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# Senate

The Senate met at 9:45 a.m. and was called to order by the Honorable DAVID VITTER, a Senator from the State of Louisiana.

## PRAYER

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

Let us pray.

Eternal Spirit, who makes us one, Your word informs us that a house divided against itself cannot stand. As the Members of this body face divisive issues, give them the wisdom to find creative ways of maintaining unity. In these uncertain times, help them to avoid the slippery slope of disunity. Remind them that pride comes before destruction and a haughty spirit before a fall. Teach each of us that before honor is humility and that losing one's life for a just cause is the best way to find it.

Lord, permit the powerful forces that unite us to overcome the feeble winds that divide. Transform cacophony into harmony. We pray in the Name of the Prince of Peace. Amen.

## PLEDGE OF ALLEGIANCE

The Honorable DAVID VITTER led the Pledge of Allegiance, as follows:

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

## APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
*Washington, DC, May 17, 2005.*

*To the Senate:*

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable DAVID VITTER, a Senator from the State of Louisiana, to perform the duties of the Chair.

TED STEVENS,
*President pro tempore.*

Mr. VITTER thereupon assumed the Chair as Acting President pro tempore.

## RESERVATION OF LEADER TIME

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

## RECOGNITION OF THE MAJORITY LEADER

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

## SCHEDULE

Mr. FRIST. Mr. President, today, we will start the session with a 1-hour period of morning business. Following that period, we will resume the highway bill for the final 30 minutes of debate. At the conclusion of those remarks, we will begin a series of debates on any of the remaining pending amendments. It is my understanding that several of the amendments will not require rollcalls; therefore, we expect three or four votes, including final passage.

We will be recessing today from 12:30 to 2:15 for the weekly policy luncheons. We will be talking to the managers shortly, but I would expect we would be able to, starting at around 11:30 or noon today, do at least a couple of those votes, and then, following the luncheons, complete the bill.

Mr. President, tomorrow I expect the Senate will begin consideration of some of the judicial nominations that have been available on the Executive Calendar, as we determine specifically the plans for tomorrow. But we will be going by regular order tomorrow, taking one of the nominees from the Executive Calendar. But over the course of the day, we will come back and be more specific with those announcements, after discussion with the Democratic leader.

## JORDAN

Mr. FRIST. Mr. President, for the past week, I have come to the Senate floor to briefly discuss my recent fact-finding mission to the Middle East, having had the opportunity to travel to Israel, the West Bank, Egypt, Lebanon, and Jordan 2 weeks ago.

I will conclude these Mideast reports with a very brief discussion of my time in Jordan.

We began the Jordan leg of our trip with a visit to King Abdullah. Son of the much admired King Hussein, King Abdullah has been a trusted and valuable friend to the United States and a steadfast partner in the war on terrorism.

We discussed Jordan's progress toward economic reform. Jordan is embarking upon free market reforms and encouraging the growth of small business and entrepreneurs. We know in the American experience that entrepreneurship is that engine of economic and job growth. I am encouraged by the progress that King Abdullah is making, and I am hopeful the Jordanian economy flourishes. As it does so, it will become a model of reform throughout the Middle East.

We also talked about the importance of the U.S.-Jordanian partnership in the peace process. King Abdullah's father exhibited great courage and foresight as he led his nation to peace with Israel in the 1990s.

Because of Jordan's relations with Israel and its special ties to the Palestinians, Jordan can be a substantial contributor to the peace process. By coordinating our efforts, I believe Jordan and the United States can help the parties build momentum toward a peaceful resolution.

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

During a dinner meeting with King Abdullah, we were joined by Jim Wolfenson, the former head of the World Bank. Dr. Wolfenson was recently selected, as my colleagues know, by President Bush to handle the upcoming Israeli withdrawal from the Gaza Strip, focusing on the quartet of partners and building the appropriate support. I applaud the President for his choice in this emissary. Not only is Dr. Wolfenson eminently capable, but he knows many of the important players directly, professionally, and personally, and he appreciates the stakes and I am confident he can get the job done.

Dr. Wolfenson understands the transition must go well. If it does not, violent unrest and instability could destroy this, what I believe is a historic chance for peace. The Jordanians have been an invaluable partner in Operation Enduring Freedom. They have made tremendous contributions to the Iraqi people's efforts to secure a free and prosperous Iraq.

We have witnessed the extraordinary bravery of the Iraqis at the polling booths and at the police recruitment centers. They have been willing to defy the terrorists and assume an active role in securing democracy.

Many of those courageous Iraqis are acquiring the training and skills needed to defend their country by completing a security course and police training regimen in Jordan.

We had the opportunity, while in Jordan, to visit the Jordan-Iraq Police Training Center, a truly unique effort where 16 countries have come together, including the United States, Jordan, Britain, Canada, Finland, and others, to train the Iraqi security force—to train the Iraqi police. The director of the facility is John Moseby, a highly qualified veteran of the U.S. Air Force.

The center's goal in Jordan is to train 32,000 Iraqi police by December 2005. Already, the center has graduated over 15,000 recruits, who have gone back to Iraq to serve in security positions. There are currently 40 Iraqi trainers at the site in Jordan, and the center hopes to add another 60. It sits on about 450 acres and can train about 3,500 cadets per session.

I wanted to go to the Jordan-Iraq Police Training Center to see firsthand how those exercises are conducted because there has been some question in the past as to the adequacy and the quality of that training. Having had the opportunity to meet the cadets, both an incoming class and classes that were leaving, viewing many of the exercises, viewing, with the leaders there, the commitment to a quality curriculum, I am very reassured they are doing an outstanding job in training those Iraqi recruits to go back and keep their communities and their streets safe.

The Iraqi cadets told us of their hope and appreciation for America's help in building a new Iraq. I am confident that by their courage and their commitment, freedom will prevail in Iraq and the dark forces that now threaten their country will be defeated.

The trip throughout the Middle East was fascinating and informative. We met many vibrant and thoughtful people. Again and again, you hear, throughout all the countries, this expressed hope, the universal dream of hope that the people of the Middle East will one day be truly free—free from violence and oppression, free to express their will through democratically elected leaders, free to express themselves in the town square without fear of violence or terrorism.

I do applaud President Bush for his vision and for his unwavering belief in the dignity and rights of all people. From Darfur to Damascus, from Baghdad to Beirut, liberty is the hope of mankind.

Here in the Senate, I encourage and urge my colleagues to continue to do our part to ensure that these principles help shape the future of the Middle East. I believe together, with our partners around the globe, we can spread prosperity and peace. I believe it is the only way.

Mr. President, I yield the floor.

## RECOGNITION OF THE MINORITY LEADER

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

## ISRAEL

Mr. REID. Mr. President, I have listened to the leader's statements these past days on his trip to the Middle East. It is a fascinating place. I returned about a month ago myself. But the one thing that I always see in the Middle East is this tiny, little State of Israel, surrounded by these other countries that are about as undemocratic as a country could be.

Israel is a democracy. Every day we hear about what is going on in the Middle East, we should realize that. Israel has risen above this. They maintain their democratic principles in spite of the violence that is going on, on a daily basis, in that part of the world.

## JUDICIAL NOMINATIONS

Mr. REID. Mr. President, yesterday afternoon the majority leader and I met one last time trying to reach a compromise that would avert the so-called nuclear option. The so-called nuclear option is nothing that we named. I know for cosmetic purposes those in the majority now have tried to call it a ''constitutional option,'' which must be directly out of Orwell's book ''1984'' because it means everything but a constitutional option. The name came from the Republican leadership last year. So the ''nuclear option'' is a name from the majority, not us.

I do not know if they met with my friend, Frank Luntz, or with whom they met to change the name from ''nuclear option'' to a softer sounding proposal, ''constitutional option.'' As I said, violating 217 years of standard procedure in the Senate, changing the rules by breaking the rules, is about as far as you could get from a constitutional option.

But it appears that my distinguished friend, the majority leader, cannot accept any solution which does not guarantee all current and future judicial nominees an up-or-down vote. That result is unacceptable to me because it is inconsistent with constitutional checks and balances. It would essentially eliminate the role of the Senate minority in confirming judicial nominations and turn the Senate into a rubber stamp for the President's choices. In fact, the majority should look carefully at what they are getting because not only would this eliminate the role of the Senate's minority but also the majority in judicial confirmations. The majority would be eliminated, too. The Senate would no longer have a role.

I can only conclude that the true purpose of the nuclear option is not to win confirmation of some or all of the small handful of nominees Democrats filibustered last year. Remember, today it stands at 208 to 10. And focusing on the number 10 is somewhat misleading because of the 10, 3 have either withdrawn or retired. And we have said, time and time again, that 2 of the remaining 7 we would agree to 10 minutes from now—2 Michigan judges. So it is really 208 to 5—208 to 5.

So the goal, it appears to me, of the Republican leadership—and note I do not say of the mainstream Republicans in this country, I do not say of the Republicans in the Senate—but, rather, the goal of the Republican leadership in this body and their allies in the White House is to pave the way for the future, so that the Senate would basically be eliminated from the confirmation process. They don't want consensus, they want confrontation.

Yesterday, after rejecting our last attempt at a compromise, the majority leader issued a statement. In this statement, the majority leader said there is going to be an upcoming debate over judicial nominations, and he said he hoped the upcoming debate is free from ''procedural gimmicks like the filibuster.'' That is a quote: ''procedural gimmicks like the filibuster,'' ''procedural gimmicks like the filibuster.''

We had a freshman Senator go to the Middle East and tell the leader of Iraq that the United States was different than any other country in the world because of the filibuster—a Republican Senator. A gimmick?

The filibuster is not a procedural gimmick. The filibuster is an important check on executive power and part of every Senator's right to free speech in the Senate. ROBERT BYRD, on Thursday, from this desk right behind mine, talked about free speech.

Senator ROBERT BYRD has been in the Senate for approximately 25 percent of

the time this country has existed. I should say in the Congress—47 years in the Senate, 6 years in the House of Representatives—more than 50 years, approximately 25 percent of the time that we have been a country. He should know something about free speech. He was here on the Senate floor when the great Margaret Chase Smith, a Republican Senator from Maine, talked about the value of free speech in the Senate. He was in the Senate when the Republican Howard Baker talked about the importance of the filibuster in protecting our democracy. A gimmick? I think not.

Senator BYRD was in the Senate when the debate over civil rights took place. I heard BARACK OBAMA upstairs with the press corps say: Isn't it interesting, the filibuster was used against African Americans but they worked around it and prevailed in spite of it. They didn't move to change the rules in the middle of the game.

Senator ROBERT BYRD was here when DAN INOUYE, the Medal of Honor winner from Hawaii, a new Senator, came to the floor, and as an Asian American whose friends and family were put in internment camps during the Second World War, spoke on the Senate floor about what it means to be a minority and how the filibuster should be available to protect the minority. A gimmick? I think not.

Over the years, the filibuster has proven to be an important tool of moderation and consensus, which partly explains why the Republican leadership is opposed to it. They aren't interested in moderation. They are only interested in advancing their right-wing, radical political agenda, an agenda being driven by the people who are saying we are filibustering against people of faith.

Mr. President, every day—for 23 years—with rare exception, I go to the House gym and work out. There I met Congressman RUSH HOLT. He is a nuclear scientist, a Congressman from New Jersey. RUSH's father, also named Rush Holt, served in this Chamber in the late 1930s. As a freshman United States Senator, he led a filibuster to preserve wage and hour protections for American workers. RUSH HOLT, Jr., is so proud of his father. He talked to me about the pride he had in his father being a United States Senator, and he told me this story about the filibuster his father conducted alone to preserve wage and hour protections that had come about as part of the New Deal. He wasn't using a political gimmick. He was using something that was part of the vision of our Founding Fathers, something they wanted in this body to make it unique and different—free speech. An important tool to stand up for working men and women in this country, that is what Senator Rush Holt, Sr., was using.

Of course, the filibuster has not always been used for good. I acknowledge that. Just as it has been used to bring about social change, it was also used to stall progress—I have talked about that—things this country needed to change, such as civil rights legislation.

But Senator BARACK OBAMA speaks in favor of the filibuster. He understands, as an African American, why it is important. But at these times people have spoken and public opinion has spurred this Chamber into action, as indicated, it brings about compromise. So you see the filibuster is not a political gimmick. It is part of the fabric of this institution we call the Senate, the greatest debating society in the world—or at least it has been so far. Is that going to be taken away from us?

While I was in the gym this morning, Mr. President, I was stopped by a Republican House Member. I will not name him for fear the Republican leadership in the House will remove him from a subcommittee or whatever they do to punish people over there, and we know that happens. But everyone within the sound of my voice should know that I am telling the truth. A Republican House Member came to me this morning and said: I never thought I would say this to the Democratic leader of the Senate, but I am praying for you, that you prevail in this battle going on in the Senate. A Republican House Member is praying for me and this institution to maintain the institution as it is.

So as the moment of truth draws near, I, too, am praying, Mr. President. I do not say that lightly. I pray that cooler heads will prevail and the responsible Republicans—and they are there, I know they are there—such as this Congressman who spoke to me this morning, will join Democrats in standing up against this abuse of power, to maintain our checks and balances, to maintain the separation of powers that has made this country the power that it is, one that the world looks upon with awe, inspiration and admiration.

## MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will be a period for the transaction of morning business of up to 60 minutes, with the first half of the time under the control of the Democratic leader or his designee and the second half of the time under the control of the majority leader or his designee.

The Senator from Washington is recognized.

Mrs. MURRAY. I thank the Chair.

## JUDICIAL NOMINATIONS

Mrs. MURRAY. Mr. President, we awoke today to see news of a breakdown in negotiations to end the so-called nuclear confrontation that some Republicans are driving this body toward.

I want to take a minute to thank our leader, Senator REID, who I believe is really doing his best to preserve the tradition and the precedent of the Senate through good-faith negotiations. He put forth a good-faith compromise proposal only to see it rejected out of hand. This breakdown really marks a sad day for this body.

More than 200 years ago, the Senate was created as part of the Great Compromise, and for the balance of those 200 years, compromise has been central to any and all of the great work that has been completed by the Senate. The rules are set up here to assure that the Senate serves as a center for Government compromise. We have a system of checks and balances, with the Senate checking the President through advice and consent and the President checking the Congress with the use of the veto. And all the while we have an independent judiciary that is empowered to balance out the system. Those checks and balances were put in place for a reason. They promote compromise, they promote preservation of minority rights, and they ensure that our system of government works for all of the people. Unfortunately, the goal of some becomes clearer each passing day in this body that they are not interested in compromise on the so-called nuclear option. If this Senate does remove the last check in Washington against an abuse of power, the majority will be able to appoint to lifetime seats on the Supreme Court and the Federal bench anyone they want.

The American people have rejected court packing before and I believe they will again. We are united against the abuse of power known as this nuclear option. We believe that Senators were sent here to serve all Americans, not to promote political agendas of one faction. Mr. President, Democrats will join responsible Republicans to fight this abuse of power and get back to the real work of the American people.

## 25TH ANNIVERSARY OF THE MOUNT ST. HELENS ERUPTION

Mrs. MURRAY. Mr. President, I rise today with my colleague from Washington State to very proudly mark the 25th anniversary of the day that Mount St. Helens erupted in my home State of Washington and will be joining with her later to offer a resolution to commemorate this anniversary.

For anyone who lived in the Pacific Northwest at the time, May 18, 1980, is a day we will never forget. It was a day that changed lives and it changed the landscape of Washington State forever. It was also a day that imposed a heavy toll in lost lives and lost habitat. Fifty-seven people were killed that day. More than 230 acres of forest were leveled in an instant.

Mr. President, the story of Mount St. Helens is a story of destruction, but it is also a story of renewal, a story of science, and a story of the importance of preparation. Today I rise to share that story and the lessons that it holds for us now 25 years later.

Perhaps the best place to start really is the day before the eruption, when Mount St. Helens was really a beautiful and striking feature of landscape

in the State that I was born and raised in.

This photo behind me shows what the mountain looked like before the eruption. As you can see, it had a nearly perfect dome, and it was recognized as one of the most symmetrical mountains in the world. It was surrounded by lush forests and beautiful streams and rivers and lakes and the area was filled with wildlife of all kinds. But danger lurked right beneath that tranquil landscape.

May 8, 1980, began as a beautiful, sunny morning in the Northwest. I remember it well, sitting at home with my two young children at the time. Meanwhile, below the surface, Mount St. Helens was anything but calm. At 8:32 a.m, a 5.1-magnitude earthquake occurred, and that sparked massive eruptions which would last for 9 hours. This photo shows some of what followed. Within minutes, this massive cloud of ash and toxic gas spouted 15 miles into the air. You could see it from many places in my State. A 300-mile-per-hour blast shot from the mountain, knocking down all of the evergreen stands as if they were matchsticks. The entire north face of the mountain gave way to this massive mud slide, and that mud slide carried hot water and debris that it picked up over the surrounding landscape.

The eruption itself released 24 megatons of energy. It destroyed all forms of life within the 18-mile blast zone, including roughly 7,000 bear, elk, and deer. The scope of this devastation on that day was enormous. The hot ash from this eruption, combined with the melting snow at the mountain top, created massive mud flows. This was not just a local event. More than 500 million tons of that ash was blown eastward across the United States 250 miles away in Spokane, WA. That traveling ash turned day into night for everyone who was there, and by June, a few months later, ash could be found from Mount St. Helens on the other side of the world.

As we now mark the 25th anniversary, I wanted to come here to the floor today with my colleague from Washington State, Senator CANTWELL, to pay tribute to the 57 men and women who died on that day. Some of them were there enjoying the area's beautiful scenery, some were drawn to the mountain for scientific study, and others were long-time residents who lived there who refused to give up the only homes they had ever known.

When that dust settled and the mountain quieted, nearly 150,000 acres of public and private land had been destroyed.

This photo behind me shows some of that destruction. That stand of trees was blown down in an instant. The mountain's nearly perfect dome was turned into a crater. The Toutle River, which had been vibrant and green before, a great place in my State, was now a dark, gray expanse.

Then President Jimmy Carter toured the site and later remarked:

Someone said this area looked like a moonscape. But the Moon looks more like a golf course compared to what's up there.

Everyone knew that wildlife restoration would be a major challenge. Within weeks of the eruption, however, many dedicated foresters and biologists returned to the area to assess the damages and help with the recovery. One of the strongest leaders in this revitalization has been the Weyerhaeuser Company. It lost nearly 68,000 acres of forest that day, making the company the largest private landowner impacted by this eruption. The company was able to replant over 45,000 acres with over 18 million seedlings. Weyerhaeuser has been committed to restoring the area through sustainable forestry. Now, 25 years later, many of those trees they planted in the wake of the eruption are now amazingly ready for thinning, and final harvesting will begin in another 20 years which will pave the way for the forest cycle to recommence. The U.S. Forest Service made similar efforts. On 14,000 acres of National Forest land, the Forest Service has planted nearly 10 million trees since 1980. In August of 1982, Congress established the 110,000-acre Mount St. Helens National Volcanic Monument.

The monument allows unhindered natural growth and serves as a resource for visitors and academics.

Within weeks of the eruption, signs of life literally sprouted through the layers of destruction.

As forests were replanted and vegetation again took root, the wildlife also began to return.

Roosevelt elk and Columbia black-tailed deer, for example, along with small birds and mammals, reestablished their habitats.

Today the area is a testament to the enduring circle of life, as green hills surround the crater, and blue waters flow through the valley once again.

As the ecosystem rebuilds, we are constantly reminded of the wealth of knowledge available from the monument itself.

Thousands of people have been drawn to the mountain to see the evidence of this power and to learn from its effects.

For many, the eruption sparked a new interest in the earth sciences.

It has provided new insight on seismology and volcanology, helping students and scientists to better understand the earth's natural movement.

Representatives of the U.S. Geological Survey have teamed with researchers at local and national universities to process the data and to continue monitoring movement beneath the ground.

Teachers from across the country have brought hundreds of student groups to the Forest Service's three visitor centers. There, students study the eruption and the reemerging wildlife.

Now what was once a bleak scene of destruction is now a living monument and an educational resource.

Although 25 years have passed, there is still much we can learn from the eruption of Mount St. Helens.

Just last fall, we were reminded that we haven't heard the last from this mountain.

After 18 years of relative quiet, a series of small quakes have occurred in October.

And in March, just 2 months ago—the mountain released a 36,000 foot plume of steam.

Today, inside the crater, the lava dome continues to grow. That is a sure sign that there is far more activity to come.

The most important lesson we can learn from the eruption is the need to improve our warning and response systems.

While we may never be able to fully protect surrounding communities, we can help reduce the risk.

For months before the 1980 blast, scientists from the USGS had monitored Mount St. Helens and were able to predict that an eruption was likely in the near future.

As a result, most people stayed away from the mountain. We must continue to support the efforts of the scientists and local officials who keep us all safe.

Unfortunately, according to a recent USGS report, monitoring of high-risk volcanoes in the U.S. leaves a lot to be desired. Of the 169 volcanoes, 55 qualify as being a ''high risk'' for eruption.

After Kilauea in Hawaii, Mount St. Helens ranks second on the list of high-risk peaks.

Mount Rainier, also in Washington State, is ranked third, followed by Mount Hood in Oregon and Mount Shasta in California.

Millions of people live near these mountains, making their monitoring and study a critical undertaking.

I want to personally commend the hundreds of dedicated scientists and local, state and federal officials who are keeping a close eye on these mountains in Washington State.

Their work is helping to ensure that the public is better prepared for any future disaster.

We can honor those who died 25 years ago by learning from the eruption and improving our ability to predict and respond to natural disasters.

While we have been fortunate not to have a major eruption in the U.S. since Mount St. Helens, the tsunami tragedy in Asia once again reminded us of the power of events beyond our control.

We know there is more to come, so together, I hope we make sure we are well-prepared, and our communities are well-protected.

My colleague from Washington State, Senator CANTWELL, is on the floor. I welcome her.

The ACTING PRESIDENT pro tempore. The Senator from Washington.

Ms. CANTWELL. Mr. President, I rise to join my colleague in the resolution commemorating the 25th anniversary of the eruption of Mount St. Helens. I thank my colleague for working on the resolution to commemorate this historic event. Not only for Washington State and the Northwest, but

for our country, May 18 marks an incredible landmark in time for people in the Northwest and certainly marks a critical response by our Federal Government. It also allows us to reflect on the progress we have made as a nation to develop a greater understanding about the more than 160 active volcanoes in the United States.

For over 100 years, Mount St. Helens stood in silence, a relatively dormant peak and serene part of the Pacific Northwest. But on the morning of May 18, 1980, Mount St. Helens erupted releasing a plume of ash that filled the sky, circling the Earth in just 15 days. The destructive eruption eviscerated everything in its path and tore through miles of trees.

Today, 25 years later, the effect of the 1980 eruption remains evident, and the rumbling of Mount St. Helens over the past several months reminds many of us, particularly in Washington State, of those events on May 18, 1980. The level of activity of Mount St. Helens, combined with the unpredictability of it, makes it very special for Washingtonians. We embrace the mountain's beauty but remain in profound respect of its power and weary of a repeat eruption similar to 1980.

What is important to understand is that Mount St. Helens, located 90 miles south of Seattle and 65 miles north of Portland, OR, when it exploded, released such hot steam that it actually melted 70 percent of the snow and ice on top of the mountain. To give you a sense of that enormity, Mount St. Helens was, prior to this, the ninth highest peak in the State of Washington. It has now been reduced about 1,300 feet. The avalanche that was created by that explosion was close to two-thirds of a cubic mile of debris. The Geological Survey estimates that would be enough to cover Washington, DC, in more than 14 feet of ash and mud. That is basically what the Northwest dealt with when this explosion happened in 1980. We saw flows of rock and ice covering various parts of the north fork of the Toutle River, debris running down those pathways wherever it could go. The eruption destroyed 27 bridges that were part of our highway structure, 200 hundred homes, 185 miles of roadway, and 15 miles of railway.

What is unique about this is that Congress responded. We responded because of the devastation to the physical and environmental infrastructure but also because of the loss of life. My colleague and I are here to commemorate those 57 Washingtonians who died in the incident, and one particular individual, David Johnston, who was with the U.S. Geological Survey. What this anniversary marks is the great strides we've made as a Nation to response to science in this area.

David Johnston, by comparison, in 1980 had been studying Mount St. Helens for many months. In fact, on the morning of the explosion, he was 6 miles away on what is now called Johnston Ridge. Many of my colleagues may, if they turned on the TV in the last several months to see rumblings of Mount St. Helens, seen many observers, and many members of the media stationed on Johnston Ridge. When Mount St. Helens erupted on that day, David Johnston, who was our monitoring system at Mount St. Helens only had an opportunity to say: Vancouver, this is it. And the eruption took his life.

Where we are today is that we have volcanologists, geologists, seismologists in what is a robust system of emergency response. The U.S. Geological Survey, the U.S. Forest Service, the Department of Interior, the National Guard and Federal Emergency Management Agency under the Department of Homeland Security, and the Cascade Volcanic Observatory in Vancouver, WA, all provide us with a much greater sense of what is going on with Mount St. Helens and what the emergency response should be in the event of a similar explosion.

My colleague mentioned that we have seen a lot of rumblings lately on Mount St. Helens, and certainly those eruptions have caused concern. But I think today's anniversary reminds us that as a nation we responded to this activity with a better warning system, and with a much better understanding of volcanic activity in the United States. With the 162 active volcanoes in the United States, we in the Northwest want to see good research on this. The fact that Mt. Rainier and other mountains are much closer to great population centers of Washington State is something for which we want to continue to have an investment in good science.

I join my colleague Senator MURRAY and thank her for commemorating the events of May 18, 1980, as a particular point in time for Washingtonians and for our country. But as I stated this commemoration is also significant because it speaks to the advancements in science that our country has achieved in better preparing to respond to this type of emergency. When I think about the science we have applied as it relates to volcano monitoring, I am confident that with similar activity and research as it relates to tsunami activity—something that also could greatly impact the Northwest—we can better prepare for an event of that nature as well. It gives me a great deal of hope that we will, through better mapping, through better geological information, better seismic information, provide Washingtonians with greater security and safety.

As most of my State will be seeing many pictures of the eruption in 1980, I thank my colleagues from past Congresses for their support in giving us a Cascade Volcanic Observatory in the State of Washington and for the work the men and women do in various Federal agencies that provide us better scientific information and a better warning systems for our country.

## SURFACE TRANSPORTATION

Ms. CANTWELL. Mr. President, I would like to take a moment to comment on the surface transportation act we are going to hopefully pass today and a particular provision that I was happy to work on with my colleagues Senators INOUYE, STEVENS, AND LOTT, regarding giving consumers better protection and accurate information about gasoline consumption. Americans today are facing a painful reality at the gas pump, so the least we can do is to make sure the mileage stickers on their cars match up with the reality of the road. That will help them and their families make better budget plans and make better choices when buying automobiles.

It is simply that we need to have truth in labeling for stickers on automobiles. But today gas mileage stickers that appear on cars basically inflate the true vehicle fuel economy performance by anywhere from 10 to 30 percent.

That is because the Federal Government laboratory tests, on which this outdated procedures rely, are false assumptions. For example, they assume people drive 48 miles per hour on the freeway, and they never use air conditioning. Obviously, a variety of other things that represent technology improvements have not been considered in this test. When a family is on a tight budget—and right now there are many Americans on a tight budget—getting accurate information about vehicle fuel efficiency is important.

The provisions of this bill that are included in the surface transportation act would direct EPA to issue a proposed rulemaking no later than the end of this year and complete the process within 18 months. What it would do is encourage the Government to take into account real-life conditions such as speed limits, acceleration rates, braking, variations of weather and temperature, vehicle load, and a variety of other fuel-consuming features.

It is important that we pass this kind of legislation. I know the American Automobile Association supports this legislation, as do many other residents throughout the country who are consumers making gas-conscious choices when they buy automobiles. We need to give them accurate information.

I am glad the truth in labeling amendment we offered will be included as part of the package of the surface transportation act and hopefully pass today.

I yield the floor.

I yield the floor.

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

Ms. STABENOW. Mr. President, I rise today in support of the Senate SAFETEA bill that is before us, the Transportation bill. I first want to thank my colleague from Washington State for her leadership on so many different issues, including provisions in the Transportation bill. I thank Senators INHOFE and JEFFORDS for drafting

a good bill for the country and a good bill for Michigan.

I am pleased the Senate is passing this critical bill today. Unfortunately, this has been delayed for over 20 months and Congress has passed six TEA–21 extensions. It is my hope that we will not have to pass a seventh and this bill will be completed before the end of the month. We have already lost one spring construction season in Michigan, and we certainly don't want to lose another.

During the budget debate, I worked with Senator TALENT on a successful amendment to help the Senate produce a well-funded highway bill and keep all the funding options on the table. This amendment was included in the final budget resolution, and I am pleased to say it helped pave the way for the additional $11 billion that was added to the Senate bill.

As my colleagues know, this bill isn't just about improving our roads, transit systems, and buses, but it is also about creating jobs. The Department of Transportation estimates that for every $1 billion of highway spending, we are creating 47,500 new jobs, and this generates more than $2 billion in economic activity.

Mr. President, we need this bill. Michigan needs this bill. Over the last 4 years, Michigan has lost jobs. The SAFETEA bill will create good-paying jobs and help thousands of Michigan families make ends meet. So it is absolutely critical we pass this bill today.

We are not talking about minimum-wage jobs, we are talking about well-paying jobs that help Michigan families pay their mortgages, save for retirement, and pay for their children's education. The SAFETEA bill will create over 59,000 jobs in Michigan alone.

Mr. President, this delay has also cost Michigan additional highway funding that we desperately need. Our communities are growing, congestion is getting worse, and our roads are worn down through increased wear and tear, but we are still working under funding formulas that are over 7 years old.

In fact, Detroit ranks ninth nationally for having the worst traffic congestion. That is even worse than the delays in Boston and Philadelphia.

The Senate bill would provide Michigan with over $6.65 billion in highway funding and $600 million in transit investment to help address our congested roads and increase bus service throughout our State. This also is desperately needed.

We cannot fix these problems without a well-funded highway bill. Unfortunately, the House TEA–LU doesn't provide the resources we need to address our aging roads and transit systems. This also would mean fewer jobs for Michigan and the country.

I also add that the Senate bill continues to move us forward for Michigan to get its fair share. We are not there in terms of dollar for dollar, and I will continue to fight in every Transportation bill until we get there. But we need to move forward so Michigan gets a better share in this bill and a better opportunity to have the resources and jobs we need.

As this bill goes to conference with the House, I urge my colleagues to stand behind the Senate bill. Once again, this Senate will be passing a bill that is better than what has been passed in the House. It is more fair. I am very hopeful we will stand together on a bipartisan basis and insist that the Senate version ultimately be the version that is passed.

We also need for the bill to be fair and for it to meet the needs of our communities, and we need to make sure we are creating as many jobs as possible. It is time to invest in the best possible resources for our Nation's transportation needs. I am pleased that because of the bipartisan effort in the Senate we will be having a vote today on final passage of this desperately needed bill. Hopefully, we will see it going to the President in a form that is fair for Michigan, for all of our States, and that it is something that will address the future needs of our country.

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

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

## UNANIMOUS CONSENT AGREEMENT—H.R. 3

Mr. INHOFE. Mr. President, I ask unanimous consent that the consecutive votes in relation to the pending amendments on the highway bill begin at noon today, with the additional time equally divided as before, and that no second-degree amendments be in order prior to the votes in relation to the pending amendments; provided, that following the first vote, the Senate then stand in recess as under the previous order, with the remaining votes occurring after the recess. I also ask unanimous consent that there be 2 minutes of debate equally divided before each of the votes in the stacked series.

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

### AMENDMENT NO. 706 WITHDRAWN

Mr. INHOFE. Mr. President, I ask unanimous consent that amendment No. 706 be withdrawn.

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

Mr. INHOFE. Mr. President, I further ask unanimous consent that following the first vote, Senator LANDRIEU be recognized for 5 minutes as in morning business prior to the recess.

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

Mr. INHOFE. I yield the floor.

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

## ASSEMBLY TO PROMOTE THE CIVIL SOCIETY IN CUBA

Mr. MARTINEZ. Mr. President, I rise today to discuss a very important sense-of-the-Senate resolution pending before the Senate. This resolution expresses support for a historic meeting taking place in Havana, Cuba, this Friday, May 20. It is called the Assembly to Promote the Civil Society in Cuba. This resolution expresses support for the courageous individuals who continue to fight for and advance liberty and democracy for the Cuban people.

I thank my colleague from Florida, Senator BILL NELSON, for partnering with me on this important effort. I also thank and commend the 23 other colleagues who have signed on to this bipartisan effort in cosponsoring this resolution.

For too long, the Cuban people have been starved of the precious freedoms so dearly cherished in the United States and in democracies around the world. This year, May 20 provides us with a unique opportunity to highlight and support efforts to advance liberty and democracy in Cuba.

I stress to my colleagues the tremendous valor and bravery of these pro-democracy advocates who are risking their lives pursuing their natural God-given freedoms that they continue to be denied.

Already there have been reports of disappearances, state security intimidation, and of infrastructure interruptions by the regime in order to stop this gathering. For someone to travel from one part of Cuba to another, within their country, citizens must seek the government's permission before doing so. Transportation is made more difficult and the ever-present Committees for the Defense of Revolution, which stand as government watchdogs in every neighborhood and on every street corner, provide even more intimidation and fear to those who seek to attend this gathering.

May 20 has long marked an important day for the Cuban people. It was on this day in 1902 that the island first gained its independence. This is a particularly poignant moment in history, when the United States fought side by side with the Cuban people as they sought to throw off the yoke of colonialism. After 4 years of building a governmental structure and helping the Cuban people to gain its governance, in 1902 the United States ceded independence to the people of Cuba. It was on May 20, 1902, that took place. This is what we currently are looking for, for the Cuban people to be allowed to celebrate. The current Cuban Government prefers to celebrate other dates more in

keeping with the beginnings of the dictatorship. But this day ought to be remembered because of the importance it carries.

This year's Cuban Independence Day is historic. The people of Cuba are on the road to transition. The historic gathering this week of prodemocracy advocates demonstrates that Cubans are increasingly losing their fear and vocalizing their desire to be architects of their own destinies and of their own future. This peaceful demonstration, a simple display of freedom of assembly and speech, represents an unprecedented partnership for over 360 prodemocracy and civil society organizations from all walks of life. Their focus will be on bringing democracy, liberty, and a respect for basic human rights to this island nation.

The fact is, the Cuban Government has one of the worst human rights records in the world. There is a complete lack of human rights available to the Cuban people under the tyranny of this repressive regime. They continue to deny universally recognized civil liberties, including freedom of speech, association, movement, and of the press. Freedom of religion is also denied.

As the recently released State Department report, ''Supporting Human Rights and Democracy, The U.S. Record 2004–2005,'' relates:

[T]he Cuban Government ignored or violated virtually all of its citizens' rights, including the fundamental right to change their government. Indeed, the Government has quashed all efforts to initiate a public debate on how Cuba can prepare for a peaceful transition.

Just last month the United Nations Human Rights Commission once again condemned Cuba for its human rights record.

Let's begin with labor rights. The Cuban Government has been cited by the International Labor Organization and scores of governmental and nongovernmental organizations worldwide for its gross violations of human rights. With a state-controlled economy, the Government is the only source of jobs, and it exercises very strict control over labor policies. Specifically, as the 2004 human rights report relates:

The foreign investment law denies all workers except those with special government permission the right to contract with foreign companies investing in the country.

Further:

[The] government required foreign investors and diplomatic missions to contract workers through state employment agencies, which were paid in foreign currency, but which in turn pay workers very low wages—

In the local currency. Typically, these workers receive 5 percent of the salary paid by the companies to the State, and the workers receive worthless pesos while the company pays the governor in dollars. In 2003, average salaries, for those lucky enough to be employed, equal about $10 a month. Yet within the last year these salaries have fallen even further. In an attempt to reassert stricter control, the Castro regime has outlawed use of the U.S. dollar, thereby diminishing the value of Cuban wages even further. New directives have also been issued regarding the tourism industry, so as to impose additional control over the actions of tourism workers.

At the same time, the Cuban Government has steadfastly rejected international human rights monitoring. As the 2004 State Department human rights report says:

The Government steadfastly rejected the human rights monitoring. Since 1992, the Government has refused to recognize the mandated UNCHR on Cuba, and despite being a UNCHR member, refused to acknowledge requests by Christine Chanet, the Personal Representative of the Commissioner on Human Rights to visit the country.

It is critical we offer our bipartisan support to the patriotic participants of the May 20 gathering on the island, as well as to the many brave men, women, and children who continue to challenge tyranny and oppression.

They need and deserve our support. These past few weeks alone, the news is reporting that the regime has begun rounding up young people for preventive security measures. The median age is 18, and 95 percent are Afro-Cuban. Specifically, our resolution includes four principal messages: First, that the Senate extend its support in solidarity to the participants of this historic meeting in Havana; second, that the Senate urges the international community to support the assembly and its mission to bring democracy and human rights to Cuba; third, that the Senate encourages the international community to oppose any attempts by the Cuban Government to repress, punish, or intimidate the organizers or participants of the assembly; and fourth, that the Senate shares the prodemocracy ideals of the assembly to promote civil society in Cuba and believes that the assembly and its mission will advance freedom and democracy for the people of Cuba.

The international community plays a very large role in helping prodemocracy movements, much as it did in Eastern Europe.

As President Bush recently remarked in his Second Inaugural Address:

All who live in tyranny and hopelessness can know the United States will not ignore your oppression or excuse your oppressors. When you stand for liberty, we will stand with you.

That is what this resolution is all about—standing with the participants of the May 20 assembly and standing with the brave men and women who continue to live in tyranny and hopelessness. When you stand for your liberty, we will stand with you. Our country's history has allowed us to observe the struggle of impatient patriots such as Frederick Douglass, Abraham Lincoln, and Martin Luther King and the mission they undertook to bring us closer to our democratic ideals.

These prodemocracy advocates today, these Cuban heroes, are today's patriots, and I have faith in them and the important mission they have undertaken. I stress to my colleagues the tremendous valor of those folks who are today struggling for the God-given freedoms they continue to be denied.

The new democracies around the world are standing for freedom and are eager to be a voice in the struggle for transition in Cuba. Our eyes should all be on Havana this Friday to witness this historic event. It is a hopeful time for the Cuban people. I am inspired by their efforts and their bravery. We applaud their strength and their unity as they gather to fight for freedom and basic human rights.

I yield the floor.

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

Mr. NELSON of Florida. Mr. President, I ask unanimous consent I be allowed to speak for 5 minutes on the resolution.

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

Mr. NELSON of Florida. Mr. President, I join my colleague from Florida and a number of other colleagues who have sponsored this resolution. This is a historic time for Cuba. The U.S. Government is redoubling its commitment to freedom and democracy around the world. We are watching as people around the globe demand accountability from their leaders, and the ability to participate in free, fair, and open elections. The winds of freedom are not only blowing in the Middle East but also closer to home, near to our blessed shores of Florida—in fact, only 90 miles away from Key West.

Despite the horrific crackdown in 2003, Cuban civil society and political dissidents continue to meet and to carry out small actions to express their views on a daily basis. This takes courage. The wives of imprisoned dissidents march silently every Sunday following church services. They are known as the Ladies In White. They march largely unopposed, despite attempts to intimidate and to pressure them.

A counterprotest was organized. It was organized once, but that counterprotest has not been repeated.

This is just one of many examples of the Cuban people organizing in small groups, showing that Fidel Castro does not have the full support of his people and that all people of the world, including Cubans, desire to be free.

A few of the dissidents rounded up in that 2003 crackdown have since been released because of the severity of their medical condition. Their time served in Cuban jails has not curtailed their desire to bring freedom to the people of Cuba. One of those individuals, Martha Beatriz Roque, continues her struggles unfazed by the experiences of a summary trial and then imprisonment. And despite the fact that she runs the risk every day of being returned to jail, she continues to fight for basic rights and she continues to organize dissidents working towards the ultimate goal of freedom.

In an effort to heighten the level of international attention—attention to those brave souls' efforts—and in an effort to continue to create greater common cause among the groups of people on the island, the Cuban dissidents are organizing this assembly to promote civil society in Cuba. Over 300 civil society groups are expected to be represented at the meeting. The goal of the assembly is to discuss how they will play a role in the transition after the end of the Castro regime. This end is approaching. The clock is ticking. We must be ready, both on the island and around the world, to ensure that Cubans have the opportunity to freely and fairly choose their successor government.

Senator MARTINEZ, my colleague from Florida, and I, along with 20 colleagues, are encouraging the Senate to support this resolution, and in supporting this resolution, therefore, to support this assembly, its participants, and all civil society on the island, and to do it in a bipartisan fashion.

This resolution is an effort to bring international attention to the assembly and to all members of civil society on the island of Cuba. These are brave individuals who deserve our support every day, not only on these memorable and momentous occasions but every day in respect for what they have endured as their liberty has been taken away from them.

We want that liberty to return. Our thoughts and prayers will be with all these individuals.

I yield the floor.

## CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

## TRANSPORTATION EQUITY ACT: A LEGACY FOR USERS

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration H.R. 3, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 3) to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes.

Pending:

Inhofe amendment No. 605, to provide a complete substitute.

Allen/Ensign amendment No. 611 (to amendment No. 605), to modify the eligibility requirements for States to receive a grant under section 405 of title 49, United States Code.

Sessions Modified amendment No. 646 (to amendment No. 605), to reduce funding for certain programs.

Reid (for Lautenberg) amendment No. 619 (to amendment No. 605), to increase penalties for individuals who operate motor vehicles while intoxicated or under the influence of alcohol under aggravated circumstances.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. INHOFE. Mr. President, I am very happy we finally got to this point. We are operating under unanimous consent at this time.

We will have for the next 45 minutes a discussion and then a vote on the Allen amendment at 12 o'clock. We will have this 45-minute period of time to talk about the highway bill, and hopefully we can confine arguments to that, with the exception of 5 minutes for Senator LANDRIEU right before the vote takes place.

I yield the floor.

The PRESIDING OFFICER. The Senator from Virginia.

AMENDMENT NO. 611

Mr. ALLEN. Mr. President, I thank my colleague from Oklahoma. I am glad we are going to be voting on my amendment around noon. I had thought it was going to be 11:30, but it is now noon.

Let me share with my colleagues the rationale behind amendment No. 611 to the underlying bill.

I first thank my colleague, Senator ENSIGN of Nevada, for cosponsoring this amendment. The purpose of my amendment is to make sure that safety belt incentive grants are awarded based on a State's seatbelt use rate, not based upon a prescriptive mandate from the Federal Government that would make the States enact a primary seatbelt law to receive their Federal funds.

The way this bill came out of committee, in effect, for the States to get their money, they have to enact a primary enforcement seatbelt law. Seatbelt laws generally, whether you have a law such as 29 States do, which is secondary enforcement, or in some cases not even secondary enforcement laws, or some States have primary enforcement laws, this is an issue under the purview of the people in the States.

This is not an issue for the Federal Government to get involved. This is not an issue of civil rights. It is not an issue of interstate commerce. It is not in the Constitution. There is no way Thomas Jefferson and James Madison would ever envision the Federal Government worrying about such matters. I know they did not have automobiles in those days, but they were not coming up with worries about what kind of saddles they had or making sure folks on horseback laced up their saddles correctly with a buck and strap or whether there were seatbelts on buggies.

The underlying bill clearly tramples on the jurisdiction that has long been held by the people in the States. I don't believe ''nanny'' mandates such as this initiative should come from Government. But if they must, the government should be that of the State legislature and not the Congress. State legislators provide a much closer representation of the views and beliefs of their respective constituencies in our country.

I am a firm believer that the laws of a particular State reflect the philosophy and principles under which the citizens of that State should be governed. The people in the States do not need fancy Federales telling them what to do. Moreover, I doubt a single Senator ran for this office of Senator promising to enact primary seatbelt laws, trampling on the laws of their States.

This chart shows a minority of States, 21 States, the States in red, have primary safety belt laws; 29 States do not, the States in white on the chart, and New Hampshire. I surmise this issue has been considered by every one of the State legislatures in all our 50 States. In 29 of those States, primary enforcement of seatbelt laws was rejected.

Why were they rejected? Each State may have their own reasons. Some may believe it is more important for law enforcement to worry about drunk drivers or impaired drivers rather than craning their necks trying to figure out what is in someone's lap as they are driving otherwise safely down the road. There are others that may have concerns about driving while black, a concern of racial profiling. Regardless of the reasons, 29 States have rejected primary seatbelt laws.

Given that a majority of the States has declined such laws, it seems inappropriate for the Federal Government to devise a grant program that essentially compels the States to enact primary enforcement laws, and if they do not, they lose Federal gas tax dollars the people in these States paid into the Federal highway trust fund.

My amendment revises the Occupant Protection Incentive Grant Program to grant awards on 85-percent belt use rate—the national average is about 80 percent. Eighty-five percent would, of course, be a significant increase. People are safer wearing seatbelts. It is a good idea to wear seatbelts, but instead of compelling States to enact primary seatbelt laws, the grants should be awarded solely on seatbelt use attainment. The point is to get people to wear seatbelts, not to have prescriptive micromanagement from the Federal Government.

For me, it is difficult to understand the logic of an incentive program that provides Virginia, with its high safety belt use, far less funding than a State with far lower seatbelt use rate but with a primary seatbelt law. Yet that is entirely possible under this bill if the State with a lower seatbelt use rate has enacted a primary seatbelt law.

For example, a State could have 70-percent seatbelt usage and receive Federal funds under this grant program only because it has enacted a primary seatbelt law. However, another State could have 89-percent seatbelt usage rate but not qualify for this grant funding because it does not have a primary seatbelt law. That makes absolutely no sense unless one is an officious meddler who wants to dictate and meddle in the prerogatives of the people in the States.

If the goal is to attain higher safety belt usage rates, incentive grants

should be awarded based on a specific goal. In our amendment, it is 85 percent. This amendment is similar to one already included in the House version of this highway bill legislation. My proposal is a much more equitable way to provide incentives and reward States for increasing seatbelt use rates. It makes the proposed program fair by making requirements the same for all States, but does not compel States to enact primary seatbelt laws.

How do you get people to wear seatbelts if you do not have a law? As if everyone carries the code of their State around in the glove box or, for that matter, carries around the United States Code. There are a variety of ways. In some States with secondary enforcement, with higher usage rates than those with primary enforcement laws, there can be advertising, there can be incentives. There are a variety of programs creative people can devise as well as just common sense.

I wear a seatbelt. My kids wear seatbelts. Everyone ought to. But the point is, Should this Senate be telling the States to pass primary enforcement laws?

I urge all my colleagues to consider the laws of your State. If you are in one of the 29 States that does not have a primary seatbelt law, what in effect Senators are saying is, we do not trust you in South Carolina, Florida, Arkansas, Missouri, Arizona, or Montana to make these laws. I don't agree with this. Moreover, you are telling people from Alaska to Arizona to Florida and South Carolina, Virginia, and on up to New Hampshire and Maine, sure, you all are paying Federal gas tax revenues into the Federal Government highway trust fund from your gasoline purchases, but you are not going to be able to get this approximately $500 million portion back unless you pass a primary enforcement seatbelt law.

The people in the States should determine whether this Federal Government incentive plan should reward States that have high usage rates or whether it should be used to promote a certain meddling nanny philosophy.

I respectfully ask my colleagues to stand up for common sense, principled respect for the will of the people in the States. Stand up for the principle that the law ought to be fair to those across the country. If any of those States can reach 85-percent attainment rate, depending on how it gets calculated in the States, let them have access to these funds and grant them the broad authority, also, to use those funds for roads and adding on to roads, as well. Finally, rather than official Federal nannyism, stand up for trusting free people. They can make these decisions perfectly well, and have heated and vigorous debate in their State legislatures if necessary. We should not trespass on the will, desires, and views of the people of 29 States with this officious nannyism and the federales planting their finite wisdom over the will of the people in the States.

I ask my colleagues to vote in favor of the Allen amendment.

AMENDMENT NO. 761, AS MODIFIED

Mr. INHOFE. Mr. President, yesterday when we passed our substitute amendment, which was No. 761, there were some technical inaccuracies in obligations and limitations for the 5 fiscal years. I ask unanimous consent to make those technical corrections to the amendment 761. This has been agreed to by both sides.

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

The amendment (No. 761) was agreed to, as follows:

Strike section 3103(b) and insert the following:

(b) MASS TRANSIT CATEGORY.—For the purpose of section 251(b) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901(b)), the level of obligation limitations for the mass transit category is—

(1) for fiscal year 2005, $7,646,336,000;
(2) for fiscal year 2006, $8,900,000,000;
(3) for fiscal year 2007, $9,267,464,000;
(4) for fiscal year 2008, $10,050,700,000; and
(5) for fiscal year 2009, $10,685,500,000.

Mr. INHOFE. Mr. President, I know there are a lot of Members interested in the Allen amendment. We are close to final passage. We may have a couple of amendments after we return at 2 o'clock, at which time we will want to debate those. We will be limited to 2 minutes on each side for those amendments. I encourage Members who want to be heard on those amendments that we will be considering after 2 o'clock, this is the time to do it. This is the only time Members will have.

Mr. JEFFORDS. Mr. President, as we stand on the verge of passing the highway bill, I once again praise Chairman INHOFE for his leadership. We would not be at this point without the chairman's persistence and hard work. And I personally thank you and Senators BAUCUS and BOND for their excellent efforts.

Mr. INHOFE. Will the Senator yield?

Mr. JEFFORDS. I yield.

Mr. INHOFE. Mr. President, this has been an effort that has been bipartisan all the way around. It has been 3 years in the making. For all of us to get along this well for 3 years—I hope it does not end after this is over.

I compliment you and Senator BAUCUS, along with Senator BOND, and the Democrats and Republicans on the Environment and Public Works Committee who are so cooperative.

Mr. JEFFORDS. We have proved it can be done.

The highway bill before the Senate is important for the Nation.

It will authorize funds for Federal-aid highways, highway safety programs, and transit programs through fiscal year 2009.

This bill will make our roads safer. This bill will reduce traffic congestion. This bill supports mass transit.

This bill will create jobs. This bill will have an impact on every town, every city, and every State.

The legislation includes a provision by Senators GRASSLEY and BAUCUS that boosts funding in this bill by $11.2 billion or about 4 percent over what the White House has requested.

That funding makes all the difference in allowing us to draft a funding formula that ensures that all States benefit in this legislation.

That funding helps level the playing field for many States that feel they are being treated unfairly at the White House prescribed funding level of $284 billion.

I urge President Bush to reconsider his veto threat against this legislation.

It is a good bill that helps every Sate and will impact every American.

There are no differences between the House and Senate versions of this bill that cannot be overcome with good, honest negotiation, and compromise.

But we should not enter those negotiations with a proverbial ''gun at our head'' with the threat of a veto.

The White House should not enter the negotiations with a ''my way or the highway'' approach.

There is a storm brewing in the Senate of mammoth proportions.

It is a storm I hope we can avoid for the sake of this great institution.

I urge the President and the Republican leadership in the Senate to change the course of this storm.

This bill, and others like it, are too important to get caught in the political hurricane on the horizon.

Despite the gloomy forecast, I remain hopeful we can maintain the momentum we have made on the highway bill and reach a final agreement quickly and fairly.

SMART GROWTH

This highway bill, although not a perfect bill, is a step forward in the smart growth arena.

We have included some modest provisions in this bill to encourage smart growth, like safer routes for our children to get to school, encouraging more physical activity through walking and biking for all Americans, measures to improve traffic congestion, funding for stormwater, and just plain smart planning.

The Safe Routes to Schools Program helps ensure our children are safer as they walk to and from school.

By improving sidewalks and crosswalks for both pedestrians and bicyclists, we are providing a healthier alternative to riding the bus or using a car. We are encouraging students to get out there and walk or ride their bike to school.

In the 1960s, over 60 percent of our children walked or rode their bikes to school. Today, it is less than 10 percent.

According to the National Institutes of Health, the number of children who are overweight has doubled in the last two to three decades; currently one child in five is overweight. Increasing the opportunities for children to walk or ride their bikes to school can help combat the obesity problem.

I would Iike to see more funding for this important program.

Even we, as adults, need to increase our physical activity. The provision for bicycle and pedestrian safety grants will promote the benefits of walking and bicycling, and how to stay safe while doing so.

According to the National Highway Traffic Safety Administration, bicycling and walking currently account for nearly 13 percent of traffic fatalities, that is over 5,000 a year. Yet States are spending less than 2 percent of their Federal safety funds on bicycle or pedestrian projects.

The biking and walking programs also help minimize traffic congestion, a common problem of urban sprawl.

The increasing amount of time that Americans spend in their cars in traffic has encouraged manufacturers to supply larger, more comfortable trucks and cars. These huge, gas-guzzling cars and trucks are a symptom of a failure to make our homes and workplaces more accessible to other forms of transportation.

Other provisions that incorporate smart planning, multi-agency coordination, and encourage public input early in the planning process, help ensure that the improvements meet the specific needs of the area. Improved planning also addresses local concerns and makes for more efficient enhancements to the community, without costly mistakes.

Even the Highway Stormwater Discharge Mitigation Program provides much needed assistance to our States and local communities by helping them deal with the impacts of highway stormwater discharges.

This important legislation increases our investment in our regional transportation agencies so they can consider the choices that will build stronger and more sustainable regions and local communities.

And, that is what smart growth is all about. Making smart, educated decisions on how to handle the growth of our communities.

Such planning promotes growth that improves the economy, revitalizes neighborhoods, protects farmland and environmentally sensitive areas, and improves public health.

Smart growth offers a range of transportation options, provides parks and play areas for our children, and provides accessible options for those with disabilities. All of these use energy more efficiently and are good for the environment.

Many of the provisions in this bill help ensure that we develop transportation projects in smarter ways.

I hope the conference committee produces an agreement that respects these important resources, be it our historic and cultural assets and parks and protected open spaces.

Since the 1960s, I have been involved in the smart growth debate. As Vermont's attorney general, I drafted what became the first, and is still today, the most comprehensive, State level environmental review regulation in the United States, known in Vermont as Act 250. In 1999, I established the Senate smart growth task force. Today, I serve as cochair, along with my colleague, Senator LEVIN, on the Senate's bipartisan, multiregional task force for smart growth.

A number of you also serve with us to ensure that we assist those at the State and local levels with the growth of their communities. If you are not already a member, I encourage you to join our task force today to broaden the efforts in the Senate.

Land use and development affects each and every one us, regardless of party affiliation. And with energy prices on the rise, transportation and land use planning are critical tools for conserving energy and promoting more fiscally sound development practices.

The task force needs your help to incorporate smart growth principles into the budget and appropriation processes, to build better relationships with our State and local partners, and work with the administration to support State and local efforts to plan for growth.

Our Nation has only recently begun to recognize that sprawl is unhealthy—whether it is contributing to obesity in America or multiplying the number of roads that are dangerous and unfriendly to pedestrians or harming the habitat of endangered species.

Smart growth is about providing transportation choices, including transit, pedestrian walkways, bicycle lanes and paths, and of course, highways and roadways.

This highway bill is a move in the right direction. While funding is limited for these programs, I am encouraged to see provisions like these are moving forward.

In these times of high gasoline prices, Vermonters and all Americans want to know what Congress is doing to reduce our dependence upon foreign oil.

Constituents who are paying steep prices at the pump want to know that we are working to promote technologies that use gasoline more efficiently.

I would like to talk about some of the provisions of the highway bill and the managers' amendment that have the potential to do just that.

The bill provides additional incentives to use hybrid vehicles on our Nation's highways and the managers' amendment builds on those provisions.

While I think these provisions represent a good initial starting point for important discussions to come in the conference on this bill, I think more can and should be done through this legislation to encourage hybrid use, and to expand their benefits for consumers and the environment.

Some argue that we do not need to do any more to promote hybrid purchasing and use by consumers.

They suggest that the price of gasoline itself has been a strong driver of hybrid purchases. Certainly, in part, that is the case.

At the end of April, the Associated Press reported that the hybrid market has grown by 960 percent since 2000.

New hybrid vehicle registrations totaled more than 8,300 in 2004, an 81 percent increase over the year before.

Even though hybrids still represent less than 1 percent of the 17 million new vehicles sold in 2004, major automakers are planning to introduce about a dozen new hybrids during the next 3 years.

I have personally joined the thousands of Americans, and several other members of this body, in becoming a hybrid owner.

I purchased a Ford Escape hybrid last year.

Simply allowing gas prices to increase is not the best way to promote hybrid use. That is a poor policy solution.

We should also provide significant non-financial incentives to stimulate demand for these vehicles.

One important incentive in the bill before us is to allow these vehicles access to the high occupancy vehicle lanes, or HOV lanes, on our highways.

We will be saving our commuters time, in addition to reducing gasoline use.

In doing so, we need to carefully consider and maintain the other societal benefits of HOV lanes.

Those benefits include: encouraging transit and shared car use, and promoting dedicated alternative fuel vehicles.

Mr. President, our last highway law, TEA–21, gave States the authority to allow what is called a high occupancy vehicle lane, or HOV lane.

Many commuting Americans are familiar with these lanes, and thousands commute into the District of Columbia every day using them.

I want to give my colleagues some of the history behind allowing less polluting vehicles in HOV lanes.

Under TEA–21, if a vehicle was certified under Federal regulations as an ''inherently low-emission vehicle'' it could be used in the HOV lane with only one occupant.

The law authorized States to implement this policy through September 30, 2003, and granted each State the right to revoke this policy if it increased HOV lane congestion.

EPA established the low-emission vehicle standards.

They did so in order to recognize that certain types of fuel and vehicle technologies have low emissions and to encourage their use.

Only vehicles without evaporative fuel emissions meet EPA standards.

Consequently, a vehicle that bums any quantity of gasoline or diesel cannot meet the standards.

That includes hybrid vehicles that operate on a combination of gasoline or diesel and electric batteries.

Vehicles that operate entirely on alternative fuels with no evaporative emissions, such as compressed natural gas, liquified natural gas, or purely

electric vehicles, are the only ones that are able to meet the standards.

We should promote the use of those vehicles.

However, such vehicles are a very small percentage of the on-road fleet, and, as a consequence, few motorists have been able to take advantage of the HOV lane benefit provided in TEA–21.

Since the passage of TEA–21, there has been growing interest among motorists, the vehicle industry, and some States in renewing the HOV lane benefit and expanding it to hybrid vehicles, which are more widely available.

The bill before us includes provisions that would renew and expand the HOV lane exemption for low-emission vehicles.

Specifically, the managers' amendment would allow ''low emission and energy-efficient vehicles'' access to HOV lanes.

The bill would make that access permanent.

A vehicle would qualify as a ''low emission and energy-efficient vehicle'' if it meets EPA's ''Tier II'' emission standards that were phased in beginning in model year 2004.

In addition, EPA would have to certify that the vehicle gets at least 50 percent better fuel economy than a gasoline vehicle in the city or that it is a ''dedicated alternative-fueled vehicle'' as defined in the Energy Policy Act of 1992.

Current hybrid vehicles are clean enough to comply with the new tier II standards. Some hybrids also meet the threshold for fuel economy ratings in the bill.

This change would result in expanding access to HOV lanes to include hybrid vehicles.

I reassure my colleagues who may be concerned that congestion in HOV lanes might arise as a result of the policy change contained in this bill.

The bill before the Senate requires States that allow hybrids on HOV lanes to establish a program for qualifying and labeling such vehicles, and monitoring and evaluating their use in HOV lanes.

States also would be required to develop policies and procedures for limiting the single-occupancy operation of hybrids if their use led to increased traffic congestion.

While there are benefits to this language, I hope that my colleagues consider strengthening the language.

We should be mindful when we allow single occupant vehicles in the HOV lanes, even if they are hybrids.

The managers' amendment simply implements the tier II emissions standards that were effective last year.

Hybrids easily meet these standards today, so this language has no practical impact.

If it is the determination of Congress to allow hybrids to use the HOV lanes, we should be promoting the most fuel-efficient and cleanest hybrid vehicles on the road. I would like to go further.

This bill takes a good step toward promoting single occupant HOV access for hybrid vehicles.

We make sure that there are only dedicated alternative fuel vehicles in HOV lanes, those that run on 100 percent alternative fuels.

But we need to make sure that we don't overburden our HOV lanes. And we need to make sure that our goals of lowering pollution that we set in our last highway law are maintained.

It is my hope that we do so in the conference on this bill.

Mr. INHOFE. Mr. President, shortly we will be voting on final passage of H.R. 3, the highway bill. Of course, we have talked about how long this has been in the making. We are finally to that point. The product is a good product. There are some who still today are not happy with the way the formula has treated their States.

There is nothing more difficult than dealing with a formula. This is a formula that deals with so many different factors. We have donor States, donee States, large States, small States, passthrough States, we have States with unusually high delegate rates. All these things are a consideration. During this debate we have discussed these at length the last 3 years.

A lot of people think we are spending too much. I put my conservative credentials up against any one of the 100 Members. I have been rated No. 1 as most conservative Member in this Senate. Yet there are two areas where we need to spend money: One is the national defense and infrastructure is the other one.

This is a life-and-death bill. We have to do something to save some lives. People who are saying we are spending too much on this, I think they forget that we have had two very great Senators in the Finance Committee, Senator GRASSLEY and Senator BAUCUS, who we went to and said: This is what we really need to have for America. Can you make sure it is paid for and make sure we can do it without a deficit? They assured us that we can.

I see Senator BAUCUS is here to speak. Of course, I repeat one more time how much I appreciate him and Senator GRASSLEY for the work they have done so that this is a bill that is paid for, this is a bill that is not going to add to the deficit, and I want to make sure that people understand that.

By the way, the work they did has been ratified by the Joint Tax Committee. That is the proper body. They have said yes, they can come up with—actually, the amendment is $11.2 billion more in contract authority—they said they can do it and it is not going to add to the deficit; it is not going to be deficit spending.

Before we run out of time, I do wish to thank some other people. I will let Senator JEFFORDS and Senator BAUCUS thank their staff, but I just want to say I wish the American people really knew the hours that are put in on something like this. I am talking about all night long and many hours. I start with Ruth Van Mark, who has been with me for 17 years now. I know there have been many sleepless nights working on this bill; Andrew Wheeler, James O'Keefe, Nathan Richmond, Greg Murrill, Marty Hall, Angie Giancarlo, John Shanahan, Rudy Kapichak, James Gentry, Alex Herrgott, Dave Lungren, Alex Marx, and many more who put in countless hours.

But also on Senator FRIST's staff, if you look back all during the consideration of this bill, we have had the help of Libby Jarvis, who is always there; Dave Schiappa has been there on a daily basis, Eric Ueland, Dan Dukes, Laura Dove; and the people from the Department of Transportation, who have been over here spending their hours on the Senate floor with us: Susan Binder, Edward Ross Crichton, who has done over 1,000 formula runs for us over the last 3 years. He will be glad when this thing is finally passed, I think; Dedra Goodman, Carolyn Edwards, Thomas Holian, Sue Anna Celini, and, of course, I thank the hard-working people of the legislative counsel because they have actually drafted this 1300-page bill and the hundreds of amendments. They include Carcie Chan, Heather Arpin, Michelle Johnson-Weider, Heather Burnham, and Gary Endicott.

Anyway, this has taken a lot of hours, a lot of years working on this. It is going to finally be a reality. I will just say we are going to have an amendment that will come up this afternoon, the Sessions amendment. I would suggest it is very important for people to understand that it would only cut contract authority, it has nothing do with spending more or less money. It is not going to have any effect on the deficit, and it is very important people understand that.

So it is a good bill, and I appreciate working with so many people on this so closely to make this come to the point where we are today.

With that, Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Montana is recognized.

Mr. BAUCUS. Mr. President, I also join in thanking a lot of people who have worked very hard on this bill. Certainly the chairman of the committee, Senator INHOFE, deserves primary credit. It has been a long road, no fun. He has done a great job, and I commend him as well as the ranking Democrat of the committee, Senator JEFFORDS from Vermont. They worked very closely together. And that is what makes good legislation. This is not a partisan bill. This is a transportation bill. Of course, Senator BOND from Missouri has done yeoman's work, and I thank Senator GRASSLEY, chairman of the Finance Committee.

I wish to make a few comments as we prepare to vote on final passage. I think that vote will occur in several hours. I start by congratulating all those who have worked so hard on this

issue, and I thank some people back in my home State of Montana.

Jim Lynch is director of the Montana Department of Transportation. He is a terrific director, a very good man. I have known him for many years. He has his heart and soul in this work. I also thank members of his team: Sandy Straehl, Jim Currie, Jim Skinner, Dick Turner, and Mike Tierney, just to name a few. They are terrific people, and many of them were also helpful in TEA–21. They know highways. They know this bill. They know the program. Believe me, they do a good job in helping us.

The bill we will vote on in a few hours is a good bill It is a solid bill. It is one that will move the country forward over the next 5 years. Every State will benefit from this legislation, the so-called donor States, donee States, urban, rural, large and small, every State.

In my state of Montana, this bill will provide $2.1 billion over the next 5 years. This is an increase in highway funding over $500 million of historic levels of TEA–21. This means that more than 16,500 good-paying jobs will be sustained in Montana each and every year of this bill. In many respects, this is our economic development program, the highway program. It provides so many good-paying jobs as well as excellent transportation.

I am very proud of the funding levels we have achieved working alongside my good friend from Iowa, Senator GRASSLEY. I believe we developed a reasonable and fiscally responsible funding package. I am pleased that the Senate voted strongly to approve our efforts to increase the funding by $11 billion. The vote last week was 76 to 22 to waive the budget point of order, that is, in favor of that $11 billion. I hope the administration will take a long serious look at this. I hope they will reexamine their earlier opposition to increasing transportation investments. It is a good solid effort. The Senate has again publicly made its desires known with regard to funding levels. We did not go over the top. We could have gone with more, to 318, but we did not. We stayed under $300 billion—very responsible, very reasonable—and I hope the President will understand this is good legislation for the country, it helps our infrastructure, it is all paid for, and it is necessary to help America be competitive.

In a moment, we will vote on an amendment to reduce the funding in this bill by almost $11 billion. That is stripping away the funding that we worked so hard to identify and that the Senate voted to support.

I have here with me a stack of letters from a diverse group of organizations that strongly oppose the amendment being offered by the Senator from Alabama. I will not go through all of them, but it is really stunning, the number of organizations that have written us in opposition to the Sessions amendment. Every organization you can think of from the ACT—that is, the Association for Commuter Transportation—the Transportation Construction Coalition, the Surface Transportation Policy Project, signed by Anne Canby, who is the President; AASHTO, signed by John Horsley, executive director, and many environmental organizations as well have written in opposing the Sessions amendment: National Association of Counties, National League of Cities, United States Conference of Mayors. It is just a representative sample of the large number of letters that have been written.

Mr. President, I ask unanimous consent to have some of them printed in the RECORD.

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

MAY 16, 2005.

DEAR SENATOR: On behalf of the nation's local governments, we urge you to maintain your support for the Senate-approved $295 billion, six-year surface transportation bill by rejecting the cuts contained in Amendment #646 offered by Senator Jeff Sessions (AL) to H.R. 3.

The Sessions Amendment exacerbates state and local governments struggle with increasing congestion, crumbling and unsafe transportation infrastructure and federal clean air mandates. This occurs through the reduction of the Congestion Mitigation and Air Quality Improvement Program (CMAQ) by $4 billion, Transit Formula Grants and Research by $5 billion, Surface Transportation Enhancements by $1.1 billion, Transportation and Community and System Preservation Program by $100 million, Transportation Infrastructure Finance and Innovation Act by $100 million, and Federal Highway Administration by $400 million.

Under this amendment, the costs to meet the federal clean air mandate will be borne largely by local property tax payers. A $4 billion reduction in the CMAQ Program is an unfunded mandate for state and local governments. CMAQ is intended to help states and cities address the degraded air quality from cars and trucks. The 1990 Clean Air Act amendments require EPA to set National Ambient Air Quality Standards for pollutants considered harmful to public health and the environment. As a result, EPA has required that state and local governments achieve attainment status for an 8-hour ozone and a 2.5 micron Particulate Matter (PM 2.5) standard by 2008-2015.

We believe $295 billion will help address the pressing outstanding transportation infrastructure and federal clean air mandates of state and local government. We also believe this funding level will also expedite the passage of SAFETEA so that the Senate-House conference committee can begin its work as soon as possible. America's state and local elected officials urge you to oppose amendment #646 offered by Senator Jeff Sessions.

Thank you for your consideration to this matter.

Respectfully,

TOM COCHRAN,
*Executive Director, U.S. Conference of Mayors.*
DONALD J. BORUT,
*Executive Director, National League of Cities.*
LARRY E. NAAKE,
*Executive Director, National Association of Counties.*
ROBERT O'NEIL,
*Executive Director, International City/ County Management Association.*

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AMERICAN ROAD & TRANSPORTATION BUILDERS ASSOCIATION,
*Washington, DC, May 16, 2005.*

DEAR SENATOR: The Senate may soon vote on an amendment by Senator Jeff Sessions to the federal highway and transit program reauthorization bill, H.R. 3, that seeks to reduce the measure's total investment level by $10.1 billion. The bipartisan leaders of the Senate transportation committees have repeatedly said the investment levels in H.R. 3 are necessary to write a reauthorization bill that does not pit states or modes of transportation against one another. Consequently the American Road & Transportation Builders Association (ARTBA) urges you to oppose this amendment.

The funding reductions in the Sessions Amendment would come from the following programs:

$5,000,000,000 transit formula grants and research

$4,000,000,000 Congestion Mitigation and Air Quality Program

$1,100,000,000 Transportation Enhancement Program

$400,000,000 Federal Highway Administration expenses

$100,000,000 Transportation Infrastructure Finance and Innovation Act Program

$100,000,000 Transportation and Community and System Preservation Program

Some—but certainly not all—of the proposed investment reductions under the Sessions Amendment would come from non-infrastructure activities. Rather than reducing H.R. 3's overall investment levels, it would be more appropriate to transfer funds from the non-infrastructure expenditures to core federal construction and maintenance programs to ensure these funds are used to improve roadway safety and alleviate traffic congestion.

Last week, 76 senators voted to support the deficit-neutral financing proposal for H.R. 3. It's time to complete action on the TEA–21 reauthorization measure. Please oppose the Sessions Amendment and support final passage of H.R. 3.

Sincerely,

T. PETER RUANE,
*President & CEO.*

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SIERRA CLUB,
*May 16, 2005.*

Re oppose Sessions Amendment #646 to SAFETEA (S. 732).

DEAR SENATOR: The TEA–21 transportation reauthorization bill (''SAFETEA,'' S. 732) that sets policy and funding for highways and transit through the end of the decade contains critical provisions to improve transportation planning and development at the state and local level. We strongly urge you to reject an amendment by Senator Sessions that would substantialIy undermine these programs.

Specifically, the amendment would:

Cut $4 billion from Congestion Mitigation and Air Quality (CMAQ) improvement programs—provides funding for projects to reduce traffic congestion and improve air quality. Such a funding cut would greatly harm the ability of municipalities to comply with air quality requiremnts under the Clean Air Act.

Cut $5 billion from formula grants and research for transit—provides funding for security, planning, capital purchase and maintenance, facility repair and construction, and operating expenses where eligible. The program includes grants specifically targeted to

urbanized areas, to non-urbanized areas, and to transportation providers that address the special transportation needs of the elderly, low-income, and persons with disabilities.

Cut $1.1 billion from Surface Transportation Enhancement activities—provides funding for projects that add community or environmental value to transportation projects. This includes historic preservation, community development, and water pollution mitigation due to highway runoff. This is a crucial community building program widely acknowledged as the most popular TEA–21 program.

Cut $100 million from transportation and community and system preservation (TCSP) programs—provides funding for a comprehensive initiative to improve the relationships and synergy between transportation, community, and system development, and to identify useful private sector initiatives. This program has been a testing ground for many key local innovations, underpinning new directions in local and regional transportation planning.

Cut $100 million from projects being built under the Transportation Infrastructure and Finance and Innovation Act (TIFIA) of 1998—provides federal credit assistance to major transportation investments of critical national importance. The TIFIA credit program is designed to fill market gaps and utilize private sector investment.

America's mobility is critical to our economy and our national security. The transportation programs that would be cut by this amendment have a long history of successful implementation, and state and local transportation officials have come to rely on them to effectively manage transportation demand. We urge you to reject Senator Sessions' shortsighted amendment that substantially undermines the ability of local and state governments and communities to effectively solve transportation problems.

Sincerely,

DEBBIE SEASE,
*Legislative Director.*

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ASSOCIATION FOR COMMUTER TRANSPORTATION,
*Washington, DC.*

Sen. JAMES INHOFE (R–OK),
*Russell Senate Office Building,*
*Washington, DC.*

DEAR SENATOR INHOFE: I write to you today to ask your help in defeating an amendment to SAFETEA that has been offered by Senator Sessions (R–AL). The amendment, as I am sure you are aware, would reduce SAFETEA by $11.1 billion, but perhaps more importantly, would greatly reduce and in some cases eliminate core highway programs. In essence, the Sessions amendment undercuts the success of ISTEA and TEA–21 by drastically altering the make up of Federal-Aid Highway Assistance.

The U.S. Department of Transportation (DOT), in cooperation with the Texas Transportation Institute (TTI), recently released its annual report on congestion. While the report paints a grim picture, it also provides proof that we can reduce congestion by getting more out of our existing transportation system.

The annual report indicates that congestion is growing quicker than states and local governments are able to build the roadways and transit needed to handle increases in travel demand. The study finds that American's spent 3.7 billion hours and 2.3 billion gallons of fuel stuck in traffic congestion—producing a ''congestion invoice'' for the national economy of $63.1 billion in 2003. Congestion is not only a problem for those who live in the nation's largest metropolitan areas, but also for those in small to medium sized cities. No longer is congestion just a New York and Los Angeles problem, now it is Savannah's and Birmingham's as well.

The TTI report further quantifies the role efficient operating roads can have in reducing congestion. The report estimates that projects to improve the efficiency of existing capacity provided 336 million hours of delay reduction and $5.6 billion in congestion savings for the 85 urban areas studied with 2003 data. If these treatments were deployed on all the major roads in every area, an estimated 613 million hours of delay and more than $10.2 billion would be saved.''. The Sessions amendment would reduce, rather then enhance, a States ability to deploy these treatments.

For your consideration we have attached the recommendations that the TTI report makes. The Sessions amendment would cut those programs that aim to increase the efficiency of the transportation system. Thus we urge you to opppose the Sessions amendment and protect those programs that help get the most out of our transportation system.

Sincerely,

KEVIN SHANNON,
*Executive Director.*

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MAY 16, 2005.

DEAR SENATOR: The 28 national associations and construction unions of the Transportation Construction Coalition (TCC) urge you to oppose an amendment to H.R. 3, the federal highway and transit program reauthorization bill, to be offered by Senator Jeff Sessions (R–AL) that would cut as much as $10.7 billion from the $295 billion authorized in the bill through FY2009. The amendment would undermine the Senate's overwhelming vote last week in support of an additional $11 billion for highways and transit over the next five years.

This additional funding is critical to help states maintain and improve their aging and congested highway system and improve safety. The additional funding is also necessary to provide an equitable return on user fee revenue collected in each state. Moreover, the proposed cut to the transit program represents nearly a year's worth of funding which would severely impact the ability of states and localities to provide public transportation services to their citizens, especially the elderly and disabled populations.

The Sessions amendment would cut the federal transit program by $5 billion and the Congestion Mitigation and Air Quality (CMAQ) program by $4 billion. In addition, under the Sessions amendment your state would lose National Highway System (NHS), Surface Transportation Program (STP), and Metropolitan Planning funds.

Attached are charts prepared by the Federal Highway Administration that illustrate how the Sessions amendment would affect the amount of highway funding your state would receive.

The TCC urges you to oppose the Sessions amendment.

Sincerely,

THE TRANSPORTATION CONSTRUCTION COALITION.

SURFACE TRANSPORTATION POLICY PROJECT,
*Washington, DC, May 16, 2005.*

Hon. JAMES INHOFE,
*Chairman, Senate Environment and Public Works Committee, Washington, DC.*

Hon. JIM JEFFORDS
*Ranking Minority Member, Senate Environment and Public Works Committee, Washington, DC.*

Hon. KIT BOND,
*Chair, Senate Subcommittee on Transportation and Infrastructure, Washington, DC.*

Hon. MAX BAUCUS,
*Ranking Minority Members, Senate Subcommittee on Transportation and Infrastructure, Washington, DC.*

DEAR CHAIRMAN INHOFE AND SENATORS BOND, JEFFORDS AND BAUCUS: On behalf of the STPP Coalition, I am writing to express our strong opposition to amendment #646 by Senator Jeff Sessions, proposing to reduce funding for many critical elements in the SAFETEA legislation before you.

The amendment threatens the basic structure of the current federal surface transportation program, disrupting program elements and policies first established in the 1991 ISTEA law. Among these is the effective reversal of a longstanding commitment under the Congestion Mitigation and Air Quality Improvement (CMAQ) program to assist local compliance efforts with applicable federal air quality standards. Now, with new and more rigorous standards for ozone and particulate matter coming on line, this amendment proposes dramatic reductions in CMAQ funding—by a total of $4 billion or more than 37 percent—that are certain to disrupt compliance air quality efforts in local areas where about one-half of the nation's population resides.

The amendment also threatens funding for transit programs, specifically commitments to transit research and transit formula grants. Ironically, this $5 billion reduction in transit funding in these investments not only eliminates the funding gains just approved by the full Senate last week but withdraws another $2.7 billion from the transit account. Undeniably, this amendment effectively reverses longstanding federal commitments to balanced funding between highway and transit programs. Importantly, the amendment also cuts the very successful Transportation Enhancements program by $1.1 billion and the TCSP program by $100 million, threatening both programs which now generate substantial benefits for taxpayers and their communities.

Taken together, this package represents an assault on continuing state and local efforts to deliver better transportation solutions and cheaper and more efficient travel options for the public and businesses, threatening public support for this transportation legislation. We urge your strongest opposition to the Sessions amendment.

Sincerely,

ANNE P. CANBY,
*President.*

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AMERICAN ASSOCIATION OF STATE HIGHWAY AND TRANSPORTATION OFFICIALS,
*Washington, DC, May 16, 2005.*

Hon. MAX BAUCUS,
*Ranking Minority Member, Committee on Finance, Dirksen Senate Office Building, Washington, DC.*

DEAR RANKING MINORITY MEMBER BAUCUS: On behalf of the American Association of State Highway and Transportation Officials (AASHTO), which represents the State transportation agencies in the fifty States, the District of Columbia, and Puerto Rico, I am writing to express opposition to an amendment offered by Senator Jeff Sessions that

would reduce funding for certain highway and transit programs by $10.7 billion over the remaining five years of the bill.

The Sessions amendment would completely reverse the funding increases, which were crafted by the Finance Committee and contained in your substitute amendment, by severely reducing funding for selected programs, including $5 billion from the transit formula program, $4 billion from the congestion mitigation and air quality program, $1.1 billion from the Transportation Enhancements Program, $400 million from FHWA's administrative expenses, $100 million from the Transportation Infrastructure Finance and Innovation Act Program; and $100 million from the Transportation and Community and System Preservation Program. We not only oppose the funding reduction altogether, but also believe that these programs, which enjoy broad support, should not be singled out in this manner.

We applaud the 76 Senators who voted to support the deficit-neutral financing proposal for H.R. 3. We urge you to oppose the Sessions Amendment, complete action on the hill and move to conference as quickly as possible.

Sincerely yours,

JOHN HORSLEY,
*Executive Director.*

Mr. BAUCUS. These groups are many. There are at least 28 national associations and construction unions that make up the Transportation Construction Coalition. I mentioned AASHTO. I didn't mention the Environmental Defense Fund and Sierra Club, which are also in opposition to the Sessions amendment. You don't see that many groups together, construction groups, unions, environmental groups, local governments, all standing together on the same amendment; that is, in opposition to an amendment, in this case the Sessions amendment. This is one such occasion.

I have heard it said that we should not increase funding for this bill because the House will not agree to it. I ask my colleagues, are we not a separate body? That can be turned around. The House should not pass something because we might not agree to it. They are a body, we are a body. We have just as much right as they to indicate what we should do.

As I have said in this Chamber many times, legislating is the art of compromise. It is time for the administration and the House to demonstrate a willingness to work with the Senate on this bill. We are now ready to go to conference. We have less than 2 weeks until the expiration of the current extension of these programs. We have to get moving. The only chance we have to get this bill done is if we act quickly, reach an agreement soon on the funding levels in this bill, that once we have reached an agreement on the funding levels, I think virtually everything else will fall into place.

I urge my colleagues in the House and in the Senate, also in the executive branch, to work with us, find an agreeable funding level for these programs. We cannot afford to argue for months about this issue. We have tough decisions to make, and the time is now to make them. We cannot afford to govern by extensions. States and local governments and the construction community are already feeling the pain from six extensions we have had to date. The time is now to roll up our sleeves, get to conference, and send a bill to the President. Then we can help the American people in doing so.

I yield the floor.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. SALAZAR. Thank you, Mr. President.

I am pleased to be on the Senate floor today to talk about this long overdue Transportation reauthorization bill. We need to pass this bill, and we need to pass it this year. We have not had a transportation bill in more than 2 years for America. The delay has caused the State departments of transportation across America and in Colorado to operate under a series of short-term extensions. That is unacceptable while we deal with the major issues that are facing the country, including the issue of transportation. The delay in the passage of the new transportation bill has cost the country about 100,000 jobs and created real uncertainty for States that are trying to make construction decisions at a time when they are also trying to recover from a devastating fiscal crisis.

The passage of a new transportation bill is central. In fact, there is nothing like the passage of a new transportation bill to create those jobs and provide the much needed funding to jumpstart the economic picture in Colorado and in many other places across our country. In fact, it is exactly the kind of business the American people expect us to be conducting.

This important legislation will create thousands of jobs in Colorado as well as across the country and support important transportation infrastructure needs on roads in our cities, in rural areas, on our transit systems, and our bridges. The legislation will also lay the groundwork to provide important high-priority projects across my State. These are essential projects that will simply not get completed without the passage of this legislation.

This legislation will reinvigorate our economy and make our Nation stronger. The first step toward this goal was with our vote to increase the funding level to $295 billion. I highly commend my colleagues, Senator GRASSLEY and Senator BAUCUS, for working to increase funding without adding to the national deficit. This additional funding will give an increase to my State of Colorado of about $156 million more than we receive under current law and about $26 million more than the House-passed transportation bill. That is $26 million more a year than the House-passed transportation bill.

Here is what this additional $26 million will do for my State of Colorado. It will allow the Colorado Department of Transportation to invest in important projects across our State such as our new transit initiative, TREX, as well as investments in U.S. Highway 160, Interstate 70, and Interstate 25. This is what the $26 million increase will not do, however. It doesn't add to our Nation's deficit. The additional funding is completely paid for. These are the types of choices I am proud to make for Colorado, and these are the choices we should all be making for America.

In Colorado, 30 percent of our major roads are congested, 43 percent of our roads are in poor or mediocre condition, and almost 20 percent of our bridges are structurally deficient. We need this increase in transportation dollars, and I will continue to work with my colleagues to ensure that the highest level of funding for our transportation infrastructure is maintained. Nonetheless, as many other States here, Colorado is a donor State. That is Washington-speak about those States that put more money into the highway user trust fund than what we get back.

There is a real issue of fairness I would like my colleagues to take a hard look at over the years ahead, fairness for the people of Colorado and all of the other States who pay the same gas tax as the rest of the country every time they fill up at the gas pump, and then at the end of the day we don't get back the same return when the Federal Government returns that money to the States. In Colorado today, for every dollar a Coloradan puts into the highway trust fund, our State receives about 90 cents back. Under the Senate proposal, in 2009, Colorado will receive 92 cents back. That is a move in the right direction, but that is still much less than what is equitable for Colorado and other donor States.

We need to pass this bill, and while the proposal being considered in the Senate certainly is a step in the right direction, it does not provide the level of investment that would address Colorado's growing transportation needs as well as the needs of donor States.

To correct this unfairness, we need to take some important steps. First, I am proud to support the increase in the overall funding of this bill without adding to the deficit. As I have said, this is a first step in the right direction. Secondly, we have to make sure we protect that increase in conference with the House. The President has indicated he will veto this larger investment, leaving Colorado with a level of funding that will not support the needs of our State. We must convince the President not to veto this additional money. Keep in mind the rising cost of steel and oil have also driven up the cost of construction, and the President's own Department of Transportation said the country needs a level of funding $100 billion more than the President has said he supports.

The third step we need to take is to correct the unfair formula that disadvantages States such as ours. I hope my colleagues will help us continue to look for ways to provide adequate investment that will give donor States

such as Colorado the rate of return we need and deserve.

Having a first-class transportation system is critical to the Nation and to Colorado. I look forward to the passage of this very important bill. I will continue to work to see that the most basic level of infrastructure funding is not only maintained but improved so we can have safe roadways and robust economic development throughout the State.

Finally, let me say this is the kind of legislation the Senate should be working on. Because at the end of the day, this is about doing the work the people of America care about. They want us to work on their behalf every day.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. INHOFE. Mr. President, we are 12 minutes away from the vote that will be taken and then recessing until 2 o'clock and coming back and finishing probably two votes and then final passage. There won't be time to debate the point. There will be a couple minutes equally divided. The Senator from Arkansas wants to participate in that.

Since I will not be able to talk about the Sessions amendment, let me make a couple of points. I don't have a better friend in this body than Senator SESSIONS. He and I are both very conservative, always ranked that way. He has an amendment to cut the transportation bill by $10.7 billion and the intent is for $5 billion of that amount to be taken from mass transit and $5.7 billion to be taken from the highway program.

The interesting thing about this is the amendment would only cut contract authority, which is the upper limit of what may be spent on the program. There is no reduction in guaranteed spending. Everybody knows last year in our bill, there was $318 billion in contract authority and $303 billion in guaranteed spending. That is the figure you are concerned with. There is no reduction in guaranteed spending on the Sessions amendment. Guaranteed spending is the amount the bill requires to be spent on the program. So there is no change in actual spending or the deficit.

The amendment also ignores the complexity of the formula. As a result, the amendment drops the contract authority of some donor States below the minimum rates of return identified in the bill. For example, Arizona's rate of return would drop below 90.3 percent in 2005 and 90.9 percent in 2006 as opposed to 92 percent. It is a huge difference. Keep in mind that is contract authority.

It is not just the donor States that are hurt by the amendment. Pennsylvania, an older State, for example, would lose $258 million in contract authority and drops from a 15-percent increase over TEA–21—that would be 7 years ago—down to 11 percent, undoing the gains they received at that time.

Finally, I remind everybody that Senators GRASSLEY and BAUCUS increased the amount of money. The Sessions amendment is supposedly going to take back that $11.2 billion increase. But when we passed that amendment, the Finance Committee—and it is their job; read the Senate rules, that is what the Finance Committee is supposed to be doing, go in there and find the money—they said: Yes, we know we can spend the additional $11.2 billion. It is not going to increase the deficit. And then they came along, and that fact was verified by the Joint Committee on Taxation. They are the ones who said what the Finance Committee said is right.

Senator SESSIONS and I are always in the top three most conservative Members when the ratings systems come out of all 100 Senators. I want people to know my view on the amendment. I know the Senator is well meaning, but it is one I will be opposing for those very reasons.

I yield the floor.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Mr. President, I understand there are 6 minutes remaining on this side.

The PRESIDING OFFICER. That is correct.

Mr. SARBANES. I yield myself 3 of the 6 minutes.

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

Mr. SARBANES. Mr. President, I join my colleagues in very strong opposition to the Sessions amendment. It is a bad idea, both from the standpoint of process and policy. First, it would undo the carefully balanced package developed by the four committees of jurisdiction. Four committees have worked putting this package together: the Environment and Public Works Committee, the Finance Committee, the Banking Committee, and the Commerce Committee. All have been involved in this process. They have spent literally years laying the groundwork for this bill, working ever since passage of the last bill. When we went through the last session of congress, we could not get a bill passed. We have since had interim extensions which were of concern.

The chairman of the Environment and Public Works Committee and the ranking member have spent countless hours trying to put together a sensible and reasonable package, making tough decisions regarding funding allocations among the various programs. This amendment would begin the process of unraveling those committee decisions, both as they affect highways and transit. I warn my colleagues at the outset, this is a bad way to proceed on a complicated and important piece of legislation which is important to every single Member of this body—important to their Governors, important to their county officials, and right on down the line.

We know as a matter of policy there is tremendous stress on our transportation system. The costs we pay in congestion have been detailed by the Texas Transportation Institute. My own view is we need even more investment in our transportation system, and it is provided for in this bill.

I understand the practicalities of the situation in which we find ourselves. Failure to make the needed investment in transportation systems would constrain our economic competitiveness and leave us at a disadvantage in world competition.

There are very few bills that are so essential to the economic well-being of our country as this bill. This transportation infrastructure bill is critical to economic development and economic competitiveness in all 50 States. Failure to make the investment that is necessary will constitute a setback to our efforts to build a better and stronger economy.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. BAUCUS. Mr. President, I yield 2 more minutes to the Senator from Maryland.

Mr. SARBANES. I thank the Senator from Montana.

The transportation industry is strongly opposed to this amendment. For example, to take one instance of a group we deal with, given the jurisdiction of our Banking Committee over mass transit, the American Public Transportation Association, which represents 1,500 transit agencies across the country, observes that the Sessions amendment would undo the bipartisan and widely supported efforts in the Senate in support of increased and balanced transportation infrastructure investment and should be strongly opposed.

I ask unanimous consent to print the letter to Chairman INHOFE in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. SARBANES. Let me again underscore how vitally important the programs authorized in the underlying bill are for the economic and social health of our Nation. As with any large and complex piece of legislation, not everyone will be satisfied. I think this bill represents a reasonable approach to meeting our urgent transportation needs. The pending amendment would begin the process of unraveling that approach to which so much effort has been devoted by so many people.

I particularly rticularly thank Chairman INHOFE and Ranking Member JEFFORDS and Chairman GRASSLEY and Ranking Member BAUCUS for their involvement in trying to shape a good piece of legislation. I didn't agree with every decision that is in this package, but I see it as a significant forward step in dealing with a very important national priority. I hope my colleagues will reject the Sessions amendment and that we will then go on to approve the Inhofe substitute amendment and final passage of this bill.

I yield the floor.

EXHIBIT 1

AMERICAN PUBLIC TRANSPORTATION ASSOCIATION,
*Washington, DC, May 16, 2005.*

Hon. JAMES M. INHOFE,
*Chairman, Senate Committee on Environment and Public Works, Dirksen Senate Office Building, Washington, DC.*

DEAR CHAIRMAN INHOFE: On behalf of the American Public Transportation Association (APTA) and its more than 1,500 member organizations, I write to express our strong opposition to the amendment Senator Sessions offered—#646—to H.R. 3. That amendment would sharply reduce funding of a number of programs in H.R. 3 by some $10.7 billion over six years.

It is critically important that H.R. 3 be passed by the Senate at the enhanced level of funding included in the Inhofe substitute amendment. The Inhofe substitute amendment is a balanced and carefully crafted measure that has strong bipartisan support from the leadership of the Senate Banking, Environment and Public Works, and Finance Committees. Transit and highway needs are critical and have been documented by the American Association of State Highway & Transportation Officials and Cambridge Systematics, Inc. The Inhofe substitute amendment addresses those needs in a balanced approach supported by a broad range of affected groups and coalitions. In contrast, the amendment offered by Senator Sessions would dramatically cut a number of programs across the board, including the transit formula program by $5 billion, the congestion mitigation and air quality program by $4 billion, and other programs that enjoy broad bipartisan support.

In short, the Sessions amendment would undo the bipartisan and widely supported efforts in the Senate in support of increased and balanced transportation infrastructure investment and should strongly be opposed.

If you have questions on this matter, please have your staff contact Rob Healy of APTA's Government Affairs Department at (202) 496–4811 or email *rhealy@apta.com*.

Sincerely yours,

WILLIAM W. MILLAR,
*President.*

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. LOTT. Mr. President, I rise to speak in opposition to the Allen amendment. We had this discussion last week, but we have a couple minutes each to sum up what is at stake.

The language in the Senate Commerce Committee bill guarantees funding if a State does one thing, and that is have or pass a primary seatbelt law. We need to give incentives for people to use their seatbelts. We need to give incentives to the States if they do that. This is about doing the thing that would have the greatest effect on saving lives of anything we could do in this legislation, and we should go forward with it.

Under the Allen amendment, a State has no certainty that any actions it takes to increase seatbelt use will result in an 85-percent or higher use rate. So that is a worthy goal, but very few States have been able to do that. We are trying to encourage more States to do better than they are. My own State only has a 63-percent seatbelt use, and I think we need to encourage more activity in the States. Only three States have ever reached the 85-percent use rate.

The language we have in the bill has near unanimous support nationwide among traffic safety organizations from USTA to the Automobile Manufacturers Association to the American Automobile Association, the American Academy of Pediatrics.

One thing I was impressed with when we had the hearings in the committee was the National Highway Safety Transportation Safety Administrator Jeff Runge, who is a doctor with expertise in this field. He said the Commerce highway safety bill will ''save more lives, and do it faster and cheaper than any other highway safety proposal Congress is likely to consider this decade.''

It would be a huge mistake to take away this incentive but in effect set a goal most States can't achieve and, therefore, we would not be able to save an estimated 1,200 or more lives a year.

I yield the floor.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. Mr. President, in these few moments before the vote, I commend the chairman of our Senate Environment and Public Works Committee, Senator INHOFE, along with Senators JEFFORDS and BAUCUS, for a job well done. We can't forget Senator REID, whom we consider an emeritus member of the EPW Committee, who has helped a great deal.

Tremendous staff work has gone into this. I appreciate the great work of my staff: Allen Stein, John Stoody, Heideh Shahmoradi; Senator INHOFE's staff, Ruth Van Mark, James O'Keeffe, Andrew Wheeler, Nathan Richmond, Greg Murrill, Alex Herrgott, John Shanahan, Angie Giancarlo, and Rudy Kapichak; Senator JEFFORDS' staff, JC Sandberg, Allison Taylor, Malia Somerville, JoEllen Darcy, and Chris Miller; and Kathy Ruffalo with Senator BAUCUS. Kathy brings a great deal of expertise to this effort.

We urge passage of this bill. It doesn't go as far as most of us would like, but it certainly moves us in the right direction. We appreciate the great work of all who cooperated on it.

The PRESIDING OFFICER (Mr. BURR). The Senator from Montana is recognized.

Mr. BAUCUS. Mr. President, after nearly 3 years and 6 temporary extensions, the Senate is on the verge of passing a monumental highway bill. We will provide over $295 billion that will create thousands of jobs and keep our transportation infrastructure healthy.

This legislation did not happen by itself—it took hard work and perseverance. First, I want to thank Senator INHOFE and Senator JEFFORDS, from the Environment and Public Works Committee, as well as Senator BOND, the chairman of the Subcommittee on Transportation and Infrastructure. They provided excellent leadership and I know their staff stayed up many a sleepless night.

For Senator INHOFE's staff, I want to thank Ruth Van Mark, James O'Keeffe, Nathan Richmond, Angie Giancarlo, Andy Wheeler, Marty Hall, Greg Murrill, Alex Herrgott, Rudy Kapichak, John Shanahan, Frank Fannon and Michele Nellenbach.

For Senator JEFFORDS' staff, I want to thank JC Sandberg, Ken Connolly, Alison Taylor, Jo-Ellen Darcy, Chris Miller, Margaret Wetherald, Mary Francis Repko, Malia Somerville, and Carolyn Dupree.

And for Senator BOND's staff, I want to thank Ellen Stein, John Stoody, and Heideh Shamoradi.

Senator SHELBY and Senator SARBANES also deserve recognition. They played an important role developing the transit title in this bill. I also want to thank my good friend Senator GRASSLEY, the chairman of the Finance Committee, for his commitment to the transportation program.

Let me take a moment and speak about the hard work of the Finance Committee staff. The House bill simply did not provide enough money for our highway infrastructure. The Finance Committee faced a difficult task. We needed to find additional revenue, but we also needed to pay for it. As is the rule on the Finance Committee, we worked in a bipartisan spirit to find an extra $7.8 billion for the highway trust fund, and all of it is paid for.

I also want to thank some staff members in particular. I appreciate the cooperation we received from the Republican staff, especially Kolan Davis, Mark Prater, Elizabeth Paris, Christy Mistr, Ed McClellan, Dean Zerbe, John O'Neill, and Nick Wyatt.

I thank the staff of the Joint Committee on Taxation and Senate Legislative Counsel for their service.

I also thank my staff for their tireless effort and dedication, including Russ Sullivan, Patrick Heck, Bill Dauster, Kathy Ruffalo-Farnsworth, Matt Jones, Jon Selib, Anita Horn Rizek, Judy Miller, Melissa Mueller, Ryan Abraham, and Wendy Carey. I also thank our dedicated fellows, Mary Baker, Jodie Cruz, Cuong Huynh, Richard Litsey, Stuart Sirkin, and Brian Townsend.

Finally, I thank our hardworking interns: Rob Grayson, Emily Meeker and Waylon Mathern.

This legislation really was a team effort. I hope that we can keep working together as we move to conference and hopefully get this legislation done before the end of the month.

The PRESIDING OFFICER. All time has expired.

AMENDMENT NO. 611

The PRESIDING OFFICER. There are 2 minutes of debate evenly divided on the Allen amendment.

The Senator from Virginia is recognized.

Mr. ALLEN. Mr. President, let me know when 1 minute is left, please.

My amendment sets a goal of 85 percent usage of seatbelts, and if a State achieves that, whichever way they may

achieve it, they would get these incentive grants.

The PRESIDING OFFICER. The Senator is reminded that he only has 1 minute.

Mr. ALLEN. Thank you.

The purpose of my amendment is to not have the Federal Government as an officious nanny telling the States how to achieve seatbelt usage rates. Twenty-nine States don't have primary enforcement of seatbelt laws and 21 do. Seven States have 90 percent usage. Fifteen States have over 85 percent. The underlying proposal will actually reward States that have lower seatbelt usage only because they have primary enforcement seatbelt laws, while others that do not have primary enforcement seatbelt laws have a higher use rate.

I don't think the people in the States who have paid into the highway trust fund ought to be dictated to by officious Federal nannies; we should trust the people in the States to make these decisions as opposed to trespassing on those prerogatives.

The PRESIDING OFFICER. The Senator from Arkansas is recognized for 1 minute.

Mr. PRYOR. Mr. President, I wish to make four points.

First, I voice my opposition to the Allen amendment. NHTSA, in every study I have found, says the best way to reduce fatalities on the highways is for States to enact primary safety belt laws.

Secondly, this bill provides an incentive, not a penalty. That is something we need to remember and understand. This is maybe a departure from past policies, but the bill, as currently written, provides incentives, not penalties.

Third, years ago, the Department of Transportation set an attainment goal of 90 percent. This amendment would move us back to 85 percent. We are moving backward instead of moving toward our goal; we are backing off of the goal.

Fourth, it is not so much about equity or fairness, but it is about saving lives. When you look at the safety groups and listen to the studies and look at the statistics—whatever measure you want to make—this is about saving lives and States having primary safety belt laws.

I thank the chair.

The PRESIDING OFFICER. Under the previous order, all time under rule XII is yielded back.

The question is on agreeing to amendment No. 611 proposed by the Senator from Virginia, Mr. ALLEN.

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

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second. The clerk will call the roll.

The legislative clerk called the roll.

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

The result was announced—yeas 14, nays 86, as follows:

[Rollcall Vote No. 123 Leg.]

YEAS—14

| | | |
|---|---|---|
| Alexander | Ensign | Nelson (FL) |
| Allen | Feingold | Snowe |
| Baucus | Gregg | Sununu |
| Bond | Kyl | Vitter |
| Collins | Lugar | |

NAYS—86

| | | |
|---|---|---|
| Akaka | Dole | McCain |
| Allard | Domenici | McConnell |
| Bayh | Dorgan | Mikulski |
| Bennett | Durbin | Murkowski |
| Biden | Enzi | Murray |
| Bingaman | Feinstein | Nelson (NE) |
| Boxer | Frist | Obama |
| Brownback | Graham | Pryor |
| Bunning | Grassley | Reed |
| Burns | Hagel | Reid |
| Burr | Harkin | Roberts |
| Byrd | Hatch | Rockefeller |
| Cantwell | Hutchison | Salazar |
| Carper | Inhofe | Santorum |
| Chafee | Inouye | Sarbanes |
| Chambliss | Isakson | Schumer |
| Clinton | Jeffords | Sessions |
| Coburn | Johnson | Shelby |
| Cochran | Kennedy | Smith |
| Coleman | Kerry | Specter |
| Conrad | Kohl | Stabenow |
| Cornyn | Landrieu | Stevens |
| Corzine | Lautenberg | Talent |
| Craig | Leahy | Thomas |
| Crapo | Levin | Thune |
| Dayton | Lieberman | Voinovich |
| DeMint | Lincoln | Warner |
| DeWine | Lott | Wyden |
| Dodd | Martinez | |

The amendment (No. 611) was rejected.

## RECESS

The PRESIDING OFFICER. Under the previous order, the hour of 12:30 p.m. having arrived, the Senate will stand in recess until 2:15 p.m.

Thereupon, the Senate, at 12:36 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. VOINOVICH).

## TRANSPORTATION EQUITY ACT: A LEGACY FOR USERS—Continued

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. INHOFE. Mr. President, it is my understanding we are now going to the Sessions amendment.

Mr. SESSIONS. Mr. President, I understand there is a unanimous consent to have 2 minutes, 1 minute on each side. I prefer to have more. I ask unanimous consent we have 3 minutes on each side.

Mr. INHOFE. I object. Two minutes on each side.

Mr. SESSIONS. Two minutes.

Mr. INHOFE. Mr. President, I offer Senator LAUTENBERG a moment to make a statement. He has been working with us on his amendment. It has been withdrawn.

I certainly yield to Senator LAUTENBERG for no more than 5 minutes.

AMENDMENT NO. 619, AS MODIFIED

Mr. LAUTENBERG. Mr. President, I appreciate the recognition. I will talk about my amendment No. 619 to crack down on our most dangerous, highest risk drunk drivers—repeat-offender, high-blood-alcohol-content drivers, drivers who have had so much to drink they have nearly double the legal limit of alcohol in their system.

I am proud to have the Senator from Ohio, Mr. DEWINE, as a cosponsor of this amendment. I ask unanimous consent Senator CORZINE be added as a cosponsor.

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

Mr. LAUTENBERG. Our amendment updates the current Federal repeat offender law so that it can be based on measures that have been proven to be effective in preventing drunk driving. It requires alcoholism assessments and treatment when necessary. It would require a 1-year license suspension with at least 45 days of no driving. The rest requires the use of an ignition interlock, a device that only lets the car operate when you blow into it and no alcohol is detected.

As for repeat offenders, it keeps current requirements for short-term jail time, closes a loophole for community service. The National Transportation Safety Board states that from 1983 through 1998 at least 137,000 people died in crashes nationwide involving higher risk drunk drivers. The research funded by the alcohol industry itself showed that 58 percent of alcohol-related deaths in 2000 involved drivers with BAC levels of .15 or above. That is outrageous. That person is totally without ability to function properly. This is consistent with government research that shows for drivers 35 and over, those with a .15 BAC or higher, they are 382 times more likely to be involved in a fatal crash than a sober driver.

It is important to note that our amendment does not create any new penalties for States. It merely updates the current program.

Our amendment does not affect a social drinker and is aimed squarely at higher risk drivers who are the core of the drunk-driving problem in this country. The National Transportation Safety Board, the Mothers Against Drunk Driving, and even groups funded by the alcohol industry, all agree we need to do more when it comes to repeat offenders and drivers with blood alcohol content levels twice the legal limit.

I understand the managers of the bill have agreed to accept the amendment as modified. I am grateful. I thank the managers, Senator INHOFE, Senator JEFFORDS, Senator BOND, and Senator BAUCUS, for working with Senator DEWINE and me. The amendment will make a meaningful difference in the number of lives we save each year from the epidemic of drunk driving.

In my early days in the Senate when President Reagan was in office, when Senator Dole was then-Secretary of Transportation, we put in a restriction on age and driving, age on alcohol and driving. We have saved 1,000 young people from dying on the highways every year for more than 20 years.

What a wonderful thing it is for a family not having to mourn the loss of a child, not having to see a policeman at the door in the dark of night.

MADD has been a stalwart ally. Together we will continue to save lives. I am very grateful to Senator INHOFE, Senator JEFFORDS, and the committee for their support on this amendment.

I yield the floor.

Mr. INHOFE. Mr. President, the distinguished junior Senator from Alabama, one of my closest friends, made a very reasonable request for 6 minutes equally divided. If he wants to restate the request, it is without objection.

Mr. SESSIONS. Mr. President, I ask unanimous consent for 6 minutes to be equally divided for debate before this vote.

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

AMENDMENT NO. 646, AS MODIFIED

Mr. SESSIONS. I thank the distinguished chairman. He is one of my favorite Senators. There is no one I respect more. He has worked hard, and so has the committee, to maximize what we can do to improve transportation infrastructure in this country. I respect that.

The problem is, we have passed a budget. The facts are that in pumping more money into highways—which all Members want to see, as this bill does—we have created a $10.7 billion shortfall. The offsets are revenue enhancements or tax increases that have been proposed either are unlikely to reach that $10.7 billion and/or will not be approved by the House of Representatives. That is a pretty well-known fact.

In addition, the President has stated he is not going to sign the bill. He started out at $256 billion. He went to $283 billion, and that is where he is going to stay.

What can we do to improve funding for highways, which affect every State, every corner of this country, not just certain areas? I proposed an amendment that I believe does the right thing. It does what our constituents pay us to do, and that is to make choices, make decisions.

I have proposed where the bill has a 31-percent increase in spending, we alter that; that we reduce the increased level of spending for matters not critical to our infrastructure; that we reduce the mass transit part of the bill by about $5 billion, still leaving an increase in mass transit spending.

We can get there. We can be sure the money we spent for highways will be sufficient, the President will sign the bill, and we will be fiscally responsible and be within our budget.

We are spending almost $300 billion. Can't we stay within the budget? Can't we be fiscally responsible and tight in how we spend this money?

My amendment reduces some of the increases in the other accounts, including mass transit. By the way, 46 percent of the mass transit funds are spent on four States in this country alone, and that does not count $8 billion in bureaucracy and overhead that goes with that in research. This would be the right approach.

I thank my colleague, Senator INHOFE, for his work on the bill. I know he has tried to do the impossible, which is to get more and more for our highways without having to bust the budget. I am afraid that is what we are doing. If we do this, we will fund highways for every State in the country. We will put the money where we need to, in concrete, so that every citizen can use for 100 years from now. The result is good for our budget and our integrity as we go through this process.

This is the first big bill that deals with a budget conflict. We do not need to fail a test on the first piece of legislation.

I thank Senator INHOFE for allowing me the additional time. I believe this is an important amendment. I urge my colleagues to vote fiscally responsibly, to affirm the budget, and pass legislation that will give us highway spending levels that we want and that the President will sign.

I yield the floor.

Mr. JEFFORDS. I yield myself such time as I may consume.

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

Mr. JEFFORDS. Mr. President, several days ago, 76 Members of this body voted to support additional investment in this Nation's surface transportation program.

They did not vote for an extravagant increase, instead they voted for a modest 4 percent increase over the President's request. With this modest increase, we will barely be able to keep pace with the enormous maintenance needs facing our surface transportation system with little left over for improvement.

Now the junior Senator from Alabama asks to return to an inadequate level of investment.

He asks the American family to waste additional time and money stuck in traffic. He asks us to vote to let more of our Nation's roads and bridges fall into a state of disrepair—all over a modest 4 percent increase.

I will vote against the Sessions amendment and I urge my colleagues to do the same.

Mr. INHOFE. I have a unanimous consent request to make. I ask unanimous consent that Lautenberg amendment No. 619 be modified with the changes at the desk and be accepted. Further, I ask that upon disposition of the Sessions amendment, the Inhofe substitute amendment, as amended, be agreed to, all without intervening action or debate.

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

The amendment (No. 619), as modified, was agreed to, as follows:

Strike section 1403 and insert the following:

**SEC. 1403. INCREASED PENALTIES FOR HIGHER-RISK DRIVERS DRIVING WHILE INTOXICATED OR DRIVING UNDER THE INFLUENCE.**

(a) IN GENERAL.—Section 164 of title 23, United States Code, is amended to read as follows:

**"§ 164. Increased penalties for higher-risk drivers driving while intoxicated or driving under the influence**

''(a) DEFINITIONS.—In this section:

''(1) BLOOD ALCOHOL CONCENTRATION.—The term 'blood alcohol concentration' means grams of alcohol per 100 milliliters of blood or the equivalent grams of alcohol per 210 liters of breath.

''(2) DRIVING WHILE INTOXICATED; DRIVING UNDER THE INFLUENCE.—The terms 'driving while intoxicated' and 'driving under the influence' mean driving or being in actual physical control of a motor vehicle while having a blood alcohol concentration above the permitted limit as established by each State.

''(3) HIGHER-RISK IMPAIRED DRIVER LAW.—

''(A) IN GENERAL.—The term 'higher-risk impaired driver law' means a State law that provides, as a minimum penalty, that—

''(i) an individual described in subparagraph (B) shall—

''(I) receive a driver's license suspension;

''(II)(aa) have the motor vehicle driven at the time of arrest impounded or immobilized for not less than 45 days; and

''(bb) for the remainder of the license suspension period, be required to install a certified alcohol ignition interlock device on the vehicle;

''(III)(aa) be subject to an assessment by a certified substance abuse official of the State that assesses the degree of abuse of alcohol by the individual; and

''(bb) be assigned to a treatment program or impaired driving education program, as determined by the assessment and paid for by the individual; and

''(IV) be imprisoned for not less than 10 days, or have an electronic monitoring device for not less than 100 days; and

''(ii) an individual who is convicted of driving while intoxicated or driving under the influence with a blood alcohol concentration level of 0.15 percent or greater shall—

''(I) receive a driver's license suspension; and

''(II)(aa) be subject to an assessment by a certified substance abuse official of the State that assesses the degree of abuse of alcohol by the individual; and

''(bb) be assigned to a treatment program or impaired driving education program, as determined by the assessment and paid for by the individual.

''(B) COVERED INDIVIDUALS.—An individual referred to in subparagraph (A)(i) is an individual who—

''(i) is convicted of a second or subsequent offense for driving while intoxicated or driving under the influence within a period of 7 consecutive years; or

''(ii) is convicted of a driving-while-suspended offense, if the suspension was the result of a conviction for driving under the influence.

''(4) LICENSE SUSPENSION.—The term 'license suspension' means, for a period of not less than 1 year—

''(A) the suspension of all driving privileges of an individual for the duration of the suspension period; or

''(B) a combination of suspension of all driving privileges of an individual for the first 45 days of the suspension period, followed by reinstatement of limited driving privileges requiring the individual to operate only motor vehicles equipped with an ignition interlock system or other device approved by the Secretary during the remainder of the suspension period.

''(5) MOTOR VEHICLE.—

''(A) IN GENERAL.—The term 'motor vehicle' means a vehicle driven or drawn by mechanical power and manufactured primarily for use on public highways.

''(B) EXCLUSIONS.—The term 'motor vehicle' does not include—

''(i) a vehicle operated solely on a rail line; or

''(ii) a commercial vehicle.

''(b) TRANSFER OF FUNDS.—

''(1) IN GENERAL.—Except as provided in paragraph (2), on October 1, 2008, and each October 1 thereafter, if a State has not enacted or is not enforcing a higher-risk impaired driver law, the Secretary shall transfer an amount equal to 3 percent of the funds apportioned to the State on that date under paragraphs (1), (3), and (4) of section 104(b) to the apportionment of the State under section 402 to be used in accordance with section 402(a)(3) only to carry out impaired driving programs.

''(2) NATIONWIDE TRAFFIC SAFETY CAMPAIGNS.—The Secretary shall—

''(A) reserve 25 percent of the funds that would otherwise be transferred to States for a fiscal year under paragraph (1); and

''(B) use the reserved funds to make law enforcement grants, in connection with nationwide traffic safety campaigns, to be used in accordance with section 402(a)(3).''.

(b) CONFORMING AMENDMENT.—The analysis for subchapter I of chapter 1 of title 23, United States Code, is amended by striking the item relating to section 164 and inserting the following:

''164. Increased penalties for higher-risk drivers driving while intoxicated or driving under the influence.''.

The amendment (No. 605), as amended, was agreed to.

AMENDMENT NO. 646, AS MODIFIED

Mr. INHOFE. Mr. President, in these 2 minutes, let me suggest two things I don't want to happen. I don't want my good friends who are conservatives on the Republican side to vote for this Sessions amendment with the idea that this is a conservative amendment. If you want to prove yourself and your conservative credentials as this being the way to do it, it is not.

I am looking at the current rating of the American Conservative Union. I am very proud of Senator SESSIONS because he is the ninth most conservative Member of this Senate. But guess who the No. 1 most conservative is. It is me. I stand here opposing—though I hate to do it—this amendment for that one reason.

The second reason is, this is very important. Inadvertently, I know it was not the intent of the Senator from Alabama, they omitted the wrong sections. So the sections of title I they amended are section 1101 and 1103 and nothing in title III. If you want to give guaranteed spending, you have to get to title III or section 102 of title I. That is where it is.

So all we have done with this amendment is attempt to reduce the contract authority which does not make any difference in terms of how much money is going to be spent. It is very important for people to understand that because I would not want them to be thinking you will be able to reduce something by doing it.

Second, the other point I want to make is, we have a Finance Committee. It is headed by Senator GRASSLEY, and the ranking minority is Senator BAUCUS. They have done a great job. We have gone to them with this bill and said we need to be able to pay for this, but we need a little bit more money. Can you find it? They found it.

The Joint Tax Committee validated what they said and, consequently, we have something that will not add to the deficit. It will do a little better job of taking care of donor States that will not be taken care of if this amendment should pass. I ask Members respectfully to reject the Sessions amendment.

Have the yeas and nays been requested?

The PRESIDING OFFICER. They have not.

Mr. INHOFE. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be.

The question is on agreeing to amendment No. 646, as modified. The clerk will call the roll.

The assistant legislative clerk called the roll.

The result was announced—yeas 16, nays 84, as follows:

[Rollcall Vote No. 124 Leg.]

YEAS—16

| | | |
|---|---|---|
| Brownback | Frist | McCain |
| Burr | Graham | Sessions |
| Coburn | Gregg | Sununu |
| Cornyn | Hagel | Thomas |
| DeMint | Hutchison | |
| Enzi | Kyl | |

NAYS—84

| | | |
|---|---|---|
| Akaka | Dodd | McConnell |
| Alexander | Dole | Mikulski |
| Allard | Domenici | Murkowski |
| Allen | Dorgan | Murray |
| Baucus | Durbin | Nelson (FL) |
| Bayh | Ensign | Nelson (NE) |
| Bennett | Feingold | Obama |
| Biden | Feinstein | Pryor |
| Bingaman | Grassley | Reed |
| Bond | Harkin | Reid |
| Boxer | Hatch | Roberts |
| Bunning | Inhofe | Rockefeller |
| Burns | Inouye | Salazar |
| Byrd | Isakson | Santorum |
| Cantwell | Jeffords | Sarbanes |
| Carper | Johnson | Schumer |
| Chafee | Kennedy | Shelby |
| Chambliss | Kerry | Smith |
| Clinton | Kohl | Snowe |
| Cochran | Landrieu | Specter |
| Coleman | Lautenberg | Stabenow |
| Collins | Leahy | Stevens |
| Conrad | Levin | Talent |
| Corzine | Lieberman | Thune |
| Craig | Lincoln | Vitter |
| Crapo | Lott | Voinovich |
| Dayton | Lugar | Warner |
| DeWine | Martinez | Wyden |

The amendment (No. 646), as modified, was rejected.

Mr. INHOFE. Mr. President, I move to reconsider the vote.

Mr. DOMENICI. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

RAIL CROSSING SAFETY FUNDING

Mrs. BOXER. Mr. President, I am pleased that this bill that we are considering has provisions to address this Nation's problems of grade crossings and the need for grade separations.

According to the Federal Railroad Administration, ''grade crossings are the site of the greatest number of collisions and injuries'' in the railroad industry. In 2000, there were 3,502 incidents at grade crossings.

This year in Glendale, CA, there was a tragic commuter train crash that resulted in 11 deaths and more than 200 injured.

In addition, the large volume of freight train traffic from California's ports to the rest of the Nation is a public safety hazard in many communities in California where traffic—including emergency vehicles—is severely delayed at these grade crossings.

In Riverside, CA, from January 2001 to January 2003, trains delayed ambulance and fire protection vehicles 88 times. This translates into more people possibly dying from health emergencies such as heart attacks, and larger and more deadly fires. If there is another terrorist attack, imagine what would happen if emergency first responders could not get across the tracks.

That is why I am pleased that this bill includes my language to require the Federal Railroad Administration to make recommendations to Congress on ways to fix this.

I am also pleased that this bill includes funding that States may use to separate railroad tracks and roads, and I am wondering whether the Senator from Missouri would enter into a colloquy on this matter.

Mr. BOND. I am happy to. And let me say that I agree with the Senator from California that there is a serious problem with grade crossings in this country, and I commend her for her leadership on this issue.

Mrs. BOXER. As I understand it, the Freight Transportation Gateways program has a provision—the ''Freight Intermodal Connections on the National Highway System''—that would allow States to use a portion of their highway funds to build bridges and tunnels for grade separations. California would receive $73 million each year.

Mr. BOND. Yes, this program would allow California—and all States—to use 2 percent of its National Highway System funding for three purposes, one of which is to eliminate grade crossings.

Mrs. BOXER. A second provision is the ''Elimination of Hazards Relating to Railway-Highway Crossings,'' which provides at least a $178 million setaside from the Highway Safety Improvement Program each year for the elimination of hazards at railway-highway crossings. Does this include projects on grade separations?

Mr. BOND. Yes, up to 50 percent of this funding could be used for grants specifically for grade separations.

Mrs. BOXER. Finally, there is a third provision that authorizes grants for rail line relocation projects. This would create a grant program that would allow States to receive funding to improve rail lines that pass through a municipality. This includes projects on grade separation. As a member of the Senate Commerce Committee, I am

pleased that Chairman STEVENS and Ranking Member INOUYE included this provision.

These provisions are a good start. I hope to continue to work with my colleague to ensure that Federal funding is available to help States and localities undertake grade separation projects so we can improve safety and relieve congestion where railroads and highways meet.

Mr. BOND. I will be happy to continue working with the Senator from California.

Mrs. BOXER. I thank the Senator.

REINFORCED CONCRETE DECKING

Mr. SANTORUM. Mr. President, I will discuss steel grid reinforced concrete decking—a product that I understand to have significant technological benefits and the ability to accomplish the goals of bridge and highway officials across the country. I am told that the following are benefits of steel grid: long service life; rapid and/or staged installation; and reduced maintenance costs and closures. Despite these benefits, states are hesitant to use steel grid reinforced concrete decking because of the initial cost per square foot of steel grid. However, because of construction benefits and the fact that steel grid weighs much less than the cast-in-place deck alternative, it is my understanding that using this product can reduce the total cost of a project. Because this type of deck system is underused, I urge your support for language in the conference report that highlights the benefits of steel grid and encourages the further development and use of this product.

Mr. INHOFE. Mr. President, I thank the Senator from Pennsylvania for his attention to steel grid reinforced concrete decking and the potential it holds. I look forward to working with Senator SANTORUM on this issue.

DIRECT DELIVERIES OF AVIATION FUEL

Mr. SMITH. Mr. President, I would like to ask a question of the chairman of the Finance Committee.

I am concerned about the application of one of the fuel tax provisions of the JOBS bill. Some people were cheating, by paying no tax on aviation fuel and then selling the fuel for highway use. To prevent this, we moved the collection point upstream, to the point at which fuel is removed from the rack.

At the same time, we created exceptions, for situations where there is little risk of evasion. One important exception is for fuel delivered by pipeline to a secure airport that goes from a secure fuel tank at an airport terminal directly into a commercial aircraft.

Here is the problem. Fuel suppliers often enter into long-term contracts to deliver fuel throughout an entire region. In some cases, they don't have their own fuel tanks at a particular airport. So the company enters into a contract with a fuel supplier, referred to as a ''position holder,'' who does have fuel available at that airport. In these cases, when planes come in for refueling, the legal title to the fuel shifts from the position holder to the reseller, then to the airline when the fuel goes into the commercial aircraft.

The concern is that situations like this may be disqualified from the exception because some believe the passage of title means that the fuel is not considered to go ''directly'' from the position holder to the commercial aircraft. As a result, the transaction could be subject to the burdens of the new rules even though I believe there is absolutely no risk of evasion.

In the chairman's markup, I filed an amendment to address this concern by clarifying that these so-called ''flash title'' transactions qualify for the exception, as long as they meet all of the other applicable requirements. I understand, however, that some believe my amendment was unnecessary because the transactions could already qualify.

This is an important matter to me. It affects many companies, including a Salem, OR, company that employs more than 100 people and provides an important service to airlines throughout my State.

I would like to get a clarification of this point. Is it the chairman's understanding that a transaction that otherwise qualifies for the exception in section 4081(a)(2)(C) and 4081(a)(3) and (4), which allows commercial aviation to self-assess fuel tax at the commercial rate, when the commercial airline receives fuel at one of the secure airports through the hydrant system exception, is not disqualified merely because of the incidental transfer of title from the original position holder to the reseller, and then to the commercial airline?

Mr. GRASSLEY. Yes, so long as the commercial airline fuel transaction takes place on one of the secure airports listed by the Treasury, then, that also is my understanding.

Mr. SMITH. Mr. President, with that understanding, I thank Chairman GRASSLEY for his assistance in this matter. It is important in order to avoid imposing unnecessary burdens on companies in Oregon and all across the country that provide aviation fuel.

Mr. LEVIN. Mr. President, the surface transportation reauthorization bill that was reported out of the Environment and Public Works committee increased Michigan's rate of return on all highway funds apportioned to States to 92 percent of our share of contributions to the highway account of the highway trust fund. However, a significant change in the funding formula was made through a substitute offered on the Senate floor which resulted in over $8 billion in apportioned highway funds being added to the bill to help certain States, including some donor States. The rate of return for all States on that $8 billion ranges from 37 percent to 550 percent. Under the substitute bill, Michigan receives the lowest rate of return of all States on the distribution of that new money. Only 12 States have a rate of return on this new money that is below 90 percent.

In recognition of Michigan's disproportionately low share of the new funding, the mangers gave assurances that corrective measures would be considered before the bill was passed by the Senate.

While a solution has not been identified yet, I would appreciate the assurances of the managers that in conference they will make every effort to address and correct this disproportionate treatment.

Mr. INHOFE. I understand and appreciate the Senator's concerns. While I cannot make any guarantees on a final outcome, I will continue to work to see if there is a way to address the critical needs of his State.

Mr. BAUCUS. I agree with the comments made by my colleague, the chairman of the Environment and Public Works Committee. I understand the concerns raised by the Senator from Michigan. I appreciate his leadership and knowledge of transportation issues and I will continue to work with him as this bill progresses.

HOUSEHOLD GOODS MOVERS

Mr. LOTT. Mr. President, I rise to discuss 2 amendments to the Commerce Committee's title of this bill addressing the regulation of the household goods moving industry. The Subcommittee on Surface Transportation and Merchant Marine, which I chair, developed a strong package to provide further protections to consumers that use movers to ship their belongings. Principally, our provisions are designed to address fraudulent and extortionary practices used by movers who take consumers' goods ''hostage'' and request exorbitant fees in exchange for releasing their worldly possessions.

Mr. INOUYE. These protections are needed because, while the Federal Motor Carrier Safety Administration, FMCSA, assumed the regulatory duties for the household goods moving industry previously entrusted to the Interstate Commerce Commission, inadequate Federal statutory protections and limited resources have meant that the interstate moving industry has essentially gone without oversight. FMCSA has received nearly 20,000 consumer complaints since January 2001, and yet until recently has had only one or two employees dedicated to household goods regulation and enforcement for the entire nation.

Mr. LOTT. Senators BOND and PRYOR have filed amendments to this section of the bill dealing with 2 important issues and I want to thank them for their hard work and interest in this topic. Senator INOUYE and I worked with Senator BOND to craft a version of his amendment which I have offered and we are prepared to accept Senator PRYOR's amendment with the understanding that we will continue to work together to perfect these provisions through the conference process with the House.

Mr. INOUYE. Yes, we understand that both Senators have a very strong interest in these provisions, and while I have concerns with the changes that

Senator BOND is proposing which I believe could significantly limit the authority of our State attorneys general in assisting the Federal Government in enforcing these new protections for moving company consumers, we are prepared to accept this language and make a commitment to work with both Senators to improve their provisions moving forward.

Mr. LOTT. Similarly, I know that Senator BOND has concerns with the language proposed by Senator PRYOR that defines who ''household goods carriers'' are, and therefore who is subject to the new consumer regulations we've proposed. In particular, the Senator is concerned that this definition could impact traditional moving companies' entry into new markets, such as the ''u-pack'' and ''pod'' moving and storage services being offered today which might not be covered by this definition. We understand these concerns and will continue to work with Senator BOND to ensure that we craft a fair and workable definition of a ''household goods carrier'' through the conference process.

Mr. BOND. I thank Senators LOTT and INOUYE for their commitments to address this issue in conference. I also raise my concerns with the amendment offered by Senator PRYOR to define the term ''household goods motor carrier.'' Definitions matter, and in this case, meeting the definition of a ''household goods carrier'' subjects the carrier to certain existing and new regulations that others who do not meet that definition do not have to provide. At the same time, I support excluding express delivery and parcel delivery carriers from the definition of ''household goods carrier.'' As currently drafted, however, I am concerned that the amendment would make it substantially more difficult for an established moving company to enter one of these new markets in which consumers are provided a trailer or container which they pack themselves and which the company then transports for them. The definition, as now offered by Senator PRYOR, would mean that an existing moving company would be subject to these new regulations while others who offer these services, but do not provide traditional moving services, would not be. As this bill moves to conference with the House, I am committed to working with the managers of this title to find a definition that is accurate and fair and that covers the universe of services that are being offered to consumers who are planning interstate moves of household goods.

Mr. PRYOR. I understand the Senator's concerns and the intent of my amendment is not to restrict competition or new entrants into the marketplace, but to ensure that we focus our resources on the problem as we now know it. I'll be glad to work with you to perfect this definition so that we can properly protect consumers while also ensuring a fair and open market place for the many different services now being offered.

Mr. BOND. I appreciate the Senator's commitment, and I also offer to work with you and Senator LOTT and INOUYE in conference on the amendment regarding procedures for allowing State attorneys general to pursue enforcement actions against interstate household goods movers in federal court. This amendment, which I have worked out with the managers and is being offered by Senator LOTT, establishes an approval process for actions taken by State attorneys general by the Secretary of Transportation before the AGs proceed in court. The amendment is critical because it establishes a responsible framework with a delineation of responsibilities to the States. The efforts of State governments should be focused on investigating and prosecuting those carriers that are too small or cases of fraud that are too isolated to cause a Federal response. At the same time, Federal agencies should be pursuing complaints of fraudulent activities by large and established carriers. By focusing our enforcement efforts along these lines, we will leverage our resources which will improve the effectiveness of the response to fraud and abuse in the household goods moving industry and ensure that no carrier slips through the cracks. The amendment also will ensure that State cases are legitimate and properly prepared. In addition, the amendment provides intervention and substitution authority for the Secretary if the Secretary believes that Federal Government would be in a better position to prosecute the case.

Mr. PRYOR. As a former State attorney general and the ranking member of the Commerce Committee's Consumer Affairs, Product Safety, and Insurance Subcommittee, I have significant concerns with this approach. I believe the amendment proposes a significant departure from precedent and establishes hurdles that could dissuade State attorneys general from proceeding with their cases, to the detriment of consumers. Allowing State attorneys general to enforce Federal laws and regulations with respect to the transportation of household goods in interstate commerce is perhaps the most important aspect of these provisions, since I believe that State attorneys general are much more likely than the Federal Government to doggedly pursue justice for their citizens in these cases.

Mr. INOUYE. I want to thank both Senators for their cooperation on these matters. Senator BOND raises a good point regarding the definition and we understand that this is a complex issue which will require further work by all involved.

Mr. LOTT. Senator PRYOR and Senator BOND, we understand your respective concerns and will work with you on these two issues as we hopefully proceed with his bill in Conference.

CLEAN TRUCKS

Mrs. BOXER. President, my amendment begins the process of putting all trucks operating in the United States, including those from Mexico, on an equal footing for emission standards with American trucks. Beginning in 2007, all trucks, including foreign trucks, operating in the U.S., will have to certify that they are meeting the performance emission standards of the Clean Air Act—the type of standards that American trucks have been required to meet for years. This provision will comply with our trade laws and help improve our air quality by assuring that foreign trucks are meeting our emissions protections. I thank the Senators from Mississippi and Hawaii for working with me on this amendment and for agreeing to accept it.

However, I believe it is only a start. I would have liked to include a provision requiring rebuilt engines to meet the standards in effect at the time the engines were manufactured. Such a provision would have covered more foreign trucks and ensured even cleaner air.

I understand the complications with including such a provision now, and I hope we can address this in Conference.

Mr. LOTT. I thank the Senator from California for her leadership. I understand what she was trying to do with regard to rebuilt engines. However, such a provision would require additional regulations from the Environmental Protection Agency, which is outside the jurisdiction of the Commerce Committee. With all committees at the table during conference, we can look at ways to address this issue.

Mr. INOUYE. I agree with the chairman, and I say to the Senator from California that you have my commitment to look into this issue as we hopefully proceed with this bill through conference. That will be the appropriate time to bring this additional matter to the table.

Mrs. BOXER. I appreciate your help on this issue, and I thank both Senators for agreeing to continue to address this issue.

PM–10 AND THE CMAQ APPORTIONMENT FORMULA

Mr. KYL. The legislation before us amends the apportionment formula for the Congestion Mitigation and Air Quality, CMAQ, program to include non-attainment and maintenance areas for fine particulate matter, so-called PM 2.5, and to make adjustments for the new 8-hour ozone standard. It does not amend the formula, however, to include non-attainment and maintenance areas for PM–10 particulate matter. Would the senior Senator from Oklahoma be willing to explore the question of whether the CMAQ apportionment formula should include factors for this Federal air quality standard as well?

Mr. INHOFE. I would.

Mr. KYL. I appreciate the Senator's openness to exploring that question. PM–10 is the greatest air quality problem facing Arizona. There are currently 8 PM–10 non-attainment areas in Arizona and the Phoenix metropolitan area is a serious non-attainment area for PM–10. Our CMAQ apportionment should reflect and help us address our

PM–10 air quality problem. Do I have the Senator's assurance that he and his colleagues are open to considering including PM–10 as part of the CMAQ apportionment formula?

Mr. INHOFE. I assure the Senator that I am willing to discuss with my fellow conferees the idea of including in the conference agreement on this legislation language adding PM–10 to the CMAQ apportionment formula.

Mr. KYL. I thank the Senator for his assurance and his consideration.

Mr. HATCH. Mr. President, I am pleased that Congress has worked in a bipartisan manner to pass a long overdue full transportation reauthorization, which has unfortunately been extended on a temporary basis six times and simply must be made permanent.

I congratulate Chairman INHOFE and Ranking Minority Member JEFFORDS for their tireless efforts in moving forward one of the largest bills Congress will consider this year. I am sensitive to the fact that the current spending extension expires at the end of this month. Clearing this legislation through a House-Senate conference before the May 31 deadline may be difficult, but I am hopeful we can move quickly. This is important because the bill will create approximately 47,500 jobs for every $1 billion in highway spending. This bill will also provide desperately needed funds for Utah roads and create jobs for many hard-working Utahns.

Transportation is an issue in which all Utahns have a stake. Without a doubt, transportation plays a central role in the State's ability and opportunity to prosper economically. As Utah's population continues to grow, its highways are becoming more congested, negatively affecting Utah's ability to compete economically, and ultimately decreasing the quality of life for many of us.

I am concerned that in 5 years, Utahns may be changing the term ''rush hour'' to ''rough 2 hours'' because of the heavy congestion on our freeways. The Utah Department of Transportation—UDOT—estimates that in 10 years, peak congestion along the Wasatch front will increase from 1 hour in the morning and in the evening to more than 3 hours. The effect congestion has had on our quality of life is undeniable.

Time after time I have visited with Utah officials who stress that our top priority must be transportation funding, because we simply do not have the money to meet the tremendous demands on our roads. Last year alone, the State of Utah received approximately $254 million in Federal transportation funding. In addition to the Federal funding received, the State of Utah spent over $520 million for transportation projects in 2004. Yet, UDOT maintains the state is unable to increase capacity or maintain existing infrastructure at this level of funding. Responding to Utah's serious transportation needs, I voted to increase total federal funding in the multi-year transportation bill by $11.2 billion, which would raise Utah's portion from the $269 million originally included in the bill to $282 million. Utah desperately needs these funds to fight congestion.

I am encouraged by the transportation projects planned for fiscal year 2006 for the State of Utah. This legislation may help us complete many transportation projects throughout Utah, including: new I–15 interchanges in Ogden, Layton and Provo; commuter rail service from Ogden to Provo and light-rail lines to the airport and South Jordan; highway projects on US–6 in Carbon County and State Road 92 in Utah County; a railroad overpass in Kaysville; and building the Northern Corridor in St. George.

This legislation also contains a provision that addresses an important competitive issue in the transportation sector. At my urging, Chairman INHOFE has agreed to include compromise language that allows qualified companies the opportunity to compete for Intelligent Transportation Infrastructure Program—ITIP—funding. I consider this a significant victory for small companies, and hope that House-Senate conferees will recognize the importance of providing a fair and level playing field for those wishing to access ITIP funds.

Our Nation's transportation infrastructure is in dire need of improvement. I believe this legislation not only addresses these critical needs, but it will create thousands of job opportunities, fight traffic congestion, and improve the safety of our roads and bridges.

As the bill moves to conference, it is my hope that we may come together with an adequately funded compromise. I pledge my efforts in this cause and hope my colleagues will do the same.

Mr. FRIST. Mr. President, we are about to vote on the highway bill. I believe we have a strong bill, a bipartisan bill.

I thank Senator INHOFE, Senator BOND, Senator GRASSLEY, Senator STEVENS, Senator LOTT, and Senator SHELBY for their hard work, dedication and leadership to get this bill passed. They have been instrumental to the process and deserve great credit.

I also thank my colleagues Senator JEFFORDS, Senator BAUCUS, Senator INOUYE, and Senator SARBANES for their willingness to work cooperatively on this critical legislation.

The highway bill is a result of a long, bipartisan process. It is based on more than 3 years of work, over a dozen hearings, testimony from more than 100 witnesses, and countless hours of negotiation. It is supported by a deep and broad coalition—from State and local highway authorities to national safety advocates.

And in a few moments, we will finally deliver to the American people legislation that will help build and improve our vast and sprawling infrastructure.

America is interlaced by nearly 4 million miles of roads and highways. The interstate highway system has often been called ''the greatest public works project in history.''

Our roads, ports and railroads are vital to America's economic success. We know this well in Tennessee where companies like Federal Express, U.S. Express, and Averitt Express are located.

Unfortunately, America's transportation infrastructure has deteriorated badly and our roads have become painfully overcrowded.

Just ask any American commuter. There is bumper-to-bumper traffic, not just during rush hour, but all day long. In our Nation's urban areas, traffic delays have more than tripled over the last 20 years in small and big cities across the country.

In my home State of Tennessee, traffic congestion has increased in all of our major metropolitan areas. Nashville commuters drive an average of 32 miles per person per day. Metropolitan planning organizations are struggling to meet demand.

Because of this congestion, Americans suffer more than 3.6 billion hours in delays, and waste 5.7 billion gallons of fuel, per year, sitting in traffic.

All the while creating more and more pollution. Cars caught in stop-and-go traffic emit far more pollution than cars on smoothly flowing roads.

The American Highway Users Alliance estimates that if we could free up America's worst bottlenecks, in 20 years, carbon dioxide emissions would drop by over three-fourths and Americans would save 40 billion gallons of fuel.

The legislation before use seeks to alleviate these problems in a number of ways.

In addition to improving our roads, the highway bill provides generous provisions to improve the buses and rail systems that make our urban centers thrive.

For Tennessee, this legislation will dramatically increase Federal highway and transit spending and support economic development throughout the State.

Tennessee, which is a donor State, will receive more than $800 million on average each year to invest in its highway infrastructure. This represents nearly $4 billion over the next 5 years.

The bill will also provide more than $296 million over the next 5 years to improve transit for our rural and urban commuters, an increase of 166 percent over the last highway reauthorization bill.

Tennessee's highways have consistently been ranked among the best and safest in the Nation, and these funds will help to reduce congestion, improve safety, and create thousands of new jobs.

Our transportation infrastructure is estimated to be worth $1.75 trillion. Every $1 billion we invest in transportation infrastructure generates more

than $2 billion in economic activity and 47,500 new jobs.

I look forward to passing this critical legislation.

We will need to work to resolve our differences with the House of Representatives so that we can send the President a bill that he can sign into law as quickly as possible. I am confident this can be done.

The highway bill is a roads bill. It is a jobs bill. It promises to help improve every American driver's quality of life.

I thank my colleagues in advance for, literally, keeping America moving forward.

Mrs. CLINTON. Mr. President, I would like to briefly describe my amendment No. 681, which includes modifications to section 1612 of the bill.

I want to thank Senator INHOFE for cosponsoring the amendment, and Senators BOND, JEFFORDS, and BAUCUS for working with me on this important issue and this amendment.

New air quality standards are driving a new round of air quality programs in many of our States. This is good for public health, and I strongly support these new standards. To meet these standards, I believe that new tools and strategies will be required.

I believe that one example of a new strategy that works was demonstrated in my State of New York. Despite making great strides in reducing emissions from a variety of sources, New York City has not yet been able to meet the air quality standards in the Clean Air Act. We are getting there, but it is a tough job, and there is more to do.

After the tragedy of September 11, it was clear that a large number of diesel-powered fleets and other diesel equipment would be operating around ground zero for many months. New York received emergency Federal funds to pay for those contractors. And, partly because they were being paid by Federal tax dollars, and partly because of New York's continuing struggle with air quality issues, diesel equipment operating at ground zero was required to be retrofitted with pollution control equipment, and some Federal funds were used to pay for the retrofits.

Communities across New York and the country face similar challenges, in that emissions from diesel equipment involved in highway construction projects can put a temporary—but significant—increase in emissions in communities struggling to meet air quality standards.

The amendment has three main provisions. First, it requires States to develop emission reduction strategies for fleets that are used in construction projects located in non-attainment and maintenance areas and are funded under this title. Second, it requires EPA to develop a non-binding guidance for the States to use in developing their emission reduction strategies. The guidance will include technical information on diesel retrofit technologies, suggestions on the methods for inclusion in the emission reductions strategies, and other information that Administrator of EPA, in consultation with the Secretary, determine to be appropriate. Third, it clarifies that States may use CMAQ funding to finance the deployment of diesel retrofit technology and other cost-effective solutions as part of the emission reduction strategies.

I first introduced this provision as an amendment during the debate on the transportation bill last year. That original provision was included in the bill reported by the Environment and Public Works Committee earlier this year. During committee consideration of the bill, it came to my attention that the Association of General Contractors had concerns with the amendment. I am pleased to say that the chairman and I have worked with them to accommodate their concerns, and the revised section 1612 that this amendment contains reflects those negotiations. The Association of General Contractors now supports this provision, and has agreed to actively support it during the conference. I will ask unanimous consent that their letter of support be placed in the RECORD following my remarks.

This amendment will also result in the cost-effective use of CMAQ funds. During the debate over the last reauthorization of the highway programs, Congress asked the Transportation Research Board of the National Academy of Sciences to assess the CMAQ programs. Specifically, Congress asked the board to report on whether CMAQ-funded projects are cost-effective relative to other strategies for reducing pollution and congestion.

The Transportation Board reported its results in a 2002 Special Report 264, the CMAQ Improvement Program, Assessing 10 Years of Experience. The report concluded that '' strategies directly targeting emission reduction have generally been more cost-effective than attempts under CMAQ to change travel behavior.'' It recommended reauthorization of the CMAQ Program with modifications to improve its cost-effectiveness and to enhance its performance in improving air quality. In addition, a recently completed report for the Emission Control Technology Association that builds on this report and other data reaches similar conclusions about the cost-effectiveness of diesel retrofits. I will also ask unanimous consent that this report be printed in the RECORD after my remarks.

This amendment achieves both goals. It improves CMAQ cost-effectiveness by authorizing states to use CMAQ to fund the deployment of diesel retrofits. These are new technologies that have been found by EPA, the Diesel Technologies Forum, and others to be very cost-effective relative to other CMAQ-funded projects to improve air quality.

The amendment will also enhance the performance of CMAQ in improving air quality by financing diesel retrofit technology that reduces emissions of fine particulate matter, the most serious airborne threat to human health today. This is a problem that everyone agrees is a top air pollution priority. It's why I feel so strongly about this amendment and have worked to fund the EPA's Clean School Bus USA program. Recognizing the seriousness of the problem, the administration has acted as well, promulgating the 2004 on-road heavy duty diesel regulations, the 2010 off-road diesel regulations, the Clean School Bus USA Program, the National Clean Diesel Campaign, and the newly-proposed Clean Diesel Initiative that is in the President's fiscal year 2006 budget proposal.

I am pleased that the Senate will adopt this amendment because I believe it will provide States with additional tools to achieve our Nation's air quality goals. Reducing diesel emissions from construction activities is often the most cost-effective way to improve air quality. This amendment will help make that happen do just that.

I want to again thank Senators INHOFE, BOND, JEFFORDS, and BAUCUS for working with me.

Mr. President, I now ask unanimous consent that the material to which I referred be printed in the RECORD.

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

MAY 12, 2005.

Hon. JAMES M. INHOFE,
*Chairman, Environment and Public Works Committee, U.S. Senate, Russell Senate Office Building, Washington, DC.*

Hon. HILLARY RODHAM CLINTON,
*U.S. Senate, Russell Senate Office Building, Washington, DC.*

DEAR MR. CHAIRMAN AND SENATOR CLINTON: We appreciate your leadership for including the diesel engine retrofit provision (Section 1612) in the Senate's highway transportation bill (S. 732). This provision is important to both the construction and the mobile source emission control technology industries that we represent.

At your urging, the Associated General Contractors of America (''AGC'') and the Emissions Control Technology Association (''ECTA'') have been working together to develop ideas for improving on Section 1612 so that it better conforms to the current marketplace. The amendment that you filed today to rewrite a portion of section 1612 reflects the principles that we have jointly developed, and we believe it is a substantial improvement over the underlying provision. Your new proposal will better accomplish the original goals of the legislation—to reduce pollution by spurring more cost-effective use of funds from the Congestion Mitigation and Air Quality Improvement Program.

Both organizations strongly support your amendment and urge that it be adopted during Senate consideration of the highway bill. Should the Senate adopt the amendment as we hope, our organizations are both committed to working with the conferees to ensure that it is retained in the conference report.

We appreciate your leadership on this important issue, and look forward to working

closely with you to ensure that this important provision is included in the highway bill that is sent to the President.

Regards,

JEFFREY D. SHOAF,
*Senior Executive Director, Government and Public Affairs, The Associated General Contractors of America.*

TIMOTHY J. REGAN,
*President, Emissions Control Technology Association.*

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## CLEANING THE AIR: COMPARING THE COST EFFECTIVENESS OF DIESEL RETROFITS VS. CURRENT CMAQ PROJECTS

AN ANALYSIS PREPARED FOR THE EMISSION CONTROL TECHNOLOGY ASSOCIATION

(By Robert F. Wescott)

### EXECUTIVE SUMMARY

A key goal of U.S. air pollution programs, including the Congestion Mitigation and Air Quality (CMAQ) program created in 1990, has been to clean the air in cities to improve public health and lower medical costs. But while the CMAQ program has emphasized reductions of carbon monoxide, hydrocarbons, and ozone, recent research finds that the top air pollution problem in urban areas today is fine particulate matter, which is particles with a diameter of 2.5 micrometers or less ($PM_{2.5}$).

This pollutant, $PM_{2.5}$, is a primary airborne threat to human health today costing more than $100,000 per ton in health costs. Researchers estimate that $PM_{2.5}$ is two to twenty times as harmful to human health as nitrous oxide, more than one hundred times as dangerous as ozone, and 2000 times as dangerous as carbon monoxide on a per ton basis.

Diesel engine exhaust is a source of $PM_{2.5}$ emissions in urban areas. Approximately one third of these diesel emissions are due to on-road vehicles and about two thirds are due to off-road equipment, such as construction equipment.

Diesel retrofit technology is currently available that is highly effective at reducing $PM_{2.5}$ emissions. Diesel oxidation catalysts (DOCs) are well suited for retrofitting older off-road vehicles and diesel particulate filters (DPFs) are highly efficient at reducing these pollutants where new low sulfur diesel fuels are available, as is already the case in most urban areas.

From the point of view of cost effectiveness, diesel retrofits are superior to almost all current CMAQ strategies, including ride-share programs, van-pool arrangements, HOV lanes, traffic signalization, bike paths, and all strategies that attempt to modify behavior (like encouraging telecommuting.) Most of these CMAQ strategies cost $20,000 to $100,000 per ton equivalent of pollutant removed, and some cost as much as $250,000 per ton removed.

Under conservative assumptions, diesel retrofits cost only $5,340 per ton equivalent of pollutant removed, In fact, among all CMAQ strategies, only emission inspection programs appear to exceed the cost effectiveness of diesel retrofits.

Expanding the range of CMAQ projects to include diesel retrofits for construction equipment and off-road machinery in urban areas could be a highly effective way to spend public monies. More than 100 million Americans live in areas of the country where $PM_{2.5}$ levels exceed the EPA's guidelines.

### BACKGROUND

Cleaning the air to improve human health and lower medical costs has been an objective of U.S. government policy since at least the Clean Air Act of 1970. Concerns about poor air quality, especially in urban areas, led to the creation of the Congestion Mitigation and Air Quality (CMAQ) Program in 1990, which has set aside a portion of transportation monies for the past 15 years to fund innovative projects to reduce carbon monoxide, hydrocarbons, nitrous oxides, and smog in so-called non-attainment areas. Vehicle emission inspection programs, high-occupancy vehicle (HOV) travel lanes, van pool programs, park-and-ride lots, and bike paths are examples of CMAQ projects.

There has been significant progress in the past 35 years in reducing carbon monoxide and hydrocarbon emissions and smog. Scientists, however, have been able to identify new airborne health risks whose costs are now becoming more fully appreciated. Notably, particulate matter (PM) has been found to have especially pernicious health effects in urban areas. Increasingly it is becoming understood that diesel engine emissions in urban areas, both from on-road trucks and buses and from off-road construction and other equipment, are a significant source of fine particulate matter pollution. This leads to a number of questions:

What is the current assessment of the top health risks from air pollution from mobile sources in urban areas?

What is the role of emissions from diesel engines?

How does diesel retrofit technology to clean engine emissions after combustion compare with current CMAQ projects in terms of cost effectiveness?

Are CMAQ funds currently being deployed in the most cost effective manner possible?

This paper examines these questions by reviewing the recent scientific, environmental, economic, and health policy literature.

### THE HEALTH COSTS OF AIR POLLUTION

In the 1960s and 1970s they key health risks from air pollution were deemed to come from carbon monoxide, hydrocarbons (or volatile organic compounds, VOCs), nitrous oxides ($NO_X$), and smog, and early clean air legislation naturally targeted these pollutants. During the past ten years or so, however, researchers have identified new pollutants from mobile sources that have particularly harmful health effects, especially in urban areas. Top concern today centers around particulate matter, and especially on fine particulate matter. Fine particulates, with a diameter of less than 2.5 micrometers ($PM_{2.5}$), can get trapped in the lungs and can cause a variety of respiratory ailments similar to those caused by coal dust in coal miners. A significant portion of $PM_{2.5}$ emissions in urban areas come from off-road diesel equipment. According to analysis by the California Air Resources Board, on-road engines account for about 27% of PM emissions in California and off-road equipment is responsible for about 60% of PM emissions.

Analysis by Donald McCubbin and Mark Delucchi published in the Journal of Transport Economics and Policy evaluates the health costs of a kilogram of various air pollutants, including CO, $NO_X$ $PM_{2.5}$, sulfur oxides ($SO_X$), and VOCs. These researchers estimate health costs from such factors as, hospitalization, chronic illness, asthma attacks, and loss work days for the U.S. as a whole, for urban areas, and for the Los Angeles basin. For urban areas, they find the range of health costs per kilogram of CO was from $0.01 to $0.10, $NO_X$ was from $1.59 to $23.34, $PM_{2.5}$ was from $14.81 to $225.36, $SO_X$ was from $9.62 to $90.94, and VOCs was from $0.13 to $1.45. Taking the mid-points of these estimates, a kilogram of $PM_{2.5}$ therefore was nearly 10 times more costly from a health point of view than a kilogram of $NO_X$, more than 150 times more costly than a kilogram of VOCs, and more than 2000 times more costly than a kilogram of CO. On a per ton basis, a ton of $PM_{2.5}$ causes $109,000 of health costs, a ton of $NO_X$ costs $11,332, a ton of VOCs costs $718, and a ton of CO costs $50.

### EFFECTIVENESS OF DIESEL RETROFIT FILTERS

Given the high health costs of $PM_{2.5}$, significant effort has gone into the development of technological solutions to deal with the problem. The best technologies involve the use of post-combustion filters with a catalyzing agent, which together trap and break down dangerous pollutants before they are emitted into the air. All new diesel trucks will be required to use these technologies by 2007 according to U.S. EPA rules, and off-road equipment will have to use these technologies by 2010. (Rules require 95% reductions in emissions of several pollutants, as well as a 97% cut in the sulfur levels in diesel fuel.) However, given that the lifespan of a diesel engine can be 20–30 years, it will take decades to completely turn over America's diesel fleet. Therefore, by lowering emissions from older diesels, retrofits are an effective path to cleaner air over the next few decades.

Diesel retrofit filters are highly effective at their chief function: preventing dangerous pollutants from ever entering the air. Diesel oxidation catalysts (DOCs), at $1,000 to $1,200 per retrofit, reduce PM by about 30% and can work with current higher sulfur diesel fuels. This yields a large benefit when installed on older, higher-polluting vehicles. In addition to the PM reducing capabilities, these filters can also cut the emission of carbon monoxide and volatile hydrocarbons by more than 70%.

Diesel particulate filters (DPFs), which generally cost $4,000–$7,000 per engine, are far more efficient. They are specifically targeted at keeping more dangerous PM out of the air than DOCs. In fact, they can reduce $PM_{2.5}$ pollution from each vehicle by more than 90%, yielding an enormous cut in emissions over the life of the diesel engine, even when installed on newer, cleaner diesel vehicles. An additional requirement of DPFs, however, is that the vehicle must run on newer very low sulfur fuels. High sulfur fuel leads to sulfate emissions from the filter due to the very active catalysts needed to make the filters function properly. Thus, DPFs are most effective as a solution for vehicles in urban areas—such as construction equipment and urban fleets—where very low sulfur fuels are already available.

These technologies are not new or experimental; they are already in use around the world. There are 2 million of these technologies already at work in heavy-duty diesel vehicles worldwide. Further, there are 36 million DOCs and 2 million DPFs in use on passenger vehicles in Europe alone, where these technologies are currently being used, reaping cost-effective health benefits over the long term.

### THE CMAQ PROGRAM

The CMAQ program is the only federally funded transportation program chiefly aimed at reducing air pollution. Its historical purpose has been twofold: to reduce traffic congestion and to fund programs that clean up the air Americans breath. Within its air quality mission, it is designed primarily to help non-attainment areas (mainly polluted urban zones) reach attainment for air quality standards under the Clean Air Act. Historically many CMAQ projects have tried to change travel and traffic behavior in order to achieve its goals. These transportation control measures (TCMs) have been designed both to reduce traffic congestion as well as improve air quality. An example is a bicycle path. Designed to reduce the number of drivers on the road, bike paths could, in theory,

achieve both goals. Further examples are vanpools, ridesharing and park and ride programs, and HOV lanes: all current CMAQ projects. Other projects have addressed emission reductions directly, as for example, through funding for state automobile emission inspection programs.

As a condition for reauthorizing the CMAQ program in 1998, the U.S. Congress required that a detailed 10-year assessment of the program be conducted. This review was performed by the Transportation Research Board of the National Research Council and was completed in 2002. This review found that CMAQ has been less than successful in reducing congestion and suggested that the most beneficial way for CMAQ to use its funds is to focus on air quality. It also found that TCMs were less cost effective than measures to directly reduce emissions, such as through inspection programs.

Furthermore, the study suggested that CMAQ's focus within the domain of air quality is misplaced. CMAQ programs have targeted the gases considered the most dangerous pollutants for many years, like hydrocarbons, carbon monoxide, and nitrous oxides. While these gases pose recognized health and environmental risks, recent work has shown that the dangers of these substances pale in comparison to the danger of fine particulate matter. In the words of the study, ''Much remains to be done to reduce diesel emissions, especially particulates, and this could well become a more important focus area for the CMAQ program.'' Further, discussing the fact that diesel-related CMAQ programs could be the most cost-effective, the study states, ''had data been available on particulate reductions . . . the ranking of strategies focused on particulate emissions . . . would likely have shown more promising cost-effectiveness results.''

COMPARING THE COST EFFECTIVENESS OF DIESEL RETROFITS WITH OTHER CMAQ PROJECTS

Given that $PM_{2.5}$ emissions from diesel engines are a leading health concern, that effective technology exists today to clean the emissions of off-road diesel equipment used extensively in the middle of American cities (non-attainment areas), and that the CMAQ 10-year review highlights the possible use of CMAQ funds for diesel retrofit projects, it is logical to compare the cost effectiveness of these diesel retrofits with current CMAQ projects. The CMAQ Program: Assessing 10 Years Experience (2002) estimates the median cost per ton of pollutant removed for 19 different CMAQ strategies and these estimates provide the comparison base. Published estimates for diesel retrofits are compared with these estimates.

As a first step in comparing the cost effectiveness of pollution reduction strategies, it must be noted that the CMAQ cost effectiveness estimates are presented as ''cost per ton equivalent removed from air,'' with weights of 1 for VOCs, 4 for $NO_X$, but 0 for $PM_{2.5}$. Relying upon the McCubbin and Delucchi health cost estimates, however, even weighted $NO_X$ should be considered more damaging than VOCs. That is, even though 0.25 ton (the 1:4 ratio above) of $NO_X$ removed counts as the CMAQ equivalent of one ton of pollution removed, it has a higher health cost than a ton of VOCs ($11,332 / 4 = $2,883 for $NO_X$ vs. $718 for VOCs). As a second step, conservatively assume that all CMAQ projects remove the more damaging pollutant ($NO_X$). This still means that a ton of $PM_{2.5}$ reduction would be worth at least 9.45 tons of regular CMAQ reductions ($109,000 for $PM_{2.5}$ / $11,332 for $NO_X$).

Diesel retrofits are estimated to cost $50,460 per ton of $PM_{2.5}$ removed by the California Air Resources Board (CARB). This estimate is very conservative and substantially higher than that cited by industry sources. Using the CARB cost estimate, diesel retrofits cost $5,340 per ton equivalent of air pollution removed ($50,460/9.45), based upon the CMAQ definition of ton equivalent and on the conservative assumption that CMAQ projects remove the most damaging pollutant reviewed. If a less conservative and more realistic assumption is used—that CMAQ projects remove a mix of $NO_X$ and VOCs—then the cost-effectiveness of diesel retrofits becomes substantially more favorable, and could be as low as $332 per ton of CMAQ pollutant removed.

This analysis means that diesel retrofits for construction equipment are highly cost effective when compared with current CMAQ strategies. As shown in Table 1 and Chart 2, some CMAQ strategies cost more than $250,000 per ton of pollutant removed (teleworking), and many are in the $20,000 to $100,000 per ton range (traffic signalization, park and ride lots, bike paths, new vehicles, etc.). The only current CMAQ project category that exceeds the cost effectiveness of diesel retrofits is emission inspection programs.

Other studies also conclude that diesel retrofits are highly cost effective compared with current CMAQ projects. The Diesel Technology Forum compared the benefits and costs of CMAQ projects with diesel retrofits for transit buses (for $NO_X$ pollution reduction) and concluded that retrofits are a better use for CMAQ funds than any other typical CMAQ project, with the exception of inspection and maintenance programs and speed limit enforcement. Also, the California EPA's Air Resources Board has estimated that diesel retrofits have a benefit of between $10 and $20 for each $1 of cost. And the U.S. EPA, in its justification for new on-road diesel rules in 2007 and off-road rules in 2010 estimates the benefits for diesel particulate filters at roughly $24 for each $1 of cost.

TABLE 1.—COST-EFFECTIVENESS OF CURRENT CMAQ STRATEGIES AND DIESEL RETROFITS

[Median cost per ton equivalent of air pollution removed]

| | Median cost | Rank |
|---|---|---|
| Inspection and maintenance | $1,900 | 1 |
| Diesel retrofits | 5,340 | 2 |
| Regional rideshares | 7,400 | 3 |
| Charges and fees | 10,300 | 4 |
| Van pool programs | 10,500 | 5 |
| Misc. travel demand management | 12,500 | 6 |
| Conventional fuel bus replacement | 16,100 | 7 |
| Alternative fuel vehicles | 17,800 | 8 |
| Traffic signalization | 20,100 | 9 |
| Employer trip reduction | 22,700 | 10 |
| Conventional service upgrades | 24,600 | 11 |
| Park and ride lots | 43,000 | 12 |
| Modal subsidies and vouchers | 46,600 | 13 |
| New transit capital systems/vehicles | 66,400 | 14 |
| Bike/pedestrian | 84,100 | 15 |
| Shuttles/feeders/paratransit | 87,500 | 16 |
| Freeway management | 102,400 | 17 |
| Alternative fuel buses | 126,400 | 18 |
| HOV facilities | 176,200 | 19 |
| Telework | 251,800 | 20 |

Source: All costs from The CMAQ Improvement Program: Assessing 10 Years of Experience, (2002), except diesel retrofit costs, which are from author's calculations.

CONCLUSIONS

The top air pollution problem in U.S. urban areas today is almost certainly $PM_{2.5}$, which is estimated to cost more than $100,000 per ton in health costs. A major source of $PM_{2.5}$ emissions in urban areas is diesel engine exhaust. Approximately one third of these diesel emissions are due to on-road vehicles and about two thirds are due to off-road equipment. Off-road equipment in urban areas is a particular problem, because it gives off exhaust at ground level, frequently near large groups of people.

Diesel retrofit technology is currently available that is highly effective at reducing $PM_{2.5}$ emissions. DOCs are well suited for retrofitting older off-road vehicles and DPFs are highly efficient at reducing these pollutants where new low sulfur diesel fuels are available, as is already the case in most urban areas.

From a cost effectiveness point of view, diesel retrofits are superior to almost all current CMAQ strategies, including rideshare programs, van-pool arrangements, HOV lanes, traffic signalization, bike paths, and all strategies that attempt to modify behavior (like encouraging teleworking.) Only emission inspection programs exceed the cost effectiveness of diesel retrofits based upon conservative assumptions. Expanding the range of CMAQ projects to include diesel retrofits for construction equipment and off-road machinery in urban areas could be a highly effective way to spend public monies.

Mr. CORZINE. Mr. President, I rise today to discuss the transportation reauthorization legislation that is pending before the Senate, the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005 or SAFETEA. I commend the managers of this bill, Senators INHOFE and JEFFORDS for producing bipartisan legislation that will help address the safety and congestion needs on our Nation's roads, rails and bridges. I thank the managers for their hard work.

Under SAFETEA, New Jersey will see a 56 percent increase in mass transit formula funds from fiscal year 2005 to fiscal year 2009. It will also see an increase its return on the highway dollar from the current 90.5 cents on the dollar, which is the absolute minimum, to 92 cents on the dollar.

This money is sorely needed. New Jersey is the most densely populated State in the Nation. This is causing gridlock on our roads. According to the latest study by the New Jersey Institute of Technology, the average New Jersey driver now spends 45 hours a year stuck in traffic. I repeat, 45 hours a year. All this time spent behind the wheel does more than hurt New Jersey's quality of life. It also costs us an average of $1,255 per driver in wasted gasoline and lost productivity—for a total cost of $7.3 billion a year. That is a huge blow to New Jersey's economy.

I have spent 25 years of my life commuting from northern New Jersey into New York City. I have seen firsthand how tough the commute is getting. People are getting caught in gridlock on roads and bridges that are overcrowded and in need of repair. According to the New Jersey Department of Transportation, to fix New Jersey's 13 most seriously deteriorating bridges will cost $2.03 billion. And we are facing $1 billion in pavement and surfacing needs for our highways alone.

New Jersey is the most densely populated State. We need a greater share of funding to repair our roads and bridges. Thanks to the leadership of Senator INHOFE and Senator JEFFORDS, we will begin to see some of that funding under SAFETEA.

However, I must say that I was disappointed when the Senate last week refused to pass the amendment Senator LAUTENBERG and I offered on protecting States from corruption in transportation contracting, a practice commonly known as ''pay-to-play''. I

believe that this was due in large part to false statements that were made by certain groups and repeated on the floor of the Senate. I would like to take a moment to address both these comments and the continuing need for this measure.

The criticisms fall into three areas: First, that this measure was not needed to ensure fair and open competition for highway and mass transit contracts. Second, that Senator LAUTENBERG and I were trying to impose New Jersey's pay-to-play law on the rest of the Nation. The third criticism was that New Jersey did not need a change in Federal law in order for its own pay-to-play measures to be implemented. All of these points are wrong and I will address each in turn.

The first criticism was that our amendment was unnecessary. The U.S. Chamber of Commerce and certain members of the Senate argued that competitive bidding rules already guarantee fair treatment for all contractors, without any favoritism. That is not true. Governments can and do enact unfair conditions to restrict who may bid. Sometimes those conditions can be subtle, such as requiring a certain size for a company that receives a contract. Sometimes they can be more overt, such as overly burdensome licensing requirements. As a result, the playing field is hardly level for those who would like to compete for contracts.

The second criticism was that Senator LAUTENBERG and I were trying to create a national pay-to-play rule that would apply to every State in the country. That is also not true. We were not establishing a Federal pay-to-play rule in Federal highway contracting. We were merely asking the Senate to respect the rights of states to establish and maintain their own *state* contracting practices. Further, this only impacts contributions to state level candidates. Federal campaign finance laws are in no way affected.

Finally, opponents argued that New Jersey does not need a Federal fix for its pay-to-play problems. That is not true as well. New Jersey enacted a statute that limits contributions from a corporation or individual who does business with the state to no more than $300. While this is a valuable tool in ensuring that contracts are awarded solely on the basis of merit, a gaping loophole exists due to the fact that the U.S. Department of Transportation will not allow this law to apply to highway and mass transit contracts that use Federal funds. As a result, New Jersey faces a situation where nearly $900 million in the contracts for Federal highway and mass transit projects that it awards annually are susceptible to corruption. This is a ''corruption tax'' that New Jersey's citizens must continue to pay, thanks to the Senate's actions last week.

A number of States and cities have enacted pay-to-play statutes that are similar to New Jersey's. This includes South Carolina, Kentucky, Ohio, West Virginia, and New Jersey, and now Hawaii. In addition, pay-to-play measures have been enacted in the cities of Los Angeles, San Francisco, Oakland, Chicago, and 24 local jurisdictions in New Jersey. Pay-to-Play bills are also pending in Illinois, Connecticut, and New York City. Let me be clear, the Senate's actions have put all of these laws in jeopardy.

It is time for the Senate to ensure that both highway and mass transit contracts can be awarded without the taint of government corruption. We owe the taxpayers nothing less.

Mr. PRYOR. Mr. President, I want to talk briefly about an amendment to this bill that I cosponsored with Senators HUTCHISON and BEN NELSON.

The amendment repealed, for the most part, an unpopular provision that was included in TEA–21 that has never been utilized: the Interstate System Reconstruction and Rehabilitation Pilot Program. It is also known as the Interstate Tolling Program.

I understand the desire to find new ways to finance our ever-growing transportation needs. Our roads and bridges are deteriorating; our freight, truck, and passenger traffic is increasing. According to the American Association of State Highway and Transportation Officials, we need an annual investment by all levels of government of $92 billion a year just to maintain the current system. To improve it, we need $125.6 billion a year. This bill addresses only a fraction of those needs, but the increased funding compared to levels contained in TEA–21 is a positive step.

I think we can do better, and I think we have a duty to do better. If we can find ways to provide more money for infrastructure without increasing our Nation's deficit, I believe we should do it. I have voted in the past to increase the level of funding in this bill because I believe it is warranted, it is reasonable, and it is the responsible thing to do.

I applaud efforts to try to find new and innovative ways to finance new road building.

The bill creates a new commission to explore alternative sources of revenue for transportation. I think that is a good idea.

However, I cannot agree that it is a good idea to put tolls on interstate highways that have already been paid for with Federal gas tax dollars. That is what the Interstate System Reconstruction and Rehabilitation Program does.

This pilot program allows tolling of existing lanes on the Interstate Highway. I think that is bad policy, and that is why I have joined Senator HUTCHISON, and Senator NELSON in sponsoring an amendment to strip this program from this reauthorization bill.

My amendment does not affect States' ability to finance new interstate construction using tolls. It does not affect States' ability to convert HOV lanes to High Occupancy Toll—HOT—add new voluntary use tolled lanes to their Interstates, or toll non-Interstate roads.

The amendment only prevents tolling on existing interstate lanes, which have already been paid for once by federal gas taxes.

I see this as an issue of double taxation.

We are talking about interstate highways that were built using Federal gas tax money. There are those who want to tax the use of these same roads that have already been paid for.

I understand the desire to find new ways to finance road building. In Arkansas, our State leaders have chosen to increase the State gas tax throughout the years in order to meet its road construction needs.

In fact, Arkansas is in the top half of State gas taxes. Arkansas has acted responsibly, and now there is an effort to institute tolls on existing interstate highways because some States don't want to raise their gas taxes. They would rather tax through tolling:) I think that is unfair.

This is an issue that affects poor, rural residents who have limited transportation options the most. Over the past few years, EAS and Small Community Air Service funding has been cut to many rural communities, including those in my State of Arkansas. AMTRAK is in financial turmoil, and over the road buses such as Greyhound have dramatically cut service.

Tolls on existing roads, which have already been financed and paid for by federal gas taxes increase the burden on these people. Again, I think it is simply unfair. Not only am I concerned about the double taxation issue, but I believe this is a safety Issue.

Tolls on existing Interstates will produce substantial diversion of traffic to other roads. I believe greater volume of truck traffic on local roads is not something we should encourage by placing tolls on the interstates.

There is also an economic downside to tolling the interstate. Businesses along newly tolled roads which rely on highway travelers—such as truck stops, motels and restaurants—will be hurt economically if significant traffic avoids the toll road.

The bottom line is that I believe allowing tolls on interstate highways that have already been paid for by Federal gas taxes is bad tax policy, is unsafe, and could have very detrimental economic effects. I am hopeful that you will agree with me that tolling existing interstate lanes is a bad idea, and will support our amendment.

Mr. WARNER. Mr. President, I rise today with renewed hope and confidence that this Congress can pass a surface transportation reauthorization bill. As it has been stated before, we have been operating under continuing resolutions—six of them—to keep the Department of Transportation's highway, transit, and highway safety programs running. We have been operating

for 2 years on expired legislation and we are far past due on our commitment to the American people to deliver an updated policy and expanded funding.

Last year both the Senate and House passed bills and the conference committee met for months before we were forced to abandon hopes of completing a conference report as a result of the much discussed disagreement over the size of the bill. This year we will still have a disagreement over the size of the bill but I am optimistic that with the narrowed gap, we will be able to resolve the differences quickly and amicably. I am pleased the Senate will adopt a bill funded at $295 billion and am hopeful that this funding level can be retained in conference. Our transportation system is bursting at the seams and the Congress must adequately fund this bill to address this myriad of needs. Almost 30 percent of ou Nation's bridges are structurally deficient. Thirty two percent of our major roads are in poor or mediocre condition. Our urban centers and suburban communities need expanded and updated transit infrastructure. Americans spend 3.7 billion hours each year in congested traffic. Our State highway departments are forced to cancel or delay projects as costs continue to rise while the revenue does not come.

In addition, we have a responsibility to make our transportation system safer for the traveling public. The President recognizes this and has appropriately named his proposal, the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005, SAFETEA. Throughout my career in the Senate I have worked with many of my colleagues to address critical safety measures on our Nation's highways. The most effective way to increase safety on our roads is to get people to wear their seat belts. I am a firm believer that the individual States must pass primary safety belt laws. The statistics are clear. More than 50 percent of the fatalities on our highways are individuals who were not wearing their safety belts. My hope is that the incentive grants included in this bill will prompt states to take actions to cut into the tens of thousands of deaths on our roadways each year.

The Committee substitute will increase funding in the bill from $284 billion as passed by the Environment and Public Works and Finance Committees to $295 billion. This means an additional $247.7 million for my home State of Virginia for a total of $4.7 billion in highway construction over the next 5 years. This represents more than a 32 percent increase over the highway funding in TEA–21. The Virginia Department of Transportation will now be able to restore many projects that had been cut from our transportation plan because of the lack of revenue. We have made small steps in the right direction to address donor States, increasing the rate of return to 92 percent by 2009.

We will also increase funding for transit programs across the country. While this has traditionally only meant our urban centers, transit has evolved to enable Americans in suburban and even rural areas of our States increased mobility on subways, buses, light rail, commuter railroads, ferries, and vans. More than 80 million Americans do not drive or have access to a car and this robust investment in our transit systems helps not only those Americans but also helps relieve congestion on our Nation's roads.

I wish to thank the chairmen and ranking members of the committees and subcommittees working so diligently on this bill. They and their staffs have been working together for several years toward the ultimate goal and today we take one step closer to that end. Chairman INHOFE, Subcommittee Chairman BOND, Ranking Member JEFFORDS, and Subcommittee Ranking Member BAUCUS have worked openly with the EPW Committee and every Senator in this body to address our concerns and their work is very much appreciated by this Senator. They have worked well with the Finance, Commerce, and Banking Committees to bring this bill together. I know how difficult this bill is to manage and it is my sincere hope that the conference committee will soon be able to resolve differences between the House and Senate bills and send a strong bill to the President. The bill we vote on today increases the revenue for our state highway departments, enhances the safety of our roadways, will help states address environmental pollution from our roadways, and will reduce the congestion millions of Americans deal with each day to help keep our Nation the strongest economy in the world.

Mr. KOHL. Mr. President I would like to explain my vote today against this important legislation, the highway reauthorization bill. I want to explain that my vote was against the unfair treatment of my State, and not a 5-year reauthorization bill. I support consistent and adequate funding of our transportation infrastructure) but I do not support a bill that cuts Wisconsin's rate of return unfairly.

A safe and efficient transportation system is critically important to my State. In Wisconsin, the changing seasons require constant maintenance of our roads and bridges. In addition, we have an aging fleet of buses that are in dire need of replacement. A five-year reauthorization is necessary for sustained transportation planning; it will provide jobs, will ensure safer travel on our highways and roads, and will provide transit funding for millions of commuters. I have heard from the people of Wisconsin, and I know they support a 5-year authorization bill.

I share their sentiments on the need for an authorization bill. I also share their sentiments on the bill the Senate passed today. I have spoken to engineers, bus drivers, road builders and businesses throughout my state and the message is the same—don't support legislation that would drop Wisconsin's rate of return. My support for this legislation would undermine Wisconsin taxpayers who deserve better than 92 cents on the dollar. A vote in favor of this legislation would set a dangerous precedent for treating Wisconsin unfairly.

I recognize the arguments of my colleagues that the overall funding for Wisconsin will increase and I support the addition of $11.2 billion that the substitute amendment contains. The substitute amendment provides Wisconsin with an additional $147 million in highway funding over the five year life of the bill. These dollars are absolutely necessary in the State, and I urge the conferees to maintain the Senate level of funding.

What the substitute amendment does not do, however, is greatly change my State's rate of return. Over the life of the bill, Wisconsin will still drop from an average of $1.02 to an average of 96 cents on every dollar the taxpayers send to Washington. The so-called equity bonus program included in the bill is far from equitable. It includes exemptions based on random criteria; it is a formula stitched together to appease the highest number of Senators possible, not to give each State its fair rate of return.

I remain hopeful that Congress will pass a bill much different than the one the Senate votes on today. I hope that my colleagues will, in conference, repair the damage that is done to Wisconsin under the Senate bill. I hope the final bill gives Wisconsin its fair share. Given the great need for a 5 year authorization bill, I would like to support this legislation. Given its treatment of Wisconsin, I cannot. I hope that will be different when the Senate considers a final bill.

Mr. SARBANES. Mr. President, it is critically important that we move forward with this reauthorization of the Nation's highway and transit programs. Although the funding levels contained in this measure are lower than many of us believe are warranted or necessary to address our pressing transportation infrastructure needs, given the budget constraints within which we had to work, I think we have responded with a reasoned and balanced package that will maintain and enhance our transit, rail and highway systems.

There is a huge backlog of needed repairs, replacements, and upgrades to bring our transportation network—our roads, bridges, transit systems and railroads—up to standards. The Department of Transportation's Conditions and Performance Report estimates that an average of $127 billion per year is needed over the next two decades to maintain and improve the condition of these systems. Other estimates show an even greater need. This backlog constrains our Nation's economic competitiveness, leaves more and more Americans stuck in traffic, contributes to air pollution and results in unnecessary fatalities.

Just last week, the Texas Transportation Institute released its annual ''Urban Mobility Report,'' which measures traffic congestion in the Nation's 85 largest cities. The report found that congestion across the country delayed travelers by 3.7 billion hours and wasted 2.3 billion gallons of gasoline in 2003. That is nearly 80 million more hours and 70 million more gallons of fuel in 2003 than in 2002. Average hours spent in rush hour traffic jams jumped from 16 in 1982 to 47 in 2003. The Washington Metropolitan area continues to suffer the third-worst traffic congestion in the country, costing area drivers an estimated $2.46 billion in lost time, fuel and productivity, or $577 per commuter. Equally important, the study found that this area would have the worst congestion in the country if not for our public transportation systems. As these figures show, congestion has a real economic cost, in addition to the psychological and social costs of spending hours each day sitting in traffic. We cannot afford to let these costs of congestion grow any further.

In my judgment, the report underscores the need to bolster investment in our transportation infrastructure and to put in place a sensible, balanced transportation network. Over the past 2 years, we have been working hard in the Congress to do just that: to reauthorize the Nation's surface transportation program, and to bring our transportation network up to standards. Last year, the Senate approved a measure authorizing $318 billion in funding over the next six years—an increase of $100 billion over the previous measure—which, in my view, provided the kind of investment needed to not only prevent further deterioration of our transportation network, but to improve the system, relieve congestion and save lives. Unfortunately, SAFETEA did not emerge from conference due in large part to the unwillingness of the administration and the House leadership to support that level of investment. As a result, we have had to pass six short-term extensions of the previous transportation legislation, TEA–21. The uncertainty inherent in these short-term extensions hinders our State and local partners in their efforts to meet the daily challenges of maintaining our transportation infrastructure and planning for improvements.

The measure that is before the Senate this year provides $295 billion over the next 6 years in highway and transit funding. That is $11 billion more than the level recently approved by the House and $39 billion more than was originally recommended in the President's reauthorization proposal. For our Nation's roadways and bridges, this legislation authorizes an average increase of nearly 31 percent in funding to enable States and localities to make desperately needed repairs and improvements. Maryland's share of highway funding will grow by more than $820 million over the next 6 years, from $2.66 billion to $3.49 billion, compared to the level provided in TEA–21, to help upgrade our highway infrastructure. This represents an average of more than $142 million more each year than was provided under TEA–21.

In the next two decades, Maryland's driving age population is expected to increase by nearly 20 percent, the number of licensed drivers by 25 percent, and the number of registered vehicles by nearly 30 percent—and this will mean significantly more traffic on our roads and pressures on our transit systems. Maryland's Department of Transportation is facing deficient roads and bridges as well as key gaps and bottlenecks within the State's transportation system that are known to cause delay and congestion. Maryland has an estimated unfunded capital need for more than $13 billion in highway maintenance, construction and reconstruction over the next ten years. Clearly, Maryland must have adequate funding to address these transportation challenges and to facilitate overall mobility—and the funds made available under this measure will be a significant help in this regard.

Importantly, the measure preserves the dedicated funding for the Congestion Mitigation and Air Quality—CMAQ—program which helps States and local governments improve air quality in nonattainment areas under the Clean Air Act; the Transportation Enhancement set-aside provisions which support bicycle and pedestrian facilities and other community based projects, as well as the other core TEA–21 programs—Interstate maintenance, National Highway System, Bridge and the Surface Transportation Program. Likewise, TEA–21's basic principles of flexibility, intermodalism, strategic infrastructure investment, and commitment to safety are retained.

I am especially pleased that the Senate rejected an amendment to strike the stormwater runoff mitigation provision that is contained in the measure, which sets aside 2 percent of a State's Surface Transportation Program for stormwater runoff mitigation. According to the Environmental Protection Agency, polluted stormwater from impervious surfaces such as roads is a leading cause of impairment for nearly 40 percent of U.S. waterways not meeting water quality standards. In the Chesapeake Bay region, it is estimated that runoff from highways contributes nearly 7 million pounds of nitrogen, 1 million pounds of phosphorous and 167,000 tons of sediment annually to the bay. In Maryland alone, the Center for Watershed Protection estimates that the 7500 miles of Federal-aid highways generate yearly loads of 1.2 million pounds of nitrogen, 127,000 pounds of phosphorous and 25,000 pounds of sediment into Maryland waterways and eventually into Chesapeake Bay each year. A study by the Chesapeake Bay Commission estimates stormwater retrofit costs at more than $2.5 billion across the watershed. The stormwater provision will provide more than $66 million for the bay States and local governments for stormwater abatement, of which approximately $12.75 million would be available for Maryland.

For our Nation's transit systems, the legislation authorizes $53.8 billion—$12.3 billion more than provided in TEA–21—to modernize and expand our transit facilities. These funds will go a long way to meeting the growing demand for transit in cities, towns, rural areas, and suburban jurisdictions across the country. Maryland's formula share of transit funding will grow by nearly 52 percent over the next 6 years—from $571 million to $870 million. These funds are absolutely critical to Maryland's efforts to maintain and upgrade the Baltimore and Washington Metro systems, the MARC commuter rail system serving Baltimore, Washington, DC, Frederick, and Brunswick, and the Baltimore Light Rail system. Bus systems and paratransit systems for elderly and disabled people throughout Maryland will also receive a big boost in funding. The measure also includes a provision reauthorizing the National Transportation Center—NTC—at Morgan State University. The NTC conducts important research, education and technology transfer activities that support workforce development of minorities and women, and addresses urban transportation problems. In addition, it includes provisions which would address a very important issue for employees of the Food and Drug Administration who will be relocating to the new FDA headquarters at White Oak, MD, enabling the agency to use its own vehicles to offer employees shuttle service to and from the metro system at Silver Spring and potentially other transit facilities. The potential impact of this provision on regional traffic is not insignificant. When construction of the White Oak complex is completed, FDA will house more than 7,000 FDA researchers and administrators at the new facility. By enabling this access from FDA's new campus to a transit station, we can reduce congestion on area roadways, improve our environment and elevate the quality of life for FDA employees. The legislation also includes a requirement for the Federal Transit Administration to report to Congress on ways to promote improved access to and increased usage of tax-free transit benefits at Federal agencies in the National Capital Region. Increasing use of public transit by federal employees has the potential to greatly aid our efforts to combat congestion and pollution in the region.

I am particularly pleased that the legislation includes the Transit in Parks Act, or TRIP, which I introduced. This new Federal transit grant initiative will support the development of alternative transportation services—everything from rail or clean fuel bus projects to pedestrian and bike paths,

or park waterway access, within or adjacent to national parks and other public lands. It will give our Federal land management agencies important new tools to improve both preservation and access. Just as we have found in metropolitan areas, transit is essential to moving large numbers of people in our national parks—quickly, efficiently, at low cost, and without adverse impact.

Like any other complex and comprehensive piece of legislation, this bill has its share of imperfections. But if we are to ensure not only the safe and efficient movement of people, goods and services, but also the future competitiveness and productivity of our economy, we must make these investments, and move forward with this legislation. I urge my colleagues to join me in approving this measure.

Mr. CARPER. Mr. President, I would like to thank the Environment and Public Works Committee Chairman INHOFE and Ranking Member JEFFORDS, the Banking Committee Chairman SHELBY and Ranking Member SARBANES, Finance Committee Chairman GRASSLEY and Ranking Member BAUCUS, and Transportation Subcommittee Chairman BOND for all their hard work in developing this bill and bringing it to the floor. We all know how important it is that we complete work on it and get it to the President as soon as possible.

We face many challenges in our transportation system. Traffic congestion continues to worsen. In the Philadelphia area—which includes Wilmington, DE—rush hour motorists spent 38 hours in traffic in 2003. The number of cities experiencing 20 hours of delay or more per year has increased from only 5 in 1982 to 51 in 2003. This kind of congestion costs this country approximately $63 billion a year and wastes nearly 2.5 billion gallons of fuel. We can do better.

This bill would provide Delaware with $793 million over 5 years to address our transportation needs. These needs include the replacement of the Indian River Inlet Bridge Replacement in Sussex County which carries 16,000 to 18,000 vehicles daily, not including the summer beach traffic. It also includes needed improvements to increase capacity at the I–95/SR–1 interchange, the busiest interchange in New Castle County.

Transit would receive around $46.5 billion over 5 years, funding the increasing demand for transportation choices, allowing people to get around without a car. This demonstrates our growing awareness that while roads and bridges and highways are important and we still love our cars in this country, more and more people are using transit.

With the congestion we have on our highways, with our increasing dependence on foreign oil, with our increasing problems with air pollution, it certainly makes sense to provide reliable transit for people to get to work, shop or attend a ball game. In the city of Wilmington, nearly 27 percent of households have no car and 44 percent have only one. This saves families money that can be better invested in home-ownership and their children's education.

In Delaware, we are responding to the demand for more transportation choices by making improvements to allow more SEPTA trains to serve Wilmington and Newark, and we hope to extend rail service to Middletown in the near future. Also, the State is investing in the replacement of our buses to improve transit statewide.

The transit title will also help states fund welfare-to-work transportation programs. In Delaware, our welfare-to-work program provides approximately 3000 welfare recipients with access to jobs by creating alternative transit services in cooperation with other social service providers. This is the only way these participants could access employment and training.

In this important legislation, we are also investing $5.8 billion in safety programs. This includes an incentive program for states to pass primary seatbelt laws like we now have in Delaware. Wearing a seatbelt is the most important step anyone can take to improve their chances of surviving a car crash, and primary enforcement seatbelt laws are the most effective way to increase seatbelt use. Since Delaware's primary seatbelt law became effective in 2003, seatbelt usage has increased from 75 percent in 2003 to 82 percent in 2004.

We are also creating in this bill a program to make it safer for children to walk to school. A recent national survey found that while 70 percent of parents walked or bicycled to school as children, only 18 percent of their children do today. Parents often say that walking to school is no longer possible because there are busy, fast-moving, multi-lane streets between home and school and often no sidewalks at all.

As more and more children are driven to school, we see traffic jams in school parking lots and increasing pollution around schools. Meanwhile, children lose this simple way to get a little exercise at a time when many American children are struggling with being overweight and 15 percent are now considered obese, putting them at risk of a number of chronic diseases. Through the Safe Routes to School program, states will be able to slow cars around schools, add crossing walks, build sidewalks and organize walking school buses where members of the community walk a school bus route to walk kids to school.

Unfortunately, this bill does not completely overcome the tradition of separating the different modes of travel and treating them as if they are separate systems. The users of the transportation system—the American people—don't use the system that way. The design of highways affects people's ability to access transit, walk to the store or go for a jog. The way we design our transportation system affects people's quality of life, the amount of pollution in the air, the amount of oil we need, and the amount of polluted runoff in our water.

In fact, when we develop our transportation network without proper consideration of other neighborhood needs, we find ourselves having to spend more money to retrofit streets so that kids may safely walk to school or to decrease the amount of pollution that runs off roads into our rivers and lakes. And when we keep roads separate from transit and transit separate from intercity rail and rail separate from air travel, we miss the opportunity to make the system work more efficiently.

Sadly, this bill, which is supposed to address the Nation's surface transportation policy, barely even mentions it. But later in the year we will have the opportunity to consider what kind of support the Federal Government should provide freight and passenger rail. This is an important area that we have neglected for too long.

I hope as we consider a national rail policy we look at what has worked for highways, transit and air and use it to develop a robust rail system. I also hope that we do not consider rail in a vacuum but rather look for opportunities to coordinate rail investment with other modes of travel—connecting airports to cities through rail for more seamless travel and connecting ports to rail to highways for more efficient shipment of freight.

Finally, because of the need to schedule a vote at 5:30 last Thursday, I was unable to make a statement in favor of Senator HARKIN's complete streets amendment, an amendment that I cosponsored and strongly supported. So I would like to do so now.

First I would like to thank my colleague, Senator HARKIN, for offering this amendment. I am proud to be a cosponsor. The adoption of the complete streets amendment would be an important step forward in providing safe transportation options for Americans. It would support active and healthy lifestyles and encourage people to get out of their cars. It would also reduce pollution and our reliance on foreign oil.

It simply requires State transportation departments and metropolitan planning organizations to fully integrate the needs and safety of all road users into the design and operation of federal-aid roads and highways. In other words, as we design our roads, we must consider more than just the needs of cars. We must consider bicyclists, pedestrians, and everyone who uses our roads.

There are deadly consequences when this does not occur. Recently, a young woman from Poland who was working for a year in Lewes, DE, was killed while riding her bike. There are hundreds of young people from Europe who come to work near the beaches in Delaware. Many of them do not have or

cannot afford a car and get around by bicycle.

This particularly young woman, named Katarzyna Reteruk, was leaving her place of employment—Anne Marie's Seafood and Italian Restaurant on Route 1—and was about to turn onto Route 24, when she was hit by a woman leaving her place of employment. Katarzyna was thrown from her bike, struck the hood and windshield of the car, and died a short while later.

This tragic event took place in a rapidly growing area of the State and on a highway that has had increasing congestion over the years. This is a challenge many areas of the country are facing. But we have to ensure that we learn from this tragedy and others like it. We must make improvements to our roadways for motorists—but we must also address the safety and mobility needs of bicyclists and pedestrians.

We often say that we want to encourage people to get out of their cars and be more active. But when there is no place for people to safely walk or bike, we can't expect them to do so. In a time of increasing obesity, especially in our children, the time has come to ensure that opportunities to walk to school or to a friend's house or just for exercise are available in as many places as possible.

By considering the needs of non-motorists, we will improve mobility for those who cannot afford a car—including young people just starting out—and allow a family of 5 to more easily get by with only 2 cars.

We have already included in this bill a program called Safe Routes to Schools to retrofit our roads to make them safer for children to walk to school. This amendment is an excellent addition to that provision in that it would ensure that new road projects are built with pedestrians in mind, saving us from having to spend money to retrofit roads later.

Under the complete streets amendment, State departments of transportation and metropolitan planning organizations would have to: 1, fully integrate the needs of pedestrians and bike riders in the transportation planning process; 2, promote pedestrian and bicycle safety improvements, and 3, set goals for increasing non-motorized transportation.

Metropolitan planning organizations serving 200,000 people or more, such as the one in Wilmington, DE, would have to designate a bicycle/pedestrian coordinator and account for the safety needs of pedestrians and bicyclists in their long term plans.

Finally, the Secretary of the U.S. Department of Transportation would report to Congress annually on the share of research funds allocated to directly benefit the planning, design, operation and maintenance of the transportation system for non-motorized users.

This amendment would build expertise in how we can make our roads safer for bicyclists and pedestrians, while improving our roads for drivers as well. I hope that we are able to encourage its adoption in conference.

Mr. LEVIN. Mr. President, funding for transportation infrastructure such as roads, bridges and border crossings is a sound investment that increases the mobility of people and goods, enhances economic competitiveness, reduces traffic congestion, and improves air quality. Those improvements in transportation infrastructure are critical to our States, and the Federal highway money that States receive is critical for funding them. In addition, few Federal investments have as large and immediate an impact on job creation and economic growth as transportation infrastructure. The Department of Transportation estimates that every $1 billion in new Federal investment creates more than 47,500 jobs.

Unfortunately, the formula that distributes Federal highway funds to States is antiquated and inequitable. Historically, about 20 States, including Michigan, have been ''donor'' States, sending more gas tax dollars to the highway trust fund in Washington than are returned in transportation infrastructure spending. The remaining 30 States, known as ''donee'' States, have received more transportation funding than they paid into the highway trust fund.

This unfair practice began in 1956 when small States and large Western States banded together to develop a formula for distributing Federal highway dollars that advantaged themselves over the remaining States. Once that formula was in place, they have tenaciously defended it.

At the beginning, there was some legitimacy to the concept that large, low-population, and predominately Western States need to get more funds than they contributed to the system. It was the only way that we could build a national interstate highway system. However, there is no justification today for any State getting more than its fair share. With the national interstate system completed, the formulas used to determine how much a State will receive from the highway trust are simply unfair.

Each time the highway bill has been reauthorized, I, along with my colleagues from the other donor States, have fought to correct this inequity in highway funding. Through these battles, some progress has been made. For instance, in 1978, Michigan was getting around 75 cents back on our Federal gas tax dollar. The 1991 bill brought us up to approximately 80 cents per dollar, and the 1998 bill guaranteed a 90.5-cent minimum return for each State.

Last year, we believed we had another significant victory when the Senate passed a bill that would have given donor States 95 cents on the dollar in the final year of the bill. Unfortunately, that bill died in conference due to the President's veto threat and his unwillingness to accept the funding levels in either the House or Senate bill.

This year's legislation, however, would give donor States just 92 percent of their highway trust fund contributions by 2009. Although that is a small step in the right direction of closing the equity gap, we still have a long way to go to achieve fairness for Michigan and other donor States.

This bill is also a setback from last year's bill because it provides fewer overall transportation dollars. Last year, the Senate wisely passed a bill that would have pumped $318 billion into our transportation systems over 6 years. This year, the Senate has reduced that funding down to $295 billion. That is more than the House-passed bill of $284 billion but still less than what is needed.

Michigan's rate of return would go from 90.5 percent to 92 percent immediately and remain at 92 percent for the full 5 years of this bill. Under this bill Michigan would get an annual average funding level of $1.134 billion which represents a 28-percent gain over TEA–21.

We have made progress in this bill compared to current law in the ongoing fight for equity for donor States. I will continue to fight in the future, as I have in the past, looking toward full equity for Michigan. I recognize, however, that we have reduced the inequity a little more in each previous reauthorization bill, and we do so in this bill as well. This bill will bring billions of desperately needed dollars to States across the country. It will improve our Nation's transportation infrastructure and create millions of American jobs, and therefore I will support it, although its steps toward equity and fairness are very tiny indeed.

Mr. FEINGOLD. Mr. President, today the Senate will vote on final passage on the Senate version of H.R. 3, the SAFETEA bill. As we all know, the country has important transportation needs that Congress must address and I commend the managers of the bill for working hard to address highway construction, mass transit, highway safety and other important programs.

This is a very important bill and I am not taking my vote lightly. I have heard from numerous individuals and groups across Wisconsin who are opposed to another temporary extension and eager to have the certainty for planning purposes that comes with a full reauthorization. I understand their concerns and I share their desire that Congress provide necessary transportation funding. That is why I voted in favor of the motion to proceed to the bill and the motion to invoke cloture on the bill—because Congress needs to act on the country's transportation priorities. I wish I could vote for the bill. I would have voted for a bill that was equitable, even if it was not perfect. However, the current bill is far from equitable—in fact, it makes Wisconsin a double loser, both under the funding formula's rate of return and in the level of overall funding relative to the last bill, TEA–21. The bill does not

do nearly enough to help meet the transportation needs of my constituents in Wisconsin and, for that reason, I will vote against the bill.

Let me take a little time to explain my concerns with the bill, starting with the funding formula this bill would establish. Under that formula, certain States would continue to receive significantly more money than they pay into the highway trust fund, while other States continue to be denied their fair share. In fact, the number of donor States—or those who receive less than their fair share—would actually increase under this bill compared to the final year of TEA–21. In 2004 there were 27 donor States, while by the end of the new bill in 2009 there would be 31 States that pay more into the highway trust fund than they receive back. Six States—Iowa, Maine, Minnesota, New Hampshire, Oregon and Wisconsin—would become donors, while only Arkansas and Nebraska would leave that category.

I worked hard with the rest of the Wisconsin delegation during the last successful authorization to make sure that our State finally got a fair rate of return. Let me tell my colleagues, that change was long overdue. According to numbers from the Department of Transportation, from 1956 through 2000, Wisconsin got back just 90 cents on every dollar it paid into the trust fund.

In TEA–21, Wisconsin at last received a fair return. Unfortunately, this bill will take us back to where we were for the previous four decades—in the hole. Under the new formula, Wisconsin will once again be a donor State in 2006 and receive the bare minimum rate of return of 92 percent by the final year of the bill. I have spoken to other members of our State's delegation, and I think I can safely say we agree that Wisconsin deserves better.

It is bad enough that the bill would return Wisconsin to donor status. Adding insult to injury is the level of funding that this bill would provide for my State. This bill provides almost flat funding for Wisconsin, which we all know in real terms is a cut. In 2004 under TEA–21, Wisconsin received $635 million, while the average spending under the current bill would only be $642.8 million per year. When these figures are adjusted for inflation, in real terms the bill means a reduction of over $35 million each year for Wisconsin, reducing our ability to meet our transportation needs—all while we become a donor State and again subsidize other States' transportation projects.

I cannot support a bill that treats Wisconsin so poorly with respect to both overall funding and the formula's rate of return. Fortunately, today's vote is not the final word on this bill. I will continue to work hard with the senior Senator from Wisconsin and the rest of the State's delegation to do everything that we can to produce a final transportation bill that is fair for our constituents.

Mr. DOMENICI. Mr. President, I rise today in support of the highway bill. I want to first applaud the bill manager, my good friend Senator INHOFE for all of his hard work on this important legislation. I also want to thank the ranking member of the EPW committee, Senator JEFFORDS, for his work on the bill.

Mr. President, the highway bill is one of the most important pieces of legislation that the Senate undertakes. This bill makes it possible to construct and repair vital transportation arteries that crisscross this great Nation. As our country grows we must be conscious of our transportation needs. Accordingly, this bill increases funding for road construction that will substantially reduce traffic delays that plague the country. Additionally, this bill substantially increases transit funding further reducing congestion and pollution caused by over-populated highways.

My home state of New Mexico is one of the most rural states in the country. However, our population is on the rise and it is vitally important to ensure New Mexicans have the transportation infrastructure they need to be competitive with the rest of the country. This bill will provide roughly $1.7 billion in funding for New Mexico specific projects.

This bill also increases funding for the Indian roads program. I have advocated for increased Indian roads funding for a number of years and while this increase only begins to address the need, it will help immensely in addressing the economic development problems facing Indian Country.

Once again, I would like to thank the chairman and ranking member of the EPW Committee and their staff for doing a great job in getting this bill completed.

Mr. GREGG. Mr. President, the Senate voted last Wednesday morning, May 11, to waive the Budget Act point of order that applied against the Inhofe substitute, Senate Amendment 606. The Budget Committee has since received a cost estimate of that substitute from the Congressional Budget Office. As I pointed out last week, CBO was not able to provide a more timely estimate because the language was not provided to them until it became available on May 10, a day after the Inhofe substitute was put before the Senate. Apparently none of the committees of jurisdiction had asked CBO for an estimate of their combined amendment.

So for the information of my colleagues and the public, I would like to enter a table into the RECORD that summarizes the status of this highway bill with regard to budgetary enforcement—showing why there was a 302(f) point of order that I raised.

I would also like to place into the RECORD a table that addresses not the contract authority, which is the relevant unit of analysis for budgetary enforcement of this bill, but the deficit results of this bill. Last week the bill's proponents repeatedly asserted the bill is ''paid for'' over the 2005–2009 window of the bill and reduces the deficit by $14 billion over the 2005–2015 period. It is hard to know how anyone could say this because the Budget Committee and the other committees did not receive until yesterday CBO's estimate of highway trust fund outlays resulting from the Inhofe substitute. Combining those outlay estimates with JCT's estimate of the new revenues that would occur if the provisions of the substitute were actually enacted, we know that the substitute would increase the deficit by $0.5 billion over the 2005–2009 period, and would reduce the deficit by only $3.5 billion over the 2005–2015 period, not $14 billion as the proponents have claimed.

But these budgetary effects come after other general-fund transfer provisions—relating, for example, to the 2.5 cents deficit reduction tax on gasoline and 5.2 tax subsidy for ethanol were enacted in the JOBS bill, P.L. 108–35—last fall. By creating higher paper entries into the highway trust fund, those enacted provisions will have the consequence of increasing the spending possible from the highway trust fund by $31 billion over the 2005–2015 period without a corresponding increase in new Federal revenues. This will have the effect of increasing the deficit by $31 billion over that period.

It is true that both the President's budget request for 2006 and the 2006 budget resolution now contemplate spending those shifted resources on transportation programs. But combining those general-fund transfer provisions enacted last fall with possible enactment of the additional general-fund transfers and new revenues from general fund offsets in this Inhofe substitute before the Senate still will have the effect of increasing the deficit by $28 billion over the 2005–2015 period. Compared to the resources available for spending from the highway trust fund 7 months ago, if this Inhofe substitute is enacted, the increase in spending that will be enabled from the highway trust fund will increase the deficit by $28 billion.

Mr. President, I ask unanimous consent that 2 tables displaying the Budget Committee scoring of the bill be printed in the RECORD.

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

COMPARISON OF BUDGET AUTHORITY LEVELS IN INHOFE SUBSTITUTE (SA 605) TO COMMITTEE ALLOCATIONS IN 2006 BUDGET RESOLUTION

[$ billions]

| | 2005 | 2006 | 2006–10 |
|---|---|---|---|
| Committee | | | |
| Environment and Public Works | | | |
| Amount over (+)/under (-) | −1.5 | −0.3 | 22.6 |
| Banking | | | |
| Amount over (+)/under (-) | 0.6 | 0.6 | 3.1 |
| Commerce | | | |
| Amount over (+)/under (-) | 0.0 | 0.1 | 0.2 |

Source: Senate Budget Committee.

DEFICIT EFFECT OF INHOFE SUBSTITUTE (SA 605) TO H.R. 3—TRANSPORTATION REAUTHORIZATION BILL

[$ billions]

| | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2005–2009 | 2005–2015 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Outlays [a] | | | | | | | | | | | | | |
| Highway Trust Fund Outlays under Inhofe Substitute (SA 605) | 40.5 | 38.3 | 43.6 | 47.0 | 49.6 | 50.6 | 52.6 | 54.0 | 55.2 | 56.2 | 57.6 | 178.5 | 504.5 |
| Highway Trust Fund Outlays under reported version HR 3 | 40.5 | 37.7 | 42.1 | 44.9 | 47.3 | 48.7 | 51.0 | 52.4 | 53.6 | 54.6 | 56.0 | 172.0 | 488.3 |
| Increase in Outlays Resulting from Inhofe Substitute (SA 605) | 0.0 | 0.6 | 1.5 | 2.1 | 2.3 | 1.9 | 1.6 | 1.6 | 1.6 | 1.6 | 1.6 | 6.5 | 16.2 |
| Revenues [b] | | | | | | | | | | | | | |
| New Highway Trust Fund Revenues Resulting from Inhofe Substitute (SA 605)—Fuel Fraud | ..... | 0.2 | 0.2 | 0.2 | 0.2 | 0.2 | 0.2 | 0.2 | 0.2 | 0.2 | 0.2 | 0.7 | 1.7 |
| New General Fund Revenues Resulting from Inhofe Substitute (SA 605) | | | | | | | | | | | | | |
| Economic Substance Doctrine | ..... | 0.6 | 0.8 | 1.1 | 1.3 | 1.4 | 1.6 | 1.9 | 2.2 | 2.4 | 2.6 | 3.8 | 16.0 |
| Other Revenue Increases | 0.1 | 0.5 | 0.5 | 0.5 | 0.5 | 0.4 | 0.3 | 0.3 | 0.3 | 0.3 | 0.3 | 2.0 | 3.9 |
| Assorted Tax Breaks | 0.0 | −0.1 | −0.1 | −0.1 | −0.1 | −0.2 | −0.2 | −0.2 | −0.2 | −0.3 | −0.3 | −0.5 | −1.8 |
| Total Net New Federal Revenues Resulting from Inhofe Substitute (SA 605) | 0.1 | 1.1 | 1.4 | 1.7 | 1.8 | 1.9 | 1.9 | 2.1 | 2.4 | 2.6 | 2.8 | 6.0 | 19.8 |
| Amount that Increase in Outlays Exceeds Increase in Revenues Resulting from Inhofe Substitute (SA 605) | | | | | | | | | | | | | |
| Deficit Increase(+)/Decrease(-) | −0.1 | −0.6 | 0.1 | 0.5 | 0.5 | 0.0 | −0.3 | −0.5 | −0.8 | −1.1 | −1.2 | 0.5 | −3.5 |

MEMO: DEFICIT INCREASE RESULTING FROM GENERAL FUND TRANSFERS INTO HIGHWAY TRUST FUND ENACTED IN P.L. 108–357 (does not include enacted fuel fraud provisions) [c]: 31.3.

a. Outlays as estimated by CBO.
b. Revenues as estimated by JCT.
c. CBO estimate based on JCT figures.
Note: Details may not add to totals because of rounding.
Source: Senate Budget Committee, Majority Staff.

Mr. BURNS. Mr. President, I rise today to express my appreciation to the managers of this legislation for including my amendment relating to commercial driver training programs. The amendment authorizes $5 million to the Department of Transportation for a grant program for driver training schools and for financial assistance for entry-level drivers who need the training.

In my State of Montana, and around the country, the trucking industry is a critical component of the economy. In 2000, the trucking industry in Montana provided 1 out of every 13 jobs, paying nearly $900 million in wages each year. Currently, the trucking industry is experiencing a severe shortage of drivers, and my amendment seeks to address that concern by providing funds to get folks behind the wheel.

Industry research indicates the number of new truck drivers in the U.S. needs to increase by 320,000 jobs per year over the next 10 years to fill the projected economic growth for that time period. Additionally, another 219,000 new truck drivers will have to be added each year to replace drivers who will be retiring over this period. Those are important jobs, and we need to get folks trained and ready to fill the growing demand for transportation services.

The average entry-level driving course can run as much as $4,000. Those tuition costs can serve as a barrier to drivers who need the training, and my amendment would allow training programs to use grant money to provide financial assistance to those who need it. When you are out of work and looking for a job, a $4,000 entry fee can seem a little steep—so this amendment will help folks out, and give them the resources they need to get trained and get trucking.

The highway bill before the Senate right now is a jobs bill, plain and simple. By authorizing critical funding for highway programs, we keep people working on our Nation's infrastructure. Construction projects that are currently stalled or deferred, waiting for final passage of a highway bill, can get underway again. My amendment contributes to the job growth encouraged by the highway bill, and I am pleased that it could be included. I commend the managers of this bill for their hard work but know that much more remains to be done in conference. In a State as large as Montana, infrastructure development is essential to our economic growth. This legislation will allocate needed funds to our roads and transit systems. The highway bill is a priority for our country, and I look forward to supporting its final passage here in the Senate.

Mr. GRASSLEY. Mr. President, after great effort by many people, the Senate is ready to move us one step closer to enacting legislation with the potential to impact all Americans in every state. Crumbling infrastructure and poor transportation choices impede our ability to live and do business, and the Senate clearly recognizes that fact. Our transportation bill utilizes more than $295 billion to ensure all Americans have access to efficient and reliable transportation as they go about their professional and personal lives.

Among the many people whose hard work has made the difference, I must first thank the chairmen and ranking members of all the appropriating committees that have been involved in this process.

Credit must also go to all members of my staff, who spent many hours sifting through the nuts and bolts of this bill. Kolan Davis, Mark Prater, Elizabeth Paris, Christy Mistr, Ed McClellan, Dean Zerbe, John O'Neill, Sherry Kuntz, and Nick Wyatt showed great dedication to the tasks before them.

As is usually the case, the cooperation of Senator BAUCUS and his staff was imperative. I particularly want to thank Russ Sullivan, Patrick Heck, Bill Dauster, Kathy Ruffalo-Farnsworth, Matt Jones, Jon Selib, Anita Horn Rizek, Judy Miller, Melissa Mueller, Ryan Abraham, Mary Baker, and Wendy Carey.

I also want to mention George K. Yin, the chief of staff of the Joint Committee on Taxation and his staff, especially the fuel fraud team of Tom Barthold, Deirdre James, Roger Colinvaux, and Allen Littman, as well as the always invaluable assistance of Mark Mathiesen, Jim Fransen and Mark McGunagle of Senate Legislative Counsel.

This bill is infused with the spirit of bipartisan cooperation. Hopefully that spirit will survive the ongoing legislative process.

The PRESIDING OFFICER. Without objection, the committee substitute is agreed to.

There will now be 2 minutes evenly divided before the final vote.

The Senator from Vermont is recognized.

Mr. JEFFORDS. Mr. President, once again I thank Senator INHOFE and all of the Senators and staff that have helped us reach this point.

This bill will make a difference in the life of every American by making it easier and safer to get from place to place.

In passing this bill, the Senate puts this Nation on the path to better roads, on the path to shorter and safer commutes, and on the path to more jobs. And this bill will not add a dime to the deficit.

The additional $11 billion in this bill will allow all States and all communities to benefit under this legislation, and it is crucial that we hold on to that funding as we move forward with this bill.

The President's veto threat against this bill is a mistake, it is misguided and it is flat out wrong.

Let's get this bill done, and get it done right.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized.

Mr. INHOFE. Mr. President, I yield to Senator BOND.

Mr. BOND. Mr. President, after working 2½ years on this bill, we have a bill that brings the environmental considerations into the planning early on so they can be dealt with without wasting money, time, and resources.

No State gets as much as they would like, but thanks to the Finance Committee, the donor States get up to 92 cents. All States go up by at least 15 percent. Given the constraints under which we operated, I urge my colleagues to adopt this bill.

I commend the chairman of the Senate Environment and Public Works Committee, JIM INHOFE, along with Senators BAUCUS and JEFFORDS for a job well done. It has been a pleasure working with them.

I also think it is appropriate to recognize the staff members that have put in many countless hours of their time to assist in drafting this legislation.

I want to especially recognize my staff: Ellen Stein, John Stoody and Heideh Shahmoradi.

Staff with Senator INHOFE: Ruth Van Mark, James Q'Keeffe, Andrew Wheeler, Nathan Richmond, Greg Murrill, Alex Herrgott, John Shanahan, Angie Giancarlo, and Rudy Kapichak.

Senator JEFFORD's staff: JC Sandberg, Allison Taylor, Malia Somerville, JoEllen Darcy, and Chris Miller.

And Kathy Ruffalo with Senator BAUCUS.

This bill faced great challenges within these past 2½ years. The committee worked hard through many meetings, hearings, a failed conference, and all to repeat the process again this year in order to get where we are today.

Interestingly enough, while on the floor both last year and this year, the Senate was sidetracked by ricin last year which had the Senate office buildings shut down for a couple of days. And just last week, a general aviation aircraft entered our air space causing us all to run out of the Senate Chamber. I can honestly say, I will be relieved when this bill is finally passed.

Some of the highlights that I am proud of in this bill include the emphasis on safety. Safety, for the first time in our recent transportation legislation, is given a prominent position and elevated to a core program.

This bill mirrors the administration's proposal by continuing our commitment to our motoring public's safety.

Nearly 43,000 lives are taken on our roads and highways each year. I am glad that the bill reflects the continued commitment to making not only investments in our infrastructure, but also to the general safety and welfare of our constituents.

Another highlight of this bill moves to carefully balance the needs of the donor States while also recognizing the needs of donee States.

My home State of Missouri, like many of the donor States mentioned, has some of the worst roads in the Nation. The condition of many of the roads and bridges in Missouri require immediate repair or reconstruction.

I am pleased to say that we did make progress in achieving a 92 cent rate of return by the end of the authorization. I am hopeful that donor States will see a dollar for dollar rate of return in the future.

Further, I am proud to announce that all States will grow at not less than 15 percent over TEA–21.

The bill also addresses several environmental issues that provide the necessary tools to reduce or eliminate unnecessary delays during the environmental review process.

Transportation projects can be built more quickly by allowing environmental stakeholders to weigh in at the early stages.

Mr. President, we are facing an expiration of May 31. I am confident that if conferees are named shortly, we will only require a short-term extension and can move this bill through conference quickly.

Our States need a multi-year bill. We cannot delay contracts anymore. The economy needs this boost and people need the jobs that this bill will provide.

I look forward to continuing to work with my colleagues as we go to conference.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. INHOFE. Mr. President, the Senator from Missouri is accurate. We have been talking about this for 3 years now. I do not think there is anything new that can be said, but I do renew my congratulations and thanks to all the staff who worked on this bill, certainly Senator JEFFORDS, Senator BAUCUS, and Senator BOND.

I agree it would be nice if we had something with which everyone agreed. It is impossible to do. The only way to do that is in a way that is not desirable. We did a formula, and we took into consideration all the factors—donee, donor States, size of the States, passthrough, fatalities—and I think we have a good bill.

I yield back the remainder of my time. Have the yeas and nays been requested?

The PRESIDING OFFICER. The yeas and nays have not been requested.

Mr. INHOFE. I withhold my request for the yeas and nays.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, how much time is remaining on this side?

The PRESIDING OFFICER. There is 13 seconds remaining.

Mr. BAUCUS. Thirteen. I will be brief.

Mr. President, I thank all my colleagues. This was a consequence of both sides working together—big States, small States. It is now time to get to conference. It is also a good example of what we can do if we do not have this filibuster issue hanging over our heads. We can work together. We can get things done. I very much hope Senators recognize this because afterwards, it may not always be this way.

The PRESIDING OFFICER. All time has expired.

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

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on the engrossment of the amendment and third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read a third time.

The PRESIDING OFFICER. The bill having been read a third time, the question is, Shall the bill, as amended, pass? The clerk will call the roll.

The legislative clerk called the roll.

The result was announced—yeas 89, nays 11, as follows:

[Rollcall Vote No. 125 Leg.]

YEAS—89

| | | |
|---|---|---|
| Akaka | Dodd | Mikulski |
| Alexander | Dole | Murkowski |
| Allard | Domenici | Murray |
| Allen | Dorgan | Nelson (FL) |
| Baucus | Durbin | Nelson (NE) |
| Bayh | Ensign | Obama |
| Bennett | Enzi | Pryor |
| Biden | Feinstein | Reed |
| Bingaman | Frist | Reid |
| Bond | Grassley | Roberts |
| Boxer | Hagel | Rockefeller |
| Bunning | Harkin | Salazar |
| Burns | Hatch | Santorum |
| Burr | Inhofe | Sarbanes |
| Byrd | Inouye | Schumer |
| Cantwell | Isakson | Sessions |
| Carper | Jeffords | Shelby |
| Chafee | Johnson | Smith |
| Chambliss | Kennedy | Snowe |
| Clinton | Kerry | Specter |
| Coburn | Landrieu | Stabenow |
| Cochran | Lautenberg | Stevens |
| Coleman | Leahy | Talent |
| Collins | Levin | Thomas |
| Conrad | Lieberman | Thune |
| Corzine | Lincoln | Vitter |
| Craig | Lott | Voinovich |
| Crapo | Lugar | Warner |
| Dayton | Martinez | Wyden |
| DeWine | McConnell | |

NAYS—11

| | | |
|---|---|---|
| Brownback | Graham | Kyl |
| Cornyn | Gregg | McCain |
| DeMint | Hutchison | Sununu |
| Feingold | Kohl | |

The bill (H.R. 3), as amended, was passed, as follows:

(The bill will be printed in a future edition of the RECORD.)

Mr. DURBIN. Mr. President, today the Senate has overwhelmingly approved the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005, SAFETEA, H.R. 3. I supported this important legislation, as I did last year when the Senate passed a

similar measure, S. 1072. I believe it is a critical step toward funding our Nation's transportation infrastructure and creating much needed jobs.

Now the real work begins. The Senate funding level is $295 billion. The House has passed its version, TEA–LU, at $284 billion over 6 years. And the President unfortunately supports the lower House number. In fact, he has threatened to veto any transportation bill that exceeds the $284 billion funding level.

I was proud to join 83 of my Senate colleagues in standing firm on the Senate level of $295 billion. The White House should take note that at least 84 Senators—a supermajority—support a higher number.

Reauthorization of TEA–21 is one of the most important job and economic stimuli that the 109th Congress can pass. We must work quickly to deliver the best conference report at the highest possible funding level. We should not let further delay stand in the way of real transportation infrastructure improvement, economic development, and job creation.

I would like to take this opportunity to discuss the benefits of this legislation for my home State of Illinois.

H.R. 3, as amended by the Senate, would make the largest investment to date in our Nation's aging infrastructure, $295 billion over the life of the bill. In short, SAFETEA would increase the State of Illinois' total Federal transportation dollars and provide greater flexibility. It would help improve the condition of Illinois' roads and bridges, properly fund mass transit in Chicago and downstate, alleviate traffic congestion, and address highway safety and the environment.

The bill would provide $184.5 billion over the next 5 years for highways and other surface transportation programs. Illinois has the third largest Interstate System in the country; however, its roads and bridges are rated among the worst in the Nation. The State can expect to receive more than $6.1 billion over the next 5 years from the highway formula contained in the Senate bill. That is a 33-percent increase over the last transportation bill, TEA–21.

With these additional funds, the Illinois Department of Transportation will be able to move forward on major reconstruction and rehabilitation projects throughout the State.

Mass transit funding is vitally important to the Chicago metropolitan area as well as to many downstate communities. It helps alleviate traffic congestion, lessen air emissions, and provides access for thousands of Illinoisans every day. H.R. 3, as amended by the Senate, includes $46.53 billion over the next 5 years for mass transit. Illinois would receive about $2.22 billion over the next 5 years under the Senate bill, a $286 million or nearly 15-percent increase from TEA–21.

This legislation also preserves some important environmental and enhancement programs, including the Congestion Mitigation and Air Quality, CMAQ, program. CMAQ's goal is to help States meet their air quality conformity requirements as prescribed by the Clean Air Act. The Senate bill would increase funding for CMAQ from $8 billion to $10.8 billion—an increase of 35 percent. Illinois received more than $460 million in CMAQ funds in TEA–21. The State is expected to receive an increase in CMAQ funds under the Senate bill.

With regard to highway safety, Illinois is 1 of 20 States that has enacted a primary seatbelt law. H.R. 3 would enable the State of Illinois and other States who have passed primary seatbelt laws to obtain Federal funds to implement this program and further improve highway safety.

I know this legislation is not perfect. Illinois' highway formula should be higher. Amtrak reauthorization and rail freight transportation funding are noticeably absent. And important road and transit projects from around my home State have not yet been included. I will work with Senator BARACK OBAMA, a member of the Environment and Public Works Committee, and my Illinois colleagues in the House to ensure that Illinois receives a fair share of transportation funds—highway, transit, and highway safety—in the final conference report.

I know my colleagues on the other side of the Capitol understand the importance of this legislation and I am hopeful that Congress can expeditiously work through the differences between the House and Senate bills in a conference committee. One of every five jobs in Illinois is related to transportation, including construction jobs. Unless Congress moves quickly, we will lose another construction season and the important jobs that are created by public investment in transportation.

Mr. President, with the passage of this legislation, the Senate has upheld its obligation to reauthorize and improve our Nation's important transportation programs. I am pleased to support SAFETEA.

### MISSED SENATE VOTES

Mr. DAYTON. Mr. President, on May 11, 2005, I was necessarily absent from the Senate to attend the funeral of St. Paul, MN police officer, Sergeant Gerald Vick, who tragically lost his life in the line of duty on Friday, May 6, 2005. I joined over 2,000 Minnesotans in paying our final respects to this heroic peace officer, community leader, and devoted husband and father.

Had I been present to vote on the amendments to the Transportation Equity Act, I would have voted as follows:

On the motion to waive the Congressional Budget Act, in relation to amendment No. 605 and H.R. 3, I would have voted ''yea.''

On the motion to table Corzine amendment No. 606, I would have voted ''nay.''

On the Lautenberg amendment No. 625, I would have voted ''nay.''

On the Harkin amendment No. 618, as modified, I would have voted ''yea.''

Mr. INHOFE. Mr. President, 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.

Mrs. BOXER. Mr. President, did my friend wish to make some comments on the floor at this time?

Mr. INHOFE. Mr. President, first of all, no. I am not going to make any additional remarks. I was going to put us into morning business. I understand the Senator had some things she wanted to talk about.

Mrs. BOXER. If you could do that, if you could ask unanimous consent I be recognized first in morning business.

## MORNING BUSINESS

Mr. INHOFE. I ask unanimous consent there now be a period for morning business, with Senators permitted to speak for up to 10 minutes on any subject, with Senator BOXER going first.

Mrs. BOXER. Reserving the right to object, and I will not object, but my statement will run 30 minutes. I ask that be amended at this point.

Mr. INHOFE. I have no objection.

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

The Senator from California.

## THANKING SENATOR INHOFE

Mrs. BOXER. Mr. President, before my colleague, Senator INHOFE, leaves the floor, I truly wish to say to him, as my chairman, how much I have enjoyed working with him on the Environment and Public Works Committee. What an important bill we have done, all of us together, across party lines. I am very hopeful we can see this bill move forward so the American people can move forward with their lives. They need the highways. They need the transit. They need the jobs this bill promises.

I wished to thank him before he left the floor.

## JUDICIAL NOMINATIONS

Mrs. BOXER. Mr. President, I have asked for this time so I could talk about the issue that is really hanging over the head of the Senate, as Senator BAUCUS said when he gave his support to the highway and transit bill: What we can do when we work together. What we can do when we set aside the partisanship. What we can do when we work for our people, rather than make up a phony crisis about the courts and threaten to change more than 200 years of tradition and threaten a nuclear option—which was named by the Republicans, by the way, when they thought about it because it is so vicious, it hurts so hard, it has such fallout that it will change the very nature of the Senate. But more importantly, it will change the way we now can protect the people of the United States of America.

This is a very simple chart. It shows the numbers 208 to 10; 208 represents

the number of judges President Bush has been able to get voted into office as a result of actions of this Congress since he got into power. Two hundred eight of his judges have gone through. This Senate has stopped 10, 10 of his nominees. Actually, some of my colleagues remind me now it is really only five because some of them are no longer up for judgeships or we have relented on a couple of them, but I am going to be fair to my colleagues on the other side of the aisle and paint the worst possible picture in terms of the number we have stopped—10.

This is a 95-percent success rate. I ask the people of this country to think about what it would mean in their lives if they got 95 percent of what they wanted. If their child came home on a regular basis with 95 percent from school? That is an A+. If their spouse said, ''Honey, I agree with you,'' 95 percent of the time and you got your way 95 percent of the time, you would be smiling.

When you went to work and you had a pretty tough boss, and your boss called you into the office and he said, ''You know, you are a fine worker, Barbara. You are a great worker. As a matter of fact, I have looked over your work, and I have agreed with you 95 percent of the time,'' I think that is the moment I would ask for a raise.

If you get what you want 95 percent of the time, you should have a broad smile on your face. You should feel good about yourself. You should feel great about yourself.

But you know what, if you wanted 100 percent all the time, if you never wanted to give 1 inch of space, if you demanded that your child get 100 percent every time, you would not be happy. I call it the arrogance of power.

What we are seeing in the United States of America is an arrogance of power. My colleagues—and particularly the White House—are not happy getting 208 of their judges but not getting 10 of their judges; they are not happy with 95 percent results. What do they do? They say: We want to change the rules of the Senate. All right, what are the rules of the Senate? The rules of the Senate say on a nomination as important as a judge, which is very key, following the Constitution, which says a President must take the advice and get the consent of the Senate, there can be extended debate on that judge. To stop that extended debate, it requires not 51 votes; it is 60 votes. That is how we have operated for a very long time.

By the way, it is important to note, it was even harder to get a nomination through. For a while, it was 67 votes. Before that, there was endless debate. You could never stop debate, ever. We have eased that rule.

We believe it is important for a lifetime appointment to the courts—and these are very important positions. They are paid a lot of money. They get a great retirement, not like United Airlines, they will get their retirement. We believe they ought to be terrific—mainstream, at least. And to stop extended debate, they have to pass a little bit of a higher threshold: 60 votes. Some of these nominees are so outside the mainstream they cannot get 60 votes. So the Republicans said: We will just change the rules. They looked in their little rule book, and they found it takes 67 votes to change the rules of the Senate, and they said: My goodness, we do not have that. Maybe we have 51 with the Vice President voting with us—he votes on a tie vote—but we do not have 67 votes. So let's go about it in a way that no one would ever expect. We will raise what we call a point of order, have a ruling of the Chair, and the Chair will rule—and it will be DICK CHENEY—that the Senate can no longer filibuster judges. Then we will have a little disagreement over that. They are getting 51 votes, they think. Maybe not. We do not know.

That is the nuclear option. A lot of my colleagues on the Republican side are nervous about it, and they will wind up, if they get 51 votes, changing the rules of the Senate without the 67 votes.

Imagine what would happen at a baseball game if in the middle of the game someone said there is no such thing as a home run, or it is an out if the ball bounces first and you throw the person out at first base. People would go nuts. You do not change the rules in the middle of the game. That is not the American way. And you do not do it in a backdoor effort. I have voted to change the rules, but I do not try a sneaky way. I said you have to get 67 votes to do it. If you do not get the 67 votes, the rules are the same.

I take my time on this because it is important the American people understand what the Republican leadership is trying to do. They tried to change the rules in the House because they did not want to investigate TOM DELAY, who is the leader over there. They changed the rules. It was so shocking, they backtracked after months of the American people saying: That is not the American way. The people of the United States of America are saying it today. They are saying it by 60 to 70 percent of the vote: Do not change the way the Senate has done its business.

Anyone who saw the movie ''Mr. Smith Goes to Washington'' knows that Jimmy Smith in that film was able to stand on his feet and be heard for a righteous and just cause. A little bit later, I will show an example of a judge we stopped and why it was important to stop her.

Let the American people and my colleagues understand. Here is what is important. This should not be about political parties, folks. When Franklin Delano Roosevelt was President—as we all know, a Democrat, considered one of the greatest Presidents ever—he made a huge mistake in his Presidency. He wanted to pack the Supreme Court. He did not like their decisions.

At the time, the Democrat party had 74 seats in the Senate. They could have done it in a heartbeat. All they needed was just a few to peel off, they had it. What did they do? Democrats in those days, colleagues, stood up to the most popular President in history. He had gotten more than 60 percent of the vote. They said: Mr. President, we think you are great, but we are not going to pack the courts just because you feel they are not upholding all of your New Deal. It is not fair. We need a check and balance.

I know young people watching or listening to this debate understand what we are talking about. The checks and balances built into our Constitution—the courts check the legislature and the courts check the executive branch. What my colleagues on the other side of the aisle, save a few, want to do is take away that check and balance, have one party rule. And, oh my goodness, they did not get enough of what they want—208 to 10—and they are throwing a fit and trying to change the rules of the Senate. That is wrong and doing it in a way that is absolutely contrary to what we say has to be done to change the rules, which is 67 votes.

Now, the next thing they will say is there have never been any judge filibusters until the Democrats. We have never done that, say the Republicans, we are so good we have never done it.

Let me tell the truth, the facts. Who started the filibuster in recent times? The Republicans. In 1968, Abe Fortas, to be Chief Justice of the Supreme Court—Democrats' choice—he did not get the required two-thirds at that time. They need 67 votes of Members supporting Abe Fortas. Republicans started it.

Then we had a filibuster for a while against William Rehnquist, but it was dropped; Stephen Breyer to be judge on the First Circuit Court of Appeals in 1980; Harvie Wilkinson to be judge on the Fourth Circuit Court of Appeals in 1984; in 1986, Sydney Fitzwater to be a judge; in 1992, Edward Earl Carnes; in 1994, Lee Sarokin; and in 1999, Brian Theodore Stewart. In 2000, two Californians were filibustered by my Republican friends: Richard Paez and Marsha Berzon. When we hear the Republicans say, we have not been, ever, for a filibuster, just say, you are making it up. They are making it up. Here they admit to a filibuster. Here is Bob Smith, Republican Senator, March 7, 2000:

> . . . it is no secret that I have been the person who has filibustered these two nominations, Judge Berzon and Judge Paez.

So when the Republicans say there has never been a Republican filibuster, they are making it up. Of course there has been.

By the way, that was their right.

ORRIN HATCH:

> Indeed, I must confess to being somewhat baffled that, after a filibuster is cut off by cloture, the Senate could still delay a final vote on the nomination.

Senator ORRIN HATCH at that time, I believe, was the chairman of the committee.

Again, Senator Bob Smith:

So don't tell me we haven't filibustered judges and that we don't have the right to filibuster judges on the floor of the Senate. Of course we do. That is our constitutional role.

Here we have a Republican Senator leading a filibuster against two of President Clinton's nominees and saying the filibuster is the constitutional role, and now we have Republicans saying: We have never, ever been involved in a filibuster.

I will talk about one of the nominees the Democrats have filibustered. I need to explain to my colleagues, and hopefully to others, how out of the mainstream some of these folks are who George Bush has nominated. Remember, we stopped 10. This is one of the 10.

Janice Rogers Brown—way outside of the mainstream to the extreme. This is one of her comments:

Where government moves in, community retreats, civil society disintegrates, and our ability to control our own destiny atrophies. The result is: Families under siege; war in the streets; unapologetic expropriation of property; the precipitous decline of the rule of law; the rapid rise of corruption; the loss of civility and the triumph of deceit.

This is what she thinks of our great Nation because we have a Government that does build the roads, that does help people out when they are in a bad situation, that may come in and say, yes, it is not a good idea to sell cigarettes to a kid who is 13. This is terrible. This is awful.

The ''precipitous decline of the rule of law; the rapid rise of corruption.''

The result is a debased, debauched culture which finds moral depravity . . . A virtue.

Now, I don't know about you, but I think the minimum wage is a part of America. Colleagues could decide they do not want to raise it for a couple of years. Right now, sadly, it hasn't been raised for a very long time, but I think most Americans think we are protected by the minimum wage.

This is what she said about the minimum wage, Janice Rogers Brown. I take a minute to say Janice Rogers Brown has served in the California Supreme Court since 1996. Her life story is amazing. It is remarkable. What I don't like is what she is doing to other people's lives. Her story is amazing, but for whatever reason, she is hurting the people of this country, particularly, right now, in my State. Of course, the President wants to move her over to Washington, DC, court.

She calls Supreme Court decisions upholding protections like the minimum wage and the 40-hour workweek ''the triumph of our own socialist revolution.'' I don't know or understand how anybody could think the 40-hour workweek or the minimum wage is socialism. She obviously does. She obviously would overturn it.

She accuses senior citizens of—and I hope everyone over the age of 55 will listen to what Janice Rogers Browns thinks of people over 55—she accuses senior citizens of ''blithely cannibalizing their grandchildren because they have a right to get as much free stuff'' as the political system permits them to extract. Free stuff? Is she talking about Social Security? That is not free. People pay into Social Security, and they deserve to get their monthly check. Free stuff. Senior citizens ''blithely cannibalize their grandchildren.'' I resent those comments as a grandmother. I would walk off a bridge for my grandson—and he knows it. I resent her painting of senior citizens.

That is why we held her up. That is why she is not sitting on the court today. Now, she may get there if my colleagues have their way. Let them explain why she would rule to overturn the minimum wage and the 40-hour workweek and overturn Social Security. It will be on their backs. We have stopped this woman from going further because of her decisions.

She declares:

Big government is . . . The drug of choice for multinational corporations and single moms, for . . . rugged Midwestern farmers and militants senior citizens.

She is back to that again. What is she afraid of—that some senior citizen will attack her? The crime rate among senior citizens is pretty low. Militant senior citizens? Give me a break. And we get accused of holding up decent people? This goes on.

I will go on with the story of Janice Rogers Brown—way outside the mainstream to the extreme. She argued a law that provided housing assistance to displaced elderly, disabled, and low-income people was unconstitutional. Her dissent said, because the city of San Francisco had a law that helped these disabled, elderly people, she said that ''private property . . . is now entirely extinct in San Francisco.''

What world does she live in? Has she tried to buy a house in San Francisco? It is the hottest real estate market in the country. But she says private property is entirely extinct. Let her go try to find some private property to buy in San Francisco. This woman is living on another planet, and we were right to stop her from getting on the bench. Whether it takes 60 votes or 51 votes to stop her, we are going to try to stop her.

Let's go on with more of her record. How about this? She said that a manager could use racial slurs against his Latino employees. Now, I say to every human being out there: What do we know about the workplace? We know people should feel OK about themselves in the workplace, that we work better together when we respect each other. Janice Rogers Brown said a manager could use racial slurs against his Latino employees—extreme in the main.

She argued that a message sent by an employee to coworkers criticizing a company's employment practices was not protected by the first amendment. In other words, you can't use your e-mail to write anything about your employer to other employees, although she said the corporations can say whatever they want any time of the day.

You know now why we have stopped Janice Rogers Brown. But we have more reasons, if you are not convinced.

Even when it comes to protecting shareholders, she is not fair. Anyone who owns a share of stock, listen to this one. She argued that a company could not be held liable for stock fraud by its employees who were offered a stock purchase plan since the stock was traded between third parties on the open market. So she comes out against the shareholders and protecting the companies.

Here is the amazing thing. Let me reiterate about Janice Rogers Brown. She serves on the California Supreme Court. There are six Republicans on the court—she is a Republican—and one Democrat. She dissented more than a third of the time. You would think she would have been happy to be with colleagues of her own party. She stood alone 31 times. And when you hear these cases, you will be amazed at where she stood. In other words, she went against five Republicans and one Democrat 31 times, and stood alone.

Let's check those cases out. How about this one: Rape victims; she was the only member of the court to vote to overturn the conviction of a rapist of a 17-year-old girl because she believed the victim gave mixed messages to the rapist. She stood alone on the side of a rapist, alone as a woman on a court that has six Republicans and one Democrat. Here is another case where she voted alone, the only member of the court to oppose an effort to stop the sale of cigarettes to children. It was a case where the supermarkets didn't want to be responsible. If somebody came up, maybe 13, maybe 12, maybe 11, maybe 14, I want a pack of cigarettes, she ruled against an effort to stop the sale of cigarettes to children. What planet is she living on now? If it was in the 1800s and we didn't know about cigarettes and what they do to you is one thing. But now is another thing. She stood alone.

I talked about senior citizens. I told you she is afraid of militant senior citizens. That is what she calls them. I told you that she said they cannibalize their grandchildren. Well, she was the only member of the court to find that a 60-year-old woman who was fired from her hospital job could not sue. This is the amazing thing she said, as she stood alone in this decision. A 60-year-old woman was fired from her hospital job. She said she has no right to sue based on age discrimination. This is her comment:

[D]iscrimination based on age does not mark its victims with a stigma of inferiority and second class citizenship.

Really? How do you think you would feel if you were fired because you were too old and suddenly that stigma was

attached to you and you lost your livelihood because maybe you had to work at age 60, as you waited for your Social Security check, which is a whole other issue. We hope we win that battle, too. But let me tell you, it makes it hard to win the battle of Social Security if you have on the court someone who calls senior citizens militant. It is going to be tough. That is why we have held her up.

By the way, her position in this case is contrary to both State and Federal law. This is one of the people we have stopped.

Just think about what we have been trying to protect the American people from. How about this? This is a woman who not only voted with a rapist against a 17-year-old girl, she was the only member of the court who voted to strike down a State antidiscrimination law that provided a contraceptive drug benefit to women. She was the only one. The State of California had required an equal health benefit to women and said: Your insurance will cover contraception because—guess what they decided. They decided it was better to avoid abortion, to cut down abortion, to make abortion rare. So they said they would give a benefit of contraception. She stood alone and tried to strike that down. Imagine.

She has been bad for workers. She was the only member of the court who voted to bar an employee from suing for sexual harassment because she signed a standard worker's compensation release form. Now, all of you probably know what that means. If you go for a job, you are usually covered by workman's compensation. But this woman had signed a waiver and said: I won't file a worker's comp claim. She didn't file a worker's comp claim, but she did file a sexual harassment claim because she was being sexually harassed. Every member of the court stood with the woman who was sexually harassed but Janice Rogers Brown. Six Republicans, one Democrat, and she stood alone again against a worker who was facing sexual harassment. The whole rest of the court agreed with the worker.

She was the only member of the court to find that a disabled worker who was the victim of employment discrimination did not have the right to raise past instances of discrimination that occurred. In other words, there was a disabled worker who filed a lawsuit, had a big story to tell about the past. She was the only judge to say: I don't agree with the worker; I agree with the company.

Here is another one. Janice Rogers Brown, bad on discrimination, the only member of the court to find that a State fair housing commission could not award certain damages to housing discrimination victims. She stood alone again.

Domestic violence: The Republicans want to put on the court a woman who stood alone 31 times against her fellow Republicans in cases like this—the only member of the court to find that a jury should not hear expert testimony in a domestic violence case about battered women's syndrome. We all know about battered women's syndrome, where a woman is beaten senseless by a boyfriend—in this case, probably a spouse—and later minimizes what he did to her. And the law in our State says it is valid evidence. If she reached out and she did something to prosecute this attacker, an explanation about battered women's syndrome will help her.

She was the only one who stood alone and said: I don't want to hear any expert testimony on this. She stood alone.

I ask unanimous consent for an additional 30 minutes.

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

Mrs. BOXER. Here is one. I want us all to remember the Enron case, a case where counties and cities and individuals were ripped off and went into debt—in our State, billions of dollars—by Enron, Enron who said they would deliver electricity and then made believe there was a shortage and jacked up the price billions of dollars. People went bankrupt and counties went bankrupt and the State went in the hole $9 billion. She was the only member of the court to find that a county could not sue a utility company for illegal price fixing that had substantially increased the county's costs for natural gas.

So here she is again hurting consumers, hurting local government, and standing alone in the process.

Here she is on a right to a fair trial. This is interesting. The courts have ruled over and over that when a criminal defendant comes into court before there is a verdict of guilt, you can't bring that criminal defendant in in shackles and in a prison uniform because you put in the jury's mind that the person is guilty. So you give the chance to the person to come in dressed as a civilian, then you find out the details and you find them guilty or innocent.

In this case, she was the only member of the court to find nothing improper about requiring a criminal defendant to wear a 50,000-volt stun belt while testifying, the only member of the court. That is how outside the mainstream she is.

If we could put back up the 208-to-10 number while I give the rest of my remarks, that would be fine.

What do we have here? We have a circumstance that 10 times out of 218, Democrats believed the President's choices were really harmful to the American people, would really be harmful to them, whether it is their minimum wage, whether it is their 40-hour workweek, whether it is the ability of all of us to protect our kids from cigarettes, whether it is to protect victims of violence, it goes on and on. You have seen just a handful of the cases.

So when somebody says to you: Well, those Democrats, they are blocking everybody—and if you listen to my Republican colleagues, that is what you would think—no, we have blocked 10. We have approved 208. In reality, now the number is 5, but circumstances have changed. I will lean over backwards to be fair and say it is 10. That is 95 percent. In each case of these 10 you will find out why we have done it. It is because these nominees are so outside the mainstream that they will hurt the people we represent.

Why is it important to say that a judge needs to have a 60-vote threshold to end extended debate? It is because it is a lifetime appointment. The President is supposed to work with the Senate before choosing a nominee, which he has not done, not on our side of the aisle. I tried hard with Mr. Gonzales when he was White House counsel. I met with him on numerous occasions, and he said: Senator BOXER, give me some names of Republicans. I gave him so many names of good Republicans for the Ninth Circuit.

I said: Look, these people are mainstream Republicans. They will fly right through here.

No, they couldn't be bothered with that. I know Senator FEINSTEIN has done the same, given them the names of people who would be quite acceptable. Who do they send us? People such as Janice Rogers Brown, people who are so outside the mainstream that we don't deserve to be here if we don't raise the arguments.

Now, what you are also going to hear is the Republicans have called this the nuclear option. They have renamed it the constitutional option. That is humorous—if you want to find humor in any of this. That is like saying that clock over there is a table. I suppose if I told you that often enough, maybe you would believe me that once upon a time that clock was a table. But the clock is a clock and the nuclear option is the nuclear option. It was named by the Republicans. But it is not popular out there because of the connotation, so they are trying to change it.

The ''constitutional option'' is the reverse of the truth. In the Constitution, it says nothing about guaranteeing a vote. It says the Senate shall write its own rules. Well, the Senate wrote its own rules and the Senate said it takes 67 votes to change our rules. Our colleagues don't have 67 votes to change the rules, so they are trying to do this sneaky parliamentary move to change the rules. What a way to govern because you didn't get 100 percent of what you want; you got 95 percent. I don't feel sorry for any President who gets 95 percent of what he wants.

I am telling you, Democratic or Republican Presidents have to work with the Senate and the House and they have to compromise. So it is very important to note that when you hear the Republicans saying all we want is the constitutional option, you say, where in the Constitution does it give you this right? Nowhere.

Then they will say this: Everybody deserves an up-or-down vote. Everybody. I don't know how many times we have given Janice Rogers Brown a vote. We gave Janice Rogers Brown a vote here once, and Priscilla Owen got a vote four times. Yes, the vote required 60 as the threshold to end extended debate, but they got their vote. Now, when you go back to Bill Clinton, 61 times his nominees got stuck in committee; 61 of Bill Clinton's nominees never got to have a cloture vote. They never got a vote. They were pocket-filibustered in committee. We have never done that. Every single Bush nominee who has come to the floor has had their vote. I know of none who have not had a vote. They just didn't meet the 60-vote threshold.

That is the second thing you are going to hear: All we are asking for is an up-or-down vote. They had that, but they had to meet the 60-vote threshold to end extended debate. Why? Because they are lifetime appointments, we are checking and balancing the power of the executive by saying don't send us people such as Janice Rogers Brown, who is so out of the mainstream. She sees a military uniform on every senior citizen and says senior citizens want to cannibalize their grandchildren. Excuse me? She says there is no private property left in this country. That is outside the mainstream to the extreme.

If we Democrats have the courage of our convictions to say no 10 times, give us a little respect; don't try to change the rules in the middle of the night. Do what the Democrats did in the 1930s. Think how good you would feel if you stood up to the President of your own party and said: Mr. President, we will follow you anywhere; we think you are terrific, and we support you in Iraq and on privatizing Social Security, and we support you in your huge deficits; we support you in these trade agreements, we support you this way and that way; but we don't think packing the courts is a good idea. Therefore, we are going to join with the Democrats and say no to this plan. It is very dangerous.

I want people to understand. The point of my discussion here today is to put a human face on these judges. This isn't about just numbers, although the numbers tell a heck of a story. The Republicans get 208 and not 10 and they are crying and doing this in a sneaky way, without getting 67 votes to do it. That alone is wrong. It is not playing fair, it is not the American way, it is not playing by the rules. The American people want to know it. If you want to fight with us, we will have a debate, but stick with the rules. Get your 67 votes so you can have the arrogance of power. Get your 67 votes so you can tread all over us. But don't do it in this sneak attack, challenging the Parliamentarian, and then having the Senator in the chair say, you know what, it is over; no more filibusters on judges.

If you do that, you are hurting the American people. Some people say it is about the traditions of our country, the right to unlimited faith, freedom of speech, ''Mr. Smith Goes to Washington,'' I will stand on my feet, that is my God-given right for my State to do that, and that is all true. But for me personally, as a Senator from the largest State in the Union, with 36 million people, I want to protect them. I want to protect the 17-year-old who got raped and not have her come before Janice Rogers Brown and have her stand alone and rule against her. I want to protect the worker who wrote a little e-mail to another worker and said I don't think the boss is being so fair, what do you think? They said we had 2 weeks vacation and now they are counting that day off as one of those days and it is not right, and have to be before Janice Rogers Brown who says the corporation can write anything they want, but you are too lowly. I don't want to have the American people subjected to a judge such as Janice Rogers Brown, who said any city that helps a disabled elderly person get housing is wrong and is destroying private property. I don't want to have my kids in a circumstance where they have to see their grandmother called a ''cannibal.'' I don't want to have a judge who overturns Social Security, who overturns the minimum wage, who overturns the 40-hour workweek.

The point is, I want to protect the people I represent. So if I don't stand up strongly against a judge such as her, I don't deserve to be here. The people of my State would be upset with me.

The right I have in this magnificent Senate today is the right of the minority. We have 45 Democrats here and 55 Republicans. I am counting JIM JEFFORDS as a Democrat for the purpose of discussion because he votes with us. So it is 55–45. JIM JEFFORDS is an Independent, but he votes with us. By the way, in the recent polls, the Independent voters are for the filibuster; 54 percent are for the filibuster. I want to protect the people I represent, because Janice Rogers Brown has been nominated for the DC Circuit Court, meaning one step below the U.S. Supreme Court. So she is going from the California Supreme Court, where she has dissented in a third of the cases, in a court that has—and you may be interested in this—six Republicans and one Democrat. Janice Rogers Brown has dissented 31 times. This is how out of the mainstream she is. I think it is important to note.

In the DC Circuit, there is a whole other area of the law that was protested—your right to breathe clean air, your right to drink clean water. This is important for us because environmental laws protect our health, and if we have someone in the court there who doesn't think Government has any right—and she obviously doesn't—to do anything because—what is it she said about Government? If you could put that chart up again. Whenever Government gets involved, this is what she predicts happens. We will show you the quote. Obviously, she doesn't think there is anyplace for Government because she says: ''Where government moves in''—I would say in a circumstance such as the Clean Air Act, where we tell folks you have to make sure the air is kept clean—''community retreats, civil society disintegrates, and our ability to control our own destiny atrophies . . . families are under siege.''

I don't know what country she is living in. She says: '' . . . unapologetic expropriation of property; the precipitous decline of the rule of law; the rapid rise of corruption, the loss of civility and the triumph of deceit.''

What an optimist. Why are we promoting someone who has this negative view of America? Doesn't she know this is a government of, by, and for the people? That is what we are about. Do we make mistakes sometimes? Yes. Do we have to make sure we fix our laws so they work better? Yes. But to say whenever Government moves in, community retreats, I wonder what she thought of the highway bill we just passed. She probably thinks it is awful because we take the gas taxes and we build highways, and we build transit systems because we think it is important for economic growth. But she says when Government moves in, community retreats, civil society disintegrates, and the result is families are under siege and there is war in the streets.

So, yes, I am here to say I did stand up against Janice Rogers Brown, and whether she has to meet a 60-vote threshold, which she has been unable to get, or a 51-vote threshold, I will be fighting against this nominee because she is way out of the mainstream. She walked away from judges in her own political party and stood alone 31 times. That is why we have said to the President: Why don't you talk to us about these nominees? We could have told you this one would have trouble. We would have given you the names of some fine conservative Republicans. But not someone who has this wonderful life story, but has a view of America that is amazing.

Here is what she once said in a speech:

> Most of us no longer find slavery abhorrent. We embrace it. We demand more. Big Government is not just the opiate of the masses; it is the opiate.

Her point is we are slaves to our Government. Well, again, I don't know what country she is living in. We are not slaves to our Government. We run the Government. We get to vote the people we want in and we get to vote them out. If we don't like what they do, we will let them know. She is out of step, calling senior citizens militant, saying they are taking all of the goodies and free stuff. She doesn't like the minimum wage, doesn't like the 40-hour workweek, doesn't like senior citizens. She never protected women. She doesn't protect our children. She doesn't protect our consumers. She

doesn't protect our workers. Why do we want someone such as that to get a promotion?

Therefore, the Democrats have said to the President, through our voice in the Senate: Send us someone else and we will be delighted to work with you. We have worked with you 208 times, Mr. President, and 10 times we said no.

We said you are out of the mainstream, and the response of a 95-percent success record by the Republicans—and a few are not going along with it, and bless them for that—is: We will take away your right, Democrats, to stand up for the things you think are important. We will take away your rights by changing the rules in the middle of the game, by skirting a 67-vote requirement for changing the rules. We will do it.

There is politics being played. The majority leader talked about this in a speech in a political way, which was wrong. He has not agreed to a compromise. Senator REID has offered several. The fact is, people have to know what is at stake.

I hope everyone within the sound of my voice will know the reason why Democrats have stood so firmly against the nomination of Janice Rogers Brown. It is because we care about the people we represent, and we care about mainstream judges, and we do not want to see such a radical individual get this position and begin to whittle away at the rights our people have won, at the fairness our people have won.

This is very important. This vote is going to change the Senate forever. But more than that, it will impact the lives of the people. Changing the Senate, changing tradition, changing the role of the minority to make a difference, to be heard, freedom of speech—these are all important. But at the end of the day, it is about our kids, our grandkids, our seniors, our families, our workers, the air we breathe and the water we drink, and this is all connected to the judges. This is not disconnected. This is the brilliance of our Founders who said the judicial branch, the judges, shall make sure that everything we do in the legislative branch and in the executive branch is constitutional, is right, is reasoned.

If we have people on the bench who believe that anything we do disintegrates our family; that anything we do, such as the highway bill, for example, turns into an expropriation of property and the rapid rise of corruption and the loss of civility and the triumph of deceit—this belongs somewhere else, not in the courts.

Mr. President, I thank you for your patience. I thank my staff who has done an extraordinary job for me in analyzing these decisions. This is not easy to do because you have to go line by line. I know the Presiding Officer knows these cases can be very long and confusing. My staff are attorneys. They are also very smart attorneys, and they were able to get to the point of these cases and bring home this message to people that when we fight against 10 judges out of 218, it is for a reason. It is not because we want to be difficult. It is because we believe when the Constitution says the Senate has the right to advise and consent on judges, it does not mean when the President feels like it. It does not mean between the hours of 11 and 1 on Wednesday. It means every time he sends a nomination to us, he should have, in fact, sought the advice and consent of the Senate.

We have a big debate coming up tomorrow. I just wanted to give a little reality check so people understand for what we have been fighting.

I thank the Chair. I suggest the absence of a quorum.

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

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. DURBIN. I ask consent I be recognized as in morning business and be allowed to speak as long as necessary.

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

## JUDICIAL FILIBUSTERS

Mr. DURBIN. Mr. President, 51 years ago today the Supreme Court, just across the street from the Senate Chamber, issued one of its most famous rulings in the history of the United States of America. The ruling was Brown v. Board of Education. It may have been one of the most courageous decisions ever issued by the Court. It rejected the cruel legal fiction of separate but equal and said that in the United States of America there would be no second-class citizens.

What an amazing victory for justice. But for some time, in some States, the Brown decision remained a victory on paper only. In much of the United States, in the Deep South, the Brown decision was met with massive resistance. Governors refused to obey the court ruling. Three years after that court decision, 48 years ago today, on May 17, 1957, 36,000 people gathered in Washington, DC, for the first march on Washington.

This is a photo of that march. We all know about the famous 1963 march, but the 1957 gathering was really the forerunner to that 1963 march. In those days, in 1957, it was known as a Prayer Pilgrimage for Freedom in Washington, DC.

Take a look at some of the people who gathered on that day 48 years ago. Dr. Martin Luther King, 29 years of age, was among those who gathered to speak. His leadership had been tested by the crucible of the Montgomery bus boycott. His remarks at the 1957 gathering were not nearly as well known as his immortal ''I Have a Dream'' speech in 1963, but they are powerful and worth repeating on this the 40th anniversary of the day he first delivered them. Here is how Dr. Martin Luther King opened his remarks on that day. He said:

> Three years ago the Supreme Court of this nation rendered in simple, eloquent, and unequivocal language a decision which will long be stenciled on the mental sheets of succeeding generations. For all men of goodwill, this May 17th decision came as a joyous daybreak to end the long night of human captivity. It came as a great beacon light of hope to millions of disinherited people throughout the world who had dared only to dream of freedom.

Dr. King went on to say:

> Unfortunately, this noble and sublime decision has not gone without opposition. This opposition has often risen to ominous proportions. Many states have risen up in open defiance. The legislative halls of the South ring loud with such words as 'interposition' and 'nullification.'
>
> But even more, all types of conniving methods are still being used to prevent Negroes from becoming registered voters. The denial of this sacred right—

Dr. King said—

> is a tragic betrayal of the highest mandates of our Democratic tradition.

But Dr. King did not stop with this sad commentary on what he saw in America. He delivered his prescription for progress when he said:

> And so our most urgent request to the president of the United States and every member of Congress is . . . Give us the ballot, and we will no longer have to worry the federal government about our basic rights.
>
> Give us the ballot and we will no longer plead to the federal government for passage of an anti-lynching law; we will by the power of our vote write the law on the statute books of the Southland bring an end to the dastardly acts of the hooded perpetrators of violence.
>
> Give us the ballot, and we will transform the salient misdeeds of bloodthirsty mobs into the calculated good deeds of orderly citizens.

What a speech. Not nearly as heralded as his speech a few years later, but certainly what Dr. King said that day still touches the hearts of every American who dreams of the ideals of this great Nation.

Now, 51 years later, it is hard to imagine the way Brown v. Board of Education was received. Most Americans look back with pride to the end of segregation in our public schools. We regard it as a great achievement that 182 years after our Nation was founded, a new generation of Americans had the courage and conscience to confront the bitter legacy of slavery, the challenge that our Founding Fathers could not resolve with all their wisdom. These people had the courage to confront segregation and voting discrimination.

Many Americans didn't support Brown v. Board of Education, not in 1954, not in 1967. That is why 36,000 people gathered on the Mall 38 years ago today. Many southern States flatly refused to obey the Brown decision. The same ruling that Martin Luther King praised as a joyous daybreak, others denounced as judicial activism. Judicial activism—that is what they said

about a decision to integrate America's schools. The courts had gone too far. Many argued: Leave it to the States to decide; this is not a decision to be made at the Federal level; certainly it is not a decision to be made in that Court across the street; those judges went too far, they argued in Brown v. Board of Education.

Does this sound familiar? That is exactly what we are hearing today. The words in opposition to Brown v. Board of Education echo through this Senate Chamber and the Halls of Congress even today.

Sadly, we may be on the verge of a constitutional confrontation over the Senate's constitutional advise and consent responsibilities regarding Federal judges. To listen to many on the far right, you would think it was events only in the last few years that have pushed us to the brink, but that is not the case.

Earl Warren of California was Chief Justice of the Supreme Court during the momentous Brown decision. The John Birch Society began putting up ''Impeach Earl Warren'' billboards in 1961. Later they tried to impeach William O. Douglas, one of the most outspoken and eloquent Justices on the Court. The far right tried to impeach Frank Johnson. Who is Frank Johnson? An interesting story.

Just a few years ago I joined JOHN LEWIS—he is a Congressman from Atlanta, GA, and what he does each year is invite Members of Congress, Democrats and Republicans, to come back down south and visit Montgomery and Birmingham and Selma. JOHN LEWIS is the perfect guide for these visits because JOHN LEWIS was there on that bridge in Selma, marching toward the capitol so that African-American people would have the right to vote. Because this young man had this idealism to participate in that march and the freedom rides, he had his skull cracked at the Selma bridge. It almost killed him.

I asked JOHN LEWIS, tell me about the Federal judge, Frank Johnson, that judge in Alabama.

He said: We wouldn't have had a civil rights movement, we certainly would not have had that parade, demonstration in Selma, without the courage of that man, Frank Johnson. Frank Johnson, a Republican appointee to the Federal bench, stood up and said: Yes, these Americans have the right to march and speak.

It was really unpopular. A lot of people hated Judge Johnson because of it. He was persona non grata in his whole community. His family was harassed. He did courageous things that permitted the Montgomery bus boycott and the freedom marches across Edmund Pettis Bridge. For that, the far right, who accused him of judicial activism, wanted him impeached. They didn't agree with his decision. They said he went too far.

Since 1961, 8 of the 12 Federal impeachments or near impeachments in Washington have involved our judges. The far right has been demanding that the Senate rein in what they call ''activist judges'' for decades. What is different now is what used to be extreme, discordant voices just heard in muted tones, now own great microphones in this democracy. They have called on their followers in Congress to follow their agenda.

Sadly, they have many allies in high places—allies in the Senate who are willing to break the rules of the Senate to change the rules of the Senate so that the far right can pack the Federal courts with judges more of their liking, judges who are not activist by their definition.

Today their allies in the Senate are willing to use the nuclear option to destroy the filibuster and to really destroy our system of checks and balances.

The obvious question is, in a body of 100 men and women where counting votes is the most important thing: Do they have enough allies? For the sake of our democracy, I pray they do not. We hope there will still be a majority of Senators who love this country, love this Constitution, and love this Senate enough to preserve the Federal courts as a fair and independent branch of Government. This should not be an exercise of power by the extreme part of any political party.

One of the men I respected most in the world, probably the man who is responsible for my standing here today more than any others, was a man named Paul Douglas, who was a Senator from Illinois from 1948 to 1966. I will never forget that day in February of 1966 when he agreed to hire me as a college student to work in his office across the street in what is now the Russell Senate Building. It was one of the most exciting things I had ever done, a student from Georgetown University from East St. Louis, IL, was going to work in the office of a Senator.

I would have done anything they asked me to do, and they asked me to do a lot of things. But the most exciting thing I did was each night Senator Douglas, who had been gravely wounded in World War II as a marine in the South Pacific, insisted on signing all letters. With one arm, he needed help, and that's where I came in. I would sit next to him on a chair next to the conference table with a big stack of letters Senator Douglas was sending back to Illinois, and as he signed them, I would pull each letter away. That was my job as an intern.

It was an exciting job. It sounds boring, I'm sure. But this man who had done so much with his life would sit there as he signed the letters and answer my questions, and I had plenty of them, and talk about his life and the things that he had done.

He talked about the 1948 Democratic Convention, when civil rights really became the focal point of a national debate, when he grabbed the standard of the Illinois delegation at that convention and paraded around the hall leading a demonstration in favor of a mayor from Minneapolis named Hubert Humphrey, who said that we had to come out of the shadow of States rights into the bright sunshine of human rights.

Paul Douglas was as committed to civil rights as any man I ever knew. He helped lead the fight in the Senate in the 1950s and much of the 1960s to pass much of that historic legislation. He ran smack dab into the filibuster, the filibuster that was used by some Senators, primarily from the South, to stop the civil rights legislation. It was almost unbreakable. It took 67 votes in that day to stop it. You remember the filibuster? That is the procedure in the Senate where any Senator can stand at the desk here and speak as long as their voice and bladder will allow, stand up there and argue for all the principles and values they believe in. You saw it, Jimmy Stewart, ''Mr. Smith Goes to Washington.'' It is still in the Senate books. It is still the rule. It has been here for over 200 years.

Some people say that is crazy. In this age of technology, why would we want this body to be dragged down by one Senator who wants to talk?

But that is what the Senate is all about. That is why we are different than the House of Representatives. I served over there with pride for 14 years. I love the House of Representatives. But they are a different institution, under our Constitution. If you have a large State with many people, you will have more Congressmen. We have quite a few people in Illinois, 12.5 million; 19 Congressmen. Think of all the Congressmen from California. But then come across the Rotunda, how many Senators from California? Two. How many from South Dakota? Two. How many from Illinois? Two. How many from Rhode Island? Two. Because the Founders of our Nation said we will have one branch of the legislature which represents the population of America, but the Senate is different.

The Senate will give every State a chance. The Senate will allow the smallest States the same number of votes as the largest States, and within the Senate we will recognize and respect the right of any Senator from any State, large or small, to engage in debate. We will protect that Senator's right, even if many people think that is not a wise position the Senator is taking, because we want to protect the rights of the minority. That is why the Senate is different.

So Paul Douglas, when he argued the civil rights bill, ran smack dab into the filibuster. One would think, as much as he hated segregation and as much as he hated Jim Crow laws, that Senator Douglas and many other progressives, Democrats and Republicans, would have tried to eliminate the filibuster which held up the civil rights bill. But they did not. Why? Because that procedure is critical to what this institution

is all about. Doing away with the filibuster does away with the protection of minority rights. It changes the dynamic.

What happens when we have a filibuster? In order to stop the filibuster, an extraordinary majority of the Senate must come forward. Now it is 60 votes. So if a Senator stands and says, this is unfair and unjust and I am going to speak at length to tell you why, what does it mean? Not only that he is a person of conviction, but it means to resolve that difference, to try to move on from the filibuster, people of good will have to meet and talk and come to an agreement. The filibuster forces compromise, the filibuster forces bipartisanship, which the Senate is all about.

That is what has happened over the years. Those who were engaged in the civil rights debates played by the rules and sometimes lost by those same rules, but they won in time. Four months after the prayer pilgrimage that I mentioned in 1957, 4 months after 36,000 people gathered at the Lincoln Memorial to protest what they considered the slow progress in America to deal with segregation, 4 years after that day, Congress passed the 1957 Civil Rights Act, the first Federal Civil Rights Act since the days after the Civil War. After that came a 1960 voting rights bill, the landmark Civil Rights Act of 1964, the Voting Rights Act of 1965.

Those advances were not won by impatient Senators breaking the rules. They were won by courageous Americans who persevered, who marched on Washington, who marched on Selma, AL, who dared to register and vote when that basic act of citizenry could cost you your life.

Near the end of his speech 48 years ago today, Martin Luther King told the thousands of people gathered at the prayer pilgrimage at the Lincoln Memorial:

> We must work passionately and unrelentingly for the goal of freedom but we must be sure that our hands are clean in the struggle.

What Dr. Martin Luther King was saying in the dark hours of Brown v. Board of Education, when it appeared there was little chance that the Congress would respond, ''your hands must be clean in the struggle.''

That, my friends, is the debate we will face when it comes to changing the Senate rules. It isn't just a matter of achieving our goals; it is how we achieve our goals. The ends do not justify the means. Think of it: Dr. King, at the age of 29, having lived through the rank discrimination that was prevalent in many parts of America, still reminded those who were listening, play by the rules, keep your hands clean in the struggle. What he was telling us was that no matter how passionately we believe something, we are not entitled to rig the rules to achieve the outcome we want. That is not how it works in society. It is not how it works in families. It certainly is not how it works when you follow the rule of law.

There always will be some who reject court decisions they do not agree with as ''judicial activism.'' There will always be some who want to restrict the independence of judges and put their own stamp on the judiciary. There will always be impatient people who want to rig and change the rules or short circuit the rules of democracy. As Senators, we have taken an oath to defend our Constitution. It is our sacred responsibility to tell them no.

This is not the first time in our Nation's history that a President of the United States wants more power. It is a natural thing in government, and the Founding Fathers who wrote this Constitution understood it. They knew that if there was no check on the judiciary, judges would be too powerful. They knew if there was no check on the Congress, the Congress would take too much power. And they certainly knew that an Executive like a President would always want to increase his power over the people. That is what led them so many times to create the checks and balances which have resulted in what we enjoy—the longest lived democracy in the history of the world.

President Thomas Jefferson, 16 years after the Constitution was written creating an independent judiciary, Thomas Jefferson, the man who wrote the Bill of Rights, was reelected as President of the United States in 1805, said to the Senate, which met on the first floor of this building not far from where we gather, said to the Senate: You are a majority of my party. You know that Supreme Court—which is in the same building—is a court which has ruled against us and sees the world quite differently. Thomas Jefferson said to the Senate: Join me in impeaching Samuel Chase. Take this Justice off the Supreme Court and let all of these judges know if they do not see the world in the terms that we believe it should be in, they will be removed from office.

Understandably, Jefferson was frustrated by the judges who were not listening to him and following his beliefs. So he came to his party in the Senate and said: Join me. And they said: No, Mr. JEFFERSON. We are loyal to you and your party, but we are more loyal to the Constitution, and the Constitution insists the judiciary must be fair and independent and balanced. And they said no.

In more recent times, many can recall that Franklin Delano Roosevelt, one of our greatest Presidents, reelected to a second term, frustrated by the Supreme Court across the street which had killed his New Deal legislation, said: It is time to do something about the old men on the Court. He came to this Chamber, this Senate, and said to the Democrats of his own party: Help me change the judiciary. We need to put more Justices on the Supreme Court to overcome those old men. The Democrats and Republicans in the Senate said: No, Mr. President. We respect you. We support your goals and your programs. But the Constitution is more important than increasing your power as a President over the judiciary.

And here we are today in the year 2005, coincidentally at the beginning of President George W. Bush's second term. And what do we hear from this President? He comes to this Chamber, to the Senate, and says to Democrats and Republicans alike: I want more power over the judiciary. I want to do something about those activist judges. And I resent the fact the Senate has not approved every judicial nominee which I have sent for approval.

Which takes me to my last chart. For those following debate, for those who want to know what the score is, it is 208 to 5 or maybe 208 to 10, depending on your count. But more than 95 percent of the nominees sent by President Bush to the Senate Chamber for approval have been approved. Mr. President, 208 to 5, and we are facing a constitutional crisis and confrontation because this President cannot get 5 judicial candidates he insists on?

One wonders if this President, coming to this Senate, would hear the echos of what Thomas Jefferson heard or Franklin Roosevelt heard where his own political party would stand up and say: Mr. President, we respect you, but we respect the Constitution more. We respect the Senate more. Sadly, few of those voices have been raised.

Within a matter of hours or days, we will face this historic constitutional crisis. I believe it comes down to some very fundamental principles. Neither this President nor any President should be allowed to change the rules in the middle of the game, to take away the right of extended debate on judicial nominees. Neither this President nor any President should be allowed to change the checks and balances which have given us our lifeblood as a nation for over 200 years. Neither this President nor any President should make a lifetime appointment of someone to a Federal court who is not prepared to take on that awesome task and to dispatch it with the kind of integrity and skill and commitment to the values of America we must insist on.

So in a short period of time, there will be a test in this Senate the likes of which it has never seen. We almost have to go back to the Civil War to recall a debate of this proportion. I sincerely hope my colleagues will rise to this challenge. I sincerely hope they will understand there is more at stake than whether a President has a good press release one day, whether some supporters cheer them on for standing up for 5 or 10 nominees, who understand that what we are debating is, sadly, going to be viewed for generations as a test of whether we are truly committed to preserving and defending the Constitution of the United States.

I still have great hope. I still have great hope that enough Republican

Senators will stand up to this President as Thomas Jefferson's party stood up to him, as Franklin Roosevelt's party stood up to him and said: Mr. President, we respect you, we believe in your program, we will support you, but first we have to be guided by our Constitution, and we cannot increase your power in this Government at the expense of the balance that was created by the wisdom of our Founding Fathers.

I yield the floor.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. Mr. President, I ask unanimous consent to speak such time as I may require.

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

Mr. FEINGOLD. Mr. President, I further ask that following my remarks, the Senator from Louisiana be recognized for her remarks.

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

Mr. FEINGOLD. Mr. President, it is not uncommon for Senators to stand in the Senate and tell their colleagues and the American people that an upcoming vote is one of the most important the Senate will ever take. We are the masters of hyperbole in this body, forever standing on the precipices and poised on the brink of momentous decisions.

But today, I think most will agree with me: We truly are at such a moment. The Senate is on the verge of making a decision with potentially enormous consequences for this institution and for the country and the people we serve. At stake is not just the fate of a handful of judicial nominations or of a future Supreme Court nomination, as important as they may be. No, the decisions made this week will resonate far beyond this Chamber and far beyond the current controversy.

I will speak today about how we arrived at this moment of great peril and how we might step back from the brink. I will speak about the consequences of the question that will apparently be put before the Senate prior to our next recess. I will speak today about principle and about power.

While they do not always attract a lot of public attention, traditional nominations are very important. We all know that. The judicial branch is a coequal branch of Government. The interpretation and enforcement of the laws we pass in Congress depend greatly on the men and women who serve as judges, and, of course, Federal judges serve lifetime appointments. Decisions made by the President and the Senate on judicial nominations have a long-term and long-lasting impact on the Nation.

Disputes over how the Senate should exercise its constitutional power of advice and consent on such nominations are as old as the Republic itself. Nominations have led to some of the most historic and divisive debates in this body, dating back to efforts to pack the courts with Federalist judges in the waning days of John Adams' Presidency. More recently, we had debates about Franklin Delano Roosevelt's court-packing plan in the late 1930s, the Abe Fortas nomination in the late 1960s, and Robert Bork in the late 1980s, to give a few examples.

Debate, even bitter partisan debate, over judicial nominations is nothing new. What is new is that the Senate is now poised to break with its rules and traditions. For the first time, the desire of one side to win nomination battles has become so intense and so unyielding that it threatens the very rules by which this Senate has operated for centuries.

In all of the previous controversies I have mentioned, which I think most serious students of Congress and the courts would agree were more significant than the current debate over a handful of circuit court judges, the rules of the Senate have allowed the battles to be fought fairly.

Only today, apparently, must those rules give way so one side can have its way. The majority leader and those who support his extraordinary plan to change the Senate rules by fiat seek to cloak their grab for power in the source of our Nation's loftiest principles, and that source is the Constitution.

This is not just a silly public relations effort to change the name of their plan from the nuclear option—the term coined by the majority leader's predecessor—because that term obviously fares rather poorly in the public opinion polls. It is actually a cynical effort to distract the public from the extraconstitutional nature of the plan by invoking the Constitution itself.

In the last Congress, as in this one, I served as the ranking member of the Senate Subcommittee on the Constitution. The subcommittee held a hearing in May 2003 with the grandiose title: ''Judicial Nominations, Filibusters, and the Constitution, When a Majority is Denied Its Right to Consent.'' The hearing was certainly interesting and provocative. I was there the whole time. No one made a convincing case that there is any such right in the Constitution anywhere.

Article II, section 2 spells out the Senate's role in nominations. It states, in relevant part, that the President ''shall nominate, and by and with the Advice and Consent of the Senate, shall appoint . . . Judges of the supreme Court, and all other Officers of the United States.'' That is it. That is all it says. Some have managed to find in those few words a requirement that the Senate give all judicial nominees up-or-down votes. Even if someone isn't a strict constructionist, I can't for the life of me understand where they get that from. Where is it? Where is it in the language? Where is it in the Constitution?

It may be the policy they prefer, but it is not a constitutional argument. It is not a constitutional requirement. In fact, the only language in the Constitution that directly addresses the issue we are faced with today is the following from Article I, clause 5:

Each House may determine the Rules of its Proceedings . . .

The Senate has determined its rules, and its rules also provide the means for changing the rules, of course. The Senate is now being asked to change the rules by breaking the rules. There is no principle involved here. There is just power.

It is a shame that those who support the President's nominees have inflated what is essentially a political dispute to a constitutional debate. For those of us who take the Constitution seriously, it is jarring to hear colleagues suggesting that one is violating one's oath of office by voting not to end debate on a nomination.

As my colleagues know, I spent 7 years in this body fighting to pass a campaign finance reform bill. We had a majority here on that bill after a couple of years. That wasn't the issue. For years that effort had the support of a bipartisan majority of Senators, but it was stymied by filibusters. Senators who supported reform had many spirited, sometimes even bitter, debates with Senators who opposed our bill. But never did we contend our opponents on campaign finance reform were violating their oath of office by using every tool available to oppose a bill with which they strongly disagreed.

The Constitution does not prohibit opponents of a judicial nominee—or any nominee, for that matter—from using a filibuster to block a final vote on the nominee. The majority does not have a constitutional right to confirm a nominee, and the nominee has no constitutional right to a vote. As the senior Senator from West Virginia said the other day: The Senate has often denied consent to a nominee in the past by simply refusing to schedule a final vote.

I have not always supported those actions, but I have not pretended they are unconstitutional.

If the arguments being advanced today by the Republican majority are correct, then the Republicans acted unconstitutionally in 1995 when they defeated the nomination of Henry Foster to be Surgeon General by using a filibuster. They violated the Constitution when they required cloture votes before ultimately confirming Stephen Breyer, Rosemary Burkett, H. Lee Sarokin, Richard Paez, and Marsha Berzon to circuit court judgeships, David Sacher to the Surgeon General's office, and Ricki Tigert to the FDIC, Walter Dellinger to the DOJ's Office of Legal Counsel, and the current Governor of Arizona, Janet Napolitano, to be U.S. Attorney. If the arguments being advanced today are correct, they violated their oaths of office when they forced the ambassadorial nomination of Sam Brown to be withdrawn because they refused to end debate on his nomination.

These are just the cases where a cloture vote was required to get a nomination through. I won't even start on the list of nominees who never even got a hearing or a vote in the Judiciary Committee or any kind of debate on the floor if they cleared committee. But there are dozens of them. Wasn't the majority denied its right to consent just as much in those cases? Is there any meaningful constitutional difference between a filibuster on the one hand and on the other hand a hold on the Senate floor or a wink and a nod between a committee chairman and a Member who just doesn't like a nominee? One could certainly argue the denial of consent by failing to schedule a hearing or a vote in committee is on even less firm constitutional ground than a filibuster because it allows just one Senator, the chairman of Judiciary Committee, to make the decision that the Senate's consent on a nominee will be withheld, whereas if all the Senators vote, a filibuster can be sustained only with 41 or more votes.

But there is no real argument that filibusters of judicial nominations are unconstitutional, just as blocking nominations in committee is not unconstitutional. There is no principle here that justifies eliminating the filibuster for judicial nominees who have lifetime appointments but leaves it intact for nominees to the executive branch who can only serve until the term of the appointing President ends at the latest.

There is no principle that can distinguish judicial nominations from legislation, which may also be passed by a majority, but can be amended or revoked by a majority in the same or later Congress as well. Again, the effort we are facing here is not based on principle, it is based on power. The lack of a constitutional basis for it is made even more clear by the specific plan that the majority leader spelled out in his press release last week.

He intends, according to that release, to ''seek a ruling from the Presiding Officer regarding the appropriate length of time for debate on such nominees.'' Seeking a ruling on how long we should debate? Surely the Presiding Officer cannot make that ruling on constitutional grounds, the idea of a constitutional time limit. What is the constitutional basis for ruling that the Senate can debate a nomination only for a particular length of time? Is the Presiding Officer going to opine that it is constitutional to debate a nomination for 100 hours, but unconstitutional for us to have 101 hours of debate? That would be absurd.

No, it appears that instead of following the existing precedents of the Senate, which state there is no dilatory rule except after cloture has been invoked, the Presiding Officer will just announce a new rule and the Senate will then debate and vote on an appeal of that ruling. If this happens, the rules of the Senate will be changed by fiat, by breaking the rules—not principle, power, the power of majority rule.

The Constitution did not set up the Senate to be a majoritarian body. That is why renaming the nuclear option as the constitutional option is so wrong. The Constitution allows citizens from smaller States who could be easily outvoted in a majoritarian legislature such as the House to have the same power in the Senate as citizens of larger States. This is not a minor provision, as the Presiding Officer knows. The Founders clearly didn't think so because—this is amazing—they made it the only provision in the Constitution that cannot be amended. No State can give up its equal representation in the Senate without its consent. You can't do a constitutional amendment to change that. They designed the Senate to be an important bulwark against majoritarian pressure.

The Senate rules from the very beginning, of course, have granted protections for the minority. There was no cloture rule at all until this century. The rule didn't cover nominations until 1949. While the cloture rule has changed over time—sometimes offering more protection to the minority and sometimes less—those rule changes have always been accomplished in accordance with the Senate rules until now, until the demand for power trumped principle.

The Framers intended the Senate to act as a check on the whims of the majority, not to facilitate them. I will not pretend the Senate has always been on the right side of history. At times, most notably during the great civil rights debates of the 1950s and 1960s, Senators used the powers given them to block vital, majority-supported legislation. But notwithstanding those dark moments, the Senate has also served throughout the history of this Republic as a place where individuals with different beliefs and goals were forced to come together to work for the common good.

By empowering the minority, the Framers created a body that has served this country well. To continue down the road we are on now will be to irretrievably change the very character of the Senate and irretrievably weaken the institution. Without the unique feature of extended debate, the Senate will be much less able to stand up to the President or to cool the passions of the explicitly majoritarian House.

I know my colleagues see themselves as guardians of this remarkable institution, as I do. When we leave the Senate—and some day, somehow or another, all of us will—it is our responsibility to ensure we do not leave this institution weakened. As Senators, we tend to see ourselves as pretty important, but none of us—and certainly no judicial nomination—is more important than the institution of the U.S. Senate itself.

Why is this extreme course necessary? Why are so many of our colleagues prepared to sacrifice the Senate's character and its special power? Why are they bent on giving up their own power as Senators?

Let me take a minute to respond to some of the charges made about the behavior of the minority that supposedly has given the majority no choice but to use this nuclear option. First, we are told using the filibuster to block a judicial nomination is unprecedented. As anyone who has studied the record knows, that is nonsense.

Most famously, the Fortas nomination was filibustered. The Senator who led that filibuster, Robert Griffin of Michigan, has tried to claim in recent days that it really wasn't a filibuster at all. But he said at the time:

> It is important to realize that it has not been unusual for the Senate to indicate its lack of approval for a nomination by just making sure that it never came to a vote on the merits. As I said, 21 nominations to the court have failed to win Senate approval. But only nine of that number were rejected on a direct, up-and-down vote.

We are told, however, that the Fortas nomination was different because there were Southern Democrats opposed to the nomination as well as Republicans. But what difference does that make? This debate is not about the rights of the minority party; it is about the rights of a minority of Senators. Does anyone really think that if one or a few of our Republican colleagues joined a filibuster against one of the handful of circuit court nominees that have been blocked, it would make a difference to the Senators who support the nominations and want to change the rules?

Fortas, of course, was a Supreme Court nominee, while the handful of nominees that have been blocked so far have been nominated to circuit courts. But there have been filibusters of circuit court nominees in the past as well, indeed in the very recent past. In 2000, cloture votes were held on two Clinton nominees to the Ninth Circuit, Marsha Berzo, and Richard Paez. The current majority leader himself voted against cloture on Judge Paez's nomination on March 8, 2000.

Apparently, these filibusters were different because they were unsuccessful. The handful of Democratic filibusters of President Bush's nominees are unprecedented, we are told, because the Republican filibusters of Richard Paez and Marsha Berzon didn't prevent them from being confirmed. Does anyone really think that if the current majority leader and the others who voted—against ending debate on the Paez nomination had convinced their colleagues to join them they would have then changed their votes the next time around to make sure that the principle of an up or down vote was maintained?

This is what now passes for debate and argument on the issue of so-called ''obstruction'' of President Bush's nominees. ''The filibusters are unprecedented,'' they say. Never mind that Republicans, including the majority leader, used the same tactic against nominees they opposed. ''Democratic obstruction of the President's nominations is unprecedented,'' we hear.

Never mind that the Senate approved 204 out of 214 nominations that came to the floor in President Bush's first term, but in the last 4 years of President Clinton's presidency, only 175 nominees were confirmed and 55 were blocked, including 20 circuit court nominees. Many of those nominees never even got a hearing in the Senate Judiciary Committee on which I sit.

Well, that was different, we are told, because President Bush's nominees have a majority of support in the Senate. But that distinction is nonsense as well. President Clinton's nominees had majority support, obviously. That is why they were held up in committee and never reached the floor, even for a cloture vote. Judge Paez, for example, was first nominated in January 1996. We finally confirmed him in March 2000. The vote on cloture was 85 to 14. The vote to confirm him was 59 to 39.

But one of the most foolish arguments we hear in support of the nuclear option is that there is a crisis in the courts because of the number of vacancies caused by Democratic filibusters. As of the end of President Bush's first term, during which the Senate confirmed 204 judges, there were only 27 vacancies on the Federal bench. The courts had their lowest vacancy rate since 1990. Five months into his second term, there are now 45 vacancies, but the President has made nominations for only 15 of them, one-third. For 30 vacancies there are no nominees. The vacancy rate is still very low historically. If there is a crisis now, which there isn't, it surely is not the Senate's fault.

There is no vacancy crisis. But we are about to be thrown into a constitutional crisis by a majority that is drunk with power. While there is plenty of blame to go around, the President precipitated this crisis. When he took office in 2001, he had an opportunity to end the bitterness that plagued judicial nominations over the previous decade by recognizing that an injustice had been done to a large number of Clinton nominees. Not an unconstitutional injustice, but an injustice nonetheless There were enough vacancies on the Federal appellate courts for him to name most of the judges but give a few seats to Clinton nominees who had been blocked, or to other nominees suggested by Democrats in those States. In his first group of nominations, which were almost all to the appellate courts, he made a nod in that direction by nominating Roger Gregory to the Fourth Circuit. President Clinton's nomination of Gregory, the first African-American to sit on that circuit, had been blocked in the Judiciary Committee. He was eventually confirmed by a 99–1 vote.

The hopes that the President would make good on his campaign promise to change the tone in Washington were short lived. He ignored pleas for consultation and conciliation on judicial nominations. Time after time, he has filled appellate court seats that had been kept vacant during the Clinton years with extremely conservative and often controversial nominees. Yet Democrats certainly didn't block all or even nearly a majority of those choices. Much to the displeasure of many of the groups on the left that work on nominations, Jeffrey Sutton and Deborah Cook now sit on the Sixth Circuit, Jay Bybee, who we later learned was the author of the infamous DOJ torture memo, is on the Ninth Circuit. Michael McConnell and Timothy Tymkovich are on the Tenth Circuit. In all, 35 of President Bush's nominations to the circuit courts have been confirmed, even though 9 of those seats became vacant during the Clinton years and were kept vacant by denying Clinton nominees an up or down vote.

Only seven judges were blocked because of their views or records. Three others were held up because of the particularly egregious tactics used to block Michigan nominees to the Sixth Circuit during the Clinton administration. The President has succeeded in reshaping the Federal courts to his liking. He may soon have one or even two Supreme Court nominations to make. He ought to be proud of and pleased with his accomplishments, but winning almost all the time apparently isn't enough. And in order to win every time, he is willing to push the Senate to upend over 200 years of tradition and precedent and perhaps permanently damage the comity on which this institution functions.

In the end, the seemingly insurmountable differences we have on judicial nominees can only be resolved the way that seemingly insurmountable differences are resolved on almost all other hotly contested issues in the Senate—through negotiation and compromise. Of course, for there to be compromise, both sides have to be willing to engage in that effort. The offers made by the majority leader thus far do not retain the unique and crucial feature of the current Senate rules—the right to unlimited debate. They amount to a slow motion nuclear option.

It may be that a confrontation cannot be avoided. The groups that support the President's nominees are clamoring for the nuclear trigger to be pulled. The only hope for the Senate is the Senate itself. In the end, this decision will be made by the 100 men and women given the honor and responsibility of serving in this body at this point in our Nation's history. The stakes could hardly be higher, or the consequences to this body more significant. I can only hope that my colleagues vote to let the Senate continue to be the Senate.

The checks and balances that the Framers created are at great risk today. The American people will suffer a great loss if we step over this precipice. My fervent plea and hope is that the Senate will choose principle over power.

I yield the floor.

The PRESIDING OFFICER. Under the previous order, the Senator from Louisiana is recognized.

Ms. LANDRIEU. Thank you, Mr. President. I understand we are in morning business. I ask unanimous consent that I may extend my remarks to consume about 20 minutes.

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

## ENERGY POLICY

Ms. LANDRIEU. Mr. President, this is shaping up to be an auspicious time for an Energy Bill, as we begin a year long celebration of Benjamin Franklin's 300th birthday. Benjamin Franklin was the embodiment of a ''renaissance man.'' He was a small business owner, a diplomat, an accomplished author, a scientist, and one of our Nation's greatest Founding Fathers. It is his role as a scientist that I want to focus on today and suggest that the best birthday present we could give him would be to honor his work and pass a balanced, forward-looking and scientifically-based Energy bill this year.

Americans learn from childhood the story of Franklin and his breakthrough experiment with a kite and lightening. In today's world, it is hard to imagine that a politician as accomplished as Benjamin Franklin would also make such a profound contribution to science. But, he did. Franklin's contribution to science was profound because his experiment with a kite and lightning proved that electricity was a naturally occurring phenomenon.

Before that, superstition governed man's interaction with electricity. It used to be that people believed the devil hurled electric bolts from the sky. So when a lightening storm was brewing, churches sent people to ring the bells to ward them off. Tragically, this same superstition seems to often guide our policies today.

Franklin's pioneering work with electricity is so instructive because it reminds us that we need to put reason and science before superstition and myth. Electricity was once a dangerous force in the world that, thanks to Franklin and Edison, we have now harnessed to provide power and light, life and hope, and the greatest prosperity the world has ever known. This remains our challenge today. If we want to continue to generate power for future generations, we must harness powerful forces—solar rays, geothermal steam, nuclear fusion, wave energy and new generations of fossil fuel technology.

To do so, we must abandon superstition, misinformation and fear.

The area of sharpest interest to the People of Louisiana in this bill, is also surely one of the areas most in need of reason over superstition—oil and gas production, both on shore and on the Outer Continental Shelf. As we are all aware, the United States has an abundant demand for fossil fuels, but also a great need to use them wisely.

We comprise about 5 percent of the world's population, but we consume more than 25 percent of the world's oil production—roughly 20 million barrels per day. Some projections have the country's oil consumption hitting 29 million barrels a day by 2025—nearly a 30 percent increase. With the price of oil hovering around $50 a barrel, this is a chilling proposition.

And for our own purposes today, it should also be a motivating proposition.

The global picture is even more difficult. China, with its rapidly growing economy, 1.3 billion people, and millions of new cars, has just passed Japan to become the second largest consumer of oil after the U.S. In 2003, China consumed more than 5 million barrels per day, of which more than 35 percent was imported. By 2030 it is estimated that China will need 12 million barrels per day. India, with its 1 billion people and surging economy, also has a growing need for a reliable energy supply.

Despite this impending crisis, is the United States trying to secure its future by maximizing its own domestic production of natural sources of renewable energy? Absolutely not. Instead, like medieval villagers, we are running up to the bell towers when lightening is striking.

We have young American soldiers securing Iraq. I support democracy for Iraq; I support democracy for all people of the world. But what separates Iraq from brutal dictatorships in other places? The answer is obvious—the second largest oil reserve in the world.

So young American men and women are sacrificing their lives every day to cover for our superstitions and political gridlock in Washington.

We have lost 1,622 Americans in Iraq—that's more than 2 American soldiers per day of occupation. We have to play the cards that we are dealt, but just because we got a tough hand doesn't mean that we should, in good conscience, pass an energy bill that does not diminish our dependence on Middle Eastern oil.

That is why it is so important that we write an energy bill that provides smart, efficient incentives for the United States to maximize its own domestic energy production, using all the avenues that are available to us to diversify our supply and to encourage competition that would drive down and stabilize prices.

Vitally for my State, this must include a recognition of the contribution that coastal states, particularly states along the Gulf Coast, make to energy production now.

The coast of Louisiana is not a regular coast. In supporting the production and transportation of 80 percent of our Nation's offshore oil supply, it is truly America's Wetland—and with its loss, America faces a national emergency. In the past 50 years alone, Louisiana's size has been reduced by an area larger than that of Rhode Island, and continues to wear away at the rate of one football field every half hour.

If the Rocky Mountains were to shrink by 10 feet every year, we would act. If a foreign army were to advance a hundred yards up our shore every 38 minutes, we would act.

Because of the vast array of energy resources Louisiana and other coastal States supply and protect, coastal erosion in our States presents a direct threat to our national security and the global economy.

We must act—and while the waves eat away our shores, the solution may lie just beneath their surface.

In the early days of this Nation, Benjamin Franklin and his colleagues looked to the western frontier for its rich resources and the promise of new economic and military security, just as their ancestors had looked to the seas with the same thoughts in mind.

Today, our oceans have reemerged as a great frontier capable of helping build a stronger, more secure and more economically stable Nation. We have learned that through new technologies, when managed well and wisely, the ocean frontier holds tremendous resources that may be put to work for America.

Harnessed beneath the surface of this great frontier lies the energy to light our homes, power our public infrastructure and give birth to even greater achievements.

Little more than a century ago, what we'd call ''Ocean Energy Industry'' was simply one of whaling ships and harpoons. But today, the Outer Continental Shelf, or OCS, provides American consumers with 25 percent of the natural gas, and 30 percent of the oil, produced in the country each year.

It also rewards the U.S. Treasury with more than $5 billion annually—$145 billion since production began in 1953. That is the second biggest contributor of revenue to our Federal Treasury after taxes.

But it has costs, and it is perfectly reasonable for States to want assistance with those costs.

The Mineral Lands Leasing Act shares with interior States 50 percent of the revenues generated on Federal land within their borders. In serving as the platforms that support a vital component of our national energy supply, coastal States deserve the same treatment. And so, last week, I introduced the Stewardship for our Coasts and Opportunities for Reliable Energy Act—or SCORE—which does just that . . . It gives coastal States the same 50 percent share of the oil and gas revenues for their work that interior States receive for their efforts to support production.

This is more than just sound economic and energy policy—it is a simple demonstration of fairness.

The OCS supplies more oil to our Nation than any foreign power—including Saudi Arabia—and it is estimated that 60 percent of our Nation's undiscovered oil and gas will be found on the shelf. And so, as we take to the seas again, we are not hunting the elusive Moby Dick of lore. . . We know where the bulk of this oil may be found.

But just as the Western frontier once represented a great unknown to our Nation's policymakers, the impact and reality of the OCS seems lost in a time warp. We exist on outdated policies, and while our production has increased somewhat, we haven't even built a new refinery in a decade.

We also have yet to adequately answer the question, ''Why should a State contribute to our energy independence?'' and have failed to take the necessary steps to encourage them to do so.

Last year, we commemorated the 200th Anniversary of Lewis and Clark's adventure into the frontier. It is a prominent historical event for Louisiana, because it marks the culmination of the promise of the Louisiana purchase. Thirty-eight soldiers and scouts set out with Lewis and Clark, and they called themselves the Corps of Discovery.

Hopefully, our body can take up their mantle and emulate their exploring spirit in the passing of this bill.

Today, we are exploring only 43 million of the 1.67 billion acres of the Outer Continental Shelf—less than 2.6 percent! If Lewis and Clark had taken this same timid tactic, they would have stopped just short of Cincinnati, and the history of our country would have been vastly different. Instead, Lewis and Clark ventured on for another 8,000 miles and helped to open our western frontier. Let us do the same!

Thomas Jefferson, who commissioned the adventure, was eager to have a full understanding of the economic potential of his great bargain. This was an act of political will—for no sooner did the trip commence, than Congress began complaining about its expense. Thus, even Lewis and Clark's voyages were seemingly subject to the mindless penny pinching of ''302(b)'' allocations.

What they were trying to discover was the economic potential and natural resources of this great country. It was a fundamental exercise of reason over myth. Jefferson sought new trading relationships with the native tribes, sought an overland route to the Pacific for nascent trade with China, and wanted to know of the quality of land for agriculture.

What he did not do was let ignorance and fear govern policy.

Yet when it comes to the Outer Continental Shelf, we are doing just that. Not only do we not know the full riches that lie off our coasts, policymakers around here don't want to go, don't want to see, and don't want to know.

While the OCS contains more than 60 percent of the Nation's remaining undiscovered oil and natural gas resources, 85 percent of the OCS in the lower 48 States remains untouchable . . . blocked by Congressional moratoria and administrative withdrawal.

While 98 percent of our current OCS production comes from a very concentrated area—the western half of the

Gulf of Mexico, offshore Louisiana and Texas—most of the Pacific Coast remains off limits. Most of the Eastern Gulf of Mexico . . . off limits. And the entire Atlantic seaboard . . . off limits.

At the same time, our demand for, and supply of, oil and gas are moving in opposite directions. Over the next 20 years, our consumption is expected to increase by 50 percent, but production is only expected to increase by less than half that amount.

Imagine explaining that circumstance to someone like Jefferson or Franklin, Lewis or Clark. They understood the essential fact of progress—you can't discover if you don't look.

It is time for a full accounting of the resources of the OCS. Technology has provided us with a modern Corps of Discovery that will be no more intrusive than the 40 men in the wilderness 200 years ago. With scientific data in hand, then we can have a meaningful argument about the efficacy of what to do with our natural resources.

For example, through the effective use of technology, we have produced three times as many resources as we thought existed 30 years ago—and have produced them in an environmentally friendly way . . . The Minerals Management Service estimates that from 1985 to 2001, OCS offshore facilities and pipelines accounted for only 2 percent of the oil released into U.S. waters. In fact, 97 percent of OCS spills are one barrel or less in volume. Obviously, just a little technology can go a long way.

What is disappointing to me is that the mythology around oil and gas production—its potential hazards and challenges—stems from stories nearly 50 years old. We live in an information driven economy, but many in the environmental community have a very industrial age approach to these challenges.

We ban; we prohibit; we restrict. Instead we should research, innovate and improve.

Several nights ago, I was up late watching an odd documentary. It was about the history of bringing hot water to our homes at the turn of the century. It's something we all take for granted now, but if you contemplate it, it was a difficult engineering problem years ago. Like all new technologies, water heaters were once a lot less reliable than they are now. In fact, when they first started to be installed in people's homes, they frequently blew sky high. That was tragic, and we are all relieved that we've moved beyond that stage in technology.

But, the lesson is that even though tragic injuries occurred, when there was great societal benefit to be had, technology kept on leading the way. That is what has already occurred in oil and gas. There is clearly more that can be done.

I invite any Member of the Senate to join me on an offshore platform. You will see something that looks a lot less like an industrial plant and more like a spaceship . . . A spaceship for which our coastal producing States provide the launch pads.

More can be done, but you will be amazed at what has already been accomplished.

The SCORE Act helps motivate States to consider the potential that lies on the frontier off their coasts, and hopes to inspire a new era of technological advancement and energy invention. As we begin to comprehend the Ocean Frontier, we need to partner with industry to develop the necessary science.

Safety and environmental sensitivity should be the watchwords of our stewardship. It is a lesson that we take with us from our collective experience. To ensure this remains a priority for industry, we need to reinvest some of the resources that we are collecting. That is the way forward—not ignorance and fear, but reason and stewardship.

No one understood the importance of stewardship more than Theodore Roosevelt, whose memorial I visited yesterday with the Senator from Tennessee, Mr. ALEXANDER. Two of Roosevelt's greatest legacies—the Pelican Island National Wildlife Refuge and Breton Island National Wildlife Refuge—lie just off Louisiana's coast. They were the first refuges he created, but as we know, they were not the last . . . and the lives of generations of Americans continue to be enriched by these gifts to us.

In his only trip to one of the refuges he created, Roosevelt visited Louisiana's barrier islands in 1915 . . . but much of the landscape he visited no longer exists, having been washed away by coastal erosion. Reflecting on the visit, he wrote in his autobiography, A Book Lover's Holidays in the Open:

> To lose the chance to see frigate-birds soaring in circles above the storm, or a file of pelicans winging their way homeward across the crimson afterglow of the sunset, or myriad terns flashing in the bright light of midday as they hover in a shifting maze above the beach—why, the loss is like the loss of a gallery of the masterpieces of the artists of old time.

Unfortunately, even with the efforts of conservation visionaries like Roosevelt, the story of the past 100 years has been one of continued coastal and wildlife losses. Consider that Battledore Island, the 'gallery of masterpiece' of which he wrote, is no more. Today, fishermen know it as Battledore Reef.

It is too late for Battledore Island, but it is not too late to save countless other natural treasures around our Nation. While President Roosevelt's vision is still alive, there is much work left to be done . . . and today we have an opportunity to carry on his legacy of conservation and write a different ending to the story he began so long ago.

The Americans Outdoors Act, which I have introduced with Senator ALEXANDER, is a significant start. In our Government today, you will be hard pressed to find a closer embodiment of Roosevelt's legacy than in Senator ALEXANDER, and I am so very proud to be working with him in this effort.

AOA would mark our Government's greatest commitment of resources to conservation ever, and would directly benefit all 50 States and hundreds of local communities through its landmark, multiyear commitment to coastal restoration and other conservation programs like the state side of the Land and Water Conservation Fund. It, like SCORE, would also set forward a crucial first step to restoring America's vital wetlands and the billions of dollars in energy investments they protect.

When Hurricane Ivan struck back in September, it should have been a wake-up call to us all. Although the storm did not hit Louisiana directly, its impact on the price and supply of oil and gas in this country could still be felt 4 months later. One can only imagine what the impact would have been had Ivan cut a more western path in the gulf. How many more hurricane seasons are we going to spend playing Russian roulette with our oil and gas supply?

But the diversity of our energy supply is just as important as the increased production of it. And our atmosphere protects us much in the same way as our coasts. We have an obligation to serve as responsible stewards of both.

Mr. President, it will come as no surprise to you that fear, rather than science, also seems to dominate our policy with respect to nuclear energy. There are some startling facts that most Americans probably do not know today. Nuclear energy—today—despite not having licensed a new plant in 27 years—provides 20 percent of America's electricity. Most importantly, it does so without any emissions.

This is a resource that is produced 100 percent domestically. No one has to bring in a new LNG plant for nuclear energy, no one has to defend critical supply lines for nuclear energy, no one has to cap and trade emissions for nuclear energy. Yet a policy driven by fear and superstition keep the United States in a technological backwater. Between our fear of oil and gas production, our near hysteria toward nuclear power, and our rejection of clean coal options, the United States is living in a kind of energy technology dark ages.

Rather than harnessing powerful forces that could bring light and energy to this Nation. We are being ruled by superstition and fear, and we have to bring these attitudes to an end. The alternative is even more bleak. While the U.S. ignores nuclear power, our economic rivals in Japan and France are pulling away from us. More menacing still, the Chinese are threatening to leap-frog U.S. technology in this arena. Spencer Reiss wrote in a recent article entitled Let a Thousand Reactors Bloom:

> The Future of Nuclear Power, a 2003 study by a blue-ribbon commission headed by

former CIA director John Deutch, concludes that by 2050 the PRC could require the equivalent of 200 full-scale nuke plants. A team of Chinese scientists advising the Beijing leadership puts the figure even higher: 300 gigawatts of nuclear output, not much less than the 350 gigawatts produced worldwide today.

To meet that growing demand, China's leaders are pursuing two strategies. They're turning to established nuke plant makers like AECL, Framatome, Mitsubishi, and Westinghouse, which supplied key technology for China's nine existing atomic power facilities. But they're also pursuing a second, more audacious course. Physicists and engineers at Beijing's Tsinghua University have made the first great leap forward in a quarter century, building a new nuclear power facility that promises to be a better way to harness the atom: a pebble-bed reactor. A reactor small enough to be assembled from mass-produced parts and cheap enough for customers without billion-dollar bank accounts. A reactor whose safety is a matter of physics, not operator skill or reinforced concrete. And, for a bona fide fairy-tale ending, the pot of gold at the end of the rainbow is labeled hydrogen.

With this sort of news, one begins to wonder if there is any set of circumstances that will dissuade the Congress from its wrong-headed policies. We cannot afford to keep waiting. I call on my colleagues to resolve once and for all the issues of where to store the byproducts of our nuclear generation.

Technology also harbors other exciting new promises for clean energy. Coal provides 50 percent of our Nation's electrical supply, and now we can use it in a better way. Coal gasification plants—or ''clean coal'' strip out the pollutants that would otherwise be released into the air, allowing us to continue to draw on this abundant natural resource while also respecting our roles as stewards of the environment.

Liquified natural gas also has a significant role in satisfying our clean energy goals while helping to solve our Nation's supply and demand imbalance. But we cannot allow the Gulf of Mexico to simply become a ''thruway'' for LNG without recognizing the role of coastal States that host the terminals and sustain its importation. To this end, terminal siting is not only a Federal concern but a local one as well.

And finally, we simply cannot ignore the promise of hydrogen technology. Senator DORGAN has been one of the Senate's foremost leaders in this regard. I was proud to support his efforts throughout all of the iterations of the Senate Energy bill, and am very pleased to understand that many of them have been incorporated into the Energy chairman's mark.

Beyond these, there are countless alternative resources we have yet to fully explore—resources such as wind, solar and even wave energy—all of which can also be produced on the OCS with the encouragement SCORE provides.

Let me make clear: Increased domestic production and supply diversity are of paramount importance to our energy needs and national security, but no serious energy policy can ignore the equally important need for energy conservation.

Benjamin Franklin was eminently quotable, but one of his more relevant quips is ''When a well's dry, we know the worth of water.'' So it is with America's environment. The cost of global warming will be truly staggering when compared to conservation measures today.

There are a number of points to be raised in that regard.

First, I believe that the U.S. Government should use its power of economies of scale, and large purchasing power to set the best example. Energy efficiency should be a consideration in the design and retrofitting of U.S. Government buildings. Energy savings should be a factor in the enormous fleet of government vehicles.

I have also supported a provision, now included in the Energy chairman's mark, which would call for a reduction in our Nation's oil consumption by 1 million barrels per day over the next 10 years. We currently consume 20 million barrels. With research and technology, these are very attainable goals.

Similarly, the Senate will be best off with a smart Renewable Portfolio Standard—RPS—that it can pass. RPS is a lynchpin that will make alternative technologies commercially viable. It is a vital and logical step in our efforts toward energy independence.

And even as we address the production side of the equation, we need to make sure the energy we produce reaches consumers affordably and reliably. In our handling of OCS revenues, we ask our coastal producing States to give and give with little in return. Equally unfair are our Nation's electrical transmission policies, which expect Louisiana consumers to foot the bill for electricity consumed in other States.

For these reasons, Senator BURR and I earlier this year introduced the Interstate Transmission Act, which seeks to protect local rate payers and make electric reliability standards mandatory.

Today we make new history. It may not be as exciting as Franklin's discoveries about electricity, or require the endurance of the Corps of Discovery. But it may hold the key to America's economic future.

My Ocean Energy Initiative, which includes the Americans Outdoors and SCORE Acts, as well as a series of technology proposals still to come, creates a strong four-step framework for protecting our national economic, military and energy security by increasing, diversifying, and cleaning up our energy production and supply.

We must look for new ideas and new frontiers to support increased, diverse, and clean energy. The Ocean Frontier today presents the most immediate opportunities, but who knows what lies on the next horizon? Space, perhaps?

We must explore these new frontiers and develop the innovative new technologies to do so more effectively and responsibly.

We must share the shelf and other frontiers, so our states aren't left shouldering the burden.

And we must invest in our environment and return to our coasts, forests and green-spaces the respect and recognition befitting what they have given us by way of natural resources. We give back some of what we take.

Through a responsible balance of conservation and innovation, this Ocean Energy Initiative recognizes that the goals of energy security and environmental stewardship need not be mutually exclusive.

Mr. President, we follow in the footsteps of great pioneers: Benjamin Franklin, who put science before superstition; Thomas Jefferson, who opened the American frontier; Lewis and Clark, who journeyed into this frontier and found its rich promise; and Theodore Roosevelt, who saw that a great nation bears a responsibility of stewardship to the ground it is built upon.

If we follow their example, and continue down the path these pioneers blazed to the new frontier, we will have a bill that we can all look back on with pride.

## TRIBUTE TO DR. RICHARD GAMELLI

Mr. DURBIN. Mr. President, I rise to pay tribute to the important work of the president of the American Burn Association, Dr. Richard Gamelli of the Loyola University Medical Center in Chicago, as he approaches the end of his distinguished service in that position. Under Dr. Gamelli's leadership, the American Burn Association has worked tirelessly to improve the first line of defense: the prevention of burn injuries.

The ABA encourages and supports burn-related research, education, care, rehabilitation, and prevention through a variety of programs and publications, including the production of the leading peer-reviewed, scientific journal in the burn field, the Journal of Burn Care & Rehabilitation. During Dr. Gamelli's tenure, the ABA has worked to improve emergency response systems and to incorporate burn care into our Nation's disaster preparedness systems in light of new threats to the United States. Under Dr. Gamelli's guidance, the ABA has expanded its reach and established its position at the forefront of its field. Many physicians, nurses, and health care workers who are members of the ABA are currently on the front lines, serving in Iraq and Afghanistan and treating America's injured soldiers.

As professor and chair of the Department of Surgery at the Loyola University Medical Center, Dr. Gamelli has dedicated his life to advancing clinical treatment of burn victims, accident and trauma victims and others whose medical needs are among the most difficult and dire a doctor ever sees. As a teacher he has provided guidance to high school students, college students,

medical students, residents, graduate students, colleagues and others, encouraging them always to strive for excellence and look for new answers. As a researcher he has helped his department secure funding for more than 20 years from the National Institutes of Health. He is nationally and internationally recognized for his research and has authored more than 150 scientific articles, 23 book chapters, and 8 books.

In 1997 and 2000 Dr. Gamelli was named by Chicago Magazine as one of ''Chicago's Top Doctors,'' and in 1982, 1985, 1986, 1988, 1989 and 1990, he was named Professor of the Year by the medical students at Loyola. He was selected by the faculty council of Loyola University Chicago as the 2002 member of the year for his excellence in teaching, research, patient care and service. In light of his extraordinary record of achievement, his alma mater, Saint Michael's College, inducted Dr. Gamelli into the inaugural class of its Alumni Academic Hall of Fame in 2002.

Having served the ABA admirably, Dr. Gamelli recently stepped down as ABA president at this year's annual meeting. I want to take this opportunity to acknowledge and thank Dr. Gamelli for his distinguished service and for his ongoing contributions to the American people and the medical community, and I wish him all the best in the future.

## REPORTING OF S. 1053

Mr. LOTT. Mr. President, I would like to give notice that on April 27, 2005 the Committee on Rules & Administration reported an original bill to amend the regulatory and reporting structure of organizations registered under section 527 of the Internal Revenue Code.

## TRIBUTE TO PETER RODINO

Mr. LAUTENBERG. Mr. President, I rise today to mourn the passing of former Congressman Peter Rodino and also to celebrate his life.

The son of hard-working Italian immigrants, Peter Rodino grew up on the streets of Newark, NJ, and rose to become a prominent and respected figure during a defining moment in our Nation's history.

Serving as the chairman of the House Judiciary Committee, Mr. Rodino was charged with managing the impeachment hearings of President Richard Nixon. He had chaired the committee for less than a year when the hearings began, and those who did not know him wondered how he would respond to such a monumental challenge.

He soon put all doubts to rest. He conducted the hearings patiently, thoroughly, and fairly, and in doing so he helped guide our Nation through a difficult test of our Constitution.

By the time the committee had heard all of the evidence about the Watergate break-in and coverup, its members approved several articles of impeachment by overwhelming bipartisan margins. By this action, they proved that our system of government is greater than any one person or political party.

Most of the Nation got to know Congressman Rodino during the Watergate hearings, but I had known him for years through his tireless work on behalf of the people of his district and New Jersey. He loved the city of Newark and the people of Newark, and he always had their interests at heart.

Whether he was helping to pass the 1966 civil rights bill, extending the Voting Rights Act, or leading the effort to make Martin Luther King's birthday a national holiday, Peter Rodino worked tirelessly to make this Nation as great as it can possibly be.

After I came to the Senate, I had the privilege of working with him to help the people of New Jersey. We served together for 6 years, and I was always amazed by the energy and determination he brought to his job.

He had tackled every challenge with that same energy and determination, from his service in World War II with the 1st Armored Division to his work at Seton Hall law school, where he shared his love of the law with students.

Every now and then, someone comes along who is an inspiration for us all, regardless of political party, religious faith, or ethnic background. Peter Rodino was just such a fellow. While I will miss him very much, I will always treasure his friendship with me and remember all the good he did for New Jersey and its people.

## VOLUNTARY PUBLIC ACCESS AND WILDLIFE HABITAT INCENTIVE PROGRAM ACT OF 2005

Mr. CONRAD. Mr. President, in March Senator ROBERTS joined me in introducing S. 548, the Voluntary Public Access and Wildlife Habitat Incentive Program Act of 2005.

This legislation is enthusiastically supported not only by America's hunters and anglers, but also by agricultural producers, private landowners and those interested in rural development. Open Fields, as this bipartisan legislation is commonly known, addresses hunting, fishing and other recreational access on private land. The legislation also tackles rural development issues head on.

Dwindling access to quality hunting, angling and other wildlife-dependent opportunities is a trend that slowly is pulling apart the American sporting tradition. At the same time, farmers, ranchers, and small town businesses are desperately looking for the means and opportunities to revitalize and stimulate their local economies. These two needs, the need for better access for sportsmen who can not afford to lease land, and the need for economic stimulation in rural America have intersected and spurred the creation of highly effective state public access programs.

Walk-in or access programs are not a new concept. In fact they have very successfully begun to reverse the trend of diminishing numbers of hunters and anglers in States with these programs. At the same time, these programs generate cash and economic activity in rural economies by encouraging increased numbers of hunters, anglers, and others who enjoy wildlife-related activities to spend more of their outdoor recreation dollars in rural America.

Eighteen States are already using their own limited funding resources to finance very successful access programs. These programs have set the stage for even greater success in the future, but only if additional funding becomes available. When enacted into law, Open Fields will provide $20 million per year in Commodity Credit Corporation funds over the next five years. These funds will be used to provide U.S. Department of Agriculture grants for States with recreational walk-in or access programs. It is our intent that access to all the land that property owners voluntarily enroll under this legislation will be available for, but not limited to, hunting and fishing activities.

I remind our colleagues that the Open Fields legislation offers benefits to many of their constituents, regardless of their State or district, or whether they represent urban or rural Americans. We all know that millions of city dwellers hunt and fish. Access to quality areas to hunt, fish, and enjoy other wildlife related activities within reasonable distances from urban areas is becoming dramatically reduced.

As we travel the rural areas of our States, Senator ROBERTS and I experience firsthand the tremendous need to bring additional income into small towns and communities in Kansas, North Dakota, and across rural America. As members of the Committee on Agriculture, we are constantly looking for alternatives to supplement traditional agricultural programs and improve the economic safety net for our farmers and ranchers that are not considered trade distorting. Open Fields is a program that can help achieve those objectives.

The positive impact of making private lands available to the hunting public is highly visible in Mr. Roberts' home State of Kansas and in my own State of North Dakota. According to data obtained from a 2001 U.S. Fish and Wildlife Service study, Kansas and North Dakota have a total of 1,750,000 acres currently enrolled in state-run access programs. Furthermore, this study notes that hunting licenses sold in the State of Kansas increased from 175,000 in 1996 to 205,000 in 2001, a 22.9 percent increase. In North Dakota, hunting license sales increased from 118,000 in 1996 to 133,000 in 2001, a 12.7 percent increase.

During this same time period, the number of hunters nationwide decreased from 14 million to 13 million.

This is a disturbing trend that has resulted in lost jobs, reduced revenues for local communities, and fewer Americans enjoying our rich hunting heritage. State-run access programs are proof that opening additional acres of private land to hunting increases the numbers of hunters and provides a significant boost to the economies of small towns and rural areas.

I cannot emphasize enough what a tremendous opportunity Open Fields provides our colleagues to invest in America and to help preserve our hunting and fishing heritage. Currently, access programs are being successfully administered in states all across America, from Arizona with 2 million acres to Pennsylvania with 4.3 million acres. In 18 States, more than 23 million acres are enrolled. Administrative and incentive payments total just over $23 million per year, an average of about $1 per acre.

According to a recently completed cost-benefit analysis, states with active access programs encouraged more than 276,000 hunters to continue to hunt who otherwise would have quit. This translates into about $512.6 million these hunters spend annually in these States. With this in mind, I remind our colleagues that the $20 million per year investment called for under this legislation will potentially return many times its initial cost. States with access programs are currently spending about $23 million per year while generating more than $512 million in additional economic activity. Through our legislation, this return on investment can become a reality for many more states and communities.

Part of our responsibility as policymakers is to seek opportunities that will improve the quality of life of our constituents. We have introduced the Open Fields legislation as a means to encourage the States to partner with the outdoor recreation community and private landowners to preserve our hunting and fishing heritage and provide economic growth opportunities for rural America.

I urge my colleagues to support and cosponsor Open Fields.

## PAUL PECK

Mr. LEAHY. Mr. President, I come to the floor today to praise an extraordinary man, Paul Peck. I had the honor of meeting Mr. Peck through our mutual interest in the Smithsonian Institution.

Mr. Peck has been an effective proponent of the civic process. In 2002, Mr. Peck generously donated $2 million to enhance the National Portrait Gallery's presidential programs, allowing for educational resources related to the presidency. In the same year, the Portrait Gallery founded The Paul Peck Presidential Awards, the only awards in the United States to honor achievement in presidential service and portrayal. Last year, at the Third Annual Paul Peck Presidential Awards Ceremony, Mr. Peck gave a heartfelt and thought-provoking speech about the need for an increased awareness of American history and an increased level of civil participation in our country. Mr. President, I ask unanimous consent that Mr. Peck's remarks be printed in the CONGRESSIONAL RECORD.

The Smithsonian is truly fortunate to have benefited from the dedication and intelligence of Mr. Peck.

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

SUMMARY OF PAUL PECK'S REMARKS, THIRD ANNUAL PAUL PECK PRESIDENTIAL AWARDS

Hi folks.

It's great to be here with you to honor two great Americans: George Elsey and Brian Lamb.

I have been asked many times why I joined with the National Portrait Gallery to focus attention on the presidency.

My answer is: I believe that ''Freedom is life and freedom is rooted in democracy.''

I believe that Americans are blessed,

And we owe it to our children and grandchildren to pass on this love of freedom and the means to preserve it.

The founding fathers believed that freedom requires voters who are knowledgeable, involved, and vigilant.

Today, however, Fewer people vote, Fewer people seem concerned about civic issues, and Fewer people are involved in the civic, governing, and political process.

Furthermore, we've cut back on teaching Civics and according to the National Assessment of Educational Progress, fewer than 25 percent of Americans have even a basic knowledge of American History.

If we allow this trend to continue, what will it mean to be an American; and what happens to democracy because democracy can't survive as a spectator sport.

We can't continue this way. It's a roadmap to disaster and I worry about the direction we're taking.

I believe every citizen has an obligation to make things better and I believe every citizen can make a difference.

Here's how we're going to fix the problem.

The presidency symbolizes the United States and represents government to most people. Americans are fascinated with the presidency and we're going to build on this fixation to foster civic action, civic understanding, and reasoned voting.

Our civic action goal is to get everybody involved in democracy whether through public service, governing, politics, non- governmental organizations, or civic volunteer activities. America was built on people coming together to achieve great and honorable goals and we're going to re-create this sense of community, caring, and co-operation.

As many of you know, I believe that our children are our future. If they don't know what it means to be an American, how do we preserve freedom, democracy, and the American way of life?

In 1954, Brown vs. The Board of Education made America better; and voting and the right to vote grabbed children's attention and led to lifelong civic involvement. What are we doing today to spark a similar interest in freedom and democracy in our children?

As a first step in increasing civic action and understanding, I intend to request that next Tuesday's presidential election winner set aside one school day every year to discuss American principles and encourage civic engagement. It is my hope that government, industry, and academia will encourage participation and provide time to their employees to get involved and help us come together as a nation.

Please help me make this proposal a reality.

In summary, you are our opinion makers. It's vital that you: Strengthen our society, Promote civility, and Inspire people to discuss issues and participate in the civic process;

Thereby promoting Lincoln's ideal of ''government of the people, by the people, and for the people.''

Thank you for coming.—Paul L. Peck, October 28, 2004

# ADDITIONAL STATEMENTS

## DOBSON STUDENTS RECEIVE HONORABLE MENTION

• Mr. KYL. Mr. President, earlier this month, a class of 25 students from Dobson High School in Mesa, AZ, competed against more than 1,250 students from across the United States in the national finals of the ''We the People: The Citizen and the Constitution'' program. I am proud to note the Dobson students, led by their teacher Joyce Godfrey, received a fourth place honorable mention in this year's competition.

I would like to take a moment to mention the names of those students who competed for Dobson High: Paul Bergelin, Andrew Brown, Lara Cardy, Zach Clark, Brian Hoblit, Katie Hughes, Byunghun Hyun, Valerie Keirn, Patrick Kwan, Alyssa Little, Alex Matyushov, Linh Nguyen, Danielle Rieger, Ralph Robles, Ashley Rogers, Darci Schimschat, Jessica Sims, Drew Snider, Jamie Stall, Tricia Strei, Wing-Yu Tang, Nehal Thakkar, Jana VanMarche, Ashley Wallace, and Jennifer Yan. I would also like to acknowledge their teacher, Joyce Godfrey, the district coordinator, Kathy Williams, and the State coordinator, Susan Nusall.

I wish these budding constitutional scholars the best of luck in the future.•

## NORTHSHORE HARBOR CENTER

• Mr. VITTER. Mr. President, I rise today to recognize the opening of the Northshore Harbor Center in Slidell, LA on May 20, 2005. This new convention center will greatly benefit St. Tammany Parish. I join the East St. Tammany Events Center Commission and all the people of St. Tammany Parish in voicing my excitement about the opening of the center and its potential for economic development.

The Northshore Harbor Center is the product of many years of hard work and intense planning. Though numerous individuals were involved in the project, I would like to take this moment to personally recognize those responsible for its completion. First, I would like to commend the dedicated citizens of the East St. Tammany Events Center Commission. Also, I

would like to recognize the parish officials who appointed and oversaw the Commission. Finally, I would like to thank the citizens of Wards 8 and 9 who contributed hard earned tax dollars to fund the construction of this state-of-the-art complex.

I look forward to the wide array of events and conventions that will begin pouring into the Northshore Harbor Center. And I look forward to the many new visitors it will attract to another wonderful parish in Louisiana.●

## CONGRATULATING MAX MEYER

● Mr. THUNE. Mr. President, I wish to congratulate a young man named Max Meyer. At the age of 14, Max was recently declared the winner of PAX TV's ''America's Most Talented Kids.'' His winning performance before a television audience exemplified his gift of playing the piano while singing a rendition of Frank Sinatra's ''The Lady is a Tramp.''

Max's accomplishments on the piano are truly impressive, but his talent does not stop there. Max also plays six other instruments, including the harmonica, kazoo, guitar, French horn, drums, and the trumpet.

I have had the pleasure of hearing Max perform on many occasions. His talent and dedication to music are nothing less than inspirational. I am proud to join Max's friends and family in congratulating him on his many and most recent accomplishments.●

## CONGRATULATING JENSI KELLOGG-ANDRUS

● Mr. THUNE. Mr. President, today I rise to congratulate an extraordinary educator from Watertown, SD. Jensi Kellogg-Andrus, South Dakota's Teacher of the Year, was recently honored at a conference here in Washington, DC. I would like to take this opportunity to extend my heartfelt congratulations to her.

Jensi is a bright light in a profession of illuminators. Her unwavering dedication to her students' education and development is remarkable. Jensi takes the time to adapt her lesson plans to each individual learning style and strives to help each student achieve their personal goals.

Jensi's career has spanned 16 years and I wish her many more years of continued excellence. It gives me great pleasure to congratulate Jensi for her many and most recent accomplishments.●

## MESSAGES FROM THE PRESIDENT

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

## EXECUTIVE MESSAGES REFERRED

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

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

## MESSAGE FROM THE HOUSE

At 2:16 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 485. An act to provide that the royalty rate on the output from Federal lands of potassium and potassium compounds from the mineral sylvite in the 5-year period beginning on the date of the enactment of this Act shall be reduced to 1.0 percent, and for other purposes.

H.R. 540. An act to authorize the Secretary of the Interior to convey the Newlands Project Headquarters and Maintenance Yard Facility to the Truckee-Carson Irrigation District.

H.R. 627. An act to designate the facility of the United States Postal Service located at 40 Putnam Avenue in Hamden, Connecticut, as the ''Linda White-Epps Post Office''.

H.R. 938. An act to establish the Upper Housatonic Valley National Heritage Area in the State of Connecticut and the Commonwealth of Massachusetts, and for other purposes.

H.R. 1046. An act to authorize the Secretary of the Interior to contract with the city of Cheyenne, Wyoming, for the storage of the city's water in the Kendrick Project, Wyoming.

H.R. 1760. An act to designate the facility of the United States Postal Service located at 215 Martin Luther King, Jr. Boulevard in Madison, Wisconsin, as the ''Robert M. LaFollette, Sr. Post Office Building''.

H.R. 2107. An act to amend Public Law 104–329 to modify authorities for the use of the National Law Enforcement Officers Memorial Maintenance Fund, and for other purposes.

The message also announced that pursuant to section 201(b) of the International Religious Freedom Act of 1998 (22 U.S.C. 6431 note), amended by section 681(b) of the Foreign Relations Authorization Act, Fiscal Year 2003 (22 U.S.C. 2651 note), and the order of the House of January 4, 2005, the Speaker reappoints the following individuals on the part of the House of Representatives to the Commission on International Religious Freedom: Ms. Nina Shea of Washington, D.C., for a 2-year term ending May 14, 2007, to succeed herself, and Ms. Felice Gaer of Paramus, New Jersey, for a 2-year term ending May 14, 2007, to succeed herself upon the recommendation of the Minority Leader.

## MEASURES REFERRED

The following bills were read the first and the second times by unanimous consent, and referred as indicated:

H.R. 485. An act to provide that the royalty rate on the output from Federal lands of potassium and potassium compounds from the mineral sylvite in the 5-year period beginning on the date of the enactment of this Act shall be reduced to 1.0 percent, and for other purposes; to the committee on Energy and Natural Resources.

H.R. 540. To authorize the Secretary of the Interior to convey the Newlands Project Headquarters and Maintenance Yard Facility to the Truckee-Carson Irrigation District; to the Committee on Energy and Natural Resources.

H.R. 627. An act to designate the facility of the United States Postal Service located at 40 Putnam Avenue in Hamden, Connecticut, as the ''Linda White-Epps Post Office''; to the Committee on Homeland Security and Government Affairs.

H.R. 938. An act to establish the Upper Housatonic Valley National Heritage Area in the State of Connecticut and the Commonwealth of Massachusetts, and for other purposes; to the Committee on Energy and Natural Resources.

H.R. 1760. An act to designate the facility of the United States Postal Service located at 215 Martin Luther King, Jr. Boulevard in Madison, Wisconsin, as the ''Robert M. La Follette, Sr. Post Office Building''; to the Committee on Homeland Security and Governmental Affairs.

H.R. 2107. An act to amend Public Law 104–329 to modify authorities for the use of the National Law Enforcement Officers Memorial Maintenance Fund, and for other purposes; to the Committee on the Judiciary.

## MEASURES PLACED ON THE CALENDAR

The following bill was read the first and second times by unanimous consent, and placed on the calendar:

H.R. 1046. An act to authorize the Secretary of the Interior to contract with the city of Cheyenne, Wyoming, for the storage of the city's water in the Kendrick Project, Wyoming.

## 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–2191. A communication from the Associate Deputy Administrator for Government Contracting and Business Development, Small Business Administration, transmitting, pursuant to law, a request for an extension to complete a report relative to the Minority Small Business and Capital Ownership Program participants that is due on April 30 of each year; to the Committee on Small Business and Entrepreneurship.

EC–2192. A communication from the Director, Office of Surface Mining, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled ''Illinois Regulatory Program'' (Docket No. IL–104–FOR) received on May 16; to the Committee on Energy and Natural Resources.

EC–2193. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Virginia; Emission Standards for Solvent Cleaning Operations Using Non-Halogenated Solvents'' (FRL No. 7913–5) received on May 16, 2005; to the Committee on Environment and Public Works.

EC–2194. A communication from the Principal Deputy Associate Administrator, Office

of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Implementation Plans for Kentucky; Inspection and Maintenance Program Removal for Jefferson County, Kentucky; Source-Specific Nitrogen Oxides Emission Rate for Kosmos Cement Kiln'' (FRL No. 7914–5) received on May 16, 2005; to the Committee on Environment and Public Works.

EC–2195. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Revisions to the California State Implementation Plan, Imperial County Air Pollution Control District and San Joaquin Valley Unified Air Pollution Control District'' (FRL No. 7901–9) received on May 16, 2005; to the Committee on Environment and Public Works.

EC–2196. A communication from the Acting Chief, Office of Regulations and Administrative Law, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Safety Zones (including 71 regulations)'' (RIN1625–AA00) received on May 11, 2005; to the Committee on Commerce, Science, and Transportation.

EC–2197. A communication from the Secretary of Transportation, transmitting, a proposed bill entitled ''Maritime Administration Enhancement Act of 2005''; to the Committee on Commerce, Science, and Transportation.

EC–2198. A communication from the Paralegal, Federal Transit Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Rail Fixed Guideway Systems; State Safety Oversight'' (RIN2132–AA76) received on May 16, 2005; to the Committee on Commerce, Science, and Transportation.

EC–2199. A communication from the Paralegal, Federal Transit Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Environmental Impact and Related Procedures'' (RIN2132–AA78) received on May 16, 2005; to the Committee on Commerce, Science, and Transportation.

EC–2200. A communication from the Attorney Advisor, Maritime Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Amended Service Obligation Reporting Requirements for State Maritime Academy Graduates'' (RIN2133–AB61) received on May 16, 2005; to the Committee on Commerce, Science, and Transportation.

EC–2201. A communication from the Attorney Advisor, Maritime Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Merchant Marine Training'' (RIN2133–AB60) received on May 16, 2005; to the Committee on Commerce, Science, and Transportation.

EC–2202. A communication from the Regulations Officer, Federal Highway Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Environmental Impact and Related Procedures'' (RIN2125–AF04) received on May 16, 2005; to the Committee on Commerce, Science, and Transportation.

EC–2203. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: General Electric Company CF6–45 and CF6–50 Series Turbofan Engines'' ((RIN2120–AA64) (2005–0221)) received on May 16, 2005; to the Committee on Commerce, Science, and Transportation.

EC–2204. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: BAE Systems Limited Model 4101 Airplanes'' ((RIN2120–AA64) (2005–0220)) received on May 16, 2005; to the Committee on Commerce, Science, and Transportation.

EC–2205. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Boeing Model 747–200B, 200C, 200F, and 400F Series Airplanes'' ((RIN2120–AA64) (2005–0219)) received on May 16, 2005; to the Committee on Commerce, Science, and Transportation.

EC–2206. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Boeing Model 737–600, 700, and 800 Series Airplanes'' ((RIN2120–AA64) (2005–0218)) received on May 16, 2005; to the Committee on Commerce, Science, and Transportation.

EC–2207. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Saab Model SF340A and 340B Series Airplanes'' ((RIN2120–AA64) (2005–0217)) received on May 16, 2005; to the Committee on Commerce, Science, and Transportation.

EC–2208. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Aviointeriors S.p.A. Series 312 Seats'' ((RIN2120–AA64) (2005–0216)) received on May 16, 2005; to the Committee on Commerce, Science, and Transportation.

EC–2209. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Boeing Model 747–100, 100B, 100B SUD, 200B, 200C, 200F, and 300 Series Airplanes; and Model 747SP and 747SR Series Airplanes'' ((RIN2120–AA64) (2005–0215)) received on May 16, 2005; to the Committee on Commerce, Science, and Transportation.

EC–2210. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Dassault Model Falcon 10 Series Airplanes'' ((RIN2120–AA64) (2005–0214)) received on May 16, 2005; to the Committee on Commerce, Science, and Transportation.

EC–2211. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Boeing Model 777–200 and 300 Series Airplanes Equipped with Rolls Royce Model RB211 TRENT 800 Engines'' ((RIN2120–AA64) (2005–0213)) received on May 16, 2005; to the Committee on Commerce, Science, and Transportation.

EC–2212. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Airbus Model A300 B2 and B4 Series Airplanes; Model A300 B4–600, A300 B4–600R, A300 C4–605R Variant F, and A300 F4–600R; and Model A310 Series Airplanes'' ((RIN2120–AA64) (2005–0212)) received on May 16, 2005; to the Committee on Commerce, Science, and Transportation.

EC–2213. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Saab Model 2000 Series Airplanes'' ((RIN2120–AA64) (2005–0211)) received on May 16, 2005; to the Committee on Commerce, Science, and Transportation.

EC–2214. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: CENTRAIR 101 Series Gliders'' ((RIN2120–AA64) (2005–0210)) received on May 16, 2005; to the Committee on Commerce, Science, and Transportation.

EC–2215. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Cessna Model 680 Airplanes'' ((RIN2120–AA64) (2005–0208)) received on May 16, 2005; to the Committee on Commerce, Science, and Transportation.

EC–2216. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: British Aerospace Model BAe 146 and Model Avro 146–RJ Series Airplanes; CORRECTION: Docket No. 2001–NM–273'' ((RIN2120–AA64) (2005–0209)) received on May 16, 2005; to the Committee on Commerce, Science, and Transportation.

EC–2217. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Empresa Brasileira de Aeronautica S.A. Model EMB 135 and 145 Series Airplanes'' ((RIN2120–AA64) (2005–0207)) received on May 16, 2005; to the Committee on Commerce, Science, and Transportation.

EC–2218. A communication from the Deputy Executive Director, Pension Benefit Guaranty Corporation, transmitting, pursuant to law, the report of a rule entitled ''Benefits Payable in Terminated Single-Employer Plans; Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits'' received on May 16, 2005; to the Committee on Health, Education, Labor, and Pensions.

EC–2219. A communication from the Regulations Coordinator, Public Health Service, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled ''Public Health Service Policies on Research Misconduct'' (RIN0940–AA04) received on May 16, 2005; to the Committee on Health, Education, Labor, and Pensions.

EC–2220. A communication from the Acting Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to law, a report of the convening of an Accountability Review Board; to the Committee on Foreign Relations.

EC–2221. A communication from the Acting Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to law, a report relative to the Afghanistan Freedom Support Act and the Foreign Assistance Act (FAA) of 1961; to the Committee on Foreign Relations.

EC–2222. A communication from the Acting Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to law, a notification relative to funds for purposes of Nonproliferation and Disarmament Fund (NDF) activities; to the Committee on Foreign Relations.

EC–2223. A communication from the Acting Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to

law, the report of a vacancy in the position of Under Secretary of State for Public Diplomacy, received on May 16, 2005; to the Committee on Foreign Relations.

EC–2224. A communication from the Acting Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to law, the report of a vacancy in the position of Coordinator for Counterterrorism w/Rank of Ambassador at Large, received on May 16, 2005; to the Committee on Foreign Relations.

EC–2225. A communication from the Acting Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to law, the report of a vacancy in the position of Legal Advisor, received on May 16, 2005; to the Committee on Foreign Relations.

EC–2226. A communication from the Acting Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to law, the report of a vacancy in the position of Inspector General, received on May 16, 2005; to the Committee on Foreign Relations.

EC–2227. A communication from the Acting Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to law, the report of a vacancy in the position of Assistant Secretary of State (Educational and Cultural Affairs), received on May 16, 2005; to the Committee on Foreign Relations.

EC–2228. A communication from the Acting Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to law, the report of a vacancy in the position of Assistant Secretary of State for European and Eurasian Affairs, received on May 16, 2005; to the Committee on Foreign Relations.

EC–2229. A communication from the Acting Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to law, the report of a vacancy in the position of Assistant Secretary of State (International Organization Affairs), received on May 16, 2005; to the Committee on Foreign Relations.

EC–2230. A communication from the Acting Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to law, the report of a vacancy in the position of Assistant Secretary of State for Near Eastern Affairs, received on May 16, 2005; to the Committee on Foreign Relations.

## REPORT RELATIVE TO THE CONTINUATION OF THE NATIONAL EMERGENCY WITH RESPECT TO BURMA—PM 10

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Banking, Housing, and Urban Affairs:

*To the Congress of the United States:*

Section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)) provides for the automatic termination of a national emergency unless, prior to the anniversary date of its declaration, the President publishes in the *Federal Register* and transmits to the Congress a notice stating that the emergency is to continue in effect beyond the anniversary date. I have sent the enclosed notice to the *Federal Register* for publication, which states that the Burma emergency is to continue beyond May 20, 2005. The most recent notice continuing this emergency was published in the *Federal Register* on May 19, 2004 (69 FR 29041).

The crisis between the United States and Burma arising from the actions and policies of the Government of Burma that led to the declaration of a national emergency on May 20, 1997, has not been resolved. These actions and policies, including its policies of committing large-scale repression of the democratic opposition in Burma, are hostile to U.S. interests and pose a continuing unusual and extraordinary threat to the national security and foreign policy of the United States. For this reason, I have determined that it is necessary to continue the national emergency with respect to Burma and maintain in force the sanctions against Burma to respond to this threat.

GEORGE W. BUSH.

THE WHITE HOUSE, *May 17, 2005.*

## REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. WARNER, from the Committee on Armed Services, without amendment:

S. 1042. An original bill to authorize appropriations for fiscal year 2006 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes (Rept. No. 109–69).

S. 1043. An original bill to authorize appropriations for fiscal year 2006 for military activities of the Department of Defense, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes.

S. 1044. An original bill to authorize appropriations for fiscal year 2006 for military construction, and for other purposes.

S. 1045. An original bill to authorize appropriations for fiscal year 2006 for defense activities of the Department of Energy, and for other purposes.

By Mr. LOTT, from the Committee on Rules and Administration, without amendment:

S. 1053. A bill to amend the Federal Election Campaign Act of 1971 to clarify when organizations described in section 527 of the Internal Revenue Code of 1986 must register as political committees, and for other puropses.

## 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. WARNER:

S. 1042. An original bill to authorize appropriations for fiscal year 2006 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes; from the Committee on Armed Services; placed on the calendar.

By Mr. WARNER:

S. 1043. An original bill to authorize appropriations for fiscal year 2006 for military activities of the Department of Defense, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes; from the Committee on Armed Services; placed on the calendar.

By Mr. WARNER:

S. 1044. An original bill to authorize appropriations for fiscal year 2006 for military construction, and for other purposes; from the Committee on Armed Services; placed on the calendar.

By Mr. WARNER:

S. 1045. An original bill to authorize appropriations for fiscal year 2006 for defense activities of the Department of Energy, and for other purposes; from the Committee on Armed Services; placed on the calendar.

By Mr. KYL (for himself, Mr. TALENT, Mr. BROWNBACK, Mr. INHOFE, Mr. STEVENS, Mr. COBURN, Mr. BUNNING, and Mr. THUNE):

S. 1046. A bill to amend title 28, United States Code, with respect to the jurisdiction of Federal courts over certain cases and controversies involving the Pledge of Allegiance; to the Committee on the Judiciary.

By Mr. SUNUNU (for himself, Mr. REID, Mrs. DOLE, Mr. HARKIN, Mr. ALEXANDER, Mr. DURBIN, Mr. LUGAR, Mr. ENSIGN, Mr. BUNNING, Mr. BAUCUS, Mr. INOUYE, Mr. BINGAMAN, Mr. LIEBERMAN, Ms. CANTWELL, Ms. COLLINS, Ms. LANDRIEU, Mr. GRASSLEY, Mr. COCHRAN, and Mr. STEVENS):

S. 1047. A bill to require the Secretary of the Treasury to mint coins in commemoration of each of the Nation's past Presidents and their spouses, respectively to improve circulation of the $1 coin, to create a new bullion coin, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. SCHUMER (for himself, Mr. GRAHAM, Ms. STABENOW, and Mr. DURBIN):

S. 1048. A bill to amend the Exchange Rates and International Economic Policy Coordination Act of 1988 to clarify the definition of manipulation with respect to currency, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. FRIST (for himself, Mr. BINGAMAN, Mr. LUGAR, Ms. CANTWELL, Mr. SANTORUM, Ms. COLLINS, Mr. COCHRAN, Mrs. MURRAY, and Mrs. FEINSTEIN):

S. 1049. A bill to amend title XXI of the Social Security Act to provide grants to promote innovative outreach and enrollment under the medicaid and State children's health insurance programs, and for other purposes; to the Committee on Finance.

By Mrs. LINCOLN (for herself, Mr. BURR, Mrs. DOLE, Mr. GRAHAM, and Mr. DURBIN):

S. 1050. A bill to amend the Tariff Act of 1930 to provide for an expedited antidumping investigation when imports increase materially from new suppliers after an antidumping order has been issued, and to amend the provision relating to adjustments to export price and constructed export price; to the Committee on Finance.

By Mr. DODD (for himself and Mr. BOND):

S. 1051. A bill to amend the Public Health Service Act to reauthorize and extend certain programs to provide coordinated services and research with respect to children and families with HIV/AIDS; to the Committee on Health, Education, Labor, and Pensions.

By Mr. STEVENS (for himself, Mr. INOUYE, Mr. ROCKEFELLER, Mr. DORGAN, Ms. SNOWE, Mrs. BOXER, Ms. CANTWELL, Mr. LAUTENBERG, Mr. PRYOR, Mrs. CLINTON, and Mr. SCHUMER):

S. 1052. A bill to improve transportation security, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. LOTT:

S. 1053. A bill to amend the Federal Election Campaign Act of 1971 to clarify when organizations described in section 527 of the Internal Revenue Code of 1986 must register as political committees, and for other purposes; from the Committee on Rules and Administration; placed on the calendar.

By Mrs. FEINSTEIN (for herself and Mr. ENSIGN):

S. 1054. A bill to amend the Elementary and Secondary Education Act of 1965 to specify the purposes for which funds provided under part A of title I may be used; to the Committee on Health, Education, Labor, and Pensions.

By Mr. KENNEDY:

S. 1055. A bill to improve elementary and secondary education; to the Committee on Health, Education, Labor, and Pensions.

By Mr. REID (for himself and Mr. ENSIGN):

S. 1056. A bill to direct the Secretary of the Interior to convey to the City of Henderson, Nevada, certain Federal land located in the City, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. MCCAIN (for himself and Mr. DORGAN):

S. 1057. A bill to amend the Indian Health Care Improvement Act to revise and extend that Act; to the Committee on Indian Affairs.

By Mr. SANTORUM (for himself and Mr. WYDEN):

S. 1058. A bill to amend the Public Health Service Act to provide liability protections for volunteer practitioners at health centers under section 330 of such Act; to the Committee on Health, Education, Labor, and Pensions.

By Mr. BROWNBACK (for himself, Mr. SMITH, Mr. CHAMBLISS, Mr. DODD, Mr. FEINGOLD, and Mrs. CLINTON):

S.J. Res. 19. A joint resolution calling upon the President to issue a proclamation recognizing the 30th anniversary of the Helsinki Final Act; to the Committee on Foreign Relations.

## SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

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

By Mr. COLEMAN (for himself and Mr. DAYTON):

S. Res. 144. A resolution recognizing Tim Nelson and Hugh Sims for their bravery and their contributions in helping the Federal Bureau of Investigation detain Zacarias Moussaoui; considered and agreed to.

By Mr. BROWNBACK (for himself and Mrs. CLINTON):

S. Con. Res. 34. A concurrent resolution urging the Government of the Republic of Albania to ensure that the parliamentary elections to be held on July 3, 2005, are conducted in accordance with international standards for free and fair elections; to the Committee on Foreign Relations.

## ADDITIONAL COSPONSORS

S. 7

At the request of Mr. KYL, the name of the Senator from North Carolina (Mr. BURR) was added as a cosponsor of S. 7, a bill to increase American jobs and economic growth by making permanent the individual income tax rate reductions, the reduction in the capital gains and dividend tax rates, and the repeal of the estate, gift, and generation-skipping transfer taxes.

S. 21

At the request of Ms. COLLINS, the names of the Senator from Minnesota (Mr. COLEMAN) and the Senator from Arkansas (Mr. PRYOR) were added as cosponsors of S. 21, a bill to provide for homeland security grant coordination and simplification, and for other purposes.

S. 174

At the request of Mr. DEWINE, the name of the Senator from Indiana (Mr. BAYH) was added as a cosponsor of S. 174, a bill to improve the palliative and end-of-life care provided to children with life-threatening conditions, and for other purposes.

S. 185

At the request of Mr. NELSON of Florida, the name of the Senator from Minnesota (Mr. COLEMAN) was added as a cosponsor of S. 185, a bill to amend title 10, United States Code, to repeal the requirement for the reduction of certain Survivor Benefit Plan annuities by the amount of dependency and indemnity compensation and to modify the effective date for paid-up coverage under the Survivor Benefit Plan.

S. 241

At the request of Ms. SNOWE, the names of the Senator from Iowa (Mr. HARKIN) and the Senator from Wyoming (Mr. THOMAS) were added as cosponsors of S. 241, a bill to amend section 254 of the Communications Act of 1934 to provide that funds received as universal service contributions and the universal service support programs established pursuant to that section are not subject to certain provisions of title 31, United States Code, commonly known as the Antideficiency Act.

S. 382

At the request of Mr. ENSIGN, the names of the Senator from Massachusetts (Mr. KERRY) and the Senator from Oregon (Mr. WYDEN) were added as cosponsors of S. 382, a bill to amend title 18, United States Code, to strengthen prohibitions against animal fighting, and for other purposes.

S. 408

At the request of Mr. DEWINE, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 408, a bill to provide for programs and activities with respect to the prevention of underage drinking.

S. 424

At the request of Mr. BOND, the name of the Senator from Iowa (Mr. HARKIN) was added as a cosponsor of S. 424, a bill to amend the Public Health Service Act to provide for arthritis research and public health, and for other purposes.

S. 438

At the request of Mr. ENSIGN, the name of the Senator from Iowa (Mr. HARKIN) was added as a cosponsor of S. 438, a bill to amend title XVIII of the Social Security Act to repeal the medicare outpatient rehabilitation therapy caps.

S. 467

At the request of Mr. DODD, the names of the Senator from Minnesota (Mr. DAYTON) and the Senator from West Virginia (Mr. BYRD) were added as cosponsors of S. 467, a bill to extend the applicability of the Terrorism Risk Insurance Act of 2002.

S. 484

At the request of Mr. WARNER, the names of the Senator from Delaware (Mr. BIDEN) and the Senator from North Carolina (Mr. BURR) were added as cosponsors of S. 484, a bill to amend the Internal Revenue Code of 1986 to allow Federal civilian and military retirees to pay health insurance premiums on a pretax basis and to allow a deduction for TRICARE supplemental premiums.

S. 495

At the request of Mr. CORZINE, the name of the Senator from Massachusetts (Mr. KENNEDY) was added as a cosponsor of S. 495, a bill to impose sanctions against perpetrators of crimes against humanity in Darfur, Sudan, and for other purposes.

S. 518

At the request of Mr. SESSIONS, the names of the Senator from North Carolina (Mr. BURR) and the Senator from Missouri (Mr. TALENT) were added as cosponsors of S. 518, a bill to provide for the establishment of a controlled substance monitoring program in each State.

S. 603

At the request of Ms. LANDRIEU, the names of the Senator from Nebraska (Mr. NELSON) and the Senator from Louisiana (Mr. VITTER) were added as cosponsors of S. 603, a bill to amend the Consumer Credit Protection Act to assure meaningful disclosures of the terms of rental-purchase agreements, including disclosures of all costs to consumers under such agreements, to provide certain substantive rights to consumers under such agreements, and for other purposes.

S. 619

At the request of Mrs. FEINSTEIN, the name of the Senator from Vermont (Mr. LEAHY) was added as a cosponsor of S. 619, a bill to amend title II of the Social Security Act to repeal the Government pension offset and windfall elimination provisions.

S. 639

At the request of Mr. CORZINE, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 639, a bill to amend title 10, United States Code, to reduce the age for receipt of military retired pay for nonregular service from 60 years of age to 55 years of age.

S. 676

At the request of Mr. STEVENS, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 676, a bill to provide for Project GRAD programs, and for other purposes.

S. 757

At the request of Mr. CHAFEE, the names of the Senator from Wisconsin

(Mr. FEINGOLD) and the Senator from Maryland (Mr. SARBANES) were added as cosponsors of S. 757, a bill to amend the Public Health Service Act to authorize the Director of the National Institute of Environmental Health Sciences to make grants for the development and operation of research centers regarding environmental factors that may be related to the etiology of breast cancer.

S. 765

At the request of Mr. WARNER, the name of the Senator from Mississippi (Mr. COCHRAN) was added as a cosponsor of S. 765, a bill to preserve mathematics- and science-based industries in the United States.

S. 776

At the request of Mr. JOHNSON, the name of the Senator from Michigan (Ms. STABENOW) was added as a cosponsor of S. 776, a bill to designate certain functions performed at flight service stations of the Federal Aviation Administration as inherently governmental functions, and for other purposes.

S. 807

At the request of Mr. CRAIG, the name of the Senator from Colorado (Mr. ALLARD) was added as a cosponsor of S. 807, a bill to amend the Federal Land Policy and Management Act of 1976 to provide owners of non-Federal lands with a reliable method of receiving compensation for damages resulting from the spread of wildfire from nearby forested National Forest System lands or Bureau of Land Management lands, when those forested Federal lands are not maintained in the forest health status known as condition class 1.

S. 842

At the request of Mr. KENNEDY, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. 842, a bill to amend the National Labor Relations Act to establish an efficient system to enable employees to form, join, or assist labor organizations, to provide for mandatory injunctions for unfair labor practices during organizing efforts, and for other purposes.

S. 858

At the request of Mr. VOINOVICH, the name of the Senator from Delaware (Mr. CARPER) was added as a cosponsor of S. 858, a bill to reauthorize Nuclear Regulatory Commission user fees , and or other purposes.

S. 865

At the request of Mr. VOINOVICH, the name of the Senator from Delaware (Mr. CARPER) was added as a cosponsor of S. 865, a bill to amend the Atomic Energy Act of 1954 to reauthorize the Price-Anderson provisions.

S. 902

At the request of Mr. MARTINEZ, the name of the Senator from Georgia (Mr. ISAKSON) was added as a cosponsor of S. 902, a bill to amend the Longshore and Harbor Workers' Compensation Act to clarify the exemption for recreational vessel support employees, and for other purposes.

S. 991

At the request of Mr. KENNEDY, the names of the Senator from Washington (Ms. CANTWELL) and the Senator from Illinois (Mr. OBAMA) were added as cosponsors of S. 991, a bill to amend title I of the Employee Retirement Income Security Act of 1974 to limit the availability of benefits under an employer's nonqualified deferred compensation plans in the event that any of the employer's defined benefit pension plans are subjected to a distress or PBGC termination in connection with bankruptcy reorganization or a conversion to a cash balance plan, to provide appropriate funding restrictions in connection with the maintenance of nonqualified deferred compensation plans, and to provide for appropriate disclosure with respect to nonqualified deferred compensation plans.

S. 1018

At the request of Mr. SARBANES, the name of the Senator from Virginia (Mr. ALLEN) was added as a cosponsor of S. 1018, a bill to provide that transit pass transportation fringe benefits be made available to all qualified Federal employees in the National Capital Region; to allow passenger carriers which are owned or leased by the Government to be used to transport Government employees between their place of employment and mass transit facilities, and for other purposes.

S. 1031

At the request of Ms. CANTWELL, the name of the Senator from Nevada (Mr. REID) was added as a cosponsor of S. 1031, a bill to enhance the reliability of the electric system.

S.J. RES. 17

At the request of Mr. LUGAR, the name of the Senator from Alaska (Mr. STEVENS) was added as a cosponsor of S.J. Res. 17, a joint resolution honoring the life and legacy of Frederick William Augustus von Steuben and recognizing his contributions on the 275th anniversary of his birth.

S.J. RES. 18

At the request of Mr. MCCONNELL, the names of the Senator from Utah (Mr. BENNETT) and the Senator from North Carolina (Mr. BURR) were added as cosponsors of S.J. Res. 18, a joint resolution approving the renewal of import restrictions contained in the Burmese Freedom and Democracy Act of 2003.

At the request of Mrs. FEINSTEIN, the names of the Senator from Illinois (Mr. DURBIN) and the Senator from California (Mrs. BOXER) were added as cosponsors of S.J. Res . 18, supra.

S. RES. 140

At the request of Mr. NELSON of Florida, the names of the Senator from Michigan (Mr. LEVIN) and the Senator from Montana (Mr. BAUCUS) were added as cosponsors of S. Res. 140, a resolution expressing support for the historic meeting in Havana of the Assembly to Promote the Civil Society in Cuba on May 20, 2005, as well as to all those courageous individuals who continue to advance liberty and democracy for the Cuban people.

At the request of Mr. MARTINEZ, the name of the Senator from Kentucky (Mr. BUNNING) was added as a cosponsor of S. Res. 140, supra.

AMENDMENT NO. 619

At the request of Mr. LAUTENBERG, the names of the Senator from Ohio (Mr. DEWINE) and the Senator from New Jersey (Mr. CORZINE) were added as cosponsors of amendment No. 619 proposed to H.R. 3, a bill to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes.

## STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. FRIST (for himself, Mr. BINGAMAN, Mr. LUGAR, Ms. CANTWELL, Mr. SANTORUM, Ms. COLLINS, Mr. COCHRAN, Mrs. MURRAY, and Mrs. FEINSTEIN):

S. 1049. A bill to amend title XXI of the Social Security Act to provide grants to promote innovative outreach and enrollment under the medicaid and State children's health insurance programs, and for other purposes; to the Committee on Finance.

Mr. FRIST. Mr. President, today, Senator BINGAMAN and I introduced the ''Covering Kids Act of 2005.'' This legislation provides $100 million in funding to a host of entities including the States, local communities, schools, faith-based organizations, Indian tribes, safety net providers. The goal is to increase enrollment of eligible children in Medicaid and the State Children's Health Insurance Program (SCHIP).

I believe that all Americans should have the security of lifelong, affordable access to health care, especially America's children. Programs like SCHIP help provide a critical safety net.

But, unfortunately, there are still too many families who are not aware of the coverage available to them, or face barriers to enrollment. In fact, over 5.6 million kids are eligible for Medicaid and SCHIP, but are not enrolled. The Covering Kids Act will help close that gap.

The legislation will fund innovative outreach and enrollment efforts to expand coverage among minority and underserved children, and to those living in rural areas. It will also give states additional flexibility to streamline enrollment in these programs, reducing administrative costs for the government and eliminating paperwork and hassles for families.

Covering children is the right thing to do. And by ensuring that children have access to preventive care, it is also one of the best ways of reducing long-term strain on America's health care system.

Since arriving in the Senate in 1995, I have advanced worked hard to expand

coverage to uninsured Americans and improve health care for those in need. I have sponsored numerous pieces of bipartisan legislation including: the ''Closing the Health Care Gap Act of 2004,'' the ''Pediatric Research Equity Act of 2003,'' the ''Birth Defects and Developmental Disabilities Prevention Act of 2003,'' and the ''Children's Health Act of 2000.'' Last Congress, we took a critical step forward in expanding affordable health coverage to millions more Americans by authorizing tax-free, portable Health Savings Accounts as part of the Medicare Modernization Act of 2003.

Today, we build on that record of progress.

I first proposed expanding outreach efforts to help lower income children in July of last year. Today, I join with Senator JEFF BINGAMAN and other cosponsors in taking a critical step toward fulfilling that goal.

I also want to applaud the President for his leadership on this issue. President Bush has made the expansion of Medicaid and SCHIP coverage a cornerstone of his agenda. I am confident that with his leadership, and the efforts of my colleagues on the other side of the aisle, we can help millions of kids who need coverage by passing this common sense legislation. All of our children should have access to the affordable quality health care.

I'm proud to introduce this bipartisan legislation with Senators BINGAMAN, LUGAR, CANTWELL, SANTORUM, COLLINS, COCHRAN, and MURRAY. I look forward to working with them, and with all of my colleagues, to strengthen our Nation's health care system and expand affordable health coverage.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 1049

*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 ''Covering Kids Act of 2005''.

**SEC. 2. GRANTS TO PROMOTE INNOVATIVE OUTREACH AND ENROLLMENT UNDER MEDICAID AND SCHIP.**

(a) GRANTS FOR EXPANDED OUTREACH ACTIVITIES.—Title XXI of the Social Security Act (42 U.S.C. 1397aa et seq.) is amended by adding at the end the following:

**''SEC. 2111. EXPANDED OUTREACH ACTIVITIES.**

''(a) GRANTS TO CONDUCT INNOVATIVE OUTREACH AND ENROLLMENT EFFORTS.—

''(1) IN GENERAL.—The Secretary shall award grants to eligible entities to—

''(A) conduct innovative outreach and enrollment efforts that are designed to increase the enrollment and participation of eligible children under this title and title XIX; and

''(B) promote understanding of the importance of health insurance coverage for prenatal care and children.

''(2) PERFORMANCE BONUSES.—The Secretary may reserve a portion of the funds appropriated under subsection (g) for a fiscal year for the purpose of awarding performance bonuses during the succeeding fiscal year to eligible entities that meet enrollment goals or other criteria established by the Secretary.

''(b) PRIORITY FOR AWARD OF GRANTS.—

''(1) IN GENERAL.—In making grants under subsection (a)(1), the Secretary shall give priority to—

''(A) eligible entities that propose to target geographic areas with high rates of—

''(i) eligible but unenrolled children, including such children who reside in rural areas; or

''(ii) racial and ethnic minorities and health disparity populations, including those proposals that address cultural and linguistic barriers to enrollment; and

''(B) eligible entities that plan to engage in outreach efforts with respect to individuals described in subparagraph (A) and that are—

''(i) Federal health safety net organizations; or

''(ii) faith-based organizations or consortia.

''(2) 10 PERCENT SET ASIDE FOR OUTREACH TO INDIAN CHILDREN.—An amount equal to 10 percent of the funds appropriated under subsection (g) for a fiscal year shall be used by the Secretary to award grants to Indian Health Service providers and urban Indian organizations receiving funds under title V of the Indian Health Care Improvement Act (25 U.S.C. 1651 et seq.) for outreach to, and enrollment of, children who are Indians.

''(c) APPLICATION.—An eligible entity that desires to receive a grant under subsection (a)(1) shall submit an application to the Secretary in such form and manner, and containing such information, as the Secretary may decide. Such application shall include—

''(1) quality and outcomes performance measures to evaluate the effectiveness of activities funded by a grant awarded under this section to ensure that the activities are meeting their goals; and

''(2) an assurance that the entity shall—

''(A) conduct an assessment of the effectiveness of such activities against such performance measures; and

''(B) cooperate with the collection and reporting of enrollment data and other information determined as a result of conducting such assessments to the Secretary, in such form and manner as the Secretary shall require.

''(d) DISSEMINATION OF ENROLLMENT DATA AND INFORMATION DETERMINED FROM EFFECTIVENESS ASSESSMENTS; ANNUAL REPORT.—The Secretary shall—

''(1) disseminate to eligible entities and make publicly available the enrollment data and information collected and reported in accordance with subsection (c)(2)(B); and

''(2) submit an annual report to Congress on the outreach activities funded by grants awarded under this section.

''(e) SUPPLEMENT, NOT SUPPLANT.—Federal funds awarded under this section shall be used to supplement, not supplant, non-Federal funds that are otherwise available for activities funded under this section.

''(f) DEFINITIONS.—In this section:

''(1) ELIGIBLE ENTITY.—The term 'eligible entity' means any of the following:

''(A) A State or local government.

''(B) A Federal health safety net organization.

''(C) A national, local, or community-based public or nonprofit private organization.

''(D) A faith-based organization or consortia, to the extent that a grant awarded to such an entity is consistent with the requirements of section 1955 of the Public Health Service Act (42 U.S.C. 300x–65) relating to a grant award to non-governmental entities.

''(E) An elementary or secondary school.

''(2) FEDERAL HEALTH SAFETY NET ORGANIZATION.—The term 'Federal health safety net organization' means—

''(A) an Indian tribe, tribal organization, or an urban Indian organization receiving funds under title V of the Indian Health Care Improvement Act (25 U.S.C. 1651 et seq.), or an Indian Health Service provider;

''(B) a Federally-qualified health center (as defined in section 1905(l)(2)(B));

''(C) a hospital defined as a disproportionate share hospital for purposes of section 1923;

''(D) a covered entity described in section 340B(a)(4) of the Public Health Service Act (42 U.S.C. 256b(a)(4)); and

''(E) any other entity or a consortium that serves children under a federally-funded program, including the special supplemental nutrition program for women, infants, and children (WIC) established under section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786), the head start and early head start programs under the Head Start Act (42 U.S.C. 9801 et seq.), the school lunch program established under the Richard B. Russell National School Lunch Act, and an elementary or secondary school.

''(3) INDIANS; INDIAN TRIBE; TRIBAL ORGANIZATION; URBAN INDIAN ORGANIZATION.—The terms 'Indian', 'Indian tribe', 'tribal organization', and 'urban Indian organization' have the meanings given such terms in section 4 of the Indian Health Care Improvement Act (25 U.S.C. 1603).

''(g) APPROPRIATION.—There is appropriated, out of any money in the Treasury not otherwise appropriated, $50,000,000 for each of fiscal years 2006 and 2007 for the purpose of awarding grants under this section. Amounts appropriated and paid under the authority of this section shall be in addition to amounts appropriated under section 2104 and paid to States in accordance with section 2105, including with respect to expenditures for outreach activities in accordance with subsection (a)(1)(D)(iii) of that section.''.

(b) EXTENDING USE OF OUTSTATIONED WORKERS TO ACCEPT TITLE XXI APPLICATIONS.—Section 1902(a)(55) of the Social Security Act (42 U.S.C. 1396a(a)(55)) is amended by striking ''or (a)(10)(A)(ii)(IX)'' and inserting ''(a)(10)(A)(ii)(IX), or (a)(10)(A)(ii)(XIV), and applications for child health assistance under title XXI''.

**SEC. 3. STATE OPTION TO PROVIDE FOR SIMPLIFIED DETERMINATIONS OF A CHILD'S FINANCIAL ELIGIBILITY FOR MEDICAL ASSISTANCE UNDER MEDICAID OR CHILD HEALTH ASSISTANCE UNDER SCHIP.**

(a) MEDICAID.—Section 1902(e) of the Social Security Act (42 U.S.C. 1396a(e)) is amended by adding at the end the following:

''(13)(A) At the option of the State, the plan may provide that financial eligibility requirements for medical assistance are met for a child who is under an age specified by the State (not to exceed 21 years of age) by using a determination made within a reasonable period (as determined by the State) before its use for this purpose, of the child's family or household income, or if applicable for purposes of determining eligibility under this title or title XXI, assets or resources, by a Federal or State agency, or a public or private entity making such determination on behalf of such agency, specified by the plan, including (but not limited to) an agency administering the State program funded under part A of title IV, the Food Stamp Act of 1977, the Richard B. Russell National School Lunch Act, or the Child Nutrition Act of 1966, notwithstanding any differences in budget unit, disregard, deeming, or other methodology, but only if—

''(i) the agency has fiscal liabilities or responsibilities affected or potentially affected by such determination; and

''(ii) any information furnished by the agency pursuant to this subparagraph is used solely for purposes of determining financial eligibility for medical assistance under this title or for child health assistance under title XXI.

''(B) Nothing in subparagraph (A) shall be construed—

''(i) to authorize the denial of medical assistance under this title or of child health assistance under title XXI to a child who, without the application of this paragraph, would qualify for such assistance;

''(ii) to relieve a State of the obligation under subsection (a)(8) to furnish medical assistance with reasonable promptness after the submission of an initial application that is evaluated or for which evaluation is requested pursuant to this paragraph;

''(iii) to relieve a State of the obligation to determine eligibility for medical assistance under this title or for child health assistance under title XXI on a basis other than family or household income (or, if applicable, assets or resources) if a child is determined ineligible for such assistance on the basis of information furnished pursuant to this paragraph; or

''(iv) as affecting the applicability of any non-financial requirements for eligibility for medical assistance under this title or child health assistance under title XXI.''.

(b) SCHIP.—Section 2107(e)(1) of the Social Security Act (42 U.S.C. 1397gg(e)(1)) is amended by adding at the end the following:

''(E) Section 1902(e)(13) (relating to the State option to base a determination of child's financial eligibility for assistance on financial determinations made by a program providing nutrition or other public assistance).''.

(c) EFFECTIVE DATE.—The amendments made by this section take effect on October 1, 2005.

There are nearly 10 million children in the United States without health insurance coverage. Over half of these children live in families with incomes below 200 percent of the Federal poverty level and are eligible for coverage under either the State Children's Health Insurance Program (S–CHIP) or Medicaid, but are not enrolled in those safety net programs. Studies have shown that the families of many eligible children are not familiar with the availability of safety net coverage or face other barriers that prevent enrollment.

One Tuesday, May 17, Senate Majority Leader BILL FRIST and Senator JEFF BINGAMAN will introduce bipartisan legislation to help close this coverage gap. The ''Covering Kids Act of 2005'' seeks to increase health coverage among uninsured, low-income children by providing grants to States, faith-based organizations, safety net providers, schools, and other community and non-profit organizations to conduct innovative Medicaid and SCHIP outreach and enrollment efforts. Grants may also be used to promote the understanding of the important role that health insurance coverage plays in ensuring quality health care for pregnant women and children.

The legislation appropriates $50 million dollars in fiscal year 2006 and an additional $50 million in fiscal year 2007 in addition to already appropriated SCHIP funds for these additional outreach and enrollment efforts. Ten percent of grant funding would be set aside for grants to the Indian Health Service, tribal organizations, and urban Indian programs for outreach and enrollment to Native American children. Outreach funds may be carried over into subsequent fiscal years until the entire $100 million is awarded to grantees.

In making grants, the Secretary of Health and Human Services, HHS, must give priority to grantees that propose to target geographic areas with high numbers of children who are eligible but not enrolled in Medicaid and SCHIP, including those who live in rural areas and those areas with large numbers of racial and ethnic minorities and other health disparity populations.

The Secretary is required to disseminate to eligible grantees as well as to the public enrollment data and other measurements of the effectiveness of these outreach programs. The Secretary also is required to submit an annual report to Congress describing the impact of these efforts on expanding access to uninsured children.

Further, the legislation also allows States additional flexibility to streamline Medicaid and SCHIP enrollment processes. Because two-thirds of uninsured children live in families that receive benefits through other federal programs, the legislation gives states the option of using income and resource eligibility determinations made under other government programs to fast-track enrollment under Medicaid and SCHIP. This reform would simplify state administrative processes, reduce paperwork burdens for families and the government, help increase insurance coverage, and potentially reduce costs across a number of federal programs.

Mr. BINGAMAN. Mr. President, I am pleased to be introducing bipartisan legislation today with Senators FRIST, CANTWELL, LUGAR, SANTORUM, COLLINS, COCHRAN, MURRAY, and FEINSTEIN named the ''Covering Kids Act of 2005.'' This legislation is intended to improve outreach and enrollment efforts targeted toward children and pregnant women and is very similar to language included in legislation I introduced in the 107th Congress entitled the ''Children's Health Coverage Improvement Act'' and earlier this year with Senator LUGAR entitled ''Children's Express Lane to Health Coverage Act.''

The legislation provides $100 million in grants over the next two years to community and faith-based organizations, safety net organizations such as community health centers, disproportionate share hospitals, tribal providers or organizations, schools, or State or local governments for the purposes of conducting innovative outreach and enrollment efforts.

The bill includes language from legislation introduced by Senator LUGAR and me that would promote what is called ''Express Lane Eligibility.'' This approach uses two strategies to find and enroll eligible but uninsured children by: 1. targeting large numbers of eligible children in other public benefit programs like school lunch and food stamps; 2. expediting their enrollment in health coverage by using income-eligibility information already submitted by parents when they enrolled their children in these other public programs.

In combination, these two commonsense ideas could have a dramatic impact on reducing the uninsured rate among our Nation's children, which we must do.

According to the American College of Physicians, uninsured children, when compared to insured children, are: up to 6 times more likely to have gone without needed medical, dental, or other health care; 2 times more likely to have gone without a physician visit during the previous year; up to 4 times more likely to have delayed seeking medical care; up to 10 times less likely to have a regular source of medical care; 1.7 times less likely to receive medical treatment for asthma; and, up to 30 percent less likely to receive medical attention for any injury.

Another study estimated that the 15 percent rise in the number of children eligible for Medicaid between 1984 and 1992 decreased child mortality by 5 percent. I would add that the expansion period occurred during the Reagan and George H.W. Bush administrations with strong Democratic congressional support, so this is clearly a bipartisan issue that deserves further bipartisan action once again.

In fact, during the last presidential campaign, President Bush made very few promises when it came to reducing the number of uninsured in this country. However, he did make the promise to reduce the number of uninsured by conducting additional efforts in outreach and enrollment. As he said in a speech in Pennsylvania on October 21, 2004, ''We'll keep our commitment to America's children by helping them get a healthy start in life. I'll work with governors and community leaders and religious leaders to make sure every eligible child is enrolled in our government's low-income health insurance program. We will not allow a lack of attention, or information, to stand between millions of children and the health care they need.''

I agree and hope that with the support of the Administration and the Majority Leader in his introduction of this bipartisan legislation today that we can secure passage of it this year.

Despite the passage of the State Children's Health Insurance Program, or SCHIP, which has, in combination with Medicaid, caused a reduction in the rate of uninsured children in recent years, it is estimated that 5–6 million of the remaining 9.2 million uninsured children are eligible for but unenrolled in either Medicaid or SCHIP. In New Mexico, there are an estimated 80,000,

or 15.2 percent, of the children in my State without health insurance despite the fact that Medicaid and SCHIP cover children all the way up to 235 percent of the poverty level.

Thus, ineligibility for coverage is no longer a barrier for the vast majority of uninsured children. As the Urban Institute has said, ''A major challenge today is how to reach and enroll the millions of children who are eligible but who remain uninsured.''

The biggest problems are knowledge gaps, confusion about program rules, and problems created by bureaucratic barriers to coverage. The State of California has taken some important strides to eliminate some of these barriers through what they call their Express Lane Eligibility, or ELE, initiative, which allowed the sharing of income-eligibility information across public programs. Unfortunately, Down Horner, Beth Marrow, and Wendy Lazarus of the Children's Partnership in California found in their report entitled ''Building an On-Ramp to Children's Health Coverage: A Report on California's Express Lane Eligibility Program'': ''A clear lesson from California's experience is that there is only so far a state can go in putting an ELE system in place. In the end, existing Federal rules tend to thwart efforts to create a truly efficient process. In California, instead of allowing Medi-Cal to use a school lunch program's income determination, both school lunch and Medi-Cal have to recount a family's income based on their own rules.''

If we can engage in innovative enrollment and outreach activities and promote ELE types of activities in the states, it clearly could have a profound impact on reducing the uninsured rate among our nation's children.

I would like to express my thanks to the Majority Leader and his staff for working through a number of issues with me prior to the introduction of this legislation. I think the bill is stronger, as a result, and look forward to working with him on trying to get the bill enacted in this Congress.

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By Mr. DODD (for himself and Mr. BOND):

S. 1051. A bill to amend the Public Health Service Act to reauthorize and extend certain programs to provide coordinated services and research with respect to children and families with HIV/AIDS; to the Committee on Health, Education, Labor, and Pensions.

Mr. DODD. Mr. President, I rise today to introduce the Children and Family HIV/AIDS Research and Care Act of 2005. This bipartisan legislation is similar to a bill that was introduced last year. This legislation will address the special needs of children and youth with HIV/AIDS—needs that are too often overlooked, both domestically and internationally. It recognizes the, simple fact that when it comes to HIV prevention, research, care, and treatment, children and youth are not just small adults. To give them a chance for a healthy future, we must ensure that their unique needs are met. I want to thank my good friend Senator BOND of Missouri for joining me in introducing this important legislation. I am very pleased to work with him to move this bill forward.

Children's growing bodies are especially susceptible to the rapid advancement of HIV infection. Because their immune systems are still immature, the disease typically progresses more rapidly and differently in children than in adults. For example, children with HIV infection are more prone to neurological abnormalities and certain opportunistic infections than adults. In addition, because children's bodies are growing and developing, HIV/AIDS can have profound effects on children's physical growth and ability to reach developmental milestones such as crawling, walking and learning to talk.

While research has definitively shown that initiating drug treatment in children in a timely manner promotes normal growth and development, and prolongs life, treating children with HIV/AIDS presents particular challenges. Appropriately formulated and dosed HIV/AIDS drugs are urgently needed to ensure that children receive optimal care. Currently, liquid formulations that young children can swallow are not always readily available. In addition, pediatric dosing and safety information for these powerful drugs is often lacking, particularly for younger children. This lack of information puts children at risk; too much medication can be toxic and too little will not effectively suppress the virus. Over time, under-dosing can lead to drug resistance, a particularly serious concern for children who will need to use these medications for years, if not decades.

Appropriate HIV/AIDS care and treatment for children and youth also requires that special attention be paid to their social development needs. Children and youth have unique concerns regarding disclosure and stigma that may be exacerbated by frequent absences from school and social activities, and the onset of sexual maturity. Working with schools and other social and community institutions is imperative to promoting a sense of normalcy. Because children are not typically medical decision-makers, developing long-term care partnerships with parents and other caregivers is also crucial to successful care and treatment. At the same time, maximizing each child's own ability to take active participation in different aspects of his or her own care can increase a child's sense of ownership over treatment, improving adherence and overall health.

By reauthorizing and expanding Title IV of the Ryan White CARE Act this legislation will help to ensure that the unique care and treatment needs of children are addressed. This program is a lifeline for more than 53,000 women, children, and youth affected by HIV/AIDS served annually by Title IV-funded projects. Through 91 grants in 35 states, the District of Columbia, Puerto Rico and the Virgin Islands, Title IV projects provide medical care, case management, support services, mental health, transportation, child care, and other crucial services to families affected by HIV/AIDS. Title IV is the smallest of the four main titles of the Ryan White CARE Act, yet reaches the highest proportion of minorities.

Key to the success of Title IV projects is the model of ''family-centered care.'' This model of care treats the whole family as the client, whether several family members are infected by HIV, or just a parent or child. The family-centered care model is crucial to developing strong partnerships between consumers and providers, leading to better health outcomes for women, children, and youth. By allowing affected family members to receive services, as well as the infected individuals, Title IV projects promote health at the family level, thereby prolonging life, improving quality of life, and saving money by keeping people out of the hospital.

I would like to take a moment to recognize the work done by the Children, Youth and Family AIDS Network of Connecticut, which provides Title IV services to more than 500 children, youth, women, and families affected by HIV/AIDS in my home state. Just earlier today, I had an opportunity to meet with some of these individuals. They made it clear just how important these services are to their quality of life.

While recommitting the Health Resources and Services Administration (HRSA) to family-centered care and the unique work of Title IV, this legislation will also expand the innovative strategies Title IV projects have used to prevent mother-to-child HIV transmission. Since 1994, when the administration of preventive drug interventions was shown to significantly reduce perinatal HIV transmission, the number of newborns infected with HIV has decreased dramatically. Yet mother-to-children transmission does continue to occur, largely due to missed opportunities for identifying HIV-positive pregnant women and providing the supportive services needed to ensure adherence to recommended treatment regimens. We propose to fund demonstration grants to assess the effectiveness of two strategies in reducing mother-to-children transmission: (1) increasing routine, voluntary HIV testing of pregnant women and (2) increasing access to prenatal care, intensive case management, and supportive services for HIV-positive pregnant women.

In addition, this bill will encourage research into key care and treatment questions affecting the pediatric populations. These include: the long-term health effects of preventive drug regimens on HIV-exposed children; the

long-term health, psycho-social, and prevention needs for children and adolescents perinatally HIV-infected; the transition to adulthood for HIV-infected children; and safer and more effective treatment options for infants, children, and adolescents with HIV disease.

Since history suggests that a vaccine may prove to be the most effective, affordable, long-term approach to stopping the spread of HIV, this legislation will also ensure that children are not an afterthought when it comes to the development of an HIV vaccine. Currently, some of the populations hardest hit by the pandemic—infants and youth—are at risk of being left behind in the search for an effective vaccine. Because we cannot assume that a vaccine tested in adults will also be safe and effective when used in pediatric populations, it will be important to ensure that promising vaccines are tested in infants and youth as early as is medically and ethically appropriate. Failure to begin planning for the inclusion of these groups in clinical trials could mean significant delays in the availability of a pediatric HIV vaccine, at the cost of countless thousands of lives. This legislation will ensure that we begin now to address the logistical, regulatory, medical, and ethical issues presented by pediatric testing of HIV vaccines so that children can share in the benefits of any advances in vaccines research.

I want to thank several organizations for lending their expertise to the development of this legislation, in particular the Elizabeth Glaser Pediatric AIDS Foundation, the AIDS Alliance for Children, Youth and Families, and the American Academy of Pediatrics, all of whom endorse this bill.

HIV/AIDS is the single greatest health care catastrophe facing the world today. We need to do much more to seek effective treatments and, eventually, a cure for this horrible illness. This legislation is by no means sufficient to reach that goal, but it is a step towards ensuring that children are not left behind as we make progress, and then when we do finally eradicate HIV/AIDS once and for all, children and youth are able to benefit immediately. I urge all of my colleagues to join us in support of this legislation.

Mr. BOND. Mr. President, currently, more than 3,700 children and youth under the age of 13 are living with HIV or AIDS in the United States and of the more than 40,000 Americans newly infected with HIV each year, half are young people under the age of 25 years old. When we think about this devastating virus we do not often associate it with children, especially infants or newborn babies, but the fact is this disease does not discriminate on the basis of age. It affects children in very specific and very different ways than adults.

For instance, the medical experience of children with HIV/AIDS can differ significantly from that of adults. Because children's immune systems are still immature, the disease typically progresses more rapidly in children than in adults and can have different manifestations. For example, the majorities of children with HIV have neurological abnormalities and are more susceptible to certain opportunistic infections than adults. In addition, because children's bodies are growing and developing, HIV/AIDS can have profound effects on children's physical growth and ability to reach developmental milestones such as crawling, walking and learning to walk.

Medication for young children living with HIV/AIDS can also be very different than that of an adult living with HIV/AIDS. For example, children of certain ages cannot swallow pills and require liquid formulations of life-saving HIV/AIDS drugs that are not always readily available. In addition, dosing and safety information for these powerful drugs are often strikingly different for children and adults, and for younger children, this information is typically completely missing. This lack of information puts children at risk by requiring health care providers to estimate correct dosing. Too much medication can be toxic, and too little will not effectively suppress the virus. Over time, underdosing can lead to drug resistance.

Children are not just small adults and their growing bodies are especially susceptible to the rapid advancement of HIV infection. Early awareness that a child has HIV infection, combined with good care and support, can enhance survival and quality of life, which is why I am introducing, with my colleague Senator DODD, The Children and Family HIV/AIDS Research and Care Act.

This legislation will address those needs of children and adolescents living with HIV/AIDS by reauthorizing Title IV of the Ryan White CARE Act and expanding its focus on reaching and caring for adolescents with HIV/AIDS. Moreover, this legislation will continue to work to reduce mother-to-child transmission of HIV, by promoting routine, voluntary prenatal HIV testing and intensive care management for HIV-positive pregnant women. In addition, because children are at risk of being left behind in the search for an effective HIV vaccine, the bill will require federal agencies funding and regulating HIV vaccine research to develop plans and guidelines for including pediatric populations in clinical trials as quickly as is medically and ethically appropriate. This legislation will also encourage research on key remaining pediatric research questions, including how to provide safer and more effective treatment options for children with HIV/AIDS.

For a young person living with HIV or AIDS there is no cure and there is no remission. It is with them at home, on the playground, in the classroom, and at a Friday night sleepover. It will be with them as they enter high school, go to college and get their first job. For a person born with this virus it is a permanent part of their life. This bill will help to ensure that the needs of infants, children, and adolescents living with HIV/AIDS are not overlooked.

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By Mr. STEVENS (for himself, Mr. INOUYE, Mr. ROCKEFELLER, Mr. DORGAN, Ms. SNOWE, Mrs. BOXER, Ms. CANTWELL, Mr. LAUTENBERG, Mr. PRYOR, Mrs. CLINTON, and Mr. SCHUMER):

S. 1052. A bill to improve transportation security, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Mr. STEVENS. Mr. President, I am pleased to join my good friend, Senator INOUYE, Co-Chairman of the Commerce Committee, and several of our colleagues, today in introducing the ''Transportation Security Improvement Act of 2005.'' The Commerce Committee is committed to fulfilling its oversight responsibilities with respect to the security of all major modes of transportation.

It has been four years since Congress enacted landmark aviation and maritime transportation security laws after the September 11 attacks. We must remain diligent in carrying out our responsibility to secure the Nation's domestic transportation system so as to ensure consumer trust and the uninterrupted flow of commerce. Recent reorganizations and budgetary decisions affecting the Transportation Security Administration (TSA) have effectively marginalized maritime and surface transportation security, suggested reprivatization of aviation security, and offered inadequate funding for the security of all modes.

The bill that we introduce today recognizes transportation security as a national security function and an economic necessity. The legislation would address security vulnerabilities that exist within our aviation, maritime, rail, and surface transportation systems. More specifically, the bill would, among other things: make notable changes to aviation security policy, including prohibiting the Administration from increasing passenger fees without the approval of Congress; eliminate the existing cap of 45,000 full time equivalent aviation security screening employees; enhance maritime cargo security by improving the examination of shipments before they reach U.S. shores; require TSA to conduct a railroad sector threat assessment and submit prioritized recommended solutions for improving rail security; make improvements to bus and motor carrier security by subjecting foreign commercial drivers transporting hazardous materials into the U.S. to submit to security background checks; and encourage the deployment of rail car tracking equipment for high-hazard materials rail shipments.

This is an important first step toward bolstering our nation's security with respect to transportation and I

look forward to working with Senator INOUYE, as well as the Department of Homeland Security, DOT, and private industry, on this legislation in committee and on the Senate floor.

Mr. INOUYE. Mr. President, I rise as a leading co-sponsor of the Transportation Security Improvement Act of 2005 introduced today by my colleague and Chairman, TED STEVENS, along with Senators JAY ROCKEFELLER, OLYMPIA SNOWE, FRANK LAUTENBERG, BYRON DORGAN, BARBARA BOXER, MARIA CANTWELL, MARK PRYOR, HILLARY CLINTON, and CHUCK SCHUMER.

Nearly 4 years after the enactment of landmark aviation and maritime security laws, it is time to build upon that foundation, make needed improvements and enhancements to our transportation security efforts across all modes, and reestablish the requisite funding levels. Most importantly, we must restore the sense of urgency that is essential if we are to keep our transportation systems, and our economy, strong, vibrant, and secure. We have worked hard to develop this legislation, and we will continue to improve it with the assistance of committee members and the Department of Homeland Security as we move forward through the legislative process.

Over the past 3½ years, the administration and Congress have slowly lost the sense of immediacy that once allowed us to recognize that transportation security is a matter of national security. The administration's budget and priorities indicate that they are overlooking glaring security vulnerabilities, disregarding the continuing threats and risks that are reported almost daily, and underestimating the economic consequences that would undoubtedly result from another attack on our transportation systems. I am hopeful that the new leadership will reinvigorate transportation security.

The economic importance of those systems can hardly be overstated: 95 percent of the Nation's cargo comes through the ports; our rail system and our motor carriers move all of those goods from our coasts and borders throughout the interior U.S. to retail outlets and manufacturers that rely on on-time delivery; our aviation system carried 629.7 million domestic passengers during 2004 and averaged 1.5 million enplanements per day in January this year; approximately 24 million passengers ride Amtrak annually, and there are nearly 3.4 billion passenger and commuter rail trips in this country each year. The loss of our aviation system for just 4 days after the September 11th attacks sent shockwaves through the economy that are still being felt today. The al Qaida attack on the passenger trains in Madrid, Spain, killing nearly 200 people and injuring 1,800, unfortunately proved that railroads are vulnerable targets for terrorists. If there is an incident at any one seaport, the whole system for moving cargo into and out of the country would screech to a halt, as we scramble to ensure security at other ports. In addition to the horrible loss of life, the resulting economic damage would be widespread, catastrophic and possibly irreversible. We cannot afford to risk this kind of damage due to a lack of preparedness and forethought.

The terrorists that seek to do us harm are cunning, dynamic, and most of all, patient. While they have not successfully struck our homeland since September 11, 2001, it does not mean that they are not preparing to do so. They work 24 hours a day, studying what we do and how we do it. It is imperative that we stay ahead of them. That means we must constantly anticipate, innovate, and plan. We must continually research and implement the most effective technologies. We must recruit, train and deploy the most skilled security force. Simply put, our entire economy relies on a well-functioning, secure, transportation system. It is in our greatest economic interest to ensure that this system, and the passengers and cargo that use it, are well protected. And, in keeping with transportation security's impact on the nation's physical and economic security, it is the responsibility of the federal government to properly finance that protection.

Following passage of our new aviation security laws, the Transportation Security Administration, TSA, was assembled quickly, presented with an enormous task, and expected to produce immediate results. It has performed admirably, despite the administration's near-constant reorganization of the agency with little to no input from Congress. While we take seriously recent reports about financial mismanagement and the limits of the human capacity to detect security breaches, we cannot and must not use these inadequacies as justification to cast aside the critical work of this agency. There are some in Congress that have never been comfortable with the new Federal role in transportation security, and they look to every negative report to help usher in a return to private security screening companies. We contend, however, that transportation security must not be judged only by the bottom-line commercial pressures of the private sector. Transportation security is a unique national security function and an economic necessity, and like our national defense, it must remain a primary responsibility of the federal government.

The need for Congressional action to secure all forms of transportation infrastructure across the country remains essential, and I, along with many of my colleagues on the Senate Commerce Committee, have expressed great reservations about the direction our Nation is now headed on matters of transportation security.

As I noted during the Senate's consideration of the nomination of Michael Chertoff to be the Secretary of the Department of Homeland Security, the administration's budget demonstrates the lost sense of urgency. It shifts critical work away from the TSA. It erodes the Agency's limited focus and accountability. It undermines the effectiveness of our maritime and land security efforts. It underfunds efforts across all modes, but particularly port and rail.

The legislation we are introducing today renews the importance and commitment transportation security deserves. It identifies the numerous, lingering shortcomings that currently exist, re-dedicates our efforts on maritime and surface transportation security, and provides the guidance necessary to adequately defend the nation's infrastructure.

The TSA should not focus almost exclusively on aviation, nor should it be transformed into a glorified, security screener training and placement agency. The TSA is essential, and it possesses critical expertise that must be cultivated and put to proper use. We believe that the TSA, as outlined by our bill, can and will be the difference between a flourishing economy fueled by smooth-running transportation systems and an economy crippled by transportation systems that could fall victim to terrorist attacks.

As such, the Transportation Security Improvement Act of 2005 will authorize the TSA for the next 3 fiscal years and re-dedicate the agency to its mission of providing specialized security for all modes of transportation. It provides further direction to the agency's cargo security functions, strengthens aviation, maritime, rail, hazardous materials, and pipeline security efforts, and enhances interagency cooperation. While the proposal incorporates several Commerce Committee and Senate-passed bills or initiatives from the prior Congress, it also puts forth new ideas to enhance transportation security across all modes.

We recognize that Secretary Chertoff has had only a short time to make changes and that his comprehensive review is pending. Our legislation provides the flexibility necessary to address his findings and prerogatives. However, it is incumbent upon Congress to provide guidance and clarify the expectations.

On the matter of port security, our legislation seeks to improve interagency cooperation with the further development of joint operation command centers. It clarifies the roles and responsibilities for cargo security programs, while establishing criteria for contingency response plans to resume the flow of commerce in the event of a seaport attack. By setting a minimum floor for research and development funding related to maritime and land security, the bill further encourages the development of effective technologies that detect terrorist threats. Conversely, the administration has

continued to consolidate critical infrastructure grant programs, which we believe will effectively decrease funding for port security and eliminate the appropriate expertise necessary to review grant proposals and distribute the funds accordingly.

In addressing aviation security, we continue to be concerned that current budget proposals diminish the TSA's authority and squander its expertise. Airport directors are still struggling to receive the technological and capital improvements that would increase the efficiency and effectiveness of the current security system and lower costs considerably. Instead of addressing these shortcomings with aggressive support, the administration has chosen to place a greater burden on the airlines through increased security fees at the same moment that the carriers are facing the most difficult financial period in their history. Not only has the industry lost more than $30 billion cumulatively since 2000, the Federal government has had to bail out the carriers twice. Increasing the carriers' financial burden is ill conceived and counterproductive.

Quietly but consistently, we also hear of some of our colleagues' desire to return to the same privatized security apparatus that proved disastrously inadequate on September 11, 2001. These efforts are short-sighted, defy our experience, and will reverse much of the progress we have made since September 11. Those seeking to return to the old system, at times, claim that the system is no better than pre-September 11. We all know that is not the case. We also know that with new technology, we can improve screener performance. There is no doubt that human factors limit the capabilities of screeners, but as we fund and deploy new equipment, the security system will continue to improve. Our bill seeks to enhance the current screener workforce by directing a more appropriate use of the TSA's resources and through improved training. It would also stimulate efforts to streamline and improve collections of existing airline and passenger security fees to promote a more efficient and healthy aviation industry.

On rail security, our legislation will incorporate an updated version of the Rail Security Act of 2004, which the Senate passed by unanimous consent last year. It features new efforts to ensure the security of hazardous materials that are shipped by rail and improves security training and awareness for our railroad workers and the public. The tragic events in Madrid, Spain, demonstrated to all of us the clear threats to our rail system. We have already been warned publicly twice by the FBI that al Qaida may be directly targeting U.S. passenger trains and that their operatives may try to destroy key rail bridges and sections of track to cause derailments. The rail threat assessment required by our legislation and the grant programs and other measures designed to respond to those threats will strengthen our ability to address them. Until we pass a rail security package, this body is failing its responsibility to try to secure our national transportation system. We owe it to the American people to strengthen the security of our passenger and freight railroads.

To address the security needs of our other surface transportation modes, the proposal will include funding to improve intercity bus security, strengthen hazardous material transportation security efforts, establish new security guidelines for truck rental and leasing operations, and develop pipeline security incident recovery plans. Such action is long overdue as the administration has consistently failed to develop dedicated programs, much less financial support, for rail and other surface transportation security efforts.

We have reached a critical juncture for transportation security in the United States and the steps that we take in the coming months will impact our safety, security and one of our most essential freedoms—movement—for years to come. We must commit ourselves to ensuring that our transportation security remains a priority and is as strong and effective as possible. I believe the Transportation Security Improvement Act of 2005 will continue to move us in that direction.

Mr. ROCKEFELLER. Mr. President, it is my honor today to join the distinguished cochairmen of the Senate Commerce, Science, and Transportation Committee, Senators TED STEVENS and DANIEL INOUYE, along with our colleagues Senators BYRON DORGAN, FRANK LAUTENBERG, MARK PRYOR, BARBARA BOXER, MARIA CANTWELL, HILLARY CLINTON, and CHUCK SCHUMER, to introduce the Transportation Security Improvements Act of 2005. This is a vitally important contribution to the security of all Americans, and I commend it to my colleagues for their consideration.

The Transportation Security Improvements Act will increase authorizations for the Transportation Security Administration, TSA, by more than $19 billion through fiscal year 2008, and will forthrightly address continuing vulnerabilities in the security of our various transportation modes that Congress and the administration have as yet virtually ignored.

Americans were shocked to learn just how lax our aviation security was on September 11. Even those terrorists on official Government watch lists, who should have been barred from entering the United States, were able to board planes that they then turned into weapons without any significant interference from airport security staffs. As a wounded Nation tried to overcome the horrors of that day, Congress immediately went about fixing what was so obviously wrong with our aviation security.

Now, as we approach the fourth anniversary of that fateful day, Americans are regaining their confidence about aviation security. There is still work to be done, and my colleagues and I endeavor in this bill to further secure air travel. Still, we have done much to improve domestic aviation security by improving the security procedures we demand of airlines and airport personnel both here and abroad. We need to remain vigilant and avoid the inexcusable error of believing we have done all that needs to be done. We must act with the knowledge that our enemies will continue to probe the system they so successfully breached in 2001 to find new and additional opportunities to kill and terrorize Americans.

What my colleagues and I also have realized for some time is that in devoting our energy and resources to aviation security we have been, in a manner of speaking, ''fighting the last war.'' While the aviation sector is prepared for today's threats, congressional action regarding the level of security of our other transportation modes is not much changed from the blissfully naïve standards of September 10.

To be fair, industries in the other transportation modes have worked hard to improve the security of their respective sectors. The relatively little money Congress and the administration have dedicated to improving transportation security has been put to good use. Industry and Government working together, even given the overwhelming scope of the threat, have improved transportation security and protected the lives and property of Americans. We just have not done enough.

The Transportation Security Improvements Act seeks to make overdue improvements to the overall security of this Nation's vast transportation infrastructure. Our bill addresses the security practices and requirements of our Nation's freight and passenger rail network, as well as those of our oceangoing and inland ports, the trucking industry, intercity buses, and the special risks of hazardous materials transportation, regardless of the mode of transportation. It makes the TSA responsible for coordinating international and domestic cargo security. It calls on TSA to work cooperatively with stakeholders in the various transportation modes on preparedness and incident response, and establishes new maritime and land security command procedures. Perhaps most importantly, we acknowledge the need of TSA management to deploy such human resources as it sees fit to protect Americans' lives and property, and it removes the current statutory cap on the agency of 45,000 full-time employees.

To continue the TSA's efforts to improve aviation security, our bill authorizes $15.75 billion over the next 3 fiscal years to fully fund key security programs to defend our Nation's air transportation system. In lieu of recent reports regarding the performance of the airport screening workforce, our bill could not be more timely. We have

included provisions to provide TSA greater flexibility in meeting the staffing needs of screening checkpoints through elimination of an arbitrary staffing cap that was put in place shortly after the agency was created, while also requiring TSA to review the adequacy of recurrent training for these employees. With the difficult economic environment currently faced by the airline industry, the bill takes steps to relieve the carriers of some of the burden that they face through collection of these fees. We would prohibit increasing aviation security fees without Congressional review and approval, while requiring TSA to consider alternative means of collecting such fees. Finally, the bill prohibits the certification of any foreign repair stations until TSA and FAA strengthen the oversight of such facilities by reviewing, auditing and developing regulations to ensure an adequate level of safety and security.

To dramatically improve maritime and land security, we increase funding by $1.099 billion to develop and implement cargo screening and inspection standards, with special attention given to high-risk cargoes. We authorize 10 additional Joint Operation Command Centers to supplement the current positive interagency and public-private cooperation at our ports. We streamline procedures for foreign vessels and those with Coast Guard-certified security plans, require funding for port security technology improvements, and impose a January 2006 deadline for development of a comprehensive Transportation Worker Identification Credentialing Program.

We assist our railroads and hazardous materials shippers in maintaining and improving security along the Nation's nearly 150,000 miles of freight and passenger rail infrastructure. We increase rail security funding by nearly $800 million over 3 years, and with those funds require the TSA to conduct a comprehensive security threat assessment that I first advocated in October 2001. We authorize grants to Amtrak and our freight railroads for overall security improvements, and establish a revamped security training program for railroad employees. Our legislation would allow Amtrak to make specific and long-overdue security improvements along its well-traveled Northeast corridor, and it authorizes development of baggage, passenger, and cargo screening programs, as well as reviews of procedures used by foreign railroads and research into additional improvements.

We seek in this legislation to improve the security of the highway system that is the envy of the world. Our bill makes it a priority to better protect and address the unique security vulnerabilities of intercity buses and their passengers. This is a topic first brought to the attention of Congress by our former colleague Max Cleland, and which I hope we can now see enacted into law as a rightful part of his legacy of service to this country. We further seek to improve highway security by imposing the same level of background checks on foreign drivers transporting hazardous materials as we already require of American drivers. We require vehicles carrying hazardous materials to be equipped with wireless communications equipment, and that their drivers have established plans for the use of alternate routes. We provide funding for the TSA to conduct security inspections of our pipeline network, to develop a pipeline incident response plan, and to analyze the security plans in place for hazmat carriers. We create a public sector response center, and provide for the distribution of emergency wireless communications equipment to first responders, hazmat carriers, and TSA personnel.

Our constituents have sent us here, first and foremost, to protect them. The ruthless attacks of September 11, 2001, exposed inexcusable gaps in our efforts in that regard. At a time when the air in this city is acrid with accusation and acrimony, I ask my colleagues to consider this legislation a priority for quick passage, and an example of the good work this institution can do when we remember why Americans elected us. I ask my colleagues to join us in this effort, and I ask the majority leader to find time on the Senate Calendar for its expeditious consideration by the full Senate.

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

S. 1052

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) SHORT TITLE.—This Act may be cited as the ''Transportation Security Improvement Act of 2005''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:



## TITLE I—AUTHORIZATIONS

**SEC. 101. TRANSPORTATION SECURITY ADMINISTRATION AUTHORIZATION.**

Section 114 of title 49, United States Code, is amended by adding at the end thereof the following:

''(u) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to

the Secretary of Homeland Security, (Transportation Security Administration)—

''(1) for Aviation Security—

''(A) $5,000,000,000 for fiscal year 2006;

''(B) $5,250,000,000 for fiscal year 2007; and

''(C) $5,500,000,000 for fiscal year 2008;

''(2) for Maritime and Land Security—

''(A) $394,000,000 for fiscal year 2006;

''(B) $354,000,000 for fiscal year 2007; and

''(C) $354,000,000 for fiscal year 2008;

''(3) for Intelligence—

''(A) $30,000,000 for fiscal year 2006;

''(B) $32,000,000 for fiscal year 2007; and

''(C) $34,000,000 for fiscal year 2008;

''(4) for Research and Development—

''(A) $30,000,000 for fiscal year 2006;

''(B) $32,000,000 for fiscal year 2007; and

''(C) $34,000,000 for fiscal year 2008; and

''(5) for Administration—

''(A) $530,000,000 for fiscal year 2006;

''(B) $535,000,000 for fiscal year 2007; and

''(C) $540,000,000 for fiscal year 2008.''.

**SEC. 102. DEPARTMENT OF TRANSPORTATION AUTHORIZATION.**

There are authorized to be appropriated to the Secretary of Transportation to carry out title III of this Act and sections 20118 and 24316 of title 49, United States Code, as added by title III of this Act—

(1) $261,000,000 for fiscal year 2006;

(2) $258,000,000 for fiscal year 2007; and

(3) $258,000,000 for fiscal year 2008.

**SEC. 103. CERTAIN PERSONNEL LIMITATIONS NOT TO APPLY.**

(a) IN GENERAL.—Any statutory limitation on the number of employees in the Transportation Security Administration of the Department of Transportation, before or after its transfer to the Department of Homeland Security, does not apply to the extent that any such employees are responsible for implementing the provisions of this Act.

(b) AVIATION SECURITY.—Nothwithstanding any provision of law imposing a limitation on the recruiting or hiring of personnel into the Transportation Security Administration to a maximum number of permanent positions, the Secretary of Homeland Security shall recruit and hire such personnel into the Administration as may be necessary—

(1) to provide appropriate levels of aviation security; and

(2) to accomplish that goal in such a manner that the average aviation security-related delay experienced by airline passengers is reduced.

**SEC. 104. INTERMODAL REGIONAL SECURITY MANAGERS.**

(a) ESTABLISHMENT, DESIGNATION, AND STATIONING.—The Under Secretary of Homeland Security for Border and Transportation Security, acting through the Transportation Security Administration, is authorized to establish the position of Intermodal Manager within each of at least 8 regional areas of the nation, as divided on a geographical basis. The Under Secretary shall designate individuals as Managers for, and station those Managers within, those regions.

(b) DUTIES AND POWERS.—The regional offices shall—

(1) receive intelligence information related to maritime and land security within the region;

(2) assist in the development and implementation of vulnerability, threat, and risk assessments, security plans, the identification of critical infrastructure for the region undertaken by the Transportation Security Administration and the Department of Homeland Security, or other public or private entity when appropriate;

(3) serve as the regional coordinator of the Assistant Secretary's response to terrorist incidents and threats to maritime and land assets, operations and infrastructure within the region;

(4) coordinate efforts related to maritime and land security with other Department officials, State and local law enforcement, and other public and private entities;

(5) coordinate with other regional managers;

(6) assist the Assistant Secretary in prioritizing maritime and land security improvements, grants, and other efforts funded by the Transportation Security Administration or the Department of Homeland Security within the region.

(7) engage in outreach and promote public awareness of maritime and land security efforts when appropriate.

**SEC. 105. SECURITY THREAT ASSESSMENT COORDINATION POLICY.**

(a) IN GENERAL.—The Secretary of Homeland Security shall transmit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure a copy of the report on comprehensive terrorist-related screening procedures required by Homeland Security Presidential Directive 11 issued on August 27, 2004.

(b) FORMAT.—The Secretary may submit the report in both classified and redacted formats if the Secretary determines that such action is appropriate or necessary.

**SEC. 106. REORGANIZATIONS.**

The Secretary of Homeland Security shall notify the Senate Committee on Commerce, Science, and Transportation, the Senate Committee on Homeland Security and Governmental Affairs, and the House of Representatives Committee on Homeland Security in writing not less than 15 days before—

(1) reorganizing or renaming offices;

(2) reorganizing programs or activities; or

(3) contracting out or privatizing any functions or activities presently performed by Federal employees.

## TITLE II—IMPROVED AVIATION SECURITY

**SEC. 201. POST-FISCAL YEAR 2006 AIR CARRIER SECURITY FEES.**

(a) AIR CARRIER SECURITY SERVICE FEES SUBJECT TO CONGRESSIONAL REVIEW.—Section 44940(a)(2) of title 49, United States Code, is amended by adding at the end the following:

''(D) FISCAL YEARS 2007 AND LATER.—The Under Secretary may not impose a fee under subparagraph (A) after September 30, 2006, unless—

''(i) the fee is imposed by rule promulgated by the Under Secretary; and

''(ii) the Under Secretary submits the rule to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure not less than 60 days before its proposed effective date.

''(E) APPLICATION OF CHAPTER 8 OF TITLE 5.—Chapter 8 of title 5 applies to any rule promulgated by the Under Secretary imposing a fee under subparagraph (A) after September 30, 2006.''.

(b) REPORT ON TRANSPORTATION SECURITY SERVICE FEES.—Each year, beginning with calendar year 2006, the Secretary of Homeland Security, shall transmit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure on fees, substantially similar to the fee imposed under section 44940(a)(2) of title 49, United States Code, that are imposed under authority of law on competing modes of regularly-scheduled commercial passenger transportation by rail, vessel, or over-the-road bus to pay for the difference between the Transportation Security Administration's costs of providing transportation security services in connection with those modes of transportation and amounts collected from fees imposed under authority of law on passengers using those modes of transportation, taking into account costs that are the same as or similar to the costs described in 44940(a)(1) of that title that are appropriate to the respective modes of transportation.

**SEC. 202. ALTERNATIVE COLLECTION METHODS FOR PASSENGER SECURITY FEE.**

(a) IN GENERAL.—

(1) STUDY.—The Assistant Secretary of Homeland Security (Transportation Security Administration) shall study the feasibility of collecting the passenger security service fee authorized by section 44940(a) of title 49, United States Code, directly from passengers at, or before they reach, the airport through a system developed or approved by the Assistant Secretary, including the use of vending kiosks, other automated vending devices, the Internet, or other remote vending sites.

(2) SOLICITATION OF PROPOSALS.—In carrying out this subsection the Secretary shall solicit proposals for such alternative collection mechanisms.

(3) DEVELOPMENT OF ALTERNATIVES.—Based on the study conducted under paragraph (1) and an evaluation of proposals submitted pursuant to the solicitation under paragraph (2), the Assistant Secretary shall develop such alternative collection systems as the Assistant Secretary determines to be feasible, including schedules and methods to ensure the efficiency of such systems.

(b) REPORT.—The Secretary shall report the results of the study, together with any recommendations the Secretary deems appropriate, to the Congress within 6 months after the date of enactment of this Act.

(c) DEMONSTRATION PROJECTS.—If the Secretary determines that a system of direct collection of such fees from passengers at airports is feasible, the Secretary shall conduct demonstration projects at no fewer than 3 airports within 1 year after submitting the report required by subsection (b) to the Congress.

**SEC. 203. SCREENER TRAINING REVIEW.**

Within 6 months after the date of enactment of this Act, the Assistant Secretary of Homeland Security (Transportation Security Administration), shall transmit a report on the adequacy of training for Transportation Security Administration screeners to the Congress. In addition to other issues, the Assistant Secretary shall specifically address any multi-hour weekly training requirement for such screeners, including an assessment of the degree to which such a requirement is observed and whether the requirement is appropriate, workable, and desirable. The Inspector General of the Department of Homeland Security shall review the report submitted under this section.

**SEC. 204. EMPLOYEE RETENTION INTERNSHIP PROGRAM.**

The Assistant Secretary of Homeland Security (Transportation Security Administration), shall establish a pilot program at no fewer than 3 airports for training students to perform screening of passengers and property under section 44901 of title 49, United States Code. The program shall be an internship for pre-employment training of final-year students from public and private secondary schools located in nearby communities. Under the program, participants—

(1) shall be compensated for training and services time while participating in the program, and

(2) shall be required to agree, as a condition of participation in the program, to accept employment as a screener upon successful completion of the internship and upon graduation from the secondary school.

**SEC. 205. REPAIR STATION SECURITY.**

(a) CERTIFICATION OF FOREIGN REPAIR STATIONS SUSPENSION.—If the Under Secretary of Homeland Security for Border and Transportation Security does not issue the regulations required by section 44924(e) of title 49,

United States Code, within 90 days after the date of enactment of this Act, the Administrator of the Federal Aviation Administration may not certify any foreign repair station under part 145 of title 14, Code of Federal Regulations after such 90th day.

(b) 6-MONTH DEADLINE FOR SECURITY REVIEW AND AUDIT.—Subsections (a) and (d) of section 44924 of title 49, United States Code, are each amended by striking ''18 months'' and inserting ''6 months''.

**SEC. 206. WAIVER PROCESS FOR CERTAIN EMPLOYMENT DISQUALIFICATIONS.**

Section 44936 of title 49, United States Code, is amended by adding at the end the following:

''(f) WAIVER PROCESS.—

''(1) IN GENERAL.—The Under Secretary for Border and Transportation Security of the Department of Homeland Security shall establish a process to permit an individual who was convicted of a crime listed in subsection (b) to obtain a waiver from the Under Secretary to permit that individual's employment.

''(2) FACTORS.—In deciding whether to grant a waiver under this subsection, the Under Secretary shall give consideration to the circumstances of the disqualifying crime, restitution made by the individual, and other factors that would tend to indicate that the individual does not pose a security or terrorism risk.

''(3) APPEALS PROCESS.—The Under Secretary shall establish a process that includes an opportunity for a hearing for individuals who are denied waivers under this subsection.

''(4) RESTRICTIONS ON USE AND MAINTENANCE OF INFORMATION.—

''(A) Information submitted to or obtained by the Attorney General or the Secretary under this section about an individual may not be made available to the public, including the individual's employer.

''(B) Any information submitted to or obtained under this section shall be maintained confidentially by the Under Secretary and may be used only for making determinations under this section. The Under Secretary may share any such information with other Federal law enforcement agencies. An individual's employer may only be informed whether or not the individual has been granted unescorted access under this section.

''(5) APPEAL.—An individual denied a waiver under this subsection may file a civil action appealing that denial in any United States District Court and those courts shall have jurisdiction of the appeal.''.

## TITLE III—IMPROVED RAIL SECURITY

**SEC. 301. SHORT TITLE.**

This title may be cited as the ''Rail Security Act of 2005''.

**SEC. 302. RAIL TRANSPORTATION SECURITY RISK ASSESSMENT.**

(a) IN GENERAL.—

(1) VULNERABILITY AND RISK ASSESSMENT.—The Secretary of Homeland Security shall establish a task force, including the Transportation Security Administration, the Department of Transportation, and other appropriate agencies, to complete a vulnerability and risk assessment of freight and passenger rail transportation (encompassing railroads, as that term is defined in section 20102(1) of title 49, United States Code). The assessment shall include—

(A) identification and evaluation of critical assets and infrastructures;

(B) identification of vulnerabilities and risks to those assets and infrastructures;

(C) identification of vulnerabilities and risks that are specific to the transportation of hazardous materials via railroad; and

(D) identification of security weaknesses in passenger and cargo security, transportation infrastructure, protection systems, procedural policies, communications systems, employee training, emergency response planning, and any other area identified by the assessment.

(2) EXISTING PRIVATE AND PUBLIC SECTOR EFFORTS.—The assessment shall take into account actions taken or planned by both public and private entities to address identified security issues and assess the effective integration of such actions.

(3) RECOMMENDATIONS.—Based on the assessment conducted under paragraph (1), the Secretary, in consultation with the Secretary of Transportation, shall develop prioritized recommendations for improving rail security, including any recommendations the Secretary has for—

(A) improving the security of rail tunnels, rail bridges, rail switching and car storage areas, other rail infrastructure and facilities, information systems, and other areas identified by the Secretary as posing significant rail-related risks to public safety and the movement of interstate commerce, taking into account the impact that any proposed security measure might have on the provision of rail service;

(B) deploying equipment to detect explosives and hazardous chemical, biological, and radioactive substances, and any appropriate countermeasures;

(C) training appropriate railroad or railroad shipper employees in terrorism prevention, passenger evacuation, and response activities;

(D) conducting public outreach campaigns on passenger railroads;

(E) deploying surveillance equipment; and

(F) identifying the immediate and long-term costs of measures that may be required to address those risks.

(4) PLANS.—The report required by subsection (c) shall include—

(A) a plan, developed in consultation with the freight and intercity passenger railroads, and State and local governments, for the Federal government to provide increased security support at high or severe threat levels of alert;

(B) a plan for coordinating existing and planned rail security initiatives undertaken by the public and private sectors; and

(C) a contingency plan, developed in conjunction with freight and intercity and commuter passenger railroads, to ensure the continued movement of freight and passengers in the event of an attack affecting the railroad system, which shall contemplate—

(i) the possibility of rerouting traffic due to the loss of critical infrastructure, such as a bridge, tunnel, yard, or station; and

(ii) methods of continuing railroad service in the Northeast Corridor in the event of a commercial power loss, or catastrophe affecting a critical bridge, tunnel, yard, or station.

(b) CONSULTATION; USE OF EXISTING RESOURCES.—In carrying out the assessment and developing the recommendations and plans required by subsection (a), the Secretary of Homeland Security shall consult with rail management, rail labor, owners or lessors of rail cars used to transport hazardous materials, first responders, shippers of hazardous materials, public safety officials, and other relevant parties.

(c) REPORT.—

(1) CONTENTS.—Within 180 days after the date of enactment of this Act, the Secretary shall transmit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure a report containing the assessment, prioritized recommendations, and plans required by subsection (a) and an estimate of the cost to implement such recommendations.

(2) FORMAT.—The Secretary may submit the report in both classified and redacted formats if the Secretary determines that such action is appropriate or necessary.

(d) ANNUAL UPDATES.—The Secretary, in consultation with the Secretary of Transportation, shall update the assessment and recommendations each year and transmit a report, which may be submitted in both classified and redacted formats, to the Committees named in subsection (c)(1), containing the updated assessment and recommendations.

(e) FUNDING.—Out of funds appropriated pursuant to section 114(u)(2) of title 49, United States Code, there shall be made available to the Secretary of Homeland Security to carry out this section $5,000,000 for fiscal year 2006.

**SEC. 303. SYSTEMWIDE AMTRAK SECURITY UPGRADES.**

(a) IN GENERAL—Subject to subsection (c) the Secretary of Homeland Security, in consulation with the Assistant Secretary of Homeland Security (Transportation Security Administration), is authorized to make grants to Amtrak—

(1) to secure major tunnel access points and ensure tunnel integrity in New York, Baltimore, and Washington, DC;

(2) to secure Amtrak trains;

(3) to secure Amtrak stations;

(4) to obtain a watch list identification system approved by the Secretary;

(5) to obtain train tracking and interoperable communications systems that are coordinated to the maximum extent possible;

(6) to hire additional police and security officers, including canine units; and

(7) to expand emergency preparedness efforts.

(b) CONDITIONS.—The Secretary of Transportation shall disburse funds to Amtrak provided under subsection (a) for projects contained in a systemwide security plan approved by the Secretary of Homeland Security. The plan shall include appropriate measures to address security awareness, emergency response, and passenger evacuation training.

(c) EQUITABLE GEOGRAPHIC ALLOCATION.—The Secretary shall ensure that, subject to meeting the highest security needs on Amtrak's entire system, stations and facilities located outside of the Northeast Corridor receive an equitable share of the security funds authorized by this section.

(d) AVAILABILITY OF FUNDS.—Out of funds appropriated pursuant to section 114(u)(2) of title 49, United States Code, there shall be made available to the Secretary of Homeland Security and the Assistant Secretary of Homeland Security (Transportation Security Administration) to carry out this section—

(1) $63,500,000 for fiscal year 2006;

(2) $30,000,000 for fiscal year 2007; and

(3) $30,000,000 for fiscal year 2008.

Amounts appropriated pursuant to this subsection shall remain available until expended.

**SEC. 304. FIRE AND LIFE-SAFETY IMPROVEMENTS.**

(a) LIFE-SAFETY NEEDS.—The Secretary of Transportation is authorized to make grants to Amtrak for the purpose of making fire and life-safety improvements to Amtrak tunnels on the Northeast Corridor in New York, NY, Baltimore, MD, and Washington, DC.

(b) AUTHORIZATION OF APPROPRIATIONS.—Out of funds appropriated pursuant to section 102 of this Act, there shall be made available to the Secretary of Transportation for the purposes of carrying out subsection (a) the following amounts:

(1) For the 6 New York tunnels to provide ventilation, electrical, and fire safety technology upgrades, emergency communication

and lighting systems, and emergency access and egress for passengers—

(A) $190,000,000 for fiscal year 2006;

(B) $190,000,000 for fiscal year 2007;

(C) $190,000,000 for fiscal year 2008;

(2) For the Baltimore & Potomac tunnel and the Union tunnel, together, to provide adequate drainage, ventilation, communication, lighting, and passenger egress upgrades—

(A) $19,000,000 for fiscal year 2006;

(B) $19,000,000 for fiscal year 2007;

(C) $19,000,000 for fiscal year 2008;

(3) For the Washington, DC, Union Station tunnels to improve ventilation, communication, lighting, and passenger egress upgrades—

(A) $13,333,000 for fiscal year 2006;

(B) $13,333,000 for fiscal year 2007;

(C) $13,333,000 for fiscal year 2008;

(c) INFRASTRUCTURE UPGRADES.—Out of funds appropriated pursuant to section 102 of this Act, there shall be made available to the Secretary of Transportation for fiscal year 2006 $3,000,000 for the preliminary design of options for a new tunnel on a different alignment to augment the capacity of the existing Baltimore tunnels.

(d) AVAILABILITY OF APPROPRIATED FUNDS.—Amounts made available pursuant to this section shall remain available until expended.

(e) PLANS REQUIRED.—The Secretary may not make amounts available to Amtrak for obligation or expenditure under subsection (a)—

(1) until Amtrak has submitted to the Secretary, and the Secretary has approved, an engineering and financial plan for such projects; and

(2) unless, for each project funded pursuant to this section, the Secretary has approved a project management plan prepared by Amtrak addressing appropriate project budget, construction schedule, recipient staff organization, document control and record keeping, change order procedure, quality control and assurance, periodic plan updates, and periodic status reports.

(f) REVIEW OF PLANS.—The Secretary of Transportation shall complete the review of the plans required by paragraphs (1) and (2) of subsection (e) and approve or disapprove the plans within 45 days after the date on which each such plan is submitted by Amtrak. If the Secretary determines that a plan is incomplete or deficient, the Secretary shall notify Amtrak of the incomplete items or deficiencies and Amtrak shall, within 30 days after receiving the Secretary's notification, submit a modified plan for the Secretary's review. Within 15 days after receiving additional information on items previously included in the plan, and within 45 days after receiving items newly included in a modified plan, the Secretary shall either approve the modified plan, or, if the Secretary finds the plan is still incomplete or deficient, the Secretary shall identify in writing to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure the portions of the plan the Secretary finds incomplete or deficient, approve all other portions of the plan, obligate the funds associated with those other portions, and execute an agreement with Amtrak within 15 days thereafter on a process for resolving the remaining portions of the plan.

(g) FINANCIAL CONTRIBUTION FROM OTHER TUNNEL USERS.—The Secretary shall, taking into account the need for the timely completion of all portions of the tunnel projects described in subsection (a)—

(1) consider the extent to which rail carriers other than Amtrak use or plan to use the tunnels;

(2) consider the feasibility of seeking a financial contribution from those other rail carriers toward the costs of the projects; and

(3) obtain financial contributions or commitments from such other rail carriers at levels reflecting the extent of their use or planned use of the tunnels, if feasible.

**SEC. 305. FREIGHT AND PASSENGER RAIL SECURITY UPGRADES.**

(a) SECURITY IMPROVEMENT GRANTS.—The Secretary of Homeland Security, through the Assistant Secretary of Homeland Security (Transportation Security Administration) and other appropriate agencies, is authorized to make grants to freight railroads, the Alaska Railroad, hazardous materials shippers, owners of rail cars used in the transportation of hazardous materials, universities, colleges and research centers, State and local governments (for rail passenger facilities and infrastructure not owned by Amtrak), and, through the Secretary of Transportation, to Amtrak, for full or partial reimbursement of costs incurred in the conduct of activities to prevent or respond to acts of terrorism, sabotage, or other intercity passenger rail and freight rail security vulnerabilities and risks identified under section 302, including—

(1) security and redundancy for critical communications, computer, and train control systems essential for secure rail operations;

(2) accommodation of cargo or passenger screening equipment at the United States-Mexico border or the United States-Canada border;

(3) the security of hazardous material transportation by rail;

(4) secure intercity passenger rail stations, trains, and infrastructure;

(5) structural modification or replacement of rail cars transporting high hazard materials to improve their resistance to acts of terrorism;

(6) employee security awareness, preparedness, passenger evacuation, and emergency response training;

(7) public security awareness campaigns for passenger train operations;

(8) the sharing of intelligence and information about security threats;

(9) to obtain train tracking and interoperable communications systems that are coordinated to the maximum extent possible;

(10) to hire additional police and security officers, including canine units; and

(11) other improvements recommended by the report required by section 302, including infrastructure, facilities, and equipment upgrades.

(b) ACCOUNTABILITY.—The Secretary shall adopt necessary procedures, including audits, to ensure that grants made under this section are expended in accordance with the purposes of this Act and the priorities and other criteria developed by the Secretary.

(c) ALLOCATION.—The Secretary shall distribute the funds authorized by this section based on risk and vulnerability as determined under section 302, and shall encourage non-Federal financial participation in awarding grants. With respect to grants for passenger rail security, the Secretary shall also take into account passenger volume and whether a station is used by commuter rail passengers as well as intercity rail passengers.

(d) CONDITIONS.—The Secretary of Transportation may not disburse funds to Amtrak under subsection (a) unless Amtrak meets the conditions set forth in section 303(b) of this Act.

(e) ALLOCATION BETWEEN RAILROADS AND OTHERS.—Unless as a result of the assessment required by section 302 the Secretary of Homeland Security determines that critical rail transportation security needs require reimbursement in greater amounts to any eligible entity, no grants under this section may be made—

(1) in excess of $65,000,000 to Amtrak; or

(2) in excess of $100,000,000 for the purposes described in paragraphs (3) and (5) of subsection (a).

(f) AUTHORIZATION OF APPROPRIATIONS.—Out of funds appropriated pursuant to section 114(u)(2) of title 49, United States Code, there shall be made available to the Secretary of Homeland Security to carry out this section—

(1) $120,000,000 for fiscal year 2006;

(2) $120,000,000 for fiscal year 2007; and

(3) $120,000,000 for fiscal year 2008.

Amounts made available pursuant to this subsection shall remain available until expended.

(g) HIGH HAZARD MATERIALS DEFINED.—In this section, the term ''high hazard materials'' means quantities of poison inhalation hazard materials, Class 2.3 gases, Class 6.1 materials, and anhydrous ammonia that the Secretary, in consultation with the Secretary of Transportation, determines pose a security risk.

**SEC. 306. RAIL SECURITY RESEARCH AND DEVELOPMENT.**

(a) ESTABLISHMENT OF RESEARCH AND DEVELOPMENT PROGRAM.—The Secretary of Transportation, in conjunction with the Under Secretary of Homeland Security for Science and Technology and the Assistant Secretary of Homeland Security (Transportation Security Administration), shall carry out a research and development program for the purpose of improving freight and intercity passenger rail security that may include research and development projects to—

(1) reduce the vulnerability of passenger trains, stations, and equipment to explosives and hazardous chemical, biological, and radioactive substances;

(2) test new emergency response techniques and technologies;

(3) develop improved freight technologies, including—

(A) technologies for sealing rail cars;

(B) automatic inspection of rail cars;

(C) communication-based train controls; and

(D) emergency response training;

(4) test wayside detectors that can detect tampering with railroad equipment;

(5) support enhanced security for the transportation of hazardous materials by rail, including—

(A) technologies to detect a breach in a tank car or other rail car used to transport hazardous materials and transmit information about the integrity of cars to the train crew or dispatcher;

(B) research to improve tank car integrity, with a focus on tank cars that carry high hazard materials (as defined in section 305(g) of this Act;

(C) techniques to transfer hazardous materials from rail cars that are damaged or otherwise represent an unreasonable risk to human life or public safety; and

(6) other projects that address vulnerabilities and risks identified under section 302.

(b) COORDINATION WITH OTHER RESEARCH INITIATIVES.—The Secretary of Transportation shall ensure that the research and development program authorized by this section is coordinated with other research and development initiatives at the Department of Transportation and the Department of Homeland Security. The Secretary shall carry out any research and development project authorized by this section through a reimbursable agreement with the Under Secretary of Homeland Security for Science and Technology, if the Under Secretary—

(1) is already sponsoring a research and development project in a similar area; or

(2) has a unique facility or capability that would be useful in carrying out the project.

(c) GRANTS AND ACCOUNTABILITY.—To carry out the research and development program, the Secretary may award grants to the entities described in section 305(a) and shall adopt necessary procedures, including audits, to ensure that grants made under this section are expended in accordance with the purposes of this Act and the priorities and other criteria developed by the Secretary.

(d) AUTHORIZATION OF APPROPRIATIONS.—Out of funds appropriated pursuant to section 102 of this Act, there shall be made available to the Secretary of Transportation to carry out this section—

(1) $35,000,000 for fiscal year 2006;

(2) $35,000,000 for fiscal year 2007; and

(3) $35,000,000 for fiscal year 2008.

Amounts made available pursuant to this subsection shall remain available until expended.

**SEC. 307. OVERSIGHT AND GRANT PROCEDURES.**

(a) SECRETARIAL OVERSIGHT.—The Secretary of Homeland Security, in consultation with the Assistant Secretary of Homeland Security (Transportation Security Administration), may use up to 0.5 percent of amounts made available for capital projects under the Rail Security Act of 2005 to enter into contracts for the review of proposed capital projects and related program management plans and to oversee construction of such projects.

(b) USE OF FUNDS.—The Secretary may use amounts available under subsection (a) of this subsection to make contracts for safety, procurement, management, and financial compliance reviews and audits of a recipient of amounts under this Act.

(c) PROCEDURES FOR GRANT AWARD.—The Secretary shall prescribe procedures and schedules for the awarding of grants under this Act, including application and qualification procedures (including a requirement that the applicant have a security plan), and a record of decision on applicant eligibility. The procedures shall include the execution of a grant agreement between the grant recipient and the Secretary and shall be consistent, to the extent practicable, with the grant procedures established under section 70107 of title 46, United States Code. The Secretary shall issue a final rule establishing the procedures not later than 90 days after the date of enactment of this Act.

**SEC. 308. AMTRAK PLAN TO ASSIST FAMILIES OF PASSENGERS INVOLVED IN RAIL PASSENGER ACCIDENTS.**

(a) IN GENERAL.—Chapter 243 of title 49, United States Code, is amended by adding at the end the following:

**''§ 24316. Plans to address needs of families of passengers involved in rail passenger accidents**

''(a) SUBMISSION OF PLAN.—Not later than 6 months after the date of the enactment of the Rail Security Act of 2005, Amtrak shall submit to the Chairman of the National Transportation Safety Board and the Secretary of Transportation a plan for addressing the needs of the families of passengers involved in any rail passenger accident involving an Amtrak intercity train and resulting in a loss of life.

''(b) CONTENTS OF PLANS.—The plan to be submitted by Amtrak under subsection (a) shall include, at a minimum, the following:

''(1) A process by which Amtrak will maintain and provide to the National Transportation Safety Board and the Secretary of Transportation, immediately upon request, a list (which is based on the best available information at the time of the request) of the names of the passengers aboard the train (whether or not such names have been verified), and will periodically update the list. The plan shall include a procedure, with respect to unreserved trains and passengers not holding reservations on other trains, for Amtrak to use reasonable efforts to ascertain the number and names of passengers aboard a train involved in an accident.

''(2) A plan for creating and publicizing a reliable, toll-free telephone number within 4 hours after such an accident occurs, and for providing staff, to handle calls from the families of the passengers.

''(3) A process for notifying the families of the passengers, before providing any public notice of the names of the passengers, by suitably trained individuals.

''(4) A process for providing the notice described in paragraph (2) to the family of a passenger as soon as Amtrak has verified that the passenger was aboard the train (whether or not the names of all of the passengers have been verified).

''(5) A process by which the family of each passenger will be consulted about the disposition of all remains and personal effects of the passenger within Amtrak's control; that any possession of the passenger within Amtrak's control will be returned to the family unless the possession is needed for the accident investigation or any criminal investigation; and that any unclaimed possession of a passenger within Amtrak's control will be retained by the rail passenger carrier for at least 18 months.

''(6) A process by which the treatment of the families of nonrevenue passengers will be the same as the treatment of the families of revenue passengers.

''(7) An assurance that Amtrak will provide adequate training to its employees and agents to meet the needs of survivors and family members following an accident.

''(c) USE OF INFORMATION.—The National Transportation Safety Board, the Secretary of Transportation, and Amtrak may not release to any person information on a list obtained under subsection (b)(1) but may provide information on the list about a passenger to the family of the passenger to the extent that the Board or Amtrak considers appropriate.

''(d) LIMITATION ON LIABILITY.—Amtrak shall not be liable for damages in any action brought in a Federal or State court arising out of the performance of Amtrak in preparing or providing a passenger list, or in providing information concerning a train reservation, pursuant to a plan submitted by Amtrak under subsection (b), unless such liability was caused by Amtrak's conduct.

''(e) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this section may be construed as limiting the actions that Amtrak may take, or the obligations that Amtrak may have, in providing assistance to the families of passengers involved in a rail passenger accident.

''(f) FUNDING.—Out of funds appropriated pursuant to section 102 of the Rail Security Act of 2005, there shall be made available to the Secretary of Transportation for the use of Amtrak $500,000 for fiscal year 2006 to carry out this section. Amounts made available pursuant to this subsection shall remain available until expended.''.

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 243 of title 49, United States Code, is amended by adding at the end the following:

''24316. Plan to assist families of passengers involved in rail passenger accidents.''.

**SEC. 309. NORTHERN BORDER RAIL PASSENGER REPORT.**

Within 180 days after the date of enactment of this Act, the Secretary of Transportation, in consultation with the Secretary of Homeland Security, the Assistant Secretary of Homeland Security (Transportation Security Administration), heads of other appropriate Federal departments, and agencies and the National Railroad Passenger Corporation, shall transmit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure that contains—

(1) a description of the current system for screening passengers and baggage on passenger rail service between the United States and Canada;

(2) an assessment of the current program to provide preclearance of airline passengers between the United States and Canada as outlined in ''The Agreement on Air Transport Preclearance between the Government of Canada and the Government of the United States of America'', dated January 18, 2001;

(3) an assessment of the current program to provide preclearance of freight railroad traffic between the United States and Canada as outlined in the ''Declaration of Principle for the Improved Security of Rail Shipments by Canadian National Railway and Canadian Pacific Railway from Canada to the United States'', dated April 2, 2003;

(4) information on progress by the Department of Homeland Security and other Federal agencies towards finalizing a bilateral protocol with Canada that would provide for preclearance of passengers on trains operating between the United States and Canada;

(5) a description of legislative, regulatory, budgetary, or policy barriers within the United States Government to providing prescreened passenger lists for rail passengers traveling between the United States and Canada to the Department of Homeland Security;

(6) a description of the position of the Government of Canada and relevant Canadian agencies with respect to preclearance of such passengers;

(7) a draft of any changes in existing Federal law necessary to provide for pre-screening of such passengers and providing prescreened passenger lists to the Department of Homeland Security; and

(8) an analysis of the feasibility of reinstating United States Customs and Border Patrol rolling inspections onboard international Amtrak trains.

**SEC. 310. RAIL WORKER SECURITY TRAINING PROGRAM.**

(a) IN GENERAL.—Not later than 60 days after the date of enactment of this Act, the Secretary of Homeland Security and the Secretary of Transportation, in consultation with appropriate law enforcement, security, and terrorism experts, representatives of railroad carriers, and nonprofit employee organizations that represent rail workers, shall develop and issue detailed guidance for a rail worker security training program to prepare front-line workers for potential threat conditions.

(b) PROGRAM ELEMENTS.—The guidance developed under subsection (a) shall require such a program to include, at a minimum, elements as appropriate to passenger and freight rail service, that address the following:

(1) Determination of the seriousness of any occurrence.

(2) Crew communication and coordination.

(3) Appropriate responses to defend oneself.

(4) Use of protective devices.

(5) Evacuation procedures.

(6) Psychology of terrorists to cope with hijacker behavior and passenger responses.

(7) Live situational training exercises regarding various threat conditions, including tunnel evacuation procedures.

(8) Any other subject the Secretary considers appropriate.

(c) RAILROAD CARRIER PROGRAMS.—Not later than 60 days after the Secretary issues guidance under subsection (a) in final form, each railroad carrier shall develop a rail worker security training program in accordance with that guidance and submit it to the Secretary for approval. Not later than 30 days after receiving a railroad carrier's program under this subsection, the Secretary shall review the program and approve it or require the railroad carrier to make any revisions the Secretary considers necessary for the program to meet the guidance requirements.

(d) TRAINING.—Not later than 180 days after the Secretary approves the training program developed by a railroad carrier under this section, the railroad carrier shall complete the training of all front-line workers in accordance with that program.

(e) UPDATES.—The Secretary shall update the training guidance issued under subsection (a) from time to time to reflect new or different security threats, and require railroad carriers to revise their programs accordingly and provide additional training to their front-line workers.

(f) FRONT-LINE WORKERS DEFINED.—In this section, the term ''front-line workers'' means security personnel, dispatchers, train operators, other onboard employees, maintenance and support personnel, bridge tenders, and other appropriate employees of railroad carriers.

(g) OTHER EMPLOYEES.—The Secretary of Homeland Security shall issue guidance and best practices for a rail shipper employee security program containing the elements listed under subsection (b) as appropriate.

**SEC. 311. WHISTLEBLOWER PROTECTION PROGRAM.**

(a) IN GENERAL.—Subchapter A of chapter 201 of title 49, United States Code, is amended by inserting after section 20117 the following:

**''§ 20118. Whistleblower protection for rail security matters**

''(a) DISCRIMINATION AGAINST EMPLOYEE.—No rail carrier engaged in interstate or foreign commerce may discharge a railroad employee or otherwise discriminate against a railroad employee because the employee (or any person acting pursuant to a request of the employee)—

(1) provided, caused to be provided, or is about to provide or cause to be provided, to the employer or the Federal Government information relating to a perceived threat to security; or

''(2) provided, caused to be provided, or is about to provide or cause to be provided, testimony before Congress or at any Federal or State proceeding regarding a perceived threat to security; or

''(3) refused to violate or assist in the violation of any law, rule or regulation related to rail security.

''(b) DISPUTE RESOLUTION.—A dispute, grievance, or claim arising under this section is subject to resolution under section 3 of the Railway Labor Act (45 U.S.C. 153). In a proceeding by the National Railroad Adjustment Board, a division or delegate of the Board, or another board of adjustment established under section 3 to resolve the dispute, grievance, or claim the proceeding shall be expedited and the dispute, grievance, or claim shall be resolved not later than 180 days after it is filed. If the violation is a form of discrimination that does not involve discharge, suspension, or another action affecting pay, and no other remedy is available under this subsection, the Board, division, delegate, or other board of adjustment may award the employee reasonable damages, including punitive damages, of not more than $20,000.

''(c) PROCEDURAL REQUIREMENTS.—Except as provided in subsection (b), the procedure set forth in section 42121(b)(2)(B) of this title, including the burdens of proof, applies to any complaint brought under this section.

''(d) ELECTION OF REMEDIES.—An employee of a railroad carrier may not seek protection under both this section and another provision of law for the same allegedly unlawful act of the carrier.

''(e) DISCLOSURE OF IDENTITY.—

''(1) Except as provided in paragraph (2) of this subsection, or with the written consent of the employee, the Secretary of Transportation may not disclose the name of an employee of a railroad carrier who has provided information about an alleged violation of this section.

''(2) The Secretary shall disclose to the Attorney General the name of an employee described in paragraph (1) of this subsection if the matter is referred to the Attorney General for enforcement.''.

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 201 of title 49, United States Code, is amended by inserting after the item relating to section 20117 the following:

''20118. Whistleblower protection for rail security matters.''.

**SEC. 312. HIGH HAZARD MATERIAL SECURITY THREAT MITIGATION PLANS.**

(a) IN GENERAL.—The Secretary of Homeland Security, in consultation with the Assistant Secretary of Homeland Security (Transportation Security Administration) and the Secretary of Transportation, shall require rail carriers transporting a high hazard material, as defined in section 305(g) of this Act and of a quantity equal or exceeding the quantities of such material listed in subpart 172.800, title 49, Federal Code of Regulations, to develop a high hazard material security threat mitigation plans containing appropriate measures, including alternative routing and temporary shipment suspension options, to address assessed risks to high consequence targets.

(b) IMPLEMENTATION.—A high hazard material security threat mitigation plan shall be put into effect by a rail carrier for the shipment of high hazardous materials by rail on the rail carrier's right-of-way when the threat levels of the Homeland Security Advisory System are high or severe and specific intelligence of probable or imminent threat exists towards—

(1) a high-consequence target that is within the catastrophic impact zone of a railroad right-of-way used to transport high hazardous material; or

(2) rail infrastructure or operations within the immediate vicinity of a high-consequence target.

(c) COMPLETION AND REVIEW OF PLANS.—

(1) PLANS REQUIRED.—Each rail carrier shall—

(A) submit a list of routes used to transport high hazard materials to the Secretary of Homeland Security within 60 days after the date of enactment of this Act; and

(B) develop and submit a high hazard material security threat mitigation plan to the Secretary within 180 days after it receives the notice of high consequence targets on such routes by the Secretary.

(2) REVIEW AND UPDATES.—The Secretary, with assistance of the Secretary of Transportation, shall review and approve the plans. Each rail carrier shall update and resubmit its plan for review not less than every 2 years.

(d) DEFINITIONS.—In this section:

(1) The term ''high-consequence target'' means a building, buildings, infrastructure, public space, or natural resource designated by the Secretary of Homeland Security that is viable terrorist target of national significance, the attack of which could result in—

(A) catastrophic loss of life; and

(B) significantly damaged national security and defense capabilities; or

(C) national economic harm;

(2) The term ''catastrophic impact zone'' means the area immediately adjacent to, under, or above an active railroad right-of-way used to ship high hazard materials in which the potential release or explosion of the high hazard material being transported would likely cause—

(A) loss of life; or

(B) significant damage to property or structures.

(3) The term ''rail carrier'' has the meaning given that term by section 10102(5) of title 49, United States Code.

**SEC. 313. MEMORANDUM OF AGREEMENT.**

(a) MEMORANDUM OF AGREEMENT.—Within 1 year after the date of enactment of this Act, the Secretary of Transportation and the Secretary of Homeland Security shall execute and develop an annex to the memorandum of agreement between the two departments signed on September 28, 2004, governing the specific roles, delineations of responsibilities, resources and commitments of the Department of Transportation and the Department of Homeland Security, respectively, in addressing railroad transportation security matters, including the processes the departments will follow to promote communications, efficiency, and nonduplication of effort.

(b) RAIL SAFETY REGULATIONS.—Section 20103(a) of title 49, United States Code, is amended by striking ''safety'' the first place it appears, and inserting ''safety, including security,''.

**SEC. 314. RAIL SECURITY ENHANCEMENTS.**

(a) RAIL POLICE OFFICERS.—Section 28101 of title 49, United States Code, is amended—

(1) by inserting ''(a) IN GENERAL.—'' before ''Under'';

(2) by striking ''the rail carrier'' each place it appears and inserting ''any rail carrier''; and

(3) by adding at the end the following:

''(b) LIMITATION.—Except to the extent necessary to carry out subsection (a), a rail police officer employed by a Class I or Class II railroad as identified by the Surface Transportation Board has no authority to enforce any rule, policy, or practice of, or labor agreement by, a rail carrier relating to personnel management or labor relations other than those involving safety or security. Nothing in this subsection shall preclude a rail police officer from performing any activities not covered by subsection (a) that may be performed by any other employee of a railroad, provided that the rail police officer does not use his or her position as a rail police officer in performing such activities.''.

(b) REVIEW OF RAIL REGULATIONS.—Within 1 year after the date of enactment of this Act, the Secretary of Transportation, in consultation with the Secretary of Homeland Security and the Assistant Secretary of Homeland Security (Transportation Security Administration), shall review existing rail regulations of the Department of Transportation for the purpose of identifying areas in which those regulations need to be revised to improve rail security.

**SEC. 315. WELDED RAIL AND TANK CAR SAFETY IMPROVEMENTS.**

(a) TRACK STANDARDS.—

(1) IN GENERAL.—Within 90 days after the date of enactment of this Act, the Federal Railroad Administration shall—

(A) require each track owner using continuous welded rail track to include procedures

(in its procedures filed with the Administration pursuant to section 213.119 of title 49, Code of Federal Regulations) to improve the identification of cracks in rail joint bars;

(B) instruct Administration track inspectors to obtain copies of the most recent continuous welded rail programs of each railroad within the inspectors' areas of responsibility and require that inspectors use those programs when conducting track inspections; and

(C) establish a program to review continuous welded rail joint bar inspection data from railroads and Administration track inspectors periodically.

(2) INSPECTION.—Whenever the Administration determines that it is necessary or appropriate the Administration may require railroads to increase the frequency of inspection, or improve the methods of inspection, of joint bars in continuous welded rail.

(b) TANK CAR STANDARDS.—The Federal Railroad Administration shall—

(1) validate a predictive model to quantify the relevant dynamic forces acting on railroad tank cars under accident conditions within 1 year after the date of enactment of this Act; and

(2) initiate a rulemaking to develop and implement appropriate design standards for pressurized tank cars within 18 months after the date of enactment of this Act.

(c) OLDER TANK CAR IMPACT RESISTANCE ANALYSIS AND REPORT.—Within 1 year after the date of enactment of this Act the Federal Railroad Administration shall conduct a comprehensive analysis to determine the impact resistance of the steels in the shells of pressure tank cars constructed before 1989. Within 6 months after completing that analysis the Administration shall—

(1) establish a program to rank those cars according to their risk of catastrophic fracture and separation;

(2) implement measures to eliminate or mitigate this risk; and

(3) transmit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure setting forth the measures implemented.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Federal Railroad Administration $1,000,000 for fiscal year 2006 to carry out this section, such sums to remain available until expended.

**SEC. 316. REPORT REGARDING IMPACT ON SECURITY OF TRAIN TRAVEL IN COMMUNITIES WITHOUT GRADE SEPARATION.**

(a) STUDY.—The Secretary of Transportation, in consultation with the Secretary of Homeland Security, the Assistant Secretary of Homeland Security (Transportation Security Administration), and State and local government officials, shall conduct a study on the impact of blocked highway-railroad grade crossings on the ability of emergency responders, including ambulances and police, fire, and other emergency vehicles, to perform public safety and security duties in the event of a terrorist attack.

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary shall submit a report to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate on the findings of the study conducted under subsection (a) and recommendations for reducing the impact of blocked crossings on emergency response capabilities.

**SEC. 317. STUDY OF FOREIGN RAIL TRANSPORT SECURITY PROGRAMS.**

(a) REQUIREMENT FOR STUDY.—Within one year after the date of enactment of the Rail Security Act of 2005, the Comptroller General shall complete a study of the rail passenger transportation security programs that are carried out for rail transportation systems in Japan, member nations of the European Union, and other foreign countries.

(b) PURPOSE.—The purpose of the study shall be to identify effective rail transportation security measures that are in use in foreign rail transportation systems, including innovative measures and screening procedures determined effective.

(c) REPORT.—The Comptroller General shall submit a report on the results of the study to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure. The report shall include the Comptroller General's assessment regarding whether it is feasible to implement within the United States any of the same or similar security measures that are determined effective under the study.

**SEC. 318. PASSENGER, BAGGAGE, AND CARGO SCREENING.**

(a) REQUIREMENT FOR STUDY AND REPORT.—The Secretary of Homeland Security, in cooperation with the Secretary of Transportation through the Assistant Secretary of Homeland Security (Transportation Security Administration) and other appropriate agencies, shall—

(1) study the cost and feasibility of requiring security screening for passengers, baggage, and cargo on passenger trains including an analysis of any passenger train screening pilot programs undertaken by the Department of Homeland Security; and

(2) report the results of the study, together with any recommendations that the Secretary of Homeland Security may have for implementing a rail security screening program to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure within 1 year after the date of enactment of this Act.

(b) AUTHORIZATION OF APPROPRIATIONS.—Out of funds appropriated pursuant to section 114(u)(2) of title 49, United States Code, there shall be made available to the Secretary of Homeland Security to carry out this section $1,000,000 for fiscal year 2006.

**SEC. 319. PUBLIC AWARENESS.**

Not later than 90 days after the date of enactment of this Act, the Secretary of Homeland Security, in consultation with the Secretary of Transportation, shall develop a national plan for public outreach and awareness. Such plan shall be designed to increase awareness of measures that the general public, railroad passengers, and railroad employees can take to increase railroad system security. Such plan shall also provide outreach to railroad carriers and their employees to improve their awareness of available technologies, ongoing research and development efforts, and available Federal funding sources to improve railroad security. Not later than 9 months after the date of enactment of this Act, the Secretary of Transportation shall implement the plan developed under this section.

**SEC. 320. RAILROAD HIGH HAZARD MATERIAL TRACKING.**

(a) WIRELESS COMMUNICATIONS.—

(1) IN GENERAL.—Within 6 months after the date of enactment of this Act, the Secretary of Transportation shall develop a program that will encourage the equipping of rail cars transporting high hazard materials (as defined in section 305(g) of this Act) in quantities equal to or greater than the quantities specified in subpart 171.800 of title 49, Code of Federal Regulations, with wireless terrestrial or satellite communications technology that provides—

(A) car position location and tracking capabilities;

(B) notification of rail car depressurization, breach, or unsafe temperature; and

(C) notification of hazardous material release.

(2) COORDINATION.—In developing the program required by paragraph (1), the Secretary shall—

(A) consult with the Secretary of Homeland Security and the Assistant Secretary of Homeland Security (Transportation Security Administration) to coordinate the program with any ongoing or planned efforts for rail car tracking at the Department of Homeland Security; and

(B) ensure that the program is consistent with recommendations and findings of the Department of Homeland Security's hazardous material tank rail car tracking pilot programs.

(b) FUNDING.—Out of funds appropriated pursuant to section 102 of this Act, there shall be made available to the Secretary of Homeland Security through the Assistant Secretary of Homeland Security (Transportation Security Administration) to carry out this section $3,000,000 for each of fiscal years 2006, 2007, and 2008.

## TITLE IV—IMPROVED MOTOR CARRIER, BUS, AND HAZARDOUS MATERIAL SECURITY

**SEC. 401. BACKGROUND CHECKS FOR DRIVERS HAULING HAZARDOUS MATERIALS.**

(a) FOREIGN DRIVERS.—

(1) IN GENERAL.—No commercial motor vehicle operator registered to operate in Mexico or Canada may operate a commercial motor vehicle transporting a hazardous material in commerce in the United States until the operator has undergone a background records check similar to the background records check required for commercial motor vehicle operators licensed in the United States to transport hazardous materials in commerce.

(2) DEFINITIONS.—In this subsection:

(A) HAZARDOUS MATERIALS.—The term ''hazardous material'' has the meaning given that term in section 5102(2) of title 49, United States Code.

(B) COMMERCIAL MOTOR VEHICLE.—The term ''commercial motor vehicle'' has the meaning given that term by section 31101 of title 49, United States Code.

(b) OTHER DRIVERS.—

(1) EMPLOYER NOTIFICATION.—Within 90 days after the date of enactment of this Act, the Assistant Secretary of Homeland Security (Transportation Security Administration), shall develop and implement a process for the notification of a hazmat employer (as defined in section 5102(4) of title 49, United States Code), if appropriate considering the potential security implications, designated by an applicant seeking a threat assessment under part 1572 of title 49, Code of Federal Regulations, if the Transportation Security Administration, in an initial notification of threat assessment or a final notification of threat assessment, served on the applicant determines that the applicant does not meet the standards set forth in section 1572.5(d) of title 49, Code of Federal Regulations.

(2) RELATIONSHIP TO OTHER BACKGROUND RECORDS CHECKS.—

(A) ELIMINATION OF REDUNDANT CHECKS.—An individual with respect to whom the Transportation Security Administration—

(i) has performed a security threat assessment under part 1572 of title 49, Code of Federal Regulations, and

(ii) has issued a notification of no security threat under section 1572.5(g) of that title,

is deemed to have met the requirements of any other background check that is equivalent to, or less stringent than, the background check performed under section 5103a

of title 49, United States Code, that is required for purposes of any Federal law applicable to transportation workers.

(B) DETERMINATION BY ASSISTANT SECRETARY.—Within 30 days after the date of enactment of this Act, the Assistant Secretary of Homeland Security (Transportation Security Administration) shall initiate a rulemaking proceeding, including notice and opportunity for comment, that sets forth the background checks and other similar security or threat assessment requirements applicable to transportation workers under Federal law to which subparagraph (A) applies.

(C) FUTURE RULEMAKINGS.—The Assistant Secretary shall make a determination under the criteria established under subparagraph (B) with respect to any rulemaking proceeding to establish or modify required background checks for transportation workers initiated after the date of enactment of this Act.

(c) APPEALS PROCESS FOR MORE STRINGENT STATE PROCEDURES.—If a State establishes standards for applicants for a hazardous materials endorsement to a commercial driver's license that, as determined by the Secretary of Homeland Security, are more stringent than the standards set forth in section 1572.5(d) of title 49, Code of Federal Regulations, then the State shall also provide an appeals process similar to the process provided under section 1572.141 of title 49, Code of Federal Regulations, by which an applicant denied a hazardous materials endorsement to a commercial driver's license by that State may appeal that denial in a manner substantially similar to, and to the same extent as, an individual who received an initial notification of threat assessment under part 1572 of that title.

(d) CLARIFICATION OF TERM DEFINED IN REGULATIONS.—The term ''severe transportation security incident'', as defined in section 1572.3 of title 49, Code of Federal Regulations, does not include a work stoppage or other nonviolent employee-related action resulting from an employer-employee dispute. Within 30 days after the date of enactment of this Act, the Secretary of Homeland Security shall modify the definition of that term to reflect the preceding sentence.

(e) BACKGROUND CHECK CAPACITY.—The Assistant Secretary of Homeland Security (Transportation Security Administration) shall transmit a report by October 1, 2005, to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Homeland Security on the implementation of fingerprint-based security threat assessments and the adequacy of fingerprinting locations, personnel, and resources to accomplish the timely processing of fingerprint-based security threat assessments for individuals holding commercial driver's licenses who are applying to renew hazardous materials endorsements.

**SEC. 402. WRITTEN PLANS FOR HAZARDOUS MATERIALS HIGHWAY ROUTING.**

Within 180 days after the date of enactment of this Act, the Secretary of Transportation shall require each motor carrier that is required to have a hazardous material safety permit under part 385 of title 49, Code of Federal Regulations, to maintain a written route plan that meets the requirements of section 397.101 of that title when transporting the type and quantity of hazardous materials described in section 385.403 of that title.

**SEC. 403. MOTOR CARRIER HIGH HAZARD MATERIAL TRACKING.**

(a) WIRELESS COMMUNICATIONS.—Within 2 years after the date of enactment of this Act, the Assistant Secretary of Homeland Security (Transportation Security Administration), in consultation with the Secretary of Transportation, shall require, consistent with the recommendations and finding contained in the report on the Hazardous Material Safety and Security Operation Field Test released by the Federal Motor Carrier Safety Administration on November 11, 2004, commercial motor vehicles transporting high hazard materials (as defined in section 305(g) of this Act) in quantities equal to or greater than the quantities specified in subpart 171.800 of title 49, Code of Federal Regulations, to be equipped with wireless terrestrial or satellite communications technology that provides—

(1) continuous communications;

(2) vehicle position location and tracking capabilities; and

(3) a feature that allows a driver of such vehicles to broadcast an emergency message.

(b) EXEMPTIONS.—The Assistant Secretary may grant a 2-year waiver of this requirement for a motor carrier for the commercial motor vehicles it operates if—

(1) adequate technology is not readily available;

(2) available technology is not sufficiently reliable; or

(3) the size of a motor carrier or the infrequency with which it transports high hazard material shipments makes the requirement overly burdensome.

(c) ASSISTANCE PROGRAM.—The Assistant Secretary may develop an assistance program to provide technical guidance and grants to motor carriers who receive waivers under subsection (b)(3) to expedite compliance with subsection (a) of this section.

**SEC. 404. TRUCK LEASING SECURITY TRAINING GUIDELINES.**

(a) IN GENERAL.—Within 180 days after the date of enactment of this Act the Assistant Secretary of Homeland Security (Transportation Security Administration), in consultation with the Federal Motor Carrier Safety Administration, shall develop and make available in written or electronic form security training guidelines for short-term truck leasing operations.

(b) CONTENTS.—The truck leasing security training guidelines shall—

(1) include information for short-term truck leasing companies on the appropriate contents of employee security training efforts designed to enable employees to recognize terrorist threats and criminal activity; and

(2) contain a list of best practices developed by the Assistant Secretary.

(c) OUTREACH.—The Assistant Secretary, through each Federal maritime and land regional security manager, shall hold public information and outreach sessions to present the truck leasing security training guidelines to short-term truck leasing companies.

(d) FUNDING.—Out of funds appropriated pursuant to section 114(u)(2) of title 49, United States Code, there shall be made available to the Assistant Secretary of Homeland Security (Transportation Security Administration), to carry out this section $1,000,000 for fiscal year 2006.

**SEC. 405. HAZARDOUS MATERIALS SECURITY INSPECTIONS AND ENFORCEMENT.**

(a) IN GENERAL.—The Assistant Secretary of Homeland Security (Transportation Security Administration) shall establish a program within the Transportation Security Administration, in consultation with the Secretary of Transportation, for reviewing hazardous materials security plans required under part 172, title 49, Code of Federal Regulations, within 180 days after the date of enactment of this Act.

(b) CIVIL PENALTY.—The failure, by a shipper, carrier, or other person subject to part 172 of title 49, Code of Federal Regulations, to comply with any applicable section of that part within 180 days after being notified by the Assistant Secretary of such failure to comply, is punishable by a civil penalty imposed by the Assistant Secretary under title 49, United States Code. For purposes of this subsection, each day of noncompliance after the 181st day following the date on which the pipeline operator received notice of the failure shall constitute a separate failure.

(c) COMPLIANCE REVIEW.—In reviewing the compliance of hazardous materials shippers, carriers, or other persons subject to part 172 of title 49, Code of Federal Regulations, with the provisions of that part, the Assistant Secretary shall utilize risk assessment methodologies to prioritize vulnerabilities and to target review and enforcement actions to the most vulnerable and critical hazardous materials transportation operations.

(d) FUNDING.—Out of funds appropriated pursuant to section 114(u)(2) of title 49, United States Code, there shall be made available to the Assistant Secretary of Homeland Security (Transportation Security Administration), to carry out this section—

(1) $2,000,000 for fiscal year 2006;

(2) $2,000,000 for fiscal year 2007; and

(3) $2,000,000 for fiscal year 2008.

**SEC. 406. PIPELINE SECURITY AND INCIDENT RECOVERY PLAN.**

(a) IN GENERAL.—The Secretary of Homeland Security, in consultation with the Secretary of Transportation and the Pipeline and Hazardous Materials Safety Administration, and in accordance with the Memorandum of Understanding Annex executed under section 408, shall develop a Pipeline Security and Incident Recovery Protocols Plan. The plan shall include—

(1) a plan for the Federal Government to provide increased security support to the most critical interstate and intrastate natural gas and hazardous liquid transmission pipeline infrastructure and operations as determined under section 407—

(A) at high or severe security threat levels of alert; and

(B) when specific security threat information relating to such pipeline infrastructure or operations exists; and

(2) an incident recovery protocol plan, developed in conjunction with interstate and intrastate transmission and distribution pipeline operators and terminals and facilities operators connected to pipelines, to develop protocols to ensure the continued transportation of natural gas and hazardous liquids to essential markets and for essential public health or national defense uses in the event of an incident affecting the interstate and intrastate natural gas and hazardous liquid transmission and distribution pipeline system, which shall include protocols for granting access to pipeline operators for pipeline infrastructure repair, replacement or bypass following an incident.

(b) EXISTING PRIVATE AND PUBLIC SECTOR EFFORTS.—The plan shall take into account actions taken or planned by both public and private entities to address identified pipeline security issues and assess the effective integration of such actions.

(c) CONSULTATION.—In developing the plan under subsection (a), the Secretary shall consult with interstate and intrastate transmission and distribution pipeline operators, pipeline labor, first responders, shippers of hazardous materials, State Departments of Transportation, public safety officials, and other relevant parties.

(d) REPORT.—

(1) CONTENTS.—Not later than 180 days after the date of enactment of this Act, the Secretary shall transmit to the Committee on Commerce, Science, and Transportation

of the Senate, the Committee on Homeland Security of the House of Representatives, and the Committee on Transportation and Infrastructure of the House of Representatives a report containing the plan required by subsection (a), along with an estimate of the cost to implement any recommendations.

(2) FORMAT.—The Secretary may submit the report in both classified and redacted formats if the Secretary determines that such action is appropriate or necessary.

(e) FUNDING.—Out of funds appropriated pursuant to section 114(u)(2) of title 49, United States Code, there shall be made available to the Secretary of Homeland Security to carry out this section $1,000,000 for fiscal year 2006.

**SEC. 407. PIPELINE SECURITY INSPECTIONS AND ENFORCEMENT.**

(a) IN GENERAL.—Within 180 days after the date of enactment of this Act the Assistant Secretary of Homeland Security (Transportation Security Administration), in consultation with the Secretary of Transportation, shall establish a program within the Transportation Security Administration for reviewing pipeline operator adoption of recommendations in the September, 5, 2002, Department of Transportation Research and Special Programs Administration Pipeline Security Information Circular, including the review of pipeline security plans and critical facility inspections, as determined by the Assistant Secretary.

(b) REVIEW AND INSPECTION.—Within 9 months after the date of enactment of this Act the Assistant Secretary shall complete a review of the pipeline security plan and an inspection of the critical facilities of the 100 most critical pipeline operators, as determined by the Assistant Secretary, covered by the September, 5, 2002, circular.

(c) COMPLIANCE REVIEW METHODOLOGY.—In reviewing pipeline operator compliance under subsections (a) and (b), the Assistant Secretary shall utilize risk assessment methodologies to prioritize vulnerabilities and to target inspection and enforcement actions to the most vulnerable and critical pipeline assets.

(d) REGULATIONS.—Within 1 year after the date of enactment of this Act, the Assistant Secretary shall issue security regulations for natural gas and hazardous liquid pipelines and pipeline facilities. The regulations should incorporate the guidance provided to pipeline operators by the September 5, 2002, Department of Transportation Research and Special Programs Administration's Pipeline Security Information Circular and contain additional requirements as necessary based upon the results of the inspections performed under subsection (b). The regulations shall include the imposition of civil penalties for non-compliance. The Assistant Secretary shall publish a schedule of those civil penalties.

(e) FUNDING.—Out of funds appropriated pursuant to section 114(u)(2) of title 49, United States Code, there shall be made available to the Assistant Secretary of Homeland Security (Transportation Security Administration), to carry out this section—

(1) $2,000,000 for fiscal year 2006;

(2) $2,000,000 for fiscal year 2007; and

(3) $2,000,000 for fiscal year 2008.

**SEC. 408. MEMORANDUM OF AGREEMENT.**

Within 1 year after the date of enactment of this Act, the Secretary of Transportation and the Assistant Secretary of Homeland Security (Transportation Security Administration), shall execute and develop an annex to the memorandum of agreement between the two departments signed on September 28, 2004, governing the specific roles, delineations of responsibilities, resources and commitments of the Department of Transportation and the Department of Homeland Security, respectively, in addressing pipeline security and hazardous material transportation security matters, including the processes the departments will follow to promote communications, efficiency, and nonduplication of effort.

**SEC. 409. NATIONAL PUBLIC SECTOR RESPONSE SYSTEM.**

(a) DEVELOPMENT.—The Secretary of Homeland Security, in conjunction with the Secretary of Transportation, shall develop a national public sector response system to receive security alerts, emergency messages, and other information generated by various wireless terrestrial or satellite communications technologies used to track the transportation of high hazard materials which can provide accurate, timely, and actionable information to appropriate first responder, law enforcement and public safety, and homeland security officials, as appropriate, regarding accidents, threats, thefts, or other safety and security risks or incidents. In developing this system, they shall consult with law enforcement and public safety officials, hazardous material shippers, motor carriers, railroads, organizations representing hazardous material employees, State transportation and hazardous materials officials, Operation Respond, and commercial motor vehicle and hazardous material safety groups. The development of the national public sector response system shall be based upon the public sector response center developed for the hazardous material safety and security operational field test undertaken by the Federal Motor Carrier Safety Administration.

(b) CAPABILITY.—The national public sector response system shall be able to receive, as appropriate,—

(1) negative driver verification alerts;

(2) Out-of-route alerts;

(3) Driver panic or emergency alerts; and

(4) tampering or release alerts.

(c) CHARACTERISTICS.—The national public sector response system shall—

(1) be an exception-based system;

(2) be integrated with other private and public sector operation reporting and response systems and all Federal homeland security threat analysis systems or centers (including the National Response Center); and

(3) provide users the ability to create rules for alert notification messages.

(d) CARRIER PARTICIPATION.—Within 180 days after the national public sector response system is operational, as determined by the Secretary, each motor carrier and railroad transporting high hazard materials, or entities acting on their behalf who receive such wireless communication alerts from motor carriers or railroads, shall provide the information listed in subsection (b) to the national public sector response system and vehicle or rail car location information to extent possible with the wireless communication technology used by the motor carrier or railroad.

(e) CALL-IN NUMBER.—The national public sector response system shall be designed to include an automated call-in system that allows commercial motor vehicle drivers, railroad employees, and hazardous material employees involved in the transportation of high hazard materials to report accidents, threats, thefts, or other safety and security risks or incidents to the national public sector response system using cellular or other telephone technology.

(f) DATA PRIVACY.—The national public sector response system shall be designed to ensure appropriate protection of data and information relating to motor carriers and drivers.

(g) REPORT.—Not later than 180 days after the date of enactment of this Act, the Secretary shall transmit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure a report on the estimated total cost to establish and annually operate the national public sector response system under subsection (a), together with any recommendations for generating private sector participation and investment in the development and operation of the national public sector response system.

(h) FUNDING.—Out of funds appropriated pursuant to section 114(u)(2) of title 49, United States Code, there shall be made available to the Secretary of Homeland Security to carry out this section—

(1) $1,000,000 for fiscal year 2006;

(2) $1,000,000 for fiscal year 2007; and

(3) $1,000,000 for fiscal year 2008.

**SEC. 410. OVER-THE-ROAD BUS SECURITY ASSISTANCE.**

(a) IN GENERAL.—The Assistant Secretary of Homeland Security (Transportation Security Administration), shall establish a program for making grants to private operators of over-the-road buses for system-wide security improvements to their operations, including—

(1) constructing and modifying terminals, garages, facilities, or over-the-road buses to assure their security;

(2) protecting or isolating the driver;

(3) acquiring, upgrading, installing, or operating equipment, software, or accessorial services for collection, storage, or exchange of passenger and driver information through ticketing systems or otherwise, and information links with government agencies;

(4) training employees in recognizing and responding to security threats, evacuation procedures, passenger screening procedures, and baggage inspection;

(5) hiring and training security officers;

(6) installing cameras and video surveillance equipment on over-the-road buses and at terminals, garages, and over-the-road bus facilities;

(7) creating a program for employee identification or background investigation;

(8) establishing and upgrading an emergency communications system linking operational headquarters, over-the-road buses, law enforcement, and emergency personnel; and

(9) implementing and operating passenger screening programs at terminals and on over-the-road buses.

(b) REIMBURSEMENT.—A grant under this section may be used to provide reimbursement to private operators of over-the-road buses for extraordinary security-related costs for improvements described in paragraphs (1) through (9) of subsection (a), determined by the Assistant Secretary to have been incurred by such operators since September 11, 2001.

(c) FEDERAL SHARE.—The Federal share of the cost for which any grant is made under this section shall be 90 percent.

(d) DUE CONSIDERATION.—In making grants under this section, the Assistant Secretary shall give due consideration to private operators of over-the-road buses that have taken measures to enhance bus transportation security from those in effect before September 11, 2001, and shall prioritize grant funding based on the magnitude and severity of the security threat to bus passengers and the ability of the funded project to reduce, or respond to, that threat.

(e) GRANT REQUIREMENTS.—A grant under this section shall be subject to all the terms and conditions that a grant is subject to under section 3038(f) of the Transportation Equity Act for the 21st Century (49 U.S.C. 5310 note; 112 Stat. 393).

(f) PLAN REQUIREMENT.—

(1) IN GENERAL.—The Assistant Secretary may not make a grant under this section to a private operator of over-the-road buses until the operator has first submitted to the Assistant Secretary—

(A) a plan for making security improvements described in subsection (a) and the Assistant Secretary has approved the plan; and

(B) such additional information as the Assistant Secretary may require to ensure accountability for the obligation and expenditure of amounts made available to the operator under the grant.

(2) COORDINATION.—To the extent that an application for a grant under this section proposes security improvements within a specific terminal owned and operated by an entity other than the applicant, the applicant shall demonstrate to the satisfaction of the Assistant Secretary that the applicant has coordinated the security improvements for the terminal with that entity.

(g) OVER-THE-ROAD BUS DEFINED.—In this section, the term ''over-the-road bus'' means a bus characterized by an elevated passenger deck located over a baggage compartment.

(h) BUS SECURITY ASSESSMENT.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Assistant Secretary of Homeland Security (Transportation Security Administration), shall transmit to the Committee on Commerce, Science, and Transportation of the Senate, the Committee on Transportation and Infrastructure of the House of Representatives, a preliminary report in accordance with the requirements of this section.

(2) CONTENTS OF PRELIMINARY REPORT.—The preliminary report shall include—

(A) an assessment of the over-the-road bus security grant program;

(B) an assessment of actions already taken to address identified security issues by both public and private entities and recommendations on whether additional safety and security enforcement actions are needed;

(C) an assessment of whether additional legislation is needed to provide for the security of Americans traveling on over-the-road buses;

(D) an assessment of the economic impact that security upgrades of buses and bus facilities may have on the over-the-road bus transportation industry and its employees;

(E) an assessment of ongoing research and the need for additional research on over-the-road bus security, including engine shut-off mechanisms, chemical and biological weapon detection technology, and the feasibility of compartmentalization of the driver; and

(F) an assessment of industry best practices to enhance security.

(3) CONSULTATION WITH INDUSTRY, LABOR, AND OTHER GROUPS.—In carrying out this section, the Assistant Secretary shall consult with over-the-road bus management and labor representatives, public safety and law enforcement officials, and the National Academy of Sciences.

(i) FUNDING.—Out of funds appropriated pursuant to section 114(u)(2) of title 49, United States Code, there shall be made available to the Assistant Secretary of Homeland Security (Transportation Security Administration), to carry out this section—

(1) $50,000,000 for fiscal year 2006;

(2) $50,000,000 for fiscal year 2007; and

(3) $50,000,000 for fiscal year 2008.

Amounts made available pursuant to this subsection shall remain available until expended.

## TITLE V—IMPROVED MARITIME SECURITY

### SEC. 501. ESTABLISHMENT OF ADDITIONAL JOINT OPERATIONAL CENTERS FOR PORT SECURITY.

(a) IN GENERAL.—In order to improve interagency cooperation, unity of command, and the sharing of intelligence information in a common mission to provide greater protection for port and intermodal transportation systems against acts of terrorism, the Secretary of Homeland Security, acting through the Commandant of the Coast Guard, shall establish joint operational centers for port security at all Tier 1 ports to the extent practicable within 2 years ater the date of enactment of this Act.

(b) CHARACTERISTICS.—The joint operational centers shall—

(1) be based on the most appropriate compositional and operational characteristics of the pilot project joint operational centers for port security in Miami, Florida, Norfolk/Hampton Roads, Virginia, Charleston, South Carolina, and San Diego, California;

(2) be adapted to meet the security needs, requirements, and resources of the individual port area at which each is operating;

(3) provide for participation by the United States Customs and Border Protection Agency, the Transportation Security Administration, the Department of Defense, and other Federal agencies, as determined to be appropriate by the Secretary of Homeland Security, and State and local law enforcement or port security agencies and personnel; and

(4) be incorporated in the implementation of—

(A) maritime transportation security plans developed under section 70103 of title 46, United States Code;

(B) maritime intelligence activities under section 70113 of that title;

(C) short and long range vessel tracking under sections 70114 and 70115 of that title;

(D) secure transportation systems under section 70116 of that title;

(E) the Bureau of Customs and Border Protection's screening and high-risk cargo inspection programs; and

(F) the transportation security incident response plans required by section 70104 of that title.

(c) 2005 ACT REPORT REQUIREMENT.—Nothing in this section relieves the Commandant of the Coast Guard from compliance with the requirements of section 807 of the Coast Guard and Maritime Transportation Act of 2004. The Commandant shall utilize the information developed in making the report required by that section in carrying out the requirements of this section.

(d) BUDGET AND COST-SHARING ANALYSIS.—Within 180 days after the date of enactment of this Act, the Secretary shall transmit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure a proposed budget analysis for implementing subsection (a), including cost-sharing arrangements with other Federal departments and agencies involved in the joint operation of the centers.

### SEC. 502. AMTS PLAN TO INCLUDE SALVAGE RESPONSE PLAN.

Section 70103(b)(2) of title 46, United States Code, is amended—

(1) by striking ''and'' after the semicolon in subparagraph (E);

(2) by redesignating subparagraph (F) as subparagraph (G); and

(3) by inserting after subparagraph (E) the following:

''(F) include a salvage response plan—

''(i) to identify salvage equipment capable of restoring operational trade capacity; and

''(ii) to ensure that the flow of cargo through United States ports is re-established as efficiently and quickly as possible after a transportation security incident.''.

### SEC. 503. PRIORITY TO CERTAIN VESSELS IN POST-INCIDENT RESUMPTION OF TRADE.

Section 70103(a)(2)(J) of title 46, United States Code, is amended by inserting after ''incident.'' the following: ''The plan shall provide, to the extent practicable, preference in the reestablishment of the flow of cargo through United States ports after a transportation security incident to—

''(i) vessels that have a vessel security plan approved under subsection (c); and

''(ii) vessels manned by individuals who are described in section 70105(b)(2)(B) and who have undergone a background records check under section 70105(d) or who hold transportation security cards issued under section 70105.''.

### SEC. 504. ASSISTANCE FOR FOREIGN PORTS.

(a) IN GENERAL.—Section 70109 of title 46, United States Code, is amended—

(1) by adding at the end the following:

''(c) FOREIGN ASSISTANCE PROGRAMS.—

''(1) IN GENERAL.—The Administrator of the Maritime Administration, in coordination with the Secretary of State and the Secretary of Energy, shall identify foreign assistance programs that could facilitate implementation of port security antiterrorism measures in foreign countries. The Administrator and the Secretary shall establish a program to utilize those programs that are capable of implementing port security antiterrorism measures at ports in foreign countries that the Secretary finds, under section 70108, to lack effective antiterrorism measures.

''(2) CARIBBEAN BASIN.—The Administrator, in coordination with the Secretary of State and in consultation with the Organization of American States, shall place particular emphasis on utilizing programs to facilitate the implementation of port security antiterrorism measures at the ports located in the Caribbean Basin, as such ports pose unique security and safety threats to the United States due to—

''(A) the strategic location of such ports between South America and United States;

''(B) the relative openness of such ports; and

''(C) the significant number of shipments of narcotics to the United States that are moved through such ports.''.

(b) REPORT ON SECURITY AT PORTS IN THE CARIBBEAN BASIN.—Not later than 60 days after the date of enactment of this Act, the Secretary of Homeland Security shall submit to the Committee on Commerce, Science, and Transportation of the Senate and Committee on Transportation and Infrastructure of the House of Representatives a report on the security of ports in the Caribbean Basin. The report shall include the following:

(1) An assessment of the effectiveness of the measures employed to improve security at ports in the Caribbean Basin and recommendations for any additional measures to improve such security.

(2) An estimate of the number of ports in the Caribbean Basin that will not be secured by January 1, 2006, and an estimate of the financial impact in the United States of any action taken pursuant to section 70110 of title 46, United States Code, that affects trade between such ports and the United States.

(3) An assessment of the additional resources and program changes that are necessary to maximize security at ports in the Caribbean Basin.

### SEC. 505. IMPROVED DATA USED FOR TARGETED CARGO SEARCHES.

(a) IN GENERAL.—In order to provide the best possible data for the automated target system that identifies high-risk cargo for inspection, the Secretary of Homeland Security shall require importers shipping goods to the United State via cargo container to supply entry data under the advance notification requirements under section 4.7 of the Customs Regulations (19 C.F.R. 4.7).

(b) DEADLINE.—The requirement imposed under subsection (a) shall apply to goods entered after December 31, 2006.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Homeland Security $5,000,000 for each of fiscal years 2006, 2007, and 2008 to carry out the automated targeting system program to identify high-risk oceanborne container cargo for inspection. The amounts authorized by this subsection shall be in addition to any other amounts authorized to be appropriated to carry out that program.

(d) EVALUATION BY COMPTROLLER GENERAL.—

(1) IN GENERAL.—The Comptroller General shall evaluate action taken by the Department of Homeland Security to address the deficiencies in its automated targeting system strategy identified in the Government Accountability Office's report entitled ''Homeland Security Challenges Remain in the Targeting of Oceangoing Cargo Containers for Inspection'' (GAO-04-352NI). In making the evaluation, the Comptroller General shall assess whether all key elements of a risk management framework and recognized modeling practices have been incorporated in the Department's strategy, including—

(A) threat, criticality, vulnerability, and risk assessments;

(B) external peer review of the automated targeting system;

(C) a mandatory random sampling program;

(D) simulated events to test the targeting strategy; and

(E) effectiveness reviews of risk mitigation actions.

(2) REPORT.—The Comptroller General shall transmit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure within 1 year after the date of enactment of this Act containing the results of the evaluation, together with any recommendations the Comptroller General deems appropriate.

**SEC. 506. INCREASE IN NUMBER OF CUSTOMS INSPECTORS ASSIGNED OVERSEAS.**

(a) IN GENERAL.—The Secretary of Homeland Security shall substantially increase the number of United States Customs Service inspectors assigned to duty outside the United States under the Container Security Initiative of the United States Customs Service with responsibility for inspecting intermodal shipping containers being shipped to the United States.

(b) STAFFING CRITERIA.—In carrying out subsection (a) the Secretary of Homeland Security shall determine the appropriate level for assignment and density of customs inspectors at selected international port facilities by a threat, vulnerability, and risk analysis which, at a minimum, considers—

(1) the volume of containers shipped;

(2) the ability of the host government to assist in both manning and providing equipment and resources;

(3) terrorist intelligence known of importer vendors, suppliers or manufactures; and

(4) other criteria as determined in consult with experts in the shipping industry, terrorism, and shipping container security.

(c) MINIMUM NUMBER.—The total number of customs inspectors assigned to international port facilities shall not be less than the number determined as a result of the threat, vulnerability, and risk assessment analysis which is validated by the Administrator of the Transportation Security Administration within 180 days after the date of enactment of this Act.

(d) PLAN.—The Secretary shall submit a plan to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure, with timelines, for phasing inspectors into selected port facilities within 180 days after the enactment of this Act.

**SEC. 507. RANDOM INSPECTION OF CONTAINERS.**

(a) IN GENERAL.—The Under Secretary of Homeland Security for Border and Transportation Security shall develop and implement a plan for random inspection of shipping containers in addition to any targeted or preshipment inspection of such containers required by law or regulation or conducted under any other program conducted by the Under Secretary.

(b) CIVIL PENALTY FOR ERRONEOUS MANIFEST.—

(1) IN GENERAL.—Except as provided in paragraph (2), if the Under Secretary determines on the basis of an inspection conducted under subsection (a) that there is a discrepancy between the contents of a shipping container and the manifest for that container, the Under Secretary may impose a civil penalty.

(2) MANIFEST DISCREPANCY REPORTING.—The Under Secretary may not impose a civil penalty under paragraph (1) if a manifest discrepancy report is filed with respect to the discrepancy within the time limits established by Customs Directive No. 3240–067A (or any subsequently issued directive governing the matters therein) for filing a manifest discrepancy report.

**SEC. 508. CARGO SECURITY.**

(a) IN GENERAL.—Chapter 701 of title 46, United States Code, is amended—

(1) by redesignating the second section 70118 (relating to firearms, arrests, and seizure of property), as added by section 801(a) of the Coast Guard and Maritime Transportation Act of 2004, as section 70119;

(2) by redesignating the first section 70119 (relating to enforcement by State and local officers), as added by section 801(a) of the Coast Guard and Maritime Transportation Act of 2004, as section 70120;

(3) by redesignating the second section 70119 (relating to civil penalty), as redesignated by section 802(a)(1) of the Coast Guard and Maritime Transportation Act of 2004, as section 70122; and

(4) by inserting after section 70120 the following:

**''§ 70121. Container security initiative**

''(a) IN GENERAL.—Pursuant to the standards established under subsection (b)(1) of section 70116—

''(1) the Secretary of Homeland Security shall promulgate standards and procedures for—

''(A) the inspection of cargo in a foreign port intended for shipment to the United States by physical examination or nonintrusive examination by technological means; and

''(B) evaluating and screening cargo prior to loading in a foreign port for shipment to the United States, either directly or via a foreign port; and

''(2) the Commissioner of Customs and Border Protection shall—

''(A) execute inspection and screening protocols with authorities in foreign ports to ensure that the standards and procedures promulgated under paragraph (1) are implemented in an effective manner; and

''(B) in consultation with the Transportation Security Oversight Board, develop and maintain an antiterrorism cargo identification, tracking, and screening system for containerized cargo shipped to and from the United States, either directly or via a foreign port.

''(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Homeland Security such sums as may be necessary to carry out this section.''.

(b) CONFORMING AMENDMENTS.—

(1) The chapter analysis for chapter 701 of title 46, United States Code, is amended by striking the items following the item relating to section 70116 and inserting the following:

''70117. In rem liability for civil penalties and certain costs
''70118. Withholding of clearance
''70119. Firearms, arrests, and seizure of property
''70120. Enforcement by State and local officers
''70121. Container security initiative
''70122. Civil penalty''.

(2) Section 70117(a) of title 46, United States Code, as redesignated by subsection (a)(3) of this section, is amended by striking ''section 70120'' and inserting ''section 70122''.

(3) Section 70118(a) of such title is amended by striking ''under section 70120,'' and inserting ''under that section,''.

(4) Section 111 of the Maritime Transportation Security Act of 2002 is repealed.

**SEC. 509. SECURE SYSTEMS OF INTERNATIONAL INTERMODAL TRANSPORTATION.**

(a) IN GENERAL.—Section 70116(a) of title 46, United States Code, is amended—

(1) by striking ''transportation.'' and inserting ''transportation—

''(1) to ensure the security and integrity of shipments of goods to the United States from the point at which such goods are initially packed or loaded for international shipment until they reach their ultimate destination; and

''(2) to facilitate the movement of such goods through the entire supply chain through an expedited security and clearance program.''.

(b) PROGRAM ENHANCEMENTS.—Section 70116(b) of title 46, United States Code, is amended to read as follows:

''(b) PROGRAM ELEMENTS.—In establishing and conducting the program under subsection (a) the Assistant Secretary shall—

''(1) establish standards and procedures for verifying, at the point at which goods are placed in a cargo container for shipping, that the container is free of unauthorized hazardous chemical, biological, or nuclear material and for securely sealing such containers after the contents are so verified;

''(2) establish standards and procedures for securing cargo and monitoring that security while in transit from the point at which it is loaded to the point at which it is finally unloaded;

''(3) develop performance standards to enhance the physical security of shipping containers, including performance standards for seals and locks as part of the container security initiative;

''(4) establish standards and procedures for allowing the United States Government to ensure and validate compliance with this program; and

''(5) incorporate any other measures the Assistant Secretary considers necessary to ensure the security and integrity of international intermodal transport movements.''.

(b) PORT SECURITY USER FEE STUDY.—The Secretary of Homeland Security shall conduct a study of the feasibility and desirability of establishing a system of oceanborne and port-related intermodal transportation user fees that could be imposed and collected as a dedicated revenue source, on a temporary or continuing basis, to provide necessary funding for the improvement and maintenance of enhanced port security. The Assistant Secretary shall submit a report

containing the Assistant Secretary's findings, conclusions, and recommendations (including legislative recommendations if appropriate) to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure within 1 year after date of enactment of this Act.

**SEC. 510. TECHNOLOGY FOR MARITIME TRANSPORTATION SECURITY.**

(a) MINIMUM TECHNOLOGY IMPLEMENTATION AUTHORIZATION.—Section 70107(i)(2)(B) of title 46, United States Code, is amended by inserting ''not less than'' after ''Secretary''.

(b) SET-ASIDES FOR RESEARCH AND DEVELOPMENT.—Notwithstanding any provision of law to the contrary, in the administration of the Department of Homeland Security, the Secretary of Homeland Security shall ensure that, for each fiscal year beginning after the date of enactment of this Act, not less than—

(1) 8 percent of the amounts appropriated to the Transportation Security Administration and the Directorate of Science and Technology for research and development for the fiscal year are obligated or expended for maritime security related projects or programs; and

(2) 2 percent of such amounts are obligated or expended for rail security related projects or programs.

(c) STRATEGIC PLAN.—

(1) IN GENERAL.—Within 90 days after the date of enactment of this Act, the Secretary of Homeland Security shall promulgate a strategic plan for transportation research and development. The Secretary shall update the plan no less frequently than every 2 years thereafter.

(2) CONTENTS.—In the strategic plan, the Secretary shall—

(A) ensure that the research needs for security of all modes of transportation, including aviation, maritime, rail, pipeline, and transit security, are addressed;

(B) identify goals and include measurable objectives;

(C) include an adequate amount of basic research;

(D) define the research and development roles of the Transportation Security Administration and the Directorate of Science and Technology, respectively, to ensure that—

(i) they are aligned;

(ii) the efficient use of research funds is maximized; and

(iii) duplication of projects is prevented or minimized;

(E) coordinate transportation research and development under the plan with the transportation research and development activities of other Federal agencies, including the Department of Transportation and the National Aeronautics and Space Administration; and

(F) base the plan on vulnerability and criticality assessments.

(3) ANNUAL EVALUATION.—The Homeland Security Science and Technology Advisory Committee shall evaluate the plan by October 15th each year, measure progress under the plan against the goals set forth in the plan, and recommend changes to the transportation security research program under the plan.

(4) ANNUAL REPORT TO CONGRESS.—The Secretary shall transmit a copy of the strategic plan, and any revisions of that plan, and a copy of the annual evaluations and recommendations made by the Advisory Committee to the Congress.

(d) NIST TRANSPORTATION SECURITY PROGRAM.—The Secretary of Homeland Security may transfer up to $15,000,000 each fiscal year to the National Institute of Science and Technology to be obligated or expended for a focused program in transportation security under section 28 of the National Institute of Science and Technology Act (15 U.S.C. 278n).

(e) SECURE WORKFORCE INITIATIVE.—Section 70107 of title 46, United States Code, is amended by adding at the end the following:

''(j) SECURE WORKFORCE INITIATIVE.—

''(1) IN GENERAL.—The Secretary shall develop a program in conjunction with technical and community colleges to train port security workforces. The program shall focus on teaching port workers to utilize new technologies and processes to improve port security through the use of screening technologies, information technologies, detection devices, incident response training, and other advanced technologies.

''(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Homeland Security $15,000,000 for each of fiscal years 2005 through 2009 to carry out the program developed under paragraph (1).''.

(f) ESTABLISHMENT OF COMPETITIVE RESEARCH PROGRAM.—

(1) IN GENERAL.—Title III of the Homeland Security Act of 2002 (6 U.S.C. 181 et seq.) is amended by adding at the end the following:

**''SEC. 314. COMPETITIVE RESEARCH PROGRAM.**

''(a) IN GENERAL.—

''(1) ESTABLISHMENT.—The Secretary, acting through the Under Secretary for Science and Technology, shall establish a competitive research program within the Directorate.

''(2) DIRECTOR.—The program shall be headed by a Director, who shall be appointed by the Secretary. The Director shall report to the Under Secretary.

''(3) DUTIES OF DIRECTOR.—In the administration of the program, the Director shall—

''(A) establish a cofunding mechanism for States with academic facilities that have not fully developed security-related science and technology to support burgeoning research efforts by the faculty or link them to established investigators;

''(B) provide for conferences, workshops, outreach, and technical assistance to researchers and institutions of higher education in States on topics related to developing science and technology expertise in areas of high interest and relevance to the Department;

''(C) monitor the efforts of States to develop programs that support the Department's mission;

''(D) implement a merit review program, consistent with program objectives, to ensure the quality of research conducted with Program funding; and

''(E) provide annual reports on the progress and achievements of the Program to the Secretary.

''(b) ASSISTANCE UNDER THE PROGRAM.—

''(1) SCOPE.—The Director shall provide assistance under the program for research and development projects that are related to, or qualify as, homeland security research (as defined in section 307(a)(2)) under the program.

''(2) FORM OF ASSISTANCE.—Assistance under the program can take the form of grants, contracts, or cooperative arrangements.

''(3) APPLICATIONS.—Applicants shall submit proposals or applications in such form, at such times, and containing such information as the Director may require.

''(c) IMPLEMENTATION.—

''(1) START-UP PHASES.—For the first 3 fiscal years beginning after the date of enactment of the Border Infrastructure and Technology Integration Act of 2004, assistance under the program shall be limited to institutions of higher education located in States in which an institution of higher education with a grant from, or a contract or cooperative agreement with, the National Science Foundation under section 113 of the National Science Foundation Act of 1988 (42 U.S.C. 1862) is located.

''(2) SUBSEQUENT FISCAL YEARS.—

''(A) IN GENERAL.—Beginning with the 4th fiscal year after the date of enactment of this Act, the Director shall rank order the States (excluding any noncontiguous State (as defined in section 2(14)) other than Alaska, Hawaii, the Commonwealth of Puerto Rico, and the Virgin Islands) in descending order in terms of the average amount of funds received by institutions of higher education (as that term is defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)) in each State that received financial assistance in the form of grants, contracts, or cooperative arrangements under this title during each of the preceding 3 fiscal years.

''(B) ALLOCATION.—Beginning with the 4th fiscal year after the date of enactment of this Act, assistance under the program for any fiscal year is limited to institutions of higher education located in States in the lowest third of those ranked under subparagraph (A) for that fiscal year.

''(C) DETERMINATION OF LOCATION.—For purposes of this paragraph, an institution of higher education shall be considered to be located in the State in which its home campus is located, except that assistance provided under the program to a division, institute, or other facility located in another State for use in that State shall be considered to have been provided to an institution of higher education located in that other State.

''(D) MULTIYEAR ASSISTANCE.—For purposes of this paragraph, assistance under the program that is provided on a multi-year basis shall be counted as provided in each such year in the amount so provided for that year.

''(d) FUNDING.—The Secretary shall ensure that no less than 5 percent of the amount appropriated for each fiscal year to the Acceleration Fund for Research and Development of Homeland Security Technologies established by section 307(c)(1) is allocated to the program established by subsection (a).''.

(2) CONFORMING AMENDMENT.—The table of contents of the Homeland Security Act of 2002 is amended by inserting after the item relating to section 313 the following:

''Sec. 314. Competitive research program.''.

**SEC. 511. DEADLINE FOR TRANSPORTATION SECURITY CARDS.**

The Secretary shall issue a final rule under section 70105 of title 46, United States Code, no later than January 1, 2006.

**SEC. 512. EVALUATION AND REPORT.**

Within 90 days after the date of enactment of this Act the Secretary of Homeland Security shall transmit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure containing—

(1) an evaluation of the Operation Safe Commerce program and the Customs-Trade Partnership Against Terrorism program;

(2) a report on the establishment and implementation of performance standards for oceanborne and intermodal cargo seals and locks under section 70116(b) of title 46, United States Code;

(3) a report on progress made and current operational practices for monitoring oceanborne cargo through the entire supply chain;

(4) recommendations as to how the practices, programs, and procedures can be further integrated into a wider screening network for oceanborne cargo that can be applied on an international basis;

(5) recommendations as to how inspection and screening procedures developed for

oceanborne cargo might be adapted for application to the shipment of domestically-produced cargo within the United States;

(6) a status report on progress in preparing the plan for implementing secure systems of transportation required by section 809(c) of the Coast Guard and Maritime Transportation Act of 2004 (Pub. L. 108-293; 118 Stat. 1086);

(7) a report on the security of noncontainerized cargo including roll-on roll-off cargo, break bulk cargo, and liquid and dry bulk cargo; and

(8) a report on whether the increased use of waterborne transportation in the domestic movement of hazardous materials would be an effective and efficient means to enhance the safety of hazardous material shipments.

**SEC. 513. PORT SECURITY GRANTS.**

(a) BASIS FOR GRANTS.—Section 70107(a) of title 46, United States Code, is amended by striking ''for making a fair and equitable allocation of funds'' and inserting ''based on risk and vulnerability''.

(b) LETTERS OF INTENT.—Section 70107(e) of title 46, United States Code, is amended by adding at the end the following:

''(5) LETTERS OF INTENT.—The Secretary may execute letters of intent to commit funding to port sponsors from the Fund.''.

**SEC. 514. WORK STOPPAGES AND EMPLOYEE-EMPLOYER DISPUTES.**

Section 70101(6) is amended by inserting after ''area.'' the following: ''In this paragraph, the term 'economic disruption' does not include a work stoppage or other nonviolent employee-related action resulting from an employee-employer dispute.''.

**SEC. 515. APPEAL OF DENIAL OF WAIVER FOR TRANSPORTATION SECURITY CARD.**

Section 70105(c)(3) of title 46, United States Code, is amended by inserting ''or a waiver under paragraph (2)'' after ''card''.

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By Mr. LOTT:

S. 1053. A bill to amend the Federal Election Campaign Act of 1971 to clarify when organizations described in section 527 of the Internal Revenue Code of 1986 must register as political committees, and for other purposes; from the Committee on Rules and Administration; placed on the calendar.

Mr. LOTT. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 1053

*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 ''527 Reform Act of 2005''.

**SEC. 2. TREATMENT OF SECTION 527 ORGANIZATIONS.**

(a) DEFINITION OF POLITICAL COMMITTEE.—Section 301(4) of the Federal Election Campaign Act of 1971 (2 U.S.C. 431(4)) is amended by striking the period at the end of subparagraph (C) and inserting ''; or'' and by adding at the end the following:

''(D) any applicable 527 organization.''.

(b) DEFINITION OF APPLICABLE 527 ORGANIZATION.—Section 301 of the Federal Election Campaign Act of 1971 (2 U.S.C. 431) is amended by adding at the end the following new paragraph:

''(27) APPLICABLE 527 ORGANIZATION.—For purposes of paragraph (4)(D)—

''(A) IN GENERAL.—The term 'applicable 527 organization' means a committee, club, association, or group of persons that—

''(i) has given notice to the Secretary of the Treasury under section 527(i) of the Internal Revenue Code of 1986 that it is to be treated as an organization described in section 527 of such Code, and

''(ii) is not described in subparagraph (B).

''(B) EXCEPTED ORGANIZATIONS.—A committee, club, association, or other group of persons described in this subparagraph is—

''(i) an organization described in section 527(i)(5) of the Internal Revenue Code of 1986,

''(ii) an organization which is a committee, club, association or other group of persons that is organized, operated, and makes disbursements exclusively for paying expenses described in the last sentence of section 527(e)(2) of the Internal Revenue Code of 1986 or expenses of a newsletter fund described in section 527(g) of such Code,

''(iii) an organization which is a committee, club, association, or other group that consists solely of candidates for State or local office, individuals holding State or local office, or any combination of either, but only if the organization refers only to one or more non-Federal candidates or applicable State or local issues in all of its voter drive activities and does not refer to a Federal candidate or a political party in any of its voter drive activities,

''(iv) an organization which is a committee, club, association, or other group of persons—

''(I) the election or nomination activities of which relate exclusively to any voter drive activity described in subparagraphs (A) through (D) of section 325(d)(1),

''(II) the public communications of which relate exclusively to activities described in subparagraphs (A) through (D) of section 325(d)(1), and

''(III) which does not engage in any broadcast, cable, or satellite communications, or

''(v) an organization described in subparagraph (C).

''(C) APPLICABLE ORGANIZATION.—For purposes of subparagraph (B)(v), an organization described in this subparagraph is a committee, club, association, or other group of persons whose election or nomination activities relate exclusively to—

''(i) elections where no candidate for Federal office appears on the ballot; or

''(ii) one or more of the following purposes:

''(I) Influencing the selection, nomination, election, or appointment of one or more candidates to non-Federal offices.

''(II) Influencing one or more applicable State or local issues.

''(III) Influencing the selection, appointment, nomination, or confirmation of one or more individuals to non-elected offices.

''(D) EXCLUSIVITY TEST.—A committee, club, association, or other group of persons shall not be treated as meeting the exclusivity requirement of subparagraphs (B)(iv) and (C) if it makes disbursements aggregating more than $1,000 for any of the following:

''(i) A public communication that promotes, supports, attacks, or opposes a clearly identified candidate for Federal office during the 1-year period ending on the date of the general election for the office sought by the clearly identified candidate (but if a runoff election is held for that office, the 1-year period shall be extended and shall end on the date of the run-off election).

''(ii) Any voter drive activity during a calendar year, except that no disbursements for any voter drive activity shall be taken into account under this subparagraph if the committee, club, association, or other group of persons during such calendar year—

''(I) makes disbursements for voter drive activities with respect to elections in only 1 State and complies with all applicable election laws of that State, including laws related to registration and reporting requirements and contribution limitations;

''(II) refers to one or more non-Federal candidates or applicable State or local issues in all of its voter drive activities and does not refer to a Federal candidate or a political party;

''(III) does not have a candidate for Federal office, an individual who holds any Federal office, a national political party, or an agent of any of the foregoing, control or materially participate in the direction of the organization, solicit contributions to the organization (other than funds which are described under clauses (i) and (ii) of section 323(e)(1)(B)), or direct disbursements, in whole or in part, by the organization; and

''(IV) makes no contributions to Federal candidates.

Clause (ii) shall not apply to disbursements by any committee, club, or association, or other group of persons described in subparagraph (B)(iv).

''(E) VOTER DRIVE ACTIVITY.—For purposes of this paragraph, the term 'voter drive activity' has the meaning given such term by section 325(d)(1).

''(F) APPLICABLE STATE OR LOCAL ISSUE.—For purposes of this paragraph, the term 'applicable State or local issue' means any State or local ballot initiative, State or local referendum, State or local constitutional amendment, State or local bond issue, or other State or local ballot issue.

''(G) REFERENCE TO FEDERAL CANDIDATES.—For purposes of this paragraph, any prohibition on a reference to a Federal candidate shall not include any reference described in section 325(d)(4).

''(H) REFERENCE TO POLITICAL PARTIES.—For purposes of this paragraph, any prohibition on a reference to a political party shall not include any reference described in section 325(d)(5).''.

(c) REGULATIONS.—The Federal Election Commission shall promulgate regulations to implement this section not later than 60 days after the date of enactment of this Act.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date which is 60 days after the date of enactment of this Act.

**SEC. 3. RULES FOR ALLOCATION OF EXPENSES BETWEEN FEDERAL AND NON-FEDERAL ACTIVITIES.**

(a) IN GENERAL.—Title III of the Federal Election Campaign Act of 1971 (2 U.S.C. 431 et seq.) is amended by adding at the end the following:

**''SEC. 325. ALLOCATION AND FUNDING RULES FOR CERTAIN EXPENSES RELATING TO FEDERAL AND NON-FEDERAL ACTIVITIES.**

''(a) IN GENERAL.—In the case of any disbursements by any political committee that is a separate segregated fund or nonconnected committee for which allocation rules are provided under subsection (b)—

''(1) the disbursements shall be allocated between Federal and non-Federal accounts in accordance with this section and regulations prescribed by the Commission, and

''(2) in the case of disbursements allocated to non-Federal accounts, may be paid only from a qualified non-Federal account.

''(b) COSTS TO BE ALLOCATED AND ALLOCATION RULES.—Disbursements by any separate segregated fund or nonconnected committee, other than an organization described in section 323(b)(1), for any of the following categories of activity shall be allocated as follows:

''(1) 100 percent of the expenses for public communications or voter drive activities that refer to one or more clearly identified Federal candidates, but do not refer to any clearly identified non-Federal candidates,

shall be paid with funds from a Federal account, without regard to whether the communication refers to a political party.

''(2) At least 50 percent, or a greater percentage if the Commission so determines by regulation, of the expenses for public communications and voter drive activities that refer to one or more clearly identified candidates for Federal office and one or more clearly identified non-Federal candidates shall be paid with funds from a Federal account, without regard to whether the communication refers to a political party.

''(3) At least 50 percent, or a greater percentage if the Commission so determines by regulation, of the expenses for public communications or voter drive activities that refer to a political party, but do not refer to any clearly identified Federal or non-Federal candidate, shall be paid with funds from a Federal account, except that this paragraph shall not apply to communications or activities that relate exclusively to elections where no candidate for Federal office appears on the ballot.

''(4) At least 50 percent, or a greater percentage if the Commission so determines by regulation, of the expenses for public communications or voter drive activities that refer to a political party and refer to one or more clearly identified non-Federal candidates, but do not refer to any clearly identified Federal candidates, shall be paid with funds from a Federal account, except that this paragraph shall not apply to communications or activities that relate exclusively to elections where no candidate for Federal office appears on the ballot.

''(5) Unless otherwise determined by the Commission in its regulations, at least 50 percent of any administrative expenses, including rent, utilities, office supplies, and salaries not attributable to a clearly identified candidate, shall be paid with funds from a Federal account, except that for a separate segregated fund such expenses may be paid instead by its connected organization.

''(6) At least 50 percent, or a greater percentage if the Commission so determines by regulation, of the direct costs of a fundraising program or event, including disbursements for solicitation of funds and for planning and administration of actual fundraising events, where Federal and non-Federal funds are collected through such program or event shall be paid with funds from a Federal account, except that for a separate segregated fund such costs may be paid instead by its connected organization. This paragraph shall not apply to any fundraising solicitations or any other activity that constitutes a public communication.

''(c) QUALIFIED NON-FEDERAL ACCOUNT.—For purposes of this section—

''(1) IN GENERAL.—The term 'qualified non-Federal account' means an account which consists solely of amounts—

''(A) that, subject to the limitations of paragraphs (2) and (3), are raised by the separate segregated fund or nonconnected committee only from individuals, and

''(B) with respect to which all requirements of Federal, State, or local law (including any law relating to contribution limits) are met.

''(2) LIMITATION ON INDIVIDUAL DONATIONS.—

''(A) IN GENERAL.—A separate segregated fund or nonconnected committee may not accept more than $25,000 in funds for its qualified non-Federal account from any one individual in any calendar year.

''(B) AFFILIATION.—For purposes of this paragraph, all qualified non-Federal accounts of separate segregated funds or nonconnected committees which are directly or indirectly established, financed, maintained, or controlled by the same person or persons shall be treated as one account.

''(3) FUNDRAISING LIMITATION.—

''(A) IN GENERAL.—No donation to a qualified non-Federal account may be solicited, received, directed, transferred, or spent by or in the name of any person described in subsection (a) or (e) of section 323.

''(B) FUNDS NOT TREATED AS SUBJECT TO ACT.—Except as provided in subsection (a)(2) and this subsection, any funds raised for a qualified non-Federal account in accordance with the requirements of this section shall not be considered funds subject to the limitations, prohibitions, and reporting requirements of this Act for any purpose (including for purposes of subsection (a) or (e) of section 323 or subsection (d)(2) of this section).

''(d) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

''(1) VOTER DRIVE ACTIVITY.—The term 'voter drive activity' means any of the following activities conducted in connection with an election in which a candidate for Federal office appears on the ballot (regardless of whether a candidate for State or local office also appears on the ballot):

''(A) Voter registration activity.

''(B) Voter identification.

''(C) Get-out-the-vote activity.

''(D) Generic campaign activity.

''(E) Any public communication related to activities described in subparagraphs (A) through (D).

Such term shall not include any activity described in subparagraph (A) or (B) of section 316(b)(2).

''(2) FEDERAL ACCOUNT.—The term 'Federal account' means an account which consists solely of contributions subject to the limitations, prohibitions, and reporting requirements of this Act. Nothing in this section or in section 323(b)(2)(B)(iii) shall be construed to infer that a limit other than the limit under section 315(a)(1)(C) applies to contributions to the account.

''(3) NONCONNECTED COMMITTEE.—The term 'nonconnected committee' shall not include a political committee of a political party.

''(4) CERTAIN REFERENCES TO FEDERAL CANDIDATES NOT TAKEN INTO ACCOUNT.—A public communication or voter drive activity shall not be treated as referring to any clearly identified Federal candidate if the only reference is—

''(A) a reference, in connection with an election for a non-Federal office, to a Federal candidate who is also a candidate for such non-Federal office; or

''(B) a reference to the fact that a Federal candidate has endorsed a non-Federal candidate or an applicable State or local issue (as defined in section 301(27)(F)), including a reference that constitutes the endorsement itself.

''(5) CERTAIN REFERENCES TO POLITICAL PARTIES NOT TAKEN INTO ACCOUNT.—A public communication or voter drive activity shall not be treated as referring to a political party if the only reference is—

''(A) a reference to a political party for the purpose of identifying a non-Federal candidate;

''(B) a reference to a political party for the purpose of identifying the entity making the public communication or carrying out the voter drive activity; or

''(C) a reference to a political party in a manner or context that does not reflect support for or opposition to a Federal candidate or candidates and does reflect support for or opposition to a State or local candidate or candidates or an applicable State or local issue.''.

(b) REPORTING REQUIREMENTS.—Section 304(e) of the Federal Election Campaign Act of 1971 (2 U.S.C. 434(e)) is amended by redesignating paragraphs (3) and (4) as paragraphs (4) and (5), respectively, and by inserting after paragraph (2) the following new paragraph:

''(3) RECEIPTS AND DISBURSEMENTS FROM QUALIFIED NON-FEDERAL ACCOUNTS.—In addition to any other reporting requirement applicable under this Act, a political committee to which section 325(a) applies shall report all receipts and disbursements from a qualified non-Federal account (as defined in section 325(c)).''.

(c) REGULATIONS.—The Federal Election Commission shall promulgate regulations to implement the amendments made by this section not later than 180 days after the date of enactment of this Act.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date which is 180 days after the date of enactment of this Act.

**SEC. 4. TELEVISION MEDIA RATES.**

(a) LOWEST UNIT CHARGE.—Section 315 of the Communications Act of 1934 (47 U.S.C. 315) is amended by adding at the end the following:

''(f) TELEVISION MEDIA RATES.—

''(1) LOWEST UNIT CHARGE.—Notwithstanding any other provision of law, the charges made for the use of any television broadcast station, or by a provider of cable or satellite television service, to any person who is a legally qualified candidate for any public office in connection with the campaign of such candidate for nomination for election, or election, to such office or by a national committee of a political party on behalf of such candidate in connection with such campaign, shall not exceed the lowest charge of the station (at any time during the 365-day period preceding the date of the use) for pre-emptible use thereof for the same amount of time for the same period.

''(2) PREEMPTION.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), and notwithstanding the requirements of paragraph (1), a licensee shall not preempt the use of a broadcasting station by an eligible candidate or political committee of a political party who has purchased and paid for such use.

''(B) CIRCUMSTANCES BEYOND CONTROL OF LICENSEE.—If a program to be broadcast by a broadcasting station is preempted because of circumstances beyond the control of the station, any candidate or party advertising spot scheduled to be broadcast during that program shall be treated in the same fashion as a comparable commercial advertising spot.

''(3) AUDITS.—

''(A) IN GENERAL.—During the 45-day period preceding a primary election and the 60-day period preceding a general election, the Commission shall conduct such audits as it deems necessary to ensure that each broadcaster to which this subsection applies is allocating television broadcast advertising time in accordance with this subsection and section 312.

''(B) MARKETS.—Each audit conducted under subparagraph (A) shall cover the following markets:

''(i) At least 6 of the top 50 largest designated market areas (as defined in section 122(j)(2)(C) of title 17, United States Code).

''(ii) At least 3 of the 51–100 largest designated market areas (as so defined).

''(iii) At least 3 of the 101–150 largest designated market areas (as so defined).

''(iv) At least 3 of the 151–210 largest designated market areas (as so defined).

''(C) BROADCAST STATIONS.—Each audit conducted under subparagraph (A) shall include each of the 3 largest television broadcast networks, 1 independent network, and 1 cable network.''.

(b) CONFORMING AMENDMENT.—Section 504 of the Bipartisan Campaign Reform Act of

2002 (Public Law 107-155) is amended by striking ''315), as amended by this Act, is amended by redesignating subsections (e) and (f) as subsections (f) and (g), respectively, and'' and inserting ''315) is amended by''.

(c) STYLISTIC AMENDMENTS.—Section 315(c) the Communications Act of 1934 (47 U.S.C. 315(c)) is amended—

(1) by striking ''For purposes of this section—'' and inserting ''In this section:'';

(2) in paragraph (1), by striking ''the'' and inserting ''BROADCASTING STATION.—The''; and

(3) in paragraph (2), by striking ''the'' and inserting ''LICENSEE; STATION LICENSEE.—The''.

**SEC. 5. MODIFICATION OF DEFINITION OF PUBLIC COMMUNICATION.**

(a) IN GENERAL.—Paragraph (22) of section 301 of the Federal Election Campaign Act of 1971 (2 U.S.C. 431(22)) is amended by adding at the end the following new sentence: ''Such term shall not include communications over the Internet.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

**SEC. 6. INCREASE IN CONTRIBUTION LIMITS FOR POLITICAL COMMITTEES.**

(a) INCREASE IN POLITICAL COMMITTEE CONTRIBUTION LIMITS.—Section 315(a)(1)(C) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(a)(1)(C)) is amended by striking ''$5,000'' and inserting ''$7,500''.

(b) INCREASE IN MULTICANDIDATE LIMITS.—Section 315(a)(2) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(a)(2)) is amended—

(1) in subparagraph (A), by striking ''$5,000'' and inserting ''$7,500'';

(2) in subparagraph (B), by striking ''$15,000'' and inserting ''$25,000''; and

(3) in subparagraph (C), by striking ''$5,000'' and inserting ''$7,500''.

(c) INDEXING.—

(1) IN GENERAL.—Section 315(c)(1)(B) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(c)(1)(B)) is amended to read as follows:

''(B) Except as provided in subparagraph (C)—

''(i) in any calendar year after 2002—

''(I) a limitation established by subsection (a)(1)(A), (a)(1)(B), (a)(3), (b), (d), or (h) shall be increased by the percent difference determined under subparagraph (A);

''(II) each amount so increased shall remain in effect for the calendar year; and

''(III) if any amount after the adjustment under subclause (I) is not a multiple of $100, such amount shall be rounded to the nearest multiple of $100; and

''(ii) in any calendar year after 2006—

''(I) a limitation established by subsection (a)(1)(C), (a)(1)(D), or (a)(2) shall be increased by the percent difference determined under subparagraph (A);

''(II) each amount so increased shall remain in effect for the calendar year; and

''(III) if any amount after the adjustment under subclause (I) is not a multiple of $100, such amount shall be rounded to the nearest multiple of $100.''.

(2) CONFORMING AMENDMENTS.—Section 315(c) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(c)) is amended—

(A) in paragraph (1)(C), by striking ''subsections (a)(1)(A), (a)(1)(B), (a)(3),'' and inserting ''subsections (a)''; and

(B) in paragraph (2)(B)—

(i) by striking ''and'' at the end of clause (i);

(ii) by striking the period at the end of clause (ii) and inserting ''; and''; and

(iii) by adding at the end the following new clause:

''(iii) for purposes of subsections (a)(1)(C), (a)(1)(D) and (a)(2), calendar year 2005.''.

(d) SPECIAL RULE FOR TRANSFERS FROM LEADERSHIP PACS TO NATIONAL PARTY COMMITTEES.—Paragraph (4) of section 315(a) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(a)(4)) is amended—

(1) by inserting ''(A)'' before ''The limitations''; and

(2) by adding at the end the following:

''(B) The limitations on contributions contained in paragraphs (1) and (2) do not apply to transfers between any committee (other than an authorized committee) established, financed, maintained, or controlled by a candidate or an individual holding a Federal office and political committees established and maintained by a national political party.''.

(e) ELIMINATION OF CERTAIN RESTRICTIONS ON SOLICITATIONS BY CORPORATIONS AND LABOR ORGANIZATIONS.—

(1) WRITTEN SOLICITATIONS.—Subparagraph (B) of section 316(b)(4) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441b(b)(4)(B)) is amended—

(A) by striking ''2''; and

(B) by striking ''during the calendar year''.

(2) PRIOR APPROVAL OF SOLICITATION FOR TRADE ASSOCIATIONS.—Subparagraph (D) of section 316(b)(4) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441b(b)(4)(D)) is amended by striking ''to the extent that such solicitation'' and all that follows and inserting a period.

(f) INCREASE IN THRESHOLD FOR POLITICAL COMMITTEES.—

(1) IN GENERAL.—Section 301(4)(A) of the Federal Election Campaign Act of 1971 (2 U.S.C. 431(4)(A)) is amended by striking ''$1,000'' each place it appears and inserting ''$10,000''.

(2) LOCAL COMMITTEES.—

(A) CONTRIBUTIONS RECEIVED.—Section 301(4)(C) of the Federal Election Campaign Act of 1971 (2 U.S.C. 431(4)(C)) is amended by striking ''$5,000'' each place it appears and inserting ''$10,000''.

(B) CONTRIBUTIONS MADE.—Section 301(4)(C) of the Federal Election Campaign Act of 1971 (2 U.S.C. 431(4)(C)) is amended by striking ''$1,000'' each place it appears and inserting ''$10,000''.

(g) EFFECTIVE DATE.—The amendments made by this section shall apply to calendar years beginning after December 31, 2005.

**SEC. 7. SEVERABILITY.**

If any provision of this Act or amendment made by this Act, or the application of a provision or amendment to any person or circumstance, is held to be unconstitutional, the remainder of this Act and amendments made by this Act, and the application of the provisions and amendment to any person or circumstance, shall not be affected by the holding.

**SEC. 8. CONSTRUCTION.**

No provision of this Act, or amendment made by this Act, shall be construed—

(1) as approving, ratifying, or endorsing a regulation promulgated by the Federal Election Commission,

(2) as establishing, modifying, or otherwise affecting the definition of political organization for purposes of the Internal Revenue Code of 1986, or

(3) as affecting the determination of whether a group organized under section 501(c) of the Internal Revenue Code of 1986 is a political committee under section 301(4) of the Federal Election Campaign Act of 1971.

**SEC. 9. JUDICIAL REVIEW.**

(a) SPECIAL RULES FOR ACTIONS BROUGHT ON CONSTITUTIONAL GROUNDS.—If any action is brought for declaratory or injunctive relief to challenge the constitutionality of any provision of this Act or any amendment made by this Act, the following rules shall apply:

(1) The action shall be filed in the United States District Court for the District of Columbia and shall be heard by a 3-judge court convened pursuant to section 2284 of title 28, United States Code.

(2) A copy of the complaint shall be delivered promptly to the Clerk of the House of Representatives and the Secretary of the Senate.

(3) A final decision in the action shall be reviewable only by appeal directly to the Supreme Court of the United States. Such appeal shall be taken by the filing of a notice of appeal within 10 days, and the filing of a jurisdictional statement within 30 days, of the entry of the final decision.

(4) It shall be the duty of the United States District Court for the District of Columbia and the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of the action and appeal.

(b) INTERVENTION BY MEMBERS OF CONGRESS.—In any action in which the constitutionality of any provision of this Act or any amendment made by this Act is raised (including but not limited to an action described in subsection (a)), any Member of the House of Representatives (including a Delegate or Resident Commissioner to Congress) or Senate shall have the right to intervene either in support of or opposition to the position of a party to the case regarding the constitutionality of the provision or amendment. To avoid duplication of efforts and reduce the burdens placed on the parties to the action, the court in any such action may make such orders as it considers necessary, including orders to require intervenors taking similar positions to file joint papers or to be represented by a single attorney at oral argument.

(c) CHALLENGE BY MEMBERS OF CONGRESS.—Any Member of Congress may bring an action, subject to the special rules described in subsection (a), for declaratory or injunctive relief to challenge the constitutionality of any provision of this Act or any amendment made by this Act.

(d) APPLICABILITY.—

(1) INITIAL CLAIMS.—With respect to any action initially filed on or before December 31, 2008, the provisions of subsection (a) shall apply with respect to each action described in such subsection.

(2) SUBSEQUENT ACTIONS.—With respect to any action initially filed after December 31, 2008, the provisions of subsection (a) shall not apply to any action described in such subsection unless the person filing such action elects such provisions to apply to the action.

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By Mrs. FEINSTEIN (for herself and Mr. ENSIGN):

S. 1054. A bill to amend the Elementary and Secondary Education Act of 1965 to specify the purposes for which funds provided under part A of title I may be used; to the Committee on Health, Education, Labor, and Pensions.

Mrs. FEINSTEIN. Mr. President. I rise today with Senator ENSIGN to introduce a bill to ensure that Title I funds are directed towards instructional services to teach our neediest students.

Title I provides assistance to virtually every school district in the country to serve children attending schools with high concentrations of low-income students, from preschool to high school.

It has been the ''anchor'' of Federal assistance to schools, since its inception in 1965. Although it has always

been the intent of Congress for Title I funds to be used for instruction and instructional services, the Federal Government has never provided a clear definition of what instructional services should entail.

This lack of federal guidance has become especially clear now, as States scramble to comply with the Title I accountability standards established in ''No Child Left Behind.''

While State Administrators of Title I are directed by law to meet these specific requirements, they have been given little guidance as to how to ensure that they are in compliance with the law.

I believe that the Federal Government is responsible for making this process as clear to States as possible.

In my view, as it relates to Title I, we have not lived up to our end of the bargain.

During consideration of ''No Child Left Behind,'' I worked hard to get my bill defining appropriate Title I uses included in the Senate version of the bill.

Unfortunately, during conference consideration, my bill was stripped out and in its place language directing the General Accounting Office (GAO) to report on how states use their Title I funds was inserted.

In April 2003, GAO released the report that Congress directed them to submit on Title I Administrative Expenditures.

What GAO found is that while districts spent a relatively small amount, no more than 13 percent, of Title I funds on administrative services, these findings were based on their own definition ''because there is no common definition on what constitutes administrative expenditures.''

Therefore, the accounting office could not precisely measure how much of schools' Title I funds were used for administration.

Because Title I funds are not defined consistently throughout the states, the accounting office created their own definition by compiling aspects of state priorities to complete the report.

You see, the very reason I worked to define how Title I funds should be used—to create consistency and distribution priority nationwide—became the definitive aspect preventing GAO from effectively drawing conclusions to their report.

The report highlights two concerns that I have with the absence of universal definitions in the Title I program: the lack of Federal guidance on effective uses of Title I funds. The government's inability to accurately measure whether the academic needs of low-income students are being met.

My bill takes some strong steps by balancing the needs for states to retain Title I flexibility and providing them with the guidance needed to administer the program uniformly throughout the country.

Current law on Title I is much too vague.

It says, ''a State or local educational agency shall use funds received under this part only to supplement the amount of funds that would, in the absence of such Federal funds, be made available from non-Federal sources for the education of pupils participating in programs assisted under this part, and not to supplant such funds.''

Basically, it says that Title I funds are to be used for the ''education of pupils.'' This is too nebulous.

The U.S. Department of Education has given states a guidance document that explains how Title I funds can be used.

Under this guidance document, only two uses are specifically prohibited: 1. construction or acquisition of real property; and 2. payment to parents to attend a meeting or training session or to reimburse a parent for a salary lost due to attendance at a ''parental involvement'' meeting.

I believe we should give the Department, states and districts a clearer guidance in law.

This legislation does the following: defines Title I direct and indirect instructional services. Sets a standard for the amount of Title I funds that can be used to achieve the academic and administrative objectives of this program. Ensures that the majority of Title I funds are used to improve academic achievement by stipulating that a local educational agency may use not more than 10 percent of Title I funds received for indirect instructional services.

By limiting the amount of funds that schools can spend on administrative or indirect services, school districts are restricted from shuffling the majority of Title I to pay for non-academic services, but it also gives the districts flexibility to use the remaining funds for the indirect costs administering Title I distribution.

Furthermore, by defining direct and indirect services, all states can apply the same standards for how Title I funds are used nationwide.

Examples of permissible Direct Services are: employing teachers and other instructional personnel, including employee benefits. Intervening and taking corrective actions to improve student achievement. Extending academic instruction beyond the normal school day and year, including summer school. Providing instructional services to pre-kindergarten children for the transition to kindergarten. Purchasing instructional resources such as books, materials, computers, and other instructional equipment. Professional development. Developing and administering curriculum, educational materials and assessments.

Examples of Indirect Services limited to no more than 10 percent of Title I expenditures are: business services relating to administering the program. Purchasing or providing facilities maintenance, janitorial, gardening, or landscaping services or the payment of utility costs. Buying food. Paying for travel to and attendance at conferences or meetings, except if necessary for professional development.

My reasons for introducing this bill are two-fold: First, I believe that states must use their limited federal dollars for the fundamental purpose of providing academic instruction to help students learn.

Secondly, I believe that it is nearly impossible to do so without providing a clear definition of what is considered an instructional service.

I am not suggesting that it is the fault of the school districts for not focusing their Title I funds on academic instruction. They are simply exercising the flexibility that Congress has given them.

If Congress also intended for those funds to educate our neediest children, Federal guidance must be given to ensure that it happens.

It is my view that Title I cannot do everything. Federal funding is only 8 percent of the total funding for elementary and secondary education and Title I is even a smaller percentage of total support for public schools.

That is why it is imperative to better focus Title I funds on academic instruction, teaching the fundamentals and helping disadvantaged children achieve.

Schools must focus their general administrative budget to pay for expenses that fall outside of the realm of direct educational services and retain the majority of Federal funds to improve academic achievement.

It is time to better direct Title I funds to the true goal of education: to help students learn. This is one step towards that important goal.

I urge my colleagues to support this legislation.

I ask for unanimous consent that the text of the legislation directly follow this statement in the RECORD.

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

S. 1054

*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 ''Title I Integrity Act of 2005''.

**SEC. 2. DIRECT AND INDIRECT INSTRUCTIONAL SERVICES.**

Subpart 1 of part A of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311 et seq.) is amended by adding at the end the following:

**''SEC. 1120C. DIRECT AND INDIRECT INSTRUCTIONAL SERVICES.**

''(a) IN GENERAL.—

''(1) USE OF FUNDS.—Notwithstanding any other provision of this Act, a local educational agency shall use funds received under this part only for direct instructional services and indirect instructional services.

''(2) LIMITATION ON INDIRECT INSTRUCTIONAL SERVICES.—A local educational agency may use not more than 10 percent of funds received under this part for indirect instructional services.

''(b) INSTRUCTIONAL SERVICES.—

''(1) DIRECT INSTRUCTIONAL SERVICES.—In this section, the term 'direct instructional services' means—

''(A) the implementation of instructional interventions and corrective actions to improve student achievement;

''(B) the extension of academic instruction beyond the normal school day and year, including during summer school;

''(C) the employment of teachers and other instructional personnel, including providing teachers and instructional personnel with employee benefits;

''(D) the provision of instructional services to prekindergarten children to prepare such children for the transition to kindergarten;

''(E) the purchase of instructional resources, such as books, materials, computers, other instructional equipment, and wiring to support instructional equipment;

''(F) the development and administration of curricula, educational materials, and assessments;

''(G) the transportation of students to assist the students in improving academic achievement;

''(H) the employment of title I coordinators, including providing title I coordinators with employee benefits; and

''(I) the provision of professional development for teachers and other instructional personnel.

''(2) INDIRECT INSTRUCTIONAL SERVICES.—In this section, the term 'indirect instructional services' includes—

''(A) the purchase or provision of facilities maintenance, gardening, landscaping, or janitorial services, or the payment of utility costs;

''(B) the payment of travel and attendance costs at conferences or other meetings;

''(C) the payment of legal services;

''(D) the payment of business services, including payroll, purchasing, accounting, and data processing costs; and

''(E) any other services determined appropriate by the Secretary that indirectly improve student achievement.''.

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By Mr. KENNEDY:

S. 1055. A bill to improve elementary and secondary education; to the Committee on Health, Education, Labor, and Pensions.

Mr. KENNEDY. Mr. President, I ask unanimous consent that the text of the bill I introduced today, an Act to improve elementary and secondary education that may be cited as the ''No Child Left Behind Improvement Act of 2005,'' be printed in the RECORD.

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

S. 1055

*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 ''No Child Left Behind Improvement Act of 2005''.

**TITLE I—PUBLIC SCHOOL CHOICE, SUPPLEMENTAL EDUCATIONAL SERVICES, AND TEACHER QUALITY**

**SEC. 101. PUBLIC SCHOOL CHOICE CAPACITY.**

(a) SCHOOL CAPACITY.—Section 1116(b)(1)(E) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6316(b)(1)(E)) is amended—

(1) in clause (i), by striking ''In the case'' and inserting ''Subject to clauses (ii) and (iii), in the case'';

(2) by redesignating clause (ii) as clause (iii);

(3) by inserting after clause (i) the following:

''(ii) SCHOOL CAPACITY.—The obligation of a local educational agency to provide the option to transfer to students under clause (i) is subject to all applicable State and local health and safety code requirements regarding facility capacity.''; and

(4) in clause (iii) (as redesignated by paragraph (2)), by inserting ''and subject to clause (ii),'' after ''public school,''.

(b) GRANTS FOR SCHOOL CONSTRUCTION AND RENOVATION.—Subpart 1 of part A of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311 et seq.) is amended by adding at the end the following:

**''SEC. 1120C. GRANTS FOR SCHOOL CONSTRUCTION AND RENOVATION.**

''(a) PROGRAM AUTHORIZED.—From funds appropriated under subsection (g), the Secretary is authorized to award grants to local educational agencies experiencing overcrowding in the schools served by the local educational agencies, for the construction and renovation of safe, healthy, high-performance school buildings.

''(b) APPLICATION.—Each local educational agency desiring a grant under this section shall submit an application to the Secretary at such time, in such manner, and accompanied by such additional information as the Secretary may require.

''(c) PRIORITY.—In awarding grants under this section, the Secretary shall give priority to local educational agencies—

''(1) who have documented difficulties in meeting the public school choice requirements of paragraph (1)(E), (5)(A), (7)(C)(i), or (8)(A)(i) of section 1116(b), or section 1116(c)(10)(C)(vii); and

''(2) with the highest number of schools at or above capacity.

''(d) AWARD BASIS.—From funds remaining after awarding grants under subsection (c), the Secretary shall award grants to local educational agencies that are experiencing overcrowding in the schools served by the local educational agencies.

''(e) PREVAILING WAGES.—Any laborer or mechanic employed by any contractor or subcontractor in the performance of work on any construction funded by a grant awarded under this section will be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor under subchapter IV of chapter 31 of title 40, United States Code (commonly referred to as the Davis-Bacon Act).

''(f) DEFINITIONS.—In this section:

''(1) AT OR ABOVE CAPACITY.—The term 'at or above capacity', in reference to a school, means a school in which 1 additional student would increase the average class size of the school above the average class size of all schools in the State in which the school is located.

''(2) HEALTHY, HIGH-PERFORMANCE SCHOOL BUILDING.—The term 'healthy, high-performance school building' has the meaning given such term in section 5586.

''(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $250,000,000 for fiscal year 2006, and such sums as may be necessary for each of the 2 succeeding fiscal years.''.

**SEC. 102. SUPPLEMENTAL EDUCATIONAL SERVICES.**

Section 1116(e) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6316(e)) is amended—

(1) in paragraph (4)—

(A) in subparagraph (B), by striking the semicolon and inserting '', including criteria that—

''(i) ensure that personnel delivering supplemental educational services to students have adequate qualifications; and

''(ii) may, at the State's discretion, ensure that personnel delivering supplemental educational services to students are teachers that are highly qualified, as such term is defined in section 9101;'';

(B) in subparagraph (D), by striking ''and'' after the semicolon;

(C) in subparagraph (E), by striking the period and inserting ''; and''; and

(D) by adding at the end the following:

''(F) ensure that the list of approved providers of supplemental educational services described in subparagraph (C) includes a choice of providers that have sufficient capacity to provide effective services for children who are limited English proficient and children with disabilities.'';

(2) in paragraph (5)(C)—

(A) by striking ''applicable''; and

(B) by inserting before the period '', and acknowledge in writing that, as an approved provider in the relevant State educational agency program of providing supplemental educational services, the provider is deemed to be a recipient of Federal financial assistance'';

(3) by redesignating paragraphs (6), (7), (8), (9), (10), (11), and (12) as paragraphs (7), (8), (9), (10), (11), (12), and (13), respectively;

(4) by inserting after paragraph (5) the following:

''(6) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to prohibit a local educational agency from being considered by a State educational agency as a potential provider of supplemental educational services under this subsection, if such local educational agency meets the criteria adopted by the State educational agency in accordance with paragraph (5).'';

(5) in paragraph (13) (as redesignated by paragraph (3))—

(A) in subparagraph (B)—

(i) in clause (ii), by striking ''and'' after the semicolon;

(ii) in clause (iii), by striking ''and'' after the semicolon; and

(iii) by adding at the end the following:

''(iv) may employ teachers who are highly qualified as such term is defined in section 9101; and

''(v) pursuant to its inclusion on the relevant State educational agency's list described in paragraph (4)(C), is deemed to be a recipient of Federal financial assistance; and''; and

(B) in subparagraph (C)—

(i) in the matter preceding subclause (i), by striking ''are'';

(ii) in subclause (i)—

(I) by inserting ''are'' before ''in addition''; and

(II) by striking ''and'' after the semicolon;

(iii) in subclause (ii), by striking the period and inserting ''; and''; and

(iv) by adding at the end the following:

''(iii) if provided by providers that are included on the relevant State educational agency's list described in paragraph (4)(C), shall be deemed to be programs or activities of the relevant State educational agency.''; and

(6) by adding at the end the following:

''(14) CIVIL RIGHTS.—In providing supplemental educational services under this subsection, no State educational agency or local educational agency may, directly or through contractual, licensing, or other arrangements with a provider of supplemental educational services, engage in any form of discrimination prohibited by—

''(A) title VI of the Civil Rights Act of 1964;

''(B) title IX of the Education Amendments of 1972;

''(C) section 504 of the Rehabilitation Act of 1973;

''(D) titles II and III of the Americans with Disabilities Act;

''(E) the Age Discrimination Act of 1975;

''(F) regulations promulgated under the authority of the laws listed in subparagraphs (A) through (E); or

''(G) other Federal civil rights laws.''.

**SEC. 103. QUALIFICATIONS FOR TEACHERS AND PARAPROFESSIONALS.**

(a) HIGH OBJECTIVE UNIFORM STATE STANDARD OF EVALUATION.—Section 1119 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6319) is amended—

(1) in subsection (a)(2)—

(A) by redesignating subparagraphs (A) through (C) as clauses (i) through (iii), respectively, and indenting as appropriate;

(B) by striking ''(2) state plan.—As part'' and inserting the following:

''(2) STATE PLAN.—

''(A) IN GENERAL.—As part''; and

(C) by adding at the end the following:

''(B) AVAILABILITY OF STATE STANDARDS.—Each State educational agency shall make available to teachers in the State the high objective uniform State standard of evaluation, as described in section 9101(23)(C)(ii), for the purpose of meeting the teacher qualification requirements established under this section.'';

(2) by redesignating subsections (e), (f), (g), (h), (i), (j), (k), and (l) as subsections (f), (g), (h), (i), (j), (k), (l), and (m), respectively;

(3) by inserting after subsection (d) the following:

''(e) STATE RESPONSIBILITIES.—Each State educational agency shall ensure that local educational agencies in the State make available all options described in subparagraphs (A) through (C) of subsection (c)(1) to each new or existing paraprofessional for the purpose of demonstrating the qualifications of the paraprofessional, consistent with the requirements of this section.''; and

(4) in subsection (l) (as redesignated in paragraph (2)), by striking ''subsection (l)'' and inserting ''subsection (m)''.

(b) DEFINITION OF HIGHLY QUALIFIED TEACHERS.—Section 9101(23)(B)(ii) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801(23)(B)(ii)) is amended—

(1) in subclause (I), by striking ''or'' after the semicolon;

(2) in subclause (II), by striking ''and'' after the semicolon; and

(3) by adding at the end the following:

''(III) in the case of a middle school teacher, passing a State-approved middle school generalist exam when the teacher receives a license to teach middle school in the State;

''(IV) obtaining a State middle school or secondary school social studies certificate that qualifies the teacher to teach history, geography, economics, civics, and government in middle schools or in secondary schools, respectively, in the State; or

''(V) obtaining a State middle school or secondary school science certificate that qualifies the teacher to teach earth science, biology, chemistry, and physics in middle schools or secondary schools, respectively, in the State; and''.

**SEC. 104. ENSURING HIGHLY QUALIFIED TEACHERS.**

(a) REQUIREMENT.—The Secretary of Education shall improve coordination among the teacher quality programs authorized under the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.), the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.), the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.), and the Carl D. Perkins Vocational and Technical Education Act of 1998 (20 U.S.C. 2301 et seq.), to provide a unified effort in strengthening the American teaching workforce and ensuring highly qualified teachers.

(b) REPORT.—Not later than 6 months after the date of enactment of this Act, the Secretary of Education shall submit a report to the relevant committees of Congress on efforts to coordinate programs pursuant to subsection (a), which shall be made available on the website of the Department of Education.

## TITLE II—ADEQUATE YEARLY PROGRESS DETERMINATIONS

**SEC. 201. REVIEW OF ADEQUATE YEARLY PROGRESS DETERMINATIONS FOR SCHOOLS FOR THE 2002–2003 SCHOOL YEAR.**

(a) IN GENERAL.—The Secretary shall require each local educational agency to provide each school served by the agency with an opportunity to request a review of a determination by the agency that the school did not make adequate yearly progress for the 2002–2003 school year.

(b) FINAL DETERMINATION.—Not later than 30 days after receipt of a request by a school for a review under this section, a local educational agency shall issue and make publicly available a final determination on whether the school made adequate yearly progress for the 2002–2003 school year.

(c) EVIDENCE.—In conducting a review under this section, a local educational agency shall—

(1) allow the principal of the school involved to submit evidence on whether the school made adequate yearly progress for the 2002–2003 school year; and

(2) consider that evidence before making a final determination under subsection (b).

(d) STANDARD OF REVIEW.—In conducting a review under this section, a local educational agency shall revise, consistent with the applicable State plan under section 1111 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311), the local educational agency's original determination that a school did not make adequate yearly progress for the 2002–2003 school year if the agency finds that the school made such progress, taking into consideration—

(1) the amendments made to part 200 of title 34, Code of Federal Regulations (68 Fed. Reg. 68698) (relating to accountability for the academic achievement of students with the most significant cognitive disabilities); or

(2) any regulation or guidance that, subsequent to the date of such original determination, was issued by the Secretary relating to—

(A) the assessment of limited English proficient children;

(B) the inclusion of limited English proficient children as part of the subgroup described in section 1111(b)(2)(C)(v)(II)(dd) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311(b)(2)(C)(v)(II)(dd)) after such children have obtained English proficiency; or

(C) any requirement under section 1111(b)(2)(I)(ii) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311(b)(2)(I)(ii)).

(e) EFFECT OF REVISED DETERMINATION.—

(1) IN GENERAL.—If pursuant to a review under this section a local educational agency determines that a school made adequate yearly progress for the 2002–2003 school year, upon such determination—

(A) any action by the Secretary, the State educational agency, or the local educational agency that was taken because of a prior determination that the school did not make such progress shall be terminated; and

(B) any obligations or actions required of the local educational agency or the school because of the prior determination shall cease to be required.

(2) EXCEPTIONS.—Notwithstanding paragraph (1), a determination under this section shall not affect any obligation or action required of a local educational agency or school under the following:

(A) Section 1116(b)(13) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6316(b)(13)) (requiring a local educational agency to continue to permit a child who transferred to another school under such section to remain in that school until completion of the highest grade in the school).

(B) Section 1116(e)(9) of the Elementary and Secondary Education Act of 1965 (as redesignated by section 102(3)) (20 U.S.C. 6316(e)(9)) (requiring a local educational agency to continue to provide supplemental educational services under such section until the end of the school year).

(3) SUBSEQUENT DETERMINATIONS.—In determining whether a school is subject to school improvement, corrective action, or restructuring as a result of not making adequate yearly progress, the Secretary, a State educational agency, or a local educational agency may not take into account a determination that the school did not make adequate yearly progress for the 2002–2003 school year if such determination was revised under this section and the school received a final determination of having made adequate yearly progress for the 2002–2003 school year.

(f) NOTIFICATION.—The Secretary—

(1) shall require each State educational agency to notify each school served by the agency of the school's ability to request a review under this section; and

(2) not later than 30 days after the date of enactment of this section, shall notify the public by means of the Department of Education's website of the review process established under this section.

**SEC. 202. REVIEW OF ADEQUATE YEARLY PROGRESS DETERMINATIONS FOR LOCAL EDUCATIONAL AGENCIES FOR THE 2002–2003 SCHOOL YEAR.**

(a) IN GENERAL.—The Secretary shall require each State educational agency to provide each local educational agency in the State with an opportunity to request a review of a determination by the State educational agency that the local educational agency did not make adequate yearly progress for the 2002–2003 school year.

(b) APPLICATION OF CERTAIN PROVISIONS.—Except as inconsistent with, or inapplicable to, this section, the provisions of section 201 shall apply to review by a State educational agency of a determination described in subsection (a) in the same manner and to the same extent as such provisions apply to review by a local educational agency of a determination described in section 201(a).

**SEC. 203. DEFINITIONS.**

In this title:

(1) The term ''adequate yearly progress'' has the meaning given to that term in section 1111(b)(2)(C) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311(b)(2)(C)).

(2) The term ''local educational agency'' means a local educational agency (as that term is defined in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801)) receiving funds under part A of title I of such Act (20 U.S.C. 6311 et seq.).

(3) The term ''Secretary'' means the Secretary of Education.

(4) The term ''school'' means an elementary school or a secondary school (as those terms are defined in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801)) served under part A of title I of such Act (20 U.S.C. 6311 et seq.).

(5) The term ''State educational agency'' means a State educational agency (as that term is defined in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801)) receiving funds under part A of title I of such Act (20 U.S.C. 6311 et seq.).

**TITLE III—IMPROVING ASSESSMENT AND ACCOUNTABILITY**

**SEC. 301. GRANTS FOR INCREASING DATA CAPACITY FOR PURPOSES OF ASSESSMENT AND ACCOUNTABILITY.**

(a) PROGRAM AUTHORIZED.—From funds appropriated under subsection (g) for a fiscal year, the Secretary may award grants, on a competitive basis, to State educational agencies—

(1) to enable the State educational agencies to develop or increase the capacity of data systems for assessment and accountability purposes, including the collection of graduation rates; and

(2) to award subgrants to increase the capacity of local educational agencies to upgrade, create, or manage longitudinal data systems for the purpose of measuring student academic progress and achievement.

(b) STATE APPLICATION.—Each State educational agency desiring a grant under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

(c) STATE USE OF FUNDS.—Each State educational agency that receives a grant under this section shall use—

(1) not more than 20 percent of the grant funds for the purpose of—

(A) increasing the capacity of, or creating, State databases to collect, disaggregate, and report information related to student achievement, enrollment, and graduation rates for assessment and accountability purposes; and

(B) reporting, on an annual basis, for the elementary schools and secondary schools within the State, on—

(i) the enrollment data from the beginning of the academic year;

(ii) the enrollment data from the end of the academic year; and

(iii) the twelfth grade graduation rates; and

(2) not less than 80 percent of the grant funds to award subgrants to local educational agencies within the State to enable the local educational agencies to carry out the authorized activities described in subsection (e).

(d) LOCAL APPLICATION.—Each local educational agency desiring a subgrant under this section shall submit an application to the State educational agency at such time, in such manner, and containing such information as the State educational agency may require. Each such application shall include, at a minimum, a demonstration of the local educational agency's ability to put a longitudinal data system in place.

(e) LOCAL AUTHORIZED ACTIVITIES.—Each local educational agency that receives a subgrant under this section shall use the subgrant funds to increase the capacity of the local educational agency to upgrade or manage longitudinal data systems consistent with the uses in subsection (c)(1), by—

(1) purchasing database software or hardware;

(2) hiring additional staff for the purpose of managing such data;

(3) providing professional development or additional training for such staff; and

(4) providing professional development or training for principals and teachers on how to effectively use such data to implement instructional strategies to improve student achievement and graduation rates.

(f) DEFINITIONS.—In this section:

(1) The term ''graduation rate'' means the percentage that—

(A) the total number of students who—

(i) graduate from a secondary school with a regular diploma (which shall not include the recognized equivalent of a secondary school diploma or an alternative degree) in an academic year; and

(ii) graduated on time by progressing 1 grade per academic year; represents of

(B) the total number of students who entered the secondary school in the entry level academic year applicable to the graduating students.

(2) The terms ''State educational agency'' and ''local educational agency'' have the meanings given such terms in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).

(3) The term ''Secretary'' means the Secretary of Education.

(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $100,000,000 for fiscal year 2006, and such sums as may be necessary for each of the 2 succeeding fiscal years.

**SEC. 302. GRANTS FOR ASSESSMENT OF CHILDREN WITH DISABILITIES AND CHILDREN WHO ARE LIMITED ENGLISH PROFICIENT.**

Part E of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6491 et seq.) is amended by adding at the end the following:

**''SEC. 1505. GRANTS FOR ASSESSMENT OF CHILDREN WITH DISABILITIES AND CHILDREN WHO ARE LIMITED ENGLISH PROFICIENT.**

''(a) GRANTS AUTHORIZED.—From amounts authorized under subsection (e) for a fiscal year, the Secretary shall award grants, on a competitive basis, to State educational agencies, or to consortia of State educational agencies, to enable the State educational agencies or consortia to collaborate with institutions of higher education, research institutions, or other organizations—

''(1) to design and improve State academic assessments for students who are limited English proficient and students with disabilities; and

''(2) to ensure the most accurate, valid, and reliable means to assess academic content standards and student academic achievement standards for students who are limited English proficient and students with disabilities.

''(b) AUTHORIZED ACTIVITIES.—A State educational agency or consortium that receives a grant under this section shall use the grant funds to carry out 1 or more of the following activities:

''(1) Developing alternate assessments for students with disabilities, consistent with section 1111 and the amendments made on December 9, 2003, to part 200 of title 34, Code of Federal Regulations (68 Fed. Reg. 68698) (relating to accountability for the academic achievement of students with the most significant cognitive disabilities), including—

''(A) the alignment of such assessments, as appropriate and consistent with such amendments, with—

''(i) State academic achievement standards and State academic content standards for all students; or

''(ii) alternate State academic achievement standards that reflect the intended instructional construct for students with disabilities;

''(B) activities to ensure that such assessments do not reflect the disabilities, or associated characteristics, of the students that are extraneous to the intent of the measurement;

''(C) the development of an implementation plan for pilot tests for such assessments, in order to determine the level of appropriateness and feasibility of full-scale administration; and

''(D) activities that provide for the retention of all feasible standardized features in the alternate assessments.

''(2) Developing alternate assessments that meet the requirements of section 1111 for students who are limited English proficient, including—

''(A) the alignment of such assessments with State academic achievement standards and State academic content standards for all students;

''(B) the development of parallel native language assessments or linguistically modified assessments for limited English proficient students that meet the requirements of section 1111(b)(3)(C)(ix)(III);

''(C) the development of an implementation plan for pilot tests for such assessments, in order to determine the level of appropriateness and feasibility of full-scale administration; and

''(D) activities that provide for the retention of all feasible standardized features in the alternate assessments.

''(3) Developing, modifying, or revising State policies and criteria for appropriate accommodations to ensure the full participation of students who are limited English proficient and students with disabilities in State academic assessments, including—

''(A) developing a plan to ensure that assessments provided with accommodations are fully included and integrated into the accountability system, for the purpose of making the determinations of adequate yearly progress required under section 1116;

''(B) ensuring the validity, reliability, and appropriateness of such accommodations, such as—

''(i) a modification to the presentation or format of the assessment;

''(ii) the use of assistive devices;

''(iii) an extension of the time allowed for testing;

''(iv) an alteration of the test setting or procedures;

''(v) the administration of portions of the test in a method appropriate for the level of language proficiency of the test taker;

''(vi) the use of a glossary or dictionary; and

''(vii) the use of a linguistically modified assessment;

''(C) ensuring that State policies and criteria for appropriate accommodations take into account the form or program of instruction provided to students, including the level of difficulty, reliability, cultural difference, and content equivalence of such form or program;

''(D) ensuring that such policies are consistent with the standards prepared by the Joint Committee on Standards for Educational and Psychological Testing of the American Educational Research Association, the American Psychological Association, and the National Council on Measurement in Education; and

''(E) developing a plan for providing training on the use of accommodations to school instructional staff, families, students, and other appropriate parties.

''(4) Developing universally designed assessments that can be accessible to all students, including—

''(A) examining test item or test performance for students with disabilities and students who are limited English proficient, to determine the extent to which the test item or test is universally designed;

''(B) using think aloud and cognitive laboratory procedures, as well as item statistics, to identify test items that may pose particular problems for students with disabilities or students who are limited English proficient;

''(C) developing and implementing a plan to ensure that developers and reviewers of test items are trained in the principles of universal design; and

''(D) developing computer-based applications of universal design principles.

''(c) APPLICATION.—Each State educational agency, or consortium of State educational agencies, desiring to apply for a grant under

this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require, including—

''(1) information regarding the institutions of higher education, research institutions, or other organizations that are collaborating with the State educational agency or consortium, in accordance with subsection (a);

''(2) in the case of a consortium of State educational agencies, the designation of 1 State educational agency as the fiscal agent for the receipt of grant funds;

''(3) a description of the process and criteria by which the State educational agency will identify students that are unable to participate in general State content assessments and are eligible to take alternate assessments, consistent with the amendments made to part 200 of title 34, Code of Federal Regulations (68 Fed. Reg. 68698);

''(4) in the case of a State educational agency or consortium carrying out the activity described in subsection (b)(1)(A), a description of how the State educational agency or consortium plans to fulfill the requirement of subsection (b)(1)(A);

''(5) in the case of a State educational agency or consortium carrying out the activities described in paragraphs (1), (2), and (4) of subsection (b), information regarding the proposed techniques for the development of alternate assessments, including a description of the technical adequacy of, technical aspects of, and scoring for, such assessments;

''(6) a plan for providing training for school instructional staff, families, students, and other appropriate parties on the use of alternate assessments; and

''(7) information on how the scores of students participating in alternate assessments will be reported to the public and to parents.

''(d) EVALUATION AND REPORTING REQUIREMENTS.—Each State educational agency receiving a grant under this section shall submit an annual report to the Secretary describing the activities carried out under the grant and the result of such activities, including—

''(1) details on the effectiveness of the activities supported under this section in helping students with disabilities, or students who are limited English proficient, better participate in State assessment programs; and

''(2) information on the change in achievement, if any, of students with disabilities and students who are limited English proficient, as a result of a more accurate assessment of such students.

''(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $50,000,000 for fiscal year 2006, and such sums as may be necessary for each of the 2 succeeding fiscal years.''.

**SEC. 303. REPORTS ON STUDENT ENROLLMENT AND GRADUATION RATES.**

Part E of title I of the Elementary and Secondary Education Act of 1965 (as amended by section 302) (20 U.S.C. 6491 et seq.) is amended by adding at the end the following:

**''SEC. 1506. REPORTS ON STUDENT ENROLLMENT AND GRADUATION RATES.**

''(a) IN GENERAL.—The Secretary shall collect from each State educational agency, local educational agency, and school, on an annual basis, the following data:

''(1) The number of students enrolled in each of grades 7 through 12 at the beginning of the most recent school year.

''(2) The number of students enrolled in each of grades 7 through 12 at the end of the most recent school year.

''(3) The graduation rate for the most recent school year.

''(4) The data described in paragraphs (1) through (3), disaggregated by the groups of students described in section 1111(b)(2)(C)(v)(II).

''(b) ANNUAL REPORT.—The Secretary shall report the information collected under subsection (a) on an annual basis.''.

**TITLE IV—CIVIL RIGHTS**

**SEC. 401. CIVIL RIGHTS.**

Section 9534 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7914) is amended—

(1) by redesignating subsections (a) and (b) as subsections (b) and (c), respectively; and

(2) by inserting before subsection (b) (as redesignated by paragraph (1)) the following:

''(a) PROHIBITION OF DISCRIMINATION.—Discrimination on the basis of race, color, religion, sex (except as otherwise permitted under title IX of the Education Amendments of 1972), national origin, or disability in any program funded under this Act is prohibited.''.

**TITLE V—TECHNICAL ASSISTANCE**

**SEC. 501. TECHNICAL ASSISTANCE.**

Part F of title IX of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7941) is amended—

(1) in the part heading, by inserting ''**AND TECHNICAL ASSISTANCE**'' after ''**EVALUATIONS**''; and

(2) by adding at the end the following:

**''SEC. 9602. TECHNICAL ASSISTANCE.**

''The Secretary shall ensure that the technical assistance provided by, and the research developed and disseminated through, the Institute of Education Sciences and other offices or agencies of the Department provide educators and parents with the needed information and support for identifying and using educational strategies, programs, and practices, including strategies, programs, and practices available through the clearinghouses supported under the Education Sciences Reform Act of 2002 (20 U.S.C. 9501 et seq.) and other federally-supported clearinghouses, that have been successful in improving educational opportunities and achievement for all students.''.

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By Mr. REID (for himself and Mr. ENSIGN):

S. 1056. A bill to direct the Secretary of the Interior to convey to the City of Henderson, Nevada, certain Federal land located in the City, and for other purposes; to the Committee on Energy and Natural Resources.

Mr. REID. Mr. President, I rise today for myself and Senator ENSIGN to introduce the Southern Nevada Limited Transition Area Act, which will enhance the ability of a rapidly growing community to diversify its economy, gainfully employ its residents, and achieve fiscal sustainability.

In addition to creating a vital economic center in Henderson with this legislation, we hope at a future date to add another title to this bill that will allow Clark County to convey a small parcel of land to the Nevada National Guard for no consideration so that a new armory can be developed. Conversations are currently taking place at the State and county levels that may impact this conveyance, so we are awaiting more information.

The bill I am introducing today would convey approximately 547 acres of land from the Bureau of Land Management to the city of Henderson, NV, for development as an employment and business center.

The Bureau of Land Management has designated this parcel for disposal because of its urban surroundings and its isolation from other public land, which renders it difficult for the agency to manage.

The parcel is located in a rapidly growing area of the city, but is impacted by aircraft noise and overflights from the nearby Henderson Executive Airport, making it unsuitable for residential use.

Rather than shying away from this property because of the limitations on its use, the city of Henderson has put together a forward looking plan that will turn the area into a bustling business center. In addition to productively diversifying the land use pattern in the Las Vegas Valley, the proposed development of this land will encourage a broad range of employment opportunities for the region, while also helping to pay for public infrastructure in nearby residential areas.

The way that the land privatization would work is as follows. The bill would convey the land to the city by patent. The city would then subdivide and sell lots at fair market value. As in previous conveyances of Federal land designated in the Southern Nevada Public Lands Management Act for disposal, 85 percent of the proceeds from sales would return to the BLM's Special Account for a variety of conservation purposes in Nevada. Five percent of the proceeds would fund the State of Nevada's general education program. And the city of Henderson could use the remaining 10 percent to cover expenses associated with subdividing the property and providing infrastructure.

Henderson is a rapidly growing city. Its leaders are dedicated to making the city a national model of logical development, diversified employment, and fiscal sustainability. This bill helps establish the conditions needed to realize that vision.

This bill provides key assistance to southern Nevada by enabling the City of Henderson to move forward with an important economic development project. This is a simple, but an important effort that this body can make to further strengthen our Nation's economy. I look forward working with the Energy Committee and the Senate to pass this legislation.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 1056

*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 ''Southern Nevada Limited Transition Area Act''.

**SEC. 2. DEFINITIONS.**

In this Act:

(1) CITY.—The term ''City'' means the City of Henderson, Nevada.

(2) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

(3) SPECIAL ACCOUNT.—The term ''Special Account'' means the special account established under section 4(e)(1)(C) of the Southern Nevada Public Land Management Act of 1998 (112 Stat. 2345).

(4) STATE.—The term ''State'' means the State of Nevada.

(5) TRANSITION AREA.—The term ''Transition Area'' means the approximately 547 acres of Federal land located in Henderson, Nevada, and identified as ''Limited Transition Area'' on the map entitled ''Southern Nevada Limited Transition Area Act'' and dated November 16, 2004.

**SEC. 3. SOUTHERN NEVADA LIMITED TRANSITION AREA.**

(a) CONVEYANCE.—Notwithstanding the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), on request of the City, the Secretary shall, without consideration and subject to all valid existing rights, convey to the City all right, title, and interest of the United States in and to the Transition Area.

(b) USE OF LAND FOR NONRESIDENTIAL DEVELOPMENT.—

(1) IN GENERAL.—After the conveyance to the City under subsection (a), the City may sell any portion or portions of the Transition Area for purposes of nonresidential development.

(2) METHOD OF SALE.—The sale of land under paragraph (1) shall be—

(A) through a competitive bidding process; and

(B) for not less than fair market value.

(3) COMPLIANCE WITH CHARTER.—Except as provided in paragraphs (2) and (4), the City may sell parcels within the Transition Area only in accordance with the procedures for conveyances established in the City Charter.

(4) DISPOSITION OF PROCEEDS.—Of the gross proceeds from the sale of land under paragraph (1), the City shall—

(A) deposit 85 percent in the Special Account;

(B) retain 10 percent as compensation for the costs incurred by the City—

(i) in carrying out land sales under paragraph (1); and

(ii) for the provision of public infrastructure to serve the Transition Area, including planning, engineering, surveying, and subdividing the Transition Area for nonresidential development; and

(C) pay 5 percent to the State for use in the general education program of the State.

(c) USE OF LAND FOR RECREATION OR OTHER PUBLIC PURPOSES.—The City may elect to retain parcels in the Transition Area for public recreation or other public purposes consistent with the Act of June 14, 1926 (commonly known as the ''Recreation and Public Purposes Act'') (43 U.S.C. 869 et seq.) by providing to the Secretary written notice of the election.

(d) NOISE COMPATIBILITY REQUIREMENTS.—The City shall—

(1) plan and manage the Transition Area in accordance with section 47504 of title 49, United States Code (relating to airport noise compatibility planning), and regulations promulgated in accordance with that section; and

(2) agree that if any land in the Transition Area is sold, leased, or otherwise conveyed by the City, the sale, lease, or conveyance shall contain a limitation to require uses compatible with that airport noise compatibility planning.

(e) REVERSION.—

(1) IN GENERAL.—If any parcel of land in the Transition Area is not conveyed for nonresidential development under this Act or reserved for recreation or other public purposes under subsection (c) within 20 years after the date of the enactment of this Act, the parcel of land shall, if determined to be appropriate by the Secretary, revert to the United States.

(2) INCONSISTENT USE.—If the City uses any parcel of land within the Transition Area in a manner that is inconsistent with the uses specified in this section—

(A) at the election of the Secretary, the parcel shall revert to the United States; or

(B) if the Secretary does not make an election under paragraph (1), the City shall sell the parcel of land in accordance with subsection (b)(2).

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By Mr. MCCAIN (for himself and Mr. DORGAN):

S. 1057. A bill to amend the Indian Health Care Improvement Act to revise and extend that Act; to the Committee on Indian Affairs.

Mr. MCCAIN. Mr. President today I am pleased to introduce the Indian Health Care Improvement Act Amendments of 2005 to revise and extend the Act.

Six years ago a steering committee of Tribal leaders, with extensive consultation by the Indian Health Service, developed a broad consensus in Indian Country about what needs to be done to improve and update health services for Indian people. In the 108th Congress significant progress was made in crafting a bill that was acceptable to all parties but still did not pass the full Senate. In the legislation introduced today, I have tried to address concerns raised last year, but understand that there may still be some differences. I look forward to continuing discussions on these differences, but am introducing the bill to get the process moving because we want to get this legislation enacted.

Over the years, Indian health care delivery has greatly expanded and tribes are taking over more health care services on the local level. Nearly 30 years ago, Congress enacted the Indian Health Care Improvement Act to meet the fundamental trust obligation of the United States to ensure that comprehensive health care would be provided to American Indians and Alaska Natives. The health status of Indian people remains much worse than that of other Americans.

The Indian Health Care Improvement Act is the statutory framework for the Indian health system and covers just about every aspect of health care. It provides grants and scholarships to recruit Indians into health professions serving native communities and funds to expand the health care infrastructure. It lifted the prohibition against Medicare and Medicaid reimbursement for health services provided by the Indian Health Service or the Indian tribes, and established health services for Indians in urban areas.

Reauthorization of this Act is a high legislative priority. Critical improvements have been provided in this bill including provisions exploring options for long-term care, governing children and senior issues and the following: new sources of funding for recruitment and retention purposes; access to health care, especially for Indian children and low-income Indians; more flexibility in facility construction programs; consolidated behavioral health programs for more comprehensive care; and a Commission to study and recommend the best means of providing Indian health care.

I look forward to working with my colleagues on both sides of the aisle to ensure passage of this important legislation. I ask unanimous consent that the full text of the bill be printed in the RECORD.

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

S. 1057

*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 ''Indian Health Care Improvement Act Amendments of 2005''.

**SEC. 2. INDIAN HEALTH CARE IMPROVEMENT ACT AMENDED.**

(a) IN GENERAL.—The Indian Health Care Improvement Act (25 U.S.C. 1601 et seq.) is amended to read as follows:

**''SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

''(a) SHORT TITLE.—This Act may be cited as the 'Indian Health Care Improvement Act'.

''(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

**''SEC. 2. FINDINGS.**

''Congress makes the following findings:

''(1) Federal health services to maintain and improve the health of the Indians are consonant with and required by the Federal Government's historical and unique legal relationship with, and resulting responsibility to, the American Indian people.

''(2) A major national goal of the United States is to provide the quantity and quality of health services which will permit the health status of Indians to be raised to the highest possible level and to encourage the maximum participation of Indians in the planning and management of those services.

''(3) Federal health services to Indians have resulted in a reduction in the prevalence and incidence of preventable illnesses among, and unnecessary and premature deaths of, Indians.

''(4) Despite such services, the unmet health needs of the American Indian people are severe and the health status of the Indians is far below that of the general population of the United States.

**''SEC. 3. DECLARATION OF NATIONAL INDIAN HEALTH POLICY.**

''Congress declares that it is the policy of this Nation, in fulfillment of its special trust responsibilities and legal obligations to Indians—

''(1) to assure the highest possible health status for Indians and to provide all resources necessary to effect that policy;

''(2) to raise the health status of Indians by the year 2010 to at least the levels set forth in the goals contained within the Healthy People 2010 or successor objectives;

''(3) to the greatest extent possible, to allow Indians to set their own health care priorities and establish goals that reflect their unmet needs;

''(4) to increase the proportion of all degrees in the health professions and allied and associated health professions awarded to Indians so that the proportion of Indian health professionals in each Service Area is raised to at least the level of that of the general population;

''(5) to require meaningful consultation with Indian Tribes, Tribal Organizations, and Urban Indian Organizations to implement this Act and the national policy of Indian self-determination; and

''(6) to provide funding for programs and facilities operated by Indian Tribes and Tribal Organizations in amounts that are not less than the amounts provided to programs and facilities operated directly by the Service.

**"SEC. 4. DEFINITIONS.**

''For purposes of this Act:

''(1) The term 'accredited and accessible' means on or near a reservation and accredited by a national or regional organization with accrediting authority.

''(2) The term 'Area Office' means an administrative entity, including a program office, within the Service through which services and funds are provided to the Service Units within a defined geographic area.

''(3) The term 'Assistant Secretary' means the Assistant Secretary of Indian Health.

''(4)(A) The term 'behavioral health' means the blending of substance (alcohol, drugs, inhalants, and tobacco) abuse and mental health prevention and treatment, for the purpose of providing comprehensive services.

''(B) The term 'behavioral health' includes the joint development of substance abuse and mental health treatment planning and coordinated case management using a multidisciplinary approach.

''(5) The term 'California Indians' means those Indians who are eligible for health services of the Service pursuant to section 806.

''(6) The term 'community college' means—

''(A) a tribal college or university, or

''(B) a junior or community college.

''(7) The term 'contract health service' means health services provided at the expense of the Service or a Tribal Health Program by public or private medical providers or hospitals, other than the Service Unit or the Tribal Health Program at whose expense the services are provided.

''(8) The term 'Department' means, unless otherwise designated, the Department of Health and Human Services.

''(9) The term 'disease prevention' means the reduction, limitation, and prevention of disease and its complications and reduction in the consequences of disease, including—

''(A) controlling—

''(i) development of diabetes;

''(ii) high blood pressure;

''(iii) infectious agents;

''(iv) injuries;

''(v) occupational hazards and disabilities;

''(vi) sexually transmittable diseases; and

''(vii) toxic agents; and

''(B) providing—

''(i) fluoridation of water; and

''(ii) immunizations.

''(10) The term 'health profession' means allopathic medicine, family medicine, internal medicine, pediatrics, geriatric medicine, obstetrics and gynecology, podiatric medicine, nursing, public health nursing, dentistry, psychiatry, osteopathy, optometry, pharmacy, psychology, public health, social work, marriage and family therapy, chiropractic medicine, environmental health and engineering, allied health professions, and any other health profession.

''(11) The term 'health promotion' means—

''(A) fostering social, economic, environmental, and personal factors conducive to health, including raising public awareness about health matters and enabling the people to cope with health problems by increasing their knowledge and providing them with valid information;

''(B) encouraging adequate and appropriate diet, exercise, and sleep;

''(C) promoting education and work in conformity with physical and mental capacity;

''(D) making available suitable housing, safe water, and sanitary facilities;

''(E) improving the physical, economic, cultural, psychological, and social environment;

''(F) promoting adequate opportunity for spiritual, religious, and Traditional Health Care Practices; and

''(G) providing adequate and appropriate programs, including—

''(i) abuse prevention (mental and physical);

''(ii) community health;

''(iii) community safety;

''(iv) consumer health education;

''(v) diet and nutrition;

''(vi) immunization and other prevention of communicable diseases, including HIV/AIDS;

''(vii) environmental health;

''(viii) exercise and physical fitness;

''(ix) avoidance of fetal alcohol disorders;

''(x) first aid and CPR education;

''(xi) human growth and development;

''(xii) injury prevention and personal safety;

''(xiii) behavioral health;

''(xiv) monitoring of disease indicators between health care provider visits, through appropriate means, including Internet-based health care management systems;

''(xv) personal health and wellness practices;

''(xvi) personal capacity building;

''(xvii) prenatal, pregnancy, and infant care;

''(xviii) psychological well-being;

''(xix) reproductive health and family planning;

''(xx) safe and adequate water;

''(xxi) safe housing, relating to elimination, reduction, and prevention of contaminants that create unhealthy housing conditions;

''(xxii) safe work environments;

''(xxiii) stress control;

''(xxiv) substance abuse;

''(xxv) sanitary facilities;

''(xxvi) sudden infant death syndrome prevention;

''(xxvii) tobacco use cessation and reduction;

''(xxviii) violence prevention; and

''(xxix) such other activities identified by the Service, a Tribal Health Program, or an Urban Indian Organization, to promote achievement of any of the objectives described in section 3(2).

''(12) The term 'Indian', unless otherwise designated, means any person who is a member of an Indian tribe or is eligible for health services under section 806, except that, for the purpose of sections 102 and 103, the term also means any individual who—

''(A)(i) irrespective of whether the individual lives on or near a reservation, is a member of a tribe, band, or other organized group of Indians, including those tribes, bands, or groups terminated since 1940 and those recognized now or in the future by the State in which they reside; or

''(ii) is a descendant, in the first or second degree, of any such member;

''(B) is an Eskimo or Aleut or other Alaska Native;

''(C) is considered by the Secretary of the Interior to be an Indian for any purpose; or

''(D) is determined be an Indian under regulations promulgated by the Secretary.

''(13) The term 'Indian Health Program' means—

''(A) any health program administered directly by the Service;

''(B) any Tribal Health Program; or

''(C) any Indian Tribe or Tribal Organization to which the Secretary provides funding pursuant to section 23 of the Act of April 30, 1908 (25 U.S.C. 47), commonly known as the 'Buy Indian Act'.

''(14) The term 'Indian Tribe' has the meaning given the term in the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).

''(15) The term 'junior or community college' has the meaning given the term by section 312(e) of the Higher Education Act of 1965 (20 U.S.C. 1058(e)).

''(16) The term 'reservation' means any federally recognized Indian Tribe's reservation, Pueblo, or colony, including former reservations in Oklahoma, Indian allotments, and Alaska Native Regions established pursuant to the Alaska Native Claims Settlement Act (25 U.S.C. 1601 et seq.).

''(17) The term 'Secretary', unless otherwise designated, means the Secretary of Health and Human Services.

''(18) The term 'Service' means the Indian Health Service.

''(19) The term 'Service Area' means the geographical area served by each Area Office.

''(20) The term 'Service Unit' means an administrative entity of the Service, or a Tribal Health Program through which services are provided, directly or by contract, to eligible Indians within a defined geographic area.

''(21) The term 'telehealth' has the meaning given the term in section 330K(a) of the Public Health Service Act (42 U.S.C. 254c–16(a)).

''(22) The term 'telemedicine' means a telecommunications link to an end user through the use of eligible equipment that electronically links health professionals or patients and health professionals at separate sites in order to exchange health care information in audio, video, graphic, or other format for the purpose of providing improved health care services.

''(23) The term 'Traditional Health Care Practices' means the application by Native healing practitioners of the Native healing sciences (as opposed or in contradistinction to Western healing sciences) which embody the influences or forces of innate Tribal discovery, history, description, explanation and knowledge of the states of wellness and illness and which call upon these influences or forces, including physical, mental, and spiritual forces in the promotion, restoration, preservation, and maintenance of health, well-being, and life's harmony.

''(24) The term 'tribal college or university' has the meaning given the term in section 316(b)(3) of the Higher Education Act (20 U.S.C. 1059c(b)(3)).

''(25) The term 'Tribal Health Program' means an Indian Tribe or Tribal Organization that operates any health program, service, function, activity, or facility funded, in whole or part, by the Service through, or provided for in, a contract or compact with the Service under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).

''(26) The term 'Tribal Organization' has the meaning given the term in the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).

''(27) The term 'Urban Center' means any community which has a sufficient Urban Indian population with unmet health needs to warrant assistance under title V of this Act, as determined by the Secretary.

''(28) The term 'Urban Indian' means any individual who resides in an Urban Center and who meets 1 or more of the following criteria:

''(A) Irrespective of whether the individual lives on or near a reservation, the individual is a member of a tribe, band, or other organized group of Indians, including those tribes, bands, or groups terminated since 1940 and those tribes, bands, or groups that are recognized by the States in which they reside, or who is a descendant in the first or second degree of any such member.

''(B) The individual is an Eskimo, Aleut, or other Alaskan Native.

''(C) The individual is considered by the Secretary of the Interior to be an Indian for any purpose.

''(D) The individual is determined to be an Indian under regulations promulgated by the Secretary.

''(29) The term 'Urban Indian Organization' means a nonprofit corporate body that (A) is situated in an Urban Center; (B) is governed by an Urban Indian-controlled board of directors; (C) provides for the participation of all interested Indian groups and individuals; and (D) is capable of legally cooperating with other public and private entities for the purpose of performing the activities described in section 503(a).

**''TITLE I—INDIAN HEALTH, HUMAN RESOURCES, AND DEVELOPMENT**

**''SEC. 101. PURPOSE.**

''The purpose of this title is to increase, to the maximum extent feasible, the number of Indians entering the health professions and providing health services, and to assure an optimum supply of health professionals to the Indian Health Programs and Urban Indian Organizations involved in the provision of health services to Indians.

**''SEC. 102. HEALTH PROFESSIONS RECRUITMENT PROGRAM FOR INDIANS.**

''(a) IN GENERAL.—The Secretary, acting through the Service, shall make grants to public or nonprofit private health or educational entities, Tribal Health Programs, or Urban Indian Organizations to assist such entities in meeting the costs of—

''(1) identifying Indians with a potential for education or training in the health professions and encouraging and assisting them—

''(A) to enroll in courses of study in such health professions; or

''(B) if they are not qualified to enroll in any such courses of study, to undertake such postsecondary education or training as may be required to qualify them for enrollment;

''(2) publicizing existing sources of financial aid available to Indians enrolled in any course of study referred to in paragraph (1) or who are undertaking training necessary to qualify them to enroll in any such course of study; or

''(3) establishing other programs which the Secretary determines will enhance and facilitate the enrollment of Indians in, and the subsequent pursuit and completion by them of, courses of study referred to in paragraph (1).

''(b) FUNDING.—

''(1) APPLICATION.—The Secretary shall not make a grant under this section unless an application has been submitted to, and approved by, the Secretary. Such application shall be in such form, submitted in such manner, and contain such information, as the Secretary shall by regulation prescribe pursuant to this Act. The Secretary shall give a preference to applications submitted by Tribal Health Programs or Urban Indian Organizations.

''(2) AMOUNT OF FUNDS; PAYMENT.—The amount of a grant under this section shall be determined by the Secretary. Payments pursuant to this section may be made in advance or by way of reimbursement, and at such intervals and on such conditions as provided for in regulations issued pursuant to this Act. To the extent not otherwise prohibited by law, funding commitments shall be for 3 years, as provided in regulations issued pursuant to this Act.

**''SEC. 103. HEALTH PROFESSIONS PREPARATORY SCHOLARSHIP PROGRAM FOR INDIANS.**

''(a) SCHOLARSHIPS AUTHORIZED.—The Secretary, acting through the Service, shall provide scholarship grants to Indians who—

''(1) have successfully completed their high school education or high school equivalency; and

''(2) have demonstrated the potential to successfully complete courses of study in the health professions.

''(b) PURPOSES.—Scholarships provided pursuant to this section shall be for the following purposes:

''(1) Compensatory preprofessional education of any recipient, such scholarship not to exceed 2 years on a full-time basis (or the part-time equivalent thereof, as determined by the Secretary pursuant to regulations issued under this Act).

''(2) Pregraduate education of any recipient leading to a baccalaureate degree in an approved course of study preparatory to a field of study in a health profession, such scholarship not to exceed 4 years. An extension of up to 2 years (or the part-time equivalent thereof, as determined by the Secretary pursuant to regulations issued pursuant to this Act) may be approved.

''(c) OTHER CONDITIONS.—Scholarships under this section—

''(1) may cover costs of tuition, books, transportation, board, and other necessary related expenses of a recipient while attending school;

''(2) shall not be denied solely on the basis of the applicant's scholastic achievement if such applicant has been admitted to, or maintained good standing at, an accredited institution; and

''(3) shall not be denied solely by reason of such applicant's eligibility for assistance or benefits under any other Federal program.

**''SEC. 104. INDIAN HEALTH PROFESSIONS SCHOLARSHIPS.**

''(a) IN GENERAL.—

''(1) AUTHORITY.—The Secretary, acting through the Service, shall make scholarship grants to Indians who are enrolled full or part time in accredited schools pursuing courses of study in the health professions. Such scholarships shall be designated Indian Health Scholarships and shall be made in accordance with section 338A of the Public Health Services Act (42 U.S.C. 2541), except as provided in subsection (b) of this section.

''(2) ALLOCATION BY FORMULA.—Except as provided in paragraph (3), the funding authorized by this section shall be allocated by Service Area by a formula developed in consultation with Indian Tribes, Tribal Organizations, and Urban Indian Organizations. Such formula shall consider the human resource development needs in each Service Area.

''(3) CONTINUITY OF PRIOR SCHOLARSHIPS.—Paragraph (2) shall not apply with respect to individual recipients of scholarships provided under this section (as in effect 1 day prior to the date of enactment of the Indian Health Care Improvement Act Amendments of 2005) until such time as the individual completes the course of study that is supported through such scholarship.

''(4) CERTAIN DELEGATION NOT ALLOWED.—The administration of this section shall be a responsibility of the Assistant Secretary and shall not be delegated in a contract or compact under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).

''(b) ACTIVE DUTY SERVICE OBLIGATION.—

''(1) OBLIGATION MET.—The active duty service obligation under a written contract with the Secretary under section 338A of the Public Health Service Act (42 U.S.C. 2541) that an Indian has entered into under that section shall, if that individual is a recipient of an Indian Health Scholarship, be met in full-time practice on an equivalent year-for-year obligation, by service in one or more of the following:

''(A) In an Indian Health Program.

''(B) In a program assisted under title V of this Act.

''(C) In the private practice of the applicable profession if, as determined by the Secretary, in accordance with guidelines promulgated by the Secretary, such practice is situated in a physician or other health professional shortage area and addresses the health care needs of a substantial number of Indians.

''(2) OBLIGATION DEFERRED.—At the request of any individual who has entered into a contract referred to in paragraph (1) and who receives a degree in medicine (including osteopathic or allopathic medicine), dentistry, optometry, podiatry, or pharmacy, the Secretary shall defer the active duty service obligation of that individual under that contract, in order that such individual may complete any internship, residency, or other advanced clinical training that is required for the practice of that health profession, for an appropriate period (in years, as determined by the Secretary), subject to the following conditions:

''(A) No period of internship, residency, or other advanced clinical training shall be counted as satisfying any period of obligated service under this subsection.

''(B) The active duty service obligation of that individual shall commence not later than 90 days after the completion of that advanced clinical training (or by a date specified by the Secretary).

''(C) The active duty service obligation will be served in the health profession of that individual in a manner consistent with paragraph (1).

''(D) A recipient of a scholarship under this section may, at the election of the recipient, meet the active duty service obligation described in paragraph (1) by service in a program specified under that paragraph that—

''(i) is located on the reservation of the Indian Tribe in which the recipient is enrolled; or

''(ii) serves the Indian Tribe in which the recipient is enrolled.

''(3) PRIORITY WHEN MAKING ASSIGNMENTS.—Subject to paragraph (2), the Secretary, in making assignments of Indian Health Scholarship recipients required to meet the active duty service obligation described in paragraph (1), shall give priority to assigning individuals to service in those programs specified in paragraph (1) that have a need for health professionals to provide health care services as a result of individuals having breached contracts entered into under this section.

''(c) PART-TIME STUDENTS.—In the case of an individual receiving a scholarship under this section who is enrolled part time in an approved course of study—

''(1) such scholarship shall be for a period of years not to exceed the part-time equivalent of 4 years, as determined by the Area Office;

''(2) the period of obligated service described in subsection (b)(1) shall be equal to the greater of—

''(A) the part-time equivalent of 1 year for each year for which the individual was provided a scholarship (as determined by the Area Office); or

''(B) 2 years; and

''(3) the amount of the monthly stipend specified in section 338A(g)(1)(B) of the Public Health Service Act (42 U.S.C. 254*l*(g)(1)(B)) shall be reduced pro rata (as determined by the Secretary) based on the number of hours such student is enrolled.

''(d) BREACH OF CONTRACT.—

''(1) SPECIFIED BREACHES.—An individual shall be liable to the United States for the amount which has been paid to the individual, or on behalf of the individual, under a contract entered into with the Secretary

under this section on or after the date of enactment of the Indian Health Care Improvement Act Amendments of 2005 if that individual—

''(A) fails to maintain an acceptable level of academic standing in the educational institution in which he or she is enrolled (such level determined by the educational institution under regulations of the Secretary);

''(B) is dismissed from such educational institution for disciplinary reasons;

''(C) voluntarily terminates the training in such an educational institution for which he or she is provided a scholarship under such contract before the completion of such training; or

''(D) fails to accept payment, or instructs the educational institution in which he or she is enrolled not to accept payment, in whole or in part, of a scholarship under such contract, in lieu of any service obligation arising under such contract.

''(2) OTHER BREACHES.—If for any reason not specified in paragraph (1) an individual breaches a written contract by failing either to begin such individual's service obligation required under such contract or to complete such service obligation, the United States shall be entitled to recover from the individual an amount determined in accordance with the formula specified in subsection (*l*) of section 110 in the manner provided for in such subsection.

''(3) CANCELLATION UPON DEATH OF RECIPIENT.—Upon the death of an individual who receives an Indian Health Scholarship, any outstanding obligation of that individual for service or payment that relates to that scholarship shall be canceled.

''(4) WAIVERS AND SUSPENSIONS.—The Secretary shall provide for the partial or total waiver or suspension of any obligation of service or payment of a recipient of an Indian Health Scholarship if the Secretary, in consultation with the affected Area Office, Indian Tribes, Tribal Organizations, and Urban Indian Organizations, determines that—

''(A) it is not possible for the recipient to meet that obligation or make that payment;

''(B) requiring that recipient to meet that obligation or make that payment would result in extreme hardship to the recipient; or

''(C) the enforcement of the requirement to meet the obligation or make the payment would be unconscionable.

''(5) EXTREME HARDSHIP.—Notwithstanding any other provision of law, in any case of extreme hardship or for other good cause shown, the Secretary may waive, in whole or in part, the right of the United States to recover funds made available under this section.

''(6) BANKRUPTCY.—Notwithstanding any other provision of law, with respect to a recipient of an Indian Health Scholarship, no obligation for payment may be released by a discharge in bankruptcy under title 11, United States Code, unless that discharge is granted after the expiration of the 5-year period beginning on the initial date on which that payment is due, and only if the bankruptcy court finds that the nondischarge of the obligation would be unconscionable.

**''SEC. 105. AMERICAN INDIANS INTO PSYCHOLOGY PROGRAM.**

''(a) GRANTS AUTHORIZED.—The Secretary, acting through the Service, shall make grants to at least 3 colleges and universities for the purpose of developing and maintaining Indian psychology career recruitment programs as a means of encouraging Indians to enter the mental health field. These programs shall be located at various locations throughout the country to maximize their availability to Indian students and new programs shall be established in different locations from time to time.

''(b) QUENTIN N. BURDICK PROGRAM GRANT.—The Secretary shall provide a grant authorized under subsection (a) to develop and maintain a program at the University of North Dakota to be known as the 'Quentin N. Burdick American Indians Into Psychology Program'. Such program shall, to the maximum extent feasible, coordinate with the Quentin N. Burdick Indian Health Programs authorized under section 117(b), the Quentin N. Burdick American Indians Into Nursing Program authorized under section 115(e), and existing university research and communications networks.

''(c) REGULATIONS.—The Secretary shall issue regulations pursuant to this Act for the competitive awarding of grants provided under this section.

''(d) CONDITIONS OF GRANT.—Applicants under this section shall agree to provide a program which, at a minimum—

''(1) provides outreach and recruitment for health professions to Indian communities including elementary, secondary, and accredited and accessible community colleges that will be served by the program;

''(2) incorporates a program advisory board comprised of representatives from the tribes and communities that will be served by the program;

''(3) provides summer enrichment programs to expose Indian students to the various fields of psychology through research, clinical, and experimental activities;

''(4) provides stipends to undergraduate and graduate students to pursue a career in psychology;

''(5) develops affiliation agreements with tribal colleges and universities, the Service, university affiliated programs, and other appropriate accredited and accessible entities to enhance the education of Indian students;

''(6) to the maximum extent feasible, uses existing university tutoring, counseling, and student support services; and

''(7) to the maximum extent feasible, employs qualified Indians in the program.

''(e) ACTIVE DUTY SERVICE REQUIREMENT.—The active duty service obligation prescribed under section 338C of the Public Health Service Act (42 U.S.C. 254m) shall be met by each graduate who receives a stipend described in subsection (d)(4) that is funded under this section. Such obligation shall be met by service—

''(1) in an Indian Health Program;

''(2) in a program assisted under title V of this Act; or

''(3) in the private practice of psychology if, as determined by the Secretary, in accordance with guidelines promulgated by the Secretary, such practice is situated in a physician or other health professional shortage area and addresses the health care needs of a substantial number of Indians.

**''SEC. 106. FUNDING FOR TRIBES FOR SCHOLARSHIP PROGRAMS.**

''(a) IN GENERAL.—

''(1) GRANTS AUTHORIZED.—The Secretary, acting through the Service, shall make grants to Tribal Health Programs for the purpose of providing scholarships for Indians to serve as health professionals in Indian communities.

''(2) AMOUNT.—Amounts available under paragraph (1) for any fiscal year shall not exceed 5 percent of the amounts available for each fiscal year for Indian Health Scholarships under section 104.

''(3) APPLICATION.—An application for a grant under paragraph (1) shall be in such form and contain such agreements, assurances, and information as consistent with this section.

''(b) REQUIREMENTS.—

''(1) IN GENERAL.—A Tribal Health Program receiving a grant under subsection (a) shall provide scholarships to Indians in accordance with the requirements of this section.

''(2) COSTS.—With respect to costs of providing any scholarship pursuant to subsection (a)—

''(A) 80 percent of the costs of the scholarship shall be paid from the funds made available pursuant to subsection (a)(1) provided to the Tribal Health Program; and

''(B) 20 percent of such costs may be paid from any other source of funds.

''(c) COURSE OF STUDY.—A Tribal Health Program shall provide scholarships under this section only to Indians enrolled or accepted for enrollment in a course of study (approved by the Secretary) in one of the health professions contemplated by this Act.

''(d) CONTRACT.—In providing scholarships under subsection (b), the Secretary and the Tribal Health Program shall enter into a written contract with each recipient of such scholarship. Such contract shall—

''(1) obligate such recipient to provide service in an Indian Health Program or Urban Indian Organization, in the same Service Area where the Tribal Health Program providing the scholarship is located, for—

''(A) a number of years for which the scholarship is provided (or the part-time equivalent thereof, as determined by the Secretary), or for a period of 2 years, whichever period is greater; or

''(B) such greater period of time as the recipient and the Tribal Health Program may agree;

''(2) provide that the amount of the scholarship—

''(A) may only be expended for—

''(i) tuition expenses, other reasonable educational expenses, and reasonable living expenses incurred in attendance at the educational institution; and

''(ii) payment to the recipient of a monthly stipend of not more than the amount authorized by section 338(g)(1)(B) of the Public Health Service Act (42 U.S.C. 254m(g)(1)(B)), with such amount to be reduced pro rata (as determined by the Secretary) based on the number of hours such student is enrolled, and not to exceed, for any year of attendance for which the scholarship is provided, the total amount required for the year for the purposes authorized in this clause; and

''(B) may not exceed, for any year of attendance for which the scholarship is provided, the total amount required for the year for the purposes authorized in subparagraph (A);

''(3) require the recipient of such scholarship to maintain an acceptable level of academic standing as determined by the educational institution in accordance with regulations issued pursuant to this Act; and

''(4) require the recipient of such scholarship to meet the educational and licensure requirements appropriate to each health profession.

''(e) BREACH OF CONTRACT.—

''(1) SPECIFIC BREACHES.—An individual who has entered into a written contract with the Secretary and a Tribal Health Program under subsection (d) shall be liable to the United States for the Federal share of the amount which has been paid to him or her, or on his or her behalf, under the contract if that individual—

''(A) fails to maintain an acceptable level of academic standing in the educational institution in which he or she is enrolled (such level as determined by the educational institution under regulations of the Secretary);

''(B) is dismissed from such educational institution for disciplinary reasons;

''(C) voluntarily terminates the training in such an educational institution for which he or she is provided a scholarship under such contract before the completion of such training; or

''(D) fails to accept payment, or instructs the educational institution in which he or she is enrolled not to accept payment, in whole or in part, of a scholarship under such contract, in lieu of any service obligation arising under such contract.

''(2) OTHER BREACHES.—If for any reason not specified in paragraph (1), an individual breaches a written contract by failing to either begin such individual's service obligation required under such contract or to complete such service obligation, the United States shall be entitled to recover from the individual an amount determined in accordance with the formula specified in subsection (*l*) of section 110 in the manner provided for in such subsection.

''(3) CANCELLATION UPON DEATH OF RECIPIENT.—Upon the death of an individual who receives an Indian Health Scholarship, any outstanding obligation of that individual for service or payment that relates to that scholarship shall be canceled.

''(4) INFORMATION.—The Secretary may carry out this subsection on the basis of information received from Tribal Health Programs involved or on the basis of information collected through such other means as the Secretary deems appropriate.

''(f) RELATION TO SOCIAL SECURITY ACT.—The recipient of a scholarship under this section shall agree, in providing health care pursuant to the requirements herein—

''(1) not to discriminate against an individual seeking care on the basis of the ability of the individual to pay for such care or on the basis that payment for such care will be made pursuant to a program established in title XVIII of the Social Security Act or pursuant to the programs established in title XIX or title XXI of such Act; and

''(2) to accept assignment under section 1842(b)(3)(B)(ii) of the Social Security Act for all services for which payment may be made under part B of title XVIII of such Act, and to enter into an appropriate agreement with the State agency that administers the State plan for medical assistance under title XIX, or the State child health plan under title XXI, of such Act to provide service to individuals entitled to medical assistance or child health assistance, respectively, under the plan.

''(g) CONTINUANCE OF FUNDING.—The Secretary shall make payments under this section to a Tribal Health Program for any fiscal year subsequent to the first fiscal year of such payments unless the Secretary determines that, for the immediately preceding fiscal year, the Tribal Health Program has not complied with the requirements of this section.

**''SEC. 107. INDIAN HEALTH SERVICE EXTERN PROGRAMS.**

''(a) EMPLOYMENT PREFERENCE.—Any individual who receives a scholarship pursuant to section 104 or 106 shall be given preference for employment in the Service, or may be employed by a Tribal Health Program or an Urban Indian Organization, or other agencies of the Department as available, during any nonacademic period of the year.

''(b) NOT COUNTED TOWARD ACTIVE DUTY SERVICE OBLIGATION.—Periods of employment pursuant to this subsection shall not be counted in determining fulfillment of the service obligation incurred as a condition of the scholarship.

''(c) TIMING; LENGTH OF EMPLOYMENT.—Any individual enrolled in a program, including a high school program, authorized under section 102(a) may be employed by the Service or by a Tribal Health Program or an Urban Indian Organization during any nonacademic period of the year. Any such employment shall not exceed 120 days during any calendar year.

''(d) NONAPPLICABILITY OF COMPETITIVE PERSONNEL SYSTEM.—Any employment pursuant to this section shall be made without regard to any competitive personnel system or agency personnel limitation and to a position which will enable the individual so employed to receive practical experience in the health profession in which he or she is engaged in study. Any individual so employed shall receive payment for his or her services comparable to the salary he or she would receive if he or she were employed in the competitive system. Any individual so employed shall not be counted against any employment ceiling affecting the Service or the Department.

**''SEC. 108. CONTINUING EDUCATION ALLOWANCES.**

''In order to encourage health professionals, including community health representatives and emergency medical technicians, to join or continue in an Indian Health Program or an Urban Indian Organization and to provide their services in the rural and remote areas where a significant portion of Indians reside, the Secretary, acting through the Service, may provide allowances to health professionals employed in an Indian Health Program or an Urban Indian Organization to enable them for a period of time each year prescribed by regulation of the Secretary to take leave of their duty stations for professional consultation and refresher training courses.

**''SEC. 109. COMMUNITY HEALTH REPRESENTATIVE PROGRAM.**

''(a) IN GENERAL.—Under the authority of the Act of November 2, 1921 (25 U.S.C. 13) (commonly known as the 'Snyder Act'), the Secretary, acting through the Service, shall maintain a Community Health Representative Program under which Indian Health Programs—

''(1) provide for the training of Indians as community health representatives; and

''(2) use such community health representatives in the provision of health care, health promotion, and disease prevention services to Indian communities.

''(b) DUTIES.—The Community Health Representative Program of the Service, shall—

''(1) provide a high standard of training for community health representatives to ensure that the community health representatives provide quality health care, health promotion, and disease prevention services to the Indian communities served by the Program;

''(2) in order to provide such training, develop and maintain a curriculum that—

''(A) combines education in the theory of health care with supervised practical experience in the provision of health care; and

''(B) provides instruction and practical experience in health promotion and disease prevention activities, with appropriate consideration given to lifestyle factors that have an impact on Indian health status, such as alcoholism, family dysfunction, and poverty;

''(3) maintain a system which identifies the needs of community health representatives for continuing education in health care, health promotion, and disease prevention and develop programs that meet the needs for continuing education;

''(4) maintain a system that provides close supervision of Community Health Representatives;

''(5) maintain a system under which the work of Community Health Representatives is reviewed and evaluated; and

''(6) promote Traditional Health Care Practices of the Indian Tribes served consistent with the Service standards for the provision of health care, health promotion, and disease prevention.

**''SEC. 110. INDIAN HEALTH SERVICE LOAN REPAYMENT PROGRAM.**

''(a) ESTABLISHMENT.—The Secretary, acting through the Service, shall establish and administer a program to be known as the Service Loan Repayment Program (hereinafter referred to as the 'Loan Repayment Program') in order to ensure an adequate supply of trained health professionals necessary to maintain accreditation of, and provide health care services to Indians through, Indian Health Programs and Urban Indian Organizations.

''(b) ELIGIBLE INDIVIDUALS.—To be eligible to participate in the Loan Repayment Program, an individual must—

''(1)(A) be enrolled—

''(i) in a course of study or program in an accredited educational institution (as determined by the Secretary under section 338B(b)(1)(c)(i) of the Public Health Service Act (42 U.S.C. 254*l*–1(b)(1)(c)(i))) and be scheduled to complete such course of study in the same year such individual applies to participate in such program; or

''(ii) in an approved graduate training program in a health profession; or

''(B) have—

''(i) a degree in a health profession; and

''(ii) a license to practice a health profession;

''(2)(A) be eligible for, or hold, an appointment as a commissioned officer in the Regular or Reserve Corps of the Public Health Service;

''(B) be eligible for selection for civilian service in the Regular or Reserve Corps of the Public Health Service;

''(C) meet the professional standards for civil service employment in the Service; or

''(D) be employed in an Indian Health Program or Urban Indian Organization without a service obligation; and

''(3) submit to the Secretary an application for a contract described in subsection (e).

''(c) APPLICATION.—

''(1) INFORMATION TO BE INCLUDED WITH FORMS.—In disseminating application forms and contract forms to individuals desiring to participate in the Loan Repayment Program, the Secretary shall include with such forms a fair summary of the rights and liabilities of an individual whose application is approved (and whose contract is accepted) by the Secretary, including in the summary a clear explanation of the damages to which the United States is entitled under subsection (*l*) in the case of the individual's breach of contract. The Secretary shall provide such individuals with sufficient information regarding the advantages and disadvantages of service as a commissioned officer in the Regular or Reserve Corps of the Public Health Service or a civilian employee of the Service to enable the individual to make a decision on an informed basis.

''(2) CLEAR LANGUAGE.—The application form, contract form, and all other information furnished by the Secretary under this section shall be written in a manner calculated to be understood by the average individual applying to participate in the Loan Repayment Program.

''(3) TIMELY AVAILABILITY OF FORMS.—The Secretary shall make such application forms, contract forms, and other information available to individuals desiring to participate in the Loan Repayment Program on a date sufficiently early to ensure that such individuals have adequate time to carefully review and evaluate such forms and information.

''(d) PRIORITIES.—

''(1) LIST.—Consistent with subsection (k), the Secretary shall annually—

''(A) identify the positions in each Indian Health Program or Urban Indian Organization for which there is a need or a vacancy; and

''(B) rank those positions in order of priority.

''(2) APPROVALS.—Notwithstanding the priority determined under paragraph (1), the Secretary, in determining which applications under the Loan Repayment Program to approve (and which contracts to accept), shall—

''(A) give first priority to applications made by individual Indians; and

''(B) after making determinations on all applications submitted by individual Indians as required under subparagraph (A), give priority to—

''(i) individuals recruited through the efforts of an Indian Health Program or Urban Indian Organization; and

''(ii) other individuals based on the priority rankings under paragraph (1).

''(e) RECIPIENT CONTRACTS.—

''(1) CONTRACT REQUIRED.—An individual becomes a participant in the Loan Repayment Program only upon the Secretary and the individual entering into a written contract described in paragraph (2).

''(2) CONTENTS OF CONTRACT.—The written contract referred to in this section between the Secretary and an individual shall contain—

''(A) an agreement under which—

''(i) subject to subparagraph (C), the Secretary agrees—

''(I) to pay loans on behalf of the individual in accordance with the provisions of this section; and

''(II) to accept (subject to the availability of appropriated funds for carrying out this section) the individual into the Service or place the individual with a Tribal Health Program or Urban Indian Organization as provided in clause (ii)(III); and

''(ii) subject to subparagraph (C), the individual agrees—

''(I) to accept loan payments on behalf of the individual;

''(II) in the case of an individual described in subsection (b)(1)—

''(aa) to maintain enrollment in a course of study or training described in subsection (b)(1)(A) until the individual completes the course of study or training; and

''(bb) while enrolled in such course of study or training, to maintain an acceptable level of academic standing (as determined under regulations of the Secretary by the educational institution offering such course of study or training); and

''(III) to serve for a time period (hereinafter in this section referred to as the 'period of obligated service') equal to 2 years or such longer period as the individual may agree to serve in the full-time clinical practice of such individual's profession in an Indian Health Program or Urban Indian Organization to which the individual may be assigned by the Secretary;

''(B) a provision permitting the Secretary to extend for such longer additional periods, as the individual may agree to, the period of obligated service agreed to by the individual under subparagraph (A)(ii)(III);

''(C) a provision that any financial obligation of the United States arising out of a contract entered into under this section and any obligation of the individual which is conditioned thereon is contingent upon funds being appropriated for loan repayments under this section;

''(D) a statement of the damages to which the United States is entitled under subsection (*l*) for the individual's breach of the contract; and

''(E) such other statements of the rights and liabilities of the Secretary and of the individual, not inconsistent with this section.

''(f) DEADLINE FOR DECISION ON APPLICATION.—The Secretary shall provide written notice to an individual within 21 days on—

''(1) the Secretary's approving, under subsection (e)(1), of the individual's participation in the Loan Repayment Program, including extensions resulting in an aggregate period of obligated service in excess of 4 years; or

''(2) the Secretary's disapproving an individual's participation in such Program.

''(g) PAYMENTS.—

''(1) IN GENERAL.—A loan repayment provided for an individual under a written contract under the Loan Repayment Program shall consist of payment, in accordance with paragraph (2), on behalf of the individual of the principal, interest, and related expenses on government and commercial loans received by the individual regarding the undergraduate or graduate education of the individual (or both), which loans were made for—

''(A) tuition expenses;

''(B) all other reasonable educational expenses, including fees, books, and laboratory expenses, incurred by the individual; and

''(C) reasonable living expenses as determined by the Secretary.

''(2) AMOUNT.—For each year of obligated service that an individual contracts to serve under subsection (e), the Secretary may pay up to $35,000 or an amount equal to the amount specified in section 338B(g)(2)(A) of the Public Health Service Act, whichever is more, on behalf of the individual for loans described in paragraph (1). In making a determination of the amount to pay for a year of such service by an individual, the Secretary shall consider the extent to which each such determination—

''(A) affects the ability of the Secretary to maximize the number of contracts that can be provided under the Loan Repayment Program from the amounts appropriated for such contracts;

''(B) provides an incentive to serve in Indian Health Programs and Urban Indian Organizations with the greatest shortages of health professionals; and

''(C) provides an incentive with respect to the health professional involved remaining in an Indian Health Program or Urban Indian Organization with such a health professional shortage, and continuing to provide primary health services, after the completion of the period of obligated service under the Loan Repayment Program.

''(3) TIMING.—Any arrangement made by the Secretary for the making of loan repayments in accordance with this subsection shall provide that any repayments for a year of obligated service shall be made no later than the end of the fiscal year in which the individual completes such year of service.

''(4) REIMBURSEMENTS FOR TAX LIABILITY.—For the purpose of providing reimbursements for tax liability resulting from a payment under paragraph (2) on behalf of an individual, the Secretary—

''(A) in addition to such payments, may make payments to the individual in an amount equal to not less than 20 percent and not more than 39 percent of the total amount of loan repayments made for the taxable year involved; and

''(B) may make such additional payments as the Secretary determines to be appropriate with respect to such purpose.

''(5) PAYMENT SCHEDULE.—The Secretary may enter into an agreement with the holder of any loan for which payments are made under the Loan Repayment Program to establish a schedule for the making of such payments.

''(h) EMPLOYMENT CEILING.—Notwithstanding any other provision of law, individuals who have entered into written contracts with the Secretary under this section shall not be counted against any employment ceiling affecting the Department while those individuals are undergoing academic training.

''(i) RECRUITMENT.—The Secretary shall conduct recruiting programs for the Loan Repayment Program and other Service manpower programs of the Service at educational institutions training health professionals or specialists identified in subsection (a).

''(j) APPLICABILITY OF LAW.—Section 214 of the Public Health Service Act (42 U.S.C. 215) shall not apply to individuals during their period of obligated service under the Loan Repayment Program.

''(k) ASSIGNMENT OF INDIVIDUALS.—The Secretary, in assigning individuals to serve in Indian Health Programs or Urban Indian Organizations pursuant to contracts entered into under this section, shall—

''(1) ensure that the staffing needs of Tribal Health Programs and Urban Indian Organizations receive consideration on an equal basis with programs that are administered directly by the Service; and

''(2) give priority to assigning individuals to Indian Health Programs and Urban Indian Organizations that have a need for health professionals to provide health care services as a result of individuals having breached contracts entered into under this section.

''(*l*) BREACH OF CONTRACT.—

''(1) SPECIFIC BREACHES.—An individual who has entered into a written contract with the Secretary under this section and has not received a waiver under subsection (m) shall be liable, in lieu of any service obligation arising under such contract, to the United States for the amount which has been paid on such individual's behalf under the contract if that individual—

''(A) is enrolled in the final year of a course of study and—

''(i) fails to maintain an acceptable level of academic standing in the educational institution in which he or she is enrolled (such level determined by the educational institution under regulations of the Secretary);

''(ii) voluntarily terminates such enrollment; or

''(iii) is dismissed from such educational institution before completion of such course of study; or

''(B) is enrolled in a graduate training program and fails to complete such training program.

''(2) OTHER BREACHES; FORMULA FOR AMOUNT OWED.—If, for any reason not specified in paragraph (1), an individual breaches his or her written contract under this section by failing either to begin, or complete, such individual's period of obligated service in accordance with subsection (e)(2), the United States shall be entitled to recover from such individual an amount to be determined in accordance with the following formula: $A=3Z(t-s/t)$ in which—

''(A) 'A' is the amount the United States is entitled to recover;

''(B) 'Z' is the sum of the amounts paid under this section to, or on behalf of, the individual and the interest on such amounts which would be payable if, at the time the amounts were paid, they were loans bearing interest at the maximum legal prevailing rate, as determined by the Secretary of the Treasury;

''(C) 't' is the total number of months in the individual's period of obligated service in accordance with subsection (f); and

''(D) 's' is the number of months of such period served by such individual in accordance with this section.

''(3) DEDUCTIONS IN MEDICARE PAYMENTS.—Amounts not paid within such period shall be subject to collection through deductions in medicare payments pursuant to section 1892 of the Social Security Act.

''(4) TIME PERIOD FOR REPAYMENT.—Any amount of damages which the United States is entitled to recover under this subsection shall be paid to the United States within the 1-year period beginning on the date of the

breach or such longer period beginning on such date as shall be specified by the Secretary.

''(5) RECOVERY OF DELINQUENCY.—

''(A) IN GENERAL.—If damages described in paragraph (4) are delinquent for 3 months, the Secretary shall, for the purpose of recovering such damages—

''(i) use collection agencies contracted with by the Administrator of General Services; or

''(ii) enter into contracts for the recovery of such damages with collection agencies selected by the Secretary.

''(B) REPORT.—Each contract for recovering damages pursuant to this subsection shall provide that the contractor will, not less than once each 6 months, submit to the Secretary a status report on the success of the contractor in collecting such damages. Section 3718 of title 31, United States Code, shall apply to any such contract to the extent not inconsistent with this subsection.

''(m) WAIVER OR SUSPENSION OF OBLIGATION.—

''(1) IN GENERAL.—The Secretary shall by regulation provide for the partial or total waiver or suspension of any obligation of service or payment by an individual under the Loan Repayment Program whenever compliance by the individual is impossible or would involve extreme hardship to the individual and if enforcement of such obligation with respect to any individual would be unconscionable.

''(2) CANCELED UPON DEATH.—Any obligation of an individual under the Loan Repayment Program for service or payment of damages shall be canceled upon the death of the individual.

''(3) HARDSHIP WAIVER.—The Secretary may waive, in whole or in part, the rights of the United States to recover amounts under this section in any case of extreme hardship or other good cause shown, as determined by the Secretary.

''(4) BANKRUPTCY.—Any obligation of an individual under the Loan Repayment Program for payment of damages may be released by a discharge in bankruptcy under title 11 of the United States Code only if such discharge is granted after the expiration of the 5-year period beginning on the first date that payment of such damages is required, and only if the bankruptcy court finds that nondischarge of the obligation would be unconscionable.

''(n) REPORT.—The Secretary shall submit to the President, for inclusion in each report required to be submitted to Congress under section 801, a report concerning the previous fiscal year which sets forth by Service Area the following:

''(1) A list of the health professional positions maintained by Indian Health Programs and Urban Indian Organizations for which recruitment or retention is difficult.

''(2) The number of Loan Repayment Program applications filed with respect to each type of health profession.

''(3) The number of contracts described in subsection (e) that are entered into with respect to each health profession.

''(4) The amount of loan payments made under this section, in total and by health profession.

''(5) The number of scholarships that are provided under sections 104 and 106 with respect to each health profession.

''(6) The amount of scholarship grants provided under section 104 and 106, in total and by health profession.

''(7) The number of providers of health care that will be needed by Indian Health Programs and Urban Indian Organizations, by location and profession, during the 3 fiscal years beginning after the date the report is filed.

''(8) The measures the Secretary plans to take to fill the health professional positions maintained by Indian Health Programs or Urban Indian Organizations for which recruitment or retention is difficult.

**''SEC. 111. SCHOLARSHIP AND LOAN REPAYMENT RECOVERY FUND.**

''(a) ESTABLISHMENT.—There is established in the Treasury of the United States a fund to be known as the Indian Health Scholarship and Loan Repayment Recovery Fund (hereafter in this section referred to as the 'LRRF'). The LRRF shall consist of such amounts as may be collected from individuals under section 104(d), section 106(e), and section 110(*l*) for breach of contract, such funds as may be appropriated to the LRRF, and interest earned on amounts in the LRRF. All amounts collected, appropriated, or earned relative to the LRRF shall remain available until expended.

''(b) USE OF FUNDS.—

''(1) BY SECRETARY.—Amounts in the LRRF may be expended by the Secretary, acting through the Service, to make payments to an Indian Health Program—

''(A) to which a scholarship recipient under section 104 and 106 or a loan repayment program participant under section 110 has been assigned to meet the obligated service requirements pursuant to such sections; and

''(B) that has a need for a health professional to provide health care services as a result of such recipient or participant having breached the contract entered into under section 104, 106, or section 110.

''(2) BY TRIBAL HEALTH PROGRAMS.—A Tribal Health Program receiving payments pursuant to paragraph (1) may expend the payments to provide scholarships or recruit and employ, directly or by contract, health professionals to provide health care services.

''(c) INVESTMENT OF FUNDS.—The Secretary of the Treasury shall invest such amounts of the LRRF as the Secretary of Health and Human Services determines are not required to meet current withdrawals from the LRRF. Such investments may be made only in interest bearing obligations of the United States. For such purpose, such obligations may be acquired on original issue at the issue price, or by purchase of outstanding obligations at the market price.

''(d) SALE OF OBLIGATIONS.—Any obligation acquired by the LRRF may be sold by the Secretary of the Treasury at the market price.

**''SEC. 112. RECRUITMENT ACTIVITIES.**

''(a) REIMBURSEMENT FOR TRAVEL.—The Secretary, acting through the Service, may reimburse health professionals seeking positions with Indian Health Programs or Urban Indian Organizations, including individuals considering entering into a contract under section 110 and their spouses, for actual and reasonable expenses incurred in traveling to and from their places of residence to an area in which they may be assigned for the purpose of evaluating such area with respect to such assignment.

''(b) RECRUITMENT PERSONNEL.—The Secretary, acting through the Service, shall assign one individual in each Area Office to be responsible on a full-time basis for recruitment activities.

**''SEC. 113. INDIAN RECRUITMENT AND RETENTION PROGRAM.**

''(a) IN GENERAL.—The Secretary, acting through the Service, shall fund, on a competitive basis, innovative demonstration projects for a period not to exceed 3 years to enable Tribal Health Programs and Urban Indian Organizations to recruit, place, and retain health professionals to meet their staffing needs.

''(b) ELIGIBLE ENTITIES; APPLICATION.—Any Tribal Health Program or Urban Indian Organization may submit an application for funding of a project pursuant to this section.

**''SEC. 114. ADVANCED TRAINING AND RESEARCH.**

''(a) DEMONSTRATION PROGRAM.—The Secretary, acting through the Service, shall establish a demonstration project to enable health professionals who have worked in an Indian Health Program or Urban Indian Organization for a substantial period of time to pursue advanced training or research areas of study for which the Secretary determines a need exists.

''(b) SERVICE OBLIGATION.—An individual who participates in a program under subsection (a), where the educational costs are borne by the Service, shall incur an obligation to serve in an Indian Health Program or Urban Indian Organization for a period of obligated service equal to at least the period of time during which the individual participates in such program. In the event that the individual fails to complete such obligated service, the individual shall be liable to the United States for the period of service remaining. In such event, with respect to individuals entering the program after the date of enactment of the Indian Health Care Improvement Act Amendments of 2005, the United States shall be entitled to recover from such individual an amount to be determined in accordance with the formula specified in subsection (*l*) of section 110 in the manner provided for in such subsection.

''(c) EQUAL OPPORTUNITY FOR PARTICIPATION.—Health professionals from Tribal Health Programs and Urban Indian Organizations shall be given an equal opportunity to participate in the program under subsection (a).

**''SEC. 115. QUENTIN N. BURDICK AMERICAN INDIANS INTO NURSING PROGRAM.**

''(a) GRANTS AUTHORIZED.—For the purpose of increasing the number of nurses, nurse midwives, and nurse practitioners who deliver health care services to Indians, the Secretary, acting through the Service, shall provide grants to the following:

''(1) Public or private schools of nursing.

''(2) Tribal colleges or universities.

''(3) Nurse midwife programs and advanced practice nurse programs that are provided by any tribal college or university accredited nursing program, or in the absence of such, any other public or private institutions.

''(b) USE OF GRANTS.—Grants provided under subsection (a) may be used for one or more of the following:

''(1) To recruit individuals for programs which train individuals to be nurses, nurse midwives, or advanced practice nurses.

''(2) To provide scholarships to Indians enrolled in such programs that may pay the tuition charged for such program and other expenses incurred in connection with such program, including books, fees, room and board, and stipends for living expenses.

''(3) To provide a program that encourages nurses, nurse midwives, and advanced practice nurses to provide, or continue to provide, health care services to Indians.

''(4) To provide a program that increases the skills of, and provides continuing education to, nurses, nurse midwives, and advanced practice nurses.

''(5) To provide any program that is designed to achieve the purpose described in subsection (a).

''(c) APPLICATIONS.—Each application for funding under subsection (a) shall include such information as the Secretary may require to establish the connection between the program of the applicant and a health care facility that primarily serves Indians.

''(d) PREFERENCES FOR GRANT RECIPIENTS.—In providing grants under subsection (a), the Secretary shall extend a preference to the following:

''(1) Programs that provide a preference to Indians.

''(2) Programs that train nurse midwives or advanced practice nurses.

''(3) Programs that are interdisciplinary.

''(4) Programs that are conducted in cooperation with a program for gifted and talented Indian students.

''(e) QUENTIN N. BURDICK PROGRAM GRANT.—The Secretary shall provide one of the grants authorized under subsection (a) to establish and maintain a program at the University of North Dakota to be known as the 'Quentin N. Burdick American Indians Into Nursing Program'. Such program shall, to the maximum extent feasible, coordinate with the Quentin N. Burdick Indian Health Programs established under section 117(b) and the Quentin N. Burdick American Indians Into Psychology Program established under section 105(b).

''(f) ACTIVE DUTY SERVICE OBLIGATION.—The active duty service obligation prescribed under section 338C of the Public Health Service Act (42 U.S.C. 254m) shall be met by each individual who receives training or assistance described in paragraph (1) or (2) of subsection (b) that is funded by a grant provided under subsection (a). Such obligation shall be met by service—

''(1) in the Service;

''(2) in a program of an Indian Tribe or Tribal Organization conducted under the Indian Self-Determination and Education Assistance Act (including programs under agreements with the Bureau of Indian Affairs);

''(3) in a program assisted under title V of this Act; or

''(4) in the private practice of nursing if, as determined by the Secretary, in accordance with guidelines promulgated by the Secretary, such practice is situated in a physician or other health shortage area and addresses the health care needs of a substantial number of Indians.

**''SEC. 116. TRIBAL CULTURAL ORIENTATION.**

''(a) CULTURAL EDUCATION OF EMPLOYEES.—The Secretary, acting through the Service, shall require that appropriate employees of the Service who serve Indian Tribes in each Service Area receive educational instruction in the history and culture of such Indian Tribes and their relationship to the Service.

''(b) PROGRAM.—In carrying out subsection (a), the Secretary shall establish a program which shall, to the extent feasible—

''(1) be developed in consultation with the affected Indian Tribes, Tribal Organizations, and Urban Indian Organizations;

''(2) be carried out through tribal colleges or universities;

''(3) include instruction in American Indian studies; and

''(4) describe the use and place of Traditional Health Care Practices of the Indian Tribes in the Service Area.

**''SEC. 117. INMED PROGRAM.**

''(a) GRANTS AUTHORIZED.—The Secretary, acting through the Service, is authorized to provide grants to colleges and universities for the purpose of maintaining and expanding the Indian health careers recruitment program known as the 'Indians Into Medicine Program' (hereinafter in this section referred to as 'INMED') as a means of encouraging Indians to enter the health professions.

''(b) QUENTIN N. BURDICK GRANT.—The Secretary shall provide one of the grants authorized under subsection (a) to maintain the INMED program at the University of North Dakota, to be known as the 'Quentin N. Burdick Indian Health Programs', unless the Secretary makes a determination, based upon program reviews, that the program is not meeting the purposes of this section. Such program shall, to the maximum extent feasible, coordinate with the Quentin N. Burdick American Indians Into Psychology Program established under section 105(b) and the Quentin N. Burdick American Indians Into Nursing Program established under section 115.

''(c) REGULATIONS.—The Secretary, pursuant to this Act, shall develop regulations to govern grants pursuant to this section.

''(d) REQUIREMENTS.—Applicants for grants provided under this section shall agree to provide a program which—

''(1) provides outreach and recruitment for health professions to Indian communities including elementary and secondary schools and community colleges located on reservations which will be served by the program;

''(2) incorporates a program advisory board comprised of representatives from the Indian Tribes and Indian communities which will be served by the program;

''(3) provides summer preparatory programs for Indian students who need enrichment in the subjects of math and science in order to pursue training in the health professions;

''(4) provides tutoring, counseling, and support to students who are enrolled in a health career program of study at the respective college or university; and

''(5) to the maximum extent feasible, employs qualified Indians in the program.

**''SEC. 118. HEALTH TRAINING PROGRAMS OF COMMUNITY COLLEGES.**

''(a) GRANTS TO ESTABLISH PROGRAMS.—

''(1) IN GENERAL.—The Secretary, acting through the Service, shall award grants to accredited and accessible community colleges for the purpose of assisting such community colleges in the establishment of programs which provide education in a health profession leading to a degree or diploma in a health profession for individuals who desire to practice such profession on or near a reservation or in an Indian Health Program.

''(2) AMOUNT OF GRANTS.—The amount of any grant awarded to a community college under paragraph (1) for the first year in which such a grant is provided to the community college shall not exceed $100,000.

''(b) GRANTS FOR MAINTENANCE AND RECRUITING.—

''(1) IN GENERAL.—The Secretary, acting through the Service, shall award grants to accredited and accessible community colleges that have established a program described in subsection (a)(1) for the purpose of maintaining the program and recruiting students for the program.

''(2) REQUIREMENTS.—Grants may only be made under this section to a community college which—

''(A) is accredited;

''(B) has a relationship with a hospital facility, Service facility, or hospital that could provide training of nurses or health professionals;

''(C) has entered into an agreement with an accredited college or university medical school, the terms of which—

''(i) provide a program that enhances the transition and recruitment of students into advanced baccalaureate or graduate programs which train health professionals; and

''(ii) stipulate certifications necessary to approve internship and field placement opportunities at Indian Health Programs;

''(D) has a qualified staff which has the appropriate certifications;

''(E) is capable of obtaining State or regional accreditation of the program described in subsection (a)(1); and

''(F) agrees to provide for Indian preference for applicants for programs under this section.

''(c) TECHNICAL ASSISTANCE.—The Secretary shall encourage community colleges described in subsection (b)(2) to establish and maintain programs described in subsection (a)(1) by—

''(1) entering into agreements with such colleges for the provision of qualified personnel of the Service to teach courses of study in such programs; and

''(2) providing technical assistance and support to such colleges.

''(d) ADVANCED TRAINING.—

''(1) REQUIRED.—Any program receiving assistance under this section that is conducted with respect to a health profession shall also offer courses of study which provide advanced training for any health professional who—

''(A) has already received a degree or diploma in such health profession; and

''(B) provides clinical services on or near a reservation or for an Indian Health Program.

''(2) MAY BE OFFERED AT ALTERNATE SITE.—Such courses of study may be offered in conjunction with the college or university with which the community college has entered into the agreement required under subsection (b)(2)(C).

''(e) FUNDING PRIORITY.—Where the requirements of subsection (b) are met, funding priority shall be provided to tribal colleges and universities in Service Areas where they exist.

**''SEC. 119. RETENTION BONUS.**

''(a) BONUS AUTHORIZED.—The Secretary may pay a retention bonus to any health professional employed by, or assigned to, and serving in, an Indian Health Program or Urban Indian Organization either as a civilian employee or as a commissioned officer in the Regular or Reserve Corps of the Public Health Service who—

''(1) is assigned to, and serving in, a position for which recruitment or retention of personnel is difficult;

''(2) the Secretary determines is needed by Indian Health Programs and Urban Indian Organizations;

''(3) has—

''(A) completed 3 years of employment with an Indian Health Program or Urban Indian Organization; or

''(B) completed any service obligations incurred as a requirement of—

''(i) any Federal scholarship program; or

''(ii) any Federal education loan repayment program; and

''(4) enters into an agreement with an Indian Health Program or Urban Indian Organization for continued employment for a period of not less than 1 year.

''(b) RATES.—The Secretary may establish rates for the retention bonus which shall provide for a higher annual rate for multiyear agreements than for single year agreements referred to in subsection (a)(4), but in no event shall the annual rate be more than $25,000 per annum.

''(c) DEFAULT OF RETENTION AGREEMENT.—Any health professional failing to complete the agreed upon term of service, except where such failure is through no fault of the individual, shall be obligated to refund to the Government the full amount of the retention bonus for the period covered by the agreement, plus interest as determined by the Secretary in accordance with section 110(*l*)(2)(B).

''(d) OTHER RETENTION BONUS.—The Secretary may pay a retention bonus to any health professional employed by a Tribal Health Program if such health professional is serving in a position which the Secretary determines is—

''(1) a position for which recruitment or retention is difficult; and

''(2) necessary for providing health care services to Indians.

**''SEC. 120. NURSING RESIDENCY PROGRAM.**

''(a) ESTABLISHMENT OF PROGRAM.—The Secretary, acting through the Service, shall

establish a program to enable Indians who are licensed practical nurses, licensed vocational nurses, and registered nurses who are working in an Indian Health Program or Urban Indian Organization, and have done so for a period of not less than 1 year, to pursue advanced training. Such program shall include a combination of education and work study in an Indian Health Program or Urban Indian Organization leading to an associate or bachelor's degree (in the case of a licensed practical nurse or licensed vocational nurse), a bachelor's degree (in the case of a registered nurse), or advanced degrees or certifications in nursing and public health.

''(b) SERVICE OBLIGATION.—An individual who participates in a program under subsection (a), where the educational costs are paid by the Service, shall incur an obligation to serve in an Indian Health Program or Urban Indian Organization for a period of obligated service equal to the amount of time during which the individual participates in such program. In the event that the individual fails to complete such obligated service, the United States shall be entitled to recover from such individual an amount determined in accordance with the formula specified in subsection (*l*) of section 110 in the manner provided for in such subsection.

**''SEC. 121. COMMUNITY HEALTH AIDE PROGRAM FOR ALASKA.**

''(a) GENERAL PURPOSES OF PROGRAM.—Under the authority of the Act of November 2, 1921 (25 U.S.C. 13) (commonly known as the 'Snyder Act'), the Secretary, acting through the Service, shall develop and operate a Community Health Aide Program in Alaska under which the Service—

''(1) provides for the training of Alaska Natives as health aides or community health practitioners;

''(2) uses such aides or practitioners in the provision of health care, health promotion, and disease prevention services to Alaska Natives living in villages in rural Alaska; and

''(3) provides for the establishment of teleconferencing capacity in health clinics located in or near such villages for use by community health aides or community health practitioners.

''(b) SPECIFIC PROGRAM REQUIREMENTS.—The Secretary, acting through the Community Health Aide Program of the Service, shall—

''(1) using trainers accredited by the Program, provide a high standard of training to community health aides and community health practitioners to ensure that such aides and practitioners provide quality health care, health promotion, and disease prevention services to the villages served by the Program;

''(2) in order to provide such training, develop a curriculum that—

''(A) combines education in the theory of health care with supervised practical experience in the provision of health care;

''(B) provides instruction and practical experience in the provision of acute care, emergency care, health promotion, disease prevention, and the efficient and effective management of clinic pharmacies, supplies, equipment, and facilities; and

''(C) promotes the achievement of the health status objectives specified in section 3(2);

''(3) establish and maintain a Community Health Aide Certification Board to certify as community health aides or community health practitioners individuals who have successfully completed the training described in paragraph (1) or can demonstrate equivalent experience;

''(4) develop and maintain a system which identifies the needs of community health aides and community health practitioners for continuing education in the provision of health care, including the areas described in paragraph (2)(B), and develop programs that meet the needs for such continuing education;

''(5) develop and maintain a system that provides close supervision of community health aides and community health practitioners; and

''(6) develop a system under which the work of community health aides and community health practitioners is reviewed and evaluated to assure the provision of quality health care, health promotion, and disease prevention services.

''(c) NATIONAL COMMUNITY HEALTH AIDE PROGRAM.—

''(1) IN GENERAL.—The Secretary, acting through the Service, is authorized to establish a national Community Health Aide Program in accordance with subsection (a), except as provided in paragraphs (2) and (3), without reducing funds for the Community Health Aide Program for Alaska.

''(2) LIMITED CERTIFICATION.—Except for any dental health aide in the State of Alaska, the Secretary, acting through the Community Health Aide Program of the Service, shall ensure that, for a period of 4 years, dental health aides are certified only to provide services relating to—

''(A) early childhood dental disease prevention and reversible dental procedures; and

''(B) the development of local capacity to provide those dental services.

''(3) REVIEW.—

''(A) IN GENERAL.—During the 4-year period described in paragraph (2), the Secretary, acting through the Community Health Aide Program of the Service, shall conduct a review of the dental health aide program in the State of Alaska to determine the ability of the program to address the dental care needs of Native Alaskans, the quality of care provided (including any training, improvement, or additional oversight needed), and whether the program is appropriate and necessary to carry out in any other Indian community.

''(B) REPORT.—After conducting the review under subparagraph (A), the Secretary shall submit to the Committee on Indian Affairs of the Senate and the Committee on Resources of the House of Representatives a report describing any finding of the Secretary under the review.

''(C) FUTURE AUTHORIZATION OF CERTIFICATIONS.—Before authorizing any dental procedure not described in paragraph (2)(A), the Secretary shall consult with Indian tribes, Tribal Organizations, Urban Indian Organizations, and other interested parties to ensure that the safety and quality of care of the Community Health Aide Program are adequate and appropriate.

**''SEC. 122. TRIBAL HEALTH PROGRAM ADMINISTRATION.**

''The Secretary, acting through the Service, shall, by contract or otherwise, provide training for Indians in the administration and planning of Tribal Health Programs.

**''SEC. 123. HEALTH PROFESSIONAL CHRONIC SHORTAGE DEMONSTRATION PROGRAMS.**

''(a) DEMONSTRATION PROGRAMS AUTHORIZED.—The Secretary, acting through the Service, may fund demonstration programs for Tribal Health Programs to address the chronic shortages of health professionals.

''(b) PURPOSES OF PROGRAMS.—The purposes of demonstration programs funded under subsection (a) shall be—

''(1) to provide direct clinical and practical experience at a Service Unit to health profession students and residents from medical schools;

''(2) to improve the quality of health care for Indians by assuring access to qualified health care professionals; and

''(3) to provide academic and scholarly opportunities for health professionals serving Indians by identifying all academic and scholarly resources of the region.

''(c) ADVISORY BOARD.—The demonstration programs established pursuant to subsection (a) shall incorporate a program advisory board composed of representatives from the Indian Tribes and Indian communities in the area which will be served by the program.

**''SEC. 124. NATIONAL HEALTH SERVICE CORPS.**

''(a) NO REDUCTION IN SERVICES.—The Secretary shall not—

''(1) remove a member of the National Health Service Corps from an Indian Health Program or Urban Indian Organization; or

''(2) withdraw funding used to support such member, unless the Secretary, acting through the Service, Indian Tribes, or Tribal Organizations, has ensured that the Indians receiving services from such member will experience no reduction in services.

''(b) EXEMPTION FROM LIMITATIONS.—National Health Service Corps scholars qualifying for the Commissioned Corps in the United States Public Health Service shall be exempt from the full-time equivalent limitations of the National Health Service Corps and the Service when serving as a commissioned corps officer in a Tribal Health Program or an Urban Indian Organization.

**''SEC. 125. SUBSTANCE ABUSE COUNSELOR EDUCATIONAL CURRICULA DEMONSTRATION PROGRAMS.**

''(a) GRANTS AND CONTRACTS.—The Secretary, acting through the Service, may enter into contracts with, or make grants to, accredited tribal colleges and universities and eligible accredited and accessible community colleges to establish demonstration programs to develop educational curricula for substance abuse counseling.

''(b) USE OF FUNDS.—Funds provided under this section shall be used only for developing and providing educational curriculum for substance abuse counseling (including paying salaries for instructors). Such curricula may be provided through satellite campus programs.

''(c) TIME PERIOD OF ASSISTANCE; RENEWAL.—A contract entered into or a grant provided under this section shall be for a period of 1 year. Such contract or grant may be renewed for an additional 1-year period upon the approval of the Secretary.

''(d) CRITERIA FOR REVIEW AND APPROVAL OF APPLICATIONS.—Not later than 180 days after the date of enactment of the Indian Health Care Improvement Act Amendments of 2005, the Secretary, after consultation with Indian Tribes and administrators of tribal colleges and universities and eligible accredited and accessible community colleges, shall develop and issue criteria for the review and approval of applications for funding (including applications for renewals of funding) under this section. Such criteria shall ensure that demonstration programs established under this section promote the development of the capacity of such entities to educate substance abuse counselors.

''(e) ASSISTANCE.—The Secretary shall provide such technical and other assistance as may be necessary to enable grant recipients to comply with the provisions of this section.

''(f) REPORT.—Each fiscal year, the Secretary shall submit to the President, for inclusion in the report which is required to be submitted under section 801 for that fiscal year, a report on the findings and conclusions derived from the demonstration programs conducted under this section during that fiscal year.

''(g) DEFINITION.—For the purposes of this section, the term 'educational curriculum' means 1 or more of the following:

''(1) Classroom education.

''(2) Clinical work experience.

''(3) Continuing education workshops.

**''SEC. 126. BEHAVIORAL HEALTH TRAINING AND COMMUNITY EDUCATION PROGRAMS.**

''(a) STUDY; LIST.—The Secretary, acting through the Service, and the Secretary of the Interior, in consultation with Indian Tribes and Tribal Organizations, shall conduct a study and compile a list of the types of staff positions specified in subsection (b) whose qualifications include, or should include, training in the identification, prevention, education, referral, or treatment of mental illness, or dysfunctional and self destructive behavior.

''(b) POSITIONS.—The positions referred to in subsection (a) are—

''(1) staff positions within the Bureau of Indian Affairs, including existing positions, in the fields of—

''(A) elementary and secondary education;

''(B) social services and family and child welfare;

''(C) law enforcement and judicial services; and

''(D) alcohol and substance abuse;

''(2) staff positions within the Service; and

''(3) staff positions similar to those identified in paragraphs (1) and (2) established and maintained by Indian Tribes, Tribal Organizations (without regard to the funding source), and Urban Indian Organizations.

''(c) TRAINING CRITERIA.—

''(1) IN GENERAL.—The appropriate Secretary shall provide training criteria appropriate to each type of position identified in subsection (b)(1) and (b)(2) and ensure that appropriate training has been, or shall be provided to any individual in any such position. With respect to any such individual in a position identified pursuant to subsection (b)(3), the respective Secretaries shall provide appropriate training to, or provide funds to, an Indian Tribe, Tribal Organization, or Urban Indian Organization for training of appropriate individuals. In the case of positions funded under a contract or compact under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.), the appropriate Secretary shall ensure that such training costs are included in the contract or compact, as the Secretary determines necessary.

''(2) POSITION SPECIFIC TRAINING CRITERIA.—Position specific training criteria shall be culturally relevant to Indians and Indian Tribes and shall ensure that appropriate information regarding Traditional Health Care Practices is provided.

''(d) COMMUNITY EDUCATION ON MENTAL ILLNESS.—The Service shall develop and implement, on request of an Indian Tribe, Tribal Organization, or Urban Indian Organization, or assist the Indian Tribe, Tribal Organization, or Urban Indian Organization to develop and implement, a program of community education on mental illness. In carrying out this subsection, the Service shall, upon request of an Indian Tribe, Tribal Organization, or Urban Indian Organization, provide technical assistance to the Indian Tribe, Tribal Organization, or Urban Indian Organization to obtain and develop community educational materials on the identification, prevention, referral, and treatment of mental illness and dysfunctional and self-destructive behavior.

''(e) PLAN.—Not later than 90 days after the date of enactment of the Indian Health Care Improvement Act Amendments of 2005, the Secretary shall develop a plan under which the Service will increase the health care staff providing behavioral health services by at least 500 positions within 5 years after the date of enactment of this section, with at least 200 of such positions devoted to child, adolescent, and family services. The plan developed under this subsection shall be implemented under the Act of November 2, 1921 (25 U.S.C. 13) (commonly known as the 'Snyder Act').

**''SEC. 127. AUTHORIZATION OF APPROPRIATIONS.**

''There are authorized to be appropriated such sums as may be necessary for each fiscal year through fiscal year 2015 to carry out this title.

## ''TITLE II—HEALTH SERVICES

**''SEC. 201. INDIAN HEALTH CARE IMPROVEMENT FUND.**

''(a) USE OF FUNDS.—The Secretary, acting through the Service, is authorized to expend funds, directly or under the authority of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.), which are appropriated under the authority of this section, for the purposes of—

''(1) eliminating the deficiencies in health status and health resources of all Indian Tribes;

''(2) eliminating backlogs in the provision of health care services to Indians;

''(3) meeting the health needs of Indians in an efficient and equitable manner, including the use of telehealth and telemedicine when appropriate;

''(4) eliminating inequities in funding for both direct care and contract health service programs; and

''(5) augmenting the ability of the Service to meet the following health service responsibilities with respect to those Indian Tribes with the highest levels of health status deficiencies and resource deficiencies:

''(A) Clinical care, including inpatient care, outpatient care (including audiology, clinical eye, and vision care), primary care, secondary and tertiary care, and long-term care.

''(B) Preventive health, including mammography and other cancer screening in accordance with section 207.

''(C) Dental care.

''(D) Mental health, including community mental health services, inpatient mental health services, dormitory mental health services, therapeutic and residential treatment centers, and training of traditional health care practitioners.

''(E) Emergency medical services.

''(F) Treatment and control of, and rehabilitative care related to, alcoholism and drug abuse (including fetal alcohol syndrome) among Indians.

''(G) Accident prevention programs.

''(H) Home health care.

''(I) Community health representatives.

''(J) Maintenance and repair.

''(K) Traditional Health Care Practices.

''(b) NO OFFSET OR LIMITATION.—Any funds appropriated under the authority of this section shall not be used to offset or limit any other appropriations made to the Service under this Act or the Act of November 2, 1921 (25 U.S.C. 13) (commonly known as the 'Snyder Act'), or any other provision of law.

''(c) ALLOCATION; USE.—

''(1) IN GENERAL.—Funds appropriated under the authority of this section shall be allocated to Service Units, Indian Tribes, or Tribal Organizations. The funds allocated to each Indian Tribe, Tribal Organization, or Service Unit under this paragraph shall be used by the Indian Tribe, Tribal Organization, or Service Unit under this paragraph to improve the health status and reduce the resource deficiency of each Indian Tribe served by such Service Unit, Indian Tribe, or Tribal Organization.

''(2) APPORTIONMENT OF ALLOCATED FUNDS.—The apportionment of funds allocated to a Service Unit, Indian Tribe, or Tribal Organization under paragraph (1) among the health service responsibilities described in subsection (a)(5) shall be determined by the Service in consultation with, and with the active participation of, the affected Indian Tribes and Tribal Organizations.

''(d) PROVISIONS RELATING TO HEALTH STATUS AND RESOURCE DEFICIENCIES.—For the purposes of this section, the following definitions apply:

''(1) DEFINITION.—The term 'health status and resource deficiency' means the extent to which—

''(A) the health status objectives set forth in section 3(2) are not being achieved; and

''(B) the Indian Tribe or Tribal Organization does not have available to it the health resources it needs, taking into account the actual cost of providing health care services given local geographic, climatic, rural, or other circumstances.

''(2) AVAILABLE RESOURCES.—The health resources available to an Indian Tribe or Tribal Organization include health resources provided by the Service as well as health resources used by the Indian Tribe or Tribal Organization, including services and financing systems provided by any Federal programs, private insurance, and programs of State or local governments.

''(3) PROCESS FOR REVIEW OF DETERMINATIONS.—The Secretary shall establish procedures which allow any Indian Tribe or Tribal Organization to petition the Secretary for a review of any determination of the extent of the health status and resource deficiency of such Indian Tribe or Tribal Organization.

''(e) ELIGIBILITY FOR FUNDS.—Tribal Health Programs shall be eligible for funds appropriated under the authority of this section on an equal basis with programs that are administered directly by the Service.

''(f) REPORT.—By no later than the date that is 3 years after the date of enactment of the Indian Health Care Improvement Act Amendments of 2005, the Secretary shall submit to Congress the current health status and resource deficiency report of the Service for each Service Unit, including newly recognized or acknowledged Indian Tribes. Such report shall set out—

''(1) the methodology then in use by the Service for determining Tribal health status and resource deficiencies, as well as the most recent application of that methodology;

''(2) the extent of the health status and resource deficiency of each Indian Tribe served by the Service or a Tribal Health Program;

''(3) the amount of funds necessary to eliminate the health status and resource deficiencies of all Indian Tribes served by the Service or a Tribal Health Program; and

''(4) an estimate of—

''(A) the amount of health service funds appropriated under the authority of this Act, or any other Act, including the amount of any funds transferred to the Service for the preceding fiscal year which is allocated to each Service Unit, Indian Tribe, or Tribal Organization;

''(B) the number of Indians eligible for health services in each Service Unit or Indian Tribe or Tribal Organization; and

''(C) the number of Indians using the Service resources made available to each Service Unit, Indian Tribe or Tribal Organization, and, to the extent available, information on the waiting lists and number of Indians turned away for services due to lack of resources.

''(g) INCLUSION IN BASE BUDGET.—Funds appropriated under this section for any fiscal year shall be included in the base budget of the Service for the purpose of determining appropriations under this section in subsequent fiscal years.

''(h) CLARIFICATION.—Nothing in this section is intended to diminish the primary responsibility of the Service to eliminate existing backlogs in unmet health care needs,

nor are the provisions of this section intended to discourage the Service from undertaking additional efforts to achieve equity among Indian Tribes and Tribal Organizations.

''(i) FUNDING DESIGNATION.—Any funds appropriated under the authority of this section shall be designated as the 'Indian Health Care Improvement Fund'.

**"SEC. 202. CATASTROPHIC HEALTH EMERGENCY FUND.**

''(a) ESTABLISHMENT.—There is established an Indian Catastrophic Health Emergency Fund (hereafter in this section referred to as the 'CHEF') consisting of—

''(1) the amounts deposited under subsection (f); and

''(2) the amounts appropriated to CHEF under this section.

''(b) ADMINISTRATION.—CHEF shall be administered by the Secretary, acting through the central office of the Service, solely for the purpose of meeting the extraordinary medical costs associated with the treatment of victims of disasters or catastrophic illnesses who are within the responsibility of the Service.

''(c) CONDITIONS ON USE OF FUND.—No part of CHEF or its administration shall be subject to contract or grant under any law, including the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.), nor shall CHEF funds be allocated, apportioned, or delegated on an Area Office, Service Unit, or other similar basis.

''(d) REGULATIONS.—The Secretary shall, through the negotiated rulemaking process under title VIII, promulgate regulations consistent with the provisions of this section to—

''(1) establish a definition of disasters and catastrophic illnesses for which the cost of the treatment provided under contract would qualify for payment from CHEF;

''(2) provide that a Service Unit shall not be eligible for reimbursement for the cost of treatment from CHEF until its cost of treating any victim of such catastrophic illness or disaster has reached a certain threshold cost which the Secretary shall establish at—

''(A) the 2000 level of $19,000; and

''(B) for any subsequent year, not less than the threshold cost of the previous year increased by the percentage increase in the medical care expenditure category of the consumer price index for all urban consumers (United States city average) for the 12-month period ending with December of the previous year;

''(3) establish a procedure for the reimbursement of the portion of the costs that exceeds such threshold cost incurred by—

''(A) Service Units; or

''(B) whenever otherwise authorized by the Service, non-Service facilities or providers;

''(4) establish a procedure for payment from CHEF in cases in which the exigencies of the medical circumstances warrant treatment prior to the authorization of such treatment by the Service; and

''(5) establish a procedure that will ensure that no payment shall be made from CHEF to any provider of treatment to the extent that such provider is eligible to receive payment for the treatment from any other Federal, State, local, or private source of reimbursement for which the patient is eligible.

''(e) NO OFFSET OR LIMITATION.—Amounts appropriated to CHEF under this section shall not be used to offset or limit appropriations made to the Service under the authority of the Act of November 2, 1921 (25 U.S.C. 13) (commonly known as the 'Snyder Act'), or any other law.

''(f) DEPOSIT OF REIMBURSEMENT FUNDS.—There shall be deposited into CHEF all reimbursements to which the Service is entitled from any Federal, State, local, or private source (including third party insurance) by reason of treatment rendered to any victim of a disaster or catastrophic illness the cost of which was paid from CHEF.

**"SEC. 203. HEALTH PROMOTION AND DISEASE PREVENTION SERVICES.**

''(a) FINDINGS.—Congress finds that health promotion and disease prevention activities—

''(1) improve the health and well-being of Indians; and

''(2) reduce the expenses for health care of Indians.

''(b) PROVISION OF SERVICES.—The Secretary, acting through the Service and Tribal Health Programs, shall provide health promotion and disease prevention services to Indians to achieve the health status objectives set forth in section 3(2).

''(c) EVALUATION.—The Secretary, after obtaining input from the affected Tribal Health Programs, shall submit to the President for inclusion in each report which is required to be submitted to Congress under section 801 an evaluation of—

''(1) the health promotion and disease prevention needs of Indians;

''(2) the health promotion and disease prevention activities which would best meet such needs;

''(3) the internal capacity of the Service and Tribal Health Programs to meet such needs; and

''(4) the resources which would be required to enable the Service and Tribal Health Programs to undertake the health promotion and disease prevention activities necessary to meet such needs.

**"SEC. 204. DIABETES PREVENTION, TREATMENT, AND CONTROL.**

''(a) DETERMINATIONS REGARDING DIABETES.—The Secretary, acting through the Service, and in consultation with Indian Tribes and Tribal Organizations, shall determine—

''(1) by Indian Tribe and by Service Unit, the incidence of, and the types of complications resulting from, diabetes among Indians; and

''(2) based on the determinations made pursuant to paragraph (1), the measures (including patient education and effective ongoing monitoring of disease indicators) each Service Unit should take to reduce the incidence of, and prevent, treat, and control the complications resulting from, diabetes among Indian Tribes within that Service Unit.

''(b) DIABETES SCREENING.—To the extent medically indicated and with informed consent, the Secretary shall screen each Indian who receives services from the Service for diabetes and for conditions which indicate a high risk that the individual will become diabetic and, in consultation with Indian Tribes, Urban Indian Organizations, and appropriate health care providers, establish a cost-effective approach to ensure ongoing monitoring of disease indicators. Such screening and monitoring may be conducted by a Tribal Health Program and may be conducted through appropriate Internet-based health care management programs.

''(c) FUNDING FOR DIABETES.—The Secretary shall continue to maintain each model diabetes project in existence on the date of enactment of the Indian Health Amendments Care Improvement Act of 2005, any such other diabetes programs operated by the Service or Tribal Health Programs, and any additional diabetes projects, such as the Medical Vanguard program provided for in title IV of Public Law 108–87, as implemented to serve Indian Tribes. Tribal Health Programs shall receive recurring funding for the diabetes projects that they operate pursuant to this section, both at the date of enactment of the Indian Health Care Improvement Act Amendments of 2005 and for projects which are added and funded thereafter.

''(d) FUNDING FOR DIALYSIS PROGRAMS.—The Secretary is authorized to provide funding through the Service, Indian Tribes, and Tribal Organizations to establish dialysis programs, including funding to purchase dialysis equipment and provide necessary staffing.

''(e) OTHER DUTIES OF THE SECRETARY.—The Secretary shall, to the extent funding is available—

''(1) in each Area Office, consult with Indian Tribes and Tribal Organizations regarding programs for the prevention, treatment, and control of diabetes;

''(2) establish in each Area Office a registry of patients with diabetes to track the incidence of diabetes and the complications from diabetes in that area; and

''(3) ensure that data collected in each Area Office regarding diabetes and related complications among Indians are disseminated to all other Area Offices, subject to applicable patient privacy laws.

**"SEC. 205. SHARED SERVICES FOR LONG-TERM CARE.**

''(a) LONG-TERM CARE.—Notwithstanding any other provision of law, the Secretary, acting through the Service, is authorized to provide directly, or enter into contracts or compacts under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) with Indian Tribes or Tribal Organizations for, the delivery of long-term care and similar services to Indians. Such agreements shall provide for the sharing of staff or other services between the Service or a Tribal Health Program and a long-term care or other similar facility owned and operated (directly or through a contract or compact under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.)) by such Indian Tribe or Tribal Organization.

''(b) CONTENTS OF AGREEMENTS.—An agreement entered into pursuant to subsection (a)—

''(1) may, at the request of the Indian Tribe or Tribal Organization, delegate to such Indian Tribe or Tribal Organization such powers of supervision and control over Service employees as the Secretary deems necessary to carry out the purposes of this section;

''(2) shall provide that expenses (including salaries) relating to services that are shared between the Service and the Tribal Health Program be allocated proportionately between the Service and the Indian Tribe or Tribal Organization; and

''(3) may authorize such Indian Tribe or Tribal Organization to construct, renovate, or expand a long-term care or other similar facility (including the construction of a facility attached to a Service facility).

''(c) MINIMUM REQUIREMENT.—Any nursing facility provided for under this section shall meet the requirements for nursing facilities under section 1919 of the Social Security Act.

''(d) OTHER ASSISTANCE.—The Secretary shall provide such technical and other assistance as may be necessary to enable applicants to comply with the provisions of this section.

''(e) USE OF EXISTING OR UNDERUSED FACILITIES.—The Secretary shall encourage the use of existing facilities that are underused or allow the use of swing beds for long-term or similar care.

**"SEC. 206. HEALTH SERVICES RESEARCH.**

''The Secretary, acting through the Service, shall make funding available for research to further the performance of the health service responsibilities of Indian Health Programs. The Secretary shall also, to the maximum extent practicable, coordinate departmental research resources and

activities to address relevant Indian Health Program research needs. Tribal Health Programs shall be given an equal opportunity to compete for, and receive, research funds under this section. This funding may be used for both clinical and nonclinical research.

**"SEC. 207. MAMMOGRAPHY AND OTHER CANCER SCREENING.**

''The Secretary, acting through the Service or Tribal Health Programs, shall provide for screening as follows:

''(1) Screening mammography (as defined in section 1861(jj) of the Social Security Act) for Indian women at a frequency appropriate to such women under accepted and appropriate national standards, and under such terms and conditions as are consistent with standards established by the Secretary to ensure the safety and accuracy of screening mammography under part B of title XVIII of such Act.

''(2) Other cancer screening meeting accepted and appropriate national standards.

**"SEC. 208. PATIENT TRAVEL COSTS.**

''The Secretary, acting through the Service and Tribal Health Programs, is authorized to provide funds for the following patient travel costs, including appropriate and necessary qualified escorts, associated with receiving health care services provided (either through direct or contract care or through a contract or compact under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.)) under this Act—

''(1) emergency air transportation and nonemergency air transportation where ground transportation is infeasible;

''(2) transportation by private vehicle (where no other means of transportation is available), specially equipped vehicle, and ambulance; and

''(3) transportation by such other means as may be available and required when air or motor vehicle transportation is not available.

**"SEC. 209. EPIDEMIOLOGY CENTERS.**

''(a) ADDITIONAL CENTERS.—In addition to those epidemiology centers already established as of the date of enactment of this Act, and without reducing the funding levels for such centers, not later than 180 days after the date of enactment of the Indian Health Care Improvement Act Amendments of 2005, the Secretary, acting through the Service, shall establish and fund an epidemiology center in each Service Area which does not yet have one to carry out the functions described in subsection (b). Any new centers so established may be operated by Tribal Health Programs, but such funding shall not be divisible.

''(b) FUNCTIONS OF CENTERS.—In consultation with and upon the request of Indian Tribes, Tribal Organizations, and Urban Indian Organizations, each Service Area epidemiology center established under this subsection shall, with respect to such Service Area—

''(1) collect data relating to, and monitor progress made toward meeting, each of the health status objectives of the Service, the Indian Tribes, Tribal Organizations, and Urban Indian Organizations in the Service Area;

''(2) evaluate existing delivery systems, data systems, and other systems that impact the improvement of Indian health;

''(3) assist Indian Tribes, Tribal Organizations, and Urban Indian Organizations in identifying their highest priority health status objectives and the services needed to achieve such objectives, based on epidemiological data;

''(4) make recommendations for the targeting of services needed by the populations served;

''(5) make recommendations to improve health care delivery systems for Indians and Urban Indians;

''(6) provide requested technical assistance to Indian Tribes, Tribal Organizations, and Urban Indian Organizations in the development of local health service priorities and incidence and prevalence rates of disease and other illness in the community; and

''(7) provide disease surveillance and assist Indian Tribes, Tribal Organizations, and Urban Indian Organizations to promote public health.

''(c) TECHNICAL ASSISTANCE.—The Director of the Centers for Disease Control and Prevention shall provide technical assistance to the centers in carrying out the requirements of this subsection.

''(d) FUNDING FOR STUDIES.—The Secretary may make funding available to Indian Tribes, Tribal Organizations, and Urban Indian Organizations to conduct epidemiological studies of Indian communities.

**"SEC. 210. COMPREHENSIVE SCHOOL HEALTH EDUCATION PROGRAMS.**

''(a) FUNDING FOR DEVELOPMENT OF PROGRAMS.—In addition to carrying out any other program for health promotion or disease prevention, the Secretary, acting through the Service, is authorized to award grants to Indian Tribes, Tribal Organizations, and Urban Indian Organizations to develop comprehensive school health education programs for children from pre-school through grade 12 in schools for the benefit of Indian and Urban Indian children.

''(b) USE OF FUNDS.—Funding provided under this section may be used for purposes which may include, but are not limited to, the following:

''(1) Developing and implementing health education curricula both for regular school programs and afterschool programs.

''(2) Training teachers in comprehensive school health education curricula.

''(3) Integrating school-based, community-based, and other public and private health promotion efforts.

''(4) Encouraging healthy, tobacco-free school environments.

''(5) Coordinating school-based health programs with existing services and programs available in the community.

''(6) Developing school programs on nutrition education, personal health, oral health, and fitness.

''(7) Developing behavioral health wellness programs.

''(8) Developing chronic disease prevention programs.

''(9) Developing substance abuse prevention programs.

''(10) Developing injury prevention and safety education programs.

''(11) Developing activities for the prevention and control of communicable diseases.

''(12) Developing community and environmental health education programs that include traditional health care practitioners.

''(13) Violence prevention.

''(14) Such other health issues as are appropriate.

''(c) TECHNICAL ASSISTANCE.—Upon request, the Secretary, acting through the Service, shall provide technical assistance to Indian Tribes, Tribal Organizations, and Urban Indian Organizations in the development of comprehensive health education plans and the dissemination of comprehensive health education materials and information on existing health programs and resources.

''(d) CRITERIA FOR REVIEW AND APPROVAL OF APPLICATIONS.—The Secretary, acting through the Service, and in consultation with Indian Tribes, Tribal Organizations, and Urban Indian Organizations, shall establish criteria for the review and approval of applications for funding provided pursuant to this section.

''(e) DEVELOPMENT OF PROGRAM FOR BIA FUNDED SCHOOLS.—

''(1) IN GENERAL.—The Secretary of the Interior, acting through the Bureau of Indian Affairs and in cooperation with the Secretary, acting through the Service, and affected Indian Tribes and Tribal Organizations, shall develop a comprehensive school health education program for children from preschool through grade 12 in schools for which support is provided by the Bureau of Indian Affairs.

''(2) REQUIREMENTS FOR PROGRAMS.—Such programs shall include—

''(A) school programs on nutrition education, personal health, oral health, and fitness;

''(B) behavioral health wellness programs;

''(C) chronic disease prevention programs;

''(D) substance abuse prevention programs;

''(E) injury prevention and safety education programs; and

''(F) activities for the prevention and control of communicable diseases.

''(3) DUTIES OF THE SECRETARY.—The Secretary of the Interior shall—

''(A) provide training to teachers in comprehensive school health education curricula;

''(B) ensure the integration and coordination of school-based programs with existing services and health programs available in the community; and

''(C) encourage healthy, tobacco-free school environments.

**"SEC. 211. INDIAN YOUTH PROGRAM.**

''(a) PROGRAM AUTHORIZED.—The Secretary, acting through the Service, is authorized to establish and administer a program to provide funding to Indian Tribes, Tribal Organizations, and Urban Indian Organizations for innovative mental and physical disease prevention and health promotion and treatment programs for Indian and Urban Indian preadolescent and adolescent youths.

''(b) USE OF FUNDS.—

''(1) ALLOWABLE USES.—Funds made available under this section may be used to—

''(A) develop prevention and treatment programs for Indian youth which promote mental and physical health and incorporate cultural values, community and family involvement, and traditional health care practitioners; and

''(B) develop and provide community training and education.

''(2) PROHIBITED USE.—Funds made available under this section may not be used to provide services described in section 707(c).

''(c) DUTIES OF THE SECRETARY.—The Secretary shall—

''(1) disseminate to Indian Tribes, Tribal Organizations, and Urban Indian Organizations information regarding models for the delivery of comprehensive health care services to Indian and Urban Indian adolescents;

''(2) encourage the implementation of such models; and

''(3) at the request of an Indian Tribe, Tribal Organization, or Urban Indian Organization, provide technical assistance in the implementation of such models.

''(d) CRITERIA FOR REVIEW AND APPROVAL OF APPLICATIONS.—The Secretary, in consultation with Indian Tribes, Tribal Organizations, and Urban Indian Organizations, shall establish criteria for the review and approval of applications or proposals under this section.

**"SEC. 212. PREVENTION, CONTROL, AND ELIMINATION OF COMMUNICABLE AND INFECTIOUS DISEASES.**

''(a) FUNDING AUTHORIZED.—The Secretary, acting through the Service, and after consultation with Indian Tribes, Tribal Organizations, Urban Indian Organizations, and the

Centers for Disease Control and Prevention, may make funding available to Indian Tribes, Tribal Organizations, and Urban Indian Organizations for the following:

''(1) Projects for the prevention, control, and elimination of communicable and infectious diseases, including tuberculosis, hepatitis, HIV, respiratory syncitial virus, hanta virus, sexually transmitted diseases, and H. Pylori.

''(2) Public information and education programs for the prevention, control, and elimination of communicable and infectious diseases.

''(3) Education, training, and clinical skills improvement activities in the prevention, control, and elimination of communicable and infectious diseases for health professionals, including allied health professionals.

''(4) Demonstration projects for the screening, treatment, and prevention of hepatitis C virus (HCV).

''(b) APPLICATION REQUIRED.—The Secretary may provide funding under subsection (a) only if an application or proposal for funding is submitted to the Secretary.

''(c) COORDINATION WITH HEALTH AGENCIES.—Indian Tribes, Tribal Organizations, and Urban Indian Organizations receiving funding under this section are encouraged to coordinate their activities with the Centers for Disease Control and Prevention and State and local health agencies.

''(d) TECHNICAL ASSISTANCE; REPORT.—In carrying out this section, the Secretary—

''(1) may, at the request of an Indian Tribe, Tribal Organization, or Urban Indian Organization, provide technical assistance; and

''(2) shall prepare and submit a report to Congress biennially on the use of funds under this section and on the progress made toward the prevention, control, and elimination of communicable and infectious diseases among Indians and Urban Indians.

**''SEC. 213. AUTHORITY FOR PROVISION OF OTHER SERVICES.**

''(a) FUNDING AUTHORIZED.—The Secretary, acting through the Service, Indian Tribes, and Tribal Organizations, may provide funding under this Act to meet the objectives set forth in section 3 through health care-related services and programs not otherwise described in this Act, including—

''(1) hospice care;

''(2) assisted living;

''(3) long-term health care;

''(4) home- and community-based services; and

''(5) public health functions.

''(b) SERVICES TO OTHERWISE INELIGIBLE PERSONS.—Subject to section 807, at the discretion of the Service, Indian Tribes, or Tribal Organizations, services provided for hospice care, home- and community-based care, assisted living, and long-term care may be provided (subject to reimbursement) to persons otherwise ineligible for the health care benefits of the Service. Any funds received under this subsection shall not be used to offset or limit the funding allocated to the Service or an Indian Tribe or Tribal Organization.

''(c) DEFINITIONS.—For the purposes of this section, the following definitions shall apply:

''(1) The term 'home- and community-based services' means 1 or more of the following:

''(A) Homemaker/home health aide services.

''(B) Chore services.

''(C) Personal care services.

''(D) Nursing care services provided outside of a nursing facility by, or under the supervision of, a registered nurse.

''(E) Respite care.

''(F) Training for family members.

''(G) Adult day care.

''(H) Such other home- and community-based services as the Secretary, an Indian tribe, or a Tribal Organization may approve.

''(2) The term 'hospice care' means the items and services specified in subparagraphs (A) through (H) of section 1861(dd)(1) of the Social Security Act (42 U.S.C. 1395x(dd)(1)), and such other services which an Indian Tribe or Tribal Organization determines are necessary and appropriate to provide in furtherance of this care.

''(3) The term 'public health functions' means the provision of public health-related programs, functions, and services, including assessment, assurance, and policy development which Indian Tribes and Tribal Organizations are authorized and encouraged, in those circumstances where it meets their needs, to do by forming collaborative relationships with all levels of local, State, and Federal Government.

**''SEC. 214. INDIAN WOMEN'S HEALTH CARE.**

''The Secretary, acting through the Service and Indian Tribes, Tribal Organizations, and Urban Indian Organizations, shall monitor and improve the quality of health care for Indian women of all ages through the planning and delivery of programs administered by the Service, in order to improve and enhance the treatment models of care for Indian women.

**''SEC. 215. ENVIRONMENTAL AND NUCLEAR HEALTH HAZARDS.**

''(a) STUDIES AND MONITORING.—The Secretary and the Service shall conduct, in conjunction with other appropriate Federal agencies and in consultation with concerned Indian Tribes and Tribal Organizations, studies and ongoing monitoring programs to determine trends in the health hazards to Indian miners and to Indians on or near reservations and Indian communities as a result of environmental hazards which may result in chronic or life threatening health problems, such as nuclear resource development, petroleum contamination, and contamination of water source and of the food chain. Such studies shall include—

''(1) an evaluation of the nature and extent of health problems caused by environmental hazards currently exhibited among Indians and the causes of such health problems;

''(2) an analysis of the potential effect of ongoing and future environmental resource development on or near reservations and Indian communities, including the cumulative effect over time on health;

''(3) an evaluation of the types and nature of activities, practices, and conditions causing or affecting such health problems, including uranium mining and milling, uranium mine tailing deposits, nuclear power plant operation and construction, and nuclear waste disposal; oil and gas production or transportation on or near reservations or Indian communities; and other development that could affect the health of Indians and their water supply and food chain;

''(4) a summary of any findings and recommendations provided in Federal and State studies, reports, investigations, and inspections during the 5 years prior to the date of enactment of the Indian Health Care Improvement Act Amendments of 2005 that directly or indirectly relate to the activities, practices, and conditions affecting the health or safety of such Indians; and

''(5) the efforts that have been made by Federal and State agencies and resource and economic development companies to effectively carry out an education program for such Indians regarding the health and safety hazards of such development.

''(b) HEALTH CARE PLANS.—Upon completion of such studies, the Secretary and the Service shall take into account the results of such studies and, in consultation with Indian Tribes and Tribal Organizations, develop health care plans to address the health problems studied under subsection (a). The plans shall include—

''(1) methods for diagnosing and treating Indians currently exhibiting such health problems;

''(2) preventive care and testing for Indians who may be exposed to such health hazards, including the monitoring of the health of individuals who have or may have been exposed to excessive amounts of radiation or affected by other activities that have had or could have a serious impact upon the health of such individuals; and

''(3) a program of education for Indians who, by reason of their work or geographic proximity to such nuclear or other development activities, may experience health problems.

''(c) SUBMISSION OF REPORT AND PLAN TO CONGRESS.—The Secretary and the Service shall submit to Congress the study prepared under subsection (a) no later than 18 months after the date of enactment of the Indian Health Care Improvement Act Amendments of 2005. The health care plan prepared under subsection (b) shall be submitted in a report no later than 1 year after the study prepared under subsection (a) is submitted to Congress. Such report shall include recommended activities for the implementation of the plan, as well as an evaluation of any activities previously undertaken by the Service to address such health problems.

''(d) INTERGOVERNMENTAL TASK FORCE.—

''(1) ESTABLISHMENT; MEMBERS.—There is established an Intergovernmental Task Force to be composed of the following individuals (or their designees):

''(A) The Secretary of Energy.

''(B) The Secretary of the Environmental Protection Agency.

''(C) The Director of the Bureau of Mines.

''(D) The Assistant Secretary for Occupational Safety and Health.

''(E) The Secretary of the Interior.

''(F) The Secretary of Health and Human Services.

''(G) The Director of the Indian Health Service.

''(2) DUTIES.—The Task Force shall—

''(A) identify existing and potential operations related to nuclear resource development or other environmental hazards that affect or may affect the health of Indians on or near a reservation or in an Indian community; and

''(B) enter into activities to correct existing health hazards and ensure that current and future health problems resulting from nuclear resource or other development activities are minimized or reduced.

''(3) CHAIRMAN; MEETINGS.—The Secretary of Health and Human Services shall be the Chairman of the Task Force. The Task Force shall meet at least twice each year.

''(e) HEALTH SERVICES TO CERTAIN EMPLOYEES.—In the case of any Indian who—

''(1) as a result of employment in or near a uranium mine or mill or near any other environmental hazard, suffers from a work-related illness or condition;

''(2) is eligible to receive diagnosis and treatment services from an Indian Health Program; and

''(3) by reason of such Indian's employment, is entitled to medical care at the expense of such mine or mill operator or entity responsible for the environmental hazard, the Indian Health Program shall, at the request of such Indian, render appropriate medical care to such Indian for such illness or condition and may be reimbursed for any medical care so rendered to which such Indian is entitled at the expense of such operator or entity from such operator or entity. Nothing in this subsection shall affect the

rights of such Indian to recover damages other than such amounts paid to the Indian Health Program from the employer for providing medical care for such illness or condition.

**"SEC. 216. ARIZONA AS A CONTRACT HEALTH SERVICE DELIVERY AREA.**

''(a) IN GENERAL.—For fiscal years beginning with the fiscal year ending September 30, 1983, and ending with the fiscal year ending September 30, 2015, the State of Arizona shall be designated as a contract health service delivery area by the Service for the purpose of providing contract health care services to members of federally recognized Indian Tribes of Arizona.

''(b) MAINTENANCE OF SERVICES.—The Service shall not curtail any health care services provided to Indians residing on reservations in the State of Arizona if such curtailment is due to the provision of contract services in such State pursuant to the designation of such State as a contract health service delivery area pursuant to subsection (a).

**"SEC. 216A. NORTH DAKOTA AND SOUTH DAKOTA AS CONTRACT HEALTH SERVICE DELIVERY AREA.**

''(a) IN GENERAL.—Beginning in fiscal year 2003, the States of North Dakota and South Dakota shall be designated as a contract health service delivery area by the Service for the purpose of providing contract health care services to members of federally recognized Indian Tribes of North Dakota and South Dakota.

''(b) LIMITATION.—The Service shall not curtail any health care services provided to Indians residing on any reservation, or in any county that has a common boundary with any reservation, in the State of North Dakota or South Dakota if such curtailment is due to the provision of contract services in such States pursuant to the designation of such States as a contract health service delivery area pursuant to subsection (a).

**"SEC. 217. CALIFORNIA CONTRACT HEALTH SERVICES PROGRAM.**

''(a) FUNDING AUTHORIZED.—The Secretary is authorized to fund a program using the California Rural Indian Health Board (hereafter in this section referred to as the 'CRIHB') as a contract care intermediary to improve the accessibility of health services to California Indians.

''(b) REIMBURSEMENT CONTRACT.—The Secretary shall enter into an agreement with the CRIHB to reimburse the CRIHB for costs (including reasonable administrative costs) incurred pursuant to this section, in providing medical treatment under contract to California Indians described in section 806(a) throughout the California contract health services delivery area described in section 218 with respect to high cost contract care cases.

''(c) ADMINISTRATIVE EXPENSES.—Not more than 5 percent of the amounts provided to the CRIHB under this section for any fiscal year may be for reimbursement for administrative expenses incurred by the CRIHB during such fiscal year.

''(d) LIMITATION ON PAYMENT.—No payment may be made for treatment provided hereunder to the extent payment may be made for such treatment under the Indian Catastrophic Health Emergency Fund described in section 202 or from amounts appropriated or otherwise made available to the California contract health service delivery area for a fiscal year.

''(e) ADVISORY BOARD.—There is established an advisory board which shall advise the CRIHB in carrying out this section. The advisory board shall be composed of representatives, selected by the CRIHB, from not less than 8 Tribal Health Programs serving California Indians covered under this section at least one half of whom of whom are not affiliated with the CRIHB.

**"SEC. 218. CALIFORNIA AS A CONTRACT HEALTH SERVICE DELIVERY AREA.**

''The State of California, excluding the counties of Alameda, Contra Costa, Los Angeles, Marin, Orange, Sacramento, San Francisco, San Mateo, Santa Clara, Kern, Merced, Monterey, Napa, San Benito, San Joaquin, San Luis Obispo, Santa Cruz, Solano, Stanislaus, and Ventura, shall be designated as a contract health service delivery area by the Service for the purpose of providing contract health services to California Indians. However, any of the counties listed herein may only be included in the contract health services delivery area if funding is specifically provided by the Service for such services in those counties.

**"SEC. 219. CONTRACT HEALTH SERVICES FOR THE TRENTON SERVICE AREA.**

''(a) AUTHORIZATION FOR SERVICES.—The Secretary, acting through the Service, is directed to provide contract health services to members of the Turtle Mountain Band of Chippewa Indians that reside in the Trenton Service Area of Divide, McKenzie, and Williams counties in the State of North Dakota and the adjoining counties of Richland, Roosevelt, and Sheridan in the State of Montana.

''(b) NO EXPANSION OF ELIGIBILITY.—Nothing in this section may be construed as expanding the eligibility of members of the Turtle Mountain Band of Chippewa Indians for health services provided by the Service beyond the scope of eligibility for such health services that applied on May 1, 1986.

**"SEC. 220. PROGRAMS OPERATED BY INDIAN TRIBES AND TRIBAL ORGANIZATIONS.**

''The Service shall provide funds for health care programs and facilities operated by Tribal Health Programs on the same basis as such funds are provided to programs and facilities operated directly by the Service.

**"SEC. 221. LICENSING.**

''Health care professionals employed by a Tribal Health Program shall, if licensed in any State, be exempt from the licensing requirements of the State in which the Tribal Health Program performs the services described in its contract or compact under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).

**"SEC. 222. NOTIFICATION OF PROVISION OF EMERGENCY CONTRACT HEALTH SERVICES.**

''With respect to an elderly Indian or an Indian with a disability receiving emergency medical care or services from a non-Service provider or in a non-Service facility under the authority of this Act, the time limitation (as a condition of payment) for notifying the Service of such treatment or admission shall be 30 days.

**"SEC. 223. PROMPT ACTION ON PAYMENT OF CLAIMS.**

''(a) DEADLINE FOR RESPONSE.—The Service shall respond to a notification of a claim by a provider of a contract care service with either an individual purchase order or a denial of the claim within 5 working days after the receipt of such notification.

''(b) EFFECT OF UNTIMELY RESPONSE.—If the Service fails to respond to a notification of a claim in accordance with subsection (a), the Service shall accept as valid the claim submitted by the provider of a contract care service.

''(c) DEADLINE FOR PAYMENT OF VALID CLAIM.—The Service shall pay a valid contract care service claim within 30 days after the completion of the claim.

**"SEC. 224. LIABILITY FOR PAYMENT.**

''(a) NO PATIENT LIABILITY.—A patient who receives contract health care services that are authorized by the Service shall not be liable for the payment of any charges or costs associated with the provision of such services.

''(b) NOTIFICATION.—The Secretary shall notify a contract care provider and any patient who receives contract health care services authorized by the Service that such patient is not liable for the payment of any charges or costs associated with the provision of such services not later than 5 business days after receipt of a notification of a claim by a provider of contract care services.

''(c) NO RECOURSE.—Following receipt of the notice provided under subsection (b), or, if a claim has been deemed accepted under section 223(b), the provider shall have no further recourse against the patient who received the services.

**"SEC. 225. AUTHORIZATION OF APPROPRIATIONS.**

''There are authorized to be appropriated such sums as may be necessary for each fiscal year through fiscal year 2015 to carry out this title.

## "TITLE III—FACILITIES

**"SEC. 301. CONSULTATION: CONSTRUCTION AND RENOVATION OF FACILITIES; REPORTS.**

''(a) PREREQUISITES FOR EXPENDITURE OF FUNDS.—Prior to the expenditure of, or the making of any binding commitment to expend, any funds appropriated for the planning, design, construction, or renovation of facilities pursuant to the Act of November 2, 1921 (25 U.S.C. 13) (commonly known as the 'Snyder Act'), the Secretary, acting through the Service, shall—

''(1) consult with any Indian Tribe that would be significantly affected by such expenditure for the purpose of determining and, whenever practicable, honoring tribal preferences concerning size, location, type, and other characteristics of any facility on which such expenditure is to be made; and

''(2) ensure, whenever practicable and applicable, that such facility meets the construction standards of any accrediting body recognized by the Secretary for the purposes of the medicare, medicaid, and SCHIP programs under titles XVIII, XIX, and XXI of the Social Security Act by not later than 1 year after the date on which the construction or renovation of such facility is completed.

''(b) CLOSURES.—

''(1) EVALUATION REQUIRED.—Notwithstanding any other provision of law, no facility operated by the Service may be closed if the Secretary has not submitted to Congress at least 1 year prior to the date of the proposed closure an evaluation of the impact of the proposed closure which specifies, in addition to other considerations—

''(A) the accessibility of alternative health care resources for the population served by such facility;

''(B) the cost-effectiveness of such closure;

''(C) the quality of health care to be provided to the population served by such facility after such closure;

''(D) the availability of contract health care funds to maintain existing levels of service;

''(E) the views of the Indian Tribes served by such facility concerning such closure;

''(F) the level of use of such facility by all eligible Indians; and

''(G) the distance between such facility and the nearest operating Service hospital.

''(2) EXCEPTION FOR CERTAIN TEMPORARY CLOSURES.—Paragraph (1) shall not apply to any temporary closure of a facility or any portion of a facility if such closure is necessary for medical, environmental, or construction safety reasons.

''(c) HEALTH CARE FACILITY PRIORITY SYSTEM.—

''(1) IN GENERAL.—

''(A) ESTABLISHMENT.—The Secretary, acting through the Service, shall establish a health care facility priority system, which shall—

''(i) be developed with Indian Tribes and Tribal Organizations through negotiated rulemaking under section 802;

''(ii) give Indian Tribes' needs the highest priority; and

''(iii) at a minimum, include the lists required in paragraph (2)(B) and the methodology required in paragraph (2)(E).

''(B) PRIORITY OF CERTAIN PROJECTS PROTECTED.—The priority of any project established under the construction priority system in effect on the date of the Indian Health Care Improvement Act Amendments of 2005 shall not be affected by any change in the construction priority system taking place thereafter if the project was identified as 1 of the 10 top-priority inpatient projects, 1 of the 10 top-priority outpatient projects, 1 of the 10 top-priority staff quarters developments, or 1 of the 10 top-priority Youth Regional Treatment Centers in the fiscal year 2005 Indian Health Service budget justification, or if the project had completed both Phase I and Phase II of the construction priority system in effect on the date of enactment of such Act.

''(2) REPORT; CONTENTS.—The Secretary shall submit to the President, for inclusion in each report required to be transmitted to Congress under section 801, a report which sets forth the following:

''(A) A description of the health care facility priority system of the Service, established under paragraph (1).

''(B) Health care facilities lists, including—

''(i) the 10 top-priority inpatient health care facilities;

''(ii) the 10 top-priority outpatient health care facilities;

''(iii) the 10 top-priority specialized health care facilities (such as long-term care and alcohol and drug abuse treatment);

''(iv) the 10 top-priority staff quarters developments associated with health care facilities; and

''(v) the 10 top-priority hostels associated with health care facilities.

''(C) The justification for such order of priority.

''(D) The projected cost of such projects.

''(E) The methodology adopted by the Service in establishing priorities under its health care facility priority system.

''(3) REQUIREMENTS FOR PREPARATION OF REPORTS.—In preparing each report required under paragraph (2) (other than the initial report), the Secretary shall annually—

''(A) consult with and obtain information on all health care facilities needs from Indian Tribes, Tribal Organizations, and Urban Indian Organizations; and

''(B) review the total unmet needs of all Indian Tribes, Tribal Organizations, and Urban Indian Organizations for health care facilities (including hostels and staff quarters), including needs for renovation and expansion of existing facilities.

''(4) CRITERIA FOR EVALUATING NEEDS.—For purposes of this subsection, the Secretary shall, in evaluating the needs of facilities operated under any contract or compact under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) use the same criteria that the Secretary uses in evaluating the needs of facilities operated directly by the Service.

''(5) NEEDS OF FACILITIES UNDER ISDEAA AGREEMENTS.—The Secretary shall ensure that the planning, design, construction, and renovation needs of Service and non-Service facilities operated under contracts or compacts in accordance with the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) are fully and equitably integrated into the health care facility priority system.

''(d) REVIEW OF NEED FOR FACILITIES.—

''(1) INITIAL REPORT.—In the year 2006, the Government Accountability Office shall prepare and finalize a report which sets forth the needs of the Service, Indian Tribes, Tribal Organizations, and Urban Indian Organizations, for the facilities listed under subsection (c)(2)(B), including the needs for renovation and expansion of existing facilities. The Government Accountability Office shall submit the report to the appropriate authorizing and appropriations committees of Congress and to the Secretary.

''(2) Beginning in the year 2006, the Secretary shall update the report required under paragraph (1) every 5 years.

''(3) The Comptroller General and the Secretary shall consult with Indian Tribes, Tribal Organizations, and Urban Indian Organizations. The Secretary shall submit the reports required by paragraphs (1) and (2), to the President for inclusion in the report required to be transmitted to Congress under section 801.

''(4) For purposes of this subsection, the reports shall, regarding the needs of facilities operated under any contract or compact under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.), be based on the same criteria that the Secretary uses in evaluating the needs of facilities operated directly by the Service.

''(5) The planning, design, construction, and renovation needs of facilities operated under contracts or compacts under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) shall be fully and equitably integrated into the development of the health facility priority system.

''(6) Beginning in 2007 and each fiscal year thereafter, the Secretary shall provide an opportunity for nomination of planning, design, and construction projects by the Service, Indian Tribes, Tribal Organizations, and Urban Indian Organizations for consideration under the health care facility priority system.

''(e) FUNDING CONDITION.—All funds appropriated under the Act of November 2, 1921 (25 U.S.C. 13) (commonly known as the 'Snyder Act'), for the planning, design, construction, or renovation of health facilities for the benefit of 1 or more Indian Tribes shall be subject to the provisions of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).

''(f) DEVELOPMENT OF INNOVATIVE APPROACHES.—The Secretary shall consult and cooperate with Indian Tribes, Tribal Organizations, and Urban Indian Organizations in developing innovative approaches to address all or part of the total unmet need for construction of health facilities, including those provided for in other sections of this title and other approaches.

**''SEC. 302. SANITATION FACILITIES.**

''(a) FINDINGS.—Congress finds the following:

''(1) The provision of sanitation facilities is primarily a health consideration and function.

''(2) Indian people suffer an inordinately high incidence of disease, injury, and illness directly attributable to the absence or inadequacy of sanitation facilities.

''(3) The long-term cost to the United States of treating and curing such disease, injury, and illness is substantially greater than the short-term cost of providing sanitation facilities and other preventive health measures.

''(4) Many Indian homes and Indian communities still lack sanitation facilities.

''(5) It is in the interest of the United States, and it is the policy of the United States, that all Indian communities and Indian homes, new and existing, be provided with sanitation facilities.

''(b) FACILITIES AND SERVICES.—In furtherance of the findings made in subsection (a), Congress reaffirms the primary responsibility and authority of the Service to provide the necessary sanitation facilities and services as provided in section 7 of the Act of August 5, 1954 (42 U.S.C. 2004a). Under such authority, the Secretary, acting through the Service, is authorized to provide the following:

''(1) Financial and technical assistance to Indian Tribes, Tribal Organizations, and Indian communities in the establishment, training, and equipping of utility organizations to operate and maintain sanitation facilities, including the provision of existing plans, standard details, and specifications available in the Department, to be used at the option of the Indian Tribe, Tribal Organization, or Indian community.

''(2) Ongoing technical assistance and training to Indian Tribes, Tribal Organizations, and Indian communities in the management of utility organizations which operate and maintain sanitation facilities.

''(3) Priority funding for operation and maintenance assistance for, and emergency repairs to, sanitation facilities operated by an Indian Tribe, Tribal Organization or Indian community when necessary to avoid an imminent health threat or to protect the investment in sanitation facilities and the investment in the health benefits gained through the provision of sanitation facilities.

''(c) FUNDING.—Notwithstanding any other provision of law—

''(1) the Secretary of Housing and Urban Development is authorized to transfer funds appropriated under the Native American Housing Assistance and Self-Determination Act of 1996 to the Secretary of Health and Human Services;

''(2) the Secretary of Health and Human Services is authorized to accept and use such funds for the purpose of providing sanitation facilities and services for Indians under section 7 of the Act of August 5, 1954 (42 U.S.C. 2004a);

''(3) unless specifically authorized when funds are appropriated, the Secretary shall not use funds appropriated under section 7 of the Act of August 5, 1954 (42 U.S.C. 2004a), to provide sanitation facilities to new homes constructed using funds provided by the Department of Housing and Urban Development;

''(4) the Secretary of Health and Human Services is authorized to accept from any source, including Federal and State agencies, funds for the purpose of providing sanitation facilities and services and place these funds into contracts or compacts under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.);

''(5) except as otherwise prohibited by this section, the Secretary may use funds appropriated under the authority of section 7 of the Act of August 5, 1954 (42 U.S.C. 2004a) to fund up to 100 percent of the amount of an Indian Tribe's loan obtained under any Federal program for new projects to construct eligible sanitation facilities to serve Indian homes;

''(6) except as otherwise prohibited by this section, the Secretary may use funds appropriated under the authority of section 7 of the Act of August 5, 1954 (42 U.S.C. 2004a) to meet matching or cost participation requirements under other Federal and non-Federal programs for new projects to construct eligible sanitation facilities;

''(7) all Federal agencies are authorized to transfer to the Secretary funds identified, granted, loaned, or appropriated whereby the Department's applicable policies, rules, and regulations shall apply in the implementation of such projects;

''(8) the Secretary of Health and Human Services shall enter into interagency agreements with Federal and State agencies for the purpose of providing financial assistance for sanitation facilities and services under this Act; and

''(9) the Secretary of Health and Human Services shall, by regulation developed through rulemaking under section 802, establish standards applicable to the planning, design, and construction of sanitation facilities funded under this Act.

''(d) CERTAIN CAPABILITIES NOT PREREQUISITE.—The financial and technical capability of an Indian Tribe, Tribal Organization, or Indian community to safely operate, manage, and maintain a sanitation facility shall not be a prerequisite to the provision or construction of sanitation facilities by the Secretary.

''(e) FINANCIAL ASSISTANCE.—The Secretary is authorized to provide financial assistance to Indian Tribes, Tribal Organizations, and Indian communities for operation, management, and maintenance of their sanitation facilities.

''(f) OPERATION, MANAGEMENT, AND MAINTENANCE OF FACILITIES.—The Indian Tribe has the primary responsibility to establish, collect, and use reasonable user fees, or otherwise set aside funding, for the purpose of operating, managing, and maintaining sanitation facilities. If a sanitation facility serving a community that is operated by an Indian Tribe or Tribal Organization is threatened with imminent failure and such operator lacks capacity to maintain the integrity or the health benefits of the sanitation facility, then the Secretary is authorized to assist the Indian Tribe, Tribal Organization, or Indian community in the resolution of the problem on a short-term basis through cooperation with the emergency coordinator or by providing operation, management, and maintenance service.

''(g) ISDEAA PROGRAM FUNDED ON EQUAL BASIS.—Tribal Health Programs shall be eligible (on an equal basis with programs that are administered directly by the Service) for—

''(1) any funds appropriated pursuant to this section; and

''(2) any funds appropriated for the purpose of providing sanitation facilities.

''(h) REPORT.—

''(1) REQUIRED; CONTENTS.—The Secretary, in consultation with the Secretary of Housing and Urban Development, Indian Tribes, Tribal Organizations, and tribally designated housing entities (as defined in section 4 of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4103)) shall submit to the President, for inclusion in each report required to be transmitted to Congress under section 801, a report which sets forth—

''(A) the current Indian sanitation facility priority system of the Service;

''(B) the methodology for determining sanitation deficiencies and needs;

''(C) the level of initial and final sanitation deficiency for each type of sanitation facility for each project of each Indian Tribe or Indian community;

''(D) the amount and most effective use of funds, derived from whatever source, necessary to accommodate the sanitation facilities needs of new homes assisted with funds under the Native American Housing Assistance and Self-Determination Act, and to reduce the identified sanitation deficiency levels of all Indian Tribes and Indian communities to level I sanitation deficiency as defined in paragraph (4)(A); and

''(E) a 10-year plan to provide sanitation facilities to serve existing Indian homes and Indian communities and new and renovated Indian homes.

''(2) CRITERIA.—The criteria on which the deficiencies and needs will be evaluated shall be developed through negotiated rulemaking pursuant to section 802.

''(3) UNIFORM METHODOLOGY.—The methodology used by the Secretary in determining, preparing cost estimates for, and reporting sanitation deficiencies for purposes of paragraph (1) shall be applied uniformly to all Indian Tribes and Indian communities.

''(4) SANITATION DEFICIENCY LEVELS.—For purposes of this subsection, the sanitation deficiency levels for an individual, Indian Tribe, or Indian community sanitation facility to serve Indian homes are determined as follows:

''(A) A level I deficiency exists if a sanitation facility serving an individual, Indian Tribe, or Indian community—

''(i) complies with all applicable water supply, pollution control, and solid waste disposal laws; and

''(ii) deficiencies relate to routine replacement, repair, or maintenance needs.

''(B) A level II deficiency exists if a sanitation facility serving an individual, Indian Tribe, or Indian community substantially or recently complied with all applicable water supply, pollution control, and solid waste laws and any deficiencies relate to—

''(i) small or minor capital improvements needed to bring the facility back into compliance;

''(ii) capital improvements that are necessary to enlarge or improve the facilities in order to meet the current needs for domestic sanitation facilities; or

''(iii) the lack of equipment or training by an Indian Tribe, Tribal Organization, or an Indian community to properly operate and maintain the sanitation facilities.

''(C) A level III deficiency exists if a sanitation facility serving an individual, Indian Tribe or Indian community meets one or more of the following conditions—

''(i) water or sewer service in the home is provided by a haul system with holding tanks and interior plumbing;

''(ii) major significant interruptions to water supply or sewage disposal occur frequently, requiring major capital improvements to correct the deficiencies; or

''(iii) there is no access to or no approved or permitted solid waste facility available.

''(D) A level IV deficiency exists if—

''(i) a sanitation facility of an individual, Indian Tribe, Tribal Organization, or Indian community has no piped water or sewer facilities in the home or the facility has become inoperable due to major component failure; or

''(ii) where only a washeteria or central facility exists in the community.

''(E) A level V deficiency exists in the absence of a sanitation facility, where individual homes do not have access to safe drinking water or adequate wastewater (including sewage) disposal.

''(i) DEFINITIONS.—For purposes of this section, the following terms apply:

''(1) INDIAN COMMUNITY.—The term 'Indian community' means a geographic area, a significant proportion of whose inhabitants are Indians and which is served by or capable of being served by a facility described in this section.

''(2) SANITATION FACILITIES.—The terms 'sanitation facility' and 'sanitation facilities' mean safe and adequate water supply systems, sanitary sewage disposal systems, and sanitary solid waste systems (and all related equipment and support infrastructure).

**''SEC. 303. PREFERENCE TO INDIANS AND INDIAN FIRMS.**

''(a) BUY INDIAN ACT.—The Secretary, acting through the Service, may use the negotiating authority of section 23 of the Act of June 25, 1910 (25 U.S.C. 47, commonly known as the 'Buy Indian Act'), to give preference to any Indian or any enterprise, partnership, corporation, or other type of business organization owned and controlled by an Indian or Indians including former or currently federally recognized Indian Tribes in the State of New York (hereinafter referred to as an 'Indian firm') in the construction and renovation of Service facilities pursuant to section 301 and in the construction of sanitation facilities pursuant to section 302. Such preference may be accorded by the Secretary unless the Secretary finds, pursuant to regulations adopted pursuant to section 802, that the project or function to be contracted for will not be satisfactory or such project or function cannot be properly completed or maintained under the proposed contract. The Secretary, in arriving at such a finding, shall consider whether the Indian or Indian firm will be deficient with respect to—

''(1) ownership and control by Indians;

''(2) equipment;

''(3) bookkeeping and accounting procedures;

''(4) substantive knowledge of the project or function to be contracted for;

''(5) adequately trained personnel; or

''(6) other necessary components of contract performance.

''(b) LABOR STANDARDS.—

''(1) IN GENERAL.—For the purposes of implementing the provisions of this title, contracts for the construction or renovation of health care facilities, staff quarters, and sanitation facilities, and related support infrastructure, funded in whole or in part with funds made available pursuant to this title, shall contain a provision requiring compliance with subchapter IV of chapter 31 of title 40, United States Code (commonly known as the 'Davis-Bacon Act'), unless such construction or renovation—

''(A) is performed by a contractor pursuant to a contract with an Indian Tribe or Tribal Organization with funds supplied through a contract or compact authorized by the Indian Self-Determination and Education Assistance Act, or other statutory authority; and

''(B) is subject to prevailing wage rates for similar construction or renovation in the locality as determined by the Indian Tribes or Tribal Organizations to be served by the construction or renovation.

''(2) EXCEPTION.—This subsection shall not apply to construction or renovation carried out by an Indian Tribe or Tribal Organization with its own employees.

**''SEC. 304. EXPENDITURE OF NONSERVICE FUNDS FOR RENOVATION.**

''(a) IN GENERAL.—Notwithstanding any other provision of law, if the requirements of subsection (c) are met, the Secretary, acting through the Service, is authorized to accept any major expansion, renovation, or modernization by any Indian Tribe or Tribal Organization of any Service facility or of any other Indian health facility operated pursuant to a contract or compact under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.), including—

''(1) any plans or designs for such expansion, renovation, or modernization; and

''(2) any expansion, renovation, or modernization for which funds appropriated under any Federal law were lawfully expended.

''(b) PRIORITY LIST.—

''(1) IN GENERAL.—The Secretary shall maintain a separate priority list to address

the needs for increased operating expenses, personnel, or equipment for such facilities. The methodology for establishing priorities shall be developed through negotiated rulemaking under section 802. The list of priority facilities will be revised annually in consultation with Indian Tribes and Tribal Organizations.

''(2) REPORT.—The Secretary shall submit to the President, for inclusion in each report required to be transmitted to Congress under section 801, the priority list maintained pursuant to paragraph (1).

''(c) REQUIREMENTS.—The requirements of this subsection are met with respect to any expansion, renovation, or modernization if—

''(1) the Indian Tribe or Tribal Organization—

''(A) provides notice to the Secretary of its intent to expand, renovate, or modernize; and

''(B) applies to the Secretary to be placed on a separate priority list to address the needs of such new facilities for increased operating expenses, personnel, or equipment; and

''(2) the expansion, renovation, or modernization—

''(A) is approved by the appropriate area director of the Service for Federal facilities; and

''(B) is administered by the Indian Tribe or Tribal Organization in accordance with any applicable regulations prescribed by the Secretary with respect to construction or renovation of Service facilities.

''(d) ADDITIONAL REQUIREMENT FOR EXPANSION.—In addition to the requirements under subsection (c), for any expansion, the Indian Tribe or Tribal Organization shall provide to the Secretary additional information developed through negotiated rulemaking under section 802, including additional staffing, equipment, and other costs associated with the expansion.

''(e) CLOSURE OR CONVERSION OF FACILITIES.—If any Service facility which has been expanded, renovated, or modernized by an Indian Tribe or Tribal Organization under this section ceases to be used as a Service facility during the 20-year period beginning on the date such expansion, renovation, or modernization is completed, such Indian Tribe or Tribal Organization shall be entitled to recover from the United States an amount which bears the same ratio to the value of such facility at the time of such cessation as the value of such expansion, renovation, or modernization (less the total amount of any funds provided specifically for such facility under any Federal program that were expended for such expansion, renovation, or modernization) bore to the value of such facility at the time of the completion of such expansion, renovation, or modernization.

**''SEC. 305. FUNDING FOR THE CONSTRUCTION, EXPANSION, AND MODERNIZATION OF SMALL AMBULATORY CARE FACILITIES.**

''(a) FUNDING.—

''(1) IN GENERAL.—The Secretary, acting through the Service, in consultation with Indian Tribes and Tribal Organizations, shall make grants to Indian Tribes and Tribal Organizations for the construction, expansion, or modernization of facilities for the provision of ambulatory care services to eligible Indians (and noneligible persons pursuant to subsections (b)(2) and (c)(1)(C)). Funding made under this section may cover up to 100 percent of the costs of such construction, expansion, or modernization. For the purposes of this section, the term 'construction' includes the replacement of an existing facility.

''(2) AGREEMENT REQUIRED.—Funding under paragraph (1) may only be made available to a Tribal Health Program operating an Indian health facility (other than a facility owned or constructed by the Service, including a facility originally owned or constructed by the Service and transferred to an Indian Tribe or Tribal Organization).

''(b) USE OF FUNDS.—

''(1) ALLOWABLE USES.—Funding provided under this section may be used for the construction, expansion, or modernization (including the planning and design of such construction, expansion, or modernization) of an ambulatory care facility—

''(A) located apart from a hospital;

''(B) not funded under section 301 or section 307; and

''(C) which, upon completion of such construction or modernization will—

''(i) have a total capacity appropriate to its projected service population;

''(ii) provide annually no fewer than 150 patient visits by eligible Indians and other users who are eligible for services in such facility in accordance with section 807(c)(2); and

''(iii) provide ambulatory care in a Service Area (specified in the contract or compact under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.)) with a population of no fewer than 1,500 eligible Indians and other users who are eligible for services in such facility in accordance with section 807(c)(2).

''(2) ADDITIONAL ALLOWABLE USE.—The Secretary may also reserve a portion of the funding provided under this section and use those reserved funds to reduce an outstanding debt incurred by Indian Tribes or Tribal Organizations for the construction, expansion, or modernization of an ambulatory care facility that meets the requirements under paragraph (1). The provisions of this section shall apply, except that such applications for funding under this paragraph shall be considered separately from applications for funding under paragraph (1).

''(3) USE ONLY FOR CERTAIN PORTION OF COSTS.—Funding provided under this section may be used only for the cost of that portion of a construction, expansion, or modernization project that benefits the Service population identified above in subsection (b)(1)(C)(ii) and (iii). The requirements of clauses (ii) and (iii) of paragraph (1)(C) shall not apply to an Indian Tribe or Tribal Organization applying for funding under this section for a health care facility located or to be constructed on an island or when such facility is not located on a road system providing direct access to an inpatient hospital where care is available to the Service population.

''(c) FUNDING.—

''(1) APPLICATION.—No funding may be made available under this section unless an application or proposal for such funding has been approved by the Secretary in accordance with applicable regulations and has forth reasonable assurance by the applicant that, at all times after the construction, expansion, or modernization of a facility carried out pursuant to funding received under this section—

''(A) adequate financial support will be available for the provision of services at such facility;

''(B) such facility will be available to eligible Indians without regard to ability to pay or source of payment; and

''(C) such facility will, as feasible without diminishing the quality or quantity of services provided to eligible Indians, serve noneligible persons on a cost basis.

''(2) PRIORITY.—In awarding funding under this section, the Secretary shall give priority to Indian Tribes and Tribal Organizations that demonstrate—

''(A) a need for increased ambulatory care services; and

''(B) insufficient capacity to deliver such services.

''(3) PEER REVIEW PANELS.—The Secretary may provide for the establishment of peer review panels, as necessary, to review and evaluate applications and proposals and to advise the Secretary regarding such applications using the criteria developed during consultations pursuant to subsection (a)(1).

''(d) REVERSION OF FACILITIES.—If any facility (or portion thereof) with respect to which funds have been paid under this section, ceases, within 5 years after completion of the construction, expansion, or modernization carried out with such funds, to be used for the purposes of providing health care services to eligible Indians, all of the right, title, and interest in and to such facility (or portion thereof) shall transfer to the United States unless otherwise negotiated by the Service and the Indian Tribe or Tribal Organization.

''(e) FUNDING NONRECURRING.—Funding provided under this section shall be nonrecurring and shall not be available for inclusion in any individual Indian Tribe's tribal share for an award under the Indian Self-Determination and Education Assistance Act or for reallocation or redesign thereunder.

**''SEC. 306. INDIAN HEALTH CARE DELIVERY DEMONSTRATION PROJECT.**

''(a) HEALTH CARE DEMONSTRATION PROJECTS.—The Secretary, acting through the Service, and in consultation with Indian Tribes and Tribal Organizations, is authorized to enter into construction agreements under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) with Indian Tribes or Tribal Organizations for the purpose of carrying out a health care delivery demonstration project to test alternative means of delivering health care and services to Indians through facilities.

''(b) USE OF FUNDS.—The Secretary, in approving projects pursuant to this section, may authorize funding for the construction and renovation of hospitals, health centers, health stations, and other facilities to deliver health care services and is authorized to—

''(1) waive any leasing prohibition;

''(2) permit carryover of funds appropriated for the provision of health care services;

''(3) permit the use of other available funds;

''(4) permit the use of funds or property donated from any source for project purposes;

''(5) provide for the reversion of donated real or personal property to the donor; and

''(6) permit the use of Service funds to match other funds, including Federal funds.

''(c) REGULATIONS.—The Secretary shall develop and promulgate regulations not later than 1 year after the date of enactment of the Indian Health Care Improvement Act Amendments of 2005. If the Secretary has not promulgated regulations by that date, the Secretary shall develop and publish regulations, through rulemaking under section 802, for the review and approval of applications submitted under this section.

''(d) CRITERIA.—The Secretary may approve projects that meet the following criteria:

''(1) There is a need for a new facility or program or the reorientation of an existing facility or program.

''(2) A significant number of Indians, including those with low health status, will be served by the project.

''(3) The project has the potential to deliver services in an efficient and effective manner.

''(4) The project is economically viable.

''(5) The Indian Tribe or Tribal Organization has the administrative and financial capability to administer the project.

''(6) The project is integrated with providers of related health and social services

and is coordinated with, and avoids duplication of, existing services.

''(e) PEER REVIEW PANELS.—The Secretary may provide for the establishment of peer review panels, as necessary, to review and evaluate applications using the criteria developed pursuant to subsection (d).

''(f) PRIORITY.—The Secretary shall give priority to applications for demonstration projects in each of the following Service Units to the extent that such applications are timely filed and meet the criteria specified in subsection (d):

''(1) Cass Lake, Minnesota.
''(2) Clinton, Oklahoma.
''(3) Harlem, Montana.
''(4) Mescalero, New Mexico.
''(5) Owyhee, Nevada.
''(6) Parker, Arizona.
''(7) Schurz, Nevada.
''(8) Winnebago, Nebraska.
''(9) Ft. Yuma, California.

''(g) TECHNICAL ASSISTANCE.—The Secretary shall provide such technical and other assistance as may be necessary to enable applicants to comply with the provisions of this section.

''(h) SERVICE TO INELIGIBLE PERSONS.—Subject to section 807, the authority to provide services to persons otherwise ineligible for the health care benefits of the Service and the authority to extend hospital privileges in Service facilities to non-Service health practitioners as provided in section 807 may be included, subject to the terms of such section, in any demonstration project approved pursuant to this section.

''(i) EQUITABLE TREATMENT.—For purposes of subsection (d)(1), the Secretary shall, in evaluating facilities operated under any contract or compact under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.), use the same criteria that the Secretary uses in evaluating facilities operated directly by the Service.

''(j) EQUITABLE INTEGRATION OF FACILITIES.—The Secretary shall ensure that the planning, design, construction, renovation, and expansion needs of Service and non-Service facilities which are the subject of a contract or compact under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) for health services are fully and equitably integrated into the implementation of the health care delivery demonstration projects under this section.

**''SEC. 307. LAND TRANSFER.**

''Notwithstanding any other provision of law, the Bureau of Indian Affairs and all other agencies and departments of the United States are authorized to transfer, at no cost, land and improvements to the Service for the provision of health care services. The Secretary is authorized to accept such land and improvements for such purposes.

**''SEC. 308. LEASES, CONTRACTS, AND OTHER AGREEMENTS.**

''The Secretary, acting through the Service, may enter into leases, contracts, and other agreements with Indian Tribes and Tribal Organizations which hold (1) title to, (2) a leasehold interest in, or (3) a beneficial interest in (when title is held by the United States in trust for the benefit of an Indian Tribe) facilities used or to be used for the administration and delivery of health services by an Indian Health Program. Such leases, contracts, or agreements may include provisions for construction or renovation and provide for compensation to the Indian Tribe or Tribal Organization of rental and other costs consistent with section 105(*l*) of the Indian Self-Determination and Education Assistance Act and regulations thereunder.

**''SEC. 309. STUDY ON LOANS, LOAN GUARANTEES, AND LOAN REPAYMENT.**

''(a) IN GENERAL.—The Secretary, in consultation with the Secretary of the Treasury, Indian Tribes, and Tribal Organizations, shall carry out a study to determine the feasibility of establishing a loan fund to provide to Indian Tribes and Tribal Organizations direct loans or guarantees for loans for the construction of health care facilities, including—

''(1) inpatient facilities;
''(2) outpatient facilities;
''(3) staff quarters;
''(4) hostels; and
''(5) specialized care facilities, such as behavioral health and elder care facilities.

''(b) DETERMINATIONS.—In carrying out the study under subsection (a), the Secretary shall determine—

''(1) the maximum principal amount of a loan or loan guarantee that should be offered to a recipient from the loan fund;

''(2) the percentage of eligible costs, not to exceed 100 percent, that may be covered by a loan or loan guarantee from the loan fund (including costs relating to planning, design, financing, site land development, construction, rehabilitation, renovation, conversion, improvements, medical equipment and furnishings, and other facility-related costs and capital purchase (but excluding staffing));

''(3) the cumulative total of the principal of direct loans and loan guarantees, respectively, that may be outstanding at any 1 time;

''(4) the maximum term of a loan or loan guarantee that may be made for a facility from the loan fund;

''(5) the maximum percentage of funds from the loan fund that should be allocated for payment of costs associated with planning and applying for a loan or loan guarantee;

''(6) whether acceptance by the Secretary of an assignment of the revenue of an Indian Tribe or Tribal Organization as security for any direct loan or loan guarantee from the loan fund would be appropriate;

''(7) whether, in the planning and design of health facilities under this section, users eligible under section 807(c) may be included in any projection of patient population;

''(8) whether funds of the Service provided through loans or loan guarantees from the loan fund should be eligible for use in matching other Federal funds under other programs;

''(9) the appropriateness of, and best methods for, coordinating the loan fund with the health care priority system of the Service under section 301; and

''(10) any legislative or regulatory changes required to implement recommendations of the Secretary based on results of the study.

''(c) REPORT.—Not later than September 30, 2007, the Secretary shall submit to the Committee on Indian Affairs of the Senate and the Committee on Resources and the Committee on Energy and Commerce of the House of Representatives a report that describes—

''(1) the manner of consultation made as required by subsection (a); and

''(2) the results of the study, including any recommendations of the Secretary based on results of the study.

**''SEC. 310. TRIBAL LEASING.**

''A Tribal Health Program may lease permanent structures for the purpose of providing health care services without obtaining advance approval in appropriation Acts.

**''SEC. 311. INDIAN HEALTH SERVICE/TRIBAL FACILITIES JOINT VENTURE PROGRAM.**

''(a) IN GENERAL.—The Secretary, acting through the Service, shall make arrangements with Indian Tribes and Tribal Organizations to establish joint venture demonstration projects under which an Indian Tribe or Tribal Organization shall expend tribal, private, or other available funds, for the acquisition or construction of a health facility for a minimum of 10 years, under a no-cost lease, in exchange for agreement by the Service to provide the equipment, supplies, and staffing for the operation and maintenance of such a health facility. An Indian Tribe or Tribal Organization may use tribal funds, private sector, or other available resources, including loan guarantees, to fulfill its commitment under a joint venture entered into under this subsection. An Indian Tribe or Tribal Organization shall be eligible to establish a joint venture project if, when it submits a letter of intent, it—

''(1) has begun but not completed the process of acquisition or construction of a health facility to be used in the joint venture project; or

''(2) has not begun the process of acquisition or construction of a health facility for use in the joint venture project.

''(b) REQUIREMENTS.—The Secretary shall make such an arrangement with an Indian Tribe or Tribal Organization only if—

''(1) the Secretary first determines that the Indian Tribe or Tribal Organization has the administrative and financial capabilities necessary to complete the timely acquisition or construction of the relevant health facility; and

''(2) the Indian Tribe or Tribal Organization meets the need criteria which shall be developed through the negotiated rulemaking process provided for under section 802.

''(c) CONTINUED OPERATION.—The Secretary shall negotiate an agreement with the Indian Tribe or Tribal Organization regarding the continued operation of the facility at the end of the initial 10 year no-cost lease period.

''(d) BREACH OF AGREEMENT.—An Indian Tribe or Tribal Organization that has entered into a written agreement with the Secretary under this section, and that breaches or terminates without cause such agreement, shall be liable to the United States for the amount that has been paid to the Indian Tribe or Tribal Organization, or paid to a third party on the Indian Tribe's or Tribal Organization's behalf, under the agreement. The Secretary has the right to recover tangible property (including supplies) and equipment, less depreciation, and any funds expended for operations and maintenance under this section. The preceding sentence does not apply to any funds expended for the delivery of health care services, personnel, or staffing.

''(e) RECOVERY FOR NONUSE.—An Indian Tribe or Tribal Organization that has entered into a written agreement with the Secretary under this subsection shall be entitled to recover from the United States an amount that is proportional to the value of such facility if, at any time within the 10-year term of the agreement, the Service ceases to use the facility or otherwise breaches the agreement.

''(f) DEFINITION.—For the purposes of this section, the term 'health facility' or 'health facilities' includes quarters needed to provide housing for staff of the relevant Tribal Health Program.

**''SEC. 312. LOCATION OF FACILITIES.**

''(a) IN GENERAL.—In all matters involving the reorganization or development of Service facilities or in the establishment of related employment projects to address unemployment conditions in economically depressed areas, the Bureau of Indian Affairs and the Service shall give priority to locating such facilities and projects on Indian lands, or lands in Alaska owned by any Alaska Native village, or village or regional corporation under the Alaska Native Claims Settlement Act, or any land allotted to any Alaska Native, if requested by the Indian owner and

the Indian Tribe with jurisdiction over such lands or other lands owned or leased by the Indian Tribe or Tribal Organization. Top priority shall be given to Indian land owned by 1 or more Indian Tribes.

''(b) DEFINITION.—For purposes of this section, the term 'Indian lands' means—

''(1) all lands within the exterior boundaries of any reservation; and

''(2) any lands title to which is held in trust by the United States for the benefit of any Indian Tribe or individual Indian or held by any Indian Tribe or individual Indian subject to restriction by the United States against alienation.

**''SEC. 313. MAINTENANCE AND IMPROVEMENT OF HEALTH CARE FACILITIES.**

''(a) REPORT.—The Secretary shall submit to the President, for inclusion in the report required to be transmitted to Congress under section 801, a report which identifies the backlog of maintenance and repair work required at both Service and tribal health care facilities, including new health care facilities expected to be in operation in the next fiscal year. The report shall also identify the need for renovation and expansion of existing facilities to support the growth of health care programs.

''(b) MAINTENANCE OF NEWLY CONSTRUCTED SPACE.—The Secretary, acting through the Service, is authorized to expend maintenance and improvement funds to support maintenance of newly constructed space only if such space falls within the approved supportable space allocation for the Indian Tribe or Tribal Organization. Supportable space allocation shall be defined through the negotiated rulemaking process provided for under section 802.

''(c) REPLACEMENT FACILITIES.—In addition to using maintenance and improvement funds for renovation, modernization, and expansion of facilities, an Indian Tribe or Tribal Organization may use maintenance and improvement funds for construction of a replacement facility if the costs of renovation of such facility would exceed a maximum renovation cost threshold. The maximum renovation cost threshold shall be determined through the negotiated rulemaking process provided for under section 802.

**''SEC. 314. TRIBAL MANAGEMENT OF FEDERALLY OWNED QUARTERS.**

''(a) RENTAL RATES.—

''(1) ESTABLISHMENT.—Notwithstanding any other provision of law, a Tribal Health Program which operates a hospital or other health facility and the federally owned quarters associated therewith pursuant to a contract or compact under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) shall have the authority to establish the rental rates charged to the occupants of such quarters by providing notice to the Secretary of its election to exercise such authority.

''(2) OBJECTIVES.—In establishing rental rates pursuant to authority of this subsection, a Tribal Health Program shall endeavor to achieve the following objectives:

''(A) To base such rental rates on the reasonable value of the quarters to the occupants thereof.

''(B) To generate sufficient funds to prudently provide for the operation and maintenance of the quarters, and subject to the discretion of the Tribal Health Program, to supply reserve funds for capital repairs and replacement of the quarters.

''(3) EQUITABLE FUNDING.—Any quarters whose rental rates are established by a Tribal Health Program pursuant to this subsection shall remain eligible for quarters improvement and repair funds to the same extent as all federally owned quarters used to house personnel in Services-supported programs.

''(4) NOTICE OF RATE CHANGE.—A Tribal Health Program which exercises the authority provided under this subsection shall provide occupants with no less than 60 days notice of any change in rental rates.

''(b) DIRECT COLLECTION OF RENT.—

''(1) IN GENERAL.—Notwithstanding any other provision of law, and subject to paragraph (2), a Tribal Health Program shall have the authority to collect rents directly from Federal employees who occupy such quarters in accordance with the following:

''(A) The Tribal Health Program shall notify the Secretary and the subject Federal employees of its election to exercise its authority to collect rents directly from such Federal employees.

''(B) Upon receipt of a notice described in subparagraph (A), the Federal employees shall pay rents for occupancy of such quarters directly to the Tribal Health Program and the Secretary shall have no further authority to collect rents from such employees through payroll deduction or otherwise.

''(C) Such rent payments shall be retained by the Tribal Health Program and shall not be made payable to or otherwise be deposited with the United States.

''(D) Such rent payments shall be deposited into a separate account which shall be used by the Tribal Health Program for the maintenance (including capital repairs and replacement) and operation of the quarters and facilities as the Tribal Health Program shall determine.

''(2) RETROCESSION OF AUTHORITY.—If a Tribal Health Program which has made an election under paragraph (1) requests retrocession of its authority to directly collect rents from Federal employees occupying federally owned quarters, such retrocession shall become effective on the earlier of—

''(A) the first day of the month that begins no less than 180 days after the Tribal Health Program notifies the Secretary of its desire to retrocede; or

''(B) such other date as may be mutually agreed by the Secretary and the Tribal Health Program.

''(c) RATES IN ALASKA.—To the extent that a Tribal Health Program, pursuant to authority granted in subsection (a), establishes rental rates for federally owned quarters provided to a Federal employee in Alaska, such rents may be based on the cost of comparable private rental housing in the nearest established community with a year-round population of 1,500 or more individuals.

**''SEC. 315. APPLICABILITY OF BUY AMERICAN ACT REQUIREMENT.**

''(a) APPLICABILITY.—The Secretary shall ensure that the requirements of the Buy American Act apply to all procurements made with funds provided pursuant to section 317. Indian Tribes and Tribal Organizations shall be exempt from these requirements.

''(b) EFFECT OF VIOLATION.—If it has been finally determined by a court or Federal agency that any person intentionally affixed a label bearing a 'Made in America' inscription or any inscription with the same meaning, to any product sold in or shipped to the United States that is not made in the United States, such person shall be ineligible to receive any contract or subcontract made with funds provided pursuant to section 317, pursuant to the debarment, suspension, and ineligibility procedures described in sections 9.400 through 9.409 of title 48, Code of Federal Regulations.

''(c) DEFINITIONS.—For purposes of this section, the term 'Buy American Act' means title III of the Act entitled 'An Act making appropriations for the Treasury and Post Office Departments for the fiscal year ending June 30, 1934, and for other purposes', approved March 3, 1933 (41 U.S.C. 10a et seq.).

**''SEC. 316. OTHER FUNDING FOR FACILITIES.**

''(a) AUTHORITY TO ACCEPT FUNDS.—The Secretary is authorized to accept from any source, including Federal and State agencies, funds that are available for the construction of health care facilities and use such funds to plan, design, and construct health care facilities for Indians and to place such funds into a contract or compact under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.). Receipt of such funds shall have no effect on the priorities established pursuant to section 301.

''(b) INTERAGENCY AGREEMENTS.—The Secretary is authorized to enter into interagency agreements with other Federal agencies or State agencies and other entities and to accept funds from such Federal or State agencies or other sources to provide for the planning, design, and construction of health care facilities to be administered by Indian Health Programs in order to carry out the purposes of this Act and the purposes for which the funds were appropriated or for which the funds were otherwise provided.

''(c) TRANSFERRED FUNDS.—Any Federal agency to which funds for the construction of health care facilities are appropriated is authorized to transfer such funds to the Secretary for the construction of health care facilities to carry out the purposes of this Act as well as the purposes for which such funds are appropriated to such other Federal agency.

''(d) ESTABLISHMENT OF STANDARDS.—The Secretary, through the Service, shall establish standards by regulation, developed by rulemaking under section 802, for the planning, design, and construction of health care facilities serving Indians under this Act.

**''SEC. 317. AUTHORIZATION OF APPROPRIATIONS.**

''There are authorized to be appropriated such sums as may be necessary for each fiscal year through fiscal year 2015 to carry out this title.

**''TITLE IV—ACCESS TO HEALTH SERVICES**

**''SEC. 401. TREATMENT OF PAYMENTS UNDER SOCIAL SECURITY ACT HEALTH CARE PROGRAMS.**

''(a) DISREGARD OF MEDICARE, MEDICAID, AND SCHIP PAYMENTS IN DETERMINING APPROPRIATIONS.—Any payments received by an Indian Health Program or by an Urban Indian Organization made under title XVIII, XIX, or XXI of the Social Security Act for services provided to Indians eligible for benefits under such respective titles shall not be considered in determining appropriations for the provision of health care and services to Indians.

''(b) NONPREFERENTIAL TREATMENT.—Nothing in this Act authorizes the Secretary to provide services to an Indian with coverage under title XVIII, XIX, or XXI of the Social Security Act in preference to an Indian without such coverage.

''(c) USE OF FUNDS.—

''(1) SPECIAL FUND.—Notwithstanding any other provision of law, but subject to paragraph (2), payments to which a facility of the Service is entitled by reason of a provision of the Social Security Act shall be placed in a special fund to be held by the Secretary and first used (to such extent or in such amounts as are provided in appropriation Acts) for the purpose of making any improvements in the programs of the Service which may be necessary to achieve or maintain compliance with the applicable conditions and requirements of titles XVIII, XIX, and XXI of the Social Security Act. Any amounts to be reimbursed that are in excess of the amount necessary to achieve or maintain such conditions and requirements shall, subject to the consultation with Indian Tribes being served by the Service Unit, be used for reducing the

health resource deficiencies of the Indian Tribes. In making payments from such fund, the Secretary shall ensure that each Service Unit of the Service receives 100 percent of the amount to which the facilities of the Service, for which such Service Unit makes collections, are entitled by reason of a provision of the Social Security Act.

''(2) DIRECT PAYMENT OPTION.—Paragraph (1) shall not apply upon the election of a Tribal Health Program under subsection (d) to receive payments directly. No payment may be made out of the special fund described in such paragraph with respect to reimbursement made for services provided during the period of such election.

''(d) DIRECT BILLING.—

''(1) IN GENERAL.—A Tribal Health Program may directly bill for, and receive payment for, health care items and services provided by such Indian Tribe or Tribal organization for which payment is made under title XVIII, XIX, or XXI of the Social Security Act or from any other third party payor.

''(2) DIRECT REIMBURSEMENT.—

''(A) USE OF FUNDS.—Each Tribal Health Program exercising the option described in paragraph (1) with respect to a program under a title of the Social Security Act shall be reimbursed directly by that program for items and services furnished without regard to section 401(c), but all amounts so reimbursed shall be used by the Tribal Health Program for the purpose of making any improvements in Tribal facilities or Tribal Health Programs that may be necessary to achieve or maintain compliance with the conditions and requirements applicable generally to such items and services under the program under such title and to provide additional health care services, improvements in health care facilities and Tribal Health Programs, any health care-related purpose, or otherwise to achieve the objectives provided in section 3 of this Act.

''(B) AUDITS.—The amounts paid to an Indian Tribe or Tribal Organization exercising the option described in paragraph (1) with respect to a program under a title of the Social Security Act shall be subject to all auditing requirements applicable to programs administered by an Indian Health Program.

''(C) IDENTIFICATION OF SOURCE OF PAYMENTS.—If an Indian Tribe or Tribal Organization receives funding from the Service under the Indian Self-Determination and Education Assistance Act or an Urban Indian Organization receives funding from the Service under title V of this Act and receives reimbursements or payments under title XVIII, XIX, or XXI of the Social Security Act, such Indian Tribe or Tribal Organization, or Urban Indian Organization, shall provide to the Service a list of each provider enrollment number (or other identifier) under which it receives such reimbursements or payments.

''(3) EXAMINATION AND IMPLEMENTATION OF CHANGES.—The Secretary, acting through the Service and with the assistance of the Administrator of the Centers for Medicare & Medicaid Services, shall examine on an ongoing basis and implement any administrative changes that may be necessary to facilitate direct billing and reimbursement under the program established under this subsection, including any agreements with States that may be necessary to provide for direct billing under a program under a title of the Social Security Act.

''(4) WITHDRAWAL FROM PROGRAM.—A Tribal Health Program that bills directly under the program established under this subsection may withdraw from participation in the same manner and under the same conditions that an Indian Tribe or Tribal Organization may retrocede a contracted program to the Secretary under the authority of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.). All cost accounting and billing authority under the program established under this subsection shall be returned to the Secretary upon the Secretary's acceptance of the withdrawal of participation in this program.

**''SEC. 402. GRANTS TO AND CONTRACTS WITH THE SERVICE, INDIAN TRIBES, TRIBAL ORGANIZATIONS, AND URBAN INDIAN ORGANIZATIONS.**

''(a) INDIAN TRIBES AND TRIBAL ORGANIZATIONS.—The Secretary, acting through the Service, shall make grants to or enter into contracts with Indian Tribes and Tribal Organizations to assist such Tribes and Tribal Organizations in establishing and administering programs on or near reservations and trust lands to assist individual Indians—

''(1) to enroll for benefits under title XVIII, XIX, or XXI of the Social Security Act and other health benefits programs; and

''(2) to pay premiums for coverage for such benefits, which may be based on financial need (as determined by the Indian Tribe or Tribes being served based on a schedule of income levels developed or implemented by such Tribe or Tribes).

''(b) CONDITIONS.—The Secretary, acting through the Service, shall place conditions as deemed necessary to effect the purpose of this section in any grant or contract which the Secretary makes with any Indian Tribe or Tribal Organization pursuant to this section. Such conditions shall include requirements that the Indian Tribe or Tribal Organization successfully undertake—

''(1) to determine the population of Indians eligible for the benefits described in subsection (a);

''(2) to educate Indians with respect to the benefits available under the respective programs;

''(3) to provide transportation for such individual Indians to the appropriate offices for enrollment or applications for such benefits; and

''(4) to develop and implement methods of improving the participation of Indians in receiving the benefits provided under titles XVIII, XIX, and XXI of the Social Security Act.

''(c) AGREEMENTS RELATING TO IMPROVING ENROLLMENT OF INDIANS UNDER SOCIAL SECURITY ACT PROGRAMS.—

''(1) AGREEMENTS WITH SECRETARY TO IMPROVE RECEIPT AND PROCESSING OF APPLICATIONS.—

''(A) AUTHORIZATION.—The Secretary, acting through the Service, may enter into an agreement with an Indian Tribe, Tribal Organization, or Urban Indian Organization which provides for the receipt and processing of applications by Indians for assistance under titles XIX and XXI of the Social Security Act, and benefits under title XVIII of such Act, by an Indian Health Program or Urban Indian Organization.

''(B) REIMBURSEMENT OF COSTS.—Such agreements may provide for reimbursement of costs of outreach, education regarding eligibility and benefits, and translation when such services are provided. The reimbursement may, as appropriate, be added to the applicable rate per encounter or be provided as a separate fee-for-service payment to the Indian Tribe or Tribal Organization.

''(C) PROCESSING CLARIFIED.—In this paragraph, the term 'processing' does not include a final determination of eligibility.

''(2) AGREEMENTS WITH STATES FOR OUTREACH ON OR NEAR RESERVATION.—

''(A) IN GENERAL.—In order to improve the access of Indians residing on or near a reservation to obtain benefits under title XIX or XXI of the Social Security Act, the Secretary shall encourage the State to take steps to provide for enrollment on or near the reservation. Such steps may include outreach efforts such as the outstationing of eligibility workers, entering into agreements with Indian Tribes and Tribal Organizations to provide outreach, education regarding eligibility and benefits, enrollment, and translation services when such services are provided.

''(B) CONSTRUCTION.—Nothing in subparagraph (A) shall be construed as affecting arrangements entered into between States and Indian Tribes and Tribal Organizations for such Indian Tribes and Tribal Organizations to conduct administrative activities under such titles.

''(d) FACILITATING COOPERATION.—The Secretary, acting through the Centers for Medicare & Medicaid Services, shall take such steps as are necessary to facilitate cooperation with, and agreements between, States and the Service, Indian Tribes, Tribal Organizations, or Urban Indian Organizations.

''(e) APPLICATION TO URBAN INDIAN ORGANIZATIONS.—

''(1) IN GENERAL.—The provisions of subsection (a) shall apply with respect to grants and other funding to Urban Indian Organizations with respect to populations served by such organizations in the same manner they apply to grants and contracts with Indian Tribes and Tribal Organizations with respect to programs on or near reservations.

''(2) REQUIREMENTS.—The Secretary shall include in the grants or contracts made or provided under paragraph (1) requirements that are—

''(A) consistent with the requirements imposed by the Secretary under subsection (b);

''(B) appropriate to Urban Indian Organizations and Urban Indians; and

''(C) necessary to effect the purposes of this section.

**''SEC. 403. REIMBURSEMENT FROM CERTAIN THIRD PARTIES OF COSTS OF HEALTH SERVICES.**

''(a) RIGHT OF RECOVERY.—Except as provided in subsection (f), the United States, an Indian Tribe, or Tribal Organization shall have the right to recover from an insurance company, health maintenance organization, employee benefit plan, third-party tortfeasor, or any other responsible or liable third party (including a political subdivision or local governmental entity of a State) the reasonable charges as determined by the Secretary, and billed by the Secretary, an Indian Tribe, or Tribal Organization, in providing health services, through the Service, an Indian Tribe, or Tribal Organization to any individual to the same extent that such individual, or any nongovernmental provider of such services, would be eligible to receive damages, reimbursement, or indemnification for such charges or expenses if—

''(1) such services had been provided by a nongovernmental provider; and

''(2) such individual had been required to pay such charges or expenses and did pay such charges or expenses.

''(b) LIMITATIONS ON RECOVERIES FROM STATES.—Subsection (a) shall provide a right of recovery against any State, only if the injury, illness, or disability for which health services were provided is covered under—

''(1) workers' compensation laws; or

''(2) a no-fault automobile accident insurance plan or program.

''(c) NONAPPLICATION OF OTHER LAWS.—No law of any State, or of any political subdivision of a State and no provision of any contract, insurance or health maintenance organization policy, employee benefit plan, self-insurance plan, managed care plan, or other health care plan or program entered into or renewed after the date of the enactment of the Indian Health Care Amendments of 1988, shall prevent or hinder the right of recovery of the United States, an Indian Tribe, or Tribal Organization under subsection (a).

''(d) NO EFFECT ON PRIVATE RIGHTS OF ACTION.—No action taken by the United States, an Indian Tribe, or Tribal Organization to enforce the right of recovery provided under this section shall operate to deny to the injured person the recovery for that portion of the person's damage not covered hereunder.

''(e) ENFORCEMENT.—

''(1) IN GENERAL.—The United States, an Indian Tribe, or Tribal Organization may enforce the right of recovery provided under subsection (a) by—

''(A) intervening or joining in any civil action or proceeding brought—

''(i) by the individual for whom health services were provided by the Secretary, an Indian Tribe, or Tribal Organization; or

''(ii) by any representative or heirs of such individual, or

''(B) instituting a civil action, including a civil action for injunctive relief and other relief and including, with respect to a political subdivision or local governmental entity of a State, such an action against an official thereof.

''(2) NOTICE.—All reasonable efforts shall be made to provide notice of action instituted under paragraph (1)(B) to the individual to whom health services were provided, either before or during the pendency of such action.

''(f) LIMITATION.—Absent specific written authorization by the governing body of an Indian Tribe for the period of such authorization (which may not be for a period of more than 1 year and which may be revoked at any time upon written notice by the governing body to the Service), the United States shall not have a right of recovery under this section if the injury, illness, or disability for which health services were provided is covered under a self-insurance plan funded by an Indian Tribe, Tribal Organization, or Urban Indian Organization. Where such authorization is provided, the Service may receive and expend such amounts for the provision of additional health services consistent with such authorization.

''(g) COSTS AND ATTORNEYS' FEES.—In any action brought to enforce the provisions of this section, a prevailing plaintiff shall be awarded its reasonable attorneys' fees and costs of litigation.

''(h) NONAPPLICATION OF CLAIMS FILING REQUIREMENTS.—An insurance company, health maintenance organization, self-insurance plan, managed care plan, or other health care plan or program (under the Social Security Act or otherwise) may not deny a claim for benefits submitted by the Service or by an Indian Tribe or Tribal Organization based on the format in which the claim is submitted if such format complies with the format required for submission of claims under title XVIII of the Social Security Act or recognized under section 1175 of such Act.

''(i) APPLICATION TO URBAN INDIAN ORGANIZATIONS.—The previous provisions of this section shall apply to Urban Indian Organizations with respect to populations served by such Organizations in the same manner they apply to Indian Tribes and Tribal Organizations with respect to populations served by such Indian Tribes and Tribal Organizations.

''(j) STATUTE OF LIMITATIONS.—The provisions of section 2415 of title 28, United States Code, shall apply to all actions commenced under this section, and the references therein to the United States are deemed to include Indian Tribes, Tribal Organizations, and Urban Indian Organizations.

''(k) SAVINGS.—Nothing in this section shall be construed to limit any right of recovery available to the United States, an Indian Tribe, or Tribal Organization under the provisions of any applicable, Federal, State, or Tribal law, including medical lien laws and the Federal Medical Care Recovery Act (42 U.S.C. 2651 et seq.).

**''SEC. 404. CREDITING OF REIMBURSEMENTS.**

''(a) USE OF AMOUNTS.—

''(1) RETENTION BY PROGRAM.—Except as provided in section 202(g) (relating to the Catastrophic Health Emergency Fund) and section 807 (relating to health services for ineligible persons), all reimbursements received or recovered under any of the programs described in paragraph (2), including under section 807, by reason of the provision of health services by the Service, by an Indian Tribe or Tribal Organization, or by an Urban Indian Organization, shall be credited to the Service, such Indian Tribe or Tribal Organization, or such Urban Indian Organization, respectively, and may be used as provided in section 401. In the case of such a service provided by or through a Service Unit, such amounts shall be credited to such unit and used for such purposes.

''(2) PROGRAMS COVERED.—The programs referred to in paragraph (1) are the following:

''(A) Titles XVIII, XIX, and XXI of the Social Security Act.

''(B) This Act, including section 807.

''(C) Public Law 87–693.

''(D) Any other provision of law.

''(b) NO OFFSET OF AMOUNTS.—The Service may not offset or limit any amount obligated to any Service Unit or entity receiving funding from the Service because of the receipt of reimbursements under subsection (a).

**''SEC. 405. PURCHASING HEALTH CARE COVERAGE.**

''(a) IN GENERAL.—Insofar as amounts are made available under law (including a provision of the Social Security Act, the Indian Self-Determination and Education Assistance Act, or other law, other than under section 402) to Indian Tribes, Tribal Organizations, and Urban Indian Organizations for health benefits for Service beneficiaries, Indian Tribes, Tribal Organizations, and Urban Indian Organizations may use such amounts to purchase health benefits coverage for such beneficiaries in any manner, including through—

''(1) a tribally owned and operated health care plan;

''(2) a State or locally authorized or licensed health care plan;

''(3) a health insurance provider or managed care organization; or

''(4) a self-insured plan.

The purchase of such coverage by an Indian Tribe, Tribal Organization, or Urban Indian Organization may be based on the financial needs of such beneficiaries (as determined by the Indian Tribe or Tribes being served based on a schedule of income levels developed or implemented by such Indian Tribe or Tribes).

''(b) EXPENSES FOR SELF-INSURED PLAN.—In the case of a self-insured plan under subsection (a)(4), the amounts may be used for expenses of operating the plan, including administration and insurance to limit the financial risks to the entity offering the plan.

''(c) CONSTRUCTION.—Nothing in this section shall be construed as affecting the use of any amounts not referred to in subsection (a).

**''SEC. 406. SHARING ARRANGEMENTS WITH FEDERAL AGENCIES.**

''(a) AUTHORITY.—

''(1) IN GENERAL.—The Secretary may enter into (or expand) arrangements for the sharing of medical facilities and services between the Service, Indian Tribes, and Tribal Organizations and the Department of Veterans Affairs and the Department of Defense.

''(2) CONSULTATION BY SECRETARY REQUIRED.—The Secretary may not finalize any arrangement between the Service and a Department described in paragraph (1) without first consulting with the Indian Tribes which will be significantly affected by the arrangement.

''(b) LIMITATIONS.—The Secretary shall not take any action under this section or under subchapter IV of chapter 81 of title 38, United States Code, which would impair—

''(1) the priority access of any Indian to health care services provided through the Service and the eligibility of any Indian to receive health services through the Service;

''(2) the quality of health care services provided to any Indian through the Service;

''(3) the priority access of any veteran to health care services provided by the Department of Veterans Affairs;

''(4) the quality of health care services provided by the Department of Veterans Affairs or the Department of Defense; or

''(5) the eligibility of any Indian who is a veteran to receive health services through the Department of Veterans Affairs.

''(c) REIMBURSEMENT.—The Service, Indian Tribe, or Tribal Organization shall be reimbursed by the Department of Veterans Affairs or the Department of Defense (as the case may be) where services are provided through the Service, an Indian Tribe, or a Tribal Organization to beneficiaries eligible for services from either such Department, notwithstanding any other provision of law.

''(d) CONSTRUCTION.—Nothing in this section may be construed as creating any right of a non-Indian veteran to obtain health services from the Service.

**''SEC. 407. PAYOR OF LAST RESORT.**

''Indian Health Programs and health care programs operated by Urban Indian Organizations shall be the payor of last resort for services provided to persons eligible for services from Indian Health Programs and Urban Indian Organizations, notwithstanding any Federal, State, or local law to the contrary.

**''SEC. 408. NONDISCRIMINATION IN QUALIFICATIONS FOR REIMBURSEMENT FOR SERVICES.**

''For purposes of determining the eligibility of an entity that is operated by the Service, an Indian Tribe, Tribal Organization, or Urban Indian Organization to receive payment or reimbursement from any federally funded health care program for health care services it furnishes to an Indian. Such program must provide that such entity, meeting generally applicable State or other requirements applicable for participation, must be accepted as a provider on the same basis as any other qualified provider, except that any requirement that the entity be licensed or recognized under State or local law to furnish such services shall be deemed to have been met if the entity meets all the applicable standards for such licensure, but the entity need not obtain a license or other documentation. In determining whether the entity meets such standards, the absence of licensure of any staff member of the entity may not be taken into account.

**''SEC. 409. CONSULTATION.**

''(a) TRIBAL TECHNICAL ADVISORY GROUP (TTAG).—The Secretary shall maintain within the Centers for Medicaid & Medicare Services (CMS) a Tribal Technical Advisory Group, established in accordance with requirements of the charter dated September 30, 2003, and in such group shall include a representative of the Urban Indian Organizations and the Service. The representative of the Urban Indian Organization shall be deemed to be an elected officer of a tribal government for purposes of applying section 204(b) of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1534(b)).

''(b) SOLICITATION OF MEDICAID ADVICE.—

''(1) IN GENERAL.—As part of its plan under title XIX of the Social Security Act, a State in which the Service operates or funds health care programs, or in which 1 or more Indian Health Programs or Urban Indian Organizations provide health care in the State for

which medical assistance is available under such title, may establish a process under which the State seeks advice on a regular, ongoing basis from designees of such Indian Health Programs and Urban Indian Organizations on matters relating to the application of such title to and likely to have a direct effect on such Indian Health Programs and Urban Indian Organizations.

''(2) MANNER OF ADVICE.—The process described in paragraph (1) should include solicitation of advice prior to submission of any plan amendments, waiver requests, and proposals for demonstration projects likely to have a direct effect on Indians, Indian Health Programs, or Urban Indian Organizations. Such process may include appointment of an advisory committee and of a designee of such Indian Health Programs and Urban Indian Organizations to the medical care advisory committee advising the State on its medicaid plan.

''(3) PAYMENT OF EXPENSES.—The reasonable expenses of carrying out this subsection shall be eligible for reimbursement under section 1903(a) of the Social Security Act.

''(c) CONSTRUCTION.—Nothing in this section shall be construed as superseding existing advisory committees, working groups, or other advisory procedures established by the Secretary or by any State.

**''SEC. 410. STATE CHILDREN'S HEALTH INSURANCE PROGRAM (SCHIP).**

''(a) OPTIONAL USE OF FUNDS FOR INDIAN HEALTH PROGRAM PAYMENTS.—Subject to the succeeding provisions of this section, a State may provide under its State child health plan under title XXI of the Social Security Act (regardless of whether such plan is implemented under such title, title XIX of such Act, or both) for payments under this section to Indian Health Programs and Urban Indian Organizations operating in the State. Such payments shall be treated under title XXI of the Social Security Act as expenditures described in section 2105(a)(1)(A) of such Act.

''(b) USE OF FUNDS.—Payments under this section may be used only for expenditures described in clauses (i) through (iii) of section 2105(a)(1)(D) of the Social Security Act for targeted low-income children or other low-income children (as defined in 2110 of such Act) who are—

''(1) Indians; or

''(2) otherwise eligible for health services from the Indian Health Program involved.

''(c) SPECIAL RESTRICTIONS.—The following conditions apply to a State electing to provide payments under this section:

''(1) NO LIMITATION ON OTHER SCHIP PARTICIPATION OF, OR PROVIDER PAYMENTS TO, INDIAN HEALTH PROGRAMS.—The State may not exclude or limit participation of otherwise eligible Indian Health Programs in its State child health program under title XXI of the Social Security Act or its medicaid program under title XIX of such Act or pay such Programs less than they otherwise would as participating providers on the basis that payments are made to such Programs under this section.

''(2) NO LIMITATION ON OTHER SCHIP ELIGIBILITY OF INDIANS.—The State may not exclude or limit participation of otherwise eligible Indian children in such State child health or medicaid program on the basis that payments are made for assistance for such children under this section.

''(3) LIMITATION ON ACCEPTANCE OF CONTRIBUTIONS.—

''(A) IN GENERAL.—The State may not accept contributions or condition making of payments under this section upon contribution of funds from any Indian Health Program to meet the State's non-Federal matching fund requirements under titles XIX and XXI of the Social Security Act.

''(B) CONTRIBUTION DEFINED.—For purposes of subparagraph (A), the term 'contribution' includes any tax, donation, fee, or other payment made, whether made voluntarily or involuntarily.

''(d) APPLICATION OF SEPARATE 10 PERCENT LIMITATION.—Payment may be made under section 2105(a) of the Social Security Act to a State for a fiscal year for payments under this section up to an amount equal to 10 percent of the total amount available under title XXI of such Act (including allotments and reallotments available from previous fiscal years) to the State with respect to the fiscal year.

''(e) GENERAL TERMS.—A payment under this section shall only be made upon application to the State from the Indian Health Program involved and under such terms and conditions, and in a form and manner, as the Secretary determines appropriate.

**''SEC. 411. SOCIAL SECURITY ACT SANCTIONS.**

''(a) REQUESTS FOR WAIVER OF SANCTIONS.—

''(1) IN GENERAL.—For purposes of applying any authority under a provision of title XI, XVIII, XIX, or XXI of the Social Security Act to seek a waiver of a sanction imposed against a health care provider insofar as that provider provides services to individuals through an Indian Health Program, the Indian Health Program shall request the State to seek such waiver, and if such State has not sought the waiver within 60 days of the Indian Health Program request, the Indian Health Program itself may petition the Secretary for such waiver.

''(2) PROCEDURE.—In seeking a waiver under paragraph (1), the Indian Health Program must provide notice and a copy of the request, including the reasons for the waiver sought, to the State. The Secretary may consider the State's views in the determination of the waiver request, but may not withhold or delay a determination based on the lack of the State's views.

''(b) SAFE HARBOR FOR TRANSACTIONS BETWEEN AND AMONG INDIAN HEALTH CARE PROGRAMS.—For purposes of applying section 1128B(b) of the Social Security Act, the exchange of anything of value between or among the following shall not be treated as remuneration if the exchange arises from or relates to any of the following health programs:

''(1) An exchange between or among the following:

''(A) Any Indian Health Program.

''(B) Any Urban Indian Organization.

''(2) An exchange between an Indian Tribe, Tribal Organization, or an Urban Indian Organization and any patient served or eligible for service from an Indian Tribe, Tribal Organization, or Urban Indian Organization, including patients served or eligible for service pursuant to section 807, but only if such exchange—

''(A) is for the purpose of transporting the patient for the provision of health care items or services;

''(B) is for the purpose of providing housing to the patient (including a pregnant patient) and immediate family members or an escort incidental to assuring the timely provision of health care items and services to the patient;

''(C) is for the purpose of paying premiums, copayments, deductibles, or other cost-sharing on behalf of patients; or

''(D) consists of an item or service of small value that is provided as a reasonable incentive to secure timely and necessary preventive and other items and services.

''(3) Other exchanges involving an Indian Health Program, an Urban Indian Organization, or an Indian Tribe or Tribal Organization that meet such standards as the Secretary of Health and Human Services, in consultation with the Attorney General, determines is appropriate, taking into account the special circumstances of such Indian Health Programs, Urban Indian Organizations, Indian Tribes, and Tribal Organizations and of patients served by Indian Health Programs, Urban Indian Organizations, Indian Tribes, and Tribal Organizations.

**''SEC. 412. COST SHARING.**

''(a) COINSURANCE, COPAYMENTS, AND DEDUCTIBLES.—Notwithstanding any other provision of Federal or State law—

''(1) PROTECTION FOR ELIGIBLE INDIANS UNDER SOCIAL SECURITY ACT HEALTH PROGRAMS.—No Indian who is furnished an item or service for which payment may be made under title XIX or XXI of the Social Security Act may be charged a deductible, copayment, or coinsurance.

''(2) PROTECTION FOR INDIANS.—No Indian who is furnished an item or service by the Service may be charged a deductible, copayment, or coinsurance.

''(3) NO REDUCTION IN AMOUNT OF PAYMENT TO INDIAN HEALTH PROVIDERS.—The payment or reimbursement due to the Service, Indian Tribe, Tribal Organization, or Urban Indian Organization under title XIX or XXI of the Social Security Act may not be reduced by the amount of the deductible, copayment, or coinsurance that would be due from the Indian but for the operation of this section.

''(b) EXEMPTION FROM MEDICAID AND SCHIP PREMIUMS.—Notwithstanding any other provision of Federal or State law, no Indian who is otherwise eligible for services under title XIX of the Social Security Act (relating to the medicaid program) or title XXI of such Act (relating to the State children's health insurance program) may be charged a premium, enrollment fee, or similar charge as a condition of receiving benefits under the program under the respective title.

''(c) TREATMENT OF CERTAIN PROPERTY FOR MEDICAID ELIGIBILITY.—Notwithstanding any other provision of Federal or State law, the following property may not be included when determining eligibility for services under title XIX of the Social Security Act:

''(1) Property, including real property and improvements, located on a reservation, including any federally recognized Indian Tribe's reservation, Pueblo, or Colony, including former reservations in Oklahoma, Alaska Native regions established by the Alaska Native Claims Settlement Act and Indian allotments on or near a reservation as designated and approved by the Bureau of Indian Affairs of the Department of the Interior.

''(2) For any federally recognized Tribe not described in paragraph (1), property located within the most recent boundaries of a prior Federal reservation.

''(3) Ownership interests in rents, leases, royalties, or usage rights related to natural resources (including extraction of natural resources or harvesting of timber, other plants and plant products, animals, fish, and shellfish) resulting from the exercise of federally protected rights.

''(4) Ownership interests in or usage rights to items not covered by paragraphs (1) through (3) that have unique religious, spiritual, traditional, or cultural significance or rights that support subsistence or a traditional life style according to applicable tribal law or custom.

''(d) CONTINUATION OF CURRENT LAW PROTECTIONS OF CERTAIN INDIAN PROPERTY FROM MEDICAID ESTATE RECOVERY.—Income, resources, and property that are exempt from medicaid estate recovery under title XIX of the Social Security Act as of April 1, 2003, under manual instructions issued to carry out section 1917(b)(3) of such Act because of Federal responsibility for Indian Tribes and

Alaska Native Villages shall remain so exempt. Nothing in this subsection shall be construed as preventing the Secretary from providing additional medicaid estate recovery exemptions for Indians.

**"SEC. 413. TREATMENT UNDER MEDICAID MANAGED CARE.**

''(a) PROVISION OF SERVICES, TO ENROLLEES WITH NON-INDIAN MEDICAID MANAGED CARE ENTITIES, BY INDIAN HEALTH PROGRAMS AND URBAN INDIAN ORGANIZATIONS.—

''(1) PAYMENT RULES.—

''(A) IN GENERAL.—Subject to subparagraph (B), in the case of an Indian who is enrolled with a non-Indian medicaid managed care entity (as defined in subsection (c)) and who receives covered medicaid managed care services from an Indian Health Program or an Urban Indian Organization, whether or not it is a participating provider with respect to such entity, the following rules apply:

''(i) DIRECT PAYMENT.—The entity shall make prompt payment (in accordance with rules applicable to medicaid managed care entities under title XIX of the Social Security Act) to the Indian Health Program or Urban Indian Organization at a rate established by the entity for such services that is equal to the rate negotiated between such entity and the Program or Organization involved or, if such a rate has not been negotiated, a rate that is not less than the level and amount of payment which the entity would make for the services if the services were furnished by a provider which is not such a Program or Organization.

''(ii) PAYMENT THROUGH STATE.—If there is no arrangement for direct payment under clause (i) or if a State provides for this clause to apply in lieu of clause (i), the State shall provide for payment to the Indian Health Program or Urban Indian Organization under its State program under title XIX of such Act at the rate that would be otherwise applicable for such services under such program and shall provide for an appropriate adjustment of the capitation payment made to the entity to take into account such payment.

''(B) COMPLIANCE WITH GENERALLY APPLICABLE REQUIREMENTS.—

''(i) IN GENERAL.—Except as otherwise provided, as a condition of payment under subparagraph (A), the Indian Health Program or Urban Indian Organization shall comply with the generally applicable requirements of title XIX of the Social Security Act with respect to covered services.

''(ii) SATISFACTION OF CLAIM REQUIREMENT.—Any requirement for the submission of a claim or other documentation for services covered under subparagraph (A) by the enrollee is deemed to be satisfied through the submission of a claim or other documentation by the Indian Health Program or Urban Indian Organization consistent with section 403(h).

''(C) CONSTRUCTION.—Nothing in this subsection shall be construed as waiving the application of section 1902(a)(30)(A) of the Social Security Act (relating to application of standards to assure that payments are consistent with efficiency, economy, and quality of care).

''(2) ENROLLEE OPTION TO SELECT AN INDIAN HEALTH PROGRAM OR URBAN INDIAN ORGANIZATION AS PRIMARY CARE PROVIDER.—In the case of a non-Indian medicaid managed care entity that—

''(A) has an Indian enrolled with the entity; and

''(B) has an Indian Health Program or Urban Indian Organization that is participating as a primary care provider within the network of the entity,

insofar as the Indian is otherwise eligible to receive services from such Program or Organization and the Program or Organization has the capacity to provide primary care services to such Indian, the Indian shall be allowed to choose such Program or Organization as the Indian's primary care provider under the entity.

''(b) OFFERING OF MANAGED CARE THROUGH INDIAN MEDICAID MANAGED CARE ENTITIES.—If—

''(1) a State elects to provide services through medicaid managed care entities under its medicaid managed care program; and

''(2) an Indian Health Program or Urban Indian Organization that is funded in whole or in part by the Service, or a consortium thereof, has established an Indian medicaid managed care entity in the State that meets generally applicable standards required of such an entity under such medicaid managed care program,

the State shall offer to enter into an agreement with the entity to serve as a medicaid managed care entity with respect to eligible Indians served by such entity under such program.

''(c) SPECIAL RULES FOR INDIAN MANAGED CARE ENTITIES.—The following are special rules regarding the application of a medicaid managed care program to Indian medicaid managed care entities:

''(1) ENROLLMENT.—

''(A) LIMITATION TO INDIANS.—An Indian medicaid managed care entity may restrict enrollment under such program to Indians and to members of specific Tribes in the same manner as Indian Health Programs may restrict the delivery of services to such Indians and tribal members.

''(B) NO LESS CHOICE OF PLANS.—Under such program the State may not limit the choice of an Indian among medicaid managed care entities only to Indian medicaid managed care entities or to be more restrictive than the choice of managed care entities offered to individuals who are not Indians.

''(C) DEFAULT ENROLLMENT.—

''(i) IN GENERAL.—If such program of a State requires the enrollment of Indians in a medicaid managed care entity in order to receive benefits, the State shall provide for the enrollment of Indians described in clause (ii) who are not otherwise enrolled with such an entity in an Indian medicaid managed care entity described in such clause.

''(ii) INDIAN DESCRIBED.—An Indian described in this clause, with respect to an Indian medicaid managed care entity, is an Indian who, based upon the service area and capacity of the entity, is eligible to be enrolled with the entity consistent with subparagraph (A).

''(D) EXCEPTION TO STATE LOCK-IN.—A request by an Indian who is enrolled under such program with a non-Indian medicaid managed care entity to change enrollment with that entity to enrollment with an Indian medicaid managed care entity shall be considered cause for granting such request under procedures specified by the Secretary.

''(2) FLEXIBILITY IN APPLICATION OF SOLVENCY.—In applying section 1903(m)(1) of the Social Security Act to an Indian medicaid managed care entity—

''(A) any reference to a 'State' in subparagraph (A)(ii) of that section shall be deemed to be a reference to the 'Secretary'; and

''(B) the entity shall be deemed to be a public entity described in subparagraph (C)(ii) of that section.

''(3) EXCEPTIONS TO ADVANCE DIRECTIVES.—The Secretary may modify or waive the requirements of section 1902(w) of the Social Security Act (relating to provision of written materials on advance directives) insofar as the Secretary finds that the requirements otherwise imposed are not an appropriate or effective way of communicating the information to Indians.

''(4) FLEXIBILITY IN INFORMATION AND MARKETING.—

''(A) MATERIALS.—The Secretary may modify requirements under section 1932(a)(5) of the Social Security Act in a manner that improves the materials to take into account the special circumstances of such entities and their enrollees while maintaining and clearly communicating to potential enrollees their rights, protections, and benefits.

''(B) DISTRIBUTION OF MARKETING MATERIALS.—The provisions of section 1932(d)(2)(B) of the Social Security Act requiring the distribution of marketing materials to an entire service area shall be deemed satisfied in the case of an Indian medicaid managed care entity that distributes appropriate materials only to those Indians who are potentially eligible to enroll with the entity in the service area.

''(d) MALPRACTICE INSURANCE.—Insofar as, under a medicaid managed care program, a health care provider is required to have medical malpractice insurance coverage as a condition of contracting as a provider with a medicaid managed care entity, an Indian Health Program, or an Urban Indian Organization that is a Federally-qualified health center under title XIX of the Social Security Act, that is covered under the Federal Tort Claims Act (28 U.S.C. 1346(b), 2671 et seq.) is deemed to satisfy such requirement.

''(e) DEFINITIONS.—For purposes of this section:

''(1) MEDICAID MANAGED CARE ENTITY.—The term 'medicaid managed care entity' means a managed care entity (whether a managed care organization or a primary care case manager) under title XIX of the Social Security Act, whether pursuant to section 1903(m) or section 1932 of such Act, a waiver under section 1115 or 1915(b) of such Act, or otherwise.

''(2) INDIAN MEDICAID MANAGED CARE ENTITY.—The term 'Indian medicaid managed care entity' means a managed care entity that is controlled (within the meaning of the last sentence of section 1903(m)(1)(C) of the Social Security Act) by the Indian Health Service, a Tribe, Tribal Organization, or Urban Indian Organization (as such terms are defined in section 4), or a consortium, which may be composed of 1 or more Tribes, Tribal Organizations, or Urban Indian Organizations, and which also may include the Service.

''(3) NON-INDIAN MEDICAID MANAGED CARE ENTITY.—The term 'non-Indian medicaid managed care entity' means a medicaid managed care entity that is not an Indian medicaid managed care entity.

''(4) COVERED MEDICAID MANAGED CARE SERVICES.—The term 'covered medicaid managed care services' means, with respect to an individual enrolled with a medicaid managed care entity, items and services that are within the scope of items and services for which benefits are available with respect to the individual under the contract between the entity and the State involved.

''(5) MEDICAID MANAGED CARE PROGRAM.—The term 'medicaid managed care program' means a program under sections 1903(m) and 1932 of the Social Security Act and includes a managed care program operating under a waiver under section 1915(b) or 1115 of such Act or otherwise.

**"SEC. 414. NAVAJO NATION MEDICAID AGENCY FEASIBILITY STUDY.**

''(a) STUDY.—The Secretary shall conduct a study to determine the feasibility of treating the Navajo Nation as a State for the purposes of title XIX of the Social Security Act, to provide services to Indians living within the boundaries of the Navajo Nation through

an entity established having the same authority and performing the same functions as single-State medicaid agencies responsible for the administration of the State plan under title XIX of the Social Security Act.

''(b) CONSIDERATIONS.—In conducting the study, the Secretary shall consider the feasibility of—

''(1) assigning and paying all expenditures for the provision of services and related administration funds, under title XIX of the Social Security Act, to Indians living within the boundaries of the Navajo Nation that are currently paid to or would otherwise be paid to the State of Arizona, New Mexico, or Utah;

''(2) providing assistance to the Navajo Nation in the development and implementation of such entity for the administration, eligibility, payment, and delivery of medical assistance under title XIX of the Social Security Act;

''(3) providing an appropriate level of matching funds for Federal medical assistance with respect to amounts such entity expends for medical assistance for services and related administrative costs; and

''(4) authorizing the Secretary, at the option of the Navajo Nation, to treat the Navajo Nation as a State for the purposes of title XIX of the Social Security Act (relating to the State children's health insurance program) under terms equivalent to those described in paragraphs (2) through (4).

''(c) REPORT.—Not later then 3 years after the date of enactment of the Indian Health Act Improvement Act Amendments of 2005, the Secretary shall submit to the Committee of Indian Affairs and Committee on Finance of the Senate and the Committee on Resources and Committee on Ways and Means of the House of Representatives a report that includes—

''(1) the results of the study under this section;

''(2) a summary of any consultation that occurred between the Secretary and the Navajo Nation, other Indian Tribes, the States of Arizona, New Mexico, and Utah, counties which include Navajo Lands, and other interested parties, in conducting this study;

''(3) projected costs or savings associated with establishment of such entity, and any estimated impact on services provided as described in this section in relation to probable costs or savings; and

''(4) legislative actions that would be required to authorize the establishment of such entity if such entity is determined by the Secretary to be feasible.

**''SEC. 415. AUTHORIZATION OF APPROPRIATIONS.**

''There are authorized to be appropriated such sums as may be necessary for each fiscal year through fiscal year 2015 to carry out this title.

## ''TITLE V—HEALTH SERVICES FOR URBAN INDIANS

**''SEC. 501. PURPOSE.**

''The purpose of this title is to establish and maintain programs in Urban Centers to make health services more accessible and available to Urban Indians.

**''SEC. 502. CONTRACTS WITH, AND GRANTS TO, URBAN INDIAN ORGANIZATIONS.**

''Under authority of the Act of November 2, 1921 (25 U.S.C. 13) (commonly known as the 'Snyder Act'), the Secretary, acting through the Service, shall enter into contracts with, or make grants to, Urban Indian Organizations to assist such organizations in the establishment and administration, within Urban Centers, of programs which meet the requirements set forth in this title. Subject to section 506, the Secretary, acting through the Service, shall include such conditions as the Secretary considers necessary to effect the purpose of this title in any contract into which the Secretary enters with, or in any grant the Secretary makes to, any Urban Indian Organization pursuant to this title.

**''SEC. 503. CONTRACTS AND GRANTS FOR THE PROVISION OF HEALTH CARE AND REFERRAL SERVICES.**

''(a) REQUIREMENTS FOR GRANTS AND CONTRACTS.—Under authority of the Act of November 2, 1921 (25 U.S.C. 13) (commonly known as the 'Snyder Act'), the Secretary, acting through the Service, shall enter into contracts with, and make grants to, Urban Indian Organizations for the provision of health care and referral services for Urban Indians. Any such contract or grant shall include requirements that the Urban Indian Organization successfully undertake to—

''(1) estimate the population of Urban Indians residing in the Urban Center or centers that the organization proposes to serve who are or could be recipients of health care or referral services;

''(2) estimate the current health status of Urban Indians residing in such Urban Center or centers;

''(3) estimate the current health care needs of Urban Indians residing in such Urban Center or centers;

''(4) provide basic health education, including health promotion and disease prevention education, to Urban Indians;

''(5) make recommendations to the Secretary and Federal, State, local, and other resource agencies on methods of improving health service programs to meet the needs of Urban Indians; and

''(6) where necessary, provide, or enter into contracts for the provision of, health care services for Urban Indians.

''(b) CRITERIA.—The Secretary, acting through the Service, shall by regulation adopted pursuant to section 520 prescribe the criteria for selecting Urban Indian Organizations to enter into contracts or receive grants under this section. Such criteria shall, among other factors, include—

''(1) the extent of unmet health care needs of Urban Indians in the Urban Center or centers involved;

''(2) the size of the Urban Indian population in the Urban Center or centers involved;

''(3) the extent, if any, to which the activities set forth in subsection (a) would duplicate any project funded under this title;

''(4) the capability of an Urban Indian Organization to perform the activities set forth in subsection (a) and to enter into a contract with the Secretary or to meet the requirements for receiving a grant under this section;

''(5) the satisfactory performance and successful completion by an Urban Indian Organization of other contracts with the Secretary under this title;

''(6) the appropriateness and likely effectiveness of conducting the activities set forth in subsection (a) in an Urban Center or centers; and

''(7) the extent of existing or likely future participation in the activities set forth in subsection (a) by appropriate health and health-related Federal, State, local, and other agencies.

''(c) ACCESS TO HEALTH PROMOTION AND DISEASE PREVENTION PROGRAMS.—The Secretary, acting through the Service, shall facilitate access to or provide health promotion and disease prevention services for Urban Indians through grants made to Urban Indian Organizations administering contracts entered into or receiving grants under subsection (a).

''(d) IMMUNIZATION SERVICES.—

''(1) ACCESS OR SERVICES PROVIDED.—The Secretary, acting through the Service, shall facilitate access to, or provide, immunization services for Urban Indians through grants made to Urban Indian Organizations administering contracts entered into or receiving grants under this section.

''(2) DEFINITION.—For purposes of this subsection, the term 'immunization services' means services to provide without charge immunizations against vaccine-preventable diseases.

''(e) BEHAVIORAL HEALTH SERVICES.—

''(1) ACCESS OR SERVICES PROVIDED.—The Secretary, acting through the Service, shall facilitate access to, or provide, behavioral health services for Urban Indians through grants made to Urban Indian Organizations administering contracts entered into or receiving grants under subsection (a).

''(2) ASSESSMENT REQUIRED.—Except as provided by paragraph (3)(A), a grant may not be made under this subsection to an Urban Indian Organization until that organization has prepared, and the Service has approved, an assessment of the following:

''(A) The behavioral health needs of the Urban Indian population concerned.

''(B) The behavioral health services and other related resources available to that population.

''(C) The barriers to obtaining those services and resources.

''(D) The needs that are unmet by such services and resources.

''(3) PURPOSES OF GRANTS.—Grants may be made under this subsection for the following:

''(A) To prepare assessments required under paragraph (2).

''(B) To provide outreach, educational, and referral services to Urban Indians regarding the availability of direct behavioral health services, to educate Urban Indians about behavioral health issues and services, and effect coordination with existing behavioral health providers in order to improve services to Urban Indians.

''(C) To provide outpatient behavioral health services to Urban Indians, including the identification and assessment of illness, therapeutic treatments, case management, support groups, family treatment, and other treatment.

''(D) To develop innovative behavioral health service delivery models which incorporate Indian cultural support systems and resources.

''(f) PREVENTION OF CHILD ABUSE.—

''(1) ACCESS OR SERVICES PROVIDED.—The Secretary, acting through the Service, shall facilitate access to or provide services for Urban Indians through grants to Urban Indian Organizations administering contracts entered into or receiving grants under subsection (a) to prevent and treat child abuse (including sexual abuse) among Urban Indians.

''(2) EVALUATION REQUIRED.—Except as provided by paragraph (3)(A), a grant may not be made under this subsection to an Urban Indian Organization until that organization has prepared, and the Service has approved, an assessment that documents the prevalence of child abuse in the Urban Indian population concerned and specifies the services and programs (which may not duplicate existing services and programs) for which the grant is requested.

''(3) PURPOSES OF GRANTS.—Grants may be made under this subsection for the following:

''(A) To prepare assessments required under paragraph (2).

''(B) For the development of prevention, training, and education programs for Urban Indians, including child education, parent education, provider training on identification and intervention, education on reporting requirements, prevention campaigns, and establishing service networks of all those involved in Indian child protection.

''(C) To provide direct outpatient treatment services (including individual treatment, family treatment, group therapy, and support groups) to Urban Indians who are child victims of abuse (including sexual abuse) or adult survivors of child sexual abuse, to the families of such child victims, and to Urban Indian perpetrators of child abuse (including sexual abuse).

''(4) CONSIDERATIONS WHEN MAKING GRANTS.—In making grants to carry out this subsection, the Secretary shall take into consideration—

''(A) the support for the Urban Indian Organization demonstrated by the child protection authorities in the area, including committees or other services funded under the Indian Child Welfare Act of 1978 (25 U.S.C. 1901 et seq.), if any;

''(B) the capability and expertise demonstrated by the Urban Indian Organization to address the complex problem of child sexual abuse in the community; and

''(C) the assessment required under paragraph (2).

''(g) OTHER GRANTS.—The Secretary, acting through the Service, may enter into a contract with or make grants to an Urban Indian Organization that provides or arranges for the provision of health care services (through satellite facilities, provider networks, or otherwise) to Urban Indians in more than 1 Urban Center.

**''SEC. 504. CONTRACTS AND GRANTS FOR THE DETERMINATION OF UNMET HEALTH CARE NEEDS.**

''(a) GRANTS AND CONTRACTS AUTHORIZED.—Under authority of the Act of November 2, 1921 (25 U.S.C. 13) (commonly known as the 'Snyder Act'), the Secretary, acting through the Service, may enter into contracts with or make grants to Urban Indian Organizations situated in Urban Centers for which contracts have not been entered into or grants have not been made under section 503.

''(b) PURPOSE.—The purpose of a contract or grant made under this section shall be the determination of the matters described in subsection (c)(1) in order to assist the Secretary in assessing the health status and health care needs of Urban Indians in the Urban Center involved and determining whether the Secretary should enter into a contract or make a grant under section 503 with respect to the Urban Indian Organization which the Secretary has entered into a contract with, or made a grant to, under this section.

''(c) GRANT AND CONTRACT REQUIREMENTS.—Any contract entered into, or grant made, by the Secretary under this section shall include requirements that—

''(1) the Urban Indian Organization successfully undertakes to—

''(A) document the health care status and unmet health care needs of Urban Indians in the Urban Center involved; and

''(B) with respect to Urban Indians in the Urban Center involved, determine the matters described in paragraphs (2), (3), (4), and (7) of section 503(b); and

''(2) the Urban Indian Organization complete performance of the contract, or carry out the requirements of the grant, within 1 year after the date on which the Secretary and such organization enter into such contract, or within 1 year after such organization receives such grant, whichever is applicable.

''(d) NO RENEWALS.—The Secretary may not renew any contract entered into or grant made under this section.

**''SEC. 505. EVALUATIONS; RENEWALS.**

''(a) PROCEDURES FOR EVALUATIONS.—The Secretary, acting through the Service, shall develop procedures to evaluate compliance with grant requirements and compliance with and performance of contracts entered into by Urban Indian Organizations under this title. Such procedures shall include provisions for carrying out the requirements of this section.

''(b) EVALUATIONS.—The Secretary, acting through the Service, shall evaluate the compliance of each Urban Indian Organization which has entered into a contract or received a grant under section 503 with the terms of such contract or grant. For purposes of this evaluation, in determining the capacity of an Urban Indian Organization to deliver quality patient care the Secretary shall, at the option of the organization—

''(1) acting through the Service, conduct an annual onsite evaluation of the organization; or

''(2) accept in lieu of such onsite evaluation evidence of the organization's provisional or full accreditation by a private independent entity recognized by the Secretary for purposes of conducting quality reviews of providers participating in the Medicare program under title XVIII of the Social Security Act.

''(c) NONCOMPLIANCE; UNSATISFACTORY PERFORMANCE.—If, as a result of the evaluations conducted under this section, the Secretary determines that an Urban Indian Organization has not complied with the requirements of a grant or complied with or satisfactorily performed a contract under section 503, the Secretary shall, prior to renewing such contract or grant, attempt to resolve with the organization the areas of noncompliance or unsatisfactory performance and modify the contract or grant to prevent future occurrences of noncompliance or unsatisfactory performance. If the Secretary determines that the noncompliance or unsatisfactory performance cannot be resolved and prevented in the future, the Secretary shall not renew the contract or grant with the organization and is authorized to enter into a contract or make a grant under section 503 with another Urban Indian Organization which is situated in the same Urban Center as the Urban Indian Organization whose contract or grant is not renewed under this section.

''(d) CONSIDERATIONS FOR RENEWALS.—In determining whether to renew a contract or grant with an Urban Indian Organization under section 503 which has completed performance of a contract or grant under section 504, the Secretary shall review the records of the Urban Indian Organization, the reports submitted under section 507, and shall consider the results of the onsite evaluations or accreditations under subsection (b).

**''SEC. 506. OTHER CONTRACT AND GRANT REQUIREMENTS.**

''(a) PROCUREMENT.—Contracts with Urban Indian Organizations entered into pursuant to this title shall be in accordance with all Federal contracting laws and regulations relating to procurement except that in the discretion of the Secretary, such contracts may be negotiated without advertising and need not conform to the provisions of sections 1304 and 3131 through 3133 of title 40, United States Code.

''(b) PAYMENTS UNDER CONTRACTS OR GRANTS.—Payments under any contracts or grants pursuant to this title shall, notwithstanding any term or condition of such contract or grant—

''(1) be made in their entirety by the Secretary to the Urban Indian Organization by no later than the end of the first 30 days of the funding period with respect to which the payments apply, unless the Secretary determines through an evaluation under section 505 that the organization is not capable of administering such payments in their entirety; and

''(2) if any portion thereof is unexpended by the Urban Indian Organization during the funding period with respect to which the payments initially apply, shall be carried forward for expenditure with respect to allowable or reimbursable costs incurred by the organization during 1 or more subsequent funding periods without additional justification or documentation by the organization as a condition of carrying forward the availability for expenditure of such funds.

''(c) REVISION OR AMENDMENT OF CONTRACTS.—Notwithstanding any provision of law to the contrary, the Secretary may, at the request and consent of an Urban Indian Organization, revise or amend any contract entered into by the Secretary with such organization under this title as necessary to carry out the purposes of this title.

''(d) FAIR AND UNIFORM SERVICES AND ASSISTANCE.—Contracts with or grants to Urban Indian Organizations and regulations adopted pursuant to this title shall include provisions to assure the fair and uniform provision to Urban Indians of services and assistance under such contracts or grants by such organizations.

**''SEC. 507. REPORTS AND RECORDS.**

''(a) REPORTS.—For each fiscal year during which an Urban Indian Organization receives or expends funds pursuant to a contract entered into or a grant received pursuant to this title, such Urban Indian Organization shall submit to the Secretary not more frequently than every 6 months, a report that includes the following:

''(1) In the case of a contract or grant under section 503, recommendations pursuant to section 503(a)(5).

''(2) Information on activities conducted by the organization pursuant to the contract or grant.

''(3) An accounting of the amounts and purpose for which Federal funds were expended.

''(4) A minimum set of data, using uniformly defined elements, as specified by the Secretary after consultation with Urban Indian Organizations.

''(b) AUDIT.—The reports and records of the Urban Indian Organization with respect to a contract or grant under this title shall be subject to audit by the Secretary and the Comptroller General of the United States.

''(c) COSTS OF AUDITS.—The Secretary shall allow as a cost of any contract or grant entered into or awarded under section 502 or 503 the cost of an annual independent financial audit conducted by—

''(1) a certified public accountant; or

''(2) a certified public accounting firm qualified to conduct Federal compliance audits.

**''SEC. 508. LIMITATION ON CONTRACT AUTHORITY.**

''The authority of the Secretary to enter into contracts or to award grants under this title shall be to the extent, and in an amount, provided for in appropriation Acts.

**''SEC. 509. FACILITIES.**

''(a) GRANTS.—The Secretary, acting through the Service, may make grants to contractors or grant recipients under this title for the lease, purchase, renovation, construction, or expansion of facilities, including leased facilities, in order to assist such contractors or grant recipients in complying with applicable licensure or certification requirements.

''(b) LOAN FUND STUDY.—The Secretary, acting through the Services, may carry out a study to determine the feasibility of establishing a loan fund to provide to Urban Indian Organizations direct loans or guarantees for loans for the construction of health care facilities in a manner consistent with section 309.

**"SEC. 510. OFFICE OF URBAN INDIAN HEALTH.**

''There is established within the Service an Office of Urban Indian Health, which shall be responsible for—

''(1) carrying out the provisions of this title;

''(2) providing central oversight of the programs and services authorized under this title; and

''(3) providing technical assistance to Urban Indian Organizations.

**"SEC. 511. GRANTS FOR ALCOHOL AND SUBSTANCE ABUSE-RELATED SERVICES.**

''(a) GRANTS AUTHORIZED.—The Secretary, acting through the Service, may make grants for the provision of health-related services in prevention of, treatment of, rehabilitation of, or school- and community-based education regarding, alcohol and substance abuse in Urban Centers to those Urban Indian Organizations with which the Secretary has entered into a contract under this title or under section 201.

''(b) GOALS.—Each grant made pursuant to subsection (a) shall set forth the goals to be accomplished pursuant to the grant. The goals shall be specific to each grant as agreed to between the Secretary and the grantee.

''(c) CRITERIA.—The Secretary shall establish criteria for the grants made under subsection (a), including criteria relating to the following:

''(1) The size of the Urban Indian population.

''(2) Capability of the organization to adequately perform the activities required under the grant.

''(3) Satisfactory performance standards for the organization in meeting the goals set forth in such grant. The standards shall be negotiated and agreed to between the Secretary and the grantee on a grant-by-grant basis.

''(4) Identification of the need for services.

''(d) ALLOCATION OF GRANTS.—The Secretary shall develop a methodology for allocating grants made pursuant to this section based on the criteria established pursuant to subsection (c).

''(e) GRANTS SUBJECT TO CRITERIA.—Any funds received by an Urban Indian Organization under this Act for substance abuse prevention, treatment, and rehabilitation shall be subject to the criteria set forth in subsection (c).

**"SEC. 512. TREATMENT OF CERTAIN DEMONSTRATION PROJECTS.**

''Notwithstanding any other provision of law, the Tulsa Clinic and Oklahoma City Clinic demonstration projects shall—

''(1) be permanent programs within the Service's direct care program;

''(2) continue to be treated as Service Units in the allocation of resources and coordination of care; and

''(3) continue to meet the requirements and definitions of an urban Indian organization in this Act, and shall not be subject to the provisions of the Indian Self-Determination and Education Assistance Act.

**"SEC. 513. URBAN NIAAA TRANSFERRED PROGRAMS.**

''(a) GRANTS AND CONTRACTS.—The Secretary, through the Office of Urban Indian Health, shall make grants or enter into contracts with Urban Indian Organizations for the administration of Urban Indian alcohol programs that were originally established under the National Institute on Alcoholism and Alcohol Abuse (hereafter in this section referred to as 'NIAAA') and transferred to the Service. Such grants and contracts shall become effective no later than September 30, 2008.

''(b) USE OF FUNDS.—Grants provided or contracts entered into under this section shall be used to provide support for the continuation of alcohol prevention and treatment services for Urban Indian populations and such other objectives as are agreed upon between the Service and a recipient of a grant or contract under this section.

''(c) ELIGIBILITY.—Urban Indian Organizations that operate Indian alcohol programs originally funded under the NIAAA and subsequently transferred to the Service are eligible for grants or contracts under this section.

''(d) REPORT.—The Secretary shall evaluate and report to Congress on the activities of programs funded under this section not less than every 5 years.

**"SEC. 514. CONSULTATION WITH URBAN INDIAN ORGANIZATIONS.**

''(a) IN GENERAL.—The Secretary shall ensure that the Service consults, to the greatest extent practicable, with Urban Indian Organizations.

''(b) DEFINITION OF CONSULTATION.—For purposes of subsection (a), consultation is the open and free exchange of information and opinions which leads to mutual understanding and comprehension and which emphasizes trust, respect, and shared responsibility.

**"SEC. 515. FEDERAL TORT CLAIM ACT COVERAGE.**

''(a) IN GENERAL.—With respect to claims resulting from the performance of functions during fiscal year 2005 and thereafter, or claims asserted after September 30, 2004, but resulting from the performance of functions prior to fiscal year 2005, under a contract, grant agreement, or any other agreement authorized under this title, an Urban Indian Organization is deemed hereafter to be part of the Service in the Department of Health and Human Services while carrying out any such contract or agreement and its employees are deemed employees of the Service while acting within the scope of their employment in carrying out the contract or agreement. After September 30, 2003, any civil action or proceeding involving such claims brought hereafter against any Urban Indian Organization or any employee of such Urban Indian Organization covered by this provision shall be deemed to be an action against the United States and will be defended by the Attorney General and be afforded the full protection and coverage of the Federal Tort Claims Act (28 U.S.C. 1346(b), 2671 et seq.). Future coverage under that Act shall be contingent on cooperation of the Urban Indian Organization with the Attorney General in prosecuting past claims.

''(b) CLAIMS RESULTING FROM PERFORMANCE OF CONTRACT OR GRANT.—Beginning for fiscal year 2005 and thereafter, the Secretary shall request through annual appropriations funds sufficient to reimburse the Treasury for any claims paid in the prior fiscal year pursuant to the foregoing provisions.

**"SEC. 516. URBAN YOUTH TREATMENT CENTER DEMONSTRATION.**

''(a) CONSTRUCTION AND OPERATION.—The Secretary, acting through the Service, through grant or contract, is authorized to fund the construction and operation of at least 2 residential treatment centers in each State described in subsection (b) to demonstrate the provision of alcohol and substance abuse treatment services to Urban Indian youth in a culturally competent residential setting.

''(b) DEFINITION OF STATE.—A State described in this subsection is a State in which—

''(1) there resides Urban Indian youth with need for alcohol and substance abuse treatment services in a residential setting; and

''(2) there is a significant shortage of culturally competent residential treatment services for Urban Indian youth.

**"SEC. 517. USE OF FEDERAL GOVERNMENT FACILITIES AND SOURCES OF SUPPLY.**

''(a) AUTHORIZATION FOR USE.—The Secretary, acting through the Service, shall allow an Urban Indian Organization that has entered into a contract or received a grant pursuant to this title, in carrying out such contract or grant, to use existing facilities and all equipment therein or pertaining thereto and other personal property owned by the Federal Government within the Secretary's jurisdiction under such terms and conditions as may be agreed upon for their use and maintenance.

''(b) DONATIONS.—Subject to subsection (d), the Secretary may donate to an Urban Indian Organization that has entered into a contract or received a grant pursuant to this title any personal or real property determined to be excess to the needs of the Service or the General Services Administration for purposes of carrying out the contract or grant.

''(c) ACQUISITION OF PROPERTY FOR DONATION.—The Secretary may acquire excess or surplus government personal or real property for donation (subject to subsection (d)), to an Urban Indian Organization that has entered into a contract or received a grant pursuant to this title if the Secretary determines that the property is appropriate for use by the Urban Indian Organization for a purpose for which a contract or grant is authorized under this title.

''(d) PRIORITY.—In the event that the Secretary receives a request for donation of a specific item of personal or real property described in subsection (b) or (c) from both an Urban Indian Organization and from an Indian Tribe or Tribal Organization, the Secretary shall give priority to the request for donation of the Indian Tribe or Tribal Organization if the Secretary receives the request from the Indian Tribe or Tribal Organization before the date the Secretary transfers title to the property or, if earlier, the date the Secretary transfers the property physically to the Urban Indian Organization.

''(e) URBAN INDIAN ORGANIZATIONS DEEMED EXECUTIVE AGENCY FOR CERTAIN PURPOSES.—For purposes of section 501 of title 40, United States Code, (relating to Federal sources of supply, including lodging providers, airlines, and other transportation providers), an Urban Indian Organization that has entered into a contract or received a grant pursuant to this title shall be deemed an executive agency when carrying out such contract or grant.

**"SEC. 518. GRANTS FOR DIABETES PREVENTION, TREATMENT, AND CONTROL.**

''(a) GRANTS AUTHORIZED.—The Secretary may make grants to those Urban Indian Organizations that have entered into a contract or have received a grant under this title for the provision of services for the prevention and treatment of, and control of the complications resulting from, diabetes among Urban Indians.

''(b) GOALS.—Each grant made pursuant to subsection (a) shall set forth the goals to be accomplished under the grant. The goals shall be specific to each grant as agreed to between the Secretary and the grantee.

''(c) ESTABLISHMENT OF CRITERIA.—The Secretary shall establish criteria for the grants made under subsection (a) relating to—

''(1) the size and location of the Urban Indian population to be served;

''(2) the need for prevention of and treatment of, and control of the complications resulting from, diabetes among the Urban Indian population to be served;

''(3) performance standards for the organization in meeting the goals set forth in such grant that are negotiated and agreed to by the Secretary and the grantee;

''(4) the capability of the organization to adequately perform the activities required under the grant; and

''(5) the willingness of the organization to collaborate with the registry, if any, established by the Secretary under section 204(e) in the Area Office of the Service in which the organization is located.

''(d) FUNDS SUBJECT TO CRITERIA.—Any funds received by an Urban Indian Organization under this Act for the prevention, treatment, and control of diabetes among Urban Indians shall be subject to the criteria developed by the Secretary under subsection (c).

**''SEC. 519. COMMUNITY HEALTH REPRESENTATIVES.**

''The Secretary, acting through the Service, may enter into contracts with, and make grants to, Urban Indian Organizations for the employment of Indians trained as health service providers through the Community Health Representatives Program under section 109 in the provision of health care, health promotion, and disease prevention services to Urban Indians.

**''SEC. 520. REGULATIONS.**

''(a) REQUIREMENTS FOR REGULATIONS.—The Secretary may promulgate regulations to implement the provisions of this title in accordance with the following:

''(1) Proposed regulations to implement this Act shall be published in the Federal Register by the Secretary no later than 9 months after the date of enactment of this Act and shall have no less than a 4-month comment period.

''(2) The authority to promulgate regulations under this Act shall expire 18 months from the date of enactment of this Act.

''(b) EFFECTIVE DATE OF TITLE.—The amendments to this title made by the Indian Health Care Improvement Act Amendments of 2005 shall be effective on the date of enactment of such amendments, regardless of whether the Secretary has promulgated regulations implementing such amendments have been promulgated.

**''SEC. 521. ELIGIBILITY FOR SERVICES.**

''Urban Indians shall be eligible and the ultimate beneficiaries for health care or referral services provided pursuant to this title.

**''SEC. 522. AUTHORIZATION OF APPROPRIATIONS.**

''There are authorized to be appropriated such sums as may be necessary for each fiscal year through fiscal year 2015 to carry out this title.

## ''TITLE VI—ORGANIZATIONAL IMPROVEMENTS

**''SEC. 601. ESTABLISHMENT OF THE INDIAN HEALTH SERVICE AS AN AGENCY OF THE PUBLIC HEALTH SERVICE.**

''(a) ESTABLISHMENT.—

''(1) IN GENERAL.—In order to more effectively and efficiently carry out the responsibilities, authorities, and functions of the United States to provide health care services to Indians and Indian Tribes, as are or may be hereafter provided by Federal statute or treaties, there is established within the Public Health Service of the Department the Indian Health Service.

''(2) ASSISTANT SECRETARY OF INDIAN HEALTH.—The Service shall be administered by an Assistant Secretary of Indian Health, who shall be appointed by the President, by and with the advice and consent of the Senate. The Assistant Secretary shall report to the Secretary. Effective with respect to an individual appointed by the President, by and with the advice and consent of the Senate, after January 1, 2005, the term of service of the Assistant Secretary shall be 4 years. An Assistant Secretary may serve more than 1 term.

''(3) INCUMBENT.—The individual serving in the position of Director of the Indian Health Service on the day before the date of enactment of the Indian Health Care Improvement Act Amendments of 2005 shall serve as Assistant Secretary.

''(4) ADVOCACY AND CONSULTATION.—The position of Assistant Secretary is established to, in a manner consistent with the government-to-government relationship between the United States and Indian Tribes—

''(A) facilitate advocacy for the development of appropriate Indian health policy; and

''(B) promote consultation on matters relating to Indian health.

''(b) AGENCY.—The Service shall be an agency within the Public Health Service of the Department, and shall not be an office, component, or unit of any other agency of the Department.

''(c) DUTIES.—The Assistant Secretary of Indian Health shall—

''(1) perform all functions that were, on the day before the date of enactment of the Indian Health Care Improvement Act Amendments of 2005, carried out by or under the direction of the individual serving as Director of the Service on that day;

''(2) perform all functions of the Secretary relating to the maintenance and operation of hospital and health facilities for Indians and the planning for, and provision and utilization of, health services for Indians;

''(3) administer all health programs under which health care is provided to Indians based upon their status as Indians which are administered by the Secretary, including programs under—

''(A) this Act;

''(B) the Act of November 2, 1921 (25 U.S.C. 13);

''(C) the Act of August 5, 1954 (42 U.S.C. 2001 et seq.);

''(D) the Act of August 16, 1957 (42 U.S.C. 2005 et seq.); and

''(E) the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.);

''(4) administer all scholarship and loan functions carried out under title I;

''(5) report directly to the Secretary concerning all policy- and budget-related matters affecting Indian health;

''(6) collaborate with the Assistant Secretary for Health concerning appropriate matters of Indian health that affect the agencies of the Public Health Service;

''(7) advise each Assistant Secretary of the Department concerning matters of Indian health with respect to which that Assistant Secretary has authority and responsibility;

''(8) advise the heads of other agencies and programs of the Department concerning matters of Indian health with respect to which those heads have authority and responsibility;

''(9) coordinate the activities of the Department concerning matters of Indian health; and

''(10) perform such other functions as the Secretary may designate.

''(d) AUTHORITY.—

''(1) IN GENERAL.—The Secretary, acting through the Assistant Secretary, shall have the authority—

''(A) except to the extent provided for in paragraph (2), to appoint and compensate employees for the Service in accordance with title 5, United States Code;

''(B) to enter into contracts for the procurement of goods and services to carry out the functions of the Service; and

''(C) to manage, expend, and obligate all funds appropriated for the Service.

''(2) PERSONNEL ACTIONS.—Notwithstanding any other provision of law, the provisions of section 12 of the Act of June 18, 1934 (48 Stat. 986; 25 U.S.C. 472), shall apply to all personnel actions taken with respect to new positions created within the Service as a result of its establishment under subsection (a).

''(e) REFERENCES.—Any reference to the Director of the Indian Health Service in any other Federal law, Executive order, rule, regulation, or delegation of authority, or in any document of or relating to the Director of the Indian Health Service, shall be deemed to refer to the Assistant Secretary.

**''SEC. 602. AUTOMATED MANAGEMENT INFORMATION SYSTEM.**

''(a) ESTABLISHMENT.—

''(1) IN GENERAL.—The Secretary shall establish an automated management information system for the Service.

''(2) REQUIREMENTS OF SYSTEM.—The information system established under paragraph (1) shall include—

''(A) a financial management system;

''(B) a patient care information system for each area served by the Service;

''(C) a privacy component that protects the privacy of patient information held by, or on behalf of, the Service;

''(D) a services-based cost accounting component that provides estimates of the costs associated with the provision of specific medical treatments or services in each Area office of the Service;

''(E) an interface mechanism for patient billing and accounts receivable system; and

''(F) a training component.

''(b) PROVISION OF SYSTEMS TO TRIBES AND ORGANIZATIONS.—The Secretary shall provide each Tribal Health Program automated management information systems which—

''(1) meet the management information needs of such Tribal Health Program with respect to the treatment by the Tribal Health Program of patients of the Service; and

''(2) meet the management information needs of the Service.

''(c) ACCESS TO RECORDS.—Notwithstanding any other provision of law, each patient shall have reasonable access to the medical or health records of such patient which are held by, or on behalf of, the Service.

''(d) AUTHORITY TO ENHANCE INFORMATION TECHNOLOGY.—The Secretary, acting through the Assistant Secretary, shall have the authority to enter into contracts, agreements, or joint ventures with other Federal agencies, States, private and nonprofit organizations, for the purpose of enhancing information technology in Indian health programs and facilities.

**''SEC. 603. AUTHORIZATION OF APPROPRIATIONS.**

''There is authorized to be appropriated such sums as may be necessary for each fiscal year through fiscal year 2015 to carry out this title.

## ''TITLE VII—BEHAVIORAL HEALTH PROGRAMS

**''SEC. 701. BEHAVIORAL HEALTH PREVENTION AND TREATMENT SERVICES.**

''(a) PURPOSES.—The purposes of this section are as follows:

''(1) To authorize and direct the Secretary, acting through the Service, Indian Tribes, Tribal Organizations, and Urban Indian Organizations, to develop a comprehensive behavioral health prevention and treatment program which emphasizes collaboration among alcohol and substance abuse, social services, and mental health programs.

''(2) To provide information, direction, and guidance relating to mental illness and dysfunction and self-destructive behavior, including child abuse and family violence, to those Federal, tribal, State, and local agencies responsible for programs in Indian communities in areas of health care, education,

social services, child and family welfare, alcohol and substance abuse, law enforcement, and judicial services.

''(3) To assist Indian Tribes to identify services and resources available to address mental illness and dysfunctional and self-destructive behavior.

''(4) To provide authority and opportunities for Indian Tribes and Tribal Organizations to develop, implement, and coordinate with community-based programs which include identification, prevention, education, referral, and treatment services, including through multidisciplinary resource teams.

''(5) To ensure that Indians, as citizens of the United States and of the States in which they reside, have the same access to behavioral health services to which all citizens have access.

''(6) To modify or supplement existing programs and authorities in the areas identified in paragraph (2).

''(b) PLANS.—

''(1) DEVELOPMENT.—The Secretary, acting through the Service, Indian Tribes, Tribal Organizations, and Urban Indian Organizations, shall encourage Indian Tribes and Tribal Organizations to develop tribal plans, and Urban Indian Organizations to develop local plans, and for all such groups to participate in developing areawide plans for Indian Behavioral Health Services. The plans shall include, to the extent feasible, the following components:

''(A) An assessment of the scope of alcohol or other substance abuse, mental illness, and dysfunctional and self-destructive behavior, including suicide, child abuse, and family violence, among Indians, including—

''(i) the number of Indians served who are directly or indirectly affected by such illness or behavior; or

''(ii) an estimate of the financial and human cost attributable to such illness or behavior.

''(B) An assessment of the existing and additional resources necessary for the prevention and treatment of such illness and behavior, including an assessment of the progress toward achieving the availability of the full continuum of care described in subsection (c).

''(C) An estimate of the additional funding needed by the Service, Indian Tribes, Tribal Organizations, and Urban Indian Organizations to meet their responsibilities under the plans.

''(2) NATIONAL CLEARINGHOUSE.—The Secretary, acting through the Service, shall establish a national clearinghouse of plans and reports on the outcomes of such plans developed by Indian Tribes, Tribal Organizations, Urban Indian Organizations, and Service Areas relating to behavioral health. The Secretary shall ensure access to these plans and outcomes by any Indian Tribe, Tribal Organization, Urban Indian Organization, or the Service.

''(3) TECHNICAL ASSISTANCE.—The Secretary shall provide technical assistance to Indian Tribes, Tribal Organizations, and Urban Indian Organizations in preparation of plans under this section and in developing standards of care that may be used and adopted locally.

''(c) PROGRAMS.—The Secretary, acting through the Service, Indian Tribes, and Tribal Organizations, shall provide, to the extent feasible and if funding is available, programs including the following:

''(1) COMPREHENSIVE CARE.—A comprehensive continuum of behavioral health care which provides—

''(A) community-based prevention, intervention, outpatient, and behavioral health aftercare;

''(B) detoxification (social and medical);

''(C) acute hospitalization;

''(D) intensive outpatient/day treatment;

''(E) residential treatment;

''(F) transitional living for those needing a temporary, stable living environment that is supportive of treatment and recovery goals;

''(G) emergency shelter;

''(H) intensive case management;

''(I) Traditional Health Care Practices; and

''(J) diagnostic services.

''(2) CHILD CARE.—Behavioral health services for Indians from birth through age 17, including—

''(A) preschool and school age fetal alcohol disorder services, including assessment and behavioral intervention;

''(B) mental health and substance abuse services (emotional, organic, alcohol, drug, inhalant, and tobacco);

''(C) identification and treatment of co-occurring disorders and comorbidity;

''(D) prevention of alcohol, drug, inhalant, and tobacco use;

''(E) early intervention, treatment, and aftercare;

''(F) promotion of healthy approaches to risk and safety issues; and

''(G) identification and treatment of neglect and physical, mental, and sexual abuse.

''(3) ADULT CARE.—Behavioral health services for Indians from age 18 through 55, including—

''(A) early intervention, treatment, and aftercare;

''(B) mental health and substance abuse services (emotional, alcohol, drug, inhalant, and tobacco), including sex specific services;

''(C) identification and treatment of co-occurring disorders (dual diagnosis) and comorbidity;

''(D) promotion of healthy approaches for risk-related behavior;

''(E) treatment services for women at risk of giving birth to a child with a fetal alcohol disorder; and

''(F) sex specific treatment for sexual assault and domestic violence.

''(4) FAMILY CARE.—Behavioral health services for families, including—

''(A) early intervention, treatment, and aftercare for affected families;

''(B) treatment for sexual assault and domestic violence; and

''(C) promotion of healthy approaches relating to parenting, domestic violence, and other abuse issues.

''(5) ELDER CARE.—Behavioral health services for Indians 56 years of age and older, including—

''(A) early intervention, treatment, and aftercare;

''(B) mental health and substance abuse services (emotional, alcohol, drug, inhalant, and tobacco), including sex specific services;

''(C) identification and treatment of co-occurring disorders (dual diagnosis) and comorbidity;

''(D) promotion of healthy approaches to managing conditions related to aging;

''(E) sex specific treatment for sexual assault, domestic violence, neglect, physical and mental abuse and exploitation; and

''(F) identification and treatment of dementias regardless of cause.

''(d) COMMUNITY BEHAVIORAL HEALTH PLAN.—

''(1) ESTABLISHMENT.—The governing body of any Indian Tribe, Tribal Organization, or Urban Indian Organization may adopt a resolution for the establishment of a community behavioral health plan providing for the identification and coordination of available resources and programs to identify, prevent, or treat substance abuse, mental illness, or dysfunctional and self-destructive behavior, including child abuse and family violence, among its members or its service population. This plan should include behavioral health services, social services, intensive outpatient services, and continuing aftercare.

''(2) TECHNICAL ASSISTANCE.—At the request of an Indian Tribe, Tribal Organization, or Urban Indian Organization, the Bureau of Indian Affairs and the Service shall cooperate with and provide technical assistance to the Indian Tribe, Tribal Organization, or Urban Indian Organization in the development and implementation of such plan.

''(3) FUNDING.—The Secretary, acting through the Service, may make funding available to Indian Tribes and Tribal Organizations which adopt a resolution pursuant to paragraph (1) to obtain technical assistance for the development of a community behavioral health plan and to provide administrative support in the implementation of such plan.

''(e) COORDINATION FOR AVAILABILITY OF SERVICES.—The Secretary, acting through the Service, Indian Tribes, Tribal Organizations, and Urban Indian Organizations, shall coordinate behavioral health planning, to the extent feasible, with other Federal agencies and with State agencies, to encourage comprehensive behavioral health services for Indians regardless of their place of residence.

''(f) MENTAL HEALTH CARE NEED ASSESSMENT.—Not later than 1 year after the date of enactment of the Indian Health Care Improvement Act Amendments of 2005, the Secretary, acting through the Service, shall make an assessment of the need for inpatient mental health care among Indians and the availability and cost of inpatient mental health facilities which can meet such need. In making such assessment, the Secretary shall consider the possible conversion of existing, underused Service hospital beds into psychiatric units to meet such need.

**''SEC. 702. MEMORANDA OF AGREEMENT WITH THE DEPARTMENT OF THE INTERIOR.**

''(a) CONTENTS.—Not later than 12 months after the date of enactment of the Indian Health Care Improvement Act Amendments of 2005, the Secretary, acting through the Service, and the Secretary of the Interior shall develop and enter into a memoranda of agreement, or review and update any existing memoranda of agreement, as required by section 4205 of the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986 (25 U.S.C. 2411) under which the Secretaries address the following:

''(1) The scope and nature of mental illness and dysfunctional and self-destructive behavior, including child abuse and family violence, among Indians.

''(2) The existing Federal, tribal, State, local, and private services, resources, and programs available to provide behavioral health services for Indians.

''(3) The unmet need for additional services, resources, and programs necessary to meet the needs identified pursuant to paragraph (1).

''(4)(A) The right of Indians, as citizens of the United States and of the States in which they reside, to have access to behavioral health services to which all citizens have access.

''(B) The right of Indians to participate in, and receive the benefit of, such services.

''(C) The actions necessary to protect the exercise of such right.

''(5) The responsibilities of the Bureau of Indian Affairs and the Service, including mental illness identification, prevention, education, referral, and treatment services (including services through multidisciplinary resource teams), at the central, area, and agency and Service Unit, Service Area, and headquarters levels to address the problems identified in paragraph (1).

''(6) A strategy for the comprehensive coordination of the behavioral health services

provided by the Bureau of Indian Affairs and the Service to meet the problems identified pursuant to paragraph (1), including—

''(A) the coordination of alcohol and substance abuse programs of the Service, the Bureau of Indian Affairs, and Indian Tribes and Tribal Organizations (developed under the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986) with behavioral health initiatives pursuant to this Act, particularly with respect to the referral and treatment of dually diagnosed individuals requiring behavioral health and substance abuse treatment; and

''(B) ensuring that the Bureau of Indian Affairs and Service programs and services (including multidisciplinary resource teams) addressing child abuse and family violence are coordinated with such non-Federal programs and services.

''(7) Directing appropriate officials of the Bureau of Indian Affairs and the Service, particularly at the agency and Service Unit levels, to cooperate fully with tribal requests made pursuant to community behavioral health plans adopted under section 701(c) and section 4206 of the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986 (25 U.S.C. 2412).

''(8) Providing for an annual review of such agreement by the Secretaries which shall be provided to Congress and Indian Tribes and Tribal Organizations.

''(b) SPECIFIC PROVISIONS REQUIRED.—The memoranda of agreement updated or entered into pursuant to subsection (a) shall include specific provisions pursuant to which the Service shall assume responsibility for—

''(1) the determination of the scope of the problem of alcohol and substance abuse among Indians, including the number of Indians within the jurisdiction of the Service who are directly or indirectly affected by alcohol and substance abuse and the financial and human cost;

''(2) an assessment of the existing and needed resources necessary for the prevention of alcohol and substance abuse and the treatment of Indians affected by alcohol and substance abuse; and

''(3) an estimate of the funding necessary to adequately support a program of prevention of alcohol and substance abuse and treatment of Indians affected by alcohol and substance abuse.

''(c) CONSULTATION.—The Secretary, acting through the Service, and the Secretary of the Interior shall, in developing the memoranda of agreement under subsection (a), consult with and solicit the comments from—

''(1) Indian Tribes and Tribal Organizations;

''(2) Indians;

''(3) Urban Indian Organizations and other Indian organizations; and

''(4) behavioral health service providers.

''(d) PUBLICATION.—Each memorandum of agreement entered into or renewed (and amendments or modifications thereto) under subsection (a) shall be published in the Federal Register. At the same time as publication in the Federal Register, the Secretary shall provide a copy of such memoranda, amendment, or modification to each Indian Tribe, Tribal Organization, and Urban Indian Organization.

**''SEC. 703. COMPREHENSIVE BEHAVIORAL HEALTH PREVENTION AND TREATMENT PROGRAM.**

''(a) ESTABLISHMENT.—

''(1) IN GENERAL.—The Secretary, acting through the Service, Indian Tribes, and Tribal Organizations, shall provide a program of comprehensive behavioral health, prevention, treatment, and aftercare, including Traditional Health Care Practices, which shall include—

''(A) prevention, through educational intervention, in Indian communities;

''(B) acute detoxification, psychiatric hospitalization, residential, and intensive outpatient treatment;

''(C) community-based rehabilitation and aftercare;

''(D) community education and involvement, including extensive training of health care, educational, and community-based personnel;

''(E) specialized residential treatment programs for high-risk populations, including pregnant and postpartum women and their children; and

''(F) diagnostic services.

''(2) TARGET POPULATIONS.—The target population of such programs shall be members of Indian Tribes. Efforts to train and educate key members of the Indian community shall also target employees of health, education, judicial, law enforcement, legal, and social service programs.

''(b) CONTRACT HEALTH SERVICES.—

''(1) IN GENERAL.—The Secretary, acting through the Service, Indian Tribes, and Tribal Organizations, may enter into contracts with public or private providers of behavioral health treatment services for the purpose of carrying out the program required under subsection (a).

''(2) PROVISION OF ASSISTANCE.—In carrying out this subsection, the Secretary shall provide assistance to Indian Tribes and Tribal Organizations to develop criteria for the certification of behavioral health service providers and accreditation of service facilities which meet minimum standards for such services and facilities.

**''SEC. 704. MENTAL HEALTH TECHNICIAN PROGRAM.**

''(a) IN GENERAL.—Under the authority of the Act of November 2, 1921 (25 U.S.C. 13) (commonly known as the 'Snyder Act'), the Secretary shall establish and maintain a mental health technician program within the Service which—

''(1) provides for the training of Indians as mental health technicians; and

''(2) employs such technicians in the provision of community-based mental health care that includes identification, prevention, education, referral, and treatment services.

''(b) PARAPROFESSIONAL TRAINING.—In carrying out subsection (a), the Secretary, acting through the Service, Indian Tribes, and Tribal Organizations, shall provide high-standard paraprofessional training in mental health care necessary to provide quality care to the Indian communities to be served. Such training shall be based upon a curriculum developed or approved by the Secretary which combines education in the theory of mental health care with supervised practical experience in the provision of such care.

''(c) SUPERVISION AND EVALUATION OF TECHNICIANS.—The Secretary, acting through the Service, Indian Tribes, and Tribal Organizations, shall supervise and evaluate the mental health technicians in the training program.

''(d) TRADITIONAL HEALTH CARE PRACTICES.—The Secretary, acting through the Service, shall ensure that the program established pursuant to this subsection involves the use and promotion of the Traditional Health Care Practices of the Indian Tribes to be served.

**''SEC. 705. LICENSING REQUIREMENT FOR MENTAL HEALTH CARE WORKERS.**

''Subject to the provisions of section 221, any person employed as a psychologist, social worker, or marriage and family therapist for the purpose of providing mental health care services to Indians in a clinical setting under this Act is required to be licensed as a clinical psychologist, social worker, or marriage and family therapist, respectively, or working under the direct supervision of a licensed clinical psychologist, social worker, or marriage and family therapist, respectively.

**''SEC. 706. INDIAN WOMEN TREATMENT PROGRAMS.**

''(a) FUNDING.—The Secretary, consistent with section 701, shall make funds available to Indian Tribes, Tribal Organizations, and Urban Indian Organizations to develop and implement a comprehensive behavioral health program of prevention, intervention, treatment, and relapse prevention services that specifically addresses the spiritual, cultural, historical, social, and child care needs of Indian women, regardless of age.

''(b) USE OF FUNDS.—Funds made available pursuant to this section may be used to—

''(1) develop and provide community training, education, and prevention programs for Indian women relating to behavioral health issues, including fetal alcohol disorders;

''(2) identify and provide psychological services, counseling, advocacy, support, and relapse prevention to Indian women and their families; and

''(3) develop prevention and intervention models for Indian women which incorporate Traditional Health Care Practices, cultural values, and community and family involvement.

''(c) CRITERIA.—The Secretary, in consultation with Indian Tribes and Tribal Organizations, shall establish criteria for the review and approval of applications and proposals for funding under this section.

''(d) EARMARK OF CERTAIN FUNDS.—Twenty percent of the funds appropriated pursuant to this section shall be used to make grants to Urban Indian Organizations.

**''SEC. 707. INDIAN YOUTH PROGRAM.**

''(a) DETOXIFICATION AND REHABILITATION.—The Secretary, acting through the Service, consistent with section 701, shall develop and implement a program for acute detoxification and treatment for Indian youths, including behavioral health services. The program shall include regional treatment centers designed to include detoxification and rehabilitation for both sexes on a referral basis and programs developed and implemented by Indian Tribes or Tribal Organizations at the local level under the Indian Self-Determination and Education Assistance Act. Regional centers shall be integrated with the intake and rehabilitation programs based in the referring Indian community.

''(b) ALCOHOL AND SUBSTANCE ABUSE TREATMENT CENTERS OR FACILITIES.—

''(1) ESTABLISHMENT.—

''(A) IN GENERAL.—The Secretary, acting through the Service, Indian Tribes, and Tribal Organizations, shall construct, renovate, or, as necessary, purchase, and appropriately staff and operate, at least 1 youth regional treatment center or treatment network in each area under the jurisdiction of an Area Office.

''(B) AREA OFFICE IN CALIFORNIA.—For the purposes of this subsection, the Area Office in California shall be considered to be 2 Area Offices, 1 office whose jurisdiction shall be considered to encompass the northern area of the State of California, and 1 office whose jurisdiction shall be considered to encompass the remainder of the State of California for the purpose of implementing California treatment networks.

''(2) FUNDING.—For the purpose of staffing and operating such centers or facilities, funding shall be pursuant to the Act of November 2, 1921 (25 U.S.C. 13).

''(3) LOCATION.—A youth treatment center constructed or purchased under this subsection shall be constructed or purchased at

a location within the area described in paragraph (1) agreed upon (by appropriate tribal resolution) by a majority of the Indian Tribes to be served by such center.

''(4) SPECIFIC PROVISION OF FUNDS.—

''(A) IN GENERAL.—Notwithstanding any other provision of this title, the Secretary may, from amounts authorized to be appropriated for the purposes of carrying out this section, make funds available to—

''(i) the Tanana Chiefs Conference, Incorporated, for the purpose of leasing, constructing, renovating, operating, and maintaining a residential youth treatment facility in Fairbanks, Alaska; and

''(ii) the Southeast Alaska Regional Health Corporation to staff and operate a residential youth treatment facility without regard to the proviso set forth in section 4(*l*) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(*l*)).

''(B) PROVISION OF SERVICES TO ELIGIBLE YOUTHS.—Until additional residential youth treatment facilities are established in Alaska pursuant to this section, the facilities specified in subparagraph (A) shall make every effort to provide services to all eligible Indian youths residing in Alaska.

''(c) INTERMEDIATE ADOLESCENT BEHAVIORAL HEALTH SERVICES.—

''(1) IN GENERAL.—The Secretary, acting through the Service, Indian Tribes, and Tribal Organizations, may provide intermediate behavioral health services, which may incorporate Traditional Health Care Practices, to Indian children and adolescents, including—

''(A) pretreatment assistance;

''(B) inpatient, outpatient, and aftercare services;

''(C) emergency care;

''(D) suicide prevention and crisis intervention; and

''(E) prevention and treatment of mental illness and dysfunctional and self-destructive behavior, including child abuse and family violence.

''(2) USE OF FUNDS.—Funds provided under this subsection may be used—

''(A) to construct or renovate an existing health facility to provide intermediate behavioral health services;

''(B) to hire behavioral health professionals;

''(C) to staff, operate, and maintain an intermediate mental health facility, group home, sober housing, transitional housing or similar facilities, or youth shelter where intermediate behavioral health services are being provided;

''(D) to make renovations and hire appropriate staff to convert existing hospital beds into adolescent psychiatric units; and

''(E) for intensive home- and community-based services.

''(3) CRITERIA.—The Secretary, acting through the Service, shall, in consultation with Indian Tribes and Tribal Organizations, establish criteria for the review and approval of applications or proposals for funding made available pursuant to this subsection.

''(d) FEDERALLY OWNED STRUCTURES.—

''(1) IN GENERAL.—The Secretary, in consultation with Indian Tribes and Tribal Organizations, shall—

''(A) identify and use, where appropriate, federally owned structures suitable for local residential or regional behavioral health treatment for Indian youths; and

''(B) establish guidelines, in consultation with Indian Tribes and Tribal Organizations, for determining the suitability of any such federally owned structure to be used for local residential or regional behavioral health treatment for Indian youths.

''(2) TERMS AND CONDITIONS FOR USE OF STRUCTURE.—Any structure described in paragraph (1) may be used under such terms and conditions as may be agreed upon by the Secretary and the agency having responsibility for the structure and any Indian Tribe or Tribal Organization operating the program.

''(e) REHABILITATION AND AFTERCARE SERVICES.—

''(1) IN GENERAL.—The Secretary, Indian Tribes, or Tribal Organizations, in cooperation with the Secretary of the Interior, shall develop and implement within each Service Unit, community-based rehabilitation and follow-up services for Indian youths who are having significant behavioral health problems, and require long-term treatment, community reintegration, and monitoring to support the Indian youths after their return to their home community.

''(2) ADMINISTRATION.—Services under paragraph (1) shall be provided by trained staff within the community who can assist the Indian youths in their continuing development of self-image, positive problem-solving skills, and nonalcohol or substance abusing behaviors. Such staff may include alcohol and substance abuse counselors, mental health professionals, and other health professionals and paraprofessionals, including community health representatives.

''(f) INCLUSION OF FAMILY IN YOUTH TREATMENT PROGRAM.—In providing the treatment and other services to Indian youths authorized by this section, the Secretary, acting through the Service, Indian Tribes, and Tribal Organizations, shall provide for the inclusion of family members of such youths in the treatment programs or other services as may be appropriate. Not less than 10 percent of the funds appropriated for the purposes of carrying out subsection (e) shall be used for outpatient care of adult family members related to the treatment of an Indian youth under that subsection.

''(g) MULTIDRUG ABUSE PROGRAM.—The Secretary, acting through the Service, Indian Tribes, Tribal Organizations, and Urban Indian Organizations, shall provide, consistent with section 701, programs and services to prevent and treat the abuse of multiple forms of substances, including alcohol, drugs, inhalants, and tobacco, among Indian youths residing in Indian communities, on or near reservations, and in urban areas and provide appropriate mental health services to address the incidence of mental illness among such youths.

**''SEC. 708. INPATIENT AND COMMUNITY-BASED MENTAL HEALTH FACILITIES DESIGN, CONSTRUCTION, AND STAFFING.**

''Not later than 1 year after the date of enactment of the Indian Health Care Improvement Act Amendments of 2005, the Secretary, acting through the Service, Indian Tribes, and Tribal Organizations, may provide, in each area of the Service, not less than 1 inpatient mental health care facility, or the equivalent, for Indians with behavioral health problems. For the purposes of this subsection, California shall be considered to be 2 Area Offices, 1 office whose location shall be considered to encompass the northern area of the State of California and 1 office whose jurisdiction shall be considered to encompass the remainder of the State of California. The Secretary shall consider the possible conversion of existing, underused Service hospital beds into psychiatric units to meet such need.

**''SEC. 709. TRAINING AND COMMUNITY EDUCATION.**

''(a) PROGRAM.—The Secretary, in cooperation with the Secretary of the Interior, shall develop and implement or provide funding for Indian Tribes and Tribal Organizations to develop and implement, within each Service Unit or tribal program, a program of community education and involvement which shall be designed to provide concise and timely information to the community leadership of each tribal community. Such program shall include education about behavioral health issues to political leaders, Tribal judges, law enforcement personnel, members of tribal health and education boards, health care providers including traditional practitioners, and other critical members of each tribal community. Community-based training (oriented toward local capacity development) shall also include tribal community provider training (designed for adult learners from the communities receiving services for prevention, intervention, treatment, and aftercare).

''(b) INSTRUCTION.—The Secretary, acting through the Service, shall, either directly or through Indian Tribes and Tribal Organizations, provide instruction in the area of behavioral health issues, including instruction in crisis intervention and family relations in the context of alcohol and substance abuse, child sexual abuse, youth alcohol and substance abuse, and the causes and effects of fetal alcohol disorders to appropriate employees of the Bureau of Indian Affairs and the Service, and to personnel in schools or programs operated under any contract with the Bureau of Indian Affairs or the Service, including supervisors of emergency shelters and halfway houses described in section 4213 of the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986 (25 U.S.C. 2433).

''(c) TRAINING MODELS.—In carrying out the education and training programs required by this section, the Secretary, in consultation with Indian Tribes, Tribal Organizations, Indian behavioral health experts, and Indian alcohol and substance abuse prevention experts, shall develop and provide community-based training models. Such models shall address—

''(1) the elevated risk of alcohol and behavioral health problems faced by children of alcoholics;

''(2) the cultural, spiritual, and multigenerational aspects of behavioral health problem prevention and recovery; and

''(3) community-based and multidisciplinary strategies for preventing and treating behavioral health problems.

**''SEC. 710. BEHAVIORAL HEALTH PROGRAM.**

''(a) INNOVATIVE PROGRAMS.—The Secretary, acting through the Service, Indian Tribes, and Tribal Organizations, consistent with section 701, may plan, develop, implement, and carry out programs to deliver innovative community-based behavioral health services to Indians.

''(b) FUNDING; CRITERIA.—The Secretary may award such funding for a project under subsection (a) to an Indian Tribe or Tribal Organization and may consider the following criteria:

''(1) The project will address significant unmet behavioral health needs among Indians.

''(2) The project will serve a significant number of Indians.

''(3) The project has the potential to deliver services in an efficient and effective manner.

''(4) The Indian Tribe or Tribal Organization has the administrative and financial capability to administer the project.

''(5) The project may deliver services in a manner consistent with Traditional Health Care Practices.

''(6) The project is coordinated with, and avoids duplication of, existing services.

''(c) EQUITABLE TREATMENT.—For purposes of this subsection, the Secretary shall, in evaluating project applications or proposals, use the same criteria that the Secretary uses in evaluating any other application or proposal for such funding.

**"SEC. 711. FETAL ALCOHOL DISORDER FUNDING.**

''(a) PROGRAMS.—

''(1) ESTABLISHMENT.—The Secretary, consistent with section 701, acting through the Service, Indian Tribes, and Tribal Organizations, is authorized to establish and operate fetal alcohol disorder programs as provided in this section for the purposes of meeting the health status objectives specified in section 3.

''(2) USE OF FUNDS.—Funding provided pursuant to this section shall be used for the following:

''(A) To develop and provide for Indians community and in school training, education, and prevention programs relating to fetal alcohol disorders.

''(B) To identify and provide behavioral health treatment to high-risk Indian women and high-risk women pregnant with an Indian's child.

''(C) To identify and provide appropriate psychological services, educational and vocational support, counseling, advocacy, and information to fetal alcohol disorder affected Indians and their families or caretakers.

''(D) To develop and implement counseling and support programs in schools for fetal alcohol disorder affected Indian children.

''(E) To develop prevention and intervention models which incorporate practitioners of Traditional Health Care Practices, cultural and spiritual values, and community involvement.

''(F) To develop, print, and disseminate education and prevention materials on fetal alcohol disorder.

''(G) To develop and implement, through the tribal consultation process, culturally sensitive assessment and diagnostic tools including dysmorphology clinics and multidisciplinary fetal alcohol disorder clinics for use in Indian communities and Urban Centers.

''(H) To develop early childhood intervention projects from birth on to mitigate the effects of fetal alcohol disorder among Indians.

''(I) To develop and fund community-based adult fetal alcohol disorder housing and support services for Indians and for women pregnant with an Indian's child.

''(3) CRITERIA FOR APPLICATIONS.—The Secretary shall establish criteria for the review and approval of applications for funding under this section.

''(b) SERVICES.—The Secretary, acting through the Service and Indian Tribes, Tribal Organizations, and Urban Indian Organizations, shall—

''(1) develop and provide services for the prevention, intervention, treatment, and aftercare for those affected by fetal alcohol disorder in Indian communities; and

''(2) provide supportive services, directly or through an Indian Tribe, Tribal Organization, or Urban Indian Organization, including services to meet the special educational, vocational, school-to-work transition, and independent living needs of adolescent and adult Indians with fetal alcohol disorder.

''(c) TASK FORCE.—The Secretary shall establish a task force to be known as the Fetal Alcohol Disorder Task Force to advise the Secretary in carrying out subsection (b). Such task force shall be composed of representatives from the following:

''(1) The National Institute on Drug Abuse.

''(2) The National Institute on Alcohol and Alcoholism.

''(3) The Office of Substance Abuse Prevention.

''(4) The National Institute of Mental Health.

''(5) The Service.

''(6) The Office of Minority Health of the Department of Health and Human Services.

''(7) The Administration for Native Americans.

''(8) The National Institute of Child Health and Human Development (NICHD).

''(9) The Centers for Disease Control and Prevention.

''(10) The Bureau of Indian Affairs.

''(11) Indian Tribes.

''(12) Tribal Organizations.

''(13) Urban Indian Organizations.

''(14) Indian fetal alcohol disorder experts.

''(d) APPLIED RESEARCH PROJECTS.—The Secretary, acting through the Substance Abuse and Mental Health Services Administration, shall make funding available to Indian Tribes, Tribal Organizations, and Urban Indian Organizations for applied research projects which propose to elevate the understanding of methods to prevent, intervene, treat, or provide rehabilitation and behavioral health aftercare for Indians and Urban Indians affected by fetal alcohol disorder.

''(e) FUNDING FOR URBAN INDIAN ORGANIZATIONS.—Ten percent of the funds appropriated pursuant to this section shall be used to make grants to Urban Indian Organizations funded under title V.

**"SEC. 712. CHILD SEXUAL ABUSE AND PREVENTION TREATMENT PROGRAMS.**

''(a) ESTABLISHMENT.—The Secretary, acting through the Service, and the Secretary of the Interior, Indian Tribes, and Tribal Organizations shall establish, consistent with section 701, in every Service Area, programs involving treatment for—

''(1) victims of sexual abuse who are Indian children or children in an Indian household; and

''(2) perpetrators of child sexual abuse who are Indian or members of an Indian household.

''(b) USE OF FUNDS.—Funding provided pursuant to this section shall be used for the following:

''(1) To develop and provide community education and prevention programs related to sexual abuse of Indian children or children in an Indian household.

''(2) To identify and provide behavioral health treatment to victims of sexual abuse who are Indian children or children in an Indian household, and to their family members who are affected by sexual abuse.

''(3) To develop prevention and intervention models which incorporate Traditional Health Care Practices, cultural and spiritual values, and community involvement.

''(4) To develop and implement, through the tribal consultation process, culturally sensitive assessment and diagnostic tools for use in Indian communities and Urban Centers.

''(5) To identify and provide behavioral health treatment to Indian perpetrators and perpetrators who are members of an Indian household—

''(A) making efforts to begin offender and behavioral health treatment while the perpetrator is incarcerated or at the earliest possible date if the perpetrator is not incarcerated; and

''(B) providing treatment after the perpetrator is released, until it is determined that the perpetrator is not a threat to children.

**"SEC. 713. BEHAVIORAL HEALTH RESEARCH.**

''The Secretary, in consultation with appropriate Federal agencies, shall provide funding to Indian Tribes, Tribal Organizations, and Urban Indian Organizations or enter into contracts with, or make grants to appropriate institutions for, the conduct of research on the incidence and prevalence of behavioral health problems among Indians served by the Service, Indian Tribes, or Tribal Organizations and among Indians in urban areas. Research priorities under this section shall include—

''(1) the interrelationship and interdependence of behavioral health problems with alcoholism and other substance abuse, suicide, homicides, other injuries, and the incidence of family violence; and

''(2) the development of models of prevention techniques.

The effect of the interrelationships and interdependencies referred to in paragraph (1) on children, and the development of prevention techniques under paragraph (2) applicable to children, shall be emphasized.

**"SEC. 714. DEFINITIONS.**

''For the purpose of this title, the following definitions shall apply:

''(1) ASSESSMENT.—The term 'assessment' means the systematic collection, analysis, and dissemination of information on health status, health needs, and health problems.

''(2) ALCOHOL-RELATED NEURODEVELOPMENTAL DISORDERS OR ARND.—The term 'alcohol-related neurodevelopmental disorders' or 'ARND' means, with a history of maternal alcohol consumption during pregnancy, central nervous system involvement such as developmental delay, intellectual deficit, or neurologic abnormalities. Behaviorally, there can be problems with irritability, and failure to thrive as infants. As children become older there will likely be hyperactivity, attention deficit, language dysfunction, and perceptual and judgment problems.

''(3) BEHAVIORAL HEALTH AFTERCARE.—The term 'behavioral health aftercare' includes those activities and resources used to support recovery following inpatient, residential, intensive substance abuse, or mental health outpatient or outpatient treatment. The purpose is to help prevent or deal with relapse by ensuring that by the time a client or patient is discharged from a level of care, such as outpatient treatment, an aftercare plan has been developed with the client. An aftercare plan may use such resources a as community-based therapeutic group, transitional living facilities, a 12-step sponsor, a local 12-step or other related support group, and other community-based providers (mental health professionals, traditional health care practitioners, community health aides, community health representatives, mental health technicians, ministers, etc.)

''(4) DUAL DIAGNOSIS.—The term 'dual diagnosis' means coexisting substance abuse and mental illness conditions or diagnosis. Such clients are sometimes referred to as mentally ill chemical abusers (MICAs).

''(5) FETAL ALCOHOL DISORDERS.—The term 'fetal alcohol disorders' means fetal alcohol syndrome, partial fetal alcohol syndrome and alcohol related neurodevelopmental disorder (ARND).

''(6) FETAL ALCOHOL SYNDROME OR FAS.—The term 'fetal alcohol syndrome' or 'FAS' means a syndrome in which, with a history of maternal alcohol consumption during pregnancy, the following criteria are met:

''(A) Central nervous system involvement such as developmental delay, intellectual deficit, microencephaly, or neurologic abnormalities.

''(B) Craniofacial abnormalities with at least 2 of the following: microophthalmia, short palpebral fissures, poorly developed philtrum, thin upper lip, flat nasal bridge, and short upturned nose.

''(C) Prenatal or postnatal growth delay.

''(7) PARTIAL FAS.—The term 'partial FAS' means, with a history of maternal alcohol consumption during pregnancy, having most of the criteria of FAS, though not meeting a minimum of at least 2 of the following: microophthalmia, short palpebral fissures, poorly developed philtrum, thin upper lip, flat nasal bridge, and short upturned nose.

''(8) REHABILITATION.—The term 'rehabilitation' means to restore the ability or capacity to engage in usual and customary life activities through education and therapy.

''(9) SUBSTANCE ABUSE.—The term 'substance abuse' includes inhalant abuse.

**"SEC. 715. AUTHORIZATION OF APPROPRIATIONS.**

''There is authorized to be appropriated such sums as may be necessary for each fiscal year through fiscal year 2015 to carry out the provisions of this title.

**"TITLE VIII—MISCELLANEOUS**

**"SEC. 801. REPORTS.**

''The President shall, at the time the budget is submitted under section 1105 of title 31, United States Code, for each fiscal year transmit to Congress a report containing the following:

''(1) A report on the progress made in meeting the objectives of this Act, including a review of programs established or assisted pursuant to this Act and assessments and recommendations of additional programs or additional assistance necessary to, at a minimum, provide health services to Indians and ensure a health status for Indians, which are at a parity with the health services available to and the health status of the general population, including specific comparisons of appropriations provided and those required for such parity.

''(2) A report on whether, and to what extent, new national health care programs, benefits, initiatives, or financing systems have had an impact on the purposes of this Act and any steps that the Secretary may have taken to consult with Indian Tribes, Tribal Organizations, and Urban Indian Organizations to address such impact, including a report on proposed changes in allocation of funding pursuant to section 808.

''(3) A report on the use of health services by Indians—

''(A) on a national and area or other relevant geographical basis;

''(B) by gender and age;

''(C) by source of payment and type of service;

''(D) comparing such rates of use with rates of use among comparable non-Indian populations; and

''(E) provided under contracts.

''(4) A report of contractors to the Secretary on Health Care Educational Loan Repayments every 6 months required by section 110.

''(5) A general audit report of the Secretary on the Health Care Educational Loan Repayment Program as required by section 110(n).

''(6) A report of the findings and conclusions of demonstration programs on development of educational curricula for substance abuse counseling as required in section 125(f).

''(7) A separate statement which specifies the amount of funds requested to carry out the provisions of section 201.

''(8) A report of the evaluations of health promotion and disease prevention as required in section 203(c).

''(9) A biennial report to Congress on infectious diseases as required by section 212.

''(10) A report on environmental and nuclear health hazards as required by section 215.

''(11) An annual report on the status of all health care facilities needs as required by section 301(c)(2) and 301(d).

''(12) Reports on safe water and sanitary waste disposal facilities as required by section 302(h).

''(13) An annual report on the expenditure of nonservice funds for renovation as required by sections 304(b)(2).

''(14) A report identifying the backlog of maintenance and repair required at Service and tribal facilities required by section 313(a).

''(15) A report providing an accounting of reimbursement funds made available to the Secretary under titles XVIII, XIX, and XXI of the Social Security Act.

''(16) A report on any arrangements for the sharing of medical facilities or services, as authorized by section 406.

''(17) A report on evaluation and renewal of Urban Indian programs under section 505.

''(18) A report on the evaluation of programs as required by section 513(d).

''(19) A report on alcohol and substance abuse as required by section 701(f).

**"SEC. 802. REGULATIONS.**

''(a) DEADLINES.—

''(1) PROCEDURES.—Not later than 90 days after the date of enactment of the Indian Health Care Improvement Act Amendments of 2005, the Secretary shall initiate procedures under subchapter III of chapter 5 of title 5, United States Code, to negotiate and promulgate such regulations or amendments thereto that are necessary to carry out titles I (except sections 105, 115, and 117), II, III, and VII. The Secretary may promulgate regulations to carry out sections 105, 115, 117, and titles IV and V, using the procedures required by chapter V of title 5, United States Code (commonly known as the 'Administrative Procedure Act'). The Secretary shall issue no regulations to carry out titles VI and VIII.

''(2) PROPOSED REGULATIONS.—Proposed regulations to implement this Act shall be published in the Federal Register by the Secretary no later than 1 year after the date of enactment of the Indian Health Care Improvement Act Amendments of 2005 and shall have no less than a 120-day comment period.

''(3) EXPIRATION OF AUTHORITY.—Except as otherwise provided herein, the authority to promulgate regulations under this Act shall expire 24 months from the date of enactment of this Act.

''(b) COMMITTEE.—A negotiated rulemaking committee established pursuant to section 565 of title 5, United States Code, to carry out this section shall have as its members only representatives of the Federal Government and representatives of Indian Tribes and Tribal Organizations, a majority of whom shall be nominated by and be representatives of Indian Tribes, Tribal Organizations, and Urban Indian Organizations from each Service Area. The representative of the Urban Indian Organization shall be deemed to be an elected officer of a tribal government for purposes of applying section 204(b) of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1534(b)).

''(c) ADAPTATION OF PROCEDURES.—The Secretary shall adapt the negotiated rulemaking procedures to the unique context of self-governance and the government-to-government relationship between the United States and Indian Tribes.

''(d) LACK OF REGULATIONS.—The lack of promulgated regulations shall not limit the effect of this Act.

''(e) INCONSISTENT REGULATIONS.—The provisions of this Act shall supersede any conflicting provisions of law) in effect on the day before the date of enactment of the Indian Health Care Improvement Act Amendments of 2005, and the Secretary is authorized to repeal any regulation inconsistent with the provisions of this Act.

**"SEC. 803. PLAN OF IMPLEMENTATION.**

''Not later than 9 months after the date of enactment of the Indian Health Care Improvement Act Amendments of 2005, the Secretary in consultation with Indian Tribes, Tribal Organizations, and Urban Indian Organizations, shall submit to Congress a plan explaining the manner and schedule (including a schedule of appropriation requests), by title and section, by which the Secretary will implement the provisions of this Act.

**"SEC. 804. AVAILABILITY OF FUNDS.**

''The funds appropriated pursuant to this Act shall remain available until expended.

**"SEC. 805. LIMITATION ON USE OF FUNDS APPROPRIATED TO THE INDIAN HEALTH SERVICE.**

''Any limitation on the use of funds contained in an Act providing appropriations for the Department for a period with respect to the performance of abortions shall apply for that period with respect to the performance of abortions using funds contained in an Act providing appropriations for the Service.

**"SEC. 806. ELIGIBILITY OF CALIFORNIA INDIANS.**

''(a) IN GENERAL.—The following California Indians shall be eligible for health services provided by the Service:

''(1) Any member of a federally recognized Indian Tribe.

''(2) Any descendant of an Indian who was residing in California on June 1, 1852, if such descendant—

''(A) is a member of the Indian community served by a local program of the Service; and

''(B) is regarded as an Indian by the community in which such descendant lives.

''(3) Any Indian who holds trust interests in public domain, national forest, or reservation allotments in California.

''(4) Any Indian in California who is listed on the plans for distribution of the assets of rancherias and reservations located within the State of California under the Act of August 18, 1958 (72 Stat. 619), and any descendant of such an Indian.

''(b) CLARIFICATION.—Nothing in this section may be construed as expanding the eligibility of California Indians for health services provided by the Service beyond the scope of eligibility for such health services that applied on May 1, 1986.

**"SEC. 807. HEALTH SERVICES FOR INELIGIBLE PERSONS.**

''(a) CHILDREN.—Any individual who—

''(1) has not attained 19 years of age;

''(2) is the natural or adopted child, stepchild, foster child, legal ward, or orphan of an eligible Indian; and

''(3) is not otherwise eligible for health services provided by the Service,

shall be eligible for all health services provided by the Service on the same basis and subject to the same rules that apply to eligible Indians until such individual attains 19 years of age. The existing and potential health needs of all such individuals shall be taken into consideration by the Service in determining the need for, or the allocation of, the health resources of the Service. If such an individual has been determined to be legally incompetent prior to attaining 19 years of age, such individual shall remain eligible for such services until 1 year after the date of a determination of competency.

''(b) SPOUSES.—Any spouse of an eligible Indian who is not an Indian, or who is of Indian descent but is not otherwise eligible for the health services provided by the Service, shall be eligible for such health services if all such spouses or spouses who are married to members of each Indian Tribe being served are made eligible, as a class, by an appropriate resolution of the governing body of the Indian Tribe or Tribal Organization providing such services. The health needs of persons made eligible under this paragraph shall not be taken into consideration by the Service in determining the need for, or allocation of, its health resources.

''(c) PROVISION OF SERVICES TO OTHER INDIVIDUALS.—

''(1) IN GENERAL.—The Secretary is authorized to provide health services under this subsection through health programs operated directly by the Service to individuals

who reside within the Service Unit and who are not otherwise eligible for such health services if—

''(A) the Indian Tribes served by such Service Unit request such provision of health services to such individuals; and

''(B) the Secretary and the served Indian Tribes have jointly determined that—

''(i) the provision of such health services will not result in a denial or diminution of health services to eligible Indians; and

''(ii) there is no reasonable alternative health facilities or services, within or without the Service Unit, available to meet the health needs of such individuals.

''(2) ISDEAA PROGRAMS.—In the case of health programs and facilities operated under a contract or compact entered into under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.), the governing body of the Indian Tribe or Tribal Organization providing health services under such contract or compact is authorized to determine whether health services should be provided under such contract or compact to individuals who are not otherwise eligible for such services under any other subsection of this section or under any other provision of law. In making such determination, the governing body of the Indian Tribe or Tribal organization shall take into account the considerations described in clauses (i) and (ii) of paragraph (1)(B).

''(3) PAYMENT FOR SERVICES.—

''(A) IN GENERAL.—Persons receiving health services provided by the Service under of this subsection shall be liable for payment of such health services under a schedule of charges prescribed by the Secretary which, in the judgment of the Secretary, results in reimbursement in an amount not less than the actual cost of providing the health services. Notwithstanding section 404 of this Act or any other provision of law, amounts collected under this subsection, including medicare, medicaid, or SCHIP reimbursements under titles XVIII, XIX, and XXI of the Social Security Act, shall be credited to the account of the program providing the service and shall be used for the purposes listed in section 401(d)(2) and amounts collected under this subsection shall be available for expenditure within such program.

''(B) INDIGENT PEOPLE.—Health services may be provided by the Secretary through the Service under this subsection to an indigent individual who would not be otherwise eligible for such health services but for the provisions of paragraph (1) only if an agreement has been entered into with a State or local government under which the State or local government agrees to reimburse the Service for the expenses incurred by the Service in providing such health services to such indigent individual.

''(4) REVOCATION OF CONSENT FOR SERVICES.—

''(A) SINGLE TRIBE SERVICE AREA.—In the case of a Service Area which serves only 1 Indian Tribe, the authority of the Secretary to provide health services under paragraph (1) shall terminate at the end of the fiscal year succeeding the fiscal year in which the governing body of the Indian Tribe revokes its concurrence to the provision of such health services.

''(B) MULTITRIBAL SERVICE AREA.—In the case of a multitribal Service Area, the authority of the Secretary to provide health services under paragraph (1) shall terminate at the end of the fiscal year succeeding the fiscal year in which at least 51 percent of the number of Indian Tribes in the Service Area revoke their concurrence to the provisions of such health services.

''(d) OTHER SERVICES.—The Service may provide health services under this subsection to individuals who are not eligible for health services provided by the Service under any other provision of law in order to—

''(1) achieve stability in a medical emergency;

''(2) prevent the spread of a communicable disease or otherwise deal with a public health hazard;

''(3) provide care to non-Indian women pregnant with an eligible Indian's child for the duration of the pregnancy through postpartum; or

''(4) provide care to immediate family members of an eligible individual if such care is directly related to the treatment of the eligible individual.

''(e) HOSPITAL PRIVILEGES FOR PRACTITIONERS.—Hospital privileges in health facilities operated and maintained by the Service or operated under a contract or compact pursuant to the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) may be extended to non-Service health care practitioners who provide services to individuals described in subsection (a), (b), (c), or (d). Such non-Service health care practitioners may, as part of privileging process, be designated as employees of the Federal Government for purposes of section 1346(b) and chapter 171 of title 28, United States Code (relating to Federal tort claims) only with respect to acts or omissions which occur in the course of providing services to eligible individuals as a part of the conditions under which such hospital privileges are extended.

''(f) ELIGIBLE INDIAN.—For purposes of this section, the term 'eligible Indian' means any Indian who is eligible for health services provided by the Service without regard to the provisions of this section.

**''SEC. 808. REALLOCATION OF BASE RESOURCES.**

''(a) REPORT REQUIRED.—Notwithstanding any other provision of law, any allocation of Service funds for a fiscal year that reduces by 5 percent or more from the previous fiscal year the funding for any recurring program, project, or activity of a Service Unit may be implemented only after the Secretary has submitted to the President, for inclusion in the report required to be transmitted to Congress under section 801, a report on the proposed change in allocation of funding, including the reasons for the change and its likely effects.

''(b) EXCEPTION.—Subsection (a) shall not apply if the total amount appropriated to the Service for a fiscal year is at least 5 percent less than the amount appropriated to the Service for the previous fiscal year.

**''SEC. 809. RESULTS OF DEMONSTRATION PROJECTS.**

''The Secretary shall provide for the dissemination to Indian Tribes, Tribal Organizations, and Urban Indian Organizations of the findings and results of demonstration projects conducted under this Act.

**''SEC. 810. PROVISION OF SERVICES IN MONTANA.**

''(a) CONSISTENT WITH COURT DECISION.—The Secretary, acting through the Service, shall provide services and benefits for Indians in Montana in a manner consistent with the decision of the United States Court of Appeals for the Ninth Circuit in McNabb for McNabb v. Bowen, 829 F.2d 787 (9th Cir. 1987).

''(b) CLARIFICATION.—The provisions of subsection (a) shall not be construed to be an expression of the sense of Congress on the application of the decision described in subsection (a) with respect to the provision of services or benefits for Indians living in any State other than Montana.

**''SEC. 811. MORATORIUM.**

''During the period of the moratorium imposed on implementation of the final rule published in the Federal Register on September 16, 1987, by the Health Resources and Services Administration of the Public Health Service, relating to eligibility for the health care services of the Indian Health Service, the Indian Health Service shall provide services pursuant to the criteria for eligibility for such services that were in effect on September 15, 1987, subject to the provisions of sections 806 and 807 until such time as new criteria governing eligibility for services are developed in accordance with section 802.

**''SEC. 812. TRIBAL EMPLOYMENT.**

''For purposes of section 2(2) of the Act of July 5, 1935 (49 Stat. 450, chapter 372), an Indian Tribe or Tribal Organization carrying out a contract or compact pursuant to the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) shall not be considered an 'employer'.

**''SEC. 813. SEVERABILITY PROVISIONS.**

''If any provision of this Act, any amendment made by the Act, or the application of such provision or amendment to any person or circumstances is held to be invalid, the remainder of this Act, the remaining amendments made by this Act, and the application of such provisions to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

**''SEC. 814. ESTABLISHMENT OF NATIONAL BIPARTISAN COMMISSION ON INDIAN HEALTH CARE.**

''(a) ESTABLISHMENT.—There is established the National Bipartisan Indian Health Care Commission (the 'Commission').

''(b) DUTIES OF COMMISSION.—The duties of the Commission are the following:

''(1) To establish a study committee composed of those members of the Commission appointed by the Director and at least 4 members of Congress from among the members of the Commission, the duties of which shall be the following:

''(A) To the extent necessary to carry out its duties, collect and compile data necessary to understand the extent of Indian needs with regard to the provision of health services, regardless of the location of Indians, including holding hearings and soliciting the views of Indians, Indian Tribes, Tribal Organizations, and Urban Indian Organizations, which may include authorizing and making funds available for feasibility studies of various models for providing and funding health services for all Indian beneficiaries, including those who live outside of a reservation, temporarily or permanently.

''(B) To make legislative recommendations to the Commission regarding the delivery of Federal health care services to Indians. Such recommendations shall include those related to issues of eligibility, benefits, the range of service providers, the cost of such services, financing such services, and the optimal manner in which to provide such services.

''(C) To determine the effect of the enactment of such recommendations on (i) the existing system of delivery of health services for Indians, and (ii) the sovereign status of Indian Tribes.

''(D) Not later than 12 months after the appointment of all members of the Commission, to submit a written report of its findings and recommendations to the full Commission. The report shall include a statement of the minority and majority position of the Committee and shall be disseminated, at a minimum, to every Indian Tribe, Tribal Organization, and Urban Indian Organization for comment to the Commission.

''(E) To report regularly to the full Commission regarding the findings and recommendations developed by the study committee in the course of carrying out its duties under this section.

''(2) To review and analyze the recommendations of the report of the study committee.

''(3) To make legislative recommendations to Congress regarding the delivery of Federal health care services to Indians. Such recommendations shall include those related to issues of eligibility, benefits, the range of service providers, the cost of such services, financing such services, and the optimal manner in which to provide such services.

''(4) Not later than 18 months following the date of appointment of all members of the Commission, submit a written report to Congress regarding the delivery of Federal health care services to Indians. Such recommendations shall include those related to issues of eligibility, benefits, the range of service providers, the cost of such services, financing such services, and the optimal manner in which to provide such services.

''(c) MEMBERS.—

''(1) APPOINTMENT.—The Commission shall be composed of 25 members, appointed as follows:

''(A) Ten members of Congress, including 3 from the House of Representatives and 2 from the Senate, appointed by their respective majority leaders, and 3 from the House of Representatives and 2 from the Senate, appointed by their respective minority leaders, and who shall be members of the standing committees of Congress that consider legislation affecting health care to Indians.

''(B) Twelve persons chosen by the congressional members of the Commission, 1 from each Service Area as currently designated by the Director to be chosen from among 3 nominees from each Service Area put forward by the Indian Tribes within the area, with due regard being given to the experience and expertise of the nominees in the provision of health care to Indians and to a reasonable representation on the commission of members who are familiar with various health care delivery modes and who represent Indian Tribes of various size populations.

''(C) Three persons appointed by the Director who are knowledgeable about the provision of health care to Indians, at least 1 of whom shall be appointed from among 3 nominees put forward by those programs whose funds are provided in whole or in part by the Service primarily or exclusively for the benefit of Urban Indians.

''(D) All those persons chosen by the congressional members of the Commission and by the Director shall be members of federally recognized Indian Tribes.

''(2) CHAIR; VICE CHAIR.—The Chair and Vice Chair of the Commission shall be selected by the congressional members of the Commission.

''(3) TERMS.—The terms of members of the Commission shall be for the life of the Commission.

''(4) DEADLINE FOR APPOINTMENTS.—Congressional members of the Commission shall be appointed not later than 180 days after the date of enactment of the Indian Health Care Improvement Act Amendments of 2005, and the remaining members of the Commission shall be appointed not later than 60 days following the appointment of the congressional members.

''(5) VACANCY.—A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

''(d) COMPENSATION.—

''(1) CONGRESSIONAL MEMBERS.—Each congressional member of the Commission shall receive no additional pay, allowances, or benefits by reason of their service on the Commission and shall receive travel expenses and per diem in lieu of subsistence in accordance with sections 5702 and 5703 of title 5, United States Code.

''(2) OTHER MEMBERS.—Remaining members of the Commission, while serving on the business of the Commission (including travel time), shall be entitled to receive compensation at the per diem equivalent of the rate provided for level IV of the Executive Schedule under section 5315 of title 5, United States Code, and while so serving away from home and the member's regular place of business, a member may be allowed travel expenses, as authorized by the Chairman of the Commission. For purpose of pay (other than pay of members of the Commission) and employment benefits, rights, and privileges, all personnel of the Commission shall be treated as if they were employees of the United States Senate.

''(e) MEETINGS.—The Commission shall meet at the call of the Chair.

''(f) QUORUM.—A quorum of the Commission shall consist of not less than 15 members, provided that no less than 6 of the members of Congress who are Commission members are present and no less than 9 of the members who are Indians are present.

''(g) EXECUTIVE DIRECTOR; STAFF; FACILITIES.—

''(1) APPOINTMENT; PAY.—The Commission shall appoint an executive director of the Commission. The executive director shall be paid the rate of basic pay for level V of the Executive Schedule.

''(2) STAFF APPOINTMENT.—With the approval of the Commission, the executive director may appoint such personnel as the executive director deems appropriate.

''(3) STAFF PAY.—The staff of the Commission shall be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and shall be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title (relating to classification and General Schedule pay rates).

''(4) TEMPORARY SERVICES.—With the approval of the Commission, the executive director may procure temporary and intermittent services under section 3109(b) of title 5, United States Code.

''(5) FACILITIES.—The Administrator of General Services shall locate suitable office space for the operation of the Commission. The facilities shall serve as the headquarters of the Commission and shall include all necessary equipment and incidentals required for the proper functioning of the Commission.

''(h) HEARINGS.—(1) For the purpose of carrying out its duties, the Commission may hold such hearings and undertake such other activities as the Commission determines to be necessary to carry out its duties, provided that at least 6 regional hearings are held in different areas of the United States in which large numbers of Indians are present. Such hearings are to be held to solicit the views of Indians regarding the delivery of health care services to them. To constitute a hearing under this subsection, at least 5 members of the Commission, including at least 1 member of Congress, must be present. Hearings held by the study committee established in this section may count toward the number of regional hearings required by this subsection.

''(2) Upon request of the Commission, the Comptroller General shall conduct such studies or investigations as the Commission determines to be necessary to carry out its duties.

''(3)(A) The Director of the Congressional Budget Office or the Chief Actuary of the Centers for Medicare & Medicaid Services, or both, shall provide to the Commission, upon the request of the Commission, such cost estimates as the Commission determines to be necessary to carry out its duties.

''(B) The Commission shall reimburse the Director of the Congressional Budget Office for expenses relating to the employment in the office of the Director of such additional staff as may be necessary for the Director to comply with requests by the Commission under subparagraph (A).

''(4) Upon the request of the Commission, the head of any Federal agency is authorized to detail, without reimbursement, any of the personnel of such agency to the Commission to assist the Commission in carrying out its duties. Any such detail shall not interrupt or otherwise affect the civil service status or privileges of the Federal employee.

''(5) Upon the request of the Commission, the head of a Federal agency shall provide such technical assistance to the Commission as the Commission determines to be necessary to carry out its duties.

''(6) The Commission may use the United States mails in the same manner and under the same conditions as Federal agencies and shall, for purposes of the frank, be considered a commission of Congress as described in section 3215 of title 39, United States Code.

''(7) The Commission may secure directly from any Federal agency information necessary to enable it to carry out its duties, if the information may be disclosed under section 552 of title 4, United States Code. Upon request of the Chairman of the Commission, the head of such agency shall furnish such information to the Commission.

''(8) Upon the request of the Commission, the Administrator of General Services shall provide to the Commission on a reimbursable basis such administrative support services as the Commission may request.

''(9) For purposes of costs relating to printing and binding, including the cost of personnel detailed from the Government Printing Office, the Commission shall be deemed to be a committee of Congress.

''(i) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated $4,000,000 to carry out the provisions of this section, which sum shall not be deducted from or affect any other appropriation for health care for Indian persons.

''(j) FACA.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Commission.

**''SEC. 815. APPROPRIATIONS; AVAILABILITY.**

''Any new spending authority (described in subsection (c)(2)(A) or (B) of section 401 of the Congressional Budget Act of 1974) which is provided under this Act shall be effective for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts.

**''SEC. 816. AUTHORIZATION OF APPROPRIATIONS.**

''(a) IN GENERAL.—There are authorized to be appropriated such sums as may be necessary for each fiscal year through fiscal year 2015 to carry out this title.''.

(b) RATE OF PAY.—

(1) POSITIONS AT LEVEL IV.—Section 5315 of title 5, United States Code, is amended by striking ''Assistant Secretaries of Health and Human Services (6).'' and inserting ''Assistant Secretaries of Health and Human Services (7)''.

(2) POSITIONS AT LEVEL V.—Section 5316 of title 5, United States Code, is amended by striking ''Director, Indian Health Service, Department of Health and Human Services''.

(c) AMENDMENTS TO OTHER PROVISIONS OF LAW.—

(1) Section 3307(b)(1)(C) of the Children's Health Act of 2000 (25 U.S.C. 1671 note; Public Law 106–310) is amended by striking ''Director of the Indian Health Service'' and inserting ''Assistant Secretary for Indian Health''.

(2) The Indian Lands Open Dump Cleanup Act of 1994 is amended—

(A) in section 3 (25 U.S.C. 3902)—

(i) by striking paragraph (2);

(ii) by redesignating paragraphs (1), (3), (4), (5), and (6) as paragraphs (4), (5), (2), (6), and

(1), respectively, and moving those paragraphs so as to appear in numerical order; and

(iii) by inserting before paragraph (4) (as redesignated by subclause (II)) the following:

''(3) ASSISTANT SECRETARY.—The term 'Assistant Secretary' means the Assistant Secretary for Indian Health.'';

(B) in section 5 (25 U.S.C. 3904), by striking the section heading and inserting the following:

**''SEC. 5. AUTHORITY OF ASSISTANT SECRETARY FOR INDIAN HEALTH.'';**

(C) in section 6(a) (25 U.S.C. 3905(a)), in the subsection heading, by striking ''DIRECTOR'' and inserting ''ASSISTANT SECRETARY'';

(D) in section 9(a) (25 U.S.C. 3908(a)), in the subsection heading, by striking ''DIRECTOR'' and inserting ''ASSISTANT SECRETARY''; and

(E) by striking ''Director'' each place it appears and inserting ''Assistant Secretary''.

(3) Section 5504(d)(2) of the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (25 U.S.C. 2001 note; Public Law 100–297) is amended by striking ''Director of the Indian Health Service'' and inserting ''Assistant Secretary for Indian Health''.

(4) Section 203(a)(1) of the Rehabilitation Act of 1973 (29 U.S.C. 763(a)(1)) is amended by striking ''Director of the Indian Health Service'' and inserting ''Assistant Secretary for Indian Health''.

(5) Subsections (b) and (e) of section 518 of the Federal Water Pollution Control Act (33 U.S.C. 1377) are amended by striking ''Director of the Indian Health Service'' each place it appears and inserting ''Assistant Secretary for Indian Health''.

(6) Section 317M(b) of the Public Health Service Act (42 U.S.C. 247b–14(b)) is amended—

(A) by striking ''Director of the Indian Health Service'' each place it appears and inserting ''Assistant Secretary for Indian Health''; and

(B) in paragraph (2)(A), by striking ''the Directors referred to in such paragraph'' and inserting ''the Director of the Centers for Disease Control and Prevention and the Assistant Secretary for Indian Health''.

(7) Section 417C(b) of the Public Health Service Act (42 U.S.C. 285–9(b)) is amended by striking ''Director of the Indian Health Service'' and inserting ''Assistant Secretary for Indian Health''.

(8) Section 1452(i) of the Safe Drinking Water Act (42 U.S.C. 300j–12(i)) is amended by striking ''Director of the Indian Health Service'' each place it appears and inserting ''Assistant Secretary for Indian Health''.

(9) Section 803B(d)(1) of the Native American Programs Act of 1974 (42 U.S.C. 2991b–2(d)(1)) is amended in the last sentence by striking ''Director of the Indian Health Service'' and inserting ''Assistant Secretary for Indian Health''.

(10) Section 203(b) of the Michigan Indian Land Claims Settlement Act (Public Law 105–143; 111 Stat. 2666) is amended by striking ''Director of the Indian Health Service'' and inserting ''Assistant Secretary for Indian Health''.

**SEC. 3. SOBOBA SANITATION FACILITIES.**

The Act of December 17, 1970 (84 Stat. 1465), is amended by adding at the end the following new section:

''SEC. 9. Nothing in this Act shall preclude the Soboba Band of Mission Indians and the Soboba Indian Reservation from being provided with sanitation facilities and services under the authority of section 7 of the Act of August 5, 1954 (68 Stat. 674), as amended by the Act of July 31, 1959 (73 Stat. 267).''.

**SEC. 4. AMENDMENTS TO THE MEDICAID AND STATE CHILDREN'S HEALTH INSURANCE PROGRAMS.**

(a) EXPANSION OF MEDICAID PAYMENT FOR ALL COVERED SERVICES FURNISHED BY INDIAN HEALTH PROGRAMS.—

(1) EXPANSION TO ALL COVERED SERVICES.—Section 1911 of the Social Security Act (42 U.S.C. 1396j) is amended—

(A) by amending the heading to read as follows:

''INDIAN HEALTH PROGRAMS''; and

(B) by amending subsection (a) to read as follows:

''(a) ELIGIBILITY FOR REIMBURSEMENT FOR MEDICAL ASSISTANCE.—The Indian Health Service and an Indian Tribe, Tribal Organization, or an urban Indian Organization (as such terms are defined in section 4 of the Indian Health Care Improvement Act) shall be eligible for reimbursement for medical assistance provided under a State plan or under waiver authority with respect to items and services furnished by the Indian Health Service, Indian Tribe, Tribal Organization, or Urban Indian Organization if the furnishing of such services meets all the conditions and requirements which are applicable generally to the furnishing of items and services under this title and under such plan or waiver authority.''.

(2) ELIMINATION OF TEMPORARY DEEMING PROVISION.—Such section is amended by striking subsection (b).

(3) REVISION OF AUTHORITY TO ENTER INTO AGREEMENTS.—Subsection (c) of such section is redesignated as subsection (b) and is amended to read as follows:

''(b) AUTHORITY TO ENTER INTO AGREEMENTS.—The Secretary may enter into an agreement with a State for the purpose of reimbursing the State for medical assistance provided by the Indian Health Service, an Indian Tribe, Tribal Organizations, or an Urban Indian Organization (as so defined), directly, through referral, or under contracts or other arrangements between the Indian Health Service, an Indian Tribe, Tribal Organization, or an Urban Indian Organization and another health care provider to Indians who are eligible for medical assistance under the State plan or under waiver authority.''.

(4) REFERENCE CORRECTION.—Subsection (d) of such section is redesignated as subsection (c) and is amended—

(A) by striking ''For'' and inserting ''DIRECT BILLING.—For''; and

(B) by striking ''section 405'' and inserting ''section 401(d)''.

(b) SPECIAL RULES FOR INDIANS, INDIAN HEALTH CARE PROVIDERS, AND INDIAN MANAGED CARE ENTITIES.—

(1) IN GENERAL.—Section 1932 of the Social Security Act (42 U.S.C. 1396u–2) is amended by adding at the end the following new subsection:

''(h) SPECIAL RULES FOR INDIANS, INDIAN HEALTH CARE PROVIDERS, AND INDIAN MANAGED CARE ENTITIES.—A State shall comply with the provisions of section 413 of the Indian Health Care Improvement Act (relating to the treatment of Indians, Indian health care providers, and Indian managed care entities under a medicaid managed care program).''.

(2) APPLICATION TO SCHIP.—Section 2107(e)(1) of the Social Security Act (42 U.S.C. 1397gg(1)) is amended by adding at the end the following:

''(E) Subsections (a)(2)(C) and (h) of section 1932.''.

(c) SCHIP TREATMENT OF INDIAN TRIBES, TRIBAL ORGANIZATIONS, AND URBAN INDIAN ORGANIZATIONS.—Section 2105(c) of the Social Security Act (42 U.S.C. 1397ee(c)) is amended—

(1) in paragraph (2), by adding at the end the following:

''(C) INDIAN HEALTH PROGRAM PAYMENTS.—For provisions relating to authorizing use of allotments under this title for payments to Indian Health Programs and Urban Indian Organizations, see section 410 of the Indian Health Care Improvement Act.''; and

(2) in paragraph (6)(B), by inserting ''or by an Indian Tribe, Tribal Organization, or Urban Indian Organization (as such terms are defined in section 4 of the Indian Health Care Improvement Act)'' after ''Service''.

**SEC. 5. NATIVE AMERICAN HEALTH AND WELLNESS FOUNDATION.**

(a) IN GENERAL.—The Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) is amended by adding at the end the following:

**''TITLE VIII—NATIVE AMERICAN HEALTH AND WELLNESS FOUNDATION**

**''SEC. 801. DEFINITIONS.**

''In this title:

''(1) BOARD.—The term 'Board' means the Board of Directors of the Foundation.

''(2) COMMITTEE.—The term 'Committee' means the Committee for the Establishment of Native American Health and Wellness Foundation established under section 802(f).

''(3) FOUNDATION.—The term 'Foundation' means the Native American Health and Wellness Foundation established under section 802.

''(4) SECRETARY.—The term 'Secretary' means the Secretary of Health and Human Services.

''(5) SERVICE.—The term 'Service' means the Indian Health Service of the Department of Health and Human Services.

**''SEC. 802. NATIVE AMERICAN HEALTH AND WELLNESS FOUNDATION.**

''(a) IN GENERAL.—As soon as practicable after the date of enactment of this title, the Secretary shall establish, under the laws of the District of Columbia and in accordance with this title, the Native American Health and Wellness Foundation.

''(b) PERPETUAL EXISTENCE.—The Foundation shall have perpetual existence.

''(c) NATURE OF CORPORATION.—The Foundation—

''(1) shall be a charitable and nonprofit federally chartered corporation; and

''(2) shall not be an agency or instrumentality of the United States.

''(d) PLACE OF INCORPORATION AND DOMICILE.—The Foundation shall be incorporated and domiciled in the District of Columbia.

''(e) DUTIES.—The Foundation shall—

''(1) encourage, accept, and administer private gifts of real and personal property, and any income from or interest in such gifts, for the benefit of, or in support of, the mission of the Service;

''(2) undertake and conduct such other activities as will further the health and wellness activities and opportunities of Native Americans; and

''(3) participate with and assist Federal, State, and tribal governments, agencies, entities, and individuals in undertaking and conducting activities that will further the health and wellness activities and opportunities of Native Americans.

''(f) COMMITTEE FOR THE ESTABLISHMENT OF NATIVE AMERICAN HEALTH AND WELLNESS FOUNDATION.—

''(1) IN GENERAL.—The Secretary shall establish the Committee for the Establishment of Native American Health and Wellness Foundation to assist the Secretary in establishing the Foundation.

''(2) DUTIES.—Not later than 180 days after the date of enactment of this section, the Committee shall—

''(A) carry out such activities as are necessary to incorporate the Foundation under the laws of the District of Columbia, including acting as incorporators of the Foundation;

''(B) ensure that the Foundation qualifies for and maintains the status required to carry out this section, until the Board is established;

''(C) establish the constitution and initial bylaws of the Foundation;

''(D) provide for the initial operation of the Foundation, including providing for temporary or interim quarters, equipment, and staff; and

''(E) appoint the initial members of the Board in accordance with the constitution and initial bylaws of the Foundation.

''(g) BOARD OF DIRECTORS.—

''(1) IN GENERAL.—The Board of Directors shall be the governing body of the Foundation.

''(2) POWERS.—The Board may exercise, or provide for the exercise of, the powers of the Foundation.

''(3) SELECTION.—

''(A) IN GENERAL.—Subject to subparagraph (B), the number of members of the Board, the manner of selection of the members (including the filling of vacancies), and the terms of office of the members shall be as provided in the constitution and bylaws of the Foundation.

''(B) REQUIREMENTS.—

''(i) NUMBER OF MEMBERS.—The Board shall have at least 11 members, who shall have staggered terms.

''(ii) INITIAL VOTING MEMBERS.—The initial voting members of the Board—

''(I) shall be appointed by the Committee not later than 180 days after the date on which the Foundation is established; and

''(II) shall have staggered terms.

''(iii) QUALIFICATION.—The members of the Board shall be United States citizens who are knowledgeable or experienced in Native American health care and related matters.

''(C) COMPENSATION.—A member of the Board shall not receive compensation for service as a member, but shall be reimbursed for actual and necessary travel and subsistence expenses incurred in the performance of the duties of the Foundation.

''(h) OFFICERS.—

''(1) IN GENERAL.—The officers of the Foundation shall be—

''(A) a secretary, elected from among the members of the Board; and

''(B) any other officers provided for in the constitution and bylaws of the Foundation.

''(2) SECRETARY.—The secretary of the Foundation shall serve, at the direction of the Board, as the chief operating officer of the Foundation.

''(3) ELECTION.—The manner of election, term of office, and duties of the officers of the Foundation shall be as provided in the constitution and bylaws of the Foundation.

''(i) POWERS.—The Foundation—

''(1) shall adopt a constitution and bylaws for the management of the property of the Foundation and the regulation of the affairs of the Foundation;

''(2) may adopt and alter a corporate seal;

''(3) may enter into contracts;

''(4) may acquire (through a gift or otherwise), own, lease, encumber, and transfer real or personal property as necessary or convenient to carry out the purposes of the Foundation;

''(5) may sue and be sued; and

''(6) may perform any other act necessary and proper to carry out the purposes of the Foundation.

''(j) PRINCIPAL OFFICE.—

''(1) IN GENERAL.—The principal office of the Foundation shall be in the District of Columbia.

''(2) ACTIVITIES; OFFICES.—The activities of the Foundation may be conducted, and offices may be maintained, throughout the United States in accordance with the constitution and bylaws of the Foundation.

''(k) SERVICE OF PROCESS.—The Foundation shall comply with the law on service of process of each State in which the Foundation is incorporated and of each State in which the Foundation carries on activities.

''(l) LIABILITY OF OFFICERS, EMPLOYEES, AND AGENTS.—

''(1) IN GENERAL.—The Foundation shall be liable for the acts of the officers, employees, and agents of the Foundation acting within the scope of their authority.

''(2) PERSONAL LIABILITY.—A member of the Board shall be personally liable only for gross negligence in the performance of the duties of the member.

''(m) RESTRICTIONS.—

''(1) LIMITATION ON SPENDING.—Beginning with the fiscal year following the first full fiscal year during which the Foundation is in operation, the administrative costs of the Foundation shall not exceed 10 percent of the sum of—

''(A) the amounts transferred to the Foundation under subsection (o) during the preceding fiscal year; and

''(B) donations received from private sources during the preceding fiscal year.

''(2) APPOINTMENT AND HIRING.—The appointment of officers and employees of the Foundation shall be subject to the availability of funds.

''(3) STATUS.—A member of the Board or officer, employee, or agent of the Foundation shall not by reason of association with the Foundation be considered to be an officer, employee, or agent of the United States.

''(n) AUDITS.—The Foundation shall comply with section 10101 of title 36, United States Code, as if the Foundation were a corporation under part B of subtitle II of that title.

''(o) FUNDING.—

''(1) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out subsection (e)(1) $500,000 for each fiscal year, as adjusted to reflect changes in the Consumer Price Index for all-urban consumers published by the Department of Labor.

''(2) TRANSFER OF DONATED FUNDS.—The Secretary shall transfer to the Foundation funds held by the Department of Health and Human Services under the Act of August 5, 1954 (42 U.S.C. 2001 et seq.), if the transfer or use of the funds is not prohibited by any term under which the funds were donated.

**''SEC. 803. ADMINISTRATIVE SERVICES AND SUPPORT.**

''(a) PROVISION OF SUPPORT BY SECRETARY.—Subject to subsection (b), during the 5-year period beginning on the date on which the Foundation is established, the Secretary—

''(1) may provide personnel, facilities, and other administrative support services to the Foundation;

''(2) may provide funds for initial operating costs and to reimburse the travel expenses of the members of the Board; and

''(3) shall require and accept reimbursements from the Foundation for—

''(A) services provided under paragraph (1); and

''(B) funds provided under paragraph (2).

''(b) REIMBURSEMENT.—Reimbursements accepted under subsection (a)(3)—

''(1) shall be deposited in the Treasury of the United States to the credit of the applicable appropriations account; and

''(2) shall be chargeable for the cost of providing services described in subsection (a)(1) and travel expenses described in subsection (a)(2).

''(c) CONTINUATION OF CERTAIN SERVICES.—The Secretary may continue to provide facilities and necessary support services to the Foundation after the termination of the 5-year period specified in subsection (a) if the facilities and services—

''(1) are available; and

''(2) are provided on reimbursable cost basis.''.

(b) TECHNICAL AMENDMENTS.—The Indian Self-Determination and Education Assistance Act is amended—

(1) by redesignating title V (as added by section 1302 of the American Indian Education Foundation Act of 2000) (25 U.S.C. 458bbb et seq.)) as title VII;

(2) by redesignating sections 501, 502, and 503 (as added by section 1302 of the American Indian Education Foundation Act of 2000) as sections 701, 702, and 703, respectively; and

(3) in subsection (a)(2) of section 702 and paragraph (2) of section 703 (as redesignated by paragraph (2)), by striking ''section 501'' and inserting ''section 701''.

Mr. DORGAN. I thank Chairman MCCAIN for his leadership in introducing the Indian Health Care Improvement Act Amendments of 2005. I have been pleased to work with him in constructing this legislation. He and I are united in our agreement that getting the Indian Health Care Improvement Act reauthorized this year is the Indian Affairs Committee's top priority.

This legislation was last reauthorized in 1992. Since 1999, the director of the Indian Health Service and his staff have worked with a national steering committee of tribal leaders and representatives of Indian health organizations, as well as with the congressional authorizing committees, on reauthorization of and amendments to the Indian Health Care Improvement Act.

The bill that we introduce today reflects many elements of these discussions and negotiations over recent years, as well as testimony received at a number of hearings held by the Senate Indian Affairs Committee and House Resources Committee. It is important that we begin as soon as possible to receive the views of Indian Country, the administration and others on this legislation.

I am sure that in the course of this Congress, there will be changes to the bill that is being proposed today. As Chairman MCCAIN knows, I am committed to addressing the serious issue of teen suicide that is epidemic on several Indian reservations, in North Dakota and other areas of the country. I hope that the recommendations of Indian parents, students, tribal officials and health professionals may lead to additional provisions in the Act to deal with this very serious problem.

I look forward to the comments of the administration, especially the Indian Health Services, as well as other committees of the Congress, tribes and tribal organizations, urban Indian entities, and others to help us craft legislation that will provide creative and effective solutions to address the health care needs of American Indian and Alaska Native communities.

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Mr. SANTORUM (for himself and Mr. WYDEN):

S. 1058. A bill to amend the Public Health Service Act to provide liability protections for volunteer practitioners at health centers under section 330 of

such Act; to the Committee on Health, Education, Labor, and Pensions.

Mr. SANTORUM. Mr. President, I rise today to introduce the Community Health Center Volunteer Physician Protection Act of 2005 along with Senator RON WYDEN. Representative TIM MURPHY of Pennsylvania introduced identical bipartisan legislation in the House of Representatives, H.R. 1313.

Community health centers offer primary and preventive health care services to everyone, including low-income, underinsured and uninsured families. Community health centers are typically located in high-need areas identified by the Federal Government as having elevated poverty, higher than average infant mortality, and where few physicians practice. They tailor their services to fit the special needs and priorities of their communities, and offer services that help their patients access health care such as health education, transportation and home visitation.

While low-income individuals have access to Medicaid and the elderly and the disabled have access to Medicare, uninsured and underinsured families often delay seeing a doctor or turn to emergency departments where treatment is several times more expensive.

Community health centers, however, provide comprehensive and preventive care that adjusts charges for patient care according to family income. The Federal Government spends over $23 billion a year to offset losses incurred by hospitals for patients unable to pay their bills, and the Department of Health and Human Services note that medical care at community health centers cost only about $1.30 per day per patient served. In fact, medical care at community health centers is around $250 less per patient served than the average annual expenditure for an office-based medical provider.

Community health centers offer an affordable source of quality health care, but we need more of them. The President has proposed a $304 million increase for community health center programs to create 1,200 new or expanded sites to serve an additional 6.1 million people by next year. In order to meet that goal, the centers must double their workforce by adding double the clinicians by 2006. Hiring this many doctors would be costly, but encouraging more to volunteer would help to meet this need. While many physicians are willing to volunteer their services at these centers, they often hesitate due to the high cost of medical liability insurance. As a result, there are too few volunteer physicians to meet our health care needs.

By comparison, volunteer physicians at free health clinics and paid physicians at community health centers already receive comprehensive medical liability coverage under the Federal Tort Claims Act (FTCA).

Accordingly, the Community Health Center Volunteer Physician Protection Act of 2005 would extend the medical liability protections of F'TCA to volunteer physicians at community health centers. These protections are necessary to ensure that the centers can continue to play an important role in lowering our Nation's health care costs and meeting the needs for affordable and access quality health care. The Community Health Center Volunteer Physician Protection Act of 2005 is supported by the National Association of Community Health Centers, the American Medical Association and the American Osteopathic Association.

The impact that community health centers have on the citizens of the Commonwealth of Pennsylvania is significant. Pennsylvania is the home to twenty-nine Federal grantees, including 11 of which are rural, and 151 different service delivery sites. These services are crucial in my home state which also faces a severe medical liability crisis.

We must continue to encourage the spirit of giving and volunteerism, particularly in the healthcare arena. I urge my colleagues to support the Community Health Center Volunteer Physician Protection Act of 2005.

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By Mr. BROWNBACK (for himself, Mr. SMITH, Mr. CHAMBLISS, Mr. DODD, Mr. FEINGOLD, and Mrs. CLINTON):

S.J. Res. 19. A joint resolution calling upon the President to issue a proclamation recognizing the 30th anniversary of the Helsinki Final Act; to the Committee on Foreign Relations.

Mr. BROWNBACK. Mr. President, as Chairman of the Commission on Security and Cooperation in Europe I am pleased to submit a bipartisan resolution in support of the vital work of the Organization for Security and Cooperation in Europe (OSCE) in conjunction with the 30th anniversary of the signing of the Helsinki Final Act on August 1. I am pleased that Senate Commissioners SMITH of Oregon, CHAMBLISS, DODD, FEINGOLD, and CLINTON are included as original cosponsors of this resolution.

For three decades the OSCE has provided an important framework for advancing democracy, human rights and the rule of law in an expansive region encompassing the U.S. and Canada, Europe and the countries of Central Asia. Over the years, the OSCE participating States have hammered out an extensive body of commitments agreed on the basis of consensus. Our Commission was established by Congress to monitor and encourage the OSCE participating States—now numbering 55—to implement the commitments they have accepted. The Commission's mission can be distilled to a single word, accountability. As President Ford remarked when signing the Final Act on behalf of the United States, ''History will judge this Conference . . . not only by the promises we make, but by the promises we keep.''

The Final Act inspired courageous individuals in the Soviet Union and Eastern Europe to form monitoring groups to assess how their respective governments lived up to the commitments they had endorsed on paper. For their temerity in seeking accountability most activists were imprisoned, banished or exiled. Many endured years of suffering in the gulag. Some paid the price with their very lives. Ultimately, their sacrifice and the work of countless others began to bear fruit, ushering in the dramatic changes of the late 1980's and early 90's.

A catalyst for change, the Helsinki Final Act and the process it began provided an important backdrop against which President Ronald Reagan, standing in front of Berlin's Brandenburg Gate, could boldly declare, ''Mr. Gorbachev, tear down this wall.'' Bold leadership led to concrete results with the resolution of hundreds of cases of political prisoners and prisoners of conscience as well as the reunification of tens of thousands of families. Progress in implementing existing commitments paved the way for the participating States to address the need for systemic change to ensure sustained respect for human rights. In 1990, as the Iron Curtain began to fall, the leaders of the then—35 participating States declared, ''We undertake to build, consolidate and strengthen democracy as the only system of government of our nations.'' The following year they categorically and irrevocably declared that human rights commitments ''are matters of direct and legitimate concern to all participating States and do not belong exclusively to the internal affairs of the State concerned.'' In a step designed to preserve the unity of the Helsinki process, each country that joined the OSCE after 1975 submitted a letter in which the accepted in their entirety all commitments and responsibilities contained in the Helsinki Final Act, and all subsequent documents adopted prior to their membership. To underscore this continuity, the leaders of each of these countries signed the actual original 1975 Final Act document.

With the break up of the Soviet Union, many observers believed—or hoped—that the fall of communism would usher in a new era and the relatively speedy emergence of states that treat their citizens and neighbors with respect. Regrettably, the gap between commitment and the situation on the ground in a number of OSCE participating States remains wide, and in at least a couple of countries is growing alarmingly wider.

Elsewhere, the OSCE has played an important role in the aftermath of conflicts that ravaged much of the Balkans region. The atrocities committed during these conflicts, in particular during the Bosnian conflict from 1992 to 1995, represent the most egregious violations of Helsinki principles in Europe since the Final Act was signed, indeed since World War II. By placing field missions throughout that region, the OSCE has helped heal the wounds, in particular by facilitating the return

of those displaced from their homes, by improving conditions for elections, by training local police and by monitoring borders used by criminal gangs who profit from the chaos of conflict. There have been improvements in recent years, but there is still plenty of work to do to build the democratic institutions and respect for the rule of law.

Freedom is on the march in places some had written off as unsuited for democracy. Kyrgyzstan's Tulip Revolution, Ukraine's Orange Revolution, Georgia's Rose Revolution, and Serbia's Democratic Revolution testify to the enduring power of the ideas reflected in the Helsinki Final Act and other OSCE documents. As we approach the 30th anniversary of the Final Act, a number of signatory states—most notably Russia and Belarus—seem determined to diminish the democratic content of the OSCE and rewrite related commitments they accepted when they joined the OSCE. It is imperative that the United States hold firm to the values that have inspired democratic change in much of the OSCE region, even as we redouble our efforts to encourage all participating States to implement their freely accepted commitments.

In recent years the OSCE has made significant inroads in confronting and combating the rise in anti-Semitism and related violence in the OSCE region, including the United States. I would point out that the OSCE was the first multilateral institution to speak out against anti-Semitism. While many OSCE states have responded appropriately, vigorously investigating the perpetrators and pursuing criminal prosecution, we must remain vigilant in addressing manifestations of anti-Semitism. The OSCE conference on anti-Semitism and other forms of intolerance to be held in June in Cordoba will provide a timely opportunity for countries to report on measures they are taking to address these concerns.

The OSCE is also playing an important role in promoting the right of individuals to freely profess and practice their faith. A number of countries in the OSCE region have adopted or are considering laws on religion that would severely restrict or otherwise regulate this fundamental right. Similarly, the OSCE has given priority attention to efforts to combat trafficking in human beings, encouraging a number of participating States to adopt measures to prevent trafficking, prosecute perpetrators, and protect victims.

In her confirmation testimony, Secretary of State Rice referred to the potential role that multilateral institutions can play in multiplying the strength of freedom-loving nations. Indeed, the OSCE has tremendous potential to play an even greater role in promoting democracy, human rights, and rule of law in a region of strategic importance to the United States.

Over the past three decades the OSCE has served as an important catalyst for change. An important aspect of the success of the Helsinki Process has been the strong partnership forged with human rights advocates, including non-governmental organizations. As we look toward the work ahead, we would do well to recall the insightful observation of renowned physicist, humanitarian, and Nobel Peace Prize laureate, Andrei Sakharov, ''The whole point of the Helsinki Accords is mutual monitoring, not mutual evasion of difficult problems.''

## SUBMITTED RESOLUTIONS

### SENATE RESOLUTION 144—RECOGNIZING TIM NELSON AND HUGH SIMS FOR THEIR BRAVERY AND THEIR CONTRIBUTIONS IN HELPING THE FEDERAL BUREAU OF INVESTIGATION DETAIN ZACARIAS MOUSSAOUI

Mr. COLEMAN (for himself and Mr. DAYTON) submitted the following resolution; which was considered and agreed to:

S. RES. 144

Whereas Tim Nelson called the Federal Bureau of Investigation's (FBI) Minneapolis Office at 8:30 am on Wednesday, August 15, 2001;

Whereas Hugh Sims called the FBI's Minneapolis Office at 9:30 am on Wednesday, August 15, 2001;

Whereas their calls set into motion the only United States criminal prosecution, so far, stemming from the attacks on our Nation on September 11, 2001;

Whereas on April 22, 2005, Zacarias Moussaoui pled guilty to 6 counts of conspiracy to commit terrorism on September 11, 2001; and

Whereas according to FBI officials, the actions of these 2 courageous and greathearted men may have saved thousands of lives and preempted a possible attack on the White House: Now, therefore, be it

*Resolved*, That it is the sense of the Senate that—

(1) Tim Nelson and Hugh Sims should be recognized for their bravery and their contributions in helping the Federal Bureau of Investigation detain Zacarias Moussaoui;

(2) the United States is grateful to Tim Nelson and Hugh Sims for their heroism; and

(3) we, as a nation, should continue to follow their example as we fight the war on terror.

### SENATE CONCURRENT RESOLUTION 34—URGING THE GOVERNMENT OF THE REPUBLIC OF ALBANIA TO ENSURE THAT THE PARLIAMENTARY ELECTIONS TO BE HELD ON JULY 3, 2005, ARE CONDUCTED IN ACCORDANCE WITH INTERNATIONAL STANDARDS FOR FREE AND FAIR ELECTIONS

Mr. BROWNBACK (for himself and Mrs. CLINTON) submitted the following concurrent resolution; which was referred to the Committee on Foreign Relations:

S. CON. RES. 34

Whereas the United States maintains strong and friendly relations with the Republic of Albania and appreciates the ongoing support of the people of Albania;

Whereas the President of Albania has called for elections to Albania's parliament, known as the People's Assembly, to be held on July 3, 2005;

Whereas Albania is one of 55 participating States in the Organization for Security and Cooperation in Europe (OSCE), all of which have adopted the 1990 Copenhagen Document containing specific commitments relating to the conduct of elections;

Whereas these commitments, which encourage transparency, balance, and impartiality in an election process, have become the standard by which observers determine whether elections have been conducted freely and fairly;

Whereas, though improvements over time have been noted, the five multiparty parliamentary elections held in Albania between 1991 and 2001, as well as elections for local offices held between and after those years, fell short of the standards in the Copenhagen Document to varying degrees, according to OSCE and other observers;

Whereas with OSCE and other international assistance, the Government of Albania has improved the country's electoral and legal framework and enhanced the capacity to conduct free and fair elections;

Whereas subsequent to the calling of elections, Albania's political parties have accepted a code of conduct regarding their campaign activities, undertaking to act in accordance with the law, to refrain from inciting violence or hatred in the election campaign, and to be transparent in disclosing campaign funding; and

Whereas meeting the standards in the Copenhagen Document for free and fair elections is absolutely essential to Albania's desired integration into European and Euro-Atlantic institutions, including full membership in the North Atlantic Treaty Organization (NATO), as well as to Albania's progress in addressing official corruption and combatting organized crime: Now, therefore, be it

*Resolved by the Senate (the House of Representatives concurring)*, That Congress—

(1) welcomes the opportunity for the Republic of Albania to demonstrate its willingness and preparedness to take the next steps in European and Euro-Atlantic integration by holding parliamentary elections on July 3, 2005, that meet the Organization for Security and Cooperation in Europe (OSCE) standards for free and fair elections as defined in the 1990 Copenhagen Document;

(2) firmly believes that the citizens of Albania, like all people, should be able to choose their own representatives in parliament and government in free and fair elections, and to hold these representatives accountable through elections at reasonable intervals;

(3) supports commitments by Albanian political parties to adhere to a basic code of conduct for campaigning and urges such parties and all election officials in Albania to adhere to laws relating to the elections, and to conduct their activities in an impartial and transparent manner, by allowing international and domestic observers to have unobstructed access to all aspects of the election process, including public campaign events, candidates, news media, voting, and post-election tabulation of results and processing of election challenges and complaints;

(4) supports assistance by the United States to help the people of Albania establish a fully free and open democratic system, a prosperous free market economy, and the rightful place of Albania in European and Euro-Atlantic institutions, including the North Atlantic Treaty Organization (NATO); and

(5) encourages the President to communicate to the Government of Albania, to all political parties and candidates in Albania,

and to the people of Albania the high importance attached by the United States Government to this parliamentary election as a central factor in determining the future relationship between the United States and Albania.

## AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. INHOFE. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on May 17, 2005, at 10 a.m., to conduct a hearing on ''Examining the Current Legal and Regulatory Requirements and Industry Practices for Credit Card Issuers with Respect to Consumer Disclosures and Marketing Efforts.''

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

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. INHOFE. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet on Tuesday, May 17, 2005, at 10 a.m., on Port Security.

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

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. INHOFE. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate, on Tuesday, May 17 at 9:30 a.m. to consider pending calendar business.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. INHOFE. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Tuesday, May 17, 2005 at 9:30 a.m. to hold a hearing on the Commission on Africa report.

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

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

Mr. INHOFE. Mr. President, I ask unanimous consent that the Permanent Subcommittee on Investigations be authorized to meet on Tuesday, May 17, 2005, at 9:30 a.m., for a hearing entitled ''Oil For Influence: How Saddam Used Oil to Reward Politicians and Terrorist Entities Under the United Nations Oil-for-Food Program.''

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. INHOFE. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on May 17, 2005 at 2:30 p.m. to hold a business meeting.

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

SUBCOMMITTEE ON CLEAN AIR, CLIMATE CHANGE AND NUCLEAR SAFETY

Mr. INHOFE. Mr. President, I ask unanimous consent that the Subcommittee on Clean Air, Climate Change, and Nuclear Safety be authorized to meet on Tuesday, May 17, 2005 at 9:30 a.m. to conduct a closed hearing regarding nuclear security. Only Members and staff with Top Secret security clearance are able to attend. The Hearing will be held in S–407 in the Capitol.

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

SUBCOMMITTEE ON IMMIGRATION, BORDER SECURITY, AND CITIZENSHIP SUBCOMMITTEE ON TERRORISM, TECHNOLOGY, AND HOMELAND SECURITY

Mr. INHOFE. Mr. President, I ask unanimous consent that the Subcommittee on Immigration, Border Security and Citizenship and the Subcommittee on Terrorism, Technology and Homeland Security be authorized to meet to conduct a hearing on ''The Need for Comprehensive Immigration Reform: Strengthening Our National Security'' on Tuesday, May 17, 2005 at 2:30 p.m. in Dirksen 226.

*Witness List*

Panel I: the Honorable Asa Hutchinson, Chair of the Homeland Security Practice, Venable, L.L.P., Former Under Secretary for Border and Transportation Security, Department of Homeland Security, Washington, DC; Margaret D. Stock, Assistant Professor of Law, United States Military Academy, West Point, NY; and Mark Reed, Border Management Strategies, LLC, Tucson, AZ.

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

SUBCOMMITTEE ON RETIREMENT SECURITY AND AGING

Mr. INHOFE. Mr. President, I ask unanimous consent that the Subcommittee on Retirement Security and Aging, be authorized to hold a hearing during the session of the Senate on Tuesday, May 17, 2005 at 10 a.m. in SD–430.

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

## PRIVILEGE OF THE FLOOR

Mrs. BOXER. Mr. President, I ask unanimous consent Patty Skuster, a fellow in my office, be granted the privilege of the floor for the remainder of the proceedings.

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

## HISTORIC HAVANA MEETING OF ASSEMBLY TO PROMOTE THE CIVIL SOCIETY IN CUBA

Mr. MCCONNELL. Mr. President, I ask unanimous consent the Foreign Relations Committee be discharged from further consideration, and the Senate now proceed to S. Res. 140.

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

The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 140) expressing support for the historic meeting in Havana of the Assembly to Promote the Civil Society in Cuba on May 20, 2005, as well as to all those courageous individuals who continue to advance liberty and democracy for the Cuban people.

There being no objection, the Senate proceeded to consider the resolution.

Mr. MCCONNELL. I ask unanimous consent the resolution be agreed to, the preamble be agreed to, and the motion to reconsider be laid upon the table.

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

The resolution (S. Res. 140) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 140

Whereas on May 20, 1902, the Republic of Cuba obtained its independence;

Whereas in the spirit of Jose Marti, many of the future leaders of a free Cuba have called for a meeting of the Assembly of the Civil Society in Cuba, an organization that consists of over 360 dissident and civil society groups in Cuba;

Whereas, on May 20, 2005, the Assembly to Promote the Civil Society in Cuba seeks to convene a historic meeting in Havana on the 103rd anniversary of Cuban Independence; and

Whereas the Assembly to Promote the Civil Society in Cuba will focus on bringing democracy and liberty to the island of Cuba: Now, therefore, be it

*Resolved*, That the Senate—

(1) extends its support and solidarity to the participants of the historic meeting, in Havana, of the Assembly to Promote the Civil Society in Cuba on May 20, 2005;

(2) urges the international community to support the Assembly and its mission to bring democracy and human rights to Cuba;

(3) encourages the international community to oppose any attempts by the Cuban government to repress, punish, or intimidate the organizers and participants of the Assembly; and

(4) shares the pro-democracy ideals of the Assembly to Promote the Civil Society in Cuba and believes that the Assembly and its mission will advance freedom and democracy for the people of Cuba.

## RECOGNIZING THE CONTRIBUTION OF TIM NELSON AND HUGH SIMS IN DETAINING ZACARIAS MOUSSAOUI

Mr. MCCONNELL. Mr. President, I ask unanimous consent the Senate now proceed to the consideration of S. Res. 144, which was submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 144) recognizing Tim Nelson and Hugh Sims for their bravery and their contributions in helping the Federal Bureau of Investigation retain Zacarias Moussaoui.

There being no objection, the Senate proceeded to consider the bill.

Mr. MCCONNELL. I ask unanimous consent the resolution be agreed to, the preamble be agreed to, and the motion to reconsider be laid upon the table.

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

The resolution (S. Res. 144) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 144

Whereas Tim Nelson called the Federal Bureau of Investigation's (FBI) Minneapolis Office at 8:30 am on Wednesday, August 15, 2001;

Whereas Hugh Sims called the FBI's Minneapolis Office at 9:30 am on Wednesday, August 15, 2001;

Whereas their calls set into motion the only United States criminal prosecution, so far, stemming from the attacks on our Nation on September 11, 2001;

Whereas on April 22, 2005, Zacarias Moussaoui pled guilty to 6 counts of conspiracy to commit terrorism on September 11, 2001; and

Whereas according to FBI officials, the actions of these 2 courageous and greathearted men may have saved thousands of lives and preempted a possible attack on the White House: Now, therefore, be it

*Resolved*, That it is the sense of the Senate that—

(1) Tim Nelson and Hugh Sims should be recognized for their bravery and their contributions in helping the Federal Bureau of Investigation detain Zacarias Moussaoui;

(2) the United States is grateful to Tim Nelson and Hugh Sims for their heroism; and

(3) we, as a nation, should continue to follow their example as we fight the war on terror.

## ORDERS FOR WEDNESDAY, MAY 18, 2005

Mr. MCCONNELL. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 9:30 a.m. on Wednesday, May 18. I further ask that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, and the time for the two leaders be reserved.

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

## PROGRAM

Mr. MCCONNELL. Mr. President and Members of the Senate, tomorrow morning the Senate will begin consideration of the nomination of Priscilla Owen to be U.S. circuit court judge for the Fifth Circuit. We will debate the nomination throughout the day tomorrow. I encourage Members who wish to speak on the nomination to come to the Senate during tomorrow's session.

I talked to the Democrat leader about the structure of the debate, and he will accommodate Members who desire to make statements. I encourage Senators to contact cloakrooms if they would like to speak on the nomination. We look forward to the debate on Priscilla Owen, and we hope all of the Members will participate.

## ORDER FOR ADJOURNMENT

Mr. MCCONNELL. If there is no further business to come before the Senate, I ask the Senate stand in adjournment under the previous order at the conclusion of the remarks of the distinguished Senator from Tennessee.

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

The Senator from Tennessee is recognized.

## ENERGY

Mr. ALEXANDER. Mr. President, the matter of giving the President an up-or-down vote on his judicial nominees or, more accurately, giving the country an opportunity for any President to have what every President has always had, a chance for the full Senate to have an up-or-down vote on his nominees, is a matter of great importance to our country. It is not the only business before the Senate. I would like to speak for a few minutes about natural gas prices and prices at the pump and how, at a time when China and India are buying up oil reserves around the world, we make sure that we have plenty of energy.

We spend, in this country, about $2,500 per person on energy per year. We are about to have a big debate and discussion in the Senate about how much we spend on energy in the future. The Senator from Louisiana was here a few minutes ago. She made an excellent address. She summed up some of what happened today in the Senate Energy Committee. It was a very good meeting. At one time, virtually every member of the Senate Energy Committee was present, even though the purpose of the meeting was simply for us to make opening statements and to take initial action on a few relatively noncontroversial matters. That is because all of us understand how important it is.

It is also because Chairman DOMENICI and Ranking Member BINGAMAN, who are from New Mexico, have worked unusually hard in creating a framework so that we could have a significant piece of legislation. To those outside the Senate, that may sound like a lot of ''inside baseball,'' but it is not. It is crucially important for the Republican majority to have listened, as Senator DOMENICI and the rest of us have over the last several months, to the views and attitudes of the Democratic minority and vice versa.

What is happening in the Energy Committee is no accident. Senator DOMENICI, at the beginning of the year, told the Republican members of the committee that as he looked back over the last session of Congress and saw our failure as a Congress to grapple with this question of high prices at the gas pump, high prices for natural gas, which are driving manufacturing jobs overseas, which are raising costs for farmers, which are making it hard to heat and cool our homes, he decided he wanted to operate in a little bit different way. So we have. In a way, it is a good thing that we didn't pass an energy bill last year because this one ought to be a lot better, a lot more aggressive, and a lot bolder.

The situation is more urgent. We have a better bipartisan framework, and we have learned a lot in the last year. Senator DOMENICI and Senator BINGAMAN have cochaired large conferences on coal and natural gas, so Senators themselves and key staff members could learn about the newest technologies and could understand the facts about what are a very complex set of considerations so we are better prepared.

I especially compliment the Senator from Louisiana. She mentioned the Americans Outdoors Act that she and I introduced together again yesterday. We introduced it in the last session of Congress. She has worked on major parts of it for the last 6 years. But basically it picks up a principle that was a part of President Reagan's Commission on Americans Outdoors which I chaired 20 years ago. It sought to create a steady stream of reliable funding for conservation purposes, specifically the Land and Water Conservation Fund, for city parks, for wildlife, for enjoyment by soccer players, by duck hunters, by walkers, by most Americans.

The idea is, if we are going to drill for gas and oil and use up some of our assets, we ought to take a part of that and use it and put it back as an asset. If there is an environmental burden, there ought to be an environmental benefit. That is a very simple idea.

She and I call it a ''conservation royalty,'' and it is our hope to persuade a majority of the Senate, which we believe is conservation minded, that a majority of Americans—and we know there is a conservation majority in the United States—want us to help them have more places to enjoy themselves outdoors.

I look forward to working with her on that and the conservation royalty.

Mr. President, let me put the meeting Senator DOMENICI chaired in the Energy Committee in this context. A couple weeks ago, I had a private letter from GEN Carl Steiner. He is a real American hero. He was head of the special forces, a very brave man. He wrote to remind me that September 11 was a big surprise, but it should not have been. During the 1980s and 1990s, there were terrorist attacks on American interests around the world and in our country itself. If we had paid attention, General Steiner reminded me, we would not have been surprised on 9/11.

The next big surprise in this country will be to our pocketbooks. But it doesn't have to happen. If we pay attention, we already know we have the highest natural gas prices in the industrialized world. Three or 4 years ago, we had the lowest natural gas prices in the industrialized world. Today we have the highest. We know gas at the pump is at record levels for our country. We know China and India are increasing their demand for energy. We know that because of high prices, manufacturing jobs are moving overseas, farmers are taking a pay cut, and consumers are paying too much to heat and cool their homes.

We can avoid this next big surprise—the one to our pocketbooks—by passing an energy bill in the next few weeks that lowers prices, cleans the air, and reduces dependence upon foreign oil. To keep our standard of living, our goal must be to aggressively conserve and to aggressively produce an adequate, reliable supply of low-cost, American-produced, clean energy.

Some may say, why the emphasis on clean energy? Isn't that over in the clean air debate in the Environment and Public Works Committee? Well, yes, it is, jurisdictionwise. They may have jurisdiction on clean air. That is the problem. But the Energy bill has the solution to the clean air problem. We are not going to have clean air just by passing a bunch of caps on things. We are going to have it by transforming the way we produce energy in this country.

Senator BINGAMAN and Senator DOMENICI, as I mentioned earlier, have worked hard to produce a bipartisan framework to accomplish the goal I just described. But the danger is still that we will be too timid and we will compromise our differences and produce a bill that doesn't do much. That is why Senator JOHNSON and I introduced the bipartisan Natural Gas Price Reduction Act of 2005 a few weeks ago. According to a preliminary analysis by the American Council for an Energy Efficient Economy, our act would yield four times the natural gas savings or production of last year's energy bill. In other words, our bill would make up seven of the eight TFC of America's projected shortfall in natural gas by 2020. That is one way to lower natural gas prices.

I suggested this morning—and some members of the committee seemed to respond well to the idea—that we think of this legislation we are beginning to work on in the Senate as the ''clean energy act of 2005.'' Along with some of my colleagues, I support legislation to reduce carbon and other pollutants in our air. But none of these caps on pollution will do the job. None will produce an adequate supply of low-cost, reliable, American-produced, clean energy. The only way to do that is, first, aggressive conservation and, secondly, to aggressively transform the way we produce energy.

In writing our bill, we have to keep in mind what the Finance Committee of the Senate will do with the tax part of this bill. Some of this Energy bill will be in the Environment and Public Works Committee, some of it is in our Energy Committee, and some of it is in the Finance Committee—the tax part. So it all eventually will come together to the floor, where I am sure there will be even more amendments.

But the reason—in our deliberations this week and next week in the Energy Committee we have to keep in mind what the Finance Committee is doing—is we have limited resources. This is not going to be a $30 billion bill. Our Budget Committee says the Energy bill will be an $11 billion bill over the next 5 years. That is what it will cost in direct spending and tax credits. The administration hopes it will be even smaller—an $8 billion bill. We won't lower prices if we spend our money on more tax credits to oil companies, and we will not lower prices if we continue current policies and spend $3.7 billion over the next 5 years, or nearly one-third of what the administration wants us to spend, on building giant windmills that produce puny amounts of high-cost, unreliable power, and destroy the landscape. We don't need a national windmill policy; we need a national clean energy policy.

It is important for us to know what the tax committee is doing because it is important for us to know, as I mentioned, that, for example, if the tax committee continues its production tax credit for so-called renewable energy—$3.7 billion over the next 5 years of the $8 billion or $11 billion we have is gone, and we don't have it to build clean coal gas plants, for credits for hybrid cars, for credits for new nuclear—the things that will make a difference for us. Of that $3.7 billion, 70 percent of it will be spent on windmills. So current policies would say, if we have $8 billion or $11 billion to spend—the total we have to spend on energy—we would spend a large part on these giant windmills, which raise prices, only work 20, 25, or 30 percent of the time, are being abandoned in many countries that started using them, and absolutely destroy the American landscape, because they are 100 yards tall, wider than jumbo jets, make noise up to a half a mile away.

Here are some of the specific steps I believe we should take to conserve and transform production. Many of these proposals are in the Alexander-Johnson legislation we introduced a few weeks ago. Several have been incorporated in Chairman DOMENICI's draft before our committee. Here are a few examples in the areas of conservation, first, and in the area of transforming production:

In conservation, consumer education. A 4-year national consumer education program to reduce the demand for energy, tailored after the successful California program, could avoid energy consumption of about 20 powerplants over 4 years.

Efficiency standards. Higher appliance and equipment standards for natural gas efficiency could save the equivalent of 24 1,000-megawatt powerplants by 2020.

Cogeneration. Regulatory relief enabling manufacturers to more easily produce their own power and steam from a single source would save money and energy and reduce pollutants.

Efficient electricity generation. Incentives to encourage utilities to utilize their natural gas plants based on efficiency—we call that efficient dispatch—to increase their efficiency as much as 40 percent. In plain English, there are old natural gas plants and there are new natural gas plants. The new ones use a lot less natural gas than the old ones to produce the same amount of power. Using gas from the new ones first would save a lot of gas.

Oil savings. Last session of Congress, the Congress adopted a plan Senator LANDRIEU and I recommended to direct the administration to come up with a plan that would reduce by 1 million barrels per day by 2015 our use of gasoline.

Senator JOHNSON and I in our legislation suggest the administration adopt a plan to reduce gasoline use by 1.75 million barrels per day. This would save enough gasoline to equal twice the anticipated production from the Arctic National Wildlife Refuge.

And finally, in terms of conservation, another important idea is support for hybrid and advanced diesel vehicles. Most of this will have to come from the Finance Committee. But the National Commission on Energy Policy, which a lot of us have been reading, both Democrats and Republicans, ''A Bipartisan Strategy to Meet America's Challenges,'' has a number of excellent ideas in it.

One of them is $1.5 billion over 5 years in manufacturer and consumer incentives for domestic production and purchase of efficient hybrid electric and advanced diesel vehicles. Hybrid vehicles use about 60 percent of the gasoline conventional vehicles use. The Commission wisely suggested that we have some loan guarantees or tax credits. We might do the loan guarantees in our own legislation in the Energy Committee to help make sure those hybrid vehicles and clean diesel vehicles are built in the United States.

The other area in which we need to move boldly, and I hope we will, is in transforming the way we produce energy. At the head of the list has to be nuclear power. There is a lot of talk in this body about global warming and carbon. Mr. President, 70 percent of the carbon-free energy we produce in the United States comes from nuclear power. Again, Seventy percent of the carbon-free energy we produce in the United States comes from nuclear power. And in the next 5, 10, 15 years, if we are serious about global warming, reducing the amount of carbon in the air and setting an example for the rest of the world to do the same, we will appropriate at least $2 billion for research and development and loan guarantees to help start at least two new advanced technology plants.

We have not built a new nuclear powerplant in America since the 1970s. TVA, the Tennessee Valley Authority, fortunately, is reopening Browns Ferry, one of its plants. This will basically be a new plant. Yet France produces 80 percent of its power using nuclear energy. Japan builds a new nuclear powerplant every year. Our Navy operates 70, 80, 90 nuclear vessels. I guess the number is classified; I do not know the exact number. They have never had one single, not one single accident with those reactors since the

1950s. Yet here we are, the most scientifically advanced nation in the world, worried about air pollution, worried about the need for low-cost, reliable supply of power, many are worried about global warming and carbon in the air, and we have not built a new nuclear powerplant since the 1970s. We should start.

The second best hope for transforming our way of producing a low-cost, reliable supply of American-produced energy is coal. We need a national coal gasification strategy. Again, both Democratic and Republican Members have been studying this very carefully. I suggest $2 billion in loan guarantees for the deployment of six coal gasification plants by 2013 and $2 billion for industrial applications of coal gasification.

Clean coal gasification, very simply, is taking coal, of which we have plenty, hundreds of years of supply, and turning it into gas and making electricity from it, either in freestanding powerplants or letting industries do that to produce their own power as, for example, Eastman does in Kingsport, TN.

Next we should focus on carbon capture and sequestration from coal plants. Coal gasification eliminates most of the problems we have with mercury, nitrogen, and sulfur, but it still produces carbon. If we could find a way to capture that carbon and put it away somewhere, sequester it, we would have created right there, in addition to nuclear power, a way to have a fairly permanent supply of low-cost, reliable, adequate American-produced energy.

That technology is not mature yet, but we need a research program to demonstrate commercial scale carbon capture and geological sequestration at a variety of sites as well as research to reduce capital costs of processes to sequester carbon. That is also one of the recommendations of the National Commission on Energy Policy.

As many leading environmental groups have pointed out, coal gasification and carbon capture is the best strategy for the rest of the world. Even if we clean up our air, even if somehow we limit our production of carbon, if China, India, and Brazil build hundreds and hundreds of dirty coal plants around the world, it will not matter what we do because the air goes around the world, and we will end up breathing it, too.

So it is urgent that we move ahead with advanced nuclear technology and with advanced coal gasification and carbon capture and sequestration, not just for us, but in hopes that the rest of the world will adopt our technology and, therefore, make our air safer and cleaner and make us less dependent on foreign oil.

We need to increase our supply of domestic natural gas, and there are specific ways in the Alexander-Johnson legislation to do that. I hope the Senate bill adopts those ideas.

No. 1, we should provide the Department of Interior with the legal authority to issue ''natural gas only'' leases. Some of the oil companies are saying, ''What do you do if you find oil?'' We are not the experts; they are. If the State of Virginia or North Carolina, or some other State prefers to look for natural gas, I would like for them to have that option, and today the Secretary does not have that option.

No. 2, we should instruct the Department of Interior to draw the State boundary according to established international law between Alabama and Florida regarding lease 181 and lease portions of it not in Florida by December 31, 2007.

That may sound very technical, but here is what that means. The Secretary should draw the State line out into the water, which should have been done years ago. The part that is in Florida can't be drilled on because of the moratorium. The part that is in Alabama could be. Some estimates say 20 percent of the natural gas that is produced in the Gulf of Mexico over the next several years could come from that new part of lease 181 in Alabama. That would lower natural gas prices.

Finally, it allows States to selectively waive the Federal moratoria on offshore production and collect significant revenues from such production.

If Tennessee had a coastline—I know Georgia does—but if Tennessee had one, here is what I would do. I would put some gas rigs so far out in the ocean that nobody could see them. I would take that money and I would put it in an endowment of Tennessee colleges and universities so they would be the best funded and gradually the best colleges and universities in America. Second, I would take the rest of the money and I would lower taxes.

That would be a pretty good platform for a Governor. I wish I could do it in Tennessee, but maybe a Governor of New Jersey or Georgia or Florida or Virginia will want to do that. I think they should have that option.

Finally—I said finally, but one other thing on domestic natural gas. We should take part of these revenues from offshore drilling and create a conservation royalty. That royalty would be equally shared by all the States in the Land and Water Conservation Fund and wildlife grants. We should take that money and invest it in conservation so an environmental burden becomes an environmental benefit.

There are a couple of other things I would specifically like to mention. We are going to have to temporarily increase the foreign supply of natural gas. We have no option if we want lower natural gas prices. We do that by streamlining the permitting of facilities for bringing LNG from overseas to the United States. We need to give the Federal Energy Regulatory Commission exclusive authority for siting and regulating LNG terminals while still preserving States' authorities under the Coastal Zone Management Act, Clean Water Act, and the Clean Air Act. Renewable power is an important part of what we ought to do. Regarding solar power, the production tax credit now in the law for solar power really isn't enough to make solar power a viable option. We should increase that over the next several years. We should adopt the work that many Democrats, and President Bush, and many Republicans have worked on to encourage hydrogen fuel cell initiatives.

We should require that FERC grant or deny a terminal pipeline application within 1 year. We should clarify the permitting processes for pipelines and natural gas storage facilities.

These are specific steps. They are aggressive steps. But they are the kind of steps we need to take.

I make these remarks, as I said at the beginning, because Senator DOMENICI and Senator BINGAMAN, both of whom have been here for a long time, have worked pretty hard to give us a chance to have the right kind of clean energy bill. I believe the American people expect us in the Senate to know that natural gas prices are driving jobs overseas and are raising prices for farmers. They expect us to know they are having a hard time affording the cost of gasoline. They expect us to take steps to do something about it. Only the steps like the ones I have mentioned will create a true Clean Energy Act of 2005. Only steps like these will produce adequate conservation and adequate supply of reliable, low-cost, American-produced, clean energy. Only steps like these will lower prices and save the United States from the next big surprise: The surprise to our pocketbooks because we failed to prepare for the oncoming energy crisis.

## ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

The PRESIDING OFFICER. Under the previous order, the Senate stands adjourned until 9:30 a.m. tomorrow morning.

Thereupon, the Senate, at 6:33 p.m., adjourned until Wednesday, May 18, 2005, at 9:30 a.m.

## NOMINATIONS

Executive nominations received by the Senate May 17, 2005:

COMMODITY FUTURES TRADING COMMISSION

REUBEN JEFFERY III, OF THE DISTRICT OF COLUMBIA, TO BE A COMMISSIONER OF THE COMMODITY FUTURES TRADING COMMISSION FOR A TERM EXPIRING APRIL 13, 2007, VICE BARBARA PEDERSEN HOLUM, TERM EXPIRED.

REUBEN JEFFERY III, OF THE DISTRICT OF COLUMBIA, TO BE CHAIRMAN OF THE COMMODITY FUTURES TRADING COMMISSION, VICE JAMES E. NEWSOME, RESIGNED.

DEPARTMENT OF ENERGY

JAMES A. RISPOLI, OF VIRGINIA, TO BE AN ASSISTANT SECRETARY OF ENERGY (ENVIRONMENTAL MANAGEMENT), VICE JESSIE HILL ROBERSON, RESIGNED.

DEPARTMENT OF STATE

LINDA JEWELL, OF THE DISTRICT OF COLUMBIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF ECUADOR.

JOHN F. TEFFT, OF VIRGINIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO GEORGIA.

DEPARTMENT OF LABOR

CHARLES S. CICCOLELLA, OF VIRGINIA, TO BE ASSISTANT SECRETARY OF LABOR FOR VETERANS' EMPLOYMENT AND TRAINING, VICE FREDERICO JUARBE, JR., RESIGNED.

IN THE AIR FORCE

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES AIR FORCE TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

*To be lieutenant general*

MAJ. GEN. STEPHEN R. LORENZ, 0000

IN THE MARINE CORPS

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES MARINE CORPS TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

*To be lieutenant general*

MAJ. GEN. RICHARD S. KRAMLICH, 0000

IN THE COAST GUARD

THE FOLLOWING NAMED INDIVIDUAL FOR APPOINTMENT AS A PERMANENT REGULAR OFFICER IN THE UNITED STATES COAST GUARD IN THE GRADE INDICATED UNDER TITLE 14, U.S.C., SECTION 211:

*To be lieutenant commander*

KATHRYN C. DUNBAR, 0000