Act (8 U.S.C. 1153(b)) is amended—

(1) in paragraph (1), by striking ''28.6 percent'' and inserting ''20 percent'';

(2) in paragraph (2)(A), by striking ''28.6 percent'' and inserting ''20 percent'';

(3) in paragraph (3)(A)—

(A) by striking ''28.6 percent'' and inserting ''35 percent''; and

(B) by striking clause (iii);

(4) by striking paragraph (4);

(5) by redesignating paragraph (5) as paragraph (4);

(6) in paragraph (4)(A), as redesignated, by striking ''7.1 percent'' and inserting ''5 percent'';

(7) by inserting after paragraph (4), as redesignated, the following:

''(5) OTHER WORKERS.—Visas shall be made available, in a number not to exceed 30 percent of such worldwide level, plus any visa numbers not required for the classes specified in paragraphs (1) through (4), to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing unskilled labor that is not of a temporary or seasonal nature, for which qualified workers are determined to be unavailable in the United States, or to nonimmigrants under section 101(a)(15)(H)(v)(a).''; and

(8) by striking paragraph (6).

(c) CONFORMING AMENDMENTS.—

(1) DEFINITION OF SPECIAL IMMIGRANT.—Section 101(a)(27)(M) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(M)) is amended by striking ''subject to the numerical limitations of section 203(b)(4),''.

(2) REPEAL OF TEMPORARY REDUCTION IN WORKERS' VISAS.—Section 203(e) of the Nicaraguan Adjustment and Central American Relief Act (8 U.S.C. 1153 note) is repealed.

SEC. 1604. RELIEF FOR CHILDREN AND WIDOWS.

(a) IN GENERAL.—Section 201(b)(2)(A)(i) of the Immigration and Nationality Act (8 U.S.C. 1151(b)(2)(A)(i)) is amended by striking ''spouses, and parents of a citizen of the United States'' and inserting ''(and their children who are accompanying or following to join them), the spouses (and their children who are accompanying or following to join them), and the parents of a citizen of the United States (and their children who are accompanying or following to join them)''.

(b) PETITION.—Section 204(a)(1)(A)(ii) of the Immigration and Nationality Act (8 U.S.C. 1154 (a)(1)(A)(ii) is amended by inserting ''or an alien child or alien parent described in the third sentence of section 201(b)(2)(A)(i)'' after ''section 201(b)(2)(A)(i)''.

(c) ADJUSTMENT OF STATUS.—Section 245 of the Immigration and Nationality Act (8 U.S.C. 1255) is amended by adding at the end the following:

''(n) APPLICATIONS FOR ADJUSTMENT OF STATUS BY SURVIVING SPOUSES, CHILDREN, AND PARENTS.—

''(1) IN GENERAL.—Notwithstanding subsections (a) and (c) (except subsection (c)(6)), any alien described in paragraph (2) who applied for adjustment of status prior to the death of the qualifying relative, may have such application adjudicated as if such death had not occurred.

''(2) ALIEN DESCRIBED.—An alien described in this paragraph is an alien who—

''(A) is an immediate relative (as defined in section 201(b)(2)(A)(i));

''(B) is a family-sponsored immigrant (as described in subsection (a) or (d) of section 203);

''(C) is a derivative beneficiary of an employment-based immigrant under section 203(b), as described in section 203(d); or

''(D) is a derivative beneficiary of a diversity immigrant (as described in section 203(c)).''.

(d) TRANSITION PERIOD.—Notwithstanding a denial of an application for adjustment of status not more than 2 years before the date of enactment of this Act, in the case of an alien whose qualifying relative died before the date of enactment of this Act, such application may be renewed by the alien through a motion to reopen, without fee, filed not later than 1 year after the date of enactment of this Act.

SEC. 1605. AMENDING THE AFFIDAVIT OF SUPPORT REQUIREMENTS.

Section 213A of the Immigration and Nationality Act (8 U.S.C. 1183a) is amended—

(1) in subsection (a)(1)(A), by striking ''125'' and inserting ''100''; and

(2) in subsection (f), by striking ''125'' each place it appears and inserting ''100''.

SEC. 1606. DISCRETIONARY AUTHORITY.

Section 212(i) of the Immigration and Nationality Act (8 U.S.C. 1182(i)) is amended—

(1) by redesignating paragraph (2) as paragraph (3); and

(2) by inserting after paragraph (1) the following:

''(2)(A) The Secretary of Homeland Security may waive the application of subsection (a)(6)(C)—

''(i) in the case of an immigrant who is the spouse, parent, son, or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if the Secretary of Homeland Security determines that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse, child, son, daughter, or parent of such an alien; or

''(ii) in the case of an alien granted classification under clause (iii) or (iv) of section 204(a)(1)(A) or clause (ii) or (iii) of section 204(a)(1)(B), the alien demonstrates extreme hardship to the alien or the alien's parent or child if, such parent or child is a United States citizen, a lawful permanent resident, or a qualified alien.

''(B) An alien who is granted a waiver under subparagraph (A) shall pay a $2,000 fine.''.

SEC. 1607. FAMILY UNITY.

Section 212(a)(9) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(9)) is amended—

(1) in subparagraph (B)(iii)(I), by striking ''18'' and inserting ''21''; and

(2) in subparagraph (C)(ii)—

(A) by redesignating subclauses (1) and (2) as subclauses (I) and (II); and

(B) in subclause (II), as redesignated, by redesignating items (A), (B), (C), and (D) as items (aa), (bb), (cc), and (dd); and

(3) by adding at the end the following:

''(D) WAIVER.—

''(i) IN GENERAL.—The Secretary may waive the application of subparagraphs (B) and (C) for an alien who is a beneficiary of a petition filed under sections 201 and 203 if such petition was filed on or before the date of introduction of Secure America and Orderly Immigration Act.

''(ii) FINE.—An alien who is granted a waiver under clause (i) shall pay a $2,000 fine.''.

TITLE VII—H–5B NONIMMIGRANTS

SEC. 1701. H–5B NONIMMIGRANTS.

(a) IN GENERAL.—Chapter 5 of title II of the Immigration and Nationality Act (8 U.S.C. 1255 et seq.) is amended by adding after section 250 the following:

''H–5B NONIMMIGRANTS

''SEC. 250A. (a) IN GENERAL.—The Secretary of Homeland Security shall adjust the status of an alien to that of a nonimmigrant under section 101(a)(15)(H)(v)(b) if the alien—

''(1) submits an application for such adjustment; and

''(2) meets the requirements of this section.

''(b) PRESENCE IN THE UNITED STATES.—The alien shall establish that the alien—

''(1) was present in the United States before the date on which the Secure America and Orderly Immigration Act was introduced, and has been continuously in the United States since such date; and

''(2) was not legally present in the United States on the date on which the Secure America and Orderly Immigration Act was introduced under any classification set forth in section 101(a)(15).

''(c) SPOUSES AND CHILDREN.—Notwithstanding any other provision of law, the Secretary of Homeland Security shall, if the person is otherwise eligible under subsection (b)—

''(1) adjust the status to that of a nonimmigrant under section 101(a)(15)(H)(v)(b) for, or provide a nonimmigrant visa to, the spouse or child of an alien who is provided nonimmigrant status under section 101(a)(15)(H)(v)(b); or

''(2) adjust the status to that of a nonimmigrant under section 101(a)(15)(H)(v)(b) for an alien who, before the date on which the Secure America and Orderly Immigration Act was introduced in Congress, was the spouse or child of an alien who is provided nonimmigrant status under section 101(a)(15)(H)(v)(b), or is eligible for such status, if—

''(A) the termination of the qualifying relationship was connected to domestic violence; and

''(B) the spouse or child has been battered or subjected to extreme cruelty by the spouse or parent alien who is provided nonimmigrant status under section 101(a)(15)(H)(v)(b).

''(d) OTHER CRITERIA.—

''(1) IN GENERAL.—An alien may be granted nonimmigrant status under section 101(a)(15)(H)(v)(b), or granted status as the spouse or child of an alien eligible for such status under subsection (c), if the alien establishes that the alien—

''(A) is not inadmissible to the United States under section 212(a), except as provided in paragraph (2); or

''(B) has not ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion.

''(2) GROUNDS OF INADMISSIBILITY.—In determining an alien's admissibility under paragraph (1)(A)—

''(A) paragraphs (5), (6)(A), (6)(B), (6)(C), (6)(F), (6)(G), (7), (9), and (10)(B) of section 212(a) shall not apply for conduct that occurred before the date on which the Secure America and Orderly Immigration Act was introduced;

''(B) the Secretary of Homeland Security may not waive—

''(i) subparagraph (A), (B), (C), (E), (G), (H), or (I) of section 212(a)(2) (relating to criminals);

''(ii) section 212(a)(3) (relating to security and related grounds); or

''(iii) subparagraph (A) or (C) of section 212(a)(10) (relating to polygamists and child abductors);

''(C) for conduct that occurred before the date on which the Secure America and Orderly Immigration Act was introduced, the Secretary of Homeland Security may waive the application of any provision of section 212(a) not listed in subparagraph (B) on behalf of an individual alien for humanitarian purposes, to ensure family unity, or when such waiver is otherwise in the public interest; and

''(D) nothing in this paragraph shall be construed as affecting the authority of the Secretary of Homeland Security other than under this paragraph to waive the provisions of section 212(a).

''(3) APPLICABILITY OF OTHER PROVISIONS.—Sections 240B(d) and 241(a)(5) shall not apply to an alien who is applying for adjustment of status in accordance with this title for conduct that occurred before the date on which the Secure America and Orderly Immigration Act was introduced.

''(e) EMPLOYMENT.—

''(1) IN GENERAL.—The Secretary of Homeland Security may not adjust the status of an alien to that of a nonimmigrant under section 101(a)(15)(H)(v)(b) unless the alien establishes that the alien—

''(A) was employed in the United States, whether full time, part time, seasonally, or self-employed, before the date on which the Secure America and Orderly Immigration Act was introduced; and

''(B) has been employed in the United States since that date.

''(2) EVIDENCE OF EMPLOYMENT.—

''(A) CONCLUSIVE DOCUMENTS.—An alien may conclusively establish employment status in compliance with paragraph (1) by submitting to the Secretary of Homeland Security records demonstrating such employment maintained by—

''(i) the Social Security Administration, Internal Revenue Service, or by any other Federal, State, or local government agency;

''(ii) an employer; or

''(iii) a labor union, day labor center, or an organization that assists workers in matters related to employment.

''(B) OTHER DOCUMENTS.—An alien who is unable to submit a document described in clauses (i) through (iii) of subparagraph (A) may satisfy the requirement in paragraph (1) by submitting to the Secretary at least 2 other types of reliable documents that provide evidence of employment, including—

''(i) bank records;

''(ii) business records;

''(iii) sworn affidavits from nonrelatives who have direct knowledge of the alien's work; or

''(iv) remittance records.

''(3) INTENT OF CONGRESS.—It is the intent of Congress that the requirement in this subsection be interpreted and implemented in a manner that recognizes and takes into account the difficulties encountered by aliens in obtaining evidence of employment due to the undocumented status of the alien.

''(4) BURDEN OF PROOF.—An alien described in paragraph (1) who is applying for adjustment of status under this section has the burden of proving by a preponderance of the evidence that the alien has satisfied the requirements of this subsection. An alien may meet such burden of proof by producing sufficient evidence to demonstrate such employment as a matter of reasonable inference.

''(f) SPECIAL RULES FOR MINORS AND INDIVIDUALS WHO ENTERED AS MINORS.—The employment requirements under this section shall not apply to any alien under 21 years of age.

''(g) EDUCATION PERMITTED.—An alien may satisfy the employment requirements under this section, in whole or in part, by full-time attendance at—

''(1) an institution of higher education (as defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001)); or

''(2) a secondary school (as defined in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801)).

''(h) SECURITY AND LAW ENFORCEMENT BACKGROUND CHECKS.—

''(1) SUBMISSION OF FINGERPRINTS.—An alien may not be granted nonimmigrant status under section 101(a)(15)(H)(v)(b), or granted status as the spouse or child of an alien eligible for such status under subsection (c), unless the alien submits fingerprints in accordance with procedures established by the Secretary of Homeland Security.

''(2) BACKGROUND CHECKS.—The Secretary of Homeland Security shall utilize fingerprints and other data provided by the alien to conduct a background check of such alien relating to criminal, national security, or other law enforcement actions that would render the alien ineligible for adjustment of status as described in this section.

''(3) EXPEDITIOUS PROCESSING.—The background checks required under paragraph (2) shall be conducted as expeditiously as possible.

''(i) PERIOD OF AUTHORIZED STAY AND APPLICATION FEE AND FINE.—

''(1) PERIOD OF AUTHORIZED STAY.—

''(A) IN GENERAL.—The period of authorized stay for a nonimmigrant described in section 101(a)(15)(H)(v)(b) shall be 6 years.

''(B) LIMITATION.—The Secretary of Homeland Security may not authorize a change from such nonimmigrant classification to any other immigrant or nonimmigrant classification until the termination of the 6-year period described in subparagraph (A). The Secretary may only extend such period to accommodate the processing of an application for adjustment of status under section 245B.

''(2) APPLICATION FEE.—The Secretary of Homeland Security shall impose a fee for filing an application for adjustment of status under this section. Such fee shall be sufficient to cover the administrative and other expenses incurred in connection with the review of such applications.

''(3) FINES.—

''(A) IN GENERAL.—In addition to the fee required under paragraph (2), the Secretary of Homeland Security may accept an application for adjustment of status under this section only if the alien pays a $1,000 fine.

''(B) EXCEPTION.—Fines paid under this paragraph shall not be required from an alien under the age of 21.

''(4) COLLECTION OF FEES AND FINES.—All fees and fines collected under this section shall be deposited in the Treasury in accordance with section 286(w).

''(j) TREATMENT OF APPLICANTS.—

''(1) IN GENERAL.—An alien who files an application under this section, including the alien's spouse or child—

''(A) shall be granted employment authorization pending final adjudication of the alien's application for adjustment of status;

''(B) shall be granted permission to travel abroad;

''(C) may not be detained, determined inadmissible or deportable, or removed pending final adjudication of the alien's application for adjustment of status, unless the alien, through conduct or criminal conviction, becomes ineligible for such adjustment of status; and

''(D) may not be considered an unauthorized alien (as defined in section 274A(h)(3)) until employment authorization under subparagraph (A) is denied.

''(2) BEFORE APPLICATION PERIOD.—If an alien is apprehended after the date of enactment of this section, but before the promulgation of regulations pursuant to this section, and the alien can establish prima facie eligibility as a nonimmigrant under section 101(a)(15)(H)(v)(b), the Secretary of Homeland Security shall provide the alien with a reasonable opportunity, after promulgation of regulations, to file an application for adjustment.

''(3) DURING CERTAIN PROCEEDINGS.—Notwithstanding any provision of this Act, an alien who is in removal proceedings shall have an opportunity to apply for adjustment of status under this title unless a final administrative determination has been made.

''(4) RELATIONSHIPS OF APPLICATION TO CERTAIN ORDERS.—An alien who is present in the United States and has been ordered excluded, deported, removed, or ordered to depart voluntarily from the United States under any provision of this Act may, notwithstanding such order, apply for adjustment of status in accordance with this section. Such an alien shall not be required to file a separate motion to reopen, reconsider, or vacate the exclusion, deportation, removal, or voluntary departure order. If the Secretary of Homeland Security grants the application, the Secretary shall cancel such order. If the Secretary of Homeland Security renders a final administrative decision to deny the application, such order shall be effective and enforceable to the same extent as if the application had not been made.

''(k) ADMINISTRATIVE AND JUDICIAL REVIEW.—

''(1) ADMINISTRATIVE REVIEW.—

''(A) SINGLE LEVEL OF ADMINISTRATIVE APPELLATE REVIEW.—The Secretary of Homeland Security shall establish an appellate authority within the United States Citizenship and Immigration Services to provide for a single level of administrative appellate review of a determination respecting an application for adjustment of status under this section.

''(B) STANDARD FOR REVIEW.—Administrative appellate review referred to in subparagraph (A) shall be based solely upon the administrative record established at the time of the determination on the application and upon the presentation of additional or newly discovered evidence during the time of the pending appeal.

''(2) JUDICIAL REVIEW.—

''(A) IN GENERAL.—There shall be judicial review in the Federal courts of appeal of the denial of an application for adjustment of status under this section. Notwithstanding any other provision of law, the standard for review of such a denial shall be governed by subparagraph (B).

''(B) STANDARD FOR JUDICIAL REVIEW.—Judicial review of a denial of an application under this section shall be based solely upon the administrative record established at the time of the review. The findings of fact and other determinations contained in the record shall be conclusive unless the applicant can

establish abuse of discretion or that the findings are directly contrary to clear and convincing facts contained in the record, considered as a whole.

''(C) JURISDICTION OF COURTS.—

''(i) IN GENERAL.—Notwithstanding any other provision of law, the district courts of the United States shall have jurisdiction over any cause or claim arising from a pattern or practice of the Secretary of Homeland Security in the operation or implementation of this section that is arbitrary, capricious, or otherwise contrary to law, and may order any appropriate relief.

''(ii) REMEDIES.—A district court may order any appropriate relief under clause (i) if the court determines that resolution of such cause or claim will serve judicial and administrative efficiency or that a remedy would otherwise not be reasonably available or practicable.

''(3) STAY OF REMOVAL.—Aliens seeking administrative or judicial review under this subsection shall not be removed from the United States until a final decision is rendered establishing ineligibility under this section.

''(l) CONFIDENTIALITY OF INFORMATION.—

''(1) IN GENERAL.—Except as otherwise provided in this subsection, no Federal agency or bureau, nor any officer, employee, or agent of such agency or bureau, may—

''(A) use the information furnished by the applicant pursuant to an application filed under this section for any purpose other than to make a determination on the application;

''(B) make any publication through which the information furnished by any particular applicant can be identified; or

''(C) permit anyone other than the sworn officers and employees of such agency or bureau to examine individual applications.

''(2) REQUIRED DISCLOSURES.—The Secretary of Homeland Security shall provide the information furnished pursuant to an application filed under this section, and any other information derived from such furnished information, to a duly recognized law enforcement entity in connection with a criminal investigation or prosecution or a national security investigation or prosecution, in each instance about an individual suspect or group of suspects, when such information is requested in writing by such entity.

''(3) CRIMINAL PENALTY.—Any person who knowingly uses, publishes, or permits information to be examined in violation of this subsection shall be fined not more than $10,000.

''(m) PENALTIES FOR FALSE STATEMENTS IN APPLICATIONS.—

''(1) CRIMINAL PENALTY.—

''(A) VIOLATION.—It shall be unlawful for any person—

''(i) to file or assist in filing an application for adjustment of status under this section and knowingly and willfully falsify, misrepresent, conceal, or cover up a material fact or make any false, fictitious, or fraudulent statements or representations, or make or use any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry; or

''(ii) to create or supply a false writing or document for use in making such an application.

''(B) PENALTY.—Any person who violates subparagraph (A) shall be fined in accordance with title 18, United States Code, imprisoned not more than 5 years, or both.

''(2) INADMISSIBILITY.—An alien who is convicted of a crime under paragraph (1) shall be considered to be inadmissible to the United States on the ground described in section 212(a)(6)(C)(i).

''(3) EXCEPTION.—Notwithstanding paragraphs (1) and (2), any alien or other entity (including an employer or union) that submits an employment record that contains incorrect data that the alien used in order to obtain such employment before the date on which the Secure America and Orderly Immigration Act is introduced, shall not, on that ground, be determined to have violated this section.''.

(b) CLERICAL AMENDMENT.—The table of contents for the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended by inserting after the item relating to section 250 the following:

''Sec. 250A. H–5B nonimmigrants.''.

SEC. 1702. ADJUSTMENT OF STATUS FOR H–5B NONIMMIGRANTS.

(a) IN GENERAL.—Chapter 5 of title II of the Immigration and Nationality Act (8 U.S.C. 1255 et seq.) is amended by inserting after section 245A the following:

''ADJUSTMENT OF STATUS OF FORMER H–5B NONIMMIGRANT TO THAT OF PERSON ADMITTED FOR LAWFUL PERMANENT RESIDENCE

''SEC. 245B. (a) REQUIREMENTS.—The Secretary shall adjust the status of an alien from nonimmigrant status under section 101(a)(15)(H)(v)(b) to that of an alien lawfully admitted for permanent residence under this section if the alien satisfies the following requirements:

''(1) COMPLETION OF EMPLOYMENT OR EDUCATION REQUIREMENT.—The alien establishes that the alien has been employed in the United States, either full time, part time, seasonally, or self-employed, or has met the education requirements of subsection (f) or (g) of section 250A during the period required by section 250A(e).

''(2) RULEMAKING.—The Secretary shall establish regulations for the timely filing and processing of applications for adjustment of status for nonimmigrants under section 101(a)(15)(H)(v)(b).

''(3) APPLICATION AND FEE.—The alien who applies for adjustment of status under this section shall pay the following:

''(A) APPLICATION FEE.—An alien who files an application under section 245B of the Immigration and Nationality Act, shall pay an application fee, set by the Secretary.

''(B) ADDITIONAL FINE.—Before the adjudication of an application for adjustment of status filed under this section, an alien who is at least 21 years of age shall pay a fine of $1,000.

''(4) ADMISSIBLE UNDER IMMIGRATION LAWS.—The alien establishes that the alien is not inadmissible under section 212(a), except for any provision of that section that is not applicable or waived under section 250A(d)(2).

''(5) MEDICAL EXAMINATION.—The alien shall undergo, at the alien's expense, an appropriate medical examination (including a determination of immunization status) that conforms to generally accepted professional standards of medical practice.

''(6) PAYMENT OF INCOME TAXES.—

''(A) IN GENERAL.—Not later than the date on which status is adjusted under this section, the alien shall establish the payment of all Federal income taxes owed for employment during the period of employment required by section 250A(e) by establishing that—

''(i) no such tax liability exists;

''(ii) all outstanding liabilities have been met; or

''(iii) the alien has entered into an agreement for payment of all outstanding liabilities with the Internal Revenue Service.

''(B) IRS COOPERATION.—The Commissioner of Internal Revenue shall provide documentation to an alien upon request to establish the payment of all income taxes required by this paragraph.

''(7) BASIC CITIZENSHIP SKILLS.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the alien shall establish that the alien—

''(i) meets the requirements of section 312; or

''(ii) is satisfactorily pursuing a course of study to achieve such an understanding of English and knowledge and understanding of the history and government of the United States.

''(B) RELATION TO NATURALIZATION EXAMINATION.—An alien who demonstrates that the alien meets the requirements of section 312 may be considered to have satisfied the requirements of that section for purposes of becoming naturalized as a citizen of the United States under title III.

''(8) SECURITY AND LAW ENFORCEMENT BACKGROUND CHECKS.—The Secretary shall conduct a security and law enforcement background check in accordance with procedures described in section 250A(h).

''(9) MILITARY SELECTIVE SERVICE.—The alien shall establish that if the alien is within the age period required under the Military Selective Service Act (50 U.S.C. App. 451 et seq.), that such alien has registered under that Act.

''(b) TREATMENT OF SPOUSES AND CHILDREN.—

''(1) ADJUSTMENT OF STATUS.—Notwithstanding any other provision of law, the Secretary of Homeland Security shall—

''(A) adjust the status to that of a lawful permanent resident under this section, or provide an immigrant visa to the spouse or child of an alien who adjusts status to that of a permanent resident under this section; or

''(B) adjust the status to that of a lawful permanent resident under this section for an alien who was the spouse or child of an alien who adjusts status or is eligible to adjust status to that of a permanent resident under section 245B in accordance with subsection (a), if—

''(i) the termination of the qualifying relationship was connected to domestic violence; and

''(ii) the spouse or child has been battered or subjected to extreme cruelty by the spouse or parent who adjusts status to that of a permanent resident under this section.

''(2) APPLICATION OF OTHER LAW.—In acting on applications filed under this subsection with respect to aliens who have been battered or subjected to extreme cruelty, the Secretary of Homeland Security shall apply the provisions of section 204(a)(1)(J) and the protections, prohibitions, and penalties under section 384 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1367).

''(c) JUDICIAL REVIEW; CONFIDENTIALITY; PENALTIES.—Subsections (n), (o), and (p) of section 250A shall apply to this section.''.

(b) CLERICAL AMENDMENT.—The table of contents for the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended by inserting after the item relating to section 245A the following:

''Sec. 245B. Adjustment of status of former H–5B nonimmigrant to that of person admitted for lawful permanent residence.''.

SEC. 1703. ALIENS NOT SUBJECT TO DIRECT NUMERICAL LIMITATIONS.

Section 201(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1151(b)(1)) is amended—

(1) in subparagraph (A), by striking ''subparagraph (A) or (B) of''; and

(2) by adding at the end the following:

''(F) Aliens whose status is adjusted from the status described in section 101(a)(15)(H)(v)(b).''.

SEC. 1704. EMPLOYER PROTECTIONS.

(a) IMMIGRATION STATUS OF ALIEN.—Employers of aliens applying for adjustment of status under section 245B or 250A of the Immigration and Nationality Act, as added by this title, shall not be subject to civil and criminal tax liability relating directly to the employment of such alien prior to such alien receiving employment authorization under this title.

(b) PROVISION OF EMPLOYMENT RECORDS.—Employers that provide unauthorized aliens with copies of employment records or other evidence of employment pursuant to an application for adjustment of status under section 245B or 250A of the Immigration and Nationality Act or any other application or petition pursuant to any other immigration law, shall not be subject to civil and criminal liability under section 274A of such Act for employing such unauthorized aliens.

(c) APPLICABILITY OF OTHER LAW.—Nothing in this section may be used to shield an employer from liability under section 274B of the Immigration and Nationality Act (8 U.S.C. 1324b) or any other labor or employment law.

SEC. 1705. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated to the Secretary of Homeland Security such sums as may be necessary to carry out this title and the amendments made by this title.

(b) AVAILABILITY OF FUNDS.—Funds appropriated pursuant subsection (a) shall remain available until expended.

(c) SENSE OF CONGRESS.—It is the sense of Congress that funds authorized to be appropriated under subsection (a) should be directly appropriated so as to facilitate the orderly and timely commencement of the processing of applications filed under sections 245B and 250A of the Immigration and Nationality Act, as added by this Act.

TITLE VIII—PROTECTION AGAINST IMMIGRATION FRAUD

SEC. 1801. RIGHT TO QUALIFIED REPRESENTATION.

Section 292 of the Immigration and Nationality Act (8 U.S.C. 1362) is amended to read as follows:

''RIGHT TO QUALIFIED REPRESENTATION IN IMMIGRATION MATTERS

''SEC. 292. (a) AUTHORIZED REPRESENTATIVES IN IMMIGRATION MATTERS.—Only the following individuals are authorized to represent an individual in an immigration matter before any Federal agency or entity:

''(1) An attorney.

''(2) A law student who is enrolled in an accredited law school, or a graduate of an accredited law school who is not admitted to the bar, if—

''(A) the law student or graduate is appearing at the request of the individual to be represented;

''(B) in the case of a law student, the law student has filed a statement that the law student is participating, under the direct supervision of a faculty member, attorney, or accredited representative, in a legal aid program or clinic conducted by a law school or nonprofit organization, and that the law student is appearing without direct or indirect remuneration from the individual the law student represents;

''(C) in the case of a graduate, the graduate has filed a statement that the graduate is appearing under the supervision of an attorney or accredited representative and that the graduate is appearing without direct or indirect remuneration from the individual the graduate represents; and

''(D) the law student's or graduate's appearance is—

''(i) permitted by the official before whom the law student or graduate wishes to appear; and

''(ii) accompanied by the supervising faculty member, attorney, or accredited representative, to the extent required by such official.

''(3) Any reputable individual, if—

''(A) the individual is appearing on an individual case basis, at the request of the individual to be represented;

''(B) the individual is appearing without direct or indirect remuneration and the individual files a written declaration to that effect, except as described in subparagraph (D);

''(C) the individual has a pre-existing relationship or connection with the individual entitled to representation, such as a relative, neighbor, clergyman, business associate, or personal friend, except that this requirement may be waived, as a matter of administrative discretion, in cases where adequate representation would not otherwise be available; and

''(D) if making a personal appearance on behalf of another individual, the appearance is permitted by the official before whom the individual wishes to appear, except that such permission shall not be granted with respect to any individual who regularly engages in immigration and naturalization practice or preparation, or holds himself or herself out to the public as qualified to do so.

''(4) An individual representing a recognized organization (as described in subsection (f)) who has been approved to serve as an accredited representative by the Board of Immigration Appeals under subsection (f)(2).

''(5) An accredited official, in the United States, of the government to which an alien owes allegiance, if the official appears solely in his or her official capacity and with the consent of the person to be represented.

''(6) An individual who is licensed to practice law and is in good standing in a court of general jurisdiction of the country in which the individual resides and who is engaged in such practice, if the person represents persons only in matters outside the United States and that the official before whom such person wishes to appear allows such representation, as a matter of discretion.

''(7) An attorney, or an organization represented by an attorney, may appear, on a case-by-case basis, as amicus curiae, if the Board of Immigration Appeals grants such permission and the public interest will be served by such appearance.

''(b) FORMER EMPLOYEES.—No individual previously employed by the Department of Justice, Department of State, Department of Labor, or Department of Homeland Security may be permitted to act as an authorized representative under this section, if such authorization would violate any other applicable provision of Federal law or regulation. In addition, any application for such authorization must disclose any prior employment by or contract with such agencies for services of any nature.

''(c) ADVERTISING.—Only an attorney or an individual approved under subsection (f)(2) as an accredited representative may advertise or otherwise hold themselves out as being able to provide representation in an immigration matter. This provision shall in no way be deemed to diminish any Federal or State law to regulate, control, or enforce laws regarding such advertisement, solicitation, or offer of representation.

''(d) REMOVAL PROCEEDINGS.—In any proceeding for the removal of an individual from the United States and in any appeal proceedings from such proceeding, the individual shall have the privilege, as the individual shall choose, of being represented (at no expense to the Government) by an individual described in subsection (a). Representation by an individual other than a person described in subsection (a) may cause the representative to be subject to civil penalties or such other penalties as may be applicable.

''(e) BENEFITS FILINGS.—In any filing or submission for an immigration related benefit or a determination related to the immigration status of an individual made to the Department of Homeland Security, the Department of Labor, or the Department of State, the individual shall have the privilege, as the individual shall choose, of being represented (at no expense to the Government) by an individual described in subsection (a). Representation by an individual other than an individual described in subsection (a) is cause for the representative to be subject to civil or criminal penalties, as may be applicable.

''(f) RECOGNIZED ORGANIZATIONS AND ACCREDITED REPRESENTATIVES.—

''(1) RECOGNIZED ORGANIZATIONS.—

''(A) IN GENERAL.—The Board of Immigration Appeals may determine that a person is a recognized organization if such person—

''(i) is a nonprofit religious, charitable, social service, or similar organization established in the United States that—

''(I) is recognized by the Board of Immigration Appeals; and

''(II) is authorized to designate a representative to appear in an immigration matter before the Department of Homeland Security or the Executive Office for Immigration Review of the Department of Justice; and

''(ii) demonstrates to the Board that such person—

''(I) makes only nominal charges and assesses no excessive membership dues for individuals given assistance; and

''(II) has at its disposal adequate knowledge, information, and experience.

''(B) BONDING.—The Board, in its discretion, may impose a bond requirement on new organizations seeking recognition.

''(C) REPORTING OBLIGATIONS.—Recognized organizations shall promptly notify the Board when the organization no longer meets the requirements for recognition or when an accredited representative employed by the recognized organization ceases to be employed by the recognized organization.

''(2) ACCREDITED REPRESENTATIVES.—The Board of Immigration Appeals shall approve any qualified individual designated by a recognized organization to serve as an accredited representative. Such individual must be employed by the recognized organization and must meet all requirements set forth in this section and in the accompanying regulations to be authorized to represent individuals in an immigration matter. Accredited representatives, through their recognized organizations, must certify their continuing eligibility for accreditation every 3 years with the Board of Immigration Appeals. Accredited representatives who fail to comply with these requirements shall not have authority to represent persons in an immigration matter for the recognized organization.

''(g) PROHIBITED ACTS.—An individual, other than an individual authorized to represent an individual under this section, may not—

''(1) directly or indirectly provide or offer representation regarding an immigration matter for compensation or contribution;

''(2) advertise or solicit representation in an immigration matter;

''(3) retain any compensation provided for a prohibited act described in paragraph (1) or (2), regardless of whether any petition, application, or other document was filed with any government agency or entity and regardless of whether a petition, application, or other document was prepared or represented to have been prepared by such individual;

''(4) represent directly or indirectly that the individual is an attorney or supervised

by or affiliated with an attorney, when such representation is false; or

''(5) violate any applicable civil or criminal statute or regulation of a State regarding the provision of representation by providing or offering to provide immigration or immigration-related assistance referenced in this subsection.

''(h) CIVIL ENFORCEMENT.—

''(1) IN GENERAL.—Any person, or any entity acting for the interests of itself, its members, or the general public (including a Federal law enforcement official or agency or law enforcement official or agency of any State or political subdivision of a State), that has reason to believe that any person is being or has been injured by reason of a violation of subsection (g) may commence a civil action in any court of competent jurisdiction.

''(2) REMEDIES.—

''(A) DAMAGES.—In any civil action brought under this subsection, if the court finds that the defendant has violated subsection (g), it shall award actual damages, plus the greater of—

''(i) an amount treble the amount of actual damages; or

''(ii) $1,000 per violation.

''(B) INJUNCTIVE RELIEF.—The court may award appropriate injunctive relief, including temporary, preliminary, or permanent injunctive relief, and restitution. Injunctive relief may include, where appropriate, an order temporarily or permanently enjoining the defendant from providing any service to any person in any immigration matter. The court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the commission of any act described in subsection (g).

''(C) ATTORNEY'S FEES.—The court shall also grant a prevailing plaintiff reasonable attorney's fees and costs, including expert witness fees.

''(D) CIVIL PENALTIES.—The court may also assess a civil penalty not exceeding $50,000 for a first violation, and not exceeding $100,000 for subsequent violations.

''(E) CUMULATIVE REMEDIES.—Unless otherwise expressly provided, the remedies or penalties provided under this paragraph are cumulative to each other and to the remedies or penalties available under all other Federal laws or laws of the jurisdiction where the violation occurred.

''(3) NONPREEMPTION.—Nothing in this subsection shall be construed to preempt any other private right of action or any right of action pursuant to the laws of any jurisdiction.

''(4) DISCOVERY.—Information obtained through discovery in a civil action under this subsection shall not be used in any criminal action. Upon the request of any party to a civil action under this subsection, any part of the court file that makes reference to information discovered in a civil action under this subsection may be sealed.

''(i) NONPREEMPTION OF MORE PROTECTIVE STATE AND LOCAL LAWS.—The provisions of this section supersede laws, regulations, and municipal ordinances of any State only to the extent such laws, regulations, and municipal ordinances impede the application of any provision of this section. Any State or political subdivision of a State may impose requirements supplementing those imposed by this section.

''(j) DEFINITIONS.—As used in this section—

''(1) the term 'attorney' means a person who—

''(A) is a member in good standing of the bar of the highest court of a State; and

''(B) is not under any order of any court suspending, enjoining, restraining, disbarring, or otherwise restricting such person in the practice of law;

''(2) the term 'compensation' means money, property, labor, promise of payment, or any other consideration provided directly or indirectly to an individual

''(3) the term 'immigration matter' means any proceeding, filing, or action affecting the immigration or citizenship status of any person, which arises under any immigration or nationality law, Executive order, Presidential proclamation, or action of any Federal agency;

''(4) the term 'representation', when used with respect to the representation of a person, includes—

''(A) the appearance, either in person or through the preparation or filing of any brief or other document, paper, application, or petition on behalf of another person or client, before any Federal agency or officer; and

''(B) the study of the facts of a case and the applicable laws, coupled with the giving of advice and auxiliary activities, including the incidental preparation of papers; and

''(5) the term 'State' includes a State or an outlying possession of the United States.''.

SEC. 1802. PROTECTION OF WITNESS TESTIMONY.

(a) DEFINITION.—Section 101(a)(15)(U)(i) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(i)) is amended—

(1) by inserting in subclause (I) after the phrase ''clause (iii)'' the following: ''or has suffered substantial financial, physical, or mental harm as the result of a prohibited act described in section 292;''

(2) by inserting in subclause (II) after the phrase ''clause (iii)'' the following: ''or section 292'';

(3) by inserting in subclause (III) after the phrase ''clause (iii)'' the following: ''or section 292''; and

(4) by inserting in subclause (IV) after the phrase ''clause (iii)'' the following: ''or section 292''.

(b) ADMISSION OF NONIMMIGRANTS.—Section 214(p) of the Immigration and Nationality Act of (8 U.S.C. 1184(p)) is amended—

(1) in paragraph (1), by inserting ''or section 274E'' after ''section 101(a)(15)(U)(iii)'' each place it appears; and

(2) in paragraph (2)(A), by striking ''10,000'' and inserting ''15,000''.

TITLE IX—CIVICS INTEGRATION

SEC. 1901. FUNDING FOR THE OFFICE OF CITIZENSHIP.

(a) AUTHORIZATION.—The Secretary of Homeland Security, acting through the Director of the Bureau of Citizenship and Immigration Services, is authorized to establish the United States Citizenship Foundation (referred to in this section as the ''Foundation''), an organization duly incorporated in the District of Columbia, exclusively for charitable and educational purposes to support the functions of the Office of Citizenship (as described in section 451(f)(2) of the Homeland Security Act of 2002 (6 U.S.C. 271(f)(2)).

(b) GIFTS.—

(1) TO FOUNDATION.—The Foundation may solicit, accept, and make gifts of money and other property in accordance with section 501(c)(3) of the Internal Revenue Code of 1986.

(2) FROM FOUNDATION.—The Office of Citizenship may accept gifts from the Foundation to support the functions of the Office.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out the mission of the Office of Citizenship.

SEC. 1902. CIVICS INTEGRATION GRANT PROGRAM.

(a) IN GENERAL.—The Secretary of Homeland Security shall establish a competitive grant program to fund—

(1) efforts by entities certified by the Office of Citizenship to provide civics and English as a second language courses; or

(2) other activities approved by the Secretary to promote civics and English as a second language.

(b) ACCEPTANCE OF GIFTS.—The Secretary may accept and use gifts from the United States Citizenship Foundation for grants under this section.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section.

TITLE X—PROMOTING ACCESS TO HEALTH CARE

SEC. 2001. FEDERAL REIMBURSEMENT OF EMERGENCY HEALTH SERVICES FURNISHED TO UNDOCUMENTED ALIENS.

Section 1011 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (42 U.S.C. 1395dd note) is amended—

(1) by striking ''2008'' and inserting ''2011''; and

(2) in subsection (c)(5), by adding at the end the following:

''(D) Nonimmigrants described in section 101(a)(15)(H)(v) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(v)''.

SEC. 2002. PROHIBITION AGAINST OFFSET OF CERTAIN MEDICARE AND MEDICAID PAYMENTS.

Payments made under section 1011 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (42 U.S.C. 1395dd note)—

(1) shall not be considered ''third party coverage'' for the purposes of section 1923 of the Social Security Act (42 U.S.C. 1396r–4); and

(2) shall not impact payments made under such section of the Social Security Act.

SEC. 2003. PROHIBITION AGAINST DISCRIMINATION AGAINST ALIENS ON THE BASIS OF EMPLOYMENT IN HOSPITAL-BASED VERSUS NONHOSPITAL-BASED SITES.

Section 214(l)(1)(C) of the Immigrant and Nationality Act (8 U.S.C. 1184(l)(1)(C) is amended—

(1) in clause (i), by striking ''and'' at the end; and

(2) by adding at the end the following:

''(iii) such interested Federal agency or interested State agency, in determining which aliens will be eligible for such waivers, does not utilize selection criteria, other than as described in this subsection, that discriminate on the basis of the alien's employment in a hospital-based versus nonhospital-based facility or organization; and''.

SEC. 2004. BINATIONAL PUBLIC HEALTH INFRASTRUCTURE AND HEALTH INSURANCE.

(a) STUDY.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall contract with the Institute of Medicine of the National Academies (referred to in this section as the ''Institute'') to study binational public health infrastructure and health insurance efforts.

(2) INPUT.—In conducting the study under paragraph (1), the Institute shall solicit input from border health experts and health insurance companies.

(b) REPORT.—

(1) IN GENERAL.—Not later than 1 year after the date on which the Secretary of Health and Human Services enters into a contract under subsection (a), the Institute shall submit a report concerning the study conducted under subsection (a) to the Secretary of Health and Human Services and the appropriate committees of Congress.

(2) CONTENTS.—The report submitted under paragraph (1) shall include the recommendations of the Institute on ways to expand or improve binational public health infrastructure and health insurance efforts.

TITLE XI—MISCELLANEOUS

SEC. 2101. SUBMISSION TO CONGRESS OF INFORMATION REGARDING H–5A NONIMMIGRANTS.

(a) ENSURING ACCURATE COUNT.—The Secretary of State and the Secretary of Homeland Security shall maintain an accurate count of the number of aliens subject to the numerical limitations under section 214(g)(1)(C) of the Immigration and Nationality Act (8 U.S.C. 1184(g)(1)(C)) who are issued visas or otherwise provided nonimmigrant status.

(b) PROVISION OF INFORMATION.—

(1) QUARTERLY NOTIFICATION.—Beginning with the first fiscal year after regulations are promulgated to implement this Act, the Secretary of State and the Secretary of Homeland Security shall submit quarterly reports to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives containing the numbers of aliens who were issued visas or otherwise provided nonimmigrant status under section 101(a)(15)(H)(v)(a) of the Immigrant and Nationality Act (8 U.S.C. 1101(a)(15)(H)(v)(a)) during the preceding 3-month period.

(2) ANNUAL SUBMISSION.—Beginning with the first fiscal year after regulations are promulgated to implement this Act, the Secretary of Homeland Security shall submit annual reports to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives, containing information on the countries of origin and occupations of, geographic area of employment in the United States, and compensation paid to, aliens who were issued visas or otherwise provided nonimmigrant status under such section 101(a)(15)(H)(v)(a). The Secretary shall compile such reports based on the data reported by employers to the Employment Eligibility Confirmation System established in section 402.

SEC. 2102. H–5 NONIMMIGRANT PETITIONER ACCOUNT.

Section 286 of the Immigration and Nationality Act (8 U.S.C. 1356) is amended by adding at the end the following:

''(w)(1) There is established in the general fund of the Treasury of the United States an account, which shall be known as the 'H–5 Nonimmigrant Petitioner Account'.

''(2) There shall be deposited as offsetting receipts into the H–5 Nonimmigrant Petitioners Account—

''(A) all fees collected under section 218A; and

''(B) all fines collected under section 212(n)(2)(I).

''(3) Of the fees and fines deposited into the H–5 Nonimmigrant Petitioner Account—

''(A) 53 percent shall remain available to the Secretary of Homeland Security for efforts related to the adjudication and implementation of the H–5 visa programs described in sections 221(a) and 250A and any other efforts necessary to carry out the provisions of the Secure America and Orderly Immigration Act and the amendments made by such Act, of which the Secretary shall allocate—

''(i) 10 percent shall remain available to the Secretary of Homeland Security for the border security efforts described in title I of the Secure America and Orderly Immigration Act.

''(ii) not more than 1 percent to promote public awareness of the H–5 visa program, to protect migrants from fraud, and to combat the unauthorized practice of law described in title III of the Secure America and Orderly Immigration Act;

''(iii) not more than 1 percent to the Office of Citizenship to promote civics integration activities described in section 901 of the Secure America and Orderly Immigration Act; and

''(iv) 2 percent for the Civics Integration Grant Program under section 902 of the Secure America and Orderly Immigration Act.

''(B) 15 percent shall remain available to the Secretary of Labor for the enforcement of labor standards in those geographic and occupational areas in which H–5A visa holders are likely to be employed and for other enforcement efforts under the Secure America and Orderly Immigration Act;

''(C) 15 percent shall remain available to the Commissioner of Social Security for the creation and maintenance of the Employment Eligibility Confirmation System described in section 402 of the Secure America and Orderly Immigration Act;

''(D) 15 percent shall remain available to the Secretary of State to carry out any necessary provisions of the Secure America and Orderly Immigration Act; and

''(E) 2 percent shall remain available to the Secretary of Health and Human Services for the reimbursement of hospitals serving individuals working under programs established in this Act.''.

SEC. 2103. ANTI-DISCRIMINATION PROTECTIONS.

Section 274B(a)(3)(B) of the Immigration and Nationality Act (8 U.S.C. 1324b(a)(3)(B)) is amended to read as follows:

''(B) is an alien who is—

''(i) lawfully admitted for permanent residence;

''(ii) granted the status of an alien lawfully admitted for temporary residence under section 210(a) or 245(a)(1);

''(iii) admitted as a refugee under section 207;

''(iv) granted asylum under section 208; or

''(v) granted the status of nonimmigrant under section 101(a)(15)(H)(v).''.

SEC. 2104. WOMEN AND CHILDREN AT RISK OF HARM.

(a) CERTAIN CHILDREN AND WOMEN AT RISK OF HARM.—Section 101(a)(27) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)) is amended—

(1) in subparagraph (L), by inserting a semicolon at the end;

(2) in subparagraph (M), by striking the period at the end and inserting ''; or''; and

(3) by adding at the end the following:

''(N) subject to subsection (j), an immigrant who is not present in the United States—

''(i) who is—

''(I) referred to a consular, immigration, or other designated official by a United States Government agency, an international organization, or recognized nongovernmental entity designated by the Secretary of State for purposes of such referrals; and

''(II) determined by such official to be a minor under 18 years of age (as determined under subsection (j)(5))—

''(aa) for whom no parent or legal guardian is able to provide adequate care;

''(bb) who faces a credible fear of harm related to his or her age;

''(cc) who lacks adequate protection from such harm; and

''(dd) for whom it has been determined to be in his or her best interests to be admitted to the United States; or

''(ii) who is—

''(I) referred to a consular or immigration official by a United States Government agency, an international organization or recognized nongovernmental entity designated by the Secretary of State for purposes of such referrals; and

''(II) determined by such official to be a female who has—

''(aa) a credible fear of harm related to her sex; and

''(bb) a lack of adequate protection from such harm.''.

(b) STATUTORY CONSTRUCTION.—Section 101 of the Immigration and Nationality Act (8 U.S.C. 1101) is amended by adding at the end the following:

''(j)(1) No natural parent or prior adoptive parent of any alien provided special immigrant status under subsection (a)(27)(N)(i) shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act.

''(2)(A) No alien who qualifies for a special immigrant visa under subsection (a)(27)(N)(ii) may apply for derivative status or petition for any spouse who is represented by the alien as missing, deceased, or the source of harm at the time of the alien's application and admission. The Secretary of Homeland Security may waive this requirement for an alien who demonstrates that the alien's representations regarding the spouse were bona fide.

''(B) An alien who qualifies for a special immigrant visa under subsection (a)(27)(N) may apply for derivative status or petition for any sibling under the age of 18 years or children under the age of 18 years of any such alien, if accompanying or following to join the alien. For purposes of this subparagraph, a determination of age shall be made using the age of the alien on the date the petition is filed with the Department of Homeland Security.

''(3) An alien who qualifies for a special immigrant visa under subsection (a)(27)(N) shall be treated in the same manner as a refugee solely for purposes of section 412.

''(4) The provisions of paragraphs (4), (5), and (7)(A) of section 212(a) shall not be applicable to any alien seeking admission to the United States under subsection (a)(27)(N), and the Secretary of Homeland Security may waive any other provision of such section (other than paragraph (2)(C) or subparagraph (A), (B), (C), or (E) of paragraph (3)) with respect to such an alien for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest. Any such waiver by the Secretary of Homeland Security shall be in writing and shall be granted only on an individual basis following an investigation. The Secretary of Homeland Security shall provide for the annual reporting to Congress of the number of waivers granted under this paragraph in the previous fiscal year and a summary of the reasons for granting such waivers.

''(5) For purposes of subsection (a)(27)(N)(i)(II), a determination of age shall be made using the age of the alien on the date on which the alien was referred to the consular, immigration, or other designated official.

''(6) The Secretary of Homeland Security shall waive any application fee for a special immigrant visa for an alien described in section 101(a)(27)(N).''.

(c) ALLOCATION OF SPECIAL IMMIGRANT VISAS.—Section 203(b)(4) of the Immigration Nationality Act (8 U.S.C. 1153(b)(4)) is amended by striking ''(A) or (B) thereof'' and inserting ''(A), (B), or (N) of such section''.

(d) EXPEDITED PROCESS.—Not later than 45 days after the date of referral to a consular, immigration, or other designated official as described in section 101(a)(27)(N) of the Immigration and Nationality Act, as added by subsection (a), special immigrant status shall be adjudicated and, if granted, the alien shall be—

(1) paroled to the United States pursuant to section 212(d)(5) of that Act (8 U.S.C. 1182(d)(5)); and

(2) allowed to apply for adjustment of status to permanent residence under section 245 of that Act (8 U.S.C. 1255) not later than 1 year after the alien's arrival in the United States.

(e) REQUIREMENT PRIOR TO ENTRY INTO THE UNTIED STATES.—

(1) DATABASE SEARCH.—An alien may not be admitted to the United States under this section or an amendment made by this section until the Secretary of Homeland Security has ensured that a search of each database maintained by an agency or department of the United States has been conducted to determine whether such alien is ineligible to be admitted to the Untied States on criminal, security, or related grounds.

(2) COOPERATION AND SCHEDULE.—The Secretary of Homeland Security and the head of each appropriate agency or department of the United States shall work cooperatively to ensure that each database search required by paragraph (1) is completed not later than 45 days after the date on which an alien files a petition seeking a special immigration visa under section 101(a)(27)(N) of the Immigration and Nationality Act, as added by subsection (a).

(f) REQUIREMENT AFTER ENTRY INTO THE UNITED STATES.—

(1) REQUIREMENT TO SUBMIT FINGERPRINTS.—

(A) IN GENERAL.—Not later than 30 days after the date that an alien enters the United States under this section or an amendment made by this section, the alien shall be fingerprinted and submit to the Secretary of Homeland Security such fingerprints and any other personal biometric data required by the Secretary.

(B) OTHER REQUIREMENTS.—The Secretary of Homeland Security may prescribe regulations that permit fingerprints submitted by an alien under section 262 of the Immigration and Nationality Act (8 U.S.C. 1302) or any other provision of law to satisfy the requirement to submit fingerprints under subparagraph (A).

(2) DATABASE SEARCH.—The Secretary of Homeland Security shall ensure that a search of each database that contains fingerprints that is maintained by an agency or department of the United States be conducted to determine whether such alien is ineligible for an adjustment of status under any provision of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) on criminal, security, or related grounds.

(3) COOPERATION AND SCHEDULE.—The Secretary of Homeland Security and the head of each appropriate agency or department of the United States shall work cooperatively to ensure that each database search required under paragraph (2) is completed not later than 180 days after the date on which the alien enters the United States.

(4) ADMINISTRATIVE AND JUDICIAL REVIEW.—

(A) ADMINISTRATIVE REVIEW.—An alien who is admitted to the United States under this section or an amendment made by this section who is determined to be ineligible for an adjustment of status pursuant to section 212 of the Immigration and Nationality Act (8 U.S.C. 1182) may appeal such a determination through the Administrative Appeals Office of the Bureau of Citizenship and Immigration Services of the Department of Homeland Security. The Secretary of Homeland Security shall ensure that a determination on such appeal is made not later than 60 days after the date on which the appeal is filed.

(B) JUDICIAL REVIEW.—Nothing in this section, or in an amendment made by this section, may preclude application of section 242(a)(2)(B) of the Immigration and Nationality Act (8 U.S.C. 1252(a)(2)(B)).

(g) REPORT TO CONGRESS.—Not later than 1 year after the date of enactment of this Act, the Secretary of Homeland Security shall report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives on the progress of the implementation of this section and the amendments made by this section, including—

(1) data related to the implementation of this section and the amendments made by this section;

(2) data regarding the number of placements of females and children who faces a credible fear of harm as referred to in section 101(a)(27)(N) of the Immigration and Nationality Act, as added by subsection (a); and

(3) any other information that the Secretary of Homeland Security determines to be appropriate.

(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section and the amendments made by this section.

SEC. 2105. EXPANSION OF S VISA.

(a) EXPANSION OF S VISA CLASSIFICATION.—Section 101(a)(15)(S) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(S)) is amended—

(1) in clause (i)—

(A) by striking ''Attorney General'' each place that term appears and inserting ''Secretary of Homeland Security''; and

(B) by striking ''or'' at the end; and

(2) in clause (ii)—

(A) by striking ''Attorney General'' and inserting ''Secretary of Homeland Security''; and

(B) by striking ''1956,'' and all that follows through ''the alien;'' and inserting the following: ''1956; or

''(iii) who the Secretary of Homeland Security and the Secretary of State, in consultation with the Director of Central Intelligence, jointly determine—

''(I) is in possession of critical reliable information concerning the activities of governments or organizations, or their agents, representatives, or officials, with respect to weapons of mass destruction and related delivery systems, if such governments or organizations are at risk of developing, selling, or transferring such weapons or related delivery systems; and

''(II) is willing to supply or has supplied, fully and in good faith, information described in subclause (I) to appropriate persons within the United States Government;

and, if the Secretary of Homeland Security (or with respect to clause (ii), the Secretary of State and the Secretary of Homeland Security jointly) considers it to be appropriate, the spouse, married and unmarried sons and daughters, and parents of an alien described in clause (i), (ii), or (iii) if accompanying, or following to join, the alien;''.

(b) NUMERICAL LIMITATION.—Section 214(k)(1) of the Immigration and Nationality Act (8 U.S.C. 1184(k)(1)) is amended to read as follows:

''(1) The number of aliens who may be provided a visa as nonimmigrants under section 101(a)(15)(S) in any fiscal year may not exceed 3,500.''.

SEC. 2106. VOLUNTEERS.

It is not a violation of clauses (ii), (iii), or (iv) of subparagraph (A) for a religious denomination described in section 101(a)(27)(C)(i) or an affiliated religious organization described in section 101(a)(27)(C)(ii)(III), or their agents or officers, to encourage, invite, call, allow, or enable an alien, who is already present in the United States in violation of law to carry on the violation described in section 101(a)(27)(C)(ii)(I), as a volunteer who is not compensated as an employee, notwithstanding the provision of room, board, travel, and other basic living expenses.

SA 182. Mrs. HUTCHISON (for herself, Mr. CORNYN, and Mr. VOINOVICH) submitted an amendment intended to be proposed to amendment SA 100 proposed by Mr. REID (for Mr. BAUCUS) to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. MODIFICATIONS TO THE SPECIAL FUNDING RULES OF THE PENSION PROTECTION ACT OF 2006.

(a) MODIFICATION OF THE INTEREST RATE FOR THE SPECIAL FUNDING RULES OF THE PENSION PROTECTION ACT OF 2006.—

(1) INTEREST RATE.—Section 402 (a)(2) of the Pension Protection Act of 2006 is amended by inserting ''and by using, in determining the funding target for each of the 10 plan years during such period, an interest rate of 8.25 percent (rather than the segment rates calculated on the basis of the corporate bond yield curve)'' after ''such plan year''.

(2) EFFECTIVE DATE.—The amendment made by this subsection shall take effect as if included in the provisions of the Pension Protection Act of 2006 to which such amendment relates.

(b) TECHNICAL AMENDMENTS.—

(1) IN GENERAL.—Section 402 of the Pension Protection Act of 2006 is amended—

(A) in subsection (d)(1), by adding at the end the following new subparagraph:

''(D) SPECIAL RULE FOR PLANS YEARS NOT BEGINNING ON 1ST DAY OF MONTH.—For purposes of applying subparagraph (A), a plan year beginning during the 4-day period immediately preceding 2006 or 2007 shall be treated as beginning in 2006 or 2007, as the case may be.'', and

(B) in subsection (i)(1), by striking ''December 28, 2007'' and inserting ''January 1, 2008''.

(2) EFFECTIVE DATE.—The amendments made by this subsection shall take effect as if included in the provisions of the Pension Protection Act of 2006 to which such amendments relate. If an employer filed an election under section 402 of the Pension Protection Act of 2006 before January 1, 2007, the employer may, during the 60-day beginning on the date of the enactment of this Act, modify the election to reflect the amendments made by this subsection.

SA 183. Mrs. HUTCHISON (for herself, Mr. CORNYN, and Mr. VOINOVICH) submitted an amendment intended to be proposed to amendment SA 100 proposed by Mr. REID (for Mr. BAUCUS) to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. MODIFICATION OF THE INTEREST RATE FOR THE SPECIAL FUNDING RULES OF THE PENSION PROTECTION ACT OF 2006.

(a) INTEREST RATE.—Section 402 (a)(2) of the Pension Protection Act of 2006 is amended by inserting ''and by using, in determining the funding target for each of the 10 plan years during such period, an interest rate of 8.25 percent (rather than the segment rates calculated on the basis of the corporate bond yield curve)'' after ''such plan year''.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect as if included in the provisions of the Pension Protection Act of 2006 to which such amendment relates.

SA 184. Mrs. HUTCHISON (for herself, Mr. CORNYN, Mr. VOINOVICH, and Mr. BROWN) submitted an amendment intended to be proposed to amendment SA 100 proposed by Mr. REID (for Mr. BAUCUS) to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. TECHNICAL AMENDMENTS TO THE SPECIAL FUNDING RULES OF THE PENSION PROTECTION ACT OF 2006.

(a) TECHNICAL AMENDMENTS.—Section 402 of the Pension Protection Act of 2006 is amended—

(1) in subsection (d)(1), by adding at the end the following new subparagraph:

''(D) SPECIAL RULE FOR PLANS YEARS NOT BEGINNING ON 1ST DAY OF MONTH.—For purposes of applying subparagraph (A), a plan year beginning during the 4-day period immediately preceding 2006 or 2007 shall be treated as beginning in 2006 or 2007, as the case may be.'', and

(2) in subsection (i)(1), by striking ''December 28, 2007'' and inserting ''January 1, 2008''.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the provisions of the Pension Protection Act of 2006 to which such amendments relate. If an employer filed an election under section 402 of the Pension Protection Act of 2006 before January 1, 2007, the employer may, during the 60-day beginning on the date of the enactment of this Act, modify the election to reflect the amendments made by this section.

SA 185. Mr. CHAMBLISS submitted an amendment intended to be proposed to amendment SA 118 submitted by Mr. CHAMBLISS (for himself, Mr. ISAKSON, and Mr. BURR) and intended to be proposed to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; which was ordered to lie on the table; as follows:

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

SEC. ___. WAGES FOR AGRICULTURAL WORKERS.

Section (6)(a)(5) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(5)) is amended to read as follows:

''(5) if such employee is employed in agriculture, not less than the greater of—

''(A) the minimum wage rate in effect under paragraph (1) after December 31, 1977; or

''(B) the prevailing wage established by the Occupational Employment Statistics program, or other wage survey, conducted by the Bureau of Labor Statistics in the county of intended employment, for entry level workers who are employed in agriculture in the area of work to be performed.''.

SA 186. Mr. CHAMBLISS submitted an amendment intended to be proposed by him to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; which was ordered to lie on the table; as follows:

At the appropriate place, add the following new section:

SEC. ___. WAGES FOR AGRICULTURAL WORKERS.

Section (6)(a)(5) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(5)) is amended to read as follows:

''(5) if such employee is employed to provide agriculture labor or services—

''(A) not less than the minimum wage rate in effect under paragraph (1) after December 31, 1977; or

''(B) pursuant to the provisions of section 218 of the Immigration and Nationality Act (8 U.S.C. 1188), not less than the greater of—

''(i) the minimum wage rate in effect under paragraph (1) after December 31, 1977; or

''(ii) the prevailing wage established by the Occupational Employment Statistics program, or other wage survey, conducted by the Bureau of Labor Statistics in the county of intended employment, for entry level workers who are employed in agriculture in the area of the work to be performed.''.

SA 187. Mr. KERRY (for himself, Ms. SNOWE, Mr. SUNUNU, Ms. LANDRIEU, and Mr. LIEBERMAN) submitted an amendment intended to be proposed to amendment SA 112 submitted by Mr. SUNUNU to the amendment SA 100 proposed by Mr. REID (for Mr. BAUCUS) to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; as follows:

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

SEC. ___. RENEWAL GRANTS FOR WOMEN'S BUSINESS CENTERS.

(a) IN GENERAL.—Section 29 of the Small Business Act (15 U.S.C. 656) is amended by adding at the end the following:

''(m) CONTINUED FUNDING FOR CENTERS.—

''(1) IN GENERAL.—A nonprofit organization described in paragraph (2) shall be eligible to receive, subject to paragraph (3), a 3-year grant under this subsection.

''(2) APPLICABILITY.—A nonprofit organization described in this paragraph is a nonprofit organization that has received funding under subsection (b) or (l).

''(3) APPLICATION AND APPROVAL CRITERIA.—

''(A) CRITERIA.—Subject to subparagraph (B), the Administrator shall develop and publish criteria for the consideration and approval of applications by nonprofit organizations under this subsection.

''(B) CONTENTS.—Except as otherwise provided in this subsection, the conditions for participation in the grant program under this subsection shall be the same as the conditions for participation in the program under subsection (l), as in effect on the date of enactment of this Act.

''(C) NOTIFICATION.—Not later than 60 days after the date of the deadline to submit applications for each fiscal year, the Administrator shall approve or deny any application under this subsection and notify the applicant for each such application.

''(4) AWARD OF GRANTS.—

''(A) IN GENERAL.—Subject to the availability of appropriations, the Administrator shall make a grant for the Federal share of the cost of activities described in the application to each applicant approved under this subsection.

''(B) AMOUNT.—A grant under this subsection shall be for not more than $150,000, for each year of that grant.

''(C) FEDERAL SHARE.—The Federal share under this subsection shall be not more than 50 percent.

''(D) PRIORITY.—In allocating funds made available for grants under this section, the Administrator shall give applications under this subsection or subsection (l) priority over first-time applications under subsection (b).

''(5) RENEWAL.—

''(A) IN GENERAL.—The Administrator may renew a grant under this subsection for additional 3-year periods, if the nonprofit organization submits an application for such renewal at such time, in such manner, and accompanied by such information as the Administrator may establish.

''(B) UNLIMITED RENEWALS.—There shall be no limitation on the number of times a grant may be renewed under subparagraph (A).

''(n) PRIVACY REQUIREMENTS.—

''(1) IN GENERAL.—A women's business center may not disclose the name, address, or telephone number of any individual or small business concern receiving assistance under this section without the consent of such individual or small business concern, unless—

''(A) the Administrator is ordered to make such a disclosure by a court in any civil or criminal enforcement action initiated by a Federal or State agency; or

''(B) the Administrator considers such a disclosure to be necessary for the purpose of conducting a financial audit of a women's business center, but a disclosure under this subparagraph shall be limited to the information necessary for such audit.

''(2) ADMINISTRATION USE OF INFORMATION.—This subsection shall not—

''(A) restrict Administration access to program activity data; or

''(B) prevent the Administration from using client information (other than the information described in subparagraph (A)) to conduct client surveys.

''(3) REGULATIONS.—The Administrator shall issue regulations to establish standards for requiring disclosures during a financial audit under paragraph (1)(B).''.

(b) REPEAL.—Section 29(l) of the Small Business Act (15 U.S.C. 656(l)) is repealed effective October 1 of the first full fiscal year after the date of enactment of this Act.

(c) TRANSITIONAL RULE.—Notwithstanding any other provision of law, a grant or cooperative agreement that was awarded under subsection (l) of section 29 of the Small Business Act (15 U.S.C. 656), on or before the day before the date described in subsection (b) of this section, shall remain in full force and effect under the terms, and for the duration, of such grant or agreement.

SA 188. Mr. OBAMA submitted an amendment intended to be proposed to amendment SA 100 proposed by Mr. REID (for Mr. BAUCUS) to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; which was ordered to lie on the table; as follows:

On page 15, line 3, strike ''2001.''.'' and insert ''2001, or

''(iii) receiving services for the homeless (as defined in section 103(a) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11302(a)) through the Department of Veterans Affairs, the Department of Housing and Urban Development, or grant recipients of either at anytime during the 12-month period ending on the hiring date.''.

SA 189. Mr. SESSIONS submitted an amendment intended to be proposed to amendment SA 141 submitted by Mr. SESSIONS and intended to be proposed to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; which was ordered to lie on the table; as follows:

On page 3, line 21, insert ''not'' after ''and''.

SA 190. Mr. SESSIONS submitted an amendment intended to be proposed to amendment SA 142 submitted by Mr. SESSIONS and intended to be proposed

to the amendment SA 100 proposed by Mr. REID (for Mr. BAUCUS) to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; which was ordered to lie on the table; as follows:

On page 3, line 21, insert ''not'' after ''and''.

SA 191. Ms. COLLINS (for herself and Mr. WARNER) submitted an amendment intended to be proposed by her to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; which was ordered to lie on the table; as follows:

At the appropriate place insert the following:

SEC. _____. EXPANSION OF ABOVE-THE-LINE DEDUCTION FOR CERTAIN EXPENSES OF ELEMENTARY AND SECONDARY SCHOOL TEACHERS.

(a) IN GENERAL.—Subparagraph (D) of section 62(a)(2) (relating to certain trade and business deductions of employees) is amended to read as follows:

''(D) CERTAIN EXPENSES OF ELEMENTARY AND SECONDARY SCHOOL TEACHERS.—The deductions allowed by section 162 which consist of expenses, not in excess of $400, paid or incurred by an eligible educator—

''(i) by reason of the participation of the educator in professional development courses related to the curriculum and academic subjects in which the educator provides instruction or to the students for which the educator provides instruction, and

''(ii) in connection with books, supplies (other than nonathletic supplies for courses of instruction in health or physical education), computer equipment (including related software and services) and other equipment, and supplementary materials used by the eligible educator in the classroom.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2006.

SA 192. Ms. LANDRIEU submitted an amendment intended to be proposed to amendment SA 100 proposed by Mr. REID (for Mr. BAUCUS) to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; which was ordered to lie on the table; as follows:

On page 15, after line 24, insert the following:

SEC. 205. EXTENSION OF WORK OPPORTUNITY TAX CREDIT FOR HURRICANE KATRINA EMPLOYEES HIRED BY SMALL BUSINESSES.

(a) IN GENERAL.—Section 201(b)(1) of the Katrina Emergency Tax Relief Act of 2005 (Public Law 109–73) is amended by striking ''who is hired during the 2-year period'' and all that follows and inserting ''who—

''(A) is hired during the 2-year period beginning on such date for a position the principal place of employment which is located in the core disaster area, or

''(B) is hired—

''(i) during the 3-year period beginning on such date for a position the principal place of employment which is located in the core disaster area, and

''(ii) by an employer who has no more than 100 employees on the date such individual is hired, and''.

(b) EFFECTIVE DATE.—The amendment made by this section take effect as if included in section 201 of the Katrina Emergency Tax Relief Act of 2005.

SA 193. Ms. LANDRIEU submitted an amendment intended to be proposed to amendment SA 100 proposed by Mr. REID (for Mr. BAUCUS) to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; which was ordered to lie on the table; as follows:

On page 4, between lines 8 and 9, insert the following:

SEC. 202. EXTENSION OF INCREASED EXPENSING FOR QUALIFIED SECTION 179 GULF OPPORTUNITY ZONE PROPERTY.

Paragraph (2) of section 1400N(e) (relating to qualified section 179 Gulf Opportunity Zone property) is amended—

(1) by striking ''this subsection, the term'' and inserting ''this subsection—

''(A) IN GENERAL.—The term'', and

(2) by adding at the end the following new subparagraph:

''(B) EXTENSION FOR CERTAIN PROPERTY.—In the case of property substantially all of the use of which is in one or more specified portions of the GO Zone (as defined by subsection (d)(6)), such term shall include section 179 property (as so defined) which is described in subsection (d)(2), determined—

''(i) without regard to subsection (d)(6), and

''(ii) by substituting '2008' for '2007' in subparagraph (A)(v) thereof.''.

SA 194. Ms. LANDRIEU submitted an amendment intended to be proposed to amendment SA 100 proposed by Mr. REID (for Mr. BAUCUS) to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; which was ordered to lie on the table; as follows:

At the appropriate place insert the following:

SEC. ___. REDUCTION IN INCOME TAX WITHHOLDING DEPOSITS TO REFLECT FICA PAYROLL TAX CREDIT FOR CERTAIN EMPLOYERS LOCATED IN SPECIFIED PORTIONS OF THE GO ZONE DURING 2007.

(a) GENERAL RULE.—In the case of any applicable calendar quarter—

(1) the aggregate amount of required income tax deposits of an eligible employer for the calendar quarter following the applicable calendar quarter shall be reduced by the payroll tax credit equivalent amount for the applicable calendar quarter, and

(2) the amount of any deduction allowable to the eligible employer under chapter 1 of the Internal Revenue Code of 1986 for taxes paid under section 3111 of such Code with respect to employment during the applicable calendar quarter shall be reduced by such payroll tax credit equivalent amount.

For purposes of the Internal Revenue Code of 1986, an eligible employer shall be treated as having paid, and an eligible employee shall be treated as having received, any wages or compensation deducted and withheld but not deposited by reason of paragraph (1).

(b) CARRYOVERS OF UNUSED AMOUNTS.—If the payroll tax credit equivalent amount for any applicable calendar quarter exceeds the required income tax deposits for the following calendar quarter—

(1) such excess shall be added to the payroll tax credit equivalent amount for the next applicable calendar quarter, and

(2) in the case of the last applicable calendar quarter, such excess shall be used to reduce required income tax deposits for any succeeding calendar quarter until such excess is used.

(c) PAYROLL TAX CREDIT EQUIVALENT AMOUNT.—For purposes of this section—

(1) IN GENERAL.—The term ''payroll tax credit equivalent amount'' means, with respect to any applicable calendar quarter, an amount equal to 7.65 percent of the aggregate amount of wages or compensation—

(A) paid or incurred by the eligible employer with respect to employment of eligible employees during the applicable calendar quarter, and

(B) subject to the tax imposed by section 3111 of the Internal Revenue Code of 1986.

(2) TRADE OR BUSINESS REQUIREMENT.—A rule similar to the rule of section 51(f) of such Code shall apply for purposes of this section.

(3) LIMITATION ON WAGES SUBJECT TO CREDIT.—For purposes of this subsection, only wages and compensation of an eligible employee in an applicable calendar quarter, when added to such wages and compensation for any preceding applicable calendar quarter, not exceeding $15,000 shall be taken into account with respect to such employee.

(d) ELIGIBLE EMPLOYER; ELIGIBLE EMPLOYEE.—For purposes of this section—

(1) ELIGIBLE EMPLOYER.—

(A) IN GENERAL.—The term ''eligible employer'' means any employer which conducts an active trade or business in any specified portion of the GO Zone and employs not more than 100 full-time employees on the date of the enactment of this Act.

(B) SPECIFIED PORTION OF THE GO ZONE.—The term ''specified portion of the GO Zone'' means any portion of the GO Zone (as defined in section 1400M(1) of the Internal Revenue Code of 1986) which is in any county or parish which is identified by the Secretary of the Treasury as being a county or parish in which hurricanes occurring during 2005 damaged (in the aggregate) more than 60 percent of the housing units in such county or parish which were occupied (determined according to the 2000 Census).

(2) ELIGIBLE EMPLOYEE.—The term ''eligible employee'' means with respect to an eligible employer an employee whose principal place of employment with such eligible employer is in a specified portion of the GO Zone. Such term shall not include an employee described in section 401(c)(1)(A).

(e) APPLICABLE CALENDAR QUARTER.—For purposes of this section, the term ''applicable calendar quarter'' means any of the 4 calendar quarters beginning in 2007.

(f) SPECIAL RULES.—For purposes of this section—

(1) REQUIRED INCOME TAX DEPOSITS.—The term ''required income tax deposits'' means deposits an eligible employer is required to make under section 6302 of the Internal Revenue Code of 1986 of taxes such employer is required to deduct and withhold under section 3402 of such Code.

(2) AGGREGATION RULES.—Rules similar to the rules of subsections (a) and (b) of section 52 of the Internal Revenue Code of 1986 shall apply.

(3) EMPLOYERS NOT ON QUARTERLY SYSTEM.—The Secretary of the Treasury shall prescribe rules for the application of this section in the case of an eligible employer whose required income tax deposits are not made on a quarterly basis.

(4) ADJUSTMENTS FOR CERTAIN ACQUISITIONS, ETC.—Under regulations prescribed by the Secretary—

(A) ACQUISITIONS.—If, after December 31, 2006, an employer acquires the major portion of a trade or business of another person (hereafter in this paragraph referred to as the ''predecessor'') or the major portion of a separate unit of a trade or business of a predecessor, then, for purposes of applying this section for any calendar quarter ending after such acquisition, the amount of wages or compensation deemed paid by the employer during periods before such acquisition shall

be increased by so much of such wages or compensation paid by the predecessor with respect to the acquired trade or business as is attributable to the portion of such trade or business acquired by the employer.

(B) DISPOSITIONS.—If, after December 31, 2006—

(i) an employer disposes of the major portion of any trade or business of the employer or the major portion of a separate unit of a trade or business of the employer in a transaction to which paragraph (1) applies, and

(ii) the employer furnishes the acquiring person such information as is necessary for the application of subparagraph (A),

then, for purposes of applying this section for any calendar quarter ending after such disposition, the amount of wages or compensation deemed paid by the employer during periods before such disposition shall be decreased by so much of such wages as is attributable to such trade or business or separate unit.

(5) OTHER RULES.—

(A) GOVERNMENT EMPLOYERS.—This section shall not apply if the employer is the Government of the United States, the government of any State or political subdivision of the State, or any agency or instrumentality of any such government.

(B) TREATMENT OF OTHER ENTITIES.—Rules similar to the rules of subsections (d) and (e) of section 52 of such Code shall apply for purposes of this section.

SA 195. Mr. BURR (for himself, Mr. DEMINT, and Mr. COBURN) submitted an amendment intended to be proposed to amendment SA 100 proposed by Mr. REID (for Mr. BAUCUS) to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; which was ordered to lie on the table; as follows:

At the end of section 102, add the following:

(c) EXCEPTION IN THE CASE OF PROVISION OF HEALTH BENEFITS.—Notwithstanding the amendment made by subsection (a), an employer to which such amendment applies shall have the option to—

(1) increase the minimum wage paid to employees as required under such amendment; or

(2) provide such employees with health care benefits that are equal (in terms of the monetary amount expended by the employer for such benefits) to the monetary amount by which the minimum wage is to be increased pursuant to such amendment.

SA 196. Mr. GRASSLEY submitted an amendment intended to be proposed to amendment SA 100 proposed by Mr. REID (for Mr. BAUCUS) to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; which was ordered to lie on the table; as follows:

Strike section 102 of the amendment and insert the following:

SEC. 102. MINIMUM WAGE FOR TERRITORIES AND POSSESSIONS.

(a) MINIMUM WAGE FOR TERRITORIES AND POSSESSIONS.—The Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.) is amended—

(1) in section 6, by adding at the end the following:

''(h) TERRITORIES AND POSSESSIONS.—

''(1) IN GENERAL.—Subject to subsection (a)(2), each employer of an employee employed in any territory or possession of the United States shall pay to such employee, in lieu of the rate or rates provided by subsection (a)(1) or (b), not less than the rate calculated under subsection (b) as of the day after the date that an increase in the minimum wage rate under subsection (a)(1) takes effect.

''(2) MINIMUM WAGE RATE.—The applicable rate described in paragraph (1) shall be the greater of—

''(A) the minimum wage rate in effect in the territory or possession in which the employee is employed on the date of enactment of the Fair Minimum Wage Act of 2007; or

''(B) the product of—

''(i) the rate in effect under subsection (a)(1); multiplied by

''(ii) the quotient of—

''(I) the average annual wage in the territory or possession, as determined by the Social Security Administration based on the W-2 forms furnished under section 6051 of the Internal Revenue Code of 1986 to individuals employed in the territory or possession for the third prior calendar year; divided by

''(II) the average annual wage in the United States (not including the territories or possessions of the United States, but including the District of Columbia), as determined by the Social Security Administration based on the W-2 forms furnished under section 6051 of the Internal Revenue Code of 1986 to individuals employed in the United States (as so defined) for the third prior calendar year.

''(3) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to prohibit any territory or possession of the United States from establishing a minimum wage higher than the minimum wage required under this subsection.''; and

(2) in section 13(f), by inserting ''the Northern Mariana Islands,'' after ''Guam,''.

(b) ABOLISHING THE SPECIAL WAGE BOARD FOR AMERICAN SAMOA.—The Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.) is amended—

(1) by repealing sections 5, 8, and 10;

(2) in section 6(a)—

(A) by striking paragraph (3); and

(B) by redesignating paragraphs (4) and (5) as paragraphs (3) and (4), respectively; and

(3) in section 13—

(A) by striking subsection (e); and

(B) by redesignating subsections (f) (as amended in subsection (a)(2)) and (g) as subsections (e) and (f), respectively.

(c) CONFORMING AMENDMENTS.—The Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.) is amended—

(1) in section 6—

(A) in subsection (b), by striking ''(a)(5)'' and inserting ''(a)(4)''; and

(B) in paragraphs (1) and (2) of subsection (e), by striking ''and (f)'' each place the term occurs and inserting ''and (e)'';

(2) in section 13(c)(1)(a), by striking ''6(a)(5)'' and inserting ''6(a)(4)'';

(3) in section 14(b)(2), by striking ''6(a)(5)'' and inserting ''6(a)(4)'';

(4) in section 16(d), by striking ''13(f)'' and inserting ''13(e)''; and

(5) in section 18(b), by striking ''13(f)'' and inserting ''13(e)''.

SA 197. Mr. GRASSLEY submitted an amendment intended to be proposed to amendment SA 100 proposed by Mr. REID (for Mr. BAUCUS) to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; which was ordered to lie on the table; as follows:

Strike section 102 of the amendment and insert the following:

SEC. 102. MINIMUM WAGE FOR TERRITORIES AND POSSESSIONS.

(a) IN GENERAL.—Notwithstanding any provision of the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.), section 6 of such Act shall apply to employees employed in each territory or possession of the United States in the same manner as such section applies to employees employed in the several States of the United States, except that in lieu of the rate or rates provided by subsection (a)(1) or (b) of section 6 of such Act, the applicable rate for such employees shall be the rate calculated under subsection (b) as of the day after the date that an increase in the minimum wage rate under such section 6(a)(1) takes effect.

(b) MINIMUM WAGE RATE.—The applicable rate for employees employed in each territory or possession of the United States shall be the greater of—

(1) the minimum wage rate in effect in the territory or possession on the date of enactment of this Act; or

(2) the product of—

(A) the rate in effect under section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)); multiplied by

(B) the quotient of—

(i) the average annual wage in the territory or possession, as determined by the Social Security Administration based on the W-2 forms furnished under section 6051 of the Internal Revenue Code of 1986 to individuals employed in the territory or possession for the third prior calendar year; and

(ii) the average annual wage in the United States (not including the territories or possessions of the United States, but including the District of Columbia), as determined by the Social Security Administration based on the W-2 forms furnished under section 6051 of the Internal Revenue Code of 1986 to individuals employed in the United States (as so defined) for the third prior calendar year.

(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to prohibit any territory or possession of the United States from establishing a minimum wage higher than the minimum wage required under this section.

SA 198. Mr. COLEMAN submitted an amendment intended to be proposed to amendment SA 100 proposed by Mr. REID (for Mr. BAUCUS) to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; which was ordered to lie on the table; as follows:

At the appropriate place insert the following:

SEC. _____. DESIGNATION OF OVERPAYMENTS TO SUPPORT RESERVISTS AND NATIONAL GUARD MEMBERS.

(a) DESIGNATION.—Subchapter A of chapter 61 is amended by adding at the end the following new part:

''PART IX—DESIGNATION OF OVERPAYMENTS TO RESERVE INCOME REPLACEMENT PROGRAM

''Sec. 6097. Designation.

''SEC. 6097. DESIGNATION.

''(a) IN GENERAL.—In the case of an individual, with respect to each taxpayer's return for the taxable year of the tax imposed by chapter 1, such taxpayer may designate that a specified portion (not less than $1) of any overpayment of tax for such taxable year be paid over to the Reserve Income Replacement Program (RIRP) under section 910 of title 37, United States Code.

''(b) MANNER AND TIME OF DESIGNATION.—A designation under subsection (a) may be made with respect to any taxable year only at the time of filing the return of the tax imposed by chapter 1 for such taxable year. Such designation shall be made in such manner as the Secretary prescribes by regulations except that such designation shall be

made either on the first page of the return or on the page bearing the taxpayer's signature.

''(c) OVERPAYMENTS TREATED AS REFUNDED.—For purposes of this title, any portion of an overpayment of tax designated under subsection (a) shall be treated as—

''(1) being refunded to the taxpayer as of the last date prescribed for filing the return of tax imposed by chapter 1 (determined without regard to extensions) or, if later, the date the return is filed, and

''(2) a contribution made by such taxpayer on such date to the United States.''.

(b) TRANSFERS TO RESERVE INCOME REPLACEMENT PROGRAM.—The Secretary of the Treasury shall, from time to time, transfer to the Reserve Income Replacement Program (RIRP) under section 910 of title 37, United States Code, the amounts designated under section 6097 of the Internal Revenue Code of 1986, under regulations jointly prescribed by the Secretary of the Treasury and the Secretary of Defense.

(c) CLERICAL AMENDMENT.—The table of parts for subchapter A of chapter 61 is amended by adding at the end the following new item:

''PART IX. DESIGNATION OF OVERPAYMENTS TO RESERVE INCOME REPLACEMENT PROGRAM.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2006.

SA 199. Mr. VITTER submitted an amendment intended to be proposed by him to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

TITLE ___—SMALL BUSINESS HEALTH COVERAGE

SEC. _01. SHORT TITLE; PURPOSES.

(a) SHORT TITLE.—This title may be cited as the ''Health Insurance Marketplace Modernization and Affordability Act of 2007''.

(b) PURPOSES.—It is the purpose of this Act to—

(1) make more affordable health insurance options available to small businesses, working families, and all Americans;

(2) assure effective State regulatory protection of the interests of health insurance consumers; and

(3) create a more efficient and affordable health insurance marketplace through collaborative development of uniform regulatory standards.

Subtitle A—Small Business Health Plans

SEC. _11. RULES GOVERNING SMALL BUSINESS HEALTH PLANS.

(a) IN GENERAL.—Subtitle B of title I of the Employee Retirement Income Security Act of 1974 is amended by adding after part 7 the following new part:

''PART 8—RULES GOVERNING SMALL BUSINESS HEALTH PLANS

''SEC. 801. SMALL BUSINESS HEALTH PLANS.

''(a) IN GENERAL.—For purposes of this part, the term 'small business health plan' means a fully insured group health plan whose sponsor is (or is deemed under this part to be) described in subsection (b).

''(b) SPONSORSHIP.—The sponsor of a group health plan is described in this subsection if such sponsor—

''(1) is organized and maintained in good faith, with a constitution and bylaws specifically stating its purpose and providing for periodic meetings on at least an annual basis, as a bona fide trade association, a bona fide industry association (including a rural electric cooperative association or a rural telephone cooperative association), a bona fide professional association, or a bona fide chamber of commerce (or similar bona fide business association, including a corporation or similar organization that operates on a cooperative basis (within the meaning of section 1381 of the Internal Revenue Code of 1986)), for substantial purposes other than that of obtaining medical care;

''(2) is established as a permanent entity which receives the active support of its members and requires for membership payment on a periodic basis of dues or payments necessary to maintain eligibility for membership;

''(3) does not condition membership, such dues or payments, or coverage under the plan on the basis of health status-related factors with respect to the employees of its members (or affiliated members), or the dependents of such employees, and does not condition such dues or payments on the basis of group health plan participation; and

''(4) does not condition membership on the basis of a minimum group size.

Any sponsor consisting of an association of entities which meet the requirements of paragraphs (1), (2), (3), and (4) shall be deemed to be a sponsor described in this subsection.

''SEC. 802. CERTIFICATION OF SMALL BUSINESS HEALTH PLANS.

''(a) IN GENERAL.—Not later than 6 months after the date of enactment of this part, the applicable authority shall prescribe by interim final rule a procedure under which the applicable authority shall certify small business health plans which apply for certification as meeting the requirements of this part.

''(b) REQUIREMENTS APPLICABLE TO CERTIFIED PLANS.—A small business health plan with respect to which certification under this part is in effect shall meet the applicable requirements of this part, effective on the date of certification (or, if later, on the date on which the plan is to commence operations).

''(c) REQUIREMENTS FOR CONTINUED CERTIFICATION.—The applicable authority may provide by regulation for continued certification of small business health plans under this part. Such regulation shall provide for the revocation of a certification if the applicable authority finds that the small business health plan involved is failing to comply with the requirements of this part.

''(d) EXPEDITED AND DEEMED CERTIFICATION.—

''(1) IN GENERAL.—If the Secretary fails to act on an application for certification under this section within 90 days of receipt of such application, the applying small business health plan shall be deemed certified until such time as the Secretary may deny for cause the application for certification.

''(2) CIVIL PENALTY.—The Secretary may assess a civil penalty against the board of trustees and plan sponsor (jointly and severally) of a small business health plan that is deemed certified under paragraph (1) of up to $500,000 in the event the Secretary determines that the application for certification of such small business health plan was willfully or with gross negligence incomplete or inaccurate.

''SEC. 803. REQUIREMENTS RELATING TO SPONSORS AND BOARDS OF TRUSTEES.

''(a) SPONSOR.—The requirements of this subsection are met with respect to a small business health plan if the sponsor has met (or is deemed under this part to have met) the requirements of section 801(b) for a continuous period of not less than 3 years ending with the date of the application for certification under this part.

''(b) BOARD OF TRUSTEES.—The requirements of this subsection are met with respect to a small business health plan if the following requirements are met:

''(1) FISCAL CONTROL.—The plan is operated, pursuant to a plan document, by a board of trustees which pursuant to a trust agreement has complete fiscal control over the plan and which is responsible for all operations of the plan.

''(2) RULES OF OPERATION AND FINANCIAL CONTROLS.—The board of trustees has in effect rules of operation and financial controls, based on a 3-year plan of operation, adequate to carry out the terms of the plan and to meet all requirements of this title applicable to the plan.

''(3) RULES GOVERNING RELATIONSHIP TO PARTICIPATING EMPLOYERS AND TO CONTRACTORS.—

''(A) BOARD MEMBERSHIP.—

''(i) IN GENERAL.—Except as provided in clauses (ii) and (iii), the members of the board of trustees are individuals selected from individuals who are the owners, officers, directors, or employees of the participating employers or who are partners in the participating employers and actively participate in the business.

''(ii) LIMITATION.—

''(I) GENERAL RULE.—Except as provided in subclauses (II) and (III), no such member is an owner, officer, director, or employee of, or partner in, a contract administrator or other service provider to the plan.

''(II) LIMITED EXCEPTION FOR PROVIDERS OF SERVICES SOLELY ON BEHALF OF THE SPONSOR.—Officers or employees of a sponsor which is a service provider (other than a contract administrator) to the plan may be members of the board if they constitute not more than 25 percent of the membership of the board and they do not provide services to the plan other than on behalf of the sponsor.

''(III) TREATMENT OF PROVIDERS OF MEDICAL CARE.—In the case of a sponsor which is an association whose membership consists primarily of providers of medical care, subclause (I) shall not apply in the case of any service provider described in subclause (I) who is a provider of medical care under the plan.

''(iii) CERTAIN PLANS EXCLUDED.—Clause (i) shall not apply to a small business health plan which is in existence on the date of the enactment of the Health Insurance Marketplace Modernization and Affordability Act of 2006.

''(B) SOLE AUTHORITY.—The board has sole authority under the plan to approve applications for participation in the plan and to contract with insurers.

''(c) TREATMENT OF FRANCHISE NETWORKS.—In the case of a group health plan which is established and maintained by a franchiser for a franchise network consisting of its franchisees—

''(1) the requirements of subsection (a) and section 801(a) shall be deemed met if such requirements would otherwise be met if the franchiser were deemed to be the sponsor referred to in section 801(b), such network were deemed to be an association described in section 801(b), and each franchisee were deemed to be a member (of the association and the sponsor) referred to in section 801(b); and

''(2) the requirements of section 804(a)(1) shall be deemed met.

The Secretary may by regulation define for purposes of this subsection the terms 'franchiser', 'franchise network', and 'franchisee'.

''SEC. 804. PARTICIPATION AND COVERAGE REQUIREMENTS.

''(a) COVERED EMPLOYERS AND INDIVIDUALS.—The requirements of this subsection are met with respect to a small business health plan if, under the terms of the plan—

''(1) each participating employer must be—

''(A) a member of the sponsor;

''(B) the sponsor; or

''(C) an affiliated member of the sponsor, except that, in the case of a sponsor which is a professional association or other individual-based association, if at least one of the officers, directors, or employees of an employer, or at least one of the individuals who are partners in an employer and who actively participates in the business, is a member or such an affiliated member of the sponsor, participating employers may also include such employer; and

''(2) all individuals commencing coverage under the plan after certification under this part must be—

''(A) active or retired owners (including self-employed individuals), officers, directors, or employees of, or partners in, participating employers; or

''(B) the dependents of individuals described in subparagraph (A).

''(b) INDIVIDUAL MARKET UNAFFECTED.—The requirements of this subsection are met with respect to a small business health plan if, under the terms of the plan, no participating employer may provide health insurance coverage in the individual market for any employee not covered under the plan which is similar to the coverage contemporaneously provided to employees of the employer under the plan, if such exclusion of the employee from coverage under the plan is based on a health status-related factor with respect to the employee and such employee would, but for such exclusion on such basis, be eligible for coverage under the plan.

''(c) PROHIBITION OF DISCRIMINATION AGAINST EMPLOYERS AND EMPLOYEES ELIGIBLE TO PARTICIPATE.—The requirements of this subsection are met with respect to a small business health plan if—

''(1) under the terms of the plan, all employers meeting the preceding requirements of this section are eligible to qualify as participating employers for all geographically available coverage options, unless, in the case of any such employer, participation or contribution requirements of the type referred to in section 2711 of the Public Health Service Act are not met;

''(2) information regarding all coverage options available under the plan is made readily available to any employer eligible to participate; and

''(3) the applicable requirements of sections 701, 702, and 703 are met with respect to the plan.

''SEC. 805. OTHER REQUIREMENTS RELATING TO PLAN DOCUMENTS, CONTRIBUTION RATES, AND BENEFIT OPTIONS.

''(a) IN GENERAL.—The requirements of this section are met with respect to a small business health plan if the following requirements are met:

''(1) CONTENTS OF GOVERNING INSTRUMENTS.—

''(A) IN GENERAL.—The instruments governing the plan include a written instrument, meeting the requirements of an instrument required under section 402(a)(1), which—

''(i) provides that the board of trustees serves as the named fiduciary required for plans under section 402(a)(1) and serves in the capacity of a plan administrator (referred to in section 3(16)(A)); and

''(ii) provides that the sponsor of the plan is to serve as plan sponsor (referred to in section 3(16)(B)).

''(B) DESCRIPTION OF MATERIAL PROVISIONS.—The terms of the health insurance coverage (including the terms of any individual certificates that may be offered to individuals in connection with such coverage) describe the material benefit and rating, and other provisions set forth in this section and such material provisions are included in the summary plan description.

''(2) CONTRIBUTION RATES MUST BE NONDISCRIMINATORY.—

''(A) IN GENERAL.—The contribution rates for any participating small employer shall not vary on the basis of any health status-related factor in relation to employees of such employer or their beneficiaries and shall not vary on the basis of the type of business or industry in which such employer is engaged.

''(B) EFFECT OF TITLE.—Nothing in this title or any other provision of law shall be construed to preclude a health insurance issuer offering health insurance coverage in connection with a small business health plan, and at the request of such small business health plan, from—

''(i) setting contribution rates for the small business health plan based on the claims experience of the plan so long as any variation in such rates complies with the requirements of clause (ii), except that small business health plans shall not be subject to paragraphs (1)(A) and (3) of section 2911(b) of the Public Health Service Act; or

''(ii) varying contribution rates for participating employers in a small business health plan in a State to the extent that such rates could vary using the same methodology employed in such State for regulating small group premium rates, subject to the terms of part I of subtitle A of title XXIX of the Public Health Service Act (relating to rating requirements), as added by title II of the Health Insurance Marketplace Modernization and Affordability Act of 2006.

''(3) EXCEPTIONS REGARDING SELF-EMPLOYED AND LARGE EMPLOYERS.—

''(A) SELF EMPLOYED.—

''(i) IN GENERAL.—Small business health plans with participating employers who are self-employed individuals (and their dependents) shall enroll such self-employed participating employers in accordance with rating rules that do not violate the rating rules for self-employed individuals in the State in which such self-employed participating employers are located.

''(ii) GUARANTEE ISSUE.—Small business health plans with participating employers who are self-employed individuals (and their dependents) may decline to guarantee issue to such participating employers in States in which guarantee issue is not otherwise required for the self-employed in that State.

''(B) LARGE EMPLOYERS.—Small business health plans with participating employers that are larger than small employers (as defined in section 808(a)(10)) shall enroll such large participating employers in accordance with rating rules that do not violate the rating rules for large employers in the State in which such large participating employers are located.

''(4) REGULATORY REQUIREMENTS.—Such other requirements as the applicable authority determines are necessary to carry out the purposes of this part, which shall be prescribed by the applicable authority by regulation.

''(b) ABILITY OF SMALL BUSINESS HEALTH PLANS TO DESIGN BENEFIT OPTIONS.—Nothing in this part or any provision of State law (as defined in section 514(c)(1)) shall be construed to preclude a small business health plan or a health insurance issuer offering health insurance coverage in connection with a small business health plan from exercising its sole discretion in selecting the specific benefits and services consisting of medical care to be included as benefits under such plan or coverage, except that such benefits and services must meet the terms and specifications of part II of subtitle A of title XXIX of the Public Health Service Act (relating to lower cost plans), as added by title II of the Health Insurance Marketplace Modernization and Affordability Act of 2006.

''(c) DOMICILE AND NON-DOMICILE STATES.—

''(1) DOMICILE STATE.—Coverage shall be issued to a small business health plan in the State in which the sponsor's principal place of business is located.

''(2) NON-DOMICILE STATES.—With respect to a State (other than the domicile State) in which participating employers of a small business health plan are located but in which the insurer of the small business health plan in the domicile State is not yet licensed, the following shall apply:

''(A) TEMPORARY PREEMPTION.—If, upon the expiration of the 90-day period following the submission of a licensure application by such insurer (that includes a certified copy of an approved licensure application as submitted by such insurer in the domicile State) to such State, such State has not approved or denied such application, such State's health insurance licensure laws shall be temporarily preempted and the insurer shall be permitted to operate in such State, subject to the following terms:

''(i) APPLICATION OF NON-DOMICILE STATE LAW.—Except with respect to licensure and with respect to the terms of subtitle A of title XXIX of the Public Health Service Act (relating to rating and benefits as added by the Health Insurance Marketplace Modernization and Affordability Act of 2006), the laws and authority of the non-domicile State shall remain in full force and effect.

''(ii) REVOCATION OF PREEMPTION.—The preemption of a non-domicile State's health insurance licensure laws pursuant to this subparagraph, shall be terminated upon the occurrence of either of the following:

''(I) APPROVAL OR DENIAL OF APPLICATION.—The approval of denial of an insurer's licensure application, following the laws and regulations of the non-domicile State with respect to licensure.

''(II) DETERMINATION OF MATERIAL VIOLATION.—A determination by a non-domicile State that an insurer operating in a non-domicile State pursuant to the preemption provided for in this subparagraph is in material violation of the insurance laws (other than licensure and with respect to the terms of subtitle A of title XXIX of the Public Health Service Act (relating to rating and benefits added by the Health Insurance Marketplace Modernization and Affordability Act of 2006)) of such State.

''(B) NO PROHIBITION ON PROMOTION.—Nothing in this paragraph shall be construed to prohibit a small business health plan or an insurer from promoting coverage prior to the expiration of the 90-day period provided for in subparagraph (A), except that no enrollment or collection of contributions shall occur before the expiration of such 90-day period.

''(C) LICENSURE.—Except with respect to the application of the temporary preemption provision of this paragraph, nothing in this part shall be construed to limit the requirement that insurers issuing coverage to small business health plans shall be licensed in each State in which the small business health plans operate.

''(D) SERVICING BY LICENSED INSURERS.—Notwithstanding subparagraph (C), the requirements of this subsection may also be satisfied if the participating employers of a small business health plan are serviced by a licensed insurer in that State, even where such insurer is not the insurer of such small business health plan in the State in which such small business health plan is domiciled.

''SEC. 806. REQUIREMENTS FOR APPLICATION AND RELATED REQUIREMENTS.

''(a) FILING FEE.—Under the procedure prescribed pursuant to section 802(a), a small

business health plan shall pay to the applicable authority at the time of filing an application for certification under this part a filing fee in the amount of $5,000, which shall be available in the case of the Secretary, to the extent provided in appropriation Acts, for the sole purpose of administering the certification procedures applicable with respect to small business health plans.

''(b) INFORMATION TO BE INCLUDED IN APPLICATION FOR CERTIFICATION.—An application for certification under this part meets the requirements of this section only if it includes, in a manner and form which shall be prescribed by the applicable authority by regulation, at least the following information:

''(1) IDENTIFYING INFORMATION.—The names and addresses of—

''(A) the sponsor; and

''(B) the members of the board of trustees of the plan.

''(2) STATES IN WHICH PLAN INTENDS TO DO BUSINESS.—The States in which participants and beneficiaries under the plan are to be located and the number of them expected to be located in each such State.

''(3) BONDING REQUIREMENTS.—Evidence provided by the board of trustees that the bonding requirements of section 412 will be met as of the date of the application or (if later) commencement of operations.

''(4) PLAN DOCUMENTS.—A copy of the documents governing the plan (including any bylaws and trust agreements), the summary plan description, and other material describing the benefits that will be provided to participants and beneficiaries under the plan.

''(5) AGREEMENTS WITH SERVICE PROVIDERS.—A copy of any agreements between the plan, health insurance issuer, and contract administrators and other service providers.

''(c) FILING NOTICE OF CERTIFICATION WITH STATES.—A certification granted under this part to a small business health plan shall not be effective unless written notice of such certification is filed with the applicable State authority of each State in which the small business health plans operate.

''(d) NOTICE OF MATERIAL CHANGES.—In the case of any small business health plan certified under this part, descriptions of material changes in any information which was required to be submitted with the application for the certification under this part shall be filed in such form and manner as shall be prescribed by the applicable authority by regulation. The applicable authority may require by regulation prior notice of material changes with respect to specified matters which might serve as the basis for suspension or revocation of the certification.

''SEC. 807. NOTICE REQUIREMENTS FOR VOLUNTARY TERMINATION.

''A small business health plan which is or has been certified under this part may terminate (upon or at any time after cessation of accruals in benefit liabilities) only if the board of trustees, not less than 60 days before the proposed termination date—

''(1) provides to the participants and beneficiaries a written notice of intent to terminate stating that such termination is intended and the proposed termination date;

''(2) develops a plan for winding up the affairs of the plan in connection with such termination in a manner which will result in timely payment of all benefits for which the plan is obligated; and

''(3) submits such plan in writing to the applicable authority.

Actions required under this section shall be taken in such form and manner as may be prescribed by the applicable authority by regulation.

''SEC. 808. DEFINITIONS AND RULES OF CONSTRUCTION.

''(a) DEFINITIONS.—For purposes of this part—

''(1) AFFILIATED MEMBER.—The term 'affiliated member' means, in connection with a sponsor—

''(A) a person who is otherwise eligible to be a member of the sponsor but who elects an affiliated status with the sponsor, or

''(B) in the case of a sponsor with members which consist of associations, a person who is a member or employee of any such association and elects an affiliated status with the sponsor.

''(2) APPLICABLE AUTHORITY.—The term 'applicable authority' means the Secretary of Labor, except that, in connection with any exercise of the Secretary's authority with respect to which the Secretary is required under section 506(d) to consult with a State, such term means the Secretary, in consultation with such State.

''(3) APPLICABLE STATE AUTHORITY.—The term 'applicable State authority' means, with respect to a health insurance issuer in a State, the State insurance commissioner or official or officials designated by the State to enforce the requirements of title XXVII of the Public Health Service Act for the State involved with respect to such issuer.

''(4) GROUP HEALTH PLAN.—The term 'group health plan' has the meaning provided in section 733(a)(1) (after applying subsection (b) of this section).

''(5) HEALTH INSURANCE COVERAGE.—The term 'health insurance coverage' has the meaning provided in section 733(b)(1), except that such term shall not include excepted benefits (as defined in section 733(c)).

''(6) HEALTH INSURANCE ISSUER.—The term 'health insurance issuer' has the meaning provided in section 733(b)(2).

''(7) INDIVIDUAL MARKET.—

''(A) IN GENERAL.—The term 'individual market' means the market for health insurance coverage offered to individuals other than in connection with a group health plan.

''(B) TREATMENT OF VERY SMALL GROUPS.—

''(i) IN GENERAL.—Subject to clause (ii), such term includes coverage offered in connection with a group health plan that has fewer than 2 participants as current employees or participants described in section 732(d)(3) on the first day of the plan year.

''(ii) STATE EXCEPTION.—Clause (i) shall not apply in the case of health insurance coverage offered in a State if such State regulates the coverage described in such clause in the same manner and to the same extent as coverage in the small group market (as defined in section 2791(e)(5) of the Public Health Service Act) is regulated by such State.

''(8) MEDICAL CARE.—The term 'medical care' has the meaning provided in section 733(a)(2).

''(9) PARTICIPATING EMPLOYER.—The term 'participating employer' means, in connection with a small business health plan, any employer, if any individual who is an employee of such employer, a partner in such employer, or a self-employed individual who is such employer (or any dependent, as defined under the terms of the plan, of such individual) is or was covered under such plan in connection with the status of such individual as such an employee, partner, or self-employed individual in relation to the plan.

''(10) SMALL EMPLOYER.—The term 'small employer' means, in connection with a group health plan with respect to a plan year, a small employer as defined in section 2791(e)(4).

''(11) TRADE ASSOCIATION AND PROFESSIONAL ASSOCIATION.—The terms 'trade association' and 'professional association' mean an entity that meets the requirements of section 1.501(c)(6)-1 of title 26, Code of Federal Regulations (as in effect on the date of enactment of this Act).

''(b) RULE OF CONSTRUCTION.—For purposes of determining whether a plan, fund, or program is an employee welfare benefit plan which is a small business health plan, and for purposes of applying this title in connection with such plan, fund, or program so determined to be such an employee welfare benefit plan—

''(1) in the case of a partnership, the term 'employer' (as defined in section 3(5)) includes the partnership in relation to the partners, and the term 'employee' (as defined in section 3(6)) includes any partner in relation to the partnership; and

''(2) in the case of a self-employed individual, the term 'employer' (as defined in section 3(5)) and the term 'employee' (as defined in section 3(6)) shall include such individual.

''(c) RENEWAL.—Notwithstanding any provision of law to the contrary, a participating employer in a small business health plan shall not be deemed to be a plan sponsor in applying requirements relating to coverage renewal.

''(d) HEALTH SAVINGS ACCOUNTS.—Nothing in this part shall be construed to inhibit the development of health savings accounts pursuant to section 223 of the Internal Revenue Code of 1986.''.

(b) CONFORMING AMENDMENTS TO PREEMPTION RULES.—

(1) Section 514(b)(6) of such Act (29 U.S.C. 1144(b)(6)) is amended by adding at the end the following new subparagraph:

''(E) The preceding subparagraphs of this paragraph do not apply with respect to any State law in the case of a small business health plan which is certified under part 8.''.

(2) Section 514 of such Act (29 U.S.C. 1144) is amended—

(A) in subsection (b)(4), by striking ''Subsection (a)'' and inserting ''Subsections (a) and (d)'';

(B) in subsection (b)(5), by striking ''subsection (a)'' in subparagraph (A) and inserting ''subsection (a) of this section and subsections (a)(2)(B) and (b) of section 805'', and by striking ''subsection (a)'' in subparagraph (B) and inserting ''subsection (a) of this section or subsection (a)(2)(B) or (b) of section 805'';

(C) by redesignating subsection (d) as subsection (e); and

(D) by inserting after subsection (c) the following new subsection:

''(d)(1) Except as provided in subsection (b)(4), the provisions of this title shall supersede any and all State laws insofar as they may now or hereafter preclude a health insurance issuer from offering health insurance coverage in connection with a small business health plan which is certified under part 8.

''(2) In any case in which health insurance coverage of any policy type is offered under a small business health plan certified under part 8 to a participating employer operating in such State, the provisions of this title shall supersede any and all laws of such State insofar as they may establish rating and benefit requirements that would otherwise apply to such coverage, provided the requirements of subtitle A of title XXIX of the Public Health Service Act (as added by title II of the Health Insurance Marketplace Modernization and Affordability Act of 2006) (concerning health plan rating and benefits) are met.''.

(c) PLAN SPONSOR.—Section 3(16)(B) of such Act (29 U.S.C. 102(16)(B)) is amended by adding at the end the following new sentence: ''Such term also includes a person serving as the sponsor of a small business health plan under part 8.''.

(d) SAVINGS CLAUSE.—Section 731(c) of such Act is amended by inserting ''or part 8'' after ''this part''.

(e) CLERICAL AMENDMENT.—The table of contents in section 1 of the Employee Retirement Income Security Act of 1974 is amended by inserting after the item relating to section 734 the following new items:

''PART 8—RULES GOVERNING SMALL BUSINESS HEALTH PLANS

''801. Small business health plans.
''802. Certification of small business health plans.
''803. Requirements relating to sponsors and boards of trustees.
''804. Participation and coverage requirements.
''805. Other requirements relating to plan documents, contribution rates, and benefit options.
''806. Requirements for application and related requirements.
''807. Notice requirements for voluntary termination.
''808. Definitions and rules of construction.''.

SEC. __12. COOPERATION BETWEEN FEDERAL AND STATE AUTHORITIES.

Section 506 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1136) is amended by adding at the end the following new subsection:

''(d) CONSULTATION WITH STATES WITH RESPECT TO SMALL BUSINESS HEALTH PLANS.—

''(1) AGREEMENTS WITH STATES.—The Secretary shall consult with the State recognized under paragraph (2) with respect to a small business health plan regarding the exercise of—

''(A) the Secretary's authority under sections 502 and 504 to enforce the requirements for certification under part 8; and

''(B) the Secretary's authority to certify small business health plans under part 8 in accordance with regulations of the Secretary applicable to certification under part 8.

''(2) RECOGNITION OF DOMICILE STATE.—In carrying out paragraph (1), the Secretary shall ensure that only one State will be recognized, with respect to any particular small business health plan, as the State with which consultation is required. In carrying out this paragraph such State shall be the domicile State, as defined in section 805(c).''.

SEC. __13. EFFECTIVE DATE AND TRANSITIONAL AND OTHER RULES.

(a) EFFECTIVE DATE.—The amendments made by this subtitle shall take effect 12 months after the date of the enactment of this Act. The Secretary of Labor shall first issue all regulations necessary to carry out the amendments made by this subtitle within 6 months after the date of the enactment of this Act.

(b) TREATMENT OF CERTAIN EXISTING HEALTH BENEFITS PROGRAMS.—

(1) IN GENERAL.—In any case in which, as of the date of the enactment of this Act, an arrangement is maintained in a State for the purpose of providing benefits consisting of medical care for the employees and beneficiaries of its participating employers, at least 200 participating employers make contributions to such arrangement, such arrangement has been in existence for at least 10 years, and such arrangement is licensed under the laws of one or more States to provide such benefits to its participating employers, upon the filing with the applicable authority (as defined in section 808(a)(2) of the Employee Retirement Income Security Act of 1974 (as amended by this subtitle)) by the arrangement of an application for certification of the arrangement under part 8 of subtitle B of title I of such Act—

(A) such arrangement shall be deemed to be a group health plan for purposes of title I of such Act;

(B) the requirements of sections 801(a) and 803(a) of the Employee Retirement Income Security Act of 1974 shall be deemed met with respect to such arrangement;

(C) the requirements of section 803(b) of such Act shall be deemed met, if the arrangement is operated by a board of trustees which—

(i) is elected by the participating employers, with each employer having one vote; and

(ii) has complete fiscal control over the arrangement and which is responsible for all operations of the arrangement;

(D) the requirements of section 804(a) of such Act shall be deemed met with respect to such arrangement; and

(E) the arrangement may be certified by any applicable authority with respect to its operations in any State only if it operates in such State on the date of certification.

The provisions of this subsection shall cease to apply with respect to any such arrangement at such time after the date of the enactment of this Act as the applicable requirements of this subsection are not met with respect to such arrangement or at such time that the arrangement provides coverage to participants and beneficiaries in any State other than the States in which coverage is provided on such date of enactment.

(2) DEFINITIONS.—For purposes of this subsection, the terms ''group health plan'', ''medical care'', and ''participating employer'' shall have the meanings provided in section 808 of the Employee Retirement Income Security Act of 1974, except that the reference in paragraph (7) of such section to an ''small business health plan'' shall be deemed a reference to an arrangement referred to in this subsection.

Subtitle B—Market Relief

SEC. __021. MARKET RELIEF.

The Public Health Service Act (42 U.S.C. 201 et seq.) is amended by adding at the end the following:

''TITLE XXIX—HEALTH CARE INSURANCE MARKETPLACE MODERNIZATION

''SEC. 2901. GENERAL INSURANCE DEFINITIONS.

''In this title, the terms 'health insurance coverage', 'health insurance issuer', 'group health plan', and 'individual health insurance' shall have the meanings given such terms in section 2791.

''Subtitle A—Market Relief

''PART I—RATING REQUIREMENTS

''SEC. 2911. DEFINITIONS.

''(a) GENERAL DEFINITIONS.—In this part:

''(1) ADOPTING STATE.—The term 'adopting State' means a State that, with respect to the small group market, has enacted either the Model Small Group Rating Rules or, if applicable to such State, the Transitional Model Small Group Rating Rules, each in their entirety and as the exclusive laws of the State that relate to rating in the small group insurance market.

''(2) APPLICABLE STATE AUTHORITY.—The term 'applicable State authority' means, with respect to a health insurance issuer in a State, the State insurance commissioner or official or officials designated by the State to enforce the insurance laws of such State.

''(3) BASE PREMIUM RATE.—The term 'base premium rate' means, for each class of business with respect to a rating period, the lowest premium rate charged or that could have been charged under a rating system for that class of business by the small employer carrier to small employers with similar case characteristics for health benefit plans with the same or similar coverage

''(4) ELIGIBLE INSURER.—The term 'eligible insurer' means a health insurance issuer that is licensed in a State and that—

''(A) notifies the Secretary, not later than 30 days prior to the offering of coverage described in this subparagraph, that the issuer intends to offer health insurance coverage consistent with the Model Small Group Rating Rules or, as applicable, transitional small group rating rules in a State;

''(B) notifies the insurance department of a nonadopting State (or other State agency), not later than 30 days prior to the offering of coverage described in this subparagraph, that the issuer intends to offer small group health insurance coverage in that State consistent with the Model Small Group Rating Rules, and provides with such notice a copy of any insurance policy that it intends to offer in the State, its most recent annual and quarterly financial reports, and any other information required to be filed with the insurance department of the State (or other State agency); and

''(C) includes in the terms of the health insurance coverage offered in nonadopting States (including in the terms of any individual certificates that may be offered to individuals in connection with such group health coverage) and filed with the State pursuant to subparagraph (B), a description in the insurer's contract of the Model Small Group Rating Rules and an affirmation that such Rules are included in the terms of such contract.

''(5) HEALTH INSURANCE COVERAGE.—The term 'health insurance coverage' means any coverage issued in the small group health insurance market, except that such term shall not include excepted benefits (as defined in section 2791(c)).

''(6) INDEX RATE.—The term 'index rate' means for each class of business with respect to the rating period for small employers with similar case characteristics, the arithmetic average of the applicable base premium rate and the corresponding highest premium rate.

''(7) MODEL SMALL GROUP RATING RULES.—The term ' Model Small Group Rating Rules' means the rules set forth in subsection (b).

''(8) NONADOPTING STATE.—The term 'nonadopting State' means a State that is not an adopting State.

''(9) SMALL GROUP INSURANCE MARKET.—The term 'small group insurance market' shall have the meaning given the term 'small group market' in section 2791(e)(5).

''(10) STATE LAW.—The term 'State law' means all laws, decisions, rules, regulations, or other State actions (including actions by a State agency) having the effect of law, of any State.

''(b) DEFINITION RELATING TO MODEL SMALL GROUP RATING RULES.—The term 'Model Small Group Rating Rules' means adapted rating rules drawn from the Adopted Small Employer Health Insurance Availability Model Act of 1993 of the National Association of Insurance Commissioners consisting of the following:

''(1) PREMIUM RATES.—Premium rates for health benefit plans to which this title applies shall be subject to the following provisions relating to premiums:

''(A) INDEX RATE.—The index rate for a rating period for any class of business shall not exceed the index rate for any other class of business by more than 20 percent.

''(B) CLASS OF BUSINESSES.—With respect to a class of business, the premium rates charged during a rating period to small employers with similar case characteristics for the same or similar coverage or the rates that could be charged to such employers under the rating system for that class of business, shall not vary from the index rate by more than 25 percent of the index rate under subparagraph (A).

''(C) INCREASES FOR NEW RATING PERIODS.—The percentage increase in the premium rate charged to a small employer for a new rating

period may not exceed the sum of the following:

''(i) The percentage change in the new business premium rate measured from the first day of the prior rating period to the first day of the new rating period. In the case of a health benefit plan into which the small employer carrier is no longer enrolling new small employers, the small employer carrier shall use the percentage change in the base premium rate, except that such change shall not exceed, on a percentage basis, the change in the new business premium rate for the most similar health benefit plan into which the small employer carrier is actively enrolling new small employers.

''(ii) Any adjustment, not to exceed 15 percent annually and adjusted pro rata for rating periods of less then 1 year, due to the claim experience, health status or duration of coverage of the employees or dependents of the small employer as determined from the small employer carrier's rate manual for the class of business involved.

''(iii) Any adjustment due to change in coverage or change in the case characteristics of the small employer as determined from the small employer carrier's rate manual for the class of business.

''(D) UNIFORM APPLICATION OF ADJUSTMENTS.—Adjustments in premium rates for claim experience, health status, or duration of coverage shall not be charged to individual employees or dependents. Any such adjustment shall be applied uniformly to the rates charged for all employees and dependents of the small employer.

''(E) USE OF INDUSTRY AS A CASE CHARACTERISTIC.—A small employer carrier may utilize industry as a case characteristic in establishing premium rates, so long as the highest rate factor associated with any industry classification does not exceed the lowest rate factor associated with any industry classification by more than 15 percent.

''(F) CONSISTENT APPLICATION OF FACTORS.—Small employer carriers shall apply rating factors, including case characteristics, consistently with respect to all small employers in a class of business. Rating factors shall produce premiums for identical groups which differ only by the amounts attributable to plan design and do not reflect differences due to the nature of the groups assumed to select particular health benefit plans.

''(G) TREATMENT OF PLANS AS HAVING SAME RATING PERIOD.—A small employer carrier shall treat all health benefit plans issued or renewed in the same calendar month as having the same rating period.

''(H) RESTRICTED NETWORK PROVISIONS.—For purposes of this subsection, a health benefit plan that contains a restricted network provision shall not be considered similar coverage to a health benefit plan that does not contain a similar provision if the restriction of benefits to network providers results in substantial differences in claims costs.

''(I) PROHIBITION ON USE OF CERTAIN CASE CHARACTERISTICS.—The small employer carrier shall not use case characteristics other than age, gender, industry, geographic area, family composition, group size, and participation in wellness programs without prior approval of the applicable State authority.

''(J) REQUIRE COMPLIANCE.—Premium rates for small business health benefit plans shall comply with the requirements of this subsection notwithstanding any assessments paid or payable by a small employer carrier as required by a State's small employer carrier reinsurance program.

''(2) ESTABLISHMENT OF SEPARATE CLASS OF BUSINESS.—Subject to paragraph (3), a small employer carrier may establish a separate class of business only to reflect substantial differences in expected claims experience or administrative costs related to the following:

''(A) The small employer carrier uses more than one type of system for the marketing and sale of health benefit plans to small employers.

''(B) The small employer carrier has acquired a class of business from another small employer carrier.

''(C) The small employer carrier provides coverage to one or more association groups that meet the requirements of this title.

''(3) LIMITATION.—A small employer carrier may establish up to 9 separate classes of business under paragraph (2), excluding those classes of business related to association groups under this title.

''(4) ADDITIONAL GROUPINGS.—The applicable State authority may approve the establishment of additional distinct groupings by small employer carriers upon the submission of an application to the applicable State authority and a finding by the applicable State authority that such action would enhance the efficiency and fairness of the small employer insurance marketplace.

''(5) LIMITATION ON TRANSFERS.—A small employer carrier shall not transfer a small employer involuntarily into or out of a class of business. A small employer carrier shall not offer to transfer a small employer into or out of a class of business unless such offer is made to transfer all small employers in the class of business without regard to case characteristics, claim experience, health status or duration of coverage since issue.

''(6) SUSPENSION OF THE RULES.—The applicable State authority may suspend, for a specified period, the application of paragraph (1) to the premium rates applicable to one or more small employers included within a class of business of a small employer carrier for one or more rating periods upon a filing by the small employer carrier and a finding by the applicable State authority either that the suspension is reasonable when considering the financial condition of the small employer carrier or that the suspension would enhance the efficiency and fairness of the marketplace for small employer health insurance.

''SEC. 2912. RATING RULES.

''(a) IMPLEMENTATION OF MODEL SMALL GROUP RATING RULES.—Not later than 6 months after the enactment of this title, the Secretary shall promulgate regulations implementing the Model Small Group Rating Rules pursuant to section 2911(b).

''(b) TRANSITIONAL MODEL SMALL GROUP RATING RULES.—

''(1) IN GENERAL.—Not later than 6 months after the date of enactment of this title and to the extent necessary to provide for a graduated transition to the Model Small Group Rating Rules, the Secretary, in consultation with the NAIC, shall promulgate Transitional Model Small Group Rating Rules in accordance with this subsection, which shall be applicable with respect to certain non-adopting States for a period of not to exceed 5 years from the date of the promulgation of the Model Small Group Rating Rules pursuant to subsection (a). After the expiration of such 5-year period, the transitional model small group rating rules shall expire, and the Model Small Group Rating Rules shall then apply with respect to all non-adopting States pursuant to the provisions of this part.

''(2) PREMIUM VARIATION DURING TRANSITION.—

''(A) TRANSITION STATES.—During the transition period described in paragraph (1), small group health insurance coverage offered in a non-adopting State that had in place premium rating band requirements or premium limits that varied by less than 12.5 percent from the index rate within a class of business on the date of enactment of this title, shall not be subject to the premium variation provision of section 2911(b)(1) of the Model Small Group Rating Rules and shall instead be subject to the Transitional Model Small Group Rating Rules as promulgated by the Secretary pursuant to paragraph (1).

''(B) NON-TRANSITION STATES.—During the transition period described in paragraph (1), and thereafter, small group health insurance coverage offered in a non-adopting State that had in place premium rating band requirements or premium limits that varied by more than 12.5 percent from the index rate within a class of business on the date of enactment of this title, shall not be subject to the Transitional Model Small Group Rating Rules as promulgated by the Secretary pursuant to paragraph (1), and instead shall be subject to the Model Small Group Rating Rules effective beginning with the first plan year or calendar year following the promulgation of such Rules, at the election of the eligible insurer.

''(3) TRANSITIONING OF OLD BUSINESS.—In developing the transitional model small group rating rules under paragraph (1), the Secretary shall, after consultation with the National Association of Insurance Commissioners and representatives of insurers operating in the small group health insurance market, promulgate special transition standards and timelines with respect to independent rating classes for old and new business, to the extent reasonably necessary to protect health insurance consumers and to ensure a stable and fair transition for old and new market entrants.

''(4) OTHER TRANSITIONAL AUTHORITY.—In developing the Transitional Model Small Group Rating Rules under paragraph (1), the Secretary shall provide for the application of the Transitional Model Small Group Rating Rules in transition States as the Secretary may determine necessary for a an effective transition.

''(c) MARKET RE-ENTRY.—

''(1) IN GENERAL.—Notwithstanding any other provision of law, a health insurance issuer that has voluntarily withdrawn from providing coverage in the small group market prior to the date of enactment of the Health Insurance Marketplace Modernization and Affordability Act of 2006 shall not be excluded from re-entering such market on a date that is more than 180 days after such date of enactment.

''(2) TERMINATION.—The provision of this subsection shall terminate on the date that is 24 months after the date of enactment of the Health Insurance Marketplace Modernization and Affordability Act of 2006.

''SEC. 2913. APPLICATION AND PREEMPTION.

''(a) SUPERSEDING OF STATE LAW.—

''(1) IN GENERAL.—This part shall supersede any and all State laws of a non-adopting State insofar as such State laws (whether enacted prior to or after the date of enactment of this subtitle) relate to rating in the small group insurance market as applied to an eligible insurer, or small group health insurance coverage issued by an eligible insurer, including with respect to coverage issued to a small employer through a small business health plan, in a State.

''(2) NONADOPTING STATES.—This part shall supersede any and all State laws of a non-adopting State insofar as such State laws (whether enacted prior to or after the date of enactment of this subtitle)—

''(A) prohibit an eligible insurer from offering, marketing, or implementing small group health insurance coverage consistent with the Model Small Group Rating Rules or transitional model small group rating rules; or

''(B) have the effect of retaliating against or otherwise punishing in any respect an eligible insurer for offering, marketing, or implementing small group health insurance coverage consistent with the Model Small Group Rating Rules or transitional model small group rating rules.

''(b) SAVINGS CLAUSE AND CONSTRUCTION.—

''(1) NONAPPLICATION TO ADOPTING STATES.—Subsection (a) shall not apply with respect to adopting states.

''(2) NONAPPLICATION TO CERTAIN INSURERS.—Subsection (a) shall not apply with respect to insurers that do not qualify as eligible insurers that offer small group health insurance coverage in a nonadopting State.

''(3) NONAPPLICATION WHERE OBTAINING RELIEF UNDER STATE LAW.—Subsection (a)(1) shall not supercede any State law in a nonadopting State to the extent necessary to permit individuals or the insurance department of the State (or other State agency) to obtain relief under State law to require an eligible insurer to comply with the Model Small Group Rating Rules or transitional model small group rating rules.

''(4) NO EFFECT ON PREEMPTION.—In no case shall this part be construed to limit or affect in any manner the preemptive scope of sections 502 and 514 of the Employee Retirement Income Security Act of 1974. In no case shall this part be construed to create any cause of action under Federal or State law or enlarge or affect any remedy available under the Employee Retirement Income Security Act of 1974

''(c) EFFECTIVE DATE.—This section shall apply, at the election of the eligible insurer, beginning in the first plan year or the first calendar year following the issuance of the final rules by the Secretary under the Model Small Group Rating Rules or, as applicable, the Transitional Model Small Group Rating Rules, but in no event earlier than the date that is 12 months after the date of enactment of this title.

''SEC. 2914. CIVIL ACTIONS AND JURISDICTION.

''(a) IN GENERAL.—The courts of the United States shall have exclusive jurisdiction over civil actions involving the interpretation of this part.

''(b) ACTIONS.—An eligible insurer may bring an action in the district courts of the United States for injunctive or other equitable relief against any officials or agents of a nonadopting State in connection with any conduct or action, or proposed conduct or action, by such officials or agents which violates, or which would if undertaken violate, section 2913.

''(c) DIRECT FILING IN COURT OF APPEALS.—At the election of the eligible insurer, an action may be brought under subsection (b) directly in the United States Court of Appeals for the circuit in which the nonadopting State is located by the filing of a petition for review in such Court.

''(d) EXPEDITED REVIEW.—

''(1) DISTRICT COURT.—In the case of an action brought in a district court of the United States under subsection (b), such court shall complete such action, including the issuance of a judgment, prior to the end of the 120-day period beginning on the date on which such action is filed, unless all parties to such proceeding agree to an extension of such period.

''(2) COURT OF APPEALS.—In the case of an action brought directly in a United States Court of Appeal under subsection (c), or in the case of an appeal of an action brought in a district court under subsection (b), such Court shall complete all action on the petition, including the issuance of a judgment, prior to the end of the 60-day period beginning on the date on which such petition is filed with the Court, unless all parties to such proceeding agree to an extension of such period.

''(e) STANDARD OF REVIEW.—A court in an action filed under this section, shall render a judgment based on a review of the merits of all questions presented in such action and shall not defer to any conduct or action, or proposed conduct or action, of a nonadopting State.

''SEC. 2915. ONGOING REVIEW.

''Not later than 5 years after the date on which the Model Small Group Rating Rules are issued under this part, and every 5 years thereafter, the Secretary, in consultation with the National Association of Insurance Commissioners, shall prepare and submit to the appropriate committees of Congress a report that assesses the effect of the Model Small Group Rating Rules on access, cost, and market functioning in the small group market. Such report may, if the Secretary, in consultation with the National Association of Insurance Commissioners, determines such is appropriate for improving access, costs, and market functioning, contain legislative proposals for recommended modification to such Model Small Group Rating Rules.

''PART II—AFFORDABLE PLANS

''SEC. 2921. DEFINITIONS.

''In this part:

''(1) ADOPTING STATE.—The term 'adopting State' means a State that has enacted a law providing that small group and large group health insurers in such State may offer and sell products in accordance with the List of Required Benefits and the Terms of Application as provided for in section 2922(b).

''(2) ELIGIBLE INSURER.—The term 'eligible insurer' means a health insurance issuer that is licensed in a nonadopting State and that—

''(A) notifies the Secretary, not later than 30 days prior to the offering of coverage described in this subparagraph, that the issuer intends to offer health insurance coverage consistent with the List of Required Benefits and Terms of Application in a nonadopting State;

''(B) notifies the insurance department of a nonadopting State (or other applicable State agency), not later than 30 days prior to the offering of coverage described in this subparagraph, that the issuer intends to offer health insurance coverage in that State consistent with the List of Required Benefits and Terms of Application, and provides with such notice a copy of any insurance policy that it intends to offer in the State, its most recent annual and quarterly financial reports, and any other information required to be filed with the insurance department of the State (or other State agency) by the Secretary in regulations; and

''(C) includes in the terms of the health insurance coverage offered in nonadopting States (including in the terms of any individual certificates that may be offered to individuals in connection with such group health coverage) and filed with the State pursuant to subparagraph (B), a description in the insurer's contract of the List of Required Benefits and a description of the Terms of Application, including a description of the benefits to be provided, and that adherence to such standards is included as a term of such contract.

''(3) HEALTH INSURANCE COVERAGE.—The term 'health insurance coverage' means any coverage issued in the small group or large group health insurance markets, including with respect to small business health plans, except that such term shall not include excepted benefits (as defined in section 2791(c)).

''(4) LIST OF REQUIRED BENEFITS.—The term 'List of Required Benefits' means the List issued under section 2922(a).

''(5) NONADOPTING STATE.—The term 'nonadopting State' means a State that is not an adopting State.

''(6) STATE LAW.—The term 'State law' means all laws, decisions, rules, regulations, or other State actions (including actions by a State agency) having the effect of law, of any State.

''(7) STATE PROVIDER FREEDOM OF CHOICE LAW.—The term 'State provider freedom of choice law' means a State law requiring that a health insurance issuer, with respect to health insurance coverage, not discriminate with respect to participation, reimbursement, or indemnification as to any provider who is acting within the scope of the provider's license or certification under applicable State law.

''(8) TERMS OF APPLICATION.—The term 'Terms of Application' means terms provided under section 2922(a).

''SEC. 2922. OFFERING AFFORDABLE PLANS.

''(a) LIST OF REQUIRED BENEFITS.—Not later than 3 months after the date of enactment of this title, the Secretary, in consultation with the National Association of Insurance Commissioners, shall issue by interim final rule a list (to be known as the 'List of Required Benefits') of covered benefits, services, or categories of providers that are required to be provided by health insurance issuers, in each of the small group and large group markets, in at least 26 States as a result of the application of State covered benefit, service, and category of provider mandate laws. With respect to plans sold to or through small business health plans, the List of Required Benefits applicable to the small group market shall apply.

''(b) TERMS OF APPLICATION.—

''(1) STATE WITH MANDATES.—With respect to a State that has a covered benefit, service, or category of provider mandate in effect that is covered under the List of Required Benefits under subsection (a), such State mandate shall, subject to paragraph (3) (concerning uniform application), apply to a coverage plan or plan in, as applicable, the small group or large group market or through a small business health plan in such State.

''(2) STATES WITHOUT MANDATES.—With respect to a State that does not have a covered benefit, service, or category of provider mandate in effect that is covered under the List of Required Benefits under subsection (a), such mandate shall not apply, as applicable, to a coverage plan or plan in the small group or large group market or through a small business health plan in such State.

''(3) UNIFORM APPLICATION OF LAWS.—

''(A) IN GENERAL.—With respect to a State described in paragraph (1), in applying a covered benefit, service, or category of provider mandate that is on the List of Required Benefits under subsection (a) the State shall permit a coverage plan or plan offered in the small group or large group market or through a small business health plan in such State to apply such benefit, service, or category of provider coverage in a manner consistent with the manner in which such coverage is applied under one of the three most heavily subscribed national health plans offered under the Federal Employee Health Benefits Program under chapter 89 of title 5, United States Code (as determined by the Secretary in consultation with the Director of the Office of Personnel Management), and consistent with the Publication of Benefit Applications under subsection (c). In the event a covered benefit, service, or category of provider appearing in the List of Required Benefits is not offered in one of the three most heavily subscribed national health plans offered under the Federal Employees Health Benefits Program, such covered benefit, service, or category of provider requirement shall be applied in a manner consistent with the manner in which such coverage is

offered in the remaining most heavily subscribed plan of the remaining Federal Employees Health Benefits Program plans, as determined by the Secretary, in consultation with the Director of the Office of Personnel Management.

''(B) EXCEPTION REGARDING STATE PROVIDER FREEDOM OF CHOICE LAWS.—Notwithstanding subparagraph (A), in the event a category of provider mandate is included in the List of Covered Benefits, any State Provider Freedom of Choice Law (as defined in section 2921(7)) that is in effect in any State in which such category of provider mandate is in effect shall not be preempted, with respect to that category of provider, by this part.

''(c) PUBLICATION OF BENEFITS APPLICATIONS.—Not later than 3 months after the date of enactment of this title, and on the first day of every calendar year thereafter, the Secretary, in consultation with the Director of the Office of Personnel Management, shall publish in the Federal Register a description of such covered benefits, services, and categories of providers covered in that calendar year by each of the three most heavily subscribed nationally available Federal Employee Health Benefits Plan options which are also included on the List of Required Benefits.

''(d) EFFECTIVE DATES.—

''(1) SMALL BUSINESS HEALTH PLANS.—With respect to health insurance provided to participating employers of small business health plans, the requirements of this part (concerning lower cost plans) shall apply beginning on the date that is 12 months after the date of enactment of this title.

''(2) NON-ASSOCIATION COVERAGE.—With respect to health insurance provided to groups or individuals other than participating employers of small business health plans, the requirements of this part shall apply beginning on the date that is 15 months after the date of enactment of this title.

''(e) UPDATING OF LIST OF REQUIRED BENEFITS.—Not later than 2 years after the date on which the list of required benefits is issued under subsection (a), and every 2 years thereafter, the Secretary, in consultation with the National Association of Insurance Commissioners, shall update the list based on changes in the laws and regulations of the States. The Secretary shall issue the updated list by regulation, and such updated list shall be effective upon the first plan year following the issuance of such regulation.

''SEC. 2923. APPLICATION AND PREEMPTION.

''(a) SUPERCEDING OF STATE LAW.—

''(1) IN GENERAL.—This part shall supersede any and all State laws insofar as such laws relate to mandates relating to covered benefits, services, or categories of provider in the health insurance market as applied to an eligible insurer, or health insurance coverage issued by an eligible insurer, including with respect to coverage issued to a small business health plan, in a nonadopting State.

''(2) NONADOPTING STATES.—This part shall supersede any and all State laws of a nonadopting State (whether enacted prior to or after the date of enactment of this title) insofar as such laws—

''(A) prohibit an eligible insurer from offering, marketing, or implementing health insurance coverage consistent with the Benefit Choice Standards, as provided for in section 2922(a); or

''(B) have the effect of retaliating against or otherwise punishing in any respect an eligible insurer for offering, marketing, or implementing health insurance coverage consistent with the Benefit Choice Standards.

''(b) SAVINGS CLAUSE AND CONSTRUCTION.—

''(1) NONAPPLICATION TO ADOPTING STATES.—Subsection (a) shall not apply with respect to adopting States.

''(2) NONAPPLICATION TO CERTAIN INSURERS.—Subsection (a) shall not apply with respect to insurers that do not qualify as eligible insurers who offer health insurance coverage in a nonadopting State.

''(3) NONAPPLICATION WHERE OBTAINING RELIEF UNDER STATE LAW.—Subsection (a)(1) shall not supercede any State law of a nonadopting State to the extent necessary to permit individuals or the insurance department of the State (or other State agency) to obtain relief under State law to require an eligible insurer to comply with the Benefit Choice Standards.

''(4) NO EFFECT ON PREEMPTION.—In no case shall this part be construed to limit or affect in any manner the preemptive scope of sections 502 and 514 of the Employee Retirement Income Security Act of 1974. In no case shall this part be construed to create any cause of action under Federal or State law or enlarge or affect any remedy available under the Employee Retirement Income Security Act of 1974

''SEC. 2924. CIVIL ACTIONS AND JURISDICTION.

''(a) IN GENERAL.—The courts of the United States shall have exclusive jurisdiction over civil actions involving the interpretation of this part.

''(b) ACTIONS.—An eligible insurer may bring an action in the district courts of the United States for injunctive or other equitable relief against any officials or agents of a nonadopting State in connection with any conduct or action, or proposed conduct or action, by such officials or agents which violates, or which would if undertaken violate, section 2923.

''(c) DIRECT FILING IN COURT OF APPEALS.—At the election of the eligible insurer, an action may be brought under subsection (b) directly in the United States Court of Appeals for the circuit in which the nonadopting State is located by the filing of a petition for review in such Court.

''(d) EXPEDITED REVIEW.—

''(1) DISTRICT COURT.—In the case of an action brought in a district court of the United States under subsection (b), such court shall complete such action, including the issuance of a judgment, prior to the end of the 120-day period beginning on the date on which such action is filed, unless all parties to such proceeding agree to an extension of such period.

''(2) COURT OF APPEALS.—In the case of an action brought directly in a United States Court of Appeal under subsection (c), or in the case of an appeal of an action brought in a district court under subsection (b), such Court shall complete all action on the petition, including the issuance of a judgment, prior to the end of the 60-day period beginning on the date on which such petition is filed with the Court, unless all parties to such proceeding agree to an extension of such period.

''(e) STANDARD OF REVIEW.—A court in an action filed under this section, shall render a judgment based on a review of the merits of all questions presented in such action and shall not defer to any conduct or action, or proposed conduct or action, of a nonadopting State.

''SEC. 2925. RULES OF CONSTRUCTION.

''(a) IN GENERAL.—Notwithstanding any other provision of Federal or State law, a health insurance issuer in an adopting State or an eligible insurer in a non-adopting State may amend its existing policies to be consistent with the terms of this subtitle (concerning rating and benefits).

''(b) HEALTH SAVINGS ACCOUNTS.—Nothing in this subtitle shall be construed to inhibit the development of health savings accounts pursuant to section 223 of the Internal Revenue Code of 1986.''.

Subtitle C—Harmonization of Health Insurance Standards

SEC. __31. HEALTH INSURANCE STANDARDS HARMONIZATION.

Title XXIX of the Public Health Service Act (as added by section __21) is amended by adding at the end the following:

''Subtitle B—Standards Harmonization

''SEC. 2931. DEFINITIONS.

''In this subtitle:

''(1) ADOPTING STATE.—The term 'adopting State' means a State that has enacted the harmonized standards adopted under this subtitle in their entirety and as the exclusive laws of the State that relate to the harmonized standards.

''(2) ELIGIBLE INSURER.—The term 'eligible insurer' means a health insurance issuer that is licensed in a nonadopting State and that—

''(A) notifies the Secretary, not later than 30 days prior to the offering of coverage described in this subparagraph, that the issuer intends to offer health insurance coverage consistent with the harmonized standards in a nonadopting State;

''(B) notifies the insurance department of a nonadopting State (or other State agency), not later than 30 days prior to the offering of coverage described in this subparagraph, that the issuer intends to offer health insurance coverage in that State consistent with the harmonized standards published pursuant to section 2932(d), and provides with such notice a copy of any insurance policy that it intends to offer in the State, its most recent annual and quarterly financial reports, and any other information required to be filed with the insurance department of the State (or other State agency) by the Secretary in regulations; and

''(C) includes in the terms of the health insurance coverage offered in nonadopting States (including in the terms of any individual certificates that may be offered to individuals in connection with such health coverage) and filed with the State pursuant to subparagraph (B), a description of the harmonized standards published pursuant to section 2932(g)(2) and an affirmation that such standards are a term of the contract.

''(3) HARMONIZED STANDARDS.—The term 'harmonized standards' means the standards certified by the Secretary under section 2932(d).

''(4) HEALTH INSURANCE COVERAGE.—The term 'health insurance coverage' means any coverage issued in the health insurance market, except that such term shall not include excepted benefits (as defined in section 2791(c).

''(5) NONADOPTING STATE.—The term 'nonadopting State' means a State that fails to enact, within 18 months of the date on which the Secretary certifies the harmonized standards under this subtitle, the harmonized standards in their entirety and as the exclusive laws of the State that relate to the harmonized standards.

''(6) STATE LAW.—The term 'State law' means all laws, decisions, rules, regulations, or other State actions (including actions by a State agency) having the effect of law, of any State.

''SEC. 2932. HARMONIZED STANDARDS.

''(a) BOARD.—

''(1) ESTABLISHMENT.—Not later than 3 months after the date of enactment of this title, the Secretary, in consultation with the NAIC, shall establish the Health Insurance Consensus Standards Board (referred to in this subtitle as the 'Board') to develop recommendations that harmonize inconsistent State health insurance laws in accordance with the procedures described in subsection (b).

''(2) COMPOSITION.—

''(A) IN GENERAL.—The Board shall be composed of the following voting members to be appointed by the Secretary after considering the recommendations of professional organizations representing the entities and constituencies described in this paragraph:

''(i) Four State insurance commissioners as recommended by the National Association of Insurance Commissioners, of which 2 shall be Democrats and 2 shall be Republicans, and of which one shall be designated as the chairperson and one shall be designated as the vice chairperson.

''(ii) Four representatives of State government, two of which shall be governors of States and two of which shall be State legislators, and two of which shall be Democrats and two of which shall be Republicans.

''(iii) Four representatives of health insurers, of which one shall represent insurers that offer coverage in the small group market, one shall represent insurers that offer coverage in the large group market, one shall represent insurers that offer coverage in the individual market, and one shall represent carriers operating in a regional market.

''(iv) Two representatives of insurance agents and brokers.

''(v) Two independent representatives of the American Academy of Actuaries who have familiarity with the actuarial methods applicable to health insurance.

''(B) EX OFFICIO MEMBER.—A representative of the Secretary shall serve as an ex officio member of the Board.

''(3) ADVISORY PANEL.—The Secretary shall establish an advisory panel to provide advice to the Board, and shall appoint its members after considering the recommendations of professional organizations representing the entities and constituencies identified in this paragraph:

''(A) Two representatives of small business health plans.

''(B) Two representatives of employers, of which one shall represent small employers and one shall represent large employers.

''(C) Two representatives of consumer organizations.

''(D) Two representatives of health care providers.

''(4) QUALIFICATIONS.—The membership of the Board shall include individuals with national recognition for their expertise in health finance and economics, actuarial science, health plans, providers of health services, and other related fields, who provide a mix of different professionals, broad geographic representation, and a balance between urban and rural representatives.

''(5) ETHICAL DISCLOSURE.—The Secretary shall establish a system for public disclosure by members of the Board of financial and other potential conflicts of interest relating to such members. Members of the Board shall be treated as employees of Congress for purposes of applying title I of the Ethics in Government Act of 1978 (Public Law 95–521).

''(6) DIRECTOR AND STAFF.—Subject to such review as the Secretary deems necessary to assure the efficient administration of the Board, the chair and vice-chair of the Board may—

''(A) employ and fix the compensation of an Executive Director (subject to the approval of the Comptroller General) and such other personnel as may be necessary to carry out its duties (without regard to the provisions of title 5, United States Code, governing appointments in the competitive service);

''(B) seek such assistance and support as may be required in the performance of its duties from appropriate Federal departments and agencies;

''(C) enter into contracts or make other arrangements, as may be necessary for the conduct of the work of the Board (without regard to section 3709 of the Revised Statutes (41 U.S.C. 5));

''(D) make advance, progress, and other payments which relate to the work of the Board;

''(E) provide transportation and subsistence for persons serving without compensation; and

''(F) prescribe such rules as it deems necessary with respect to the internal organization and operation of the Board.

''(7) TERMS.—The members of the Board shall serve for the duration of the Board. Vacancies in the Board shall be filled as needed in a manner consistent with the composition described in paragraph (2).

''(b) DEVELOPMENT OF HARMONIZED STANDARDS.—

''(1) IN GENERAL.—In accordance with the process described in subsection (c), the Board shall identify and recommend nationally harmonized standards for each of the following process categories:

''(A) FORM FILING AND RATE FILING.—Form and rate filing standards shall be established which promote speed to market and include the following defined areas for States that require such filings:

''(i) Procedures for form and rate filing pursuant to a streamlined administrative filing process.

''(ii) Timeframes for filings to be reviewed by a State if review is required before they are deemed approved.

''(iii) Timeframes for an eligible insurer to respond to State requests following its review.

''(iv) A process for an eligible insurer to self-certify.

''(v) State development of form and rate filing templates that include only non-preempted State law and Federal law requirements for eligible insurers with timely updates.

''(vi) Procedures for the resubmission of forms and rates.

''(vii) Disapproval rationale of a form or rate filing based on material omissions or violations of non-preempted State law or Federal law with violations cited and explained.

''(viii) For States that may require a hearing, a rationale for hearings based on violations of non-preempted State law or insurer requests.

''(B) MARKET CONDUCT REVIEW.—Market conduct review standards shall be developed which provide for the following:

''(i) Mandatory participation in national databases.

''(ii) The confidentiality of examination materials.

''(iii) The identification of the State agency with primary responsibility for examinations.

''(iv) Consultation and verification of complaint data with the eligible insurer prior to State actions.

''(v) Consistency of reporting requirements with the recordkeeping and administrative practices of the eligible insurer.

''(vi) Examinations that seek to correct material errors and harmful business practices rather than infrequent errors.

''(vii) Transparency and publishing of the State's examination standards.

''(viii) Coordination of market conduct analysis.

''(ix) Coordination and nonduplication between State examinations of the same eligible insurer.

''(x) Rationale and protocols to be met before a full examination is conducted.

''(xi) Requirements on examiners prior to beginning examinations such as budget planning and work plans.

''(xii) Consideration of methods to limit examiners' fees such as caps, competitive bidding, or other alternatives.

''(xiii) Reasonable fines and penalties for material errors and harmful business practices.

''(C) PROMPT PAYMENT OF CLAIMS.—The Board shall establish prompt payment standards for eligible insurers based on standards similar to those applicable to the Social Security Act as set forth in section 1842(c)(2) of such Act (42 U.S.C. 1395u(c)(2)). Such prompt payment standards shall be consistent with the timing and notice requirements of the claims procedure rules to be specified under subparagraph (D), and shall include appropriate exceptions such as for fraud, nonpayment of premiums, or late submission of claims.

''(D) INTERNAL REVIEW.—The Board shall establish standards for claims procedures for eligible insurers that are consistent with the requirements relating to initial claims for benefits and appeals of claims for benefits under the Employee Retirement Income Security Act of 1974 as set forth in section 503 of such Act (29 U.S.C. 1133) and the regulations thereunder.

''(2) RECOMMENDATIONS.—The Board shall recommend harmonized standards for each element of the categories described in subparagraph (A) through (D) of paragraph (1) within each such market. Notwithstanding the previous sentence, the Board shall not recommend any harmonized standards that disrupt, expand, or duplicate the benefit, service, or provider mandate standards provided in the Benefit Choice Standards pursuant to section 2922(a).

''(c) PROCESS FOR IDENTIFYING HARMONIZED STANDARDS.—

''(1) IN GENERAL.—The Board shall develop recommendations to harmonize inconsistent State insurance laws with respect to each of the process categories described in subparagraphs (A) through (D) of subsection (b)(1).

''(2) REQUIREMENTS.—In adopting standards under this section, the Board shall consider the following:

''(A) Any model acts or regulations of the National Association of Insurance Commissioners in each of the process categories described in subparagraphs (A) through (D) of subsection (b)(1).

''(B) Substantially similar standards followed by a plurality of States, as reflected in existing State laws, relating to the specific process categories described in subparagraphs (A) through (D) of subsection (b)(1).

''(C) Any Federal law requirement related to specific process categories described in subparagraphs (A) through (D) of subsection (b)(1).

''(D) In the case of the adoption of any standard that differs substantially from those referred to in subparagraphs (A), (B), or (C), the Board shall provide evidence to the Secretary that such standard is necessary to protect health insurance consumers or promote speed to market or administrative efficiency.

''(E) The criteria specified in clauses (i) through (iii) of subsection (d)(2)(B).

''(d) RECOMMENDATIONS AND CERTIFICATION BY SECRETARY.—

''(1) RECOMMENDATIONS.—Not later than 18 months after the date on which all members of the Board are selected under subsection (a), the Board shall recommend to the Secretary the certification of the harmonized standards identified pursuant to subsection (c).

''(2) CERTIFICATION.—

''(A) IN GENERAL.—Not later than 120 days after receipt of the Board's recommendations under paragraph (1), the Secretary shall certify the recommended harmonized standards as provided for in subparagraph

(B), and issue such standards in the form of an interim final regulation.

''(B) CERTIFICATION PROCESS.—The Secretary shall establish a process for certifying the recommended harmonized standard, by category, as recommended by the Board under this section. Such process shall—

''(i) ensure that the certified standards for a particular process area achieve regulatory harmonization with respect to health plans on a national basis;

''(ii) ensure that the approved standards are the minimum necessary, with regard to substance and quantity of requirements, to protect health insurance consumers and maintain a competitive regulatory environment; and

''(iii) ensure that the approved standards will not limit the range of group health plan designs and insurance products, such as catastrophic coverage only plans, health savings accounts, and health maintenance organizations, that might otherwise be available to consumers.

''(3) EFFECTIVE DATE.—The standards certified by the Secretary under paragraph (2) shall be effective on the date that is 18 months after the date on which the Secretary certifies the harmonized standards.

''(e) TERMINATION.—The Board shall terminate and be dissolved after making the recommendations to the Secretary pursuant to subsection (d)(1).

''(f) ONGOING REVIEW.—Not earlier than 3 years after the termination of the Board under subsection (e), and not earlier than every 3 years thereafter, the Secretary, in consultation with the National Association of Insurance Commissioners and the entities and constituencies represented on the Board and the Advisory Panel, shall prepare and submit to the appropriate committees of Congress a report that assesses the effect of the harmonized standards on access, cost, and health insurance market functioning. The Secretary may, based on such report and applying the process established for certification under subsection (d)(2)(B), in consultation with the National Association of Insurance Commissioners and the entities and constituencies represented on the Board and the Advisory Panel, update the harmonized standards through notice and comment rulemaking.

''(g) PUBLICATION.—

''(1) LISTING.—The Secretary shall maintain an up to date listing of all harmonized standards certified under this section on the Internet website of the Department of Health and Human Services.

''(2) SAMPLE CONTRACT LANGUAGE.—The Secretary shall publish on the Internet website of the Department of Health and Human Services sample contract language that incorporates the harmonized standards certified under this section, which may be used by insurers seeking to qualify as an eligible insurer. The types of harmonized standards that shall be included in sample contract language are the standards that are relevant to the contractual bargain between the insurer and insured.

''(h) STATE ADOPTION AND ENFORCEMENT.—Not later than 18 months after the certification by the Secretary of harmonized standards under this section, the States may adopt such harmonized standards (and become an adopting State) and, in which case, shall enforce the harmonized standards pursuant to State law.

''SEC. 2933. APPLICATION AND PREEMPTION.

''(a) SUPERCEDING OF STATE LAW.—

''(1) IN GENERAL.—The harmonized standards certified under this subtitle shall supersede any and all State laws of a non-adopting State insofar as such State laws relate to the areas of harmonized standards as applied to an eligible insurer, or health insurance coverage issued by a eligible insurer, including with respect to coverage issued to a small business health plan, in a nonadopting State.

''(2) NONADOPTING STATES.—This subtitle shall supersede any and all State laws of a nonadopting State (whether enacted prior to or after the date of enactment of this title) insofar as they may—

''(A) prohibit an eligible insurer from offering, marketing, or implementing health insurance coverage consistent with the harmonized standards; or

''(B) have the effect of retaliating against or otherwise punishing in any respect an eligible insurer for offering, marketing, or implementing health insurance coverage consistent with the harmonized standards under this subtitle.

''(b) SAVINGS CLAUSE AND CONSTRUCTION.—

''(1) NONAPPLICATION TO ADOPTING STATES.—Subsection (a) shall not apply with respect to adopting States.

''(2) NONAPPLICATION TO CERTAIN INSURERS.—Subsection (a) shall not apply with respect to insurers that do not qualify as eligible insurers who offer health insurance coverage in a nonadopting State.

''(3) NONAPPLICATION WHERE OBTAINING RELIEF UNDER STATE LAW.—Subsection (a)(1) shall not supercede any State law of a nonadopting State to the extent necessary to permit individuals or the insurance department of the State (or other State agency) to obtain relief under State law to require an eligible insurer to comply with the harmonized standards under this subtitle.

''(4) NO EFFECT ON PREEMPTION.—In no case shall this subtitle be construed to limit or affect in any manner the preemptive scope of sections 502 and 514 of the Employee Retirement Income Security Act of 1974. In no case shall this subtitle be construed to create any cause of action under Federal or State law or enlarge or affect any remedy available under the Employee Retirement Income Security Act of 1974.

''(c) EFFECTIVE DATE.—This section shall apply beginning on the date that is 18 months after the date on harmonized standards are certified by the Secretary under this subtitle.

''SEC. 2934. CIVIL ACTIONS AND JURISDICTION.

''(a) IN GENERAL.—The district courts of the United States shall have exclusive jurisdiction over civil actions involving the interpretation of this subtitle.

''(b) ACTIONS.—An eligible insurer may bring an action in the district courts of the United States for injunctive or other equitable relief against any officials or agents of a nonadopting State in connection with any conduct or action, or proposed conduct or action, by such officials or agents which violates, or which would if undertaken violate, section 2933.

''(c) DIRECT FILING IN COURT OF APPEALS.—At the election of the eligible insurer, an action may be brought under subsection (b) directly in the United States Court of Appeals for the circuit in which the nonadopting State is located by the filing of a petition for review in such Court.

''(d) EXPEDITED REVIEW.—

''(1) DISTRICT COURT.—In the case of an action brought in a district court of the United States under subsection (b), such court shall complete such action, including the issuance of a judgment, prior to the end of the 120-day period beginning on the date on which such action is filed, unless all parties to such proceeding agree to an extension of such period.

''(2) COURT OF APPEALS.—In the case of an action brought directly in a United States Court of Appeal under subsection (c), or in the case of an appeal of an action brought in a district court under subsection (b), such Court shall complete all action on the petition, including the issuance of a judgment, prior to the end of the 60-day period beginning on the date on which such petition is filed with the Court, unless all parties to such proceeding agree to an extension of such period.

''(e) STANDARD OF REVIEW.—A court in an action filed under this section, shall render a judgment based on a review of the merits of all questions presented in such action and shall not defer to any conduct or action, or proposed conduct or action, of a nonadopting State.

''SEC. 2935. AUTHORIZATION OF APPROPRIATIONS; RULE OF CONSTRUCTION.

''(a) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this subtitle.

''(b) HEALTH SAVINGS ACCOUNTS.—Nothing in this subtitle shall be construed to inhibit the development of health savings accounts pursuant to section 223 of the Internal Revenue Code of 1986.''.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to hold a hearing during the session of the Senate on Wednesday, January 24, 2007, at 10 a.m. in room SR–253 of the Russell Senate Office Building.

The purpose of the hearing is to evaluate the state of the airline industry, and the potential impacts of airline mergers and industry consolidation.

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

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to hold a hearing during the session of the Senate on Wednesday, January 24, 2007, at 9:45 a.m. in room SD–366 of the Dirksen Senate Office Building

The purpose of the hearing is to receive testimony on analysis recently completed by the Energy Information Administration, Energy Market and Economic Impacts of a Proposal to Reduce Greenhouse Gas Intensity with a Cap and Trade System.

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

COMMITTEE ON FINANCE

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session on Wednesday, January 24, 2007, at 10 a.m., in 215 Dirksen Senate Office Building, to consider the nomination of Michael J. Astrue, to be Commissioner of Social Security.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate

on Wednesday, January 24, 2007, at 9 a.m. to hold a business meeting in 216 of the Hart Senate Office Building to consider Senate Concurrent Resolution 2, a concurrent resolution expressing the bipartisan resolution on Iraq.

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

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Health, Education, Labor, and Pensions meet in executive session during the session of the Senate on Wednesday, January 24, 2007 at 10 a.m. in SD–430.

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

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Homeland Security and Governmental Affairs be authorized to meet on Wednesday, January 24, 2007, at 10 a.m. for a business meeting to consider pending committee business.

Agenda

(1) Funding resolution.

(2) Rules of procedure of the Committee on Homeland Security and Governmental Affairs.

(3) Appointment of subcommittee chairmen and ranking members.

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

PRIVILEGES OF THE FLOOR

Mrs. MURRAY. I ask unanimous consent that Janice Camp be granted the privileges of the floor for the duration of this session of Congress.

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

ORDER OF PROCEDURE

Mr. REID. Mr. President, I ask unanimous consent that tomorrow, following the prayer and the pledge, the Senate resume consideration of H.R. 2; that the Senate then resume consideration of the DeMint amendment No. 158; that there be a time limitation prior to a vote in relation to the amendment of 1 hour, equally divided between Senators KENNEDY and DEMINT; that no amendments to the amendment be in order prior to a vote in relation to the amendment; and that at the conclusion or yielding back of the time, the Senate vote in relation to the amendment.

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

PROGRAM

Mr. REID. Mr. President, we are working with the Republican leader's staff to arrange for votes throughout tomorrow's session in relation to several amendments. So Members should be on notice there will be a vote at approximately 10:30 tomorrow morning, and there will be other votes throughout the day.

I would say that we have five or six amendments all teed up to vote on. We have a few more things—we have one we thought we could vote on in the morning, but we could not get the person offering the amendment on the minority side to allow us to go forward. We hope we can work that out either later tonight or in the morning.

We would like to move through this bill, but we cannot do that unless people are willing to let us vote on their amendments. So after the vote tomorrow at 10:30, hopefully we will have more to tell the body as to what votes have been able to be lined up for later in the day.

Everyone should know that it is unlikely there will be any votes from about 1 to 2 o'clock tomorrow. Other than that, everything is fair game.

ORDERS FOR THURSDAY, JANUARY 25, 2007

Mr. REID. I ask unanimous consent that when the Senate completes its business today, it stand adjourned until 9:30 a.m., Thursday, January 25; that on Thursday, following the prayer and pledge, the Journal of proceedings be approved to date, the morning hour be deemed expired, the time for the two leaders be reserved for their use later in the day, and the Senate then resume consideration of H.R. 2, as provided under the previous order.

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

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. REID. If there is no further business to come before the Senate, I ask unanimous consent that the Senate stand adjourned under the previous order.

There being no objection, the Senate, at 7:44 p.m., adjourned until Thursday, January 25, 2007, at 9:30 a.m.