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Senate

The Senate met at 9:30 a.m. and was called to order by the President pro tempore (Mr. STEVENS).

PRAYER

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

Let us pray.

O Lord our God, we exalt Your Name, for You are great and highly to be praised. We praise You because Your power is unlimited and You are able to do immeasurably more than we can imagine. You rule over the heavens and the Earth and hold in Your power our breath and our destiny.

Thank You, Lord, for Your sovereignty over the days of our lives. Exercise Your gracious authority over our Nation as You guide our lawmakers in the tasks of freedom. Give them an awareness of Your presence and Your willingness to be an ever-present help for life's challenges.

Help each of us to labor, not only for time, but also for eternity. Let our words and thoughts be acceptable in Your sight, for You are our strength and our Redeemer.

Amen.

PLEDGE OF ALLEGIANCE

The PRESIDENT pro tempore 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.

LEADER TIME

The PRESIDENT pro tempore. Under the previous order, there will now be a period of leader time under the standing order.

The Senator from Texas.

SCHEDULE

Mr. CORNYN. Mr. President, on behalf of the leader, this morning we will have a period of morning business for up to 60 minutes. The first 30 minutes of that time will be under the control of the majority side, and the second 30 minutes will be controlled by the minority side of the aisle. Following morning business, the Senate will resume consideration of S. 150, a bill relating to taxation of Internet access.

Yesterday, we made a little progress on the bill by debating and disposing of one amendment related to the definitions in the bill. Unfortunately, following the vote we were sidetracked with an amendment related to a completely different subject than Internet access.

Currently, we are scheduled for cloture votes beginning Thursday on the Daschle energy-related first-degree amendment to the underlying bill, the Domenici second-degree amendment on energy, and finally the McCain substitute which is on the Internet access tax subject.

The chairman of the committee will be here shortly this morning, and I believe it will be his desire to try to reach agreements to consider amendments relating to the underlying bill. Hopefully that will be possible and therefore rollcall votes will occur on amendments today.

The PRESIDENT pro tempore. The deputy minority leader.

Mr. REID. Parliamentary inquiry: If I do not reserve the Democratic leader's time, he can use that time throughout the day or do I need to reserve it?

The PRESIDENT pro tempore. You may reserve it.

Mr. REID. The leader is here, so I will not do that.

RECOGNITION OF THE MINORITY LEADER

The PRESIDENT pro tempore. The Democratic leader is recognized.

AGRICULTURAL ISSUES FACING THE COUNTRY

Mr. DASCHLE. Mr. President, I want to talk today about several agricultural issues.

First, last week, I met with John Stewart and Bill Fielding. They run a company called Creekstone Farms that sells premium Black Angus beef cattle.

Creekstone had a good marketing idea: In the wake of the mad cow scare, Creekstone thought that one way to re-open the Japanese markets, which had accounted for 28 percent of our Nation's beef exports, would be to privately test all of their cattle for BSE, or mad cow disease, at no cost to the taxpayers.

The Japanese markets have been closed for several months, but they have said that they would re-open their markets for Creekstone's beef.

Creekstone has built a top-notch laboratory at their headquarters in Kansas, and they have hired several full-time animal health experts. But they wanted to do this the right way, so they asked USDA to support them in their efforts.

The Department actually said ''no.'' They said Creekstone could not test.

You see, USDA doesn't want to set a precedent that all beef needs to be tested. They suggest that large meat packers might essentially be forced into testing all animals. That, USDA contends, would be expensive and, well, inconvenient.

But nobody is suggesting that the Government mandate 100 percent testing. If a meat packer wanted to test, however, it might be a good marketing tool for them.

But the packers say testing would be too cumbersome, that consumers don't want and don't need testing information.

All of those arguments ring very familiar and very hollow. Remember, the packers and the Bush administration opposed another marketing tool—country-of-origin labeling for those very same reasons.

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

USDA says that mad cow disease, or BSE, isn't even a public health issue. They say it is only an animal health issue, but tell that to the more than 120 people who died from the human form of BSE in Britain. It was a food safety issue for them. It is a public health issue.

Creekstone even acknowledges, and I agree, that the science does not now suggest that all cattle need to be tested for BSE. They acknowledge that. Most experts do.

But consumers don't always base their purchasing preferences on science. The Japanese, who, by the way, test all of their beef for BSE, want their imported beef tested, and Creekstone was willing to do so, but USDA said ''no.''

Isn't this the administration that wants the free market to prosper?

Yet, here we have a willing buyer, the Japanese, a willing seller, Creekstone, and the Government says ''no.''

Government is telling a U.S. business what they can and can't do to add value to their product and create a market.

It is kind of like the Government telling automakers they can't have leather seats. Leather seats aren't needed, but they add value to the cars and make the product more marketable.

So I am hopeful that USDA will revisit this issue. Creekstone and other companies want the ability to meet consumer demand, and the Government should not get in the way.

If USDA wants to establish a testing protocol or some other structure for the testing to ensure that it is done in an appropriate manner and that we don't get false positives, I think we can all agree that such an approach would make some sense. But to deny producers the ability to use another marketing tool baffles me. I think USDA could and should have done better, and I urge them to re-examine the issue immediately.

It is also clear that some of the other things that USDA has been doing need to be reassessed. For example, on Monday, U.S. District Court Judge Richard Cebull granted a temporary restraining order prohibiting USDA from importing ground beef and bone-in beef from Canada.

The judge said, and I agree, that the risk of BSE is simply too great for us to fail to ensure that we have taken a thoughtful and deliberate approach to resuming beef imports from Canada.

Both animal health and food safety demand that we take a science-based approach to the reopening of our border with Canada. Producers are extremely concerned that USDA has not done so.

The judge has scheduled a May 11 hearing, at which time I hope there will be a full examination of the process USDA did or did not use in making their decision to reopen the border.

Ensuring that we get this right is not only important for our Nation's ranchers. It is important for our export markets and consumers of U.S. beef.

Another issue I want to discuss today is what I see as an emerging drought in many parts of the country. The Drought Monitor—a government map that documents the ongoing extent of drought—already shows some problem areas.

The yellow here—and you can see this on the map—denotes conditions across the Southeast, conditions which have continued to deteriorate for most of that region. Southern California, the area in Oklahoma, Arkansas, through southern Missouri and into southern Illinois, and up all the way through Indiana and Ohio and Michigan. You can see that there is abnormal dryness occurring in that area, even getting into the lower parts of the northern regions of Texas.

While there were some rains in parts of the upper-Midwest recently, they missed the western part of Minnesota. And you can see here this is where the extraordinary conditions are now becoming even more adverse, creating what the Drought Monitor categorizes as ''severe drought'' conditions, represented of course in the areas here in the orange and darker areas. The darker the color, the more severe the drought.

In my State of South Dakota, we have been able to avoid some of the most severe parts, but you talk to ranchers and farmers today and it is clear that this drought that we now see through almost the entire western part of the United States is moving east.

South Dakota has now experienced a drought in each of the last 5 years. The experience has been daunting. But there is one thing we have learned in dealing with drought and other weather-related natural disasters: Our national polices are wholly inadequate. By any legitimate standard, our policies have failed.

In 2002 the Senate approved, on a bipartisan basis, an amendment that I offered to provide $6 billion in disaster assistance. Unfortunately, the administration blocked its enactment.

But that was then, and today is, hopefully, a different story. Today, I think we need to take a serious look at what more we can do this year.

That is why today I am asking the President again to re-examine this issue, while we still have time. I am urging him to take a fresh look at what we can do, through an interagency approach, to address what appears to be another extreme drought this year—already extreme in some parts of the country, and certainly moving, as we have said, to the Great Plains States as well.

Although USDA should take the lead in this effort, the SBA, the Economic Development Administration, and other agencies, including, but not limited to, FEMA, can all play a role in finding a solution to this ongoing problem.

That is why I have requested that the President immediately ask the Federal agencies involved to develop a comprehensive legislative proposal to address weather-related natural disasters that impact our Nation's farmers, ranchers, and rural communities.

If he does this now, and receives a report back within 45 to 60 days, the Congress will still have time this summer to enact meaningful disaster assistance.

In my letter to the President sent earlier today, I pledged that, once he has provided Congress with such a proposal, I will work with him and all of my colleagues in a bipartisan fashion to approve whatever disaster-related assistance is necessary to adequately compensate producers and keep our nation's rural communities vibrant.

We can prepare now for what looks like another very bad year for agriculture.

Drought victims are no less deserving of Federal assistance than those who are impacted by a flood, tornado, or hurricane. As Federal officials, we have an obligation to respond more effectively than we have in the past.

Working together, with the leadership of this administration, I hope we can.

RESERVATION OF LEADER TIME

Mr. CORNYN. Mr. President, I ask unanimous consent that the Republican leader's time be reserved for his use later in the day.

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

MORNING BUSINESS

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

The Senator from North Carolina is recognized.

FSC–ETI AND JOBS BILL

Mrs. DOLE. Mr. President, when I came to the United States Senate last year, it was with great optimism—with a mission to get real results accomplished for my North Carolina constituents and for our great Nation. During my tenure in the Department of Transportation, the Department of Labor, and the American Red Cross, I was blessed with the opportunity to tackle some very important and challenging issues—like the sale of Conrail, modernizing the American Red Cross, settling a bitter coal strike, transferring Dulles and National airports from Federal control to ensure that Dulles' capacity would be doubled and the gateway to the Nation's capital would be our beautiful new airport. These issues required me to work with colleagues from both sides of the aisle at

every turn. If I had just tried to work with Republicans when tackling these matters, you can bet that nothing would have ever been accomplished. These success stories were achieved in a bipartisan and constructive manner. I looked forward to the same experience when entering this great body last year; however, the pattern of obstructionism occurring over the past few months is at a crossroads.

The opportunity to vote—to even vote—on the following legislation has been blocked:

Medical liability reform: After a comprehensive bipartisan bill was blocked last July, two additional targeted attempts to protect access to ERs and OB–GYNs were blocked February 24 and April 7.

A comprehensive Energy bill has been thwarted for 3 years—3 years. Passage would not only create an estimated 1 million American jobs but also reduce our dependence on foreign oil. Energy tax relief that would have created an estimated 650,000 jobs was also blocked on April 7.

Workforce Investment Act: This legislation, projected to help more than 940,000 dislocated workers obtain the training they need to get good jobs was passed by both the House and Senate but now my friends across the aisle refuse to even appoint conferees.

There are other examples of blocked legislation: Class action reform, Faith based/charities—the Care Act—welfare reform, and the Fair Act—Asbestos—but I want to highlight the legislation that could directly benefit the economy. And I use the word ''could'' because unfortunately none of this legislation can even get the courtesy of an up or down vote.

You cannot have it both ways. You cannot come down to the Senate floor and deride the administration's economic policies—then, in the same day, vote to block job-creating legislation.

A piece of legislation that underscores this point is S. 1637, the JOBS bill. Why in the world would we not be passing this legislation? I really want to know the answer so I can tell my constituents, in a State that has been hit especially hard by manufacturing job losses. Why is there objection to removing tariffs from our companies? Why is there objection to cutting taxes on manufacturing companies when they need it most? I must be missing something. When a bill is passed out of the Finance Committee 19–2—yes 19–2—and it is blocked from coming to a vote on two separate, that is simply outrageous.

Those of us on both sides of the aisle recognize the need to deal with the increasing concerns associated with the current Extraterriorial Tax Regime ETI. The World Trade Organizations has determined that if not repealed, the current rules for exportation would necessitate $4 billion in tariffs. If passed, the JOBS bill will not only eliminate the WTO's exorbitant tariff imposition; it will also replace ETI's tax relief with a tax deduction for domestic manufacturers.

At a time when America's manufacturing industries need immediate relief, the benefits of this legislation are clear—and the necessity of its passage is obvious. However, Senate Democrats are continuing to play petty political games and in so doing, are preventing direct aid to our hurting manufacturers. These partisan antics harm our American businesses directly—businesses run by men and women who deserve better from their elected officials.

I am particularly focused on this issue because North Carolina has areas that are severely affected by the loss of manufacturing jobs, mainly in textiles and furniture. This past summer, North Carolina experienced the largest layoff in State history when textile giant Pillowtex closed its doors forever. The result of Pillowtex's closing was 4,400 people losing their jobs in a single day—and eventually nearly 5,000 being laid off.

In eastern North Caroline, layoffs and plant closures have resulted in more than 2,200 layoffs since last summer. In just the past few months, the western region of North Carolina has lost more than 1,500 jobs. And in February, 22 of North Carolina's 100 counties had double-digit unemployment rates. Now there are signs that the situation is improving—initial data for March unemployment in North Carolina shows that just four counties have double-digit rates—but we must take action to help our manufacturers and to ensure upward trends will continue.

Action can begin with final passage of the JOBS bill. This is not the time for political games. This is a time for doing what is right for the American people—and providing our manufacturers with legislation that will directly benefit their businesses. I urge my colleagues to allow the final vote on the passage of S. 1637 to protect our companies from undo tariffs and excessive taxes.

Democrats say they want to find a way to rejuvenate our economy and prevent more factories from shutting down. If they are truly searching for such answers, then why don't they step forward and allow for the solution to reach final passage? I am hoping my friends on the other side of the aisle will remember the American people who depend on Congress and put aside partisan antics and pass good legislation. We need to put an end to this obstruction and work together to get things done in the Senate.

I yield the floor.

The PRESIDENT pro tempore. The Senator from Kentucky.

9/11 COMMISSION AND IRAQ

Mr. MCCONNELL. Mr. President, I wish to talk about a couple of events that are in the news: the proceedings of the 9/11 Commission and the debate about the President's policy in Iraq.

As I said last week, I am troubled by the partisanship and public posturing of some members of the 9/11 Commission, both in the hearing room and in TV studios.

I am not the only one who is troubled. The former National Security Advisor under President Clinton, Tony Lake, has said the hearings are ''a sad spectacle that has become so partisan.''

And Max Holland, a former fellow at the University of Virginia who is writing a history of the Warren Commission, notes that ''in some respects'' the proceedings of the commission are ''definitely a new low.'' He added that ''this is a commission charged with establishing facts and the truth rather than posturing for political gain. But some of the hearings amounted to lecturing and posturing.''

Still others, like Professor Juliette Kayyem, of the Kennedy School of Government at Harvard, who served on a congressional terrorism panel to investigate the 1998 African embassy bombings, have questioned why 9/11 commission members have granted so many interviews. She notes that ''they have become too public,'' and that ''tempts commissioners into making assessments and conclusions prematurely.''

My understanding of the 9/11 Commission was that it was to impartially determine the facts and make non-partisan recommendations on how to go forward.

So far, the 9/11 Commission's descent into ''gotcha'' questioning has only highlighted a tendency to fight each other rather than the terrorists. Unfortunately, while American politicians are busy blaming each other, the terrorists are busy plotting our doom.

This partisanship, unfortunately, is not confined to the 9/11 Commission. Clearly, the central front in the war against terrorism has shifted to Iraq. Al Qaeda operatives and foreign terrorists have flocked to Iraq to make a desperate final stand against American troops, and we must see to it that they lose.

On the issue of Iraq, the most important thing this body could do is to have an open and honest debate about how to build a moderate democracy in that country. If Senator KERRY, in particular, believes he has a solution to the difficult challenges facing our troops and diplomats in Iraq, let him offer a plan, rather than simply guessing and criticizing.

Let me be clear: placing the UN in charge in Iraq is not a plan. It is a pure fantasy.

America did the right thing by liberating the Iraqi people from Saddam's tyrannical regime, and by so doing, we are making the American people safer. Succeeding in our efforts to help the Iraqis replace one of the most repressive regimes on the planet with the single most representative government in the Arab World will dramatically alter the political landscape of the Middle East.

Only if the citizens of the Middle East experience the freedoms and opportunity of democratic reform can we hope to win the war against terrorism. We can kill terrorists one by one in Afghanistan and Iraq, but until we change the individual and personal calculations of thousands of young men who are taught to value death over life, there will always be more terrorists around every street corner. A free Iraq will be an oasis of liberty in the heart of the Middle East and a source of democratic influence on its undemocratic neighbors.

Bringing democratic reform to the Middle East is not a lofty hope but a necessary reality and a long-term strategy. Citizens who can voice their frustrations at the ballot box are less likely to do so by strapping bombs to their bodies.

It is no coincidence that democratic Muslim states such as Turkey and reforming states such as Jordan, Egypt, and Morocco are not state supporters of terrorism, while oppressive states such as Syria and Iran provide aid and succor to international terrorists.

President Bush's multi-tiered approach to combating terrorism is the right one. And it is improving.

Likewise, our Nation's efforts can be improved upon if we conduct our debates with the gravity and objectivity required by the high stakes of the war against terrorism, but forgive me for not being optimistic.

Until now, the critics have proposed two alternatives to President Bush's plan to stay the course in Iraq. One alternative is to cut and run or to cede control to the U.N., whose member states by and large want America to cut and run.

Unless failure is our goal, these are not serious proposals. And they discount the very simple fact that unless America delivers on its commitment to eliminate havens for terrorists and support democracy in Iraq, Afghanistan and elsewhere, we will embolden the terrorists who delight and attack when America wavers.

How do I know this? Because Osama bin Laden has told us. In his 1998 ''Declaration of War Against the Americans'' bin Laden noted, and I quote: ''When tens of your soldiers were killed in minor battles and one American Pilot was dragged in the street of Mogadishu, you left the area in disappointment, humiliation and defeat, carrying your dead with you.''

Former Secretary of Defense James Schlesinger recently noted that Bin Laden also observed: ''when people see a strong horse and a weak horse, they naturally gravitate toward the strong horse.''

The terrorists are watching us closely, and we must show strength, not weakness. We must not allow Iraq to become another Somalia because going home early is the surest way to embolden the terrorists and ensure the failure of our efforts to bring peace and security to the Middle East.

It is clear to this Senator that al-Qaida wants us to fail in Iraq, just as it wants us to fail in Afghanistan. Al-Qaida terrorists and other foreign Jihadis are aligning themselves with violent Iraqi insurgents whose radical ideology has no place in a democratic Iraq. These zealots want the United States to appear in the Arab world as a weak horse.

The terrorists are watching us closely, and we must show our strength, not our weaknesses, as we confront the security challenges in Iraq that lie between despotism and democracy.

I yield the floor.

The PRESIDING OFFICER (Mr. GRAHAM of South Carolina). The majority leader.

JOBS BILL

Mr. FRIST. Mr. President, this week our colleague, Senator JOHN KERRY, is traveling to the Midwest to discuss ways to help boost job creation. While I applaud his intention on this issue, I also want to make certain Senator KERRY is aware we have scheduled a third floor debate on the JOBS bill—that is the very important bill on manufacturing in this country, S. 1637—to start next week. That important bill seeks to protect more than a million high-quality manufacturing jobs in the United States.

Unfortunately, Senator KERRY's Democrat colleagues in the Senate are waging a filibuster against this jumpstart our business strength bill, the JOBS bill, having twice voted to prevent us from completing action on this essential manufacturing legislation.

I do ask Senator KERRY to use his new position as his party's presumptive nominee, but in all likelihood the nominee, to help convince his colleagues to abandon this filibuster and move this legislation quickly toward passage.

According to the National Foreign Trade Council, there are currently 147,200 jobs in Ohio that hinge on passage of this JOBS bill; in Michigan, some 150,000 jobs will be impacted by this ill-advised filibuster; and in Pennsylvania, nearly 142,000 jobs are tied to this legislation.

We must repeal these European tariffs on at least 100 U.S.-made products. People say: What sort of products? They include safety glass. They include portable handheld tools. They include marine engines. They include aluminum wire, steel wire. They include printing paper. This Euro tax started at $200 million in March. It increased to $240 million in April. It will increase again to $280 million this Saturday and will continue to climb upward to $680 million next year if we fail to act.

Senator KERRY was a cosponsor of this bill and supported it in the Finance Committee. I urge him to join us in a bipartisan effort to end his fellow Democrats' filibuster and agree to a time to pass and send to President Bush a jobs bill, a jobs bill that will benefit manufacturing workers throughout the United States.

We must pass this JOBS bill to protect America's manufacturing base and the manufacturing jobs of thousands of our workers across the United States. America's workers are depending on us.

Mr. President, I ask unanimous consent that a letter from me to Senator KERRY dated April 28, 2004, be printed in the RECORD.

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

U.S. SENATE,
OFFICE OF THE MAJORITY LEADER,
Washington, DC, April 28, 2004.

Hon. JOHN KERRY,
Russell Office Building,
Washington, DC.

DEAR SENATOR KERRY: This week you are campaigning in the Midwest to discuss ways to help create jobs for the American people.

While I applaud your enthusiasm, I want to make certain you are aware that we have scheduled a third floor debate on the JOBS bill, S. 1637, to start next week. As you know, this important legislation seeks to protect more than a million high-quality manufacturing jobs in the United States.

Unfortunately, your Democrat colleagues in the Senate are waging a filibuster against the Jumpstart Our Business Strength bill (JOBS), having twice voted to prevent us from completing action on this essential legislation.

It is my hope that you will use your position to help convince your Senate Democrat colleagues of the importance of this legislation and help us to move it quickly toward passage. After all, according to the National Foreign Trade Council, there are currently 147,200 jobs in Ohio that hinge on passage of the JOBS bill. In Michigan, some 150,100 jobs will be impacted by this ill-advised filibuster. In Pennsylvania, nearly 142,000 jobs are tied to this legislation. It is my hope that you will join with us in a bipartisan effort to end the Democrat filibuster and press for timely action on the JOBS measure.

Since you were once a co-sponsor of this bill and supported it in the Finance Committee, I know you appreciate how important it is that we approve this measure and repeal the European tariffs on at least 100 US-made products. This Euro-tax started at $200 million in March, increased to $240 million in April, will increase to $280 million this Saturday, and will continue to climb upward to $680 million by next year if we fail to act.

We look forward to your support in passing a measure that is absolutely essential if we are to protect America's manufacturing base and the manufacturing jobs of thousands of our workers across the United States.

Sincerely yours,

WILLIAM H. FRIST, MD,
Majority Leader,
United States Senate.

Mr. FRIST. I yield the floor.

The PRESIDING OFFICER. The minority leader.

Mr. DASCHLE. Mr. President, I ask unanimous consent that I have 5 additional minutes of leader time.

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

STAYING THE COURSE

Mr. DASCHLE. Mr. President, I want to respond to the distinguished majority leader.

Like him, I have come to the Senate floor on several occasions advocating for passage of the FSC bill. Many of us believe it may be the only opportunity we have to address, meaningfully, jobs policy and the creation of new jobs in this country.

His characterization of our position is unfortunate and inaccurate. We have no desire to filibuster the bill. We simply believe Senators ought to have a right to offer amendments. That was really the discussion and the debate earlier as the legislation was offered. We had an amendment that simply provided for protection for 8 million workers who were not accorded overtime, who the administration now acknowledges were prepared to take overtime as a part of their compensation packages. We fought it. The administration has changed it, not to our satisfaction. But had it not been for our fight, I doubt very much that overtime could have been protected for the millions of workers who otherwise would see it as lost.

We also want to ensure that we have an opportunity to deal with the outsourcing problem. Outsourcing is a very serious issue today. The President has created a new program called Higher Hour Workers. The acronym is HOW. Well, that is our question. How? How are you going to do it? What we have seen so far from this administration falls far short of what we need to do if we are serious about meaningfully addressing the problem of jobs in this country.

This administration has lost 3 million jobs. We have not seen an administration like this in seven administrations. We want to address the terrible and unfortunate record we have seen with regard to the economy over the last 36 months.

So our hope is we can create a real opportunity to debate jobs, to debate the way with which we can compete in the international markets. That is our desire.

I went to Senator FRIST and offered him an agreement, after this cloture vote, and indicated that we would limit our ourselves to 18 amendments. I presented that to him. I was hoping we could get a unanimous consent agreement. That was not done and, as a result, time was lost. Now, as we understand it, they have over 50 amendments pending to this bill. We have something like 30. So there is no filibuster going on. They have some difficulty on their side in trying to address this issue, and in an expeditious way.

We will get through the amendments. It is unfortunate we could not have agreed to the 18. We would be done with it by now. But there has been a practice on the Senate floor, over the last several months—we get on a bill, an amendment is offered, the bill is pulled; we move to another bill, we get on that, an amendment is offered, the bill is pulled. We have to stay on a bill to finish the bill. I am hopeful we can stay on the Internet tax bill until it is finished, that we can stay then on the FSC bill until it is finished, and welfare reform until it is finished.

We can accomplish a lot, but we have to have greater attention to the work at hand and a willingness to stay with it until it is done. That is the nature of the Senate. That is the way we function. That is our institutional history. We are prepared to work with our Republican colleagues on these and other bills in the months ahead to make that happen.

I yield the floor.

The PRESIDING OFFICER. The majority leader.

FSC/ETI

Mr. FRIST. Mr. President, very briefly, I know we are in morning business and we are on other topics, but so our colleagues will know, we are coming back to the FSC/ETI bill. We have a general agreement and a framework. We are coming back to it. That was really the purpose of my comments today. We are coming back to it next week. I hope we can work together. The American people deserve it. I do not believe either side will have 30 or 40 or 50 amendments. I think we can do it if we start right now to put our heads together. The managers are working. They have, I believe, an excellent glidepath to finish it as we go forward. I appeal, in a strong, bipartisan way—we are going to have to have a bipartisan approach to finish that bill—that we do just that next week. The American people deserve it. Regardless of how we get there, next week we have this opportunity to address it. We absolutely must do that.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. Mr. President, may I inquire how much time we have remaining in morning business?

The PRESIDING OFFICER. Eleven minutes 18 seconds.

Mr. CORNYN. I thank the Chair.

THE 9/11 COMMISSION

Mr. CORNYN. Mr. President, I want to talk a few minutes about the work of the 9/11 Commission. I know it has become popular—perhaps it has always been that way—for those who sit on commissions, those who engage in political debate about the great causes of the day in Washington, DC, to try to find blame for various things that happen. That is no less true of the work of the 9/11 Commission in looking into both the causes of the terrible events of that day and also when it comes to coming up with recommendations about what we might be able to do to make sure that sort of tragedy never occurs on our own soil again.

But I think we ought to be clear about who is to blame for the terrible events of 9/11. It was not President Clinton or his administration. It was not President Bush or his administration. The individual and the organization at fault for the events of 9/11 were Osama bin Laden and al-Qaida. Regardless of our differences, especially in this election year where we are going to select a President, I think we ought to make sure our enemies do not draw any comfort from the debates we have on the floor of the U.S. Senate or elsewhere that we somehow are redirecting the blame to others for political gain and to score political points. I think all Members of the U.S. Senate—indeed, all Members of the U.S. Congress—should be absolutely clear where the blame lies. As I said, that lies with al-Qaida and Osama bin Laden.

Indeed, after that terrible day there was an upswelling of bipartisan support in this country to try to make sure we did whatever we needed to do in order to make sure that the events of that day would never occur again. Indeed, the Senate unanimously approved a resolution authorizing the use of all necessary and appropriate force against the persons and organizations responsible for September 11.

Indeed, in an unprecedented fashion, also, we saw that our allies in NATO, under article V of that treaty, declared that an attack against the United States was, in effect, an attack against all NATO nations.

Of course, this issue is as current as today's news because we know there are two cases that are going to be argued before the U.S. Supreme Court, the Hamdi and Padilla cases, which are going to look at the limits of Presidential power under a declaration of war, such as was authorized by the Congress, by the Senate unanimously. Of course, they are going to decide, and it seems obvious to me, but perhaps it is not as obvious to others, that the approval of all necessary and appropriate force must necessarily include the capture and detention of enemy combatants. But that is perhaps an issue for another time.

Also, in the spirit of bipartisan support for using all necessary and appropriate means to defend our country, the Senate passed the USA PATRIOT Act 98 to 1. Of course, this important legislation provides law enforcement with sorely needed tools to combat terrorism. Unfortunately, we also recall that spirit of bipartisan unanimity did not last very long.

Once the Democratic Party began to choose its Democratic nominee, we heard a lot of disparaging remarks made about the USA PATRIOT Act. Indeed, in a misguided and perhaps ill-informed way, there are 287 different municipalities around the country that have passed resolutions disparaging the USA PATRIOT Act.

It is amazing, in Washington, how events can turn on a dime. After we heard testimony before the 9/11 Commission from Janet Reno, former FBI Director Louis Freeh, Attorney General John Ashcroft, FBI Director Robert Mueller, and others, a bipartisan chorus said it was the USA PATRIOT Act which tore down the wall which

previously precluded information sharing between law enforcement and intelligence-gathering officials. We haven't heard very much more about the previous calls to either repeal or change the PATRIOT Act because, indeed, it was the PATRIOT Act that tore down that wall and which has made America safer. Perhaps the best evidence of that is not just my statement or anyone else's. It is the fact we have, thank God, avoided another 9/11 in the days since that terrible day.

The spirit of bipartisanship that resulted in a resolution authorizing the use of necessary force against our enemies who brought the war to us on 9/11 and the spirit of bipartisanship that saw a 98-to-1 vote in favor of the USA PATRIOT Act and tearing down that wall needs to continue to prevail on the National Commission on Terrorist Attacks on the United States that was created by Congress and appointed by both the Congress and the President. Of course, it is the job of that Commission to find facts, to create a historical record of the events that led up to that date, and then come up with recommendations. It is absolutely critical that the work of the National Commission on Terrorist Attacks, the 9/11 Commission, not be undermined and that the public confidence be preserved in that Commission.

That brings me to the testimony which I believe must be provided in an open forum by Commissioner Jamie Gorelick. As Attorney General Ashcroft revealed during his testimony, when he declassified a key 1995 memorandum, dated actually March 4, 1995, authored by Ms. Gorelick when she was Deputy Attorney General, it was the policy of the Justice Department, under Ms. Reno and under Ms. Gorelick, during the Clinton administration, that went further than the law required in establishing this wall which prohibited information sharing between law enforcement officials and counterintelligence officials. Indeed, in the days since Attorney General Ashcroft revealed the existence of this memo, we have seen Ms. Gorelick respond in a Washington Post op-ed piece explaining her role.

My point is, Ms. Gorelick, serving in a high-level position in the Justice Department as Deputy Attorney General, in effect the chief operating officer in the Department of Justice under Attorney General Janet Reno, has special knowledge of the facts and circumstances leading up to that memo and the erection and buttressing of that wall barring the sharing of communications.

I believe her testimony under ordinary circumstances would be sort of a no-brainer. The 9/11 Commission would say: This is a person with knowledge of relevant facts. Let's bring her before the Commission and ask her to tell us what she knows.

That has been requested now, public testimony by Ms. Gorelick, in letters signed by a number of Senators, and now been refused by the cochairs, Chairman Kean and Chairman Hamilton.

Simply put, this is a self-inflicted wound on the credibility of the 9/11 Commission. We have learned that she has provided testimony in camera or, in English, in secret. In other words, she has been interviewed by the 9/11 Commission and told apparently what she knows out of the public eye. Obviously, she has written an op-ed piece explaining, without the benefit of further questions or followup, what it is she intended to do and the circumstances leading up to that 1995 memo.

If public testimony by persons with knowledge of relevant facts ranging from Janet Reno to Louis Freeh to John Ashcroft to Bob Mueller and others, if that testimony was important—and indeed, I believe it was—then public testimony by Ms. Gorelick is important to preserving the public credibility of the work product of the 9/11 Commission.

Secret testimony will not cut it. In fact, we need to know what it was that led up to this policy and the reasons for it in order to understand why it is important never to go there again. As I said, this policy is stated in that very same memo, which went well beyond legal requirements. In other words, the PATRIOT Act, once it was passed virtually unanimously in this body, dismantled that wall in a way that made America safer.

May I ask how much time I have remaining?

The PRESIDING OFFICER. Ten seconds.

Mr. CORNYN. I ask unanimous consent for 2 additional minutes and also to extend the Democratic time by the same amount.

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

Mr. CORNYN. First, Ms. Gorelick claims in this Washington Post op-ed piece that she had no choice when she penned the 1995 memo. It would be worth knowing why it is she thought she had no choice.

Second, she claims this memo did nothing more than continue preexisting Justice Department policy first established in the 1980s. By the very terms of the memo, she states it is prudent to establish a set of instructions that will clearly separate counterintelligence investigations from criminal investigations. It is appropriate to ask her if she thought she was establishing a policy or continuing a policy, as she stated in another place.

Finally, Ms. Gorelick appears to be shifting the blame for the policy—and we are not talking about blame for the policy—to then-Deputy Attorney General Larry Thompson. At a minimum, it is not appropriate for one Justice Department official to attack her successor for failing to adequately correct their own mistakes, as we now know that wall was a mistake.

So, Mr. President, in conclusion, let me say because I know time is running out, I believe it is absolutely imperative that Ms. Gorelick offer to come forward and give public testimony about what she knows about the erection of the ''wall'' barring the critical sharing of information that has subsequently now made America much safer.

I believe the credibility of the Commission's report depends on that public testimony, and I urge the chairman of the 9/11 Commission to reconsider, and indeed Ms. Gorelick to consider her refusal to testify in public and avoid what has, by all appearances, the status of a self-inflicted wound on the credibility of the Commission.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada is recognized.

Mr. REID. Mr. President, I think that in addition to having Ms. Gorelick reassess her position, it would be good for the President and administration to reassess their positions and testify publicly, or at least separately, instead of this appearance that they have in secret.

THE HIGHWAY BILL

Mr. REID. Mr. President, tomorrow, in the White House, it is my understanding from press accounts—and I have talked to various Senators and one House Member who will attend the meeting—there is going to be a meeting with the President to talk about the highway bill. I think it is important, therefore, that I, who have worked on this most important bill—and I have worked on several others in years past—make some observations about what I think should take place at that meeting.

Of course, it is a typical meeting that takes place in this administration. It is done in secret, with no Democrats present, which is unusual; but that is in keeping with what this administration has done now for 3½ years. Let me say, though, that I believe Senator JIM INHOFE, the chairman of the Environment and Public Works Committee, has been an exemplary legislator on the highway bill. He has been someone that has been very fixed in his ideas. He is someone, however, who is willing to work and, as legislators have to do, compromise. I have had to do the same thing. Senator JEFFORDS had to do the same thing. Senator BOND has had to do the same thing. The four of us have put this bill together. I think it is a good bill.

I appreciate the tireless efforts of Jim Inhofe on this most important legislation. He has always understood the importance of a highway bill. No one in this country can question the conservative credentials of JIM INHOFE. No one could ever accuse him of trying to give things away. That is why it is a mystery to most of us what the administration is doing on this bill.

Mr. President, first of all, understand that the chairman of the Transportation Committee in the House, Congressman YOUNG from Alaska, believed

a bill of $300 billion just for highways alone—he was unable to do this because he could not get a proper rule in the House. The administration was opposed to him, and my understanding is that several other leaders in the House were opposed to him.

Finally, they came with a bill of $275 billion, which included transit. The legislation that we have passed in the Senate takes into consideration the needs of this country. We have $318 billion over six years. This is a bill that includes transit. We have worked very hard on this. Keep in mind, there are no new taxes. The bill is paid for in a number of different ways, not the least of which is highway trust fund moneys, which are supposed to be used for highways. We have been told by all outside organizations, by our own experts within the Federal Government—and the outside organizations can be exemplified and illustrated by the American Association of State Highway Transportation Officials, AASHTO. They say, as we all say, simply to maintain our roads and bridges—not to have some Cadillac version, but simply to maintain our roads and bridges—the Federal Government must invest at least $40 billion a year.

Unfortunately, a 6-year bill at $275 billion that includes all the needs of this country simply doesn't do the trick when we talk about highways and transit. This means, then, more congestion, less safety, and increased maintenance and replacement costs.

The Senate bill is a good bill. It passed by 76 Members voting for it. It would create a $42.7 billion average annual highway investment. This is a good bill. It would generate real improvements in condition and performance. Let's not forget, it would create more than a million high-paying jobs. The spinoff from those direct jobs would be many thousands more.

I cannot understand the President. He is the first President since Herbert Hoover who has not had a net increase of private sector jobs. It doesn't matter how many jobs are created in the next 6 months, he will be the first President since Hoover to have a net loss of private sector jobs. Yet he is threatening to veto this. It is wrong.

Not only is the bill good for the reasons I have mentioned. That will allow us to at least keep even with the programs that we need in this country—highways, bridges—but it also consolidates all safety programs. It creates a very new program, with safe routes to school, which will allow children to walk and ride bicycles to school. It creates a good program at our ports, called a gateway program, which will not only be one that will create a more safe network of ports in our country, but will be more efficient, and it will save lots of time. There will be a new equity bonus program.

We have tried in this legislation to have a fair bill, not just to add up the number of Senators who are for the bill and run over those who don't get treated as well. By the end of our bill, every State will get at least 95 cents for every dollar they pay in. This is a tremendous improvement.

Mr. President, I hope at this meeting tomorrow the Republicans who are meeting in secret to discuss this matter will follow the lead of the Senate, and especially Senator INHOFE. This is a bill that we need to pass for the good of every State in the Union.

Mr. President, I am going to yield the remaining time I have to the Senator from New Jersey, with this preface. I say to my friend from New Jersey, who is going to discuss chicken hawk, I want the Senator to understand that when the President held his last press conference and said he could not think of a mistake he made—when I was at home during the last break, I reminded the people of Nevada that I could think of at least 2 mistakes he made. One is when he climbed on the USS *Lincoln*, the big aircraft carrier, and had the big sign in celebration of the ''mission accomplished.'' I think the second mistake was when he was asked the question whether there are some people in Iraq who, maybe, are going to cause some trouble, as you will remember, the President said, ''bring them on.'' I think those are two mistakes—''mission accomplished'' and ''bring them on.''

Since his statement, ''bring them on,'' we have lost more than 600 American soldiers. That is only the number of those who were killed; that doesn't take into consideration the thousands who are missing limbs, eyes, who are paralyzed, and in bad shape physically. So I think those are two mistakes, I remind the President. No. 1, the mission was not accomplished when he flew on the aircraft carrier in his borrowed jumpsuit; or, No. 2, when he said ''bring them on,'' I think that was an intemperate remark, and I think he made a mistake.

I yield the remaining time to the Senator from New Jersey.

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

WAR RECORDS

Mr. LAUTENBERG. Mr. President, I thank my friend from Nevada. Nothing could be more poignant, as we view what has taken place in Iraq, than the bravado that led us into the battle and the boastful statements that were made, such as ''mission accomplished.'' What the mission accomplished was, was to get a picture that could be used in an election campaign. That was the mission that was accomplished.

People thought the President was talking about something else, and he did say the worst is behind us. It is a terrible memory for us to conjure up while people are dying in quantities hardly ever dreamed about, far more casualties in this war where we have 130,000 people in Iraq than when we had 540,000 people in the first gulf war because there were enough of them to protect one another; there were enough of them to get the job done quickly and effectively.

We have some memories, and I couldn't agree more with the Democratic whip, my friend from Nevada, about mistakes made and remembering ''bring them on,'' which I found so offensive.

This week is the anniversary of the photo on the bridge of the aircraft carrier *Abraham Lincoln*. Photo on the bridge—that is the memory that is going to be conveyed out there. This is the photo on the bridge. Here is the aircraft carrier looking very splendid in a display of power, but the timing was so far off and the statements were so empty: ''Mission accomplished.''

Ask the 600 families who have lost children; ask those 22 families of sons and daughters in the State of New Jersey whether they think the mission was accomplished May 1 a year ago. I don't think they would agree.

Yesterday, I had an opportunity to visit the World War II memorial that is going to be open to the public very shortly. I am a veteran of World War II, as are several other Members of the Senate. I came from a working-class family. My 42-year-old father was on his deathbed from cancer when I enlisted. My mother became a 36-year-old widow. I was 18 already. I did not enlist to be a hero. I simply wanted to do whatever I could to help my country. So when I looked at the memorial yesterday, it brought back some very significant memories.

I remember being in uniform. I remember climbing telephone poles and putting up wire. Once again, I did what I was supposed to do because I was in the Signal Corps and responsible in part for getting communications between those who are commanders and those who are in the field.

I had a fairly narrow perspective, but one thing I did respect was those who received medals, those who had a Purple Heart. They were my heroes, and we used to defer to them. Anyone who got a Bronze Star or a Silver Star was thought to be someone special. That was to those of us in uniform who were trying to bring America victory. That is what happened.

When you visit the Vietnam Memorial here in Washington, it pulls at your heartstrings to see 58,235 names on the wall and you are reminded of the gravity and the impact that conflict had on our Nation. But now we are in a different place. I do not believe, I must say, we should judge our politicians based on who served and who did not serve. But when those who did not serve attack the heroism of those who did, I find it particularly offensive, and I hope people across America will put aside that criticism of Senator JOHN KERRY who received three Purple Hearts and a Silver Star, which is a very high commendation for bravery. I find it offensive, and I hope every American and I hope every veteran will say: No, no, you can't talk like that,

pretending this man is soft on defense. He put his neck on the line, almost lost it, and saved someone else's neck in a very heroic deed.

That is what we are talking about: heroism. Max Cleland lost three limbs in Vietnam, and they shamed him so that he was pushed out of office because he was portrayed as weak on defense. Where do they come off with that kind of stuff? I will never know, but I hope the American public understands what is being done.

We now have discovered a return of the chicken hawk. We thought they flew the coop, but in the last week or two, they have returned aplenty. If anyone is curious about what a chicken hawk is, I have a definition right here on this placard. We see the chicken in a uniform with medals. The definition obtained from the Internet goes as follows:

Chickenhawk, n.: A person enthusiastic about war, provided someone else does the fighting, particularly when that enthusiasm is undimmed by personal experience with war; most emphatically when that lack of experience came in spite of ample opportunity in that person's youth—

I am extending it—to serve their country, unless you had a good excuse, unless you had other priorities.

Chicken hawks shriek like a hawk, but they have the backbone of a chicken. We know who the chicken hawks are. They talk tough on national defense and military issues and cast aspersion on others. When it was their turn to serve, where were they? A-W-O-L, that's where they were.

Now the chicken hawks are cackling about Senator JOHN KERRY. The lead chicken hawk against Senator KERRY is the Vice President of the United States, Vice President CHENEY. He was in Missouri this week claiming Senator KERRY is not up to the job of protecting this Nation. What nerve. Where was DICK CHENEY when that war was going on where 58,235 young men died and many more wounded and many with wounds that were never visible, but you could see it in their emotional structure and in their psychology? It was a war everyone thinks in retrospect was misguided. But JOHN KERRY volunteered for hazardous duty on a swift boat going up a river with people shooting at him all over the place. Cowardly? What an insult. I plead with veterans across this country. Look at what they are saying about your service. Exemplified: Max Cleland lost three limbs. What a sacrifice he made, and they beat him in the election, beat him in the polls because they characterized him as soft on defense. Now they want to take JOHN KERRY who served nobly and establish that he, too, is soft on defense. I don't know where they get it.

He fought for our country. He still has shrapnel from the battlefield. Vice President CHENEY said: At the time he had other priorities in the sixties than military service. He ought to tell that to the parents of those who lost their lives in Vietnam, and ask them what they think.

I heard someone—I think it was Karen Hughes—on the television the other night. Why are they talking about a 35-year-old war? A 35-year-old war? Ask those who served in Vietnam whether they ever think it is a 35-year-old war.

Come on, America, face up to what we are doing here. This is the ultimate disgrace: Risk your life and then be abused by those in the highest office in the country? The chicken hawk has no idea what it means to have the courage to put your life at risk to defend this Nation. They are quick to disparage those who did sacrifice. I do not understand how their conscience permits them to challenge Senator KERRY's commitment to our Nation's defense.

The reality is the chicken hawks in this administration are doing a lousy job of bolstering our Nation's defense and supporting the troops. Case in point: Mission accomplished.

I want to discuss this 1-year anniversary because I think it summarizes this flawed thinking and policy planning of the administration regarding its activities in Iraq after the initial invasion. We are all familiar with the imagery of May 1, 2003. My colleagues can see it on this placard. President Bush is dressed up in a flight suit—well, here he is wearing civilian clothes—playing soldier that day. The theatrics that followed were a production carefully choreographed by the White House political unit. It was nothing more than a staged circus act.

When the President switched to substance, it was almost more disturbing. He declared that ''major combat operations are over.''

He was, unfortunately, wrong. He was certainly wrong over 600 times because people died in that relatively peaceful postwar period of time.

Since the President declared mission accomplished on May 1, 2003, we have lost 585 American troops in Iraq. Before that day we had lost 139. That is a total of 724. In the first gulf war, with over 500,000 troops abroad, we lost a total of 293 troops.

When the President made his speech on the May 1 mission, it was not accomplished. Major combat operations were not over. It was a naive miscalculation. The troops on the ground in Iraq knew trouble was brewing, even though they heard that declaration that the mission was accomplished. They knew trouble was brewing as insurgents were launching more and more attacks.

When these attacks on our troops became more frequent, what did the President say last July? I could not believe what I was hearing. He said, ''Bring 'em on,'' in this gesture of bravado, in this gesture of toughness, bring them on. But he was not brought on. He was brought on to the deck of the aircraft carrier but he was not brought on to the battlefield in Vietnam when there was a chance to do something.

I do not think our soldiers are so happy about the President's dangerous comment.

I served in Europe in World War II. The last thing I wanted to hear from my Commander in Chief, or my local commander, is to dare the enemy to launch attacks on us.

The President and his allies are charging Senator KERRY with being a flip-flopper, but is it not a more dangerous flip-flop to tell our enemies to bring it on and invite attacks? Is it not a flip-flop when one says they support the troops and then—I heard it directly on our recent trip to Iraq when a captain in one of the reserve units—no, he was full service—when I asked if there were any complaints, he said, Senator, those flak jackets, the new ones, I have seen them on Spanish coalition members and I have seen them on other coalition members. We do not have them, Senator.

He then pointed to his rifle. He said, You know, there are smaller, more efficient, and better sidings and better sights on smaller, lighter weapons. We do not have those. We need more armored Humvee vehicles.

When I was in Iraq in March, soldiers complained to me they are not receiving the best equipment they could have.

What about the President's flip-flop to military families? He is arbitrarily extending tours of duties despite promises to families that loved ones would be returning home.

No, when it comes to supporting the troops the President is a flip-flopper. He says one thing, does another. Supporting the troops means careful planning of military operations, both pre- and postinvasion.

We know the administration did not want to hear any dissent about the unrealistic assessment of what the Iraqi operation would require. When General Shinseki, a distinguished military leader, said we need more troops, that over 300,000 troops would be required, he got fired. Instead, we have 130,000 troops in Iraq. That is what is favored by Secretary Rumsfeld.

Our excellent troops are fighting a treacherous insurgency launched by both Sunni and Shi'a elements. Combat operations are not over. They are raging. It is obvious the administration miscalculated and misunderstood what would happen after we deposed Saddam. In fact, the administration's beliefs bordered on the delusional. Experts warned them at the time, but they refused to listen.

According to Bob Woodward's account, Secretary Powell was all but excluded from the war planning among the key Cabinet officers. Colin Powell is the only one who ever saw combat in that group and they excluded him.

George McGovern, a friend, a decorated veteran, said this war was clearly planned by people who have never seen a battlefield. Look at what Vice President CHENEY said on March 16, 2003:

We will, in fact, be greeted as liberators. . . . I think it will go relatively quickly . . . (in) weeks rather than months.

February 23, Defense Secretary Rumsfeld said the war ''could last 6 days, 6 weeks. I doubt 6 months.'' Now it is over a year later and the war is still going on. A total of 724 American troops have been killed, 585 of them after President Bush declared major combat operations had ended.

We are in a quagmire that is the result of miscalculations and poor planning by the administration, but for the sake of our troops it is time for the chicken hawks in this administration to end the arrogance and the bravado that has put us in the mess we are in right now.

If we want someone effectively to defend our Nation and support our troops, I say let us look to someone who understands what it really means to answer the call and defend your country.

I yield the floor.

The PRESIDING OFFICER. For the information of Members, there are still 4 minutes 30 seconds remaining. Does the Senator wish to yield back the time?

Mr. LAUTENBERG. I yield back all the time, yes.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

INTERNET TAX NONDISCRIMINATION ACT

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of S. 150, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 150) to make permanent the moratorium on taxes on Internet access and multiple and discriminatory taxes on electronic commerce imposed by the Internet Tax Freedom Act.

Pending:

McCain amendment No. 3048, in the nature of a substitute.

Daschle amendment No. 3050 (to the language of the bill proposed to be stricken by amendment No. 3048), to eliminate methyl tertiary butyl ether from the United States fuel supply, to increase production and use of renewable fuel, to increase the Nation's energy independence.

Domenici amendment No. 3051 (to amendment No. 3050), to enhance energy conservation and research and development and to provide for security and diversity in the energy supply for the American people.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, I came to the floor to urge consideration of the Internet Tax Moratorium Act, the proposal, debate, and voting on germane amendments. As I came to the floor, I heard this attack on the President of the United States and the administration. It was pretty rough stuff, calling people chicken hawks and talking about service to the country or lack thereof.

I am sure the statements just made by the Senator from New Jersey reflect the intense partisanship and recent discussions and charges and countercharges on talk shows and cable television and radio all over America. I think it might be an interesting and maybe sometimes entertaining exercise—the little drawing of the chicken hawk was kind of clever. I have to hand it to whoever the artist is.

But isn't it a fact that we are now engaged in a war? Isn't it a fact right now that, as we speak, our marines are attacking Falluja and I am sure incurring casualties, these brave young Americans?

I don't know if they get C–SPAN over in Iraq, but here they are with their lives literally on the line, trying to bring freedom or ensure the freedom of the Iraqi people. They get television—if not C–SPAN, I know they get Armed Forces Television in many of the bases in Iraq—what do they see? They see us attacking each other about service or nonservice in a conflict that ended more than 30 years ago.

All of us who stand here—I haven't known of an elected or nonelected politician who hasn't said: We are all behind the troops; we are behind the men and women in the military; we support them 100 percent no matter what. What are they supposed to think? Are we really supporting them and are we interested in bringing about a successful conclusion to the Iraqi conflict?

Senator KERRY, the Democrat nominee, says we have to stay the course. He may have different views as to exactly how to do that than the President and the administration, but we are in agreement. Meanwhile, what are we doing on the floor of the Senate? We are attacking the President's credentials because of his service or lack of service in a war that ended 30 years ago, more than 30 years ago.

I think that is wrong. I wish we would stop it. I wish we would just stop, at least until the fighting in Iraq is over.

Second, maybe we could devote some of our time and effort and energy in coming up with a bipartisan approach to this conflict. Yes, there are enormous difficulties. No, things haven't worked out as well as they should have. Yes, I, myself, would have had different approaches to the challenge in Iraq. But we are there. We are in a very crucial moment. Why don't we all join together and sit down and work out, with the administration, both sides of the aisle, a common approach so we send a single message? Not that we are refighting the Vietnam war, but that we are committed to seeing this thing through in Iraq because we cannot afford to fail. We cannot afford to fail.

There will be plenty of time after this conflict is over. We may even have a commission. We have commissions for everything else; why not have a commission after we have democracy in Iraq to find out where we failed in Iraq? That would be fine with me. I wouldn't particularly want to serve on it, but let's have a commission.

But in the meantime, don't you think our focus and attention is misplaced? We are talking about chicken hawks. When the President of the United States is the one whose most solemn responsibility is to be Commander in Chief of our Armed Forces, and to prosecute a conflict that was authorized by an overwhelming vote in this body, and we are calling him a chicken hawk—please. Is that the appropriate time and place for this kind of activity?

I do know some of my colleagues on the other side of the aisle don't like this. I know my friend Senator LIEBERMAN proposed that we all join together to try to come up with a common approach. I don't know if that is possible in this day and age, but it is certainly something worth consideration. But at least, could we declare that the Vietnam war is over and have a cease-fire and agree that both candidates, the President of the United States and Senator KERRY, served honorably—end of story. Now let's focus our attention on the conflict that is taking place in Iraq, that is taking American lives as I speak on this floor.

I don't want to belabor the subject, but I do want to expand on it a little bit. It is a symptom of the extreme partisanship that exists in this body today on both sides of the aisle.

Mr. REID. Mr. President, could I ask the Senator to yield for a brief comment?

Mr. MCCAIN. I am glad to yield to my friend from Nevada.

Mr. REID. I had to step off the floor for a phone call, and I apologize. But what I wanted to say to the Senator from Arizona, the Senator from Arizona, in my opinion, is exemplary in his statements on the floor and off the floor about what has been going on between the two people who are going to be running for President in November.

I believe the Senator from Arizona has defended the Democratic nominee, his war record.

Mr. MCCAIN. And the President of the United States.

Mr. REID. That is right. I was going to say, and the President of the United States. We would be better off if everyone in this very delicate Presidential election would follow the lead of the Senator from Arizona. We do not need, in my opinion, to get into what went on in Vietnam.

We are proud of what Senator KERRY has done, and whatever President Bush has done, he is Commander in Chief now. It would be better off for everybody, I repeat, for the second time, if we followed the lead of the Senator from Arizona and not question what went on during those war years.

I would say, though, to my friend from Arizona, I feel as if I am in high school now—''They started it,'' that kind of thing. I think we need to get back to the real issues; that is, how we are going to finish the situation in

Iraq, what we are going to do about the economy, health care, the environment, and all those other issues.

The third time: We would all be better off if we followed the example of the Senator from Arizona. That is basically what I want to say. I apologize.

This is a he-said, she-said, they-said. My friend from New Jersey is a war veteran himself. He has a right to speak, as we all know. But I am sure he would not have spoken had this not started some other place. But I appreciate very much the Senator from Arizona yielding.

Mr. MCCAIN. I thank the Senator from Nevada who is a good and dear friend of many years, who I also know decries this.

Let me repeat one more time that I believe that honorable service was performed by the President of the United States in the National Guard. Almost 40 percent of the forces that are in Iraq today are guardsmen and reservists. They are superb young men and women.

Obviously, I know the Senator from Nevada shares my view that service in the National Guard is honorable service, as is service on Active Duty, as that performed by Senator KERRY, in my view. But it is time to declare a truce.

I would also say to my friend from Nevada, there is nothing we can do about what talk show hosts do, or outside commentators. That is freedom of speech.

I am sorry so much focus is on that, and I don't pretend to say I could do anything about that. But I hope Members of this body could declare a truce on this issue, if I may use that word, and then we could move forward in addressing the compelling issues of the day.

I will be glad to hear the response of the Senator or, if he doesn't mind—I yield to the Senator from Nevada.

Mr. REID. Mr. President, that would be easy to do. I think we can get people on this side to stop the discussion. If the administration wouldn't be doing what they are doing with ads and things of that nature, we would all be better off.

I repeat that I am not questioning someone's military record. As the Senator knows, this is an ongoing issue. I can't do anything about talk show people, but we can do something about the two Presidential candidates—one sitting President and one sitting Senator—and have them and their organizations not discuss this. I think it doesn't accomplish anything. Someone might say: They started it; we are going to try to finish it. We should wash our hands of that and try to start anew and not be talking about the service of either one.

Mr. MCCAIN. Mr. President, I would like to leave that particular subject, but say that segues in a very rational way into what we are facing on the floor of the Senate in consideration of this bill.

Yesterday, I was under the impression that we were moving forward with a vigorous and spirited and passionate debate on the issue of an Internet tax moratorium.

Why is this issue of importance? Because the worst thing we can do to small and large businesses in America, around America, is to have an atmosphere of uncertainty.

I think most of my colleagues would agree—this is probably the most partisan environment I have seen in the 18 years I have served in the Senate and the 4 years that I served in the House.

What is happening—and I was a bit sarcastic yesterday, I must admit—is we come to the floor with legislation which is important. The Internet tax moratorium doesn't lend itself to partisanship. In fact, the two greatest opponents of this legislation—Senator DORGAN opposes it with two Members on this side of the aisle. It is not one of those that somehow is a Democrat philosophy versus a Republican philosophy. One of the greatest supporters of the Internet tax moratorium is the Senator from Oregon. Here we are with this issue which is really important to American businesses. Most businesses, obviously, support a tax moratorium. But what they fear most of all is uncertainty. They have to make plans for their businesses and their futures.

What we are in danger of right now as we speak is getting hung up on extraneous issues, as we have on almost every piece of legislation that has come before this body, on extraneous amendments. I understand the frustration of my colleagues on the other side of the aisle. I served in the minority for the first number of years that I was here. Yet the majority sets the agenda. I have said to the Senator from North Dakota, I want my issue raised, I want a vote on it, and I am ready to go. I have never tried to tie up the Senate on an issue. I have come down here for years and forced votes on line-item vetoes. But I said that I am willing to have a time agreement and a debate on the issue of climate change. Senator LIEBERMAN and I said: Look, we are not going to tie up the Senate. We are not going to impede everything from going forward. We had a vote. We got 43, I am happy to say.

My point is, we shouldn't block the passage of legislation. I think there is a careful balance between proposing an amendment, getting a vote on it, and then allowing the legislation to move on rather than just overloading the legislation to the point where it has to be withdrawn.

I hope we can get a vote on the Democratic leader's amendment on ethanol. I hope we can get a vote on many of these other issues, including minimum wage if necessary. But at some point you cross a line between trying to have your views and your issues and your agenda addressed to the point where we just end up in gridlock.

I think most observers, both inside and outside of this institution, will agree we are basically gridlocked on almost every issue that comes before us. That is not what we are sent here to do. We are sent here to act as legislators and to address the issues that are important to the American people instead of partisan gridlock.

I hope we can sit down on both sides of the aisle and at least make people aware of what the agenda is. I have a very long relationship with both the Senator from Nevada and the Senator from South Dakota who are friends of mine. I would like to know what the agenda is. I don't think it is a lot to ask what I can expect in managing this bill. At least in that way I can try to accommodate the concerns of the agenda of the other side of the aisle.

But to come out here and just spring an amendment I don't think is quite fair, and I don't think I would do that if I were in that position.

I hope we can return to some kind of comity and that way perhaps decide how we are going to dispose of this bill.

I said only half sarcastically yesterday that if we are going to spend all of our time in gridlock around here, some of us would like to go home. It is much nicer in Arizona than in the Nation's Capital. Maybe we could leave a couple of Senators on either side to propose amendments, have quorum calls, and be in gridlock. Some people would be fooled that we are still working. But instead, it is now Wednesday. We are supposed to be out Thursday night, and we have addressed one amendment to this legislation. I don't think this is a fair way to legislate.

I know my friend from North Dakota is here and wants to say a few words, and my friend from Oregon and my friend from Virginia. But I also urge those who have amendments which are germane to please come to the floor so we can debate them and vote on them since I think it is important to do so.

I yield the floor.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, I know my colleague from Oregon has been waiting to speak. The Senator from Virginia is in the Chamber as well. But if it might be appropriate, I wish to make a couple of comments relative to my friend's comments. If it is appropriate, I would like to ask consent that the Senator from Oregon be recognized following my presentation. My understanding is he is going to speak for a few moments.

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

Mr. DORGAN. Mr. President, let me clear up a couple of issues.

First, my colleague from Arizona is straight with all the facts. We have no disagreements about the facts. He indicated I am opposed to the moratorium. I am not opposed to the moratorium. I have voted for an Internet tax moratorium. I hope before the end of this week I can vote for another Internet tax moratorium.

Mr. MCCAIN. Mr. President, if the Senator will yield, I appreciate the

Senator correcting the RECORD. I do not mean his opposition to a moratorium but his opposition to the definition of Internet access.

Mr. DORGAN. That is correct. I don't support the specific definition of access. We need to work through that. But that doesn't mean I don't support the moratorium on taxing the Internet. I have supported that previously. I supported the previous moratorium that was in existence, and I support it now. In fact, I will offer an amendment that will demonstrate that support. I appreciate clearing that up.

Second, the Senator twice yesterday—I was going to correct him and I did not—talked about the fact that the Democrats have a retreat this weekend on Friday. We Democrats don't use the word ''retreat.'' We call it an ''issues conference.'' We think ''retreat'' is a more negative word. So we have an issues conference, as do the Republican members of the Republican caucus, I think, have a couple times a year. We have an issues conference. We will be doing that beginning on Friday.

Let me also comment about the Senator from South Dakota, the minority leader, Mr. DASCHLE. He offered his amendment. I know the comments by Senator MCCAIN this morning reflect the right of Senator DASCHLE to offer that amendment. I understand that when one is managing a bill, the last thing you want is an amendment that is off the particular subject. But Senator MCCAIN has correctly stated that the amendment offered by Senator DASCHLE was well within the rules of the Senate. He has the right to offer that amendment.

My guess is, as Senator MCCAIN described his approach earlier in the Senate of offering an amendment, that might be extraneous for the purpose of getting a vote on the amendment at some point. I think Senator DASCHLE would be very happy to—I can't speak for him—come out here and say: I will withdraw that amendment in exchange of Senator FRIST allowing me a vote on that amendment immediately following the Internet tax moratorium. I am guessing Senator DASCHLE would be very happy to do that.

In any event, because he felt a need to offer that amendment on this bill, it doesn't mean he is trying to block this bill. The only block is a mental block among those who might not want to proceed now.

The fact is, I think Senator DASCHLE would be willing to come out here and say: Let us have a 15-minute time agreement or 30-minute time agreement, have a vote, and we will dispose of this amendment—however it is disposed of. Let us do that. I am sure he would say: I don't intend to block this bill but I just intend to exercise my right to get a vote on my amendment, which I think is the same approach the Senator from Arizona has used very effectively, I might add, over many years.

If anybody on the floor of this Senate is relentless—and some might use other adjectives—in the pursuit of his passions and demands that he be heard, it is the Senator from Arizona.

I expect others who have managed bills who have sat in that very chair have from time to time had to grit their teeth in sufficient volume to have people hear in the Russell Building when Senator MCCAIN comes to the Senate floor, wondering what amendment he will offer and what is its purpose.

The approach with which we legislate in the Senate is not always the most efficient approach. The most efficient approach, I suppose, is the one used by the other body in the House of Representatives where they package up, through the Rules Committee, the exact circumstance under which legislation will be considered. They bring a bill to the floor, they will allow these six amendments, and they will have 10 minutes each. They package it up and zip it real tight. The Senate does not work that way. George Washington was happy it does not. So was Thomas Jefferson. I am as well. However, it is frustrating from time to time. Yesterday was a frustrating day.

However, I would speak on behalf of the minority leader in saying that the issue offered with respect to renewable fuels is a very important issue. Let's just move on that. Let's get a vote on that. I expect I could ask him to come to the Senate floor, and I expect he would be willing to have a short time agreement if he gets a vote on his amendment. Since he offered the amendment, Senator DOMENICI came and offered a 900-page amendment dealing with the entire Energy bill, rewritten so that is a different issue.

My goal would be to try to move through this legislation. I hope we can find a way to vote on amendments that are offered, have short time agreements.

Mr. REID. Will the Senator yield for a question?

Mr. DORGAN. I am happy to yield.

Mr. REID. Is the Senator aware on this side we would be happy to agree to set aside, temporarily, the pending amendment? For example, Senator KENNEDY wants to offer something on minimum wage. He would take a very short time agreement on that: 15 minutes divided on each side. We would be happy to allow the majority to offer an amendment either as it relates to this bill, as the Senator from Arizona wants to do, or whatever else they might feel is appropriate. We would look at that and see if we could agree to a short time agreement.

Even though we are in this parliamentary quagmire with three votes scheduled for tomorrow, three separate cloture votes, today we would be happy to work our way through this, doing one amendment per one amendment. Is the Senator aware of that?

Mr. DORGAN. I am. I was trying to make the point that those who have a right to offer amendments do not intend to block the legislation. My hope is we can try to determine how we get through this, have votes.

I heard a presentation earlier this morning in the Senate saying the problem with the Senate is we are being obstructed every time we turn around. The obstruction is the minute somebody on our side offers an amendment, the place shuts down. I don't understand that.

There is a guy in my hometown who had a Model T. He got drunk one night, and when he was driving home he turned the front wheels too sharp. The Model T's were the only cars like the red wagon: If you turn the wheel too tight, it tips over. He turned the Model T too tight and it tipped over. He thought he saw chickens in the road, so he turned the wheels too tight and tipped the Model T.

I was thinking of this in terms of getting this moving. When somebody offers an amendment, somebody sees some chickens in the road, so we just stop or tip over. We just do not move. Then somebody says, Well, we do not want to move anymore because the other side has obstructed us.

I say—whether it is overtime, whether it is ethanol, or whether it is on minimum wage—they need not obstruct anything. I believe all of those who have offered those amendments have agreed to a very short timeframe. Have a vote and dispose of it, and then move forward. Because the majority does not want to have that vote, they essentially decide we are going to do nothing. We will keep the lights on, we will make it look like we are working, but we are not going to move.

That is unfortunate because there is not obstruction from this side. The obstruction would be from those who have decided once my colleague offered an overtime amendment we will no longer proceed with the corporate finance bill; we will no longer proceed because somebody offered an amendment we do not like.

With respect to this bill in the Senate, the Internet Tax Freedom Act, my preference would be whatever somebody offers today, ask them, Will you accept a time agreement that is reasonable—15 minutes, 30 minutes? If they say yes, we ought to have a discussion about it for that 15 minutes, call the roll, have a vote, and then move on. We will exhaust that pretty quickly. We will get to the amendments that are at the center of this bill, find out what the sentiment of the Senate is on that, and then, I hope, pass this legislation.

I hope at the end of the day I will vote in favor of this, as I have done on previous pieces of legislation dealing with the Internet tax freedom or the moratorium on taxing the Internet. My hope is we can find a solution to this definition. I think we are working on one so that we can vote for it. I want this to pass.

I have taken longer than I intended to say something I should have said with greater brevity, but my hope is we

can just proceed. We are now at parade rest again, as is the case with every bill, with people saying, Your side is obstructing. We are not obstructing. We can have a 15-minute debate on the Daschle amendment and then vote for it. I am for that. I think Senator REID would be for that. Let's do that. Then we do not have a worry about the Democratic leader offering an amendment. He offers it and the Senate has an opportunity to vote on it.

The place where we should be roundly criticized is if we offered an amendment and said, By the way, we do not want to vote on this; we want to talk about it for 2 or 3 days. No one I am aware of is in the position of doing that. That is not our intention. We simply want to vote on the Daschle amendment.

I know my colleague from Oregon is waiting to talk about the very thing that represents the difference on this moratorium issue, and that is the definition.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. First, Mr. President, I say to the Senator from North Dakota I very much support what the Senator is trying to do in terms of procedure. It is time to vote. As the Senator has said, whether 15 minutes or half an hour, people ought to get on to the task of voting.

After 8 years of discussing this eyeglazing subject of Internet taxes, we always cringe at the prospect of wading once more into this incredibly arcane area, so I will take a few minutes to talk about the definitions question with respect to Internet access. This is clearly the big hangup.

The Senator from North Dakota is here. He has been exceptionally cooperative, even though we have had different views on the subject over the last 8 years. I will take a couple of minutes to describe what the central concerns are with respect to working out the definition of the Internet access.

The concern on my part is, as the Alexander language is written today, in effect it will hide taxes on Internet access, No. 1; and, No. 2, it opens the door to multiple State and city taxes on the individual component parts the American people think of as Internet access. No Senator wants to do this. There is no Member of the Senate who gets up in the morning and says, I want to have thousands of new Internet taxes. However, the way the definition of the Alexander language is written today, it will, in fact, open up the opportunity to tax wireless Blackberry services, spam-filtering systems, Web hosting, and the like.

I will take a minute to touch on both of these concepts, the question of hiding the Internet taxes and the question of opening the entire Net to taxing the individual components. We will have to work through those two in order to do as the Senator from North Dakota has suggested—get this done as we have done on several occasions.

With respect to the hiding of taxes, it comes in the overall bill the consumer receives. We already see this in jurisdictions, for example, that tax DSL. Right now, I believe we are discriminating against the future. Right now cabling, in effect, gets a free ride. DSL gets taxed in a number of jurisdictions. This has special impact for my friend from North Dakota and me because DSL, of course, is the way we will get broadband into rural areas. The way that tax shows up, of course, is in the overall bill. It is just in the overall bill.

So unless we get equity for DSL relative to cable, what is going to happen in America is the Internet tax will be hidden in the overall kind of bill, and the consumer will just see, in Oregon and North Dakota and everywhere else, a higher bill for broadband than they would see right now for cable, and that would be continued.

So we absolutely, in the area of definitions, have to have technological neutrality. That is what we began with 8 years ago when we said everything that happens online is the same thing that is going to happen offline. To get the technological neutrality this time, we have to say that DSL does not get hammered and cable gets a free ride.

Here is an example. I want to offer this to my colleagues because I think it also highlights again our concern with respect to the definitions in the Alexander language and how it opens the opportunity for additional taxes. The Alexander language stipulates there be no tax on services used to ''connect the purchaser of Internet access to the Internet access provider.'' But nowhere in that language is the term ''connect'' defined.

Does it mean that Internet access ends where a computer hooks into the phoneline? Does it mean where the phoneline reaches the central office or where the line makes its first point of presence on the Net? So the term ''connect'' without any definition is simply uncharted territory, and it would again, in my view, allow States and cities to tax Internet access, again, through a kind of hidden approach that is going to keep the consumer from doing what I and the Senator from North Dakota have always tried to do in the consumer protection area: give consumers access to information and make sure there is truth in billing so they can actually choose between various technologies that best assist them.

With respect to the question of the Alexander legislation opening up the door to multiple State and city taxes on the individual components people think of as Internet access, we now have 391 separate taxes on telecommunications administered in 10,000 jurisdictions. The fact is, States tax different technology platforms for Internet access in different ways. So we have a cable modem platform, we have a traditional landline, we have a wireless dial-up in DSL, and, of course, satellites.

The Alexander proposal says that DSL is not Internet access but a telecommunications service, and, in effect, we would then see DSL further taxed. I think that would eliminate the competitive playing field that has always been the point of this exercise for now 8 years. To me, to just force people, particularly in rural areas—in the rural areas I care about and the Senator from North Dakota cares about—to face this discrimination against broadband is particularly troubling.

So I know this is exceptionally complicated material, and Senators have been barraged by all sides on this over the last few days. I have tried to outline how the revenue projections we have discussed over the last 8 years, with the States and localities saying they were going to lose vast amounts of revenue, have not come true. I have talked about how this is an effort, in this iteration of the Internet tax freedom bill, to essentially update our original law with respect to technology. But it is, as the Senator from North Dakota has correctly said, a question of definitions. So this concept, as I have outlined with respect to the Alexander language, in terms of how you would connect the purchaser of Internet access—without that being defined means you can expose jurisdictions to multiple forms of taxation. Then there is the question of hiding the Internet tax, which is what the Alexander proposal will do, because companies do not eat these costs; the companies end up passing them to the consumer.

So what will happen, all over this country—in North Dakota and Oregon and across the country—is that people who order broadband, who essentially look to DSL for their broadband services, will just get a higher bill. They will get a higher bill than people who order broadband through cable. That is regrettable. It certainly violates the principle of technological neutrality.

I repeat, I think the Senator from North Dakota has been very constructive on this issue. We have gone through this water torture exercise now since late 1996, and I am very much prepared to do this once again. But clearly, with respect to these definitions, we have some major issues that have to be worked through.

I also point out, as the chairman of the Commerce Committee did yesterday and Senator ALLEN has as well, in 10 separate areas, as we worked even for the managers' amendment, we have made efforts to compromise on the definitions question. We have exempted a whole host of areas all of the sponsors felt should not be subjected to taxation. With respect particularly to voice over, the exciting area where phone calls are going to be made over the Internet, we have made it clear in this legislation, in the substitute the chairman of the Commerce Committee

is offering, that we would not change the status quo.

I have heard from California and others that somehow this is going to dramatically change the question of taxation for phone calls over the Internet. The McCain language clearly stipulates—clearly stipulates—that in that area California and others have been so concerned about, there are no changes.

So I look forward to working with the Senator from North Dakota. I commend him for taking yet another crack, as he has done for 8 years with me, on this subject that I have been comparing to sort of prolonged root canal work. But we are going to get this done, and hopefully it will be this week.

Mr. DORGAN. Mr. President, will the Senator from Oregon yield for a question?

Mr. WYDEN. Of course.

Mr. DORGAN. The Senator from Oregon has outlined, I think, the center of the discussion and the controversy. To demonstrate the complexity of this issue, when we talk about someone connecting to broadband from their home computer, they are connecting, perhaps, through their telephone system. So it goes from the computer to the telephone wire, back to, I guess—through, perhaps—a D-SLAM, up to an ISP, Internet service provider. So you have a series of things that are happening with respect to the connection.

Some would say the connection is between the computer and the telephone service that is going to be provided at a cost of, let's say, $40 a month, and that shall be tax exempt. I agree with that. That connection shall not bear the burden of a tax. I think that is what the Senator is talking about with respect to part of the definition.

So then the question goes beyond that. Well, what about the architecture that goes back up through the local phone system to the D-SLAM, to the Internet service provider? What if they are buying a part for the facility that allows them to move DSL out to the neighborhood? That is part of the DSL stream, but it is upstream in the architecture of getting the DSL to the home. So is that part of what the architecture is?

One of the difficulties for me is to try to understand what the Senator from Oregon describes as the connection. Is it all the way up to the Internet service provider in every purchase—every part, every piece, or every bit of construction that exists between the computer and the Internet service provider downstream through the architecture? If that is the case, we are talking about a substantial amount of economic activity, almost all of which is now taxed, incidentally, not just for telephone service but similarly for the cable system, which would not then be taxed in the future and would affect the revenue base of State and local governments. But if the definition of the ''connection'' is some $40 a month that one might pay for the DSL service, that, I think, represents a definition that most of us agree with.

I am just trying to understand a bit, and perhaps the Senator from Oregon can describe an answer to those questions so I understand it better.

Mr. WYDEN. Mr. President, with respect to the architecture the Senator from North Dakota has described, people have already paid once. So this question of what is going to be done with respect to various aspects of the architecture is an interesting discussion for us to be pursuing in the Senate, and all of these various components and pieces of equipment, but people have already paid once. And with respect to Internet access, about which we have been concerned, it is almost like a carton of milk: You paid for the carton of milk once; you should not pay again if you are going to pour it on your cereal or something else.

The Senator from North Dakota has raised a question about funding for what is called the backbone of the communications system. But at the end of the day, the bottom line is, people have already paid once. What we want to do with this legislation is to say, on the question of Internet access, nothing about sales taxes and the like. The Senator from North Dakota knows once we get over this, we will have the next issue, which is the question of the streamlining of sales taxes. But with respect to the architecture the Senator from North Dakota has raised, the consumer has already paid once with respect to Internet access.

Mr. MCCAIN. Mr. President, will the Senator yield for a question?

Mr. WYDEN. I am happy to yield.

Mr. MCCAIN. I don't know if the Senator from Oregon had a chance to see the article by Senator ALLEN this morning in the Wall Street Journal. I commend it to all. It is funny because Senator ALLEN's piece in the Wall Street Journal dovetails with the information we received in the Commerce Committee in the last 2 years about revisiting the 1996 Telecommunications Act and what we need to do in the future.

The issue that came up with all the witnesses this morning and came up yesterday morning was the United States is falling dangerously behind all other nations on DSL. We are now ranked 11th in the view of some, 20th in the view of others. If you would have told me 10 years ago we would rank behind South Korea on almost any technology, as intelligent and hard working and industrious as they are, I would have said: We have a problem.

As the Senator from Virginia points out in his piece, they are trying to tax DSL. Some States are taxing DSL. I am not saying it is taxation of DSL that has caused the serious problem we have fallen behind at least 10—in the view of some, 19—other nations in broadband access. But I am saying, why in the world would we want to lay taxes on them at a time when we need to expand it dramatically rather than lay a tax on it.

May I mention one other point here that is important. To all of these State Governors, the National Governors Association, who keep saying, ''We are losing all this revenue; why don't you stop spending so much,'' revenues have increased in literally every State in America in the last couple of years. Instead they are spending more. For them to tax DSL at a time when it, in the view of almost everyone, is critical to the United States maintaining its technological lead and the growth of business, communications, and politics, is outrageous. It is insulting. It is disgraceful these greedy Governors are so greedy they don't understand the impact of taxation of DSL, which is still only in 28 percent of our urban and suburban residences and 10 percent of rural America. Talk about tunnel vision.

They and their acolytes come over here and start talking about how important it is that they be able to keep taxing and that many of them—as Senator ALLEN points out in his column, they say: We are not going to tax hamburgers, so they tax the meat and not the bun—have started to tax DSL. It is spreading. Even in our bill, we are going to allow them to continue to do so. We are going to allow them, even though they are not in violation of the letter of the law, but certainly the intent of the law by taxing DSL. Now they want to tax it more. Every witness before our committee—we had the Cato Institute and the Brookings Institute; we had representatives across the spectrum of thought in America—said: You have to increase DSL. You have to increase broadband access. You are falling behind every other nation in the world.

So what do the Governors want to do? They want to tax them. We are going to have them come over here and talk about unfunded mandates and unfairness and fairness. The fact is, if we allow every State in America and every municipality in America to start taxing DSL, it is absolutely inevitable that we will see a slowing of the growth of broadband access. It is obvious if you lay another burden on it.

There are a number of areas, including overregulation and other things. Mr. Notebaert of Qwest pointed out yesterday that in order for his corporation to provide DSL to a home, to have permission to do so required $130,000 in expenditure and X number of days. I think he said something like 24 days. But if a cable company wants to provide exactly that same service, they can provide it in less than 24 hours. Obviously there is something fundamentally and terribly wrong in the regulatory regime, and it needs to be fixed.

I am not blaming our falling behind other nations on DSL and broadband access simply on taxation. But I am saying that increases in taxation—and it would be widespread if we opened the door—will have a substantial chilling effect in the reduction of what should be one of our Nation's highest priorities, as the President of the United

States said in his speech the day before yesterday, to provide broadband access to all Americans no matter where they are.

I again congratulate my colleague from Virginia for an excellent piece in the Wall Street Journal. I recommend it to my colleagues.

Mr. WYDEN. Mr. President, I still have the floor. I know the Senator from North Dakota wants to talk more about the architecture. The point that is being made with respect to broadband and that Senator MCCAIN has touched on is if we now say the Alexander definitions go forward, broadband through DSL is going to be taxed. That is discrimination against the future. It is particularly burdensome for rural areas, the kind of areas I and the Senators from North Dakota and South Carolina represent. The fact is, you are not going to get broadband into small areas through cable. It is not economically efficient to do it. You are going to get broadband to rural areas through DSL.

I am prepared—once we make sure DSL is not singled out for discriminatory treatment, as it has been in a number of jurisdictions in the past—to work with the Senator from North Dakota and others to get this matter resolved.

Broadband through DSL is going to create a tremendous number of jobs. Brookings has said there are going to be hundreds of millions of dollars worth of investment that come about through broadband DSL. The Senator from Arizona is correct in saying we don't have the problem now with respect to broadband exclusively because of taxes. But I can assure my colleagues we will in the future see this problem compounded if broadband secured through DSL is singled out for special treatment. Under the Alexander definition, that would be the case. That is unfortunate.

I yield the floor.

Mr. DORGAN. Mr. President, I have just a couple of thoughts. First, my colleague from Arizona was also at the hearing this morning when the question to one of the witnesses elicited the answer that taxes really are inconsequential or have almost no impact on the movement and deployment of broadband. I happen to agree with that assessment.

What has happened with respect to Japan and South Korea, as an example, where they have had this robust, aggressive development of broadband, it is a result of a couple things. They had a national will, a program, and a determination to make that happen, including loan guarantees, among other things—also, including regulation. What was the regulation? It was that their Government said incumbent providers must make their facilities available to other competitors; their dark fiber must be made available to other competitors. They created robust, aggressive competition and, therefore, a massive buildout of broadband. Good for them. But that was regulation. That was the Government saying you have to make your dark fiber available to the incumbent providers. They have approached this in different ways.

Also, we in this Government, right now, have, I understand, over $2 billion of loan guarantees and loan authority in the U.S. for the buildout of broadband. I know that because I offered the amendment which allowed that to happen.

Senator BURNS and I and others worked on this for a long while. Yet that money has sat down at the USDA and they are not doing much with it. We met with the Secretary of Agriculture to say: Let's move, let's incentivize and develop the buildout of broadband.

You have resources, substantial resources. I believe the resources used in Japan were $1 billion in loan guarantees. We have more than that available; it has been available, appropriated, and ready, and it is not being used. While I appreciate the President's speech, I say to the President that we have appropriated money for this. Let's get USDA to move on it.

I wish to make the point that there are a couple of things that reflect what has happened in Japan, South Korea, and other countries, I might add, that has dramatically accelerated their buildout of broadband. We ought to be concerned about that. In my judgment, we ought to have regulatory authority, and we ought to have the ability to use what is already appropriated for loan guarantees. We ought to have a national will and a national determination to have a broadband buildout that is aggressive. That is going to happen when our Government says this is a significant priority for us.

Attendant to that, I would say, is passage of a moratorium bill. I will support that at the end of the week, provided we can reach this solution on definition. I don't want to describe that as some nirvana that is going to be the event that unleashes some massive, new program of the buildout of broadband.

I agree with the fellow from Brookings who said this isn't particularly consequential. It is not the tax issue that is impeding the buildout of broadband.

Having said that, we have previously decided, as a matter of public policy, that we did not want to tax Internet service, connection to the Internet. I supported that. That moratorium existed in Federal law, and then it expired last fall. I prefer at the end of this process, this week, I hope, that we will have passed another piece of legislation that represents a moratorium. Why? Well, I think incrementally it is the right policy. I don't know. We have some people on the floor who have law degrees. I guess most of us have advance degrees of some type. I will bet there is not one person on the floor of the Senate at the moment who can understand their telephone bill—not one. We ought to bring them to the floor of the Senate and go over it in some detail. It would take a few days. That would be the ultimate obstruction, trying to read your personal telephone bill. It is so god-awful complicated, nobody can understand it. There is a myriad of charges, fees, and taxes.

For that reason, I am sympathetic to the notion of a moratorium, not because I think it unleashes the forces of the buildout of broadband; I think it is a reasonable thing to do.

I have not read the submission of the Wall Street Journal printed by the Senator from Virginia today, but I will do that when I have the opportunity. I am interested now that it has been raised. I think what we should do is the right thing, and we ought to do it the right way. So you don't find opposition from me with respect to the objective here. I hope we can reach this definition as we move upstream beyond the immediate connection of DSL, for example, and that we can define what moving upstream means, and exactly what it is we are preventing from ever being taxed by State and local governments, which they may now tax.

Once we describe and understand that, I think we can easily find a bill that should get 95 votes in the Senate, to say we subscribe to the basic principle that we should not tax access to the Internet. That is a principle I support, and I hope at the end of the week I will be able to manifest my support by voting for the legislation.

Mr. MCCAIN. Mr. President, I know the Senator from Virginia has been patient. Briefly, I point out that in the hearing this morning, yes, one witness from Brookings said it would have very little, or not much, effect. The other five witnesses said it would have great effect. All six witnesses said they strongly supported an Internet tax moratorium, including DSL, with varying degrees of enthusiasm, including the one who said there was very little effect. The other witnesses strongly favored it and thought that a tax, particularly on DSL, would have a significant impact.

I think we ought to reflect in the RECORD the view of all of the witnesses.

Mr. DORGAN. If the Senator will yield on that point, this is like being witness to an accident. We all see different things, apparently. But it is absolutely true that all of the witnesses at the hearing we just attended supported a moratorium on the issue of taxing the Internet. No question. I didn't hear from all these witnesses that it would have ''great'' effect. I didn't hear that term. Nonetheless, I believe they feel, as I do, and as Senator MCCAIN does, that we ought to have a moratorium.

Mr. MCCAIN. I thank my friend.

I point out again, there are a lot of reasons why we are falling behind, probably for the first time I know of in a major high-technology capability. Maybe during the 1970s there was a time we fell behind the Japanese in

certain areas. But this should be of concern to all of us. We should remove any impediment or burden. I think the Senator from North Dakota and the Senators from Oregon and Virginia agree that we have to change the regulatory scheme which has clearly not conformed with these advances in technology.

I point out again, when Dick Notebaert said it costs him $124,000 and X number of days to install a DSL line, and a cable company can do it in 24 hours, something is wrong. Either one is wrong or the other.

But I argue that if I were a small businessperson and I saw looming ahead of me significant taxes on the way I was conducting my business, I would obviously give pause. Small businesspeople have small margins. We all know that. That is always a factor in the decisions that are made. I think we ought to remove that impediment or certainly that cloud of concern that small business in America is considering today.

I thank my friend from Virginia for his patience. I yield the floor.

The PRESIDING OFFICER. The Senator from Virginia is recognized.

Mr. ALLEN. Mr. President, it is an interesting discussion we are having. Actually, I think it is very important for folks to understand the context of this and how important it is in our efforts—Senator MCCAIN's Senator WYDEN's, mine, and others.

This debate is about protecting consumers from taxes, taxes that would be burdensome and harmful. It is keeping, not taking necessarily, revenues away from any State or local government, but making sure we don't have them putting on additional taxes and costs, thereby making access to the Internet, and more particularly broadband, in rural areas and small towns less affordable. Everyone understands that if you tax something or something has a higher cost, fewer people can afford it.

We are talking about bridging economic digital divides. We are talking about what Japan, South Korea, Singapore, Denmark, Sweden are doing, and how the U.S. is falling behind.

One of the reasons the Internet has grown in this country is because the national policy for the last 6 years has been, don't tax it. It is simple. A fourth grader will understand the basic economics that more people will be able to afford something if it doesn't cost as much.

So the first rule of a national policy in making broadband available to all people everywhere in this country is don't tax it. That is simple and that is the basic effort of the leadership on this issue.

You can talk about incentives, and the Senator from North Dakota talked about incentives. I have been in favor of many of these incentives, and I think the Senator from Oregon has, the chairman of the Commerce Committee as well. But the point is, it seems so counterproductive. We are going to give incentives to companies to invest hundreds of millions of dollars to get broadband high-speed Internet access to southwest Virginia or eastern Oregon or northern Arizona, but we are going to have to give even greater incentives because we are going to have to offset the taxes that are going to be imposed on those ultimate consumers. It is illogical and counterproductive to have taxes imposed on Internet access.

For folks who are watching at home, you may think you send e-mails across this country and those messages are traveling over the Internet. Guess what. You are right; they are. Here is the problem with our opponents' proposal. By the way, I wish the folks who are on the side of taxing the Internet were in the Chamber. Let's vote on the amendments. The Senator from Texas, Mrs. HUTCHISON, had an amendment yesterday. We debated it, and we voted on it.

We had a cloture vote, and 11 people did not want to go to this bill. I wish they were in this Chamber debating and advocating their ideas and let the Senators vote on them rather than delaying, dawdling, and freezing up this bill.

Our opponents say e-mails are not Internet services, they are telephone services because what they want to do is apply telephone taxes to your Internet communications.

The protax view is, if you happen to choose DSL for your Internet service, and you are unlucky enough to fall into one of these taxing grandfathered States, then the entire network from your computer to your friend's e-mail inbox on the other side of the country is taxable.

Telephone tax rates can run very high. Here are some examples. This is not a proud moment for the Commonwealth of Virginia. Richmond, VA, 29, almost 30-percent taxes on a telephone bill in Virginia. Texas has high taxes, too, 28.5 percent. This is the top 10. Georgia is 19 percent. I am sure the Presiding Officer is glad to see South Carolina is not in the top 10. South Carolina actually ought to be applauded. South Carolina was one of the grandfathered States, allowing them to tax Internet access, but they said, no, it is harmful to South Carolina's ability to attract business, and they removed that tax, as did Iowa, the District of Columbia, and Connecticut. Regardless, this is the amount of taxes that are put on telephone services.

The opponents will say they are worried about telecommunications migrating. They worry about telecommunications, telephone calls, migrating to the Internet with voice over IP. Senator MCCAIN's amendment makes sure that issue is not disposed of in this bill. The reality is, what they are advocating is having telephone taxes migrate onto your Internet access bill.

The Senator from North Dakota mentioned bills and how we try to figure out these bills. What Senator WYDEN and Senator MCCAIN and I would like to see done if we had a moratorium is have your Internet access bill be the way it is now. Whatever that amount is, it is simple. This chart shows your monthly bill of $23.90. If it is broadband, the amount is probably going to be in the thirties or forties. Of course, we like to make sure there is competition whether it is wireless, DSL, satellite, and a variety of other areas. The Carper-Alexander approach would want that to be taxed.

Guess what it would look like. The Senator from North Dakota talked about how can we figure out these telephone bills, as there are multiple local taxes, State taxes, Federal taxes. This chart shows a Verizon bill. Here we have gross receipts surcharge, relay center surcharge, such and such—all sorts of different taxes, Federal and State.

From the simplicity of your bill with no added taxes, taxes on average 17 percent, they want to get into this situation. I say to my friends and anybody watching, there was a similar debate, I suppose, 105 years ago, in this Senate. They needed this money because we were in the midst of the Spanish-American War. They said: We need to put a luxury tax on this newfangled idea called the telephone. So a luxury tax was put on telephone service.

Guess what. Whether you are in Virginia, North Dakota, Oregon, Hawaii, or anywhere in between in this country, Americans, well over 100 years after that Spanish-American War, are still paying that Spanish-American War luxury tax on telephone service. The reason I say that is it gives us an idea of how many different taxes there are, but also a history lesson of how hard it is and nearly impossible to ever remove a tax once a tax is imposed.

That is why it is so important that we act on this moratorium and prevent new States, additional States, localities, counties, and tax districts from coming up with new taxes because if you ever try to take them off, you will hear all sorts of bleating and whining: Oh, gosh, you can't take it off. Again, the prime example is this Spanish-American War tax that still is on our telephone bills. This is what Senator MCCAIN, Senator WYDEN, and those of us who are on the side of the consumers and against taxing the Internet are advocating.

If you happen to choose a dial-up service, whether it is cable modem, or however you get your Internet access, our opponents will say you should be protected from taxation from, they say, ''the last mile'' leading up to your house. But then say the Internet backbone still should be taxable.

Let's examine what this means. Let's assume you live on Capitol Hill in Washington, DC. I know for some watching on TV that would not be an appealing thought. Nonetheless, let's assume you do. Let's assume you wanted to send an e-mail to a friend in Los Angeles, CA. Because of the way the Internet operates, that e-mail message

will be broken into various packets of data sent via various routes all across this country.

Let's say one piece of your e-mail goes from Washington, DC. It will probably go into Loudoun County, VA, because there is a good server there. It is going to go to Chicago, because in Chicago they have a big Internet hub, then to Austin, TX, then to northern California because they also have a huge hub there, and then on down to southern California.

You begin to get a sense of all the jurisdictions this e-mail passes through and the chaos that will result if they, the tax proponents, claim to have authority over your e-mail. Obviously, DC and Virginia would have an opportunity to tax it, or maybe Loudoun County would tax it, going through parts of Ohio and Indiana, through Missouri, Arkansas, Oklahoma, Texas, and probably, if you are assuming all these are direct lines, it may, for all you know, go on up to Idaho and Oregon. Regardless, all of those would claim jurisdiction and authority over that e-mail.

This is a classic example of interstate commerce. Our Founders had a concern about multiple burdens imposed by multiple governments and that is why our Founders put the Commerce clause in the Constitution giving Congress, not unelected bureaucrats, the authority and responsibility to make sure interstate commerce and the interests of all of the people are defended against potentially harmful burdens imposed by State and local governments to taxation.

Now, according to our opponents, the folks who are advocating taxing the backbone, which of the jurisdictions would be free from taxation on this Internet backbone? None. None would be prohibited. All would be free to tax interstate communications. Every single State, every single city, county, town, and municipality on this red line would have authority to tax; not just DC, not just Illinois, not just Texas, not just California, but all of them.

Remember, our opponents have promised everyone tax freedom for the so-called last mile, which is the last mile right here, which means people may enjoy no taxation on the last mile so they will have tax freedom there, but they have 3,000 miles of taxes if the Alexander-Carper proposal is successful. I do not know if that sounds like an Internet tax moratorium to my colleagues. It certainly does not to me, because State and local governments, while they cannot tax the very beginning or the very end of an electronic connection, can tax everywhere in between. They can tax from the end of the beginning to the middle to the end of the end before you get to the final end. The point is, they can tax every other part of this 3,000-mile electronic journey.

The Alexander-Carper alternative would allow for taxes on the Internet backbone services in all 50 States and in every local taxing jurisdiction, plus taxes directly will be on the consumer in more than 20 States. The Alexander-Carper amendment would create a nightmare scenario our Founders sought to avoid when they wrote the Commerce clause of our Constitution where every town and State would tax commercial traffic moving through its borders.

We have 7,600 taxing jurisdictions in the United States. Not a single one of those 7,600 taxing jurisdictions would be prohibited from taxing the Internet backbone under the Alexander-Carper proposal. In fact, the bill makes clear America's 7,600 taxing authorities can tax e-mail in every jurisdiction in America as long as they present the bill to the Internet service provider instead of directly to the customer. In the 20 to 30 States, depending on interpretations of the new grandfather clauses, they can tax the consumer directly.

Figure what is going to happen. If there is a 17-percent tax on this, who knows, Ohio might have the 17-percent tax, Illinois would have a 12-percent tax, Texas would have 25 percent, New Mexico 12, Arizona, under the great influence of the senior Senator from Arizona, would have 1 percent, Nevada being a very free State in many respects, and libertarian, would have zero. Then we get to California and San Francisco which would have a high tax, say 28 percent, and then as it gets to Los Angeles, it is back to 17-percent tax.

The point is, every single one of these would be able to tax it. So the opponents will say we ought to be able to tax this, but if one takes an airplane from Dulles Airport to Long Beach, say they flew Jet Blue from Dulles Airport to Long Beach, the Federal Government says a person is not going to be taxed as they fly over the country, but that electronic message will be taxed if the Alexander-Carper amendment passes.

Indeed, if we want to use that analogy going from Dulles Airport in northern Virginia to Long Beach, CA, the Federal Government recognized that is interstate commerce. Decades ago, the Federal Government said you cannot tax not only when you fly over a State but you cannot tax as you are leaving and you cannot tax those passengers at their destination when they arrive, either.

I ask my colleagues to say no to 3,000 miles of taxes, and say yes to a true and accurate Internet tax moratorium.

Mr. DORGAN. Will the Senator yield for a question?

Mr. ALLEN. I ask my colleagues to act. I ask those who have amendments to go forward with their amendments, let us debate them, let us decide today so we are not delayed, frozen up as it happens from time to time in the Senate with not enough time tomorrow night because folks are scattering to go to various events and political functions.

Yes, I yield to the Senator from North Dakota.

The PRESIDING OFFICER (Ms. MURKOWSKI). The Senator from North Dakota.

Mr. DORGAN. Madam President, I agree with the last statement. I think we ought to proceed and vote on issues that are before us. I would like to get to the conclusion of the bill, so I support that.

Looking at the Senator's chart and listening to his discussion, we are not so far apart on all of this. I do not disagree with that which he has said with respect to much of his desire to prevent institutions of Government from coming in and taking pieces of this and taxing it, but I used an example last year I want to use again to describe my need to understand exactly what will be covered by the moratorium.

For example, if we decided to exempt from taxation a loaf of bread because we decided bread is important to life and we do not believe bread ever ought to be taxed, so we want to exempt a loaf of bread, we could have a moratorium on the taxation of a loaf of bread forever. The question will be, does that extend then to the grocery store that buys the shelf to display the bread, because they are probably going to have to pay a use tax to the company they buy the shelf from, and that use tax goes to the State and local government. They are going to make the case there is a moratorium on the taxation of bread. We actually pay a tax on the shelves we are purchasing and that has to be passed along in the price of bread so we believe the purchase of the shelves ought to be tax exempt as part of this moratorium.

I am asking that question only to try to understand what the moratorium refers to with respect to the electronic transmission. The electronic transmission the Senator describes I understand should be exempt. The question is, if that facility in Los Angeles the Senator describes, or southern California, which is a facility that is an Internet hub and reroutes the e-mail that is moving along the system, if they are purchasing desks and things in that facility for the purpose of furthering this Internet transmission, should they be exempt? Will they be exempt? Is that what the Senator intends with this definition?

I think as soon as we fully understand all of this definition issue that is being raised, the sooner we can move forward and construct an appropriate moratorium, which I will support. So I ask those questions of the Senator from Virginia.

Mr. ALLEN. I thank the Senator from North Dakota for his question. We are not talking about a loaf of bread, and if we were talking about a loaf of bread we would have a lot of people saying, gee, we rely on all the taxes. If one looks at the cost of a loaf of bread—and I know the wheat farmers in North Dakota say, Here is the price I get for wheat and think of what

the cost of it is, it is 3 cents out of the loaf of bread, and by the time everyone else does different things in packaging and transport, there are all sorts of taxes on it, and it ends up being who knows what, $1.50 for a loaf of bread, or maybe 79 cents if one is lucky and it is a few weeks old. Regardless, all of those component parts increase the cost of the loaf of bread to someone who wants to put peanut butter and jam on a sandwich for their young son or daughter going to school.

So that economic argument applies to why we do not want to have a lot of taxes in between. The simple answer is we do not want the bandwidth being taxed. Internet service providers have desks. Internet service providers have a physical facility that is subject to property taxes and they have personal property taxes on some of the accessories in that building. They have to pay the corporate taxes as that corporation. If they are an Internet service provider, if they have an income, they have to pay a tax in that particular State. The point is, though, that for the bandwidth, the actual transport, that should not be taxed.

I thank the Senator from North Dakota. I also recognize that while we do not necessarily agree on this issue at this moment, I do appreciate that at least when we wanted to proceed to this measure you voted to proceed, unlike the 11 who wanted to continue to freeze it.

Mr. DORGAN. If the Senator will yield further for a question, I think I understand a bit more. I think I would want to see a greater refinement of it. If the Senator is now saying the definition that he believes is appropriate for this moratorium deals with the bandwidth or the spectrum that is used—essentially the bandwidth that moves that packet of ones and zeros across the country in the form of an e-mail, but he is not talking about things other than that—is that correct?

Mr. ALLEN. Right. There were a great deal of concerns, I think the Senator from North Dakota might recollect, in the Commerce Committee about what was exempt or what was prohibited from taxation or what did the moratorium prohibit taxation upon. There were many concerns. They were generally handled, in my view, adequately by the managers' amendment that Senator MCCAIN had, that came out of the Finance Committee. That made sure what was to be taxable and what was not taxable because there were concerns that somehow personal property taxes, real estate taxes, corporate taxes, income taxes, and so forth, would be prohibited on companies that are involved in providing Internet service.

Our concern is making sure that whomever your Internet service provider is in Washington, DC, when you get to, say, Los Angeles and there is a slew of other Internet service providers there with a lot of competition, in between they don't own all of this. Somebody has to get this routed electronically. So that routing of that electronic e-mail, so to speak, or those bits, should not be taxed.

It is looking at this message as being a car, an automobile. You could drive across this whole country on an interstate that is a freeway. The Alexander-Carper amendment would turn that into a toll road. So you wouldn't go this way unless you were lost or taking some scenic route. But if you were driving from Virginia to Tennessee, you would take Interstate 40 probably, across 81, but you can probably drive that whole route, as I have and others have, and not pay a toll.

But if you have the Alexander-Carper amendment, that turns this whole thing into something akin to the New Jersey Turnpike, a toll road. Obviously, once you get there it is going to cost you a whole lot more to get that packet, that automobile, from Washington, DC, to Los Angeles.

I thank the Senator from North Dakota for his interest, his probing questions that allowed me to clarify what we are trying to do.

I conclude by saying to the opponents, come forward; let's get moving; let's get acting. I think it is vitally important to protect consumers from these taxes. I think it is vitally important to those who are looking to invest in rural areas that they know what the policies of this country are, to recognize in what kind of market they might be in small towns and rural areas, and let's get about expanding economic opportunity, jobs, and prosperity for all Americans everywhere in this country.

I yield the floor.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. MILLER. I ask unanimous consent I be allowed to speak up to 12 minutes as in morning time.

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

(The remarks of Mr. MILLER pertaining to the introduction of S.J. Res. 35 are printed in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Madam President, I am prompted to comment on the interesting, provocative, and controversial comments by my colleague from Georgia. He knows I have long respected him and was pleased when he arrived here in the Senate. I have enjoyed working with him. But I must say I don't have quite so hopeless a notion about our country or its future. I don't despair about what is happening in this country. I think we have incredible challenges to meet, and we must. We have a big globe with 6 billion people on it. One-half of them have never made a telephone call. One-half of them live on less than $2 a day. One hundred fifty million kids are not in school. One and one-half billion people don't have access to clean, potable water. Somehow, in this big challenging Earth of ours, we ended up right here right now. What a remarkable thing for us. It is our time and our responsibility to nurture and protect this democracy of ours. There is no other democracy like it on the face of this Earth. At a time when our country faces challenges, this country somehow provides leadership.

The McCullough book about John Adams is interesting to me. John Adams traveled a lot, because he represented this new country they were trying to put together, both in England and in France. He represented our interests, and he would write back to Abigail. As he would write to Abigail, he would lament in his letters to her: Who will provide leadership to put this country of ours together? Where will leaders come from? Who will be leaders?

Then he would plaintively say in his letter: There is only us. There is just only us. There is me. There is Jefferson. There is George Washington. There is Ben Franklin. There is Mason. There is Madison. There is only us.

In the rearview mirror of history, the ''only us'' represents some of the greatest talent ever gathered on the face of this Earth.

Thomas Jefferson: Have we seen another? I don't think so. George Washington was a remarkable person.

So the questions John Adams asked—where will leadership come from, who will be the leaders—have been asked of every generation. Somehow, through time, this country has been blessed by leaders who stepped forward and said, Let it be me. Let it be us. This country has been blessed with remarkable leadership.

You can take over 200 years a period of 5 years or 10 years in which you can suggest perhaps the leadership was less than it should have been at that time. But somehow the calling of this great democracy to ordinary Americans who have the capability to do extraordinary things has produced that leadership. It will, in my judgment, again also strengthen and nurture our country.

I like the original thinking of those who wrote our Constitution. I love the Constitution. I think it is one of the greatest documents ever written which establishes the basis of our freedom—we the people. We have people here who think it is a rough draft. I think we are going to vote on three amendments to the Constitution in next couple of months in the Senate. It has only been amended 17 times in 2 centuries. Do you know why? Because there are not many people who can improve upon the work of George Washington, Ben Franklin, and Thomas Jefferson's contribution to the Bill of Rights, for example. Outside of the 10 amendments called the Bill of Rights, we have amended the Constitution only 17 times in 200 years. Yet we will, I guess, vote on three of them here in just a matter of time because people think it is a rough draft and something that is easily changed and easily improved.

It is the case I think which perhaps causes some of the despair in some quarters in this country, that there is a kind of a crescendo of noise from corners of America that aren't very appealing.

I can tell a story which describes a country in great trouble. I can tell that story easily. We have roughly 10 million Americans who do not have a job today. They desperately want a job and their country's economy hasn't provided them a job. There are 10 million people who are out of work, and 30 million to 40 million people are on food stamps. We are the murder capital of the world. We consume one-half the world's cocaine. What an ugly place. Or I can take up some person's dysfunctional behavior and hold it up to a light, and say, Isn't this ugly, and run it through about 10 talk show programs and have it on every morning show, and say, Isn't this ugly? Yes, it is ugly, but it is not America. It is not America. It is somebody's ability and desire to try to entertain people with someone else's dysfunctional behavior. I can give that speech and I hear it from time to time.

However, there is another side to this country that gives me cause for great hope and does not lead me to the conclusion that we ought to take away the right of the American people to vote for public officials. Let me describe that, if I might.

There was a man named Stanley Newberg who died in New York City. Stanley Newberg is someone I did not know. I saw a paragraph, maybe two paragraphs about him in the New York Times. It simply said this man had died and then described something he had done. I asked my staff if we could find out a little more about him. Let me tell you about Stanley Newberg.

He came to America with nothing, to escape the persecution of the Jews by Nazis. His dad had nothing. He began to peddle fish on the Lower East Side of New York. Stanley, beside his dad, walked along the Lower East Side peddling fish in New York City. They made some money and did fairly well.

Stanley went to school, went to college. He got his college degree and went to work for an aluminum company. He did so well he rose up to manage the company. He did so well managing, he decided to buy the company. He did very well, and then later he died. When Stanley died they opened his will. In his will, this man left $5.7 million, his estate, to the United States of America. He said: With gratitude for the privilege of living in this great country, with gratitude for the privilege of living in this great country of ours. I thought, what a wonderful thing, to understand what others see.

If we did not have immigration laws, this place would be full, just plain full. We have folks from all around the world who want to come and live in this country. Why? It is a beacon of hope and opportunity.

We survived the Civil War. We beat back a depression. We beat back the oppression of nazism and defeated Adolph Hitler. We have done so much. We built the atom. We spliced genes. We invented the silicon chip, plastics, radar, the telephone computer, the television set. We build airplanes; we fly them; we build rockets; we go to the moon; and we are hardly out of breath. We cure smallpox. We cure polio. What a remarkable place this is. We have two little vehicles crawling around the surface of Mars analyzing rocks. Isn't that something? I must say, the pictures they got look very much like a place 5 miles south of my hometown, but apparently this is high science and pretty remarkable. This is really a very special place.

Is it the case that we face some pretty big, daunting challenges? You bet your life we do. We have a fiscal policy that is way out of whack. A few years ago everyone thought we would have surpluses forever. Now it looks like we will have deficits forever. We have to fix that. We cannot leave that to somebody else. That is our job. That is on our shoulders. This President and this Congress need to fix that.

Iraq, Afghanistan—this country represents the beacon of opportunity and freedom around the world. We are involved. We got involved in Afghanistan because we are tracking al-Qaida and dealing with people who killed innocent Americans, and we need to deal with that. We have American troops there, fighting and dying. We do not have a lot of options. We have to prevail and persevere and support those troops. We will. This is not the darkest of hours for our country. This is a great, strong, resilient country—within my judgment, a foundation of goodness people around the world understand. For a long, long time, if anything happens around the world, who is there first? Which country can be looked to to provide help, to say, you are not alone? This country. This country tackles issues other countries do not even want to acknowledge.

We had women chaining themselves to the White House gate because they were not allowed the right to vote. They said: We demand the right to vote. We dealt with that issue. The list is endless. We grapple with them. It is not easy. But we are the example of representative self-government in this world that works. It is messy. The noise of democracy is annoying sometimes, but it works.

Going back to John Adams' lament to Abigail: where is the leadership, in my judgment, every generation of Americans has seen leadership emerge and develop to lead this great country in times of trouble. That will always be the case because this is a special country, and we do have people who are willing and able. Right now, there is someone running for the Senate someplace in this country whose name I perhaps do not know who likely will be a President some day. Why? Because they have a passion in their heart and their gut to serve this country and want to do right by this country.

Let me come back to where I started. The only reason I was provoked to say these things is my colleague gave a speech this morning about something which, as I sat and listened to it—look, I have great respect for my colleague from Georgia. His public service is extraordinary. I first knew about him when he was Governor of Georgia and he was talking about scholarships for kids. I thought, what a great idea. Our future is not people who wear dark suits and suspenders who some people consider windbags in the Senate; our future is kids. That is who will run this country. I have great respect for the Senator from Georgia.

I wanted to say this: At a time when there is so much lament about America, I have a great reservoir of hope for the future of this country. This country will prevail. I know, as I have traveled around parts of the world, one example comes to mind. I was on an Army helicopter once that ran out of gas. I learned one of the immutable laws of flying: When you are out of gas in a flying machine, you will land soon. We landed in an area between Nicaragua and Honduras. I was with two other Members of Congress. When we landed, we were out of contact with anybody else. We landed in a clearing in kind of a jungle area between Nicaragua and Honduras, and campesinos from all around came to the helicopter. We were waiting to get rescued. We got rescued in 4 or 5 hours. The campesinos had come up and I got to talking to some people who had never seen anyone from our country. I was asking questions. We had an interpreter with us.

Do you know what all of them said they would like to do? They would like to come to the United States of America—all of them. We asked, What would you like? I would like to come to the United States of America. I would like that for me, for my kids. We find that all over the world. Why? Because they see this country as something unusual on the face of this Earth, something very unusual. That did not happen just by accident.

I come to this Senate floor not because I have a political pedigree or because I come from a big reservoir of wealth; I come here because a Norwegian immigrant came to this country with her husband, and her husband had a heart attack shortly thereafter. She was left alone with six kids. She took her six kids to a small rural area in southwestern North Dakota and started a farm. She pitched a tent, she built a house, raised a family, and ran a family farm in Hettinger County, ND. She had a son who had a daughter who had me. That is how I got here. And virtually everyone here has a similar story about perseverance, strength, faith, and hope—almost always about hope.

Let me conclude by saying while we face many challenges, I have great hope that, yes, the talents of the Senator from Georgia—unique talents, extraordinary talents—and the talents of

so many others with whom I have had the ability to serve in this Chamber and in the House of Representatives, and also other venues of public service in this country, give this country a better opportunity for a better future.

I have had several other opportunities to work in different environments. I don't know that I have ever worked with a more talented group of people than the men and women, Republicans and Democrats, with whom I have served in the Senate. They are extraordinary people who come to the call for public service. I salute them and say I have great reservoir of hope for the future of this country.

I yield the floor.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. CARPER. Madam President, I was watching the debate earlier that dealt with the Internet tax, and I felt it important to explain clearly where Senators ALEXANDER, VOINOVICH, ENZI, Senator DORGAN, and I are on this issue.

Before I do that, I am compelled to comment on a bit of what Senator DORGAN has said. I missed most of my colleague ZELL MILLER's comments, but I heard all of what Senator DORGAN said. I am one of those guys who are probably like him, who see this glass as almost full; but even if it were almost empty, I tend to see it as half full.

We were here about a week or so ago debating what to do with respect to the situation we face in this country with asbestos. We all heard the stories that there are people who are sick and dying from asbestos exposure and not getting the help they need. There are folks who may have been exposed to asbestos, and they are taking away money from the folks who ought to be getting it, who are sick and dying.

In the meantime, in the settlements that are taking place, in relation to the transaction costs, the legal fees, maybe half the settlements go for legal fees. That is a situation we face. It is not a good situation. We all know we ought to do something about it. The tough thing is trying to figure out what.

We have the insurance industry in one corner, the manufacturers and the defendants in another corner, the trial bar in another corner, and organized labor, which is a proxy for victims, in yet another corner.

Last week, we voted not to proceed to the bill that Senator FRIST had introduced. Some of us thought it was premature, given the negotiations that have been underway for the last couple months, trying to narrow our differences on asbestos litigation reform. As a result, I think 47 of us voted not to proceed to the bill. We did not proceed to the bill.

But a very good thing has happened subsequent to that. The very good thing is, the negotiations, the mediation led by a retired Federal judge from Pennsylvania, a fellow named Becker, who had been the chief judge of the Third Circuit for a number of years, now retired, in his seventies, a fellow whose health is apparently not good. I probably should not say this. He takes chemotherapy, so I think his health is not good. But he is in his seventies and an age where he is retired and he does not have to work. But he has been drawn, by Senator SPECTER, into trying to mediate the differences between organized labor and the trial bar and the insurance companies and the defendant companies to see if we cannot come up with a better way to make sure people who are sick and dying from asbestos exposure get the help they need, and to make sure people who are not sick but have been exposed—but they get sick—that we help them, too; and for folks who are not sick, who have exposure, to make sure they get their medical costs paid and try to reduce outlays from the settlements that occur so the money goes to the people who need the help, not necessarily to their attorneys.

Judge Becker is here today in Washington. He lives in Pennsylvania, but he is here today. He was here yesterday. He was here the day before. He is leading a mediation that has been anointed, embraced by our leaders—Bill Frist on the Republican side, the majority leader, and Tom Daschle on our side, the Democratic leader.

As I speak right now, Judge Becker is holding forth, meeting, listening, asking questions, probing, trying to move the disparate forces to a consensus. I joined him for a little while over in the Hart Building earlier today and said to Judge Becker: My job, I get paid to try to build a consensus on difficult issues. That is part of what we do in the Senate.

That is not Judge Becker's job. He is retired. He ought to be somewhere taking life easier, and yet he is here. He paid his way down on the train today. He did the same thing yesterday. He pays for his own meals, his own lodging. He does it out of the goodness of his heart because he thinks it needs to be done.

I raise that just to say that every day, in some corner of this Capitol, somebody is trying to make this place work. In this case, it is Judge Becker. There are other people of good will who are in that room with him trying to get through a tough patch and to help us find a way to a more rational, logical, fair way to help people who have been exposed to asbestos.

We voted last week not to go to the bill. I know some people were not happy with that vote, but we simply believed it was not time to go to the bill, given this mediation process. We urged our leaders to embrace that process, and they have done that. I am encouraged—out of that embracing of that mediation process, and the infusion of leadership authority to it—that something good will come of these negotiations.

Mr. President, we will have an opportunity to vote tomorrow on proceeding to the McCain amendment. Senator MCCAIN has sought to find a compromise on the Internet tax legislation.

Let me back up for a moment and talk about it, if I can. When Senator VOINOVICH and I were Governors of our respective States, we worked with the Congress—House and Senate Democrats and Republicans—and encouraged then-President Clinton to sign legislation that said the Federal Government ought not tell the States to spend money on something and not provide that money. The Federal Government should not undercut the revenue base of State and local governments without making up the difference.

In 1998, the Congress passed a little bitty unfunded mandate that said States could not tax access to the Internet. If you were already doing it, you could continue to derive your tax, if you are a State or local government, and tax access to the Internet. But the States could not have multiple taxes; they could not have discriminatory taxes on the Internet. That was the legislation passed in 1998 and extended in 2001, and that moratorium lapsed last fall, as we know.

Since that time, States have not jumped in to pass new taxes on access to the Internet. They have not passed discriminatory taxes or multiple taxes with respect to the Internet. They have been sort of sitting back biding their time, waiting to see what we would do.

I think there are four areas of contention that exist with respect to the proposal that Senator MCCAIN has offered. One is the definition of what is tax exempt under any moratorium we negotiate. On our side, Senators ALEXANDER, VOINOVICH, ENZI, myself, and others believe the existing moratorium actually nails it pretty well, and the idea that folks should not have to pay a tax on accessing the Internet on their AOL bills, if you will. Whether they access their e-mail, their Internet by cable, by DSL, or by wireless, we think folks should not have to pay that kind of tax.

We do not believe folks should have to pay multiple taxes by different levels of government on the Internet. We believe there should not be discriminatory taxes on purchases, for example, that are made over the Internet.

But we have a clear difference of opinion with respect to defining what is to be tax exempt—free from taxation—by State and local governments. Our friends on the other side are interested in doing a whole lot more than stopping access fees that we pay as consumers. We don't want anybody to pay those either.

They want to go well beyond the moratorium against multiple fees on use of the Internet. They want to go beyond discriminatory taxes. What they want to do, really, is take away from States and local governments the ability, if States want to, to impose business-to-business transaction taxes that might involve the Internet. I am not interested in taxing those as a Federal legislator, but I don't know that it

is our part, as Federal legislators, to say to State and local governments that they can't do that unless we are willing to make up the revenue shortfall that may come as a result.

So the four areas of difference: One is the definition of what is tax exempt under the moratorium we adopt. A second area of difference that we have is with respect to the duration of the moratorium that we might extend. I said earlier, the first moratorium we passed was 3 years in duration from 1998 to 2001. At that time, Congress passed, almost unanimously, a further 2-year extension of that moratorium that lasted until last fall. Now that moratorium has lapsed.

I think we have seen suggestions in S. 150, introduced by Senator ALLEN and Senator WYDEN, that they wanted to make the moratorium permanent, an extension of the moratorium not 2 years, not 3 years, but to make it permanent. They define very broadly what is to be exempt from taxation under that permanent moratorium, even if it cuts into the revenue bases of State and local governments, and even if we do not make up the shortfall they may then face. So the second area of contention is the duration of the moratorium.

The third area of contention deals with whether we should grandfather in the rights of State and local governments, so if they have already put in place some kind of tax on the Internet, our previous moratoriums grandfathered them in, protected them, for a period of time, from losing those revenues. It held them harmless, if you will. And the question is, if we go forward and we have a grandfather clause to protect the States that already have imposed some kind of tax measure, how long do we extend that grandfather clause for those State and local governments that are going to be deprived of revenues they currently collect, and that we are not prepared to make up?

The suggestion has come forward, in Senator MCCAIN's proposal earlier this week—maybe yesterday—that there should be a grandfather clause to hold the States harmless for a while but not for as long as the duration of the moratorium. And that is problematic.

The fourth area of contention deals with the application of the moratorium to what I would describe as traditional taxable voice communications, taxable by State and local governments, but the application of the moratorium to those traditional taxable voice communications when those communications are routed over the Internet. It is called VOIP.

Is it possible to bridge our differences on those four areas? It may or may not be. But having clearly defined them, our side is certainly willing to discuss them with those who have a different view of these issues than we do. One thing we all agree on is, whatever we do, we should try to hold the States harmless.

Somewhere in my talking points today, I have a discussion of why it is important that we hold the States harmless. If I can just take a minute or 2, I want to share part of this.

Our States are clearly facing extremely difficult times. We all know that. States have cut services and raised taxes over the last 3 years as they have scrambled to fill a budget shortfall that approaches $250 billion. Many States still face significant revenue shortfalls. California alone must fill an estimated $16 billion shortfall. New York faces a $4 billion shortfall. Both Michigan and Florida still have projected deficits of $1 billion. Some States are being forced to make cuts that are not only painful and unpopular but which ultimately undermine our efforts as part of welfare reform to make work pay. Some 34 States have adopted cuts that are causing anywhere from 1.2 million to 1.6 million low-income people to lose their health insurance. Alabama, Colorado, Maryland, Montana, and Utah have all stopped enrolling children in their children's health insurance programs. Florida has done the same and has built up a waiting list of more than 10,000 children.

Meanwhile, Connecticut is cutting coverage for more than 20,000 parents, and Georgia is cutting coverage for 20,000 pregnant women and children. In Texas, the State is actually ending coverage entirely for nearly 160,000 children and working families.

Besides health care, childcare is also on the chopping block. Some 23 States have cut back on childcare for working families. Florida, for example, has more than 48,000 children on a waiting list for childcare. Under the State's formula they are actually eligible, but they are not able to get it given the State's fiscal challenges. Reducing the waiting list is not even an option. I am told the budget in Florida is moving through the statehouse and they have cut childcare even more, by another $40 million.

Tennessee faces similar cuts. Tennessee has begun declining applications for childcare from all families who are not actually receiving welfare payments.

Altogether, in about half of all States, low-income families who are eligible for or in need of childcare assistance are either not allowed to apply or are placed on waiting lists. In California alone, over a quarter of a million kids, 280,000 children, are on waiting lists in that one State.

I won't go on. The point I am trying to make is just a reminder. States face terribly difficult choices these days, whether it is health care, childcare, size of the classrooms, or the ability to hire teachers and to pay them what they need to attract good math and science teachers. States are in a bind. I was Governor in the good years, from 1993 to 2001, when we were rolling in money. The States are not rolling in money anymore.

The father of the Presiding Officer is Governor. He will tell us they are not rolling in money up in Alaska any more than they are in California.

If States were rolling in money, Senator ALEXANDER and myself, Senators VOINOVICH, ENZI, HUTCHISON, and others would not be making this big fuss over what we believe is an unfunded mandate for State and local governments that is represented by S. 150 and, we believe, by the alternative offered by Senator MCCAIN. If the States were rolling in money, we wouldn't be doing this. If we were providing some kind of offset to the revenues that State and local governments would lose, we wouldn't be making a big fight about it either. If States could be held harmless, we could probably work our way through this. Maybe we ought to. I believe we should.

One thing I know for sure, there is agreement to extend the moratorium. I think if we were to vote on a simple 2-year extension of the moratorium that expired last November, there would probably be votes to pass that.

I am concerned about the vote on cloture tomorrow on the McCain proposal. I urge my colleagues not to vote for it. Last week I urged my colleagues not to vote to proceed to the bill on asbestos that Senator FRIST had introduced, not because I was not interested in getting a conclusion or consensus. I believed that by not bringing the bill to the floor, it actually increased the likelihood that we are going to get consensus on asbestos litigation reform. We are moving in that direction, and I am encouraged that we are on the right track.

I believe if we go to the McCain bill tomorrow, we would be acting prematurely. There are still negotiations that can take place and should take place around the four elements I discussed. If we are forced to take up the bill at that point in time, we foreclose what could come out of those discussions, some of which have borne fruit already, some which still could.

There are a number of Senators on my side who want to offer amendments of their own. It is ironic. We have on the one hand people on the other side of this issue—from Senators ALEXANDER, VOINOVICH, ENZI, and myself—who contend that they want to support the telecom industry. I believe in their hearts they want to promote the industry. It is a good industry with good people. But there are also folks on our side and on the Republican side who have a whole bunch of ideas they would like to present and to offer as amendments. I will mention a few that might be appropriate.

If we want to help the industry build a market broadband network, there are any number of viable options. Senator HOLLINGS has introduced legislation, with a number of cosponsors, that would provide block grants to support State and local broadband initiatives.

Senator DORGAN, the floor manager on our side, has legislation to make

low-interest loans available to countries who would deploy broadband technology in rural areas. Senator ROCKEFELLER has introduced legislation, with 65 cosponsors, to provide tax credits for companies investing in broadband equipment. Senator BURNS of Montana has legislation that would allow the expensing of broadband equipment. Senator BOXER has legislation that allocates the additional spectrum for unlicensed use by wireless broadband devices. Senator CLINTON and others have legislation.

To the extent that we vote for cloture tomorrow on the McCain proposal, many, if not all, of these proposals will not be made in order, even though they are germane and they relate to the issue. These amendments and, frankly, a lot of others like them could not be offered.

I am not suggesting that all of them should be offered, but some of them should. Members who have a strong interest and have worked on the issues for a long time deserve that right. They believe strongly.

As my collegues think about tomorrow's cloture votes, I realize this bill has gotten off track. What somehow started off as an Internet tax bill and figuring out how we can extend the moratorium and then paying a user fee for access to the Internet got off on another side rail on energy policy, ethanol, and a number of other things. I think Senator DOMENICI has introduced as an amendment the entire Energy bill. Eventually, I hope we will work our way through that. In the meantime, I hope we will use the hours ahead and maybe the next couple of days to join in a negotiation with our colleagues on the other side of this issue and try, maybe one last time, to see if there is someplace in between where we are and where they are.

In the end, if there is a push for the approach Senator ALEXANDER and I introduced, which is the straight-ahead, 2-year extension of the moratorium, to make sure it is not biased against DSL, we can just have that vote. We are not there yet. We have about 24 hours to consider it, and maybe cooler heads will prevail. If it comes to it, I will vote against cloture, not because I am not interested in finding a solution—I think we can. The time just may not be right. It could be close.

With that, I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada is recognized.

Mr. REID. Madam President, I ask the Chair to make an inquiry to the leadership as to whether it would be appropriate for us to recess at about 2:55 until about 4:05. The Secretary of Defense will be here. With the parliamentary situation we find ourselves in on the Senate floor, it would be appreciated if the Chair would check that out through the leadership.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Ms. MURKOWSKI. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mrs. DOLE). Without objection, it is so ordered.

Ms. MURKOWSKI. Madam President, I would like to take a little time this afternoon to talk about one of the pending amendments. This would be the amendment of the Senator from New Mexico regarding energy. It has been said on this floor and in the committees in which I have been participating, and no doubt it is going to be said again: At a time when the American economy is suffering under the weight of high energy prices such as the steadily increasing natural gas prices, record high gasoline prices as we go into the summer months, and tight international oil markets resulting in rising crude oil prices, it is time that the Congress act on issues as they relate to energy with a comprehensive national energy policy.

I am pleased the Senate is reconsidering this vital national policy. I commend Chairman DOMENICI for his leadership on this issue. The Senator from New Mexico has shown a great deal of willingness to find the middle ground on many of these issues addressed in the amendment. I believe we should work with him to enact this comprehensive energy legislation.

There are several different components to the amendment. Certainly the one I happen to focus on most, coming from Alaska, is that area which will help facilitate the construction of an Alaska natural gas pipeline. Construction of this pipeline means a great deal to the people in my State. It means not only jobs for Alaskans, but it means energy, natural gas, to my State.

But we have to look beyond just what it can provide to Alaska. The construction of a natural gas pipeline will create thousands of jobs throughout the United States and bring a much needed new supply of domestically produced natural gas to our starved lower 48 markets.

We have seen in the news recently the suggestion, coming from Mr. Greenspan, that the future, if you will, is in imported LNG. Once again, it is the emphasis that we should place in the national energy policy on domestic sources of energy. We have those domestic reserves in Alaska, as it relates to natural gas. Let's take advantage of that.

Residential natural gas customers are paying nearly historic high costs to heat their homes, to cool their homes, to keep the lights on. Americans are increasingly forced to spend a substantial portion of their household income on energy costs. A reasonably priced supply of natural gas will allow homeowners to devote a greater portion of their disposable income to other pursuits.

When you think about the state of the economy and what we spend on energy, the more disposable income that we have, the less we have to spend on energy, the stronger an economy we have.

But it is not just the residential customers in America who are suffering from these sustained high natural gas prices. It is our industrial consumers who rely on natural gas to produce the petrochemicals, the fertilizers, and other goods. They are losing their markets to foreign competitors who have access to less expensive reserves of gas. Whether I am sitting in the Energy Committee or the EPW, talking about what is happening across the country now, whether it is on our farms or whether it is AMAZON.Com not being able to produce the packaging bubbles domestically because of the high price of natural gas, it affects all of us in all the industries.

In many instances we are hearing about the companies that are laying off workers, closing their factories, because they simply cannot pay the current natural gas prices and remain competitive within the global marketplace. The layoffs affect thousands of workers in many regions of the country.

Look at what Alaska's natural gas can do. We are a long way from the rest of the 48, but with a pipeline getting our reserves of natural gas into the lower 48, we can meet that supply need; we can help to reopen these factories.

Natural gas is not only a vital feedstock for industry and home heating, it also serves as a major fuel for electricity production. By the year 2020, the Energy Information Agency has predicted that natural gas will account for 32 percent of all electricity generation. When we think back to the situation just last August in the Northeast, California's power problems 3 years ago, increasing the investment requirements for our Nation's electrical grid and production capability will only further the demand for natural gas as plant operators look to natural gas as having lower capital costs, higher fuel efficiency, shorter construction lead times, and lower emissions as compared to traditional coal-fired electrical plants.

Yet with all of these facts in front of us, recognizing that the residential consumer is paying more, that the industrial consumer is paying more, and businesses are being closed, recognizing the future as it relates to electricity production, and considering the President's request, if you will, that we move to a hydrogen-based society, the request he made in his State of the Union Address last year when he indicated he wanted children who were born today to be driving vehicles powered by hydrogen—it is wonderful, but we have to have the natural gas to assist with all of this.

Despite all of Alaska's proven reserves, 35 trillion cubic feet of proven reserves on the North Slope with the possibility of upwards of 100 trillion cubic feet still in the ground, we need to do all we can to bring that from

Alaska's North Slope to the rest of the country.

Senator DOMENICI's amendment is not all about natural gas. For electricity, about which many of my colleagues have spent a great deal of time talking on the floor, the amendment ensures reliable and affordable electricity for America.

We all recognize that we in Congress must address the issue of reliability. The amendment would prohibit onerous Federal manipulation of energy trading markets that cost consumers money, and it would increase the penalties for market manipulation and enhance consumer protections.

To those of my colleagues who have called on the Senate to address the electricity issue, the reliability issue, I say support Senator DOMENICI's proposal.

For coal, which is used to produce 50 percent of our Nation's electricity, the amendment authorizes $2 billion to fund the Clean Coal Power Initiative. The development of clean coal technology will help our Nation use its abundant coal resources in an environmentally responsible manner.

In Alaska, we are working to find new ways to use our very abundant reserves while mitigating the impact on our environment. We have a little place called Healy, AK, where we have a small experimental clean coal plant. This clean coal plant is currently sitting dormant. It just barely missed its emissions requirement. We were attempting to utilize new technology to again provide very necessary energy to an area that was very limited in what it could receive and what it could generate. Once the Healy clean coal plant and other clean coal technologies demonstrate better ways for us to generate electricity from coal, we can utilize our Nation's vast coal resources in an environmentally responsible manner for many years to come, as well as provide high-paying jobs and much needed electricity.

There is also renewable energy. For renewable energy, the amendment reauthorizes the Renewable Energy Production Incentive Program to promote the use of clean renewable energy. The amendment would also encourage exploration and development of geothermal energy, including a call for rulemaking on a new royalty structure that encourages new production.

I could go further in detailing all those very important matters contained in the energy amendment, but I think these four examples—authorizing the Alaska natural gas pipeline, improving our Nation's electricity grid, providing research on clean coal technology, and promoting the use of clean renewable energy—illustrate the immense benefits of a comprehensive energy policy. They are great, but they are meaningless to us unless we enact them.

A comprehensive national energy policy, as envisioned in Senator DOMENICI's amendment, will generate thousands of jobs throughout the country. As I said on many occasions, the Energy bill is a jobs bill. So is this amendment.

I commend the Senator from New Mexico for offering this amendment. I know my constituents in Alaska don't care whether this bill is enacted as an amendment or as a stand-alone bill. My constituents want to see the jobs. My constituents want to see the energy, they want to see the natural gas, and they want to see movement on an energy policy. I think most Americans want the same thing. They want high-paying jobs. They want decreased volatility in the energy market. They want increased use of renewable energy and improved electricity grids. I think we have that within this amendment.

I urge my colleagues as we move forward to support the amendment of the Senator from New Mexico.

I thank the Chair. I yield the floor. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

MORNING BUSINESS

Mr. MCCAIN. Madam President, I ask unanimous consent at this time the Senate proceed as if in morning business until 2:55, and the Senate will recess for approximately 1 hour because Secretary Rumsfeld will be briefing Members in room 407. I amend my unanimous consent request that the Senate reconvene at 4 p.m. today.

Mr. REID. If the Senator would modify his request, at that time we come back on the bill.

Mr. MCCAIN. Return to consideration of the McCain substitute.

Mr. REID. Reserving the right to object, I appreciate very much the request of the Senator from Arizona. It is appropriate. By 4 o'clock we will know what position we are in on both sides.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. ALEXANDER. Madam President, I ask unanimous consent I be allowed to speak as in morning business.

The PRESIDING OFFICER. The Senator has that right.

Mr. ALEXANDER. I understand the President pro tempore may be coming to the Senate floor. If he appears, I will yield to him and pick back up when he finishes. In fact, the President pro tempore has arrived.

I yield the floor to the Senator from Alaska until he finishes.

PRAISE FOR MILITARY MEDICAL COMMUNITY

Mr. STEVENS. Madam President, the Senator is very kind, and I thank the Senator from Tennessee.

Madam President, I come to the floor today to inform the Senate of the outstanding commitment, courage, and professionalism of our military medical community. This morning, the Senator from Hawaii and I cochaired a hearing with the Surgeons General and the chiefs of the Nursing Corps from each branch of the Armed Forces. We were joined by Army Surgeon General James Peake, Navy Surgeon General Michael Cowan, and Air Force Surgeon General George Taylor. From the Service Nursing Corps, we heard from Army COL Deborah Gustke, Navy ADM Nancy Lescavage, and Air Force GEN Barbara Brannon.

I want the Senate to note and personally thank each of our witnesses today for the outstanding leadership they provided to our military medical community. Their individual accomplishments are numerous.

I offer a special recognition to Surgeons General Peake and Cowan, who will be retiring from Active Duty this year. We greatly appreciate their service in military medicine, to our Nation, and especially their assistance to the Appropriations Subcommittee on Defense. The insight they provided to the subcommittee is invaluable. I congratulate each one of them on a successful and distinguished career.

During today's hearing, the members of the committee and I were told of outstanding accomplishments by our military medical leaders. I have come to the Senate to share some of what we learned today with my colleagues.

Over the last year, our thoughts have never been far from the battlefields, or from the soldiers and families who have sacrificed so much for our Nation. I salute our brave soldiers, sailors, airmen, and marines for their efforts in the war on terrorism. I join the families of our lost sons and daughters in mourning and remembering those who made the ultimate sacrifice in the defense of freedom.

I have seen many headlines about the casualties of the war, but the accomplishments of our military doctors, nurses, and corpsmen are seldom mentioned. These health care professionals were among the first to rush to the battlefield, and they are still on the front lines providing care in some of the most dangerous and difficult conditions.

Today our combat medics regularly perform miracles. They use transformational technology to successfully expand the ''golden hour'' of trauma care, the critical hour of opportunity from when a trauma is sustained and the lives can be most often saved.

One telling statistic is the lowest ''died of wounds rate'' in recorded history of warfare.

A number of factors have contributed to this accomplishment, but the mobile surgical teams have been crucial. They bring resuscitative surgical care onto the battlefield. Without the care they get within the ''golden hour'' after being wounded, the 15 to 20 percent of wounded soldiers they target would probably die while being evacuated to the combat support hospital.

These surgical teams are specially equipped to deal with excessive hemorrhaging, which has been the major cause of death in previous conflicts. One of the transformational technologies employed by these surgical units is a hand-held ultrasound machine used to identify internal bleeding, a truly lifesaving piece of equipment.

Other technologies the medics have employed include haemostatic dressings and the chitosen bandage. These are two new lifesaving wound dressings that are being used in Iraq and Afghanistan.

Approximately 1,200 haemostatic dressings have been deployed under an investigational new drug battlefield protocol. In one account we learned of today, the dressing was successfully applied to a thigh wound to completely control arterial bleeding when a pressure dressing and tourniquet proved unsuccessful. There are two similar reports of special forces medics using chitosen bandages to treat severe bleeding caused by gunshot wounds to the extremities. Approximately 5,800 of these chitosen bandages have been deployed to the theater of operations.

These are just a few of the examples of military medics using revolutionary medical technologies to lead the way in trauma treatment, lead the way in saving lives. Military researchers continue to investigate numerous other cutting-edge technologies, and those efforts are the foundation for the future of medical health care while in the service. Many of these same technologies will likely be used someday in civilian trauma centers across our country.

Aeromedical and ground evacuation crews, operating from Blackhawk helicopters, a variety of fixed-wing aircraft, and ground evacuation vehicles, such as the Stryker, have also performed exceptionally during operations in Iraq and Afghanistan. The crews have demonstrated an ability to swoop into a hostile environment and pull wounded service members from the battlefield. They provide critical in-flight trauma care until more substantial care can be provided at fleet and field hospitals.

Military health professionals also ensure the health and safety of our soldiers in a number of other ways. When forces deploy around the globe, environmental health professionals are on the ground surveying the environment for biological and environmental threats. Among these military health professionals are nationally recognized experts in chemical, biological, radiological, and nuclear threats. Their expertise ranges from medical surveillance and epidemiology to casualty management. Chemical, biological, radiological, and nuclear training has been incorporated into the soldiers' common skills training, advanced individual training, and leadership courses.

Our health professionals also consider the mental health of our troops to be a top priority. In July 2003, a team of mental health experts from treatment facilities around the Nation left for Iraq. Their mission was to assess mental health issues and address concerns about a spike in the number of suicides occurring in the theater of operation. These professionals evaluated the mental health patient flow from theaters and assessed the stress-related issues soldiers experienced in combat operations.

The survey team remained in the theater for 6 weeks and traveled to several base camps. I am told this is the first time a mental health assessment team has ever conducted a mental health survey with soldiers in an active combat environment.

While many of the medical providers are deployed in the support of contingency operations, the military health system continues to provide outstanding care to service members, their families, and our retirees here at home.

These professionals never waiver in their commitment to the highest quality of health care for our beneficiaries.

The caregivers here at home also provide rehabilitative care to our troops after returning from combat. Perhaps the best example is the amputee center at Walter Reed Army Medical Hospital, which provides state-of-the-art care to service members who have lost limbs in battle. The center aims to return each amputee to the highest level of performance and quality of life. I have personally visited with wounded soldiers at the center, and I can tell you they are achieving their goal.

I have come to the Chamber to commend our military health care professionals who have served with distinction throughout the global war on terrorism. Their dedication and commitment to their fellow service members is unmistakable, and their service is responsible for saving countless lives, both of our American service members and injured Iraqis. We are truly grateful for their service.

I ask the whole Senate to join me in commending the military service of these medical professionals who have done so much for us.

I ask unanimous consent that the article from the Washington Post of April 27, entitled ''The Lasting Wounds of War,'' by Karl Vick, be printed in the RECORD.

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

THE LASTING WOUNDS OF WAR

(By Karl Vick)

BAGHDAD.—The soldiers were lifted into the helicopters under a moonless sky, their bandaged heads grossly swollen by trauma, their forms silhouetted by the glow from the row of medical monitors laid out across their bodies, from ankle to neck.

An orange screen atop the feet registered blood pressure and heart rate. The blue screen at the knees announced the level of postoperative pressure on the brain. On the stomach, a small gray readout recorded the level of medicine pumping into the body. And the slender plastic box atop the chest signaled that a respirator still breathed for the lungs under it.

At the door to the busiest hospital in Iraq, a wiry doctor bent over the worst-looking case, an Army gunner with coarse stitches holding his scalp together and a bolt protruding from the top of his head. Lt. Col. Jeff Poffenbarger checked a number on the blue screen, announced it dangerously high and quickly pushed a clear liquid through a syringe into the gunner's bloodstream. The number fell like a rock.

''We're just preparing for something a brain-injured person should not do two days out, which is travel to Germany,'' the neurologist said. He smiled grimly and started toward the UH–60 Black Hawk thwump-thwumping out on the helipad, waiting to spirit out of Iraq one more of the hundreds of Americans wounded here this month.

While attention remains riveted on the rising count of Americans killed in action—more than 100 so far in April—doctors at the main combat support hospital in Iraq are reeling from a stream of young soldiers with wounds so devastating that they probably would have been fatal in any previous war.

More and more in Iraq, combat surgeons say, the wounds involve severe damage to the head and eyes—injuries that leave soldiers brain damaged or blind, or both, and the doctors who see them first struggling against despair.

For months the gravest wounds have been caused by roadside bombs—improvised explosives that negate the protection of Kevlar helmets by blowing shrapnel and dirt upward into the face. In addition, firefights with guerrillas have surged recently, causing a sharp rise in gunshot wounds to the only vital area not protected by body armor.

The neurosurgeons at the 31st Combat Support Hospital measure the damage in the number of skulls they remove to get to the injured brain inside, a procedure known as a craniotomy. ''We've done more in 8 weeks than the previous neurosurgery team did in 8 months,'' Poffenbarger said. ''So there's been a change in the intensity level of the war.''

Numbers tell part of the story. So far in April, more than 900 soldiers and Marines have been wounded in Iraq, more than twice the number wounded in October, the previous high. With the tally still climbing, this month's injuries account for about a quarter of the 3,864 U.S. servicemen and women listed as wounded in action since the March 2003 invasion.

About half the wounded troops have suffered injuries light enough that they were able to return to duty after treatment, according to the Pentagon.

The others arrive on stretchers at the hospitals operated by the 31st CSH. ''These injuries,'' said Lt. Col. Stephen M. Smith, executive officer of the Baghdad facility, ''are horrific.''

By design, the Baghdad hospital sees the worst. Unlike its sister hospital on a sprawling air base located in Balad, north of the capital, the staff of 300 in Baghdad includes

the only ophthalmology and neurology surgical teams in Iraq, so if a victim has damage to the head, the medevac sets out for the facility here, located in the heavily fortified coalition headquarters known as the Green Zone.

Once there, doctors scramble. A patient might remain in the combat hospital for only six hours. The goal is lightning-swift, expert treatment, followed as quickly as possible by transfer to the military hospital in Landstuhl, Germany.

While waiting for what one senior officer wearily calls ''the flippin' helicopters,'' the Baghdad medical staff studies photos of wounds they used to see once or twice in a military campaign but now treat every day. And they struggle with the implications of a system that can move a wounded soldier from a booby-trapped roadside to an operating room in less than an hour.

''We're saving more people than should be saved, probably,'' Lt. Col. Robert Carroll said. ''We're saving severely injured people. Legs. Eyes. Part of the brain.''

Carroll, an eye surgeon from Waynesville, Mo., sat at his desk during a rare slow night last Wednesday and called up a digital photo on his laptop computer. The image was of a brain opened for surgery earlier that day, the skull neatly lifted away, most of the organ healthy and pink. But a thumb-sized section behind the ear was gray.

''See all that dark stuff? That's dead brain,'' he said. ''That ain't gonna regenerate. And that's not uncommon. That's really not uncommon. We do craniotomies on average, lately, of one a day.''

''We can save you,'' the surgeon said. ''You might not be what you were.''

Accurate statistics are not yet available on recovery from this new round of battlefield brain injuries, an obstacle that frustrates combat surgeons. But judging by medical literature and surgeons' experience with their own patients, ''three of four months from now 50 to 60 percent will be functional and doing things,'' said Maj. Richard Gullick.

''Functional,'' he said, means ''up and around, but with pretty significant disabilities,'' including paralysis.

The remaining 40 percent to 50 percent of patients include those whom the surgeons send to Europe, and on to the United States, with no prospect of regaining consciousness. The practice, subject to review after gathering feedback from families, assumes that loves ones will find value in holding the soldier's hand before confronting the decision to remove life support.

''I'm actually glad I'm here and not at home, tending to all the social issues with all these broken soldiers,'' Carroll said.

But the toll on the combat medical staff is itself acute, and unrelenting.

In a comprehensive Army survey of troop morale across Iraq, taken in September, the unit with the lowest spirits was the one that ran the combat hospitals until the 31st arrived in late January. The 3 months since then have been substantially more intense.

''We've all reached our saturation for drama trauma,'' said Maj. Greg Kidwell, head nurse in the emergency room.

On April 4, the hospital received 36 wounded in 4 hours. A U.S. patrol in Baghdad's Sadr City slum was ambushed at dusk, and the battle for the Shiite Muslim neighborhood lasted most of the night. The event qualified as a ''mass casualty,'' defined as more casualties than can be accommodated by the 10 trauma beds in the emergency room.

''I'd never really seen a 'mass cal' before April 4,'' said Lt. Col. John Xenos, an orthopedic surgeon from Fairfax. ''And it just kept coming and coming. I think that week we had three or four mass cals.''

The ambush heralded a wave of attacks by a Shiite militia across southern Iraq. The next morning, another front erupted when Marines cordoned off Fallujah, a restive, largely Sunni city west of Baghdad. The engagements there led to record casualties.

''Intellectually, you tell yourself you're prepared,'' said Gullick, from San Antonio. ''You do the reading. You study the slides. But being here. . . .'' His voice trailed off.

''It's just the sheer volume.''

In part, the surge in casualties reflects more frequent firefights after a year in which roadside bombings made up the bulk of attacks on U.S. forces. At the same time, insurgents began planting improvised explosive devices (IEDs) in what one officer called ''ridiculous numbers.''

The improvised bombs are extraordinarily destructive. Typically fashioned from artillery shells they may be packed with such debris as broken glass, nails, sometimes even gravel. They're detonated by remote control as a Humvee or truck passes by, and they explode upward.

To protect against the blasts, the U.S. military has wrapped many of its vehicles in armor. When Xenos, the orthopedist, treats limbs shredded by an IED blast, it is usually ''an elbow stuck out of a window, or an arm.''

Troops wear armor as well, providing protection that Gullick called ''orders of magnitude from what we've had before. But it just shifts the injury pattern from a lot of abdominal injuries to extremity and head and face wounds.''

The Army gunner whom Poffenbarger was preparing for the flight to Germany had his skull pierced by four 155mm shells, rigged to detonate one after another in what soldiers call a ''daisy chain.'' The shrapnel took a fortunate route through his brain, however, and ''when all is said and done, he should be independent. . . . He'll have speech, cognition, vision.''

On a nearby stretcher, Staff Sgt. Rene Fernandez struggled to see from eyes bruised nearly shut.

''We were clearing the area and an IED went off,'' he said, describing an incident outside the western city of Ramadi where his unit was patrolling on foot.

The Houston native counted himself lucky, escaping with a concussion and the temporary damage to his open, friendly face. Waiting for his own hop to the hospital plane headed north, he said what most soldiers tell surgeons: What he most wanted was to return to his unit.

Mr. STEVENS. I thank the Senator from Tennessee.

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

Mr. ALEXANDER. Mr. President, I ask unanimous consent to speak in morning business for as much time as I may require.

The PRESIDING OFFICER. The Senator has that right.

INTERNET TAXATION

Mr. ALEXANDER. Mr. President, I was just at a luncheon with the distinguished chairman of the Commerce Committee, and he wondered where I had been in terms of the debate on the Internet tax question. So here I am. I am glad to have this opportunity. I know we have been diverted to discuss the Energy bill. But I appreciate the leadership creating an opportunity to debate these issues.

As the Senator from New Hampshire knows, who is a member of the Commerce Committee, and has a large interest in the fastest-growing technology in America, the growth of high-speed Internet access—the question of how we approach, in a comprehensive way, the regulation and taxation of this new technology—is very important. It is important for our economic growth. It is important because, as we do this, we will be making, inevitably, major adjustments in terms of the responsibilities of State and local governments, and we need to do it right.

That is why I am encouraged by the fact Senator MCCAIN; Senator STEVENS; the Commerce Committee; Michael Powell, the Chairman of the Federal Communications Commission, all have announced that we need to take a new look at the Telecommunications Act of 1996 in light of the recent growth of high-speed Internet access.

I am not happy about the fact we are trying to solve problems that ought to be solved comprehensively, for the long term, on a piecemeal basis, which is exactly what some are trying to do, by turning a fairly innocuous idea—a temporary timeout on State and local taxation of Internet access; we are just talking about the connection between my computer and AOL or whoever is providing my Internet access; that is just a little bitty thing—they have turned that into a debate about whether we should give a broad exemption to the entire high-speed Internet access industry, and make decisions now about whether State and local governments will be able to continue to collect taxes on telephone services.

One of the problems with this debate is that everyone who stands up on opposite sides offers different facts and figures and interpretations, so a Member of the Senate who is not really studying or following this issue closely is easily misled.

Let me deal with four or five of the misconceptions. First, let me talk about what we are talking about. We are talking about high-speed Internet access, which was barely known to most Members of Congress when the 1996 Telecommunications Act was enacted, not very well known in 1998, when we all said—almost all of us said; I said this—let's take a temporary timeout. Let's not allow even State and local taxation of Internet access until we figure out what it is.

So we did that for 2 years. We did it then for 3 more years. Now the effort is to not just do that permanently but to just say: OK, this is a great new invention. Let's just exempt the whole industry from taxation.

High-speed Internet access is now offered in lots of different ways. The reason it is so important is because it means that lots of different services may come to my home. If I am watching television through direct satellite in my home here in the District of Columbia, there is a nice young woman who comes on and she advertises that

the same DirecTV satellite television I have can also supply me with high-speed Internet access.

Anywhere I am that I can get DIRECTV, which is most places in the world, I can get high-speed Internet access. It seems I get something in the mail every day from my telephone company saying they can deliver it over the telephone line. That is DSL. I would get something from the cable TV, when I had that, that said: We can deliver high-speed Internet access to you as well. There are Internet service providers, companies who deliver it, such as America Online. Now we are finding that high-speed Internet access can be delivered by power companies.

In other words, there is no problem with making high-speed Internet access available to anybody in America who has a telephone wire running to their house or business, has an electric wire running to their house or business, who can put up a satellite dish or hook into a cable television. That covers about everybody. But not everybody has it. More Americans have it than in any other country, which I will get to in a minute. But this is a new technology. A lot of people have it. In Manassas, VA, you can buy it from your electric power company. The same people who provide electricity will sell it to you for $25 a month. Most cable systems or telephone companies will sell it to you for $30 or $40 a month. I get things in the mail that offer it on an introductory basis for $10 or $15 a month.

What we are debating is whether State and local governments can apply the sales taxes they usually apply to such transactions and whether they can apply the business taxes they usually apply to such business activities. The tax we are talking about that Tennessee, New Hampshire, or Texas might charge might be $1 a month or $2 a month. That is what all the fuss is about. If that were all we were talking about, it really would not be worth very much of the Senate's time except the legislation that we are being offered would do much more than is advertised.

Let me begin by suggesting what it will do or what it could do. I don't know why every Governor in America and every mayor in America is not sitting in the lobby right now saying to Members of the Senate: Be careful about what you are doing because the way we read the latest proposal by the distinguished chairman of the Commerce Committee, Senator MCCAIN, and certainly the way we read the legislation that came over from the House that is expected to be put into conference with whatever we produce, you put at risk the money State and local governments collect today from taxing telephone services.

If you are sitting at home listening, you might say: Hooray, I don't want to pay those taxes. Well, fine. So we take those taxes off. In Texas, if we take off the taxes Texas collects on telephone services, it is $1.7 billion a year. So if the bill passes in the form it passed the House or in the form it is now written in the Senate, we might as well call this the Texas new income tax law of 2004 or the Nashville higher local property tax law of 2004. Because you cannot put at risk billions of dollars of State and local revenues and expect those governments to continue to fully fund universities, schools, parks, roads, and the other things they are expected to do.

One might say, well, let them just cut the size of government. I could be facetious about this, although I don't want to be because it is so serious. Here is a serious analogy. I just had lunch with the president of one of the largest car companies in the world. We were talking about hybrid cars, the cars that have an electric engine in them and an internal combustion engine in them. They are reported, according to Toyota Corporation, to get 50 miles a gallon. That is pretty good. Gasoline is at record prices. The Middle East is in turmoil. We are getting 65 percent of our oil from around the world, and our air is dirty. So as a Senator, I think it would be a great idea to encourage people to use hybrid cars.

Why don't I propose a Federal law that stops Tennessee, New Hampshire, Texas, and California from charging a State tax on the sale of hybrid cars? That would clean the air. That is a good thing. Let's do it. You might say: That sounds good, but it sounds odd, too, because you are a Federal legislator. Why would you pass a hybrid car act about State laws? If you have an expensive idea, why don't you do it yourself?

The Senator from Virginia and the Senator from Arizona have said it is not the intention of their legislation to keep States from continuing to tax telephone calls, telephone services, even if the calls are made over the Internet. That is what was said. But that is not what the language of the bill does. I don't think the Senate should take any chance that in the State of California we would pass a law on such a simple item as exempting Internet access from taxation and have the unintended effect of costing State and local governments up to $10 billion a year in revenues they now collect on telephone calls—not all telephone services, just telephone calls.

In Florida, it is $1 billion a year. So you might call this act, as it is now written, the Florida income tax act of 2004, the Tennessee income tax act of 2004, the Texas income tax act of 2004, because I don't know what other revenue base is left if that much of a sales tax is taken away.

You might ask: Why are you saying it would be taken away? Let's assume I am right about the way the law is written. Here is what happens. I will use the hybrid car analogy. We might set up a two-tier tax system for cars. Buy a hybrid car in Nashville and you will pay zero of the Tennessee sales tax. Buy a regular car in Nashville and you will pay 6, 7 percent on the cost of the car, I believe up to a ceiling. So we will have two tiers. That is what is going to happen with telephone calls.

One of the exciting advantages of this new technology is we will soon be making regular telephone calls over the Internet, not over the telephone wires. They will be using telephone wires but not in the same way. It is a different technology. It is still a telephone call but a different way of doing it, just as with a hybrid car. Calls, as they move to the Internet, will be free of State and local taxation. That is what adds up to about $10 billion a year in State and local revenues.

That won't happen overnight. The Congressional Budget Office has informed us that within the next 5 years, State and local governments will lose $3 billion of revenue. I think it will come faster than that. Most people who look at VOIP, voice over Internet protocol, believe it will and hope it does. I hope it does. I think it is a great advance. But I disagree that on this bill, we should decide the question of whether State and local governments must stop taxing telephone services and start raising property taxes, or sales taxes on food, or institute a new income tax to make up for all or part of the revenue you lose.

I would much rather see the Senate Commerce Committee, over the next year or two, consider legislation such as that by the distinguished Presiding Officer, which straight out says—if I am stating it correctly—that with this new protocol, it should be free of taxation. We ought to talk about that. It ought not be snuck into a bill.

I urge the chairman of the committee and Senator ALLEN to accept plain English language—just take it and change their bill. They asked what suggestions we have. I have given this to them several times. Just say that nothing in this legislation precludes States from collecting taxes they are collecting on telephone services, including telephone calls made over the Internet. Save that question for another day. I have heard that is their intention. That is not what it says.

In Alabama, that is worth up to $213 million a year; in Alaska, it is $18 million a year; in Arizona, it is $308 million a year; California collects $1.5 billion a year. So that is a huge cost to State and local governments. It is 5 percent of the Tennessee State budget, to give you an example. Senator FEINSTEIN says there are more than 100 cities and counties in California that estimate they could lose from 5 to 15 percent of their revenue. So that is one of the four issues that could be easily corrected.

Another question that has come up quite a bit lately is the idea that suddenly we need more Government subsidy for high-speed Internet access because the United States is falling behind.

Well, my view on that is I don't think it is true that we do. But if it is

true, Congress ought to pay the bill and not send it to State and local governments. Just as we think hybrid cars are great and we want to give them a subsidy—that is called picking and choosing winners in the economic marketplace, which I thought conservatives were not supposed to do. If we want to do that for hybrid cars, we should take it out of our budget and not tell Governors and mayors to take it out of property taxes or take it out of the classrooms to do it. If we want to give an advantage to high-speed Internet access, we should pay for it. But we ought not to pass this bill because we think we are behind in high-speed Internet access. There is no real evidence of that.

For example, in 2002, the United States had the highest number of Internet subscribers in the world, nearly 20 million. Eighty-eight percent of all ZIP codes have at least one high-speed subscriber; 29 percent of all ZIP codes have access to five or more providers. The Pew analysis recently showed that a quarter of Americans have high-speed Internet access in their home and half have it at their workplace.

Consumers are adopting broadband, high-speed Internet access, at a record pace, not a slow pace. There is no emergency in terms of people not using this. They are adopting broadband technology at a faster pace than CD players. High-speed Internet access is coming in at a faster pace than cell phones, color TVs, and VCRs during their development. That is according to a report from the Department of Commerce in 2002. Cellular phones took 6 years from their introduction to reach 7½ million subscribers. High-speed Internet reached that in 3½ years.

High-speed Internet service providers are increasing their investment in broadband services. For example, between 1996 and 2001, the four largest phone companies increased their investment in broadband technologies by 64 percent and cable companies by 68 percent.

In short, the Congressional Budget Office told us, the Senate, in December 2003 that the broadband market is booming. In its report to us in December of 2003, ''Does the Residential Broadband Market Need Fixing?'' the CBO analysis also concluded that ''Nothing in the performance of the residential broadband market suggests that Federal subsidies for it will produce large economic gains.''

This is CBO. ''Nothing in the performance of the residential broadband market suggests that Federal subsidies for it will produce large economic gains.''

So, then, why are we coming with a bill that would give more big subsidies? I have reviewed the fact that, because of the language in the latest proposal by the chairman of the Commerce Committee, up to $10 billion of State and local tax collections on telephone companies are at risk. If you take that away, that is a subsidy to a company.

You can subsidize a company in one of two ways. You can give it some money or you can say you don't have to pay taxes like everybody else does. That is a flatout subsidy. That is not the only subsidy. I mentioned to the distinguished chairman, the Senator from Arizona, that it seems to me that insofar as my research indicates, high-speed Internet access is a lot like ethanol. It is hard to find anything that has more subsidy. According to the Congressional Research Service, the Congressional Budget Office identified three programs totaling $4.8 billion in subsidy, a Federal subsidy for promoting the adoption of high-speed Internet access. They are already in place—$4.8 billion of Federal subsidy for high-speed Internet access.

Established in 1996, the Telecommunications Act provided subsidies for schools and libraries, subsidies for rural health care providers. The Farm Security and Rural Investment Act of 2002 authorizes $20 million per year for loans and grants.

Then I have the Alliance for Public Technologies' report on all of the State and local broadband policy experiments in the State. In virtually every State in America, there is a spending of taxpayer dollars to encourage the spread of high-speed Internet access.

Yesterday, I used the example of Texas. Texas set up a fund in 1995 to spend $1.5 billion over 10 years to provide telecommunications access to public schools, hospitals, libraries, and institutions of higher education. Almost every State is doing it. So let's take how this works as an example.

If this bill passes—and if I am reading the McCain proposal right and it affects telephones the way I believe it does—this is what happens in Texas to broadband. They are spending $1.5 billion already to encourage the spread of broadband in public institutions. Texas also has a law put in by President Bush when he was Governor in 1999; I think it is a good law. By the way, I think we ought to adopt that. I think it is exactly the way to encourage permanently the growth of high-speed Internet access, if that is what we want to do.

Texas, in 1999, said it is the law of Texas that the first $25 is exempt of everything to pay for Internet access. So that would save you maybe $1 or $2 a month. That is what the tax would be in Texas on high-speed Internet access. You can get it anywhere from $20, to $40, or $50, depending on who sells it to you. The prices are coming down because of the competition.

So you have $1.5 billion in Texas at least to encourage it. You have an exemption for every single person in Texas who wants to sign up. The first $25 is already exempt.

Now here we come with our bill. What does it do? It does a lot more than exempt Texans from tax on Internet access. First, I believe it puts at risk up to $1 billion of revenues in sales taxes the State collects today on telephone services. That is one.

Second, it stops Texas from collecting business taxes on telephone companies it normally would collect on any company that does business in the State. The definition of the latest proposal by the distinguished Senator from Arizona says we are not just talking about the hookup, Internet access between the end user and the provider, we are talking about the whole industry. We are talking about that, that, that, and that—in other words, all the way through.

Let's go back to the example of the hybrid cars. It would be like passing a Federal law saying you cannot collect the State tax in Arizona or Tennessee on the sale of a hybrid car because it is a great new invention. Not only that, you cannot collect a sales tax—if you are an auto parts supplier in Tennessee—you can't collect a tax there. And if they brought steel to the auto parts supplier, you cannot collect a tax there.

None of us like to pay taxes, but when we lower State and local taxes here, we are inevitably raising State and local taxes there. Lowering taxes in this amount of money by direction from Washington, DC, inevitably makes this the Higher Sales Tax Act of 2004, the Higher Local Property Tax Act of 2004 because every mayor and every Governor is going to be scrambling to figure out: We lost all this revenue because the Congress in its wisdom had the idea to give a big subsidy to the high-speed Internet access business, and we are going to have to find a way to pay for the schools, to keep from raising tuition so much, to pay for health care, and to open the parks. So we are going to have to close them, cut them back, or raise the sales tax on food and raise the property tax. That is why we usually leave those matters to mayors and Governors and do not do it from here.

We are all for home ownership, but we do not pass a Federal law to lower property taxes. We all want our corporations to stay in the United States, and we do not want them to have high local taxes any more than high Federal taxes, but we do not pass a Federal law lowering the local corporate income tax.

That is why I am perplexed by this bill. The idea that by adding a subsidy we would encourage the use of high-speed Internet access when it is already, according to the New York Times last week, the fastest growing technology in America, when already it is being accepted more rapidly than VCR and all these other innovations I do not agree with. The idea that it needs more taxpayer support I do not agree with.

Let's throw that item completely out the window and say if we do believe it needs a subsidy, then why do we send the bill to State and local governments? We promised not to do that.

Mr. President, 300 Republicans stood over on the steps of the Capitol in late September 1994 and said: No money, no mandates. If we break our promise, throw us out.

I thought we were the party on this side of the aisle of no Federal unfunded mandates. That was a big movement back then. Everybody got fired up about it. I heard it. I was running around the country trying to offer myself for higher office, which the people rejected. I know the great Contract with America was no more unfunded mandates. I remember Senator Dole saying when he was majority leader the first act on the part of the Senate was no more unfunded mandates. In fact, this unfunded mandate might be so large that according to CBO's letter to us, they cannot calculate how much it will be, although they know it is enough to make it an unfunded Federal mandate.

Why would we do that? Why don't we do what Texas did? Texas did a very direct thing. They said the first $25 you pay every month is exempt from State and local taxes. It could be $30, it could be $35, it could be $40. Then we won't have any argument about definition. We would not have to worry about whether we were subsidizing companies instead of consumers, and we would actually be giving a benefit to the individual American—maybe there will be 100 million of them 1 day—who subscribe to high-speed Internet access, and we say no State and local taxes at all, none on you.

The States have asked us to do that, and we have not done it. I don't know why. That also is an unfunded mandate, but it is not much money. The way we are doing it is a lot of money. It is at least hundreds of millions of State dollars a year, and the way this latest bill is written, it could be billions a year of State and local revenues.

I thought the National Governors Association letter was thoughtful and respectful and acknowledged the hard work all sides have done on this issue. That is why it is such a hard issue, maybe, because it ought to be easy. It ought to be a small amount of money and a fairly simple issue. But it has been written into a complex issue with the possibility that it might run a Mack truck through State and local budgets.

The National Governors Association yesterday suggested the proposal by the Senator from Arizona falls short of their hope of balancing the interests of State sovereignty and State responsibility with the desire for keeping high-speed Internet access free of excessive taxation. They talked about the specific issues I suggested in my letter to the chairman earlier this week and that formed the basis for amendments I have filed.

One, the definition. Instead of using the definition of the original moratorium in 1998, the one we all agreed to in 1998 and 2000, instead of saying let's do that permanently or do that again, they have cooked up a new definition. This definition is the one that runs the risk of costing State and local governments so much. That is one.

Second, the language—and this may be inadvertent and if it is, maybe I can ask the Senator from Arizona if there is a way we can agree on how to fix it. If we agree we do not intend to keep States from continuing to collect State and local taxes on telephone services, even telephone calls made over the Internet, then we ought to get that issue off the table, and surely we can find somebody who can write that in a sentence to which we can all agree.

Then there is the term. I applaud the leadership of those Senators on the Commerce Committee who want to address this issue. I think if we go 4 years, which is better than permanent, but if we go 3 or 4 years, we run the risk of freezing into the law provisions that will be much harder for the Commerce Committee and the full Senate to change. Then there is the question of the so-called grandfather act which allows States already collecting taxes to keep doing that.

Those are all the issues we have here. One is the definition, one is telephone, one is term, and one is grandfather. That is tantalizingly close, it would seem to me, but the one that makes the most difference is the definition, which means for the first time, States will not be allowed to apply business taxes to the high-speed Internet industry in the same way they normally would other businesses for the first time. They are not collecting these taxes.

The other issue is the language, we believe, in the latest draft and certainly the language in the House bill runs the substantial risk of over time costing the States up to $10 billion a year in sales taxes, and the House bill another $7 billion in business taxes now collected on telephone services.

I do not want to overstate that point. That is not going to happen tomorrow. It is going to gradually happen as telephone calls are made over the Internet.

So that would be my hope since we have narrowed it down to that, and one of them may not be an issue at all, but that is pretty close. I do not know much more that I can say about it except—well, I can say a whole lot more about it. I have stacks of stuff and I will be glad to stick around and talk about it if anybody wants to. I do have the hearing I am expected to chair at 3, but I would say to the distinguished chairman from Arizona that I hope he understands I am not persisting in this just for the purpose of being obstinate. I feel very deeply, from my background as Governor, that it is important for us to respect the ability of State and local governments to fund their programs.

Since I left the Governor's office in Tennessee in 1987, Federal funding for education has gone from 50 cents out of every dollar to 40 cents. Most of that has gone to higher education. Our chances for job growth and a high standard of living depend to a great extent on the ability of State and local governments to properly fund colleges and universities and create schools our children can attend.

Any time we take away resources from State and local governments, that does not sound like the Republican Party. President Reagan was giving resources to State and local governments. President Eisenhower was giving resources to State and local governments. Last year, we sent a welfare check to State and local governments of $20 billion, and this year we are talking about taking back up to at least $10 billion a year. That is my objection.

We could have a separate debate about whether the subsidy is warranted and, if it is, well, we could pay for it from here. But surely we would not send the bill to State and local governments.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, I look forward to discussions with the Senator from Tennessee and the Senator from Delaware. As they know, we have a meeting with Secretary Rumsfeld in 407 in about 20 minutes, and we are going to go back on the bill at 4. I would be glad to have discussions. Meanwhile, I hope there would be some amendments proposed by the opponents of the legislation, and we could dispose of them as we did yesterday with the Senator from Texas, who came forward with an amendment and we debated it. Unfortunately, neither the Senator from Tennessee, nor the Senator from Delaware, nor the Senator from Ohio have chosen to do so.

Usually, I like to do business by amendments, debates, and votes. That is the way we usually like to move forward legislatively.

I look forward to that opportunity and also engaging in any discussions which the Senator would like. I want to assure him I am very confident in the sincerity of his views on this issue and his commitment to the issue. I understand his background as a very successful Governor of the great State of Tennessee which gives him a perspective for which I am greatly appreciative.

We are still in morning business?

The PRESIDING OFFICER. The Senator is correct.

Mr. MCCAIN. I ask unanimous consent that I be allowed to finish my statement, which I hope will be done by 2:55. If not, I ask unanimous consent to finish my complete statement.

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

THE FEDERAL ELECTION COMMISSION CHAIRMAN MUST GO

Mr. MCCAIN. Mr. President, I was in Arizona recently, and by chance I watched C–SPAN airing the Federal Election Commission hearing on the issue of 527s. Let me assure my colleagues, it was both eye opening and appalling.

Once in a while, we have a public debate in Washington that serves as a perfect metaphor for the cynical way in which business is sometimes done here. The argument over whether and when the Federal Election Commission should regulate new soft money fundraising groups provides us with one of those moments. In it, we can see how badly our election watchdog has served the public and the urgent need to fix it.

The Chairman of the Federal Election Commission, Bradley Smith, claims apparently some moral superiority on the issue of 527s because as a Republican he stands in opposition to the Republican Party's effort to ensure 527 groups comply with the law. While some may look upon his views as principles, I can only conclude that they again illustrate the same unfitness to serve on the Federal Election Commission he has shown since he was appointed 5 years ago.

Despite claims that his contempt for the Federal elections laws was merely that of an academic commentator and that he would uphold the laws as passed by Congress if confirmed, Mr. Smith has made no secret since arriving at the FEC of his disdain for the Federal Election Campaign Act of 1974, as well as the Bipartisan Campaign Reform Act of 2002. He has done so once again in the pending rulemaking.

Even after the Supreme Court decision in McConnell v. FEC, Mr. Smith has gone out of his way to criticize the Court's decision and the law he is supposed to enforce. In one public speech he said:

> Now and then the Supreme Court issues a decision that cries out to the public, ''We do not know what we are doing.'' McConnell is such a decision.

Further evidence of Mr. Smith's predilection can be found in an article in the May 3 edition of National Review in which he writes:

> Campaign reform passed Congress and was upheld by the Supreme Court because groups hostile to freedom spent hundreds of millions of dollars to create an intellectual climate in which free political participation was viewed as a threat to democracy.

This is perhaps the most inflammatory and inappropriate comment I have ever seen by an individual who is supposed to be enforcing existing law, affirmed in its constitutionality by the Supreme Court of the United States of America. To assert that proreform groups had somehow brainwashed Congress and the Supreme Court is simply pathetic and solidifies my belief that Mr. Smith cannot administer our campaign finance laws in good faith because he is incapable of putting his sworn duties above his personal opinion.

By the way, his treatment of Mr. Nobel, a witness before the FEC, was as bullying and as cowardly as I have ever seen anyone conduct themselves in our Nation's Capital and clearly was an abuse of his authority as Chairman of the Commission.

Mr. Smith's views on the constitutionality of the Nation's campaign finance laws have been repeatedly rejected by the Supreme Court. Mr. Smith was dead wrong in his views that the Federal Election Campaign Act and its restrictions on contributions were unconstitutional, and Mr. Smith was dead wrong in his views that BCRA was unconstitutional. Mr. Smith seems to be incapable of accepting the fact that the Supreme Court of the United States, not Mr. Smith, is the last word on the constitutionality of campaign laws and that it is his job as an FEC Commissioner to carry out, not thwart, the Supreme Court's mandate.

I do not deny that Mr. Smith is entitled to his personal views on the issue of regulating 527s. I am saying, however, that he is failing to fulfill his duties as the chairman of a Federal agency and one who is sworn to uphold and enforce the law. Just as we would not tolerate the appointment of a pacifist to be Chairman of the Joint Chiefs of Staff or the Director of the FBI who believes the whole Penal Code should be null and void, so we should not accept a Chairman of the FEC who opposes campaign laws upheld as constitutional by the U.S. Supreme Court.

Knowing of his opposition to the laws he was sworn to uphold, I cannot fathom why Mr. Smith would have even accepted his current position in the first place, certainly now that the Supreme Court has proven him wrong and upheld the constitutionality of a law that he stated was ''clearly unconstitutional.'' It makes no sense. It makes no sense for him to be charged with enforcing a law he so publicly opposes on policy and legal grounds.

I know if I were in Mr. Smith's shoes, I would do the honorable thing and resign if I was so determined to carry on a crusade against Federal regulation of campaign finance. I would leave the FEC position to be filled by someone who believed in the job.

If any of my colleagues think I am exaggerating about these FEC hearings, by the way, they should get a tape from C–SPAN and look at it themselves. It was shocking.

One very troubling aspect of the hearings was the way in which some Commissioners and antireform witnesses joined in a chorus of complaint that ''no one knew what Congress intended to do'' when it passed FECA in 1974 and BCRA in 2002.

One witness testified that it took Congress 7 years to figure out what to do about soft money. I am somewhat amazed by such a statement because anyone who was in Washington during those 7 years knows that the main component of our bill—from the very beginning—was a ban on soft money. You can't get much more definitive than a ban. What did take 7 years was convincing our opponents to allow a vote on the measure, and when we finally got our vote, we had clear majorities in both Houses.

Some of the lawyers who testified that no one knows what Congress intended to do in these bills were the very same lawyers who spent years urging Members to vote against BCRA, and argued its unconstitutionality before the Supreme Court. Give me a break. As witnesses to Congressional intent, they have zero credibility. Let me be clear on this: Senator FEINGOLD and I repeatedly told the FEC exactly what we intended to accomplish with our legislation, and the legislative history of FECA from 1974 is equally as clear. The only confusion in this area has been with the FEC itself and those Commissioners who just simply didn't like the actions taken by Congress.

The Commission's hearings centered on the issue of regulation of so-called ''527 groups'' that are raising and spending millions of dollars in soft money in the current presidential election. These groups readily admit that their intended purpose is to influence the outcome of Federal elections. FECA has long required these groups to register as Federal political committees and comply with Federal campaign finance limits. Unfortunately, because the FEC has misinterpreted and undermined the law, we find ourselves in this unenforced regulatory limbo today. The 1974 law requires that any group with a ''major purpose'' of influencing a Federal election, and which spends more than $1,000 doing so, must use the same limited hard money contributions as the political parties and the candidates themselves. In recent years though, the FEC slouched into the feckless and unjustified position of not enforcing the law in the case of groups which avoided the ''magic words'' of ''express advocacy'' but were set up and operated to influence Federal elections. Then, in McConnell, the Supreme Court itself made clear what many of us already knew—that the Constitution did not require an ''express advocacy'' standard, and that such a standard is ''functionally meaningless.'' That's the words of The United States Supreme Court.

But here we are, with these groups openly flouting the law and openly spending soft money for the express purpose of influencing the presidential election while the FEC sits on its hands once again. Like the emperor with no clothes, those Commissioners just do not know what to do now that the Supreme Court has removed their ''express advocacy is required by the Constitution'' rationale for failing to regulate political activity by the 527 political organizations. As a result, these organizations remain busy soliciting and spending millions for the avowed purpose of influencing Federal elections.

That the FEC's lack of action undermines the law isn't just my opinion. The Supreme Court confirmed this in its recent decision upholding the soft money ban. In McConnell v. FEC, the Supreme Court stated, in no uncertain terms, how we ended up in the soft money crisis to begin with. The Justices placed the blame squarely at the

doors of the FEC, concluding that the agency had eroded the prohibitions on union and corporate spending, and the limits on individual contributions through years of bad rulings and rulemakings, including its formulas for allocation of party expenses between Federal and non-Federal accounts. Regarding the allocation regulations for parties, the Supreme Court stated in McConnell that the FEC had ''subverted'' the law, issued regulations that ''permitted more than Congress . . . had ever intended'', and ''invited widespread circumvention of FECA's limits on contributions.'' That is a damning indictment of the behavior and performance of the Federal Elections Commission.

Based on the recent hearings, it seems entirely possible that the FEC will once again abdicate its statutory responsibilities and refuse to end this new soft money scheme—or at least put off any action until the Presidential election is over. In fact, FFC Vice-chair Ellen Weintraub recently opposed a rulemaking on 527 activity saying that:

> At this stage in the election cycle, it is unprecedented for the FEC to contemplate changes to the very definitions of terms as fundamental as ''expenditure'' and ''political committee'' . . . sowing uncertainty during an election year.

Ms. Weintraub further stated:

> I will not be rushed to make hasty decisions, with far-reaching implications, at the behest of those who see in our hurried action their short-term political gain.

Ms. Weintraub has no business looking at the election calendar. That is none of her business. What is her business is to enforce existing law according to the law in the U.S. Supreme Court upholding its constitutionality. It should not matter to Ms. Weintraub whether we are in an even numbered year, an odd numbered year, fall, spring, winter, or summer. This is an incredible statement as to how politics affects a Federal commission that is supposed to rule on laws, not on political campaigns.

Of course, it is not that complicated. All the FEC needs to do now is simply enforce existing Federal law as written by Congress in 1974 and interpreted by the Supreme Court in a number of cases, including the McConnell case. It defies the whole purpose of the FEC, to say it should not properly enforce the law in the middle of an election year because such enforcement might affect that election. We want the law enforced. I have never heard of a regulatory agency that has any reference whatsoever to political campaigns.

The fact the FEC has neglected to properly enforce the law correctly in the past is not a reason or justification for the Commission to continue failing to properly enforce the law, now that the Supreme Court has made clear the FEC was wrong. If the FEC fails to act now, the FEC will simply be treading the same destructive path it has followed for a generation.

We know systemic campaign finance abuses have usually begun when one political party decides to push the envelope and the FEC declines to act, leading the other party to adopt the same illegal tactics. In 1988, one party invented the use of soft money to promote their Presidential campaign, evading campaign finance rules. The Commission let them get away with this. This is well documented. The other party followed.

In 1996, the soft money scheme was raised to an art form and the Commission did nothing. You have to ask whether the Commission has learned anything about the consequences of its failure to properly enforce the law. History proves it is imperative that the Commission act now. If it does not, we can rest assured both parties will soon be trying to out-raise each other in this venue, and a whole new soft money scheme will have blossomed.

By the way, the reality is if these soft money 527s are allowed to stand—they are now, we know, largely funded by Democrats. Who in the world doesn't understand if you allow this to stand, then the Republicans will do the same thing, and understandably so? Just as in 1988 one party was allowed to do it, so the other party was able to as well.

Much of the controversy at the Commission has been ginned up by an artfully crafted misinformation campaign designed to persuade the nonprofit community—the 501(c)s—that any FEC action to rein in 527s would have the unintended consequence of limiting their own advocacy efforts. It is true certain campaign finance rules for spending by nonprofits are different than they are for political groups like 527s. There is no immediate campaign finance regulatory problem with the 501(c) groups. I repeat, there is no immediate campaign finance regulatory problem with the 501(c) groups as there is with the 527 groups, and no need—no need to address 501(c) groups in this rulemaking.

Some have suggested the agency do what Congress did when it passed BCRA: Issue a ruling but make the change effective after the election.

What these critics fail to recognize, however, is that Congress was creating an entirely new set of election rules in BCRA. All that is required here is for the FEC to properly enforce law that has been on the books for 30 years, and to abandon its wrong interpretations of the law as made clear in the McConnell decision. To issue new regulations now and make them effective after the 2004 election would be for the FEC to say that ''we know the law has been wrongly interpreted for years but we are going to allow that to continue for the rest of this year, and then next year, we will start interpreting that law correctly.'' This is simply not rational and it is an abdication of their responsibilities.

Finally, it is essential that the FEC act quickly to fix its absurd allocation rules, which govern the mix of soft and hard money a political committee can spend when it is supporting both State and Federal candidates. It is clear that a number of the current crop of 527s exist only to defeat President Bush. But through the absurd FEC allocation formulas, if these same entities also claim to be working in state elections, they could use soft money for 98 percent of their expenditures—a complete end-run around the soft money ban in Federal races.

Despite all the evidence, I am still hopeful the Commissioners will summon the political will to do the right thing now. There are some commissioners who want to do the right thing. I want them to step forward and do it. But even if they do, the agency's structural problems will be the same as they ever were. By unfortunate custom, three Republicans and three Democrats are chosen by their party leadership, usually with the express purpose of protecting their party's interests, rather than enforcing the law. It takes four votes for the Commission to take action—a requirement that has been a recipe for deadlock and bipartisan collusion and gave birth to the soft money problem we're trying to put behind us.

Last month I testified before the Senate Rules Committee on the issue of 527s. During my testimony I stated that one of the problems the FEC faces today is that some Commissioners, and in particular Chairman Smith, refuse to accept the Supreme Court's conclusions in the area of campaign financing. A decision by the FEC to abdicate its responsibility at this politically inconvenient moment will only provide further evidence that it is time to start over. If the Commission has become too hopelessly politicized to do its job, then we must replace it with an agency that will.

The FEC's current difficulty in dealing with an issue as straightforward as these 527 organizations spending soft money to influence the 2004 Federal elections, and the 3–3 ties at the Commission when it recently considered an advisory opinion on this issue, are only the most recent examples of the need for fundamental FEC reform. With my fellow BCRA sponsors, I have introduced legislation that would scrap the FEC and start over, using a new organizational structure and administrative law judges to avoid deadlocks and take some of the politics out of the process. Whether we adopt this or some other basic reform, it is time for a watchdog with some bite.

I thank the President for his patience as I ran over the previously agreed-to time.

This is a very serious issue. We are not going to give up on it. We didn't work for 7 years to get campaign finance reform done and upheld by the U.S. Supreme Court to have a group of six people down there who are so politicized that they refuse to enforce a law which was passed by this Congress in overwhelming numbers, finally, and upheld by the U.S. Supreme Court.

I want to tell them and all of those other people I watched on CSPAN who are trying to undermine this law that we will not let you get away with it. American politics and the political process is too sacred for me to allow these stooges of special interests around this town to prevail and prevent us from restoring faith and confidence in the American people and their electoral system.

Again, I appreciate the patience of the Presiding Officer.

I yield the floor.

RECESS

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess until 4 p.m.

Thereupon, the Senate, at 3:04 p.m., recessed until 4 p.m. and reassembled when called to order by the Presiding Officer (Mr. CORNYN).

INTERNET TAX NONDISCRIMINATION ACT

The PRESIDING OFFICER. The Senate will resume consideration of S. 150.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

ANOTHER WEEK, ANOTHER CLOTURE VOTE

Mr. BYRD. Mr. President, our country is facing record budget and trade deficits. We are in a war of our President's choosing that is not, to put it mildly, going as well as had been expected. Millions of Americans are without health care and millions more worry about the security of their jobs.

These are troubled times and many issues clamor for the attention of the Senate. Yet what is the response of the Senate, the world's greatest deliberative body? Are we debating strategies to quell the violence in Iraq and bring our soldiers home? No. Are we considering plans to shore up Social Security and Medicare? No. Is the Senate deliberating on how to make America's workforce more competitive? No. Is the Senate grappling with reauthorizing welfare reform or the highway bill? No.

This great deliberative body which was forged by the Founding Fathers in the Great Compromise of July 16, 1787, has become a factory that manufactures sound-bite votes that make great fodder for 30-second political ads but which do very little to address the many challenges facing this country. If this continues, I fear that the Senate will be little more than an insignificant arm of the political parties, and we may as well lower the flag that flies over this Capitol and wave the white flag of surrender in its place.

Have we lost the will to legislate? Is the current leadership afraid to allow the Senate to work its will? The Republican leadership seems to feel that their slim majority gives them a blank check to impose their exclusive agenda. Let me be clear. It does not. The Senate, by its very existence, embodies a core tenet in American democracy; namely, the principle that the minority—the minority, the Democrats as of now, the minority—has rights. The Republican leadership is fast making the committee process a thing of the past. Furthermore, the leadership has done everything in its power to prevent Democratic Senators from getting votes on their amendments.

The United States is faced with a trade deficit that has mushroomed to an all-time high for the third year in a row. Adding to that unfortunate situation, in August 2002, the World Trade Organization authorized the European Union to impose up to $4 billion in trade sanctions against the United States if provisions of the Tax Code were not repealed. How about that?

The distinguish Republican leader brought up the Foreign Sales Corporation legislation to address this situation only after the sanctions were in place. After votes on only two amendments, the majority wanted to shut down the amendment process—shut it down. Many reasons were given, but the truth is that they did not want to vote on an amendment dealing with overtime rules for American workers. Yes, the American workers. While American companies are losing their competitive edge, the ''my way or the highway'' approach of the leadership has delayed a final resolution on this bill.

In the past, cloture was a rarely used procedural tool. When I came to this Senate, it was rarely used—only once in a while. Not so today. Cloture is routinely filed in an attempt to limit nongermane amendments. Instead of the phrase, ''another day, another dollar,'' the Senate operates in an atmosphere of ''another week, another cloture vote.''

Last November, we had three cloture votes in one day. What great hopes the leadership must have had for the first two votes to schedule three in a row. How can such a move be seen as anything more than political scorekeeping?

This Senate has spent an extraordinary amount of time and energy and effort on President Bush's judicial nominees. In fact, last November the Senate set aside the VA–HUD appropriations bill to hold an overnight marathon stunt—something to watch indeed, something to watch. What a sham. The majority actually set aside substantive legislation to conduct a circus—a circus—on the floor of the Senate.

The VA–HUD appropriations bill was never completed. Instead, it was rolled into the Omnibus appropriations bill, as has become the unfortunate custom in recent years. We have had 17 cloture votes on 6 controversial and problematic nominees. The response of the Republican leadership and the administration has not been to address the fundamental underlying concerns raised by various Senators. Oh, no, no negotiation. Instead, they choose the course of holding cloture vote after cloture vote and then bash Democratic Senators as obstructionist. And just for good measure, the President, who has had 96 percent of his judges confirmed, moved two of these divisive nominees on to the bench in recess appointments.

Now, I do not pretend that the conflict over judicial nominees began in this Senate or with the President, but I will state that this Senate leadership and this President have worked in concert to further politicize the process by which we select members of the judiciary.

And it is not just with judicial nominees that the Republican leadership is doing the White House's bidding. The Republican leadership is controlled by this White House—controlled by this White House. Rather than have a legislative branch which crafts a bill and then sends it to the President to sign or veto, this Republican leadership in the Senate and in the House has allowed this President to control both ends of Pennsylvania Avenue.

During the conference on the Omnibus appropriations bill, the Republican majority allowed this White House to assert itself and put in provisions that had been rejected by one or both Houses. Specifically, the provision to allow increased concentration of media ownership had been rejected by both the House and the Senate. However, it was included in the bill at the behest of the White House. Shameful. Yes, shameful.

The House and the Senate were both on record as opposing overtime regulations proposed by the Bush administration. Nevertheless, at the urging of the Bush White House, language to block implementation of these regulations was dropped from the conference report—dropped from the conference report.

Another example of allowing the Bush White House to dictate the legislation produced by the Congress is the highway bill. Here is a bill that is important to every State and every person in the Union. Every Senator's State will benefit from this bill. The transportation bills passed the House and the Senate by wide bipartisan majorities, majorities that could easily override a veto. Yet we are stalled because the Bush White House is demanding that the cost of the highway bill be significantly lower than what was passed by both Houses of Congress.

This White House, under the Bush administration, has threatened a veto if the cost of the bill is over its chosen number. What is meant by ''its''? Under the White House's chosen number. Big daddy down at the White House, big daddy.

And what is the reaction of the Senate leadership to such an outrageous, outrageous, outrageous demand? Did the Senate stand its ground? No. The White House offers a disapproving nod and the Senate leaders scurry like mice, taking the offensive proposal off the table.

It was not always like this. There was a time when the Senate was an independent body, not the errand boy of the White House. It was not always like that. It was not always that the executive branch effectively dictated what provisions the Congress included in conference reports. No, this is not how the Senate is supposed to work.

The Senate is like a broken bone today. Left untreated, we risk that this body will be permanently weakened, never again able to do the work and bear the load for which it was designed.

I say that we must set the Senate back on course and allow it to knit back together. The current path is reckless, unsustainable, and unwise.

The record of this Senate is abysmal. Time after time, on issues such as medical malpractice, asbestos reform, and many others, the Republican leadership has abandoned the committee process of the Senate to bring partisan, divisive bills to the floor to make a political statement and to score political points with supporters.

One might dismiss the polarization of this body as a product of the Senate being so closely divided. But this leadership has allowed external forces—most notably pressure from the White House—to seep into the dealings of the Senate.

Is the leadership unaware that the Constitution has separate articles for the legislative and the executive branches? This is the Constitution. I hold it in my hand. It has separate titles for the executive and the legislative branches, does it not, Mr. MCCAIN, my friend from Arizona? Separate titles. What branch does it mention first? Not the executive branch. No, not the executive branch. No, it mentions first the people's branch and then the executive branch and then the judicial branch.

What has become of civility in this branch? That is a great question. One could spend a day talking about that. What has become of civility, old-fashioned civility? What has become of comity? What has become of comity in this branch? It used to be unheard of for Senate leaders to seek an active role against each other in campaigns. That time has apparently gone. Has honor gone, too? Who cares about honor when a Senate seat might be gained? When did party labels become more important than honor and the power of ideas?

Gone are the days in which there was genuine debate. Gone are the days when Senators listened to the give and take of the discussion to learn about an issue. And sadly, many of the votes that we take have a predetermined outcome. Yet they are brought to the floor—and this goes for both sides of the aisle—to try to get Senators on record as voting for and against such-and-such.

Bills are brought to the floor. Amendments are offered to create a public record that can be touted or attacked come campaign season. In all this sound bite and fury, the losers are the people, the people out there who are watching through those electronic lenses. They are the losers. The losers are the people whom we represent, the people who send us to this body to act in their best interests, not to squabble and point fingers like petulant children.

That is where all of these shenanigans play out, in front of the American people—people who need affordable health care or help putting their children through college, people who are afraid that their jobs will be sent overseas or that they will lose the pay and the benefits they have worked hard to secure, people on Medicare, people on Social Security, people who worry about whether Medicare and Social Security will be there when it is time for them to retire, people who have sent their sons and daughters to fight in the hot sands of the Middle East halfway around the world and who are afraid that their sons and daughters may not come home.

I have served in this Chamber for more than four decades. Times have changed. The world has changed. But our responsibilities and our duties, may I say to the distinguished Senator from Oregon, Mr. SMITH—who always is so nice to his colleagues, always has a smile. I like him. He is always a gentleman. What better can be said about one? Our responsibilities and our duties as Senators have not changed, may I say to my friend, Mr. SMITH.

Long after the campaign of this November or the campaigns of many Novembers to come, each Senator in this body will look back at the content of his or her career and judge whether they made our country a better place. The people send us here to do a job. They do not send us here to play with their lives or their children's lives or to score political points.

It is difficult in this world of instant gratification to think beyond the moment, to think beyond the immediate, but we should all pause for a moment and reflect on the Senate.

The Senate is an institution that relies on precedent. What kind of precedent is being set here?

In my many years in this body, I have spent approximately two-thirds of my time in the majority and one-third in the minority. The majority is better, by the way. I would say to the Republican leadership that it is unlikely that they will always be in the majority. There will come a time when they may appreciate once again the rights afforded to the minority. We all need to spend a little time thinking about how it may feel once again to be in the other guy's shoes, and about what our silly, silly, little selfish games are doing to the soul of this Senate.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Oregon is recognized.

Mr. SMITH. Mr. President, I am going to yield to the Senator from Arkansas, and I hope to speak after him.

Briefly, I wonder if the Senator from West Virginia would permit me to thank him for his kind words. I have heard Senator BYRD many times speak about his mother. In hearing his speech today, from a statesman such as he, he is uniquely qualified to remind us Senators as to our institutional responsibility and the importance of remembering civility.

I remember when my mother used to say: ''Gordy, the best way to ruin a good story is to hear the other side.'' I have remembered so much else that she taught me while she was alive about treating others as I would like to be treated. I appreciate Senator BYRD's civility on every occasion on which I have ever dealt with him. We don't vote much the same, but I will tell you, we both care about coal miners, we both care about timbermen, or lumbermen, we care about people who love the land. In all of my dealings with him, he has always been civil and set that example.

For that, I publicly express my appreciation and thank you, sir, for your kind words.

Mr. BYRD. Mr. President, the Senator from Oregon, as I have already indicated, is a gentleman. I think—in fact I know—that if all Senators accorded to their fellow Senators and fellow men and women the graciousness that he accords us, not only the Senate but the Nation would be a better place in which to live. I like him. I like him for what he is, for what he appears to be. As I said earlier, he is a gentleman.

There seems to be, as I have found, something bigger and better than a political party. His political party does not seem to be the end-all, not the beginning of everything. He seems to be something even bigger and better than his political party. I appreciate that, I commend him for that, and I wish in many ways that I could be the man that he is. I remember those lines, ''You are a better man than I am, Gunga Din.'' The Senator from Oregon sets a fine example. I thank him for that.

I yield the floor.

The PRESIDING OFFICER. The Senator from Arkansas is recognized.

Mr. PRYOR. Mr. President, I notice that today we have a number of schoolchildren watching the proceedings. It is always great to have people here watching in on us and watching what we do and hopefully keeping us accountable. I hope they realize and appreciate the greatness of the Senator from West Virginia and his wisdom and counsel. I hope they also will recall the teaching in the Bible about respecting your elders. I can say that there is no Senator in this body that we, the body,

have more respect for than the Senator from West Virginia. So we thank him for those comments.

HONORING OUR ARMED FORCES

Mr. PRYOR. Mr. President, today I rise to talk about the ongoing war in Iraq, but more importantly to recognize a few of those soldiers who sometimes get lost in the mounting rolls of casualty listings and to speak to the reality of war as seen through the eyes of a State that has a long tradition of sending young men and women onto the battlefield.

I have been in every county in my State many times, and I cannot think of one county in Arkansas that does not have some sort of war memorial. In fact, most of those are at the county courthouse. In fact, War Memorial Stadium is in Little Rock; it is where the Razorbacks play their games. You can go all over the State and see memorials to men and women who have served and died in World War I, World War II, the Korean War, Vietnam, and now we are adding memorials for those who have died in Iraq. In fact, in some parts of Arkansas, you can visit the graves of Revolutionary War soldiers who actually—even though Arkansas wasn't even a State or a territory during that time, we have taken those graves, honored them, and we are proud that they migrated to the area known as Arkansas. We feel connected to the Revolutionary War through them.

Sometimes it is easy to feel disconnected from the war effort. Even though there is 24-hour news coverage dominated by visions of our men and women in uniform fighting for freedom in Iraq, the pictures, words, and stories can have a numbing effect. We start paying attention to other matters, and we try to live our daily lives and try to put the echoes of war in the background. But sometimes all it takes is one event to snap us back, to grab our attention and make us more attuned to the conflict we face.

The tragic events in Iraq in April have brought with it 115 American military fatalities; major combat in Fallujah; and a rush of kidnapping, bombings, and other insurgent attacks that have terrorized not just American soldiers but innocent Iraqis.

April has also brought our full attention as a Nation back to the war in Iraq. Almost a year later, we fully realize there is still work to be done militarily and diplomatically, and that our mission is not yet accomplished.

As for the citizens of Arkansas, we have in the past few weeks experienced both the joy and pain that is associated with being a standard bearer for freedom and democracy. We are a country that has and will continue to risk life and limb, not only to protect our freedom and liberty but to extend those same opportunities to all people in all places. It is something of which we can and should be proud. But as we know, it often comes with the most precious sacrifice.

On April 22, we were fortunate enough to welcome home 106 Army National Guard soldiers, members of the 1123rd Transportation Company based in Marked Tree, AR, and Blytheville, AR. Also, more than 60 Army Reserve soldiers from Company C of the 489th Engineer Battalion returned to their home bases in Arkansas last week after spending more than a year in Iraq. These units spent more than a year in Iraq helping rebuild Iraqi cities, providing protection and logistical support, and destroying enemy weapons.

I commend these men and women for their brave service. Some of them were away from their families for far longer than they expected, but they are now home, and I, along with all Arkansans and all Americans, welcome them back.

Mr. President, while Arkansans rejoiced in the news of having a collection of our men and women return safely, we at the same time faced the harsh reality that some of our men and women would pay the ultimate sacrifice for freedom.

On Saturday, April 24, four soldiers, all members of the Arkansas Army National Guard's 39th Infantry Brigade, were killed in Taji, Iraq, as a result of hostile fire when rockets hit their camp. An additional soldier was killed a day later when a roadside bomb detonated near Sadr City.

To let my colleagues know, there are approximately 4,200 troops in the 39th Infantry Brigade, including about 2,800 Arkansans from 47 hometown units. The balance of the troops are from 10 other States.

The 39th was officially called to active duty last September, and I watched their progress as they trained and prepared to fulfill their mission.

In January, I traveled to Fort Hood, TX, to visit troops from the 1st Cavalry Division and the 39th Infantry Brigade. During my trip, I witnessed demonstrations of topnotch training and cutting-edge equipment that will enable these soldiers to successfully carry out their mission in Iraq.

I again visited them at Fort Polk, LA, with other members of Arkansas's congressional delegation. I was truly proud of what I witnessed. I saw Arkansans who had undergone long days of training and preparation and were aware of the dangerous conditions and challenges that lay ahead for them in Iraq. However, they remained in high spirits and were determined to carry out their mission.

I am inspired by these men and women, patriots all, who have taken determination and commitment to a new level. I know the sacrifice and the dedication of the 39th will help bring stability and democracy to the streets of Iraq.

We wished these soldiers well, knowing it was a matter of days before they would be sent to Iraq. In March, they were sent over. Since their departure, we have all gone to bed with prayers in our minds and hope in our hearts that all the members of the 39th would return home safely. The events of the past few weeks have prevented this from happening, although we remain hopeful.

I stand here today to extend my deepest sympathies to their families and honor them for their commitment and sacrifice. The brave men and women who have surrendered their lives this weekend so others might enjoy freedom include:

U.S. Army CPT Arthur ''Bo'' Felder, 36, of Lewisville, AR. He had served in the National Guard since 1986, a year after he graduated from Lewisville High School. Felder served as a youth director at St. Luke Missionary Baptist Church in North Little Rock.

U.S. Army CWO 3 Patrick Kordsmeier, 49, of North Little Rock, AR, who died tending the soldiers injured in the first blast when he was killed by a second attack. He was up for retirement before the war in Iraq began, but he asked for an extension so he might serve. He was born in Little Rock. He reminds me of that phrase in the Bible where it talks about there is no greater love than one who lays down his life for a friend. That is exactly what he did;

U.S. Army SSG Stacey Brandon, 35, of Hazen. He was a prison guard for the Arkansas Department of Correction and later worked at the Federal prison in Forrest City;

U.S. Army SSG Billy Orton, 41, of Humnoke, AR. His wife and children reside in Carlisle, AR, and his mother in Hazen;

U.S. Army SP Kenneth Melton, 30, of Batesville, AR. Melton was traveling as part of a protection team with battalion leaders when a roadside bomb exploded, taking his life.

The events of this past weekend almost double the number of troops my State has previously lost during the war in Iraq. Arkansas has lost eight soldiers prior to this weekend.

To put this in perspective, no single day during Vietnam saw as many Arkansans killed by hostile fire as this past Saturday. In fact, Saturday's events are the bloodiest for Arkansas's soldiers since December 2, 1950, when five Arkansans were killed during combat in Korea.

I also honor the other eight soldiers who gave their lives during combat in Iraq. They include:

U.S. Army SFC William Labadie, 45, of Bauxite, AR, who died 2 weeks after being deployed. Labadie was also assigned to the 1st Cavalry, 39th Brigade, Troop E–151 Cavalry, Camp Taji in Kuwait;

U.S. Army SP Ahmed ''Mel'' Cason, 24, died on April 4 in Baghdad. He was assigned to the 2nd Battalion, 5th Cavalry Regiment, 1st Cavalry Division in Fort Hood. Cason grew up in McGehee and many of his relatives now live in Maumelle, AR;

U.S. Army 1LT Adam Mooney, 28, of Cambridge, MD. His helicopter went down in the Tigris River in Mosul,

Iraq, during a search for a missing soldier. His wife now lives in Conway, AR;

U.S. Army MSG Kevin Morehead, 33, a special forces soldier from Little Rock who had previously received a Bronze Star with valor in Afghanistan, died on September 12, 2003, from hostile fire in Ramadi, Iraq;

U.S. Army SP Dustin McGaugh, 20, of Derby, KS, died on September 30 in Balad, Iraq. His mother resides in Tulsa, OK, and his father in Springdale, AR. McGaugh grew up in Springdale and joined the Army ROTC after he graduated from high school in 2001;

U.S. Army PFC Jonathan M. Cheatham, 19, of Camden, AR, my father's hometown. He was assigned to the 489th Engineer Battalion, U.S. Army Reserve, North Little Rock, AR. He was killed while riding in a convoy that came under a rocket-propelled grenade attack on July 26 in Baghdad;

U.S. Marine Corps PFC Brandon Smith, 20, of Washington, AR, died March 18, 2004, in Qaim, Iraq, on the eve of the anniversary of the war. He was trying to help comrades under attack when he was killed by mortar fire;

U.S. Navy Hospital Corpsman Third Class Michael Vann Johnson, Jr., of Little Rock, AR. He was the first Arkansan to die during Operation Iraqi Freedom. In fact, one of my staff in Little Rock was visiting a doctor several days ago and it so happened he started talking to the woman who was assisting in the doctor's office, and it was Michael Vann Johnson's mother. It happened to be the 1-year anniversary of his death in Iraq.

We have not lost nearly as many as other States, but our loss is just as real. The grieving is just as sorrowful, and the fear that there may be more coming is just as frightening, but our resolve is just as strong.

This is a very real war for the people of my State. It impacts every community. It seems as if everybody in my State knows of someone who has served, is serving, or who will serve in Iraq.

We might not all agree on how we got where we are. We might not all agree with all the decisions that have been made by this administration. But we stand behind our troops and are truly inspired by their dedication. We are proud of our professional soldiers, Guard members and reservists who left behind their families and way of life to fight in a land that is not theirs for people they do not know.

The soldiers we have lost will never be forgotten. They, along with all our soldiers, will be remembered for their strength and dedication in bringing independence to the Iraqi nation, and they will be defined as heroes of the 21st century.

Mr. President, I yield the floor.

Mrs. MURRAY. Mr. President, I rise today to honor Petty Officer Nathan B. Bruckenthal for his service to the United States Coast Guard and his commitment to his country. Petty Officer Bruckenthal was killed in action in Iraq on April 25, 2004, as he sought to intercept a marine vessel attempting to launch a terrorist attack.

Petty Officer Bruckenthal's death reminds us of the dangerous mission that the Coast Guard performs every day, at home and overseas, in support of the Nation's defense.

It is with a deep respect for the Coast Guard and the many valiant Americans who serve in the Coast Guard that I come to the floor today to pay tribute to the first Coast Guardsmen killed in Iraq. U.S. Coast Guard Damage Controlman Third Class Nathan B. Bruckenthal was killed along with two U.S. Navy sailors, Petty Officer First Class Michael J. Pernaselli and Petty Officer Second Class Christopher E. Watts, trying to protect oil terminals off the coast of Iraq. A coordinated suicide bombing attack struck members of the coalition Maritime Interception Operations team as they attempted to board a small boat that threatened the Khawr Al Amay Oil Terminal.

This tragic loss of the first Coast Guard member killed in battle since Vietnam highlights the critical and often overlooked role of Coast Guard operations in Operation Iraqi Freedom. At the height of combat operations, the Coast Guard had approximately 1,250 personnel deployed to Operation Iraqi Freedom for port and coastal security, maritime law enforcement, humanitarian aid, maintenance of navigational waterways, contingency preparedness for environmental terrorism, and training the newly established Iraqi coast guard. Coast Guard support to Operation Iraqi Freedom continues today with approximately 300 people supporting these vital operations.

Petty Officer Bruckenthal enlisted in the Coast Guard 6 years ago. I am proud to say his service included 2 years in western Washington at the Coast Guard Station Neah Bay. In addition to protecting the safety of lives at sea, he was a dedicated citizen of the Clallum County community. Petty Officer Bruckenthal made time to volunteer as a Neah Bay fire fighter, an emergency medical technician, a reserve police officer, and a coach for the Neah Bay High School. He was known for his terrific work with children and his passion for law enforcement.

As many brave members of our armed forces, Petty Officer Bruckenthal was serving on his second tour in Iraq. He served from February 2003 to May 2003 in Operation Iraqi Freedom where he received the Armed Forces Expeditionary Medal and the Combat Action Ribbon. He returned for a second tour in Iraq beginning February 2004. This was an extremely difficult and complex mission; particularly trying to distinguish between the enemy and the average citizens. Coast Guard is carrying a very heavy load in protecting the northern Arabian Gulf and the oil fueling stations which are essential to the recovery of the Iraqi economy.

I have long ties to the Coast Guard. In my leadership roles on the Transportation and Homeland Security Appropriations Subcommittees, I have often noted the tremendous task the Coast Guard faces in terms of securing our Nation's ports and cargo terminals. I have applauded their efforts in addressing the security issues facing our country's ports. The 13th Coast Guard District is known as guardians of the Pacific Northwest. They have a presence in 14 locations throughout my State and are responsible for monitoring 200 facilities in Washington, including 60 designated water front facilities that handle oil and hazardous materials.

We know that many fine young American soldiers, sailors and airmen have made the ultimate sacrifice in the fight against terrorism and terrorists and in Iraq and Afghanistan. I have personally written to 25 families of service men and women with ties to the State of Washington who have died while serving in Operation Iraqi Freedom and Operation Enduring Freedom. Now, sadly, a proud member of the Coast Guard has joined the list of Americans killed in action in defense of our country. We extend our deepest sympathies and respect to Petty Officer Bruckenthal's family and friends. We join the Coast Guard family in honoring Petty Officer Nathan Bruckenthal. We will remember his brave service to the Coast Guard, to our Nation's defense, and to us all.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. SMITH. Mr. President, I ask unanimous consent that I be allowed to speak as in morning business, and after my remarks that the Senator from New Mexico, Mr. BINGAMAN, be allowed to speak.

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

ENVIRONMENTAL POLICIES

Mr. SMITH. Mr. President, I am pleased to be addressing a Texan, the Presiding Officer, at this moment. I wish to speak about a Texan. I was serving in the Senate for 4 years when I got a call from the Governor of Texas, George W. Bush, to ask if I would give him some time and consider his candidacy for the Presidency of the United States.

I was privileged to travel to Austin, and an hour's meeting turned into a half a day's meeting, as I found in this good man a man of the West, a man who understood from whence he came in rural parts of Texas.

I represent the State of Oregon. I come from the dry side of Oregon, a side not unlike many parts of Texas. People do not think of Oregon in those terms, but many parts of Oregon are arid. My neighbors are people who farm the earth, fish the rivers, the ocean, and they harvest timber from our mountains.

I had served for 4 years as a Senator, working with President Clinton and his administration, trying to make sense of his Northwest Forest Plan, and other proposals of his administration that had an enormous effect upon the State of Oregon.

It was interesting to watch the election results 4 years ago and to see the diversity of voting between urban and rural places. Overwhelmingly, rural people voted for George W. Bush, as did I because I am from a rural place.

In my first meeting with George W. Bush, I began to discuss the issues of the people I serve and who elected me. I could tell in an instant that he got it, that he understood. He understood water. He understood ranching. He understood farmers.

Should he be elected, I asked him as he formulated his environmental policies to please not forget the people who I thought would vote overwhelmingly for him. I asked him to please try to better balance the environmental policies of the Federal Government so we did not forget our human stewardship as we try to implement our environmental stewardship.

We have just observed the 34th annual Earth Day. I know many in the environmental community are assembling an arsenal of millions of dollars to run against George W. Bush and suggest that the air has gotten dirtier, the water is fouler, and that the earth is more imbalanced because of his tenure.

He has not forgotten those who have elected him. He has not forgotten rural people. He has reconsidered and rebalanced some proposals, and the air is cleaner, the water is cleaner, and the land is doing fine. We have made enormous environmental progress in our country and sometimes we do not stop to celebrate all the progress we have made.

I remember as a boy growing up in Bethesda, MD, one could not safely go in the Potomac River because it was so polluted. We can do that today because of the EPA, an Agency established by Richard Nixon and the Congress. We can do that because of all of the efforts that have gone on before.

I used to be somewhat concerned and frustrated as President Clinton would go to Virginia and West Virginia and decry rural poverty, when I recognized that much of the poverty occurring in my State was as a direct result of Federal policies. It used to be that in the State of Oregon, for a long time, we harvested tremendous amounts of timber. We had a very vibrant timber industry in our country.

Indeed, from the Pacific Northwest region alone we would average about 4 billion board feet a year. I think President Clinton recognized that maybe that was more than was sustainable. He promised the timber industry and the people of the forest in Oregon that he would give them 25 percent of their average harvest—that is 1 billion board feet. We have probably harvested 10 percent of that since that promise was made, and I have witnessed tens of thousands of family wage jobs evaporate.

When that happens, it is not just jobs that go away. There are problems with alcoholism, spousal abuse, crime, hopelessness, suicide, and a loss of dignity. So when one wants to know where a lot of our jobs went, they went away because of conscious Federal policy.

Right now, as we barely utilize our resources in Oregon and in America, we are overcutting in Canada. The spotted owl does not know the difference. In fact, as we overcut in Canada, we watch our forests burn at record rates. George W. Bush, fortunately, true to his word, helped with this Senate and the House of Representatives to pass a forest health initiative. It is a modest step but it is designed to make communities safer, improve environmental health, and to harvest timber. All of those things will begin to be enjoyed by the people of Oregon again: a better environment and a better economy. Some of those jobs can come back.

I lamented when Michael Kelly, the late columnist, lost his life in Iraq. He put the natural resources conflict quite eloquently in a column he wrote in 2001. He said that the battle of values over land use and environmental policies, while often framed as between man and beast, is better understood as between increasingly poor and powerless rural voters and increasingly rich and powerful urban and suburban voters.

Kelly went on to note that the Endangered Species Act ''has been exploited by environmental groups whose agenda is to force humans out of lands they wish to see returned to a pre-human state.''

For my counterparts in the East, some of whom think all resource extraction on public lands should be off limits, I would like to give you a sense of how vast the Federal presence is in my State. This picture is of an area known as the Biscuit Fire. The Biscuit Fire consumed lands larger than the State of Rhode Island, or four times the size of the District of Columbia. It destroyed countless acres of roadless areas, wilderness, spotted owl habitat, and salmon spawning grounds. I ask how that moonscape leaves the environment better. I know it left the people worse.

The Federal Government owns over 50 percent of the State of Oregon, which amounts to almost 33 million acres; greater than the total acreage of 22 other individual States. So it is safe to say Federal land management policies have a significant impact on the people, the economy, the environment, and the environmental health of my State.

I am proud we have a President who understands the implications of Federal policies on rural America. This President understands that humans are part of the environmental equation, and he is working to maintain domestic resource industries and to return strength to rural economies.

So as he gets attacked in this campaign, I hope the people of Oregon will understand there is a human side to this equation, and they will remember the compassionate conservatism he campaigned on is being restored in rural places: a little compassion, a little balance.

In 2002, President Bush came to Oregon. He saw firsthand the destruction and dislocation caused by these catastrophic wildfires. On occasion, I was able to share with him the importance of rebalancing policies, even as it related to producing electricity. For a long time there were serious people in powerful places advocating the demolition of hydroelectric power on the Columbia and Snake Rivers. It is the product of our prosperity in this country that we have come to a place where too many think electricity comes from a light switch, gasoline comes from a service station, and timber comes from the local hardware store. But all of these things come from rural places, from industries that provide us the power and the means to enjoy the American way of life. President Bush has had the good sense to resist some of these proposals that went too far and, when appropriate, to rebalance them so people can have a place again in the environmental equation.

This President also is strongly committed to species conservation. Sometimes that is missed. In fact, it will never be included in the ads of environmental organizations, but this President's budget for fiscal year 2005 includes $100 million for the Pacific Coastal Salmon Recovery Fund, which is a $10 million increase from the year before. The combined Federal funding request for Pacific salmon mitigation and recovery is over $719 million, and this commitment is paying off. Ten years ago a little over 200,000 chinook and 160,000 steelhead returned to the Bonneville Dam. But in 2003, nearly a million chinook and 365,000 steelhead returned to that dam.

This President has also understood the need for a comprehensive national energy policy, and that energy security is vital to our national security, to say nothing of our economic security. He has championed the research and development of new fuel cell technology that would lessen our dependence on imported oil. He has supported energy conservation and tax credits for the production of electricity from renewable sources.

As energy prices remain high, and as our economy rebounds, the need for a national energy policy will only continue to become more and more urgent.

President Bush is not going to get credit for these things in the ads of certain advocacy groups, but I hope the American people will remember to credit him for his care for rural people and places, for his tangible efforts to restore lost family-wage jobs as it relates to fishing, farming, forestry, and energy production. I hope people will also remember our air is cleaner, our water is cleaner—we are making tremendous progress. While some will say this has been rolled back, or that has been changed, it is usually because something has gone too far and a little common sense, a little compassionate

conservatism was needed to be restored to the equation.

On Earth Day I had wanted to come and say these things to defend the President, as he is being attacked so liberally, but time on the floor was not allowed that day. So I am here this day to put in this reminder and ask the American people to remember: President Bush is a good steward. More than that, he is a good man.

I yield the floor.

The PRESIDING OFFICER (Ms. COLLINS). Under the previous order, the Senator from New Mexico is recognized.

Mr. CORNYN. Will the Senator from New Mexico yield for a unanimous consent request?

Mr. BINGAMAN. I am glad to yield.

Mr. CORNYN. I ask unanimous consent that following the remarks of the Senator from New Mexico, I be recognized for such remarks that I may make.

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

The Senator from New Mexico.

AMENDMENT NO. 3051

Mr. BINGAMAN. Madam President, I thank my colleague from Oregon for his courtesy in reserving my opportunity to speak.

The pending business before the Senate is the Domenici amendment which has been offered to the Internet tax bill. I thought it would be useful to try to talk about that legislation and the substance of that legislation, at least to some extent this afternoon, before we get to a cloture vote tomorrow. This amendment, of course, is the Energy bill. For those who have not focused on it, this is the amendment I hold in my hand. It is 913 pages. It is called the Energy Policy Act of 2003.

Unfortunately, not a lot has changed since the beginning of the floor debate that we had in the Congress last May, or when we debated the energy conference report last November. We have before us proposed legislation that I believe does not command the broad public support that we need in order to have a national energy policy.

I would cite three categories of problems with the bill. First, I will talk about some of the objectionable provisions in the bill and give examples of concerns in that area. Second, I will talk about some meritorious provisions which the Senate has previously passed as part of the Energy bill that we acted upon in this Congress and in the previous Congress but which have been deleted from this bill, which I think is a mistake. Finally, I will talk about the legislative thicket that we would be wading into if in fact we invoked cloture on this amendment.

First, let me talk about this category of objectionable provisions that are contained in the Domenici amendment. There are fairly good provisions in the bill as well. Let me say that at the outset. Many of those are ones we have included in legislation previously passed in the Senate. I do not mean to imply that there are not good provisions in the bill. But let me start the list of examples of objectionable provisions by talking a little about electricity and the efforts that we made in the Senate regarding the regulation of electricity markets.

The new amendment substantially fails to protect electricity consumers from market manipulation, including most of the schemes that were used in California by Enron and other companies that were acting in the same way that Enron was. It makes illegal only one specific practice that was used by Enron, that is round-trip trading. It potentially leaves an inference that Congress does not view the other schemes as equally problematic.

The Senate voted last year, 57 to 40, for a broad ban on market manipulation. I strongly believe that was the right way for us to vote on this issue. I do not understand the rationale for ignoring a past strong Senate vote on this subject in an effort to prohibit market manipulation.

The amendment also contains a proposal to shift the cost of constructing new transmission from one set of parties in the electric utility industry to another. Trying to legislate rate design is probably never a good idea. In the form of so-called participant funding that is contained in this amendment, it is particularly egregious. Its effect would be to create a huge disincentive for the construction of new transmission by corporations that are not already in a substantial monopoly position in a given region.

Why should we want to cut down on the number of companies interested in building generation and transmission? I fear that is what this amendment, as it currently stands, would do. The new amendment repeals the Public Utility Holding Company Act. It does so, however, without any other provisions being added to ensure that electric or gas mergers or acquisitions had to be in the public interest, without any real protection for the ability of State public utility commissions to protect consumers against cross-subsidization or other abuses.

If there were such protections, it would be my inclination to support the repeal of PUHCA, and I have supported the repeal of PUHCA in the past. But I think a world of untrammeled mergers of electric utility companies is going to turn out to be bad for electricity consumers.

The amendment also overreaches, in my view, in the response to the standard market design rulemaking. It basically throws into question the Federal Energy Regulatory Commission's authority to issue rules of general applicability that are other than the standard market design rule. If we have another price crisis in this country as we have in California, the Federal Energy Regulatory Commission will be unable to intervene as it ultimately did in California and in the West. Since standard market design is, for all practical purposes, a dead issue at this point, I do not see why we are still trying to address it in the clumsy way it is addressed in the amendment.

Let me move on from electricity and the whole issue of oil and gas.

With respect to the dependence on foreign oil, the bill has some problematic provisions, both on the efficiency side and on the supply side. One provision in the amendment would increase U.S. gasoline demand over the current law by 11 billion gallons by 2020. Given today's prices at the pump, that would seem to me to be a step in the wrong direction.

With respect to oil and gas production, the bill mixes up the worthy goal of getting more energy development on Indian lands with provisions that weaken the National Environmental Policy Act process—the NEPA process—with the change in the trust relationship between Indian tribes and the Department of the Interior. The trust relationship has nothing to do with energy, and the change contemplated by this bill is vigorously opposed by several Indian tribes. I do not know why it needs to be included in this amendment either.

The new amendment adds some other new provisions related to the oil and gas industry that, in my view, are likely to backfire when they actually get implemented. The first of these provides the cost of NEPA analyses can be pushed off on oil and gas producers to be recovered by them at some future date from their royalty stream to the government, if one ever develops from the lease for which the NEPA work was done. This is essentially a mandate that producers give the Federal Government the equivalent of an interest-free loan with the producers paying for something they thought they had already paid for through their taxes.

If this amendment were to become law, there would be much greater pressure to let producers bear the entire cost of preparing the Government's NEPA documents with a theoretical cost recovery by them at some point in the future. I do not think this is good public policy.

A second provision that could backfire is the very detailed micromanagement of the permit approval process in the Government with extremely tight deadlines like a 10-day deadline for agency action. This is likely to result in a great deal of paperwork to explain why the 10-day limit was exceeded for such permits, and the effort spent on generating all of the defensive paperwork will probably come at the expense of actually getting permits done.

What we need and what I have strongly supported is getting more resources into the field offices of the Department of the Interior to eliminate the backlogs that are there at the present time. That is what we should be focused on—not on micromanaging the bureaucratic process.

With respect to coal, the new amendment waters down the Clean Coal Technology Program in some very important ways. It lowers the fraction of funds in the program that needs to be spent on the cleanest technologies from what we have previously agreed to here in the Senate. It also sets up a brand new competing program to the Clean Coal Technology Program. Under that program, the Federal Government will contribute up to $1.8 billion to the utility industry to help foot the bill for off-the-shelf coal and pollution control technology for existing coal plants. I don't see how this subsidy makes sense from the point of view of energy, or the environment, or our budget situation.

With respect to renewables, the new amendment authorizes grants to burn biomass for energy, but then it fails to protect old-growth forests. Under the amendment, old-growth forests could be cut down with Federal grants for use as an energy source. I think that is objectionable. An imperative for Federal energy policy legislation has to be to recognize the ways in which energy use and energy policy is intertwined with the environment.

In this area, the amendment we have before us has some major failures. If enacted, it would be the first statute in years to substantially roll back environmental protections for our citizens and those rollbacks have nothing to do with improving our energy security.

For example, the amendment loosens ozone attainment standards nationwide. To its credit, EPA in the last few weeks has taken definitive steps in the opposite direction; that is, for tough standards for ozone control. I don't know why we should vote in the Senate to undercut the progress the EPA is making. Further changing ozone standards is a topic that has never received Senate consideration in the past on any energy bill.

The particular provision I am describing here materialized for the first time in one of last year's closed-door conference discussions.

The conference report also exempts oil and gas construction sites from the Clean Water Act, even large sites that have been under regulation for years. It contains numerous provisions that are inconsistent with a thoughtful environmental review process under NEPA.

I could go on at some length here pointing out problems in the bill.

I have a letter I received today from Trout Unlimited and various Indian tribes in the Northwest and other outdoor sportsmen's groups—41 groups in total—that talks about problems they see with the hydroelectric provisions in this amendment. It is a letter sent to all Senators and I am sure all Senators have received it.

They say:

> We urge you to oppose cloture on the amendment and support amendments to fix or eliminate the hydro provisions from the energy bill.

They also go on to say:

> At this point, the adoption of the hydropower title would significantly complicate the implementation of these new rules and would lengthen the licensing process.

I ask unanimous consent that the letter be printed in the RECORD following my remarks.

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

(See exhibit 1.)

Mr. BINGAMAN. Madam President, these are some of the many problems contained in the pending amendment. I am sure colleagues will come to the floor and mention others they particularly are focused on.

Let me talk about the second class of problems which consists of the good and needed energy policy provisions the amendment leaves out, even though those in most cases I am going to discuss are ones we in the Senate have passed as part of the Energy bill we sent to conference.

First of all, the amendment steps backward from the old conference report that was brought to the Senate last fall in one important area; that is, in renewing the Federal Government's ability to enter into emergency savings performance contracts. This is one of the Federal Government's primary tools for improving energy efficiency in Federal facilities. I don't know why we would not want to include that in any energy bill we passed here in the Senate. We have included it in the bills we have passed previously.

Second, the new amendment lacks something that enjoys majority support in the Senate; that is, a renewable portfolio standard for electricity.

Along with the tax incentives in the FSC/ETI bill, this measure is essential, in my view, in order to give new certainty to the fledgling market to allow economies of scale to drive down costs and improve manufacturing capacity for renewable energy equipment in the United States.

The Energy Information Agency agrees with this analysis. They have come up with their own analysis that shows this renewable portfolio standard is effective in getting more renewables into the market beyond what tax incentives would do. That would relieve some of the pressure on national gas prices over the long term.

Another problem that is unaddressed in the bill deals with distributed generation such as combined heat and power at industrial facilities. The amendment does not address the barriers that have been erected to uniform interconnection of distributed generation to the grid. It is not enough to have the technology; we need to rid ourselves of the redtape that is keeping the technology from being used. The amendment, unfortunately, does not do that.

With respect to reducing our dependence on foreign oil, the new amendment leaves out another important proposal that has overwhelming support in the Senate. That would be the innovative amendment offered last year by Senator LANDRIEU to promote oil savings economy-wide. That amendment passed this body 99–1 as part of our debate of an energy bill. Again, I see no reason why that should not be included if we are going to, in fact, pass an energy bill.

The new amendment also entirely ducks the important issue of climate change. Climate change is closely related to energy policy because the two most prominent greenhouse gases—that is, carbon dioxide and methane—are largely released due to energy production in use. Every study of how to mitigate the possibility of global climate change comes up with a list of policy measures which relies heavily on increased energy efficiency and new energy production technologies with lower greenhouse gas emissions. Because of this connection, much of the energy policy and much of the climate change policy has to be discussed together. To do one is, by implication, to do the other; to ignore one while doing the other is to risk unfortunate and unintended consequences.

The Senate has previously passed energy bills with numerous provisions to ensure that we integrate climate change strategy with energy policy, develop better climate change science, and that we focus on breakthrough technologies with better environmental performance, and the United States takes the lead in exporting the clean energy technologies we develop. These provisions do not receive even the slightest consideration or mention in the amendment that has been put forward. Leaving climate change out of the energy legislation is a very shortsighted approach, both in terms of energy policy and in terms of our overall relations with the rest of the world.

Finally, let me talk about this third major problem, and that is the way we are being asked to go about legislating on energy with this cloture vote on this amendment added to the Internet tax bill. This has to do with the fact that all of the above problems are encompassed in the 913-page amendment. Because it is a second-degree amendment, all 913 pages are, at the moment, unamendable. It is a take-it-or-leave-it proposition for the Senate at this point.

Let us suppose a cloture is invoked on this second-degree amendment and it was then adopted to the first-degree Daschle amendment. At that point, Senators who wish to change language currently contained within the Domenici amendment could only do so by offering a complete substitute amendment for the whole 913-page amendment. Senators who wish to add new subject matter, not seeking to change what is currently in the Domenici amendment, would do so by offering amendments that would be added onto the end of the amendment. But whenever the first substitute amendment fixing a problem within the Domenici amendment was adopted, no further amendments to the amended Daschle amendment would be in order.

To have further amendment opportunities, Senators would then have to agree to adopt the Daschle amendment to the underlying text of S. 150. At that point, Senators with new ideas could still add new amendments addressing those new ideas but—and this is significant—Senators who still want to address problems remaining in the text would have to write so-called ''bigger bite'' amendments.

As an example of what I am talking about, a Senator wishing to change something on page 600 of this 913-page amendment would have to write an amendment containing part of S. 150 and the first 599 pages of the Domenici amendment, and then the Senator would have to make sure the amendment made substantive changes both to the text of S. 150 and to the Domenici amendment. Successful amendments of this sort could take bigger bites that would unwittingly screen out other such amendments other Senators might want to offer.

If this sounds convoluted as a way to do business in the Senate, that is because it is. If anyone wants to stand up and say this amendment would be fully amendable even if we invoke cloture tomorrow, I guess there is some technical argument to the effect that is true, but the reality is, all Senators with interests in changing specific problems in this 913 pages would find themselves at a considerable and perhaps overwhelming disadvantage compared to the normal way we go about amending bills in the Senate.

So for both substantive and procedural reasons, I think proceeding to invoke cloture on the Domenici amendment is not the best course of action for the Senate. I believe we have better options for enacting energy issues in this Congress than this convoluted amendment situation. Those options would be to take the most pressing energy needs and promising energy opportunities and act directly on those without getting mired in the many controversies that are contained in this amendment.

The Senate has already made a start in that direction. Over the past few months, the Senate has incorporated both large chunks and smaller pieces of the energy conference report into other legislation it has either passed or hopefully is going to pass. The prime example, of course, is the unanimous agreement to incorporate the Senate's bipartisan energy tax package into the FSC/ETI bill. We have also acted separately on LIHEAP reauthorization, the Low-Income Home Energy Assistance Program reauthorization, putting that in a separate bill, S. 1786, which passed the Senate on February 12. Other sections of the Energy bill were put into the highway bill, which has also passed the Senate.

I have pointed out for some time now that there are a number of additional provisions from the conference report that have broad bipartisan support that we could act on. Instead of mixing them with the Internet tax bill, we ought to separate them and pass them individually.

One such provision, of course, is the legislation related to electricity reliability. Congress has been working on this over three Congresses now. Senator CANTWELL has proposed free-standing legislation and has come to the Senate floor twice now and asked unanimous consent to pass this bill. Her requests have been denied. I urge my colleagues to let this bipartisan bill pass. There is no reason why this much needed provision should be held hostage to more controversial energy provisions.

Another noncontroversial energy provision is related to the Alaska gas pipeline. The needed fiscal incentives to build the pipeline are now in the FSC/ETI bill. That is a great development. Why can't we go ahead and pass the provisions to streamline the regulatory approvals for the pipeline by unanimous consent? I am not aware of anyone in the Senate who objects to doing that.

A third example where the Senate could act very easily, in my view, would be to renew the authority for energy savings performance contracts. This is an important energy matter that has broad bipartisan support. I pointed that out. As I have also pointed out, it has been totally deleted from this amendment.

I could go on and point to other provisions related to the oil and gas industry, to energy efficiency, to research and development, and to other topics that are probably also easy enough to pass on a bipartisan basis. It does not make sense to take the position that we cannot do any single thing related to energy unless we tie it to the resolution of every other controversial issue in energy policy. In my view, that is counterproductive.

I hope my colleagues will agree with me that the current amendment before the Senate is not the path we should take to move forward.

I think there has been too much partisanship on energy in this Congress. In my view, that is unfortunate. Taking an especially partisan approach to formulating the policy has not been a recipe for success. I hope the Senate will not proceed forward with this amendment and will proceed forward with the underlying Internet tax bill. I do not believe this amendment provides the right balance between energy supply, energy efficiency, and the protection of the environment. We can do better for this Nation by passing the sensible energy provisions that are broadly supported in this body, and passing them soon.

Madam President, I yield the floor.

EXHIBIT 1

TRIBAL NATIONS AND RIVER CONSERVATIONISTS CALL ON THE SENATE TO OPPOSE CLOTURE ON SENATOR DOMENICI'S SECOND DEGREE AMENDMENT TO ADD THE ENERGY BILL (S. 2095) TO THE INTERNET TAX BILL—PROVISIONS HARMFUL TO RIVERS AND FISH MUST BE FIXED OR ELIMINATED IN THE ENERGY BILL

APRIL 28, 2004.

DEAR SENATOR: Last year, the conference committee agreed to profound changes to the Federal Power Act contained in the proposed hydropower title of the Energy Bill. These changes turn 80 years of law on its head by significantly changing Sections 33(b), 4(e), and 18 of the Federal Power Act. Under the new statute, States, Tribes and interested citizens would, for the first time, be afforded inferior status in the process for establishing fish passage and other public land protections on hydropower licenses. Today, Senator Domenici is trying to add the Energy bill, S. 2095, containing these provisions to the Internet Tax Bill. We urge you to oppose cloture on his amendment, and support amendments to fix or eliminate the hydro provisions from the Energy bill.

Under these provisions, a given license applicant would offer alternative conditions contrary to what the Secretaries of the Interior, Commerce, or Agriculture may have recommended, and provide them with an unfair and exclusive opportunity to specify the level of protection for public lands (including Indian lands) or implementation of fish passage. Perhaps the most disturbing aspect of this language is the establishment of a new administrative appeals process in the form of a ''trial-type'' hearing. Both this new ''hearing'' and the right to require the agencies to accept alternative conditions are available only to dam owners. Other interests already full parties to FERC proceedings, including states, tribes, irrigators, landholders, and environmental are prohibited from gaining party status in this process. To suggest that State and Tribal governments or local citizens should not be able to exercise their role as full parties to hydro licensing when hydropower dam operators proposed alternatives that could damage fisheries and public lands is nothing less than an attack on basic democratic principles.

Today, there is even less reason to adopt the language from last year's conference. On July 23, 2003, FERC finalized new rules that establish a new licensing process—Integrated Licensing—designed collaboratively by industry, FERC, State and Tribal governments and the public interest community. See ''Hydroelectric Licensing Under the Federal Power Act; Final Rule,'' 68 Fed. Reg. 51069–51143 (August 25, 2003). This new process specifically addresses the longstanding concerns that inadequate interagency coordination has resulted in delays and unnecessary costs in licensing decisions. Under this process, licensees along with the other parties are provided with opportunities to work collaboratively with the conditioning agencies on the development of public land protections and fishways in FERC licensing. The process will run on a strict clock to assure a relicensing decision before expiration of an original license, as the hydropower industry requested. The rules also require FERC to conduct consultation with tribes affected by the licensing. At this point, the adoption of hydropower title would significantly complicate the implementation of these new rules (for example, by requiring Commerce, Agriculture and Interior to undertake their own further rulemakings), and would lengthen the licensing process. Without question, they will add a new layer of red tape to a process that has not even been given a chance to work.

Yesterday, amendment was offered to the Internet tax legislation on the Senate floor that includes the Hydropower Title. We ask you to vote ''no'' on cloture for Senator Domenici's amendment. We also ask you to oppose any efforts to attach or otherwise pass the hydropower title and its provisions that are so contrary to the interests of State and Tribal governments and local citizens. Let's give these new FERC regulations an opportunity to work.

We thank you for your continued leadership on this issue to ensure that our nation's rivers remain a public resource for all to use and enjoy.

The PRESIDING OFFICER. The Senator from Texas is recognized under the previous order.

Mr. CORNYN. Thank you, Madam President.

THE 9/11 COMMISSION

Madam President, earlier, I spoke on the importance of the 9/11 Commission maintaining its credibility given the important mission that organization has undertaken to determine, first, a factual record of the events leading up to 9/11, and then to make recommendations to Congress and various Government agencies on how we can continue to protect our homeland against any further terrorist attacks on our own soil.

I spoke about the need of one of the Commissioners, Commissioner Jamie Gorelick, to provide information about her knowledge of relevant facts. She, of course, was Deputy Attorney General during the Clinton administration under Attorney General Janet Reno.

I also made one other point that I think bears repeating here now; that is, this is not about blame. The only person and the only entity to blame for the events of 9/11 are al-Qaida and Osama bin Laden. This is not about blaming the Clinton administration or the Bush administration. This is about getting to the facts. This is about getting good recommendations based on all the information and then making the American people safer as a result.

On Monday, Senator LINDSEY GRAHAM and I asked the Justice Department to produce any documents they may have in their possession relating to Jamie Gorelick's involvement in establishing policies preventing the sharing of critical terrorism-related information between intelligence and law enforcement officials. It is the fact that those have now been made public and, indeed, posted on the Department of Justice's Web site at www.usdot.gov which brings me back to the Senate floor to briefly mention why I think Ms. Gorelick's testimony is even more important to explaining what she did as a member of the Justice Department under Janet Reno to erect and buttress this wall that has been the subject of so much conversation and why it is so much more important that she do so because the 9/11 Commission's credibility is at stake.

Documents posted today on the Justice Department's Web site substantially discredit Ms. Gorelick's recent claims that, No. 1, she was not substantially involved in the development of the new information-sharing policy, and, No. 2, the Department's policies under the Clinton-Reno administration enhanced rather than restricted information sharing.

Madam President, these documents—and they are not particularly lengthy, but they do raise significant questions about the decision of the Commission not to have Ms. Gorelick testify in public. Indeed, the only testimony we know she has given has been in secret or in camera, to use the technical term. These documents make it even more important that we get her explanation for these apparent inconsistencies and contradictions.

Indeed, the document that Attorney General Ashcroft declassified and released during the course of his testimony —giving his very powerful testimony about the erection and the buttressing of this wall that blinded American law enforcement and intelligence agencies from the threat of al-Qaida and Osama bin Laden—these new documents reveal, indeed, Ms. Gorelick did have a key role in establishing that policy, which was ultimately signed off on and approved by Attorney General Janet Reno; indeed, that she received and rejected in part and accepted in part recommendations made by the U.S. attorney for the Southern District of New York with regard to this wall.

Specifically, Madam President, as you will recall, the first attack on American soil that al-Qaida administered was, in all likelihood, the World Trade Center bombing in 1993. Indeed, the document that Attorney General Ashcroft released pointed out that Mary Jo White, the U.S. attorney for the Southern District of New York, was concerned about an ongoing criminal investigation ''of certain terrorist acts, including the bombing of the World Trade Center,'' and that ''[d]uring the course of those investigations significant counterintelligence information [had] been developed related to the activities and plans of agents of foreign powers operating in [the United States] and overseas, including previously unknown connections between separate terrorist groups.''

Well, in response to some draft proposals for establishing criteria for both law enforcement and intelligence, counterterrorism officials, Ms. Gorelick noted that the procedures that were adopted at her recommendation by the Justice Department under Attorney General Janet Reno went beyond what is legally required. Indeed, I spoke earlier about the fact that the USA PATRIOT Act brought down that law that had been established both by this policy and, indeed, by policies that had preceded it.

But it is important, in these new documents that have just been revealed today, in response to my request and Senator GRAHAM's request, that there is, indeed, a memorandum by Mary Jo White dated June 13, 1995, in which she was given an opportunity to respond to the proposed procedures that have maintained and buttressed this wall that blinded America to this terrible threat.

Mary Jo White, in part, said—and the documents are on the website so anyone who wishes can see the whole document, but she said, in part:

It is hard to be totally comfortable with instructions to the FBI prohibiting contact with United States Attorney's Offices when such prohibitions are not legally required. . . .

She goes on to say:

Our experience has been that the FBI labels of an investigation as intelligence or law enforcement can be quite arbitrary depending upon the personnel involved and that the most effective way to combat terrorism is with as few labels and walls as possible so that wherever permissible, the right and left hands are communicating.

Indeed, it was this lack of communication, which I think is universally acknowledged, that contributed to the blinding of America to the threat of terrorism leading up to the events of 9/11. So Ms. White made what she called a very modest compromise and some recommendations for change to this proposed policy.

In the interest of fairness and completeness, let me just say the documents reveal there were two memoranda by U.S. Attorney Mary Jo White, and they contain recommendations for revisions of the policy, and that Ms. Gorelick, through and in cooperation with Michael Vatis, Deputy Director of the Executive Office for National Security, accepted some of those proposed changes and rejected others.

But then in these documents, again, which were finally disclosed today in response to Senator GRAHAM's and my request, there is a handwritten note from Ms. Gorelick that says:

To the AG—I have reviewed and concur with the Vatis/Garland recommendations for the reasons set forth in the Vatis memo. Jamie.

So it is clear Ms. Gorelick was intimately involved with consideration of the arguments, both pro and con, on establishing this policy which, according to her own memo, went well beyond what the law required. Thus, it becomes even more clear she is a person with knowledge of facts that are relevant and indeed essential to the decisionmaking process of the 9/11 Commission.

I wish it stopped there, but it does not. Indeed, it appears these new documents contradict or at least require clarification by Ms. Gorelick of subsequent statements that she has made on the 9/11 Commission. For example, in a broadcast on CNN's Wolf Blitzer Reports, Wolf Blitzer asked her:

Did you write this memorandum in 1995 . . .

By reference, this was the one that was declassified by Attorney General Ashcroft that established these procedures building the wall and blinding America to this terrible threat.

He asked:

Did you write this memorandum in 1995 that helped establish the so-called walls between the FBI and CIA?

Ms. Gorelick said:

No. And again, I would refer you back to what others on the commission have said. The wall was a creature of statute. It existed since the mid-1980s. And while it is too lengthy to go into, basically the policy that was put out in the mid 1990s, which I didn't sign, wasn't my policy in any way. It was the Attorney General's policy, was ratified by Attorney General Ashcroft's deputy as well on August of 2001.

In other words, Ms. Gorelick, notwithstanding the fact that her initials as Deputy Attorney General appear on the very memos considering recommendations, both pro and con, with regard to establishing these procedures, in spite of the fact she appears by these documents to have been intimately involved in the adoption and establishment of these procedures, said: I didn't sign this memorandum and it wasn't my policy.

Well, at the very least it is clear that it was the policy of the Attorney General, based on her explicit recommendation, and that she consciously adopted in some cases and rejected in others the recommendation of the U.S. attorney for the Southern District of New York with regard to sharing of information between law enforcement and counterintelligence authorities.

Finally, another example of an apparent contradiction, and maybe one that Ms. Gorelick could explain if she would testify in public, as I and others have requested, before the Commission, she said in an op-ed that appeared in the Washington Post, April 18, 2004, entitled ''The Truth About the Wall,'' in giving the various reasons for her side of the story in response to the testimony of Attorney General Ashcroft and the revelation of this previously classified document:

Nothing in the 1995 guidelines prevented the sharing of information between criminal and intelligence investigators.

That appears to directly contradict what is contained in these documents. I would imagine if asked to provide her own testimony, Mary Jo White, the now retired former U.S. attorney for the Southern District of New York, would beg to differ.

The primary purpose of this is not to cast blame. We know where the blame lies. But it is important the 9/11 Commission get an accurate record, a historical record of the events leading up to September 11. If, in fact, there is a way for Ms. Gorelick to shed some light on this subject, indeed, if there is a way for her to clarify or reconcile the apparent contradictions between what these newly released records demonstrate and her public statements and writings, then she ought to be given a chance to do so.

If she does not avail herself of that opportunity, if the Commission refuses to hear from this person in public and to give the American people the benefit of this testimony in public in a way that they have done with Attorney General Janet Reno and former FBI Director Louis Freeh, current FBI Director Robert Mueller, George Tenet, Director of Central Intelligence, and Attorney General John Ashcroft, if they refuse, if they continue to refuse to avail themselves of this public testimony and the opportunity for questions to be asked about these apparent contradictions, they will have administered a self-inflicted wound. The public will be left, at the conclusion of the 9/11 Commission, with grave doubts about the impartiality and the judgment of the Commissioners who have refused to allow the American people the benefit of this relevant and important testimony.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oregon.

INTERNET TAXES

Mr. WYDEN. Madam President, as we move to conclusion of the debate on the question of Internet taxes and votes tomorrow, as has happened so often over the last 8 years that we have dealt with this issue, a lot of Senators have asked for some examples of how all this would work because it is obviously an extraordinarily complicated issue, and the terminology is pretty dense. What I wanted to do was give Senators a sense of what we are talking about.

Of course, under the McCain proposal, Senator ALLEN and I would simply say, with respect to Internet access, it is tax free. You have already paid for it. It is like buying a carton of milk. You have already paid for it once. You should not have to pay for it again when you pour it on your cereal. That is essentially what the McCain compromise would do.

The proposal offered by the Senator from Tennessee takes a very different kind of tack. I wanted to give a very specific example of how it would work and why I am opposed to what he has been advocating. The Senator from Tennessee, in his proposal, stipulates that there would be no taxes on services used ''to connect a purchaser of Internet access to the Internet access provider.''

That certainly sounds like a laudable goal and something everyone should support. But because the Senator from Tennessee nowhere defines what the word ''connect'' means, I am of the view that proposal alone means that scores of jurisdictions in our country would be able to subject a simple message, sent by a Blackberry via DSL, to scores of taxes.

I want to walk through exactly why I believe that. Let us say, for purposes of discussing an example, you send a Blackberry message via DSL from Providence, RI, to Portland, OR. You type your message in and you hit send.

The first connection—again, I am citing that because it is the language of the Alexander proposal—is with a cell tower in Providence. This would then be connected to a Verizon local phone line somewhere in the Northeast. Then it would be connected to a switch, again somewhere on the east coast. The message at that point is connected to AT&T at a network in one of their many facilities on the east coast. AT&T would then shoot the message across scores of States and connect it at a Qwest switch in Portland, in my home State. That Qwest switch then connects the message to a cell tower in Portland. And then, finally, it connects it to the friend in Portland.

The way that message is sent could involve as many as 100 different connections—the concept that is not defined in the Alexander proposal. But depending on how the word ''connect'' is defined—and it is not laid out anywhere in the proposal of the Senator from Tennessee—you could have hundreds of jurisdictions imposing taxes on the one message I have just described as being sent on a Blackberry from Providence, RI, to Portland, OR.

The reason why that is the case is the Alexander proposal states no taxes would be applied on services used to connect a purchaser of Internet to the Internet access provider. But in the example I just gave, what you would have is scores of jurisdictions across the country saying they are not the exempted connection. They would say they are not the exempted connection, and then they would be off to the races, in terms of imposing these special taxes.

So we are going to have a chance, I think tomorrow, to extend this debate a bit longer. I think people are going to be pretty close to ecstasy to have this debate wrap up, given how long it has gone. But I want to take a minute and try to recap what I think are the central kinds of questions.

From the very beginning, those who have been involved in this effort have tried to promote technological neutrality. We have come back again and again to say all we would like is to make sure that what happens in the offline world is applicable to the online world. We have said it does not make sense today to discriminate against the future, which is broadband delivered through DSL. Certainly, that would be the case if cable gets a free ride and DSL gets hammered.

I am of the view the message you get today under the Alexander proposal—instead of that message, ''you've got mail,'' the message will be ''you've got special taxes,'' and you will have those special taxes because terms like the one I have described this afternoon are not defined.

As I have talked about in the last couple of days, we have pointed out the revenue estimates, which are always so dire in terms of lost revenue on the part of the States and localities, and time after time—and we have debated this in the last 8 years—those revenue projections have not come to pass. I know Senators and their staffs right now are being bombarded by some officials from State and local governments, saying they are going to lose

enormous amounts of money, and this is going to drain their revenue base, and it will have calamitous financial ramifications.

But as you listen to those projections—and I know they are pouring into Senators' offices—we have heard those arguments again and again, and they have not come to pass. I point out, for example—and I will quote—in 1997, the National Governors Association said the Internet Tax Freedom Act ''would cause the virtual collapse of the State and local revenue base.''

The chairman of the Commerce Committee worked with myself and Senator STEVENS and others, and we passed the legislation. The Governors said that revenue base was going to collapse. But in the next year, local and State tax revenues were up $7.2 billion. That is one example from over the last 8 years and the journey we have had in the debate over this legislation.

The same thing happened in 2001. Those who opposed our legislation said: The growth of e-commerce represents a significant threat to State and local tax revenues and they might lose tax revenue in the neighborhood of $20 billion in 2003.

According to the National Association of State Budget Officers, State sales tax collections rose from $134.5 billion in 2001 to $160 billion in 2003, an increase of more than $25 billion in 2 years.

We heard again and again this would be devastating to mom-and-pop stores on Main Streets, and pretty much the Main Streets of Maine and Oregon would shrivel up because of the special fix that was provided for sales online. Over the entire period this law has been on the books, the number of sales online has gone up something like 1.5 percent. It has been a tiny fraction of our economy.

The fact is, the major development over the 8 years we have had this legislation on the books is we have essentially seen most of our businesses go to ''bricks and clicks.'' If you walk on the streets of Maine, or the streets of Oregon, our smallest businesses so often are able to expand their sales because they have a significant online component, and people from all over the world can shop at a small store in Maine or Oregon. I think as the Chair will note, these small stores don't have big advertising budgets. They cannot send people all over the world to market their products. Because of the Internet, they are in a position to have a global marketplace. So major development in this field, rather than wiping out Main Street stores, has helped them.

Senator LEAHY brought in a small merchant from Vermont who talked to us specifically about the extraordinary gains they have been able to make as a result of the convenience provided by Internet shopping, which will certainly be harmed if the Alexander legislation were to pass.

I imagine we will continue to pummel this subject a bit more tomorrow. Having been involved in this issue for 8 years, I think it is fair to say the decision the Senate makes on this subject will say a whole lot about the future of the Internet. We learned this morning, as the chairman of the Commerce Committee pointed out, we are already lagging behind in terms of broadband investment. That is the wave of the future. I think small towns in Maine and in Oregon—when we talk about access, for example, to the Net and new technology, it is not going to come about through cable, because cable is going to be very reluctant to make those major investments in small towns, such as those that the distinguished Presiding Officer represents, and my small towns. It is going to come about essentially through broadband, delivered via DSL, and the fact is, today, DSL in many jurisdictions is singled out for special and discriminatory treatment. If we were to not update the law, that would be a trend that would be sure to accelerate.

So I think this is going to be an extremely important vote tomorrow. This is a law that has worked. I will wrap up with this one comment I have mentioned to colleagues, as we have talked about this over the years. I have not found a single jurisdiction anywhere that can point to an example of how they have been hurt by their inability to discriminate against the Internet. That is all we have sought to do over the last 7 years. We said treat the Internet as you treat the offline world. When we started, that was not the case. If you bought a paper the traditional way in a number of jurisdictions, you would pay no taxes. If you bought the online edition of that very same paper, you would pay a tax. That was not technologically neutral. So we passed the first Internet tax freedom bill to deal with that kind of example.

For over more than 5 years, this is a law that has worked. Under the McCain compromise that we will vote on tomorrow, we would simply be updating that law to incorporate the kinds of technologies that evolved over the last few years.

I wanted to make sure tonight that people understood with a specific example of a message that would go from Providence, RI, to Portland, OR, how the vagueness in terms of the definitions in the Alexander legislation would, in my view, subject a simple message sent by BlackBerry via DSL to scores of new taxes. I cannot believe any Senator would want that to happen, and that is why I am hopeful we will get support for the McCain compromise and be able to move forward to final passage of the legislation.

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

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

The legislative clerk proceeded to call the roll.

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

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

MORNING BUSINESS

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate now proceed to a period for morning business, with Senators permitted to speak for up to 10 minutes each.

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

JOHN RHODES MEMORIES

Mr. COCHRAN. Mr. President, it has come to my attention that the family of former Congressman John Rhodes of Arizona has established a special Web site: www.johnrhodesmemories.org for the purpose of collecting memories from friends and former colleagues of this outstanding statesman.

When I was elected to serve in the U.S. House of Representatives in 1972 one of the first House leaders I came to know was John Rhodes, who was serving as chairman of the House Republican Policy Committee. Together with Congressman Gerald Ford, who was the Republican leader, he helped shape our legislative priorities and worked closely with President Nixon to formulate Republican Party policies.

The memories I have of John Rhodes include his impeccable manners, his courtesy, his warm, big smile, his good judgement and his honesty. He was well liked by all Members of the House, Republicans and Democrats.

It was foregone conclusion when Gerald Ford was selected by President Nixon to be his Vice President that John Rhodes would be elected by House Republicans to be the Republican leader. He was unopposed and elected unanimously.

He served as leader with distinction during a very challenging time. The Watergate experience decimated House Republicans, but he helped put us on the road to political recovery and eventual majority status. Even though he and I left the House about the same time—he to retirement and I to election to the Senate—we would get together occasionally at meetings of SOS, a group that meets every week to discuss mutual interests and ideas for the improvement of the country and beyond.

In summary, all my memories of the Honorable John Rhodes were good ones. His death on August 24, 2003, saddened all who knew him. He was a true friend and a great Congressman.

UKRAINIAN DEMOCRACY

Mr. LEVIN. Mr. President, the demise of the Soviet Union, in 1991, provided an opportunity for millions of people to chart their own destiny as people free from the yoke of repressive communism. At that time, there was great hope that a free and prosperous Ukraine could become a member of the

Euro-Atlantic community that is united by democracy, free markets and the rule of law.

In the past 12 years, Ukraine's transition to democracy and capitalism has been a difficult process marked by success and failure. The successes are many: Ukraine has given up nuclear weapons, peacefully changed power from Leonid Kravchuk to Leonid Kuchma, partnered with NATO's Partnership for Peace program, and has stationed roughly 1,600 troops in Iraq—one of whom, Private Ruslan Androshchuk paid the ultimate price for his service.

Yet, in spite of these achievements, Ukraine faces a stark choice of leadership as it seeks to shape its second decade of freedom from communism. Those who would seek to forge a new and open Ukrainian identity aligned with the community of democratic nations stand in contrast to those who seek to return the nation to its repressive past by establishing a more authoritarian regime that avoids the needed reforms it must undertake.

The choices facing the Ukrainian people are clear, and the upcoming October 2004 presidential election will play a critical role in determining the course that this proud and important nation will take. It is my hope that the presidential election will draw Ukraine closer to the West by cementing a strong and stable democracy. Unfortunately, a number of recent events and actions by the Ukrainian government have provided supporters of a democratic Ukraine with reason for concern.

In the lead up to the fall's election, Ukrainian president Leonid Kuchma has pursued constitutional changes that would shift substantial powers from the presidency to the Ukrainian parliament, the Verkhovna Rada, on the eve of the presidential election in which a strong opponent of the President is currently leading in the polls. In response to concerns expressed by many nations, President Kuchma dropped the most egregious provision, which would have replaced the direct election of the president with an election by the Ukrainian parliament. Deliberations on constitutional reforms, especially reforms that would alter the political landscape and structure of the nation, should be discussed in a full and open parliamentary debate with the broad participation of the Ukrainian population. Yet, the proponents of this measure primarily relied on backroom maneuvering to push through their changes. Although President Kuchma argued that he was not advocating these changes to strengthen his position, since he has said he will not run for reelection, many concerns existed that he was doing so to fortify the position of his allies in the legislature.

In a sign that true democratic aspirations in Ukraine are still alive, those changes to the Ukrainian constitution failed by six votes earlier this month. I am hopeful that President Kuchma will permit the election to go forward without further attempts to undermine Ukraine's constitution.

The constitutional changes advocated by President Kuchma are just one facet of an increasingly authoritarian trend in Ukraine. Media repression that threatens the safety of Ukrainian journalists also limits the ability of citizens to obtain fair and accurate reporting prior to the October elections. A free press and open media are essential foundations for any open, democratic society. Yet the ability of the media to operate freely has been threatened in the past several years.

The commercial FM Dovira network removed Radio Free Europe/Radio Liberty, RFE/RL, Ukrainian-language programs from its schedule in February of this year. This move came after the takeover of the network by a political supporter of President Kuchma. The network had previously served as the RFE/RL major affiliate, reaching roughly 60 percent of Ukraine's population. Apparently RFE/RL programming did not ''fit the envisioned new format of the radio network,'' despite the fact that these programs were the most popular shows on the station.

When Radio Kontynent, an FM commercial station in Kyiv, started airing RFE/RL programming a couple of weeks later, the station was raided and closed by Ukrainian authorities. The station's transmission equipment and three employees were briefly detained. The former owner of the station fled to Poland fearing for his life and is awaiting political asylum.

This action was not an isolated event, unfortunately. According to the Broadcasting Board of Governors, Ukrainian authorities continue an ongoing campaign against the independent media, including the harassment of journalists and the suppression of fact-based news and information and investigative reporting. Several journalists have been murdered and others have been killed in suspicious ''accidents.'' We must do more to support efforts in Ukraine by journalists and media organizations that fight for fundamental rights.

Political repression and harassment apparently influenced the election for the mayor of Mukachevo, a town in southwestern Ukraine. Exit polls for this election indicated that Our Ukraine's candidate received 62.4% of the vote, yet a subsequent recount indicated that his opponent won by 5,000 votes. Reports trickling out after the election indicated that some of the election stations were raided and damaged by ''criminal elements'' and other ballots were summarily destroyed or ignored. Four members of the parliament were beaten and an election observer was hospitalized after being assaulted. In addition to this, prior to the election the Our Ukraine candidate temporarily was taken off the ballot and a theater director that allowed Our Ukraine to use his venue for a meeting was severely beaten.

The Organization for Security and Cooperation in Europe, OSCE, expressed its concerns about this election, as well as recent legislation that bars domestic non-partisan observers from monitoring elections. Without the assurances of a free, open, and transparent election, there is little to hope that the fall election will, in fact, uphold true democratic values. The events in Mukachevo and the barring of domestic observers are reasons for great concern. Recent actions, such I described, raise the fear that this election will be stolen from the Ukrainian people.

Ukraine has taken some positive steps toward the creation of democratic institutions and a free-market economy, though much more remains to be done. This is why a free and fair presidential election in October 2004 remains so important to determining the future path of Ukraine. Who emerges victorious from this election is a matter to be decided by the Ukrainian people. What is of concern to the United States is how these elections will be conducted. Both the election day and the pre-election period must meet international standards for a free and fair electoral process, including ensuring that candidates have unimpeded access to media outlets, citizens are guaranteed the opportunity to exercise their civil and political rights, free from intimidation and interference, and domestic and international monitors are allowed to observe the electoral process and report their findings. The numerous problems in Ukraine noted in elections in 1999 and 2002 by election observers only intensify everyone's concerns.

Ukraine, if it is to realize its considerable potential, must take action now to protect the fundamental human rights of its citizens. There have been some achievements in the past twelve years, but much more remains to be done. I know that my Senate colleagues share my concerns about the upcoming presidential elections and stand ready to support the Ukrainian people as they continue with efforts to make their nation more free and democratic.

LOCAL LAW ENFORCEMENT ACT OF 2003

Mr. SMITH. Mr. President, I rise today to speak about the need for hate crimes legislation. On May 1, 2003, Senator KENNEDY and I introduced the Local Law Enforcement Enhancement Act, a bill that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society.

Three employees of the Office of Diversity and Dialogue in Scottsdale, AZ, were injured on February 26, 2004, when a bomb delivered through the mail exploded in their office. The Office of Diversity and Dialogue offers community training and outreach programs and handles various complaints from city employees and citizens, including racial and sex discrimination grievances.

The explosion occurred when Don Logan, the director of Scottsdale's Office of Diversity and Dialogue, opened a notebook sized package addressed to him that was carrying a bomb. The blast left a 3½ inch-wide hole in Logan's desk and shot shrapnel into the walls, ceiling and floor. Logan, 48, suffered serious burns on his hands and arms.

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

A CREDIBILITY GAP ON NEW NUCLEAR WEAPONS

Mrs. FEINSTEIN. Mr. President, I rise today to address what I consider a large and serious issue—U.S. nuclear weapons policy—and update the Senate on what has been happening.

In particular, I am concerned about the apparent reopening of the nuclear door by the United States and the further research and development of a new generation of nuclear weapons.

I serve as a member of the Senate Appropriations Committee, on both the Energy and Water and Defense Subcommittees, and have had an opportunity to participate in the committee and conference debates on this issue.

Despite earlier claims to the contrary, by all appearances the Bush Administration is seeking to develop a new generation of nuclear weapons.

This includes both the Robust Nuclear Earth Penetrator, which is a 100-kiloton ''bunker buster'', and so-called Advanced Concepts, which translate into low-yield battlefield nuclear weapons, below 5 kilotons.

The first hints of this policy came in the administration's 2001 Nuclear Posture Review—which was leaked to the press in early 2002.

The review cited the need to develop a new generation of tactical nuclear weapons, blurring the lines between conventional and nuclear forces.

According to press reports, it named seven countries against which it would consider launching a nuclear first strike: North Korea, Iraq, Iran, Syria, Lybia, China, and Russia.

And it proposed a ''new triad,'' in which nuclear and conventional weapons co-exist along the same continuum.

This blurs the distinction between nuclear and conventional weapons and suggests that they could be used as offensive weapons.

Subsequently, in the Defense Authorization Bill last year the Administration sought, and ultimately obtained permission, to repeal the 10-year old Spratt-Furse Amendment, which prohibited research to develop a low-yield, less than 5 kiloton, nuclear weapon.

Spratt-Furse has served as a ''brake'' on nuclear weapons development for the past decade. Now, it is gone.

I argued against the repeal of Spratt-Furse on the floor, and working with Senator KENNEDY, I offered an amendment to maintain it. Unfortunately, we did not prevail.

What really concerns me is that, throughout all of this, the Administration continues to deny their intention to develop new nuclear weapons.

For example, Secretary of Energy Spencer Abraham, in a Washington Post op-ed on July 21, 2003, stated: ''. . . we are not planning to develop any new nuclear weapons at all.''

And Secretary of Defense Donald Rumsfeld, in response to a question I asked him at a Defense Appropriations Subcommittee hearing on May 14, 2003, stated that the work the Administration was undertaking was ''just a study'', and that there were no plans to build new weapons.

This defies credibility.

Well, if one really wants to know what is happening, the best thing to do is to track where the Administration is asking for and spending money.

And when you do, you find that the administration is putting major resources into researching new nuclear weapons.

For instance, last year's budget request included: $15 million for the study of the development of the Robust Nuclear Earth Penetrator; $6 million in funding for Advanced Nuclear Weapons Concepts, including the study for development of low-yield, battlefield weapons; $24 million to increase the Nevada Test Site's time-to-test readiness posture from the current 36 months to 18 months; and, $22 million for site selection for the Modern Pit Facility, which is a facility to build nuclear triggers for our Nation's stockpile of nuclear weapons.

This would be a $4 billion plant to make up to 450 new ''pits'' per year, some of which could be designed for new weapons.

Four-hundred-and-fifty pits is larger than China's entire nuclear arsenal, so this production capacity raises questions about the number of weapons the Administration wants in the U.S. arsenal.

Currently, the United States has approximately 15,000 warheads. Under the Moscow Treaty, the U.S. is to decrease its strategic nuclear force to 1,700 to 2,200 warheads by 2012.

To maintain a 2,200 warhead nuclear force at replacement level, we would only need to build 50 pits a year, not 450. Fifty pits a year can be handled at Los Alamos. So why build a new facility, with a production capacity of 450 pits a year?

This country doesn't need that much production unless plans are underway to increase the size of our nuclear arsenal, including a new generation of nuclear weapons.

Last year, those of us opposed to developing tactical nuclear weapons did have some success in limiting these programs.

Working with others in the House and Senate, we managed to: cut the funding for the Robust Nuclear Earth Penetrator in half, to $7.5 million; condition $4 million of the $6 million for Advanced Concepts on further reporting and planning on Stockpile Stewardship; and contain spending on the Modern Pit Facility to $10 million, a $12 million reduction.

Critically, we also managed to win passage of a requirement that any move to develop a Robust Nuclear Earth Penetrator further than the 6.2A phase require a specific congressional authorization.

As many of my colleagues know, there is a formal set of phases by which new and modified nuclear weapons move through research, development, production, deployment, and retirement.

As a recent CRS report states, ''The Key phases for Robust Nuclear Earth Penetrator are: phase 6.2, feasibility study and down select; phase 6.2A, design definition and cost study; phase 6.3, development engineering in which the nuclear weapons labs produce a completed warhead design; and phase 6.4, production engineering, in which the design is a adopted for production and a system to manufacture the weapon is created.''

So when the administration wants to move beyond 6.2A to 6.3 and into the development engineering phase, they need specific Congressional authorization.

Continuing its efforts, the administration came back this year and asked for significantly more funding for research into new nuclear weapons.

Indeed, the administration's budget requests before Congress this year total some $96.5 million, and makes it clear that there are those in this administration who are deadly serious about the development and deployment of a new generation of nuclear weapons.

The administration's FY 2005 budget request calls for: $27.5 million for the Robust Nuclear Earth Penetrator; $9 million for Advanced Concepts Initiative, which includes so-called ''low yield'' weapons (under 5 kilotons); and $30 million for the Modern Pit Facility.

This is just the tip of the iceberg. The Congressional Research Service now reports that the administration's own long-term budget plans, including $485 million for the Robust Nuclear Earth Penetrator between 2005 and 2009, ''cast doubt'' on the contention that the study of new nuclear weapons are, in fact, only a study.

This ramp-up in funding can mean one thing: the administration is determined to develop and deploy a new generation of nuclear weapons.

Yes, the administration is seeking to re-open the nuclear door and is seeking more ''usable'' nuclear weapons:

The Robust Nuclear Earth Penetrator, for use in launching first strikes to reach deeply embedded command bunkers; and

Tactical nuclear weapons, for possible use on the battlefield.

The logic of the Robust Nuclear Earth Penetrator, for instance, is that there are certain scenarios in which the United States could need a nuclear weapon to destroy deeply buried targets—such as command bunkers—which could not be effectively targeted by conventional weapons.

The goal would be to develop a weapon that could burrow into the earth deep enough so that it would be ''antiseptic'', with fallout contained deep beneath the surface, 500–1000 feet below the surface.

There are three problems with this:

First, a casing that can drill down 800–1000 feet before the warhead explodes does not exist. While the U.S. has technologically sophisticated missiles, there is no such casing at this time.

Second, advanced conventional munitions can shut down air vents, cut-off electricity, and render these targets harmless.

Third, and most critically, it is not possible to contain the radioactive fallout from these weapons—and the radioactive fallout is enormous.

According to Stanford University physicist Sidney Drell, even a one-kiloton weapon detonated 20–50 feet underground would dig a crater the size of ground zero and eject a million cubic feet of radioactive debris into the air. The Robust Nuclear Earth Penetrator is a 100 megaton weapon, so magnify that by 100-fold.

You would need to burrow more than 800 feet into the earth before the weapon exploded in order to contain the fallout from the Robust Nuclear Earth Penetrator. The maximum feasible depth we can bury a warhead into the earth today is about 35 feet.

Use of the Robust Nuclear Earth Penetrator would be a cataclysm of the highest order. Using one might well take out a buried North Korean bunker, but would also kill tens of thousands, if not hundreds of thousands in both North and South Korea and, depending on wind patterns, either China and Japan as well.

So the idea that the Robust Nuclear Earth Penetrator would provide the United States with a usable nuclear weapon—perhaps even a weapon that would be an effective first strike weapon—is absurd.

Furthermore, it represents a major departure from U.S. policy and makes our nation less safe—not more.

This is in fact part of the administration's broader policy in the international arena that can best be summed up in two words: Arrogant unilateralism.

This administration has: engaged in unnecessarily belligerent unilateralist rhetoric and action; dismissed arms control and nonproliferation efforts as ineffective; emphasized the role of preemptive military action; and pursued new nuclear weapon capabilities.

The administration is sending the destabilizing message that nuclear weapons have utility, thereby encouraging the proliferation the United States seeks to prevent.

Instead, I believe that the United States' top priority for nuclear security should be preventing the spread of nuclear, chemical, and biological weapons and the means to deliver them.

Leading non-proliferation efforts and actions, and convincing the world to follow, that's how the world will be safer today and safer tomorrow.

U.S. Nuclear Weapons Policy: I am not a supporter of unilateral disarmament. I am a supporter of treaties, agreements, and programs with strong enforcement and interdiction programs to accomplish multi-lateral disarmament.

I believe that this Nation should always be in a position to protect itself, with a strong military, and the most advanced technology available to that military.

But I believe that moving ahead with these programs is folly.

First, who would want to send their son or daughter to a battlefield with tactical nuclear weapons?

Second, under what circumstances would a President push the ''Red Button'' for a nuclear first strike that would launch a nuclear missile of 100 kilotons, 4 or 5 times more devastating than Hiroshima, which killed 140,000 in just the first four months after the Bomb was dropped.

The United States has the most advanced conventional strike forces in the world. We have conventional bombs that can burrow into the earth and deliver thousands of pounds of explosives.

If the United States develops new nuclear weapons, what do we think India will do?

If the United States develops new nuclear weapons, what do we think Pakistan will do?

And what about Iran and North Korea?

Does this encourage them to develop battlefield nuclear weapons? I believe it does.

This administration is placing too great an emphasis on efforts to develop and deploy a new generation of nuclear weapons.

This is the wrong policy and, in my view, will only cause America to be placed in greater jeopardy in the future.

What should be done?

First, Congress should cut the funding for the Robust Nuclear Earth Penetrator and Advanced Concepts entirely.

Second, Congress should close an inadvertent loophole that appears to allow the Administration to go forward with design engineering of low-yield or other Advanced Concepts weapons, but requires specific Congressional action for the Robust Nuclear Earth Penetrator.

Congress should put the same restrictions on Advance Systems that are required for the Robust Nuclear Earth Penetrator—and require specific Congressional authorization for design engineering and development of battlefield nuclear weapons.

I will propose such an amendment most likely in mark-up or Conference Committee.

Third, Congress should postpone funding for the Modern Pit Facility until we receive a joint laboratory report that will include the finds of ''accelerated aging'' experiment, due in 2006,

Although it is true that the pits in current U.S. warheads are expected to slowly deteriorate as they age—and at some point will need to be replaced if the warheads are to remain in the stockpile—until that study is completed we simply have insufficient data to measure either the urgency by which pits need to be replaced or how many pits a year the United States needs to be able to manufacture to meet replacement needs.

Finally, Congress should deny any funding for new nuclear weapons until the reports we are awaiting justify these programs, including:

The report on stockpile stewardship required by last year's Energy and Water bill and which is intended to help inform decision making; and,

A formal report that spells out the specific military necessity of any of these new weapons. Usually, the military requirements for a specific weapons system—nuclear or nonnuclear are provided before well before funds are provided for design engineering.

These steps are necessary to bring this administration's unrestrained enthusiasm for developing new nuclear weapons under control, and assure that the United States proceeds in this area with all the seriousness and restraint that is fitting for a great power.

Now, I want to take a moment to say what I believe the United States should be doing with regard to nuclear policy.

First and foremost, the United States must work with others in the international community to address the larger nuclear non-proliferation problem.

Proliferation poses a clear and present danger not only to our nation but to the world.

President Bush offered a glimmer of hope two months ago, when he called for international cooperation on controlling the spread of weapons of mass destruction.

In his speech, President Bush called for: expanding efforts to obtain multilateral cooperation in interdicting land, sea and air shipments of WMD-related equipment, materials and technology.

Early adoption of a U.N. Security Council resolution that would require all Nations to criminalize certain proliferation-related activities, enact strict export control regulations, and ensure adequate security for nuclear and other sensitive materials within their borders.

Expansion of threat-reduction assistance programs that are designed to secure sensitive materials and prevent former weapons scientists from selling their expertise on the black market.

Closing a loophole in the Non-proliferation Treaty—NPT—that has enabled countries like Iran to acquire dual-use facilities capable of producing bomb-grade plutonium under the guise of a civil nuclear energy program.

Strengthening verification of the Non-Proliferation Treaty, by calling on countries to adhere to the International Atomic Energy Agency's—IAEA—Additional Protocol.

The creation of a special committee of the IAEA Board to deal with verification and compliance.

Ensuring that no country under investigation for violating nuclear proliferation obligations should be allowed to serve on the IAEA Board of Governors.

These are important steps, but they do not amount to a comprehensive non-proliferation strategy.

Building on what the President suggested, I believe the following actions are needed to implement a comprehensive approach to non-proliferation:

First, the U.S. should support strengthened international monitoring and inspection capabilities, such as the International Atomic Energy Agency's Additional Protocol.

The Additional Protocol is an addendum to the Non-Proliferation Treaty, which would expand the amount of information that Nations will have to provide the IAEA—including, the location, operational status, and production of any uranium and thorium mines.

It also would expand IAEA's ability to check for clandestine nuclear facilities by providing the agency with authority to visit, on short or no notice, any facility to investigate questions or inconsistencies in a state's nuclear declarations.

The Additional Protocol has now passed the Senate, and I believe that the United States must work with the IAEA to give it reality and force.

Second, the U.S. and other global powers can no longer ignore the possession of nuclear weapons by allies and friends.

India and Pakistan are not a direct threat to the United States, but they do threaten one another, and, as we recently learned, Pakistan has been at the hub of a global black market in nuclear technology.

According to a press report last Friday, it is possible that India is now seeking to develop a low-yield nuclear weapon of less than one kiloton, following in the footsteps of the Bush administration's nuclear weapons policy.

Such a move by India would likely be extremely destabilizing for Asia. We must realize that the way in which the United States and our friends and allies approach nuclear weapons has a profound impact on global security, and we must be willing to make sure that our friends, no less than states of concern, adopt a responsible approach to nuclear weapons.

Third, the international community must consider new ways to restrict access to dangerous nuclear technologies.

The Non-Proliferation Treaty guarantee of access to ''peaceful'' nuclear technology has allowed states such as Iran to acquire uranium enrichment or plutonium production facilities useful for weapons without adequate oversight and monitoring.

I support efforts in the UN Security Council to effectively criminalize trafficking in weapons of mass destruction, and work with other nations to make sure that effective means to control the spread of any WMD technology are in place.

Fourth, the United States should expand and accelerate Nunn-Lugar threat reduction programs.

This initiative has helped make the United States and the world safer over the past 10 years by improving security and taking much of the Soviet era nuclear, chemical, and biological weapons arsenal and infrastructure out of circulation. Yet funding for Nunn-Lugar has remained flat at about $1 billion annually over the past several years.

The bipartisan Baker-Cutler Commission proposed last year that U.S. efforts for nuclear security should be increased to $30 billion over ten years, and I believe it is critical that we increase Nunn-Lugar funding so that resources are commensurate with the challenge.

Fifth, we must redouble our efforts to secure and remove all unprotected nuclear material, especially material at the world's most vulnerable sites.

During the Cold War more than twenty tons of HEU were distributed around the world to research reactors and other facilities. Most of this material is poorly guarded and much is stored at extremely vulnerable sites.

Along with Senators REED, NELSON, and LEVIN I recently introduced legislation to give our government the direction, tools, and resources necessary to secure and remove nuclear materials from around the world in an expeditious manner by creating a single, integrated U.S. government program, with a defined budget and resources, to facilitate the removal of these materials. It is my hope that Congress will take action on this legislation soon.

Sixth, the United States should work to achieve a global halt to the production of weapons usable fissile materials through the Fissile Material Cut off Treaty—FMCT.

Progress on multilateral negotiations to end the supply of new material for nuclear bombs has been stalled for years.

Now, a shift in China's position opens the way for progress. Unfortunately, the Bush administration has decided to reevaluate its support for such an agreement.

Seventh, the United States should seek to engage in discussions with ''states of proliferation concern'' to look for ways to bring such states into the community of responsible nations.

These are states that have nuclear weapons or may be pursuing them and include: India, Pakistan, Iran, Israel, Libya, North Korea, Syria, Brazil, Egypt, and Saudi Arabia.

Despite the administration's claim of a Libya success story, other nations appear to be drawing different conclusions from the Administration's approach on these issues.

We are experiencing on-going crises involving the North Korean nuclear weapons programs, and Iran now appears to be on the verge of a nuclear weapons capability.

Finally, the United States and other nuclear weapon states must reduce the role of nuclear weapons in their own thinking.

For the United States to be increasing funding for the research and development of a new generation of nuclear weapons even as we are telling others that they should not pursue these weapons themselves may well provoke the very proliferation we seek to prevent.

I strongly support a robust military to safeguard America's National Security interests.

But I believe we will make our nation and our allies less secure—not more—if the United States opens the door to the development, testing, and deployment of new tactical and 'low-yield' nuclear weapons.

The administration claims that it is not seeking to develop these nuclear weapons.

But I think we've seen that the facts demonstrate that this is not the case.

That is why those of us who do not want the nuclear door opened need to stand firm and oppose these efforts by the administration to develop these weapons.

JAMES MONROE, FIFTH PRESIDENT 1817–1825

Mr. ALLEN. Mr. President, I rise today on the 198th anniversary of his birth, to recognize James Monroe, a Virginia patriot, and honor his service to our Nation as a soldier, a diplomat, a legislator and as the fifth President of the United States of America.

James Monroe, born April 28, 1758 in Westmoreland County, was born, raised, and educated in the Commonwealth of Virginia. Foregoing his studies at the College of William and Mary, James Monroe joined the Williamsburg Militia in 1775 in defiance of the British King. He served gallantly in the Continental Army on the battlefield at Harlem Heights, White Plains, Trenton, Brandywine, Germantown and Monmouth, eventually rising to the rank of Lieutenant Colonel.

A student of Thomas Jefferson's after serving in the Revolutionary War, James Monroe was an adherent of Mr. Jefferson's principles of individual freedom and restrained representative government, which would guide him through fifty years of public service. Elected to the Virginia General Assembly in 1782, Monroe served in the Confederate Congress and in the first United States Senate before his first of

two terms as Minister to France. He returned to his Virginia, and as many students of Mr. Jefferson have done since, served four years as Governor.

During Thomas Jefferson's Presidency, James Monroe returned to France and was essential in the negotiation of the Louisiana Purchase in 1803. His foreign policy experience led James Madison to name him both Secretary of State and Secretary of War as the United States was once again pulled into war with Great Britain in 1812.

Elected President of the United States in 1816, Monroe's Presidency has long been referred to as the Era of Good Feeling, during which time he helped resolve long-standing grievances with the British, acquired Florida from the Spanish in 1819, signed the Missouri Compromise and renounced European intervention or dominion in the Western Hemisphere with one of our Nation's greatest foreign policy documents, the Monroe Doctrine.

In 1820, Monroe achieved an impressive re-election, losing only one electoral vote, reserving a unanimous election for George Washington.

My own family has many strong ties to the legacy of James Monroe. My wife Susan and I enjoyed our wedding on the grounds of his home Ashlawn-Highland in Charlottesville where her family has worked for many years. In fact, part of Monroe's property in Albemarle County, is now on the grounds of his teacher's great institution of learning, the University of Virginia and is respectfully referred to as Monroe's Hill.

The life of James Monroe is one that embodied Virtue, Honor and Commitment during his accomplished life of public service. It is fitting that he would pass from this Earth on July Fourth, 1831.

It is with sincere admiration that I respectfully ask my colleagues to recognize James Monroe's one hundred and ninety-eighth birthday as a reminder of his remarkable and magnificent leadership for the people of Virginia and the United States of America.

ADDITIONAL STATEMENTS

CONGRATULATING SISTER JANICE RYAN

● Mr. JEFFORDS. Mr. President, today I recognize Sister Janice Ryan, a native of Fairfield, as this year's recipient of the Kids On The Block Vermont Puppet's Choice Award winner. This award is conferred annually by Kids on the Block—Vermont, a theatrical troupe that performs with puppets to deliver messages of personal safety, diversity, and acceptance of disabilities. As an honoree, Sister Janice is being acknowledged for her outstanding contributions to children and families statewide.

I have admired Sister Janice ever since I first met her. Her career-long dedication to education and to helping those who need it most has encompassed serving in many capacities, including teacher, professor, administrator, advocate, mentor and role model. Each one of these alone are worthy of praise in their own right.

One of Sister Janice's first of many outstanding accomplishments was the development of the special education program at Trinity College, where she served as a professor, Chair of Education and President. She continued on that path of service in helping to pass groundbreaking legislation that ensured the educational rights of children with disabilities.

Sister Janice's passion and commitment to the children of Vermont and the Nation is unsurpassed. From 1995 to 1999 Sister Janice served as Education Director on my staff. Her experience was invaluable. I am forever indebted to her for her service.

All who know Sister Janice know how dedicated she has been her entire life in serving others. She now serves as the Deputy Director for the Vermont Department of Corrections. There are very few people in this world who have given so much and asked so little in return. I hope Sister Janice knows that her years of giving have not gone unnoticed. This award shows how much she is appreciated even though it is impossible for us to fully recognize her contributions.

I am so proud to stand here and tell you about such a great Vermonter. I wish her my deepest congratulations for an award she so greatly deserves. Everyone who has the opportunity to benefit from Sister Janice's service is extremely lucky.●

HONORING PARENTS ANONYMOUS OF SOUTH EASTERN KENTUCKY

● Mr. BUNNING. Mr. President, I pay tribute and congratulate the work of Parents Anonymous of South Eastern Kentucky.

Parents Anonymous was founded with the goal of preventing child abuse by engaging parents and strengthening families. Their goal is to stop child abuse by working with parents before it happens or continues to happen.

The citizens of Kentucky are fortunate to have the services of Parents Anonymous of South Eastern Kentucky. This organization's example of dedication, hard work and compassion should be an inspiration to all throughout the Commonwealth.

They have my most sincere appreciation for this work and I look forward to their continued service to Kentucky.●

GIRL SCOUTS OF KICKAPOO COUNCIL HONOR SIX GOLD AWARD RECIPIENTS

● Mr. DURBIN. Mr. President, I rise today to salute six remarkable young women who will soon be presented with the Girl Scout Gold Award by Girl Scouts-Kickapoo Council in Peoria, IL.

The Girl Scout Gold Award is the highest achievement in Girl Scouting. It is presented to Senior Girl Scouts who have demonstrated outstanding accomplishments in the areas of leadership, community service, career planning, and personal development. Nationwide, less than 3 percent of Senior Girl Scouts earn the Gold Award each year.

To earn the Girl Scout Gold Award, a Girl Scout must satisfy several requirements. First, she must fulfill a series of preliminary tasks, including the completion of four Interest Project Patches, the Career Exploration Pin, the Senior Girl Scout Leadership Award, and the Senior Girl Scout Challenge. Upon completion of these four tasks, the Girl Scout then must design and implement a Girl Scout Gold Award project, integrating all of the skills and knowledge that she has gained through her years in Girl Scouting. The project must demonstrate a substantial commitment to community service and leadership and be carried out over the course of at least 50 hours.

Leslie Carter, of Girl Scout Troop 47, will be presented with the Girl Scout Gold Award for her service as a personalized aide for a student with special needs during the summer school term. Leslie's project involved planning lessons and activities that helped the girl improve her socialization skills, enabling the student to be more receptive to academic lessons, try new activities, and improve her abilities.

Tiffany Cremer, of Girl Scout Troop 47, will be honored with the Girl Scout Gold Award for her project which aimed to increase public awareness of Girl Scout events, service projects, and programming, by publishing articles and photographs in local newspapers across Fulton County, IL.

Kendall Juers, of Girl Scout Troop 555, will receive her Girl Scout Gold Award for her efforts to refurbish the collection of the Glen Oak Primary School Library. Kendall collected new and used books to be donated to the library and also made bags that the children will use to protect the books they check out of the library and bring home.

Alicia McCombs, of Girl Scout Troop 47, will receive her Girl Scout Gold Award in recognition of her role in co-directing a school play and fulfilling a variety of additional responsibilities, including set building, costumes, makeup, and lighting.

Diana Newlan, of Girl Scout Troop 555, will be presented with the Girl Scout Gold Award in recognition of her efforts to reorganize her school's music library, including cataloging, repairing, and replacing sheet music.

Sarah Rosecrans, of the Juliette Girl Scout Troop, will be honored with the Girl Scout Gold Award for her leadership in planning a councilwide event for Brownie Girl Scouts, enabling the younger girls to learn about and prepare for Junior Girl Scouts, the next level in Girl Scouting.

For each of these young women, I expect that the completion of the Girl Scout Gold Award is only the first step toward a lifetime of civic involvement. I take this opportunity to congratulate each of these young women for their hard work and dedication in earning the Girl Scout Gold Award and to publicly recognize them for their exceptional leadership and service to their communities.●

IN TRIBUTE TO THE PETTYS

● Mr. HOLLINGS. Mr. President, this year many of our colleagues are seeking the NASCAR vote, but I think it would be wise if each member in this body, instead, sought out the NASCAR heart.

My neighbors in South Carolina are Pattie and Kyle Petty. In May 2000, the Pettys faced a terrible tragedy, as their young son, Adam, the next great racing hope in the family, died during a practice session. Pattie and Kyle didn't retreat after that, but have worked ever since to bring Adam's dream of a camp for chronically ill children to reality. Many NASCAR drivers, owners, sponsors, and fans have contributed, and the Victory Junction Gang Camp will open its doors in June.

I bring to the attention of my colleagues the following article from the April 23 USA Today, outlining the good work of the Petty family and I ask that it be printed in the RECORD.

The article follows:

[From USA TODAY, Apr. 23, 2004]

LEGENDARY RACING FAMILY HOPES TO TURN CORNER

KYLE PETTY HELPS MAKE HIS SON'S DREAM A REALITY

(By Chris Jenkins)

As a race car driver, Kyle Petty can't hope to match the success of his father and grandfather. As an executive, he can't hope to compete with NASCAR's mega-teams that have millions more to spend on the best cars, drivers and mechanics. As a father, he can't hope to put his son's death in a racing accident nearly four years ago completely behind him.

But Petty does hope, and he seems to radiate hope to those around him through his sincere nature and gentle, quick wit. Other drivers might be better at turning left on the racetrack. They don't have his gift for turning life's negatives into positives.

''No matter how bad your day is, when you see Kyle, your day's better,'' driver Tony Stewart says. ''He tells you a silly joke that makes you laugh or something that makes you feel better.''

Petty, 43, gets angry—furious, actually—when he and his cars don't measure up. And he recently woke up crying in the middle of the night, missing his son, Adam.

But in the right-hand column of Petty's emotional ledger is the camaraderie he feels with others in the NASCAR community, optimism that his family's team eventually will return to victory lane and, above all, the completion of Adam's dream: a $20 million-plus retreat for chronically ill children.

''I've always been incredibly optimistic that as bad as it is, it's got to get better,'' Petty says.

It would be easy to dwell on what might have been. Had Adam Petty lived, many in NASCAR believe his electric talent and sponsor-friendly personality would have driven the Petty Enterprises team back to the prominence it once enjoyed. Petty doesn't allow such thoughts: ''If you do, you'll just go crazy.''

Kyle's father, seven-time NASCAR champion Richard Petty, 66, says it took years for Kyle's upbeat personality to resurface. ''It took him a long time to get over it,'' Richard says, pausing to reconsider his use of the phrase ''over it.''

''Not to get over it. To get it beside of him instead of in front of him.''

Says Stewart: ''I think when you see what Kyle's been through as a person, a lot of people at that point would kind of retreat and kind of put themselves in their own little hole and shut themselves out from the rest of the world.

''With Kyle and (wife) Pattie, it's just the opposite. He's such a positive person that you can't help gravitate toward people like him and you want to be surrounded by people like him.''

''CAMP'' A MISNOMER

A tour of the Victory Junction Gang Camp, a retreat in rural Randleman, N.C., for chronically ill children, revealed two minor flaws.

The first is in its name: A ''camp'' has shoddy log cabins, leaky canoes and a slimy pond. This place feels more like a trendy suburban subdivision. There are new buildings—a theater, a gym, a pool and more—trimmed in bright colors and stainless steel, resort-quality guest cottages and medical facilities where volunteer doctors will care for campers' special needs.

The second flaw, pointed out by Kyle and Pattie Petty, is a bent pedestrian bridge girder that was rammed by an errant delivery truck. It's March, three months before the camp is to open. This setback doesn't seem to be stressful. Instead, the Pettys laugh, reminded of the time Adam, at 15, accidentally mangled the family van by running into an overhang at his grandfather's house.

Fond stories about Adam, the only one of the Pettys' three children who seriously pursued a driving career, still waft through the garage. Once he was spotted carrying a briefcase around the infield, an accessory not often associated with drivers. Bystanders couldn't let that oddity pass without comment, so they asked him what he was carrying. Grinning, he opened the briefcase to reveal a hairbrush and some gum.

For Kyle, almost anything can trigger memories. ''The way the sun shines, the way you see a car on the racetrack,'' he says. ''I'll hear somebody holler, say a name and turn around expecting to see Adam standing there. And it just tweaks you just right. And it hurts you. And it just breaks your heart.

''And I'm not the only person in this boat, believe me. There's plenty of other families out all over this country who have lost kids. I'm sure they all feel the same way.''

Adam died in May 2000 during a practice session at New Hampshire International Speedway. NASCAR officials determined that he died of a neck injury, the same type that would kill Dale Earnhardt nine months later. Drivers now are required to wear safety collars that help prevent neck injuries, and the wall Adam hit is covered with an impact-absorbing barrier system.

Kyle Petty doesn't blame NASCAR. He knows it might sound odd to outsiders, but being around racers offers ''a lot of comfort.''

The camp embraces racing as its theme. Used race cars will be suspended from the cafeteria ceiling. An obstacle course is built from tires. One building looks like a giant race car—Adam's car. ''Racing is all Adam knew,'' Petty says.

Often when something is done in someone's memory, it is said he or she would have wanted it this way. In Adam's case, this is literally true: After helping his sponsor, Sprint, promote a product that allowed kids in different hospitals to communicate, Adam became determined to do something else for those kids—even if, as his grandfather says, that meant offering to sign over the rights to his winnings for the next 20 years to a loan officer if he'd lend Adam the money to build a camp. But the project never got rolling until after his death.

''Most 19-year-old kids (are) looking out for themselves,'' Richard says. ''And he was, don't get me wrong. But he had feelings for other kids, too. So that just inspired us that much more, that it was his idea originally. We're going to do it come heck or high water.''

NASCAR and many of its drivers, team owners and sponsors have chipped in for the camp, which will welcome its first group in June; Stewart has pledged to raise at least $1 million. Fans have donated money and time. Nursing home groups have sent box loads of handmade teddy bears and quilts, gifts to campers.

The project is personal to rookie driver Brian Vickers, who befriended Adam and the other Petty children, brother Austin, 22, and sister Montgomery, 18. All four grew up attending the same home-schooling classes from a tutor. Vickers isn't comfortable talking about Adam and doesn't mention the significant donation he's quietly making to the camp.

Asked if Adam was talented enough to become a star, Vickers looks at the floor and says, ''Yeah.''

TEAM LOSES GROUND

Most of today's big-time racing teams have moved into gleaming buildings designed to attract tourists and impress sponsors in suburban Charlotte. Then there's Petty Enterprises' humble jumble of white shacks in Randleman, a town short on stoplights and long on religious radio programming.

Founded in 1949 by Kyle's grandfather, NASCAR pioneer Lee Petty, then made famous by Richard, the team has won 268 races and 10 NASCAR championships. Most of that success came before the NASCAR boom of the 1990s. When corporate America began waking up to the popularity of NASCAR in the late 1980s, Richard was past his prime, though he'd drive until 1992.

Other teams were winning races, so they landed big sponsors. Having more money allowed those teams to develop technology to make their cars faster.

The Pettys fell behind; they've won three races since 1984, none since '99. Adam was supposed to change that. When he died, the promise of a young driver who could rally crewmembers and attract sponsorships died with him. ''We had a lot of stuff lined up around how we were going to do his career and stuff like that,'' Richard says. ''So when the accident happened, everything just went into limbo. For six months or a year there, we just basically survived.''

Today the team, which fields cars for Kyle and journeyman Jeff Green, 41, has funding from Georgia-Pacific and General Mills, plus associate sponsors. It's significant money (exact amounts are not disclosed), but nowhere near what marquee teams command.

But the team's problems might not all be financial. Years ago it was common for drivers to run teams. As the business of racing became more complex, other teams added layers of management. Today Petty is the only driver with a major team who has extensive executive responsibilities.

''Definitely, he tries to handle way, way too much,'' says Robbie Loomis, who worked for the Pettys before becoming Jeff Gordon's crew chief in 2001. ''He's good at about everything, but when you get stretched so thin and get pulled in so many directions, it's hard to tell what direction to go in.''

Petty says he enjoys being busy but concedes that the return of Dale Inman, the crew chief for Richard Petty's championship teams, is making his job easier. Although Inman is 67 and can't offer much in the way of technical advice, Petty says Inman's presence helps crewmembers believe the team can win. Petty compares it to Joe Gibbs returning to coach the NFL's Washington Redskins.

Although Petty says this isn't his last season as a driver, Loomis says Petty's retirement could be the first major step toward a team resurgence. When Petty stops driving and focuses on running the team, Loomis says, ''You're going to see a whole new Petty Enterprises.''

The team is improving slowly; Petty's recent 12th-place finish at Las Vegas Motor Speedway was cause for mild celebration. The lack of research-and-development money continues to show, as Petty and Green finish in the bottom half of the field most of the time.

Though nice guys, as the saying goes, might finish last, that doesn't mean they have to like it; a disappointing race can transform Petty from friendly to fierce. But his outbursts aren't without perspective and don't last long.

''I can deal with how we run a lot better, sometimes, because of Adam,'' Petty says. ''Because nothing is as bad as Adam, no matter what. I can go to the racetrack, run dead last. I can go to the racetrack, not make the race. That's still not the worst day.''

GANG CAMP'S AIM: HELPING SICK KIDS

About the Victory Junction Gang Camp:

Campers will be grouped according to the disease they have been diagnosed with; a group of children with hemophilia will visit the camp June 20–25, and seven other groups of children will visit during the camp's eight-week season.

Campers, ages 7–15, will be selected based on their doctors' recommendations and will not pay a fee to attend.

The camp is seeking volunteer counselors and donations.

Online: www.victoryjunction.org.●

MESSAGE FROM THE HOUSE

At 1:12 p.m., a message from the House of Representatives, delivered by Mr. Hays, 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. 3942. An act to redesignate the facility of the United States Postal Service located at 7 Commercial Boulevard in Middletown, Rhode Island, as the ''Rhode Island Veterans Post Office Building''.

H.R. 4219. An act to provide an extension of highway, highway safety, motor carrier safety, transit, an other programs funded out of the Highway Trust Fund pending enactment of a law reauthorizing the Transportation Equity Act for the 21st Century.

The message also announced that the House has passed the following bills, without amendment:

S. 1904. An act to designate the United States courthouse located at 400 North Miami Avenue in Miami, Florida, as the ''Wilkie D. Ferguson, Jr. United States Courthouse''.

S. 2043. An act to designate a Federal building in Harrisburg, Pennsylvania, as the ''Ronald Reagan Federal Building''.

The message further announced that pursuant to section 637(d)(1) of the HELP Commission Act (Public Law 108–199), the Minority Leader appoints the following individuals on the part of the House of Representatives to the Helping To Enhance the Livelihood of People (HELP) Around the Globe Commission: Mr. Lytn C. Fritz of California, Mr. C. Payne Lucas of Washington, DC, and Mr. Jeffery D. Sachs of New York.

MEASURES REFERRED

The following bill was read, and referred as indicated:

H.R. 3942. An act to redesignate the facility of the United States Postal Service Located at 7 Commercial Boulevard in Middletown, Rhode Island, as the ''Rhode Island Veterans Post Office Building''; to the Committee on Governmental Affairs.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC–7213. A communication from the Director, Regulatory Review Group, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Emergency Conservation Program'' (RIN0560–AG26) received on April 27, 2004; to the Committee on Agriculture, Nutrition, and Forestry.

EC–7214. A communication from the Director, Regulatory Review Group, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Tree Assistance Program'' (RIN0560–AG83) received on April 27, 2004; to the Committee on Agriculture, Nutrition, and Forestry.

EC–7215. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Tuberculosis Cattle and Bison; State and Zone Designations; Michigan'' (Doc. No. 02–112–3) received on April 27, 2004; to the Committee on Agriculture, Nutrition, and Forestry.

EC–7216. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Classical Swine Fever Status of France and Spain'' (Doc. No. 98–090–7) received on April 27, 2004; to the Committee on Agriculture, Nutrition, and Forestry.

EC–7217. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Cattle From Australia and New Zealand; Testing Exemptions'' (Doc. No. 99–071–3) received on April 27, 2004; to the Committee on Agriculture, Nutrition, and Forestry.

EC–7218. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Golden Nematode; Regulated Area'' (Doc. No. 03–082–2) received on April 27, 2004; to the Committee on Agriculture, Nutrition, and Forestry.

EC–7219. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Certification Program for Imported Articles of Pelargonium spp. and Solanum spp. to Prevent Introduction of Potato Brown Rot'' (Doc. No. 03–019–2) received on April 27, 2004; to the Committee on Agriculture, Nutrition, and Forestry.

EC–7220. A communication from the Administrator, Rural Business-Cooperative Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''General Requirements for Cooperative Services Grant Programs, Value-Added Producer Grants, Agriculture Innovation Centers and Rural Cooperative Development Grants'' (RIN0570–AA40) received on April 27, 2004; to the Committee on Agriculture, Nutrition, and Forestry.

EC–7221. A communication from the Office of the Secretary, Department of Defense, transmitting, pursuant to law, the report of a rule entitled ''CHAMPUS/TRICARE; Implementation of the Pharmacy Benefits Program'' (RIN0720–AA63) received on April 27, 2004; to the Committee on Armed Services.

EC–7222. A communication from the Assistant Secretary of Defense for Homeland Defense, Department of Defense, transmitting, pursuant to law, a report relative to Department of Defense assistance to civilian sporting events during calendar year 2003; to the Committee on Armed Services.

EC–7223. A communication from the General Counsel, National Credit Union Administration, transmitting, pursuant to law, the report of a rule entitled ''Prompt Corrective Action; Corporate Credit Unions; Credit Union Service Organizations; Member Business Loans; Regulatory Flexibility Program'' received on April 27, 2004; to the Committee on Banking, Housing, and Urban Affairs .

EC–7224. A communication from the Secretary of the Treasury, transmitting, pursuant to law, a report relative to the national emergency declared in with respect to Sierra Leone in Executive Order 13194; to the Committee on Banking, Housing, and Urban Affairs.

EC–7225. A communication from the Chairman and President, Export-Import Bank of the United States, transmitting, pursuant to law, a report relative to U.S. imports to Mexico; to the Committee on Banking, Housing, and Urban Affairs.

EC–7226. A communication from the Chairman and President, Export-Import Bank of the United States, transmitting, pursuant to law, a report relative to U.S. imports to the Republic of Korea; to the Committee on Banking, Housing, and Urban Affairs.

EC–7227. A communication from the Acting General Counsel, Federal Emergency Management Agency, transmitting, pursuant to law, the report of a rule entitled ''List of Communities Eligible for the Sale of Flood Insurance'' (Doc. No. FEMA–7770) received on April 27, 2004; to the Committee on Banking, Housing, and Urban Affairs.

EC–7228. A communication from the Acting General Counsel, Federal Emergency Management Agency, transmitting, pursuant to law, the report of a rule entitled ''Final Flood Elevation Determinations; 68 FR 8113'' received on April 27, 2004; to the Committee on Banking, Housing, and Urban Affairs.

EC–7229. A communication from the Acting General Counsel, Federal Emergency Management Agency, transmitting, pursuant to law, the report of a rule entitled ''Final Flood Elevation Determinations; 68 FR 8112'' received on April 27, 2004; to the Committee on Banking, Housing, and Urban Affairs.

EC–7230. A communication from the Acting General Counsel, Federal Emergency Management Agency, transmitting, pursuant to law, the report of a rule entitled ''Suspension of Community Elibility; 69 FR 9755'' (Doc. No. FEMA–7827) received on April 27, 2004; to the Committee on Banking, Housing, and Urban Affairs.

EC–7231. A communication from the Assistant Secretary, Division of Corporate Finance, Securities and Exchange Commission, transmitting, pursuant to law, the report of a rule entitled ''Foreign Bank Exemption from the Insider Lending Prohibition of Exchange Act Section 13(k)'' (RIN3235–AI81) received on April 27, 2004; to the Committee on Banking, Housing, and Urban Affairs.

EC–7232. A communication from the Chairman, Consumer Product Safety Commission, transmitting, pursuant to law, the Commission's Audited Financial Statements for Fiscal Year 2003; to the Committee on Commerce, Science, and Transportation.

EC–7233. A communication from the Secretary of Transportation, transmitting, pursuant to law, the Department of Transportation's Fiscal Year 2003 Annual Report; to the Committee on Commerce, Science, and Transportation.

EC–7234. A communication from the Assistant Administrator for Procurement, National Aeronautics and Space Administration, transmitting, pursuant to law, the report of a rule entitled ''NASA Grant and Cooperative Agreement Handbook—Property Reporting'' (RIN2700–AC79) received on April 27, 2004; to the Committee on Commerce, Science, and Transportation.

EC–7235. A communication from the Assistant Administrator for Procurement, National Aeronautics and Space Administration, transmitting, pursuant to law, the report of a rule entitled ''Conformance with Federal Acquisition Circular 2001–16'' received on April 27, 2004; to the Committee on Commerce, Science, and Transportation.

EC–7236. A communication from the Assistant Administrator for Procurement, National Aeronautics and Space Administration, transmitting, pursuant to law, the report of a rule entitled ''NASA Grant and Cooperative Agreement Handbook—Synopses Requirements'' (RIN2700–AC93) received on April 27, 2004; to the Committee on Commerce, Science, and Transportation.

EC–7237. A communication from the Assistant Administrator for Procurement, National Aeronautics and Space Administration, transmitting, pursuant to law, the report of a rule entitled ''Government-Owned Contractor-Operated Vehicle Fleet Management and Reporting'' received on April 27, 2004; to the Committee on Commerce, Science, and Transportation.

EC–7238. A communication from the Deputy Assistant Administrator, National Marine Fisheries Service, transmitting, pursuant to law, the report of a rule entitled ''Pacific Coast Groundfish Fishery; Groundfish Fishery Management Measures'' (RIN0648–AR68) received on April 27, 2004; to the Committee on Commerce, Science, and Transportation.

EC–7239. A communication from the Deputy Assistant Administrator, National Marine Fisheries Service, transmitting, pursuant to law, the report of a rule entitled ''Decrease of the Commercial Trip Limit for the Hook-and-Line Fishery for Gulf Group King Mackerel in the Southern Florida West Coast Subzone'' received on April 27, 2004; to the Committee on Commerce, Science, and Transportation.

EC–7240. A communication from the Director, Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, a report of all federal programs related to coastal and ocean activities; to the Committee on Commerce, Science, and Transportation.

EC–7241. A communication from the Administrator, Federal Aviation Administration, transmitting, pursuant to law, the Administration's Capital Investment Plan; to the Committee on Commerce, Science, and Transportation.

EC–7242. A communication from the Secretary of Homeland Security, transmitting, pursuant to law, a report relative to the implementation and enforcement of the International Safety Management Code; to the Committee on Commerce, Science, and Transportation.

EC–7243. A communication from the Secretary of Transportation, transmitting, pursuant to law, a report entitled ''Fundamental Properties of Asphalts and Modified Asphalts—II''; to the Committee on Commerce, Science, and Transportation.

EC–7244. A communication from the Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service, transmitting, pursuant to law, the report of a rule entitled ''Prohibiting Directed Fishing for Pacific Cod by Catcher Vessels 60 Feet Length Overall and Longer Using Pot Gear in the Bering Sea and Aleutian Islands Management Area'' received on April 27, 2004; to the Committee on Commerce, Science, and Transportation.

EC–7245. A communication from the Director, Office of Sustainable Fisheries, National Marine Fisheries Service, transmitting, pursuant to law, the report of a rule entitled ''Inseason Adjustment Opening Directed Fishing for Pollock in Statistical Area 630 of the Gulf of Alaska for Twelve Hours'' received on April 27, 2004; to the Committee on Commerce, Science, and Transportation.

EC–7246. A communication from the Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration, transmitting, pursuant to law, a report entitled ''Apportionment of Membership on the Regional Fishery Management Councils''; to the Committee on Commerce, Science, and Transportation.

EC–7247. A communication from the Administrator, Energy Information Administration, Department of Energy, transmitting, pursuant to law, a report entitled ''Voluntary Reporting of Greenhouse Gases of 2002''; to the Committee on Energy and Natural Resources.

EC–7248. A communication from the Director, Office of Personnel Policy, Department of the Interior, transmitting, pursuant to law, a report of a nomination for the position of Solicitor, Department of the Interior, received on April 27, 2004; to the Committee on Energy and Natural Resources.

EC–7249. A communication from the Director, Office of Human Resources Management, Department of Energy, transmitting, pursuant to law, a report of a nomination for the position of Principal Deputy Administrator, Department of Energy, received on April 27, 2004; to the Committee on Energy and Natural Resources.

EC–7250. A communication from the Director, Office of Human Resources Management, Department of Energy, transmitting, pursuant to law, a report of a vacancy and designation of acting officer for the position of Assistant Secretary for Policy and International Affairs, Department of Energy, received on April 27, 2004; to the Committee on Energy and Natural Resources.

EC–7251. A communication from the Director, Office of Human Resources Management, Department of Energy, transmitting, pursuant to law, a report of a vacancy and designation of acting officer for the position of Assistant Secretary, Fossil Energy, Department of Energy, received on April 27, 2004; to the Committee on Energy and Natural Resources.

EC–7252. A communication from the Secretary of Energy, transmitting, pursuant to law, a report relative to the effectiveness of the Department of Energy's defense and national security programs; to the Committee on Energy and Natural Resources.

EC–7253. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Geraniol; Exemption from the Requirement of a Tolerance'' (FRL#7351–1) received on April 27, 2004; to the Committee on Agriculture, Nutrition, and Forestry.

EC–7254. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Pesticides; Tolerance Exemption for Active and Inert Ingredients for Use in Antimicrobial Formulations (Food-Contract Surface Sanitizing Solutions)'' (FRL#7335–4) received on April 27, 2004; to the Committee on Agriculture, Nutrition, and Forestry.

EC–7255. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Interim Final Determination to Stay and/or Defer Sanctions, South Coast Air Quality Management District'' (FRL#7651–6) received on April 27, 2004; to the Committee on Environment and Public Works.

EC–7256. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 1'' (FRL7651–7) received on April 27, 2004; to the Committee on Environment and Public Works.

EC–7257. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''In Vitro Dermal Absorption Rate Testing of Certain Chemicals of Interest to the Occupational Safety and Health Administration'' (FRL#7321–2) received on April 27, 2004; to the Committee on Environment and Public Works.

EC–7258. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Revisions to the Arizona State Implementation Plan, Pinal County Air Quality Control District'' (FRL#7638–2) received on April 27, 2004; to the Committee on Environment and Public Works.

EC–7259. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, a report relative to the Agency's regulatory programs; to the Committee on Environment and Public Works.

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. CRAIG (for himself, Ms. MURKOWSKI, Mr. DOMENICI, Mr. BURNS, Mr. ROBERTS, Mr. BUNNING, Mr. COCHRAN, Mr. CRAPO, Mr. BENNETT, and Mr. REID):

S. 2353. A bill to reauthorize and amend the National Geologic Mapping Act of 1992; to the Committee on Energy and Natural Resources.

By Mr. MCCAIN (for himself and Mr. KYL):

S. 2354. A bill to amend the National Trails System Act to direct the Secretary of the Interior and the Secretary of Agriculture to jointly conduct a study on the feasibility of designating the Arizona Trail as a national scenic trail or a national historic trail; to the Committee on Energy and Natural Resources.

By Mr. JOHNSON:

S. 2355. A bill to make available hazardous duty incentive pay to uniformed service members performing firefighting duties; to the Committee on Armed Services.

By Ms. COLLINS (for herself and Mr. FEINGOLD):

S. 2356. A bill to require the Director of the Office of Management and Budget to issue guidance for, and provide oversight of, the management of micropurchases made with Government-wide commercial purchase cards, and for other purposes; to the Committee on Governmental Affairs.

By Mr. BAUCUS:

S. 2357. A bill to direct the Secretary of the Army, acting through the Chief of Engineers, to maintain a minimum quantity of stored water in certain reservoirs in the vicinity of the upper portion of the Missouri River; to the Committee on Environment and Public Works.

By Mr. DURBIN (for himself, Mr. LEAHY, Mr. FEINGOLD, and Mr. KENNEDY):

S. 2358. A bill to allow for the prosecution of members of criminal street gangs, and for other purposes; to the Committee on the Judiciary.

By Mr. REID:

S. 2359. A bill to amend the Internal Revenue Code of 1986 to provide a refundable tax credit for small business health insurance costs, and for other purposes; to the Committee on Finance.

By Mr. MILLER:

S.J. Res. 35. A joint resolution to repeal the seventeenth article of amendment to the Constitution of the United States; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

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

By Mr. BOND:

S. Res. 344. A resolution welcoming the Prime Minister of Singapore on the occasion of his visit to the United States, expressing gratitude to the Government of Singapore for its support in the reconstruction of Iraq and its strong cooperation with the United States in the campaign against terrorism, and reaffirming the commitment of the Senate to the continued expansion of friendship and cooperation between the United States and Singapore; to the Committee on Foreign Relations.

By Mrs. CLINTON (for herself, Ms. SNOWE, Mr. KENNEDY, Mr. MILLER, Mr. KERRY, Mr. JOHNSON, Mr. PRYOR, Mr. CORZINE, Mrs. MURRAY, Ms. STABENOW, Ms. MIKULSKI, Mr. BAUCUS, Mr. COCHRAN, Mr. LIEBERMAN, and Mrs. LINCOLN):

S. Res. 345. A resolution expressing the Sense of the Senate that Congress should expand the supports and services available to grandparents and other relatives who are raising children when their biological parents have died or can no longer take care of them; to the Committee on Health, Education, Labor, and Pensions.

By Mr. BROWNBACK (for himself and Mr. ROBERTS):

S. Con. Res. 101. A concurrent resolution to express the sense of the Congress regarding the 50th anniversary of the Supreme Court decision in Brown v. Board of Education of Topeka; to the Committee on Rules and Administration.

ADDITIONAL COSPONSORS

S. 198

At the request of Mr. SMITH, the name of the Senator from Mississippi (Mr. COCHRAN) was added as a cosponsor of S. 198, a bill to amend the Internal Revenue Code of 1986 to allow an income tax credit for the provision of homeownership and community development, and for other purposes.

S. 493

At the request of Mrs. LINCOLN, the names of the Senator from North Dakota (Mr. DORGAN), the Senator from New Jersey (Mr. CORZINE), the Senator from Nebraska (Mr. NELSON) and the Senator from New Jersey (Mr. LAUTENBERG) were added as cosponsors of S. 493, a bill to amend title XVIII of the Social Security Act to authorize physical therapists to evaluate and treat medicare beneficiaries without a requirement for a physician referral, and for other purposes.

S. 859

At the request of Mr. CORZINE, the name of the Senator from Massachusetts (Mr. KERRY) was added as a cosponsor of S. 859, a bill to amend the Public Health Service Act with respect to facilitating the development of microbicides for preventing transmission of HIV and other diseases.

S. 896

At the request of Mrs. MURRAY, the name of the Senator from New York (Mr. SCHUMER) was added as a cosponsor of S. 896, a bill to establish a public education and awareness program relating to emergency contraception.

S. 976

At the request of Mr. WARNER, the name of the Senator from Oregon (Mr. SMITH) was added as a cosponsor of S. 976, a bill to provide for the issuance of a coin to commemorate the 400th anniversary of the Jamestown settlement.

S. 1010

At the request of Mr. HARKIN, the name of the Senator from Massachusetts (Mr. KERRY) was added as a cosponsor of S. 1010, a bill to enhance and further research into paralysis and to improve rehabilitation and the quality of life for persons living with paralysis and other physical disabilities.

S. 1063

At the request of Ms. COLLINS, the name of the Senator from New York (Mrs. CLINTON) was added as a cosponsor of S. 1063, a bill to amend the Public Health Service Act to authorize the Commissioner of Food and Drugs to conduct oversight of any entity engaged in the recovery, screening, testing, processing, storage, or distribution of human tissue or human tissue-based products.

S. 1092

At the request of Mr. CAMPBELL, the name of the Senator from Maine (Ms. COLLINS) was added as a cosponsor of S. 1092, a bill to authorize the establishment of a national database for purposes of identifying, locating, and cataloging the many memorials and permanent tributes to America's veterans.

S. 1909

At the request of Mr. COCHRAN, the names of the Senator from Hawaii (Mr. AKAKA), the Senator from Delaware (Mr. BIDEN) and the Senator from Connecticut (Mr. DODD) were added as cosponsors of S. 1909, a bill to amend the Public Health Service Act to improve stroke prevention, diagnosis, treatment, and rehabilitation.

S. 2174

At the request of Mr. BUNNING, the name of the Senator from Minnesota (Mr. DAYTON) was added as a cosponsor of S. 2174, a bill to amend title XIX of the Social Security Act to include podiatrists as physicians for purposes of covering physicians services under the medicaid program.

S. 2192

At the request of Mr. HATCH, the name of the Senator from Iowa (Mr. GRASSLEY) was added as a cosponsor of S. 2192, a bill to amend title 35, United States Code, to promote cooperative research involving universities, the public sector, and private enterprises.

S. 2236

At the request of Ms. CANTWELL, the name of the Senator from Rhode Island (Mr. CHAFEE) was added as a cosponsor of S. 2236, a bill to enhance the reliability of the electric system.

S. 2267

At the request of Ms. SNOWE, the name of the Senator from Wyoming (Mr. ENZI) was added as a cosponsor of S. 2267, a bill to amend section 29(k) of the Small Business Act to establish funding priorities for women's business centers.

S. 2292

At the request of Mr. VOINOVICH, the names of the Senator from Connecticut (Mr. DODD) and the Senator from North Dakota (Mr. DORGAN) were added as cosponsors of S. 2292, a bill to require a report on acts of anti-Semitism around the world.

S. 2311

At the request of Mr. CHAFEE, his name was added as a cosponsor of S. 2311, a bill to provide for various energy efficiency programs and tax incentives, and for other purposes.

S. 2318

At the request of Ms. COLLINS, the name of the Senator from New York (Mrs. CLINTON) was added as a cosponsor of S. 2318, a bill to expand upon the Department of Defense Energy Efficiency Program required by section 317 of the National Defense Authorization Act of 2002 by authorizing the Secretary of Defense to enter into energy savings performance contracts, and for other purposes.

S. 2337

At the request of Ms. STABENOW, the name of the Senator from Minnesota

(Mr. DAYTON) was added as a cosponsor of S. 2337, a bill to establish a grant program to support coastal and water quality restoration activities in States bordering the Great Lakes, and for other purposes.

S. 2343

At the request of Mr. CONRAD, the name of the Senator from North Dakota (Mr. DORGAN) was added as a cosponsor of S. 2343, a bill to amend title XVIII of the Social Security Act to improve the medicare program, and for other purposes.

S.J. RES. 33

At the request of Mr. BROWNBACK, the names of the Senator from Oregon (Mr. SMITH) and the Senator from South Carolina (Mr. GRAHAM) were added as cosponsors of S.J. Res. 33, a joint resolution expressing support for freedom in Hong Kong.

S.J. RES. 34

At the request of Mr. CONRAD, the name of the Senator from West Virginia (Mr. ROCKEFELLER) was added as a cosponsor of S.J. Res. 34, a joint resolution designating May 29, 2004, on the occasion of the dedication of the National World War II Memorial, as Remembrance of World War II Veterans Day.

S. CON. RES. 90

At the request of Mr. LEVIN, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. Con. Res. 90, a concurrent resolution expressing the Sense of the Congress regarding negotiating, in the United States-Thailand Free Trade Agreement, access to the United States automobile industry.

S. CON. RES. 100

At the request of Mr. ALEXANDER, the name of the Senator from Maryland (Mr. SARBANES) was added as a cosponsor of S. Con. Res. 100, a concurrent resolution celebrating 10 years of majority rule in the Republic of South Africa and recognizing the momentous social and economic achievements of South Africa since the institution of democracy in that country.

S. RES. 164

At the request of Mr. ENSIGN, the name of the Senator from New Hampshire (Mr. GREGG) was added as a cosponsor of S. Res. 164, a resolution reaffirming support of the Convention on the Prevention and Punishment of the Crime of Genocide and anticipating the commemoration of the 15th anniversary of the enactment of the Genocide Convention Implementation Act of 1987 (the Proxmire Act) on November 4, 2003.

S. RES. 269

At the request of Mr. DORGAN, his name was added as a cosponsor of S. Res. 269, a resolution urging the Government of Canada to end the commercial seal hunt that opened on November 15, 2003.

S. RES. 311

At the request of Mr. BROWNBACK, the names of the Senator from Illinois (Mr. FITZGERALD) and the Senator from North Carolina (Mrs. DOLE) were added as cosponsors of S. Res. 311, a resolution calling on the Government of the Socialist Republic of Vietnam to immediately and unconditionally release Father Thadeus Nguyen Van Ly, and for other purposes.

S. RES. 342

At the request of Mr. HATCH, the names of the Senator from South Carolina (Mr. GRAHAM) and the Senator from New Jersey (Mr. CORZINE) were added as cosponsors of S. Res. 342, a resolution designating April 30, 2004, as ''Dia de los Ninos: Celebrating Young Americans'', and for other purposes.

AMENDMENT NO. 3050

At the request of Mr. DASCHLE, the names of the Senator from Iowa (Mr. HARKIN) and the Senator from Indiana (Mr. BAYH) were added as cosponsors of amendment No. 3050 proposed to S. 150, a bill to make permanent the moratorium on taxes on Internet access and multiple and discriminatory taxes on electronic commerce imposed by the Internet Tax Freedom Act.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. CRAIG (for himself, Ms. MURKOWSKI, Mr. DOMENICI, Mr. BURNS, Mr. ROBERTS, Mr. BUNNING, Mr. COCHRAN, Mr. CRAPO, Mr. BENNETT, and Mr. REID):

S. 2353. A bill to reauthorize and amend the National Geologic Mapping Act of 1992; to the Committee on Energy and Natural Resources.

Mr. CRAIG. Mr. President, I am today introducing, along with Senators MURKOWSKI, DOMENICI, BURNS, ROBERTS, BUNNING, COCHRAN, CRAPO, BENNETT, and REID, the National Geologic Mapping Reauthorization Act of 2004. This is an act that has been very beneficial to the Nation and deserves to be reauthorized.

The National Geologic Mapping Act was originally signed into law in 1992, creating the National Cooperative Geologic Mapping Program (NCGMP). This program exists as a partnership between the USGS and the State geological surveys, whose purpose is to provide the Nation with urgently-needed geologic maps that can be and are used by a diverse clientele. These maps are vital to understanding groundwater regimes, mineral resources, geologic hazards such as landslides and earthquakes, and geology essential for all types of land use planning; as well as providing basic scientific data. The NCGMP contains three parts: FedMap—the U.S. Geological Survey's geologic mapping program, StateMap—the State geological survey's part of the act, and EdMap—a program to encourage the training of future geologic mappers at our colleges and universities. All three components are reviewed annually by a Federal Advisory Committee to ensure program effectiveness and to provide future guidance.

FedMap geologic mapping priorities are determined by the needs of Federal land-management agencies, regional customer forums, and cooperatively with the State geological surveys. FedMap also coordinates national geologic mapping standards. StateMap is a competitive program wherein the States submit proposals for geologic mapping that are critiqued by a peer review panel. A requirement of this section of the legislation is that each Federal dollar be matched one-for-one with State funds. Each participating State has a State Advisory Committee to ensure that its proposal addresses priority areas and needs as determined in the NGMA. The success of this program ensured reauthorization of similar legislation in 1997 and in 1999 with widespread bipartisan support in both the House and Senate. To date approximately $50M has been awarded to State geological surveys through StateMap, and these Federal dollars have been more than matched by State dollars.

In 2003, more than 450 new digital geologic maps were published by NCGMP, covering over 120,000 square miles of the Nation. These high quality geologic maps will be used by a very broad base of customers including geotechnical consultants, Federal, State and local land managers, and mineral and energy exploration companies. Information on how to obtain all of these maps is provided on the Internet by the National Geologic Map Database, allowing ease of access for all users.

EdMap has trained over 550 university students at 118 universities across the Nation. The best testament to the quality of this training are its beneficiaries—an unusually high percentage of these students go on to careers in Earth Science, becoming university professors, energy company exploration scientists, or mapping specialists themselves. Their EdMap program experience provides them with a remarkable self-confidence, having completed a difficult and independent field mapping experience. At this very moment, a former EdMap student, Sergeant Alexander Stewart, is serving his Nation in Operation Iraqi Freedom, where his geologic mapping skills have been put to excellent use training his unit in all aspects of map making and interpretation.

Mr. President, the National Geologic Mapping Reauthorization Act benefits numerous citizens every day by assuring there is accurate, usable geologic information available to communities and individuals so that safe, educated resource use decisions can be made. I encourage my colleagues to support this legislation and am committed to its timely consideration.

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. 2353

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 ''National Geologic Mapping Reauthorization Act of 2004''.

SEC. 2. FINDINGS.

Section 2(a) of the National Geologic Mapping Act of 1992 (43 U.S.C. 31a(a)) is amended—

(1) by striking paragraph (1) and inserting the following:

''(1) although significant progress has been made in the production of geologic maps since the establishment of the national cooperative geologic mapping program in 1992, no modern, digital, geologic map exists for approximately 75 percent of the United States;''; and

(2) in paragraph (2)—

(A) in subparagraph (C), by inserting ''homeland and'' after ''planning for'';

(B) in subparagraph (E), by striking ''predicting'' and inserting ''identifying'';

(C) in subparagraph (I), by striking ''and'' after the semicolon at the end;

(D) by redesignating subparagraph (J) as subparagraph (K); and

(E) by inserting after subparagraph (I) the following:

''(J) recreation and public awareness; and''; and

(3) in paragraph (9), by striking ''important'' and inserting ''available''.

SEC. 3. PURPOSE.

Section 2(b) of the National Geologic Mapping Act of 1992 (43 U.S.C. 31a(b)) is amended by striking ''protection'' and inserting ''management''.

SEC. 4. DEADLINES FOR ACTIONS BY THE UNITED STATES GEOLOGICAL SURVEY.

Section 4(b)(1) of the National Geologic Mapping Act of 1992 (43 U.S.C. 31c(b)(1)) is amended in the second sentence—

(1) in subparagraph (A), by striking ''not later than'' and all that follows through the semicolon and inserting ''not later than 1 year after the date of enactment of the National Geologic Mapping Reauthorization Act of 2004;'';

(2) in subparagraph (B), by striking ''not later than'' and all that follows through ''in accordance'' and inserting ''not later than 1 year after the date of enactment of the National Geologic Mapping Reauthorization Act of 2004 in accordance''; and

(3) in the matter preceding clause (i) of subparagraph (C), by striking ''not later than'' and all that follows through ''submit'' and inserting ''submit biennially''.

SEC. 5. GEOLOGIC MAPPING PROGRAM OBJECTIVES.

Section 4(c)(2) of the National Geologic Mapping Act of 1992 (43 U.S.C. 31c(c)(2)) is amended—

(1) by striking ''geophysical-map data base, geochemical-map data base, and a''; and

(2) by striking ''provide'' and inserting ''provides''.

SEC. 6. GEOLOGIC MAPPING PROGRAM COMPONENTS.

Section 4(d)(1)(B)(ii) of the National Geologic Mapping Act of 1992 (43 U.S.C. 31c(d)(1)(B)(ii)) is amended—

(1) in subclause (I), by striking ''and'' after the semicolon at the end;

(2) in subclause (II), by striking the period at the end and inserting ''; and''; and

(3) by adding at the end the following:

''(III) the needs of land management agencies of the Department of the Interior.''.

SEC. 7. GEOLOGIC MAPPING ADVISORY COMMITTEE.

Section 5(a) of the National Geologic Mapping Act of 1992 (43 U.S.C. 31d(a)) is amended—

(1) in paragraph (2)—

(A) by striking ''Administrator of the Environmental Protection Agency or a designee'' and inserting ''Secretary of the Interior or a designee from a land management agency of the Department of the Interior'';

(B) by inserting ''and'' after ''Energy or a designee,''; and

(C) by striking '', and the Assistant to the President for Science and Technology or a designee''; and

(2) in paragraph (3)—

(A) by striking ''Not later than'' and all that follows through ''consultation'' and inserting ''In consultation'';

(B) by striking ''Chief Geologist, as Chairman'' and inserting ''Associate Director for Geology, as Chair''; and

(C) by striking ''one representative from the private sector'' and inserting ''2 representatives from the private sector''.

SEC. 8. FUNCTIONS OF NATIONAL GEOLOGIC-MAP DATABASE.

Section 7(a) of the National Geologic Mapping Act of 1992 (43 U.S.C. 31f(a)) is amended—

(1) in paragraph (1), by striking ''geologic map'' and inserting ''geologic-map''; and

(2) in paragraph (2)—

(A) in the matter preceding subparagraph (A), by inserting ''information on how to obtain'' after ''that includes''; and

(B) in subparagraph (A), by striking ''under the Federal component and the education component'' and inserting ''with funding provided under the national cooperative geologic mapping program established by section 4(a)''.

SEC. 9. BIENNIAL REPORT.

Section 8 of the National Geologic Mapping Act of 1992 (43 U.S.C. 31g) is amended by striking ''Not later'' and all that follows through ''biennially'' and inserting ''Not later than 3 years after the date of enactment of the National Geologic Mapping Reauthorization Act of 2004 and biennially''.

SEC. 10. AUTHORIZATION OF APPROPRIATIONS; ALLOCATION.

Section 9 of the National Geologic Mapping Act of 1992 (43 U.S.C. 31h) is amended—

(1) by striking subsection (a) and inserting the following:

''(a) IN GENERAL.—There is authorized to be appropriated to carry out this Act $64,000,000 for each of fiscal years 2006 through 2010.''; and

(2) in subsection (b)—

(A) in the matter preceding paragraph (1), by striking ''2000'' and inserting ''2005'';

(B) in paragraph (1), by striking ''48'' and inserting ''50''; and

(C) in paragraph (2), by striking 2 and inserting ''4''.

By Mr. MCCAIN (for himself and Mr. KYL):

S. 2354. A bill to amend the National Trails System Act to direct the Secretary of the Interior and the Secretary of Agriculture to jointly conduct a study on the feasibility of designating the Arizona Trail as a national scenic trail or a national historic trail; to the Committee on Energy and Natural Resources.

Mr. MCCAIN. Mr. President, I am pleased to be joined today by Senator KYL in introducing the Arizona Trail Feasibility Study Act. This bill would authorize the Secretaries of Agriculture and Interior to conduct a joint study to determine the feasibility of designating the Arizona Trail as a National Scenic or National Historic Trail. A companion bill is being introduced in the House of Representatives today by Representative KOLBE and rest of the Arizona delegation.

Since 1968, when the National Trails System Act was established, Congress has designated twenty national trails. This legislation is the first step in the process of national trail designation for the Arizona Trail. If the study concludes that designating the Arizona Trail as a part of the national trail system if feasible, subsequent legislation will be introduced to designate the Arizona Trail as either a National Scenic Trail or National Historic Trail.

The Arizona Trail is a beautifully diverse stretch of public lands, mountains, canyons, deserts, forests, historic sites, and communities. The Trail begins at the Coronado National Memorial on the U.S.-Mexico border and ends in the Bureau of Land Management's Arizona Strip District on the Utah border. In between these two points, the Trail winds through some of the most rugged, spectacular scenery in the Western United States.

For the past 10 years, over 16 Federal, state and local agencies, as well as community and business organizations, have worked to form a partnership to create, develop, and manage the Arizona Trail. Designating the Arizona Trail as a national trail would help streamline the management of the Trail to ensure that this pristine stretch of diverse land is preserved for future generations to enjoy.

The corridor for the Arizona Trail encompasses the wide range of ecological diversity in the state, and incorporates a host of existing trails into one continuous trail. The Arizona Trail extends through seven ecological life zones including such legendary landmarks as the Sonoran Desert and the Grand Canyon. It connects the unique lowland desert flora and fauna in Saguaro National Park and the pine-covered San Francisco Peaks, Arizona's highest mountains at 12,633 feet in elevation. In fact, the Trail route is so topographically diverse that a person can hike from the Sonoran Desert to Alpine forests in one day. The Trail also takes travelers through ranching, mining, agricultural, and developed urban areas, as well as remote, pristine wildlands.

With nearly 700 miles of the 800-mile trail already completed, the Arizona Trail is a boon to recreationists. The Arizona State Parks recently released data showing that two-thirds of Arizonans consider themselves trail users. Millions of visitors also use Arizona's trails each year. In one of the fastest-growing states in the U.S., the designation of the Arizona Trail as a National Scenic or National Historic Trail would ensure the preservation of a corridor of open space for hikers, mountain bicyclists, cross country skiers, snowshoers, eco-tourists, equestrians, and joggers.

I commend the Arizona Trail Association for taking the lead in building

a coalition of partners to bring the Arizona Trail from its inception to a nearly completed, multiple-use, non-motorized, long-distance trail. Trail enthusiasts look forward to the completion of the Arizona Trail. Its designation as a national trail would help to protect the natural, cultural, and historic resources it contains for the public to use and enjoy.

By Mr. JOHNSON:

S. 2355. A bill to make available hazardous duty incentive pay to uniformed service members performing firefighting duties; to the Committee on Armed Services.

Mr. JOHNSON. Mr. President, I rise today to introduce the Fair Pay for Military Firefighters Act. This bill authorizes hazardous duty incentive pay for our Nation's military firefighters.

It may come as a surprise to many of my colleagues, as it did to me, that military firefighters are not currently eligible to receive hazardous duty incentive pay. This issue was first brought to my attention in a letter I received several months ago from an Air Force Staff Sergeant stationed at Ellsworth Air Force Base. The letter stated, ''We are in one of the most dangerous jobs in the world. We face danger not only when we deploy like other jobs that get this pay but we face hazards at our home station.''

As the Staff Sergeant said, firefighting is in itself a dangerous profession, but military firefighters must confront a wide variety of threats and are exposed to toxic materials distinctive to the military. The fires they fight often involve fuel and propellants, munitions, or chemicals which present unique and extremely dangerous situations. These servicemembers face risks not only when in combat, but as a part of their every day duties. Despite these dangers, most of the approximate 5,000 military firefighters serving in the Armed Forces are not eligible to receive hazardous duty incentive pay. If these servicemembers are willing to take the risk, our nation should be willing to provide them the benefits they deserve.

In addition to being the right thing to do, I believe there are broader reasons to support hazardous duty incentive pay for military firefighters. First, there is an issue of fairness. Federal civilian firefighters, who also face great risk and are critically important to protecting our nation, rightly have risk calculated into their compensation package. This creates a situation where federal civilian and military firefighters, who often work side-by-side, are exposed to the same risk but are compensated differently.

Second, it is my understanding that each of the Services supports providing this benefit to our military firefighters because they see it as a manning and retention issue. In fact, according to survey results, lack of hazardous duty incentive pay was cited by military firefighters as one of the top three reasons for morale and retention problems. The Air Force has specifically stated that the lack of hazardous duty incentive pay is a primary factor in poor retention rates among its military firefighters. In my view, providing hazardous duty incentive pay is essential to retaining our best firefighters and maintaining this crucial capability within our Armed Forces.

Mr. President, I am pleased the Fair Pay for Military firefighters Act has been endorsed by both the Fleet Reserve Association and the Air Force Sergeants Association and I thank them for their assistance in preparing this legislation. I ask unanimous consent that the full text of two letters from these distinguished organizations be printed in the RECORD and the bill be printed in the RECORD.

I look forward to working with my colleagues to pass the Fair Pay for Military Firefighters Act and to extending hazardous duty incentive pay benefits to our nation's military firefighters. There can be no doubt that firefighting is one of the most dangerous professions. Military firefighters understand this threat and deserve the recognition of receiving hazardous duty incentive pay for the sacrifices they make and the risks they take.

There being no objection, the two letters and the text of the bill were ordered to be printed in the RECORD, as follows:

FLEET RESERVE ASSOCIATION,
Alexandria, VA, April 22, 2004.

Hon. TIM JOHNSON,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR JOHNSON: The Fleet Reserve Association (FRA) has been advised that you plan to introduce a bill to recognize the regimen that requires military firefighters to put themselves in harm's way by authorizing their eligibility to receive Hazardous Duty Incentive Pay (HDIP). FRA strongly endorses this initiative.

There is no doubt these firefighters rate special consideration in the performance of their duties. They race to quell fires placing themselves in jeopardy from dangerous traffic conditions. They rush into burning buildings to fight flames and smoke, rescue persons in peril, and face the possibility of structures falling on them at any moment. They rush to stop burning aircraft from exploding, fight toxic chemical spills, rescue victims in danger of losing their lives, resolve hazardous material conditions, and even free kittens caught in tree tops. All are dangerous and can be life threatening at any time.

It is the Association's understanding that the military services are in favor of authorizing this special pay to their military firefighters. However, there are forces within the Administration that believe military firefighters, all enlisted service members, do not deserve HDIP. But the question arises that if their sacrifices are not worthy of recognition then why do civilian personnel, working side-by-side with these uniformed personnel, receive a risk factor incorporated in their federal pay checks?

FRA applauds your leadership on this proposal, and remains committed to working with you and your staff on its advancement. Please contact our legislative department at (703) 683–1400 if the Association can be of assistance.

JOSEPH L. BARNES,
National Executive Secretary.

AIR FORCE SERGEANTS ASSOCIATION,
Temple Hills, MD, April 23, 2004.

Hon. TIM JOHNSON,
Hart Senate Office Building,
Washington, DC.

DEAR SENATOR JOHNSON: On behalf of the 135,000 members of this association, thank you for introducing legislation which would provide Hazardous Duty Incentive Pay for military firefighters. Your efforts will undoubtedly pave the way to correct an inequity that senior military leaders have identified as a contributing factor to low retention and morale among enlisted firefighters.

Military firefighters face hazardous duty every day—not just in wartime. They are confronted with fuel fires and explosive situations on our flightlines and in the environments unique to executing the military missions required to protect this nation. Like you, we are extremely proud of their courage and dedication. We are pleased you have taken the lead to honor them and to provide them equitable compensation for their intrepidity.

Senator Johnson, thank you again for your leadership and your dedication to enlisted military members. AFSA will continue to inform Airmen of all ranks at our chapters around the world that they have a dedicated champion in Washington thanks to your untiring efforts. We look forward to continue working with you on this and other matters of mutual concern. Please let me know when we can be of further assistance to you.

Sincerely,

RICHARD M. DEAN,
Executive Director.

S. 2355

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 ''Fair Pay for Military Firefighters Act of 2004''.

SEC. 2. AVAILABILITY OF HAZARDOUS DUTY INCENTIVE PAY FOR MILITARY FIREFIGHTERS.

(a) ADDITIONAL TYPE OF DUTY ELIGIBLE FOR PAY.—Subsection (a) of section 301 of title 37, United States Code, is amended—

(1) in paragraph (12), by striking ''or'' at the end;

(2) by redesignating paragraph (13) as paragraph (14); and

(3) by inserting after paragraph (12) the following new paragraph:

''(13) involving regular participation as a firefighting crew member, as determined by the Secretary concerned; or''.

(b) MONTHLY AMOUNT OF PAY.—Subsection (c) of such section is amended—

(1) in paragraph (1), by striking ''(12)'' and inserting ''(13)''; and

(2) in paragraph (2)(A), by striking ''(13)'' and inserting ''(14)''.

By Ms. COLLINS (for herself and Mr. FEINGOLD):

S. 2356. A bill to require the Director of the Office of Management and Budget to issue guidance for, and provide oversight of, the management of micropurchases made with Government-wide commercial purchase cards, and for other purposes; to the Committee on Governmental Affairs.

Ms. COLLINS. Mr. President, I rise today with my colleague, Senator RUSS

FEINGOLD, to introduce the ''Purchase Card Waste Elimination Act of 2004,'' to help eliminate wasteful spending through the use of governmental credit cards.

Today, the Governmental Affairs Committee explored the federal government's use of ''purchase cards,'' which are commercial charge cards used by federal agencies to buy billions of dollars worth of goods and services. The Committee heard the results of the General Accounting Office's investigation into waste, fraud, and abuse in the purchase card program.

The American people have the right to expect the federal government to spend their tax dollars carefully and wisely. While this is true at all times, it is never more so than today, when the government faces enormous fiscal pressures and a growing budget deficit.

The Governmental Affairs Committee has a mandate to help safeguard those tax dollars from waste, fraud, and abuse. To meet this mandate, the Committee has launched an initiative to root out government waste. Today's hearing was part of that effort and focused on wasteful, inefficient, and in some cases, fraudulent, transactions using purchase cards.

These cards were first introduced by the General Services Administration on a government-wide basis in 1989. Purchase cards are used primarily for making routine purchases such as office supplies, computers and copying machines. Purchase cards are similar to the personal credit cards we all carry, but with one important difference: The taxpayers pays the bill. Although the card is only supposed to be used for official purposes, the Federal Government is responsible for paying all charges by authorized cardholders, regardless of what was purchased.

While legitimate purchases are usually small, they nevertheless add up to big money. Purchase card use has soared during the past decade—from less than $1 billion in fiscal year 1994 to more than $16 billion in fiscal year 2003. There are more than 134,000 purchase cardholders in the Defense Department alone.

This explosive growth presents both challenges and opportunities. While there are many benefits to the purchase card, such as expediting purchases, cutting red tape, and saving administrative costs, the General Accounting Office and the Inspectors General have reported that inadequate controls over purchase cards leave agencies vulnerable to waste, fraud, and abuse.

The Governmental Affairs Committee heard testimony describing how smarter use of purchase cards could save taxpayers hundreds of millions of dollars. A GAO report that I requested along with Senator FEINGOLD and Congresswoman SCHAKOWSKY, which is being released today, highlights several wasteful purchasing practices.

The GAO concludes that many agency cardholders fail to obtain readily available discounts on purchase card buys. In too many cases, purchase cardholders are buying goods and services from vendors that already agreed to provide government discounts through the GSA schedule, yet cardholders often lack the information and training needed to obtain the discounted prices. As a result, GAO found numerous instances of cardholders paying significantly more for items for which discounts already had been negotiated. In light of the fact that conscientious shoppers often can obtain savings beyond the schedule discounts, these findings indicate that some federal agencies are substantially overpaying for routine supplies.

For example, an analysis of the Department of Interior's purchase card buys of ink cartridges found that most of the time the cardholder paid more than the government schedule price to which the vendors had already agreed. One vendor had agreed to a schedule price of $24.99 for a particular ink cartridge, yet of 791 separate purchases of this model,only two were at or below that price. Some purchasers paid $34.99 or about 40 percent more for the same item.

In conducting its investigation, the GAO examined six agencies that together account for over 85 percent of all government purchase card transactions. If the six agencies reviewed in this study negotiated automatic discounts of just 10 percent from major vendors, and if agency employees had used those discounts, GAO estimates annual savings of $300 million. Over 10 years, that's $3 billion. Pretty soon, as Senator Dirksen once observed, we're talking real money.

The GAO also found that agencies should be making greater efforts to collect and analyze data on purchase card transactions. This would help agencies to eliminate waste and to expose fraud and abuse.

We must assure taxpayers that the federal government is shopping carefully, wisely and honestly. That's why the legislation we introduce today would require the Office of Management and Budget to direct agencies to better train cardholders and to more effectively scrutinize their purchases. This legislation would also instruct the General Services Administration to increase its efforts to secure discount agreements with vendors and to better provide agencies with the tools needed to control wasteful spending. According to testimony by GAO, this legislation would be a strong first step to eliminating $300 million in wasteful spending.

The American people have the right to expect the federal government to spend their tax dollars carefully and wisely. I urge my colleagues to cosponsor this legislation and help eliminate wasteful purchase card spending.

By Mr. BAUCUS:

S. 2357. A bill to direct the Secretary of the Army, acting through the Chief of Engineers, to maintain a minimum quantity of stored water in certain reservoirs in the vicinity of the upper portion of the Missouri River; to the Committee on Environment and Public Works.

Mr. BAUCUS. 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. 2357

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. UPPER MISSOURI RIVER WATER STORAGE.

(a) WATER STORAGE.—Notwithstanding any project or activity carried out by the Secretary of the Army, acting through the Chief of Engineers, under the Pick-Sloan Missouri River Basin Program authorized by section 9 of the Act of December 22, 1944 (58 Stat. 891), or any other law, the Secretary shall cease to support water releases for navigation purposes at any time at which the total volume of water stored in the reservoirs described in subsection (b) is less than 44,000,000 acre-feet.

(b) RESERVOIRS.—The reservoirs referred to in subsection (a) are the following reservoirs located in the vicinity of the upper portion of the Missouri River:

(1) Fort Peck Lake.
(2) Lake Sakakawea.
(3) Lake Oahe.
(4) Lake Sharpe.
(5) Lake Francis Case.
(6) Lewis and Clark Lake.

By Mr. DURBIN (for himself, Mr. LEAHY, Mr. FEINGOLD, and Mr. KENNEDY):

S. 2358. A bill to allow for the prosecution of members of criminal street gangs, and for other purposes; to the Committee on the Judiciary.

Mr. DURBIN. Mr. President, today, I am joined by Senators LEAHY, KENNEDY, and FEINGHOLD in introducing the American Neighborhoods Taking the Initiative—Guarding Against Neighborhood Gangs (ANTI–GANG) Act, which is a comprehensive, tailored bill that will help State and local prosecutors prevent, investigate, and prosecute gang crimes in their neighborhoods.

The National Youth Gang Center has reported evidence of resurgence in gang violence, and this is clearly reflected in Chicago, IL, where 45 percent of the homicides last year were gang-related. In Chicago, there are 98 identified gangs, with an estimated 100,000 gang members; over 13 percent of the gang members nationwide are located within Chicago's city limits.

I would like to commend the State and local prosecutors and law enforcement agencies for their work in fighting this problem. The ANTI–GANG Act would authorize $862.5 million in grants over the next 5 years to provide them with the tools they need and have specifically requested of Congress to combat violent gangs.

For example, the National District Attorneys Association (NDAA) wrote the following: ''We must find new methods of protecting those individuals brave enough to come forward as

witnesses. Our biggest problem is getting the financial help to establish, and run, meaningful witness protection programs.'' The National Alliance of Gang Investigators (NAGI) also has identified a trend in witness intimidation that is ''dramatically affecting the prosecution of violent gang offenders.'' The ANTI–GANG Act responds by authorizing $300 million over 5 years for the protection of witnesses and victims of gang crimes. This bill also would allow the Attorney General to provide for the relocation and protection of witnesses in State gang, drug, and homicide cases, and it would allow States to obtain the temporary protection of witnesses in Stage gang cases through the Federal witness relocation and protection program, without any requirement of reimbursement for those temporary services.

The ANTI–GANG Act also authorizes $200 million for grants to develop gang prevention, research, and intervention services. However, these grants should not be limited to those areas already identified as ''high intensity'' interstate gang activity areas. The NAGI also has identified a trend of gangs migrating from larger cities to smaller communities, which is fueled in large part by an increase in gang involvement in drug trafficking. This may be related to the spread of methamphetamine, which is the fastest-growing drug in the United States and, according to Illinois Attorney General Lisa Madigan, the ''single-greatest threat to rural America today.'' In response to these trends, the ANTI–GANG Act would allow rural communities and other jurisdictions to apply for these grants, to prevent gang violence from occurring in the first place.

The ANTI–GANG Act also authorizes $262.5 million over five years for the cooperative prevention, investigation, and prosecution of gang crimes. Most of this funding would be for criminal street gang enforcement teams made up of local, State, and Federal law enforcement authorities that would investigate and prosecute criminal street gangs in high intensity interstate gang activity areas (HIIGAAs). Importantly, this bill would allow HIIGAAs to be integrated with High Intensity Interstate Drug Trafficking Areas (HIIDTAs), to avoid conflicts in those areas where the two entities would coexist.

The ANTI–GANG Act also authorizes $100 million over five years for technology, equipment, and training to identify gang members and violent offenders and to maintain databases to facilitate coordination among law enforcement and prosecutors.

In addition to these new resources, the ANTI–GANG Act will effectively strengthen the ability of prosecutors to prosecute violent street gangs, by creating a stronger federal criminal gang prosecution offense. This new offense criminalizes participation in criminal street gangs, recruitment and retention of gang members, and witness intimidation. At the same time, it responds to concerns raised by the NDAA regarding potential conflicts with local investigation and prosecution efforts, by requiring certification by the Department of Justice before any prosecution under this bill could be undertaken in federal court.

The ANTI–GANG Act also promotes the recruitment and retention of highly-qualified prosecutors and public defenders by establishing a student loan forgiveness program modeled after the current program for federal employees. Almost a third of prosecutors' offices across the country have problems with recruiting or retaining staff attorneys, and low salaries were cited as the primary reason for recruitment and retention problems. This proposed loan forgiveness program is supported by the American Bar Association, the NDAA, the National Association of Prosecutor Coordinators, the National Legal Aid and Defender Association, and the American Council of Chief Defenders.

The ANTI–GANG Act will effectively strengthen the ability of prosecutors at the local, state, and federal level to prosecute violent street gangs, and it will give state and local governments the resources they need to protect witnesses and prevent youth from joining gangs in the first place. This bill achieves these important goals without increasing any mandatory minimum sentences, which conservation jurists such as Justice Anthony Kennedy have criticized as ''unfair, unjust, unwise.'' It also does not unnecessarily expand the federal death penalty—a measure which has been included in other federal gang legislation but is opposed by the Leadership Conference on Civil Rights, NAACP, ACLU, and National Association of Criminal Defense Lawyers.

Finally, the Juvenile Justice and Delinquency Prevention Coalition has raised the following concerns regarding federal gang legislation that would allow more juveniles to be prosecuted as adults in the federal system: ''[T]he fact remains that transfer of youth to the adult system, simply put, is a failed public policy. Comprehensive national research on the practice of prosecuting youth in the adult system has shown conclusively that transferring youth to the adult criminal justice system does nothing to reduce crime and actually has the opposite effect. In fact, study after study has shown that youth transferred to the adult criminal justice system are more likely to re-offend and to commit more serious crimes upon release than youth who were charged with similar offenses and had similar offenses histories but remained in the juvenile justice system. Moreover, national data show that young people incarcerated with adults are five times as likely to report being a victim of rape, twice as likely to be beaten by staff and 50 percent more likely to be assaulted with a weapon than youth held in juvenile facilities. A Justice Department report also found that youth confined in adult facilities are nearly 8 times more likely to commit suicide than youth in juvenile facilities.''

In light of these concerns, the ANTI–GANG Act provides Congress with the necessary data to decide whether to expand the federal role in prosecuting juvenile offenders, by requiring a comprehensive report on the current treatment of juveniles by the states and the capability of the federal criminal justice system to take on these additional cases and house additional prisoners. The American Bar Association has written that this study is ''the more prudent course of action at this time.''

The ANTI–GANG Act is a comprehensive, common-sense approach to fight gang violence. I urge my colleagues to join me in support of this important legislation.

Mr. President, I ask unanimous consent that a summary of the bill be printed in the RECORD.

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

THE AMERICAN NEIGHBORHOODS TAKING THE INITIATIVE—GUARDING AGAINST NEIGHBORHOOD GANGS (ANTI–GANG) ACT

OVERVIEW

The American Neighborhoods Taking the Iniative—Guarding Against Neighborhood Gangs (ANTI–GANG) Act of 2004 is a comprehensive, tailored bill that will help state and local prosecutors prevent, investigate, and prosecute gang crimes in their neighborhoods. This bill contains four major provisions:

(1) It gives state and local prosecutors the tools they need and have specifically requested of Congress to combat violent gangs by authorizing $52.5 million for the cooperative prevention, investigation, and prosecution of gang crimes; $20 million for technology, equipment, and training to identify gang members and violent offenders and to maintain databases to facilitate coordination among law enforcement and prosecutors; $60 million for the protection of witnesses and victims of gang crimes; and $40 million for grants to develop gang prevention, research, and intervention services.

(2) It replaces the current provision on criminal street gangs in federal law, seldom-used penalty enhancement, with a stronger measure that criminalizes participation in criminal street gangs, recruitment and retention of gang members, and witness intimidation. The ANTI–GANG Act targets gang violence and gang crimes in a logical, straightforward manner.

(3) It will provide Congress with the necessary data to decide whether to expand the federal role in prosecuting juvenile offenders by requiring a comprehensive report on the current treatment of juveniles by the states and the capabilities of the federal criminal justice system to take on these additional cases and house additional prisoners.

(4) It promotes the recruitment and retention of highly-qualified prosecutors and public defenders by establishing a student loan forgiveness program modeled after the current program for federal employees.

The ANTI–GANG Act will effectively strengthen the ability of prosecutors at the local, state, and federal level to prosecute violent street gangs, it will give state and local governments the resources they need to protect witnesses and prevent kids from joining gangs in the first place. This bill achieves these important goals without increasing any mandatory minimum sentences

(which conservative jurists such as Justice Anthony Kennedy have criticized as ''unfair, unjust, unwise''). It also respects the traditional principles of federalism, by requiring certification by the Department of Justice before any prosecution under this bill may be undertaken in federal court and by not unnecessarily expanding the federal death penalty.

SECTION-BY-SECTION SUMMARY OF THE ANTI-GANG ACT

Title I—Criminal Street Gangs

Sec. 101. Criminal Street Gangs—Definitions. Defines a criminal street gang as a preexisting and ongoing entity (e.g., having already committed crimes); targets violent criminal street gangs by requiring that at least one predicate gang crime be a violent gang crime; establishes evidentiary relevance of gang symbolism in prosecutions; and allows federal prosecution of neighborhood gang activity when those activities substantially affect interstate commerce.

Sec. 102. Criminal Street Gangs—Prohibited Acts, Penalties, and Forfeiture. Creates three new federal crimes to prosecute cases involving violent criminal street gangs. (1) It prohibits the recruitment and forced retention of gang members, including harsher penalties if an adult recruits a minor or prevents a minor from leaving a criminal street gang. (2) It prohibits participation in a criminal street gang if done with the intent to further the criminal activities of the gang or through the commission of a single predicate gang crime. (3) It prohibits witness intimidation and tampering in cases and investigations related to gang activity. Before the federal government may undertake a prosecution of these offenses, the Department of Justice must certify that it has consulted with state and local prosecutors before seeking an indictment and that federal prosecution is ''in the public interest and necessary to secure substantial justice.''

Sec. 103. Clerical Amendments.

Sec. 104. Conforming Amendments.

Sec. 105. Designation of and Assistance for ''High Intensity'' Interstate Gang Activity Areas. Requires the Attorney General, after consultation with the governors of appropriate States, to designate certain locations as ''high intensity'' interstate gang activity areas (HIIGAAs) and provide assistance in the form of criminal street gang enforcement teams made up of local, State, and Federal law enforcement authorities to investigate and prosecute criminal street gangs in each designated area. The ANTI–GANG bill also allows for HIIGAAs to be integrated with High Intensity Interstate Drug Trafficking Areas (HIIDTAs), to avoid conflicts and bureaucratic morasses in those areas where the two entities would coexist. Subsection (c) authorizes funding of $40 million for each fiscal year 2005 through 2009.

Sec. 106. Gang Prevention Grants. Requires the Office of Justice Programs of the Department of Justice to make grants to States, units of local government, tribal governments, and qualified private entities to develop community-based programs that provide crime prevention, research, and intervention services designed for gang members and at-risk youth. Subsection (f) authorizes $40 million for each fiscal year 2005 through 2009. No grant may exceed $1 million nor last for any period longer than 2 years.

Sec. 107. Gang Prevention Information Grants. Requires the Office of Justice Programs of the Department of Justice to make grants to States, units of local government, tribal governments to fund technology, equipment, and training for state and local sheriffs, police agencies, and prosecutor offices to increase accurate identification of gang members and violent offenders and to maintain databases with such information to facilitate coordination among law enforcement and prosecutors. Subsection (f) authorizes $20 million for each fiscal year 2005 through 2009. No grant may exceed $1 million nor last for any period longer than 2 years.

Sec. 1089. Enhancement of Project Safe Neighborhoods Initiative to Improve Enforcement of Criminal Laws Against Violent Gangs. Expands the Project Safe Neighborhood program to require United States Attorneys to identify and prosecute significant gangs within their district; to coordinate such prosecutions among all local, State, and Federal law enforcement agencies; and to coordinate criminal street gang enforcement teams in designated ''high intensity'' interstate gang activity areas. Subsection (b) authorizes the hiring of 94 additional Assistant United States Attorneys and funding of $7.5 million for each fiscal year 2005 through 2009 to carry out the provisions of this section.

Sec. 109. Additional Resources Needed by the Federal Bureau of Investigation to Investigate and Prosecute Violent Criminal Street Gangs. Requires the Federal Bureau of Investigation to increase funding for the Safe Streets Program and to support the criminal street gang enforcement teams in designated high intensity interstate gang activity areas. Subsection (b) authorizes $5 million for each fiscal year 2005 through 2009 to expand the FBI's Safe Streets Program.

Sec. 110. Expansion of Federal Witness Relocation and Protection Program. Amends 18 U.S.C. §3521(a)(1), which governs the Federal witness relocation and protection program, to make clear that the Attorney General can provide for the relocation and protection of witnesses in State gang, drug, and homicide cases. Current law authorizes Federal relocation and protection for witnesses in State cases involving ''an organized criminal activity or other serious offense.''

Sec. 111. Grants to States and Local Prosecutors to Protect Witnesses and Victims of Crime. Authorizes the Attorney General to make grants available to State and local prosecutors and the U.S. Attorney for the District of Columbia for the purpose of providing short-term protection to witnesses in cases involving an organized criminal activity, criminal street gang, serious drug offense, homicide, or other serious offense. State and local prosecutors will have the option of either providing the witness protection themselves or contracting with the United States Marshals Service for use of the Federal witness protection and relocation program. Subsection (d) authorizes $60 million for each fiscal year 2005 through 2009 to fund the program. By providing significantly increased resources and flexibility for State and local prosecutors, this provision responds in a meaningful way to the need for effective witness protection emphasized by prosecutors during the September 17, 2003, hearing in the Judiciary Committee.

Sec. 1112. Witness Protection Services. Amends 18 U.S.C. §3526 to allow States to obtain the temporary protection of witnesses in State gang cases through the Federal witness relocation and protection program, without any requirement of reimbursement for those temporary services. Currently, complex reimbursement procedures deter State and local prosecutors from obtaining witness protection services from the Federal government in emergency circumstances.

Title II—Related Matters Involving Violent Crime Prosecution

Sec. 201. Study on Expanding Federal Authority for Juvenile Offenders. This section requires the General Accounting Office to do a comprehensive report on the advantages and disadvantages of increasing Federal authority for the prosecution of 16- and 17-year-old offenders. Some have proposed indicting and prosecuting more juveniles in Federal courts as a step in combating gang violence. Although there is insufficient data to support this proposition, it is appropriate for the GAO to review the current treatment of such offenders by the States and the capability of the Federal criminal justice system to take on these additional cases and house additional prisoners. With this review, Congress can knowledgeably consider whether to expand the Federal role in prosecuting juveniles.

Sec. 202. Prosecutors and Defenders Incentive Act. This section establishes a student loan repayment program for prosecutors and public defenders that is modeled after the program currently available to federal employees. This would increase the ability of federal, state, and local prosecutors and public defenders to recruit and retain highly-qualified attorneys. Attorneys in this program must agree to serve for a minimum of three years. Participants can receive up to $10,000 per year and a total of up to $60,000; these amounts are identical to the limitations in the program for federal employees. Subsection (h) authorizes $25 million for fiscal year 2005 and such sums as may be necessary for each succeeding fiscal year.

Mr. LEAHY. Mr. President, I am pleased to cosponsor the introduction of the ANTI-Gang Act with my good friends on the Judiciary Committee, Senators DURBIN, KENNEDY and FEINGOLD.

The American Neighborhoods Taking the Initiative—Guarding Against Neighborhood Gangs Act of 2004 is a bill carefully crafted to target violent criminal street gangs whose activities extend beyond the neighborhood and have a substantial impact on Federal interests.

As a former county prosecutor, I have long expressed concern about making Federal crimes out of every offense that comes to the attention of Congress. I know that States have competent and able police departments, county sheriffs' offices, prosecutors and judges. Gangs are, more often than not, locally-based, geographically-oriented criminal associations, and our local communities are on the front lines of the fight against gang violence. We should be supplementing the work of our State and local law enforcement officers, not usurping them. This is why this bill specifically targets only those gangs where there is a provable Federal interest. This is why this bill requires consultation with our State and local counterparts before embarking on a Federal prosecution of historically State crimes. And this is why major provisions of the bill are directed toward helping State and local law enforcement officers prevent, investigate, and prosecute gang crimes in their own neighborhoods.

There are four major sections of the bill:

First, the bill gives State and local prosecutors financial resources to guard against neighborhood gangs by authorizing $72.5 million for the cooperative prevention, investigation, and prosecution of gang crimes; $40 million for grants to develop gang prevention,

research, and intervention services; and $60 million for the protection of witnesses and victims of gang crimes. Federal funds are also provided for hiring new Assistant U.S. Attorneys and to fund technology, equipment and training grants to increase accurate identification of gang members and violent offenders and to maintain databases with such information to facilitate state and Federal coordination.

The first defense in protecting our youth against gang influence is a good offense. I have long thought that programs aimed at combating gang activity must incorporate gang prevention and education—programs that would examine why our youth choose to associate in gangs and prey on others—to be effective. When Chairman HATCH appropriately targeted gang violence as a subject for a full Committee hearing last year, all agreed that we should be doing more to deter our youth from joining gangs in the first place. This bill heeds that call.

Another unifying theme of the expert witnesses at the Committee's hearing was the serious need for Federal assistance in protecting witnesses who will provide information about and testify against gangs from intimidation. Our bill not only provides funding to help protect witnesses, it also makes it a Federal crime to intimidate witnesses in certain State prosecutions involving gang activity.

Second, the bill defines a Federal criminal street gang by using well-established legal principles and providing recognizable limits. Rather than create yet another cumbersome and broad-reaching Federal crime that overlaps with numerous existing Federal statutes, this bill actually targets the problem that needs to be addressed: violent criminal street gangs. It recognizes that gangs are ongoing entities whose members commit crimes more easily simply because of their association with one another. Gangs prove the old adage: there is safety in numbers. Gang members can be sheep-like in their loyalty and allegiance to the gang. In this regard, the bill also explicitly and evenhandedly addresses the evidentiary significance of gang symbolism in gang prosecutions.

In addition to witness intimidation, other important crimes established by this bill include: One, participation in criminal street gangs by any act that is intended to effect the criminal activities of the gang; two, participation by committing a crime in furtherance of or for the benefit of the gang, and three, recruitment and retention of gang members. There are increased penalties for those who target minors for recruitment in a criminal street gang.

Third, the bill requires a comprehensive report on the current treatment of juveniles by the States, and the capability of the Federal criminal justice system to take on these additional cases and house additional prisoners, so that Congress can make an informed decision about whether or not to expand the Federal role in prosecuting juvenile offenders.

Some have suggested that the Federal Government has been unable to proceed effectively against gang crime because of Federal law's protections for juvenile offenders. I have not seen sufficient evidence to support his claim, but I think that Congressional consideration of this issue would benefit greatly from a comprehensive General Accounting Office study on this topic. We need to know both whether justice would be served by increasing the Federal role, and whether the Federal system—including both our prosecutors and the Bureau of Prisons—is prepared for such a step.

Fourth, the bill promotes the recruitment and retention of highly-qualified State and local prosecutors and public defenders by establishing a student loan forgiveness program modeled after the current program for Federal employees.

We have worked very hard in crafting this legislation not to further blur the lines between Federal and State law enforcement responsibilities or to add more burdens to the FBI as the primary Federal investigative agency. Federal law enforcement has been faced with a unique challenge since the September 11 attacks. The FBI is no longer just an enforcement agency, but also has a critical terrorism prevention mission. This mission is a daunting one, and our Federal law enforcement resources are not limitless. I, for one, do not want the FBI or U.S. Attorneys to focus these limited resources on cases that are best handled at the local level.

Combating gang violence should not be a partisan battle. The tragedy of gang violence affects too many. No community can afford to lose a single youth to the arms of a waiting gang. No gang should be allowed to flourish without consequence in our communities. I urge your support for this important bill.

Mr. FEINGOLD. Mr. President, I am pleased to support S. 2358, the Anti-Gang Act. This critical legislation will provide State and Federal law enforcement with the tools and resources needed to successfully fight the expanding presence of violent gangs that bring drugs like methamphetamine into our communities.

Time and time again, we in Congress have heard the call of prosecutors and law enforcement for more resources to combat the problem of gang violence. The Anti-Gang Act gives local prosecutors and law enforcement what they have asked Congress for most—targeted financial assistance. The bill will help combat the growth and proliferation of violent gangs by authorizing funds for the cooperative prevention, investigation, and prosecution of gang crimes. In addition, grant money will be made available for the protection of witnesses and victims of gang violence. These funds will not be tied to restrictive formulas that would keep the majority of the assistance from reaching suburban and rural communities. This money will be able to go to the communities in Wisconsin and the rest of the country where rural and smaller law enforcement agencies are financially limited in their ability to deal with the exploding increase in gang violence associated with methamphetamines and other narcotics.

The Anti-Gang Act also promotes hiring and long-term service of highly qualified prosecutors and public defenders by establishing a student loan forgiveness program. Prosecuting gangs is some of the most demanding and challenging work a prosecutor will tackle. Loan forgiveness will allow Assistant District Attorneys and Assistant Attorney Generals to remain in public service and allow them to take their wealth of experience and use it to combat gang violence.

The Anti-Gang Act also replaces the current Federal RICO statute that was never intended to be used against violent street gangs with a tough statute that not only criminalizes participation in criminal street gangs, but addresses the serious problem of the recruitment and retention of gang members. The Anti-Gang Act targets gang violence and gang crimes in a logical, straightforward manner. The bill also recognizes that the vast majority of gang investigations and prosecutions have been and will continue to be done at the State and local level. The bill requires that Federal prosecutors consult with State and local law enforcement before seeking an indictment and that a Federal prosecution is in the public interest and necessary to secure substantial justice.

Finally, the Anti-Gang Act will provide Congress with the data necessary to decide whether to expand the Federal role in prosecuting juvenile offenders by requiring a comprehensive report on the current treatment of juveniles by the States and the capability of the Federal criminal justice system to take on more juvenile cases and to house additional prisoners. Some have proposed indicting and prosecuting more juveniles in Federal courts as a way of combating gang violence without being able to tell us why this is necessary and what effect it might have on the criminal justice system. With this review, Congress can intelligently consider whether to expand the Federal role in prosecuting juveniles.

Our citizens should be able to send their children to school, use their parks and walk their streets without fearing that ever-spreading gang violence will grow unfettered in their community. The Anti-Gang Act is an important step towards making all of our neighborhoods safe and I urge my colleagues to support it.

Mr. KENNEDY. Mr. President, it's a privilege to join my colleagues Senator DURBIN, Senator LEAHY, and Senator FEINGOLD in introducing this important legislation, the ANTI–GANG Act.

Gang violence is a serious problem in many communities across the nation, and it deserves a serious response by Congress. The key to success is an effective strategy that rejects partisanship and ''lock-em-up'' sound bites in favor of tough, targeted law enforcement; aggressive steps to take guns out of the hands of criminal gang members and other violent juvenile offenders; and heavy emphasis on prevention programs that discourage gang membership and provide realistic alternatives for at-risk youth.

The past decade saw a dramatic reduction in violent juvenile crime, in large part because of these crime-fighting strategies. Many of us remember the dire ''juvenile superpredator'' predictions that were common before that reduction took place. In 1996, William Bennett and John Walters wrote that America was a ''ticking crime bomb,'' faced with the ''youngest, biggest, and baddest generation'' of juvenile offenders that our country had ever known. Fortunately, these predictions were wrong. From 1993 to 2001, arrest rates for violent juvenile crime fell by more than two-thirds. We're still reaping the benefits of this lower crime rate today.

The decrease in crime is explained partly by the sensible measures taken by Congress on gun safety in the early 1990's, including the ban on assault weapons. In 1999, the National Center for Juvenile Justice concluded that all of the increase in homicides by juveniles between the mid-1980's and mid-1990's was firearms-related. The Surgeon General concluded that guns were responsible for both the epidemic in juvenile violence in the late 1980's and the decrease in violence after 1993. ''It is now clear,'' the Surgeon General wrote, ''that the violence epidemic was caused largely by an upsurge in the use of firearms by young people. . . . Today's youth violence is less lethal, largely because of a decline in the use of firearms.'' The current ban on assault weapons is scheduled to expire in September, and given its proven results against crime, it is reckless for anyone to oppose its continuation.

Another factor that contributed to the remarkable decrease in juvenile violent crime was the innovative, cooperative crime-fighting strategy developed in Boston and other communities across the nation. The Boston strategy was neither a ''liberal'' nor a ''conservative'' approach. It engaged the entire community, including police and probation officers, clergy and community leaders, and even gang members themselves in a united effort to crack down on gang violence, strengthen after-school prevention programs, and take guns out of the hands of juvenile offenders. This strategy was very successful—juvenile homicides dropped 80 percent from 1990 to 1995—and it succeeded without prosecuting more juveniles as adults, without housing nonviolent juvenile offenders in adult facilities, and without spending huge sums of money on new juvenile facilities.

The call for expanding federal prosecution of juveniles as adults was already controversial in those years when juvenile violent crime was at its peak. It makes no sense today, when juvenile violent crime rates have fallen to historic lows.

Unfortunately, an expansion is exactly what is sought by the supporters of S. 1735, the Gang Prevention and Effective Deterrence Act. Their bill responds to the problem of gang violence in the wrong way. They want the expanded federal prosecution of juveniles as adults. They want to federalize a broad range of street crimes now being prosecuted effectively at the local level. They want to create an unnecessary bureaucratic morass by duplicating law enforcement efforts now taking place on drug trafficking. They support a one-size-fits-all, Washington-knows-best approach to juvenile crime that ignores the achievements of the past decade and will only make the current problem of gang violence worse.

Our bill, the ANTI–GANG Act, avoids the most serious defects of S. 1735 by recognizing, first and foremost, the primary role of state and local law enforcement in responding to violent crime. The American Bar Association and the Judicial Conference have both called on Congress to consider the risks of federalizing offenses that have traditionally been the responsibility of state criminal justice systems. Many of us support the Local Law Enforcement Enhancement Act (S. 966), to deal with hate crimes. It would require the Justice Department to certify the need for federal involvement before commencing federal prosecution of a hate crime. We also oppose the enactment of federal ''concealed carry'' laws, which would undermine state and local gun-safety laws.

Instead of ignoring the primary role of state and local governments in fighting violent gang crimes in their communities, our ANTI–GANG Act strengthens that role, by giving local law enforcement and prosecutors the resources they need. It authorizes $52 million for cooperative prevention, investigation, and prosecution of gang crimes. It authorizes $20 million for technology, equipment, and training, so that state and local sheriffs, police agencies, and prosecutors can improve their identification of gang members and maintain databases with information to facilitate coordination among law enforcement and prosecutors. It authorizes $60 million for the protecting and relocation of witnesses and victims of gang crimes, and $40 million for grants for gang prevention, research, and intervention services.

The resources in our bill for witness relocation and protection are particularly important. At a Judiciary Committee hearing last September, state and local prosecutors specifically asked for Congress's help in protecting witnesses of gang crimes. Our bill responds to this need by authorizing $60 million in assistance. By contrast, the most recently revised version of S. 1735 authorizes only $12 million.

In addition, our bill amends the current law on governing federal witness relocation and protection to make clear that the Attorney General can use these provisions to support witnesses in state gang, drug, and homicide cases. We also allow states to obtain the temporary protection of witnesses in gang cases, without any requirement of reimbursement. The current complex reimbursement procedures deter state and local prosecutors from obtaining witness protection assistance from the federal government, even in emergencies. Our bill offers needed relief to state prosecutors undertaking difficult prosecutions of gang offenders, but no such relief is included in S. 1735.

The ANTI–GANG Act respects the primary role of state and local governments in fighting street crime, but it also recognizes that violent gangs can be a substantial impact on federal interests. According to the most recent National Drug Threat Assessment, criminal street gangs are responsible for the distribution of much of the cocaine, methamphetamine, heroin, and other illegal drugs being distributed in communities throughout the United States. Gang activity interferes with lawful commerce and undermines the freedom and security of entire communities.

The current provision on criminal street gangs in federal law is a seldom-used penalty enhancement. To address these legitimate federal interests, the ANTI–GANG Act replaces that provision with a stronger set of measures criminalizing participation in criminal street gangs, recruitment and retention of gang members, and witness intimidation. It also increases penalties for gang members who target minors for recruitment. It targets gang violence and gang crimes in a sensible way, avoiding the confusing and counterproductive approach taken in S. 1735. Before any federal prosecution can take place under our bill, a high-level representative from the Justice Department, after consultation with state and local prosecutors, must certify that the federal prosecution is in the public interest and necessary to achieve substantial justice.

The Act strengthens the ability of prosecutors at all levels—federal, state and local—to prosecute violent street gangs, and it does so without increasing any mandatory minimum sentences or unnecessarily expanding the federal death penalty to include state murder offenses.

An increasing number of judges, prosecutors, defense lawyers, and other criminal justice authorities now agree that mandatory minimum sentences are, in the words of Justice Anthony Kennedy, ''unfair, unjust, and unwise.'' They are inconsistent with and undermine the sentencing guidelines that Congress established in the Sentencing

Reform Act of 1984. The supporters of S. 1735 have commendably removed some of the mandatory sentencing provisions in their original bill, but even a single increased mandatory minimum is counterproductive and unjustified.

The ANTI–GANG Act also requires the General Accounting Office to conduct a comprehensive study and report on the current treatment of juveniles by states and local governments and the capability of the Bureau of Prisons and other parts of the federal criminal justice system to take on the additional cases that would result from an expansion of the federal prosecutions of juvenile offenders as adults. This report will enable Congress to make a better informed decision on this criminal issue.

Finally, the Act encourages the recruitment and retention of highly-qualified prosecutors and public defenders by establishing a student loan forgiveness program modeled on the current program for federal employees. According to the National District Attorneys Association, this provision ''would allow prosecutors to relieve the crushing burden of student loans that now cause so many young attorneys to abandon public service.'' The provision is also strongly supported by the National Legal Aid and Defender Association and the American Council of Chief Defenders.

I commend my colleagues for their leadership in developing this important legislation to protect American communities from gang violence without undermining fundamental principles of fairness and federal-state relations. I urge the Senate to approve it.

By Mr. REID:

S. 2359. A bill to amend the Internal Revenue Code of 1986 to provide a refundable tax credit for small business health insurance costs, and for other purposes; to the Committee on Finance.

Mr. REID. Mr. President, I rise today to introduce the Healthy Employees, Healthy Small Businesses Act of 2004. This legislation addresses a number of fundamental problems: the fact that millions of hard working American families have no health insurance, they live in fear that financial ruin is just one illness away, or that a family member will need medical treatment that they simply can't afford; the fact that small businesses in this country are facing health care costs that are skyrocketing far beyond the rate of inflation, and that as much as many small business owners would like to provide health benefits to their employees, it is becoming more and more difficult for them to afford these costs; and the fact that this health care dilemma is damaging our Nation's competitive position internationally.

In 2002, 44 million Americans lived without health insurance for the entire year. 85 percent of these uninsured people belong to working families.

Think about that. The vast majority of the people in the United States of America who have no health insurance work.

These uninsured workers are trapped in the middle—in fact, most of them are middle class families. They do not receive health coverage through their jobs. They are too young to qualify for Medicare. They earn too much to qualify for a public health insurance program.

Yet they cannot afford private insurance plans.

For each one of those 44 million people, and each one of those millions of families, living without health coverage causes real and serious problems.

Living without health insurance is difficult for anyone. It is especially hard for parents with children. In addition to the constant worry about whether their child will have an accident or get sick, there are serious long-term consequences for kids who grow up without health insurance.

Uninsured kids have a higher rate of acute and infectious diseases than children who are covered by health insurance, and uninsured kids actually have a higher number of hospitalizations, because their problems don't get treated until they become serious.

Uninsured children are: four times as likely to have necessary care delayed; five times more likely to use a hospital emergency room as their regular source of care; and six times as likely as other children to go without the care they need.

But having no health care is a problem even when kids are not sick. It forces parents into the kinds of choices that none of us would want to make, and that nobody in America should have to make.

When your daughter is uninsured, you have to think twice about signing her up for a youth soccer league, because she might break her arm.

When your son has no health coverage, maybe it is not safe to let him ride his bike through the neighborhood, or try out his friend's new rollerblades.

Accidents happen to everyone, especially to active children. But when your family has no health insurance, a simple fall requiring a few stitches, a broken bone, or a minor sports-related injury could result in hundreds or even thousands of dollars in emergency room fees.

In the end, in a lot of families, living without health insurance sometimes means that kids do not get to do very much living at all.

In her book The Betrayal of Work, Beth Shulman asked Flor Segunda, a working mom with no health insurance, about how her family's uninsured status affects her kids. Segunda says:

> Doctors require immediate payment before they will see you, but many times I don't have the money. Right now, [my son] Luis has a temperature. But I try to take care of it myself because I can't afford to take him to the doctor every time. It is one of the reasons I don't like my children to play outside. They will get sick and I can't afford it.

A lack of access to health care can destroy a family's financial security in a heartbeat—that is certainly true. But it can also deny uninsured kids some of the most basic and simple pleasures of being a child: going outside to play, joining a tee-ball team, riding a bike.

Surely we can do better.

Living without health insurance is a terrible problem. So why are so many families forced to do it? Who are these families trapped in the middle—earning too much to qualify for free care, but not enough to pay for private insurance?

It turns out that more than half of the uninsured people in our country live in a family supported by someone who works for a small business—meaning a company that employs fewer than 100 workers.

This is not because small businesses are less committed to their workers than larger employers. On the contrary, the small business owners in my State seem to care a great deal about their employees. Most small business owners work closely with their employees, and they understand that the success of their enterprise depends on the loyalty of the people who work for them.

The reason small businesses are less likely to provide health insurance is simply a matter of economics.

At a small business, where people are delivering a product or service with just a handful of employees, the margin between revenues and costs can be pretty slim.

That does not leave much room for error—or for rising costs. But health care costs are spiraling out of control.

Every year for the last several years, we have seen double-digit inflation in health care prices. With health care costs rising out of sight, small business owners are rightly concerned about whether these uncontrolled prices represent too much of a risk to their overall business health.

My legislation would create a Federal refundable tax credit to reimburse small employers for part of the costs they incur for providing health insurance coverage to their employees.

The HEHSB tax credit would operate on a sliding scale, providing a large tax credit to all businesses with fewer than 50 employees, but giving the greatest tax relief to the smallest enterprises.

Last year, the average health insurance plan for a single person costs $3,383, of which the employee paid an average of $508 and the employer paid an average of $2,875.

For a family policy, the average cost totalled $9,068, with the employee bearing $2,412 and the employer shouldering $6,656.

Under my bill, companies with fewer than 10 employees would be eligible to claim a credit of 50 percent of the cost of each eligible employee's policy, up to a limit of $1,500 for an individual policy or $3,400 for a family policy.

Companies with 25 to 50 employees would be eligible to claim a credit of 35 percent of the cost of each eligible employee's policy, up to a limit of $750 for

a self-only policy or $1,700 for a family policy.

I believe that this legislation will give more small business owners the ability to do what they want to do in the first place: provide their first-rate employees with first-rate benefits.

It will shield them from the worst risks associated with rising health care costs.

And I hope that it will eventually result in families like the Segundas feeling a little more security and happiness.

By Mr. MILLER:

S.J. Res. 35. A joint resolution to repeal the seventeenth article of amendment to the Constitution of the United States; to the Committee on the Judiciary.

Mr. MILLER. Madam President, we live in perilous times. The leader of the free world's power has become so neutered he cannot, even with the support of the majority of the Senate, appoint highly qualified individuals endorsed by the American Bar to a Federal court. He cannot conduct a war without being torn to shreds by partisans with their eyes set, not on he defeat of our enemy but on the defeat of our President.

The Senate has become just one big, bad, ongoing joke, held hostage by special interests, and so impotent an 18-wheeler truck loaded with Viagra would do no good.

Andrew Young, one of the most thoughtful men in America, recently took a long and serious look at the Senate. He was thinking about making a race for it. After visiting Washington, he concluded that the Senate is composed of:

A bunch of pompous, old—

And I won't use his word here, I would say ''folks''—

listening to people read statements they didn't even write and probably don't believe.

The House of Representatives, theoretically the closest of all the Federal Government to the people, cannot restrain its extravagant spending nor limit our spiraling debt, and incumbents are so entrenched you might as well call off 80 percent of the House races. There are no contests.

Most of the laws of the land, at least the most important and lasting ones, are made not by elected representatives of the people but by unelected, unaccountable legislators in black robes who churn out volumes of case law and hold their jobs for life. A half dozen dirty bombs the size of a small suitcase planted around the country could kill hundreds of thousands of our citizens and bring this Nation to its knees at any time, and yet we can't even build a fence along our border to keep out illegals because some nutty environmentalists say it will cause erosion.

This Government is in one hell of a mess. Frankly, as Rett Butler said—my dear, very few people up here give a damn.

It is not funny. It is sad. It is tragic. And it can only get worse—much worse. What this Government needs is one of those extreme makeovers they have on television, and I am not referring to some minor nose job or a little botox here and there.

Congressional Quarterly recently devoted an issue to the mandate wars, with headlines blaring: ''Unfunded Mandates Add to Woes, States Say; Localities Get the Bill for Beefed Up Security; Transportation Money Comes With Strings, and Medicare Stuck in Funding Squabbles,'' et cetera, et cetera, et cetera.

One would think that the much heralded Unfunded Mandate Reform Act of 1995 never passed. The National Conference of State Legislatures has set the unfunded mandate figure for the States at $33 billion for 2005. This, along with the budget problems they have been having for the last few years, has put States under the heel of a distant and unresponsive government. That is us. And it gives the enthusiastic tax raisers at the State level the very excuse they are looking for to dig deeper and deeper into the pockets of their taxpayers.

It is not a pretty picture. No matter who you send to Washington, for the most part smart and decent people, it is not going to change much because the individuals are not so much at fault as the rotten and decaying foundation of what is no longer a Republic. It is the system that stinks, and it is only going to get worse because that perfect balance our brilliant Founding Fathers put in place in 1787 no longer exists.

Perhaps, then, the answer is a return to the original thinking of those wisest of all men, and how they intended for this government to function. Federalism, for all practical purposes, has become to this generation of leaders, some vague philosophy of the past that is dead, dead, dead. It isn't even on life support. The line on that monitor went flat some time ago.

You see, the reformers of the early 1900s killed it dead and cremated the body when they allowed for the direct election of U.S. Senators.

Up until then, Senators were chosen by State legislatures, as James Madison and Alexander Hamilton had so carefully crafted.

Direct elections of Senators, as great and as good as that sounds, allowed Washington's special interests to call the shots, whether it is filling judicial vacancies, passing laws, or issuing regulations. The State governments aided in their own collective suicide by going along with that popular fad at the time.

Today it is heresy to even think about changing the system. But can you imagine those dreadful unfunded mandates being put on the States or a homeland security bill being torpedoed by the unions if Senators were still chosen by and responsible to the State legislatures?

Make no mistake about it. It is the special interest groups and their fundraising power that elect Senators and then hold them in bondage forever.

In the past five election cycles, Senators have raised over $1.5 billion for their election contests, not counting all the soft money spent on their behalf in other ways. Few would believe it, but the daily business of the Senate in fact is scheduled around fundraising.

The 17th amendment was the death of the careful balance between State and Federal Government. As designed by that brilliant and very practical group of Founding Fathers, the two governments would be in competition with each other and neither could abuse or threaten the other. The election of Senators by the State legislatures was the lynchpin that guaranteed the interests of the States would be protected.

Today State governments have to stand in line because they are just another one of the many special interests that try to get Senators to listen to them, and they are at an extreme disadvantage because they have no PAC.

You know what the great historian Edward Gibbons said of the decline of the Roman Empire. I quote: ''The fine theory of a republic insensibly vanished.''

That is exactly what happened in 1913 when the State legislatures, except for Utah and Delaware, rushed pell-mell to ratify the popular 17th amendment and, by doing so, slashed their own throats and destroyed federalism forever. It was a victory for special-interest tyranny and a blow to the power of State governments that would cripple them forever.

Instead of Senators who thoughtfully make up their own minds as they did during the Senate's greatest era of Clay, Webster, and Calhoun, we now have too many Senators who are mere cat's-paws for the special interests. It is the Senate's sorriest of times in its long, checkered, and once glorious history.

Having now jumped off the Golden Gate Bridge of political reality, before I hit the water and go splat, I have introduced a bill that would repeal the 17th amendment. I use the word ''would,'' not ''will,'' because I know it doesn't stand a chance of getting even a single cosponsor, much less a single vote beyond my own.

Abraham Lincoln, as a young man, made a speech in Springfield, IL, in which he called our founding principles ''a fortress of strength.'' Then he went on to warn, and again I quote, that they ''would grow more and more dim by the silent artillery of time.''

A wise man, that Lincoln, who understood and predicted all too well the fate of our republican form of government. Too bad we didn't listen to him.

I ask unanimous consent that the text of the joint resolution be printed in the RECORD.

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

S.J. RES. 35

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within 7 years after the date of its submission for ratification:

''ARTICLE—

''SECTION 1. The seventeenth article of amendment to the Constitution of the United States is hereby repealed.

''SECTION 2. The Senate of the United States shall be composed of two Senators from each State, chosen by the legislature thereof, for six years; and each Senator shall have one vote.

''SECTION 3. If vacancies happen by resignation or otherwise, during the recess of the legislature of any State, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

''SECTION 4. This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes a valid part of the Constitution.''.

S. RES. 334

Whereas the United States and Singapore have a strong and enduring friendship;

Whereas the United States and Singapore share a common vision in ensuring the continued peace, stability, and prosperity of the Asia-Pacific region;

Whereas Singapore is a member of the coalition for the reconstruction of Iraq and is a strong supporter of the coalition efforts to stabilize and rebuild Iraq;

Whereas Singapore is a steadfast partner with the United States in the global campaign against terrorism and has worked closely with the United States to fight terrorism around the world;

Whereas Singapore is a core member of the Proliferation Security Initiative and is committed to preventing the proliferation of weapons of mass destruction;

Whereas Singapore has provided valuable support to the United States Armed Forces, including inviting such Forces to use the state-of-the-art Changi Naval Base;

Whereas Singapore is the 11th largest trading partner of the United States;

Whereas Singapore was the first country in Asia to enter into a free trade agreement with the United States;

Whereas Singapore, which has one of the busiest ports in the world, was the first country in Asia to join the Container Security Initiative (CSI), a key initiative of the United States Customs Service designed to prevent terrorist attacks through the use of cargo;

Whereas Singapore is a leader in biological research, has established a regional Emerging Diseases Intervention Center, and is leading efforts to respond to new health threats, including emerging diseases and the use of biological agents;

Whereas the relationship between the United States and Singapore is reinforced by strong ties of culture, values, commerce, and scientific cooperation; and

Whereas relationship and international cooperation between the United States and Singapore is important and valuable to both countries: Now, therefore, be it

Resolved, That the Senate—

(1) welcomes the Prime Minister of Singapore, His Excellency Goh Chok Tong, to the United States;

(2) expresses profound gratitude to the Government of Singapore for its assistance in Iraq and its support in the global campaign against terrorism; and

(3) reaffirms the commitment of the United States to the continued expansion of friendship and cooperation between the United States and Singapore.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 345—EXPRESSING THE SENSE OF THE SENATE THAT CONGRESS SHOULD EXPAND THE SUPPORTS AND SERVICES AVAILABLE TO GRANDPARENTS AND OTHER RELATIVES WHO ARE RAISING CHILDREN WHEN THEIR BIOLOGICAL PARENTS HAVE DIED OR CAN NO LONGER TAKE CARE OF THEM

Mrs. CLINTON (for herself, Ms. SNOWE, Mr. KENNEDY, Mr. MILLER, Mr. KERRY, Mr. JOHNSON, Mr. PRYOR, Mr. CORZINE, Mrs. MURRAY, Ms. STABENOW, Ms. MIKULSKI, Mr. BAUCUS, Mr. COCHRAN, Mr. LIEBERMAN, and Mrs. LINCOLN) submitted the following resolution; which was referred to the Committee on Health, Education, Labor, and Pensions:

S. RES. 345

Whereas, 4.5 million children in the United States are living in grandparent-headed households—a 30% increase from 1990 to 2000—and an additional 1.5 million children are living in households headed by other relatives;

Whereas 70% of grandparents who report they are responsible for the grandchildren living with them are under the age of 60, many of whom are still in the workforce and making a valuable contribution to the national economy;

Whereas, an increasing number of parents are unable to raise their own children due to substance abuse, incarceration, illnesses such as HIV/AIDS, child abuse and neglect, domestic and community violence, unemployment and poverty, and other serious community crises;

Whereas, grandparents and other relatives raising children, especially those without formal legal custody or guardianship of the children under their care, face a variety of unnecessary barriers, including difficulties enrolling children in school, authorizing medical treatment, maintaining their public housing leases, obtaining affordable legal services, and accessing a variety of federal benefits and services;

Whereas, grandparents and other relatives have stepped forward at great personal sacrifice to their financial and health status, to provide safe and loving homes and keep thousands of children from unnecessarily entering the formal foster care system;

Whereas children feel content to live in an environment with people that they know, who are familiar, and who are able to provide them with extended family as additional support and a family history, which gives them a sense of belonging.

Whereas the time, effort, and unselfish commitment shown by these family members is worthy of recognition.

Whereas, almost one-fifth of grandparents who report that they are responsible for the grandchildren living with them live in poverty;

Whereas, grandparents and other relatives have taken over the care of abused and neglected children who have been removed from their homes even though they often fail to receive the same services and supports offered to non-related foster parents.

Whereas, grandparents and other relatives, whether raising children inside or outside of the foster care system, need better access to health insurance, respite care, child care, special education, housing, and other benefits, and where appropriate, support from Temporary Assistance For Needy Families, federal foster care and subsidized guardianship programs.

Resolved, That—

(1) it is the sense of the Senate that

(A) Congress and all Americans should recognize and publicly laud the commitment of grandparents, aunts, uncles, and other relative caregivers raising children whose parents are unable or unwilling to do so;

(B) Congress urges institutions and government entities at every level to promote public policies that support, and remove barriers to these caregivers;

(C) Congress should establish new and expanded appropriate supports and services, such as respite care, housing, and subsidized guardianship, for grandparents and other relatives who are raising children inside and outside of the foster care system.

Mrs. CLINTON. Mr. President, today I am pleased to be submitting a resolution that urges Congress to expand the supports and services available to grandparents and other relatives who are raising children when their biological parents can no longer take care of them. I am pleased to have worked with my friend and colleague, Senator OLYMPIA SNOWE, in crafting this important bill.

Today, in Albany, NY, there is a ''GrandRally'' going on to celebrate and honor the almost 300,000 children who live in grandparent-headed households—a total of 6.3 percent of all children in New York State. Another 112,000 children live in households headed by other relatives. I am so pleased that this resolution coincides with the GrandRally because they compliment each other nicely.

Nationwide, four and a half million children are living in grandparent-headed households and an additional 1.5 million children are living in households headed by other relatives. This represents a 30 percent increase between 1990 and 2000.

Kinship care families came to be because there are many tragic instances when parents are unable to raise their own children. Serious illness, death, substance abuse, incarceration, domestic violence, and unemployment are just some of the reasons that have forced grandparents and other relatives to step forward, often at great personal sacrifice, to provide safe and loving homes for the children in their care. This has allowed thousands of children to live with extended family rather than strangers.

We know that children are better off living in an environment with people that they know, who are familiar, and who are able to provide them with extended family as additional support. When foster children are placed with family members rather than strangers, they gain a critical sense of belonging and a family history.

Unfortunately, these grandparents and other relatives raising children often face a number of unnecessary barriers, including difficulties enrolling children in school, authorizing medical treatment, and accessing a variety of government benefits and services. Almost one-fifth of grandparents who are serving as the parents for their grandchildren are living in poverty.

The time, effort, and unselfish commitment of these family members is worthy of recognition.

This resolution encourages institutions and government entities at every level to promote public policies that support these caregivers by expanding existing services such as respite care, housing, and subsidized guardianship for grandparents and other relatives who are raising children inside and outside of the foster care system.

I want to thank all of my colleagues who are cosponsors of this resolution. Senator SNOWE and I are being joined by a diverse, bipartisan group of Senators whose commitment to this issue demonstrates the broad range of support for kinship care families.

SENATE CONCURRENT RESOLUTION 101—TO EXPRESS THE SENSE OF THE CONGRESS REGARDING THE 50TH ANNIVERSARY OF THE SUPREME COURT DECISION IN BROWN V. BOARD OF EDUCATION OF TOPEKA

Mr. BROWNBACK (for himself and Mr. ROBERTS) submitted the following concurrent resolution; which was referred to the Committee on Rules and Administration:

S. CON. RES. 101

Whereas Oliver L. Brown is the namesake of the landmark United States Supreme Court decision of 1954, Brown v. Board of Education (347 U.S. 483, 1954);

Whereas Oliver L. Brown is honored as the lead plaintiff in the Topeka, Kansas case which posed a legal challenge to racial segregation in public education;

Whereas by 1950, African-American parents began to renew their efforts to challenge State laws that only permitted their children to attend certain schools, and as a result, they organized through the National Association for the Advancement of Colored People (the NAACP), an organization founded in 1909 to address the issue of the unequal and discriminatory treatment experienced by African-Americans throughout the country;

Whereas Oliver L. Brown became part of the NAACP strategy led first by Charles Houston and later by Thurgood Marshall, to file suit against various school boards on behalf of such parents and their children;

Whereas Oliver L. Brown was a member of a distinguished group of plaintiffs in cases from Kansas (Brown v. Board of Education), Delaware (Gebhart v. Belton), South Carolina (Briggs v. Elliot), and Virginia (Davis v. County School Board of Prince Edward County) that were combined by the United States Supreme Court in Brown v. Board of Education, and in Washington, D.C. (Bolling v. Sharpe), considered separately by the Supreme Court with respect to the District of Columbia;

Whereas with respect to cases filed in the State of Kansas—

(1) there were 11 school integration cases dating from 1881 to 1949, prior to Brown v. Board of Education in 1954;

(2) in many instances, the schools for African-American children were substandard facilities with out-of-date textbooks and often no basic school supplies;

(3) in the fall of 1950, members of the Topeka, Kansas chapter of the NAACP agreed to again challenge the ''separate but equal'' doctrine governing public education;

(4) on February 28, 1951, the NAACP filed their case as Oliver L. Brown et al. v. The Board of Education of Topeka Kansas (which represented a group of 13 parents and 20 children);

(5) the district court ruled in favor of the school board and the case was appealed to the United States Supreme Court;

(6) at the Supreme Court level, the case was combined with other NAACP cases from Delaware, South Carolina, Virginia, and Washington, D.C. (which was later heard separately); and

(7) the combined cases became known as Oliver L. Brown et al. v. The Board of Education of Topeka, et al.;

Whereas with respect to the Virginia case of Davis et al. v. Prince Edward County Board of Supervisors—

(1) one of the few public high schools available to African-Americans in the State of Virginia was Robert Moton High School in Prince Edward County;

(2) built in 1943, it was never large enough to accommodate its student population;

(3) the gross inadequacies of these classrooms sparked a student strike in 1951;

(4) the NAACP soon joined their struggles and challenged the inferior quality of their school facilities in court; and

(5) although the United States District Court ordered that the plaintiffs be provided with equal school facilities, they were denied access to the schools for white students in their area;

Whereas with respect to the South Carolina case of Briggs v. R.W. Elliott—

(1) in Clarendon County, South Carolina, the State NAACP first attempted, unsuccessfully and with a single plaintiff, to take legal action in 1947 against the inferior conditions that African-American students experienced under South Carolina's racially segregated school system;

(2) by 1951, community activists convinced African-American parents to join the NAACP efforts to file a class action suit in United States District Court;

(3) the court found that the schools designated for African-Americans were grossly inadequate in terms of buildings, transportation, and teacher salaries when compared to the schools provided for white students; and

(4) an order to equalize the facilities was virtually ignored by school officials, and the schools were never made equal;

Whereas with respect to the Delaware cases of Belton v. Gebhart and Bulah v. Gebhart—

(1) first petitioned in 1951, these cases challenged the inferior conditions of 2 African-American schools;

(2) in the suburb of Claymont, Delaware, African-American children were prohibited from attending the area's local high school, and in the rural community of Hockessin, Delaware, African-American students were forced to attend a dilapidated 1-room schoolhouse, and were not provided transportation to the school, while white children in the area were provided transportation and a better school facility;

(3) both plaintiffs were represented by local NAACP attorneys; and

(4) though the State Supreme Court ruled in favor of the plaintiffs, the decision did not apply to all schools in Delaware;

Whereas with respect to the District of Columbia case of Bolling, et al. v. C. Melvin Sharpe, et al.—

(1) 11 African-American junior high school students were taken on a field trip to Washington, D.C.'s new John Philip Sousa School for white students only;

(2) the African-American students were denied admittance to the school and ordered to return to their inadequate school; and

(3) in 1951, a suit was filed on behalf of the students, and after review with the Brown case in 1954, the United States Supreme Court ruled that segregation in the Nation's capitol was unconstitutional;

Whereas on May 17, 1954, at 12:52 p.m., the United States Supreme Court ruled that the discriminatory nature of racial segregation ''violates the 14th Amendment to the Constitution, which guarantees all citizens equal protection of the laws'';

Whereas the decision in Brown v. Board of Education set the stage for dismantling racial segregation throughout the country;

Whereas the quiet courage of Oliver L. Brown and his fellow plaintiffs asserted the right of African-American people to have equal access to social, political, and communal structures;

Whereas our country is indebted to the work of the NAACP Legal Defense and Educational Fund, Inc., Howard University Law School, the NAACP, and the individual plaintiffs in the cases considered by the Supreme Court;

Whereas Reverend Oliver L. Brown died in 1961, and because the landmark United States Supreme Court decision bears his name, he is remembered as an icon for justice, freedom, and equal rights; and

Whereas the national importance of the Brown v. Board of Education decision had a profound impact on American culture, affecting families, communities, and governments by outlawing racial segregation in public education, resulting in the abolition of legal discrimination on any basis: Now therefore be it

Resolved by the Senate (the House of Representatives concurring), That—

(1) the Congress recognizes and honors the 50th anniversary of the Supreme Court decision in Brown v. Board of Education of Topeka;

(2) the Congress encourages all people of the United States to recognize the importance of the Supreme Court decision in Brown v. Board of Education of Topeka;

(3) by celebrating the 50th anniversary of the Brown v. Board of Education of Topeka, the Nation will be able to refresh and renew the importance of equality in society; and

(4) the Rotunda of the Capitol is authorized to be used on May 13, 2004 or June 17, 2004 for a ceremony to commemorate the 50th anniversary of the Supreme Court's landmark decision in Brown v. Board of Education of Topeka, 347 U.S. 483 (1954);

physical preparations for the ceremony shall be carried out in accordance with such conditions as the Architect of the Capitol may prescribe.

AMENDMENTS SUBMITTED AND PROPOSED

SA 3052. Mrs. FEINSTEIN submitted an amendment intended to be proposed to amendment SA 3048 proposed by Mr. McCAIN to the bill S. 150, to make permanent the moratorium on taxes on Internet access and multiple and discriminatory taxes on electronic commerce imposed by the Internet

Tax Freedom Act; which was ordered to lie on the table.

SA 3053. Mr. ROCKEFELLER submitted an amendment intended to be proposed to amendment SA 3048 proposed by Mr. McCAIN to the bill S. 150, supra; which was ordered to lie on the table.

SA 3054. Mr. ROCKEFELLER submitted an amendment intended to be proposed to amendment SA 3048 proposed by Mr. McCAIN to the bill S. 150, supra; which was ordered to lie on the table.

SA 3055. Mr. ALLEN submitted an amendment intended to be proposed to amendment SA 3048 proposed by Mr. McCAIN to the bill S. 150, supra; which was ordered to lie on the table.

SA 3056. Mr. ALLEN submitted an amendment intended to be proposed to amendment SA 3048 proposed by Mr. McCAIN to the bill S. 150, supra; which was ordered to lie on the table.

SA 3057. Mr. ALLEN submitted an amendment intended to be proposed to amendment SA 3048 proposed by Mr. McCAIN to the bill S. 150, supra; which was ordered to lie on the table.

SA 3058. Mr. ALLEN submitted an amendment intended to be proposed to amendment SA 3048 proposed by Mr. McCAIN to the bill S. 150, supra; which was ordered to lie on the table.

SA 3059. Mr. BINGAMAN submitted an amendment intended to be proposed to amendment SA 3048 proposed by Mr. McCAIN to the bill S. 150, supra; which was ordered to lie on the table.

SA 3060. Mr. CARPER submitted an amendment intended to be proposed to amendment SA 3048 proposed by Mr. McCAIN to the bill S. 150, supra; which was ordered to lie on the table.

SA 3061. Mr. CARPER submitted an amendment intended to be proposed to amendment SA 3048 proposed by Mr. McCAIN to the bill S. 150, supra; which was ordered to lie on the table.

SA 3062. Mr. CARPER submitted an amendment intended to be proposed to amendment SA 3048 proposed by Mr. McCAIN to the bill S. 150, supra; which was ordered to lie on the table.

SA 3063. Mr. CARPER submitted an amendment intended to be proposed to amendment SA 3048 proposed by Mr. McCAIN to the bill S. 150, supra; which was ordered to lie on the table.

SA 3064. Mrs. FEINSTEIN submitted an amendment intended to be proposed to amendment SA 3048 proposed by Mr. McCAIN to the bill S. 150, supra; which was ordered to lie on the table.

SA 3065. Mrs. FEINSTEIN submitted an amendment intended to be proposed by her to the bill S. 150, supra; which was ordered to lie on the table.

SA 3066. Mr. DORGAN submitted an amendment intended to be proposed by him to the bill S. 150, supra; which was ordered to lie on the table.

SA 3067. Mr. DORGAN submitted an amendment intended to be proposed by him to the bill S. 150, supra; which was ordered to lie on the table.

SA 3068. Mr. ALEXANDER submitted an amendment intended to be proposed to amendment SA 3048 proposed by Mr. McCAIN to the bill S. 150, supra; which was ordered to lie on the table.

SA 3069. Mr. ALEXANDER submitted an amendment intended to be proposed to amendment SA 3048 proposed by Mr. McCAIN to the bill S. 150, supra; which was ordered to lie on the table.

SA 3070. Mr. ALEXANDER submitted an amendment intended to be proposed to amendment SA 3048 proposed by Mr. McCAIN to the bill S. 150, supra; which was ordered to lie on the table.

SA 3071. Mr. ALEXANDER submitted an amendment intended to be proposed to amendment SA 3048 proposed by Mr. McCAIN to the bill S. 150, supra; which was ordered to lie on the table.

SA 3072. Mr. ALEXANDER submitted an amendment intended to be proposed to amendment SA 3048 proposed by Mr. McCAIN to the bill S. 150, supra; which was ordered to lie on the table.

SA 3073. Mr. ALEXANDER submitted an amendment intended to be proposed to amendment SA 3048 proposed by Mr. McCAIN to the bill S. 150, supra; which was ordered to lie on the table.

SA 3074. Mr. GRAHAM of Florida submitted an amendment intended to be proposed to amendment SA 3048 proposed by Mr. McCAIN to the bill S. 150, supra; which was ordered to lie on the table.

SA 3075. Mr. HOLLINGS submitted an amendment intended to be proposed by him to the bill S. 150, supra; which was ordered to lie on the table.

SA 3076. Mr. GRAHAM of Florida submitted an amendment intended to be proposed to amendment SA 3048 proposed by Mr. McCAIN to the bill S. 150, supra; which was ordered to lie on the table.

SA 3077. Mr. LAUTENBERG submitted an amendment intended to be proposed by him to the bill S. 150, supra; which was ordered to lie on the table.

SA 3078. Mr. LAUTENBERG submitted an amendment intended to be proposed to amendment SA 3048 proposed by Mr. McCAIN to the bill S. 150, supra; which was ordered to lie on the table.

SA 3079. Mr. GRAHAM of Florida submitted an amendment intended to be proposed to amendment SA 3048 proposed by Mr. McCAIN to the bill S. 150, supra; which was ordered to lie on the table.

SA 3080. Mr. ENZI submitted an amendment intended to be proposed by him to the bill S. 150, supra; which was ordered to lie on the table.

SA 3081. Mr. ENZI submitted an amendment intended to be proposed by him to the bill S. 150, supra; which was ordered to lie on the table.

SA 3082. Mr. LOTT submitted an amendment intended to be proposed to amendment SA 3048 proposed by Mr. McCAIN to the bill S. 150, supra; which was ordered to lie on the table.

TEXT OF AMENDMENTS— TUESDAY, APRIL 27, 2004

SA 3051. Mr. DOMENICI proposed an amendment to amendment SA 3050 proposed by Mr. DASCHLE (for himself, Mr. DURBIN, and Mr. JOHNSON) to the bill S. 150, to make permanent the moratorium on taxes on Internet access and multiple and discriminatory taxes on electronic commerce imposed by the Internet Tax Freedom Act; as follows:

Strike all after the first word and insert the following:

DIVISION ___—ENERGY

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This division may be cited as the ''Energy Policy Act of 2003''.

(b) TABLE OF CONTENTS.—The table of contents for this division is as follows:

TITLE I—ENERGY EFFICIENCY

Subtitle A—Federal Programs

SEC. 101. ENERGY AND WATER SAVING MEASURES IN CONGRESSIONAL BUILDINGS.

(a) IN GENERAL.—Part 3 of title V of the National Energy Conservation Policy Act (42 U.S.C. 8251 et seq.) is amended by adding at the end the following:

''SEC. 552. ENERGY AND WATER SAVINGS MEASURES IN CONGRESSIONAL BUILDINGS.

''(a) IN GENERAL.—The Architect of the Capitol—

''(1) shall develop, update, and implement a cost-effective energy conservation and management plan (referred to in this section as the 'plan') for all facilities administered by Congress (referred to in this section as 'congressional buildings') to meet the energy performance requirements for Federal buildings established under section 543(a)(1); and

''(2) shall submit the plan to Congress, not later than 180 days after the date of enactment of this section.

''(b) PLAN REQUIREMENTS.—The plan shall include—

''(1) a description of the life cycle cost analysis used to determine the cost-effectiveness of proposed energy efficiency projects;

''(2) a schedule of energy surveys to ensure complete surveys of all congressional buildings every 5 years to determine the cost and payback period of energy and water conservation measures;

''(3) a strategy for installation of life cycle cost-effective energy and water conservation measures;

''(4) the results of a study of the costs and benefits of installation of submetering in congressional buildings; and

''(5) information packages and 'how-to' guides for each Member and employing authority of Congress that detail simple, cost-effective methods to save energy and taxpayer dollars in the workplace.

''(c) ANNUAL REPORT.—The Architect of the Capitol shall submit to Congress annually a report on congressional energy management and conservation programs required under this section that describes in detail—

''(1) energy expenditures and savings estimates for each facility;

''(2) energy management and conservation projects; and

''(3) future priorities to ensure compliance with this section.''.

(b) TABLE OF CONTENTS AMENDMENT.—The table of contents of the National Energy Conservation Policy Act is amended by adding at the end of the items relating to part 3 of title V the following new item:

''Sec. 552. Energy and water savings measures in congressional buildings.''.

(c) REPEAL.—Section 310 of the Legislative Branch Appropriations Act, 1999 (2 U.S.C. 1815), is repealed.

(d) ENERGY INFRASTRUCTURE.—The Architect of the Capitol, building on the Master

Plan Study completed in July 2000, shall commission a study to evaluate the energy infrastructure of the Capital Complex to determine how the infrastructure could be augmented to become more energy efficient, using unconventional and renewable energy resources, in a way that would enable the Complex to have reliable utility service in the event of power fluctuations, shortages, or outages.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Architect of the Capitol to carry out subsection (d), $2,000,000 for each of fiscal years 2004 through 2008.

SEC. 102. ENERGY MANAGEMENT REQUIREMENTS.

(a) ENERGY REDUCTION GOALS.—

(1) AMENDMENT.—Section 543(a)(1) of the National Energy Conservation Policy Act (42 U.S.C. 8253(a)(1)) is amended by striking ''its Federal buildings so that'' and all that follows through the end and inserting ''the Federal buildings of the agency (including each industrial or laboratory facility) so that the energy consumption per gross square foot of the Federal buildings of the agency in fiscal years 2004 through 2013 is reduced, as compared with the energy consumption per gross square foot of the Federal buildings of the agency in fiscal year 2001, by the percentage specified in the following table:

''Fiscal Year	Percentage reduction
2004	2
2005	4
2006	6
2007	8
2008	10
2009	12
2010	14
2011	16
2012	18
2013	20.''.

(2) REPORTING BASELINE.—The energy reduction goals and baseline established in paragraph (1) of section 543(a) of the National Energy Conservation Policy Act (42 U.S.C. 8253(a)(1)), as amended by this subsection, supersede all previous goals and baselines under such paragraph, and related reporting requirements.

(b) REVIEW AND REVISION OF ENERGY PERFORMANCE REQUIREMENT.—Section 543(a) of the National Energy Conservation Policy Act (42 U.S.C. 8253(a)) is further amended by adding at the end the following:

''(3) Not later than December 31, 2012, the Secretary shall review the results of the implementation of the energy performance requirement established under paragraph (1) and submit to Congress recommendations concerning energy performance requirements for fiscal years 2014 through 2023.''.

(c) EXCLUSIONS.—Section 543(c)(1) of the National Energy Conservation Policy Act (42 U.S.C. 8253(c)(1)) is amended by striking ''An agency may exclude'' and all that follows through the end and inserting ''(A) An agency may exclude, from the energy performance requirement for a fiscal year established under subsection (a) and the energy management requirement established under subsection (b), any Federal building or collection of Federal buildings, if the head of the agency finds that—

''(i) compliance with those requirements would be impracticable;

''(ii) the agency has completed and submitted all federally required energy management reports;

''(iii) the agency has achieved compliance with the energy efficiency requirements of this Act, the Energy Policy Act of 1992, Executive orders, and other Federal law; and

''(iv) the agency has implemented all practicable, life cycle cost-effective projects with respect to the Federal building or collection of Federal buildings to be excluded.

''(B) A finding of impracticability under subparagraph (A)(i) shall be based on—

''(i) the energy intensiveness of activities carried out in the Federal building or collection of Federal buildings; or

''(ii) the fact that the Federal building or collection of Federal buildings is used in the performance of a national security function.''.

(d) REVIEW BY SECRETARY.—Section 543(c)(2) of the National Energy Conservation Policy Act (42 U.S.C. 8253(c)(2)) is amended—

(1) by striking ''impracticability standards'' and inserting ''standards for exclusion'';

(2) by striking ''a finding of impracticability'' and inserting ''the exclusion''; and

(3) by striking ''energy consumption requirements'' and inserting ''requirements of subsections (a) and (b)(1)''.

(e) CRITERIA.—Section 543(c) of the National Energy Conservation Policy Act (42 U.S.C. 8253(c)) is further amended by adding at the end the following:

''(3) Not later than 180 days after the date of enactment of this paragraph, the Secretary shall issue guidelines that establish criteria for exclusions under paragraph (1).''.

(f) RETENTION OF ENERGY AND WATER SAVINGS.—Section 546 of the National Energy Conservation Policy Act (42 U.S.C. 8256) is amended by adding at the end the following new subsection:

''(e) RETENTION OF ENERGY AND WATER SAVINGS.—An agency may retain any funds appropriated to that agency for energy expenditures, water expenditures, or wastewater treatment expenditures, at buildings subject to the requirements of section 543(a) and (b), that are not made because of energy savings or water savings. Except as otherwise provided by law, such funds may be used only for energy efficiency, water conservation, or unconventional and renewable energy resources projects.''.

(g) REPORTS.—Section 548(b) of the National Energy Conservation Policy Act (42 U.S.C. 8258(b)) is amended—

(1) in the subsection heading, by inserting ''THE PRESIDENT AND'' before ''CONGRESS''; and

(2) by inserting ''President and'' before ''Congress''.

(h) CONFORMING AMENDMENT.—Section 550(d) of the National Energy Conservation Policy Act (42 U.S.C. 8258b(d)) is amended in the second sentence by striking ''the 20 percent reduction goal established under section 543(a) of the National Energy Conservation Policy Act (42 U.S.C. 8253(a)).'' and inserting ''each of the energy reduction goals established under section 543(a).''.

SEC. 103. ENERGY USE MEASUREMENT AND ACCOUNTABILITY.

Section 543 of the National Energy Conservation Policy Act (42 U.S.C. 8253) is further amended by adding at the end the following:

''(e) METERING OF ENERGY USE.—

''(1) DEADLINE.—By October 1, 2010, in accordance with guidelines established by the Secretary under paragraph (2), all Federal buildings shall, for the purposes of efficient use of energy and reduction in the cost of electricity used in such buildings, be metered or submetered. Each agency shall use, to the maximum extent practicable, advanced meters or advanced metering devices that provide data at least daily and that measure at least hourly consumption of electricity in the Federal buildings of the agency. Such data shall be incorporated into existing Federal energy tracking systems and made available to Federal facility energy managers.

''(2) GUIDELINES.—

''(A) IN GENERAL.—Not later than 180 days after the date of enactment of this subsection, the Secretary, in consultation with the Department of Defense, the General Services Administration, representatives from the metering industry, utility industry, energy services industry, energy efficiency industry, energy efficiency advocacy organizations, national laboratories, universities, and Federal facility energy managers, shall establish guidelines for agencies to carry out paragraph (1).

''(B) REQUIREMENTS FOR GUIDELINES.—The guidelines shall—

''(i) take into consideration—

''(I) the cost of metering and submetering and the reduced cost of operation and maintenance expected to result from metering and submetering;

''(II) the extent to which metering and submetering are expected to result in increased potential for energy management, increased potential for energy savings and energy efficiency improvement, and cost and energy savings due to utility contract aggregation; and

''(III) the measurement and verification protocols of the Department of Energy;

''(ii) include recommendations concerning the amount of funds and the number of trained personnel necessary to gather and use the metering information to track and reduce energy use;

''(iii) establish priorities for types and locations of buildings to be metered and submetered based on cost-effectiveness and a schedule of 1 or more dates, not later than 1 year after the date of issuance of the guidelines, on which the requirements specified in paragraph (1) shall take effect; and

''(iv) establish exclusions from the requirements specified in paragraph (1) based on the de minimis quantity of energy use of a Federal building, industrial process, or structure.

''(3) PLAN.—Not later than 6 months after the date guidelines are established under paragraph (2), in a report submitted by the agency under section 548(a), each agency shall submit to the Secretary a plan describing how the agency will implement the requirements of paragraph (1), including (A) how the agency will designate personnel primarily responsible for achieving the requirements and (B) demonstration by the agency, complete with documentation, of any finding that advanced meters or advanced metering devices, as defined in paragraph (1), are not practicable.''.

SEC. 104. PROCUREMENT OF ENERGY EFFICIENT PRODUCTS.

(a) REQUIREMENTS.—Part 3 of title V of the National Energy Conservation Policy Act (42 U.S.C. 8251 et seq.), as amended by section 101 of this Act, is amended by adding at the end the following:

''SEC. 553. FEDERAL PROCUREMENT OF ENERGY EFFICIENT PRODUCTS.

''(a) DEFINITIONS.—In this section:

''(1) ENERGY STAR PRODUCT.—The term 'Energy Star product' means a product that is rated for energy efficiency under an Energy Star program.

''(2) ENERGY STAR PROGRAM.—The term 'Energy Star program' means the program established by section 324A of the Energy Policy and Conservation Act.

''(3) EXECUTIVE AGENCY.—The term 'executive agency' has the meaning given the term in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403).

''(4) FEMP DESIGNATED PRODUCT.—The term 'FEMP designated product' means a product that is designated under the Federal Energy Management Program of the Department of Energy as being among the highest 25 percent of equivalent products for energy efficiency.

''(b) PROCUREMENT OF ENERGY EFFICIENT PRODUCTS.—

''(1) REQUIREMENT.—To meet the requirements of an executive agency for an energy consuming product, the head of the executive agency shall, except as provided in paragraph (2), procure—

''(A) an Energy Star product; or

''(B) a FEMP designated product.

''(2) EXCEPTIONS.—The head of an executive agency is not required to procure an Energy Star product or FEMP designated product under paragraph (1) if the head of the executive agency finds in writing that—

''(A) an Energy Star product or FEMP designated product is not cost-effective over the life of the product taking energy cost savings into account; or

''(B) no Energy Star product or FEMP designated product is reasonably available that meets the functional requirements of the executive agency.

''(3) PROCUREMENT PLANNING.—The head of an executive agency shall incorporate into the specifications for all procurements involving energy consuming products and systems, including guide specifications, project specifications, and construction, renovation, and services contracts that include provision of energy consuming products and systems, and into the factors for the evaluation of offers received for the procurement, criteria for energy efficiency that are consistent with the criteria used for rating Energy Star products and for rating FEMP designated products.

''(c) LISTING OF ENERGY EFFICIENT PRODUCTS IN FEDERAL CATALOGS.—Energy Star products and FEMP designated products shall be clearly identified and prominently displayed in any inventory or listing of products by the General Services Administration or the Defense Logistics Agency. The General Services Administration or the Defense Logistics Agency shall supply only Energy Star products or FEMP designated products for all product categories covered by the Energy Star program or the Federal Energy Management Program, except in cases where the agency ordering a product specifies in writing that no Energy Star product or FEMP designated product is available to meet the buyer's functional requirements, or that no Energy Star product or FEMP designated product is cost-effective for the intended application over the life of the product, taking energy cost savings into account.

''(d) SPECIFIC PRODUCTS.—(1) In the case of electric motors of 1 to 500 horsepower, agencies shall select only premium efficient motors that meet a standard designated by the Secretary. The Secretary shall designate such a standard not later than 120 days after the date of the enactment of this section, after considering the recommendations of associated electric motor manufacturers and energy efficiency groups.

''(2) All Federal agencies are encouraged to take actions to maximize the efficiency of air conditioning and refrigeration equipment, including appropriate cleaning and maintenance, including the use of any system treatment or additive that will reduce the electricity consumed by air conditioning and refrigeration equipment. Any such treatment or additive must be—

''(A) determined by the Secretary to be effective in increasing the efficiency of air conditioning and refrigeration equipment without having an adverse impact on air conditioning performance (including cooling capacity) or equipment useful life;

''(B) determined by the Administrator of the Environmental Protection Agency to be environmentally safe; and

''(C) shown to increase seasonal energy efficiency ratio (SEER) or energy efficiency ratio (EER) when tested by the National Institute of Standards and Technology according to Department of Energy test procedures without causing any adverse impact on the system, system components, the refrigerant or lubricant, or other materials in the system.

Results of testing described in subparagraph (C) shall be published in the Federal Register for public review and comment. For purposes of this section, a hardware device or primary refrigerant shall not be considered an additive.

''(e) REGULATIONS.—Not later than 180 days after the date of the enactment of this section, the Secretary shall issue guidelines to carry out this section.''.

(b) CONFORMING AMENDMENT.—The table of contents of the National Energy Conservation Policy Act is further amended by inserting after the item relating to section 552 the following new item:

''Sec. 553. Federal procurement of energy efficient products.''.

SEC. 105. VOLUNTARY COMMITMENTS TO REDUCE INDUSTRIAL ENERGY INTENSITY.

(a) VOLUNTARY AGREEMENTS.—The Secretary of Energy is authorized to enter into voluntary agreements with 1 or more persons in industrial sectors that consume significant amounts of primary energy per unit of physical output to reduce the energy intensity of their production activities by a significant amount relative to improvements in each sector in recent years.

(b) RECOGNITION.—The Secretary of Energy, in cooperation with the Administrator of the Environmental Protection Agency and other appropriate Federal agencies, shall recognize and publicize the achievements of participants in voluntary agreements under this section.

(c) DEFINITION.—In this section, the term ''energy intensity'' means the primary energy consumed per unit of physical output in an industrial process.

SEC. 106. ADVANCED BUILDING EFFICIENCY TESTBED.

(a) ESTABLISHMENT.—The Secretary of Energy, in consultation with the Administrator of General Services, shall establish an Advanced Building Efficiency Testbed program for the development, testing, and demonstration of advanced engineering systems, components, and materials to enable innovations in building technologies. The program shall evaluate efficiency concepts for government and industry buildings, and demonstrate the ability of next generation buildings to support individual and organizational productivity and health (including by improving indoor air quality) as well as flexibility and technological change to improve environmental sustainability. Such program shall complement and not duplicate existing national programs.

(b) PARTICIPANTS.—The program established under subsection (a) shall be led by a university with the ability to combine the expertise from numerous academic fields including, at a minimum, intelligent workplaces and advanced building systems and engineering, electrical and computer engineering, computer science, architecture, urban design, and environmental and mechanical engineering. Such university shall partner with other universities and entities who have established programs and the capability of advancing innovative building efficiency technologies.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Energy to carry out this section $6,000,000 for each of the fiscal years 2004 through 2006, to remain available until expended. For any fiscal year in which funds are expended under this section, the Secretary shall provide ⅓ of the total amount to the lead university described in subsection (b), and provide the remaining ⅔ to the other participants referred to in subsection (b) on an equal basis.

SEC. 107. FEDERAL BUILDING PERFORMANCE STANDARDS.

Section 305(a) of the Energy Conservation and Production Act (42 U.S.C. 6834(a)) is amended—

(1) in paragraph (2)(A), by striking ''CABO Model Energy Code, 1992'' and inserting ''the 2003 International Energy Conservation Code''; and

(2) by adding at the end the following:

''(3) REVISED FEDERAL BUILDING ENERGY EFFICIENCY PERFORMANCE STANDARDS.—

''(A) IN GENERAL.—Not later than 1 year after the date of enactment of this paragraph, the Secretary of Energy shall establish, by rule, revised Federal building energy efficiency performance standards that require that—

''(i) if life-cycle cost-effective, for new Federal buildings—

''(I) such buildings be designed so as to achieve energy consumption levels at least 30 percent below those of the version current as of the date of enactment of this paragraph of the ASHRAE Standard or the International Energy Conservation Code, as appropriate; and

''(II) sustainable design principles are applied to the siting, design, and construction of all new and replacement buildings; and

''(ii) where water is used to achieve energy efficiency, water conservation technologies shall be applied to the extent they are life-cycle cost effective.

''(B) ADDITIONAL REVISIONS.—Not later than 1 year after the date of approval of each subsequent revision of the ASHRAE Standard or the International Energy Conservation Code, as appropriate, the Secretary of Energy shall determine, based on the cost-effectiveness of the requirements under the amendments, whether the revised standards established under this paragraph should be updated to reflect the amendments.

''(C) STATEMENT ON COMPLIANCE OF NEW BUILDINGS.—In the budget request of the Federal agency for each fiscal year and each report submitted by the Federal agency under section 548(a) of the National Energy Conservation Policy Act (42 U.S.C. 8258(a)), the head of each Federal agency shall include—

''(i) a list of all new Federal buildings owned, operated, or controlled by the Federal agency; and

''(ii) a statement concerning whether the Federal buildings meet or exceed the revised standards established under this paragraph.''.

SEC. 108. INCREASED USE OF RECOVERED MINERAL COMPONENT IN FEDERALLY FUNDED PROJECTS INVOLVING PROCUREMENT OF CEMENT OR CONCRETE.

(a) AMENDMENT.—Subtitle F of the Solid Waste Disposal Act (42 U.S.C. 6961 et seq.) is amended by adding at the end the following new section:

''INCREASED USE OF RECOVERED MINERAL COMPONENT IN FEDERALLY FUNDED PROJECTS INVOLVING PROCUREMENT OF CEMENT OR CONCRETE

''SEC. 6005. (a) DEFINITIONS.—In this section:

''(1) AGENCY HEAD.—The term 'agency head' means—

''(A) the Secretary of Transportation; and

''(B) the head of each other Federal agency that on a regular basis procures, or provides Federal funds to pay or assist in paying the cost of procuring, material for cement or concrete projects.

''(2) CEMENT OR CONCRETE PROJECT.—The term 'cement or concrete project' means a project for the construction or maintenance

of a highway or other transportation facility or a Federal, State, or local government building or other public facility that—

''(A) involves the procurement of cement or concrete; and

''(B) is carried out in whole or in part using Federal funds.

''(3) RECOVERED MINERAL COMPONENT.—The term 'recovered mineral component' means—

''(A) ground granulated blast furnace slag;

''(B) coal combustion fly ash; and

''(C) any other waste material or byproduct recovered or diverted from solid waste that the Administrator, in consultation with an agency head, determines should be treated as recovered mineral component under this section for use in cement or concrete projects paid for, in whole or in part, by the agency head.

''(b) IMPLEMENTATION OF REQUIREMENTS.—

''(1) IN GENERAL.—Not later than 1 year after the date of enactment of this section, the Administrator and each agency head shall take such actions as are necessary to implement fully all procurement requirements and incentives in effect as of the date of enactment of this section (including guidelines under section 6002) that provide for the use of cement and concrete incorporating recovered mineral component in cement or concrete projects.

''(2) PRIORITY.—In carrying out paragraph (1) an agency head shall give priority to achieving greater use of recovered mineral component in cement or concrete projects for which recovered mineral components historically have not been used or have been used only minimally.

''(3) CONFORMANCE.—The Administrator and each agency head shall carry out this subsection in accordance with section 6002.

''(c) FULL IMPLEMENTATION STUDY.—

''(1) IN GENERAL.—The Administrator, in cooperation with the Secretary of Transportation and the Secretary of Energy, shall conduct a study to determine the extent to which current procurement requirements, when fully implemented in accordance with subsection (b), may realize energy savings and environmental benefits attainable with substitution of recovered mineral component in cement used in cement or concrete projects.

''(2) MATTERS TO BE ADDRESSED.—The study shall—

''(A) quantify the extent to which recovered mineral components are being substituted for Portland cement, particularly as a result of current procurement requirements, and the energy savings and environmental benefits associated with that substitution;

''(B) identify all barriers in procurement requirements to greater realization of energy savings and environmental benefits, including barriers resulting from exceptions from current law; and

''(C)(i) identify potential mechanisms to achieve greater substitution of recovered mineral component in types of cement or concrete projects for which recovered mineral components historically have not been used or have been used only minimally;

''(ii) evaluate the feasibility of establishing guidelines or standards for optimized substitution rates of recovered mineral component in those cement or concrete projects; and

''(iii) identify any potential environmental or economic effects that may result from greater substitution of recovered mineral component in those cement or concrete projects.

''(3) REPORT.—Not later than 30 months after the date of enactment of this section, the Administrator shall submit to Congress a report on the study.

''(d) ADDITIONAL PROCUREMENT REQUIREMENTS.—Unless the study conducted under subsection (c) identifies any effects or other problems described in subsection (c)(2)(C)(iii) that warrant further review or delay, the Administrator and each agency head shall, not later than 1 year after the release of the report in accordance with subsection (c)(3), take additional actions authorized under this Act to establish procurement requirements and incentives that provide for the use of cement and concrete with increased substitution of recovered mineral component in the construction and maintenance of cement or concrete projects, so as to—

''(1) realize more fully the energy savings and environmental benefits associated with increased substitution; and

''(2) eliminate barriers identified under subsection (c).

''(e) EFFECT OF SECTION.—Nothing in this section affects the requirements of section 6002 (including the guidelines and specifications for implementing those requirements).''.

(b) TABLE OF CONTENTS AMENDMENT.—The table of contents of the Solid Waste Disposal Act is amended by adding after the item relating to section 6004 the following new item:

''Sec. 6005. Increased use of recovered mineral component in federally funded projects involving procurement of cement or concrete.''.

Subtitle B—Energy Assistance and State Programs

SEC. 121. LOW INCOME HOME ENERGY ASSISTANCE PROGRAM.

Section 2602(b) of the Low-Income Home Energy Assistance Act of 1981 (42 U.S.C. 8621(b)) is amended by striking ''and $2,000,000,000 for each of fiscal years 2002 through 2004'' and inserting ''$2,000,000,000 for fiscal years 2002 and 2003, and $3,400,000,000 for each of fiscal years 2004 through 2006''.

SEC. 122. WEATHERIZATION ASSISTANCE.

Section 422 of the Energy Conservation and Production Act (42 U.S.C. 6872) is amended by striking ''for fiscal years 1999 through 2003 such sums as may be necessary'' and inserting ''$325,000,000 for fiscal year 2004, $400,000,000 for fiscal year 2005, and $500,000,000 for fiscal year 2006''.

SEC. 123. STATE ENERGY PROGRAMS.

(a) STATE ENERGY CONSERVATION PLANS.—Section 362 of the Energy Policy and Conservation Act (42 U.S.C. 6322) is amended by inserting at the end the following new subsection:

''(g) The Secretary shall, at least once every 3 years, invite the Governor of each State to review and, if necessary, revise the energy conservation plan of such State submitted under subsection (b) or (e). Such reviews should consider the energy conservation plans of other States within the region, and identify opportunities and actions carried out in pursuit of common energy conservation goals.''.

(b) STATE ENERGY EFFICIENCY GOALS.—Section 364 of the Energy Policy and Conservation Act (42 U.S.C. 6324) is amended to read as follows:

''STATE ENERGY EFFICIENCY GOALS

''SEC. 364. Each State energy conservation plan with respect to which assistance is made available under this part on or after the date of enactment of the Energy Policy Act of 2003 shall contain a goal, consisting of an improvement of 25 percent or more in the efficiency of use of energy in the State concerned in calendar year 2010 as compared to calendar year 1990, and may contain interim goals.''.

(c) AUTHORIZATION OF APPROPRIATIONS.—Section 365(f) of the Energy Policy and Conservation Act (42 U.S.C. 6325(f)) is amended by striking ''for fiscal years 1999 through 2003 such sums as may be necessary'' and inserting ''$100,000,000 for each of the fiscal years 2004 and 2005 and $125,000,000 for fiscal year 2006''.

SEC. 124. ENERGY EFFICIENT APPLIANCE REBATE PROGRAMS.

(a) DEFINITIONS.—In this section:

(1) ELIGIBLE STATE.—The term ''eligible State'' means a State that meets the requirements of subsection (b).

(2) ENERGY STAR PROGRAM.—The term ''Energy Star program'' means the program established by section 324A of the Energy Policy and Conservation Act.

(3) RESIDENTIAL ENERGY STAR PRODUCT.—The term ''residential Energy Star product'' means a product for a residence that is rated for energy efficiency under the Energy Star program.

(4) SECRETARY.—The term ''Secretary'' means the Secretary of Energy.

(5) STATE ENERGY OFFICE.—The term ''State energy office'' means the State agency responsible for developing State energy conservation plans under section 362 of the Energy Policy and Conservation Act (42 U.S.C. 6322).

(6) STATE PROGRAM.—The term ''State program'' means a State energy efficient appliance rebate program described in subsection (b)(1).

(b) ELIGIBLE STATES.—A State shall be eligible to receive an allocation under subsection (c) if the State—

(1) establishes (or has established) a State energy efficient appliance rebate program to provide rebates to residential consumers for the purchase of residential Energy Star products to replace used appliances of the same type;

(2) submits an application for the allocation at such time, in such form, and containing such information as the Secretary may require; and

(3) provides assurances satisfactory to the Secretary that the State will use the allocation to supplement, but not supplant, funds made available to carry out the State program.

(c) AMOUNT OF ALLOCATIONS.—

(1) IN GENERAL.—Subject to paragraph (2), for each fiscal year, the Secretary shall allocate to the State energy office of each eligible State to carry out subsection (d) an amount equal to the product obtained by multiplying the amount made available under subsection (f) for the fiscal year by the ratio that the population of the State in the most recent calendar year for which data are available bears to the total population of all eligible States in that calendar year.

(2) MINIMUM ALLOCATIONS.—For each fiscal year, the amounts allocated under this subsection shall be adjusted proportionately so that no eligible State is allocated a sum that is less than an amount determined by the Secretary.

(d) USE OF ALLOCATED FUNDS.—The allocation to a State energy office under subsection (c) may be used to pay up to 50 percent of the cost of establishing and carrying out a State program.

(e) ISSUANCE OF REBATES.—Rebates may be provided to residential consumers that meet the requirements of the State program. The amount of a rebate shall be determined by the State energy office, taking into consideration—

(1) the amount of the allocation to the State energy office under subsection (c);

(2) the amount of any Federal or State tax incentive available for the purchase of the residential Energy Star product; and

(3) the difference between the cost of the residential Energy Star product and the cost

of an appliance that is not a residential Energy Star product, but is of the same type as, and is the nearest capacity, performance, and other relevant characteristics (as determined by the State energy office) to, the residential Energy Star product.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary to carry out this section $50,000,000 for each of the fiscal years 2004 through 2008.

SEC. 125. ENERGY EFFICIENT PUBLIC BUILDINGS.

(a) GRANTS.—The Secretary of Energy may make grants to the State agency responsible for developing State energy conservation plans under section 362 of the Energy Policy and Conservation Act (42 U.S.C. 6322), or, if no such agency exists, a State agency designated by the Governor of the State, to assist units of local government in the State in improving the energy efficiency of public buildings and facilities—

(1) through construction of new energy efficient public buildings that use at least 30 percent less energy than a comparable public building constructed in compliance with standards prescribed in the most recent version of the International Energy Conservation Code, or a similar State code intended to achieve substantially equivalent efficiency levels; or

(2) through renovation of existing public buildings to achieve reductions in energy use of at least 30 percent as compared to the baseline energy use in such buildings prior to renovation, assuming a 3-year, weather-normalized average for calculating such baseline.

(b) ADMINISTRATION.—State energy offices receiving grants under this section shall—

(1) maintain such records and evidence of compliance as the Secretary may require; and

(2) develop and distribute information and materials and conduct programs to provide technical services and assistance to encourage planning, financing, and design of energy efficient public buildings by units of local government.

(c) AUTHORIZATION OF APPROPRIATIONS.—For the purposes of this section, there are authorized to be appropriated to the Secretary of Energy $30,000,000 for each of fiscal years 2004 through 2008. Not more than 10 percent of appropriated funds shall be used for administration.

SEC. 126. LOW INCOME COMMUNITY ENERGY EFFICIENCY PILOT PROGRAM.

(a) GRANTS.—The Secretary of Energy is authorized to make grants to units of local government, private, non-profit community development organizations, and Indian tribe economic development entities to improve energy efficiency; identify and develop alternative, renewable, and distributed energy supplies; and increase energy conservation in low income rural and urban communities.

(b) PURPOSE OF GRANTS.—The Secretary may make grants on a competitive basis for—

(1) investments that develop alternative, renewable, and distributed energy supplies;

(2) energy efficiency projects and energy conservation programs;

(3) studies and other activities that improve energy efficiency in low income rural and urban communities;

(4) planning and development assistance for increasing the energy efficiency of buildings and facilities; and

(5) technical and financial assistance to local government and private entities on developing new renewable and distributed sources of power or combined heat and power generation.

(c) DEFINITION.—For purposes of this section, the term ''Indian tribe'' means any Indian tribe, band, nation, or other organized group or community, including any Alaskan Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(d) AUTHORIZATION OF APPROPRIATIONS.—For the purposes of this section there are authorized to be appropriated to the Secretary of Energy $20,000,000 for each of fiscal years 2004 through 2006.

Subtitle C—Energy Efficient Products

SEC. 131. ENERGY STAR PROGRAM.

(a) AMENDMENT.—The Energy Policy and Conservation Act (42 U.S.C. 6201 et seq.) is amended by inserting the following after section 324:

''SEC. 324A. ENERGY STAR PROGRAM.

''There is established at the Department of Energy and the Environmental Protection Agency a voluntary program to identify and promote energy-efficient products and buildings in order to reduce energy consumption, improve energy security, and reduce pollution through voluntary labeling of or other forms of communication about products and buildings that meet the highest energy efficiency standards. Responsibilities under the program shall be divided between the Department of Energy and the Environmental Protection Agency consistent with the terms of agreements between the 2 agencies. The Administrator and the Secretary shall—

''(1) promote Energy Star compliant technologies as the preferred technologies in the marketplace for achieving energy efficiency and to reduce pollution;

''(2) work to enhance public awareness of the Energy Star label, including special outreach to small businesses;

''(3) preserve the integrity of the Energy Star label;

''(4) solicit comments from interested parties prior to establishing or revising an Energy Star product category, specification, or criterion (or effective dates for any of the foregoing);

''(5) upon adoption of a new or revised product category, specification, or criterion, provide reasonable notice to interested parties of any changes (including effective dates) in product categories, specifications, or criteria along with an explanation of such changes and, where appropriate, responses to comments submitted by interested parties; and

''(6) provide appropriate lead time (which shall be 9 months, unless the Agency or Department determines otherwise) prior to the effective date for a new or a significant revision to a product category, specification, or criterion, taking into account the timing requirements of the manufacturing, product marketing, and distribution process for the specific product addressed.''.

(b) TABLE OF CONTENTS AMENDMENT.—The table of contents of the Energy Policy and Conservation Act is amended by inserting after the item relating to section 324 the following new item:

''Sec. 324A. Energy Star program.''.

SEC. 132. HVAC MAINTENANCE CONSUMER EDUCATION PROGRAM.

Section 337 of the Energy Policy and Conservation Act (42 U.S.C. 6307) is amended by adding at the end the following:

''(c) HVAC MAINTENANCE.—For the purpose of ensuring that installed air conditioning and heating systems operate at their maximum rated efficiency levels, the Secretary shall, not later than 180 days after the date of enactment of this subsection, carry out a program to educate homeowners and small business owners concerning the energy savings resulting from properly conducted maintenance of air conditioning, heating, and ventilating systems. The Secretary shall carry out the program in a cost-shared manner in cooperation with the Administrator of the Environmental Protection Agency and such other entities as the Secretary considers appropriate, including industry trade associations, industry members, and energy efficiency organizations.

''(d) SMALL BUSINESS EDUCATION AND ASSISTANCE.—The Administrator of the Small Business Administration, in consultation with the Secretary of Energy and the Administrator of the Environmental Protection Agency, shall develop and coordinate a Government-wide program, building on the existing Energy Star for Small Business Program, to assist small businesses to become more energy efficient, understand the cost savings obtainable through efficiencies, and identify financing options for energy efficiency upgrades. The Secretary and the Administrator of the Small Business Administration shall make the program information available directly to small businesses and through other Federal agencies, including the Federal Emergency Management Program and the Department of Agriculture.''.

SEC. 133. ENERGY CONSERVATION STANDARDS FOR ADDITIONAL PRODUCTS.

(a) DEFINITIONS.—Section 321 of the Energy Policy and Conservation Act (42 U.S.C. 6291) is amended—

(1) in paragraph (30)(S), by striking the period and adding at the end the following: ''but does not include any lamp specifically designed to be used for special purpose applications and that is unlikely to be used in general purpose applications such as those described in subparagraph (D), and also does not include any lamp not described in subparagraph (D) that is excluded by the Secretary, by rule, because the lamp is designed for special applications and is unlikely to be used in general purpose applications.''; and

(2) by adding at the end the following:

''(32) The term 'battery charger' means a device that charges batteries for consumer products and includes battery chargers embedded in other consumer products.

''(33) The term 'commercial refrigerators, freezers, and refrigerator-freezers' means refrigerators, freezers, or refrigerator-freezers that—

''(A) are not consumer products regulated under this Act; and

''(B) incorporate most components involved in the vapor-compression cycle and the refrigerated compartment in a single package.

''(34) The term 'external power supply' means an external power supply circuit that is used to convert household electric current into either DC current or lower-voltage AC current to operate a consumer product.

''(35) The term 'illuminated exit sign' means a sign that—

''(A) is designed to be permanently fixed in place to identify an exit; and

''(B) consists of an electrically powered integral light source that illuminates the legend 'EXIT' and any directional indicators and provides contrast between the legend, any directional indicators, and the background.

''(36)(A) Except as provided in subparagraph (B), the term 'distribution transformer' means a transformer that—

''(i) has an input voltage of 34.5 kilovolts or less;

''(ii) has an output voltage of 600 volts or less; and

''(iii) is rated for operation at a frequency of 60 Hertz.

''(B) The term 'distribution transformer' does not include—

''(i) transformers with multiple voltage taps, with the highest voltage tap equaling at least 20 percent more than the lowest voltage tap;

''(ii) transformers, such as those commonly known as drive transformers, rectifier transformers, auto-transformers, Uninterruptible Power System transformers, impedance transformers, harmonic transformers, regulating transformers, sealed and nonventilating transformers, machine tool transformers, welding transformers, grounding transformers, or testing transformers, that are designed to be used in a special purpose application and are unlikely to be used in general purpose applications; or

''(iii) any transformer not listed in clause (ii) that is excluded by the Secretary by rule because—

''(I) the transformer is designed for a special application;

''(II) the transformer is unlikely to be used in general purpose applications; and

''(III) the application of standards to the transformer would not result in significant energy savings.

''(37) The term 'low-voltage dry-type distribution transformer' means a distribution transformer that—

''(A) has an input voltage of 600 volts or less;

''(B) is air-cooled; and

''(C) does not use oil as a coolant.

''(38) The term 'standby mode' means the lowest power consumption mode that—

''(A) cannot be switched off or influenced by the user; and

''(B) may persist for an indefinite time when an appliance is connected to the main electricity supply and used in accordance with the manufacturer's instructions,

as defined on an individual product basis by the Secretary.

''(39) The term 'torchiere' means a portable electric lamp with a reflector bowl that directs light upward so as to give indirect illumination.

''(40) The term 'traffic signal module' means a standard 8-inch (200mm) or 12-inch (300mm) traffic signal indication, consisting of a light source, a lens, and all other parts necessary for operation, that communicates movement messages to drivers through red, amber, and green colors.

''(41) The term 'transformer' means a device consisting of 2 or more coils of insulated wire that transfers alternating current by electromagnetic induction from 1 coil to another to change the original voltage or current value.

''(42) The term 'unit heater' means a self-contained fan-type heater designed to be installed within the heated space, except that such term does not include a warm air furnace.''.

(b) TEST PROCEDURES.—Section 323 of the Energy Policy and Conservation Act (42 U.S.C. 6293) is amended—

(1) in subsection (b), by adding at the end the following:

''(9) Test procedures for illuminated exit signs shall be based on the test method used under Version 2.0 of the Energy Star program of the Environmental Protection Agency for illuminated exit signs.

''(10) Test procedures for distribution transformers and low voltage dry-type distribution transformers shall be based on the 'Standard Test Method for Measuring the Energy Consumption of Distribution Transformers' prescribed by the National Electrical Manufacturers Association (NEMA TP 2–1998). The Secretary may review and revise this test procedure. For purposes of section 346(a), this test procedure shall be deemed to be testing requirements prescribed by the Secretary under section 346(a)(1) for distribution transformers for which the Secretary makes a determination that energy conservation standards would be technologically feasible and economically justified, and would result in significant energy savings.

''(11) Test procedures for traffic signal modules shall be based on the test method used under the Energy Star program of the Environmental Protection Agency for traffic signal modules, as in effect on the date of enactment of this paragraph.

''(12) Test procedures for medium base compact fluorescent lamps shall be based on the test methods used under the August 9, 2001, version of the Energy Star program of the Environmental Protection Agency and Department of Energy for compact fluorescent lamps. Covered products shall meet all test requirements for regulated parameters in section 325(bb). However, covered products may be marketed prior to completion of lamp life and lumen maintenance at 40 percent of rated life testing provided manufacturers document engineering predictions and analysis that support expected attainment of lumen maintenance at 40 percent rated life and lamp life time.''; and

(2) by adding at the end the following:

''(f) ADDITIONAL CONSUMER AND COMMERCIAL PRODUCTS.—The Secretary shall, not later than 24 months after the date of enactment of this subsection, prescribe testing requirements for suspended ceiling fans, refrigerated bottled or canned beverage vending machines, and commercial refrigerators, freezers, and refrigerator-freezers. Such testing requirements shall be based on existing test procedures used in industry to the extent practical and reasonable. In the case of suspended ceiling fans, such test procedures shall include efficiency at both maximum output and at an output no more than 50 percent of the maximum output.''.

(c) NEW STANDARDS.—Section 325 of the Energy Policy and Conservation Act (42 U.S.C. 6295) is amended by adding at the end the following:

''(u) BATTERY CHARGER AND EXTERNAL POWER SUPPLY ELECTRIC ENERGY CONSUMPTION.—

''(1) INITIAL RULEMAKING.—(A) The Secretary shall, within 18 months after the date of enactment of this subsection, prescribe by notice and comment, definitions and test procedures for the power use of battery chargers and external power supplies. In establishing these test procedures, the Secretary shall consider, among other factors, existing definitions and test procedures used for measuring energy consumption in standby mode and other modes and assess the current and projected future market for battery chargers and external power supplies. This assessment shall include estimates of the significance of potential energy savings from technical improvements to these products and suggested product classes for standards. Prior to the end of this time period, the Secretary shall hold a scoping workshop to discuss and receive comments on plans for developing energy conservation standards for energy use for these products.

''(B) The Secretary shall, within 3 years after the date of enactment of this subsection, issue a final rule that determines whether energy conservation standards shall be issued for battery chargers and external power supplies or classes thereof. For each product class, any such standards shall be set at the lowest level of energy use that—

''(i) meets the criteria and procedures of subsections (o), (p), (q), (r), (s), and (t); and

''(ii) will result in significant overall annual energy savings, considering both standby mode and other operating modes.

''(2) REVIEW OF STANDBY ENERGY USE IN COVERED PRODUCTS.—In determining pursuant to section 323 whether test procedures and energy conservation standards pursuant to this section should be revised, the Secretary shall consider, for covered products that are major sources of standby mode energy consumption, whether to incorporate standby mode into such test procedures and energy conservation standards, taking into account, among other relevant factors, standby mode power consumption compared to overall product energy consumption.

''(3) RULEMAKING.—The Secretary shall not propose a standard under this section unless the Secretary has issued applicable test procedures for each product pursuant to section 323.

''(4) EFFECTIVE DATE.—Any standard issued under this subsection shall be applicable to products manufactured or imported 3 years after the date of issuance.

''(5) VOLUNTARY PROGRAMS.—The Secretary and the Administrator shall collaborate and develop programs, including programs pursuant to section 324A (relating to Energy Star Programs) and other voluntary industry agreements or codes of conduct, that are designed to reduce standby mode energy use.

''(v) SUSPENDED CEILING FANS, VENDING MACHINES, AND COMMERCIAL REFRIGERATORS, FREEZERS, AND REFRIGERATOR-FREEZERS.—The Secretary shall not later than 36 months after the date on which testing requirements are prescribed by the Secretary pursuant to section 323(f), prescribe, by rule, energy conservation standards for suspended ceiling fans, refrigerated bottled or canned beverage vending machines, and commercial refrigerators, freezers, and refrigerator-freezers. In establishing standards under this subsection, the Secretary shall use the criteria and procedures contained in subsections (o) and (p). Any standard prescribed under this subsection shall apply to products manufactured 3 years after the date of publication of a final rule establishing such standard.

''(w) ILLUMINATED EXIT SIGNS.—Illuminated exit signs manufactured on or after January 1, 2005, shall meet the Version 2.0 Energy Star Program performance requirements for illuminated exit signs prescribed by the Environmental Protection Agency.

''(x) TORCHIERES.—Torchieres manufactured on or after January 1, 2005—

''(1) shall consume not more than 190 watts of power; and

''(2) shall not be capable of operating with lamps that total more than 190 watts.

''(y) LOW VOLTAGE DRY-TYPE DISTRIBUTION TRANSFORMERS.—The efficiency of low voltage dry-type distribution transformers manufactured on or after January 1, 2005, shall be the Class I Efficiency Levels for distribution transformers specified in Table 4–2 of the 'Guide for Determining Energy Efficiency for Distribution Transformers' published by the National Electrical Manufacturers Association (NEMA TP–1–2002).

''(z) TRAFFIC SIGNAL MODULES.—Traffic signal modules manufactured on or after January 1, 2006, shall meet the performance requirements used under the Energy Star program of the Environmental Protection Agency for traffic signals, as in effect on the date of enactment of this subsection, and shall be installed with compatible, electrically connected signal control interface devices and conflict monitoring systems.

''(aa) UNIT HEATERS.—Unit heaters manufactured on or after the date that is 3 years after the date of enactment of this subsection shall be equipped with an intermittent ignition device and shall have either power venting or an automatic flue damper.

''(bb) MEDIUM BASE COMPACT FLUORESCENT LAMPS.—Bare lamp and covered lamp (no reflector) medium base compact fluorescent lamps manufactured on or after January 1, 2005, shall meet the following requirements prescribed by the August 9, 2001, version of

the Energy Star Program Requirements for Compact Fluorescent Lamps, Energy Star Eligibility Criteria, Energy-Efficiency Specification issued by the Environmental Protection Agency and Department of Energy: minimum initial efficacy; lumen maintenance at 1000 hours; lumen maintenance at 40 percent of rated life; rapid cycle stress test; and lamp life. The Secretary may, by rule, establish requirements for color quality (CRI); power factor; operating frequency; and maximum allowable start time based on the requirements prescribed by the August 9, 2001, version of the Energy Star Program Requirements for Compact Fluorescent Lamps. The Secretary may, by rule, revise these requirements or establish other requirements considering energy savings, cost effectiveness, and consumer satisfaction.

''(cc) EFFECTIVE DATE.—Section 327 shall apply—

''(1) to products for which standards are to be established under subsections (u) and (v) on the date on which a final rule is issued by the Department of Energy, except that any State or local standards prescribed or enacted for any such product prior to the date on which such final rule is issued shall not be preempted until the standard established under subsection (u) or (v) for that product takes effect; and

''(2) to products for which standards are established under subsections (w) through (bb) on the date of enactment of those subsections, except that any State or local standards prescribed or enacted prior to the date of enactment of those subsections shall not be preempted until the standards established under subsections (w) through (bb) take effect.''.

(d) RESIDENTIAL FURNACE FANS.—Section 325(f)(3) of the Energy Policy and Conservation Act (42 U.S.C. 6295(f)(3)) is amended by adding the following new subparagraph at the end:

''(D) Notwithstanding any provision of this Act, the Secretary may consider, and prescribe, if the requirements of subsection (o) of this section are met, energy efficiency or energy use standards for electricity used for purposes of circulating air through duct work.''.

SEC. 134. ENERGY LABELING.

(a) RULEMAKING ON EFFECTIVENESS OF CONSUMER PRODUCT LABELING.—Section 324(a)(2) of the Energy Policy and Conservation Act (42 U.S.C. 6294(a)(2)) is amended by adding at the end the following:

''(F) Not later than 3 months after the date of enactment of this subparagraph, the Commission shall initiate a rulemaking to consider the effectiveness of the current consumer products labeling program in assisting consumers in making purchasing decisions and improving energy efficiency and to consider changes to the labeling rules that would improve the effectiveness of consumer product labels. Such rulemaking shall be completed not later than 2 years after the date of enactment of this subparagraph.''.

(b) RULEMAKING ON LABELING FOR ADDITIONAL PRODUCTS.—Section 324(a) of the Energy Policy and Conservation Act (42 U.S.C. 6294(a)) is further amended by adding at the end the following:

''(5) The Secretary or the Commission, as appropriate, may, for covered products referred to in subsections (u) through (aa) of section 325, prescribe, by rule, pursuant to this section, labeling requirements for such products after a test procedure has been set pursuant to section 323. In the case of products to which TP–1 standards under section 325(y) apply, labeling requirements shall be based on the 'Standard for the Labeling of Distribution Transformer Efficiency' prescribed by the National Electrical Manufacturers Association (NEMA TP–3) as in effect upon the date of enactment of this paragraph.''.

Subtitle D—Public Housing

SEC. 141. CAPACITY BUILDING FOR ENERGY-EFFICIENT, AFFORDABLE HOUSING.

Section 4(b) of the HUD Demonstration Act of 1993 (42 U.S.C. 9816 note) is amended—

(1) in paragraph (1), by inserting before the semicolon at the end the following: '', including capabilities regarding the provision of energy efficient, affordable housing and residential energy conservation measures''; and

(2) in paragraph (2), by inserting before the semicolon the following: '', including such activities relating to the provision of energy efficient, affordable housing and residential energy conservation measures that benefit low-income families''.

SEC. 142. INCREASE OF CDBG PUBLIC SERVICES CAP FOR ENERGY CONSERVATION AND EFFICIENCY ACTIVITIES.

Section 105(a)(8) of the Housing and Community Development Act of 1974 (42 U.S.C. 5305(a)(8)) is amended—

(1) by inserting ''or efficiency'' after ''energy conservation'';

(2) by striking '', and except that'' and inserting ''; except that''; and

(3) by inserting before the semicolon at the end the following: ''; and except that each percentage limitation under this paragraph on the amount of assistance provided under this title that may be used for the provision of public services is hereby increased by 10 percent, but such percentage increase may be used only for the provision of public services concerning energy conservation or efficiency''.

SEC. 143. FHA MORTGAGE INSURANCE INCENTIVES FOR ENERGY EFFICIENT HOUSING.

(a) SINGLE FAMILY HOUSING MORTGAGE INSURANCE.—Section 203(b)(2) of the National Housing Act (12 U.S.C. 1709(b)(2)) is amended, in the first undesignated paragraph beginning after subparagraph (B)(ii)(IV) (relating to solar energy systems), by striking ''20 percent'' and inserting ''30 percent''.

(b) MULTIFAMILY HOUSING MORTGAGE INSURANCE.—Section 207(c) of the National Housing Act (12 U.S.C. 1713(c)) is amended, in the last undesignated paragraph beginning after paragraph (3) (relating to solar energy systems and residential energy conservation measures), by striking ''20 percent'' and inserting ''30 percent''.

(c) COOPERATIVE HOUSING MORTGAGE INSURANCE.—Section 213(p) of the National Housing Act (12 U.S.C. 1715e(p)) is amended by striking ''20 per centum'' and inserting ''30 percent''.

(d) REHABILITATION AND NEIGHBORHOOD CONSERVATION HOUSING MORTGAGE INSURANCE.—Section 220(d)(3)(B)(iii)(IV) of the National Housing Act (12 U.S.C. 1715k(d)(3)(B)(iii)(IV)) is amended—

(1) by striking ''with respect to rehabilitation projects involving not more than five family units,''; and

(2) by striking ''20 per centum'' and inserting ''30 percent''.

(e) LOW-INCOME MULTIFAMILY HOUSING MORTGAGE INSURANCE.—Section 221(k) of the National Housing Act (12 U.S.C. 1715l(k)) is amended by striking ''20 per centum'' and inserting ''30 percent''.

(f) ELDERLY HOUSING MORTGAGE INSURANCE.—Section 231(c)(2)(C) of the National Housing Act (12 U.S.C. 1715v(c)(2)(C)) is amended by striking ''20 per centum'' and inserting ''30 percent''.

(g) CONDOMINIUM HOUSING MORTGAGE INSURANCE.—Section 234(j) of the National Housing Act (12 U.S.C. 1715y(j)) is amended by striking ''20 per centum'' and inserting ''30 percent''.

SEC. 144. PUBLIC HOUSING CAPITAL FUND.

Section 9 of the United States Housing Act of 1937 (42 U.S.C. 1437g) is amended—

(1) in subsection (d)(1)—

(A) in subparagraph (I), by striking ''and'' at the end;

(B) in subparagraph (J), by striking the period at the end and inserting a semicolon; and

(C) by adding at the end the following new subparagraphs:

''(K) improvement of energy and water-use efficiency by installing fixtures and fittings that conform to the American Society of Mechanical Engineers/American National Standards Institute standards A112.19.2–1998 and A112.18.1–2000, or any revision thereto, applicable at the time of installation, and by increasing energy efficiency and water conservation by such other means as the Secretary determines are appropriate; and

''(L) integrated utility management and capital planning to maximize energy conservation and efficiency measures.''; and

(2) in subsection (e)(2)(C)—

(A) by striking ''The'' and inserting the following:

''(i) IN GENERAL.—The''; and

(B) by adding at the end the following:

''(ii) THIRD PARTY CONTRACTS.—Contracts described in clause (i) may include contracts for equipment conversions to less costly utility sources, projects with resident-paid utilities, and adjustments to frozen base year consumption, including systems repaired to meet applicable building and safety codes and adjustments for occupancy rates increased by rehabilitation.

''(iii) TERM OF CONTRACT.—The total term of a contract described in clause (i) shall not exceed 20 years to allow longer payback periods for retrofits, including windows, heating system replacements, wall insulation, site-based generation, advanced energy savings technologies, including renewable energy generation, and other such retrofits.''.

SEC. 145. GRANTS FOR ENERGY-CONSERVING IMPROVEMENTS FOR ASSISTED HOUSING.

Section 251(b)(1) of the National Energy Conservation Policy Act (42 U.S.C. 8231(1)) is amended—

(1) by striking ''financed with loans'' and inserting ''assisted'';

(2) by inserting after ''1959,'' the following: ''which are eligible multifamily housing projects (as such term is defined in section 512 of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (42 U.S.C. 1437f note)) and are subject to mortgage restructuring and rental assistance sufficiency plans under such Act,''; and

(3) by inserting after the period at the end of the first sentence the following new sentence: ''Such improvements may also include the installation of energy and water conserving fixtures and fittings that conform to the American Society of Mechanical Engineers/American National Standards Institute standards A112.19.2–1998 and A112.18.1–2000, or any revision thereto, applicable at the time of installation.''.

SEC. 146. NORTH AMERICAN DEVELOPMENT BANK.

Part 2 of subtitle D of title V of the North American Free Trade Agreement Implementation Act (22 U.S.C. 290m–290m–3) is amended by adding at the end the following:

''SEC. 545. SUPPORT FOR CERTAIN ENERGY POLICIES.

''Consistent with the focus of the Bank's Charter on environmental infrastructure projects, the Board members representing the United States should use their voice and vote to encourage the Bank to finance projects related to clean and efficient energy, including energy conservation, that

prevent, control, or reduce environmental pollutants or contaminants.''.

SEC. 147. ENERGY-EFFICIENT APPLIANCES.

In purchasing appliances, a public housing agency shall purchase energy-efficient appliances that are Energy Star products or FEMP-designated products, as such terms are defined in section 553 of the National Energy Conservation Policy Act (as amended by this title), unless the purchase of energy-efficient appliances is not cost-effective to the agency.

SEC. 148. ENERGY EFFICIENCY STANDARDS.

Section 109 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12709) is amended—

(1) in subsection (a)—

(A) in paragraph (1)—

(i) by striking ''1 year after the date of the enactment of the Energy Policy Act of 1992'' and inserting ''September 30, 2004'';

(ii) in subparagraph (A), by striking ''and'' at the end;

(iii) in subparagraph (B), by striking the period at the end and inserting ''; and''; and

(iv) by adding at the end the following:

''(C) rehabilitation and new construction of public and assisted housing funded by HOPE VI revitalization grants under section 24 of the United States Housing Act of 1937 (42 U.S.C. 1437v), where such standards are determined to be cost effective by the Secretary of Housing and Urban Development.''; and

(B) in paragraph (2), by striking ''Council of American'' and all that follows through ''90.1–1989')'' and inserting ''2003 International Energy Conservation Code'';

(2) in subsection (b)—

(A) by striking ''within 1 year after the date of the enactment of the Energy Policy Act of 1992'' and inserting ''by September 30, 2004''; and

(B) by striking ''CABO'' and all that follows through ''1989'' and inserting ''the 2003 International Energy Conservation Code''; and

(3) in subsection (c)—

(A) in the heading, by striking ''MODEL ENERGY CODE'' and inserting ''THE INTERNATIONAL ENERGY CONSERVATION CODE''; and

(B) by striking ''CABO'' and all that follows through ''1989'' and inserting ''the 2003 International Energy Conservation Code''.

SEC. 149. ENERGY STRATEGY FOR HUD.

The Secretary of Housing and Urban Development shall develop and implement an integrated strategy to reduce utility expenses through cost-effective energy conservation and efficiency measures and energy efficient design and construction of public and assisted housing. The energy strategy shall include the development of energy reduction goals and incentives for public housing agencies. The Secretary shall submit a report to Congress, not later than 1 year after the date of the enactment of this Act, on the energy strategy and the actions taken by the Department of Housing and Urban Development to monitor the energy usage of public housing agencies and shall submit an update every 2 years thereafter on progress in implementing the strategy.

TITLE II—RENEWABLE ENERGY

Subtitle A—General Provisions

SEC. 201. ASSESSMENT OF RENEWABLE ENERGY RESOURCES.

(a) RESOURCE ASSESSMENT.—Not later than 6 months after the date of enactment of this Act, and each year thereafter, the Secretary of Energy shall review the available assessments of renewable energy resources within the United States, including solar, wind, biomass, ocean (tidal, wave, current, and thermal), geothermal, and hydroelectric energy resources, and undertake new assessments as necessary, taking into account changes in market conditions, available technologies, and other relevant factors.

(b) CONTENTS OF REPORTS.—Not later than 1 year after the date of enactment of this Act, and each year thereafter, the Secretary shall publish a report based on the assessment under subsection (a). The report shall contain—

(1) a detailed inventory describing the available amount and characteristics of the renewable energy resources; and

(2) such other information as the Secretary believes would be useful in developing such renewable energy resources, including descriptions of surrounding terrain, population and load centers, nearby energy infrastructure, location of energy and water resources, and available estimates of the costs needed to develop each resource, together with an identification of any barriers to providing adequate transmission for remote sources of renewable energy resources to current and emerging markets, recommendations for removing or addressing such barriers, and ways to provide access to the grid that do not unfairly disadvantage renewable or other energy producers.

(c) AUTHORIZATION OF APPROPRIATIONS.—For the purposes of this section, there are authorized to be appropriated to the Secretary of Energy $10,000,000 for each of fiscal years 2004 through 2008.

SEC. 202. RENEWABLE ENERGY PRODUCTION INCENTIVE.

(a) INCENTIVE PAYMENTS.—Section 1212(a) of the Energy Policy Act of 1992 (42 U.S.C. 13317(a)) is amended by striking ''and which satisfies'' and all that follows through ''Secretary shall establish.'' and inserting ''. If there are insufficient appropriations to make full payments for electric production from all qualified renewable energy facilities in any given year, the Secretary shall assign 60 percent of appropriated funds for that year to facilities that use solar, wind, geothermal, or closed-loop (dedicated energy crops) biomass technologies to generate electricity, and assign the remaining 40 percent to other projects. The Secretary may, after transmitting to Congress an explanation of the reasons therefor, alter the percentage requirements of the preceding sentence.''.

(b) QUALIFIED RENEWABLE ENERGY FACILITY.—Section 1212(b) of the Energy Policy Act of 1992 (42 U.S.C. 13317(b)) is amended—

(1) by striking ''a State or any political'' and all that follows through ''nonprofit electrical cooperative'' and inserting ''a not-for-profit electric cooperative, a public utility described in section 115 of the Internal Revenue Code of 1986, a State, Commonwealth, territory, or possession of the United States or the District of Columbia, or a political subdivision thereof, or an Indian tribal government or subdivision thereof,''; and

(2) by inserting ''landfill gas,'' after ''wind, biomass,''.

(c) ELIGIBILITY WINDOW.—Section 1212(c) of the Energy Policy Act of 1992 (42 U.S.C. 13317(c)) is amended by striking ''during the 10-fiscal year period beginning with the first full fiscal year occurring after the enactment of this section'' and inserting ''after October 1, 2003, and before October 1, 2013''.

(d) AMOUNT OF PAYMENT.—Section 1212(e)(1) of the Energy Policy Act of 1992 (42 U.S.C. 13317(e)(1)) is amended by inserting ''landfill gas,'' after ''wind, biomass,''.

(e) SUNSET.—Section 1212(f) of the Energy Policy Act of 1992 (42 U.S.C. 13317(f)) is amended by striking ''the expiration of'' and all that follows through ''of this section'' and inserting ''September 30, 2023''.

(f) AUTHORIZATION OF APPROPRIATIONS.—Section 1212(g) of the Energy Policy Act of 1992 (42 U.S.C. 13317(g)) is amended to read as follows:

''(g) AUTHORIZATION OF APPROPRIATIONS.—

''(1) IN GENERAL.—Subject to paragraph (2), there are authorized to be appropriated such sums as may be necessary to carry out this section for fiscal years 2003 through 2023.

''(2) AVAILABILITY OF FUNDS.—Funds made available under paragraph (1) shall remain available until expended.''.

SEC. 203. FEDERAL PURCHASE REQUIREMENT.

(a) REQUIREMENT.—The President, acting through the Secretary of Energy, shall seek to ensure that, to the extent economically feasible and technically practicable, of the total amount of electric energy the Federal Government consumes during any fiscal year, the following amounts shall be renewable energy:

(1) Not less than 3 percent in fiscal years 2005 through 2007.

(2) Not less than 5 percent in fiscal years 2008 through 2010.

(3) Not less than 7.5 percent in fiscal year 2011 and each fiscal year thereafter.

(b) DEFINITIONS.—In this section:

(1) BIOMASS.—The term ''biomass'' means any solid, nonhazardous, cellulosic material that is derived from—

(A) any of the following forest-related resources: mill residues, precommercial thinnings, slash, and brush, or nonmerchantable material;

(B) solid wood waste materials, including waste pallets, crates, dunnage, manufacturing and construction wood wastes (other than pressure-treated, chemically-treated, or painted wood wastes), and landscape or right-of-way tree trimmings, but not including municipal solid waste (garbage), gas derived from the biodegradation of solid waste, or paper that is commonly recycled;

(C) agriculture wastes, including orchard tree crops, vineyard, grain, legumes, sugar, and other crop by-products or residues, and livestock waste nutrients; or

(D) a plant that is grown exclusively as a fuel for the production of electricity.

(2) RENEWABLE ENERGY.—The term ''renewable energy'' means electric energy generated from solar, wind, biomass, landfill gas, geothermal, municipal solid waste, or new hydroelectric generation capacity achieved from increased efficiency or additions of new capacity at an existing hydroelectric project.

(c) CALCULATION.—For purposes of determining compliance with the requirement of this section, the amount of renewable energy shall be doubled if—

(1) the renewable energy is produced and used on-site at a Federal facility;

(2) the renewable energy is produced on Federal lands and used at a Federal facility; or

(3) the renewable energy is produced on Indian land as defined in title XXVI of the Energy Policy Act of 1992 (25 U.S.C. 3501 et seq.) and used at a Federal facility.

(d) REPORT.—Not later than April 15, 2005, and every 2 years thereafter, the Secretary of Energy shall provide a report to Congress on the progress of the Federal Government in meeting the goals established by this section.

SEC. 204. INSULAR AREAS ENERGY SECURITY.

Section 604 of the Act entitled ''An Act to authorize appropriations for certain insular areas of the United States, and for other purposes'', approved December 24, 1980 (48 U.S.C. 1492), is amended—

(1) in subsection (a)(4) by striking the period and inserting a semicolon;

(2) by adding at the end of subsection (a) the following new paragraphs:

''(5) electric power transmission and distribution lines in insular areas are inadequate to withstand damage caused by the hurricanes and typhoons which frequently

occur in insular areas and such damage often costs millions of dollars to repair; and

''(6) the refinement of renewable energy technologies since the publication of the 1982 Territorial Energy Assessment prepared pursuant to subsection (c) reveals the need to reassess the state of energy production, consumption, infrastructure, reliance on imported energy, opportunities for energy conservation and increased energy efficiency, and indigenous sources in regard to the insular areas.'';

(3) by amending subsection (e) to read as follows:

''(e)(1) The Secretary of the Interior, in consultation with the Secretary of Energy and the head of government of each insular area, shall update the plans required under subsection (c) by—

''(A) updating the contents required by subsection (c);

''(B) drafting long-term energy plans for such insular areas with the objective of reducing, to the extent feasible, their reliance on energy imports by the year 2010, increasing energy conservation and energy efficiency, and maximizing, to the extent feasible, use of indigenous energy sources; and

''(C) drafting long-term energy transmission line plans for such insular areas with the objective that the maximum percentage feasible of electric power transmission and distribution lines in each insular area be protected from damage caused by hurricanes and typhoons.

''(2) Not later than December 31, 2005, the Secretary of the Interior shall submit to Congress the updated plans for each insular area required by this subsection.''; and

(4) by amending subsection (g)(4) to read as follows:

''(4) POWER LINE GRANTS FOR INSULAR AREAS.—

''(A) IN GENERAL.—The Secretary of the Interior is authorized to make grants to governments of insular areas of the United States to carry out eligible projects to protect electric power transmission and distribution lines in such insular areas from damage caused by hurricanes and typhoons.

''(B) ELIGIBLE PROJECTS.—The Secretary may award grants under subparagraph (A) only to governments of insular areas of the United States that submit written project plans to the Secretary for projects that meet the following criteria:

''(i) The project is designed to protect electric power transmission and distribution lines located in 1 or more of the insular areas of the United States from damage caused by hurricanes and typhoons.

''(ii) The project is likely to substantially reduce the risk of future damage, hardship, loss, or suffering.

''(iii) The project addresses 1 or more problems that have been repetitive or that pose a significant risk to public health and safety.

''(iv) The project is not likely to cost more than the value of the reduction in direct damage and other negative impacts that the project is designed to prevent or mitigate. The cost benefit analysis required by this criterion shall be computed on a net present value basis.

''(v) The project design has taken into consideration long-term changes to the areas and persons it is designed to protect and has manageable future maintenance and modification requirements.

''(vi) The project plan includes an analysis of a range of options to address the problem it is designed to prevent or mitigate and a justification for the selection of the project in light of that analysis.

''(vii) The applicant has demonstrated to the Secretary that the matching funds required by subparagraph (D) are available.

''(C) PRIORITY.—When making grants under this paragraph, the Secretary shall give priority to grants for projects which are likely to—

''(i) have the greatest impact on reducing future disaster losses; and

''(ii) best conform with plans that have been approved by the Federal Government or the government of the insular area where the project is to be carried out for development or hazard mitigation for that insular area.

''(D) MATCHING REQUIREMENT.—The Federal share of the cost for a project for which a grant is provided under this paragraph shall not exceed 75 percent of the total cost of that project. The non-Federal share of the cost may be provided in the form of cash or services.

''(E) TREATMENT OF FUNDS FOR CERTAIN PURPOSES.—Grants provided under this paragraph shall not be considered as income, a resource, or a duplicative program when determining eligibility or benefit levels for Federal major disaster and emergency assistance.

''(F) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this paragraph $5,000,000 for each fiscal year beginning after the date of the enactment of this paragraph.''.

SEC. 205. USE OF PHOTOVOLTAIC ENERGY IN PUBLIC BUILDINGS.

(a) IN GENERAL.—Subchapter VI of chapter 31 of title 40, United States Code, is amended by adding at the end the following:

''§3177. Use of photovoltaic energy in public buildings

''(a) PHOTOVOLTAIC ENERGY COMMERCIALIZATION PROGRAM.—

''(1) IN GENERAL.—The Administrator of General Services may establish a photovoltaic energy commercialization program for the procurement and installation of photovoltaic solar electric systems for electric production in new and existing public buildings.

''(2) PURPOSES.—The purposes of the program shall be to accomplish the following:

''(A) To accelerate the growth of a commercially viable photovoltaic industry to make this energy system available to the general public as an option which can reduce the national consumption of fossil fuel.

''(B) To reduce the fossil fuel consumption and costs of the Federal Government.

''(C) To attain the goal of installing solar energy systems in 20,000 Federal buildings by 2010, as contained in the Federal Government's Million Solar Roof Initiative of 1997.

''(D) To stimulate the general use within the Federal Government of life-cycle costing and innovative procurement methods.

''(E) To develop program performance data to support policy decisions on future incentive programs with respect to energy.

''(3) ACQUISITION OF PHOTOVOLTAIC SOLAR ELECTRIC SYSTEMS.—

''(A) IN GENERAL.—The program shall provide for the acquisition of photovoltaic solar electric systems and associated storage capability for use in public buildings.

''(B) ACQUISITION LEVELS.—The acquisition of photovoltaic electric systems shall be at a level substantial enough to allow use of low-cost production techniques with at least 150 megawatts (peak) cumulative acquired during the 5 years of the program.

''(4) ADMINISTRATION.—The Administrator shall administer the program and shall—

''(A) issue such rules and regulations as may be appropriate to monitor and assess the performance and operation of photovoltaic solar electric systems installed pursuant to this subsection;

''(B) develop innovative procurement strategies for the acquisition of such systems; and

''(C) transmit to Congress an annual report on the results of the program.

''(b) PHOTOVOLTAIC SYSTEMS EVALUATION PROGRAM.—

''(1) IN GENERAL.—Not later than 60 days after the date of enactment of this section, the Administrator, in consultation with the Secretary of Energy, shall establish a photovoltaic solar energy systems evaluation program to evaluate such photovoltaic solar energy systems as are required in public buildings.

''(2) PROGRAM REQUIREMENT.—In evaluating photovoltaic solar energy systems under the program, the Administrator shall ensure that such systems reflect the most advanced technology.

''(c) AUTHORIZATION OF APPROPRIATIONS.—

''(1) PHOTOVOLTAIC ENERGY COMMERCIALIZATION PROGRAM.—There are authorized to be appropriated to carry out subsection (a) $50,000,000 for each of fiscal years 2004 through 2008. Such sums shall remain available until expended.

''(2) PHOTOVOLTAIC SYSTEMS EVALUATION PROGRAM.—There are authorized to be appropriated to carry out subsection (b) $10,000,000 for each of fiscal years 2004 through 2008. Such sums shall remain available until expended.''.

(b) CONFORMING AMENDMENT.—The section analysis for such chapter is amended by inserting after the item relating to section 3176 the following:

''3177. Use of photovoltaic energy in public buildings.''.

SEC. 206. GRANTS TO IMPROVE THE COMMERCIAL VALUE OF FOREST BIOMASS FOR ELECTRIC ENERGY, USEFUL HEAT, TRANSPORTATION FUELS, PETROLEUM-BASED PRODUCT SUBSTITUTES, AND OTHER COMMERCIAL PURPOSES.

(a) FINDINGS.—Congress finds the following:

(1) Thousands of communities in the United States, many located near Federal lands, are at risk to wildfire. Approximately 190,000,000 acres of land managed by the Secretary of Agriculture and the Secretary of the Interior are at risk of catastrophic fire in the near future. The accumulation of heavy forest fuel loads continues to increase as a result of disease, insect infestations, and drought, further raising the risk of fire each year.

(2) In addition, more than 70,000,000 acres across all land ownerships are at risk to higher than normal mortality over the next 15 years from insect infestation and disease. High levels of tree mortality from insects and disease result in increased fire risk, loss of old growth, degraded watershed conditions, and changes in species diversity and productivity, as well as diminished fish and wildlife habitat and decreased timber values.

(3) Preventive treatments such as removing fuel loading, ladder fuels, and hazard trees, planting proper species mix and restoring and protecting early successional habitat, and other specific restoration treatments designed to reduce the susceptibility of forest land, woodland, and rangeland to insect outbreaks, disease, and catastrophic fire present the greatest opportunity for long-term forest health by creating a mosaic of species-mix and age distribution. Such prevention treatments are widely acknowledged to be more successful and cost effective than suppression treatments in the case of insects, disease, and fire.

(4) The byproducts of preventive treatment (wood, brush, thinnings, chips, slash, and other hazardous fuels) removed from forest lands, woodlands and rangelands represent an abundant supply of biomass for biomass-to-energy facilities and raw material for business. There are currently few markets for the extraordinary volumes of byproducts being generated as a result of the necessary large-scale preventive treatment activities.

(5) The United States should—

(A) promote economic and entrepreneurial opportunities in using byproducts removed through preventive treatment activities related to hazardous fuels reduction, disease, and insect infestation; and

(B) develop and expand markets for traditionally underused wood and biomass as an outlet for byproducts of preventive treatment activities.

(b) DEFINITIONS.—In this section:

(1) BIOMASS.—The term ''biomass'' means trees and woody plants, including limbs, tops, needles, and other woody parts, and byproducts of preventive treatment, such as wood, brush, thinnings, chips, and slash, that are removed—

(A) to reduce hazardous fuels; or

(B) to reduce the risk of or to contain disease or insect infestation.

(2) INDIAN TRIBE.—The term ''Indian tribe'' has the meaning given the term in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)).

(3) PERSON.—The term ''person'' includes—

(A) an individual;

(B) a community (as determined by the Secretary concerned);

(C) an Indian tribe;

(D) a small business, micro-business, or a corporation that is incorporated in the United States; and

(E) a nonprofit organization.

(4) PREFERRED COMMUNITY.—The term ''preferred community'' means—

(A) any town, township, municipality, or other similar unit of local government (as determined by the Secretary concerned) that—

(i) has a population of not more than 50,000 individuals; and

(ii) the Secretary concerned, in the sole discretion of the Secretary concerned, determines contains or is located near land, the condition of which is at significant risk of catastrophic wildfire, disease, or insect infestation or which suffers from disease or insect infestation; or

(B) any county that—

(i) is not contained within a metropolitan statistical area; and

(ii) the Secretary concerned, in the sole discretion of the Secretary concerned, determines contains or is located near land, the condition of which is at significant risk of catastrophic wildfire, disease, or insect infestation or which suffers from disease or insect infestation.

(5) SECRETARY CONCERNED.—The term ''Secretary concerned'' means—

(A) the Secretary of Agriculture with respect to National Forest System lands; and

(B) the Secretary of the Interior with respect to Federal lands under the jurisdiction of the Secretary of the Interior and Indian lands.

(c) BIOMASS COMMERCIAL USE GRANT PROGRAM.—

(1) IN GENERAL.—The Secretary concerned may make grants to any person that owns or operates a facility that uses biomass as a raw material to produce electric energy, sensible heat, transportation fuels, or substitutes for petroleum-based products to offset the costs incurred to purchase biomass for use by such facility.

(2) GRANT AMOUNTS.—A grant under this subsection may not exceed $20 per green ton of biomass delivered.

(3) MONITORING OF GRANT RECIPIENT ACTIVITIES.—As a condition of a grant under this subsection, the grant recipient shall keep such records as the Secretary concerned may require to fully and correctly disclose the use of the grant funds and all transactions involved in the purchase of biomass. Upon notice by a representative of the Secretary concerned, the grant recipient shall afford the representative reasonable access to the facility that purchases or uses biomass and an opportunity to examine the inventory and records of the facility.

(d) IMPROVED BIOMASS USE GRANT PROGRAM.—

(1) IN GENERAL.—The Secretary concerned may make grants to persons to offset the cost of projects to develop or research opportunities to improve the use of, or add value to, biomass. In making such grants, the Secretary concerned shall give preference to persons in preferred communities.

(2) SELECTION.—The Secretary concerned shall select a grant recipient under paragraph (1) after giving consideration to the anticipated public benefits of the project, including the potential to develop thermal or electric energy resources or affordable energy, opportunities for the creation or expansion of small businesses and micro-businesses, and the potential for new job creation.

(3) GRANT AMOUNT.—A grant under this subsection may not exceed $500,000.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $50,000,000 for each of the fiscal years 2004 through 2014 to carry out this section.

(f) REPORT.—Not later than October 1, 2010, the Secretary of Agriculture, in consultation with the Secretary of the Interior, shall submit to the Committee on Energy and Natural Resources and the Committee on Agriculture, Nutrition, and Forestry of the Senate and the Committee on Resources, the Committee on Energy and Commerce, and the Committee on Agriculture of the House of Representatives a report describing the results of the grant programs authorized by this section. The report shall include the following:

(1) An identification of the size, type, and the use of biomass by persons that receive grants under this section.

(2) The distance between the land from which the biomass was removed and the facility that used the biomass.

(3) The economic impacts, particularly new job creation, resulting from the grants to and operation of the eligible operations.

SEC. 207. BIOBASED PRODUCTS.

Section 9002(c)(1) of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8102(c)(1)) is amended by inserting ''or such items that comply with the regulations issued under section 103 of Public Law 100–556 (42 U.S.C. 6914b–1)'' after ''practicable''.

Subtitle B—Geothermal Energy

SEC. 211. SHORT TITLE.

This subtitle may be cited as the ''John Rishel Geothermal Steam Act Amendments of 2003''.

SEC. 212. COMPETITIVE LEASE SALE REQUIREMENTS.

Section 4 of the Geothermal Steam Act of 1970 (30 U.S.C. 1003) is amended to read as follows:

''SEC. 4. LEASING PROCEDURES.

''(a) NOMINATIONS.—The Secretary shall accept nominations of lands to be leased at any time from qualified companies and individuals under this Act.

''(b) COMPETITIVE LEASE SALE REQUIRED.—The Secretary shall hold a competitive lease sale at least once every 2 years for lands in a State which has nominations pending under subsection (a) if such lands are otherwise available for leasing.

''(c) NONCOMPETITIVE LEASING.—The Secretary shall make available for a period of 2 years for noncompetitive leasing any tract for which a competitive lease sale is held, but for which the Secretary does not receive any bids in a competitive lease sale.

''(d) LEASES SOLD AS A BLOCK.—If information is available to the Secretary indicating a geothermal resource that could be produced as 1 unit can reasonably be expected to underlie more than 1 parcel to be offered in a competitive lease sale, the parcels for such a resource may be offered for bidding as a block in the competitive lease sale.

''(e) PENDING LEASE APPLICATIONS ON APRIL 1, 2003.—It shall be a priority for the Secretary of the Interior, and for the Secretary of Agriculture with respect to National Forest Systems lands, to ensure timely completion of administrative actions necessary to process applications for geothermal leasing pending on April 1, 2003. Such an application, and any lease issued pursuant to such an application—

''(1) except as provided in paragraph (2), shall be subject to this section as in effect on April 1, 2003; or

''(2) at the election of the applicant, shall be subject to this section as in effect on the effective date of this paragraph.''.

SEC. 213. DIRECT USE.

(a) FEES FOR DIRECT USE.—Section 5 of the Geothermal Steam Act of 1970 (30 U.S.C. 1004) is amended—

(1) in paragraph (c) by redesignating subparagraphs (1) and (2) as subparagraphs (A) and (B);

(2) by redesignating paragraphs (a) through (d) in order as paragraphs (1) through (4);

(3) by inserting ''(a) IN GENERAL.—'' after ''SEC. 5.''; and

(4) by adding at the end the following:

''(b) DIRECT USE.—Notwithstanding subsection (a)(1), with respect to the direct use of geothermal resources for purposes other than the commercial generation of electricity, the Secretary of the Interior shall establish a schedule of fees and collect fees pursuant to such a schedule in lieu of royalties based upon the total amount of the geothermal resources used. The schedule of fees shall ensure that there is a fair return to the public for the use of a geothermal resource based upon comparable fees charged for direct use of geothermal resources by States or private persons. For direct use by a State or local government for public purposes there shall be no royalty and the fee charged shall be nominal. Leases in existence on the date of enactment of the Energy Policy Act of 2003 shall be modified in order to reflect the provisions of this subsection.''.

(b) LEASING FOR DIRECT USE.—Section 4 of the Geothermal Steam Act of 1970 (30 U.S.C. 1003) is further amended by adding at the end the following:

''(f) LEASING FOR DIRECT USE OF GEOTHERMAL RESOURCES.—Lands leased under this Act exclusively for direct use of geothermal resources shall be leased to any qualified applicant who first applies for such a lease under regulations issued by the Secretary, if—

''(1) the Secretary publishes a notice of the lands proposed for leasing 60 days before the date of the issuance of the lease; and

''(2) the Secretary does not receive in the 60-day period beginning on the date of such publication any nomination to include the lands concerned in the next competitive lease sale.

''(g) AREA SUBJECT TO LEASE FOR DIRECT USE.—A geothermal lease for the direct use of geothermal resources shall embrace not more than the amount of acreage determined by the Secretary to be reasonably necessary for such proposed utilization.''.

(c) EXISTING LEASES WITH A DIRECT USE FACILITY.—

(1) APPLICATION TO CONVERT.—Any lessee under a lease under the Geothermal Steam Act of 1970 that was issued before the date of the enactment of this Act may apply to the Secretary of the Interior, by not later than 18 months after the date of the enactment of

this Act, to convert such lease to a lease for direct utilization of geothermal resources in accordance with the amendments made by this section.

(2) CONVERSION.—The Secretary shall approve such an application and convert such a lease to a lease in accordance with the amendments by not later than 180 days after receipt of such application, unless the Secretary determines that the applicant is not a qualified applicant with respect to the lease.

(3) APPLICATION OF NEW LEASE TERMS.—The amendment made by subsection (a)(4) shall apply with respect to payments under a lease converted under this subsection that are due and owing to the United States on or after July 16, 2003.

SEC. 214. ROYALTIES AND NEAR-TERM PRODUCTION INCENTIVES.

(a) ROYALTY.—Section 5 of the Geothermal Steam Act of 1970 (30 U.S.C. 1004) is further amended—

(1) in subsection (a) by striking paragraph (1) and inserting the following:

''(1) a royalty on electricity produced using geothermal steam and associated geothermal resources, other than direct use of geothermal resources, that shall be—

''(A) not less than 1 percent and not more than 2.5 percent of the gross proceeds from the sale of electricity produced from such resources during the first 10 years of production under the lease; and

''(B) not less than 2 and not more than 5 percent of the gross proceeds from the sale of electricity produced from such resources during each year after such 10-year period;''; and

(2) by adding at the end the following:

''(c) FINAL REGULATION ESTABLISHING ROYALTY RATES.—In issuing any final regulation establishing royalty rates under this section, the Secretary shall seek—

''(1) to provide lessees a simplified administrative system;

''(2) to encourage new development; and

''(3) to achieve the same long-term level of royalty revenues to States and counties as the regulation in effect on the date of enactment of this subsection.

''(d) CREDITS FOR IN-KIND PAYMENTS OF ELECTRICITY.—The Secretary may provide to a lessee a credit against royalties owed under this Act, in an amount equal to the value of electricity provided under contract to a State or county government that is entitled to a portion of such royalties under section 20 of this Act, section 35 of the Mineral Leasing Act (30 U.S.C. 191), or section 6 of the Mineral Leasing Act for Acquired Lands (30 U.S.C. 355), if—

''(1) the Secretary has approved in advance the contract between the lessee and the State or county government for such in-kind payments;

''(2) the contract establishes a specific methodology to determine the value of such credits; and

''(3) the maximum credit will be equal to the royalty value owed to the State or county that is a party to the contract and the electricity received will serve as the royalty payment from the Federal Government to that entity.''.

(b) DISPOSAL OF MONEYS FROM SALES, BONUSES, ROYALTIES, AND RENTALS.—Section 20 of the Geothermal Steam Act of 1970 (30 U.S.C. 1019) is amended to read as follows:

''SEC. 20. DISPOSAL OF MONEYS FROM SALES, BONUSES, RENTALS, AND ROYALTIES.

''(a) IN GENERAL.—Except with respect to lands in the State of Alaska, all monies received by the United States from sales, bonuses, rentals, and royalties under this Act shall be paid into the Treasury of the United States. Of amounts deposited under this subsection, subject to the provisions of section 35 of the Mineral Leasing Act (30 U.S.C. 191(b)) and section 5(a)(2) of this Act—

''(1) 50 percent shall be paid to the State within the boundaries of which the leased lands or geothermal resources are or were located; and

''(2) 25 percent shall be paid to the County within the boundaries of which the leased lands or geothermal resources are or were located.

''(b) USE OF PAYMENTS.—Amounts paid to a State or county under subsection (a) shall be used consistent with the terms of section 35 of the Mineral Leasing Act (30 U.S.C. 191).''.

(c) NEAR-TERM PRODUCTION INCENTIVE FOR EXISTING LEASES.—

(1) IN GENERAL.—Notwithstanding section 5(a) of the Geothermal Steam Act of 1970, the royalty required to be paid shall be 50 percent of the amount of the royalty otherwise required, on any lease issued before the date of enactment of this Act that does not convert to new royalty terms under subsection (e)—

(A) with respect to commercial production of energy from a facility that begins such production in the 6-year period beginning on the date of the enactment of this Act; or

(B) on qualified expansion geothermal energy.

(2) 4-YEAR APPLICATION.—Paragraph (1) applies only to new commercial production of energy from a facility in the first 4 years of such production.

(3) EFFECTIVE DATE.—This subsection takes effect on October 1, 2004.

(d) DEFINITION OF QUALIFIED EXPANSION GEOTHERMAL ENERGY.—In this section, the term ''qualified expansion geothermal energy'' means geothermal energy produced from a generation facility for which—

(1) the production is increased by more than 10 percent as a result of expansion of the facility carried out in the 6-year period beginning on the date of the enactment of this Act; and

(2) such production increase is greater than 10 percent of the average production by the facility during the 5-year period preceding the expansion of the facility.

(e) ROYALTY UNDER EXISTING LEASES.—

(1) IN GENERAL.—Any lessee under a lease issued under the Geothermal Steam Act of 1970 before the date of the enactment of this Act may modify the terms of the lease relating to payment of royalties to comply with the amendment made by subsection (a), by applying to the Secretary of the Interior by not later than 18 months after the date of the enactment of this Act.

(2) APPLICATION OF MODIFICATION.—Such modification shall apply to any use of geothermal steam and any associated geothermal resources to which the amendment applies that occurs after the date of that application.

(3) CONSULTATION.—The Secretary—

(A) shall consult with the State and local governments affected by any proposed changes in lease royalty terms under this subsection; and

(B) may establish a gross proceeds percentage within the range specified in the amendment made by subsection (a)(1) and with the concurrence of the lessee and the State.

SEC. 215. GEOTHERMAL LEASING AND PERMITTING ON FEDERAL LANDS.

(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this section, the Secretary of the Interior and the Secretary of Agriculture shall enter into and submit to Congress a memorandum of understanding in accordance with this section regarding leasing and permitting for geothermal development of public lands and National Forest System lands under their respective jurisdictions.

(b) LEASE AND PERMIT APPLICATIONS.—The memorandum of understanding shall—

(1) identify areas with geothermal potential on lands included in the National Forest System and, when necessary, require review of management plans to consider leasing under the Geothermal Steam Act of 1970 (30 U.S.C. 1001 et seq.) as a land use; and

(2) establish an administrative procedure for processing geothermal lease applications, including lines of authority, steps in application processing, and time limits for application procession.

(c) DATA RETRIEVAL SYSTEM.—The memorandum of understanding shall establish a joint data retrieval system that is capable of tracking lease and permit applications and providing to the applicant information as to their status within the Departments of the Interior and Agriculture, including an estimate of the time required for administrative action.

SEC. 216. REVIEW AND REPORT TO CONGRESS.

The Secretary of the Interior shall promptly review and report to Congress not later than 3 years after the date of the enactment of this Act regarding the status of all withdrawals from leasing under the Geothermal Steam Act of 1970 (30 U.S.C. 1001 et seq.) of Federal lands, specifying for each such area whether the basis for such withdrawal still applies.

SEC. 217. REIMBURSEMENT FOR COSTS OF NEPA ANALYSES, DOCUMENTATION, AND STUDIES.

(a) IN GENERAL.—The Geothermal Steam Act of 1970 (30 U.S.C. 1001 et seq.) is amended by adding at the end the following:

''SEC. 30. REIMBURSEMENT FOR COSTS OF CERTAIN ANALYSES, DOCUMENTATION, AND STUDIES.

''(a) IN GENERAL.—The Secretary of the Interior may reimburse a person that is a lessee, operator, operating rights owner, or applicant for any lease under this Act for reasonable amounts paid by the person for preparation for the Secretary by a contractor or other person selected by the Secretary of any project-level analysis, documentation, or related study required pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) with respect to the lease.

''(b) CONDITIONS.—The Secretary may provide reimbursement under subsection (a) only if—

''(1) adequate funding to enable the Secretary to timely prepare the analysis, documentation, or related study is not appropriated;

''(2) the person paid the costs voluntarily;

''(3) the person maintains records of its costs in accordance with regulations issued by the Secretary;

''(4) the reimbursement is in the form of a reduction in the Federal share of the royalty required to be paid for the lease for which the analysis, documentation, or related study is conducted, and is agreed to by the Secretary and the person reimbursed prior to commencing the analysis, documentation, or related study; and

''(5) the agreement required under paragraph (4) contains provisions—

''(A) reducing royalties owed on lease production based on market prices;

''(B) stipulating an automatic termination of the royalty reduction upon recovery of documented costs; and

''(C) providing a process by which the lessee may seek reimbursement for circumstances in which production from the specified lease is not possible.''.

(b) APPLICATION.—The amendment made by this section shall apply with respect to an analysis, documentation, or a related study conducted on or after October 1, 2004, for any lease entered into before, on, or after the date of enactment of this Act.

(c) DEADLINE FOR REGULATIONS.—The Secretary shall issue regulations implementing

the amendment made by this section by not later than 1 year after the date of enactment of this Act.

SEC. 218. ASSESSMENT OF GEOTHERMAL ENERGY POTENTIAL.

The Secretary of Interior, acting through the Director of the United States Geological Survey and in cooperation with the States, shall update the 1978 Assessment of Geothermal Resources, and submit that updated assessment to Congress—

(1) not later than 3 years after the date of enactment of this Act; and

(2) thereafter as the availability of data and developments in technology warrant.

SEC. 219. COOPERATIVE OR UNIT PLANS.

Section 18 of the Geothermal Steam Act of 1970 (30 U.S.C. 1017) is amended to read as follows:

"SEC. 18. UNIT AND COMMUNITIZATION AGREEMENTS.

''(a) ADOPTION OF UNITS BY LESSEES.—

''(1) IN GENERAL.—For the purpose of more properly conserving the natural resources of any geothermal reservoir, field, or like area, or any part thereof (whether or not any part of the geothermal field, or like area, is then subject to any Unit Agreement (cooperative plan of development or operation)), lessees thereof and their representatives may unite with each other, or jointly or separately with others, in collectively adopting and operating under a Unit Agreement for such field, or like area, or any part thereof including direct use resources, if determined and certified by the Secretary to be necessary or advisable in the public interest. A majority interest of owners of any single lease shall have the authority to commit that lease to a Unit Agreement. The Secretary of the Interior may also initiate the formation of a Unit Agreement if in the public interest.

''(2) MODIFICATION OF LEASE REQUIREMENTS BY SECRETARY.—The Secretary may, in the discretion of the Secretary, and with the consent of the holders of leases involved, establish, alter, change, or revoke rates of operations (including drilling, operations, production, and other requirements) of such leases and make conditions with reference to such leases, with the consent of the lessees, in connection with the creation and operation of any such Unit Agreement as the Secretary may deem necessary or proper to secure the proper protection of the public interest. Leases with unlike lease terms or royalty rates do not need to be modified to be in the same unit.

''(b) REQUIREMENT OF PLANS UNDER NEW LEASES.—The Secretary—

''(1) may provide that geothermal leases issued under this Act shall contain a provision requiring the lessee to operate under such a reasonable Unit Agreement; and

''(2) may prescribe such an Agreement under which such lessee shall operate, which shall adequately protect the rights of all parties in interest, including the United States.

''(c) MODIFICATION OF RATE OF PROSPECTING, DEVELOPMENT, AND PRODUCTION.—The Secretary may require that any Agreement authorized by this section that applies to lands owned by the United States contain a provision under which authority is vested in the Secretary, or any person, committee, or State or Federal officer or agency as may be designated in the Agreement to alter or modify from time to time the rate of prospecting and development and the quantity and rate of production under such an Agreement.

''(d) EXCLUSION FROM DETERMINATION OF HOLDING OR CONTROL.—Any lands that are subject to any Agreement approved or prescribed by the Secretary under this section shall not be considered in determining holdings or control under any provision of this Act.

''(e) POOLING OF CERTAIN LANDS.—If separate tracts of lands cannot be independently developed and operated to use geothermal steam and associated geothermal resources pursuant to any section of this Act—

''(1) such lands, or a portion thereof, may be pooled with other lands, whether or not owned by the United States, for purposes of development and operation under a Communitization Agreement providing for an apportionment of production or royalties among the separate tracts of land comprising the production unit, if such pooling is determined by the Secretary to be in the public interest; and

''(2) operation or production pursuant to such an Agreement shall be treated as operation or production with respect to each tract of land that is subject to the agreement.

''(f) UNIT AGREEMENT REVIEW.—No more than 5 years after approval of any cooperative or Unit Agreement and at least every 5 years thereafter, the Secretary shall review each such Agreement and, after notice and opportunity for comment, eliminate from inclusion in such Agreement any lands that the Secretary determines are not reasonably necessary for Unit operations under the Agreement. Such elimination shall be based on scientific evidence, and shall occur only if it is determined by the Secretary to be for the purpose of conserving and properly managing the geothermal resource. Any land so eliminated shall be eligible for an extension under subsection (g) of section 6 if it meets the requirements for such an extension.

''(g) DRILLING OR DEVELOPMENT CONTRACTS.— The Secretary may, on such conditions as the Secretary may prescribe, approve drilling or development contracts made by 1 or more lessees of geothermal leases, with 1 or more persons, associations, or corporations if, in the discretion of the Secretary, the conservation of natural resources or the public convenience or necessity may require or the interests of the United States may be best served thereby. All leases operated under such approved drilling or development contracts, and interests thereunder, shall be excepted in determining holdings or control under section 7.

''(h) COORDINATION WITH STATE GOVERNMENTS.—The Secretary shall coordinate unitization and pooling activities with the appropriate State agencies and shall ensure that State leases included in any unitization or pooling arrangement are treated equally with Federal leases.''.

SEC. 220. ROYALTY ON BYPRODUCTS.

Section 5 of the Geothermal Steam Act of 1970 (30 U.S.C. 1004) is further amended in subsection (a) by striking paragraph (2) and inserting the following:

''(2) a royalty on any byproduct that is a mineral named in the first section of the Mineral Leasing Act (30 U.S.C. 181), and that is derived from production under the lease, at the rate of the royalty that applies under that Act to production of such mineral under a lease under that Act;''.

SEC. 221. REPEAL OF AUTHORITIES OF SECRETARY TO READJUST TERMS, CONDITIONS, RENTALS, AND ROYALTIES.

Section 8 of the Geothermal Steam Act of 1970 (30 U.S.C. 1007) is amended by repealing subsection (b), and by redesignating subsection (c) as subsection (b).

SEC. 222. CREDITING OF RENTAL TOWARD ROYALTY.

Section 5 of the Geothermal Steam Act of 1970 (30 U.S.C. 1004) is further amended—

(1) in subsection (a)(2) by inserting ''and'' after the semicolon at the end;

(2) in subsection (a)(3) by striking ''; and'' and inserting a period;

(3) by striking paragraph (4) of subsection (a); and

(4) by adding at the end the following:

''(e) CREDITING OF RENTAL TOWARD ROYALTY.—Any annual rental under this section that is paid with respect to a lease before the first day of the year for which the annual rental is owed shall be credited to the amount of royalty that is required to be paid under the lease for that year.''.

SEC. 223. LEASE DURATION AND WORK COMMITMENT REQUIREMENTS.

Section 6 of the Geothermal Steam Act of 1970 (30 U.S.C. 1005) is amended—

(1) by striking so much as precedes subsection (c), and striking subsections (e), (g), (h), (i), and (j);

(2) by redesignating subsections (c), (d), and (f) in order as subsections (g), (h), and (i); and

(3) by inserting before subsection (g), as so redesignated, the following:

"SEC. 6. LEASE TERM AND WORK COMMITMENT REQUIREMENTS.

''(a) IN GENERAL.—

''(1) PRIMARY TERM.—A geothermal lease shall be for a primary term of 10 years.

''(2) INITIAL EXTENSION.—The Secretary shall extend the primary term of a geothermal lease for 5 years if, for each year after the fifth year of the lease—

''(A) the Secretary determined under subsection (c) that the lessee satisfied the work commitment requirements that applied to the lease for that year; or

''(B) the lessee paid in accordance with subsection (d) the value of any work that was not completed in accordance with those requirements.

''(3) ADDITIONAL EXTENSION.—The Secretary shall extend the primary term of a geothermal lease (after an initial extension under paragraph (2)) for an additional 5 years if, for each year of the initial extension under paragraph (2), the Secretary determined under subsection (c) that the lessee satisfied the work commitment requirements that applied to the lease for that year.

''(b) REQUIREMENT TO SATISFY ANNUAL WORK COMMITMENT REQUIREMENT.—

''(1) IN GENERAL.—The lessee for a geothermal lease shall, for each year after the fifth year of the lease, satisfy work commitment requirements prescribed by the Secretary that apply to the lease for that year.

''(2) PRESCRIPTION OF WORK COMMITMENT REQUIREMENTS.—The Secretary shall issue regulations prescribing minimum equivalent dollar value work commitment requirements for geothermal leases, that—

''(A) require that a lessee, in each year after the fifth year of the primary term of a geothermal lease, diligently work to achieve commercial production or utilization of steam under the lease;

''(B) require that in each year to which work commitment requirements under the regulations apply, the lessee shall significantly reduce the amount of work that remains to be done to achieve such production or utilization;

''(C) describe specific work that must be completed by a lessee by the end of each year to which the work commitment requirements apply and factors, such as force majeure events, that suspend or modify the work commitment obligation;

''(D) carry forward and apply to work commitment requirements for a year, work completed in any year in the preceding 3-year period that was in excess of the work required to be performed in that preceding year;

''(E) establish transition rules for leases issued before the date of the enactment of this subsection, including terms under which a lease that is near the end of its term on the date of enactment of this subsection may be extended for up to 2 years—

''(i) to allow achievement of production under the lease; or

''(ii) to allow the lease to be included in a producing unit; and

''(F) establish an annual payment that, at the option of the lessee, may be exercised in lieu of meeting any work requirement for a limited number of years that the Secretary determines will not impair achieving diligent development of the geothermal resource.

''(3) TERMINATION OF APPLICATION OF REQUIREMENTS.—Work commitment requirements prescribed under this subsection shall not apply to a geothermal lease after the date on which geothermal steam is produced or utilized under the lease in commercial quantities.

''(c) DETERMINATION OF WHETHER REQUIREMENTS SATISFIED.—The Secretary shall, by not later than 90 days after the end of each year for which work commitment requirements under subsection (b) apply to a geothermal lease—

''(1) determine whether the lessee has satisfied the requirements that apply for that year;

''(2) notify the lessee of that determination; and

''(3) in the case of a notification that the lessee did not satisfy work commitment requirements for the year, include in the notification—

''(A) a description of the specific work that was not completed by the lessee in accordance with the requirements; and

''(B) the amount of the dollar value of such work that was not completed, reduced by the amount of expenditures made for work completed in a prior year that is carried forward pursuant to subsection (b)(2)(D).

''(d) PAYMENT OF VALUE OF UNCOMPLETED WORK.—

''(1) IN GENERAL.—If the Secretary notifies a lessee that the lessee failed to satisfy work commitment requirements under subsection (b), the lessee shall pay to the Secretary, by not later than the end of the 60-day period beginning on the date of the notification, the dollar value of work that was not completed by the lessee, in the amount stated in the notification (as reduced under subsection (c)(3)(B)).

''(2) FAILURE TO PAY VALUE OF UNCOMPLETED WORK.—If a lessee fails to pay such amount to the Secretary before the end of that period, the lease shall terminate upon the expiration of the period.

''(e) CONTINUATION AFTER COMMERCIAL PRODUCTION OR UTILIZATION.—If geothermal steam is produced or utilized in commercial quantities within the primary term of the lease under subsection (a) (including any extension of the lease under subsection (a)), such lease shall continue until the date on which geothermal steam is no longer produced or utilized in commercial quantities.

''(f) CONVERSION OF GEOTHERMAL LEASE TO MINERAL LEASE.—The lessee under a lease that has produced geothermal steam for electrical generation, has been determined by the Secretary to be incapable of any further commercial production or utilization of geothermal steam, and that is producing any valuable byproduct in payable quantities may, within 6 months after such determination—

''(1) convert the lease to a mineral lease under the Mineral Leasing Act (30 U.S.C. 181 et seq.) or under the Mineral Leasing Act for Acquired Lands (30 U.S.C. 351 et seq.), if the lands that are subject to the lease can be leased under that Act for the production of such byproduct; or

''(2) convert the lease to a mining claim under the general mining laws, if the byproduct is a locatable mineral.''.

SEC. 224. ADVANCED ROYALTIES REQUIRED FOR SUSPENSION OF PRODUCTION.

Section 5 of the Geothermal Steam Act of 1970 (30 U.S.C. 1004) is further amended by adding at the end the following:

''(f) ADVANCED ROYALTIES REQUIRED FOR SUSPENSION OF PRODUCTION.—

''(1) CONTINUATION OF LEASE FOLLOWING CESSATION OF PRODUCTION.—If, at any time after commercial production under a lease is achieved, production ceases for any cause the lease shall remain in full force and effect—

''(A) during the 1-year period beginning on the date production ceases; and

''(B) after such period if, and so long as, the lessee commences and continues diligently and in good faith until such production is resumed the steps, operations, or procedures necessary to cause a resumption of such production.

''(2) If production of heat or energy under a geothermal lease is suspended after the date of any such production for which royalty is required under subsection (a) and the terms of paragraph (1) are not met, the Secretary shall require the lessee, until the end of such suspension, to pay royalty in advance at the monthly pro-rata rate of the average annual rate at which such royalty was paid each year in the 5-year-period preceding the date of suspension.

''(3) Paragraph (2) shall not apply if the suspension is required or otherwise caused by the Secretary, the Secretary of a military department, a State or local government, or a force majeure.''.

SEC. 225. ANNUAL RENTAL.

(a) ANNUAL RENTAL RATE.—Section 5 of the Geothermal Steam Act of 1970 (30 U.S.C. 1004) is further amended in subsection (a) in paragraph (3) by striking ''$1 per acre or fraction thereof for each year of the lease'' and all that follows through the end of the paragraph and inserting ''$1 per acre or fraction thereof for each year of the lease through the tenth year in the case of a lease awarded in a noncompetitive lease sale; or $2 per acre or fraction thereof for the first year, $3 per acre or fraction thereof for each of the second through tenth years, in the case of a lease awarded in a competitive lease sale; and $5 per acre or fraction thereof for each year after the 10th year thereof for all leases.''.

(b) TERMINATION OF LEASE FOR FAILURE TO PAY RENTAL.—Section 5 of the Geothermal Steam Act of 1970 (30 U.S.C. 1004) is further amended by adding at the end the following:

''(g) TERMINATION OF LEASE FOR FAILURE TO PAY RENTAL.—

''(1) IN GENERAL.—The Secretary shall terminate any lease with respect to which rental is not paid in accordance with this Act and the terms of the lease under which the rental is required, upon the expiration of the 45-day period beginning on the date of the failure to pay such rental.

''(2) NOTIFICATION.—The Secretary shall promptly notify a lessee that has not paid rental required under the lease that the lease will be terminated at the end of the period referred to in paragraph (1).

''(3) REINSTATEMENT.—A lease that would otherwise terminate under paragraph (1) shall not terminate under that paragraph if the lessee pays to the Secretary, before the end of the period referred to in paragraph (1), the amount of rental due plus a late fee equal to 10 percent of such amount.''.

SEC. 226. LEASING AND PERMITTING ON FEDERAL LANDS WITHDRAWN FOR MILITARY PURPOSES.

Not later than 2 years after the date of enactment of this Act, the Secretary of the Interior and the Secretary of Defense, in consultation with each military service and with interested States, counties, representatives of the geothermal industry, and other persons, shall submit to Congress a joint report concerning leasing and permitting activities for geothermal energy on Federal lands withdrawn for military purposes. Such report shall include the following:

(1) A description of the Military Geothermal Program, including any differences between it and the non-Military Geothermal Program, including required security procedures, and operational considerations, and discussions as to the differences, and why they are important. Further, the report shall describe revenues or energy provided to the Department of Defense and its facilities, royalty structures, where applicable, and any revenue sharing with States and counties or other benefits between—

(A) the implementation of the Geothermal Steam Act of 1970 (30 U.S.C 1001 et seq.) and other applicable Federal law by the Secretary of the Interior; and

(B) the administration of geothermal leasing under section 2689 of title 10, United States Code, by the Secretary of Defense.

(2) If appropriate, a description of the current methods and procedures used to ensure interagency coordination, where needed, in developing renewable energy sources on Federal lands withdrawn for military purposes, and an identification of any new procedures that might be required in the future for the improvement of interagency coordination to ensure efficient processing and administration of leases or contracts for geothermal energy on Federal lands withdrawn for military purposes, consistent with the defense purposes of such withdrawals.

(3) Recommendations for any legislative or administrative actions that might better achieve increased geothermal production, including a common royalty structure, leasing procedures, or other changes that increase production, offset military operation costs, or enhance the Federal agencies' ability to develop geothermal resources.

Except as provided in this section, nothing in this subtitle shall affect the legal status of the Department of the Interior and the Department of the Defense with respect to each other regarding geothermal leasing and development until such status is changed by law.

SEC. 227. TECHNICAL AMENDMENTS.

The Geothermal Steam Act of 1970 (30 U.S.C. 1001 et seq.) is further amended as follows:

(1) By striking ''geothermal steam and associated geothermal resources'' each place it appears and inserting ''geothermal resources''.

(2) Section 2(e) (30 U.S.C. 1001(e)) is amended to read as follows:

''(e) 'direct use' means utilization of geothermal resources for commercial, residential, agricultural, public facilities, or other energy needs other than the commercial production of electricity; and''.

(3) Section 21 (30 U.S.C. 1020) is amended by striking ''(a) Within one hundred'' and all that follows through ''(b) Geothermal'' and inserting ''Geothermal''.

(4) The first section (30 U.S.C. 1001 note) is amended by striking ''That this'' and inserting the following:

''SECTION 1. SHORT TITLE.

''This''.

(5) Section 2 (30 U.S.C. 1001) is amended by striking ''SEC. 2. As'' and inserting the following:

''SEC. 2. DEFINITIONS.

''As''.

(6) Section 3 (30 U.S.C. 1002) is amended by striking ''SEC. 3. Subject'' and inserting the following:

''SEC. 3. LANDS SUBJECT TO GEOTHERMAL LEASING.

''Subject''.

(7) Section 5 (30 U.S.C. 1004) is further amended by striking ''SEC. 5.'', and by inserting immediately before and above subsection (a) the following:

''SEC. 5. RENTS AND ROYALTIES.''.

(8) Section 7 (30 U.S.C. 1006) is amended by striking ''SEC. 7. A geothermal'' and inserting the following:

''SEC. 7. ACREAGE OF GEOTHERMAL LEASE.

''A geothermal''.

(9) Section 8 (30 U.S.C. 1007) is amended by striking ''SEC. 8. (a) The'' and inserting the following:

''SEC. 8. READJUSTMENT OF LEASE TERMS AND CONDITIONS.

''(a) The''.

(10) Section 9 (30 U.S.C. 1008) is amended by striking ''SEC. 9. If'' and inserting the following:

''SEC. 9. BYPRODUCTS.

''If''.

(11) Section 10 (30 U.S.C. 1009) is amended by striking ''SEC. 10. The'' and inserting the following:

''SEC. 10. RELINQUISHMENT OF GEOTHERMAL RIGHTS.

''The''.

(12) Section 11 (30 U.S.C. 1010) is amended by striking ''SEC. 11. The'' and inserting the following:

''SEC. 11. SUSPENSION OF OPERATIONS AND PRODUCTION.

''The''.

(13) Section 12 (30 U.S.C. 1011) is amended by striking ''SEC. 12. Leases'' and inserting the following:

''SEC. 12. TERMINATION OF LEASES.

''Leases''.

(14) Section 13 (30 U.S.C. 1012) is amended by striking ''SEC. 13. The'' and inserting the following:

''SEC. 13. WAIVER, SUSPENSION, OR REDUCTION OF RENTAL OR ROYALTY.

''The''.

(15) Section 14 (30 U.S.C. 1013) is amended by striking ''SEC. 14. Subject'' and inserting the following:

''SEC. 14. SURFACE LAND USE.

''Subject''.

(16) Section 15 (30 U.S.C. 1014) is amended by striking ''SEC. 15. (a) Geothermal'' and inserting the following:

''SEC. 15. LANDS SUBJECT TO GEOTHERMAL LEASING.

''(a) Geothermal''.

(17) Section 16 (30 U.S.C. 1015) is amended by striking ''SEC. 16. Leases'' and inserting the following:

''SEC. 16. REQUIREMENT FOR LESSEES.

''Leases''.

(18) Section 17 (30 U.S.C. 1016) is amended by striking ''SEC. 17. Administration'' and inserting the following:

''SEC. 17. ADMINISTRATION.

''Administration''.

(19) Section 19 (30 U.S.C. 1018) is amended by striking ''SEC. 19. Upon'' and inserting the following:

''SEC. 19. DATA FROM FEDERAL AGENCIES.

''Upon''.

(20) Section 21 (30 U.S.C. 1020) is further amended by striking ''SEC. 21.'', and by inserting immediately before and above the remainder of that section the following:

''SEC. 21. PUBLICATION IN FEDERAL REGISTER; RESERVATION OF MINERAL RIGHTS.''.

(21) Section 22 (30 U.S.C. 1021) is amended by striking ''SEC. 22. Nothing'' and inserting the following:

''SEC. 22. FEDERAL EXEMPTION FROM STATE WATER LAWS.

''Nothing''.

(22) Section 23 (30 U.S.C. 1022) is amended by striking ''SEC. 23. (a) All'' and inserting the following:

''SEC. 23. PREVENTION OF WASTE; EXCLUSIVITY.

''(a) All''.

(23) Section 24 (30 U.S.C. 1023) is amended by striking ''SEC. 24. The'' and inserting the following:

''SEC. 24. RULES AND REGULATIONS.

''The''.

(24) Section 25 (30 U.S.C. 1024) is amended by striking ''SEC. 25. As'' and inserting the following:

''SEC. 25. INCLUSION OF GEOTHERMAL LEASING UNDER CERTAIN OTHER LAWS.

''As''.

(25) Section 26 is amended by striking ''SEC. 26. The'' and inserting the following:

''SEC. 26. AMENDMENT.

''The''.

(26) Section 27 (30 U.S.C. 1025) is amended by striking ''SEC. 27. The'' and inserting the following:

''SEC. 27. FEDERAL RESERVATION OF CERTAIN MINERAL RIGHTS.

''The''.

(27) Section 28 (30 U.S.C. 1026) is amended by striking ''SEC. 28. (a)(1) The'' and inserting the following:

''SEC. 28. SIGNIFICANT THERMAL FEATURES.

''(a)(1) The''.

(28) Section 29 (30 U.S.C. 1027) is amended by striking ''SEC. 29. The'' and inserting the following:

''SEC. 29. LAND SUBJECT TO PROHIBITION ON LEASING.

''The''.

Subtitle C—Hydroelectric

PART I—ALTERNATIVE CONDITIONS

SEC. 231. ALTERNATIVE CONDITIONS AND FISHWAYS.

(a) FEDERAL RESERVATIONS.—Section 4(e) of the Federal Power Act (16 U.S.C. 797(e)) is amended by inserting after ''adequate protection and utilization of such reservation.'' at the end of the first proviso the following: ''The license applicant shall be entitled to a determination on the record, after opportunity for an expedited agency trial-type hearing of any disputed issues of material fact, with respect to such conditions. Such hearing may be conducted in accordance with procedures established by agency regulation in consultation with the Federal Energy Regulatory Commission.''.

(b) FISHWAYS.—Section 18 of the Federal Power Act (16 U.S.C. 811) is amended by inserting after ''and such fishways as may be prescribed by the Secretary of Commerce.'' the following: ''The license applicant shall be entitled to a determination on the record, after opportunity for an expedited agency trial-type hearing of any disputed issues of material fact, with respect to such fishways. Such hearing may be conducted in accordance with procedures established by agency regulation in consultation with the Federal Energy Regulatory Commission.''.

(c) ALTERNATIVE CONDITIONS AND PRESCRIPTIONS.—Part I of the Federal Power Act (16 U.S.C. 791a et seq.) is amended by adding the following new section at the end thereof:

''SEC. 33. ALTERNATIVE CONDITIONS AND PRESCRIPTIONS.

''(a) ALTERNATIVE CONDITIONS.—(1) Whenever any person applies for a license for any project works within any reservation of the United States, and the Secretary of the department under whose supervision such reservation falls (referred to in this subsection as 'the Secretary') deems a condition to such license to be necessary under the first proviso of section 4(e), the license applicant may propose an alternative condition.

''(2) Notwithstanding the first proviso of section 4(e), the Secretary shall accept the proposed alternative condition referred to in paragraph (1), and the Commission shall include in the license such alternative condition, if the Secretary determines, based on substantial evidence provided by the license applicant or otherwise available to the Secretary, that such alternative condition—

''(A) provides for the adequate protection and utilization of the reservation; and

''(B) will either—

''(i) cost less to implement; or

''(ii) result in improved operation of the project works for electricity production—

as compared to the condition initially deemed necessary by the Secretary.

''(3) The Secretary shall submit into the public record of the Commission proceeding with any condition under section 4(e) or alternative condition it accepts under this section, a written statement explaining the basis for such condition, and reason for not accepting any alternative condition under this section. The written statement must demonstrate that the Secretary gave equal consideration to the effects of the condition adopted and alternatives not accepted on energy supply, distribution, cost, and use; flood control; navigation; water supply; and air quality (in addition to the preservation of other aspects of environmental quality); based on such information as may be available to the Secretary, including information voluntarily provided in a timely manner by the applicant and others. The Secretary shall also submit, together with the aforementioned written statement, all studies, data, and other factual information available to the Secretary and relevant to the Secretary's decision.

''(4) Nothing in this section shall prohibit other interested parties from proposing alternative conditions.

''(5) If the Secretary does not accept an applicant's alternative condition under this section, and the Commission finds that the Secretary's condition would be inconsistent with the purposes of this part, or other applicable law, the Commission may refer the dispute to the Commission's Dispute Resolution Service. The Dispute Resolution Service shall consult with the Secretary and the Commission and issue a non-binding advisory within 90 days. The Secretary may accept the Dispute Resolution Service advisory unless the Secretary finds that the recommendation will not provide for the adequate protection and utilization of the reservation. The Secretary shall submit the advisory and the Secretary's final written determination into the record of the Commission's proceeding.

''(b) ALTERNATIVE PRESCRIPTIONS.—(1) Whenever the Secretary of the Interior or the Secretary of Commerce prescribes a fishway under section 18, the license applicant or licensee may propose an alternative to such prescription to construct, maintain, or operate a fishway.

''(2) Notwithstanding section 18, the Secretary of the Interior or the Secretary of Commerce, as appropriate, shall accept and prescribe, and the Commission shall require, the proposed alternative referred to in paragraph (1), if the Secretary of the appropriate department determines, based on substantial evidence provided by the licensee or otherwise available to the Secretary, that such alternative—

''(A) will be no less protective than the fishway initially prescribed by the Secretary; and

''(B) will either—

''(i) cost less to implement; or

''(ii) result in improved operation of the project works for electricity production,

as compared to the fishway initially deemed necessary by the Secretary.

''(3) The Secretary concerned shall submit into the public record of the Commission proceeding with any prescription under section 18 or alternative prescription it accepts

under this section, a written statement explaining the basis for such prescription, and reason for not accepting any alternative prescription under this section. The written statement must demonstrate that the Secretary gave equal consideration to the effects of the condition adopted and alternatives not accepted on energy supply, distribution, cost, and use; flood control; navigation; water supply; and air quality (in addition to the preservation of other aspects of environmental quality); based on such information as may be available to the Secretary, including information voluntarily provided in a timely manner by the applicant and others. The Secretary shall also submit, together with the aforementioned written statement, all studies, data, and other factual information available to the Secretary and relevant to the Secretary's decision.

''(4) Nothing in this section shall prohibit other interested parties from proposing alternative prescriptions.

''(5) If the Secretary concerned does not accept an applicant's alternative prescription under this section, and the Commission finds that the Secretary's prescription would be inconsistent with the purposes of this part, or other applicable law, the Commission may refer the dispute to the Commission's Dispute Resolution Service. The Dispute Resolution Service shall consult with the Secretary and the Commission and issue a nonbinding advisory within 90 days. The Secretary may accept the Dispute Resolution Service advisory unless the Secretary finds that the recommendation will be less protective than the fishway initially prescribed by the Secretary. The Secretary shall submit the advisory and the Secretary's final written determination into the record of the Commission's proceeding.''.

PART II—ADDITIONAL HYDROPOWER

SEC. 241. HYDROELECTRIC PRODUCTION INCENTIVES.

(a) INCENTIVE PAYMENTS.—For electric energy generated and sold by a qualified hydroelectric facility during the incentive period, the Secretary of Energy (referred to in this section as the ''Secretary'') shall make, subject to the availability of appropriations, incentive payments to the owner or operator of such facility. The amount of such payment made to any such owner or operator shall be as determined under subsection (e) of this section. Payments under this section may only be made upon receipt by the Secretary of an incentive payment application which establishes that the applicant is eligible to receive such payment and which satisfies such other requirements as the Secretary deems necessary. Such application shall be in such form, and shall be submitted at such time, as the Secretary shall establish.

(b) DEFINITIONS.—For purposes of this section:

(1) QUALIFIED HYDROELECTRIC FACILITY.—The term ''qualified hydroelectric facility'' means a turbine or other generating device owned or solely operated by a non-Federal entity which generates hydroelectric energy for sale and which is added to an existing dam or conduit.

(2) EXISTING DAM OR CONDUIT.—The term ''existing dam or conduit'' means any dam or conduit the construction of which was completed before the date of the enactment of this section and which does not require any construction or enlargement of impoundment or diversion structures (other than repair or reconstruction) in connection with the installation of a turbine or other generating device.

(3) CONDUIT.—The term ''conduit'' has the same meaning as when used in section 30(a)(2) of the Federal Power Act (16 U.S.C. 823a(a)(2)). The terms defined in this subsection shall apply without regard to the hydroelectric kilowatt capacity of the facility concerned, without regard to whether the facility uses a dam owned by a governmental or nongovernmental entity, and without regard to whether the facility begins operation on or after the date of the enactment of this section.

(c) ELIGIBILITY WINDOW.—Payments may be made under this section only for electric energy generated from a qualified hydroelectric facility which begins operation during the period of 10 fiscal years beginning with the first full fiscal year occurring after the date of enactment of this subtitle.

(d) INCENTIVE PERIOD.—A qualified hydroelectric facility may receive payments under this section for a period of 10 fiscal years (referred to in this section as the ''incentive period''). Such period shall begin with the fiscal year in which electric energy generated from the facility is first eligible for such payments.

(e) AMOUNT OF PAYMENT.—

(1) IN GENERAL.—Payments made by the Secretary under this section to the owner or operator of a qualified hydroelectric facility shall be based on the number of kilowatt hours of hydroelectric energy generated by the facility during the incentive period. For any such facility, the amount of such payment shall be 1.8 cents per kilowatt hour (adjusted as provided in paragraph (2)), subject to the availability of appropriations under subsection (g), except that no facility may receive more than $750,000 in 1 calendar year.

(2) ADJUSTMENTS.—The amount of the payment made to any person under this section as provided in paragraph (1) shall be adjusted for inflation for each fiscal year beginning after calendar year 2003 in the same manner as provided in the provisions of section 29(d)(2)(B) of the Internal Revenue Code of 1986, except that in applying such provisions the calendar year 2003 shall be substituted for calendar year 1979.

(f) SUNSET.—No payment may be made under this section to any qualified hydroelectric facility after the expiration of the period of 20 fiscal years beginning with the first full fiscal year occurring after the date of enactment of this subtitle, and no payment may be made under this section to any such facility after a payment has been made with respect to such facility for a period of 10 fiscal years.

(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary to carry out the purposes of this section $10,000,000 for each of the fiscal years 2004 through 2013.

SEC. 242. HYDROELECTRIC EFFICIENCY IMPROVEMENT.

(a) INCENTIVE PAYMENTS.—The Secretary of Energy shall make incentive payments to the owners or operators of hydroelectric facilities at existing dams to be used to make capital improvements in the facilities that are directly related to improving the efficiency of such facilities by at least 3 percent.

(b) LIMITATIONS.—Incentive payments under this section shall not exceed 10 percent of the costs of the capital improvement concerned and not more than 1 payment may be made with respect to improvements at a single facility. No payment in excess of $750,000 may be made with respect to improvements at a single facility.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section not more than $10,000,000 for each of the fiscal years 2004 through 2013.

SEC. 243. SMALL HYDROELECTRIC POWER PROJECTS.

Section 408(a)(6) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2708(a)(6)) is amended by striking ''April 20, 1977'' and inserting ''March 4, 2003''.

SEC. 244. INCREASED HYDROELECTRIC GENERATION AT EXISTING FEDERAL FACILITIES.

(a) IN GENERAL.—The Secretary of the Interior and the Secretary of Energy, in consultation with the Secretary of the Army, shall jointly conduct a study of the potential for increasing electric power production capability at federally owned or operated water regulation, storage, and conveyance facilities.

(b) CONTENT.—The study under this section shall include identification and description in detail of each facility that is capable, with or without modification, of producing additional hydroelectric power, including estimation of the existing potential for the facility to generate hydroelectric power.

(c) REPORT.—The Secretaries shall submit to the Committees on Energy and Commerce, Resources, and Transportation and Infrastructure of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a report on the findings, conclusions, and recommendations of the study under this section by not later than 18 months after the date of the enactment of this Act. The report shall include each of the following:

(1) The identifications, descriptions, and estimations referred to in subsection (b).

(2) A description of activities currently conducted or considered, or that could be considered, to produce additional hydroelectric power from each identified facility.

(3) A summary of prior actions taken by the Secretaries to produce additional hydroelectric power from each identified facility.

(4) The costs to install, upgrade, or modify equipment or take other actions to produce additional hydroelectric power from each identified facility and the level of Federal power customer involvement in the determination of such costs.

(5) The benefits that would be achieved by such installation, upgrade, modification, or other action, including quantified estimates of any additional energy or capacity from each facility identified under subsection (b).

(6) A description of actions that are planned, underway, or might reasonably be considered to increase hydroelectric power production by replacing turbine runners, by performing generator upgrades or rewinds, or construction of pumped storage facilities.

(7) The impact of increased hydroelectric power production on irrigation, fish, wildlife, Indian tribes, river health, water quality, navigation, recreation, fishing, and flood control.

(8) Any additional recommendations to increase hydroelectric power production from, and reduce costs and improve efficiency at, federally owned or operated water regulation, storage, and conveyance facilities.

SEC. 245. SHIFT OF PROJECT LOADS TO OFF-PEAK PERIODS.

(a) IN GENERAL.—The Secretary of the Interior shall—

(1) review electric power consumption by Bureau of Reclamation facilities for water pumping purposes; and

(2) make such adjustments in such pumping as possible to minimize the amount of electric power consumed for such pumping during periods of peak electric power consumption, including by performing as much of such pumping as possible during off-peak hours at night.

(b) CONSENT OF AFFECTED IRRIGATION CUSTOMERS REQUIRED.—The Secretary may not under this section make any adjustment in pumping at a facility without the consent of each person that has contracted with the United States for delivery of water from the facility for use for irrigation and that would be affected by such adjustment.

(c) EXISTING OBLIGATIONS NOT AFFECTED.—This section shall not be construed to affect any existing obligation of the Secretary to provide electric power, water, or other benefits from Bureau of Reclamation facilities, including recreational releases.

SEC. 246. LIMITATION ON CERTAIN CHARGES ASSESSED TO THE FLINT CREEK PROJECT, MONTANA.

Notwithstanding section 10(e)(1) of the Federal Power Act (16 U.S.C. 803(e)(1)) or any other provision of Federal law providing for the payment to the United States of charges for the use of Federal land for the purposes of operating and maintaining a hydroelectric development licensed by the Federal Energy Regulatory Commission (referred to in this section as the ''Commission''), any political subdivision of the State of Montana that holds a license for Commission Project No. 1473 in Granite and Deer Lodge Counties, Montana, shall be required to pay to the United States for the use of that land for each year during which the political subdivision continues to hold the license for the project, the lesser of—

(1) $25,000; or

(2) such annual charge as the Commission or any other department or agency of the Federal Government may assess.

SEC. 247. REINSTATEMENT AND TRANSFER.

(a) REINSTATEMENT AND TRANSFER OF FEDERAL LICENSE FOR PROJECT NUMBERED 2696.—Notwithstanding section 8 of the Federal Power Act (16 U.S.C. 801) or any other provision of such Act, the Federal Energy Regulatory Commission shall reinstate the license for Project No. 2696 and transfer the license, without delay or the institution of any proceedings, to the Town of Stuyvesant, New York, holder of Federal Energy Regulatory Commission Preliminary Permit No. 11787, within 30 days after the date of enactment of this Act.

(b) HYDROELECTRIC INCENTIVES.—Project No. 2696 shall be entitled to the full benefit of any Federal legislation that promotes hydroelectric development that is enacted within 2 years either before or after the date of enactment of this Act.

(c) PROJECT DEVELOPMENT AND FINANCING.—The Federal Energy Regulatory Commission shall permit the Town of Stuyvesant to add as a colicensee any private or public entity or entities to the reinstated license at any time, notwithstanding the issuance of a preliminary permit to the Town of Stuyvesant and any consideration of municipal preference. The town shall be entitled, to the extent that funds are available or shall be made available, to receive loans under sections 402 and 403 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2702 and 2703), or similar programs, for the reimbursement of feasibility studies or development costs, or both, incurred since January 1, 2001, through and including December 31, 2006. All power produced by the project shall be deemed incremental hydropower for purpose of qualifying for any energy credit or similar benefits.

TITLE III—OIL AND GAS

Subtitle A—Petroleum Reserve and Home Heating Oil

SEC. 301. PERMANENT AUTHORITY TO OPERATE THE STRATEGIC PETROLEUM RESERVE AND OTHER ENERGY PROGRAMS.

(a) AMENDMENT TO TITLE I OF THE ENERGY POLICY AND CONSERVATION ACT.—Title I of the Energy Policy and Conservation Act (42 U.S.C. 6211 et seq.) is amended—

(1) by striking section 166 (42 U.S.C. 6246) and inserting the following:

''AUTHORIZATION OF APPROPRIATIONS

''SEC. 166. There are authorized to be appropriated to the Secretary such sums as may be necessary to carry out this part and part D, to remain available until expended.'';

(2) by striking section 186 (42 U.S.C. 6250e); and

(3) by striking part E (42 U.S.C. 6251; relating to the expiration of title I of the Act).

(b) AMENDMENT TO TITLE II OF THE ENERGY POLICY AND CONSERVATION ACT.—Title II of the Energy Policy and Conservation Act (42 U.S.C. 6271 et seq.) is amended—

(1) by inserting before section 273 (42 U.S.C. 6283) the following:

''PART C—SUMMER FILL AND FUEL BUDGETING PROGRAMS'';

(2) by striking section 273(e) (42 U.S.C. 6283(e); relating to the expiration of summer fill and fuel budgeting programs); and

(3) by striking part D (42 U.S.C. 6285; relating to the expiration of title II of the Act).

(c) TECHNICAL AMENDMENTS.—The table of contents for the Energy Policy and Conservation Act is amended—

(1) by inserting after the items relating to part C of title I the following:

''PART D—NORTHEAST HOME HEATING OIL RESERVE

''Sec. 181. Establishment.
''Sec. 182. Authority.
''Sec. 183. Conditions for release; plan.
''Sec. 184. Northeast Home Heating Oil Reserve Account.
''Sec. 185. Exemptions.'';

(2) by amending the items relating to part C of title II to read as follows:

''PART C—SUMMER FILL AND FUEL BUDGETING PROGRAMS

''Sec. 273. Summer fill and fuel budgeting programs.'';

and

(3) by striking the items relating to part D of title II.

(d) AMENDMENT TO THE ENERGY POLICY AND CONSERVATION ACT.—Section 183(b)(1) of the Energy Policy and Conservation Act (42 U.S.C. 6250(b)(1)) is amended by striking all after ''increases'' through to ''mid-October through March'' and inserting ''by more than 60 percent over its 5-year rolling average for the months of mid-October through March (considered as a heating season average)''.

(e) FILL STRATEGIC PETROLEUM RESERVE TO CAPACITY.—The Secretary of Energy shall, as expeditiously as practicable, acquire petroleum in amounts sufficient to fill the Strategic Petroleum Reserve to the 1,000,000,000 barrel capacity authorized under section 154(a) of the Energy Policy and Conservation Act (42 U.S.C. 6234(a)), consistent with the provisions of sections 159 and 160 of such Act (42 U.S.C. 6239, 6240).

SEC. 302. NATIONAL OILHEAT RESEARCH ALLIANCE.

Section 713 of the Energy Act of 2000 (42 U.S.C. 6201 note) is amended by striking ''4'' and inserting ''9''.

Subtitle B—Production Incentives

SEC. 311. DEFINITION OF SECRETARY.

In this subtitle, the term ''Secretary'' means the Secretary of the Interior.

SEC. 312. PROGRAM ON OIL AND GAS ROYALTIES IN-KIND.

(a) APPLICABILITY OF SECTION.—Notwithstanding any other provision of law, this section applies to all royalty in-kind accepted by the Secretary on or after October 1, 2004, under any Federal oil or gas lease or permit under section 36 of the Mineral Leasing Act (30 U.S.C. 192), section 27 of the Outer Continental Shelf Lands Act (43 U.S.C. 1353), or any other Federal law governing leasing of Federal land for oil and gas development.

(b) TERMS AND CONDITIONS.—All royalty accruing to the United States shall, on the demand of the Secretary, be paid in oil or gas. If the Secretary makes such a demand, the following provisions apply to such payment:

(1) SATISFACTION OF ROYALTY OBLIGATION.—Delivery by, or on behalf of, the lessee of the royalty amount and quality due under the lease satisfies the lessee's royalty obligation for the amount delivered, except that transportation and processing reimbursements paid to, or deductions claimed by, the lessee shall be subject to review and audit.

(2) MARKETABLE CONDITION.—

(A) IN GENERAL.—Royalty production shall be placed in marketable condition by the lessee at no cost to the United States.

(B) DEFINITION OF MARKETABLE CONDITION.—In this paragraph, the term ''in marketable condition'' means sufficiently free from impurities and otherwise in a condition that the royalty production will be accepted by a purchaser under a sales contract typical of the field or area in which the royalty production was produced.

(3) DISPOSITION BY THE SECRETARY.—The Secretary may—

(A) sell or otherwise dispose of any royalty production taken in-kind (other than oil or gas transferred under section 27(a)(3) of the Outer Continental Shelf Lands Act (43 U.S.C. 1353(a)(3)) for not less than the market price; and

(B) transport or process (or both) any royalty production taken in-kind.

(4) RETENTION BY THE SECRETARY.—The Secretary may, notwithstanding section 3302 of title 31, United States Code, retain and use a portion of the revenues from the sale of oil and gas taken in-kind that otherwise would be deposited to miscellaneous receipts, without regard to fiscal year limitation, or may use oil or gas received as royalty taken in-kind (in this paragraph referred to as ''royalty production'') to pay the cost of—

(A) transporting the royalty production;

(B) processing the royalty production;

(C) disposing of the royalty production; or

(D) any combination of transporting, processing, and disposing of the royalty production.

(5) LIMITATION.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the Secretary may not use revenues from the sale of oil and gas taken in-kind to pay for personnel, travel, or other administrative costs of the Federal Government.

(B) EXCEPTION.—Notwithstanding subparagraph (A), the Secretary may use a portion of the revenues from the sale of oil taken in-kind, without fiscal year limitation, to pay transportation costs, salaries, and other administrative costs directly related to filling the Strategic Petroleum Reserve.

(c) REIMBURSEMENT OF COST.—If the lessee, pursuant to an agreement with the United States or as provided in the lease, processes the royalty gas or delivers the royalty oil or gas at a point not on or adjacent to the lease area, the Secretary shall—

(1) reimburse the lessee for the reasonable costs of transportation (not including gathering) from the lease to the point of delivery or for processing costs; or

(2) allow the lessee to deduct the transportation or processing costs in reporting and paying royalties in-value for other Federal oil and gas leases.

(d) BENEFIT TO THE UNITED STATES REQUIRED.—The Secretary may receive oil or gas royalties in-kind only if the Secretary determines that receiving royalties in-kind provides benefits to the United States that are greater than or equal to the benefits that are likely to have been received had royalties been taken in-value.

(e) REPORTS.—

(1) IN GENERAL.—Not later than September 30, 2005, the Secretary shall submit to Congress a report that addresses—

(A) actions taken to develop businesses processes and automated systems to fully support the royalty-in-kind capability to be used in tandem with the royalty-in-value approach in managing Federal oil and gas revenue; and

(B) future royalty-in-kind businesses operation plans and objectives.

(2) REPORTS ON OIL OR GAS ROYALTIES TAKEN IN-KIND.—For each of fiscal years 2004 through 2013 in which the United States takes oil or gas royalties in-kind from production in any State or from the Outer Continental Shelf, excluding royalties taken in-kind and sold to refineries under subsection (h), the Secretary shall submit to Congress a report that describes—

(A) the methodology or methodologies used by the Secretary to determine compliance with subsection (d), including the performance standard for comparing amounts received by the United States derived from royalties in-kind to amounts likely to have been received had royalties been taken in-value;

(B) an explanation of the evaluation that led the Secretary to take royalties in-kind from a lease or group of leases, including the expected revenue effect of taking royalties in-kind;

(C) actual amounts received by the United States derived from taking royalties in-kind and costs and savings incurred by the United States associated with taking royalties in-kind, including, but not limited to, administrative savings and any new or increased administrative costs; and

(D) an evaluation of other relevant public benefits or detriments associated with taking royalties in-kind.

(f) DEDUCTION OF EXPENSES.—

(1) IN GENERAL.—Before making payments under section 35 of the Mineral Leasing Act (30 U.S.C. 191) or section 8(g) of the Outer Continental Shelf Lands Act (43 U.S.C. 1337(g)) of revenues derived from the sale of royalty production taken in-kind from a lease, the Secretary shall deduct amounts paid or deducted under subsections (b)(4) and (c) and deposit the amount of the deductions in the miscellaneous receipts of the United States Treasury.

(2) ACCOUNTING FOR DEDUCTIONS.—When the Secretary allows the lessee to deduct transportation or processing costs under subsection (c), the Secretary may not reduce any payments to recipients of revenues derived from any other Federal oil and gas lease as a consequence of that deduction.

(g) CONSULTATION WITH STATES.—The Secretary—

(1) shall consult with a State before conducting a royalty in-kind program under this subtitle within the State, and may delegate management of any portion of the Federal royalty in-kind program to the State except as otherwise prohibited by Federal law; and

(2) shall consult annually with any State from which Federal oil or gas royalty is being taken in-kind to ensure, to the maximum extent practicable, that the royalty in-kind program provides revenues to the State greater than or equal to those likely to have been received had royalties been taken in-value.

(h) SMALL REFINERIES.—

(1) PREFERENCE.—If the Secretary finds that sufficient supplies of crude oil are not available in the open market to refineries that do not have their own source of supply for crude oil, the Secretary may grant preference to such refineries in the sale of any royalty oil accruing or reserved to the United States under Federal oil and gas leases issued under any mineral leasing law, for processing or use in such refineries at private sale at not less than the market price.

(2) PRORATION AMONG REFINERIES IN PRODUCTION AREA.—In disposing of oil under this subsection, the Secretary of Energy may, at the discretion of the Secretary, prorate the oil among refineries described in paragraph (1) in the area in which the oil is produced.

(i) DISPOSITION TO FEDERAL AGENCIES.—

(1) ONSHORE ROYALTY.—Any royalty oil or gas taken by the Secretary in-kind from onshore oil and gas leases may be sold at not less than the market price to any Federal agency.

(2) OFFSHORE ROYALTY.—Any royalty oil or gas taken in-kind from a Federal oil or gas lease on the Outer Continental Shelf may be disposed of only under section 27 of the Outer Continental Shelf Lands Act (43 U.S.C. 1353).

(j) FEDERAL LOW-INCOME ENERGY ASSISTANCE PROGRAMS.—

(1) PREFERENCE.—In disposing of royalty oil or gas taken in-kind under this section, the Secretary may grant a preference to any person, including any Federal or State agency, for the purpose of providing additional resources to any Federal low-income energy assistance program.

(2) REPORT.—Not later than 3 years after the date of enactment of this Act, the Secretary shall transmit a report to Congress, assessing the effectiveness of granting preferences specified in paragraph (1) and providing a specific recommendation on the continuation of authority to grant preferences.

(k) EFFECTIVE DATE.—This section takes effect on October 1, 2004.

SEC. 313. MARGINAL PROPERTY PRODUCTION INCENTIVES.

(a) DEFINITION OF MARGINAL PROPERTY.—Until such time as the Secretary issues regulations under subsection (e) that prescribe a different definition, in this section the term ''marginal property'' means an onshore unit, communitization agreement, or lease not within a unit or communitization agreement, that produces on average the combined equivalent of less than 15 barrels of oil per well per day or 90 million British thermal units of gas per well per day calculated based on the average over the 3 most recent production months, including only wells that produce on more than half of the days during those 3 production months.

(b) CONDITIONS FOR REDUCTION OF ROYALTY RATE.—Until such time as the Secretary issues regulations under subsection (e) that prescribe different thresholds or standards, the Secretary shall reduce the royalty rate on—

(1) oil production from marginal properties as prescribed in subsection (c) when the spot price of West Texas Intermediate crude oil at Cushing, Oklahoma, is, on average, less than $15 per barrel for 90 consecutive trading days; and

(2) gas production from marginal properties as prescribed in subsection (c) when the spot price of natural gas delivered at Henry Hub, Louisiana, is, on average, less than $2.00 per million British thermal units for 90 consecutive trading days.

(c) REDUCED ROYALTY RATE.—

(1) IN GENERAL.—When a marginal property meets the conditions specified in subsection (b), the royalty rate shall be the lesser of—

(A) 5 percent; or

(B) the applicable rate under any other statutory or regulatory royalty relief provision that applies to the affected production.

(2) PERIOD OF EFFECTIVENESS.—The reduced royalty rate under this subsection shall be effective beginning on the first day of the production month following the date on which the applicable condition specified in subsection (b) is met.

(d) TERMINATION OF REDUCED ROYALTY RATE.—A royalty rate prescribed in subsection (d)(1)(A) shall terminate—

(1) with respect to oil production from a marginal property, on the first day of the production month following the date on which—

(A) the spot price of West Texas Intermediate crude oil at Cushing, Oklahoma, on average, exceeds $15 per barrel for 90 consecutive trading days; or

(B) the property no longer qualifies as a marginal property; and

(2) with respect to gas production from a marginal property, on the first day of the production month following the date on which—

(A) the spot price of natural gas delivered at Henry Hub, Louisiana, on average, exceeds $2.00 per million British thermal units for 90 consecutive trading days; or

(B) the property no longer qualifies as a marginal property.

(e) REGULATIONS PRESCRIBING DIFFERENT RELIEF.—

(1) DISCRETIONARY REGULATIONS.—The Secretary may by regulation prescribe different parameters, standards, and requirements for, and a different degree or extent of, royalty relief for marginal properties in lieu of those prescribed in subsections (a) through (d).

(2) MANDATORY REGULATIONS.—Not later than 18 months after the date of enactment of this Act, the Secretary shall by regulation—

(A) prescribe standards and requirements for, and the extent of royalty relief for, marginal properties for oil and gas leases on the Outer Continental Shelf; and

(B) define what constitutes a marginal property on the Outer Continental Shelf for purposes of this section.

(3) CONSIDERATIONS.—In promulgating regulations under this subsection, the Secretary may consider—

(A) oil and gas prices and market trends;

(B) production costs;

(C) abandonment costs;

(D) Federal and State tax provisions and the effects of those provisions on production economics;

(E) other royalty relief programs;

(F) regional differences in average wellhead prices;

(G) national energy security issues; and

(H) other relevant matters.

(f) SAVINGS PROVISION.—Nothing in this section prevents a lessee from receiving royalty relief or a royalty reduction pursuant to any other law (including a regulation) that provides more relief than the amounts provided by this section.

(g) EFFECTIVE DATE.—This section takes effect on October 1, 2004.

SEC. 314. INCENTIVES FOR NATURAL GAS PRODUCTION FROM DEEP WELLS IN THE SHALLOW WATERS OF THE GULF OF MEXICO.

(a) ROYALTY INCENTIVE REGULATIONS.—The Secretary shall publish a final regulation to complete the rulemaking begun by the Notice of Proposed Rulemaking entitled ''Relief or Reduction in Royalty Rates—Deep Gas Provisions'', published in the Federal Register on March 26, 2003 (Federal Register, volume 68, number 58, 14868-14886).

(b) ROYALTY INCENTIVE REGULATIONS FOR ULTRA DEEP GAS WELLS.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this section, in addition to any other regulations that may provide royalty incentives for natural gas produced from deep wells on oil and gas leases issued pursuant to the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.), the Secretary shall issue regulations, in accordance with the regulations published pursuant to subsection (a), granting royalty relief suspension volumes of not less than 35,000,000,000 cubic feet with respect to the production of natural gas from ultra deep

wells on leases issued before January 1, 2001, in shallow waters less than 200 meters deep located in the Gulf of Mexico wholly west of 87 degrees, 30 minutes West longitude. Regulations issued under this subsection shall be retroactive to the date that the Notice of Proposed Rulemaking is published in the Federal Register.

(2) DEFINITION OF ULTRA DEEP WELL.—In this subsection, the term ''ultra deep well'' means a well drilled with a perforated interval, the top of which is at least 20,000 feet true vertical depth below the datum at mean sea level.

(c) EFFECTIVE DATE.—This section takes effect on October 1, 2004.

SEC. 315. ROYALTY RELIEF FOR DEEP WATER PRODUCTION.

(a) IN GENERAL.—For all tracts located in water depths of greater than 400 meters in the Western and Central Planning Area of the Gulf of Mexico, including the portion of the Eastern Planning Area of the Gulf of Mexico encompassing whole lease blocks lying west of 87 degrees, 30 minutes West longitude, any oil or gas lease sale under the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.) occurring within 5 years after the date of enactment of this Act shall use the bidding system authorized in section 8(a)(1)(H) of the Outer Continental Shelf Lands Act (43 U.S.C. 1337(a)(1)(H)), except that the suspension of royalties shall be set at a volume of not less than—

(1) 5,000,000 barrels of oil equivalent for each lease in water depths of 400 to 800 meters;

(2) 9,000,000 barrels of oil equivalent for each lease in water depths of 800 to 1,600 meters; and

(3) 12,000,000 barrels of oil equivalent for each lease in water depths greater than 1,600 meters.

(b) LIMITATION.—The Secretary may place limitations on the suspension of royalty relief granted based on market price.

SEC. 316. ALASKA OFFSHORE ROYALTY SUSPENSION.

Section 8(a)(3)(B) of the Outer Continental Shelf Lands Act (43 U.S.C. 1337(a)(3)(B)) is amended by inserting ''and in the Planning Areas offshore Alaska'' after ''West longitude''.

SEC. 317. OIL AND GAS LEASING IN THE NATIONAL PETROLEUM RESERVE IN ALASKA.

(a) TRANSFER OF AUTHORITY.—

(1) REDESIGNATION.—The Naval Petroleum Reserves Production Act of 1976 (42 U.S.C. 6501 et seq.) is amended by redesignating section 107 (42 U.S.C. 6507) as section 108.

(2) TRANSFER.—The matter under the heading ''EXPLORATION OF NATIONAL PETROLEUM RESERVE IN ALASKA'' under the heading ''ENERGY AND MINERALS'' of title I of Public Law 96–514 (42 U.S.C. 6508) is—

(A) transferred to the Naval Petroleum Reserves Production Act of 1976 (42 U.S.C. 6501 et seq.);

(B) redesignated as section 107 of that Act; and

(C) moved so as to appear after section 106 of that Act (42 U.S.C. 6506).

(b) COMPETITIVE LEASING.—Section 107 of the Naval Petroleum Reserves Production Act of 1976 (as amended by subsection (a) of this section) is amended—

(1) by striking the heading and all that follows through ''*Provided,* That (1) activities'' and inserting the following:

''SEC. 107. COMPETITIVE LEASING OF OIL AND GAS.

''(a) IN GENERAL.—Notwithstanding any other provision of law and pursuant to regulations issued by the Secretary, the Secretary shall conduct an expeditious program of competitive leasing of oil and gas in the National Petroleum Reserve in Alaska (referred to in this section as the 'Reserve').

''(b) MITIGATION OF ADVERSE EFFECTS.—Activities'';

(2) by striking ''Alaska (the Reserve); (2) the'' and inserting ''Alaska.

''(c) LAND USE PLANNING; BLM WILDERNESS STUDY.—The'';

(3) by striking ''Reserve; (3) the'' and inserting ''Reserve.

''(d) FIRST LEASE SALE.—The'';

(4) by striking ''4332); (4) the'' and inserting ''4321 et seq.).

''(e) WITHDRAWALS.—The'';

(5) by striking ''herein; (5) bidding'' and inserting ''under this section.

''(f) BIDDING SYSTEMS.—Bidding'';

(6) by striking ''629); (6) lease'' and inserting ''629).

''(g) GEOLOGICAL STRUCTURES.—Lease'';

(7) by striking ''structures; (7) the'' and inserting ''structures.

''(h) SIZE OF LEASE TRACTS.—The'';

(8) by striking ''Secretary; (8)'' and all that follows through ''Drilling, production,'' and inserting ''Secretary.

''(i) TERMS.—

''(1) IN GENERAL.—Each lease shall be—

''(A) issued for an initial period of not more than 10 years; and

''(B) renewed for successive 10-year terms if—

''(i) oil or gas is produced from the lease in paying quantities;

''(ii) oil or gas is capable of being produced in paying quantities; or

''(iii) drilling or reworking operations, as approved by the Secretary, are conducted on the leased land.

''(2) RENEWAL OF NONPRODUCING LEASES.—The Secretary shall renew for an additional 10-year term a lease that does not meet the requirements of paragraph (1)(B) if the lessee submits to the Secretary an application for renewal not later than 60 days before the expiration of the primary lease and—

''(A) the lessee certifies, and the Secretary agrees, that hydrocarbon resources were discovered on 1 or more wells drilled on the leased land in such quantities that a prudent operator would hold the lease for potential future development;

''(B) the lessee—

''(i) pays the Secretary a renewal fee of $100 per acre of leased land; and

''(ii) provides evidence, and the Secretary agrees that, the lessee has diligently pursued exploration that warrants continuation with the intent of continued exploration or future development of the leased land; or

''(C) all or part of the lease—

''(i) is part of a unit agreement covering a lease described in subparagraph (A) or (B); and

''(ii) has not been previously contracted out of the unit.

''(3) APPLICABILITY.—This subsection applies to a lease that—

''(A) is entered into before, on, or after the date of enactment of the Energy Policy Act of 2003; and

''(B) is effective on or after the date of enactment of that Act.

''(j) UNIT AGREEMENTS.—

''(1) IN GENERAL.—For the purpose of conservation of the natural resources of all or part of any oil or gas pool, field, reservoir, or like area, lessees (including representatives) of the pool, field, reservoir, or like area may unite with each other, or jointly or separately with others, in collectively adopting and operating under a unit agreement for all or part of the pool, field, reservoir, or like area (whether or not any other part of the oil or gas pool, field, reservoir, or like area is already subject to any cooperative or unit plan of development or operation), if the Secretary determines the action to be necessary or advisable in the public interest.

''(2) PARTICIPATION BY STATE OF ALASKA.—The Secretary shall ensure that the State of Alaska is provided the opportunity for active participation concerning creation and management of units formed or expanded under this subsection that include acreage in which the State of Alaska has an interest in the mineral estate.

''(3) PARTICIPATION BY REGIONAL CORPORATIONS.—The Secretary shall ensure that any Regional Corporation (as defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602)) is provided the opportunity for active participation concerning creation and management of units that include acreage in which the Regional Corporation has an interest in the mineral estate.

''(4) PRODUCTION ALLOCATION METHODOLOGY.—The Secretary may use a production allocation methodology for each participating area within a unit created for land in the Reserve, State of Alaska land, or Regional Corporation land shall, when appropriate, be based on the characteristics of each specific oil or gas pool, field, reservoir, or like area to take into account reservoir heterogeneity and a real variation in reservoir producibility across diverse leasehold interests.

''(5) BENEFIT OF OPERATIONS.—Drilling, production,'';

(9) by striking ''When separate'' and inserting the following:

''(6) POOLING.—If separate'';

(10) by inserting ''(in consultation with the owners of the other land)'' after ''determined by the Secretary of the Interior'';

(11) by striking ''thereto; (10) to'' and all that follows through ''the terms provided therein'' and inserting ''to the agreement.

''(k) EXPLORATION INCENTIVES.—

''(1) IN GENERAL.—

''(A) WAIVER, SUSPENSION, OR REDUCTION.—To encourage the greatest ultimate recovery of oil or gas or in the interest of conservation, the Secretary may waive, suspend, or reduce the rental fees or minimum royalty, or reduce the royalty on an entire leasehold (including on any lease operated pursuant to a unit agreement), if (after consultation with the State of Alaska and the North Slope Borough of Alaska and the concurrence of any Regional Corporation for leases that include lands available for acquisition by the Regional Corporation under the provisions of section 1431(o) of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 et seq.)) the Secretary determines that the waiver, suspension, or reduction is in the public interest.

''(B) APPLICABILITY.—This paragraph applies to a lease that—

''(i) is entered into before, on, or after the date of enactment of the Energy Policy Act of 2003; and

''(ii) is effective on or after the date of enactment of that Act.'';

(12) by striking ''The Secretary is authorized to'' and inserting the following:

''(2) SUSPENSION OF OPERATIONS AND PRODUCTION.—The Secretary may'';

(13) by striking ''In the event'' and inserting the following:

''(3) SUSPENSION OF PAYMENTS.—If'';

(14) by striking ''thereto; and (11) all'' and inserting ''to the lease.

''(l) RECEIPTS.—All'';

(15) by redesignating clauses (A), (B), and (C) as clauses (1), (2), and (3), respectively;

(16) by striking ''Any agency'' and inserting the following:

''(m) EXPLORATIONS.—Any agency'';

(17) by striking ''Any action'' and inserting the following:

''(n) ENVIRONMENTAL IMPACT STATEMENTS.—

''(1) JUDICIAL REVIEW.—Any action'';

(18) by striking ''The detailed'' and inserting the following:

''(2) INITIAL LEASE SALES.—The detailed'';

(19) by striking ''of the Naval Petroleum Reserves Production Act of 1976 (90 Stat. 304; 42 U.S.C. 6504)''; and

(20) by adding at the end the following:

''(o) WAIVER OF ADMINISTRATION FOR CONVEYED LANDS.—Notwithstanding section 14(g) of the Alaska Native Claims Settlement Act (43 U.S.C. 1613(g)) or any other provision of law—

''(1) the Secretary of the Interior shall waive administration of any oil and gas lease insofar as such lease covers any land in the National Petroleum Reserve in Alaska in which the subsurface estate is conveyed to the Arctic Slope Regional Corporation; and

''(2) if any such conveyance of such subsurface estate does not cover all the land embraced within any such oil and gas lease—

''(A) the person who owns the subsurface estate in any particular portion of the land covered by such lease shall be entitled to all of the revenues reserved under such lease as to such portion, including, without limitation, all the royalty payable with respect to oil or gas produced from or allocated to such particular portion of the land covered by such lease; and

''(B) the Secretary of the Interior shall segregate such lease into 2 leases, 1 of which shall cover only the subsurface estate conveyed to the Arctic Slope Regional Corporation, and operations, production, or other circumstances (other than payment of rentals or royalties) that satisfy obligations of the lessee under, or maintain, either of the segregated leases shall likewise satisfy obligations of the lessee under, or maintain, the other segregated lease to the same extent as if such segregated leases remained a part of the original unsegregated lease.''.

SEC. 318. ORPHANED, ABANDONED, OR IDLED WELLS ON FEDERAL LAND.

(a) IN GENERAL.—The Secretary, in cooperation with the Secretary of Agriculture, shall establish a program not later than 1 year after the date of enactment of this Act to remediate, reclaim, and close orphaned, abandoned, or idled oil and gas wells located on land administered by the land management agencies within the Department of the Interior and the Department of Agriculture.

(b) ACTIVITIES.—The program under subsection (a) shall—

(1) include a means of ranking orphaned, abandoned, or idled wells sites for priority in remediation, reclamation, and closure, based on public health and safety, potential environmental harm, and other land use priorities;

(2) provide for identification and recovery of the costs of remediation, reclamation, and closure from persons or other entities currently providing a bond or other financial assurance required under State or Federal law for an oil or gas well that is orphaned, abandoned, or idled; and

(3) provide for recovery from the persons or entities identified under paragraph (2), or their sureties or guarantors, of the costs of remediation, reclamation, and closure of such wells.

(c) COOPERATION AND CONSULTATIONS.—In carrying out the program under subsection (a), the Secretary shall—

(1) work cooperatively with the Secretary of Agriculture and the States within which Federal land is located; and

(2) consult with the Secretary of Energy and the Interstate Oil and Gas Compact Commission.

(d) PLAN.—Not later than 1 year after the date of enactment of this Act, the Secretary, in cooperation with the Secretary of Agriculture, shall submit to Congress a plan for carrying out the program under subsection (a).

(e) IDLED WELL.—For the purposes of this section, a well is idled if—

(1) the well has been nonoperational for at least 7 years; and

(2) there is no anticipated beneficial use for the well.

(f) TECHNICAL ASSISTANCE PROGRAM FOR NON-FEDERAL LAND.—

(1) IN GENERAL.—The Secretary of Energy shall establish a program to provide technical and financial assistance to oil and gas producing States to facilitate State efforts over a 10-year period to ensure a practical and economical remedy for environmental problems caused by orphaned or abandoned oil and gas exploration or production well sites on State or private land.

(2) ASSISTANCE.—The Secretary of Energy shall work with the States, through the Interstate Oil and Gas Compact Commission, to assist the States in quantifying and mitigating environmental risks of onshore orphaned or abandoned oil or gas wells on State and private land.

(3) ACTIVITIES.—The program under paragraph (1) shall include—

(A) mechanisms to facilitate identification, if feasible, of the persons currently providing a bond or other form of financial assurance required under State or Federal law for an oil or gas well that is orphaned or abandoned;

(B) criteria for ranking orphaned or abandoned well sites based on factors such as public health and safety, potential environmental harm, and other land use priorities;

(C) information and training programs on best practices for remediation of different types of sites; and

(D) funding of State mitigation efforts on a cost-shared basis.

(g) FEDERAL REIMBURSEMENT FOR ORPHANED WELL RECLAMATION PILOT PROGRAM.—

(1) REIMBURSEMENT FOR REMEDIATING, RECLAIMING, AND CLOSING WELLS ON LAND SUBJECT TO A NEW LEASE.—The Secretary shall carry out a pilot program under which, in issuing a new oil and gas lease on federally owned land on which 1 or more orphaned wells are located, the Secretary—

(A) may require, but not as a condition of the lease, that the lessee remediate, reclaim, and close in accordance with standards established by the Secretary, all orphaned wells on the land leased; and

(B) shall develop a program to reimburse a lessee, through a royalty credit against the Federal share of royalties owed or other means, for the reasonable actual costs of remediating, reclaiming, and closing the orphaned well pursuant to that requirement.

(2) REIMBURSEMENT FOR RECLAIMING ORPHANED WELLS ON OTHER LAND.—In carrying out this subsection, the Secretary—

(A) may authorize any lessee under an oil and gas lease on federally owned land to reclaim in accordance with the Secretary's standards—

(i) an orphaned well on unleased federally owned land; or

(ii) an orphaned well located on an existing lease on federally owned land for the reclamation of which the lessee is not legally responsible; and

(B) shall develop a program to provide reimbursement of 115 percent of the reasonable actual costs of remediating, reclaiming, and closing the orphaned well, through credits against the Federal share of royalties or other means.

(3) EFFECT OF REMEDIATION, RECLAMATION, OR CLOSURE OF WELL PURSUANT TO AN APPROVED REMEDIATION PLAN.—

(A) DEFINITION OF REMEDIATING PARTY.—In this paragraph the term ''remediating party'' means a person who remediates, reclaims, or closes an abandoned, orphaned, or idled well pursuant to this subsection.

(B) GENERAL RULE.—A remediating party who remediates, reclaims, or closes an abandoned, orphaned, or idled well in accordance with a detailed written remediation plan approved by the Secretary under this subsection, shall be immune from civil liability under Federal environmental laws, for—

(i) pre-existing environmental conditions at or associated with the well, unless the remediating party owns or operates, in the past owned or operated, or is related to a person that owns or operates or in the past owned or operated, the well or the land on which the well is located; or

(ii) any remaining releases of pollutants from the well during or after completion of the remediation, reclamation, or closure of the well, unless the remediating party causes increased pollution as a result of activities that are not in accordance with the approved remediation plan.

(C) LIMITATIONS.—Nothing in this section shall limit in any way the liability of a remediating party for injury, damage, or pollution resulting from the remediating party's acts or omissions that are not in accordance with the approved remediation plan, are reckless or willful, constitute gross negligence or wanton misconduct, or are unlawful.

(4) REGULATIONS.—The Secretary may issue such regulations as are appropriate to carry out this subsection.

(h) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated to carry out this section $25,000,000 for each of fiscal years 2005 through 2009.

(2) USE.—Of the amounts authorized under paragraph (1), $5,000,000 are authorized for each fiscal year for activities under subsection (f).

SEC. 319. COMBINED HYDROCARBON LEASING.

(a) SPECIAL PROVISIONS REGARDING LEASING.—Section 17(b)(2) of the Mineral Leasing Act (30 U.S.C. 226(b)(2)) is amended—

(1) by inserting ''(A)'' after ''(2)''; and

(2) by adding at the end the following:

''(B) For any area that contains any combination of tar sand and oil or gas (or both), the Secretary may issue under this Act, separately—

''(i) a lease for exploration for and extraction of tar sand; and

''(ii) a lease for exploration for and development of oil and gas.

''(C) A lease issued for tar sand shall be issued using the same bidding process, annual rental, and posting period as a lease issued for oil and gas, except that the minimum acceptable bid required for a lease issued for tar sand shall be $2 per acre.

''(D) The Secretary may waive, suspend, or alter any requirement under section 26 that a permittee under a permit authorizing prospecting for tar sand must exercise due diligence, to promote any resource covered by a combined hydrocarbon lease.''.

(b) CONFORMING AMENDMENT.—Section 17(b)(1)(B) of the Mineral Leasing Act (30 U.S.C. 226(b)(1)(B)) is amended in the second sentence by inserting '', subject to paragraph (2)(B),'' after ''Secretary''.

(c) REGULATIONS.—Not later than 45 days after the date of enactment of this Act, the Secretary shall issue final regulations to implement this section.

SEC. 320. LIQUIFIED NATURAL GAS.

Section 3 of the Natural Gas Act (15 U.S.C. 717b) is amended by adding at the end the following:

''(d) LIMITATION ON COMMISSION AUTHORITY.—If an applicant under this section proposes to construct or expand a liquified natural gas terminal either onshore or in State

waters for the purpose of importing liquified natural gas into the United States, the Commission shall not deny or condition the application solely on the basis that the applicant proposes to utilize the terminal exclusively or partially for gas that the applicant or any affiliate thereof will supply thereto. In all other respects, subsection (a) shall remain applicable to any such proposal.''.

SEC. 321. ALTERNATE ENERGY-RELATED USES ON THE OUTER CONTINENTAL SHELF.

(a) AMENDMENT TO OUTER CONTINENTAL SHELF LANDS ACT.—Section 8 of the Outer Continental Shelf Lands Act (43 U.S.C. 1337) is amended by adding at the end the following:

''(p) LEASES, EASEMENTS, OR RIGHTS-OF-WAY FOR ENERGY AND RELATED PURPOSES.—

''(1) IN GENERAL.—The Secretary, in consultation with the Secretary of the Department in which the Coast Guard is operating and other relevant departments and agencies of the Federal Government, may grant a lease, easement, or right-of-way on the Outer Continental Shelf for activities not otherwise authorized in this Act, the Deepwater Port Act of 1974 (33 U.S.C. 1501 et seq.), or the Ocean Thermal Energy Conversion Act of 1980 (42 U.S.C. 9101 et seq.), or other applicable law, if those activities—

''(A) support exploration, development, production, transportation, or storage of oil, natural gas, or other minerals;

''(B) produce or support production, transportation, or transmission of energy from sources other than oil and gas; or

''(C) use, for energy-related or marine-related purposes, facilities currently or previously used for activities authorized under this Act.

''(2) PAYMENTS.—The Secretary shall establish reasonable forms of payments for any easement or right-of-way granted under this subsection. Such payments shall not be assessed on the basis of throughput or production. The Secretary may establish fees, rentals, bonus, or other payments by rule or by agreement with the party to which the lease, easement, or right-of-way is granted.

''(3) CONSULTATION.—Before exercising authority under this subsection, the Secretary shall consult with the Secretary of Defense and other appropriate agencies concerning issues related to national security and navigational obstruction.

''(4) COMPETITIVE OR NONCOMPETITIVE BASIS.—

''(A) IN GENERAL.—The Secretary may issue a lease, easement, or right-of-way for energy and related purposes as described in paragraph (1) on a competitive or noncompetitive basis.

''(B) CONSIDERATIONS.—In determining whether a lease, easement, or right-of-way shall be granted competitively or noncompetitively, the Secretary shall consider such factors as—

''(i) prevention of waste and conservation of natural resources;

''(ii) the economic viability of an energy project;

''(iii) protection of the environment;

''(iv) the national interest and national security;

''(v) human safety;

''(vi) protection of correlative rights; and

''(vii) potential return for the lease, easement, or right-of-way.

''(5) REGULATIONS.—Not later than 270 days after the date of enactment of the Energy Policy Act of 2003, the Secretary, in consultation with the Secretary of the Department in which the Coast Guard is operating and other relevant agencies of the Federal Government and affected States, shall issue any necessary regulations to ensure safety, protection of the environment, prevention of waste, and conservation of the natural resources of the Outer Continental Shelf, protection of national security interests, and protection of correlative rights in the Outer Continental Shelf.

''(6) SECURITY.—The Secretary shall require the holder of a lease, easement, or right-of-way granted under this subsection to furnish a surety bond or other form of security, as prescribed by the Secretary, and to comply with such other requirements as the Secretary considers necessary to protect the interests of the United States.

''(7) EFFECT OF SUBSECTION.—Nothing in this subsection displaces, supersedes, limits, or modifies the jurisdiction, responsibility, or authority of any Federal or State agency under any other Federal law.

''(8) APPLICABILITY.—This subsection does not apply to any area on the Outer Continental Shelf designated as a National Marine Sanctuary.''.

(b) CONFORMING AMENDMENT.—Section 8 of the Outer Continental Shelf Lands Act (43 U.S.C. 1337) is amended by striking the section heading and inserting the following: ''LEASES, EASEMENTS, AND RIGHTS-OF-WAY ON THE OUTER CONTINENTAL SHELF.—''.

(c) SAVINGS PROVISION.—Nothing in the amendment made by subsection (a) requires, with respect to any project—

(1) for which offshore test facilities have been constructed before the date of enactment of this Act; or

(2) for which a request for proposals has been issued by a public authority,

any resubmittal of documents previously submitted or any reauthorization of actions previously authorized.

SEC. 322. PRESERVATION OF GEOLOGICAL AND GEOPHYSICAL DATA.

(a) SHORT TITLE.—This section may be cited as the ''National Geological and Geophysical Data Preservation Program Act of 2003''.

(b) PROGRAM.—The Secretary shall carry out a National Geological and Geophysical Data Preservation Program in accordance with this section—

(1) to archive geologic, geophysical, and engineering data, maps, well logs, and samples;

(2) to provide a national catalog of such archival material; and

(3) to provide technical and financial assistance related to the archival material.

(c) PLAN.—Not later than 1 year after the date of enactment of this Act, the Secretary shall submit to Congress a plan for the implementation of the Program.

(d) DATA ARCHIVE SYSTEM.—

(1) ESTABLISHMENT.—The Secretary shall establish, as a component of the Program, a data archive system to provide for the storage, preservation, and archiving of subsurface, surface, geological, geophysical, and engineering data and samples. The Secretary, in consultation with the Advisory Committee, shall develop guidelines relating to the data archive system, including the types of data and samples to be preserved.

(2) SYSTEM COMPONENTS.—The system shall be comprised of State agencies that elect to be part of the system and agencies within the Department of the Interior that maintain geological and geophysical data and samples that are designated by the Secretary in accordance with this subsection. The Program shall provide for the storage of data and samples through data repositories operated by such agencies.

(3) LIMITATION OF DESIGNATION.—The Secretary may not designate a State agency as a component of the data archive system unless that agency is the agency that acts as the geological survey in the State.

(4) DATA FROM FEDERAL LAND.—The data archive system shall provide for the archiving of relevant subsurface data and samples obtained from Federal land—

(A) in the most appropriate repository designated under paragraph (2), with preference being given to archiving data in the State in which the data were collected; and

(B) consistent with all applicable law and requirements relating to confidentiality and proprietary data.

(e) NATIONAL CATALOG.—

(1) IN GENERAL.—As soon as practicable after the date of enactment of this Act, the Secretary shall develop and maintain, as a component of the Program, a national catalog that identifies—

(A) data and samples available in the data archive system established under subsection (d);

(B) the repository for particular material in the system; and

(C) the means of accessing the material.

(2) AVAILABILITY.—The Secretary shall make the national catalog accessible to the public on the site of the Survey on the Internet, consistent with all applicable requirements related to confidentiality and proprietary data.

(f) ADVISORY COMMITTEE.—

(1) IN GENERAL.—The Advisory Committee shall advise the Secretary on planning and implementation of the Program.

(2) NEW DUTIES.—In addition to its duties under the National Geologic Mapping Act of 1992 (43 U.S.C. 31a et seq.), the Advisory Committee shall perform the following duties:

(A) Advise the Secretary on developing guidelines and procedures for providing assistance for facilities under subsection (g)(1).

(B) Review and critique the draft implementation plan prepared by the Secretary under subsection (c).

(C) Identify useful studies of data archived under the Program that will advance understanding of the Nation's energy and mineral resources, geologic hazards, and engineering geology.

(D) Review the progress of the Program in archiving significant data and preventing the loss of such data, and the scientific progress of the studies funded under the Program.

(E) Include in the annual report to the Secretary required under section 5(b)(3) of the National Geologic Mapping Act of 1992 (43 U.S.C. 31d(b)(3)) an evaluation of the progress of the Program toward fulfilling the purposes of the Program under subsection (b).

(g) FINANCIAL ASSISTANCE.—

(1) ARCHIVE FACILITIES.—Subject to the availability of appropriations, the Secretary shall provide financial assistance to a State agency that is designated under subsection (d)(2) for providing facilities to archive energy material.

(2) STUDIES.—Subject to the availability of appropriations, the Secretary shall provide financial assistance to any State agency designated under subsection (d)(2) for studies and technical assistance activities that enhance understanding, interpretation, and use of materials archived in the data archive system established under subsection (d).

(3) FEDERAL SHARE.—The Federal share of the cost of an activity carried out with assistance under this subsection shall be not more than 50 percent of the total cost of the activity.

(4) PRIVATE CONTRIBUTIONS.—The Secretary shall apply to the non-Federal share of the cost of an activity carried out with assistance under this subsection the value of private contributions of property and services used for that activity.

(h) REPORT.—The Secretary shall include in each report under section 8 of the National Geologic Mapping Act of 1992 (43 U.S.C. 31g)—

(1) a description of the status of the Program;

(2) an evaluation of the progress achieved in developing the Program during the period covered by the report; and

(3) any recommendations for legislative or other action the Secretary considers necessary and appropriate to fulfill the purposes of the Program under subsection (b).

(i) MAINTENANCE OF STATE EFFORT.—It is the intent of Congress that the States not use this section as an opportunity to reduce State resources applied to the activities that are the subject of the Program.

(j) DEFINITIONS.—In this section:

(1) ADVISORY COMMITTEE.—The term ''Advisory Committee'' means the advisory committee established under section 5 of the National Geologic Mapping Act of 1992 (43 U.S.C. 31d).

(2) PROGRAM.—The term ''Program'' means the National Geological and Geophysical Data Preservation Program carried out under this section.

(3) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior, acting through the Director of the United States Geological Survey.

(4) SURVEY.—The term ''Survey'' means the United States Geological Survey.

(k) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $30,000,000 for each of fiscal years 2004 through 2008.

SEC. 323. OIL AND GAS LEASE ACREAGE LIMITATIONS.

Section 27(d)(1) of the Mineral Leasing Act (30 U.S.C. 184(d)(1)) is amended by inserting after ''acreage held in special tar sand areas'' the following: '', and acreage under any lease any portion of which has been committed to a federally approved unit or cooperative plan or communitization agreement or for which royalty (including compensatory royalty or royalty in-kind) was paid in the preceding calendar year,''.

SEC. 324. ASSESSMENT OF DEPENDENCE OF STATE OF HAWAII ON OIL.

(a) ASSESSMENT.—The Secretary of Energy shall assess the economic implication of the dependence of the State of Hawaii on oil as the principal source of energy for the State, including—

(1) the short- and long-term prospects for crude oil supply disruption and price volatility and potential impacts on the economy of Hawaii;

(2) the economic relationship between oil-fired generation of electricity from residual fuel and refined petroleum products consumed for ground, marine, and air transportation;

(3) the technical and economic feasibility of increasing the contribution of renewable energy resources for generation of electricity, on an island-by-island basis, including—

(A) siting and facility configuration;

(B) environmental, operational, and safety considerations;

(C) the availability of technology;

(D) effects on the utility system including reliability;

(E) infrastructure and transport requirements;

(F) community support; and

(G) other factors affecting the economic impact of such an increase and any effect on the economic relationship described in paragraph (2);

(4) the technical and economic feasibility of using liquified natural gas to displace residual fuel oil for electric generation, including neighbor island opportunities, and the effect of the displacement on the economic relationship described in paragraph (2), including—

(A) the availability of supply;

(B) siting and facility configuration for onshore and offshore liquified natural gas receiving terminals;

(C) the factors described in subparagraphs (B) through (F) of paragraph (3); and

(D) other economic factors;

(5) the technical and economic feasibility of using renewable energy sources (including hydrogen) for ground, marine, and air transportation energy applications to displace the use of refined petroleum products, on an island-by-island basis, and the economic impact of the displacement on the relationship described in (2); and

(6) an island-by-island approach to—

(A) the development of hydrogen from renewable resources; and

(B) the application of hydrogen to the energy needs of Hawaii.

(b) CONTRACTING AUTHORITY.—The Secretary of Energy may carry out the assessment under subsection (a) directly or, in whole or in part, through 1 or more contracts with qualified public or private entities.

(c) REPORT.—Not later than 300 days after the date of enactment of this Act, the Secretary of Energy shall prepare, in consultation with agencies of the State of Hawaii and other stakeholders, as appropriate, and submit to Congress, a report detailing the findings, conclusions, and recommendations resulting from the assessment.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this section.

SEC. 325. DEADLINE FOR DECISION ON APPEALS OF CONSISTENCY DETERMINATION UNDER THE COASTAL ZONE MANAGEMENT ACT OF 1972.

(a) IN GENERAL.—Section 319 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1465) is amended to read as follows:

''APPEALS TO THE SECRETARY

''SEC. 319. (a) NOTICE.—The Secretary shall publish an initial notice in the Federal Register not later than 30 days after the date of the filing of any appeal to the Secretary of a consistency determination under section 307.

''(b) CLOSURE OF RECORD.—

''(1) IN GENERAL.—Not later than the end of the 120-day period beginning on the date of publication of an initial notice under subsection (a), the Secretary shall receive no more filings on the appeal and the administrative record regarding the appeal shall be closed.

''(2) NOTICE.—Upon the closure of the administrative record, the Secretary shall immediately publish a notice that the administrative record has been closed.

''(c) DEADLINE FOR DECISION.—The Secretary shall issue a decision in any appeal filed under section 307 not later than 120 days after the closure of the administrative record.

''(d) APPLICATION.—This section applies to appeals initiated by the Secretary and appeals filed by an applicant.''.

(b) APPLICATION.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by subsection (a) shall apply with respect to any appeal initiated or filed before, on, or after the date of enactment of this Act.

(2) LIMITATION.—Subsection (a) of section 319 of the Coastal Zone Management Act of 1972 (as amended by subsection (a)) shall not apply with respect to an appeal initiated or filed before the date of enactment of this Act.

(c) CLOSURE OF RECORD FOR APPEAL FILED BEFORE DATE OF ENACTMENT.—Notwithstanding section 319(b)(1) of the Coastal Zone Management Act of 1972 (as amended by this section), in the case of an appeal of a consistency determination under section 307 of that Act initiated or filed before the date of enactment of this Act, the Secretary of Commerce shall receive no more filings on the appeal and the administrative record regarding the appeal shall be closed not later than 120 days after the date of enactment of this Act.

SEC. 326. REIMBURSEMENT FOR COSTS OF NEPA ANALYSES, DOCUMENTATION, AND STUDIES.

(a) IN GENERAL.—The Mineral Leasing Act is amended by inserting after section 37 (30 U.S.C. 193) the following:

''REIMBURSEMENT FOR COSTS OF CERTAIN ANALYSES, DOCUMENTATION, AND STUDIES

''SEC. 38. (a) IN GENERAL.—The Secretary of the Interior may reimburse a person that is a lessee, operator, operating rights owner, or applicant for any lease under this Act for reasonable amounts paid by the person for preparation for the Secretary by a contractor or other person selected by the Secretary of any project-level analysis, documentation, or related study required pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) with respect to the lease.

''(b) CONDITIONS.—The Secretary may provide reimbursement under subsection (a) only if—

''(1) adequate funding to enable the Secretary to timely prepare the analysis, documentation, or related study is not appropriated;

''(2) the person paid the costs voluntarily;

''(3) the person maintains records of its costs in accordance with regulations issued by the Secretary;

''(4) the reimbursement is in the form of a reduction in the Federal share of the royalty required to be paid for the lease for which the analysis, documentation, or related study is conducted, and is agreed to by the Secretary and the person reimbursed prior to commencing the analysis, documentation, or related study; and

''(5) the agreement required under paragraph (4) contains provisions—

''(A) reducing royalties owed on lease production based on market prices;

''(B) stipulating an automatic termination of the royalty reduction upon recovery of documented costs; and

''(C) providing a process by which the lessee may seek reimbursement for circumstances in which production from the specified lease is not possible.''.

(b) APPLICATION.—The amendment made by this section shall apply with respect to an analysis, documentation, or a related study conducted on or after October 1, 2008, for any lease entered into before, on, or after the date of enactment of this Act.

(c) DEADLINE FOR REGULATIONS.—The Secretary shall issue regulations implementing the amendment made by this section by not later than 1 year after the date of enactment of this Act.

SEC. 327. HYDRAULIC FRACTURING.

Paragraph (1) of section 1421(d) of the Safe Drinking Water Act (42 U.S.C. 300h(d)) is amended to read as follows:

''(1) UNDERGROUND INJECTION.—The term 'underground injection'—

''(A) means the subsurface emplacement of fluids by well injection; and

''(B) excludes—

''(i) the underground injection of natural gas for purposes of storage; and

''(ii) the underground injection of fluids or propping agents pursuant to hydraulic fracturing operations related to oil or gas production activities.''.

SEC. 328. OIL AND GAS EXPLORATION AND PRODUCTION DEFINED.

Section 502 of the Federal Water Pollution Control Act (33 U.S.C. 1362) is amended by adding at the end the following:

''(24) OIL AND GAS EXPLORATION AND PRODUCTION.—The term 'oil and gas exploration, production, processing, or treatment operations or transmission facilities' means all field activities or operations associated with exploration, production, processing, or treatment operations, or transmission facilities, including activities necessary to prepare a site for drilling and for the movement and placement of drilling equipment, whether or not such field activities or operations may be considered to be construction activities.''.

SEC. 329. OUTER CONTINENTAL SHELF PROVISIONS.

(a) STORAGE ON THE OUTER CONTINENTAL SHELF.—Section 5(a)(5) of the Outer Continental Shelf Lands Act (43 U.S.C. 1334(a)(5)) is amended by inserting ''from any source'' after ''oil and gas''.

(b) DEEPWATER PROJECTS.—Section 6 of the Deepwater Port Act of 1974 (33 U.S.C. 1505) is amended by adding at the end the following:

''(d) RELIANCE ON ACTIVITIES OF OTHER AGENCIES.—In fulfilling the requirements of section 5(f)—

''(1) to the extent that other Federal agencies have prepared environmental impact statements, are conducting studies, or are monitoring the affected human, marine, or coastal environment, the Secretary may use the information derived from those activities in lieu of directly conducting such activities; and

''(2) the Secretary may use information obtained from any State or local government or from any person.''.

(c) NATURAL GAS DEFINED.—Section 3(13) of the Deepwater Port Act of 1974 (33 U.S.C. 1502(13)) is amended to read as follows:

''(13) natural gas means—

''(A) natural gas unmixed; or

''(B) any mixture of natural or artificial gas, including compressed or liquefied natural gas, natural gas liquids, liquefied petroleum gas, and condensate recovered from natural gas;''.

SEC. 330. APPEALS RELATING TO PIPELINE CONSTRUCTION OR OFFSHORE MINERAL DEVELOPMENT PROJECTS.

(a) AGENCY OF RECORD, PIPELINE CONSTRUCTION PROJECTS.—Any Federal administrative agency proceeding that is an appeal or review under section 319 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1465), as amended by this Act, related to Federal authority for an interstate natural gas pipeline construction project, including construction of natural gas storage and liquefied natural gas facilities, shall use as its exclusive record for all purposes the record compiled by the Federal Energy Regulatory Commission pursuant to the Commission's proceeding under sections 3 and 7 of the Natural Gas Act (15 U.S.C. 717b, 717f).

(b) SENSE OF CONGRESS.—It is the sense of Congress that all Federal and State agencies with jurisdiction over interstate natural gas pipeline construction activities should coordinate their proceedings within the timeframes established by the Federal Energy Regulatory Commission when the Commission is acting under sections 3 and 7 of the Natural Gas Act (15 U.S.C. 717b, 717f) to determine whether a certificate of public convenience and necessity should be issued for a proposed interstate natural gas pipeline.

(c) AGENCY OF RECORD, OFFSHORE MINERAL DEVELOPMENT PROJECTS.—Any Federal administrative agency proceeding that is an appeal or review under section 319 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1465), as amended by this Act, related to Federal authority for the permitting, approval, or other authorization of energy projects, including projects to explore, develop, or produce mineral resources in or underlying the Outer Continental Shelf shall use as its exclusive record for all purposes (except for the filing of pleadings) the record compiled by the relevant Federal permitting agency.

SEC. 331. BILATERAL INTERNATIONAL OIL SUPPLY AGREEMENTS.

(a) IN GENERAL.—Notwithstanding any other provision of law, the President may export oil to, or secure oil for, any country pursuant to a bilateral international oil supply agreement entered into by the United States with the country before June 25, 1979, or to any country pursuant to the International Emergency Oil Sharing Plan of the International Energy Agency.

(b) MEMORANDUM OF AGREEMENT.—The following agreements are deemed to have entered into force by operation of law and are deemed to have no termination date:

(1) The agreement entitled ''Agreement amending and extending the memorandum of agreement of June 22, 1979'', entered into force November 13, 1994 (TIAS 12580).

(2) The agreement entitled ''Agreement amending the contingency implementing arrangements of October 17, 1980'', entered into force June 27, 1995 (TIAS 12670).

SEC. 332. NATURAL GAS MARKET REFORM.

(a) CLARIFICATION OF EXISTING CFTC AUTHORITY.—

(1) FALSE REPORTING.—Section 9(a)(2) of the Commodity Exchange Act (7 U.S.C. 13(a)(2)) is amended by striking ''false or misleading or knowingly inaccurate reports'' and inserting ''knowingly false or knowingly misleading or knowingly inaccurate reports''.

(2) COMMISSION ADMINISTRATIVE AND CIVIL AUTHORITY.—Section 9 of the Commodity Exchange Act (7 U.S.C. 13) is amended by redesignating subsection (f) as subsection (e), and adding:

''(f) COMMISSION ADMINISTRATIVE AND CIVIL AUTHORITY.—The Commission may bring administrative or civil actions as provided in this Act against any person for a violation of any provision of this section including, but not limited to, false reporting under subsection (a)(2).''.

(3) EFFECT OF AMENDMENTS.—The amendments made by paragraphs (1) and (2) restate, without substantive change, existing burden of proof provisions and existing Commission civil enforcement authority, respectively. These clarifying changes do not alter any existing burden of proof or grant any new statutory authority. The provisions of this section, as restated herein, continue to apply to any action pending on or commenced after the date of enactment of this Act for any act, omission, or violation occurring before, on, or after, such date of enactment.

(b) FRAUD AUTHORITY.—Section 4b of the Commodity Exchange Act (7 U.S.C. 6b) is amended—

(1) by redesignating subsections (b) and (c) as subsections (c) and (d), respectively; and

(2) by striking subsection (a) and inserting the following:

''(a) It shall be unlawful—

''(1) for any person, in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery or in interstate commerce, that is made, or to be made, on or subject to the rules of a designated contract market, for or on behalf of any other person; or

''(2) for any person, in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery, or other agreement, contract, or transaction subject to section 5a(g) (1) and (2) of this Act, that is made, or to be made, for or on behalf of, or with, any other person, other than on or subject to the rules of a designated contract market—

''(A) to cheat or defraud or attempt to cheat or defraud such other person;

''(B) willfully to make or cause to be made to such other person any false report or statement or willfully to enter or cause to be entered for such other person any false record;

''(C) willfully to deceive or attempt to deceive such other person by any means whatsoever in regard to any order or contract or the disposition or execution of any order or contract, or in regard to any act of agency performed, with respect to any order or contract for or, in the case of subsection (a)(2), with such other person; or

''(D)(i) to bucket an order if such order is either represented by such person as an order to be executed, or required to be executed, on or subject to the rules of a designated contract market; or

''(ii) to fill an order by offset against the order or orders of any other person, or willfully and knowingly and without the prior consent of such other person to become the buyer in respect to any selling order of such other person, or become the seller in respect to any buying order of such other person, if such order is either represented by such person as an order to be executed, or required to be executed, on or subject to the rules of a designated contract market.

''(b) Subsection (a)(2) shall not obligate any person, in connection with a transaction in a contract of sale of a commodity for future delivery, or other agreement, contract or transaction subject to section 5a(g) (1) and (2) of this Act, with another person, to disclose to such other person nonpublic information that may be material to the market price of such commodity or transaction, except as necessary to make any statement made to such other person in connection with such transaction, not misleading in any material respect.''.

(c) JURISDICTION OF THE CFTC.—The Natural Gas Act (15 U.S.C. 717 et seq.) is amended by adding at the end:

''SEC. 26. JURISDICTION.

''This Act shall not affect the exclusive jurisdiction of the Commodity Futures Trading Commission with respect to accounts, agreements, contracts, or transactions in commodities under the Commodity Exchange Act (7 U.S.C. 1 et seq.). Any request for information by the Commission to a designated contract market, registered derivatives transaction execution facility, board of trade, exchange, or market involving accounts, agreements, contracts, or transactions in commodities (including natural gas, electricity, and other energy commodities) within the exclusive jurisdiction of the Commodity Futures Trading Commission shall be directed to the Commodity Futures Trading Commission, which shall cooperate in responding to any information request by the Commission.''.

(d) INCREASED PENALTIES.—Section 21 of the Natural Gas Act (15 U.S.C. 717t) is amended—

(1) in subsection (a)—

(A) by striking ''$5,000'' and inserting ''$1,000,000''; and

(B) by striking ''two years'' and inserting ''5 years''; and

(2) in subsection (b), by striking ''$500'' and inserting ''$50,000''.

SEC. 333. NATURAL GAS MARKET TRANSPARENCY.

The Natural Gas Act (15 U.S.C 717 et seq.) is amended—

(1) by redesignating section 24 as section 25; and

(2) by inserting after section 23 the following:

''SEC. 24. NATURAL GAS MARKET TRANSPARENCY.

''(a) AUTHORIZATION.—(1) Not later than 180 days after the date of enactment of the Energy Policy Act of 2003, the Federal Energy

Regulatory Commission shall issue rules directing all entities subject to the Commission's jurisdiction as provided under this Act to timely report information about the availability and prices of natural gas sold at wholesale in interstate commerce to the Commission and price publishers.

''(2) The Commission shall evaluate the data for adequate price transparency and accuracy.

''(3) Rules issued under this subsection requiring the reporting of information to the Commission that may become publicly available shall be limited to aggregate data and transaction-specific data that are otherwise required by the Commission to be made public.

''(4) In exercising its authority under this section, the Commission shall not—

''(A) compete with, or displace from the market place, any price publisher; or

''(B) regulate price publishers or impose any requirements on the publication of information.

''(b) TIMELY ENFORCEMENT.—No person shall be subject to any penalty under this section with respect to a violation occurring more than 3 years before the date on which the Federal Energy Regulatory Commission seeks to assess a penalty.

''(c) LIMITATION ON COMMISSION AUTHORITY.—(1) The Commission shall not condition access to interstate pipeline transportation upon the reporting requirements authorized under this section.

''(2) Natural gas sales by a producer that are attributable to volumes of natural gas produced by such producer shall not be subject to the rules issued pursuant to this section.

''(3) The Commission shall not require natural gas producers, processors, or users who have a de minimis market presence to participate in the reporting requirements provided in this section.''.

Subtitle C—Access to Federal Land

SEC. 341. OFFICE OF FEDERAL ENERGY PROJECT COORDINATION.

(a) ESTABLISHMENT.—The President shall establish the Office of Federal Energy Project Coordination (referred to in this section as the ''Office'') within the Executive Office of the President in the same manner and with the same mission as the White House Energy Projects Task Force established by Executive Order No. 13212 (42 U.S.C. 13201 note).

(b) STAFFING.—The Office shall be staffed by functional experts from relevant Federal agencies on a nonreimbursable basis to carry out the mission of the Office.

(c) REPORT.—The Office shall transmit an annual report to Congress that describes the activities put in place to coordinate and expedite Federal decisions on energy projects. The report shall list accomplishments in improving the Federal decisionmaking process and shall include any additional recommendations or systemic changes needed to establish a more effective and efficient Federal permitting process.

SEC. 342. FEDERAL ONSHORE OIL AND GAS LEASING AND PERMITTING PRACTICES.

(a) REVIEW OF ONSHORE OIL AND GAS LEASING PRACTICES.—

(1) IN GENERAL.—The Secretary of the Interior, in consultation with the Secretary of Agriculture with respect to National Forest System lands under the jurisdiction of the Department of Agriculture, shall perform an internal review of current Federal onshore oil and gas leasing and permitting practices.

(2) INCLUSIONS.—The review shall include the process for—

(A) accepting or rejecting offers to lease;

(B) administrative appeals of decisions or orders of officers or employees of the Bureau of Land Management with respect to a Federal oil or gas lease;

(C) considering surface use plans of operation, including the timeframes in which the plans are considered, and any recommendations for improving and expediting the process; and

(D) identifying stipulations to address site-specific concerns and conditions, including those stipulations relating to the environment and resource use conflicts.

(b) REPORT.—Not later than 180 days after the date of enactment of this Act, the Secretary of the Interior and the Secretary of Agriculture shall transmit a report to Congress that describes—

(1) actions taken under section 3 of Executive Order No. 13212 (42 U.S.C. 13201 note); and

(2) actions taken or any plans to improve the Federal onshore oil and gas leasing program.

SEC. 343. MANAGEMENT OF FEDERAL OIL AND GAS LEASING PROGRAMS.

(a) TIMELY ACTION ON LEASES AND PERMITS.—To ensure timely action on oil and gas leases and applications for permits to drill on land otherwise available for leasing, the Secretary of the Interior (in this section referred to as the ''Secretary'') shall—

(1) ensure expeditious compliance with section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C));

(2) improve consultation and coordination with the States and the public; and

(3) improve the collection, storage, and retrieval of information relating to the leasing activities.

(b) BEST MANAGEMENT PRACTICES.—

(1) IN GENERAL.—Not later than 18 months after the date of enactment of this Act, the Secretary shall develop and implement best management practices to—

(A) improve the administration of the onshore oil and gas leasing program under the Mineral Leasing Act (30 U.S.C. 181 et seq.); and

(B) ensure timely action on oil and gas leases and applications for permits to drill on lands otherwise available for leasing.

(2) CONSIDERATIONS.—In developing the best management practices under paragraph (1), the Secretary shall consider any recommendations from the review under section 342.

(3) REGULATIONS.—Not later than 180 days after the development of best management practices under paragraph (1), the Secretary shall publish, for public comment, proposed regulations that set forth specific timeframes for processing leases and applications in accordance with the practices, including deadlines for—

(A) approving or disapproving resource management plans and related documents, lease applications, and surface use plans; and

(B) related administrative appeals.

(c) IMPROVED ENFORCEMENT.—The Secretary shall improve inspection and enforcement of oil and gas activities, including enforcement of terms and conditions in permits to drill.

(d) AUTHORIZATION OF APPROPRIATIONS.—In addition to amounts authorized to be appropriated to carry out section 17 of the Mineral Leasing Act (30 U.S.C. 226), there are authorized to be appropriated to the Secretary for each of fiscal years 2004 through 2007—

(1) $40,000,000 to carry out subsections (a) and (b); and

(2) $20,000,000 to carry out subsection (c).

SEC. 344. CONSULTATION REGARDING OIL AND GAS LEASING ON PUBLIC LAND.

(a) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Secretary of the Interior and the Secretary of Agriculture shall enter into a memorandum of understanding regarding oil and gas leasing on—

(1) public lands under the jurisdiction of the Secretary of the Interior; and

(2) National Forest System lands under the jurisdiction of the Secretary of Agriculture.

(b) CONTENTS.—The memorandum of understanding shall include provisions that—

(1) establish administrative procedures and lines of authority that ensure timely processing of oil and gas lease applications, surface use plans of operation, and applications for permits to drill, including steps for processing surface use plans and applications for permits to drill consistent with the timelines established by the amendment made by section 348;

(2) eliminate duplication of effort by providing for coordination of planning and environmental compliance efforts; and

(3) ensure that lease stipulations are—

(A) applied consistently;

(B) coordinated between agencies; and

(C) only as restrictive as necessary to protect the resource for which the stipulations are applied.

(c) DATA RETRIEVAL SYSTEM.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary of the Interior and the Secretary of Agriculture shall establish a joint data retrieval system that is capable of—

(A) tracking applications and formal requests made in accordance with procedures of the Federal onshore oil and gas leasing program; and

(B) providing information regarding the status of the applications and requests within the Department of the Interior and the Department of Agriculture.

(2) RESOURCE MAPPING.—Not later than 2 years after the date of enactment of this Act, the Secretary of the Interior and the Secretary of Agriculture shall establish a joint Geographic Information System mapping system for use in—

(A) tracking surface resource values to aid in resource management; and

(B) processing surface use plans of operation and applications for permits to drill.

SEC. 345. ESTIMATES OF OIL AND GAS RESOURCES UNDERLYING ONSHORE FEDERAL LAND.

(a) ASSESSMENT.—Section 604 of the Energy Act of 2000 (42 U.S.C. 6217) is amended—

(1) in subsection (a)—

(A) in paragraph (1)—

(i) by striking ''reserve''; and

(ii) by striking ''and'' after the semicolon; and

(B) by striking paragraph (2) and inserting the following:

''(2) the extent and nature of any restrictions or impediments to the development of the resources, including—

''(A) impediments to the timely granting of leases;

''(B) post-lease restrictions, impediments, or delays on development for conditions of approval, applications for permits to drill, or processing of environmental permits; and

''(C) permits or restrictions associated with transporting the resources for entry into commerce; and

''(3) the quantity of resources not produced or introduced into commerce because of the restrictions.'';

(2) in subsection (b)—

(A) by striking ''reserve'' and inserting ''resource''; and

(B) by striking ''publically'' and inserting ''publicly''; and

(3) by striking subsection (d) and inserting the following:

''(d) ASSESSMENTS.—Using the inventory, the Secretary of Energy shall make periodic assessments of economically recoverable resources accounting for a range of parameters

such as current costs, commodity prices, technology, and regulations.''.

(b) METHODOLOGY.—The Secretary of the Interior shall use the same assessment methodology across all geological provinces, areas, and regions in preparing and issuing national geological assessments to ensure accurate comparisons of geological resources.

SEC. 346. COMPLIANCE WITH EXECUTIVE ORDER 13211; ACTIONS CONCERNING REGULATIONS THAT SIGNIFICANTLY AFFECT ENERGY SUPPLY, DISTRIBUTION, OR USE.

(a) REQUIREMENT.—The head of each Federal agency shall require that before the Federal agency takes any action that could have a significant adverse effect on the supply of domestic energy resources from Federal public land, the Federal agency taking the action shall comply with Executive Order No. 13211 (42 U.S.C. 13201 note).

(b) GUIDANCE.—Not later than 180 days after the date of enactment of this Act, the Secretary of Energy shall publish guidance for purposes of this section describing what constitutes a significant adverse effect on the supply of domestic energy resources under Executive Order No. 13211 (42 U.S.C. 13201 note).

(c) MEMORANDUM OF UNDERSTANDING.—The Secretary of the Interior and the Secretary of Agriculture shall include in the memorandum of understanding under section 344 provisions for implementing subsection (a) of this section.

SEC. 347. PILOT PROJECT TO IMPROVE FEDERAL PERMIT COORDINATION.

(a) ESTABLISHMENT.—The Secretary of the Interior (in this section referred to as the ''Secretary'') shall establish a Federal Permit Streamlining Pilot Project (in this section referred to as the ''Pilot Project'').

(b) MEMORANDUM OF UNDERSTANDING.—

(1) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Secretary shall enter into a memorandum of understanding with the Secretary of Agriculture, the Administrator of the Environmental Protection Agency, and the Chief of Engineers of the Army Corps of Engineers for purposes of this section.

(2) STATE PARTICIPATION.—The Secretary may request that the Governors of Wyoming, Montana, Colorado, Utah, and New Mexico be signatories to the memorandum of understanding.

(c) DESIGNATION OF QUALIFIED STAFF.—

(1) IN GENERAL.—Not later than 30 days after the date of the signing of the memorandum of understanding under subsection (b), all Federal signatory parties shall assign to each of the field offices identified in subsection (d), on a nonreimbursable basis, an employee who has expertise in the regulatory issues relating to the office in which the employee is employed, including, as applicable, particular expertise in—

(A) the consultations and the preparation of biological opinions under section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536);

(B) permits under section 404 of Federal Water Pollution Control Act (33 U.S.C. 1344);

(C) regulatory matters under the Clean Air Act (42 U.S.C. 7401 et seq.);

(D) planning under the National Forest Management Act of 1976 (16 U.S.C. 472a et seq.); and

(E) the preparation of analyses under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(2) DUTIES.—Each employee assigned under paragraph (1) shall—

(A) not later than 90 days after the date of assignment, report to the Bureau of Land Management Field Managers in the office to which the employee is assigned;

(B) be responsible for all issues relating to the jurisdiction of the home office or agency of the employee; and

(C) participate as part of the team of personnel working on proposed energy projects, planning, and environmental analyses.

(d) FIELD OFFICES.—The following Bureau of Land Management Field Offices shall serve as the Pilot Project offices:

(1) Rawlins, Wyoming.
(2) Buffalo, Wyoming.
(3) Miles City, Montana.
(4) Farmington, New Mexico.
(5) Carlsbad, New Mexico.
(6) Glenwood Springs, Colorado.
(7) Vernal, Utah.

(e) REPORTS.—Not later than 3 years after the date of enactment of this Act, the Secretary shall transmit to Congress a report that—

(1) outlines the results of the Pilot Project to date; and

(2) makes a recommendation to the President regarding whether the Pilot Project should be implemented throughout the United States.

(f) ADDITIONAL PERSONNEL.—The Secretary shall assign to each field office identified in subsection (d) any additional personnel that are necessary to ensure the effective implementation of—

(1) the Pilot Project; and

(2) other programs administered by the field offices, including inspection and enforcement relating to energy development on Federal land, in accordance with the multiple use mandate of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq).

(g) SAVINGS PROVISION.—Nothing in this section affects—

(1) the operation of any Federal or State law; or

(2) any delegation of authority made by the head of a Federal agency whose employees are participating in the Pilot Project.

SEC. 348. DEADLINE FOR CONSIDERATION OF APPLICATIONS FOR PERMITS.

Section 17 of the Mineral Leasing Act (30 U.S.C. 226) is amended by adding at the end the following:

''(p) DEADLINES FOR CONSIDERATION OF APPLICATIONS FOR PERMITS.—

''(1) IN GENERAL.—Not later than 10 days after the date on which the Secretary receives an application for any permit to drill, the Secretary shall—

''(A) notify the applicant that the application is complete; or

''(B) notify the applicant that information is missing and specify any information that is required to be submitted for the application to be complete.

''(2) ISSUANCE OR DEFERRAL.—Not later than 30 days after the applicant for a permit has submitted a complete application, the Secretary shall—

''(A) issue the permit; or

''(B)(i) defer decision on the permit; and

''(ii) provide to the applicant a notice that specifies any steps that the applicant could take for the permit to be issued.

''(3) REQUIREMENTS FOR DEFERRED APPLICATIONS.—

''(A) IN GENERAL.—If the Secretary provides notice under paragraph (2)(B)(ii), the applicant shall have a period of 2 years from the date of receipt of the notice in which to complete all requirements specified by the Secretary, including providing information needed for compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

''(B) ISSUANCE OF DECISION ON PERMIT.—If the applicant completes the requirements within the period specified in subparagraph (A), the Secretary shall issue a decision on the permit not later than 10 days after the date of completion of the requirements described in subparagraph (A).

''(C) DENIAL OF PERMIT.—If the applicant does not complete the requirements within the period specified in subparagraph (A), the Secretary shall deny the permit.

''(q) REPORT.—On a quarterly basis, each field office of the Bureau of Land Management and the Forest Service shall transmit to the Secretary of the Interior or the Secretary of Agriculture, respectively, a report that—

''(1) specifies the number of applications for permits to drill received by the field office in the period covered by the report; and

''(2) describes how each of the applications was disposed of by the field office.''.

SEC. 349. CLARIFICATION OF FAIR MARKET RENTAL VALUE DETERMINATIONS FOR PUBLIC LAND AND FOREST SERVICE RIGHTS-OF-WAY.

(a) LINEAR RIGHTS-OF-WAY UNDER FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976.—Section 504 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1764) is amended by adding at the end the following:

''(k) DETERMINATION OF FAIR MARKET VALUE OF LINEAR RIGHTS-OF-WAY.—

''(1) IN GENERAL.—Effective beginning on the date of the issuance of the rules required by paragraph (2), for purposes of subsection (g), the Secretary concerned shall determine the fair market value for the use of land encumbered by a linear right-of-way granted, issued, or renewed under this title using the valuation method described in paragraphs (2), (3), and (4).

''(2) REVISIONS.—Not later than 1 year after the date of enactment of this subsection—

''(A) the Secretary of the Interior shall amend section 2803.1–2 of title 43, Code of Federal Regulations, as in effect on the date of enactment of this subsection, to revise the per acre rental fee zone value schedule by State, county, and type of linear right-of-way use to reflect current values of land in each zone; and

''(B) the Secretary of Agriculture shall make the same revision for linear rights-of-way granted, issued, or renewed under this title on National Forest System land.

''(3) UPDATES.—The Secretary concerned shall annually update the schedule revised under paragraph (2) by multiplying the current year's rental per acre by the annual change, second quarter to second quarter (June 30 to June 30) in the Gross National Product Implicit Price Deflator Index published in the Survey of Current Business of the Department of Commerce, Bureau of Economic Analysis.

''(4) REVIEW.—If the cumulative change in the index referred to in paragraph (3) exceeds 30 percent, or the change in the 3-year average of the 1-year Treasury interest rate used to determine per acre rental fee zone values exceeds plus or minus 50 percent, the Secretary concerned shall conduct a review of the zones and rental per acre figures to determine whether the value of Federal land has differed sufficiently from the index referred to in paragraph (3) to warrant a revision in the base zones and rental per acre figures. If, as a result of the review, the Secretary concerned determines that such a revision is warranted, the Secretary concerned shall revise the base zones and rental per acre figures accordingly. Any revision of base zones and rental per acre figure shall only affect lease rental rates at inception or renewal.''.

(b) RIGHTS-OF-WAY UNDER MINERAL LEASING ACT.—Section 28(*l*) of the Mineral Leasing Act (30 U.S.C. 185(*l*)) is amended by inserting before the period at the end the following: ''using the valuation method described in section 2803.1–2 of title 43, Code of

Federal Regulations, as revised in accordance with section 504(k) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1764(k))''.

SEC. 350. ENERGY FACILITY RIGHTS-OF-WAY AND CORRIDORS ON FEDERAL LAND.

(a) REPORT TO CONGRESS.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary of Agriculture and the Secretary of the Interior, in consultation with the Secretary of Commerce, the Secretary of Defense, the Secretary of Energy, and the Federal Energy Regulatory Commission, shall submit to Congress a joint report—

(A) that addresses—

(i) the location of existing rights-of-way and designated and de facto corridors for oil and gas pipelines and electric transmission and distribution facilities on Federal land; and

(ii) opportunities for additional oil and gas pipeline and electric transmission capacity within those rights-of-way and corridors; and

(B) that includes a plan for making available, on request, to the appropriate Federal, State, and local agencies, tribal governments, and other persons involved in the siting of oil and gas pipelines and electricity transmission facilities Geographic Information System-based information regarding the location of the existing rights-of-way and corridors and any planned rights-of-way and corridors.

(2) CONSULTATIONS AND CONSIDERATIONS.—In preparing the report, the Secretary of the Interior and the Secretary of Agriculture shall consult with—

(A) other agencies of Federal, State, tribal, or local units of government, as appropriate;

(B) persons involved in the siting of oil and gas pipelines and electric transmission facilities; and

(C) other interested members of the public.

(3) LIMITATION.—The Secretary of the Interior and the Secretary of Agriculture shall limit the distribution of the report and Geographic Information System-based information referred to in paragraph (1) as necessary for national and infrastructure security reasons, if either Secretary determines that the information may be withheld from public disclosure under a national security or other exception under section 552(b) of title 5, United States Code.

(b) CORRIDOR DESIGNATIONS.—

(1) 11 CONTIGUOUS WESTERN STATES.—Not later than 2 years after the date of enactment of this Act, the Secretary of Agriculture, the Secretary of Commerce, the Secretary of Defense, the Secretary of Energy, and the Secretary of the Interior, in consultation with the Federal Energy Regulatory Commission and the affected utility industries, shall jointly—

(A) designate, under title V of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761 et seq.) and other applicable Federal laws, corridors for oil and gas pipelines and electricity transmission and facilities on Federal land in the eleven contiguous Western States (as defined in section 103 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1702));

(B) perform any environmental reviews that may be required to complete the designations of corridors for the facilities on Federal land in the eleven contiguous Western States; and

(C) incorporate the designated corridors into—

(i) the relevant departmental and agency land use and resource management plans; or

(ii) equivalent plans.

(2) OTHER STATES.—Not later than 4 years after the date of enactment of this Act, the Secretary of Agriculture, the Secretary of Commerce, the Secretary of Defense, the Secretary of Energy, and the Secretary of the Interior, in consultation with the Federal Energy Regulatory Commission and the affected utility industries, shall jointly—

(A) identify corridors for oil and gas pipelines and electricity transmission and distribution facilities on Federal land in the States other than those described in paragraph (1); and

(B) schedule prompt action to identify, designate, and incorporate the corridors into the land use plan.

(3) ONGOING RESPONSIBILITIES.—After completing the requirements under paragraphs (1) and (2), the Secretary of Agriculture, the Secretary of Commerce, the Secretary of Defense, the Secretary of Energy, and the Secretary of the Interior, with respect to lands under their respective jurisdictions, in consultation with the Federal Energy Regulatory Commission and the affected utility industries, shall establish procedures that—

(A) ensure that additional corridors for oil and gas pipelines and electricity transmission and distribution facilities on Federal land are promptly identified and designated; and

(B) expedite applications to construct or modify oil and gas pipelines and electricity transmission and distribution facilities within the corridors, taking into account prior analyses and environmental reviews undertaken during the designation of corridors.

(c) CONSIDERATIONS.—In carrying out this section, the Secretaries shall take into account the need for upgraded and new electricity transmission and distribution facilities to—

(1) improve reliability;

(2) relieve congestion; and

(3) enhance the capability of the national grid to deliver electricity.

(d) DEFINITION OF CORRIDOR.—

(1) IN GENERAL.—In this section and title V of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761 et seq.), the term ''corridor'' means—

(A) a linear strip of land—

(i) with a width determined with consideration given to technological, environmental, and topographical factors; and

(ii) that contains, or may in the future contain, 1 or more utility, communication, or transportation facilities;

(B) a land use designation that is established—

(i) by law;

(ii) by Secretarial Order;

(iii) through the land use planning process; or

(iv) by other management decision; and

(C) a designation made for the purpose of establishing the preferred location of compatible linear facilities and land uses.

(2) SPECIFICATIONS OF CORRIDOR.—On designation of a corridor under this section, the centerline, width, and compatible uses of a corridor shall be specified.

SEC. 351. CONSULTATION REGARDING ENERGY RIGHTS-OF-WAY ON PUBLIC LAND.

(a) MEMORANDUM OF UNDERSTANDING.—

(1) IN GENERAL.—Not later than 6 months after the date of enactment of this Act, the Secretary of Energy, in consultation with the Secretary of the Interior, the Secretary of Agriculture, and the Secretary of Defense with respect to lands under their respective jurisdictions, shall enter into a memorandum of understanding to coordinate all applicable Federal authorizations and environmental reviews relating to a proposed or existing utility facility. To the maximum extent practicable under applicable law, the Secretary of Energy shall, to ensure timely review and permit decisions, coordinate such authorizations and reviews with any Indian tribes, multi-State entities, and State agencies that are responsible for conducting any separate permitting and environmental reviews of the affected utility facility.

(2) CONTENTS.—The memorandum of understanding shall include provisions that—

(A) establish—

(i) a unified right-of-way application form; and

(ii) an administrative procedure for processing right-of-way applications, including lines of authority, steps in application processing, and timeframes for application processing;

(B) provide for coordination of planning relating to the granting of the rights-of-way;

(C) provide for an agreement among the affected Federal agencies to prepare a single environmental review document to be used as the basis for all Federal authorization decisions; and

(D) provide for coordination of use of right-of-way stipulations to achieve consistency.

(b) NATURAL GAS PIPELINES.—

(1) IN GENERAL.—With respect to permitting activities for interstate natural gas pipelines, the May 2002 document entitled ''Interagency Agreement On Early Coordination Of Required Environmental And Historic Preservation Reviews Conducted In Conjunction With The Issuance Of Authorizations To Construct And Operate Interstate Natural Gas Pipelines Certificated By The Federal Energy Regulatory Commission'' shall constitute compliance with subsection (a).

(2) REPORT.—

(A) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, and every 2 years thereafter, agencies that are signatories to the document referred to in paragraph (1) shall transmit to Congress a report on how the agencies under the jurisdiction of the Secretaries are incorporating and implementing the provisions of the document referred to in paragraph (1).

(B) CONTENTS.—The report shall address—

(i) efforts to implement the provisions of the document referred to in paragraph (1);

(ii) whether the efforts have had a streamlining effect;

(iii) further improvements to the permitting process of the agency; and

(iv) recommendations for inclusion of State and tribal governments in a coordinated permitting process.

(c) DEFINITION OF UTILITY FACILITY.—In this section, the term ''utility facility'' means any privately, publicly, or cooperatively owned line, facility, or system—

(1) for the transportation of—

(A) oil, natural gas, synthetic liquid fuel, or gaseous fuel;

(B) any refined product produced from oil, natural gas, synthetic liquid fuel, or gaseous fuel; or

(C) products in support of the production of material referred to in subparagraph (A) or (B);

(2) for storage and terminal facilities in connection with the production of material referred to in paragraph (1); or

(3) for the generation, transmission, and distribution of electric energy.

SEC. 352. RENEWABLE ENERGY ON FEDERAL LAND.

(a) REPORT.—

(1) IN GENERAL.—Not later than 24 months after the date of enactment of this Act, the Secretary of the Interior, in cooperation with the Secretary of Agriculture, shall develop and transmit to Congress a report that includes recommendations on opportunities to develop renewable energy on—

(A) public lands under the jurisdiction of the Secretary of the Interior; and

(B) National Forest System lands under the jurisdiction of the Secretary of Agriculture.

(2) CONTENTS.—The report shall include—

(A) 5-year plans developed by the Secretary of the Interior and the Secretary of Agriculture, respectively, for encouraging the development of renewable energy consistent with applicable law and management plans;

(B) an analysis of—

(i) the use of rights-of-way, leases, or other methods to develop renewable energy on such lands;

(ii) the anticipated benefits of grants, loans, tax credits, or other provisions to promote renewable energy development on such lands; and

(iii) any issues that the Secretary of the Interior or the Secretary of Agriculture have encountered in managing renewable energy projects on such lands, believe are likely to arise in relation to the development of renewable energy on such lands;

(C) a list, developed in consultation with the Secretary of Energy and the Secretary of Defense, of lands under the jurisdiction of the Department of Energy or the Department of Defense that would be suitable for development for renewable energy, and any recommended statutory and regulatory mechanisms for such development; and

(D) any recommendations relating to the issues addressed in the report.

(b) NATIONAL ACADEMY OF SCIENCES STUDY.—

(1) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Secretary of the Interior shall contract with the National Academy of Sciences to—

(A) study the potential for the development of wind, solar, and ocean energy (including tidal, wave, and thermal energy) on the Outer Continental Shelf;

(B) assess existing Federal authorities for the development of such resources; and

(C) recommend statutory and regulatory mechanisms for such development.

(2) TRANSMITTAL.—The results of the study shall be transmitted to Congress not later than 2 years after the date of enactment of this Act.

(c) GENERATION CAPACITY OF ELECTRICITY FROM RENEWABLE ENERGY RESOURCES ON PUBLIC LAND.—The Secretary of the Interior shall, not later than 10 years after the date of enactment of this Act, seek to approve renewable energy projects located (or to be located) on public lands with a generation capacity of at least 10,000 megawatts of electricity.

SEC. 353. ELECTRICITY TRANSMISSION LINE RIGHT-OF-WAY, CLEVELAND NATIONAL FOREST AND ADJACENT PUBLIC LAND, CALIFORNIA.

(a) ISSUANCE.—

(1) IN GENERAL.—Not later than 60 days after the completion of the environmental reviews under subsection (c), the Secretary of the Interior and the Secretary of Agriculture shall issue all necessary grants, easements, permits, plan amendments, and other approvals to allow for the siting and construction of a high-voltage electricity transmission line right-of-way running approximately north to south through the Trabuco Ranger District of the Cleveland National Forest in the State of California and adjacent lands under the jurisdiction of the Bureau of Land Management and the Forest Service.

(2) INCLUSIONS.—The right-of-way approvals under paragraph (1) shall provide all necessary Federal authorization from the Secretary of the Interior and the Secretary of Agriculture for the routing, construction, operation, and maintenance of a 500-kilovolt transmission line capable of meeting the long-term electricity transmission needs of the region between the existing Valley-Serrano transmission line to the north and the Telega-Escondido transmission line to the south, and for connecting to future generating capacity that may be developed in the region.

(b) PROTECTION OF WILDERNESS AREAS.—The Secretary of the Interior and the Secretary of Agriculture shall not allow any portion of a transmission line right-of-way corridor identified in subsection (a) to enter any identified wilderness area in existence as of the date of enactment of this Act.

(c) ENVIRONMENTAL AND ADMINISTRATIVE REVIEWS.—

(1) DEPARTMENT OF INTERIOR OR LOCAL AGENCY.—The Secretary of the Interior, acting through the Director of the Bureau of Land Management, shall be the lead Federal agency with overall responsibility to ensure completion of required environmental and other reviews of the approvals to be issued under subsection (a).

(2) NATIONAL FOREST SYSTEM LAND.—For the portions of the corridor on National Forest System lands, the Secretary of Agriculture shall complete all required environmental reviews and administrative actions in coordination with the Secretary of the Interior.

(3) EXPEDITIOUS COMPLETION.—The reviews required for issuance of the approvals under subsection (a) shall be completed not later than 1 year after the date of the enactment of this Act.

(d) OTHER TERMS AND CONDITIONS.—The transmission line right-of-way shall be subject to such terms and conditions as the Secretary of the Interior and the Secretary of Agriculture consider necessary, based on the environmental reviews under subsection (c), to protect the value of historic, cultural, and natural resources under the jurisdiction of the Secretary of the Interior or the Secretary of Agriculture.

(e) PREFERENCE AMONG PROPOSALS.—The Secretary of the Interior and the Secretary of Agriculture shall give a preference to any application or preapplication proposal for a transmission line right-of-way referred to in subsection (a) that was submitted before December 31, 2002, over all other applications and proposals for the same or a similar right-of-way submitted on or after that date.

SEC. 354. SENSE OF CONGRESS REGARDING DEVELOPMENT OF MINERALS UNDER PADRE ISLAND NATIONAL SEASHORE.

(a) FINDINGS.—Congress finds the following:

(1) Pursuant to Public Law 87–712 (16 U.S.C. 459d et seq.; popularly known as the ''Federal Enabling Act'') and various deeds and actions under that Act, the United States is the owner of only the surface estate of certain lands constituting the Padre Island National Seashore.

(2) Ownership of the oil, gas, and other minerals in the subsurface estate of the lands constituting the Padre Island National Seashore was never acquired by the United States, and ownership of those interests is held by the State of Texas and private parties.

(3) Public Law 87–712 (16 U.S.C. 459d et seq.)—

(A) expressly contemplated that the United States would recognize the ownership and future development of the oil, gas, and other minerals in the subsurface estate of the lands constituting the Padre Island National Seashore by the owners and their mineral lessees; and

(B) recognized that approval of the State of Texas was required to create Padre Island National Seashore.

(4) Approval was given for the creation of Padre Island National Seashore by the State of Texas through Tex. Rev. Civ. Stat. Ann. Art. 6077(t) (Vernon 1970), which expressly recognized that development of the oil, gas, and other minerals in the subsurface of the lands constituting Padre Island National Seashore would be conducted with full rights of ingress and egress under the laws of the State of Texas.

(b) SENSE OF CONGRESS.—It is the sense of Congress that with regard to Federal law, any regulation of the development of oil, gas, or other minerals in the subsurface of the lands constituting Padre Island National Seashore should be made as if those lands retained the status that the lands had on September 27, 1962.

SEC. 355. ENCOURAGING PROHIBITION OF OFFSHORE DRILLING IN THE GREAT LAKES.

Congress encourages—

(1) the States of Illinois, Michigan, New York, Pennsylvania, and Wisconsin to continue to prohibit offshore drilling in the Great Lakes for oil and gas; and

(2) the States of Indiana, Minnesota, and Ohio to enact a prohibition of such drilling.

SEC. 356. FINGER LAKES NATIONAL FOREST WITHDRAWAL.

All Federal land within the boundary of Finger Lakes National Forest in the State of New York is withdrawn from—

(1) all forms of entry, appropriation, or disposal under the public land laws; and

(2) disposition under all laws relating to oil and gas leasing.

SEC. 357. STUDY ON LEASE EXCHANGES IN THE ROCKY MOUNTAIN FRONT.

(a) DEFINITIONS.—For the purposes of this section:

(1) BADGER-TWO MEDICINE AREA.—The term ''Badger-Two Medicine Area'' means the Forest Service land located in—

(A) T. 31 N., R. 12–13 W.;

(B) T. 30 N., R. 11–13 W.;

(C) T. 29 N., R. 10–16 W.; and

(D) T. 28 N., R. 10–14 W.

(2) BLACKLEAF AREA.—The term ''Blackleaf Area'' means the Federal land owned by the Forest Service and Bureau of Land Management that is located in—

(A) T. 27 N., R. 9 W.;

(B) T. 26 N., R. 9–10 W.;

(C) T. 25 N., R. 8–10 W.; and

(D) T. 24 N., R. 8–9 W.

(3) ELIGIBLE LESSEE.—The term ''eligible lessee'' means a lessee under a nonproducing lease.

(4) NONPRODUCING LEASE.—The term ''nonproducing lease'' means a Federal oil or gas lease—

(A) that is in existence and in good standing on the date of enactment of this Act; and

(B) that is located in the Badger-Two Medicine Area or the Blackleaf Area.

(5) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

(6) STATE.—The term ''State'' means the State of Montana.

(b) EVALUATION.—

(1) IN GENERAL.—The Secretary, in consultation with the Governor of the State, and the eligible lessees, shall evaluate opportunities for domestic oil and gas production through the exchange of the nonproducing leases.

(2) REQUIREMENTS.—In carrying out the evaluation under subsection (a), the Secretary shall—

(A) consider opportunities for domestic production of oil and gas through—

(i) the exchange of the nonproducing leases for oil and gas lease tracts of comparable value in the State; and

(ii) the issuance of bidding, royalty, or rental credits for Federal oil and gas leases in the State in exchange for the cancellation of the nonproducing leases;

(B) consider any other appropriate means to exchange, or provide compensation for the cancellation of, nonproducing leases, subject to the consent of the eligible lessees;

(C) consider the views of any interested persons, including the State;

(D) determine the level of interest of the eligible lessees in exchanging the nonproducing leases;

(E) assess the economic impact on the lessees and the State of lease exchange, lease cancellation, and final judicial or administrative decisions related to the nonproducing leases; and

(F) provide recommendations on—

(i) whether to pursue an exchange of the nonproducing leases;

(ii) any changes in laws (including regulations) that are necessary for the Secretary to carry out the exchange; and

(iii) any other appropriate means to exchange or provide compensation for the cancellation of a nonproducing lease, subject to the consent of the eligible lessee.

(c) VALUATION OF NONPRODUCING LEASES.—For the purpose of the evaluation under subsection (a), the value of a nonproducing lease shall be an amount equal to the difference between—

(1) the sum of—

(A) the amount paid by the eligible lessee for the nonproducing lease;

(B) any direct expenditures made by the eligible lessee before the transmittal of the report in subsection (c) associated with the exploration and development of the nonproducing lease; and

(C) interest on any amounts under subparagraphs (A) and (B) during the period beginning on the date on which the amount was paid and ending on the date on which credits are issued under subsection (b)(2)(A)(ii); and

(2) the sum of the revenues from the nonproducing lease.

(d) REPORT TO CONGRESS.—Not later than 2 years after the date of the enactment of this Act, the Secretary shall initiate the evaluation in subsection (b) and transmit to Congress a report on the evaluation.

SEC. 358. FEDERAL COALBED METHANE REGULATION.

Any State currently on the list of Affected States established under section 1339(b) of the Energy Policy Act of 1992 (42 U.S.C. 13368(b)) shall be removed from the list if, not later than 3 years after the date of enactment of this Act, the State takes, or prior to the date of enactment has taken, any of the actions required for removal from the list under such section 1339(b).

SEC. 359. LIVINGSTON PARISH MINERAL RIGHTS TRANSFER.

(a) AMENDMENTS.—Section 102 of Public Law 102–562 (106 Stat. 4234) is amended—

(1) by striking ''(a) IN GENERAL.—

(2) by striking ''and subject to the reservation in subsection (b),''; and

(3) by striking subsection (b).

(b) IMPLEMENTATION OF AMENDMENT.—The Secretary of the Interior shall execute the legal instruments necessary to effectuate the amendment made by subsection (a)(3).

Subtitle D—Alaska Natural Gas Pipeline

SEC. 371. SHORT TITLE.

This subtitle may be cited as the ''Alaska Natural Gas Pipeline Act''.

SEC. 372. DEFINITIONS.

In this subtitle:

(1) ALASKA NATURAL GAS.—The term ''Alaska natural gas'' means natural gas derived from the area of the State of Alaska lying north of 64 degrees north latitude.

(2) ALASKA NATURAL GAS TRANSPORTATION PROJECT.—The term ''Alaska natural gas transportation project'' means any natural gas pipeline system that carries Alaska natural gas to the border between Alaska and Canada (including related facilities subject to the jurisdiction of the Commission) that is authorized under—

(A) the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719 et seq.); or

(B) section 373.

(3) ALASKA NATURAL GAS TRANSPORTATION SYSTEM.—The term ''Alaska natural gas transportation system'' means the Alaska natural gas transportation project authorized under the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719 et seq.) and designated and described in section 2 of the President's decision.

(4) COMMISSION.—The term ''Commission'' means the Federal Energy Regulatory Commission.

(5) FEDERAL COORDINATOR.—The term ''Federal Coordinator'' means the head of the Office of the Federal Coordinator for Alaska Natural Gas Transportation Projects established by section 376(a).

(6) PRESIDENT'S DECISION.—The term ''President's decision'' means the decision and report to Congress on the Alaska natural gas transportation system—

(A) issued by the President on September 22, 1977, in accordance with section 7 of the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719e); and

(B) approved by Public Law 95–158 (15 U.S.C. 719f note; 91 Stat. 1268).

(7) SECRETARY.—The term ''Secretary'' means the Secretary of Energy.

(8) STATE.—The term ''State'' means the State of Alaska.

SEC. 373. ISSUANCE OF CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY.

(a) AUTHORITY OF THE COMMISSION.—Notwithstanding the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719 et seq.), the Commission may, in accordance with section 7(c) of the Natural Gas Act (15 U.S.C. 717f(c)), consider and act on an application for the issuance of a certificate of public convenience and necessity authorizing the construction and operation of an Alaska natural gas transportation project other than the Alaska natural gas transportation system.

(b) ISSUANCE OF CERTIFICATE.—

(1) IN GENERAL.—The Commission shall issue a certificate of public convenience and necessity authorizing the construction and operation of an Alaska natural gas transportation project under this section if the applicant has satisfied the requirements of section 7(e) of the Natural Gas Act (15 U.S.C. 717f(e)).

(2) CONSIDERATIONS.—In considering an application under this section, the Commission shall presume that—

(A) a public need exists to construct and operate the proposed Alaska natural gas transportation project; and

(B) sufficient downstream capacity will exist to transport the Alaska natural gas moving through the project to markets in the contiguous United States.

(c) EXPEDITED APPROVAL PROCESS.—Not later than 60 days after the date of issuance of the final environmental impact statement under section 374 for an Alaska natural gas transportation project, the Commission shall issue a final order granting or denying any application for a certificate of public convenience and necessity for the project under section 7(c) of the Natural Gas Act (15 U.S.C. 717f(c)) and this section.

(d) PROHIBITION OF CERTAIN PIPELINE ROUTE.—No license, permit, lease, right-of-way, authorization, or other approval required under Federal law for the construction of any pipeline to transport natural gas from land within the Prudhoe Bay oil and gas lease area may be granted for any pipeline that follows a route that—

(1) traverses land beneath navigable waters (as defined in section 2 of the Submerged Lands Act (43 U.S.C. 1301)) beneath, or the adjacent shoreline of, the Beaufort Sea; and

(2) enters Canada at any point north of 68 degrees north latitude.

(e) OPEN SEASON.—

(1) IN GENERAL.—Not later than 120 days after the date of enactment of this Act, the Commission shall issue regulations governing the conduct of open seasons for Alaska natural gas transportation projects (including procedures for the allocation of capacity).

(2) REGULATIONS.—The regulations referred to in paragraph (1) shall—

(A) include the criteria for and timing of any open seasons;

(B) promote competition in the exploration, development, and production of Alaska natural gas; and

(C) for any open season for capacity exceeding the initial capacity, provide the opportunity for the transportation of natural gas other than from the Prudhoe Bay and Point Thomson units.

(3) APPLICABILITY.—Except in a case in which an expansion is ordered in accordance with section 375, initial or expansion capacity on any Alaska natural gas transportation project shall be allocated in accordance with procedures to be established by the Commission in regulations issued under paragraph (1).

(f) PROJECTS IN THE CONTIGUOUS UNITED STATES.—

(1) IN GENERAL.—An application for additional or expanded pipeline facilities that may be required to transport Alaska natural gas from Canada to markets in the contiguous United States may be made in accordance with the Natural Gas Act (15 U.S.C. 717a et seq.).

(2) EXPANSION.—To the extent that a pipeline facility described in paragraph (1) includes the expansion of any facility constructed in accordance with the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719 et seq.), that Act shall continue to apply.

(g) STUDY OF IN-STATE NEEDS.—The holder of the certificate of public convenience and necessity issued, modified, or amended by the Commission for an Alaska natural gas transportation project shall demonstrate that the holder has conducted a study of Alaska in-State needs, including tie-in points along the Alaska natural gas transportation project for in-State access.

(h) ALASKA ROYALTY GAS.—

(1) IN GENERAL.—Except as provided in paragraph (2), the Commission, on a request by the State and after a hearing, may provide for reasonable access to the Alaska natural gas transportation project by the State (or State designee) for the transportation of royalty gas of the State for the purpose of meeting local consumption needs within the State.

(2) EXCEPTION.—The rates of shippers of subscribed capacity on an Alaska natural gas transportation project described in paragraph (1), as in effect as of the date on which access under that paragraph is granted, shall not be increased as a result of such access.

(i) REGULATIONS.—The Commission may issue such regulations as are necessary to carry out this section.

SEC. 374. ENVIRONMENTAL REVIEWS.

(a) COMPLIANCE WITH NEPA.—The issuance of a certificate of public convenience and necessity authorizing the construction and operation of any Alaska natural gas transportation project under section 373 shall be treated as a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

(b) DESIGNATION OF LEAD AGENCY.—

(1) IN GENERAL.—The Commission—

(A) shall be the lead agency for purposes of complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and

(B) shall be responsible for preparing the environmental impact statement required by section 102(2)(c) of that Act (42 U.S.C. 4332(2)(c)) with respect to an Alaska natural gas transportation project under section 373.

(2) CONSOLIDATION OF STATEMENTS.—In carrying out paragraph (1), the Commission shall prepare a single environmental impact statement, which shall consolidate the environmental reviews of all Federal agencies considering any aspect of the Alaska natural gas transportation project covered by the environmental impact statement.

(c) OTHER AGENCIES.—

(1) IN GENERAL.—Each Federal agency considering an aspect of the construction and operation of an Alaska natural gas transportation project under section 373 shall—

(A) cooperate with the Commission; and

(B) comply with deadlines established by the Commission in the preparation of the environmental impact statement under this section.

(2) SATISFACTION OF NEPA REQUIREMENTS.—The environmental impact statement prepared under this section shall be adopted by each Federal agency described in paragraph (1) in satisfaction of the responsibilities of the Federal agency under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) with respect to the Alaska natural gas transportation project covered by the environmental impact statement.

(d) EXPEDITED PROCESS.—The Commission shall—

(1) not later than 1 year after the Commission determines that the application under section 373 with respect to an Alaska natural gas transportation project is complete, issue a draft environmental impact statement under this section; and

(2) not later than 180 days after the date of issuance of the draft environmental impact statement, issue a final environmental impact statement, unless the Commission for good cause determines that additional time is needed.

SEC. 375. PIPELINE EXPANSION.

(a) AUTHORITY.—With respect to any Alaska natural gas transportation project, on a request by 1 or more persons and after giving notice and an opportunity for a hearing, the Commission may order the expansion of the Alaska natural gas project if the Commission determines that such an expansion is required by the present and future public convenience and necessity.

(b) RESPONSIBILITIES OF COMMISSION.—Before ordering an expansion under subsection (a), the Commission shall—

(1) approve or establish rates for the expansion service that are designed to ensure the recovery, on an incremental or rolled-in basis, of the cost associated with the expansion (including a reasonable rate of return on investment);

(2) ensure that the rates do not require existing shippers on the Alaska natural gas transportation project to subsidize expansion shippers;

(3) find that a proposed shipper will comply with, and the proposed expansion and the expansion of service will be undertaken and implemented based on, terms and conditions consistent with the tariff of the Alaska natural gas transportation project in effect as of the date of the expansion;

(4) find that the proposed facilities will not adversely affect the financial or economic viability of the Alaska natural gas transportation project;

(5) find that the proposed facilities will not adversely affect the overall operations of the Alaska natural gas transportation project;

(6) find that the proposed facilities will not diminish the contract rights of existing shippers to previously subscribed certificated capacity;

(7) ensure that all necessary environmental reviews have been completed; and

(8) find that adequate downstream facilities exist or are expected to exist to deliver incremental Alaska natural gas to market.

(c) REQUIREMENT FOR A FIRM TRANSPORTATION AGREEMENT.—Any order of the Commission issued in accordance with this section shall be void unless the person requesting the order executes a firm transportation agreement with the Alaska natural gas transportation project within such reasonable period of time as the order may specify.

(d) LIMITATION.—Nothing in this section expands or otherwise affects any authority of the Commission with respect to any natural gas pipeline located outside the State.

(e) REGULATIONS.—The Commission may issue such regulations as are necessary to carry out this section.

SEC. 376. FEDERAL COORDINATOR.

(a) ESTABLISHMENT.—There is established, as an independent office in the executive branch, the Office of the Federal Coordinator for Alaska Natural Gas Transportation Projects.

(b) FEDERAL COORDINATOR.—

(1) APPOINTMENT.—The Office shall be headed by a Federal Coordinator for Alaska Natural Gas Transportation Projects, who shall be appointed by the President, by and with the advice and consent of the Senate, to serve a term to last until 1 year following the completion of the project referred to in section 373.

(2) COMPENSATION.—The Federal Coordinator shall be compensated at the rate prescribed for level III of the Executive Schedule (5 U.S.C. 5314).

(c) DUTIES.—The Federal Coordinator shall be responsible for—

(1) coordinating the expeditious discharge of all activities by Federal agencies with respect to an Alaska natural gas transportation project; and

(2) ensuring the compliance of Federal agencies with the provisions of this subtitle.

(d) REVIEWS AND ACTIONS OF OTHER FEDERAL AGENCIES.—

(1) EXPEDITED REVIEWS AND ACTIONS.—All reviews conducted and actions taken by any Federal agency relating to an Alaska natural gas transportation project authorized under this section shall be expedited, in a manner consistent with completion of the necessary reviews and approvals by the deadlines under this subtitle.

(2) PROHIBITION OF CERTAIN TERMS AND CONDITIONS.—No Federal agency may include in any certificate, right-of-way, permit, lease, or other authorization issued to an Alaska natural gas transportation project any term or condition that may be permitted, but is not required, by any applicable law if the Federal Coordinator determines that the term or condition would prevent or impair in any significant respect the expeditious construction and operation, or an expansion, of the Alaska natural gas transportation project.

(3) PROHIBITION OF CERTAIN ACTIONS.—Unless required by law, no Federal agency shall add to, amend, or abrogate any certificate, right-of-way, permit, lease, or other authorization issued to an Alaska natural gas transportation project if the Federal Coordinator determines that the action would prevent or impair in any significant respect the expeditious construction and operation, or an expansion, of the Alaska natural gas transportation project.

(4) LIMITATION.—The Federal Coordinator shall not have authority to—

(A) override—

(i) the implementation or enforcement of regulations issued by the Commission under section 373; or

(ii) an order by the Commission to expand the project under section 375; or

(B) impose any terms, conditions, or requirements in addition to those imposed by the Commission or any agency with respect to construction and operation, or an expansion of, the project.

(e) STATE COORDINATION.—

(1) IN GENERAL.—The Federal Coordinator and the State shall enter into a joint surveillance and monitoring agreement similar to the agreement in effect during construction of the Trans-Alaska Pipeline, to be approved by the President and the Governor of the State, for the purpose of monitoring the construction of the Alaska natural gas transportation project.

(2) PRIMARY RESPONSIBILITY.—With respect to an Alaska natural gas transportation project—

(A) the Federal Government shall have primary surveillance and monitoring responsibility in areas where the Alaska natural gas transportation project crosses Federal land or private land; and

(B) the State government shall have primary surveillance and monitoring responsibility in areas where the Alaska natural gas transportation project crosses State land.

(f) TRANSFER OF FEDERAL INSPECTOR FUNCTIONS AND AUTHORITY.—On appointment of the Federal Coordinator by the President, all of the functions and authority of the Office of Federal Inspector of Construction for the Alaska Natural Gas Transportation System vested in the Secretary under section 3012(b) of the Energy Policy Act of 1992 (15 U.S.C. 719e note; Public Law 102–486), including all functions and authority described and enumerated in the Reorganization Plan No. 1 of 1979 (44 Fed. Reg. 33663), Executive Order No. 12142 of June 21, 1979 (44 Fed. Reg. 36927), and section 5 of the President's decision, shall be transferred to the Federal Coordinator.

(g) TEMPORARY AUTHORITY.—The functions, authorities, duties, and responsibilities of the Federal Coordinator shall be vested in the Secretary until the later of the appointment of the Federal Coordinator by the President, or 18 months after the date of enactment of this Act.

SEC. 377. JUDICIAL REVIEW.

(a) EXCLUSIVE JURISDICTION.—Except for review by the Supreme Court on writ of certiorari, the United States Court of Appeals for the District of Columbia Circuit shall have original and exclusive jurisdiction to determine—

(1) the validity of any final order or action (including a failure to act) of any Federal agency or officer under this subtitle;

(2) the constitutionality of any provision of this subtitle, or any decision made or action taken under this subtitle; or

(3) the adequacy of any environmental impact statement prepared under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) with respect to any action under this subtitle.

(b) DEADLINE FOR FILING CLAIM.—A claim arising under this subtitle may be brought not later than 60 days after the date of the decision or action giving rise to the claim.

(c) EXPEDITED CONSIDERATION.—The United States Court of Appeals for the District of Columbia Circuit shall set any action brought under subsection (a) for expedited consideration, taking into account the national interest of enhancing national energy security by providing access to the significant gas reserves in Alaska needed to meet the anticipated demand for natural gas.

(d) AMENDMENT OF THE ALASKA NATURAL GAS TRANSPORTATION ACT OF 1976.—Section

10(c) of the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719h) is amended—

(1) by striking ''(c)(1) A claim'' and inserting the following:

''(c) JURISDICTION.—

''(1) SPECIAL COURTS.—

''(A) IN GENERAL.—A claim'';

(2) by striking ''Such court shall have'' and inserting the following:

''(B) EXCLUSIVE JURISDICTION.—The Special Court shall have'';

(3) by inserting after paragraph (1) the following:

''(2) EXPEDITED CONSIDERATION.—The Special Court shall set any action brought under this section for expedited consideration, taking into account the national interest described in section 2.''; and

(4) in paragraph (3), by striking ''(3) The enactment'' and inserting the following:

''(3) ENVIRONMENTAL IMPACT STATEMENTS.—The enactment''.

SEC. 378. STATE JURISDICTION OVER IN-STATE DELIVERY OF NATURAL GAS.

(a) LOCAL DISTRIBUTION.—Any facility receiving natural gas from an Alaska natural gas transportation project for delivery to consumers within the State—

(1) shall be deemed to be a local distribution facility within the meaning of section 1(b) of the Natural Gas Act (15 U.S.C. 717(b)); and

(2) shall not be subject to the jurisdiction of the Commission.

(b) ADDITIONAL PIPELINES.—Except as provided in section 373(d), nothing in this subtitle shall preclude or otherwise affect a future natural gas pipeline that may be constructed to deliver natural gas to Fairbanks, Anchorage, Matanuska-Susitna Valley, or the Kenai peninsula or Valdez or any other site in the State for consumption within or distribution outside the State.

(c) RATE COORDINATION.—

(1) IN GENERAL.—In accordance with the Natural Gas Act (15 U.S.C. 717a et seq.), the Commission shall establish rates for the transportation of natural gas on any Alaska natural gas transportation project.

(2) CONSULTATION.—In carrying out paragraph (1), the Commission, in accordance with section 17(b) of the Natural Gas Act (15 U.S.C. 717p(b)), shall consult with the State regarding rates (including rate settlements) applicable to natural gas transported on and delivered from the Alaska natural gas transportation project for use within the State.

SEC. 379. STUDY OF ALTERNATIVE MEANS OF CONSTRUCTION.

(a) REQUIREMENT OF STUDY.—If no application for the issuance of a certificate or amended certificate of public convenience and necessity authorizing the construction and operation of an Alaska natural gas transportation project has been filed with the Commission by the date that is 18 months after the date of enactment of this Act, the Secretary shall conduct a study of alternative approaches to the construction and operation of such an Alaska natural gas transportation project.

(b) SCOPE OF STUDY.—The study under subsection (a) shall take into consideration the feasibility of—

(1) establishing a Federal Government corporation to construct an Alaska natural gas transportation project; and

(2) securing alternative means of providing Federal financing and ownership (including alternative combinations of Government and private corporate ownership) of the Alaska natural gas transportation project.

(c) CONSULTATION.—In conducting the study under subsection (a), the Secretary shall consult with the Secretary of the Treasury and the Secretary of the Army (acting through the Chief of Engineers).

(d) REPORT.—On completion of any study under subsection (a), the Secretary shall submit to Congress a report that describes—

(1) the results of the study; and

(2) any recommendations of the Secretary (including proposals for legislation to implement the recommendations).

SEC. 380. CLARIFICATION OF ANGTA STATUS AND AUTHORITIES.

(a) SAVINGS CLAUSE.—Nothing in this subtitle affects—

(1) any decision, certificate, permit, right-of-way, lease, or other authorization issued under section 9 of the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719g); or

(2) any Presidential finding or waiver issued in accordance with that Act.

(b) CLARIFICATION OF AUTHORITY TO AMEND TERMS AND CONDITIONS TO MEET CURRENT PROJECT REQUIREMENTS.—Any Federal agency responsible for granting or issuing any certificate, permit, right-of-way, lease, or other authorization under section 9 of the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719g) may add to, amend, or rescind any term or condition included in the certificate, permit, right-of-way, lease, or other authorization to meet current project requirements (including the physical design, facilities, and tariff specifications), if the addition, amendment, or rescission—

(1) would not compel any change in the basic nature and general route of the Alaska natural gas transportation system as designated and described in section 2 of the President's decision; or

(2) would not otherwise prevent or impair in any significant respect the expeditious construction and initial operation of the Alaska natural gas transportation system.

(c) UPDATED ENVIRONMENTAL REVIEWS.—The Secretary shall require the sponsor of the Alaska natural gas transportation system to submit such updated environmental data, reports, permits, and impact analyses as the Secretary determines are necessary to develop detailed terms, conditions, and compliance plans required by section 5 of the President's decision.

SEC. 381. SENSE OF CONGRESS CONCERNING USE OF STEEL MANUFACTURED IN NORTH AMERICA NEGOTIATION OF A PROJECT LABOR AGREEMENT.

It is the sense of Congress that—

(1) an Alaska natural gas transportation project would provide significant economic benefits to the United States and Canada; and

(2) to maximize those benefits, the sponsors of the Alaska natural gas transportation project should make every effort to—

(A) use steel that is manufactured in North America; and

(B) negotiate a project labor agreement to expedite construction of the pipeline.

SEC. 382. SENSE OF CONGRESS AND STUDY CONCERNING PARTICIPATION BY SMALL BUSINESS CONCERNS.

(a) DEFINITION OF SMALL BUSINESS CONCERN.—In this section, the term ''small business concern'' has the meaning given the term in section 3(a) of the Small Business Act (15 U.S.C. 632(a)).

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) an Alaska natural gas transportation project would provide significant economic benefits to the United States and Canada; and

(2) to maximize those benefits, the sponsors of the Alaska natural gas transportation project should maximize the participation of small business concerns in contracts and subcontracts awarded in carrying out the project.

(c) STUDY.—

(1) IN GENERAL.—The Comptroller General of the United States shall conduct a study to determine the extent to which small business concerns participate in the construction of oil and gas pipelines in the United States.

(2) REPORT.—Not later than 1 year after the date of enactment of this Act, the Comptroller General shall submit to Congress a report that describes results of the study under paragraph (1).

(3) UPDATES.—The Comptroller General shall—

(A) update the study at least once every 5 years until construction of an Alaska natural gas transportation project is completed; and

(B) on completion of each update, submit to Congress a report containing the results of the update.

SEC. 383. ALASKA PIPELINE CONSTRUCTION TRAINING PROGRAM.

(a) PROGRAM.—

(1) ESTABLISHMENT.—The Secretary of Labor (in this section referred to as the ''Secretary'') shall make grants to the Alaska Workforce Investment Board—

(A) to recruit and train adult and dislocated workers in Alaska, including Alaska Natives, in the skills required to construct and operate an Alaska gas pipeline system; and

(B) for the design and construction of a training facility to be located in Fairbanks, Alaska, to support an Alaska gas pipeline training program.

(2) COORDINATION WITH EXISTING PROGRAMS.—The training program established with the grants authorized under paragraph (1) shall be consistent with the vision and goals set forth in the State of Alaska Unified Plan, as developed pursuant to the Workforce Investment Act of 1998 (29 U.S.C. 2801 et seq.).

(b) REQUIREMENTS FOR GRANTS.—The Secretary shall make a grant under subsection (a) only if—

(1) the Governor of the State of Alaska requests the grant funds and certifies in writing to the Secretary that there is a reasonable expectation that the construction of the Alaska natural gas pipeline system will commence by the date that is 2 years after the date of the certification; and

(2) the Secretary of Energy concurs in writing to the Secretary with the certification made under paragraph (1) after considering—

(A) the status of necessary Federal and State permits;

(B) the availability of financing for the Alaska natural gas pipeline project; and

(C) other relevant factors.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary to carry out this section $20,000,000. Not more than 15 percent of the funds may be used for the facility described in subsection (a)(1)(B).

SEC. 384. SENSE OF CONGRESS CONCERNING NATURAL GAS DEMAND.

It is the sense of Congress that—

(1) North American demand for natural gas will increase dramatically over the course of the next several decades;

(2) both the Alaska Natural Gas Pipeline and the Mackenzie Delta Natural Gas project in Canada will be necessary to help meet the increased demand for natural gas in North America;

(3) Federal and State officials should work together with officials in Canada to ensure both projects can move forward in a mutually beneficial fashion;

(4) Federal and State officials should acknowledge that the smaller scope, fewer permitting requirements, and lower cost of the Mackenzie Delta project means it will most likely be completed before the Alaska Natural Gas Pipeline;

(5) natural gas production in the 48 contiguous States and Canada will not be able to meet all domestic demand in the coming decades; and

(6) as a result, natural gas delivered from Alaskan North Slope will not displace or reduce the commercial viability of Canadian natural gas produced from the Mackenzie Delta or production from the 48 contiguous States.

SEC. 385. SENSE OF CONGRESS CONCERNING ALASKAN OWNERSHIP.

It is the sense of Congress that—

(1) Alaska Native Regional Corporations, companies owned and operated by Alaskans, and individual Alaskans should have the opportunity to own shares of the Alaska natural gas pipeline in a way that promotes economic development for the State; and

(2) to facilitate economic development in the State, all project sponsors should negotiate in good faith with any willing Alaskan person that desires to be involved in the project.

SEC. 386. LOAN GUARANTEES.

(a) AUTHORITY.—(1) The Secretary may enter into agreements with 1 or more holders of a certificate of public convenience and necessity issued under section 373(b) or section 9 of the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719g) to issue Federal guarantee instruments with respect to loans and other debt obligations for a qualified infrastructure project.

(2) Subject to the requirements of this section, the Secretary may also enter into agreements with 1 or more owners of the Canadian portion of a qualified infrastructure project to issue Federal guarantee instruments with respect to loans and other debt obligations for a qualified infrastructure project as though such owner were a holder described in paragraph (1).

(3) The authority of the Secretary to issue Federal guarantee instruments under this section for a qualified infrastructure project shall expire on the date that is 2 years after the date on which the final certificate of public convenience and necessity (including any Canadian certificates of public convenience and necessity) is issued for the project. A final certificate shall be considered to have been issued when all certificates of public convenience and necessity have been issued that are required for the initial transportation of commercially economic quantities of natural gas from Alaska to the continental United States.

(b) CONDITIONS.—(1) The Secretary may issue a Federal guarantee instrument for a qualified infrastructure project only after a certificate of public convenience and necessity under section 373(b) or an amended certificate under section 9 of the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719g) has been issued for the project.

(2) The Secretary may issue a Federal guarantee instrument under this section for a qualified infrastructure project only if the loan or other debt obligation guaranteed by the instrument has been issued by an eligible lender.

(3) The Secretary shall not require as a condition of issuing a Federal guarantee instrument under this section any contractual commitment or other form of credit support of the sponsors (other than equity contribution commitments and completion guarantees), or any throughput or other guarantee from prospective shippers greater than such guarantees as shall be required by the project owners.

(c) LIMITATIONS ON AMOUNTS.—(1) The amount of loans and other debt obligations guaranteed under this section for a qualified infrastructure project shall not exceed 80 percent of the total capital costs of the project, including interest during construction.

(2) The principal amount of loans and other debt obligations guaranteed under this section shall not exceed, in the aggregate, $18,000,000,000, which amount shall be indexed for United States dollar inflation from the date of enactment of this Act, as measured by the Consumer Price Index.

(d) LOAN TERMS AND FEES.—(1) The Secretary may issue Federal guarantee instruments under this section that take into account repayment profiles and grace periods justified by project cash flows and project-specific considerations. The term of any loan guaranteed under this section shall not exceed 30 years.

(2) An eligible lender may assess and collect from the borrower such other fees and costs associated with the application and origination of the loan or other debt obligation as are reasonable and customary for a project finance transaction in the oil and gas sector.

(e) REGULATIONS.—The Secretary may issue regulations to carry out this section.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to cover the cost of loan guarantees under this section, as defined by section 502(5) of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a(5)). Such sums shall remain available until expended.

(g) DEFINITIONS.—In this section, the following definitions apply:

(1) The term ''Consumer Price Index'' means the Consumer Price Index for all-urban consumers, United States city average, as published by the Bureau of Labor Statistics, or if such index shall cease to be published, any successor index or reasonable substitute thereof.

(2) The term ''eligible lender'' means any non-Federal qualified institutional buyer (as defined by section 230.144A(a) of title 17, Code of Federal Regulations (or any successor regulation), known as Rule 144A(a) of the Securities and Exchange Commission and issued under the Securities Act of 1933), including—

(A) a qualified retirement plan (as defined in section 4974(c) of the Internal Revenue Code of 1986 (26 U.S.C. 4974(c)) that is a qualified institutional buyer; and

(B) a governmental plan (as defined in section 414(d) of the Internal Revenue Code of 1986 (26 U.S.C. 414(d)) that is a qualified institutional buyer.

(3) The term ''Federal guarantee instrument'' means any guarantee or other pledge by the Secretary to pledge the full faith and credit of the United States to pay all of the principal and interest on any loan or other debt obligation entered into by a holder of a certificate of public convenience and necessity.

(4) The term ''qualified infrastructure project'' means an Alaskan natural gas transportation project consisting of the design, engineering, finance, construction, and completion of pipelines and related transportation and production systems (including gas treatment plants), and appurtenances thereto, that are used to transport natural gas from the Alaska North Slope to the continental United States.

TITLE IV—COAL

Subtitle A—Clean Coal Power Initiative

SEC. 401. AUTHORIZATION OF APPROPRIATIONS.

(a) CLEAN COAL POWER INITIATIVE.—There are authorized to be appropriated to the Secretary of Energy (referred to in this title as the ''Secretary'') to carry out the activities authorized by this subtitle $200,000,000 for each of fiscal years 2004 through 2012, to remain available until expended.

(b) REPORT.—The Secretary shall submit to Congress the report required by this subsection not later than March 31, 2005. The report shall include, with respect to subsection (a), a 10-year plan containing—

(1) a detailed assessment of whether the aggregate funding levels provided under subsection (a) are the appropriate funding levels for that program;

(2) a detailed description of how proposals will be solicited and evaluated, including a list of all activities expected to be undertaken;

(3) a detailed list of technical milestones for each coal and related technology that will be pursued; and

(4) a detailed description of how the program will avoid problems enumerated in General Accounting Office reports on the Clean Coal Technology Program, including problems that have resulted in unspent funds and projects that failed either financially or scientifically.

SEC. 402. PROJECT CRITERIA.

(a) IN GENERAL.—The Secretary shall not provide funding under this subtitle for any project that does not advance efficiency, environmental performance, and cost competitiveness well beyond the level of technologies that are in commercial service or have been demonstrated on a scale that the Secretary determines is sufficient to demonstrate that commercial service is viable as of the date of enactment of this Act.

(b) TECHNICAL CRITERIA FOR CLEAN COAL POWER INITIATIVE.—

(1) GASIFICATION PROJECTS.—

(A) IN GENERAL.—In allocating the funds made available under section 401(a), the Secretary shall ensure that at least 60 percent of the funds are used only for projects on coal-based gasification technologies, including gasification combined cycle, gasification fuel cells, gasification coproduction, and hybrid gasification/combustion.

(B) TECHNICAL MILESTONES.—The Secretary shall periodically set technical milestones specifying the emission and thermal efficiency levels that coal gasification projects under this subtitle shall be designed, and reasonably expected, to achieve. The technical milestones shall become more restrictive during the life of the program. The Secretary shall set the periodic milestones so as to achieve by 2020 coal gasification projects able—

(i) to remove 99 percent of sulfur dioxide;

(ii) to emit not more than .05 lbs of NO_X per million Btu;

(iii) to achieve substantial reductions in mercury emissions; and

(iv) to achieve a thermal efficiency of—

(I) 60 percent for coal of more than 9,000 Btu;

(II) 59 percent for coal of 7,000 to 9,000 Btu; and

(III) 50 percent for coal of less than 7,000 Btu.

(2) OTHER PROJECTS.—The Secretary shall periodically set technical milestones and ensure that up to 40 percent of the funds appropriated pursuant to section 401(a) are used for projects not described in paragraph (1). The milestones shall specify the emission and thermal efficiency levels that projects funded under this paragraph shall be designed to and reasonably expected to achieve. The technical milestones shall become more restrictive during the life of the program. The Secretary shall set the periodic milestones so as to achieve by 2010 projects able—

(A) to remove 97 percent of sulfur dioxide;

(B) to emit no more than .08 lbs of NO_X per million Btu;

(C) to achieve substantial reductions in mercury emissions; and

(D) to achieve a thermal efficiency of—

(i) 45 percent for coal of more than 9,000 Btu;

(ii) 44 percent for coal of 7,000 to 9,000 Btu; and

(iii) 40 percent for coal of less than 7,000 Btu.

(3) CONSULTATION.—Before setting the technical milestones under paragraphs (1)(B) and (2), the Secretary shall consult with the Administrator of the Environmental Protection Agency and interested entities, including coal producers, industries using coal, organizations to promote coal or advanced coal technologies, environmental organizations, and organizations representing workers.

(4) EXISTING UNITS.—In the case of projects at units in existence on the date of enactment of this Act, in lieu of the thermal efficiency requirements set forth in paragraph (1)(B)(iv) and (2)(D), the milestones shall be designed to achieve an overall thermal design efficiency improvement, compared to the efficiency of the unit as operated, of not less than—

(A) 7 percent for coal of more than 9,000 Btu;

(B) 6 percent for coal of 7,000 to 9,000 Btu; or

(C) 4 percent for coal of less than 7,000 Btu.

(5) PERMITTED USES.—In carrying out this subtitle, the Secretary may fund projects that include, as part of the project, the separation and capture of carbon dioxide.

(c) FINANCIAL CRITERIA.—The Secretary shall not provide a funding award under this subtitle unless the recipient documents to the satisfaction of the Secretary that—

(1) the award recipient is financially viable without the receipt of additional Federal funding;

(2) the recipient will provide sufficient information to the Secretary to enable the Secretary to ensure that the award funds are spent efficiently and effectively; and

(3) a market exists for the technology being demonstrated or applied, as evidenced by statements of interest in writing from potential purchasers of the technology.

(d) FINANCIAL ASSISTANCE.—The Secretary shall provide financial assistance to projects that meet the requirements of subsections (a), (b), and (c) and are likely to—

(1) achieve overall cost reductions in the utilization of coal to generate useful forms of energy;

(2) improve the competitiveness of coal among various forms of energy in order to maintain a diversity of fuel choices in the United States to meet electricity generation requirements; and

(3) demonstrate methods and equipment that are applicable to 25 percent of the electricity generating facilities, using various types of coal, that use coal as the primary feedstock as of the date of enactment of this Act.

(e) FEDERAL SHARE.—The Federal share of the cost of a coal or related technology project funded by the Secretary under this subtitle shall not exceed 50 percent.

(f) APPLICABILITY.—No technology, or level of emission reduction, shall be treated as adequately demonstrated for purposes of section 111 of the Clean Air Act (42 U.S.C. 7411), achievable for purposes of section 169 of that Act (42 U.S.C. 7479), or achievable in practice for purposes of section 171 of that Act (42 U.S.C. 7501) solely by reason of the use of such technology, or the achievement of such emission reduction, by 1 or more facilities receiving assistance under this subtitle.

SEC. 403. REPORT.

Not later than 1 year after the date of enactment of this Act, and once every 2 years thereafter through 2012, the Secretary, in consultation with other appropriate Federal agencies, shall submit to Congress a report describing—

(1) the technical milestones set forth in section 402 and how those milestones ensure progress toward meeting the requirements of subsections (b)(1)(B) and (b)(2) of section 402; and

(2) the status of projects funded under this subtitle.

SEC. 404. CLEAN COAL CENTERS OF EXCELLENCE.

As part of the program authorized in section 401, the Secretary shall award competitive, merit-based grants to universities for the establishment of Centers of Excellence for Energy Systems of the Future. The Secretary shall provide grants to universities that show the greatest potential for advancing new clean coal technologies.

Subtitle B—Clean Power Projects

SEC. 411. COAL TECHNOLOGY LOAN.

There are authorized to be appropriated to the Secretary $125,000,000 to provide a loan to the owner of the experimental plant constructed under United States Department of Energy cooperative agreement number DE–FC–22–91PC90544 on such terms and conditions as the Secretary determines, including interest rates and upfront payments.

SEC. 412. COAL GASIFICATION.

The Secretary is authorized to provide loan guarantees for a project to produce energy from a plant using integrated gasification combined cycle technology of at least 400 megawatts in capacity that produces power at competitive rates in deregulated energy generation markets and that does not receive any subsidy (direct or indirect) from ratepayers.

SEC. 413. INTEGRATED GASIFICATION COMBINED CYCLE TECHNOLOGY.

The Secretary is authorized to provide loan guarantees for a project to produce energy from a plant using integrated gasification combined cycle technology located in a taconite-producing region of the United States that is entitled under the law of the State in which the plant is located to enter into a long-term contract approved by a State Public Utility Commission to sell at least 450 megawatts of output to a utility.

SEC. 414. PETROLEUM COKE GASIFICATION.

The Secretary is authorized to provide loan guarantees for at least 1 petroleum coke gasification polygeneration project.

SEC. 415. INTEGRATED COAL/RENEWABLE ENERGY SYSTEM.

The Secretary is authorized, subject to the availability of appropriations, to provide loan guarantees for a project to produce energy from coal of less than 7,000 btu/lb using appropriate advanced integrated gasification combined cycle technology, including repowering of existing facilities, that is combined with wind and other renewable sources, minimizes and offers the potential to sequester carbon dioxide emissions, and provides a ready source of hydrogen for near-site fuel cell demonstrations. The facility may be built in stages, combined output shall be at least 200 megawatts at successively more competitive rates, and the facility shall be located in the Upper Great Plains. Section 402(b) technical criteria apply, and the Federal cost share shall not exceed 50 percent. The loan guarantees provided under this section do not preclude the facility from receiving an allocation for investment tax credits under section 48A of the Internal Revenue Code of 1986. Utilizing this investment tax credit does not prohibit the use of other Clean Coal Program funding.

SEC. 416. ELECTRON SCRUBBING DEMONSTRATION.

The Secretary shall use $5,000,000 from amounts appropriated to initiate, through the Chicago Operations Office, a project to demonstrate the viability of high-energy electron scrubbing technology on commercial-scale electrical generation using high-sulfur coal.

Subtitle C—Federal Coal Leases

SEC. 421. REPEAL OF THE 160–ACRE LIMITATION FOR COAL LEASES.

Section 3 of the Mineral Leasing Act (30 U.S.C. 203) is amended—

(1) in the first sentence—

(A) by striking ''Any person'' and inserting ''(a) Any person'';

(B) by inserting a comma after ''may''; and

(C) by striking ''upon'' and all that follows through the period and inserting the following: ''upon a finding by the Secretary that the lease—

''(1) would be in the interest of the United States;

''(2) would not displace a competitive interest in the land; and

''(3) would not include land or deposits that can be developed as part of another potential or existing operation;

secure modifications of the original coal lease by including additional coal land or coal deposits contiguous or cornering to those embraced in the lease, but in no event shall the total area added by any modifications to an existing coal lease exceed 1,280 acres, or add acreage larger than the acreage in the original lease.'';

(2) in the second sentence, by striking ''The Secretary'' and inserting the following: ''(b) The Secretary''; and

(3) in the third sentence, by striking ''The minimum'' and inserting the following: ''(c) The minimum''.

SEC. 422. MINING PLANS.

Section 2(d)(2) of the Mineral Leasing Act (30 U.S.C. 202a(2)) is amended—

(1) by inserting ''(A)'' after ''(2)''; and

(2) by adding at the end the following:

''(B) The Secretary may establish a period of more than 40 years if the Secretary determines that the longer period—

''(i) will ensure the maximum economic recovery of a coal deposit; or

''(ii) the longer period is in the interest of the orderly, efficient, or economic development of a coal resource.''.

SEC. 423. PAYMENT OF ADVANCE ROYALTIES UNDER COAL LEASES.

Section 7(b) of the Mineral Leasing Act (30 U.S.C. 207(b)) is amended to read as follows:

''(b)(1) Each lease shall be subjected to the condition of diligent development and continued operation of the mine or mines, except in a case in which operations under the lease are interrupted by strikes, the elements, or casualties not attributable to the lessee.

''(2)(A) The Secretary of the Interior may suspend the condition of continued operation upon the payment of advance royalties, if the Secretary determines that the public interest will be served by the suspension.

''(B) Advance royalties required under subparagraph (A) shall be computed based on—

''(i) the average price for coal sold in the spot market from the same region during the last month of each applicable continued operation year; or

''(ii) by using other methods established by the Secretary of the Interior to capture the commercial value of coal,

and based on commercial quantities, as defined by regulation by the Secretary of the Interior.

''(C) The aggregate number of years during the initial and any extended term of any lease for which advance royalties may be accepted in lieu of the condition of continued operation shall not exceed 20.

''(3) The amount of any production royalty paid for any year shall be reduced (but not below 0) by the amount of any advance royalties paid under the lease, to the extent that the advance royalties have not been used to reduce production royalties for a prior year.

''(4) The Secretary may, upon 6 months' notice to a lessee, cease to accept advance royalties in lieu of the requirement of continued operation.

''(5) Nothing in this subsection affects the requirement contained in the second sentence of subsection (a) relating to commencement of production at the end of 10 years.''.

SEC. 424. ELIMINATION OF DEADLINE FOR SUBMISSION OF COAL LEASE OPERATION AND RECLAMATION PLAN.

Section 7(c) of the Mineral Leasing Act (30 U.S.C. 207(c)) is amended in the first sentence by striking ''and not later than three years after a lease is issued,''.

SEC. 425. AMENDMENT RELATING TO FINANCIAL ASSURANCES WITH RESPECT TO BONUS BIDS.

Section 2(a) of the Mineral Leasing Act (30 U.S.C. 201(a)) is amended by adding at the end the following:

''(4)(A) The Secretary shall not require a surety bond or any other financial assurance to guarantee payment of deferred bonus bid installments with respect to any coal lease issued on a cash bonus bid to a lessee or successor in interest having a history of a timely payment of noncontested coal royalties and advanced coal royalties in lieu of production (where applicable) and bonus bid installment payments.

''(B) The Secretary may waive any requirement that a lessee provide a surety bond or other financial assurance for a coal lease issued before the date of the enactment of the Energy Policy Act of 2003 only if the Secretary determines that the lessee has a history of making timely payments referred to in subparagraph (A).

''(5) Notwithstanding any other provision of law, if the lessee under a coal lease fails to pay any installment of a deferred cash bonus bid within 10 days after the Secretary provides written notice that payment of the installment is past due—

''(A) the lease shall automatically terminate; and

''(B) any bonus payments already made to the United States with respect to the lease shall not be returned to the lessee or credited in any future lease sale.''.

SEC. 426. INVENTORY REQUIREMENT.

(a) REVIEW OF ASSESSMENTS.—

(1) IN GENERAL.—The Secretary of the Interior, in consultation with the Secretary of Agriculture and the Secretary, shall review coal assessments and other available data to identify—

(A) public lands, other than National Park lands, with coal resources;

(B) the extent and nature of any restrictions or impediments to the development of coal resources on public lands identified under subparagraph (A); and

(C) with respect to areas of such lands for which sufficient data exists, resources of compliant coal and supercompliant coal.

(2) DEFINITIONS.—In this subsection:

(A) COMPLIANT COAL.—The term ''compliant coal'' means coal that contains not less than 1.0 and not more than 1.2 pounds of sulfur dioxide per million Btu.

(B) SUPERCOMPLIANT COAL.—The term ''supercompliant coal'' means coal that contains less than 1.0 pounds of sulfur dioxide per million Btu.

(b) COMPLETION AND UPDATING OF THE INVENTORY.—The Secretary of the Interior—

(1) shall complete the inventory under subsection (a)(1) by not later than 2 years after the date of the enactment of this Act; and

(2) shall update the inventory as the availability of data and developments in technology warrant.

(c) REPORT.—The Secretary of the Interior shall submit to Congress, and make publicly available—

(1) a report containing the inventory under this section by not later than 2 years after the effective date of this section; and

(2) each update of that inventory.

SEC. 427. APPLICATION OF AMENDMENTS.

The amendments made by this subtitle apply—

(1) with respect to any coal lease issued on or after the date of enactment of this Act; and

(2) with respect to any coal lease issued before the date of enactment of this Act, upon the earlier of—

(A) the date of readjustment of the lease as provided for by section 7(a) of the Mineral Leasing Act (30 U.S.C. 207(a)); or

(B) the date the lessee requests such application.

Subtitle D—Coal and Related Programs

SEC. 441. CLEAN AIR COAL PROGRAM.

(a) AMENDMENT.—The Energy Policy Act of 1992 is amended by adding the following new title at the end thereof:

''TITLE XXXI—CLEAN AIR COAL PROGRAM

''SEC. 3101. FINDINGS; PURPOSES; DEFINITIONS.

''(a) FINDINGS.—The Congress finds that—

''(1) new environmental regulations present additional challenges for coal-fired electrical generation in the private marketplace; and

''(2) the Department of Energy, in cooperation with industry, has already fully developed and commercialized several new clean-coal technologies that will allow the clean use of coal.

''(b) PURPOSES.—The purposes of this title are to—

''(1) promote national energy policy and energy security, diversity, and economic competitiveness benefits that result from the increased use of coal;

''(2) mitigate financial risks, reduce the cost, and increase the marketplace acceptance of the new clean coal technologies; and

''(3) advance the deployment of pollution control equipment to meet the current and future obligations of coal-fired generation units regulated under the Clean Air Act (42 U.S.C. 7402 and following).

''SEC. 3102. AUTHORIZATION OF PROGRAM.

''The Secretary shall carry out a program to facilitate production and generation of coal-based power and the installation of pollution control equipment.

''SEC. 3103. AUTHORIZATION OF APPROPRIATIONS.

''(a) POLLUTION CONTROL PROJECTS.—There are authorized to be appropriated to the Secretary $300,000,000 for fiscal year 2005, $100,000,000 for fiscal year 2006, $40,000,000 for fiscal year 2007, $30,000,000 for fiscal year 2008, and $30,000,000 for fiscal year 2009, to remain available until expended, for carrying out the program for pollution control projects, which may include—

''(1) pollution control equipment and processes for the control of mercury air emissions;

''(2) pollution control equipment and processes for the control of nitrogen dioxide air emissions or sulfur dioxide emissions;

''(3) pollution control equipment and processes for the mitigation or collection of more than one pollutant;

''(4) advanced combustion technology for the control of at least two pollutants, including mercury, particulate matter, nitrogen oxides, and sulfur dioxide, which may also be designed to improve the energy efficiency of the unit; and

''(5) advanced pollution control equipment and processes designed to allow use of the waste byproducts or other byproducts of the equipment or an electrical generation unit designed to allow the use of byproducts.

Funds appropriated under this subsection which are not awarded before fiscal year 2011 may be applied to projects under subsection (b), in addition to amounts authorized under subsection (b).

''(b) GENERATION PROJECTS.—There are authorized to be appropriated to the Secretary $150,000,000 for fiscal year 2006, $250,000,000 for each of the fiscal years 2007 through 2011, and $100,000,000 for fiscal year 2012, to remain available until expended, for generation projects and air pollution control projects. Such projects may include—

''(1) coal-based electrical generation equipment and processes, including gasification combined cycle or other coal-based generation equipment and processes;

''(2) associated environmental control equipment, that will be cost-effective and that is designed to meet anticipated regulatory requirements;

''(3) coal-based electrical generation equipment and processes, including gasification fuel cells, gasification coproduction, and hybrid gasification/combustion projects; and

''(4) advanced coal-based electrical generation equipment and processes, including oxidation combustion techniques, ultra-supercritical boilers, and chemical looping, which the Secretary determines will be cost-effective and could substantially contribute to meeting anticipated environmental or energy needs.

''(c) LIMITATION.—Funds placed at risk during any fiscal year for Federal loans or loan guarantees pursuant to this title may not exceed 30 percent of the total funds obligated under this title.

''SEC. 3104. AIR POLLUTION CONTROL PROJECT CRITERIA.

''The Secretary shall pursuant to authorizations contained in section 3103 provide funding for air pollution control projects designed to facilitate compliance with Federal and State environmental regulations, including any regulation that may be established with respect to mercury.

''SEC. 3105. CRITERIA FOR GENERATION PROJECTS.

''(a) CRITERIA.—The Secretary shall establish criteria on which selection of individual projects described in section 3103(b) should be based. The Secretary may modify the criteria as appropriate to reflect improvements in equipment, except that the criteria shall not be modified to be less stringent. These selection criteria shall include—

''(1) prioritization of projects whose installation is likely to result in significant air quality improvements in nonattainment air quality areas;

''(2) prioritization of projects that result in the repowering or replacement of older, less efficient units;

''(3) documented broad interest in the procurement of the equipment and utilization of the processes used in the projects by electrical generator owners or operators;

''(4) equipment and processes beginning in 2005 through 2010 that are projected to achieve an thermal efficiency of—

''(A) 40 percent for coal of more than 9,000 Btu per pound based on higher heating values;

''(B) 38 percent for coal of 7,000 to 9,000 Btu per pound based on higher heating values; and

''(C) 36 percent for coal of less than 7,000 Btu per pound based on higher heating values—

except that energy used for coproduction or cogeneration shall not be counted in calculating the thermal efficiency under this paragraph; and

''(5) equipment and processes beginning in 2011 and 2012 that are projected to achieve an thermal efficiency of—

''(A) 45 percent for coal of more than 9,000 Btu per pound based on higher heating values;

''(B) 44 percent for coal of 7,000 to 9,000 Btu per pound based on higher heating values; and

''(C) 40 percent for coal of less than 7,000 Btu per pound based on higher heating values—

except that energy used for coproduction or cogeneration shall not be counted in calculating the thermal efficiency under this paragraph.

''(b) SELECTION.—(1) In selecting the projects, up to 25 percent of the projects selected may be either coproduction or cogeneration or other gasification projects, but at least 25 percent of the projects shall be for the sole purpose of electrical generation, and priority should be given to equipment and projects less than 600 MW to foster and promote standard designs.

''(2) The Secretary shall give priority to projects that have been developed and demonstrated that are not yet cost competitive, and for coal energy generation projects that advance efficiency, environmental performance, or cost competitiveness significantly beyond the level of pollution control equipment that is in operation on a full scale.

''SEC. 3106. FINANCIAL CRITERIA.

''(a) IN GENERAL.—The Secretary shall only provide financial assistance to projects that meet the requirements of sections 3103 and 3104 and are likely to—

''(1) achieve overall cost reductions in the utilization of coal to generate useful forms of energy; and

''(2) improve the competitiveness of coal in order to maintain a diversity of domestic fuel choices in the United States to meet electricity generation requirements.

''(b) CONDITIONS.—The Secretary shall not provide a funding award under this title unless—

''(1) the award recipient is financially viable without the receipt of additional Federal funding; and

''(2) the recipient provides sufficient information to the Secretary for the Secretary to ensure that the award funds are spent efficiently and effectively.

''(c) EQUAL ACCESS.—The Secretary shall, to the extent practical, utilize cooperative agreement, loan guarantee, and direct Federal loan mechanisms designed to ensure that all electrical generation owners have equal access to these technology deployment incentives. The Secretary shall develop and direct a competitive solicitation process for the selection of technologies and projects under this title.

''SEC. 3107. FEDERAL SHARE.

''The Federal share of the cost of a coal or related technology project funded by the Secretary under this title shall not exceed 50 percent. For purposes of this title, Federal funding includes only appropriated funds.

''SEC. 3108. APPLICABILITY.

''No technology, or level of emission reduction, shall be treated as adequately demonstrated for purposes of section 111 of the Clean Air Act (42 U.S.C. 7411), achievable for purposes of section 169 of the Clean Air Act (42 U.S.C. 7479), or achievable in practice for purposes of section 171 of the Clean Air Act (42 U.S.C. 7501) solely by reason of the use of such technology, or the achievement of such emission reduction, by one or more facilities receiving assistance under this title.''.

(b) TABLE OF CONTENTS AMENDMENT.—The table of contents of the Energy Policy Act of 1992 is amended by adding at the end the following:

''TITLE XXXI—CLEAN AIR COAL PROGRAM

''Sec. 3101. Findings; purposes; definitions.
''Sec. 3102. Authorization of program.
''Sec. 3103. Authorization of appropriations.
''Sec. 3104. Air pollution control project criteria.
''Sec. 3105. Criteria for generation projects.
''Sec. 3106. Financial criteria.
''Sec. 3107. Federal share.
''Sec. 3108. Applicability.''.

TITLE V—INDIAN ENERGY

SEC. 501. SHORT TITLE.

This title may be cited as the ''Indian Tribal Energy Development and Self-Determination Act of 2003''.

SEC. 502. OFFICE OF INDIAN ENERGY POLICY AND PROGRAMS.

(a) IN GENERAL.—Title II of the Department of Energy Organization Act (42 U.S.C. 7131 et seq.) is amended by adding at the end the following:

''OFFICE OF INDIAN ENERGY POLICY AND PROGRAMS

''SEC. 217. (a) ESTABLISHMENT.—There is established within the Department an Office of Indian Energy Policy and Programs (referred to in this section as the 'Office'). The Office shall be headed by a Director, who shall be appointed by the Secretary and compensated at a rate equal to that of level IV of the Executive Schedule under section 5315 of title 5, United States Code.

''(b) DUTIES OF DIRECTOR.—The Director, in accordance with Federal policies promoting Indian self-determination and the purposes of this Act, shall provide, direct, foster, coordinate, and implement energy planning, education, management, conservation, and delivery programs of the Department that—

''(1) promote Indian tribal energy development, efficiency, and use;

''(2) reduce or stabilize energy costs;

''(3) enhance and strengthen Indian tribal energy and economic infrastructure relating to natural resource development and electrification; and

''(4) bring electrical power and service to Indian land and the homes of tribal members located on Indian lands or acquired, constructed, or improved (in whole or in part) with Federal funds.''.

(b) CONFORMING AMENDMENTS.—

(1) The table of contents of the Department of Energy Organization Act (42 U.S.C. prec. 7101) is amended—

(A) in the item relating to section 209, by striking ''Section'' and inserting ''Sec.''; and

(B) by striking the items relating to sections 213 through 216 and inserting the following:

''Sec. 213. Establishment of policy for National Nuclear Security Administration.
''Sec. 214. Establishment of security, counterintelligence, and intelligence policies.
''Sec. 215. Office of Counterintelligence.
''Sec. 216. Office of Intelligence.
''Sec. 217. Office of Indian Energy Policy and Programs.''.

(2) Section 5315 of title 5, United States Code, is amended by inserting ''Director, Office of Indian Energy Policy and Programs, Department of Energy.'' after ''Inspector General, Department of Energy.''.

SEC. 503. INDIAN ENERGY.

(a) IN GENERAL.—Title XXVI of the Energy Policy Act of 1992 (25 U.S.C. 3501 et seq.) is amended to read as follows:

''TITLE XXVI—INDIAN ENERGY

''SEC. 2601. DEFINITIONS.

''For purposes of this title:

''(1) The term 'Director' means the Director of the Office of Indian Energy Policy and Programs, Department of Energy.

''(2) The term 'Indian land' means—

''(A) any land located within the boundaries of an Indian reservation, pueblo, or rancheria;

''(B) any land not located within the boundaries of an Indian reservation, pueblo, or rancheria, the title to which is held—

''(i) in trust by the United States for the benefit of an Indian tribe or an individual Indian;

''(ii) by an Indian tribe or an individual Indian, subject to restriction against alienation under laws of the United States; or

''(iii) by a dependent Indian community; and

''(C) land that is owned by an Indian tribe and was conveyed by the United States to a Native Corporation pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), or that was conveyed by the United States to a Native Corporation in exchange for such land.

''(3) The term 'Indian reservation' includes—

''(A) an Indian reservation in existence in any State or States as of the date of enactment of this paragraph;

''(B) a public domain Indian allotment; and

''(C) a dependent Indian community located within the borders of the United States, regardless of whether the community is located—

''(i) on original or acquired territory of the community; or

''(ii) within or outside the boundaries of any particular State.

''(4) The term 'Indian tribe' has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b), except that the term 'Indian tribe', for the purpose of paragraph (11) and sections 2603(b)(3) and 2604, shall not include any Native Corporation.

''(5) The term 'integration of energy resources' means any project or activity that promotes the location and operation of a facility (including any pipeline, gathering system, transportation system or facility, or electric transmission or distribution facility) on or near Indian land to process, refine, generate electricity from, or otherwise develop energy resources on, Indian land.

''(6) The term 'Native Corporation' has the meaning given the term in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602).

''(7) The term 'organization' means a partnership, joint venture, limited liability company, or other unincorporated association or entity that is established to develop Indian energy resources.

''(8) The term 'Program' means the Indian energy resource development program established under section 2602(a).

''(9) The term 'Secretary' means the Secretary of the Interior.

''(10) The term 'tribal energy resource development organization' means an organization of 2 or more entities, at least 1 of which is an Indian tribe, that has the written consent of the governing bodies of all Indian tribes participating in the organization to apply for a grant, loan, or other assistance authorized by section 2602.

''(11) The term 'tribal land' means any land or interests in land owned by any Indian tribe, title to which is held in trust by the United States or which is subject to a restriction against alienation under laws of the United States.

''SEC. 2602. INDIAN TRIBAL ENERGY RESOURCE DEVELOPMENT.

''(a) DEPARTMENT OF THE INTERIOR PROGRAM.—

''(1) To assist Indian tribes in the development of energy resources and further the goal of Indian self-determination, the Secretary shall establish and implement an Indian energy resource development program to assist consenting Indian tribes and tribal energy resource development organizations in achieving the purposes of this title.

''(2) In carrying out the Program, the Secretary shall—

''(A) provide development grants to Indian tribes and tribal energy resource development organizations for use in developing or obtaining the managerial and technical capacity needed to develop energy resources on Indian land, and to properly account for resulting energy production and revenues;

''(B) provide grants to Indian tribes and tribal energy resource development organizations for use in carrying out projects to promote the integration of energy resources, and to process, use, or develop those energy resources, on Indian land; and

''(C) provide low-interest loans to Indian tribes and tribal energy resource development organizations for use in the promotion of energy resource development on Indian land and integration of energy resources.

''(3) There are authorized to be appropriated to carry out this subsection such sums as are necessary for each of fiscal years 2004 through 2014.

''(b) DEPARTMENT OF ENERGY INDIAN ENERGY EDUCATION PLANNING AND MANAGEMENT ASSISTANCE PROGRAM.—

''(1) The Director shall establish programs to assist consenting Indian tribes in meeting energy education, research and development, planning, and management needs.

''(2) In carrying out this subsection, the Director may provide grants, on a competitive basis, to an Indian tribe or tribal energy resource development organization for use in carrying out—

''(A) energy, energy efficiency, and energy conservation programs;

''(B) studies and other activities supporting tribal acquisitions of energy supplies, services, and facilities;

''(C) planning, construction, development, operation, maintenance, and improvement of tribal electrical generation, transmission, and distribution facilities located on Indian land; and

''(D) development, construction, and interconnection of electric power transmission facilities located on Indian land with other electric transmission facilities.

''(3)(A) The Director may develop, in consultation with Indian tribes, a formula for providing grants under this subsection.

''(B) In providing a grant under this subsection, the Director shall give priority to an application received from an Indian tribe with inadequate electric service (as determined by the Director).

''(4) The Secretary of Energy may issue such regulations as necessary to carry out this subsection.

''(5) There are authorized to be appropriated to carry out this subsection $20,000,000 for each of fiscal years 2004 through 2014.

''(c) DEPARTMENT OF ENERGY LOAN GUARANTEE PROGRAM.—

''(1) Subject to paragraph (3), the Secretary of Energy may provide loan guarantees (as defined in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a)) for not more than 90 percent of the unpaid principal and interest due on any loan made to any Indian tribe for energy development.

''(2) A loan guarantee under this subsection shall be made by—

''(A) a financial institution subject to examination by the Secretary of Energy; or

''(B) an Indian tribe, from funds of the Indian tribe.

''(3) The aggregate outstanding amount guaranteed by the Secretary of Energy at any time under this subsection shall not exceed $2,000,000,000.

''(4) The Secretary of Energy may issue such regulations as the Secretary of Energy determines are necessary to carry out this subsection.

''(5) There are authorized to be appropriated such sums as are necessary to carry out this subsection, to remain available until expended.

''(6) Not later than 1 year from the date of enactment of this section, the Secretary of Energy shall report to Congress on the financing requirements of Indian tribes for energy development on Indian land.

''(d) FEDERAL AGENCIES—INDIAN ENERGY PREFERENCE.—

''(1) In purchasing electricity or any other energy product or byproduct, a Federal agency or department may give preference to an energy and resource production enterprise, partnership, consortium, corporation, or other type of business organization the majority of the interest in which is owned and controlled by 1 or more Indian tribes.

''(2) In carrying out this subsection, a Federal agency or department shall not—

''(A) pay more than the prevailing market price for an energy product or byproduct; or

''(B) obtain less than prevailing market terms and conditions.

''SEC. 2603. INDIAN TRIBAL ENERGY RESOURCE REGULATION.

''(a) GRANTS.—The Secretary may provide to Indian tribes, on an annual basis, grants for use in accordance with subsection (b).

''(b) USE OF FUNDS.—Funds from a grant provided under this section may be used—

''(1) by an Indian tribe for the development of a tribal energy resource inventory or tribal energy resource on Indian land;

''(2) by an Indian tribe for the development of a feasibility study or other report necessary to the development of energy resources on Indian land;

''(3) by an Indian tribe (other than an Indian Tribe in Alaska except the Metlakatla Indian Community) for the development and enforcement of tribal laws (including regulations) relating to tribal energy resource development and the development of technical infrastructure to protect the environment under applicable law; or

''(4) by a Native Corporation for the development and implementation of corporate policies and the development of technical infrastructure to protect the environment under applicable law; and

''(5) by an Indian tribe for the training of employees that—

''(A) are engaged in the development of energy resources on Indian land; or

''(B) are responsible for protecting the environment.

''(c) OTHER ASSISTANCE.—In carrying out the obligations of the United States under this title, the Secretary shall ensure, to the maximum extent practicable and to the extent of available resources, that upon the request of an Indian tribe, the Indian tribe shall have available scientific and technical information and expertise, for use in the Indian tribe's regulation, development, and management of energy resources on Indian land. The Secretary may fulfill this responsibility either directly, through the use of Federal officials, or indirectly, by providing financial assistance to the Indian tribe to secure independent assistance.

''SEC. 2604. LEASES, BUSINESS AGREEMENTS, AND RIGHTS-OF-WAY INVOLVING ENERGY DEVELOPMENT OR TRANSMISSION.

''(a) LEASES AND BUSINESS AGREEMENTS.—Subject to the provisions of this section—

''(1) an Indian tribe may, at its discretion, enter into a lease or business agreement for the purpose of energy resource development on tribal land, including a lease or business agreement for—

''(A) exploration for, extraction of, processing of, or other development of the Indian tribe's energy mineral resources located on tribal land; and

''(B) construction or operation of an electric generation, transmission, or distribution facility located on tribal land or a facility to process or refine energy resources developed on tribal land; and

''(2) such lease or business agreement described in paragraph (1) shall not require the approval of the Secretary under section 2103 of the Revised Statutes (25 U.S.C. 81) or any other provision of law, if—

''(A) the lease or business agreement is executed pursuant to a tribal energy resource agreement approved by the Secretary under subsection (e);

''(B) the term of the lease or business agreement does not exceed—

''(i) 30 years; or

''(ii) in the case of a lease for the production of oil resources, gas resources, or both, 10 years and as long thereafter as oil or gas is produced in paying quantities; and

''(C) the Indian tribe has entered into a tribal energy resource agreement with the Secretary, as described in subsection (e), relating to the development of energy resources on tribal land (including the periodic review and evaluation of the activities of the Indian tribe under the agreement, to be conducted pursuant to the provisions required by subsection (e)(2)(D)(i)).

''(b) RIGHTS-OF-WAY FOR PIPELINES OR ELECTRIC TRANSMISSION OR DISTRIBUTION LINES.—An Indian tribe may grant a right-of-way over tribal land for a pipeline or an electric transmission or distribution line without approval by the Secretary if—

''(1) the right-of-way is executed in accordance with a tribal energy resource agreement approved by the Secretary under subsection (e);

''(2) the term of the right-of-way does not exceed 30 years;

''(3) the pipeline or electric transmission or distribution line serves—

''(A) an electric generation, transmission, or distribution facility located on tribal land; or

''(B) a facility located on tribal land that processes or refines energy resources developed on tribal land; and

''(4) the Indian tribe has entered into a tribal energy resource agreement with the Secretary, as described in subsection (e), relating to the development of energy resources on tribal land (including the periodic review and evaluation of the Indian tribe's activities under such agreement described in subparagraphs (D) and (E) of subsection (e)(2)).

''(c) RENEWALS.—A lease or business agreement entered into or a right-of-way granted by an Indian tribe under this section may be renewed at the discretion of the Indian tribe in accordance with this section.

''(d) VALIDITY.—No lease, business agreement, or right-of-way relating to the development of tribal energy resources pursuant to the provisions of this section shall be valid unless the lease, business agreement, or right-of-way is authorized by the provisions of a tribal energy resource agreement approved by the Secretary under subsection (e)(2).

''(e) TRIBAL ENERGY RESOURCE AGREEMENTS.—

''(1) On issuance of regulations under paragraph (8), an Indian tribe may submit to the Secretary for approval a tribal energy resource agreement governing leases, business agreements, and rights-of-way under this section.

''(2)(A) Not later than 180 days after the date on which the Secretary receives a tribal energy resource agreement submitted by an Indian tribe under paragraph (1), or not later than 60 days after the Secretary receives a revised tribal energy resource agreement

submitted by an Indian tribe under paragraph (4)(C), (or such later date as may be agreed to by the Secretary and the Indian tribe), the Secretary shall approve or disapprove the tribal energy resource agreement.

''(B) The Secretary shall approve a tribal energy resource agreement submitted under paragraph (1) if—

''(i) the Secretary determines that the Indian tribe has demonstrated that the Indian tribe has sufficient capacity to regulate the development of energy resources of the Indian tribe;

''(ii) the tribal energy resource agreement includes provisions required under subparagraph (D); and

''(iii) the tribal energy resource agreement includes provisions that, with respect to a lease, business agreement, or right-of-way under this section—

''(I) ensure the acquisition of necessary information from the applicant for the lease, business agreement, or right-of-way;

''(II) address the term of the lease or business agreement or the term of conveyance of the right-of-way;

''(III) address amendments and renewals;

''(IV) address the economic return to the Indian tribe under leases, business agreements, and rights-of-way;

''(V) address technical or other relevant requirements;

''(VI) establish requirements for environmental review in accordance with subparagraph (C);

''(VII) ensure compliance with all applicable environmental laws;

''(VIII) identify final approval authority;

''(IX) provide for public notification of final approvals;

''(X) establish a process for consultation with any affected States concerning off-reservation impacts, if any, identified pursuant to the provisions required under subparagraph (C)(i);

''(XI) describe the remedies for breach of the lease, business agreement, or right-of-way;

''(XII) require each lease, business agreement, and right-of-way to include a statement that, in the event that any of its provisions violates an express term or requirement set forth in the tribal energy resource agreement pursuant to which it was executed—

''(aa) such provision shall be null and void; and

''(bb) if the Secretary determines such provision to be material, the Secretary shall have the authority to suspend or rescind the lease, business agreement, or right-of-way or take other appropriate action that the Secretary determines to be in the best interest of the Indian tribe;

''(XIII) require each lease, business agreement, and right-of-way to provide that it will become effective on the date on which a copy of the executed lease, business agreement, or right-of-way is delivered to the Secretary in accordance with regulations adopted pursuant to this subsection; and

''(XIV) include citations to tribal laws, regulations, or procedures, if any, that set out tribal remedies that must be exhausted before a petition may be submitted to the Secretary pursuant to paragraph (7)(B).

''(C) Tribal energy resource agreements submitted under paragraph (1) shall establish, and include provisions to ensure compliance with, an environmental review process that, with respect to a lease, business agreement, or right-of-way under this section, provides for—

''(i) the identification and evaluation of all significant environmental impacts (as compared with a no-action alternative), including effects on cultural resources;

''(ii) the identification of proposed mitigation;

''(iii) a process for ensuring that the public is informed of and has an opportunity to comment on the environmental impacts of the proposed action before tribal approval of the lease, business agreement, or right-of-way; and

''(iv) sufficient administrative support and technical capability to carry out the environmental review process.

''(D) A tribal energy resource agreement negotiated between the Secretary and an Indian tribe in accordance with this subsection shall include—

''(i) provisions requiring the Secretary to conduct a periodic review and evaluation to monitor the performance of the Indian tribe's activities associated with the development of energy resources under the tribal energy resource agreement; and

''(ii) when such review and evaluation result in a finding by the Secretary of imminent jeopardy to a physical trust asset arising from a violation of the tribal energy resource agreement or applicable Federal laws, provisions authorizing the Secretary to take appropriate actions determined by the Secretary to be necessary to protect such asset, which actions may include reassumption of responsibility for activities associated with the development of energy resources on tribal land until the violation and conditions that gave rise to such jeopardy have been corrected.

''(E) The periodic review and evaluation described in subparagraph (D) shall be conducted on an annual basis, except that, after the third such annual review and evaluation, the Secretary and the Indian tribe may mutually agree to amend the tribal energy resource agreement to authorize the review and evaluation required by subparagraph (D) to be conducted once every 2 years.

''(3) The Secretary shall provide notice and opportunity for public comment on tribal energy resource agreements submitted for approval under paragraph (1). The Secretary's review of a tribal energy resource agreement under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) shall be limited to the direct effects of that approval.

''(4) If the Secretary disapproves a tribal energy resource agreement submitted by an Indian tribe under paragraph (1), the Secretary shall, not later than 10 days after the date of disapproval—

''(A) notify the Indian tribe in writing of the basis for the disapproval;

''(B) identify what changes or other actions are required to address the concerns of the Secretary; and

''(C) provide the Indian tribe with an opportunity to revise and resubmit the tribal energy resource agreement.

''(5) If an Indian tribe executes a lease or business agreement or grants a right-of-way in accordance with a tribal energy resource agreement approved under this subsection, the Indian tribe shall, in accordance with the process and requirements set forth in the Secretary's regulations adopted pursuant to paragraph (8), provide to the Secretary—

''(A) a copy of the lease, business agreement, or right-of-way document (including all amendments to and renewals of the document); and

''(B) in the case of a tribal energy resource agreement or a lease, business agreement, or right-of-way that permits payments to be made directly to the Indian tribe, information and documentation of those payments sufficient to enable the Secretary to discharge the trust responsibility of the United States to enforce the terms of, and protect the Indian tribe's rights under, the lease, business agreement, or right-of-way.

''(6)(A) For purposes of the activities to be undertaken by the Secretary pursuant to this section, the Secretary shall—

''(i) carry out such activities in a manner consistent with the trust responsibility of the United States relating to mineral and other trust resources; and

''(ii) act in good faith and in the best interests of the Indian tribes.

''(B) Subject to the provisions of subsections (a)(2), (b), and (c) waiving the requirement of Secretarial approval of leases, business agreements, and rights-of-way executed pursuant to tribal energy resource agreements approved under this section, and the provisions of subparagraph (D), nothing in this section shall absolve the United States from any responsibility to Indians or Indian tribes, including, but not limited to, those which derive from the trust relationship or from any treaties, statutes, and other laws of the United States, Executive Orders, or agreements between the United States and any Indian tribe.

''(C) The Secretary shall continue to have a trust obligation to ensure that the rights and interests of an Indian tribe are protected in the event that—

''(i) any other party to any such lease, business agreement, or right-of-way violates any applicable provision of Federal law or the terms of any lease, business agreement, or right-of-way under this section; or

''(ii) any provision in such lease, business agreement, or right-of-way violates any express provision or requirement set forth in the tribal energy resource agreement pursuant to which the lease, business agreement, or right-of-way was executed.

''(D) Notwithstanding subparagraph (B), the United States shall not be liable to any party (including any Indian tribe) for any of the negotiated terms of, or any losses resulting from the negotiated terms of, a lease, business agreement, or right-of-way executed pursuant to and in accordance with a tribal energy resource agreement approved by the Secretary under paragraph (2). For the purpose of this subparagraph, the term 'negotiated terms' means any terms or provisions that are negotiated by an Indian tribe and any other party or parties to a lease, business agreement, or right-of-way entered into pursuant to an approved tribal energy resource agreement.

''(7)(A) In this paragraph, the term 'interested party' means any person or entity the interests of which have sustained or will sustain a significant adverse environmental impact as a result of the failure of an Indian tribe to comply with a tribal energy resource agreement of the Indian tribe approved by the Secretary under paragraph (2).

''(B) After exhaustion of tribal remedies, and in accordance with the process and requirements set forth in regulations adopted by the Secretary pursuant to paragraph (8), an interested party may submit to the Secretary a petition to review compliance of an Indian tribe with a tribal energy resource agreement of the Indian tribe approved by the Secretary under paragraph (2).

''(C)(i) Not later than 120 days after the date on which the Secretary receives a petition under subparagraph (B), the Secretary shall determine whether the Indian tribe is not in compliance with the tribal energy resource agreement, as alleged in the petition.

''(ii) The Secretary may adopt procedures under paragraph (8) authorizing an extension of time, not to exceed 120 days, for making the determination under clause (i) in any case in which the Secretary determines that additional time is necessary to evaluate the allegations of the petition.

''(iii) Subject to subparagraph (D), if the Secretary determines that the Indian tribe is

not in compliance with the tribal energy resource agreement as alleged in the petition, the Secretary shall take such action as is necessary to ensure compliance with the provisions of the tribal energy resource agreement, which action may include—

''(I) temporarily suspending some or all activities under a lease, business agreement, or right-of-way under this section until the Indian tribe or such activities are in compliance with the provisions of the approved tribal energy resource agreement; or

''(II) rescinding approval of all or part of the tribal energy resource agreement, and if all of such agreement is rescinded, reassuming the responsibility for approval of any future leases, business agreements, or rights-of-way described in subsections (a) and (b).

''(D) Prior to seeking to ensure compliance with the provisions of the tribal energy resource agreement of an Indian tribe under subparagraph (C)(iii), the Secretary shall—

''(i) make a written determination that describes the manner in which the tribal energy resource agreement has been violated;

''(ii) provide the Indian tribe with a written notice of the violations together with the written determination; and

''(iii) before taking any action described in subparagraph (C)(iii) or seeking any other remedy, provide the Indian tribe with a hearing and a reasonable opportunity to attain compliance with the tribal energy resource agreement.

''(E) An Indian tribe described in subparagraph (D) shall retain all rights to appeal as provided in regulations issued by the Secretary.

''(8) Not later than 1 year after the date of enactment of the Indian Tribal Energy Development and Self-Determination Act of 2003, the Secretary shall issue regulations that implement the provisions of this subsection, including—

''(A) criteria to be used in determining the capacity of an Indian tribe described in paragraph (2)(B)(i), including the experience of the Indian tribe in managing natural resources and financial and administrative resources available for use by the Indian tribe in implementing the approved tribal energy resource agreement of the Indian tribe;

''(B) a process and requirements in accordance with which an Indian tribe may—

''(i) voluntarily rescind a tribal energy resource agreement approved by the Secretary under this subsection; and

''(ii) return to the Secretary the responsibility to approve any future leases, business agreements, and rights-of-way described in this subsection;

''(C) provisions setting forth the scope of, and procedures for, the periodic review and evaluation described in subparagraphs (D) and (E) of paragraph (2), including provisions for review of transactions, reports, site inspections, and any other review activities the Secretary determines to be appropriate; and

''(D) provisions defining final agency actions after exhaustion of administrative appeals from determinations of the Secretary under paragraph (7).

''(f) NO EFFECT ON OTHER LAW.—Nothing in this section affects the application of—

''(1) any Federal environment law;

''(2) the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.); or

''(3) except as otherwise provided in this title, the Indian Mineral Development Act of 1982 (25 U.S.C. 2101 et seq.) and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

''(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary such sums as are necessary for each of fiscal years 2004 through 2014 to implement the provisions of this section and to make grants or provide other appropriate assistance to Indian tribes to assist the Indian tribes in developing and implementing tribal energy resource agreements in accordance with the provisions of this section.

''SEC. 2605. INDIAN MINERAL DEVELOPMENT REVIEW.

''(a) IN GENERAL.—The Secretary shall conduct a review of all activities being conducted under the Indian Mineral Development Act of 1982 (25 U.S.C. 2101 et seq.) as of that date.

''(b) REPORT.—Not later than 1 year after the date of enactment of the Indian Tribal Energy Development and Self-Determination Act of 2003, the Secretary shall submit to Congress a report that includes—

''(1) the results of the review;

''(2) recommendations to ensure that Indian tribes have the opportunity to develop Indian energy resources; and

''(3) an analysis of the barriers to the development of energy resources on Indian land (including legal, fiscal, market, and other barriers), along with recommendations for the removal of those barriers.

''SEC. 2606. FEDERAL POWER MARKETING ADMINISTRATIONS.

''(a) DEFINITIONS.—In this section:

''(1) The term ''Administrator'' means the Administrator of the Bonneville Power Administration and the Administrator of the Western Area Power Administration.

''(2) The term ''power marketing administration'' means—

''(A) the Bonneville Power Administration;

''(B) the Western Area Power Administration; and

''(C) any other power administration the power allocation of which is used by or for the benefit of an Indian tribe located in the service area of the administration.

''(b) ENCOURAGEMENT OF INDIAN TRIBAL ENERGY DEVELOPMENT.—Each Administrator shall encourage Indian tribal energy development by taking such actions as are appropriate, including administration of programs of the Bonneville Power Administration and the Western Area Power Administration, in accordance with this section.

''(c) ACTION BY THE ADMINISTRATOR.—In carrying out this section, and in accordance with existing law—

''(1) each Administrator shall consider the unique relationship that exists between the United States and Indian tribes;

''(2) power allocations from the Western Area Power Administration to Indian tribes may be used to meet firming and reserve needs of Indian-owned energy projects on Indian land;

''(3) the Administrator of the Western Area Power Administration may purchase nonfederally generated power from Indian tribes to meet the firming and reserve requirements of the Western Area Power Administration; and

''(4) each Administrator shall not pay more than the prevailing market price for an energy product nor obtain less than prevailing market terms and conditions.

''(d) ASSISTANCE FOR TRANSMISSION SYSTEM USE.—(1) An Administrator may provide technical assistance to Indian tribes seeking to use the high-voltage transmission system for delivery of electric power.

''(2) The costs of technical assistance provided under paragraph (1) shall be funded by the Secretary of Energy using nonreimbursable funds appropriated for that purpose, or by the applicable Indian tribes.

''(e) POWER ALLOCATION STUDY.—Not later than 2 years after the date of enactment of the Indian Tribal Energy Development and Self-Determination Act of 2003, the Secretary of Energy shall submit to Congress a report that—

''(1) describes the use by Indian tribes of Federal power allocations of the Western Area Power Administration (or power sold by the Southwestern Power Administration) and the Bonneville Power Administration to or for the benefit of Indian tribes in service areas of those administrations; and

''(2) identifies—

''(A) the quantity of power allocated to, or used for the benefit of, Indian tribes by the Western Area Power Administration;

''(B) the quantity of power sold to Indian tribes by other power marketing administrations; and

''(C) barriers that impede tribal access to and use of Federal power, including an assessment of opportunities to remove those barriers and improve the ability of power marketing administrations to deliver Federal power.

''(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $750,000, which shall remain available until expended and shall not be reimbursable.

''SEC. 2607. WIND AND HYDROPOWER FEASIBILITY STUDY.

''(a) STUDY.—The Secretary of Energy, in coordination with the Secretary of the Army and the Secretary, shall conduct a study of the cost and feasibility of developing a demonstration project that would use wind energy generated by Indian tribes and hydropower generated by the Army Corps of Engineers on the Missouri River to supply firming power to the Western Area Power Administration.

''(b) SCOPE OF STUDY.—The study shall—

''(1) determine the feasibility of the blending of wind energy and hydropower generated from the Missouri River dams operated by the Army Corps of Engineers;

''(2) review historical and projected requirements for firming power and the patterns of availability and use of firming power;

''(3) assess the wind energy resource potential on tribal land and projected cost savings through a blend of wind and hydropower over a 30-year period;

''(4) determine seasonal capacity needs and associated transmission upgrades for integration of tribal wind generation; and

''(5) include an independent tribal engineer as a study team member.

''(c) REPORT.—Not later than 1 year after the date of enactment of the Energy Policy Act of 2003, the Secretary and Secretary of the Army shall submit to Congress a report that describes the results of the study, including—

''(1) an analysis of the potential energy cost or benefits to the customers of the Western Area Power Administration through the use of combined wind and hydropower;

''(2) an evaluation of whether a combined wind and hydropower system can reduce reservoir fluctuation, enhance efficient and reliable energy production, and provide Missouri River management flexibility;

''(3) recommendations for a demonstration project that could be carried out by the Western Area Power Administration in partnership with an Indian tribal government or tribal energy resource development organization to demonstrate the feasibility and potential of using wind energy produced on Indian land to supply firming energy to the Western Area Power Administration or any other Federal power marketing agency; and

''(4) an identification of—

''(A) the economic and environmental costs or benefits to be realized through such a Federal-tribal partnership; and

''(B) the manner in which such a partnership could contribute to the energy security of the United States.

''(d) FUNDING.—

''(1) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $500,000, to remain available until expended.

''(2) NONREIMBURSABILITY.—Costs incurred by the Secretary in carrying out this section shall be nonreimbursable.''.

(b) CONFORMING AMENDMENTS.—The table of contents for the Energy Policy Act of 1992 is amended by striking the items relating to title XXVI and inserting the following:

''Sec. 2601. Definitions.
''Sec. 2602. Indian tribal energy resource development.
''Sec. 2603. Indian tribal energy resource regulation.
''Sec. 2604. Leases, business agreements, and rights-of-way involving energy development or transmission.
''Sec. 2605. Indian mineral development review.
''Sec. 2606. Federal Power Marketing Administrations.
''Sec. 2607. Wind and hydropower feasibility study.''.

SEC. 504. FOUR CORNERS TRANSMISSION LINE PROJECT.

The Dine Power Authority, an enterprise of the Navajo Nation, shall be eligible to receive grants and other assistance as authorized by section 217 of the Department of Energy Organization Act, as added by section 502 of this title, and section 2602 of the Energy Policy Act of 1992, as amended by this title, for activities associated with the development of a transmission line from the Four Corners Area to southern Nevada, including related power generation opportunities.

SEC. 505. ENERGY EFFICIENCY IN FEDERALLY ASSISTED HOUSING.

(a) IN GENERAL.—The Secretary of Housing and Urban Development shall promote energy conservation in housing that is located on Indian land and assisted with Federal resources through—

(1) the use of energy-efficient technologies and innovations (including the procurement of energy-efficient refrigerators and other appliances);

(2) the promotion of shared savings contracts; and

(3) the use and implementation of such other similar technologies and innovations as the Secretary of Housing and Urban Development considers to be appropriate.

(b) AMENDMENT.—Section 202(2) of the Native American Housing and Self-Determination Act of 1996 (25 U.S.C. 4132(2)) is amended by inserting ''improvement to achieve greater energy efficiency,'' after ''planning,''.

SEC. 506. CONSULTATION WITH INDIAN TRIBES.

In carrying out this title and the amendments made by this title, the Secretary of Energy and the Secretary shall, as appropriate and to the maximum extent practicable, involve and consult with Indian tribes in a manner that is consistent with the Federal trust and the government-to-government relationships between Indian tribes and the United States.

TITLE VI—NUCLEAR MATTERS

Subtitle A—Price-Anderson Act Amendments

SEC. 601. SHORT TITLE.

This subtitle may be cited as the ''Price-Anderson Amendments Act of 2003''.

SEC. 602. EXTENSION OF INDEMNIFICATION AUTHORITY.

(a) INDEMNIFICATION OF NUCLEAR REGULATORY COMMISSION LICENSEES.—Section 170 c. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(c)) is amended—

(1) in the subsection heading, by striking ''LICENSES'' and inserting ''LICENSEES''; and

(2) by striking ''December 31, 2003'' each place it appears and inserting ''December 31, 2023''.

(b) INDEMNIFICATION OF DEPARTMENT OF ENERGY CONTRACTORS.—Section 170 d.(1)(A) of the Atomic Energy Act of 1954 (42 U.S.C. 2210(d)(1)(A)) is amended by striking ''December 31, 2004'' and inserting ''December 31, 2023''.

(c) INDEMNIFICATION OF NONPROFIT EDUCATIONAL INSTITUTIONS.—Section 170 k. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(k)) is amended by striking ''August 1, 2002'' each place it appears and inserting ''December 31, 2023''.

SEC. 603. MAXIMUM ASSESSMENT.

Section 170 of the Atomic Energy Act of 1954 (42 U.S.C. 2210) is amended—

(1) in the second proviso of the third sentence of subsection b.(1)—

(A) by striking ''$63,000,000'' and inserting ''$95,800,000''; and

(B) by striking ''$10,000,000 in any 1 year'' and inserting ''$15,000,000 in any 1 year (subject to adjustment for inflation under subsection t.)''; and

(2) in subsection t.(1)—

(A) by inserting ''total and annual'' after ''amount of the maximum'';

(B) by striking ''the date of the enactment of the Price-Anderson Amendments Act of 1988'' and inserting ''August 20, 2003''; and

(C) in subparagraph (A), by striking ''such date of enactment'' and inserting ''August 20, 2003''.

SEC. 604. DEPARTMENT OF ENERGY LIABILITY LIMIT.

(a) INDEMNIFICATION OF DEPARTMENT OF ENERGY CONTRACTORS.—Section 170 d. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(d)) is amended by striking paragraph (2) and inserting the following:

''(2) In an agreement of indemnification entered into under paragraph (1), the Secretary—

''(A) may require the contractor to provide and maintain financial protection of such a type and in such amounts as the Secretary shall determine to be appropriate to cover public liability arising out of or in connection with the contractual activity; and

''(B) shall indemnify the persons indemnified against such liability above the amount of the financial protection required, in the amount of $10,000,000,000 (subject to adjustment for inflation under subsection t.), in the aggregate, for all persons indemnified in connection with the contract and for each nuclear incident, including such legal costs of the contractor as are approved by the Secretary.''.

(b) CONTRACT AMENDMENTS.—Section 170 d. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(d)) is further amended by striking paragraph (3) and inserting the following—

''(3) All agreements of indemnification under which the Department of Energy (or its predecessor agencies) may be required to indemnify any person under this section shall be deemed to be amended, on the date of enactment of the Price-Anderson Amendments Act of 2003, to reflect the amount of indemnity for public liability and any applicable financial protection required of the contractor under this subsection.''.

(c) LIABILITY LIMIT.—Section 170 e.(1)(B) of the Atomic Energy Act of 1954 (42 U.S.C. 2210(e)(1)(B)) is amended—

(1) by striking ''the maximum amount of financial protection required under subsection b. or''; and

(2) by striking ''paragraph (3) of subsection d., whichever amount is more'' and inserting ''paragraph (2) of subsection d.''.

SEC. 605. INCIDENTS OUTSIDE THE UNITED STATES.

(a) AMOUNT OF INDEMNIFICATION.—Section 170 d.(5) of the Atomic Energy Act of 1954 (42 U.S.C. 2210(d)(5)) is amended by striking ''$100,000,000'' and inserting ''$500,000,000''.

(b) LIABILITY LIMIT.—Section 170 e.(4) of the Atomic Energy Act of 1954 (42 U.S.C. 2210(e)(4)) is amended by striking ''$100,000,000'' and inserting ''$500,000,000''.

SEC. 606. REPORTS.

Section 170 p. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(p)) is amended by striking ''August 1, 1998'' and inserting ''December 31, 2019''.

SEC. 607. INFLATION ADJUSTMENT.

Section 170 t. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(t)) is amended—

(1) by redesignating paragraph (2) as paragraph (3); and

(2) by inserting after paragraph (1) the following:

''(2) The Secretary shall adjust the amount of indemnification provided under an agreement of indemnification under subsection d. not less than once during each 5-year period following July 1, 2003, in accordance with the aggregate percentage change in the Consumer Price Index since—

''(A) that date, in the case of the first adjustment under this paragraph; or

''(B) the previous adjustment under this paragraph.''.

SEC. 608. TREATMENT OF MODULAR REACTORS.

Section 170 b. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(b)) is amended by adding at the end the following:

''(5)(A) For purposes of this section only, the Commission shall consider a combination of facilities described in subparagraph (B) to be a single facility having a rated capacity of 100,000 electrical kilowatts or more.

''(B) A combination of facilities referred to in subparagraph (A) is 2 or more facilities located at a single site, each of which has a rated capacity of 100,000 electrical kilowatts or more but not more than 300,000 electrical kilowatts, with a combined rated capacity of not more than 1,300,000 electrical kilowatts.''.

SEC. 609. APPLICABILITY.

The amendments made by sections 603, 604, and 605 do not apply to a nuclear incident that occurs before the date of the enactment of this Act.

SEC. 610. PROHIBITION ON ASSUMPTION BY UNITED STATES GOVERNMENT OF LIABILITY FOR CERTAIN FOREIGN INCIDENTS.

Section 170 of the Atomic Energy Act of 1954 (42 U.S.C. 2210) is amended by adding at the end the following new subsection:

''u. PROHIBITION ON ASSUMPTION OF LIABILITY FOR CERTAIN FOREIGN INCIDENTS.—Notwithstanding this section or any other provision of law, no officer of the United States or of any department, agency, or instrumentality of the United States Government may enter into any contract or other arrangement, or into any amendment or modification of a contract or other arrangement, the purpose or effect of which would be to directly or indirectly impose liability on the United States Government, or any department, agency, or instrumentality of the United States Government, or to otherwise directly or indirectly require an indemnity by the United States Government, for nuclear incidents occurring in connection with the design, construction, or operation of a production facility or utilization facility in any country whose government has been identified by the Secretary of State as engaged in state sponsorship of terrorist activities (specifically including any country the government of which, as of September 11, 2001, had been determined by the Secretary

of State under section 620A(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2371(a)), section 6(j)(1) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(1)), or section 40(d) of the Arms Export Control Act (22 U.S.C. 2780(d)) to have repeatedly provided support for acts of international terrorism). This subsection shall not apply to nuclear incidents occurring as a result of missions, carried out under the direction of the Secretary of Energy, the Secretary of Defense, or the Secretary of State, that are necessary to safely secure, store, transport, or remove nuclear materials for nuclear safety or nonproliferation purposes.''.

SEC. 611. CIVIL PENALTIES.

(a) REPEAL OF AUTOMATIC REMISSION.—Section 234A b.(2) of the Atomic Energy Act of 1954 (42 U.S.C. 2282a(b)(2)) is amended by striking the last sentence.

(b) LIMITATION FOR NOT-FOR-PROFIT INSTITUTIONS.—Subsection d. of section 234A of the Atomic Energy Act of 1954 (42 U.S.C. 2282a(d)) is amended to read as follows:

''d.(1) Notwithstanding subsection a., in the case of any not-for-profit contractor, subcontractor, or supplier, the total amount of civil penalties paid under subsection a. may not exceed the total amount of fees paid within any 1-year period (as determined by the Secretary) under the contract under which the violation occurs.

''(2) For purposes of this section, the term ''not-for-profit'' means that no part of the net earnings of the contractor, subcontractor, or supplier inures to the benefit of any natural person or for-profit artificial person.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall not apply to any violation of the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) occurring under a contract entered into before the date of enactment of this section.

Subtitle B—General Nuclear Matters

SEC. 621. LICENSES.

Section 103 c. of the Atomic Energy Act of 1954 (42 U.S.C. 2133(c)) is amended by inserting ''from the authorization to commence operations'' after ''forty years''.

SEC. 622. NRC TRAINING PROGRAM.

(a) IN GENERAL.—In order to maintain the human resource investment and infrastructure of the United States in the nuclear sciences, health physics, and engineering fields, in accordance with the statutory authorities of the Nuclear Regulatory Commission relating to the civilian nuclear energy program, the Nuclear Regulatory Commission shall carry out a training and fellowship program to address shortages of individuals with critical nuclear safety regulatory skills.

(b) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated to the Nuclear Regulatory Commission to carry out this section $1,000,000 for each of fiscal years 2004 through 2008.

(2) AVAILABILITY.—Funds made available under paragraph (1) shall remain available until expended.

SEC. 623. COST RECOVERY FROM GOVERNMENT AGENCIES.

Section 161 w. of the Atomic Energy Act of 1954 (42 U.S.C. 2201(w)) is amended—

(1) by striking ''for or is issued'' and all that follows through ''1702'' and inserting ''to the Commission for, or is issued by the Commission, a license or certificate'';

(2) by striking ''483a'' and inserting ''9701''; and

(3) by striking '', of applicants for, or holders of, such licenses or certificates''.

SEC. 624. ELIMINATION OF PENSION OFFSET.

Section 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201) is amended by adding at the end the following:

''y. Exempt from the application of sections 8344 and 8468 of title 5, United States Code, an annuitant who was formerly an employee of the Commission who is hired by the Commission as a consultant, if the Commission finds that the annuitant has a skill that is critical to the performance of the duties of the Commission.''.

SEC. 625. ANTITRUST REVIEW.

Section 105 c. of the Atomic Energy Act of 1954 (42 U.S.C. 2135(c)) is amended by adding at the end the following:

''(9) APPLICABILITY.—This subsection does not apply to an application for a license to construct or operate a utilization facility or production facility under section 103 or 104 b. that is filed on or after the date of enactment of this paragraph.''.

SEC. 626. DECOMMISSIONING.

Section 161 i. of the Atomic Energy Act of 1954 (42 U.S.C. 2201(i)) is amended—

(1) by striking ''and (3)'' and inserting ''(3)''; and

(2) by inserting before the semicolon at the end the following: '', and (4) to ensure that sufficient funds will be available for the decommissioning of any production or utilization facility licensed under section 103 or 104 b., including standards and restrictions governing the control, maintenance, use, and disbursement by any former licensee under this Act that has control over any fund for the decommissioning of the facility''.

SEC. 627. LIMITATION ON LEGAL FEE REIMBURSEMENT.

The Department of Energy shall not, except as required under a contract entered into before the date of enactment of this Act, reimburse any contractor or subcontractor of the Department for any legal fees or expenses incurred with respect to a complaint subsequent to—

(1) an adverse determination on the merits with respect to such complaint against the contractor or subcontractor by the Director of the Department of Energy's Office of Hearings and Appeals pursuant to part 708 of title 10, Code of Federal Regulations, or by a Department of Labor Administrative Law Judge pursuant to section 211 of the Energy Reorganization Act of 1974 (42 U.S.C. 5851); or

(2) an adverse final judgment by any State or Federal court with respect to such complaint against the contractor or subcontractor for wrongful termination or retaliation due to the making of disclosures protected under chapter 12 of title 5, United States Code, section 211 of the Energy Reorganization Act of 1974 (42 U.S.C. 5851), or any comparable State law,

unless the adverse determination or final judgment is reversed upon further administrative or judicial review.

SEC. 628. DECOMMISSIONING PILOT PROGRAM.

(a) PILOT PROGRAM.—The Secretary of Energy shall establish a decommissioning pilot program to decommission and decontaminate the sodium-cooled fast breeder experimental test-site reactor located in northwest Arkansas in accordance with the decommissioning activities contained in the August 31, 1998, Department of Energy report on the reactor.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Energy to carry out this section $16,000,000.

SEC. 629. REPORT ON FEASIBILITY OF DEVELOPING COMMERCIAL NUCLEAR ENERGY GENERATION FACILITIES AT EXISTING DEPARTMENT OF ENERGY SITES.

Not later than 1 year after the date of the enactment of this Act, the Secretary of Energy shall submit to Congress a report on the feasibility of developing commercial nuclear energy generation facilities at Department of Energy sites in existence on the date of enactment of this Act.

SEC. 630. URANIUM SALES.

(a) SALES, TRANSFERS, AND SERVICES.—Section 3112 of the USEC Privatization Act (42 U.S.C. 2297h–10) is amended by striking subsections (d), (e), and (f) and inserting the following:

''(d) INVENTORY SALES.—(1) In addition to the transfers and sales authorized under subsections (b) and (c) and under paragraph (5) of this subsection, the United States Government may transfer or sell uranium in any form subject to paragraphs (2), (3), and (4).

''(2) Except as provided in subsections (b) and (c) and paragraph (5) of this subsection, no sale or transfer of uranium shall be made under this subsection by the United States Government unless—

''(A) the President determines that the material is not necessary for national security needs and the sale or transfer has no adverse impact on implementation of existing government-to-government agreements;

''(B) the price paid to the appropriate Federal agency, if the transaction is a sale, will not be less than the fair market value of the material; and

''(C) the sale or transfer to commercial nuclear power end users is made pursuant to a contract of at least 3 years' duration.

''(3) Except as provided in paragraph (5), the United States Government shall not make any transfer or sale of uranium in any form under this subsection that would cause the total amount of uranium transferred or sold pursuant to this subsection that is delivered for consumption by commercial nuclear power end users to exceed—

''(A) 3,000,000 pounds of U_3O_8 equivalent in fiscal year 2004, 2005, 2006, 2007, 2008, or 2009;

''(B) 5,000,000 pounds of U_3O_8 equivalent in fiscal year 2010 or 2011;

''(C) 7,000,000 pounds of U_3O_8 equivalent in fiscal year 2012; and

''(D) 10,000,000 pounds of U_3O_8 equivalent in fiscal year 2013 or any fiscal year thereafter.

''(4) Except for sales or transfers under paragraph (5), for the purposes of this subsection, the recovery of uranium from uranium bearing materials transferred or sold by the United States Government to the domestic uranium industry shall be the preferred method of making uranium available. The recovered uranium shall be counted against the annual maximum deliveries set forth in this section, when such uranium is sold to end users.

''(5) The United States Government may make the following sales and transfers:

''(A) Sales or transfers to a Federal agency if the material is transferred for the use of the receiving agency without any resale or transfer to another entity and the material does not meet commercial specifications.

''(B) Sales or transfers to any person for national security purposes, as determined by the Secretary.

''(C) Sales or transfers to any State or local agency or nonprofit, charitable, or educational institution for use other than the generation of electricity for commercial use.

''(D) Sales or transfers to the Department of Energy research reactor sales program.

''(E) Sales or transfers, at fair market value, for emergency purposes in the event of a disruption in supply to commercial nuclear power end users in the United States.

''(F) Sales or transfers, at fair market value, for use in a commercial reactor in the United States with nonstandard fuel requirements.

''(G) Sales or transfers provided for under law for use by the Tennessee Valley Authority in relation to the Department of Energy's highly enriched uranium or tritium programs.

''(6) For purposes of this subsection, the term ''United States Government'' does not include the Tennessee Valley Authority.

''(e) SAVINGS PROVISION.—Nothing in this subchapter modifies the terms of the Russian HEU Agreement.

''(f) SERVICES.—Notwithstanding any other provision of this section, if the Secretary determines that the Corporation has failed, or may fail, to perform any obligation under the Agreement between the Department of Energy and the Corporation dated June 17, 2002, and as amended thereafter, which failure could result in termination of the Agreement, the Secretary shall notify Congress, in such a manner that affords Congress an opportunity to comment, prior to a determination by the Secretary whether termination, waiver, or modification of the Agreement is required. The Secretary is authorized to take such action as he determines necessary under the Agreement to terminate, waive, or modify provisions of the Agreement to achieve its purposes.''.

(b) REPORT.—Not later than 3 years after the date of enactment of this Act, the Secretary of Energy shall report to Congress on the implementation of this section. The report shall include a discussion of available excess uranium inventories; all sales or transfers made by the United States Government; the impact of such sales or transfers on the domestic uranium industry, the spot market uranium price, and the national security interests of the United States; and any steps taken to remediate any adverse impacts of such sales or transfers.

SEC. 631. COOPERATIVE RESEARCH AND DEVELOPMENT AND SPECIAL DEMONSTRATION PROJECTS FOR THE URANIUM MINING INDUSTRY.

(a) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Energy $10,000,000 for each of fiscal years 2004, 2005, and 2006 for—

(1) cooperative, cost-shared agreements between the Department of Energy and domestic uranium producers to identify, test, and develop improved in situ leaching mining technologies, including low-cost environmental restoration technologies that may be applied to sites after completion of in situ leaching operations; and

(2) funding for competitively selected demonstration projects with domestic uranium producers relating to—

(A) enhanced production with minimal environmental impacts;

(B) restoration of well fields; and

(C) decommissioning and decontamination activities.

(b) DOMESTIC URANIUM PRODUCER.—For purposes of this section, the term ''domestic uranium producer'' has the meaning given that term in section 1018(4) of the Energy Policy Act of 1992 (42 U.S.C. 2296b–7(4)), except that the term shall not include any producer that has not produced uranium from domestic reserves on or after July 30, 1998.

(c) LIMITATION.—No activities funded under this section may be carried out in the State of New Mexico.

SEC. 632. WHISTLEBLOWER PROTECTION.

(a) DEFINITION OF EMPLOYER.—Section 211(a)(2) of the Energy Reorganization Act of 1974 (42 U.S.C. 5851(a)(2)) is amended—

(1) in subparagraph (C), by striking ''and'' at the end;

(2) in subparagraph (D), by striking the period at the end and inserting ''; and''; and

(3) by adding at the end the following:

''(E) a contractor or subcontractor of the Commission.''.

(b) DE NOVO REVIEW.—Subsection (b) of such section 211 is amended by adding at the end the following new paragraph:

''(4) If the Secretary has not issued a final decision within 540 days after the filing of a complaint under paragraph (1), and there is no showing that such delay is due to the bad faith of the person seeking relief under this paragraph, such person may bring an action at law or equity for de novo review in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy.''.

SEC. 633. MEDICAL ISOTOPE PRODUCTION.

Section 134 of the Atomic Energy Act of 1954 (42 U.S.C. 2160d) is amended—

(1) in subsection a., by striking ''a. The Commission'' and inserting ''a. IN GENERAL.—Except as provided in subsection b., the Commission'';

(2) by redesignating subsection b. as subsection c.; and

(3) by inserting after subsection a. the following:

''b. MEDICAL ISOTOPE PRODUCTION.—

''(1) DEFINITIONS.—In this subsection:

''(A) HIGHLY ENRICHED URANIUM.—The term 'highly enriched uranium' means uranium enriched to include concentration of U–235 above 20 percent.

''(B) MEDICAL ISOTOPE.—The term 'medical isotope' includes Molybdenum 99, Iodine 131, Xenon 133, and other radioactive materials used to produce a radiopharmaceutical for diagnostic, therapeutic procedures or for research and development.

''(C) RADIOPHARMACEUTICAL.—The term 'radiopharmaceutical' means a radioactive isotope that—

''(i) contains byproduct material combined with chemical or biological material; and

''(ii) is designed to accumulate temporarily in a part of the body for therapeutic purposes or for enabling the production of a useful image for use in a diagnosis of a medical condition.

''(D) RECIPIENT COUNTRY.—The term 'recipient country' means Canada, Belgium, France, Germany, and the Netherlands.

''(2) LICENSES.—The Commission may issue a license authorizing the export (including shipment to and use at intermediate and ultimate consignees specified in the license) to a recipient country of highly enriched uranium for medical isotope production if, in addition to any other requirements of this Act (except subsection a.), the Commission determines that—

''(A) a recipient country that supplies an assurance letter to the United States Government in connection with the consideration by the Commission of the export license application has informed the United States Government that any intermediate consignees and the ultimate consignee specified in the application are required to use the highly enriched uranium solely to produce medical isotopes; and

''(B) the highly enriched uranium for medical isotope production will be irradiated only in a reactor in a recipient country that—

''(i) uses an alternative nuclear reactor fuel; or

''(ii) is the subject of an agreement with the United States Government to convert to an alternative nuclear reactor fuel when alternative nuclear reactor fuel can be used in the reactor.

''(3) REVIEW OF PHYSICAL PROTECTION REQUIREMENTS.—

''(A) IN GENERAL.—The Commission shall review the adequacy of physical protection requirements that, as of the date of an application under paragraph (2), are applicable to the transportation and storage of highly enriched uranium for medical isotope production or control of residual material after irradiation and extraction of medical isotopes.

''(B) IMPOSITION OF ADDITIONAL REQUIREMENTS.—If the Commission determines that additional physical protection requirements are necessary (including a limit on the quantity of highly enriched uranium that may be contained in a single shipment), the Commission shall impose such requirements as license conditions or through other appropriate means.

''(4) FIRST REPORT TO CONGRESS.—

''(A) NAS STUDY.—The Secretary shall enter into an arrangement with the National Academy of Sciences to conduct a study to determine—

''(i) the feasibility of procuring supplies of medical isotopes from commercial sources that do not use highly enriched uranium;

''(ii) the current and projected demand and availability of medical isotopes in regular current domestic use;

''(iii) the progress that is being made by the Department of Energy and others to eliminate all use of highly enriched uranium in reactor fuel, reactor targets, and medical isotope production facilities; and

''(iv) the potential cost differential in medical isotope production in the reactors and target processing facilities if the products were derived from production systems that do not involve fuels and targets with highly enriched uranium.

''(B) FEASIBILITY.—For the purpose of this subsection, the use of low enriched uranium to produce medical isotopes shall be determined to be feasible if—

''(i) low enriched uranium targets have been developed and demonstrated for use in the reactors and target processing facilities that produce significant quantities of medical isotopes to serve United States needs for such isotopes;

''(ii) sufficient quantities of medical isotopes are available from low enriched uranium targets and fuel to meet United States domestic needs; and

''(iii) the average anticipated total cost increase from production of medical isotopes in such facilities without use of highly enriched uranium is less than 10 percent.

''(C) REPORT BY THE SECRETARY.—Not later than 5 years after the date of enactment of the Energy Policy Act of 2003, the Secretary shall submit to Congress a report that—

''(i) contains the findings of the National Academy of Sciences made in the study under subparagraph (A); and

''(ii) discloses the existence of any commitments from commercial producers to provide domestic requirements for medical isotopes without use of highly enriched uranium consistent with the feasibility criteria described in subparagraph (B) not later than the date that is 4 years after the date of submission of the report.

''(5) SECOND REPORT TO CONGRESS.—If the study of the National Academy of Sciences determines under paragraph (4)(A)(i) that the procurement of supplies of medical isotopes from commercial sources that do not use highly enriched uranium is feasible, but the Secretary is unable to report the existence of commitments under paragraph (4)(C)(ii), not later than the date that is 6 years after the date of enactment of the Energy Policy Act of 2003, the Secretary shall submit to Congress a report that describes options for developing domestic supplies of medical isotopes in quantities that are adequate to meet domestic demand without the use of highly enriched uranium consistent with the cost increase described in paragraph (4)(B)(iii).

''(6) CERTIFICATION.—At such time as commercial facilities that do not use highly enriched uranium are capable of meeting domestic requirements for medical isotopes, within the cost increase described in paragraph (4)(B)(iii) and without impairing the

reliable supply of medical isotopes for domestic utilization, the Secretary shall submit to Congress a certification to that effect.

''(7) SUNSET PROVISION.—After the Secretary submits a certification under paragraph (6), the Commission shall, by rule, terminate its review of export license applications under this subsection.''.

SEC. 634. FERNALD BYPRODUCT MATERIAL.

Notwithstanding any other law, the material in the concrete silos at the Fernald uranium processing facility managed on the date of enactment of this Act by the Department of Energy shall be considered byproduct material (as defined by section 11 e.(2) of the Atomic Energy Act of 1954 (42 U.S.C. 2014(e)(2))). The Department of Energy may dispose of the material in a facility regulated by the Nuclear Regulatory Commission or by an Agreement State. If the Department of Energy disposes of the material in such a facility, the Nuclear Regulatory Commission or the Agreement State shall regulate the material as byproduct material under that Act. This material shall remain subject to the jurisdiction of the Department of Energy until it is received at a commercial, Nuclear Regulatory Commission-licensed, or Agreement State-licensed facility, at which time the material shall be subject to the health and safety requirements of the Nuclear Regulatory Commission or the Agreement State with jurisdiction over the disposal site.

SEC. 635. SAFE DISPOSAL OF GREATER-THAN-CLASS C RADIOACTIVE WASTE.

(a) DESIGNATION OF RESPONSIBILITY.—The Secretary of Energy shall designate an Office within the Department of Energy to have the responsibility for activities needed to develop a new, or use an existing, facility for safely disposing of all low-level radioactive waste with concentrations of radionuclides that exceed the limits established by the Nuclear Regulatory Commission for Class C radioactive waste (referred to in this section as ''GTCC waste'').

(b) COMPREHENSIVE PLAN.—The Secretary of Energy shall develop a comprehensive plan for permanent disposal of GTCC waste which includes plans for a disposal facility. This plan shall be transmitted to Congress in a series of reports, including the following:

(1) REPORT ON SHORT-TERM PLAN.—Not later than 180 days after the date of enactment of this Act, the Secretary of Energy shall submit to Congress a plan describing the Secretary's operational strategy for continued recovery and storage of GTCC waste until a permanent disposal facility is available.

(2) UPDATE OF 1987 REPORT.—

(A) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary of Energy shall submit to Congress an update of the Secretary's February 1987 report submitted to Congress that made comprehensive recommendations for the disposal of GTCC waste.

(B) CONTENTS.—The update under this paragraph shall contain—

(i) a detailed description and identification of the GTCC waste that is to be disposed;

(ii) a description of current domestic and international programs, both Federal and commercial, for management and disposition of GTCC waste;

(iii) an identification of the Federal and private options and costs for the safe disposal of GTCC waste;

(iv) an identification of the options for ensuring that, wherever possible, generators and users of GTCC waste bear all reasonable costs of waste disposal;

(v) an identification of any new statutory authority required for disposal of GTCC waste; and

(vi) in coordination with the Environmental Protection Agency and the Nuclear Regulatory Commission, an identification of any new regulatory guidance needed for the disposal of GTCC waste.

(3) REPORT ON COST AND SCHEDULE FOR COMPLETION OF ENVIRONMENTAL IMPACT STATEMENT AND RECORD OF DECISION.—Not later than 180 days after the date of submission of the update required under paragraph (2), the Secretary of Energy shall submit to Congress a report containing an estimate of the cost and schedule to complete a draft and final environmental impact statement and to issue a record of decision for a permanent disposal facility, utilizing either a new or existing facility, for GTCC waste.

SEC. 636. PROHIBITION ON NUCLEAR EXPORTS TO COUNTRIES THAT SPONSOR TERRORISM.

(a) IN GENERAL.—Section 129 of the Atomic Energy Act of 1954 (42 U.S.C. 2158) is amended—

(1) by inserting ''a.'' before ''No nuclear materials and equipment''; and

(2) by adding at the end the following new subsection:

''b.(1) Notwithstanding any other provision of law, including specifically section 121 of this Act, and except as provided in paragraphs (2) and (3), no nuclear materials and equipment or sensitive nuclear technology, including items and assistance authorized by section 57 b. of this Act and regulated under part 810 of title 10, Code of Federal Regulations, and nuclear-related items on the Commerce Control List maintained under part 774 of title 15 of the Code of Federal Regulations, shall be exported or reexported, or transferred or retransferred whether directly or indirectly, and no Federal agency shall issue any license, approval, or authorization for the export or reexport, or transfer, or retransfer, whether directly or indirectly, of these items or assistance (as defined in this paragraph) to any country whose government has been identified by the Secretary of State as engaged in state sponsorship of terrorist activities (specifically including any country the government of which has been determined by the Secretary of State under section 620A(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2371(a)), section 6(j)(1) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(1)), or section 40(d) of the Arms Export Control Act (22 U.S.C. 2780(d)) to have repeatedly provided support for acts of international terrorism).

''(2) This subsection shall not apply to exports, reexports, transfers, or retransfers of radiation monitoring technologies, surveillance equipment, seals, cameras, tamper-indication devices, nuclear detectors, monitoring systems, or equipment necessary to safely store, transport, or remove hazardous materials, whether such items, services, or information are regulated by the Department of Energy, the Department of Commerce, or the Nuclear Regulatory Commission, except to the extent that such technologies, equipment, seals, cameras, devices, detectors, or systems are available for use in the design or construction of nuclear reactors or nuclear weapons.

''(3) The President may waive the application of paragraph (1) to a country if the President determines and certifies to Congress that the waiver will not result in any increased risk that the country receiving the waiver will acquire nuclear weapons, nuclear reactors, or any materials or components of nuclear weapons and—

''(A) the government of such country has not within the preceding 12-month period willfully aided or abetted the international proliferation of nuclear explosive devices to individuals or groups or willfully aided and abetted an individual or groups in acquiring unsafeguarded nuclear materials;

''(B) in the judgment of the President, the government of such country has provided adequate, verifiable assurances that it will cease its support for acts of international terrorism;

''(C) the waiver of that paragraph is in the vital national security interest of the United States; or

''(D) such a waiver is essential to prevent or respond to a serious radiological hazard in the country receiving the waiver that may or does threaten public health and safety.''.

(b) APPLICABILITY TO EXPORTS APPROVED FOR TRANSFER BUT NOT TRANSFERRED.—Subsection b. of section 129 of Atomic Energy Act of 1954, as added by subsection (a) of this section, shall apply with respect to exports that have been approved for transfer as of the date of the enactment of this Act but have not yet been transferred as of that date.

SEC. 637. URANIUM ENRICHMENT FACILITIES.

(a) NUCLEAR REGULATORY COMMISSION REVIEW OF APPLICATIONS.—

(1) IN GENERAL.—In order to facilitate a timely review and approval of an application in a proceeding for a license for the construction and operation of a uranium enrichment facility under sections 53 and 63 of the Atomic Energy Act of 1954 (42 U.S.C. 2073, 2093) (referred to in this subsection as a ''covered proceeding''), the Nuclear Regulatory Commission shall, not later than 30 days after the receipt of the application, establish, by order, the schedule for the conduct of any hearing that may be requested by any person whose interest may be affected by the covered proceeding.

(2) FINAL AGENCY DECISION.—The schedule shall provide that a final decision by the Commission on the application shall be made not later than the date that is 2 years after the date of submission of the application by the applicant.

(3) COMPLIANCE WITH SCHEDULE.—

(A) IN GENERAL.—The Commission shall establish a process to assess compliance with the schedule established under paragraph (1) on an ongoing basis during the course of the review of the application, including ensuring compliance with schedules and milestones that are established for the conduct of any covered proceeding by the Atomic Safety and Licensing Board.

(B) REPORT.—The Commission shall submit to Congress on a bimonthly basis a report describing the status of compliance with the schedule established under paragraph (1), including a description of the status of actions required to be completed pursuant to the schedule by officers and employees of—

(i) the Commission in undertaking the safety and environmental review of applications; and

(ii) the Atomic Safety and Licensing Board in the conduct of any covered proceeding.

(4) ENVIRONMENTAL REVIEW.—

(A) IN GENERAL.—In evaluating an application under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) for licensing of a facility in a covered proceeding, the Commission shall limit the consideration of need to whether the licensing of the facility would advance the national interest of encouraging in the United States—

(i) additional secure, reliable uranium enrichment capacity;

(ii) diverse supplies and suppliers of uranium enrichment capacity; and

(iii) the deployment of advanced centrifuge enrichment technology.

(B) COMMENT.—In carrying out subparagraph (A), the Commission shall consider and solicit the views of other affected Federal agencies.

(C) ATOMIC SAFETY AND LICENSING BOARD.—

(i) IN GENERAL.—Except as provided in clause (ii), in any covered proceeding, the Commission shall allow the litigation and

resolution by the Atomic Safety and Licensing Board of issues arising under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), on the basis of information submitted by the applicant in its environmental report, prior to publication of any required environmental impact statement.

(ii) EXCEPTIONS.—On the publication of any required environmental impact statement, issues may be proffered for resolution by the Atomic Safety and Licensing Board only if information or conclusions in the environmental impact statement differ significantly from the information or conclusions in the environmental report submitted by the applicant.

(D) ENVIRONMENTAL JUSTICE.—In a covered proceeding, the Commission shall apply the criteria in Appendix C of the final report entitled ''Environmental Review Guidance for Licensing Actions Associated with NMSS Programs'' (NUREG–1748), published in August 2003, in any required review of environmental justice.

(5) LOW-LEVEL WASTE.—In any covered proceeding, the Commission shall—

(A) deem the obligation of the Secretary of Energy pursuant to section 3113 of the USEC Privitization Act (42 U.S.C. 2297 h–11) to constitute a plausible strategy with regard to the disposition of depleted uranium generated by such facility; and

(B) treat any residual material that remains following the extraction of any usable resource value from depleted uranium as low-level radioactive waste under part 61 of title 10, Code of Federal Regulations.

(6) ADJUDICATORY HEARING ON LICENSING OF URANIUM ENRICHMENT FACILITIES.—Section 193(b) of the Atomic Energy Act of 1954 (42 U.S.C. 2243(b)) is amended by striking paragraph (2) and inserting the following:

''(2) TIMING.—On the issuance of a final decision on the application by the Atomic Safety and Licensing Board, the Commission shall issue and make immediately effective any license for the construction and operation of a uranium enrichment facility under sections 53 and 63, on a determination by the Commission that the issuance of the license would not cause irreparable injury to the public health and safety or the common defense and security, notwithstanding the pendency before the Commission of any appeal or petition for review of any decision of the Atomic Safety and Licensing Board.''.

(b) DEPARTMENT OF ENERGY RESPONSIBILITIES.—

(1) IN GENERAL.—Not later than 180 days after a request is made to the Secretary of Energy by an applicant for or recipient of a license for a uranium enrichment facility under section 53, 63, or 193 of the Atomic Energy Act of 1954 (42 U.S.C. 2073, 2093, 2243), the Secretary shall enter into a memorandum of agreement with the applicant or licensee that provides a schedule for the transfer to the Secretary, not later than 5 years after the generation of any depleted uranium hexafluoride, of title and possession of the depleted uranium hexafluoride to be generated by the applicant or licensee.

(2) COST.—

(A) IN GENERAL.—Subject to subparagraphs (B) and (C), the memorandum of agreement shall specify the cost to be assessed by the Secretary for the transfer to the Secretary of the depleted uranium hexafluoride.

(B) NONDISCRIMINATORY BASIS.—The cost shall be determined by the Secretary on a nondiscriminatory basis.

(C) COST.—Taking into account the physical and chemical characteristics of such depleted uranium hexafluoride, the cost shall not exceed the cost assessed by the Secretary for the acceptance of depleted uranium hexafluoride under—

(i) the memorandum of agreement between the United States Department of Energy and the United States Enrichment Corporation Relating to Depleted Uranium, dated June 30, 1998; and

(ii) the Agreement Between the U.S. Department of Energy and USEC Inc., dated June 17, 2002.

SEC. 638. NATIONAL URANIUM STOCKPILE.

(a) STOCKPILE CREATION.—The Secretary of Energy may create a national low-enriched uranium stockpile with the goals to—

(1) enhance national energy security; and

(2) reduce global proliferation threats.

(b) SOURCE OF MATERIAL.—The Secretary shall obtain material for the stockpile from—

(1) material derived from blend-down of Russian highly enriched uranium derived from weapons materials; and

(2) domestically mined and enriched uranium.

(c) LIMITATION ON SALES OR TRANSFERS.—Sales or transfer of materials in the stockpile shall occur pursuant to section 3112 of the USEC Privitization Act (42 U.S.C. 2297h–10), as amended by section 630.

Subtitle C—Advanced Reactor Hydrogen Cogeneration Project

SEC. 651. PROJECT ESTABLISHMENT.

The Secretary of Energy (in this subtitle referred to as the ''Secretary'') is directed to establish an Advanced Reactor Hydrogen Cogeneration Project.

SEC. 652. PROJECT DEFINITION.

The project shall consist of the research, development, design, construction, and operation of a hydrogen production cogeneration research facility that, relative to the current commercial reactors, enhances safety features, reduces waste production, enhances thermal efficiencies, increases proliferation resistance, and has the potential for improved economics and physical security in reactor siting. This facility shall be constructed so as to enable research and development on advanced reactors of the type selected and on alternative approaches for reactor-based production of hydrogen.

SEC. 653. PROJECT MANAGEMENT.

(a) MANAGEMENT.—The project shall be managed within the Department by the Office of Nuclear Energy, Science, and Technology.

(b) LEAD LABORATORY.—The lead laboratory for the project, providing the site for the reactor construction, shall be the Idaho National Engineering and Environmental Laboratory (in this subtitle referred to as ''INEEL'').

(c) STEERING COMMITTEE.—The Secretary shall establish a national steering committee with membership from the national laboratories, universities, and industry to provide advice to the Secretary and the Director of the Office of Nuclear Energy, Science, and Technology on technical and program management aspects of the project.

(d) COLLABORATION.—Project activities shall be conducted at INEEL, other national laboratories, universities, domestic industry, and international partners.

SEC. 654. PROJECT REQUIREMENTS.

(a) RESEARCH AND DEVELOPMENT.—

(1) IN GENERAL.—The project shall include planning, research and development, design, and construction of an advanced, next-generation, nuclear energy system suitable for enabling further research and development on advanced reactor technologies and alternative approaches for reactor-based generation of hydrogen.

(2) REACTOR TEST CAPABILITIES AT INEEL.—The project shall utilize, where appropriate, extensive reactor test capabilities resident at INEEL.

(3) ALTERNATIVES.—The project shall be designed to explore technical, environmental, and economic feasibility of alternative approaches for reactor-based hydrogen production.

(4) INDUSTRIAL LEAD.—The industrial lead for the project shall be a company incorporated in the United States.

(b) INTERNATIONAL COLLABORATION.—

(1) IN GENERAL.—The Secretary shall seek international cooperation, participation, and financial contribution in this project.

(2) ASSISTANCE FROM INTERNATIONAL PARTNERS.—The Secretary may contract for assistance from specialists or facilities from member countries of the Generation IV International Forum, the Russian Federation, or other international partners where such specialists or facilities provide access to cost-effective and relevant skills or test capabilities.

(3) GENERATION IV INTERNATIONAL FORUM.—International activities shall be coordinated with the Generation IV International Forum.

(4) GENERATION IV NUCLEAR ENERGY SYSTEMS PROGRAM.—The Secretary may combine this project with the Generation IV Nuclear Energy Systems Program.

(c) DEMONSTRATION.—The overall project, which may involve demonstration of selected project objectives in a partner nation, must demonstrate both electricity and hydrogen production and may provide flexibility, where technically and economically feasible in the design and construction, to enable tests of alternative reactor core and cooling configurations.

(d) PARTNERSHIPS.—The Secretary shall establish cost-shared partnerships with domestic industry or international participants for the research, development, design, construction, and operation of the research facility, and preference in determining the final project structure shall be given to an overall project which retains United States leadership while maximizing cost sharing opportunities and minimizing Federal funding responsibilities.

(e) TARGET DATE.—The Secretary shall select technologies and develop the project to provide initial testing of either hydrogen production or electricity generation by 2010, or provide a report to Congress explaining why this date is not feasible.

(f) WAIVER OF CONSTRUCTION TIMELINES.—The Secretary is authorized to conduct the Advanced Reactor Hydrogen Cogeneration Project without the constraints of DOE Order 413.3, relating to program and project management for the acquisition of capital assets, as necessary to meet the specified operational date.

(g) COMPETITION.—The Secretary may fund up to 2 teams for up to 1 year to develop detailed proposals for competitive evaluation and selection of a single proposal and concept for further progress. The Secretary shall define the format of the competitive evaluation of proposals.

(h) USE OF FACILITIES.—Research facilities in industry, national laboratories, or universities either within the United States or with cooperating international partners may be used to develop the enabling technologies for the research facility. Utilization of domestic university-based facilities shall be encouraged to provide educational opportunities for student development.

(i) ROLE OF NUCLEAR REGULATORY COMMISSION.—

(1) IN GENERAL.—The Nuclear Regulatory Commission shall have licensing and regulatory authority for any reactor authorized under this subtitle, pursuant to section 202 of the Energy Reorganization Act of 1974 (42 U.S.C. 5842).

(2) RISK-BASED CRITERIA.—The Secretary shall seek active participation of the Nuclear Regulatory Commission throughout the project to develop risk-based criteria for any future commercial development of a similar reactor architecture.

(j) REPORT—The Secretary shall develop and transmit to Congress a comprehensive project plan not later than April 30, 2004. The project plan shall be updated annually with each annual budget submission.

SEC. 655. AUTHORIZATION OF APPROPRIATIONS.

(a) RESEARCH, DEVELOPMENT, AND DESIGN PROGRAMS.—The following sums are authorized to be appropriated to the Secretary for all activities under this subtitle except for construction activities described in subsection (b):

(1) For fiscal year 2004, $35,000,000.

(2) For each of fiscal years 2005 through 2008, $150,000,000.

(3) For fiscal years beyond 2008, such sums as are necessary.

(b) CONSTRUCTION.—There are authorized to be appropriated to the Secretary for all project-related construction activities, to be available until expended, $500,000,000.

Subtitle D—Nuclear Security

SEC. 661. NUCLEAR FACILITY THREATS.

(a) STUDY.—The President, in consultation with the Nuclear Regulatory Commission (referred to in this subtitle as the ''Commission'') and other appropriate Federal, State, and local agencies and private entities, shall conduct a study to identify the types of threats that pose an appreciable risk to the security of the various classes of facilities licensed by the Commission under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.). Such study shall take into account, but not be limited to—

(1) the events of September 11, 2001;

(2) an assessment of physical, cyber, biochemical, and other terrorist threats;

(3) the potential for attack on facilities by multiple coordinated teams of a large number of individuals;

(4) the potential for assistance in an attack from several persons employed at the facility;

(5) the potential for suicide attacks;

(6) the potential for water-based and air-based threats;

(7) the potential use of explosive devices of considerable size and other modern weaponry;

(8) the potential for attacks by persons with a sophisticated knowledge of facility operations;

(9) the potential for fires, especially fires of long duration;

(10) the potential for attacks on spent fuel shipments by multiple coordinated teams of a large number of individuals;

(11) the adequacy of planning to protect the public health and safety at and around nuclear facilities, as appropriate, in the event of a terrorist attack against a nuclear facility; and

(12) the potential for theft and diversion of nuclear materials from such facilities.

(b) SUMMARY AND CLASSIFICATION REPORT.—Not later than 180 days after the date of the enactment of this Act, the President shall transmit to Congress and the Commission a report—

(1) summarizing the types of threats identified under subsection (a); and

(2) classifying each type of threat identified under subsection (a), in accordance with existing laws and regulations, as either—

(A) involving attacks and destructive acts, including sabotage, directed against the facility by an enemy of the United States, whether a foreign government or other person, or otherwise falling under the responsibilities of the Federal Government; or

(B) involving the type of risks that Commission licensees should be responsible for guarding against.

(c) FEDERAL ACTION REPORT.—Not later than 90 days after the date on which a report is transmitted under subsection (b), the President shall transmit to Congress a report on actions taken, or to be taken, to address the types of threats identified under subsection (b)(2)(A), including identification of the Federal, State, and local agencies responsible for carrying out the obligations and authorities of the United States. Such report may include a classified annex, as appropriate.

(d) REGULATIONS.—Not later than 180 days after the date on which a report is transmitted under subsection (b), the Commission may revise, by rule, the design basis threats issued before the date of enactment of this section as the Commission considers appropriate based on the summary and classification report.

(e) PHYSICAL SECURITY PROGRAM.—The Commission shall establish an operational safeguards response evaluation program that ensures that the physical protection capability and operational safeguards response for sensitive nuclear facilities, as determined by the Commission consistent with the protection of public health and the common defense and security, shall be tested periodically through Commission approved or designed, observed, and evaluated force-on-force exercises to determine whether the ability to defeat the design basis threat is being maintained. For purposes of this subsection, the term ''sensitive nuclear facilities'' includes at a minimum commercial nuclear power plants and category I fuel cycle facilities.

(f) CONTROL OF INFORMATION.—Notwithstanding any other provision of law, the Commission may undertake any rulemaking under this subtitle in a manner that will fully protect safeguards and classified national security information.

(g) FEDERAL SECURITY COORDINATORS.—

(1) REGIONAL OFFICES.—Not later than 18 months after the date of enactment of this Act, the Commission shall assign a Federal security coordinator, under the employment of the Commission, to each region of the Commission.

(2) RESPONSIBILITIES.—The Federal security coordinator shall be responsible for—

(A) communicating with the Commission and other Federal, State, and local authorities concerning threats, including threats against such classes of facilities as the Commission determines to be appropriate;

(B) ensuring that such classes of facilities as the Commission determines to be appropriate maintain security consistent with the security plan in accordance with the appropriate threat level; and

(C) assisting in the coordination of security measures among the private security forces at such classes of facilities as the Commission determines to be appropriate and Federal, State, and local authorities, as appropriate.

(h) TRAINING PROGRAM.—The President shall establish a program to provide technical assistance and training to Federal agencies, the National Guard, and State and local law enforcement and emergency response agencies in responding to threats against a designated nuclear facility.

SEC. 662. FINGERPRINTING FOR CRIMINAL HISTORY RECORD CHECKS.

(a) IN GENERAL.—Subsection a. of section 149 of the Atomic Energy Act of 1954 (42 U.S.C. 2169(a)) is amended—

(1) by striking ''a. The Nuclear'' and all that follows through ''section 147.'' and inserting the following:

''a. IN GENERAL.—

''(1) REQUIREMENTS.—

''(A) IN GENERAL.— The Commission shall require each individual or entity—

''(i) that is licensed or certified to engage in an activity subject to regulation by the Commission;

''(ii) that has filed an application for a license or certificate to engage in an activity subject to regulation by the Commission; or

''(iii) that has notified the Commission, in writing, of an intent to file an application for licensing, certification, permitting, or approval of a product or activity subject to regulation by the Commission,

to fingerprint each individual described in subparagraph (B) before the individual is permitted unescorted access or access, whichever is applicable, as described in subparagraph (B).

''(B) INDIVIDUALS REQUIRED TO BE FINGERPRINTED.—The Commission shall require to be fingerprinted each individual who—

''(i) is permitted unescorted access to—

''(I) a utilization facility; or

''(II) radioactive material or other property subject to regulation by the Commission that the Commission determines to be of such significance to the public health and safety or the common defense and security as to warrant fingerprinting and background checks; or

''(ii) is permitted access to safeguards information under section 147.'';

(2) by striking ''All fingerprints obtained by a licensee or applicant as required in the preceding sentence'' and inserting the following:

''(2) SUBMISSION TO THE ATTORNEY GENERAL.—All fingerprints obtained by an individual or entity as required in paragraph (1)'';

(3) by striking ''The costs of any identification and records check conducted pursuant to the preceding sentence shall be paid by the licensee or applicant.'' and inserting the following:

''(3) COSTS.—The costs of any identification and records check conducted pursuant to paragraph (1) shall be paid by the individual or entity required to conduct the fingerprinting under paragraph (1)(A).''; and

(4) by striking ''Notwithstanding any other provision of law, the Attorney General may provide all the results of the search to the Commission, and, in accordance with regulations prescribed under this section, the Commission may provide such results to licensee or applicant submitting such fingerprints.'' and inserting the following:

''(4) PROVISION TO INDIVIDUAL OR ENTITY REQUIRED TO CONDUCT FINGERPRINTING.—Notwithstanding any other provision of law, the Attorney General may provide all the results of the search to the Commission, and, in accordance with regulations prescribed under this section, the Commission may provide such results to the individual or entity required to conduct the fingerprinting under paragraph (1)(A).''.

(b) ADMINISTRATION.—Subsection c. of section 149 of the Atomic Energy Act of 1954 (42 U.S.C. 2169(c)) is amended—

(1) by striking '', subject to public notice and comment, regulations—'' and inserting ''requirements—''; and

(2) by striking, in paragraph (2)(B), ''unescorted access to the facility of a licensee or applicant'' and inserting ''unescorted access to a utilization facility, radioactive material, or other property described in subsection a.(1)(B)''.

(c) BIOMETRIC METHODS.—Subsection d. of section 149 of the Atomic Energy Act of 1954 (42 U.S.C. 2169(d)) is redesignated as subsection e., and the following is inserted after subsection c.:

''d. USE OF OTHER BIOMETRIC METHODS.—The Commission may satisfy any requirement for a person to conduct fingerprinting under this section using any other biometric method for identification approved for use by the Attorney General, after the Commission has approved the alternative method by rule.''.

SEC. 663. USE OF FIREARMS BY SECURITY PERSONNEL OF LICENSEES AND CERTIFICATE HOLDERS OF THE COMMISSION.

Section 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201) is amended by adding at the end the following subsection:

''(z)(1) notwithstanding section 922(o), (v), and (w) of title 18, United States Code, or any similar provision of any State law or any similar rule or regulation of a State or any political subdivision of a State prohibiting the transfer or possession of a handgun, a rifle or shotgun, a short-barreled shotgun, a short-barreled rifle, a machinegun, a semiautomatic assault weapon, ammunition for the foregoing, or a large capacity ammunition feeding device, authorize security personnel of licensees and certificate holders of the Commission (including employees of contractors of licensees and certificate holders) to receive, possess, transport, import, and use 1 or more of those weapons, ammunition, or devices, if the Commission determines that—

''(A) such authorization is necessary to the discharge of the security personnel's official duties; and

''(B) the security personnel—

''(i) are not otherwise prohibited from possessing or receiving a firearm under Federal or State laws pertaining to possession of firearms by certain categories of persons;

''(ii) have successfully completed requirements established through guidelines implementing this subsection for training in use of firearms and tactical maneuvers;

''(iii) are engaged in the protection of—

''(I) facilities owned or operated by a Commission licensee or certificate holder that are designated by the Commission; or

''(II) radioactive material or other property owned or possessed by a person that is a licensee or certificate holder of the Commission, or that is being transported to or from a facility owned or operated by such a licensee or certificate holder, and that has been determined by the Commission to be of significance to the common defense and security or public health and safety; and

''(iv) are discharging their official duties.

''(2) Such receipt, possession, transportation, importation, or use shall be subject to—

''(A) chapter 44 of title 18, United States Code, except for section 922(a)(4), (o), (v), and (w);

''(B) chapter 53 of title 26, United States Code, except for section 5844; and

''(C) a background check by the Attorney General, based on fingerprints and including a check of the system established under section 103(b) of the Brady Handgun Violence Prevention Act (18 U.S.C. 922 note) to determine whether the person applying for the authority is prohibited from possessing or receiving a firearm under Federal or State law.

''(3) This subsection shall become effective upon the issuance of guidelines by the Commission, with the approval of the Attorney General, to govern the implementation of this subsection.

''(4) In this subsection, the terms ''handgun'', ''rifle'', ''shotgun'', ''firearm'', ''ammunition'', ''machinegun'', ''semiautomatic assault weapon'', ''large capacity ammunition feeding device'', ''short-barreled shotgun'', and ''short-barreled rifle'' shall have the meanings given those terms in section 921(a) of title 18, United States Code.''.

SEC. 664. UNAUTHORIZED INTRODUCTION OF DANGEROUS WEAPONS.

Section 229 a. of the Atomic Energy Act of 1954 (42 U.S.C. 2278a(a)) is amended in the first sentence by inserting ''or subject to the licensing authority of the Commission or to certification by the Commission under this Act or any other Act'' before the period at the end.

SEC. 665. SABOTAGE OF NUCLEAR FACILITIES OR FUEL.

(a) IN GENERAL.—Section 236 a. of the Atomic Energy Act of 1954 (42 U.S.C. 2284(a)) is amended—

(1) in paragraph (2), by striking ''storage facility'' and inserting ''storage, treatment, or disposal facility'';

(2) in paragraph (3)—

(A) by striking ''such a utilization facility'' and inserting ''a utilization facility licensed under this Act''; and

(B) by striking ''or'' at the end;

(3) in paragraph (4)—

(A) by striking ''facility licensed'' and inserting '', uranium conversion, or nuclear fuel fabrication facility licensed or certified''; and

(B) by striking the comma at the end and inserting a semicolon; and

(4) by inserting after paragraph (4) the following:

''(5) any production, utilization, waste storage, waste treatment, waste disposal, uranium enrichment, uranium conversion, or nuclear fuel fabrication facility subject to licensing or certification under this Act during construction of the facility, if the destruction or damage caused or attempted to be caused could adversely affect public health and safety during the operation of the facility;

''(6) any primary facility or backup facility from which a radiological emergency preparedness alert and warning system is activated; or

''(7) any radioactive material or other property subject to regulation by the Nuclear Regulatory Commission that, before the date of the offense, the Nuclear Regulatory Commission determines, by order or regulation published in the Federal Register, is of significance to the public health and safety or to common defense and security,''.

(b) PENALTIES.—Section 236 of the Atomic Energy Act of 1954 (42 U.S.C. 2284) is amended by striking ''$10,000 or imprisoned for not more than 20 years, or both, and, if death results to any person, shall be imprisoned for any term of years or for life'' both places it appears and inserting ''$1,000,000 or imprisoned for up to life without parole''.

SEC. 666. SECURE TRANSFER OF NUCLEAR MATERIALS.

(a) AMENDMENT.—Chapter 14 of the Atomic Energy Act of 1954 (42 U.S.C. 2201–2210b) is amended by adding at the end the following new section:

''SEC. 170C. SECURE TRANSFER OF NUCLEAR MATERIALS.

''a. The Nuclear Regulatory Commission shall establish a system to ensure that materials described in subsection b., when transferred or received in the United States by any party pursuant to an import or export license issued pursuant to this Act, are accompanied by a manifest describing the type and amount of materials being transferred or received. Each individual receiving or accompanying the transfer of such materials shall be subject to a security background check conducted by appropriate Federal entities.

''b. Except as otherwise provided by the Commission by regulation, the materials referred to in subsection a. are byproduct materials, source materials, special nuclear materials, high-level radioactive waste, spent nuclear fuel, transuranic waste, and low-level radioactive waste (as defined in section 2(16) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101(16))).''.

(b) REGULATIONS.—Not later than 1 year after the date of the enactment of this Act, and from time to time thereafter as it considers necessary, the Nuclear Regulatory Commission shall issue regulations identifying radioactive materials or classes of individuals that, consistent with the protection of public health and safety and the common defense and security, are appropriate exceptions to the requirements of section 170C of the Atomic Energy Act of 1954, as added by subsection (a) of this section.

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect upon the issuance of regulations under subsection (b), except that the background check requirement shall become effective on a date established by the Commission.

(d) EFFECT ON OTHER LAW.—Nothing in this section or the amendment made by this section shall waive, modify, or affect the application of chapter 51 of title 49, United States Code, part A of subtitle V of title 49, United States Code, part B of subtitle VI of title 49, United States Code, and title 23, United States Code.

(e) TABLE OF SECTIONS AMENDMENT.—The table of sections for chapter 14 of the Atomic Energy Act of 1954 is amended by adding at the end the following new item:

''Sec. 170C. Secure transfer of nuclear materials.''.

SEC. 667. DEPARTMENT OF HOMELAND SECURITY CONSULTATION.

Before issuing a license for a utilization facility, the Nuclear Regulatory Commission shall consult with the Department of Homeland Security concerning the potential vulnerabilities of the location of the proposed facility to terrorist attack.

SEC. 668. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated such sums as are necessary to carry out this subtitle and the amendments made by this subtitle.

(b) AGGREGATE AMOUNT OF CHARGES.—Section 6101(c)(2)(A) of the Omnibus Budget Reconciliation Act of 1990 (42 U.S.C. 2214(c)(2)(A)) is amended—

(1) in clause (i), by striking ''and'' at the end;

(2) in clause (ii), by striking the period at the end and inserting ''; and'' and

(3) by adding at the end the following:

''(iii) amounts appropriated to the Commission for homeland security activities of the Commission for the fiscal year, except for the costs of fingerprinting and background checks required by section 149 of the Atomic Energy Act of 1954 (42 U.S.C. 2169) and the costs of conducting security inspections.''.

TITLE VII—VEHICLES AND FUELS

Subtitle A—Existing Programs

SEC. 701. USE OF ALTERNATIVE FUELS BY DUAL-FUELED VEHICLES.

Section 400AA(a)(3)(E) of the Energy Policy and Conservation Act (42 U.S.C. 6374(a)(3)(E)) is amended to read as follows:

''(E)(i) Dual fueled vehicles acquired pursuant to this section shall be operated on alternative fuels unless the Secretary determines that an agency qualifies for a waiver of such requirement for vehicles operated by the agency in a particular geographic area in which—

''(I) the alternative fuel otherwise required to be used in the vehicle is not reasonably available to retail purchasers of the fuel, as certified to the Secretary by the head of the agency; or

''(II) the cost of the alternative fuel otherwise required to be used in the vehicle is unreasonably more expensive compared to gasoline, as certified to the Secretary by the head of the agency.

''(ii) The Secretary shall monitor compliance with this subparagraph by all such fleets and shall report annually to Congress on the extent to which the requirements of this subparagraph are being achieved. The report shall include information on annual reductions achieved from the use of petroleum-based fuels and the problems, if any, encountered in acquiring alternative fuels.''.

SEC. 702. NEIGHBORHOOD ELECTRIC VEHICLES.

(a) AMENDMENTS.—Section 301 of the Energy Policy Act of 1992 (42 U.S.C. 13211) is amended—

(1) in paragraph (3), by striking ''or a dual fueled vehicle'' and inserting '', a dual fueled vehicle, or a neighborhood electric vehicle'';

(2) in paragraph (13), by striking ''and'' at the end;

(3) in paragraph (14), by striking the period at the end and inserting ''; and''; and

(4) by adding at the end the following:

''(15) the term 'neighborhood electric vehicle' means a motor vehicle that—

''(A) meets the definition of a low-speed vehicle (as defined in part 571 of title 49, Code of Federal Regulations);

''(B) meets the definition of a zero-emission vehicle (as defined in section 86.1702–99 of title 40, Code of Federal Regulations);

''(C) meets the requirements of Federal Motor Vehicle Safety Standard No. 500; and

''(D) has a maximum speed of not greater than 25 miles per hour.''.

(b) CREDITS.—Notwithstanding section 508 of the Energy Policy Act of 1992 (42 U.S.C. 13258) or any other provision of law, a neighborhood electric vehicle shall not be allocated credit as more than 1 vehicle for purposes of determining compliance with any requirement under title III or title V of such Act.

SEC. 703. CREDITS FOR MEDIUM AND HEAVY DUTY DEDICATED VEHICLES.

Section 508 of the Energy Policy Act of 1992 (42 U.S.C. 13258) is amended by adding at the end the following:

''(e) CREDIT FOR PURCHASE OF MEDIUM AND HEAVY DUTY DEDICATED VEHICLES.—

''(1) DEFINITIONS.—In this subsection:

''(A) HEAVY DUTY DEDICATED VEHICLE.—The term 'heavy duty dedicated vehicle' means a dedicated vehicle that has a gross vehicle weight rating of more than 14,000 pounds.

''(B) MEDIUM DUTY DEDICATED VEHICLE.—The term 'medium duty dedicated vehicle' means a dedicated vehicle that has a gross vehicle weight rating of more than 8,500 pounds but not more than 14,000 pounds.

''(2) CREDITS FOR MEDIUM DUTY VEHICLES.—The Secretary shall issue 2 full credits to a fleet or covered person under this title, if the fleet or covered person acquires a medium duty dedicated vehicle.

''(3) CREDITS FOR HEAVY DUTY VEHICLES.—The Secretary shall issue 3 full credits to a fleet or covered person under this title, if the fleet or covered person acquires a heavy duty dedicated vehicle.

''(4) USE OF CREDITS.—At the request of a fleet or covered person allocated a credit under this subsection, the Secretary shall, for the year in which the acquisition of the dedicated vehicle is made, treat that credit as the acquisition of 1 alternative fueled vehicle that the fleet or covered person is required to acquire under this title.''.

SEC. 704. INCREMENTAL COST ALLOCATION.

Section 303(c) of the Energy Policy Act of 1992 (42 U.S.C. 13212(c)) is amended by striking ''may'' and inserting ''shall''.

SEC. 705. ALTERNATIVE COMPLIANCE AND FLEXIBILITY.

(a) ALTERNATIVE COMPLIANCE.—

(1) IN GENERAL.—Title V of the Energy Policy Act of 1992 (42 U.S.C. 13251 et seq.) is amended—

(A) by redesignating section 514 as section 515; and

(B) by inserting after section 513 the following:

''SEC. 514. ALTERNATIVE COMPLIANCE.

''(a) APPLICATION FOR WAIVER.—Any covered person subject to section 501 and any State subject to section 507(o) may petition the Secretary for a waiver of the applicable requirements of section 501 or 507(o).

''(b) GRANT OF WAIVER.—The Secretary may grant a waiver of the requirements of section 501 or 507(o) upon a showing that the fleet owned, operated, leased, or otherwise controlled by the State or covered person—

''(1) will achieve a reduction in its annual consumption of petroleum fuels equal to the reduction in consumption of petroleum that would result from 100 percent compliance with fuel use requirements in section 501, or, for entities covered under section 507(o), a reduction equal to the covered State entity's consumption of alternative fuels if all its alternative fuel vehicles given credit under section 508 were to use alternative fuel 100 percent of the time; and

''(2) is in compliance with all applicable vehicle emission standards established by the Administrator under the Clean Air Act (42 U.S.C. 7401 et seq.).

''(c) REVOCATION OF WAIVER.—The Secretary shall revoke any waiver granted under this section if the State or covered person fails to comply with subsection (b).''.

(2) TABLE OF CONTENTS AMENDMENT.—The table of contents of the Energy Policy Act of 1992 (42 U.S.C. prec. 13201) is amended by striking the item relating to section 514 and inserting the following:

''Sec. 514. Alternative compliance.
''Sec. 515. Authorization of appropriations.''.

(b) CREDITS.—Section 508 of the Energy Policy Act of 1992 (42 U.S.C. 13258) (as amended by section 703) is amended—

(1) by redesignating subsections (b) through (e) as subsections (c) through (f), respectively;

(2) by striking subsection (a) and inserting the following:

''(a) IN GENERAL.—The Secretary shall allocate a credit to a fleet or covered person that is required to acquire an alternative fueled vehicle under this title, if that fleet or person acquires an alternative fueled vehicle—

''(1) in excess of the number that fleet or person is required to acquire under this title;

''(2) before the date on which that fleet or person is required to acquire an alternative fueled vehicle under this title; or

''(3) that is eligible to receive credit under subsection (b).

''(b) MAXIMUM AVAILABLE POWER.—The Secretary shall allocate credit to a fleet under subsection (a)(3) for the acquisition by the fleet of a hybrid vehicle as follows:

''(1) For a hybrid vehicle with at least 4 percent but less than 10 percent maximum available power, the Secretary shall allocate 25 percent of 1 credit.

''(2) For a hybrid vehicle with at least 10 percent but less than 20 percent maximum available power, the Secretary shall allocate 50 percent of 1 credit.

''(3) For a hybrid vehicle with at least 20 percent but less than 30 percent maximum available power, the Secretary shall allocate 75 percent of 1 credit.

''(4) For a hybrid vehicle with 30 percent or more maximum available power, the Secretary shall allocate 1 credit.''; and

(3) by adding at the end the following:

''(g) CREDIT FOR INVESTMENT IN ALTERNATIVE FUEL INFRASTRUCTURE.—

''(1) DEFINITION OF QUALIFYING INFRASTRUCTURE.—In this subsection, the term 'qualifying infrastructure' means—

''(A) equipment required to refuel or recharge alternative fueled vehicles;

''(B) facilities or equipment required to maintain, repair, or operate alternative fueled vehicles; and

''(C) such other activities as the Secretary considers to constitute an appropriate expenditure in support of the operation, maintenance, or further widespread adoption of or utilization of alternative fueled vehicles.

''(2) ISSUANCE OF CREDITS.—The Secretary shall issue a credit to a fleet or covered person under this title for investment in qualifying infrastructure if the qualifying infrastructure is open to the general public during regular business hours.

''(3) AMOUNT.—For the purpose of credits under this subsection—

''(A) 1 credit shall be equal to a minimum investment of $25,000 in cash or equivalent expenditure, as determined by the Secretary; and

''(B) except in the case of a Federal or State fleet, no part of the investment may be provided by Federal or State funds.

''(4) USE OF CREDITS.—At the request of a fleet or covered person allocated a credit under this subsection, the Secretary shall, for the year in which the investment is made, treat that credit as the acquisition of 1 alternative fueled vehicle that the fleet or covered person is required to acquire under this title.

''(h) DEFINITION OF MAXIMUM AVAILABLE POWER.—In this section, the term 'maximum available power' means the quotient obtained by dividing—

''(1) the maximum power available from the energy storage device of a hybrid vehicle, during a standard 10-second pulse power or equivalent test; by

''(2) the sum of—

''(A) the maximum power described in subparagraph (A); and

''(B) the net power of the internal combustion or heat engine, as determined in accordance with standards established by the Society of Automobile Engineers.''.

(c) LEASE CONDENSATE FUELS.—Section 301 of the Energy Policy Act of 1992 (42 U.S.C. 13211) (as amended by section 702) is amended—

(1) in paragraph (2), by inserting ''mixtures containing 50 percent or more by volume of lease condensate or fuels extracted from lease condensate;'' after ''liquefied petroleum gas;'';

(2) in paragraph (14)—

(A) by inserting ''mixtures containing 50 percent or more by volume of lease condensate or fuels extracted from lease condensate,'' after ''liquefied petroleum gas,''; and

(B) by striking ''and'' at the end;

(3) in paragraph (15), by striking the period at the end and inserting ''; and''; and

(4) by adding at the end the following:

''(16) the term 'lease condensate' means a mixture, primarily of pentanes and heavier hydrocarbons, that is recovered as a liquid from natural gas in lease separation facilities.''.

(d) LEASE CONDENSATE USE CREDITS.—

(1) IN GENERAL.—Title III of the Energy Policy Act of 1992 (42 U.S.C. 13211 et seq.) is amended by adding at the end the following:

''SEC. 313. LEASE CONDENSATE USE CREDITS.

''(a) IN GENERAL.—Subject to subsection (d), the Secretary shall allocate 1 credit under this section to a fleet or covered person for each qualifying volume of the lease condensate component of fuel containing at least 50 percent lease condensate, or fuels extracted from lease condensate, after the date of enactment of this section for use by the

fleet or covered person in vehicles owned or operated by the fleet or covered person that weigh more than 8,500 pounds gross vehicle weight rating.

''(b) REQUIREMENTS.—A credit allocated under this section—

''(1) shall be subject to the same exceptions, authority, documentation, and use of credits that are specified for qualifying volumes of biodiesel in section 312; and

''(2) shall not be considered a credit under section 508.

''(c) REGULATION.—

''(1) IN GENERAL.—Subject to subsection (d), not later than January 1, 2004, after the collection of appropriate information and data that consider usage options, uses in other industries, products, or processes, potential volume capacities, costs, air emissions, and fuel efficiencies, the Secretary shall issue a regulation establishing requirements and procedures for the implementation of this section.

''(2) QUALIFYING VOLUME.—The regulation shall include a determination of an appropriate qualifying volume for lease condensate, except that in no case shall the Secretary determine that the qualifying volume for lease condensate is less than 1,125 gallons.

''(d) APPLICABILITY.—This section applies unless the Secretary finds that the use of lease condensate as an alternative fuel would adversely affect public health or safety or ambient air quality or the environment.''.

(2) TABLE OF CONTENTS AMENDMENT.—The table of contents of the Energy Policy Act of 1992 (42 U.S.C. prec. 13201) is amended by adding at the end of the items relating to title III the following:

''Sec. 313. Lease condensate use credits.''.

(e) EMERGENCY EXEMPTION.—Section 301 of the Energy Policy Act of 1992 (42 U.S.C. 13211) (as amended by section 702 and this section) is amended in paragraph (9)(E) by inserting before the semicolon at the end '', including vehicles directly used in the emergency repair of transmission lines and in the restoration of electricity service following power outages, as determined by the Secretary''.

SEC. 706. REVIEW OF ENERGY POLICY ACT OF 1992 PROGRAMS.

(a) IN GENERAL.—Not later than 180 days after the date of enactment of this section, the Secretary of Energy shall complete a study to determine the effect that titles III, IV, and V of the Energy Policy Act of 1992 (42 U.S.C. 13211 et seq.) have had on—

(1) the development of alternative fueled vehicle technology;

(2) the availability of that technology in the market; and

(3) the cost of alternative fueled vehicles.

(b) TOPICS.—As part of the study under subsection (a), the Secretary shall specifically identify—

(1) the number of alternative fueled vehicles acquired by fleets or covered persons required to acquire alternative fueled vehicles;

(2) the quantity, by type, of alternative fuel actually used in alternative fueled vehicles acquired by fleets or covered persons;

(3) the quantity of petroleum displaced by the use of alternative fuels in alternative fueled vehicles acquired by fleets or covered persons;

(4) the direct and indirect costs of compliance with requirements under titles III, IV, and V of the Energy Policy Act of 1992 (42 U.S.C. 13211 et seq.), including—

(A) vehicle acquisition requirements imposed on fleets or covered persons;

(B) administrative and recordkeeping expenses;

(C) fuel and fuel infrastructure costs;

(D) associated training and employee expenses; and

(E) any other factors or expenses the Secretary determines to be necessary to compile reliable estimates of the overall costs and benefits of complying with programs under those titles for fleets, covered persons, and the national economy;

(5) the existence of obstacles preventing compliance with vehicle acquisition requirements and increased use of alternative fuel in alternative fueled vehicles acquired by fleets or covered persons; and

(6) the projected impact of amendments to the Energy Policy Act of 1992 made by this title.

(c) REPORT.—Upon completion of the study under this section, the Secretary shall submit to Congress a report that describes the results of the study and includes any recommendations of the Secretary for legislative or administrative changes concerning the alternative fueled vehicle requirements under titles III, IV and V of the Energy Policy Act of 1992 (42 U.S.C. 13211 et seq.).

SEC. 707. REPORT CONCERNING COMPLIANCE WITH ALTERNATIVE FUELED VEHICLE PURCHASING REQUIREMENTS.

Section 310(b)(1) of the Energy Policy Act of 1992 (42 U.S.C. 13218(b)(1)) is amended by striking ''1 year after the date of enactment of this subsection'' and inserting ''February 15, 2004''.

Subtitle B—Hybrid Vehicles, Advanced Vehicles, and Fuel Cell Buses

PART 1—HYBRID VEHICLES

SEC. 711. HYBRID VEHICLES.

The Secretary of Energy shall accelerate efforts directed toward the improvement of batteries and other rechargeable energy storage systems, power electronics, hybrid systems integration, and other technologies for use in hybrid vehicles.

PART 2—ADVANCED VEHICLES

SEC. 721. DEFINITIONS.

In this part:

(1) ALTERNATIVE FUELED VEHICLE.—

(A) IN GENERAL.—The term ''alternative fueled vehicle'' means a vehicle propelled solely on an alternative fuel (as defined in section 301 of the Energy Policy Act of 1992 (42 U.S.C. 13211)).

(B) EXCLUSION.—The term ''alternative fueled vehicle'' does not include a vehicle that the Secretary determines, by regulation, does not yield substantial environmental benefits over a vehicle operating solely on gasoline or diesel derived from fossil fuels.

(2) FUEL CELL VEHICLE.—The term ''fuel cell vehicle'' means a vehicle propelled by an electric motor powered by a fuel cell system that converts chemical energy into electricity by combining oxygen (from air) with hydrogen fuel that is stored on the vehicle or is produced onboard by reformation of a hydrocarbon fuel. Such fuel cell system may or may not include the use of auxiliary energy storage systems to enhance vehicle performance.

(3) HYBRID VEHICLE.—The term ''hybrid vehicle'' means a medium or heavy duty vehicle propelled by an internal combustion engine or heat engine using any combustible fuel and an onboard rechargeable energy storage device.

(4) NEIGHBORHOOD ELECTRIC VEHICLE.—The term ''neighborhood electric vehicle'' means a motor vehicle that—

(A) meets the definition of a low-speed vehicle (as defined in part 571 of title 49, Code of Federal Regulations);

(B) meets the definition of a zero-emission vehicle (as defined in section 86.1702–99 of title 40, Code of Federal Regulations);

(C) meets the requirements of Federal Motor Vehicle Safety Standard No. 500; and

(D) has a maximum speed of not greater than 25 miles per hour.

(5) PILOT PROGRAM.—The term ''pilot program'' means the competitive grant program established under section 722.

(6) SECRETARY.—The term ''Secretary'' means the Secretary of Energy.

(7) ULTRA-LOW SULFUR DIESEL VEHICLE.—The term ''ultra-low sulfur diesel vehicle'' means a vehicle manufactured in any of model years 2003 through 2006 powered by a heavy-duty diesel engine that—

(A) is fueled by diesel fuel that contains sulfur at not more than 15 parts per million; and

(B) emits not more than the lesser of—

(i) for vehicles manufactured in—

(I) model year 2003, 3.0 grams per brake horsepower-hour of oxides of nitrogen and .01 grams per brake horsepower-hour of particulate matter; and

(II) model years 2004 through 2006, 2.5 grams per brake horsepower-hour of nonmethane hydrocarbons and oxides of nitrogen and .01 grams per brake horsepower-hour of particulate matter; or

(ii) the quantity of emissions of nonmethane hydrocarbons, oxides of nitrogen, and particulate matter of the best-performing technology of ultra-low sulfur diesel vehicles of the same class and application that are commercially available.

SEC. 722. PILOT PROGRAM.

(a) ESTABLISHMENT.—The Secretary, in consultation with the Secretary of Transportation, shall establish a competitive grant pilot program, to be administered through the Clean Cities Program of the Department of Energy, to provide not more than 15 geographically dispersed project grants to State governments, local governments, or metropolitan transportation authorities to carry out a project or projects for the purposes described in subsection (b).

(b) GRANT PURPOSES.—A grant under this section may be used for the following purposes:

(1) The acquisition of alternative fueled vehicles or fuel cell vehicles, including—

(A) passenger vehicles (including neighborhood electric vehicles); and

(B) motorized 2-wheel bicycles, scooters, or other vehicles for use by law enforcement personnel or other State or local government or metropolitan transportation authority employees.

(2) The acquisition of alternative fueled vehicles, hybrid vehicles, or fuel cell vehicles, including—

(A) buses used for public transportation or transportation to and from schools;

(B) delivery vehicles for goods or services; and

(C) ground support vehicles at public airports (including vehicles to carry baggage or push or pull airplanes toward or away from terminal gates).

(3) The acquisition of ultra-low sulfur diesel vehicles.

(4) Installation or acquisition of infrastructure necessary to directly support an alternative fueled vehicle, fuel cell vehicle, or hybrid vehicle project funded by the grant, including fueling and other support equipment.

(5) Operation and maintenance of vehicles, infrastructure, and equipment acquired as part of a project funded by the grant.

(c) APPLICATIONS.—

(1) REQUIREMENTS.—

(A) IN GENERAL.—The Secretary shall issue requirements for applying for grants under the pilot program.

(B) MINIMUM REQUIREMENTS.—At a minimum, the Secretary shall require that an application for a grant—

(i) be submitted by the head of a State or local government or a metropolitan transportation authority, or any combination thereof, and a registered participant in the

Clean Cities Program of the Department of Energy; and

(ii) include—

(I) a description of the project proposed in the application, including how the project meets the requirements of this part;

(II) an estimate of the ridership or degree of use of the project;

(III) an estimate of the air pollution emissions reduced and fossil fuel displaced as a result of the project, and a plan to collect and disseminate environmental data, related to the project to be funded under the grant, over the life of the project;

(IV) a description of how the project will be sustainable without Federal assistance after the completion of the term of the grant;

(V) a complete description of the costs of the project, including acquisition, construction, operation, and maintenance costs over the expected life of the project;

(VI) a description of which costs of the project will be supported by Federal assistance under this part; and

(VII) documentation to the satisfaction of the Secretary that diesel fuel containing sulfur at not more than 15 parts per million is available for carrying out the project, and a commitment by the applicant to use such fuel in carrying out the project.

(2) PARTNERS.—An applicant under paragraph (1) may carry out a project under the pilot program in partnership with public and private entities.

(d) SELECTION CRITERIA.—In evaluating applications under the pilot program, the Secretary shall—

(1) consider each applicant's previous experience with similar projects; and

(2) give priority consideration to applications that—

(A) are most likely to maximize protection of the environment;

(B) demonstrate the greatest commitment on the part of the applicant to ensure funding for the proposed project and the greatest likelihood that the project will be maintained or expanded after Federal assistance under this part is completed; and

(C) exceed the minimum requirements of subsection (c)(1)(B)(ii).

(e) PILOT PROJECT REQUIREMENTS.—

(1) MAXIMUM AMOUNT.—The Secretary shall not provide more than $20,000,000 in Federal assistance under the pilot program to any applicant.

(2) COST SHARING.—The Secretary shall not provide more than 50 percent of the cost, incurred during the period of the grant, of any project under the pilot program.

(3) MAXIMUM PERIOD OF GRANTS.—The Secretary shall not fund any applicant under the pilot program for more than 5 years.

(4) DEPLOYMENT AND DISTRIBUTION.—The Secretary shall seek to the maximum extent practicable to ensure a broad geographic distribution of project sites.

(5) TRANSFER OF INFORMATION AND KNOWLEDGE.—The Secretary shall establish mechanisms to ensure that the information and knowledge gained by participants in the pilot program are transferred among the pilot program participants and to other interested parties, including other applicants that submitted applications.

(f) SCHEDULE.—

(1) PUBLICATION.—Not later than 90 days after the date of enactment of this Act, the Secretary shall publish in the Federal Register, Commerce Business Daily, and elsewhere as appropriate, a request for applications to undertake projects under the pilot program. Applications shall be due not later than 180 days after the date of publication of the notice.

(2) SELECTION.—Not later than 180 days after the date by which applications for grants are due, the Secretary shall select by competitive, peer reviewed proposal, all applications for projects to be awarded a grant under the pilot program.

(g) LIMIT ON FUNDING.—The Secretary shall provide not less than 20 nor more than 25 percent of the grant funding made available under this section for the acquisition of ultra-low sulfur diesel vehicles.

SEC. 723. REPORTS TO CONGRESS.

(a) INITIAL REPORT.—Not later than 60 days after the date on which grants are awarded under this part, the Secretary shall submit to Congress a report containing—

(1) an identification of the grant recipients and a description of the projects to be funded;

(2) an identification of other applicants that submitted applications for the pilot program; and

(3) a description of the mechanisms used by the Secretary to ensure that the information and knowledge gained by participants in the pilot program are transferred among the pilot program participants and to other interested parties, including other applicants that submitted applications.

(b) EVALUATION.—Not later than 3 years after the date of enactment of this Act, and annually thereafter until the pilot program ends, the Secretary shall submit to Congress a report containing an evaluation of the effectiveness of the pilot program, including—

(1) an assessment of the benefits to the environment derived from the projects included in the pilot program; and

(2) an estimate of the potential benefits to the environment to be derived from widespread application of alternative fueled vehicles and ultra-low sulfur diesel vehicles.

SEC. 724. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Secretary to carry out this part $200,000,000, to remain available until expended.

PART 3—FUEL CELL BUSES

SEC. 731. FUEL CELL TRANSIT BUS DEMONSTRATION.

(a) IN GENERAL.—The Secretary of Energy, in consultation with the Secretary of Transportation, shall establish a transit bus demonstration program to make competitive, merit-based awards for 5-year projects to demonstrate not more than 25 fuel cell transit buses (and necessary infrastructure) in 5 geographically dispersed localities.

(b) PREFERENCE.—In selecting projects under this section, the Secretary of Energy shall give preference to projects that are most likely to mitigate congestion and improve air quality.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Energy to carry out this section $10,000,000 for each of fiscal years 2004 through 2008.

Subtitle C—Clean School Buses

SEC. 741. DEFINITIONS.

In this subtitle:

(1) ADMINISTRATOR.—The term ''Administrator'' means the Administrator of the Environmental Protection Agency.

(2) ALTERNATIVE FUEL.—The term ''alternative fuel'' means liquefied natural gas, compressed natural gas, liquefied petroleum gas, hydrogen, propane, or methanol or ethanol at no less than 85 percent by volume.

(3) ALTERNATIVE FUEL SCHOOL BUS.—The term ''alternative fuel school bus'' means a school bus that meets all of the requirements of this subtitle and is operated solely on an alternative fuel.

(4) EMISSIONS CONTROL RETROFIT TECHNOLOGY.—The term ''emissions control retrofit technology'' means a particulate filter or other emissions control equipment that is verified or certified by the Administrator or the California Air Resources Board as an effective emission reduction technology when installed on an existing school bus.

(5) IDLING.—The term ''idling'' means operating an engine while remaining stationary for more than approximately 15 minutes, except that the term does not apply to routine stoppages associated with traffic movement or congestion.

(6) SECRETARY.—The term ''Secretary'' means the Secretary of Energy.

(7) ULTRA-LOW SULFUR DIESEL FUEL.—The term ''ultra-low sulfur diesel fuel'' means diesel fuel that contains sulfur at not more than 15 parts per million.

(8) ULTRA-LOW SULFUR DIESEL FUEL SCHOOL BUS.—The term ''ultra-low sulfur diesel fuel school bus'' means a school bus that meets all of the requirements of this subtitle and is operated solely on ultra-low sulfur diesel fuel.

SEC. 742. PROGRAM FOR REPLACEMENT OF CERTAIN SCHOOL BUSES WITH CLEAN SCHOOL BUSES.

(a) ESTABLISHMENT.—The Administrator, in consultation with the Secretary and other appropriate Federal departments and agencies, shall establish a program for awarding grants on a competitive basis to eligible entities for the replacement of existing school buses manufactured before model year 1991 with alternative fuel school buses and ultra-low sulfur diesel fuel school buses.

(b) REQUIREMENTS.—

(1) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Administrator shall establish and publish in the Federal Register grant requirements on eligibility for assistance, and on implementation of the program established under subsection (a), including instructions for the submission of grant applications and certification requirements to ensure compliance with this subtitle.

(2) APPLICATION DEADLINES.—The requirements established under paragraph (1) shall require submission of grant applications not later than—

(A) in the case of the first year of program implementation, the date that is 180 days after the publication of the requirements in the Federal Register; and

(B) in the case of each subsequent year, June 1 of the year.

(c) ELIGIBLE RECIPIENTS.—A grant shall be awarded under this section only—

(1) to 1 or more local or State governmental entities responsible for providing school bus service to 1 or more public school systems or responsible for the purchase of school buses;

(2) to 1 or more contracting entities that provide school bus service to 1 or more public school systems, if the grant application is submitted jointly with the 1 or more school systems to be served by the buses, except that the application may provide that buses purchased using funds awarded shall be owned, operated, and maintained exclusively by the 1 or more contracting entities; or

(3) to a nonprofit school transportation association representing private contracting entities, if the association has notified and received approval from the 1 or more school systems to be served by the buses.

(d) AWARD DEADLINES.—

(1) IN GENERAL.—Subject to paragraph (2), the Administrator shall award a grant made to a qualified applicant for a fiscal year—

(A) in the case of the first fiscal year of program implementation, not later than the date that is 90 days after the application deadline established under subsection (b)(2); and

(B) in the case of each subsequent fiscal year, not later than August 1 of the fiscal year.

(2) INSUFFICIENT NUMBER OF QUALIFIED GRANT APPLICATIONS.—If the Administrator does not receive a sufficient number of qualified grant applications to meet the requirements of subsection (i)(1) for a fiscal year, the Administrator shall award a grant made to a qualified applicant under subsection (i)(2) not later than September 30 of the fiscal year.

(e) TYPES OF GRANTS.—

(1) IN GENERAL.—A grant under this section shall be used for the replacement of school buses manufactured before model year 1991 with alternative fuel school buses and ultra-low sulfur diesel fuel school buses.

(2) NO ECONOMIC BENEFIT.—Other than the receipt of the grant, a recipient of a grant under this section may not receive any economic benefit in connection with the receipt of the grant.

(3) PRIORITY OF GRANT APPLICATIONS.—The Administrator shall give priority to applicants that propose to replace school buses manufactured before model year 1977.

(f) CONDITIONS OF GRANT.—A grant provided under this section shall include the following conditions:

(1) SCHOOL BUS FLEET.—All buses acquired with funds provided under the grant shall be operated as part of the school bus fleet for which the grant was made for a minimum of 5 years.

(2) USE OF FUNDS.—Funds provided under the grant may only be used—

(A) to pay the cost, except as provided in paragraph (3), of new alternative fuel school buses or ultra-low sulfur diesel fuel school buses, including State taxes and contract fees associated with the acquisition of such buses; and

(B) to provide—

(i) up to 20 percent of the price of the alternative fuel school buses acquired, for necessary alternative fuel infrastructure if the infrastructure will only be available to the grant recipient; and

(ii) up to 25 percent of the price of the alternative fuel school buses acquired, for necessary alternative fuel infrastructure if the infrastructure will be available to the grant recipient and to other bus fleets.

(3) GRANT RECIPIENT FUNDS.—The grant recipient shall be required to provide at least—

(A) in the case of a grant recipient described in paragraph (1) or (3) of subsection (c), the lesser of—

(i) an amount equal to 15 percent of the total cost of each bus received; or

(ii) $15,000 per bus; and

(B) in the case of a grant recipient described in subsection (c)(2), the lesser of—

(i) an amount equal to 20 percent of the total cost of each bus received; or

(ii) $20,000 per bus.

(4) ULTRA-LOW SULFUR DIESEL FUEL.—In the case of a grant recipient receiving a grant for ultra-low sulfur diesel fuel school buses, the grant recipient shall be required to provide documentation to the satisfaction of the Administrator that diesel fuel containing sulfur at not more than 15 parts per million is available for carrying out the purposes of the grant, and a commitment by the applicant to use such fuel in carrying out the purposes of the grant.

(5) TIMING.—All alternative fuel school buses, ultra-low sulfur diesel fuel school buses, or alternative fuel infrastructure acquired under a grant awarded under this section shall be purchased and placed in service as soon as practicable.

(g) BUSES.—

(1) IN GENERAL.—Except as provided in paragraph (2), funding under a grant made under this section for the acquisition of new alternative fuel school buses or ultra-low sulfur diesel fuel school buses shall only be used to acquire school buses—

(A) with a gross vehicle weight of greater than 14,000 pounds;

(B) that are powered by a heavy duty engine;

(C) in the case of alternative fuel school buses manufactured in model years 2004 through 2006, that emit not more than 1.8 grams per brake horsepower-hour of nonmethane hydrocarbons and oxides of nitrogen and .01 grams per brake horsepower-hour of particulate matter; and

(D) in the case of ultra-low sulfur diesel fuel school buses manufactured in model years 2004 through 2006, that emit not more than 2.5 grams per brake horsepower-hour of nonmethane hydrocarbons and oxides of nitrogen and .01 grams per brake horsepower-hour of particulate matter.

(2) LIMITATIONS.—A bus shall not be acquired under this section that emits nonmethane hydrocarbons, oxides of nitrogen, or particulate matter at a rate greater than the best performing technology of the same class of ultra-low sulfur diesel fuel school buses commercially available at the time the grant is made.

(h) DEPLOYMENT AND DISTRIBUTION.—The Administrator shall—

(1) seek, to the maximum extent practicable, to achieve nationwide deployment of alternative fuel school buses and ultra-low sulfur diesel fuel school buses through the program under this section; and

(2) ensure a broad geographic distribution of grant awards, with a goal of no State receiving more than 10 percent of the grant funding made available under this section for a fiscal year.

(i) ALLOCATION OF FUNDS.—

(1) IN GENERAL.—Subject to paragraph (2), of the amount of grant funding made available to carry out this section for any fiscal year, the Administrator shall use—

(A) 70 percent for the acquisition of alternative fuel school buses or supporting infrastructure; and

(B) 30 percent for the acquisition of ultra-low sulfur diesel fuel school buses.

(2) INSUFFICIENT NUMBER OF QUALIFIED GRANT APPLICATIONS.—After the first fiscal year in which this program is in effect, if the Administrator does not receive a sufficient number of qualified grant applications to meet the requirements of subparagraph (A) or (B) of paragraph (1) for a fiscal year, effective beginning on August 1 of the fiscal year, the Administrator shall make the remaining funds available to other qualified grant applicants under this section.

(j) REDUCTION OF SCHOOL BUS IDLING.—Each local educational agency (as defined in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801)) that receives Federal funds under the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.) is encouraged to develop a policy, consistent with the health, safety, and welfare of students and the proper operation and maintenance of school buses, to reduce the incidence of unnecessary school bus idling at schools when picking up and unloading students.

(k) ANNUAL REPORT.—

(1) IN GENERAL.—Not later than January 31 of each year, the Administrator shall transmit to Congress a report evaluating implementation of the programs under this section and section 743.

(2) COMPONENTS.—The reports shall include a description of—

(A) the total number of grant applications received;

(B) the number and types of alternative fuel school buses, ultra-low sulfur diesel fuel school buses, and retrofitted buses requested in grant applications;

(C) grants awarded and the criteria used to select the grant recipients;

(D) certified engine emission levels of all buses purchased or retrofitted under the programs under this section and section 743;

(E) an evaluation of the in-use emission level of buses purchased or retrofitted under the programs under this section and section 743; and

(F) any other information the Administrator considers appropriate.

(l) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Administrator to carry out this section, to remain available until expended—

(1) $45,000,000 for fiscal year 2005;

(2) $65,000,000 for fiscal year 2006;

(3) $90,000,000 for fiscal year 2007; and

(4) such sums as are necessary for each of fiscal years 2008 and 2009.

SEC. 743. DIESEL RETROFIT PROGRAM.

(a) ESTABLISHMENT.—The Administrator, in consultation with the Secretary, shall establish a program for awarding grants on a competitive basis to entities for the installation of retrofit technologies for diesel school buses.

(b) ELIGIBLE RECIPIENTS.—A grant shall be awarded under this section only—

(1) to a local or State governmental entity responsible for providing school bus service to 1 or more public school systems;

(2) to 1 or more contracting entities that provide school bus service to 1 or more public school systems, if the grant application is submitted jointly with the 1 or more school systems that the buses will serve, except that the application may provide that buses purchased using funds awarded shall be owned, operated, and maintained exclusively by the 1 or more contracting entities; or

(3) to a nonprofit school transportation association representing private contracting entities, if the association has notified and received approval from the 1 or more school systems to be served by the buses.

(c) AWARDS.—

(1) IN GENERAL.—The Administrator shall seek, to the maximum extent practicable, to ensure a broad geographic distribution of grants under this section.

(2) PREFERENCES.—In making awards of grants under this section, the Administrator shall give preference to proposals that—

(A) will achieve the greatest reductions in emissions of nonmethane hydrocarbons, oxides of nitrogen, or particulate matter per proposal or per bus; or

(B) involve the use of emissions control retrofit technology on diesel school buses that operate solely on ultra-low sulfur diesel fuel.

(d) CONDITIONS OF GRANT.—A grant shall be provided under this section on the conditions that—

(1) buses on which retrofit emissions-control technology are to be demonstrated—

(A) will operate on ultra-low sulfur diesel fuel where such fuel is reasonably available or required for sale by State or local law or regulation;

(B) were manufactured in model year 1991 or later; and

(C) will be used for the transportation of school children to and from school for a minimum of 5 years;

(2) grant funds will be used for the purchase of emission control retrofit technology, including State taxes and contract fees; and

(3) grant recipients will provide at least 15 percent of the total cost of the retrofit, including the purchase of emission control retrofit technology and all necessary labor for installation of the retrofit.

(e) VERIFICATION.—Not later than 90 days after the date of enactment of this Act, the Administrator shall publish in the Federal Register procedures to verify—

(1) the retrofit emissions-control technology to be demonstrated;

(2) that buses powered by ultra-low sulfur diesel fuel on which retrofit emissions-control technology are to be demonstrated will operate on diesel fuel containing not more than 15 parts per million of sulfur; and

(3) that grants are administered in accordance with this section.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Administrator to carry out this section, to remain available until expended—

(1) $20,000,000 for fiscal year 2005;

(2) $35,000,000 for fiscal year 2006;

(3) $45,000,000 for fiscal year 2007; and

(4) such sums as are necessary for each of fiscal years 2008 and 2009.

SEC. 744. FUEL CELL SCHOOL BUSES.

(a) ESTABLISHMENT.—The Secretary shall establish a program for entering into cooperative agreements—

(1) with private sector fuel cell bus developers for the development of fuel cell-powered school buses; and

(2) subsequently, with not less than 2 units of local government using natural gas-powered school buses and such private sector fuel cell bus developers to demonstrate the use of fuel cell-powered school buses.

(b) COST SHARING.—The non-Federal contribution for activities funded under this section shall be not less than—

(1) 20 percent for fuel infrastructure development activities; and

(2) 50 percent for demonstration activities and for development activities not described in paragraph (1).

(c) REPORTS TO CONGRESS.—Not later than 3 years after the date of enactment of this Act, the Secretary shall transmit to Congress a report that—

(1) evaluates the process of converting natural gas infrastructure to accommodate fuel cell-powered school buses; and

(2) assesses the results of the development and demonstration program under this section.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary to carry out this section $25,000,000 for the period of fiscal years 2004 through 2006.

Subtitle D—Miscellaneous

SEC. 751. RAILROAD EFFICIENCY.

(a) ESTABLISHMENT.—The Secretary of Energy shall, in cooperation with the Secretary of Transportation and the Administrator of the Environmental Protection Agency, establish a cost-shared, public-private research partnership involving the Federal Government, railroad carriers, locomotive manufacturers and equipment suppliers, and the Association of American Railroads, to develop and demonstrate railroad locomotive technologies that increase fuel economy, reduce emissions, and lower costs of operation.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Energy to carry out this section—

(1) $25,000,000 for fiscal year 2005;

(2) $35,000,000 for fiscal year 2006; and

(3) $50,000,000 for fiscal year 2007.

SEC. 752. MOBILE EMISSION REDUCTIONS TRADING AND CREDITING.

(a) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Administrator of the Environmental Protection Agency shall submit to Congress a report on the experience of the Administrator with the trading of mobile source emission reduction credits for use by owners and operators of stationary source emission sources to meet emission offset requirements within a nonattainment area.

(b) CONTENTS.—The report shall describe—

(1) projects approved by the Administrator that include the trading of mobile source emission reduction credits for use by stationary sources in complying with offset requirements, including a description of—

(A) project and stationary sources location;

(B) volumes of emissions offset and traded;

(C) the sources of mobile emission reduction credits; and

(D) if available, the cost of the credits;

(2) the significant issues identified by the Administrator in consideration and approval of trading in the projects;

(3) the requirements for monitoring and assessing the air quality benefits of any approved project;

(4) the statutory authority on which the Administrator has based approval of the projects;

(5) an evaluation of how the resolution of issues in approved projects could be used in other projects; and

(6) any other issues that the Administrator considers relevant to the trading and generation of mobile source emission reduction credits for use by stationary sources or for other purposes.

SEC. 753. AVIATION FUEL CONSERVATION AND EMISSIONS.

(a) IN GENERAL.—Not later than 60 days after the date of enactment of this Act, the Administrator of the Federal Aviation Administration and the Administrator of the Environmental Protection Agency shall jointly initiate a study to identify—

(1) the impact of aircraft emissions on air quality in nonattainment areas; and

(2) ways to promote fuel conservation measures for aviation to—

(A) enhance fuel efficiency; and

(B) reduce emissions.

(b) FOCUS.—The study under subsection (a) shall focus on how air traffic management inefficiencies, such as aircraft idling at airports, result in unnecessary fuel burn and air emissions.

(c) REPORT.—Not later than 1 year after the date of the initiation of the study under subsection (a), the Administrator of the Federal Aviation Administration and the Administrator of the Environmental Protection Agency shall jointly submit to the Committee on Energy and Commerce and the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works and the Committee on Commerce, Science, and Transportation of the Senate a report that—

(1) describes the results of the study; and

(2) includes any recommendations on ways in which unnecessary fuel use and emissions affecting air quality may be reduced—

(A) without adversely affecting safety and security and increasing individual aircraft noise; and

(B) while taking into account all aircraft emissions and the impact of the emissions on human health.

SEC. 754. DIESEL FUELED VEHICLES.

(a) DEFINITION OF TIER 2 EMISSION STANDARDS.—In this section, the term ''tier 2 emission standards'' means the motor vehicle emission standards that apply to passenger cars, light trucks, and larger passenger vehicles manufactured after the 2003 model year, as issued on February 10, 2000, by the Administrator of the Environmental Protection Agency under sections 202 and 211 of the Clean Air Act (42 U.S.C. 7521, 7545).

(b) DIESEL COMBUSTION AND AFTER-TREATMENT TECHNOLOGIES.—The Secretary of Energy shall accelerate efforts to improve diesel combustion and after-treatment technologies for use in diesel fueled motor vehicles.

(c) GOALS.—The Secretary shall carry out subsection (b) with a view toward achieving the following goals:

(1) Developing and demonstrating diesel technologies that, not later than 2010, meet the following standards:

(A) Tier 2 emission standards.

(B) The heavy-duty emissions standards of 2007 that are applicable to heavy-duty vehicles under regulations issued by the Administrator of the Environmental Protection Agency as of the date of enactment of this Act.

(2) Developing the next generation of low-emission, high-efficiency diesel engine technologies, including homogeneous charge compression ignition technology.

SEC. 755. CONSERVE BY BICYCLING PROGRAM.

(a) DEFINITIONS.—In this section:

(1) PROGRAM.—The term ''program'' means the Conserve by Bicycling Program established by subsection (b).

(2) SECRETARY.—The term ''Secretary'' means the Secretary of Transportation.

(b) ESTABLISHMENT.—There is established within the Department of Transportation a program to be known as the ''Conserve by Bicycling Program''.

(c) PROJECTS.—

(1) IN GENERAL.—In carrying out the program, the Secretary shall establish not more than 10 pilot projects that are—

(A) dispersed geographically throughout the United States; and

(B) designed to conserve energy resources by encouraging the use of bicycles in place of motor vehicles.

(2) REQUIREMENTS.—A pilot project described in paragraph (1) shall—

(A) use education and marketing to convert motor vehicle trips to bicycle trips;

(B) document project results and energy savings (in estimated units of energy conserved);

(C) facilitate partnerships among interested parties in at least 2 of the fields of—

(i) transportation;

(ii) law enforcement;

(iii) education;

(iv) public health;

(v) environment; and

(vi) energy;

(D) maximize bicycle facility investments;

(E) demonstrate methods that may be used in other regions of the United States; and

(F) facilitate the continuation of ongoing programs that are sustained by local resources.

(3) COST SHARING.—At least 20 percent of the cost of each pilot project described in paragraph (1) shall be provided from State or local sources.

(d) ENERGY AND BICYCLING RESEARCH STUDY.—

(1) IN GENERAL.—Not later than 2 years after the date of enactment of this Act, the Secretary shall enter into a contract with the National Academy of Sciences for, and the National Academy of Sciences shall conduct and submit to Congress a report on, a study on the feasibility of converting motor vehicle trips to bicycle trips.

(2) COMPONENTS.—The study shall—

(A) document the results or progress of the pilot projects under subsection (c);

(B) determine the type and duration of motor vehicle trips that people in the United States may feasibly make by bicycle, taking into consideration factors such as—

(i) weather;

(ii) land use and traffic patterns;

(iii) the carrying capacity of bicycles; and

(iv) bicycle infrastructure;

(C) determine any energy savings that would result from the conversion of motor vehicle trips to bicycle trips;

(D) include a cost-benefit analysis of bicycle infrastructure investments; and

(E) include a description of any factors that would encourage more motor vehicle trips to be replaced with bicycle trips.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary to carry out this section $6,200,000, to remain available until expended, of which—

(1) $5,150,000 shall be used to carry out pilot projects described in subsection (c);

(2) $300,000 shall be used by the Secretary to coordinate, publicize, and disseminate the results of the program; and

(3) $750,000 shall be used to carry out subsection (d).

SEC. 756. REDUCTION OF ENGINE IDLING OF HEAVY-DUTY VEHICLES.

(a) DEFINITIONS.—In this section:

(1) ADMINISTRATOR.—The term ''Administrator'' means the Administrator of the Environmental Protection Agency.

(2) ADVANCED TRUCK STOP ELECTRIFICATION SYSTEM.—The term ''advanced truck stop electrification system'' means a stationary system that delivers heat, air conditioning, electricity, and communications, and is capable of providing verifiable and auditable evidence of use of those services, to a heavy-duty vehicle and any occupants of the heavy-duty vehicle without relying on components mounted onboard the heavy-duty vehicle for delivery of those services.

(3) AUXILIARY POWER UNIT.—The term ''auxiliary power unit'' means an integrated system that—

(A) provides heat, air conditioning, engine warming, and electricity to the factory-installed components on a heavy-duty vehicle as if the main drive engine of the heavy-duty vehicle were running; and

(B) is certified by the Administrator under part 89 of title 40, Code of Federal Regulations (or any successor regulation), as meeting applicable emission standards.

(4) HEAVY-DUTY VEHICLE.—The term ''heavy-duty vehicle'' means a vehicle that—

(A) has a gross vehicle weight rating greater than 12,500 pounds; and

(B) is powered by a diesel engine.

(5) IDLE REDUCTION TECHNOLOGY.—The term ''idle reduction technology'' means an advanced truck stop electrification system, auxiliary power unit, or other device or system of devices that—

(A) is used to reduce long-duration idling of a heavy-duty vehicle; and

(B) allows for the main drive engine or auxiliary refrigeration engine of a heavy-duty vehicle to be shut down.

(6) LONG-DURATION IDLING.—

(A) IN GENERAL.—The term ''long-duration idling'' means the operation of a main drive engine or auxiliary refrigeration engine of a heavy-duty vehicle, for a period greater than 15 consecutive minutes, at a time at which the main drive engine is not engaged in gear.

(B) EXCLUSIONS.—The term ''long-duration idling'' does not include the operation of a main drive engine or auxiliary refrigeration engine of a heavy-duty vehicle during a routine stoppage associated with traffic movement or congestion.

(b) IDLE REDUCTION TECHNOLOGY BENEFITS, PROGRAMS, AND STUDIES.—

(1) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Administrator shall—

(A)(i) commence a review of the mobile source air emission models of the Environmental Protection Agency used under the Clean Air Act (42 U.S.C. 7401 et seq.) to determine whether the models accurately reflect the emissions resulting from long-duration idling of heavy-duty vehicles and other vehicles and engines; and

(ii) update those models as the Administrator determines to be appropriate; and

(B)(i) commence a review of the emission reductions achieved by the use of idle reduction technology; and

(ii) complete such revisions of the regulations and guidance of the Environmental Protection Agency as the Administrator determines to be appropriate.

(2) DEADLINE FOR COMPLETION.—Not later than 180 days after the date of enactment of this Act, the Administrator shall—

(A) complete the reviews under subparagraphs (A)(i) and (B)(i) of paragraph (1); and

(B) prepare and make publicly available 1 or more reports on the results of the reviews.

(3) DISCRETIONARY INCLUSIONS.—The reviews under subparagraphs (A)(i) and (B)(i) of paragraph (1) and the reports under paragraph (2)(B) may address the potential fuel savings resulting from use of idle reduction technology.

(4) IDLE REDUCTION DEPLOYMENT PROGRAM.—

(A) ESTABLISHMENT.—

(i) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Administrator, in consultation with the Secretary of Transportation, shall establish a program to support deployment of idle reduction technology.

(ii) PRIORITY.—The Administrator shall give priority to the deployment of idle reduction technology based on beneficial effects on air quality and ability to lessen the emission of criteria air pollutants.

(B) FUNDING.—

(i) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Administrator to carry out subparagraph (A) $19,500,000 for fiscal year 2004, $30,000,000 for fiscal year 2005, and $45,000,000 for fiscal year 2006.

(ii) COST SHARING.—Subject to clause (iii), the Administrator shall require at least 50 percent of the costs directly and specifically related to any project under this section to be provided from non-Federal sources.

(iii) NECESSARY AND APPROPRIATE REDUCTIONS.—The Administrator may reduce the non-Federal requirement under clause (ii) if the Administrator determines that the reduction is necessary and appropriate to meet the objectives of this section.

(5) IDLING LOCATION STUDY.—

(A) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Administrator, in consultation with the Secretary of Transportation, shall commence a study to analyze all locations at which heavy-duty vehicles stop for long-duration idling, including—

(i) truck stops;

(ii) rest areas;

(iii) border crossings;

(iv) ports;

(v) transfer facilities; and

(vi) private terminals.

(B) DEADLINE FOR COMPLETION.—Not later than 180 days after the date of enactment of this Act, the Administrator shall—

(i) complete the study under subparagraph (A); and

(ii) prepare and make publicly available 1 or more reports of the results of the study.

(c) VEHICLE WEIGHT EXEMPTION.—Section 127(a) of title 23, United States Code, is amended—

(1) by designating the first through eleventh sentences as paragraphs (1) through (11), respectively; and

(2) by adding at the end the following:

''(12) HEAVY DUTY VEHICLES.—

''(A) IN GENERAL.—Subject to subparagraphs (B) and (C), in order to promote reduction of fuel use and emissions because of engine idling, the maximum gross vehicle weight limit and the axle weight limit for any heavy-duty vehicle equipped with an idle reduction technology shall be increased by a quantity necessary to compensate for the additional weight of the idle reduction system.

''(B) MAXIMUM WEIGHT INCREASE.—The weight increase under subparagraph (A) shall be not greater than 250 pounds.

''(C) PROOF.—On request by a regulatory agency or law enforcement agency, the vehicle operator shall provide proof (through demonstration or certification) that—

''(i) the idle reduction technology is fully functional at all times; and

''(ii) the 250-pound gross weight increase is not used for any purpose other than the use of idle reduction technology described in subparagraph (A).''.

SEC. 757. BIODIESEL ENGINE TESTING PROGRAM.

(a) IN GENERAL.—Not later that 180 days after the date of enactment of this Act, the Secretary shall initiate a partnership with diesel engine, diesel fuel injection system, and diesel vehicle manufacturers and diesel and biodiesel fuel providers, to include biodiesel testing in advanced diesel engine and fuel system technology.

(b) SCOPE.—The program shall provide for testing to determine the impact of biodiesel from different sources on current and future emission control technologies, with emphasis on—

(1) the impact of biodiesel on emissions warranty, in-use liability, and antitampering provisions;

(2) the impact of long-term use of biodiesel on engine operations;

(3) the options for optimizing these technologies for both emissions and performance when switching between biodiesel and diesel fuel; and

(4) the impact of using biodiesel in these fueling systems and engines when used as a blend with 2006 Environmental Protection Agency-mandated diesel fuel containing a maximum of 15-parts-per-million sulfur content.

(c) REPORT.—Not later than 2 years after the date of enactment of this Act, the Secretary shall provide an interim report to Congress on the findings of the program, including a comprehensive analysis of impacts from biodiesel on engine operation for both existing and expected future diesel technologies, and recommendations for ensuring optimal emissions reductions and engine performance with biodiesel.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $5,000,000 for each of fiscal years 2004 through 2008 to carry out this section.

(e) DEFINITION.—For purposes of this section, the term ''biodiesel'' means a diesel fuel substitute produced from nonpetroleum renewable resources that meets the registration requirements for fuels and fuel additives established by the Environmental Protection Agency under section 211 of the Clean Air Act (42 U.S.C. 7545) and that meets the American Society for Testing and Materials D6751-02a Standard Specification for Biodiesel Fuel (B100) Blend Stock for Distillate Fuels.

SEC. 758. HIGH OCCUPANCY VEHICLE EXCEPTION.

Notwithstanding section 102(a) of title 23, United States Code, a State may permit a vehicle with fewer than 2 occupants to operate in high occupancy vehicle lanes if the vehicle—

(1) is a dedicated vehicle (as defined in section 301 of the Energy Policy Act of 1992 (42 U.S.C. 13211)); or

(2) is a hybrid vehicle (as defined by the State for the purpose of this section).

Subtitle E—Automobile Efficiency

SEC. 771. AUTHORIZATION OF APPROPRIATIONS FOR IMPLEMENTATION AND ENFORCEMENT OF FUEL ECONOMY STANDARDS.

In addition to any other funds authorized by law, there are authorized to be appropriated to the National Highway Traffic

Safety Administration to carry out its obligations with respect to average fuel economy standards $2,000,000 for each of fiscal years 2004 through 2008.

SEC. 772. REVISED CONSIDERATIONS FOR DECISIONS ON MAXIMUM FEASIBLE AVERAGE FUEL ECONOMY.

Section 32902(f) of title 49, United States Code, is amended to read as follows:

''(f) CONSIDERATIONS FOR DECISIONS ON MAXIMUM FEASIBLE AVERAGE FUEL ECONOMY.—When deciding maximum feasible average fuel economy under this section, the Secretary of Transportation shall consider the following matters:

''(1) Technological feasibility.

''(2) Economic practicability.

''(3) The effect of other motor vehicle standards of the Government on fuel economy.

''(4) The need of the United States to conserve energy.

''(5) The effects of fuel economy standards on passenger automobiles, nonpassenger automobiles, and occupant safety.

''(6) The effects of compliance with average fuel economy standards on levels of automobile industry employment in the United States.''.

SEC. 773. EXTENSION OF MAXIMUM FUEL ECONOMY INCREASE FOR ALTERNATIVE FUELED VEHICLES.

(a) MANUFACTURING INCENTIVES.—Section 32905 of title 49, United States Code, is amended—

(1) in each of subsections (b) and (d), by striking ''1993–2004'' and inserting ''1993–2008'';

(2) in subsection (f), by striking ''2001'' and inserting ''2005''; and

(3) in subsection (f)(1), by striking ''2004'' and inserting ''2008''.

(b) MAXIMUM FUEL ECONOMY INCREASE.—Subsection (a)(1) of section 32906 of title 49, United States Code, is amended—

(1) in subparagraph (A), by striking ''the model years 1993–2004'' and inserting ''model years 1993–2008''; and

(2) in subparagraph (B), by striking ''the model years 2005–2008'' and inserting ''model years 2009–2012''.

SEC. 774. STUDY OF FEASIBILITY AND EFFECTS OF REDUCING USE OF FUEL FOR AUTOMOBILES.

(a) IN GENERAL.—Not later than 30 days after the date of the enactment of this Act, the Administrator of the National Highway Traffic Safety Administration shall initiate a study of the feasibility and effects of reducing by model year 2012, by a significant percentage, the amount of fuel consumed by automobiles.

(b) SUBJECTS OF STUDY.—The study under this section shall include—

(1) examination of, and recommendation of alternatives to, the policy under current Federal law of establishing average fuel economy standards for automobiles and requiring each automobile manufacturer to comply with average fuel economy standards that apply to the automobiles it manufactures;

(2) examination of how automobile manufacturers could contribute toward achieving the reduction referred to in subsection (a);

(3) examination of the potential of fuel cell technology in motor vehicles in order to determine the extent to which such technology may contribute to achieving the reduction referred to in subsection (a); and

(4) examination of the effects of the reduction referred to in subsection (a) on—

(A) gasoline supplies;

(B) the automobile industry, including sales of automobiles manufactured in the United States;

(C) motor vehicle safety; and

(D) air quality.

(c) REPORT.—The Administrator shall submit to Congress a report on the findings, conclusion, and recommendations of the study under this section by not later than 1 year after the date of the enactment of this Act.

TITLE VIII—HYDROGEN

SEC. 801. DEFINITIONS.

In this title:

(1) ADVISORY COMMITTEE.—The term ''Advisory Committee'' means the Hydrogen Technical and Fuel Cell Advisory Committee established under section 805.

(2) DEPARTMENT.—The term ''Department'' means the Department of Energy.

(3) FUEL CELL.—The term ''fuel cell'' means a device that directly converts the chemical energy of a fuel and an oxidant into electricity by an electrochemical process taking place at separate electrodes in the device.

(4) INFRASTRUCTURE.—The term ''infrastructure'' means the equipment, systems, or facilities used to produce, distribute, deliver, or store hydrogen.

(5) LIGHT DUTY VEHICLE.—The term ''light duty vehicle'' means a car or truck classified by the Department of Transportation as a Class I or IIA vehicle.

(6) SECRETARY.—The term ''Secretary'' means the Secretary of Energy.

SEC. 802. PLAN.

Not later than 6 months after the date of enactment of this Act, the Secretary shall transmit to Congress a coordinated plan for the programs described in this title and any other programs of the Department that are directly related to fuel cells or hydrogen. The plan shall describe, at a minimum—

(1) the agenda for the next 5 years for the programs authorized under this title, including the agenda for each activity enumerated in section 803(a);

(2) the types of entities that will carry out the activities under this title and what role each entity is expected to play;

(3) the milestones that will be used to evaluate the programs for the next 5 years;

(4) the most significant technical and nontechnical hurdles that stand in the way of achieving the goals described in section 803(b), and how the programs will address those hurdles; and

(5) the policy assumptions that are implicit in the plan, including any assumptions that would affect the sources of hydrogen or the marketability of hydrogen-related products.

SEC. 803. PROGRAMS.

(a) ACTIVITIES.—The Secretary, in partnership with the private sector, shall conduct programs to address—

(1) production of hydrogen from diverse energy sources, including—

(A) fossil fuels, which may include carbon capture and sequestration;

(B) hydrogen-carrier fuels (including ethanol and methanol);

(C) renewable energy resources, including biomass; and

(D) nuclear energy;

(2) use of hydrogen for commercial, industrial, and residential electric power generation;

(3) safe delivery of hydrogen or hydrogen-carrier fuels, including—

(A) transmission by pipeline and other distribution methods; and

(B) convenient and economic refueling of vehicles either at central refueling stations or through distributed on-site generation;

(4) advanced vehicle technologies, including—

(A) engine and emission control systems;

(B) energy storage, electric propulsion, and hybrid systems;

(C) automotive materials; and

(D) other advanced vehicle technologies;

(5) storage of hydrogen or hydrogen-carrier fuels, including development of materials for safe and economic storage in gaseous, liquid, or solid form at refueling facilities and onboard vehicles;

(6) development of safe, durable, affordable, and efficient fuel cells, including fuel-flexible fuel cell power systems, improved manufacturing processes, high-temperature membranes, cost-effective fuel processing for natural gas, fuel cell stack and system reliability, low temperature operation, and cold start capability;

(7) development, after consultation with the private sector, of necessary codes and standards (including international codes and standards and voluntary consensus standards adopted in accordance with OMB Circular A–119) and safety practices for the production, distribution, storage, and use of hydrogen, hydrogen-carrier fuels, and related products; and

(8) a public education program to develop improved knowledge and acceptability of hydrogen-based systems.

(b) PROGRAM GOALS.—

(1) VEHICLES.—For vehicles, the goals of the program are—

(A) to enable a commitment by automakers no later than year 2015 to offer safe, affordable, and technically viable hydrogen fuel cell vehicles in the mass consumer market; and

(B) to enable production, delivery, and acceptance by consumers of model year 2020 hydrogen fuel cell and other hydrogen-powered vehicles that will have—

(i) a range of at least 300 miles;

(ii) improved performance and ease of driving;

(iii) safety and performance comparable to vehicle technologies in the market; and

(iv) when compared to light duty vehicles in model year 2003—

(I) fuel economy that is substantially higher;

(II) substantially lower emissions of air pollutants; and

(III) equivalent or improved vehicle fuel system crash integrity and occupant protection.

(2) HYDROGEN ENERGY AND ENERGY INFRASTRUCTURE.—For hydrogen energy and energy infrastructure, the goals of the program are to enable a commitment not later than 2015 that will lead to infrastructure by 2020 that will provide—

(A) safe and convenient refueling;

(B) improved overall efficiency;

(C) widespread availability of hydrogen from domestic energy sources through—

(i) production, with consideration of emissions levels;

(ii) delivery, including transmission by pipeline and other distribution methods for hydrogen; and

(iii) storage, including storage in surface transportation vehicles;

(D) hydrogen for fuel cells, internal combustion engines, and other energy conversion devices for portable, stationary, and transportation applications; and

(E) other technologies consistent with the Department's plan.

(3) FUEL CELLS.—The goals for fuel cells and their portable, stationary, and transportation applications are to enable—

(A) safe, economical, and environmentally sound hydrogen fuel cells;

(B) fuel cells for light duty and other vehicles; and

(C) other technologies consistent with the Department's plan.

(c) DEMONSTRATION.—In carrying out the programs under this section, the Secretary shall fund a limited number of demonstration projects, consistent with a determination of the maturity, cost-effectiveness, and

environmental impacts of technologies supporting each project. In selecting projects under this subsection, the Secretary shall, to the extent practicable and in the public interest, select projects that—

(1) involve using hydrogen and related products at existing facilities or installations, such as existing office buildings, military bases, vehicle fleet centers, transit bus authorities, or units of the National Park System;

(2) depend on reliable power from hydrogen to carry out essential activities;

(3) lead to the replication of hydrogen technologies and draw such technologies into the marketplace;

(4) include vehicle, portable, and stationary demonstrations of fuel cell and hydrogen-based energy technologies;

(5) address the interdependency of demand for hydrogen fuel cell applications and hydrogen fuel infrastructure;

(6) raise awareness of hydrogen technology among the public;

(7) facilitate identification of an optimum technology among competing alternatives;

(8) address distributed generation using renewable sources; and

(9) address applications specific to rural or remote locations, including isolated villages and islands, the National Park System, and tribal entities.

The Secretary shall give preference to projects which address multiple elements contained in paragraphs (1) through (9).

(d) DEPLOYMENT.—In carrying out the programs under this section, the Secretary shall, in partnership with the private sector, conduct activities to facilitate the deployment of hydrogen energy and energy infrastructure, fuel cells, and advanced vehicle technologies.

(e) FUNDING.—

(1) IN GENERAL.—The Secretary shall carry out the programs under this section using a competitive, merit-based review process and consistent with the generally applicable Federal laws and regulations governing awards of financial assistance, contracts, or other agreements.

(2) RESEARCH CENTERS.—Activities under this section may be carried out by funding nationally recognized university-based or Federal laboratory research centers.

(f) COST SHARING.—

(1) RESEARCH AND DEVELOPMENT.—Except as otherwise provided in this title, for research and development programs carried out under this title the Secretary shall require a commitment from non-Federal sources of at least 20 percent of the cost of the project. The Secretary may reduce or eliminate the non-Federal requirement under this paragraph if the Secretary determines that the research and development is of a basic or fundamental nature or involves technical analyses or educational activities.

(2) DEMONSTRATION AND COMMERCIAL APPLICATION.—Except as otherwise provided in this title, the Secretary shall require at least 50 percent of the costs directly and specifically related to any demonstration or commercial application project under this title to be provided from non-Federal sources. The Secretary may reduce the non-Federal requirement under this paragraph if the Secretary determines that the reduction is necessary and appropriate considering the technological risks involved in the project and is necessary to meet the objectives of this title.

(3) CALCULATION OF AMOUNT.—In calculating the amount of the non-Federal commitment under paragraph (1) or (2), the Secretary may include personnel, services, equipment, and other resources.

(4) SIZE OF NON-FEDERAL SHARE.—The Secretary may consider the size of the non-Federal share in selecting projects.

(g) DISCLOSURE.—Section 623 of the Energy Policy Act of 1992 (42 U.S.C. 13293) relating to the protection of information shall apply to projects carried out through grants, cooperative agreements, or contracts under this title.

SEC. 804. INTERAGENCY TASK FORCE.

(a) ESTABLISHMENT.—Not later than 120 days after the date of enactment of this Act, the President shall establish an interagency task force chaired by the Secretary with representatives from each of the following:

(1) The Office of Science and Technology Policy within the Executive Office of the President.

(2) The Department of Transportation.

(3) The Department of Defense.

(4) The Department of Commerce (including the National Institute of Standards and Technology).

(5) The Department of State.

(6) The Environmental Protection Agency.

(7) The National Aeronautics and Space Administration.

(8) Other Federal agencies as the Secretary determines appropriate.

(b) DUTIES.—

(1) PLANNING.—The interagency task force shall work toward—

(A) a safe, economical, and environmentally sound fuel infrastructure for hydrogen and hydrogen-carrier fuels, including an infrastructure that supports buses and other fleet transportation;

(B) fuel cells in government and other applications, including portable, stationary, and transportation applications;

(C) distributed power generation, including the generation of combined heat, power, and clean fuels including hydrogen;

(D) uniform hydrogen codes, standards, and safety protocols; and

(E) vehicle hydrogen fuel system integrity safety performance.

(2) ACTIVITIES.—The interagency task force may organize workshops and conferences, may issue publications, and may create databases to carry out its duties. The interagency task force shall—

(A) foster the exchange of generic, nonproprietary information and technology among industry, academia, and government;

(B) develop and maintain an inventory and assessment of hydrogen, fuel cells, and other advanced technologies, including the commercial capability of each technology for the economic and environmentally safe production, distribution, delivery, storage, and use of hydrogen;

(C) integrate technical and other information made available as a result of the programs and activities under this title;

(D) promote the marketplace introduction of infrastructure for hydrogen fuel vehicles; and

(E) conduct an education program to provide hydrogen and fuel cell information to potential end-users.

(c) AGENCY COOPERATION.—The heads of all agencies, including those whose agencies are not represented on the interagency task force, shall cooperate with and furnish information to the interagency task force, the Advisory Committee, and the Department.

SEC. 805. ADVISORY COMMITTEE.

(a) ESTABLISHMENT.—The Hydrogen Technical and Fuel Cell Advisory Committee is established to advise the Secretary on the programs and activities under this title.

(b) MEMBERSHIP.—

(1) MEMBERS.—The Advisory Committee shall be comprised of not fewer than 12 nor more than 25 members. The members shall be appointed by the Secretary to represent domestic industry, academia, professional societies, government agencies, Federal laboratories, previous advisory panels, and financial, environmental, and other appropriate organizations based on the Department's assessment of the technical and other qualifications of committee members and the needs of the Advisory Committee.

(2) TERMS.—The term of a member of the Advisory Committee shall not be more than 3 years. The Secretary may appoint members of the Advisory Committee in a manner that allows the terms of the members serving at any time to expire at spaced intervals so as to ensure continuity in the functioning of the Advisory Committee. A member of the Advisory Committee whose term is expiring may be reappointed.

(3) CHAIRPERSON.—The Advisory Committee shall have a chairperson, who is elected by the members from among their number.

(c) REVIEW.—The Advisory Committee shall review and make recommendations to the Secretary on—

(1) the implementation of programs and activities under this title;

(2) the safety, economical, and environmental consequences of technologies for the production, distribution, delivery, storage, or use of hydrogen energy and fuel cells; and

(3) the plan under section 802.

(d) RESPONSE.—

(1) CONSIDERATION OF RECOMMENDATIONS.—The Secretary shall consider, but need not adopt, any recommendations of the Advisory Committee under subsection (c).

(2) BIENNIAL REPORT.—The Secretary shall transmit a biennial report to Congress describing any recommendations made by the Advisory Committee since the previous report. The report shall include a description of how the Secretary has implemented or plans to implement the recommendations, or an explanation of the reasons that a recommendation will not be implemented. The report shall be transmitted along with the President's budget proposal.

(e) SUPPORT.—The Secretary shall provide resources necessary in the judgment of the Secretary for the Advisory Committee to carry out its responsibilities under this title.

SEC. 806. EXTERNAL REVIEW.

(a) PLAN.—The Secretary shall enter into an arrangement with the National Academy of Sciences to review the plan prepared under section 802, which shall be completed not later than 6 months after the Academy receives the plan. Not later than 45 days after receiving the review, the Secretary shall transmit the review to Congress along with a plan to implement the review's recommendations or an explanation of the reasons that a recommendation will not be implemented.

(b) ADDITIONAL REVIEW.—The Secretary shall enter into an arrangement with the National Academy of Sciences under which the Academy will review the programs under section 803 during the fourth year following the date of enactment of this Act. The Academy's review shall include the research priorities and technical milestones, and evaluate the progress toward achieving them. The review shall be completed not later than 5 years after the date of enactment of this Act. Not later than 45 days after receiving the review, the Secretary shall transmit the review to Congress along with a plan to implement the review's recommendations or an explanation for the reasons that a recommendation will not be implemented.

SEC. 807. MISCELLANEOUS PROVISIONS.

(a) REPRESENTATION.—The Secretary may represent the United States interests with respect to activities and programs under this title, in coordination with the Department of

Transportation, the National Institute of Standards and Technology, and other relevant Federal agencies, before governments and nongovernmental organizations including—

(1) other Federal, State, regional, and local governments and their representatives;

(2) industry and its representatives, including members of the energy and transportation industries; and

(3) in consultation with the Department of State, foreign governments and their representatives including international organizations.

(b) REGULATORY AUTHORITY.—Nothing in this title shall be construed to alter the regulatory authority of the Department.

SEC. 808. SAVINGS CLAUSE.

Nothing in this title shall be construed to affect the authority of the Secretary of Transportation that may exist prior to the date of enactment of this Act with respect to—

(1) research into, and regulation of, hydrogen-powered vehicles fuel systems integrity, standards, and safety under subtitle VI of title 49, United States Code;

(2) regulation of hazardous materials transportation under chapter 51 of title 49, United States Code;

(3) regulation of pipeline safety under chapter 601 of title 49, United States Code;

(4) encouragement and promotion of research, development, and deployment activities relating to advanced vehicle technologies under section 5506 of title 49, United States Code;

(5) regulation of motor vehicle safety under chapter 301 of title 49, United States Code;

(6) automobile fuel economy under chapter 329 of title 49, United States Code; or

(7) representation of the interests of the United States with respect to the activities and programs under the authority of title 49, United States Code.

SEC. 809. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Secretary to carry out this title, in addition to any amounts made available for these purposes under other Acts—

(1) $273,500,000 for fiscal year 2004;

(2) $375,000,000 for fiscal year 2005;

(3) $450,000,000 for fiscal year 2006;

(4) $500,000,000 for fiscal year 2007; and

(5) $550,000,000 for fiscal year 2008.

TITLE IX—RESEARCH AND DEVELOPMENT

SEC. 901. GOALS.

(a) IN GENERAL.—The Secretary shall conduct a balanced set of programs of energy research, development, demonstration, and commercial application to support Federal energy policy and programs by the Department. Such programs shall be focused on—

(1) increasing the efficiency of all energy intensive sectors through conservation and improved technologies;

(2) promoting diversity of energy supply;

(3) decreasing the Nation's dependence on foreign energy supplies;

(4) improving United States energy security; and

(5) decreasing the environmental impact of energy-related activities.

(b) GOALS.—The Secretary shall publish measurable 5-year cost and performance-based goals with each annual budget submission in at least the following areas:

(1) Energy efficiency for buildings, energy-consuming industries, and vehicles.

(2) Electric energy generation (including distributed generation), transmission, and storage.

(3) Renewable energy technologies including wind power, photovoltaics, solar thermal systems, geothermal energy, hydrogen-fueled systems, biomass-based systems, biofuels, and hydropower.

(4) Fossil energy including power generation, onshore and offshore oil and gas resource recovery, and transportation.

(5) Nuclear energy including programs for existing and advanced reactors and education of future specialists.

(c) PUBLIC COMMENT.—The Secretary shall provide mechanisms for input on the annually published goals from industry, university, and other public sources.

(d) EFFECT OF GOALS.—

(1) NO NEW AUTHORITY OR REQUIREMENT.—Nothing in subsection (a) or the annually published goals shall—

(A) create any new—

(i) authority for any Federal agency; or

(ii) requirement for any other person;

(B) be used by a Federal agency to support the establishment of regulatory standards or regulatory requirements; or

(C) alter the authority of the Secretary to make grants or other awards.

(2) NO LIMITATION.—Nothing in this subsection shall be construed to limit the authority of the Secretary to impose conditions on grants or other awards based on the goals in subsection (a) or any subsequent modification thereto.

SEC. 902. DEFINITIONS.

For purposes of this title:

(1) DEPARTMENT.—The term ''Department'' means the Department of Energy.

(2) DEPARTMENTAL MISSION.—The term ''departmental mission'' means any of the functions vested in the Secretary of Energy by the Department of Energy Organization Act (42 U.S.C. 7101 et seq.) or other law.

(3) INSTITUTION OF HIGHER EDUCATION.—The term ''institution of higher education'' has the meaning given that term in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)).

(4) NATIONAL LABORATORY.—The term ''National Laboratory'' means any of the following laboratories owned by the Department:

(A) Ames Laboratory.

(B) Argonne National Laboratory.

(C) Brookhaven National Laboratory.

(D) Fermi National Accelerator Laboratory.

(E) Idaho National Engineering and Environmental Laboratory.

(F) Lawrence Berkeley National Laboratory.

(G) Lawrence Livermore National Laboratory.

(H) Los Alamos National Laboratory.

(I) National Energy Technology Laboratory.

(J) National Renewable Energy Laboratory.

(K) Oak Ridge National Laboratory.

(L) Pacific Northwest National Laboratory.

(M) Princeton Plasma Physics Laboratory.

(N) Sandia National Laboratories.

(O) Stanford Linear Accelerator Center.

(P) Thomas Jefferson National Accelerator Facility.

(5) NONMILITARY ENERGY LABORATORY.—The term ''nonmilitary energy laboratory'' means the laboratories listed in paragraph (4), except for those listed in subparagraphs (G), (H), and (N).

(6) SECRETARY.—The term ''Secretary'' means the Secretary of Energy.

(7) SINGLE-PURPOSE RESEARCH FACILITY.—The term ''single-purpose research facility'' means any of the primarily single-purpose entities owned by the Department or any other organization of the Department designated by the Secretary.

Subtitle A—Energy Efficiency

SEC. 904. ENERGY EFFICIENCY.

(a) IN GENERAL.—The following sums are authorized to be appropriated to the Secretary for energy efficiency and conservation research, development, demonstration, and commercial application activities, including activities authorized under this subtitle:

(1) For fiscal year 2004, $616,000,000.

(2) For fiscal year 2005, $695,000,000.

(3) For fiscal year 2006, $772,000,000.

(4) For fiscal year 2007, $865,000,000.

(5) For fiscal year 2008, $920,000,000.

(b) ALLOCATIONS.—From amounts authorized under subsection (a), the following sums are authorized:

(1) For activities under section 905—

(A) for fiscal year 2004, $20,000,000;

(B) for fiscal year 2005, $30,000,000;

(C) for fiscal year 2006, $50,000,000;

(D) for fiscal year 2007, $50,000,000; and

(E) for fiscal year 2008, $50,000,000.

(2) For activities under section 907—

(A) for fiscal year 2004, $4,000,000; and

(B) for each of fiscal years 2005 through 2008, $7,000,000.

(3) For activities under section 908—

(A) for fiscal year 2004, $20,000,000;

(B) for fiscal year 2005, $25,000,000;

(C) for fiscal year 2006, $30,000,000;

(D) for fiscal year 2007, $35,000,000; and

(E) for fiscal year 2008, $40,000,000.

(4) For activities under section 909, $2,000,000 for each of fiscal years 2005 through 2008.

(c) EXTENDED AUTHORIZATION.—There are authorized to be appropriated to the Secretary for activities under section 905, $50,000,000 for each of fiscal years 2009 through 2013.

(d) LIMITATION ON USE OF FUNDS.—None of the funds authorized to be appropriated under this section may be used for—

(1) the issuance and implementation of energy efficiency regulations;

(2) the Weatherization Assistance Program under part A of title IV of the Energy Conservation and Production Act (42 U.S.C. 6861 et seq.);

(3) the State Energy Program under part D of title III of the Energy Policy and Conservation Act (42 U.S.C. 6321 et seq.); or

(4) the Federal Energy Management Program under part 3 of title V of the National Energy Conservation Policy Act (42 U.S.C. 8251 et seq.).

SEC. 905. NEXT GENERATION LIGHTING INITIATIVE.

(a) IN GENERAL.—The Secretary shall carry out a Next Generation Lighting Initiative in accordance with this section to support research, development, demonstration, and commercial application activities related to advanced solid-state lighting technologies based on white light emitting diodes.

(b) OBJECTIVES.—The objectives of the initiative shall be to develop advanced solid-state organic and inorganic lighting technologies based on white light emitting diodes that, compared to incandescent and fluorescent lighting technologies, are longer lasting; more energy-efficient; and cost-competitive, and have less environmental impact.

(c) INDUSTRY ALLIANCE.—The Secretary shall, not later than 3 months after the date of enactment of this section, competitively select an Industry Alliance to represent participants that are private, for-profit firms which, as a group, are broadly representative of United States solid state lighting research, development, infrastructure, and manufacturing expertise as a whole.

(d) RESEARCH.—

(1) IN GENERAL.—The Secretary shall carry out the research activities of the Next Generation Lighting Initiative through competitively awarded grants to researchers, including Industry Alliance participants, National Laboratories, and institutions of higher education.

(2) ASSISTANCE FROM THE INDUSTRY ALLIANCE.—The Secretary shall annually solicit from the Industry Alliance—

(A) comments to identify solid-state lighting technology needs;

(B) assessment of the progress of the Initiative's research activities; and

(C) assistance in annually updating solid-state lighting technology roadmaps.

(3) AVAILABILITY OF INFORMATION AND ROADMAPS.—The information and roadmaps under paragraph (2) shall be available to the public and public response shall be solicited by the Secretary.

(e) DEVELOPMENT, DEMONSTRATION, AND COMMERCIAL APPLICATION.—The Secretary shall carry out a development, demonstration, and commercial application program for the Next Generation Lighting Initiative through competitively selected awards. The Secretary may give preference to participants of the Industry Alliance selected pursuant to subsection (c).

(f) INTELLECTUAL PROPERTY.—The Secretary may require, in accordance with the authorities provided in section 202(a)(ii) of title 35, United States Code, section 152 of the Atomic Energy Act of 1954 (42 U.S.C. 2182), and section 9 of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5908), that—

(1) for any new invention resulting from activities under subsection (d)—

(A) the Industry Alliance members that are active participants in research, development, and demonstration activities related to the advanced solid-state lighting technologies that are the subject of this section shall be granted first option to negotiate with the invention owner nonexclusive licenses and royalties for uses of the invention related to solid-state lighting on terms that are reasonable under the circumstances; and

(B)(i) for 1 year after a United States patent is issued for the invention, the patent holder shall not negotiate any license or royalty with any entity that is not a participant in the Industry Alliance described in subparagraph (A); and

(ii) during the year described in clause (i), the invention owner shall negotiate nonexclusive licenses and royalties in good faith with any interested participant in the Industry Alliance described in subparagraph (A); and

(2) such other terms as the Secretary determines are required to promote accelerated commercialization of inventions made under the Initiative.

(g) NATIONAL ACADEMY REVIEW.—The Secretary shall enter into an arrangement with the National Academy of Sciences to conduct periodic reviews of the Next Generation Lighting Initiative. The Academy shall review the research priorities, technical milestones, and plans for technology transfer and progress towards achieving them. The Secretary shall consider the results of such reviews in evaluating the information obtained under subsection (d)(2).

(h) DEFINITIONS.—As used in this section:

(1) ADVANCED SOLID-STATE LIGHTING.—The term ''advanced solid-state lighting'' means a semiconducting device package and delivery system that produces white light using externally applied voltage.

(2) RESEARCH.—The term ''research'' includes research on the technologies, materials, and manufacturing processes required for white light emitting diodes.

(3) INDUSTRY ALLIANCE.—The term ''Industry Alliance'' means an entity selected by the Secretary under subsection (c).

(4) WHITE LIGHT EMITTING DIODE.—The term ''white light emitting diode'' means a semiconducting package, utilizing either organic or inorganic materials, that produces white light using externally applied voltage.

SEC. 906. NATIONAL BUILDING PERFORMANCE INITIATIVE.

(a) INTERAGENCY GROUP.—Not later than 90 days after the date of enactment of this Act, the Director of the Office of Science and Technology Policy shall establish an interagency group to develop, in coordination with the advisory committee established under subsection (e), a National Building Performance Initiative (in this section referred to as the ''Initiative''). The interagency group shall be co-chaired by appropriate officials of the Department and the Department of Commerce, who shall jointly arrange for the provision of necessary administrative support to the group.

(b) INTEGRATION OF EFFORTS.—The Initiative, working with the National Institute of Building Sciences, shall integrate Federal, State, and voluntary private sector efforts to reduce the costs of construction, operation, maintenance, and renovation of commercial, industrial, institutional, and residential buildings.

(c) PLAN.—Not later than 1 year after the date of enactment of this Act, the interagency group shall submit to Congress a plan for carrying out the appropriate Federal role in the Initiative. The plan shall include—

(1) research, development, demonstration, and commercial application of systems and materials for new construction and retrofit relating to the building envelope and building system components; and

(2) the collection, analysis, and dissemination of research results and other pertinent information on enhancing building performance to industry, government entities, and the public.

(d) DEPARTMENT OF ENERGY ROLE.—Within the Federal portion of the Initiative, the Department shall be the lead agency for all aspects of building performance related to use and conservation of energy.

(e) ADVISORY COMMITTEE.—

(1) ESTABLISHMENT.—The Secretary, in consultation with the Secretary of Commerce and the Director of the Office of Science and Technology Policy, shall establish an advisory committee to—

(A) analyze and provide recommendations on potential private sector roles and participation in the Initiative; and

(B) review and provide recommendations on the plan described in subsection (c).

(2) MEMBERSHIP.—Membership of the advisory committee shall include representatives with a broad range of appropriate expertise, including expertise in—

(A) building research and technology;

(B) architecture, engineering, and building materials and systems; and

(C) the residential, commercial, and industrial sectors of the construction industry.

(f) CONSTRUCTION.—Nothing in this section provides any Federal agency with new authority to regulate building performance.

SEC. 907. SECONDARY ELECTRIC VEHICLE BATTERY USE PROGRAM.

(a) DEFINITIONS.—For purposes of this section:

(1) ASSOCIATED EQUIPMENT.—The term ''associated equipment'' means equipment located where the batteries will be used that is necessary to enable the use of the energy stored in the batteries.

(2) BATTERY.—The term 'battery'' means an energy storage device that previously has been used to provide motive power in a vehicle powered in whole or in part by electricity.

(b) PROGRAM.—The Secretary shall establish and conduct a research, development, demonstration, and commercial application program for the secondary use of batteries if the Secretary finds that there are sufficient numbers of such batteries to support the program. The program shall be—

(1) designed to demonstrate the use of batteries in secondary applications, including utility and commercial power storage and power quality;

(2) structured to evaluate the performance, including useful service life and costs, of such batteries in field operations, and the necessary supporting infrastructure, including reuse and disposal of batteries; and

(3) coordinated with ongoing secondary battery use programs at the National Laboratories and in industry.

(c) SOLICITATION.—Not later than 180 days after the date of enactment of this Act, if the Secretary finds under subsection (b) that there are sufficient numbers of batteries to support the program, the Secretary shall solicit proposals to demonstrate the secondary use of batteries and associated equipment and supporting infrastructure in geographic locations throughout the United States. The Secretary may make additional solicitations for proposals if the Secretary determines that such solicitations are necessary to carry out this section.

(d) SELECTION OF PROPOSALS.—

(1) IN GENERAL.—The Secretary shall, not later than 90 days after the closing date established by the Secretary for receipt of proposals under subsection (c), select up to 5 proposals which may receive financial assistance under this section, subject to the availability of appropriations.

(2) DIVERSITY; ENVIRONMENTAL EFFECT.—In selecting proposals, the Secretary shall consider diversity of battery type, geographic and climatic diversity, and life-cycle environmental effects of the approaches.

(3) LIMITATION.—No 1 project selected under this section shall receive more than 25 percent of the funds authorized for the program under this section.

(4) OPTIMIZATION OF FEDERAL RESOURCES.—The Secretary shall consider the extent of involvement of State or local government and other persons in each demonstration project to optimize use of Federal resources.

(5) OTHER CRITERIA.—The Secretary may consider such other criteria as the Secretary considers appropriate.

(e) CONDITIONS.—The Secretary shall require that—

(1) relevant information be provided to the Department, the users of the batteries, the proposers, and the battery manufacturers;

(2) the proposer provide at least 50 percent of the costs associated with the proposal; and

(3) the proposer provide to the Secretary such information regarding the disposal of the batteries as the Secretary may require to ensure that the proposer disposes of the batteries in accordance with applicable law.

SEC. 908. ENERGY EFFICIENCY SCIENCE INITIATIVE.

(a) ESTABLISHMENT.—The Secretary shall establish an Energy Efficiency Science Initiative to be managed by the Assistant Secretary in the Department with responsibility for energy conservation under section 203(a)(9) of the Department of Energy Organization Act (42 U.S.C. 7133(a)(9)), in consultation with the Director of the Office of Science, for grants to be competitively awarded and subject to peer review for research relating to energy efficiency.

(b) REPORT.—The Secretary shall submit to Congress, along with the President's annual budget request under section 1105(a) of title 31, United States Code, a report on the activities of the Energy Efficiency Science Initiative, including a description of the process used to award the funds and an explanation of how the research relates to energy efficiency.

SEC. 909. ELECTRIC MOTOR CONTROL TECHNOLOGY.

The Secretary shall conduct a research, development, demonstration, and commercial application program on advanced control devices to improve the energy efficiency of

electric motors used in heating, ventilation, air conditioning, and comparable systems.

SEC. 910. ADVANCED ENERGY TECHNOLOGY TRANSFER CENTERS.

(a) GRANTS.—Not later than 18 months after the date of enactment of this Act, the Secretary shall make grants to nonprofit institutions, State and local governments, or universities (or consortia thereof), to establish a geographically dispersed network of Advanced Energy Technology Transfer Centers, to be located in areas the Secretary determines have the greatest need of the services of such Centers.

(b) ACTIVITIES.—

(1) IN GENERAL.—Each Center shall operate a program to encourage demonstration and commercial application of advanced energy methods and technologies through education and outreach to building and industrial professionals, and to other individuals and organizations with an interest in efficient energy use.

(2) ADVISORY PANEL.—Each Center shall establish an advisory panel to advise the Center on how best to accomplish the activities under paragraph (1).

(c) APPLICATION.—A person seeking a grant under this section shall submit to the Secretary an application in such form and containing such information as the Secretary may require. The Secretary may award a grant under this section to an entity already in existence if the entity is otherwise eligible under this section.

(d) SELECTION CRITERIA.—The Secretary shall award grants under this section on the basis of the following criteria, at a minimum:

(1) The ability of the applicant to carry out the activities in subsection (b).

(2) The extent to which the applicant will coordinate the activities of the Center with other entities, such as State and local governments, utilities, and educational and research institutions.

(e) MATCHING FUNDS.—The Secretary shall require a non-Federal matching requirement of at least 50 percent of the costs of establishing and operating each Center.

(f) ADVISORY COMMITTEE.—The Secretary shall establish an advisory committee to advise the Secretary on the establishment of Centers under this section. The advisory committee shall be composed of individuals with expertise in the area of advanced energy methods and technologies, including at least 1 representative from—

(1) State or local energy offices;

(2) energy professionals;

(3) trade or professional associations;

(4) architects, engineers, or construction professionals;

(5) manufacturers;

(6) the research community; and

(7) nonprofit energy or environmental organizations.

(g) DEFINITIONS.—For purposes of this section:

(1) ADVANCED ENERGY METHODS AND TECHNOLOGIES.—The term ''advanced energy methods and technologies'' means all methods and technologies that promote energy efficiency and conservation, including distributed generation technologies, and life-cycle analysis of energy use.

(2) CENTER.—The term ''Center'' means an Advanced Energy Technology Transfer Center established pursuant to this section.

(3) DISTRIBUTED GENERATION.—The term ''distributed generation'' means an electric power generation facility that is designed to serve retail electric consumers at or near the facility site.

Subtitle B—Distributed Energy and Electric Energy Systems

SEC. 911. DISTRIBUTED ENERGY AND ELECTRIC ENERGY SYSTEMS.

(a) IN GENERAL.—The following sums are authorized to be appropriated to the Secretary for distributed energy and electric energy systems activities, including activities authorized under this subtitle:

(1) For fiscal year 2004, $190,000,000.

(2) For fiscal year 2005, $200,000,000.

(3) For fiscal year 2006, $220,000,000.

(4) For fiscal year 2007, $240,000,000.

(5) For fiscal year 2008, $260,000,000.

(b) MICRO-COGENERATION ENERGY TECHNOLOGY.—From amounts authorized under subsection (a), $20,000,000 for each of fiscal years 2004 and 2005 is authorized for activities under section 914.

SEC. 912. HYBRID DISTRIBUTED POWER SYSTEMS.

(a) REQUIREMENT.—Not later than 1 year after the date of enactment of this Act, the Secretary shall develop and transmit to Congress a strategy for a comprehensive research, development, demonstration, and commercial application program to develop hybrid distributed power systems that combine—

(1) 1 or more renewable electric power generation technologies of 10 megawatts or less located near the site of electric energy use; and

(2) nonintermittent electric power generation technologies suitable for use in a distributed power system.

(b) CONTENTS.—The strategy shall—

(1) identify the needs best met with such hybrid distributed power systems and the technological barriers to the use of such systems;

(2) provide for the development of methods to design, test, integrate into systems, and operate such hybrid distributed power systems;

(3) include, as appropriate, research, development, demonstration, and commercial application on related technologies needed for the adoption of such hybrid distributed power systems, including energy storage devices and environmental control technologies;

(4) include research, development, demonstration, and commercial application of interconnection technologies for communications and controls of distributed generation architectures, particularly technologies promoting real-time response to power market information and physical conditions on the electrical grid; and

(5) describe how activities under the strategy will be integrated with other research, development, demonstration, and commercial application activities supported by the Department related to electric power technologies.

SEC. 913. HIGH POWER DENSITY INDUSTRY PROGRAM.

The Secretary shall establish a comprehensive research, development, demonstration, and commercial application program to improve energy efficiency of high power density facilities, including data centers, server farms, and telecommunications facilities. Such program shall consider technologies that provide significant improvement in thermal controls, metering, load management, peak load reduction, or the efficient cooling of electronics.

SEC. 914. MICRO-COGENERATION ENERGY TECHNOLOGY.

The Secretary shall make competitive, merit-based grants to consortia for the development of micro-cogeneration energy technology. The consortia shall explore—

(1) the use of small-scale combined heat and power in residential heating appliances; and

(2) the use of excess power to operate other appliances within the residence and supply excess generated power to the power grid.

SEC. 915. DISTRIBUTED ENERGY TECHNOLOGY DEMONSTRATION PROGRAM.

The Secretary, within the sums authorized under section 911(a), may provide financial assistance to coordinating consortia of interdisciplinary participants for demonstrations designed to accelerate the utilization of distributed energy technologies, such as fuel cells, microturbines, reciprocating engines, thermally activated technologies, and combined heat and power systems, in highly energy intensive commercial applications.

SEC. 916. RECIPROCATING POWER.

The Secretary shall conduct a research, development, and demonstration program regarding fuel system optimization and emissions reduction after-treatment technologies for industrial reciprocating engines. Such after-treatment technologies shall use processes that reduce emissions by recirculating exhaust gases and shall be designed to be retrofitted to any new or existing diesel or natural gas engine used for power generation, peaking power generation, combined heat and power, or compression.

Subtitle C—Renewable Energy

SEC. 918. RENEWABLE ENERGY.

(a) IN GENERAL.—The following sums are authorized to be appropriated to the Secretary for renewable energy research, development, demonstration, and commercial application activities, including activities authorized under this subtitle:

(1) For fiscal year 2004, $480,000,000.

(2) For fiscal year 2005, $550,000,000.

(3) For fiscal year 2006, $610,000,000.

(4) For fiscal year 2007, $659,000,000.

(5) For fiscal year 2008, $710,000,000.

(b) BIOENERGY.—From the amounts authorized under subsection (a), the following sums are authorized to be appropriated to carry out section 919:

(1) For fiscal year 2004, $135,425,000.

(2) For fiscal year 2005, $155,600,000.

(3) For fiscal year 2006, $167,650,000.

(4) For fiscal year 2007, $180,000,000.

(5) For fiscal year 2008, $192,000,000.

(c) CONCENTRATING SOLAR POWER.—From amounts authorized under subsection (a), the following sums are authorized to be appropriated to carry out section 920:

(1) For fiscal year 2004, $20,000,000.

(2) For fiscal year 2005, $40,000,000.

(3) For each of fiscal years 2006, 2007 and 2008, $50,000,000.

(d) PUBLIC BUILDINGS.—From the amounts authorized under subsection (a), $30,000,000 for each of the fiscal years 2004 through 2008 are authorized to be appropriated to carry out section 922.

(e) LIMITS ON USE OF FUNDS.—

(1) NO FUNDS FOR RENEWABLE SUPPORT AND IMPLEMENTATION.—None of the funds authorized to be appropriated under this section may be used for Renewable Support and Implementation.

(2) GRANTS.—Of the funds authorized under subsection (b), not less than $5,000,000 for each fiscal year shall be made available for grants to Historically Black Colleges and Universities, Tribal Colleges, and Hispanic-Serving Institutions.

(3) REGIONAL FIELD VERIFICATION PROGRAM.—Of the funds authorized under subsection (a), not less than $4,000,000 for each fiscal year shall be made available for the Regional Field Verification Program of the Department.

(4) OFF-STREAM PUMPED STORAGE HYDROPOWER.—Of the funds authorized under subsection (a), such sums as may be necessary shall be made available for demonstration projects of off-stream pumped storage hydropower.

(f) CONSULTATION.—In carrying out this subtitle, the Secretary, in consultation with the Secretary of Agriculture, shall demonstrate the use of advanced wind power technology, including combined use with coal gasification; biomass; geothermal energy systems; and other renewable energy technologies to assist in delivering electricity to rural and remote locations.

SEC. 919. BIOENERGY PROGRAMS.

(a) DEFINITIONS.—For the purposes of this section:

(1) The term ''agricultural byproducts'' includes waste products, including poultry fat and poultry waste.

(2) The term ''cellulosic biomass'' means any portion of a crop containing lignocellulose or hemicellulose, including barley grain, grapeseed, forest thinnings, rice bran, rice hulls, rice straw, soybean matter, and sugarcane bagasse, or any crop grown specifically for the purpose of producing cellulosic feedstocks.

(b) PROGRAM.—The Secretary shall conduct a program of research, development, demonstration, and commercial application for bioenergy, including—

(1) biopower energy systems;

(2) biofuels;

(3) bio-based products;

(4) integrated biorefineries that may produce biopower, biofuels, and bio-based products;

(5) cross-cutting research and development in feedstocks and enzymes; and

(6) economic analysis.

(c) BIOFUELS AND BIO-BASED PRODUCTS.—The goals of the biofuels and bio-based products programs shall be to develop, in partnership with industry—

(1) advanced biochemical and thermochemical conversion technologies capable of making biofuels that are price-competitive with gasoline or diesel in either internal combustion engines or fuel cell-powered vehicles, and bio-based products from a variety of feedstocks, including grains, cellulosic biomass, and other agricultural byproducts; and

(2) advanced biotechnology processes capable of making biofuels and bio-based products with emphasis on development of biorefinery technologies using enzyme-based processing systems.

SEC. 920. CONCENTRATING SOLAR POWER RESEARCH AND DEVELOPMENT PROGRAM.

(a) IN GENERAL.—The Secretary shall conduct a program of research and development to evaluate the potential of concentrating solar power for hydrogen production, including cogeneration approaches for both hydrogen and electricity. Such program shall take advantage of existing facilities to the extent possible and shall include—

(1) development of optimized technologies that are common to both electricity and hydrogen production;

(2) evaluation of thermochemical cycles for hydrogen production at the temperatures attainable with concentrating solar power;

(3) evaluation of materials issues for the thermochemical cycles described in paragraph (2);

(4) system architectures and economics studies; and

(5) coordination with activities in the Advanced Reactor Hydrogen Cogeneration Project on high temperature materials, thermochemical cycles, and economic issues.

(b) ASSESSMENT.—In carrying out the program under this section, the Secretary shall—

(1) assess conflicting guidance on the economic potential of concentrating solar power for electricity production received from the National Research Council report entitled ''Renewable Power Pathways: A Review of the U.S. Department of Energy's Renewable Energy Programs'' in 2000 and subsequent Department-funded reviews of that report; and

(2) provide an assessment of the potential impact of the technology before, or concurrent with, submission of the fiscal year 2006 budget.

(c) REPORT.—Not later than 5 years after the date of enactment of this Act, the Secretary shall provide a report to Congress on the economic and technical potential for electricity or hydrogen production, with or without cogeneration, with concentrating solar power, including the economic and technical feasibility of potential construction of a pilot demonstration facility suitable for commercial production of electricity or hydrogen from concentrating solar power.

SEC. 921. MISCELLANEOUS PROJECTS.

The Secretary may conduct research, development, demonstration, and commercial application programs for—

(1) ocean energy, including wave energy; and

(2) the combined use of renewable energy technologies with one another and with other energy technologies, including the combined use of wind power and coal gasification technologies.

SEC. 922. RENEWABLE ENERGY IN PUBLIC BUILDINGS.

(a) DEMONSTRATION AND TECHNOLOGY TRANSFER PROGRAM.—The Secretary shall establish a program for the demonstration of innovative technologies for solar and other renewable energy sources in buildings owned or operated by a State or local government, and for the dissemination of information resulting from such demonstration to interested parties.

(b) LIMIT ON FEDERAL FUNDING.—The Secretary shall provide under this section no more than 40 percent of the incremental costs of the solar or other renewable energy source project funded.

(c) REQUIREMENT.—As part of the application for awards under this section, the Secretary shall require all applicants—

(1) to demonstrate a continuing commitment to the use of solar and other renewable energy sources in buildings they own or operate; and

(2) to state how they expect any award to further their transition to the significant use of renewable energy.

SEC. 923. STUDY OF MARINE RENEWABLE ENERGY OPTIONS.

(a) IN GENERAL.—The Secretary shall enter into an arrangement with the National Academy of Sciences to conduct a study on—

(1) the feasibility of various methods of renewable generation of energy from the ocean, including energy from waves, tides, currents, and thermal gradients; and

(2) the research, development, demonstration, and commercial application activities required to make marine renewable energy generation competitive with other forms of electricity generation.

(b) TRANSMITTAL.—Not later than 1 year after the date of enactment of this Act, the Secretary shall transmit the study to Congress along with the Secretary's recommendations for implementing the results of the study.

Subtitle D—Nuclear Energy

SEC. 924. NUCLEAR ENERGY.

(a) CORE PROGRAMS.—The following sums are authorized to be appropriated to the Secretary for nuclear energy research, development, demonstration, and commercial application activities, including activities authorized under this subtitle, other than those described in subsection (b):

(1) For fiscal year 2004, $273,000,000.

(2) For fiscal year 2005, $355,000,000.

(3) For fiscal year 2006, $430,000,000.

(4) For fiscal year 2007, $455,000,000.

(5) For fiscal year 2008, $545,000,000.

(b) NUCLEAR INFRASTRUCTURE SUPPORT.—The following sums are authorized to be appropriated to the Secretary for activities under section 925(e):

(1) For fiscal year 2004, $125,000,000.

(2) For fiscal year 2005, $130,000,000.

(3) For fiscal year 2006, $135,000,000.

(4) For fiscal year 2007, $140,000,000.

(5) For fiscal year 2008, $145,000,000.

(c) ALLOCATIONS.—From amounts authorized under subsection (a), the following sums are authorized:

(1) For activities under section 926—

(A) for fiscal year 2004, $140,000,000;

(B) for fiscal year 2005, $145,000,000;

(C) for fiscal year 2006, $150,000,000;

(D) for fiscal year 2007, $155,000,000; and

(E) for fiscal year 2008, $275,000,000.

(2) For activities under section 927—

(A) for fiscal year 2004, $35,200,000;

(B) for fiscal year 2005, $44,350,000;

(C) for fiscal year 2006, $49,200,000;

(D) for fiscal year 2007, $54,950,000; and

(E) for fiscal year 2008, $60,000,000.

(3) For activities under section 929, for each of fiscal years 2004 through 2008, $6,000,000.

(d) LIMITATION ON USE OF FUNDS.—None of the funds authorized under this section may be used for decommissioning the Fast Flux Test Facility.

SEC. 925. NUCLEAR ENERGY RESEARCH AND DEVELOPMENT PROGRAMS.

(a) NUCLEAR ENERGY RESEARCH INITIATIVE.—The Secretary shall carry out a Nuclear Energy Research Initiative for research and development related to nuclear energy.

(b) NUCLEAR ENERGY PLANT OPTIMIZATION PROGRAM.—The Secretary shall carry out a Nuclear Energy Plant Optimization Program to support research and development activities addressing reliability, availability, productivity, component aging, safety, and security of existing nuclear power plants.

(c) NUCLEAR POWER 2010 PROGRAM.—The Secretary shall carry out a Nuclear Power 2010 Program, consistent with recommendations in the October 2001 report entitled ''A Roadmap to Deploy New Nuclear Power Plants in the United States by 2010'' issued by the Nuclear Energy Research Advisory Committee of the Department. Whatever type of reactor is chosen for the hydrogen cogeneration project under subtitle C of title VI, that type shall not be addressed in the Program under this section. The Program shall include—

(1) support for first-of-a-kind engineering design and certification expenses of advanced nuclear power plant designs, which offer improved safety and economics over current conventional plants and the promise of near-term to medium-term commercial deployment;

(2) action by the Secretary to encourage domestic power companies to install new nuclear plant capacity as soon as possible;

(3) utilization of the expertise and capabilities of industry, universities, and National Laboratories in evaluation of advanced nuclear fuel cycles and fuels testing;

(4) consideration of proliferation-resistant passively-safe, small reactors suitable for long-term electricity production without refueling and suitable for use in remote installations;

(5) participation of international collaborators in research, development, design, and deployment efforts as appropriate and consistent with United States interests in nonproliferation of nuclear weapons;

(6) encouragement for university and industry participation; and

(7) selection of projects such as to strengthen the competitive position of the

domestic nuclear power industrial infrastructure.

(d) GENERATION IV NUCLEAR ENERGY SYSTEMS INITIATIVE.—The Secretary shall carry out a Generation IV Nuclear Energy Systems Initiative to develop an overall technology plan and to support research and development necessary to make an informed technical decision about the most promising candidates for eventual commercial application. The Initiative shall examine advanced proliferation-resistant and passively safe reactor designs, including designs that—

(1) are economically competitive with other electric power generation plants;

(2) have higher efficiency, lower cost, and improved safety compared to reactors in operation on the date of enactment of this Act;

(3) use fuels that are proliferation-resistant and have substantially reduced production of high-level waste per unit of output; and

(4) use improved instrumentation.

(e) NUCLEAR INFRASTRUCTURE SUPPORT.—The Secretary shall develop and implement a strategy for the facilities of the Office of Nuclear Energy, Science, and Technology and shall transmit a report containing the strategy along with the President's budget request to Congress for fiscal year 2006.

SEC. 926. ADVANCED FUEL CYCLE INITIATIVE.

(a) IN GENERAL.—The Secretary, through the Director of the Office of Nuclear Energy, Science, and Technology, shall conduct an advanced fuel recycling technology research and development program to evaluate proliferation-resistant fuel recycling and transmutation technologies that minimize environmental or public health and safety impacts as an alternative to aqueous reprocessing technologies deployed as of the date of enactment of this Act in support of evaluation of alternative national strategies for spent nuclear fuel and the Generation IV advanced reactor concepts, subject to annual review by the Secretary's Nuclear Energy Research Advisory Committee or other independent entity, as appropriate. Opportunities to enhance progress of the program through international cooperation should be sought.

(b) REPORTS.—The Secretary shall report on the activities of the advanced fuel recycling technology research and development program as part of the Department's annual budget submission.

SEC. 927. UNIVERSITY NUCLEAR SCIENCE AND ENGINEERING SUPPORT.

(a) ESTABLISHMENT.—The Secretary shall support a program to invest in human resources and infrastructure in the nuclear sciences and engineering and related fields (including health physics and nuclear and radiochemistry), consistent with departmental missions related to civilian nuclear research and development.

(b) DUTIES.—In carrying out the program under this section, the Secretary shall establish fellowship and faculty assistance programs, as well as provide support for fundamental research and encourage collaborative research among industry, National Laboratories, and universities through the Nuclear Energy Research Initiative. The Secretary is encouraged to support activities addressing the entire fuel cycle through involvement of both the Office of Nuclear Energy, Science, and Technology and the Office of Civilian Radioactive Waste Management. The Secretary shall support communication and outreach related to nuclear science, engineering, and nuclear waste management, consistent with interests of the United States in nonproliferation of nuclear weapons capabilities.

(c) STRENGTHENING UNIVERSITY RESEARCH AND TRAINING REACTORS AND ASSOCIATED INFRASTRUCTURE.—Activities under this section may include—

(1) converting research and training reactors currently using high-enrichment fuels to low-enrichment fuels, upgrading operational instrumentation, and sharing of reactors among institutions of higher education;

(2) providing technical assistance, in collaboration with the United States nuclear industry, in relicensing and upgrading research and training reactors as part of a student training program; and

(3) providing funding, through the Innovations in Nuclear Infrastructure and Education Program, for reactor improvements as part of a focused effort that emphasizes research, training, and education.

(d) UNIVERSITY NATIONAL LABORATORY INTERACTIONS.—The Secretary shall develop sabbatical fellowship and visiting scientist programs to encourage sharing of personnel between National Laboratories and universities.

(e) OPERATING AND MAINTENANCE COSTS.—Funding for a research project provided under this section may be used to offset a portion of the operating and maintenance costs of a research and training reactor at an institution of higher education used in the research project.

SEC. 928. SECURITY OF REACTOR DESIGNS.

The Secretary, through the Director of the Office of Nuclear Energy, Science, and Technology, shall conduct a research and development program on cost-effective technologies for increasing the safety of reactor designs from natural phenomena and the security of reactor designs from deliberate attacks.

SEC. 929. ALTERNATIVES TO INDUSTRIAL RADIOACTIVE SOURCES.

(a) STUDY.—The Secretary shall conduct a study and provide a report to Congress not later than August 1, 2004. The study shall—

(1) survey industrial applications of large radioactive sources, including well-logging sources;

(2) review current domestic and international Department, Department of Defense, Department of State, and commercial programs to manage and dispose of radioactive sources;

(3) discuss disposal options and practices for currently deployed or future sources and, if deficiencies are noted in existing disposal options or practices for either deployed or future sources, recommend options to remedy deficiencies; and

(4) develop a program plan for research and development to develop alternatives to large industrial sources that reduce safety, environmental, or proliferation risks to either workers using the sources or the public.

(b) PROGRAM.—The Secretary shall establish a research and development program to implement the program plan developed under subsection (a)(4). The program shall include miniaturized particle accelerators for well-logging or other industrial applications and portable accelerators for production of short-lived radioactive materials at an industrial site.

SEC. 930. GEOLOGICAL ISOLATION OF SPENT FUEL.

The Secretary shall conduct a study to determine the feasibility of deep borehole disposal of spent nuclear fuel and high-level radioactive waste. The study shall emphasize geological, chemical, and hydrological characterization of, and design of engineered structures for, deep borehole environments. Not later than 1 year after the date of enactment of this Act, the Secretary shall transmit the study to Congress.

Subtitle E—Fossil Energy

PART I—RESEARCH PROGRAMS

SEC. 931. FOSSIL ENERGY.

(a) IN GENERAL.—The following sums are authorized to be appropriated to the Secretary for fossil energy research, development, demonstration, and commercial application activities, including activities authorized under this part:

(1) For fiscal year 2004, $530,000,000.

(2) For fiscal year 2005, $556,000,000.

(3) For fiscal year 2006, $583,000,000.

(4) For fiscal year 2007, $611,000,000.

(5) For fiscal year 2008, $626,000,000.

(b) ALLOCATIONS.—From amounts authorized under subsection (a), the following sums are authorized:

(1) For activities under section 932(b)(2), $28,000,000 for each of the fiscal years 2004 through 2008.

(2) For activities under section 934—

(A) for fiscal year 2004, $12,000,000;

(B) for fiscal year 2005, $15,000,000; and

(C) for each of fiscal years 2006 through 2008, $20,000,000.

(3) For activities under section 935—

(A) for fiscal year 2004, $259,000,000;

(B) for fiscal year 2005, $272,000,000;

(C) for fiscal year 2006, $285,000,000;

(D) for fiscal year 2007, $298,000,000; and

(E) for fiscal year 2008, $308,000,000.

(4) For the Office of Arctic Energy under section 3197 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (42 U.S.C. 7144d), $25,000,000 for each of fiscal years 2004 through 2008.

(5) For activities under section 933, $4,000,000 for fiscal year 2004 and $2,000,000 for each of fiscal years 2005 through 2008.

(c) EXTENDED AUTHORIZATION.—There are authorized to be appropriated to the Secretary for the Office of Arctic Energy under section 3197 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (42 U.S.C. 7144d), $25,000,000 for each of fiscal years 2009 through 2012.

(d) LIMITS ON USE OF FUNDS.—

(1) NO FUNDS FOR CERTAIN PROGRAMS.—None of the funds authorized under this section may be used for Fossil Energy Environmental Restoration or Import/Export Authorization.

(2) INSTITUTIONS OF HIGHER EDUCATION.—Of the funds authorized under subsection (b)(2), not less than 20 percent of the funds appropriated for each fiscal year shall be dedicated to research and development carried out at institutions of higher education.

SEC. 932. OIL AND GAS RESEARCH PROGRAMS.

(a) OIL AND GAS RESEARCH.—The Secretary shall conduct a program of research, development, demonstration, and commercial application on oil and gas, including—

(1) exploration and production;

(2) gas hydrates;

(3) reservoir life and extension;

(4) transportation and distribution infrastructure;

(5) ultraclean fuels;

(6) heavy oil and oil shale;

(7) related environmental research; and

(8) compressed natural gas marine transport.

(b) FUEL CELLS.—

(1) IN GENERAL.—The Secretary shall conduct a program of research, development, demonstration, and commercial application on fuel cells for low-cost, high-efficiency, fuel-flexible, modular power systems.

(2) IMPROVED MANUFACTURING PRODUCTION AND PROCESSES.—The demonstrations under paragraph (1) shall include fuel cell technology for commercial, residential, and transportation applications, and distributed generation systems, utilizing improved manufacturing production and processes.

(c) NATURAL GAS AND OIL DEPOSITS REPORT.—Not later than 2 years after the date

of enactment of this Act, and every 2 years thereafter, the Secretary of the Interior, in consultation with other appropriate Federal agencies, shall transmit a report to Congress of the latest estimates of natural gas and oil reserves, reserves growth, and undiscovered resources in Federal and State waters off the coast of Louisiana and Texas.

(d) INTEGRATED CLEAN POWER AND ENERGY RESEARCH.—

(1) NATIONAL CENTER OR CONSORTIUM OF EXCELLENCE.—The Secretary shall establish a national center or consortium of excellence in clean energy and power generation, utilizing the resources of the existing Clean Power and Energy Research Consortium, to address the Nation's critical dependence on energy and the need to reduce emissions.

(2) PROGRAM.—The center or consortium shall conduct a program of research, development, demonstration, and commercial application on integrating the following focus areas:

(A) Efficiency and reliability of gas turbines for power generation.

(B) Reduction in emissions from power generation.

(C) Promotion of energy conservation issues.

(D) Effectively utilizing alternative fuels and renewable energy.

(E) Development of advanced materials technology for oil and gas exploration and utilization in harsh environments.

(F) Education on energy and power generation issues.

SEC. 933. TECHNOLOGY TRANSFER.

The Secretary shall establish a competitive program to award a contract to a nonprofit entity for the purpose of transferring technologies developed with public funds. The entity selected under this section shall have experience in offshore oil and gas technology research management, in the transfer of technologies developed with public funds to the offshore and maritime industry, and in management of an offshore and maritime industry consortium. The program consortium selected under section 942 shall not be eligible for selection under this section. When appropriate, the Secretary shall consider utilizing the entity selected under this section when implementing the activities authorized by section 975.

SEC. 934. RESEARCH AND DEVELOPMENT FOR COAL MINING TECHNOLOGIES.

(a) ESTABLISHMENT.—The Secretary shall carry out a program of research and development on coal mining technologies. The Secretary shall cooperate with appropriate Federal agencies, coal producers, trade associations, equipment manufacturers, institutions of higher education with mining engineering departments, and other relevant entities.

(b) PROGRAM.—The research and development activities carried out under this section shall—

(1) be guided by the mining research and development priorities identified by the Mining Industry of the Future Program and in the recommendations from relevant reports of the National Academy of Sciences on mining technologies;

(2) include activities exploring minimization of contaminants in mined coal that contribute to environmental concerns including development and demonstration of electromagnetic wave imaging ahead of mining operations;

(3) develop and demonstrate electromagnetic wave imaging and radar techniques for horizontal drilling in coal beds in order to increase methane recovery efficiency, prevent spoilage of domestic coal reserves, and minimize water disposal associated with methane extraction; and

(4) expand mining research capabilities at institutions of higher education.

SEC. 935. COAL AND RELATED TECHNOLOGIES PROGRAM.

(a) IN GENERAL.—In addition to the programs authorized under title IV, the Secretary shall conduct a program of technology research, development, demonstration, and commercial application for coal and power systems, including programs to facilitate production and generation of coal-based power through—

(1) innovations for existing plants;

(2) integrated gasification combined cycle;

(3) advanced combustion systems;

(4) turbines for synthesis gas derived from coal;

(5) carbon capture and sequestration research and development;

(6) coal-derived transportation fuels and chemicals;

(7) solid fuels and feedstocks;

(8) advanced coal-related research;

(9) advanced separation technologies; and

(10) a joint project for permeability enhancement in coals for natural gas production and carbon dioxide sequestration.

(b) COST AND PERFORMANCE GOALS.—In carrying out programs authorized by this section, the Secretary shall identify cost and performance goals for coal-based technologies that would permit the continued cost-competitive use of coal for electricity generation, as chemical feedstocks, and as transportation fuel in 2007, 2015, and the years after 2020. In establishing such cost and performance goals, the Secretary shall—

(1) consider activities and studies undertaken to date by industry in cooperation with the Department in support of such assessment;

(2) consult with interested entities, including coal producers, industries using coal, organizations to promote coal and advanced coal technologies, environmental organizations, and organizations representing workers;

(3) not later than 120 days after the date of enactment of this Act, publish in the Federal Register proposed draft cost and performance goals for public comments; and

(4) not later than 180 days after the date of enactment of this Act and every 4 years thereafter, submit to Congress a report describing final cost and performance goals for such technologies that includes a list of technical milestones as well as an explanation of how programs authorized in this section will not duplicate the activities authorized under the Clean Coal Power Initiative authorized under subtitle A of title IV.

SEC. 936. COMPLEX WELL TECHNOLOGY TESTING FACILITY.

The Secretary, in coordination with industry leaders in extended research drilling technology, shall establish a Complex Well Technology Testing Facility at the Rocky Mountain Oilfield Testing Center to increase the range of extended drilling technologies.

SEC. 937. FISCHER-TROPSCH DIESEL FUEL LOAN GUARANTEE PROGRAM.

(a) DEFINITION OF FISCHER-TROPSCH DIESEL FUEL.—In this section, the term ''Fischer-Tropsch diesel fuel'' means diesel fuel that—

(1) contains less than 10 parts per million sulfur; and

(2) is produced through the Fischer-Tropsch liquification process from coal or waste from coal that was mined in the United States.

(b) LOAN GUARANTEES.—

(1) ESTABLISHMENT OF PROGRAM.—The Secretary of Energy shall establish a program to provide guarantees of loans by private lending institutions for the construction of facilities for the production of Fischer-Tropsch diesel fuel and commercial byproducts of that production.

(2) REQUIREMENTS.—The Secretary may provide a loan guarantee under paragraph (1) if—

(A) without a loan guarantee, credit is not available to the applicant under reasonable terms or conditions sufficient to finance the construction of a facility described in paragraph (1);

(B) the prospective earning power of the applicant and the character and value of the security pledged provide a reasonable assurance of repayment of the loan to be guaranteed in accordance with the terms of the loan; and

(C) the loan bears interest at a rate determined by the Secretary to be reasonable, taking into account the current average yield on outstanding obligations of the United States with remaining periods of maturity comparable to the maturity of the loan.

(3) CRITERIA.—In selecting recipients of loan guarantees from among applicants, the Secretary shall give preference to proposals that—

(A) meet all Federal and State permitting requirements;

(B) are most likely to be successful; and

(C) are located in local markets that have the greatest need for the facility because of—

(i) the availability of domestic coal or coal waste for conversion; or

(ii) a projected high level of demand for Fischer-Tropsch diesel fuel or other commercial byproducts of the facility.

(4) MATURITY.—A loan guaranteed under paragraph (1) shall have a maturity of not more than 25 years.

(5) TERMS AND CONDITIONS.—The loan agreement for a loan guaranteed under paragraph (1) shall provide that no provision of the loan may be amended or waived without the consent of the Secretary.

(6) GUARANTEE FEE.—A recipient of a loan guarantee under paragraph (1) shall pay the Secretary an amount to be determined by the Secretary to be sufficient to cover the administrative costs of the Secretary relating to the loan guarantee.

(7) FULL FAITH AND CREDIT.—

(A) IN GENERAL.—The full faith and credit of the United States is pledged to payment of loan guarantees made under this section.

(B) CONCLUSIVE EVIDENCE.—Any loan guarantee made by the Secretary under this section shall be conclusive evidence of the eligibility of the loan for the guarantee with respect to principal and interest.

(C) VALIDITY.—The validity of a loan guarantee shall be incontestable in the hands of a holder of the guaranteed loan.

(8) REPORTS.—Until each guaranteed loan under this section is repaid in full, the Secretary shall annually submit to Congress a report on the activities of the Secretary under this section.

(9) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this section.

(10) TERMINATION OF AUTHORITY.—The authority of the Secretary to issue a new loan guarantee under paragraph (1) terminates on the date that is 5 years after the date of enactment of this Act.

PART II—ULTRA-DEEPWATER AND UNCONVENTIONAL NATURAL GAS AND OTHER PETROLEUM RESOURCES

SEC. 941. PROGRAM AUTHORITY.

(a) IN GENERAL.—The Secretary shall carry out a program under this part of research, development, demonstration, and commercial application of technologies for ultra-deepwater and unconventional natural gas and other petroleum resource exploration and production, including addressing the technology challenges for small producers, safe operations, and environmental mitigation (including reduction of greenhouse gas emissions and sequestration of carbon).

(b) PROGRAM ELEMENTS.—The program under this part shall address the following areas, including improving safety and minimizing environmental impacts of activities within each area:

(1) Ultra-deepwater technology, including drilling to formations in the Outer Continental Shelf to depths greater than 15,000 feet.

(2) Ultra-deepwater architecture.

(3) Unconventional natural gas and other petroleum resource exploration and production technology, including the technology challenges of small producers.

(c) LIMITATION ON LOCATION OF FIELD ACTIVITIES.—Field activities under the program under this part shall be carried out only—

(1) in—

(A) areas in the territorial waters of the United States not under any Outer Continental Shelf moratorium as of September 30, 2002;

(B) areas onshore in the United States on public land administered by the Secretary of the Interior available for oil and gas leasing, where consistent with applicable law and land use plans; and

(C) areas onshore in the United States on State or private land, subject to applicable law; and

(2) with the approval of the appropriate Federal or State land management agency or private land owner.

(d) RESEARCH AT NATIONAL ENERGY TECHNOLOGY LABORATORY.—The Secretary, through the National Energy Technology Laboratory, shall carry out research complementary to research under subsection (b).

(e) CONSULTATION WITH SECRETARY OF THE INTERIOR.—In carrying out this part, the Secretary shall consult regularly with the Secretary of the Interior.

SEC. 942. ULTRA-DEEPWATER PROGRAM.

(a) IN GENERAL.—The Secretary shall carry out the activities under section 941(a), to maximize the use of the ultra-deepwater natural gas and other petroleum resources of the United States by increasing the supply of such resources, through reducing the cost and increasing the efficiency of exploration for and production of such resources, while improving safety and minimizing environmental impacts.

(b) ROLE OF THE SECRETARY.—The Secretary shall have ultimate responsibility for, and oversight of, all aspects of the program under this section.

(c) ROLE OF THE PROGRAM CONSORTIUM.—

(1) IN GENERAL.—The Secretary may contract with a consortium to—

(A) manage awards pursuant to subsection (f)(4);

(B) make recommendations to the Secretary for project solicitations;

(C) disburse funds awarded under subsection (f) as directed by the Secretary in accordance with the annual plan under subsection (e); and

(D) carry out other activities assigned to the program consortium by this section.

(2) LIMITATION.—The Secretary may not assign any activities to the program consortium except as specifically authorized under this section.

(3) CONFLICT OF INTEREST.—

(A) PROCEDURES.—The Secretary shall establish procedures—

(i) to ensure that each board member, officer, or employee of the program consortium who is in a decision-making capacity under subsection (f)(3) or (4) shall disclose to the Secretary any financial interests in, or financial relationships with, applicants for or recipients of awards under this section, including those of his or her spouse or minor child, unless such relationships or interests would be considered to be remote or inconsequential; and

(ii) to require any board member, officer, or employee with a financial relationship or interest disclosed under clause (i) to recuse himself or herself from any review under subsection (f)(3) or oversight under subsection (f)(4) with respect to such applicant or recipient.

(B) FAILURE TO COMPLY.—The Secretary may disqualify an application or revoke an award under this section if a board member, officer, or employee has failed to comply with procedures required under subparagraph (A)(ii).

(d) SELECTION OF THE PROGRAM CONSORTIUM.—

(1) IN GENERAL.—The Secretary shall select the program consortium through an open, competitive process.

(2) MEMBERS.—The program consortium may include corporations, trade associations, institutions of higher education, National Laboratories, or other research institutions. After submitting a proposal under paragraph (4), the program consortium may not add members without the consent of the Secretary.

(3) TAX STATUS.—The program consortium shall be an entity that is exempt from tax under section 501(c)(3) of the Internal Revenue Code of 1986.

(4) SCHEDULE.—Not later than 180 days after the date of enactment of this Act, the Secretary shall solicit proposals from eligible consortia to perform the duties in subsection (c)(1), which shall be submitted not later than 360 days after the date of enactment of this Act. The Secretary shall select the program consortium not later than 18 months after such date of enactment.

(5) APPLICATION.—Applicants shall submit a proposal including such information as the Secretary may require. At a minimum, each proposal shall—

(A) list all members of the consortium;

(B) fully describe the structure of the consortium, including any provisions relating to intellectual property; and

(C) describe how the applicant would carry out the activities of the program consortium under this section.

(6) ELIGIBILITY.—To be eligible to be selected as the program consortium, an applicant must be an entity whose members collectively have demonstrated capabilities in planning and managing research, development, demonstration, and commercial application programs in natural gas or other petroleum exploration or production.

(7) CRITERION.—The Secretary shall consider the amount of the fee an applicant proposes to receive under subsection (g) in selecting a consortium under this section.

(e) ANNUAL PLAN.—

(1) IN GENERAL.—The program under this section shall be carried out pursuant to an annual plan prepared by the Secretary in accordance with paragraph (2).

(2) DEVELOPMENT.—

(A) SOLICITATION OF RECOMMENDATIONS.—Before drafting an annual plan under this subsection, the Secretary shall solicit specific written recommendations from the program consortium for each element to be addressed in the plan, including those described in paragraph (4). The Secretary may request that the program consortium submit its recommendations in the form of a draft annual plan.

(B) SUBMISSION OF RECOMMENDATIONS; OTHER COMMENT.—The Secretary shall submit the recommendations of the program consortium under subparagraph (A) to the Ultra-Deepwater Advisory Committee established under section 945(a) for review, and such Advisory Committee shall provide to the Secretary written comments by a date determined by the Secretary. The Secretary may also solicit comments from any other experts.

(C) CONSULTATION.—The Secretary shall consult regularly with the program consortium throughout the preparation of the annual plan.

(3) PUBLICATION.—The Secretary shall transmit to Congress and publish in the Federal Register the annual plan, along with any written comments received under paragraph (2)(A) and (B).

(4) CONTENTS.—The annual plan shall describe the ongoing and prospective activities of the program under this section and shall include—

(A) a list of any solicitations for awards that the Secretary plans to issue to carry out research, development, demonstration, or commercial application activities, including the topics for such work, who would be eligible to apply, selection criteria, and the duration of awards; and

(B) a description of the activities expected of the program consortium to carry out subsection (f)(4).

(5) ESTIMATES OF INCREASED ROYALTY RECEIPTS.—The Secretary, in consultation with the Secretary of the Interior, shall provide an annual report to Congress with the President's budget on the estimated cumulative increase in Federal royalty receipts (if any) resulting from the implementation of this part. The initial report under this paragraph shall be submitted in the first President's budget following the completion of the first annual plan required under this subsection.

(f) AWARDS.—

(1) IN GENERAL.—The Secretary shall make awards to carry out research, development, demonstration, and commercial application activities under the program under this section. The program consortium shall not be eligible to receive such awards, but members of the program consortium may receive such awards.

(2) PROPOSALS.—The Secretary shall solicit proposals for awards under this subsection in such manner and at such time as the Secretary may prescribe, in consultation with the program consortium.

(3) REVIEW.—The Secretary shall make awards under this subsection through a competitive process, which shall include a review by individuals selected by the Secretary. Such individuals shall include, for each application, Federal officials, the program consortium, and non-Federal experts who are not board members, officers, or employees of the program consortium or of a member of the program consortium.

(4) OVERSIGHT.—

(A) IN GENERAL.—The program consortium shall oversee the implementation of awards under this subsection, consistent with the annual plan under subsection (e), including disbursing funds and monitoring activities carried out under such awards for compliance with the terms and conditions of the awards.

(B) EFFECT.—Nothing in subparagraph (A) shall limit the authority or responsibility of the Secretary to oversee awards, or limit the authority of the Secretary to review or revoke awards.

(C) PROVISION OF INFORMATION.—The Secretary shall provide to the program consortium the information necessary for the program consortium to carry out its responsibilities under this paragraph.

(g) ADMINISTRATIVE COSTS.—

(1) IN GENERAL.—To compensate the program consortium for carrying out its activities under this section, the Secretary shall provide to the program consortium funds sufficient to administer the program. This compensation may include a management fee consistent with Department of Energy contracting practices and procedures.

(2) ADVANCE.—The Secretary shall advance funds to the program consortium upon selection of the consortium, which shall be deducted from amounts to be provided under paragraph (1).

(h) AUDIT.—The Secretary shall retain an independent, commercial auditor to determine the extent to which funds provided to the program consortium, and funds provided under awards made under subsection (f), have been expended in a manner consistent with the purposes and requirements of this part. The auditor shall transmit a report annually to the Secretary, who shall transmit the report to Congress, along with a plan to remedy any deficiencies cited in the report.

SEC. 943. UNCONVENTIONAL NATURAL GAS AND OTHER PETROLEUM RESOURCES PROGRAM.

(a) IN GENERAL.—The Secretary shall carry out activities under subsection 941(b)(3), to maximize the use of the onshore unconventional natural gas and other petroleum resources of the United States, by increasing the supply of such resources, through reducing the cost and increasing the efficiency of exploration for and production of such resources, while improving safety and minimizing environmental impacts.

(b) AWARDS.—

(1) IN GENERAL.—The Secretary shall carry out this section through awards to research consortia made through an open, competitive process. As a condition of award of funds, qualified research consortia shall—

(A) demonstrate capability and experience in unconventional onshore natural gas or other petroleum research and development;

(B) provide a research plan that demonstrates how additional natural gas or oil production will be achieved; and

(C) at the request of the Secretary, provide technical advice to the Secretary for the purposes of developing the annual plan required under subsection (e).

(2) PRODUCTION POTENTIAL.—The Secretary shall seek to ensure that the number and types of awards made under this subsection have reasonable potential to lead to additional oil and natural gas production on Federal lands.

(3) SCHEDULE.—To carry out this subsection, not later than 180 days after the date of enactment of this Act, the Secretary shall solicit proposals from research consortia, which shall be submitted not later than 360 days after the date of enactment of this Act. The Secretary shall select the first group of research consortia to receive awards under this subsection not later than 18 months after such date of enactment.

(c) AUDIT.—The Secretary shall retain an independent, commercial auditor to determine the extent to which funds provided under awards made under this section have been expended in a manner consistent with the purposes and requirements of this part. The auditor shall transmit a report annually to the Secretary, who shall transmit the report to Congress, along with a plan to remedy any deficiencies cited in the report.

(d) FOCUS AREAS FOR AWARDS.—

(1) UNCONVENTIONAL RESOURCES.—Awards from allocations under section 949(d)(2) shall focus on areas including advanced coalbed methane, deep drilling, natural gas production from tight sands, natural gas production from gas shales, stranded gas, innovative exploration and production techniques, enhanced recovery techniques, and environmental mitigation of unconventional natural gas and other petroleum resources exploration and production.

(2) SMALL PRODUCERS.—Awards from allocations under section 949(d)(3) shall be made to consortia consisting of small producers or organized primarily for the benefit of small producers, and shall focus on areas including complex geology involving rapid changes in the type and quality of the oil and gas reservoirs across the reservoir; low reservoir pressure; unconventional natural gas reservoirs in coalbeds, deep reservoirs, tight sands, or shales; and unconventional oil reservoirs in tar sands and oil shales.

(e) ANNUAL PLAN.—

(1) IN GENERAL.—The program under this section shall be carried out pursuant to an annual plan prepared by the Secretary in accordance with paragraph (2).

(2) DEVELOPMENT.—

(A) WRITTEN RECOMMENDATIONS.—Before drafting an annual plan under this subsection, the Secretary shall solicit specific written recommendations from the research consortia receiving awards under subsection (b) and the Unconventional Resources Technology Advisory Committee for each element to be addressed in the plan, including those described in subparagraph (D).

(B) CONSULTATION.—The Secretary shall consult regularly with the research consortia throughout the preparation of the annual plan.

(C) PUBLICATION.—The Secretary shall transmit to Congress and publish in the Federal Register the annual plan, along with any written comments received under subparagraph (A).

(D) CONTENTS.—The annual plan shall describe the ongoing and prospective activities under this section and shall include a list of any solicitations for awards that the Secretary plans to issue to carry out research, development, demonstration, or commercial application activities, including the topics for such work, who would be eligible to apply, selection criteria, and the duration of awards.

(3) ESTIMATES OF INCREASED ROYALTY RECEIPTS.—The Secretary, in consultation with the Secretary of the Interior, shall provide an annual report to Congress with the President's budget on the estimated cumulative increase in Federal royalty receipts (if any) resulting from the implementation of this part. The initial report under this paragraph shall be submitted in the first President's budget following the completion of the first annual plan required under this subsection.

(f) ACTIVITIES BY THE UNITED STATES GEOLOGICAL SURVEY.—The Secretary of the Interior, through the United States Geological Survey, shall, where appropriate, carry out programs of long-term research to complement the programs under this section.

SEC. 944. ADDITIONAL REQUIREMENTS FOR AWARDS.

(a) DEMONSTRATION PROJECTS.—An application for an award under this part for a demonstration project shall describe with specificity the intended commercial use of the technology to be demonstrated.

(b) FLEXIBILITY IN LOCATING DEMONSTRATION PROJECTS.—Subject to the limitation in section 941(c), a demonstration project under this part relating to an ultra-deepwater technology or an ultra-deepwater architecture may be conducted in deepwater depths.

(c) INTELLECTUAL PROPERTY AGREEMENTS.—If an award under this part is made to a consortium (other than the program consortium), the consortium shall provide to the Secretary a signed contract agreed to by all members of the consortium describing the rights of each member to intellectual property used or developed under the award.

(d) TECHNOLOGY TRANSFER.—2.5 percent of the amount of each award made under this part shall be designated for technology transfer and outreach activities under this title.

(e) COST SHARING REDUCTION FOR INDEPENDENT PRODUCERS.—In applying the cost sharing requirements under section 972 to an award under this part the Secretary may reduce or eliminate the non-Federal requirement if the Secretary determines that the reduction is necessary and appropriate considering the technological risks involved in the project.

SEC. 945. ADVISORY COMMITTEES.

(a) ULTRA-DEEPWATER ADVISORY COMMITTEE.—

(1) ESTABLISHMENT.—Not later than 270 days after the date of enactment of this Act, the Secretary shall establish an advisory committee to be known as the Ultra-Deepwater Advisory Committee.

(2) MEMBERSHIP.—The advisory committee under this subsection shall be composed of members appointed by the Secretary including—

(A) individuals with extensive research experience or operational knowledge of offshore natural gas and other petroleum exploration and production;

(B) individuals broadly representative of the affected interests in ultra-deepwater natural gas and other petroleum production, including interests in environmental protection and safe operations;

(C) no individuals who are Federal employees; and

(D) no individuals who are board members, officers, or employees of the program consortium.

(3) DUTIES.—The advisory committee under this subsection shall—

(A) advise the Secretary on the development and implementation of programs under this part related to ultra-deepwater natural gas and other petroleum resources; and

(B) carry out section 942(e)(2)(B).

(4) COMPENSATION.—A member of the advisory committee under this subsection shall serve without compensation but shall receive travel expenses in accordance with applicable provisions under subchapter I of chapter 57 of title 5, United States Code.

(b) UNCONVENTIONAL RESOURCES TECHNOLOGY ADVISORY COMMITTEE.—

(1) ESTABLISHMENT.—Not later than 270 days after the date of enactment of this Act, the Secretary shall establish an advisory committee to be known as the Unconventional Resources Technology Advisory Committee.

(2) MEMBERSHIP.—The advisory committee under this subsection shall be composed of members appointed by the Secretary including—

(A) a majority of members who are employees or representatives of independent producers of natural gas and other petroleum, including small producers;

(B) individuals with extensive research experience or operational knowledge of unconventional natural gas and other petroleum resource exploration and production;

(C) individuals broadly representative of the affected interests in unconventional natural gas and other petroleum resource exploration and production, including interests in environmental protection and safe operations; and

(D) no individuals who are Federal employees.

(3) DUTIES.—The advisory committee under this subsection shall advise the Secretary on the development and implementation of activities under this part related to unconventional natural gas and other petroleum resources.

(4) COMPENSATION.—A member of the advisory committee under this subsection shall serve without compensation but shall receive travel expenses in accordance with applicable provisions under subchapter I of chapter 57 of title 5, United States Code.

(c) PROHIBITION.—No advisory committee established under this section shall make

recommendations on funding awards to particular consortia or other entities, or for specific projects.

SEC. 946. LIMITS ON PARTICIPATION.

An entity shall be eligible to receive an award under this part only if the Secretary finds—

(1) that the entity's participation in the program under this part would be in the economic interest of the United States; and

(2) that either—

(A) the entity is a United States-owned entity organized under the laws of the United States; or

(B) the entity is organized under the laws of the United States and has a parent entity organized under the laws of a country that affords—

(i) to United States-owned entities opportunities, comparable to those afforded to any other entity, to participate in any cooperative research venture similar to those authorized under this part;

(ii) to United States-owned entities local investment opportunities comparable to those afforded to any other entity; and

(iii) adequate and effective protection for the intellectual property rights of United States-owned entities.

SEC. 947. SUNSET.

The authority provided by this part shall terminate on September 30, 2011.

SEC. 948. DEFINITIONS.

In this part:

(1) DEEPWATER.—The term ''deepwater'' means a water depth that is greater than 200 but less than 1,500 meters.

(2) INDEPENDENT PRODUCER OF OIL OR GAS.—

(A) IN GENERAL.—The term ''independent producer of oil or gas'' means any person that produces oil or gas other than a person to whom subsection (c) of section 613A of the Internal Revenue Code of 1986 does not apply by reason of paragraph (2) (relating to certain retailers) or paragraph (4) (relating to certain refiners) of section 613A(d) of such Code.

(B) RULES FOR APPLYING PARAGRAPHS (2) AND (4) OF SECTION 613A(d).—For purposes of subparagraph (A), paragraphs (2) and (4) of section 613A(d) of the Internal Revenue Code of 1986 shall be applied by substituting ''calendar year'' for ''taxable year'' each place it appears in such paragraphs.

(3) PROGRAM CONSORTIUM.—The term ''program consortium'' means the consortium selected under section 942(d).

(4) REMOTE OR INCONSEQUENTIAL.—The term ''remote or inconsequential'' has the meaning given that term in regulations issued by the Office of Government Ethics under section 208(b)(2) of title 18, United States Code.

(5) SMALL PRODUCER.—The term ''small producer'' means an entity organized under the laws of the United States with production levels of less than 1,000 barrels per day of oil equivalent.

(6) ULTRA-DEEPWATER.—The term ''ultra-deepwater'' means a water depth that is equal to or greater than 1,500 meters.

(7) ULTRA-DEEPWATER ARCHITECTURE.—The term ''ultra-deepwater architecture'' means the integration of technologies for the exploration for, or production of, natural gas or other petroleum resources located at ultra-deepwater depths.

(8) ULTRA-DEEPWATER TECHNOLOGY.—The term ''ultra-deepwater technology'' means a discrete technology that is specially suited to address 1 or more challenges associated with the exploration for, or production of, natural gas or other petroleum resources located at ultra-deepwater depths.

(9) UNCONVENTIONAL NATURAL GAS AND OTHER PETROLEUM RESOURCE.—The term ''unconventional natural gas and other petroleum resource'' means natural gas and other petroleum resource located onshore in an economically inaccessible geological formation, including resources of small producers.

SEC. 949. FUNDING.

(a) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary, to be deposited in the Fund, such sums as are necessary for each of the fiscal years 2004 through 2013, to remain available until expended.

(b) OBLIGATIONAL AUTHORITY.—Monies in the Fund shall be available to the Secretary for obligation under this part without fiscal year limitation, to remain available until expended.

(c) ALLOCATION.—Amounts obligated from the Fund under this section in each fiscal year shall be allocated as follows:

(1) 50 percent shall be for activities under section 942.

(2) 35 percent shall be for activities under section 943(d)(1).

(3) 10 percent shall be for activities under section 943(d)(2).

(4) 5 percent shall be for research under section 941(d).

(d) FUND.—There is hereby established in the Treasury of the United States a separate fund to be known as the ''Ultra-Deepwater and Unconventional Natural Gas and Other Petroleum Research Fund''.

Subtitle F—Science

SEC. 951. SCIENCE.

(a) IN GENERAL.—The following sums are authorized to be appropriated to the Secretary for research, development, demonstration, and commercial application activities of the Office of Science, including activities authorized under this subtitle, including the amounts authorized under the amendment made by section 958(c)(2)(C), and including basic energy sciences, advanced scientific computing research, biological and environmental research, fusion energy sciences, high energy physics, nuclear physics, and research analysis and infrastructure support:

(1) For fiscal year 2004, $3,785,000,000.

(2) For fiscal year 2005, $4,153,000,000.

(3) For fiscal year 2006, $4,618,000,000.

(4) For fiscal year 2007, $5,310,000,000.

(5) For fiscal year 2008, $5,800,000,000.

(b) ALLOCATIONS.—From amounts authorized under subsection (a), the following sums are authorized:

(1) For activities of the Fusion Energy Sciences Program, including activities under sections 952 and 953—

(A) for fiscal year 2004, $335,000,000;

(B) for fiscal year 2005, $349,000,000;

(C) for fiscal year 2006, $362,000,000;

(D) for fiscal year 2007, $377,000,000; and

(E) for fiscal year 2008, $393,000,000.

(2) For the Spallation Neutron Source—

(A) for construction in fiscal year 2004, $124,600,000;

(B) for construction in fiscal year 2005, $79,800,000;

(C) for completion of construction in fiscal year 2006, $41,100,000; and

(D) for other project costs (including research and development necessary to complete the project, preoperations costs, and capital equipment related to construction), $103,279,000 for the period encompassing fiscal years 2003 through 2006, to remain available until expended through September 30, 2006.

(3) For Catalysis Research activities under section 956—

(A) for fiscal year 2004, $33,000,000;

(B) for fiscal year 2005, $35,000,000;

(C) for fiscal year 2006, $36,500,000;

(D) for fiscal year 2007, $38,200,000; and

(E) for fiscal year 2008, $40,100,000.

(4) For Nanoscale Science and Engineering Research activities under section 957—

(A) for fiscal year 2004, $270,000,000;

(B) for fiscal year 2005, $292,000,000;

(C) for fiscal year 2006, $322,000,000;

(D) for fiscal year 2007, $355,000,000; and

(E) for fiscal year 2008, $390,000,000.

(5) For activities under section 957(c), from the amounts authorized under paragraph (4) of this subsection—

(A) for fiscal year 2004, $135,000,000;

(B) for fiscal year 2005, $150,000,000;

(C) for fiscal year 2006, $120,000,000;

(D) for fiscal year 2007, $100,000,000; and

(E) for fiscal year 2008, $125,000,000.

(6) For activities in the Genomes to Life Program under section 959—

(A) for fiscal year 2004, $100,000,000; and

(B) for fiscal years 2005 through 2008, such sums as may be necessary.

(7) For activities in the Energy-Water Supply Program under section 961, $30,000,000 for each of fiscal years 2004 through 2008.

(c) ITER CONSTRUCTION.—In addition to the funds authorized under subsection (b)(1), such sums as may be necessary for costs associated with ITER construction, consistent with limitations under section 952.

SEC. 952. UNITED STATES PARTICIPATION IN ITER.

(a) IN GENERAL.—The United States may participate in ITER in accordance with the provisions of this section.

(b) AGREEMENT.—

(1) IN GENERAL.—The Secretary is authorized to negotiate an agreement for United States participation in ITER.

(2) CONTENTS.—Any agreement for United States participation in ITER shall, at a minimum—

(A) clearly define the United States financial contribution to construction and operating costs;

(B) ensure that the share of ITER's high-technology components manufactured in the United States is at least proportionate to the United States financial contribution to ITER;

(C) ensure that the United States will not be financially responsible for cost overruns in components manufactured in other ITER participating countries;

(D) guarantee the United States full access to all data generated by ITER;

(E) enable United States researchers to propose and carry out an equitable share of the experiments at ITER;

(F) provide the United States with a role in all collective decisionmaking related to ITER; and

(G) describe the process for discontinuing or decommissioning ITER and any United States role in those processes.

(c) PLAN.—The Secretary, in consultation with the Fusion Energy Sciences Advisory Committee, shall develop a plan for the participation of United States scientists in ITER that shall include the United States research agenda for ITER, methods to evaluate whether ITER is promoting progress toward making fusion a reliable and affordable source of power, and a description of how work at ITER will relate to other elements of the United States fusion program. The Secretary shall request a review of the plan by the National Academy of Sciences.

(d) LIMITATION.—No funds shall be expended for the construction of ITER until the Secretary has transmitted to Congress—

(1) the agreement negotiated pursuant to subsection (b) and 120 days have elapsed since that transmission;

(2) a report describing the management structure of ITER and providing a fixed dollar estimate of the cost of United States participation in the construction of ITER, and 120 days have elapsed since that transmission;

(3) a report describing how United States participation in ITER will be funded without

reducing funding for other programs in the Office of Science, including other fusion programs, and 60 days have elapsed since that transmission; and

(4) the plan required by subsection (c) (but not the National Academy of Sciences review of that plan), and 60 days have elapsed since that transmission.

(e) ALTERNATIVE TO ITER.—If at any time during the negotiations on ITER, the Secretary determines that construction and operation of ITER is unlikely or infeasible, the Secretary shall send to Congress, as part of the budget request for the following year, a plan for implementing the domestic burning plasma experiment known as FIRE, including costs and schedules for such a plan. The Secretary shall refine such plan in full consultation with the Fusion Energy Sciences Advisory Committee and shall also transmit such plan to the National Academy of Sciences for review.

(f) DEFINITIONS.—In this section and sections 951(b)(1) and (c):

(1) CONSTRUCTION.—The term ''construction'' means the physical construction of the ITER facility, and the physical construction, purchase, or manufacture of equipment or components that are specifically designed for the ITER facility, but does not mean the design of the facility, equipment, or components.

(2) FIRE.—The term ''FIRE'' means the Fusion Ignition Research Experiment, the fusion research experiment for which design work has been supported by the Department as a possible alternative burning plasma experiment in the event that ITER fails to move forward.

(3) ITER.—The term ''ITER'' means the international burning plasma fusion research project in which the President announced United States participation on January 30, 2003.

SEC. 953. PLAN FOR FUSION ENERGY SCIENCES PROGRAM.

(a) DECLARATION OF POLICY.—It shall be the policy of the United States to conduct research, development, demonstration, and commercial application to provide for the scientific, engineering, and commercial infrastructure necessary to ensure that the United States is competitive with other nations in providing fusion energy for its own needs and the needs of other nations, including by demonstrating electric power or hydrogen production for the United States energy grid utilizing fusion energy at the earliest date possible.

(b) PLANNING.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Secretary shall present to Congress a plan, with proposed cost estimates, budgets, and potential international partners, for the implementation of the policy described in subsection (a). The plan shall ensure that—

(A) existing fusion research facilities are more fully utilized;

(B) fusion science, technology, theory, advanced computation, modeling, and simulation are strengthened;

(C) new magnetic and inertial fusion research facilities are selected based on scientific innovation, cost effectiveness, and their potential to advance the goal of practical fusion energy at the earliest date possible, and those that are selected are funded at a cost-effective rate;

(D) communication of scientific results and methods between the fusion energy science community and the broader scientific and technology communities is improved;

(E) inertial confinement fusion facilities are utilized to the extent practicable for the purpose of inertial fusion energy research and development; and

(F) attractive alternative inertial and magnetic fusion energy approaches are more fully explored.

(2) COSTS AND SCHEDULES.—Such plan shall also address the status of and, to the degree possible, costs and schedules for—

(A) in coordination with the program under section 960, the design and implementation of international or national facilities for the testing of fusion materials; and

(B) the design and implementation of international or national facilities for the testing and development of key fusion technologies.

SEC. 954. SPALLATION NEUTRON SOURCE.

(a) DEFINITION.—For the purposes of this section, the term ''Spallation Neutron Source'' means Department Project 99–E–334, Oak Ridge National Laboratory, Oak Ridge, Tennessee.

(b) REPORT.—The Secretary shall report on the Spallation Neutron Source as part of the Department's annual budget submission, including a description of the achievement of milestones, a comparison of actual costs to estimated costs, and any changes in estimated project costs or schedule.

(c) LIMITATIONS.—The total amount obligated by the Department, including prior year appropriations, for the Spallation Neutron Source shall not exceed—

(1) $1,192,700,000 for costs of construction;

(2) $219,000,000 for other project costs; and

(3) $1,411,700,000 for total project cost.

SEC. 955. SUPPORT FOR SCIENCE AND ENERGY FACILITIES AND INFRASTRUCTURE.

(a) FACILITY AND INFRASTRUCTURE POLICY.—The Secretary shall develop and implement a strategy for facilities and infrastructure supported primarily from the Office of Science, the Office of Energy Efficiency and Renewable Energy, the Office of Fossil Energy, or the Office of Nuclear Energy, Science, and Technology Programs at all National Laboratories and single-purpose research facilities. Such strategy shall provide cost-effective means for—

(1) maintaining existing facilities and infrastructure, as needed;

(2) closing unneeded facilities;

(3) making facility modifications; and

(4) building new facilities.

(b) REPORT.—

(1) IN GENERAL.—The Secretary shall prepare and transmit, along with the President's budget request to Congress for fiscal year 2006, a report containing the strategy developed under subsection (a).

(2) CONTENTS.—For each National Laboratory and single-purpose research facility, for the facilities primarily used for science and energy research, such report shall contain—

(A) the current priority list of proposed facilities and infrastructure projects, including cost and schedule requirements;

(B) a current 10-year plan that demonstrates the reconfiguration of its facilities and infrastructure to meet its missions and to address its long-term operational costs and return on investment;

(C) the total current budget for all facilities and infrastructure funding; and

(D) the current status of each facility and infrastructure project compared to the original baseline cost, schedule, and scope.

SEC. 956. CATALYSIS RESEARCH AND DEVELOPMENT PROGRAM.

(a) ESTABLISHMENT.—The Secretary, through the Office of Science, shall support a program of research and development in catalysis science consistent with the Department's statutory authorities related to research and development. The program shall include efforts to—

(1) enable catalyst design using combinations of experimental and mechanistic methodologies coupled with computational modeling of catalytic reactions at the molecular level;

(2) develop techniques for high throughput synthesis, assay, and characterization at nanometer and subnanometer scales in situ under actual operating conditions;

(3) synthesize catalysts with specific site architectures;

(4) conduct research on the use of precious metals for catalysis; and

(5) translate molecular understanding to the design of catalytic compounds.

(b) DUTIES OF THE OFFICE OF SCIENCE.—In carrying out the program under this section, the Director of the Office of Science shall—

(1) support both individual investigators and multidisciplinary teams of investigators to pioneer new approaches in catalytic design;

(2) develop, plan, construct, acquire, share, or operate special equipment or facilities for the use of investigators in collaboration with national user facilities such as nanoscience and engineering centers;

(3) support technology transfer activities to benefit industry and other users of catalysis science and engineering; and

(4) coordinate research and development activities with industry and other Federal agencies.

(c) TRIENNIAL ASSESSMENT.—The National Academy of Sciences shall review the catalysis program every 3 years to report on gains made in the fundamental science of catalysis and its progress towards developing new fuels for energy production and material fabrication processes.

SEC. 957. NANOSCALE SCIENCE AND ENGINEERING RESEARCH, DEVELOPMENT, DEMONSTRATION, AND COMMERCIAL APPLICATION.

(a) ESTABLISHMENT.—The Secretary, acting through the Office of Science, shall support a program of research, development, demonstration, and commercial application in nanoscience and nanoengineering. The program shall include efforts to further the understanding of the chemistry, physics, materials science, and engineering of phenomena on the scale of nanometers and to apply that knowledge to the Department's mission areas.

(b) DUTIES OF THE OFFICE OF SCIENCE.—In carrying out the program under this section, the Office of Science shall—

(1) support both individual investigators and teams of investigators, including multidisciplinary teams;

(2) carry out activities under subsection (c);

(3) support technology transfer activities to benefit industry and other users of nanoscience and nanoengineering;

(4) coordinate research and development activities with other Department programs, industry, and other Federal agencies;

(5) ensure that societal and ethical concerns will be addressed as the technology is developed by—

(A) establishing a research program to identify societal and ethical concerns related to nanotechnology, and ensuring that the results of such research are widely disseminated; and

(B) integrating, insofar as possible, research on societal and ethical concerns with nanotechnology research and development; and

(6) ensure that the potential of nanotechnology to produce or facilitate the production of clean, inexpensive energy is realized by supporting nanotechnology energy applications research and development.

(c) NANOSCIENCE AND NANOENGINEERING RESEARCH CENTERS AND MAJOR INSTRUMENTATION.—

(1) IN GENERAL.—The Secretary shall carry out projects to develop, plan, construct, acquire, operate, or support special equipment,

instrumentation, or facilities for investigators conducting research and development in nanoscience and nanoengineering.

(2) ACTIVITIES.—Projects under paragraph (1) may include the measurement of properties at the scale of nanometers, manipulation at such scales, and the integration of technologies based on nanoscience or nanoengineering into bulk materials or other technologies.

(3) FACILITIES.—Facilities under paragraph (1) may include electron microcharacterization facilities, microlithography facilities, scanning probe facilities, and related instrumentation.

(4) COLLABORATIONS.—The Secretary shall encourage collaborations among Department programs, institutions of higher education, laboratories, and industry at facilities under this subsection.

SEC. 958. ADVANCED SCIENTIFIC COMPUTING FOR ENERGY MISSIONS.

(a) IN GENERAL.—The Secretary, acting through the Office of Science, shall support a program to advance the Nation's computing capability across a diverse set of grand challenge, computationally based, science problems related to departmental missions.

(b) DUTIES OF THE OFFICE OF SCIENCE.—In carrying out the program under this section, the Office of Science shall—

(1) advance basic science through computation by developing software to solve grand challenge science problems on new generations of computing platforms in collaboration with other Department program offices;

(2) enhance the foundations for scientific computing by developing the basic mathematical and computing systems software needed to take full advantage of the computing capabilities of computers with peak speeds of 100 teraflops or more, some of which may be unique to the scientific problem of interest;

(3) enhance national collaboratory and networking capabilities by developing software to integrate geographically separated researchers into effective research teams and to facilitate access to and movement and analysis of large (petabyte) data sets;

(4) develop and maintain a robust scientific computing hardware infrastructure to ensure that the computing resources needed to address departmental missions are available; and

(5) explore new computing approaches and technologies that promise to advance scientific computing, including developments in quantum computing.

(c) HIGH-PERFORMANCE COMPUTING ACT OF 1991 AMENDMENTS.—The High-Performance Computing Act of 1991 is amended—

(1) in section 4 (15 U.S.C. 5503)—

(A) in paragraph (3) by striking ''means'' and inserting ''and networking and information technology mean'', and by striking ''(including vector supercomputers and large scale parallel systems)''; and

(B) in paragraph (4), by striking ''packet switched''; and

(2) in section 203 (15 U.S.C. 5523)—

(A) in subsection (a), by striking all after ''As part of the'' and inserting ''Networking and Information Technology Research and Development Program, the Secretary of Energy shall conduct basic and applied research in networking and information technology, with emphasis on supporting fundamental research in the physical sciences and engineering, and energy applications; providing supercomputer access and advanced communication capabilities and facilities to scientific researchers; and developing tools for distributed scientific collaboration.'';

(B) in subsection (b), by striking ''Program'' and inserting ''Networking and Information Technology Research and Development Program''; and

(C) by amending subsection (e) to read as follows:

''(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Energy to carry out the Networking and Information Technology Research and Development Program such sums as may be necessary for fiscal years 2004 through 2008.''.

(d) COORDINATION.—The Secretary shall ensure that the program under this section is integrated and consistent with—

(1) the Advanced Simulation and Computing Program, formerly known as the Accelerated Strategic Computing Initiative, of the National Nuclear Security Administration; and

(2) other national efforts related to advanced scientific computing for science and engineering.

(e) REPORT.—

(1) IN GENERAL.—Before undertaking any new initiative to develop any new advanced architecture for high-speed computing, the Secretary, through the Director of the Office of Science, shall transmit a report to Congress describing—

(A) the expected duration and cost of the initiative;

(B) the technical milestones the initiative is designed to achieve;

(C) how institutions of higher education and private firms will participate in the initiative; and

(D) why the goals of the initiative could not be achieved through existing programs.

(2) LIMITATION.—No funds may be expended on any initiative described in paragraph (1) until 30 days after the report required by that paragraph is transmitted to Congress.

SEC. 959. GENOMES TO LIFE PROGRAM.

(a) PROGRAM.—

(1) ESTABLISHMENT.—The Secretary shall establish a research, development, and demonstration program in genetics, protein science, and computational biology to support the energy, national security, and environmental mission of the Department.

(2) GRANTS.—The program shall support individual investigators and multidisciplinary teams of investigators through competitive, merit-reviewed grants.

(3) CONSULTATION.—In carrying out the program, the Secretary shall consult with other Federal agencies that conduct genetic and protein research.

(b) GOALS.—The program shall have the goal of developing technologies and methods based on the biological functions of genomes, microbes, and plants that—

(1) can facilitate the production of fuels, including hydrogen;

(2) convert carbon dioxide to organic carbon;

(3) improve national security and combat terrorism;

(4) detoxify soils and water at Department facilities contaminated with heavy metals and radiological materials; and

(5) address other Department missions as identified by the Secretary.

(c) PLAN.—

(1) DEVELOPMENT OF PLAN.—Not later than 1 year after the date of enactment of this Act, the Secretary shall prepare and transmit to Congress a research plan describing how the program authorized pursuant to this section will be undertaken to accomplish the program goals established in subsection (b).

(2) REVIEW OF PLAN.—The Secretary shall contract with the National Academy of Sciences to review the research plan developed under this subsection. The Secretary shall transmit the review to Congress not later than 18 months after transmittal of the research plan under paragraph (1), along with the Secretary's response to the recommendations contained in the review.

(d) GENOMES TO LIFE USER FACILITIES AND ANCILLARY EQUIPMENT.—

(1) IN GENERAL.—Within the funds authorized to be appropriated pursuant to this Act, the amounts specified under section 951(b)(6) shall, subject to appropriations, be available for projects to develop, plan, construct, acquire, or operate special equipment, instrumentation, or facilities for investigators conducting research, development, demonstration, and commercial application in systems biology and proteomics and associated biological disciplines.

(2) FACILITIES.—Facilities under paragraph (1) may include facilities, equipment, or instrumentation for—

(A) the production and characterization of proteins;

(B) whole proteome analysis;

(C) characterization and imaging of molecular machines; and

(D) analysis and modeling of cellular systems.

(3) COLLABORATIONS.—The Secretary shall encourage collaborations among universities, laboratories, and industry at facilities under this subsection. All facilities under this subsection shall have a specific mission of technology transfer to other institutions.

(e) PROHIBITION ON BIOMEDICAL AND HUMAN CELL AND HUMAN SUBJECT RESEARCH.—

(1) NO BIOMEDICAL RESEARCH.—In carrying out the program under this section, the Secretary shall not conduct biomedical research.

(2) LIMITATIONS.—Nothing in this section shall authorize the Secretary to conduct any research or demonstrations—

(A) on human cells or human subjects; or

(B) designed to have direct application with respect to human cells or human subjects.

SEC. 960. FISSION AND FUSION ENERGY MATERIALS RESEARCH PROGRAM.

In the President's fiscal year 2006 budget request, the Secretary shall establish a research and development program on material science issues presented by advanced fission reactors and the Department's fusion energy program. The program shall develop a catalog of material properties required for these applications, develop theoretical models for materials possessing the required properties, benchmark models against existing data, and develop a roadmap to guide further research and development in this area.

SEC. 961. ENERGY-WATER SUPPLY PROGRAM.

(a) ESTABLISHMENT.—There is established within the Department the Energy-Water Supply Program, to study energy-related and certain other issues associated with the supply of drinking water and operation of community water systems and to study water supply issues related to energy.

(b) DEFINITIONS.—For the purposes of this section:

(1) ADMINISTRATOR.—The term ''Administrator'' means the Administrator of the Environmental Protection Agency.

(2) AGENCY.—The term ''Agency'' means the Environmental Protection Agency.

(3) FOUNDATION.—The term ''Foundation'' means the American Water Works Association Research Foundation.

(4) INDIAN TRIBE.—The term ''Indian tribe'' has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

(5) PROGRAM.—The term ''Program'' means the Energy-Water Supply Program established by this section.

(c) PROGRAM AREAS.—The Program shall develop methods, means, procedures, equipment, and improved technologies relating to—

(1) the arsenic removal program under subsection (d);

(2) the desalination program under subsection (e); and

(3) the water and energy sustainability program under subsection (f).

(d) ARSENIC REMOVAL PROGRAM.—

(1) IN GENERAL.—As soon as practicable after the date of enactment of this Act, the Secretary, in coordination with the Administrator and in partnership with the Foundation, shall utilize the facilities, institutions, and relationships established in the Consolidated Appropriations Resolution, 2003 as described in Senate Report 107–220 to carry out a research program to provide innovative methods and means for removal of arsenic.

(2) REQUIRED EVALUATIONS.—The program shall, to the maximum extent practicable, evaluate the means of—

(A) reducing energy costs incurred in using arsenic removal technologies;

(B) minimizing materials, operating, and maintenance costs; and

(C) minimizing any quantities of waste (especially hazardous waste) that result from use of arsenic removal technologies.

(3) PEER REVIEW.—Where applicable and reasonably available, projects undertaken under this subsection shall be peer-reviewed.

(4) COMMUNITY WATER SYSTEMS.—In carrying out the program under this subsection, the Secretary, in coordination with the Administrator, shall—

(A) select projects involving a geographically and hydrologically diverse group of community water systems (as defined in section 1003 of the Public Health Service Act (42 U.S.C. 300)) and water chemistries, that have experienced technical or economic difficulties in providing drinking water with levels of arsenic at 10 parts-per-billion or lower, which projects shall be designed to develop innovative methods and means to deliver drinking water that contains less than 10 parts per billion of arsenic; and

(B) provide not less than 40 percent of all funds spent pursuant to this subsection to address the needs of, and in collaboration with, rural communities or Indian tribes.

(5) COST EFFECTIVENESS.—The Foundation shall create methods for determining cost effectiveness of arsenic removal technologies used in the program.

(6) EDUCATION, TRAINING, AND TECHNOLOGY.—The Foundation shall include education, training, and technology transfer as part of the program.

(7) COORDINATION.—The Secretary shall consult with the Administrator to ensure that all activities conducted under the program are coordinated with the Agency and do not duplicate other programs in the Agency and other Federal agencies, State programs, and academia.

(8) REPORTS.—Not later than 1 year after the date of commencement of the program under this subsection, and once every year thereafter, the Secretary shall submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Environment and Public Works and the Committee on Energy and Natural Resources of the Senate a report on the results of the program under this subsection.

(e) DESALINATION PROGRAM.—

(1) IN GENERAL.—The Secretary, in cooperation with the Commissioner of Reclamation of the Department of the Interior, shall carry out a program to conduct research and develop methods and means for desalination in accordance with the desalination technology progress plan developed under title II of the Energy and Water Development Appropriations Act, 2002 (115 Stat. 498), and described in Senate Report 107–39 under the heading ''WATER AND RELATED RESOURCES'' in the ''BUREAU OF RECLAMATION'' section.

(2) REQUIREMENTS.—The desalination program shall—

(A) use the resources of the Department and the Department of the Interior that were involved in the development of the 2003 National Desalination and Water Purification Technology Roadmap for next-generation desalination technology;

(B) focus on technologies that are appropriate for use in desalinating brackish groundwater, drinking water, wastewater and other saline water supplies, or disposal of residual brine or salt; and

(C) consider the use of renewable energy sources.

(3) CONSTRUCTION PROJECTS.—Funds made available to carry out this subsection may be used for construction projects, including completion of the National Desalination Research Center for brackish groundwater and ongoing operational costs of this facility.

(4) STEERING COMMITTEE.—The Secretary and the Commissioner of Reclamation of the Department of the Interior shall jointly establish a steering committee for activities conducted under this subsection. The steering committee shall be jointly chaired by 1 representative from the program and 1 representative from the Bureau of Reclamation.

(f) WATER AND ENERGY SUSTAINABILITY PROGRAM.—

(1) IN GENERAL.—The Secretary shall develop a program to identify methods, means, procedures, equipment, and improved technologies necessary to ensure that sufficient quantities of water are available to meet energy needs and sufficient energy is available to meet water needs.

(2) ASSESSMENTS.—In order to acquire information and avoid duplication, the Secretary shall work in collaboration with the Secretary of the Interior, the Army Corps of Engineers, the Administrator, the Secretary of Commerce, the Secretary of Defense, relevant State agencies, nongovernmental organizations, and academia, to assess—

(A) future water resources needed to support energy development and production within the United States including water used for hydropower, and production of, or electricity generation by, hydrogen, biomass, fossil fuels, and nuclear fuel;

(B) future energy resources needed to support water purification and wastewater treatment, including desalination and water conveyance;

(C) use of impaired and nontraditional water supplies for energy production other than oil and gas extraction;

(D) technology and programs for improving water use efficiency; and

(E) technologies to reduce water use in energy development and production.

(3) ROADMAP; TOOLS.—The Secretary shall—

(A) develop a program plan and technology development roadmap for the Water and Energy Sustainability Program to identify scientific and technical requirements and activities that are required to support planning for energy sustainability under current and potential future conditions of water availability, use of impaired water for energy production and other uses, and reduction of water use in energy development and production;

(B) develop tools for national and local energy and water sustainability planning, including numerical models, decision analysis tools, economic analysis tools, databases, and planning methodologies and strategies;

(C) implement at least 3 planning projects involving energy development or production that use the tools described in subparagraph (B) and assess the viability of those tools at the scale of river basins with at least 1 demonstration involving an international border; and

(D) transfer those tools to other Federal agencies, State agencies, nonprofit organizations, industry, and academia.

(4) REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary shall submit to Congress a report on the Water and Energy Sustainability Program that—

(A) includes the results of the assessment under paragraph (2) and the program plan and technology development roadmap; and

(B) identifies policy, legal, and institutional issues related to water and energy sustainability.

SEC. 962. NITROGEN FIXATION.

The Secretary, acting through the Office of Science, shall support a program of research, development, demonstration, and commercial application on biological nitrogen fixation, including plant genomics research relevant to the development of commercial crop varieties with enhanced nitrogen fixation efficiency and ability.

Subtitle G—Energy and Environment

SEC. 964. UNITED STATES-MEXICO ENERGY TECHNOLOGY COOPERATION.

(a) PROGRAM.—The Secretary shall establish a research, development, demonstration, and commercial application program to be carried out in collaboration with entities in Mexico and the United States to promote energy efficient, environmentally sound economic development along the United States-Mexico border that minimizes public health risks from industrial activities in the border region.

(b) PROGRAM MANAGEMENT.—The program under subsection (a) shall be managed by the Department of Energy Carlsbad Environmental Management Field Office.

(c) TECHNOLOGY TRANSFER.—In carrying out projects and activities under this section, the Secretary shall assess the applicability of technology developed under the Environmental Management Science Program of the Department.

(d) INTELLECTUAL PROPERTY.—In carrying out this section, the Secretary shall comply with the requirements of any agreement entered into between the United States and Mexico regarding intellectual property protection.

(e) AUTHORIZATION OF APPROPRIATIONS.—The following sums are authorized to be appropriated to the Secretary to carry out activities under this section:

(1) For each of fiscal years 2004 and 2005, $5,000,000.

(2) For each of fiscal years 2006, 2007, and 2008, $6,000,000.

SEC. 965. WESTERN HEMISPHERE ENERGY COOPERATION.

(a) PROGRAM.—The Secretary shall carry out a program to promote cooperation on energy issues with Western Hemisphere countries.

(b) ACTIVITIES.—Under the program, the Secretary shall fund activities to work with Western Hemisphere countries to—

(1) assist the countries in formulating and adopting changes in economic policies and other policies to—

(A) increase the production of energy supplies; and

(B) improve energy efficiency; and

(2) assist in the development and transfer of energy supply and efficiency technologies that would have a beneficial impact on world energy markets.

(c) UNIVERSITY PARTICIPATION.—To the extent practicable, the Secretary shall carry out the program under this section with the participation of universities so as to take advantage of the acceptance of universities by Western Hemisphere countries as sources of unbiased technical and policy expertise when assisting the Secretary in—

(1) evaluating new technologies;
(2) resolving technical issues;
(3) working with those countries in the development of new policies; and
(4) training policymakers, particularly in the case of universities that involve the participation of minority students, such as Hispanic-serving institutions and Historically Black Colleges and Universities.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section—
(1) $8,000,000 for fiscal year 2004;
(2) $10,000,000 for fiscal year 2005;
(3) $13,000,000 for fiscal year 2006;
(4) $16,000,000 for fiscal year 2007; and
(5) $19,000,000 for fiscal year 2008.

SEC. 966. WASTE REDUCTION AND USE OF ALTERNATIVES.

(a) GRANT AUTHORITY.—The Secretary may make a single grant to a qualified institution to examine and develop the feasibility of burning post-consumer carpet in cement kilns as an alternative energy source. The purposes of the grant shall include determining—
(1) how post-consumer carpet can be burned without disrupting kiln operations;
(2) the extent to which overall kiln emissions may be reduced;
(3) the emissions of air pollutants and other relevant environmental impacts; and
(4) how this process provides benefits to both cement kiln operations and carpet suppliers.

(b) QUALIFIED INSTITUTION.—For the purposes of subsection (a), a qualified institution is a research-intensive institution of higher education with demonstrated expertise in the fields of fiber recycling and logistical modeling of carpet waste collection and preparation.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary for carrying out this section $500,000.

SEC. 967. REPORT ON FUEL CELL TEST CENTER.

(a) REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary shall transmit to Congress a report on the results of a study of the establishment of a test center for next-generation fuel cells at an institution of higher education that has available a continuous source of hydrogen and access to the electric transmission grid. Such report shall include a conceptual design for such test center and a projection of the costs of establishing the test center.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary for carrying out this section $500,000.

SEC. 968. ARCTIC ENGINEERING RESEARCH CENTER.

(a) IN GENERAL.—The Secretary of Energy (referred to in this section as the ''Secretary'') in consultation with the Secretary of Transportation and the United States Arctic Research Commission shall provide annual grants to a university located adjacent to the Arctic Energy Office of the Department of Energy, to establish and operate a university research center to be headquartered in Fairbanks and to be known as the ''Arctic Engineering Research Center'' (referred to in this section as the ''Center'').

(b) PURPOSE.—The purpose of the Center shall be to conduct research on, and develop improved methods of, construction and use of materials to improve the overall performance of roads, bridges, residential, commercial, and industrial structures, and other infrastructure in the Arctic region, with an emphasis on developing—
(1) new construction techniques for roads, bridges, rail, and related transportation infrastructure and residential, commercial, and industrial infrastructure that are capable of withstanding the Arctic environment and using limited energy resources as efficiently as possible;
(2) technologies and procedures for increasing road, bridge, rail, and related transportation infrastructure and residential, commercial, and industrial infrastructure safety, reliability, and integrity in the Arctic region;
(3) new materials and improving the performance and energy efficiency of existing materials for the construction of roads, bridges, rail, and related transportation infrastructure and residential, commercial, and industrial infrastructure in the Arctic region; and
(4) recommendations for new local, regional, and State permitting and building codes to ensure transportation and building safety and efficient energy use when constructing, using, and occupying such infrastructure in the Arctic region.

(c) OBJECTIVES.—The Center shall carry out—
(1) basic and applied research in the subjects described in subsection (b), the products of which shall be judged by peers or other experts in the field to advance the body of knowledge in road, bridge, rail, and infrastructure engineering in the Arctic region; and
(2) an ongoing program of technology transfer that makes research results available to potential users in a form that can be implemented.

(d) AMOUNT OF GRANT.—For each of fiscal years 2004 through 2009, the Secretary shall provide a grant in the amount of $3,000,000 to the institution specified in subsection (a) to carry out this section.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $3,000,000 for each of fiscal years 2004 through 2009.

SEC. 969. BARROW GEOPHYSICAL RESEARCH FACILITY.

(a) ESTABLISHMENT.—The Secretary of Commerce, in consultation with the Secretaries of Energy and the Interior, the Director of the National Science Foundation, and the Administrator of the Environmental Protection Agency, shall establish a joint research facility in Barrow, Alaska, to be known as the ''Barrow Geophysical Research Facility'', to support scientific research activities in the Arctic.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretaries of Commerce, Energy, and the Interior, the Director of the National Science Foundation, and the Administrator of the Environmental Protection Agency for the planning, design, construction, and support of the Barrow Geophysical Research Facility $61,000,000.

SEC. 970. WESTERN MICHIGAN DEMONSTRATION PROJECT.

The Administrator of the Environmental Protection Agency, in consultation with the State of Michigan and affected local officials, shall conduct a demonstration project to address the effect of transported ozone and ozone precursors in Southwestern Michigan. The demonstration program shall address projected nonattainment areas in Southwestern Michigan that include counties with design values for ozone of less than .095 based on years 2000 to 2002 or the most current 3-year period of air quality data. The Administrator shall assess any difficulties such areas may experience in meeting the 8-hour national ambient air quality standard for ozone due to the effect of transported ozone or ozone precursors into the areas. The Administrator shall work with State and local officials to determine the extent of ozone and ozone precursor transport, to assess alternatives to achieve compliance with the 8-hour standard apart from local controls, and to determine the timeframe in which such compliance could take place. The Administrator shall complete this demonstration project no later than 2 years after the date of enactment of this section and shall not impose any requirement or sanction that might otherwise apply during the pendency of the demonstration project.

Subtitle H—Management

SEC. 971. AVAILABILITY OF FUNDS.

Funds authorized to be appropriated to the Department under this title shall remain available until expended.

SEC. 972. COST SHARING.

(a) RESEARCH AND DEVELOPMENT.—Except as otherwise provided in this title, for research and development programs carried out under this title the Secretary shall require a commitment from non-Federal sources of at least 20 percent of the cost of the project. The Secretary may reduce or eliminate the non-Federal requirement under this subsection if the Secretary determines that the research and development is of a basic or fundamental nature or involves technical analyses or educational activities.

(b) DEMONSTRATION AND COMMERCIAL APPLICATION.—Except as otherwise provided in this title, the Secretary shall require at least 50 percent of the costs directly and specifically related to any demonstration or commercial application project under this title to be provided from non-Federal sources. The Secretary may reduce the non-Federal requirement under this subsection if the Secretary determines that the reduction is necessary and appropriate considering the technological risks involved in the project and is necessary to meet the objectives of this title.

(c) CALCULATION OF AMOUNT.—In calculating the amount of the non-Federal commitment under subsection (a) or (b), the Secretary may include personnel, services, equipment, and other resources.

(d) SIZE OF NON-FEDERAL SHARE.—The Secretary may consider the size of the non-Federal share in selecting projects.

SEC. 973. MERIT REVIEW OF PROPOSALS.

Awards of funds authorized under this title shall be made only after an impartial review of the scientific and technical merit of the proposals for such awards has been carried out by or for the Department.

SEC. 974. EXTERNAL TECHNICAL REVIEW OF DEPARTMENTAL PROGRAMS.

(a) NATIONAL ENERGY RESEARCH AND DEVELOPMENT ADVISORY BOARDS.—

(1) IN GENERAL.—The Secretary shall establish 1 or more advisory boards to review Department research, development, demonstration, and commercial application programs in energy efficiency, renewable energy, nuclear energy, and fossil energy.

(2) EXISTING ADVISORY BOARDS.—The Secretary may designate an existing advisory board within the Department to fulfill the responsibilities of an advisory board under this subsection, and may enter into appropriate arrangements with the National Academy of Sciences to establish such an advisory board.

(b) OFFICE OF SCIENCE ADVISORY COMMITTEES.—

(1) UTILIZATION OF EXISTING COMMITTEES.—The Secretary shall continue to use the scientific program advisory committees chartered under the Federal Advisory Committee Act (5 U.S.C. App.) by the Office of Science to oversee research and development programs under that Office.

(2) SCIENCE ADVISORY COMMITTEE.—

(A) ESTABLISHMENT.—There shall be in the Office of Science a Science Advisory Committee that includes the chairs of each of the

advisory committees described in paragraph (1).

(B) RESPONSIBILITIES.—The Science Advisory Committee shall—

(i) serve as the science advisor to the Director of the Office of Science;

(ii) advise the Director with respect to the well-being and management of the National Laboratories and single-purpose research facilities;

(iii) advise the Director with respect to education and workforce training activities required for effective short-term and long-term basic and applied research activities of the Office of Science; and

(iv) advise the Director with respect to the well being of the university research programs supported by the Office of Science.

(c) MEMBERSHIP.—Each advisory board under this section shall consist of persons with appropriate expertise representing a diverse range of interests.

(d) MEETINGS AND PURPOSES.—Each advisory board under this section shall meet at least semiannually to review and advise on the progress made by the respective research, development, demonstration, and commercial application program or programs. The advisory board shall also review the measurable cost and performance-based goals for such programs as established under section 901(b), and the progress on meeting such goals.

(e) PERIODIC REVIEWS AND ASSESSMENTS.—The Secretary shall enter into appropriate arrangements with the National Academy of Sciences to conduct periodic reviews and assessments of the programs authorized by this title, the measurable cost and performance-based goals for such programs as established under section 901(b), if any, and the progress on meeting such goals. Such reviews and assessments shall be conducted every 5 years, or more often as the Secretary considers necessary, and the Secretary shall transmit to Congress reports containing the results of all such reviews and assessments.

SEC. 975. IMPROVED COORDINATION OF TECHNOLOGY TRANSFER ACTIVITIES.

(a) TECHNOLOGY TRANSFER COORDINATOR.—The Secretary shall designate a Technology Transfer Coordinator to perform oversight of and policy development for technology transfer activities at the Department. The Technology Transfer Coordinator shall—

(1) coordinate the activities of the Technology Transfer Working Group;

(2) oversee the expenditure of funds allocated to the Technology Transfer Working Group; and

(3) coordinate with each technology partnership ombudsman appointed under section 11 of the Technology Transfer Commercialization Act of 2000 (42 U.S.C. 7261c).

(b) TECHNOLOGY TRANSFER WORKING GROUP.—The Secretary shall establish a Technology Transfer Working Group, which shall consist of representatives of the National Laboratories and single-purpose research facilities, to—

(1) coordinate technology transfer activities occurring at National Laboratories and single-purpose research facilities;

(2) exchange information about technology transfer practices, including alternative approaches to resolution of disputes involving intellectual property rights and other technology transfer matters; and

(3) develop and disseminate to the public and prospective technology partners information about opportunities and procedures for technology transfer with the Department, including those related to alternative approaches to resolution of disputes involving intellectual property rights and other technology transfer matters.

(c) TECHNOLOGY TRANSFER RESPONSIBILITY.—Nothing in this section shall affect the technology transfer responsibilities of Federal employees under the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3701 et seq.).

SEC. 976. FEDERAL LABORATORY EDUCATIONAL PARTNERS.

(a) DISTRIBUTION OF ROYALTIES RECEIVED BY FEDERAL AGENCIES.—Section 14(a)(1)(B)(v) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710c(a)(1)(B)(v)), is amended to read as follows:

''(v) for scientific research and development and for educational assistance and other purposes consistent with the missions and objectives of the agency and the laboratory.''.

(b) COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENTS.—Section 12(b)(5)(C) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a(b)(5)(C)) is amended to read as follows:

''(C) for scientific research and development and for educational assistance consistent with the missions and objectives of the agency and the laboratory.''.

SEC. 977. INTERAGENCY COOPERATION.

The Secretary shall enter into discussions with the Administrator of the National Aeronautics and Space Administration with the goal of reaching an interagency working agreement between the 2 agencies that would make the National Aeronautics and Space Administration's expertise in energy, gained from its existing and planned programs, more readily available to the relevant research, development, demonstration, and commercial applications programs of the Department. Technologies to be discussed should include the National Aeronautics and Space Administration's modeling, research, development, testing, and evaluation of new energy technologies, including solar, wind, fuel cells, and hydrogen storage and distribution.

SEC. 978. TECHNOLOGY INFRASTRUCTURE PROGRAM.

(a) ESTABLISHMENT.—The Secretary shall establish a Technology Infrastructure Program in accordance with this section.

(b) PURPOSE.—The purpose of the Technology Infrastructure Program shall be to improve the ability of National Laboratories and single-purpose research facilities to support departmental missions by—

(1) stimulating the development of technology clusters that can support departmental missions at the National Laboratories or single-purpose research facilities;

(2) improving the ability of National Laboratories and single-purpose research facilities to leverage and benefit from commercial research, technology, products, processes, and services; and

(3) encouraging the exchange of scientific and technological expertise between National Laboratories or single-purpose research facilities and entities that can support departmental missions at the National Laboratories or single-purpose research facilities, such as institutions of higher education; technology-related business concerns; nonprofit institutions; and agencies of State, tribal, or local governments.

(c) PROJECTS.—The Secretary shall authorize the Director of each National Laboratory or single-purpose research facility to implement the Technology Infrastructure Program at such National Laboratory or facility through projects that meet the requirements of subsections (d) and (e).

(d) PROGRAM REQUIREMENTS.—Each project funded under this section shall meet the following requirements:

(1) Each project shall include at least 1 of each of the following entities: A business; an institution of higher education; a nonprofit institution; and an agency of a State, local, or tribal government.

(2) Not less than 50 percent of the costs of each project funded under this section shall be provided from non-Federal sources. The calculation of costs paid by the non-Federal sources to a project shall include cash, personnel, services, equipment, and other resources expended on the project after start of the project. Independent research and development expenses of Government contractors that qualify for reimbursement under section 31.205–18(e) of the Federal Acquisition Regulation issued pursuant to section 25(c)(1) of the Office of Federal Procurement Policy Act (41 U.S.C. 421(c)(1)) may be credited toward costs paid by non-Federal sources to a project, if the expenses meet the other requirements of this section.

(3) All projects under this section shall be competitively selected using procedures determined by the Secretary.

(4) Any participant that receives funds under this section may use generally accepted accounting principles for maintaining accounts, books, and records relating to the project.

(5) No Federal funds shall be made available under this section for construction or any project for more than 5 years.

(e) SELECTION CRITERIA.—

(1) IN GENERAL.—The Secretary shall allocate funds under this section only if the Director of the National Laboratory or single-purpose research facility managing the project determines that the project is likely to improve the ability of the National Laboratory or single-purpose research facility to achieve technical success in meeting departmental missions.

(2) CRITERIA.—The Secretary shall consider the following criteria in selecting a project to receive Federal funds:

(A) The potential of the project to promote the development of a commercially sustainable technology cluster following the period of Department investment, which will derive most of the demand for its products or services from the private sector, and which will support departmental missions at the participating National Laboratory or single-purpose research facility.

(B) The potential of the project to promote the use of commercial research, technology, products, processes, and services by the participating National Laboratory or single-purpose research facility to achieve its mission or the commercial development of technological innovations made at the participating National Laboratory or single-purpose research facility.

(C) The extent to which the project involves a wide variety and number of institutions of higher education, nonprofit institutions, and technology-related business concerns that can support the missions of the participating National Laboratory or single-purpose research facility and that will make substantive contributions to achieving the goals of the project.

(D) The extent to which the project focuses on promoting the development of technology-related business concerns that are small businesses or involves such small businesses substantively in the project.

(E) Such other criteria as the Secretary determines to be appropriate.

(f) ALLOCATION.—In allocating funds for projects approved under this section, the Secretary shall provide—

(1) the Federal share of the project costs; and

(2) additional funds to the National Laboratory or single-purpose research facility managing the project to permit the National Laboratory or single-purpose research facility to carry out activities relating to the project, and to coordinate such activities with the project.

(g) REPORT TO CONGRESS.—Not later than July 1, 2006, the Secretary shall report to Congress on whether the Technology Infrastructure Program should be continued and, if so, how the program should be managed.

(h) DEFINITIONS.—In this section:

(1) TECHNOLOGY CLUSTER.—The term ''technology cluster'' means a concentration of technology-related business concerns, institutions of higher education, or nonprofit institutions that reinforce each other's performance in the areas of technology development through formal or informal relationships.

(2) TECHNOLOGY-RELATED BUSINESS CONCERN.—The term ''technology-related business concern'' means a for-profit corporation, company, association, firm, partnership, or small business concern that conducts scientific or engineering research; develops new technologies; manufactures products based on new technologies; or performs technological services.

(i) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary for activities under this section $10,000,000 for each of fiscal years 2004, 2005, and 2006.

SEC. 979. REPROGRAMMING.

(a) DISTRIBUTION REPORT.—Not later than 60 days after the date of the enactment of an Act appropriating amounts authorized under this title, the Secretary shall transmit to the appropriate authorizing committees of Congress a report explaining how such amounts will be distributed among the authorizations contained in this title.

(b) PROHIBITION.—

(1) IN GENERAL.—No amount identified under subsection (a) shall be reprogrammed if such reprogramming would result in an obligation which changes an individual distribution required to be reported under subsection (a) by more than 5 percent unless the Secretary has transmitted to the appropriate authorizing committees of Congress a report described in subsection (c) and a period of 30 days has elapsed after such committees receive the report.

(2) COMPUTATION.—In the computation of the 30-day period described in paragraph (1), there shall be excluded any day on which either House of Congress is not in session because of an adjournment of more than 3 days to a day certain.

(c) REPROGRAMMING REPORT.—A report referred to in subsection (b)(1) shall contain a full and complete statement of the action proposed to be taken and the facts and circumstances relied on in support of the proposed action.

SEC. 980. CONSTRUCTION WITH OTHER LAWS.

Except as otherwise provided in this title, the Secretary shall carry out the research, development, demonstration, and commercial application programs, projects, and activities authorized by this title in accordance with the applicable provisions of the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.), the Federal Nonnuclear Research and Development Act of 1974 (42 U.S.C. 5901 et seq.), the Energy Policy Act of 1992 (42 U.S.C. 13201 et seq.), the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3701 et seq.), chapter 18 of title 35, United States Code (commonly referred to as the Bayh-Dole Act), and any other Act under which the Secretary is authorized to carry out such activities.

SEC. 981. REPORT ON RESEARCH AND DEVELOPMENT PROGRAM EVALUATION METHODOLOGIES.

Not later than 180 days after the date of enactment of this Act, the Secretary shall enter into appropriate arrangements with the National Academy of Sciences to investigate and report on the scientific and technical merits of any evaluation methodology currently in use or proposed for use in relation to the scientific and technical programs of the Department by the Secretary or other Federal official. Not later than 6 months after receiving the report of the National Academy, the Secretary shall submit such report to Congress, along with any other views or plans of the Secretary with respect to the future use of such evaluation methodology.

SEC. 982. DEPARTMENT OF ENERGY SCIENCE AND TECHNOLOGY SCHOLARSHIP PROGRAM.

(a) ESTABLISHMENT OF PROGRAM.—

(1) IN GENERAL.—The Secretary is authorized to establish a Department of Energy Science and Technology Scholarship Program to award scholarships to individuals that is designed to recruit and prepare students for careers in the Department.

(2) COMPETITIVE PROCESS.—Individuals shall be selected to receive scholarships under this section through a competitive process primarily on the basis of academic merit, with consideration given to financial need and the goal of promoting the participation of individuals identified in section 33 or 34 of the Science and Engineering Equal Opportunities Act (42 U.S.C. 1885a or 1885b).

(3) SERVICE AGREEMENTS.—To carry out the Program the Secretary shall enter into contractual agreements with individuals selected under paragraph (2) under which the individuals agree to serve as full-time employees of the Department, for the period described in subsection (f)(1), in positions needed by the Department and for which the individuals are qualified, in exchange for receiving a scholarship.

(b) SCHOLARSHIP ELIGIBILITY.—In order to be eligible to participate in the Program, an individual must—

(1) be enrolled or accepted for enrollment as a full-time student at an institution of higher education in an academic program or field of study described in the list made available under subsection (d);

(2) be a United States citizen; and

(3) at the time of the initial scholarship award, not be a Federal employee as defined in section 2105 of title 5 of the United States Code.

(c) APPLICATION REQUIRED.—An individual seeking a scholarship under this section shall submit an application to the Secretary at such time, in such manner, and containing such information, agreements, or assurances as the Secretary may require.

(d) ELIGIBLE ACADEMIC PROGRAMS.—The Secretary shall make publicly available a list of academic programs and fields of study for which scholarships under the Program may be utilized, and shall update the list as necessary.

(e) SCHOLARSHIP REQUIREMENT.—

(1) IN GENERAL.—The Secretary may provide a scholarship under the Program for an academic year if the individual applying for the scholarship has submitted to the Secretary, as part of the application required under subsection (c), a proposed academic program leading to a degree in a program or field of study on the list made available under subsection (d).

(2) DURATION OF ELIGIBILITY.—An individual may not receive a scholarship under this section for more than 4 academic years, unless the Secretary grants a waiver.

(3) SCHOLARSHIP AMOUNT.—The dollar amount of a scholarship under this section for an academic year shall be determined under regulations issued by the Secretary, but shall in no case exceed the cost of attendance.

(4) AUTHORIZED USES.—A scholarship provided under this section may be expended for tuition, fees, and other authorized expenses as established by the Secretary by regulation.

(5) CONTRACTS REGARDING DIRECT PAYMENTS TO INSTITUTIONS.—The Secretary may enter into a contractual agreement with an institution of higher education under which the amounts provided for a scholarship under this section for tuition, fees, and other authorized expenses are paid directly to the institution with respect to which the scholarship is provided.

(f) PERIOD OF OBLIGATED SERVICE.—

(1) DURATION OF SERVICE.—The period of service for which an individual shall be obligated to serve as an employee of the Department is, except as provided in subsection (h)(2), 24 months for each academic year for which a scholarship under this section is provided.

(2) SCHEDULE FOR SERVICE.—

(A) IN GENERAL.—Except as provided in subparagraph (B), obligated service under paragraph (1) shall begin not later than 60 days after the individual obtains the educational degree for which the scholarship was provided.

(B) DEFERRAL.—The Secretary may defer the obligation of an individual to provide a period of service under paragraph (1) if the Secretary determines that such a deferral is appropriate. The Secretary shall prescribe the terms and conditions under which a service obligation may be deferred through regulation.

(g) PENALTIES FOR BREACH OF SCHOLARSHIP AGREEMENT.—

(1) FAILURE TO COMPLETE ACADEMIC TRAINING.—Scholarship recipients who fail to maintain a high level of academic standing, as defined by the Secretary by regulation, who are dismissed from their educational institutions for disciplinary reasons, or who voluntarily terminate academic training before graduation from the educational program for which the scholarship was awarded, shall be in breach of their contractual agreement and, in lieu of any service obligation arising under such agreement, shall be liable to the United States for repayment not later than 1 year after the date of default of all scholarship funds paid to them and to the institution of higher education on their behalf under the agreement, except as provided in subsection (h)(2). The repayment period may be extended by the Secretary when determined to be necessary, as established by regulation.

(2) FAILURE TO BEGIN OR COMPLETE THE SERVICE OBLIGATION OR MEET THE TERMS AND CONDITIONS OF DEFERMENT.—A scholarship recipient who, for any reason, fails to begin or complete a service obligation under this section after completion of academic training, or fails to comply with the terms and conditions of deferment established by the Secretary pursuant to subsection (f)(2)(B), shall be in breach of the contractual agreement. When a recipient breaches an agreement for the reasons stated in the preceding sentence, the recipient shall be liable to the United States for an amount equal to—

(A) the total amount of scholarships received by such individual under this section; plus

(B) the interest on the amounts of such awards which would be payable if at the time the awards were received they were loans bearing interest at the maximum legal prevailing rate, as determined by the Treasurer of the United States,

multiplied by 3.

(h) WAIVER OR SUSPENSION OF OBLIGATION.—

(1) DEATH OF INDIVIDUAL.—Any obligation of an individual incurred under the Program (or a contractual agreement thereunder) for service or payment shall be canceled upon the death of the individual.

(2) IMPOSSIBILITY OR EXTREME HARDSHIP.—The Secretary shall by regulation provide for the partial or total waiver or suspension of any obligation of service or payment incurred by an individual under the Program (or a contractual agreement thereunder) whenever compliance by the individual is impossible or would involve extreme hardship to the individual, or if enforcement of such obligation with respect to the individual would be contrary to the best interests of the Government.

(i) DEFINITIONS.—In this section the following definitions apply:

(1) COST OF ATTENDANCE.—The term ''cost of attendance'' has the meaning given that term in section 472 of the Higher Education Act of 1965 (20 U.S.C. 1087*ll*).

(2) PROGRAM.—The term ''Program'' means the Department of Energy Science and Technology Scholarship Program established under this section.

(j) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary for activities under this section—

(1) for fiscal year 2004, $800,000;

(2) for fiscal year 2005, $1,600,000;

(3) for fiscal year 2006, $2,000,000;

(4) for fiscal year 2007, $2,000,000; and

(5) for fiscal year 2008, $2,000,000.

SEC. 983. REPORT ON EQUAL EMPLOYMENT OPPORTUNITY PRACTICES.

Not later than 12 months after the date of enactment of this Act, and biennially thereafter, the Secretary shall transmit to Congress a report on the equal employment opportunity practices at National Laboratories. Such report shall include—

(1) a thorough review of each laboratory contractor's equal employment opportunity policies, including promotion to management and professional positions and pay raises;

(2) a statistical report on complaints and their disposition in the laboratories;

(3) a description of how equal employment opportunity practices at the laboratories are treated in the contract and in calculating award fees for each contractor;

(4) a summary of disciplinary actions and their disposition by either the Department or the relevant contractors for each laboratory;

(5) a summary of outreach efforts to attract women and minorities to the laboratories;

(6) a summary of efforts to retain women and minorities in the laboratories; and

(7) a summary of collaboration efforts with the Office of Federal Contract Compliance Programs to improve equal employment opportunity practices at the laboratories.

SEC. 984. SMALL BUSINESS ADVOCACY AND ASSISTANCE.

(a) SMALL BUSINESS ADVOCATE.—The Secretary shall require the Director of each National Laboratory, and may require the Director of a single-purpose research facility, to designate a small business advocate to—

(1) increase the participation of small business concerns, including socially and economically disadvantaged small business concerns, in procurement, collaborative research, technology licensing, and technology transfer activities conducted by the National Laboratory or single-purpose research facility;

(2) report to the Director of the National Laboratory or single-purpose research facility on the actual participation of small business concerns, including socially and economically disadvantaged small business concerns, in procurement, collaborative research, technology licensing, and technology transfer activities along with recommendations, if appropriate, on how to improve participation;

(3) make available to small businesses training, mentoring, and information on how to participate in procurement and collaborative research activities;

(4) increase the awareness inside the National Laboratory or single-purpose research facility of the capabilities and opportunities presented by small business concerns; and

(5) establish guidelines for the program under subsection (b) and report on the effectiveness of such program to the Director of the National Laboratory or single-purpose research facility.

(b) ESTABLISHMENT OF SMALL BUSINESS ASSISTANCE PROGRAM.—The Secretary shall require the Director of each National Laboratory, and may require the Director of a single-purpose research facility, to establish a program to provide small business concerns—

(1) assistance directed at making them more effective and efficient subcontractors or suppliers to the National Laboratory or single-purpose research facility; or

(2) general technical assistance, the cost of which shall not exceed $10,000 per instance of assistance, to improve the small business concerns' products or services.

(c) USE OF FUNDS.—None of the funds expended under subsection (b) may be used for direct grants to the small business concerns.

(d) DEFINITIONS.—In this section:

(1) SMALL BUSINESS CONCERN.—The term ''small business concern'' has the meaning given such term in section 3 of the Small Business Act (15 U.S.C. 632).

(2) SOCIALLY AND ECONOMICALLY DISADVANTAGED SMALL BUSINESS CONCERNS.—The term ''socially and economically disadvantaged small business concerns'' has the meaning given such term in section 8(a)(4) of the Small Business Act (15 U.S.C. 637(a)(4)).

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary for activities under this section $5,000,000 for each of fiscal years 2004 through 2008.

SEC. 985. REPORT ON MOBILITY OF SCIENTIFIC AND TECHNICAL PERSONNEL.

Not later than 2 years after the date of enactment of this Act, the Secretary shall transmit a report to Congress identifying any policies or procedures of a contractor operating a National Laboratory or single-purpose research facility that create disincentives to the temporary transfer of scientific and technical personnel among the contractor-operated National Laboratories or contractor-operated single-purpose research facilities and provide suggestions for improving interlaboratory exchange of scientific and technical personnel.

SEC. 986. NATIONAL ACADEMY OF SCIENCES REPORT.

Not later than 90 days after the date of enactment of this Act, the Secretary shall enter into an arrangement with the National Academy of Sciences for the Academy to—

(1) conduct a study on—

(A) the obstacles to accelerating the commercial application of energy technology; and

(B) the adequacy of Department policies and procedures for, and oversight of, technology transfer-related disputes between contractors of the Department and the private sector; and

(2) transmit a report to Congress on recommendations developed as a result of the study.

SEC. 987. OUTREACH.

The Secretary shall ensure that each program authorized by this title includes an outreach component to provide information, as appropriate, to manufacturers, consumers, engineers, architects, builders, energy service companies, institutions of higher education, small businesses, facility planners and managers, State and local governments, and other entities.

SEC. 988. COMPETITIVE AWARD OF MANAGEMENT CONTRACTS.

None of the funds authorized to be appropriated to the Secretary by this title may be used to award a management and operating contract for a nonmilitary energy laboratory of the Department unless such contract is competitively awarded or the Secretary grants, on a case-by-case basis, a waiver to allow for such a deviation. The Secretary may not delegate the authority to grant such a waiver and shall submit to Congress a report notifying Congress of the waiver and setting forth the reasons for the waiver at least 60 days prior to the date of the award of such a contract.

SEC. 989. EDUCATIONAL PROGRAMS IN SCIENCE AND MATHEMATICS.

(a) ACTIVITIES.—Section 3165(a) of the Department of Energy Science Education Enhancement Act (42 U.S.C. 7381b(a)) is amended by adding at the end the following:

''(14) Support competitive events for students, under supervision of teachers, designed to encourage student interest and knowledge in science and mathematics.''.

(b) AUTHORIZATION OF APPROPRIATIONS.—Section 3169 of the Department of Energy Science Education Enhancement Act (42 U.S.C. 7381e), as so redesignated by section 1102(b), is amended by inserting before the period ''; and $40,000,000 for each of fiscal years 2004 through 2008''.

TITLE X—DEPARTMENT OF ENERGY MANAGEMENT

SEC. 1001. ADDITIONAL ASSISTANT SECRETARY POSITION.

(a) ADDITIONAL ASSISTANT SECRETARY POSITION TO ENABLE IMPROVED MANAGEMENT OF NUCLEAR ENERGY ISSUES.—

(1) IN GENERAL.—Section 203(a) of the Department of Energy Organization Act (42 U.S.C. 7133(a)) is amended by striking ''six Assistant Secretaries'' and inserting ''7 Assistant Secretaries''.

(2) SENSE OF CONGRESS.—It is the sense of Congress that the leadership for departmental missions in nuclear energy should be at the Assistant Secretary level.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) TITLE 5.—Section 5315 of title 5, United States Code, is amended by striking ''Assistant Secretaries of Energy (6)'' and inserting ''Assistant Secretaries of Energy (7)''.

(2) DEPARTMENT OF ENERGY ORGANIZATION ACT.—The table of contents for the Department of Energy Organization Act (42 U.S.C. 7101 note) is amended—

(A) by striking ''Section 209'' and inserting ''Sec. 209'';

(B) by striking ''213.'' and inserting ''Sec. 213.'';

(C) by striking ''214.'' and inserting ''Sec. 214.'';

(D) by striking ''215.'' and inserting ''Sec. 215.''; and

(E) by striking ''216.'' and inserting ''Sec. 216.''.

SEC. 1002. OTHER TRANSACTIONS AUTHORITY.

Section 646 of the Department of Energy Organization Act (42 U.S.C. 7256) is amended by adding at the end the following:

''(g)(1) In addition to other authorities granted to the Secretary under law, the Secretary may enter into other transactions on such terms as the Secretary may deem appropriate in furtherance of research, development, or demonstration functions vested in the Secretary. Such other transactions shall not be subject to the provisions of section 9 of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5908) or section 152 of the Atomic Energy Act of 1954 (42 U.S.C. 2182).

''(2)(A) The Secretary shall ensure that—

''(i) to the maximum extent the Secretary determines practicable, no transaction entered into under paragraph (1) provides for research, development, or demonstration that duplicates research, development, or demonstration being conducted under existing projects carried out by the Department;

''(ii) to the extent the Secretary determines practicable, the funds provided by the Government under a transaction authorized by paragraph (1) do not exceed the total amount provided by other parties to the transaction; and

''(iii) to the extent the Secretary determines practicable, competitive, merit-based selection procedures shall be used when entering into transactions under paragraph (1).

''(B) A transaction authorized by paragraph (1) may be used for a research, development, or demonstration project only if the Secretary makes a written determination that the use of a standard contract, grant, or cooperative agreement for the project is not feasible or appropriate.

''(3)(A) The Secretary shall protect from disclosure, including disclosure under section 552 of title 5, United States Code, for up to 5 years after the date the information is received by the Secretary—

''(i) a proposal, proposal abstract, and supporting documents submitted to the Department in a competitive or noncompetitive process having the potential for resulting in an award under paragraph (1) to the party submitting the information; and

''(ii) a business plan and technical information relating to a transaction authorized by paragraph (1) submitted to the Department as confidential business information.

''(B) The Secretary may protect from disclosure, for up to 5 years after the information was developed, any information developed pursuant to a transaction under paragraph (1) which developed information is of a character that it would be protected from disclosure under section 552(b)(4) of title 5, United States Code, if obtained from a person other than a Federal agency.

''(4) Not later than 90 days after the date of enactment of this subsection, the Secretary shall prescribe guidelines for using other transactions authorized by paragraph (1). Such guidelines shall be published in the Federal Register for public comment under rulemaking procedures of the Department.

''(5) The authority of the Secretary under this subsection may be delegated only to an officer of the Department who is appointed by the President by and with the advice and consent of the Senate and may not be delegated to any other person.

''(6)(A) Not later than September 31, 2005, the Comptroller General of the United States shall report to Congress on the Department's use of the authorities granted under this section, including the ability to attract nontraditional government contractors and whether additional safeguards are needed with respect to the use of such authorities.

''(B) In this section, the term 'nontraditional Government contractor' has the same meaning as the term 'nontraditional defense contractor' as defined in section 845(e) of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160; 10 U.S.C. 2371 note).''.

TITLE XI—PERSONNEL AND TRAINING

SEC. 1101. TRAINING GUIDELINES FOR ELECTRIC ENERGY INDUSTRY PERSONNEL.

The Secretary of Energy, in consultation with the Secretary of Labor and jointly with the electric industry and recognized employee representatives, shall develop model personnel training guidelines to support electric system reliability and safety. The training guidelines shall, at a minimum—

(1) include training requirements for workers engaged in the construction, operation, inspection, and maintenance of electric generation, transmission, and distribution, including competency and certification requirements, and assessment requirements that include initial and ongoing evaluation of workers, recertification assessment procedures, and methods for examining or testing the qualification of individuals performing covered tasks; and

(2) consolidate existing training guidelines on the construction, operation, maintenance, and inspection of electric generation, transmission, and distribution facilities, such as those established by the National Electric Safety Code and other industry consensus standards.

SEC. 1102. IMPROVED ACCESS TO ENERGY-RELATED SCIENTIFIC AND TECHNICAL CAREERS.

(a) DEPARTMENT OF ENERGY SCIENCE EDUCATION PROGRAMS.—Section 3164 of the Department of Energy Science Education Enhancement Act (42 U.S.C. 7381a) is amended by adding at the end the following:

''(c) PROGRAMS FOR STUDENTS FROM UNDERREPRESENTED GROUPS.—In carrying out a program under subsection (a), the Secretary shall give priority to activities that are designed to encourage students from underrepresented groups to pursue scientific and technical careers.''.

(b) PARTNERSHIPS WITH HISTORICALLY BLACK COLLEGES AND UNIVERSITIES, HISPANIC-SERVICING INSTITUTIONS, AND TRIBAL COLLEGES.—The Department of Energy Science Education Enhancement Act (42 U.S.C. 7381 et seq.) is amended—

(1) by redesignating sections 3167 and 3168 as sections 3168 and 3169, respectively; and

(2) by inserting after section 3166 the following:

''SEC. 3167. PARTNERSHIPS WITH HISTORICALLY BLACK COLLEGES AND UNIVERSITIES, HISPANIC-SERVING INSTITUTIONS, AND TRIBAL COLLEGES.

''(a) DEFINITIONS.—In this section:

''(1) HISPANIC-SERVING INSTITUTION.—The term 'Hispanic-serving institution' has the meaning given that term in section 502(a) of the Higher Education Act of 1965 (20 U.S.C. 1101a(a)).

''(2) HISTORICALLY BLACK COLLEGE OR UNIVERSITY.—The term 'historically Black college or university' has the meaning given the term 'part B institution' in section 322 of the Higher Education Act of 1965 (20 U.S.C. 1061).

''(3) NATIONAL LABORATORY.—The term 'National Laboratory' has the meaning given that term in section 902 of the Energy Policy Act of 2003.

''(4) SCIENCE FACILITY.—The term 'science facility' has the meaning given the term 'single-purpose research facility' in section 902 of the Energy Policy Act of 2003.

''(5) TRIBAL COLLEGE.—The term 'tribal college' has the meaning given the term 'Tribal College or University' in section 316(b)(3) of the Higher Education Act of 1965 (20 U.S.C. 1059c(b)(3)).

''(b) EDUCATION PARTNERSHIP.—The Secretary shall direct the Director of each National Laboratory and, to the extent practicable, the head of any science facility to increase the participation of historically Black colleges or universities, Hispanic-serving institutions, or tribal colleges in activities that increase the capacity of the historically Black colleges or universities, Hispanic-serving institutions, or tribal colleges to train personnel in science or engineering.

''(c) ACTIVITIES.—An activity under subsection (b) may include—

''(1) collaborative research;

''(2) equipment transfer;

''(3) training activities conducted at a National Laboratory or science facility; and

''(4) mentoring activities conducted at a National Laboratory or science facility.

''(d) REPORT.—Not later than 2 years after the date of enactment of the Energy Policy Act of 2003, the Secretary shall submit to Congress a report on the activities carried out under this section.''.

SEC. 1103. NATIONAL POWER PLANT OPERATIONS TECHNOLOGY AND EDUCATION CENTER.

(a) ESTABLISHMENT.—The Secretary shall support the establishment of a National Power Plant Operations Technology and Education Center (in this section referred to as the ''Center''), to address the need for training and educating certified operators for nonnuclear electric power generation plants.

(b) ROLE.—The Center shall provide both training and continuing education relating to nonnuclear electric power generation plant technologies and operations. The Center shall conduct training and education activities on site and through Internet-based information technologies that allow for learning at remote sites.

(c) CRITERIA FOR COMPETITIVE SELECTION.—The Secretary shall support the establishment of the Center at an institution of higher education with expertise in power plant technology and operation and with the ability to provide onsite as well as Internet-based training.

SEC. 1104. INTERNATIONAL ENERGY TRAINING.

(a) IN GENERAL.—The Secretary of Energy, in consultation with the Secretaries of Commerce, Interior, and State and the Federal Energy Regulatory Commission, shall coordinate training and outreach efforts for international commercial energy markets in countries with developing and restructuring economies.

(b) COMPONENTS.—The efforts may address—

(1) production-related fiscal regimes;

(2) grid and network issues;

(3) energy user and demand side response;

(4) international trade of energy; and

(5) international transportation of energy.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $1,500,000 for each of fiscal years 2004 through 2007.

TITLE XII—ELECTRICITY

SEC. 1201. SHORT TITLE.

This title may be cited as the ''Electric Reliability Act of 2003''.

Subtitle A—Reliability Standards

SEC. 1211. ELECTRIC RELIABILITY STANDARDS.

(a) IN GENERAL.—Part II of the Federal Power Act (16 U.S.C 824 et seq.) is amended by adding at the end the following:

''SEC. 215. ELECTRIC RELIABILITY.

''(a) DEFINITIONS.—For purposes of this section:

''(1) The term 'bulk-power system' means—

''(A) facilities and control systems necessary for operating an interconnected electric energy transmission network (or any portion thereof); and

''(B) electric energy from generation facilities needed to maintain transmission system reliability.

The term does not include facilities used in the local distribution of electric energy.

''(2) The terms 'Electric Reliability Organization' and 'ERO' mean the organization certified by the Commission under subsection (c) the purpose of which is to establish and enforce reliability standards for the bulk-power system, subject to Commission review.

''(3) The term 'reliability standard' means a requirement, approved by the Commission under this section, to provide for reliable operation of the bulk-power system. The term

includes requirements for the operation of existing bulk-power system facilities and the design of planned additions or modifications to such facilities to the extent necessary to provide for reliable operation of the bulk-power system, but the term does not include any requirement to enlarge such facilities or to construct new transmission capacity or generation capacity.

''(4) The term 'reliable operation' means operating the elements of the bulk-power system within equipment and electric system thermal, voltage, and stability limits so that instability, uncontrolled separation, or cascading failures of such system will not occur as a result of a sudden disturbance or unanticipated failure of system elements.

''(5) The term 'Interconnection' means a geographic area in which the operation of bulk-power system components is synchronized such that the failure of 1 or more of such components may adversely affect the ability of the operators of other components within the system to maintain reliable operation of the facilities within their control.

''(6) The term 'transmission organization' means a Regional Transmission Organization, Independent System Operator, independent transmission provider, or other transmission organization finally approved by the Commission for the operation of transmission facilities.

''(7) The term 'regional entity' means an entity having enforcement authority pursuant to subsection (e)(4).

''(b) JURISDICTION AND APPLICABILITY.—(1) The Commission shall have jurisdiction, within the United States, over the ERO certified by the Commission under subsection (c), any regional entities, and all users, owners and operators of the bulk-power system, including but not limited to the entities described in section 201(f), for purposes of approving reliability standards established under this section and enforcing compliance with this section. All users, owners and operators of the bulk-power system shall comply with reliability standards that take effect under this section.

''(2) The Commission shall issue a final rule to implement the requirements of this section not later than 180 days after the date of enactment of this section.

''(c) CERTIFICATION.—Following the issuance of a Commission rule under subsection (b)(2), any person may submit an application to the Commission for certification as the Electric Reliability Organization. The Commission may certify 1 such ERO if the Commission determines that such ERO—

''(1) has the ability to develop and enforce, subject to subsection (e)(2), reliability standards that provide for an adequate level of reliability of the bulk-power system; and

''(2) has established rules that—

''(A) assure its independence of the users and owners and operators of the bulk-power system, while assuring fair stakeholder representation in the selection of its directors and balanced decisionmaking in any ERO committee or subordinate organizational structure;

''(B) allocate equitably reasonable dues, fees, and other charges among end users for all activities under this section;

''(C) provide fair and impartial procedures for enforcement of reliability standards through the imposition of penalties in accordance with subsection (e) (including limitations on activities, functions, or operations, or other appropriate sanctions);

''(D) provide for reasonable notice and opportunity for public comment, due process, openness, and balance of interests in developing reliability standards and otherwise exercising its duties; and

''(E) provide for taking, after certification, appropriate steps to gain recognition in Canada and Mexico.

''(d) RELIABILITY STANDARDS.—(1) The Electric Reliability Organization shall file each reliability standard or modification to a reliability standard that it proposes to be made effective under this section with the Commission.

''(2) The Commission may approve, by rule or order, a proposed reliability standard or modification to a reliability standard if it determines that the standard is just, reasonable, not unduly discriminatory or preferential, and in the public interest. The Commission shall give due weight to the technical expertise of the Electric Reliability Organization with respect to the content of a proposed standard or modification to a reliability standard and to the technical expertise of a regional entity organized on an Interconnection-wide basis with respect to a reliability standard to be applicable within that Interconnection, but shall not defer with respect to the effect of a standard on competition. A proposed standard or modification shall take effect upon approval by the Commission.

''(3) The Electric Reliability Organization shall rebuttably presume that a proposal from a regional entity organized on an Interconnection-wide basis for a reliability standard or modification to a reliability standard to be applicable on an Interconnection-wide basis is just, reasonable, and not unduly discriminatory or preferential, and in the public interest.

''(4) The Commission shall remand to the Electric Reliability Organization for further consideration a proposed reliability standard or a modification to a reliability standard that the Commission disapproves in whole or in part.

''(5) The Commission, upon its own motion or upon complaint, may order the Electric Reliability Organization to submit to the Commission a proposed reliability standard or a modification to a reliability standard that addresses a specific matter if the Commission considers such a new or modified reliability standard appropriate to carry out this section.

''(6) The final rule adopted under subsection (b)(2) shall include fair processes for the identification and timely resolution of any conflict between a reliability standard and any function, rule, order, tariff, rate schedule, or agreement accepted, approved, or ordered by the Commission applicable to a transmission organization. Such transmission organization shall continue to comply with such function, rule, order, tariff, rate schedule or agreement accepted approved, or ordered by the Commission until—

''(A) the Commission finds a conflict exists between a reliability standard and any such provision;

''(B) the Commission orders a change to such provision pursuant to section 206 of this part; and

''(C) the ordered change becomes effective under this part.

If the Commission determines that a reliability standard needs to be changed as a result of such a conflict, it shall order the ERO to develop and file with the Commission a modified reliability standard under paragraph (4) or (5) of this subsection.

''(e) ENFORCEMENT.—(1) The ERO may impose, subject to paragraph (2), a penalty on a user or owner or operator of the bulk-power system for a violation of a reliability standard approved by the Commission under subsection (d) if the ERO, after notice and an opportunity for a hearing—

''(A) finds that the user or owner or operator has violated a reliability standard approved by the Commission under subsection (d); and

''(B) files notice and the record of the proceeding with the Commission.

''(2) A penalty imposed under paragraph (1) may take effect not earlier than the 31st day after the ERO files with the Commission notice of the penalty and the record of proceedings. Such penalty shall be subject to review by the Commission, on its own motion or upon application by the user, owner or operator that is the subject of the penalty filed within 30 days after the date such notice is filed with the Commission. Application to the Commission for review, or the initiation of review by the Commission on its own motion, shall not operate as a stay of such penalty unless the Commission otherwise orders upon its own motion or upon application by the user, owner or operator that is the subject of such penalty. In any proceeding to review a penalty imposed under paragraph (1), the Commission, after notice and opportunity for hearing (which hearing may consist solely of the record before the ERO and opportunity for the presentation of supporting reasons to affirm, modify, or set aside the penalty), shall by order affirm, set aside, reinstate, or modify the penalty, and, if appropriate, remand to the ERO for further proceedings. The Commission shall implement expedited procedures for such hearings.

''(3) On its own motion or upon complaint, the Commission may order compliance with a reliability standard and may impose a penalty against a user or owner or operator of the bulk-power system if the Commission finds, after notice and opportunity for a hearing, that the user or owner or operator of the bulk-power system has engaged or is about to engage in any acts or practices that constitute or will constitute a violation of a reliability standard.

''(4) The Commission shall issue regulations authorizing the ERO to enter into an agreement to delegate authority to a regional entity for the purpose of proposing reliability standards to the ERO and enforcing reliability standards under paragraph (1) if—

''(A) the regional entity is governed by—

''(i) an independent board;

''(ii) a balanced stakeholder board; or

''(iii) a combination independent and balanced stakeholder board.

''(B) the regional entity otherwise satisfies the provisions of subsection (c)(1) and (2); and

''(C) the agreement promotes effective and efficient administration of bulk-power system reliability.

The Commission may modify such delegation. The ERO and the Commission shall rebuttably presume that a proposal for delegation to a regional entity organized on an Interconnection-wide basis promotes effective and efficient administration of bulk-power system reliability and should be approved. Such regulation may provide that the Commission may assign the ERO's authority to enforce reliability standards under paragraph (1) directly to a regional entity consistent with the requirements of this paragraph.

''(5) The Commission may take such action as is necessary or appropriate against the ERO or a regional entity to ensure compliance with a reliability standard or any Commission order affecting the ERO or a regional entity.

''(6) Any penalty imposed under this section shall bear a reasonable relation to the seriousness of the violation and shall take into consideration the efforts of such user, owner, or operator to remedy the violation in a timely manner.

''(f) CHANGES IN ELECTRIC RELIABILITY ORGANIZATION RULES.—The Electric Reliability Organization shall file with the Commission

for approval any proposed rule or proposed rule change, accompanied by an explanation of its basis and purpose. The Commission, upon its own motion or complaint, may propose a change to the rules of the ERO. A proposed rule or proposed rule change shall take effect upon a finding by the Commission, after notice and opportunity for comment, that the change is just, reasonable, not unduly discriminatory or preferential, is in the public interest, and satisfies the requirements of subsection (c).

''(g) RELIABILITY REPORTS.—The ERO shall conduct periodic assessments of the reliability and adequacy of the bulk-power system in North America.

''(h) COORDINATION WITH CANADA AND MEXICO.—The President is urged to negotiate international agreements with the governments of Canada and Mexico to provide for effective compliance with reliability standards and the effectiveness of the ERO in the United States and Canada or Mexico.

''(i) SAVINGS PROVISIONS.—(1) The ERO shall have authority to develop and enforce compliance with reliability standards for only the bulk-power system.

''(2) This section does not authorize the ERO or the Commission to order the construction of additional generation or transmission capacity or to set and enforce compliance with standards for adequacy or safety of electric facilities or services.

''(3) Nothing in this section shall be construed to preempt any authority of any State to take action to ensure the safety, adequacy, and reliability of electric service within that State, as long as such action is not inconsistent with any reliability standard.

''(4) Within 90 days of the application of the Electric Reliability Organization or other affected party, and after notice and opportunity for comment, the Commission shall issue a final order determining whether a State action is inconsistent with a reliability standard, taking into consideration any recommendation of the ERO.

''(5) The Commission, after consultation with the ERO and the State taking action, may stay the effectiveness of any State action, pending the Commission's issuance of a final order.

''(j) REGIONAL ADVISORY BODIES.—The Commission shall establish a regional advisory body on the petition of at least ⅔ of the States within a region that have more than ½ of their electric load served within the region. A regional advisory body shall be composed of 1 member from each participating State in the region, appointed by the Governor of each State, and may include representatives of agencies, States, and provinces outside the United States. A regional advisory body may provide advice to the Electric Reliability Organization, a regional entity, or the Commission regarding the governance of an existing or proposed regional entity within the same region, whether a standard proposed to apply within the region is just, reasonable, not unduly discriminatory or preferential, and in the public interest, whether fees proposed to be assessed within the region are just, reasonable, not unduly discriminatory or preferential, and in the public interest and any other responsibilities requested by the Commission. The Commission may give deference to the advice of any such regional advisory body if that body is organized on an Interconnection-wide basis.

''(k) ALASKA AND HAWAII.—The provisions of this section do not apply to Alaska or Hawaii.''.

(b) STATUS OF ERO.—The Electric Reliability Organization certified by the Federal Energy Regulatory Commission under section 215(c) of the Federal Power Act and any regional entity delegated enforcement authority pursuant to section 215(e)(4) of that Act are not departments, agencies, or instrumentalities of the United States Government.

Subtitle B—Transmission Infrastructure Modernization

SEC. 1221. SITING OF INTERSTATE ELECTRIC TRANSMISSION FACILITIES.

(a) AMENDMENT OF FEDERAL POWER ACT.—Part II of the Federal Power Act is amended by adding at the end the following:

''SEC. 216. SITING OF INTERSTATE ELECTRIC TRANSMISSION FACILITIES.

''(a) DESIGNATION OF NATIONAL INTEREST ELECTRIC TRANSMISSION CORRIDORS.—

''(1) TRANSMISSION CONGESTION STUDY.—Within 1 year after the enactment of this section, and every 3 years thereafter, the Secretary of Energy, in consultation with affected States, shall conduct a study of electric transmission congestion. After considering alternatives and recommendations from interested parties, including an opportunity for comment from affected States, the Secretary shall issue a report, based on such study, which may designate any geographic area experiencing electric energy transmission capacity constraints or congestion that adversely affects consumers as a national interest electric transmission corridor. The Secretary shall conduct the study and issue the report in consultation with any appropriate regional entity referenced in section 215 of this Act.

''(2) CONSIDERATIONS.—In determining whether to designate a national interest electric transmission corridor referred to in paragraph (1) under this section, the Secretary may consider whether—

''(A) the economic vitality and development of the corridor, or the end markets served by the corridor, may be constrained by lack of adequate or reasonably priced electricity;

''(B)(i) economic growth in the corridor, or the end markets served by the corridor, may be jeopardized by reliance on limited sources of energy; and

''(ii) a diversification of supply is warranted;

''(C) the energy independence of the United States would be served by the designation;

''(D) the designation would be in the interest of national energy policy; and

''(E) the designation would enhance national defense and homeland security.

''(b) CONSTRUCTION PERMIT.—Except as provided in subsection (i), the Commission is authorized, after notice and an opportunity for hearing, to issue a permit or permits for the construction or modification of electric transmission facilities in a national interest electric transmission corridor designated by the Secretary under subsection (a) if the Commission finds that—

''(1)(A) a State in which the transmission facilities are to be constructed or modified is without authority to—

''(i) approve the siting of the facilities; or

''(ii) consider the interstate benefits expected to be achieved by the proposed construction or modification of transmission facilities in the State;

''(B) the applicant for a permit is a transmitting utility under this Act but does not qualify to apply for a permit or siting approval for the proposed project in a State because the applicant does not serve end-use customers in the State; or

''(C) a State commission or other entity that has authority to approve the siting of the facilities has—

''(i) withheld approval for more than 1 year after the filing of an application pursuant to applicable law seeking approval or 1 year after the designation of the relevant national interest electric transmission corridor, whichever is later; or

''(ii) conditioned its approval in such a manner that the proposed construction or modification will not significantly reduce transmission congestion in interstate commerce or is not economically feasible;

''(2) the facilities to be authorized by the permit will be used for the transmission of electric energy in interstate commerce;

''(3) the proposed construction or modification is consistent with the public interest;

''(4) the proposed construction or modification will significantly reduce transmission congestion in interstate commerce and protects or benefits consumers; and

''(5) the proposed construction or modification is consistent with sound national energy policy and will enhance energy independence.

''(c) PERMIT APPLICATIONS.—Permit applications under subsection (b) shall be made in writing to the Commission. The Commission shall issue rules setting forth the form of the application, the information to be contained in the application, and the manner of service of notice of the permit application upon interested persons.

''(d) COMMENTS.—In any proceeding before the Commission under subsection (b), the Commission shall afford each State in which a transmission facility covered by the permit is or will be located, each affected Federal agency and Indian tribe, private property owners, and other interested persons, a reasonable opportunity to present their views and recommendations with respect to the need for and impact of a facility covered by the permit.

''(e) RIGHTS-OF-WAY.—In the case of a permit under subsection (b) for electric transmission facilities to be located on property other than property owned by the United States or a State, if the permit holder cannot acquire by contract, or is unable to agree with the owner of the property to the compensation to be paid for, the necessary right-of-way to construct or modify such transmission facilities, the permit holder may acquire the right-of-way by the exercise of the right of eminent domain in the district court of the United States for the district in which the property concerned is located, or in the appropriate court of the State in which the property is located. The practice and procedure in any action or proceeding for that purpose in the district court of the United States shall conform as nearly as may be with the practice and procedure in similar action or proceeding in the courts of the State where the property is situated.

''(f) STATE LAW.—Nothing in this section shall preclude any person from constructing or modifying any transmission facility pursuant to State law.

''(g) COMPENSATION.—Any exercise of eminent domain authority pursuant to this section shall be considered a taking of private property for which just compensation is due. Just compensation shall be an amount equal to the full fair market value of the property taken on the date of the exercise of eminent domain authority, except that the compensation shall exceed fair market value if necessary to make the landowner whole for decreases in the value of any portion of the land not subject to eminent domain. Any parcel of land acquired by eminent domain under this subsection shall be transferred back to the owner from whom it was acquired (or his heirs or assigns) if the land is not used for the construction or modification of electric transmission facilities within a reasonable period of time after the acquisition. Other than construction, modification, operation, or maintenance of electric transmission facilities and related facilities, property acquired under subsection (e) may not

be used for any purpose (including use for any heritage area, recreational trail, or park) without the consent of the owner of the parcel from whom the property was acquired (or the owner's heirs or assigns).

''(h) COORDINATION OF FEDERAL AUTHORIZATIONS FOR TRANSMISSION AND DISTRIBUTION FACILITIES.—

''(1) LEAD AGENCY.—If an applicant, or prospective applicant, for a Federal authorization related to an electric transmission or distribution facility so requests, the Department of Energy (DOE) shall act as the lead agency for purposes of coordinating all applicable Federal authorizations and related environmental reviews of the facility. For purposes of this subsection, the term 'Federal authorization' means any authorization required under Federal law in order to site a transmission or distribution facility, including but not limited to such permits, special use authorizations, certifications, opinions, or other approvals as may be required, whether issued by a Federal or a State agency. To the maximum extent practicable under applicable Federal law, the Secretary of Energy shall coordinate this Federal authorization and review process with any Indian tribes, multi-State entities, and State agencies that are responsible for conducting any separate permitting and environmental reviews of the facility, to ensure timely and efficient review and permit decisions.

''(2) AUTHORITY TO SET DEADLINES.—As lead agency, the Department of Energy, in consultation with agencies responsible for Federal authorizations and, as appropriate, with Indian tribes, multi-State entities, and State agencies that are willing to coordinate their own separate permitting and environmental reviews with the Federal authorization and environmental reviews, shall establish prompt and binding intermediate milestones and ultimate deadlines for the review of, and Federal authorization decisions relating to, the proposed facility. The Secretary of Energy shall ensure that once an application has been submitted with such data as the Secretary considers necessary, all permit decisions and related environmental reviews under all applicable Federal laws shall be completed within 1 year or, if a requirement of another provision of Federal law makes this impossible, as soon thereafter as is practicable. The Secretary of Energy also shall provide an expeditious pre-application mechanism for prospective applicants to confer with the agencies involved to have each such agency determine and communicate to the prospective applicant within 60 days of when the prospective applicant submits a request for such information concerning—

''(A) the likelihood of approval for a potential facility; and

''(B) key issues of concern to the agencies and public.

''(3) CONSOLIDATED ENVIRONMENTAL REVIEW AND RECORD OF DECISION.—As lead agency head, the Secretary of Energy, in consultation with the affected agencies, shall prepare a single environmental review document, which shall be used as the basis for all decisions on the proposed project under Federal law. The document may be an environmental assessment or environmental impact statement under the National Environmental Policy Act of 1969 if warranted, or such other form of analysis as may be warranted. The Secretary of Energy and the heads of other agencies shall streamline the review and permitting of transmission and distribution facilities within corridors designated under section 503 of the Federal Land Policy and Management Act (43 U.S.C. 1763) by fully taking into account prior analyses and decisions relating to the corridors. Such document shall include consideration by the relevant agencies of any applicable criteria or other matters as required under applicable laws.

''(4) APPEALS.—In the event that any agency has denied a Federal authorization required for a transmission or distribution facility, or has failed to act by the deadline established by the Secretary pursuant to this section for deciding whether to issue the authorization, the applicant or any State in which the facility would be located may file an appeal with the Secretary, who shall, in consultation with the affected agency, review the denial or take action on the pending application. Based on the overall record and in consultation with the affected agency, the Secretary may then either issue the necessary authorization with any appropriate conditions, or deny the application. The Secretary shall issue a decision within 90 days of the filing of the appeal. In making a decision under this paragraph, the Secretary shall comply with applicable requirements of Federal law, including any requirements of the Endangered Species Act, the Clean Water Act, the National Forest Management Act, the National Environmental Policy Act of 1969, and the Federal Land Policy and Management Act.

''(5) CONFORMING REGULATIONS AND MEMORANDA OF UNDERSTANDING.—Not later than 18 months after the date of enactment of this section, the Secretary of Energy shall issue any regulations necessary to implement this subsection. Not later than 1 year after the date of enactment of this section, the Secretary and the heads of all Federal agencies with authority to issue Federal authorizations shall enter into Memoranda of Understanding to ensure the timely and coordinated review and permitting of electricity transmission and distribution facilities. The head of each Federal agency with authority to issue a Federal authorization shall designate a senior official responsible for, and dedicate sufficient other staff and resources to ensure, full implementation of the DOE regulations and any Memoranda. Interested Indian tribes, multi-State entities, and State agencies may enter such Memoranda of Understanding.

''(6) DURATION AND RENEWAL.—Each Federal land use authorization for an electricity transmission or distribution facility shall be issued—

''(A) for a duration, as determined by the Secretary of Energy, commensurate with the anticipated use of the facility, and

''(B) with appropriate authority to manage the right-of-way for reliability and environmental protection.

Upon the expiration of any such authorization (including an authorization issued prior to enactment of this section), the authorization shall be reviewed for renewal taking fully into account reliance on such electricity infrastructure, recognizing its importance for public health, safety and economic welfare and as a legitimate use of Federal lands.

''(7) MAINTAINING AND ENHANCING THE TRANSMISSION INFRASTRUCTURE.—In exercising the responsibilities under this section, the Secretary of Energy shall consult regularly with the Federal Energy Regulatory Commission (FERC), FERC-approved electric reliability organizations (including related regional entities), and FERC-approved Regional Transmission Organizations and Independent System Operators.

''(i) INTERSTATE COMPACTS.—The consent of Congress is hereby given for 3 or more contiguous States to enter into an interstate compact, subject to approval by Congress, establishing regional transmission siting agencies to facilitate siting of future electric energy transmission facilities within such States and to carry out the electric energy transmission siting responsibilities of such States. The Secretary of Energy may provide technical assistance to regional transmission siting agencies established under this subsection. Such regional transmission siting agencies shall have the authority to review, certify, and permit siting of transmission facilities, including facilities in national interest electric transmission corridors (other than facilities on property owned by the United States). The Commission shall have no authority to issue a permit for the construction or modification of electric transmission facilities within a State that is a party to a compact, unless the members of a compact are in disagreement and the Secretary makes, after notice and an opportunity for a hearing, the finding described in section (b)(1)(C).

''(j) SAVINGS CLAUSE.—Nothing in this section shall be construed to affect any requirement of the environmental laws of the United States, including, but not limited to, the National Environmental Policy Act of 1969. Subsection (h)(4) of this section shall not apply to any Congressionally-designated components of the National Wilderness Preservation System, the National Wild and Scenic Rivers System, or the National Park system (including National Monuments therein).

''(k) ERCOT.—This section shall not apply within the area referred to in section 212(k)(2)(A).''.

(b) REPORTS TO CONGRESS ON CORRIDORS AND RIGHTS OF WAY ON FEDERAL LANDS.—The Secretary of the Interior, the Secretary of Energy, the Secretary of Agriculture, and the Chairman of the Council on Environmental Quality shall, within 90 days of the date of enactment of this subsection, submit a joint report to Congress identifying each of the following:

(1) All existing designated transmission and distribution corridors on Federal land and the status of work related to proposed transmission and distribution corridor designations under Title V of the Federal Land Policy and Management Act (43 U.S.C. 1761 et seq.), the schedule for completing such work, any impediments to completing the work, and steps that Congress could take to expedite the process.

(2) The number of pending applications to locate transmission and distribution facilities on Federal lands, key information relating to each such facility, how long each application has been pending, the schedule for issuing a timely decision as to each facility, and progress in incorporating existing and new such rights-of-way into relevant land use and resource management plans or their equivalent.

(3) The number of existing transmission and distribution rights-of-way on Federal lands that will come up for renewal within the following 5-, 10-, and 15-year periods, and a description of how the Secretaries plan to manage such renewals.

SEC. 1222. THIRD-PARTY FINANCE.

(a) EXISTING FACILITIES.—The Secretary of Energy (hereinafter in this section referred to as the ''Secretary''), acting through the Administrator of the Western Area Power Administration (hereinafter in this section referred to as ''WAPA''), or through the Administrator of the Southwestern Power Administration (hereinafter in this section referred to as ''SWPA''), or both, may design, develop, construct, operate, maintain, or own, or participate with other entities in designing, developing, constructing, operating, maintaining, or owning, an electric power transmission facility and related facilities (''Project'') needed to upgrade existing transmission facilities owned by SWPA or WAPA if the Secretary of Energy, in consultation with the applicable Administrator, determines that the proposed Project—

(1)(A) is located in a national interest electric transmission corridor designated under section 216(a) of the Federal Power Act and will reduce congestion of electric transmission in interstate commerce; or

(B) is necessary to accommodate an actual or projected increase in demand for electric transmission capacity;

(2) is consistent with—

(A) transmission needs identified, in a transmission expansion plan or otherwise, by the appropriate Regional Transmission Organization or Independent System Operator (as defined in the Federal Power Act), if any, or approved regional reliability organization; and

(B) efficient and reliable operation of the transmission grid; and

(3) would be operated in conformance with prudent utility practice.

(b) NEW FACILITIES.—The Secretary, acting through WAPA or SWPA, or both, may design, develop, construct, operate, maintain, or own, or participate with other entities in designing, developing, constructing, operating, maintaining, or owning, a new electric power transmission facility and related facilities (''Project'') located within any State in which WAPA or SWPA operates if the Secretary, in consultation with the applicable Administrator, determines that the proposed Project—

(1)(A) is located in an area designated under section 216(a) of the Federal Power Act and will reduce congestion of electric transmission in interstate commerce; or

(B) is necessary to accommodate an actual or projected increase in demand for electric transmission capacity;

(2) is consistent with—

(A) transmission needs identified, in a transmission expansion plan or otherwise, by the appropriate Regional Transmission Organization or Independent System Operator, if any, or approved regional reliability organization; and

(B) efficient and reliable operation of the transmission grid;

(3) will be operated in conformance with prudent utility practice;

(4) will be operated by, or in conformance with the rules of, the appropriate (A) Regional Transmission Organization or Independent System Operator, if any, or (B) if such an organization does not exist, regional reliability organization; and

(5) will not duplicate the functions of existing transmission facilities or proposed facilities which are the subject of ongoing or approved siting and related permitting proceedings.

(c) OTHER FUNDS.—

(1) IN GENERAL.—In carrying out a Project under subsection (a) or (b), the Secretary may accept and use funds contributed by another entity for the purpose of carrying out the Project.

(2) AVAILABILITY.—The contributed funds shall be available for expenditure for the purpose of carrying out the Project—

(A) without fiscal year limitation; and

(B) as if the funds had been appropriated specifically for that Project.

(3) ALLOCATION OF COSTS.—In carrying out a Project under subsection (a) or (b), any costs of the Project not paid for by contributions from another entity shall be collected through rates charged to customers using the new transmission capability provided by the Project and allocated equitably among these project beneficiaries using the new transmission capability.

(d) RELATIONSHIP TO OTHER LAWS.—Nothing in this section affects any requirement of—

(1) any Federal environmental law, including the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

(2) any Federal or State law relating to the siting of energy facilities; or

(3) any existing authorizing statutes.

(e) SAVINGS CLAUSE.—Nothing in this section shall constrain or restrict an Administrator in the utilization of other authority delegated to the Administrator of WAPA or SWPA.

(f) SECRETARIAL DETERMINATIONS.—Any determination made pursuant to subsection (a) or (b) shall be based on findings by the Secretary using the best available data.

(g) LIMITATIONS.—The Secretary shall not accept and use more than $100,000,000 under subsection (c)(1) for the period encompassing fiscal years 2005 through 2013.

(h) EFFECTIVE DATE.—This section takes effect on October 1, 2004.

SEC. 1223. TRANSMISSION SYSTEM MONITORING.

Within 6 months after the date of enactment of this Act, the Secretary of Energy and the Federal Energy Regulatory Commission shall study and report to Congress on the steps which must be taken to establish a system to make available to all transmission system owners and Regional Transmission Organizations (as defined in the Federal Power Act) within the Eastern and Western Interconnections real-time information on the functional status of all transmission lines within such Interconnections. In such study, the Commission shall assess technical means for implementing such transmission information system and identify the steps the Commission or Congress must take to require the implementation of such system.

SEC. 1224. ADVANCED TRANSMISSION TECHNOLOGIES.

(a) AUTHORITY.—The Federal Energy Regulatory Commission, in the exercise of its authorities under the Federal Power Act and the Public Utility Regulatory Policies Act of 1978, shall encourage the deployment of advanced transmission technologies.

(b) DEFINITION.—For the purposes of this section, the term ''advanced transmission technologies'' means technologies that increase the capacity, efficiency, or reliability of existing or new transmission facilities, including, but not limited to—

(1) high-temperature lines (including superconducting cables);

(2) underground cables;

(3) advanced conductor technology (including advanced composite conductors, high-temperature low-sag conductors, and fiber optic temperature sensing conductors);

(4) high-capacity ceramic electric wire, connectors, and insulators;

(5) optimized transmission line configurations (including multiple phased transmission lines);

(6) modular equipment;

(7) wireless power transmission;

(8) ultra-high voltage lines;

(9) high-voltage DC technology;

(10) flexible AC transmission systems;

(11) energy storage devices (including pumped hydro, compressed air, superconducting magnetic energy storage, flywheels, and batteries);

(12) controllable load;

(13) distributed generation (including PV, fuel cells, microturbines);

(14) enhanced power device monitoring;

(15) direct system state sensors;

(16) fiber optic technologies;

(17) power electronics and related software (including real time monitoring and analytical software); and

(18) any other technologies the Commission considers appropriate.

(c) OBSOLETE OR IMPRACTICABLE TECHNOLOGIES.—The Commission is authorized to cease encouraging the deployment of any technology described in this section on a finding that such technology has been rendered obsolete or otherwise impracticable to deploy.

SEC. 1225. ELECTRIC TRANSMISSION AND DISTRIBUTION PROGRAMS.

(a) ELECTRIC TRANSMISSION AND DISTRIBUTION PROGRAM.—The Secretary of Energy (hereinafter in this section referred to as the ''Secretary'') acting through the Director of the Office of Electric Transmission and Distribution shall establish a comprehensive research, development, demonstration and commercial application program to promote improved reliability and efficiency of electrical transmission and distribution systems. This program shall include—

(1) advanced energy delivery and storage technologies, materials, and systems, including new transmission technologies, such as flexible alternating current transmission systems, composite conductor materials and other technologies that enhance reliability, operational flexibility, or power-carrying capability;

(2) advanced grid reliability and efficiency technology development;

(3) technologies contributing to significant load reductions;

(4) advanced metering, load management, and control technologies;

(5) technologies to enhance existing grid components;

(6) the development and use of high-temperature superconductors to—

(A) enhance the reliability, operational flexibility, or power-carrying capability of electric transmission or distribution systems; or

(B) increase the efficiency of electric energy generation, transmission, distribution, or storage systems;

(7) integration of power systems, including systems to deliver high-quality electric power, electric power reliability, and combined heat and power;

(8) supply of electricity to the power grid by small scale, distributed and residential-based power generators;

(9) the development and use of advanced grid design, operation and planning tools;

(10) any other infrastructure technologies, as appropriate; and

(11) technology transfer and education.

(b) PROGRAM PLAN.—Not later than 1 year after the date of the enactment of this legislation, the Secretary, in consultation with other appropriate Federal agencies, shall prepare and transmit to Congress a 5-year program plan to guide activities under this section. In preparing the program plan, the Secretary may consult with utilities, energy services providers, manufacturers, institutions of higher education, other appropriate State and local agencies, environmental organizations, professional and technical societies, and any other persons the Secretary considers appropriate.

(c) IMPLEMENTATION.—The Secretary shall consider implementing this program using a consortium of industry, university and national laboratory participants.

(d) REPORT.—Not later than 2 years after the transmittal of the plan under subsection (b), the Secretary shall transmit a report to Congress describing the progress made under this section and identifying any additional resources needed to continue the development and commercial application of transmission and distribution infrastructure technologies.

(e) POWER DELIVERY RESEARCH INITIATIVE.—

(1) IN GENERAL.—The Secretary shall establish a research, development, demonstration, and commercial application initiative specifically focused on power delivery utilizing components incorporating high temperature superconductivity.

(2) GOALS.—The goals of this initiative shall be to—

(A) establish facilities to develop high temperature superconductivity power applications in partnership with manufacturers and utilities;

(B) provide technical leadership for establishing reliability for high temperature superconductivity power applications including suitable modeling and analysis;

(C) facilitate commercial transition toward direct current power transmission, storage, and use for high power systems utilizing high temperature superconductivity; and

(D) facilitate the integration of very low impedance high temperature superconducting wires and cables in existing electric networks to improve system performance, power flow control and reliability.

(3) REQUIREMENTS.—The initiative shall include—

(A) feasibility analysis, planning, research, and design to construct demonstrations of superconducting links in high power, direct current and controllable alternating current transmission systems;

(B) public-private partnerships to demonstrate deployment of high temperature superconducting cable into testbeds simulating a realistic transmission grid and under varying transmission conditions, including actual grid insertions; and

(C) testbeds developed in cooperation with national laboratories, industries, and universities to demonstrate these technologies, prepare the technologies for commercial introduction, and address cost or performance roadblocks to successful commercial use.

(4) AUTHORIZATION OF APPROPRIATIONS.—For purposes of carrying out this subsection, there are authorized to be appropriated—

(A) for fiscal year 2004, $15,000,000;

(B) for fiscal year 2005, $20,000,000;

(C) for fiscal year 2006, $30,000,000;

(D) for fiscal year 2007, $35,000,000; and

(E) for fiscal year 2008, $40,000,000.

SEC. 1226. ADVANCED POWER SYSTEM TECHNOLOGY INCENTIVE PROGRAM.

(a) PROGRAM.—The Secretary of Energy is authorized to establish an Advanced Power System Technology Incentive Program to support the deployment of certain advanced power system technologies and to improve and protect certain critical governmental, industrial, and commercial processes. Funds provided under this section shall be used by the Secretary to make incentive payments to eligible owners or operators of advanced power system technologies to increase power generation through enhanced operational, economic, and environmental performance. Payments under this section may only be made upon receipt by the Secretary of an incentive payment application establishing an applicant as either—

(1) a qualifying advanced power system technology facility; or

(2) a qualifying security and assured power facility.

(b) INCENTIVES.—Subject to availability of funds, a payment of 1.8 cents per kilowatt-hour shall be paid to the owner or operator of a qualifying advanced power system technology facility under this section for electricity generated at such facility. An additional 0.7 cents per kilowatt-hour shall be paid to the owner or operator of a qualifying security and assured power facility for electricity generated at such facility. Any facility qualifying under this section shall be eligible for an incentive payment for up to, but not more than, the first 10,000,000 kilowatt-hours produced in any fiscal year.

(c) ELIGIBILITY.—For purposes of this section:

(1) QUALIFYING ADVANCED POWER SYSTEM TECHNOLOGY FACILITY.—The term ''qualifying advanced power system technology facility'' means a facility using an advanced fuel cell, turbine, or hybrid power system or power storage system to generate or store electric energy.

(2) QUALIFYING SECURITY AND ASSURED POWER FACILITY.—The term ''qualifying security and assured power facility'' means a qualifying advanced power system technology facility determined by the Secretary of Energy, in consultation with the Secretary of Homeland Security, to be in critical need of secure, reliable, rapidly available, high-quality power for critical governmental, industrial, or commercial applications.

(d) AUTHORIZATION.—There are authorized to be appropriated to the Secretary of Energy for the purposes of this section, $10,000,000 for each of the fiscal years 2004 through 2010.

SEC. 1227. OFFICE OF ELECTRIC TRANSMISSION AND DISTRIBUTION.

(a) CREATION OF AN OFFICE OF ELECTRIC TRANSMISSION AND DISTRIBUTION.—Title II of the Department of Energy Organization Act (42 U.S.C. 7131 et seq.) (as amended by section 502(a)) is amended by inserting the following after section 217, as added by title V:

''SEC. 218. OFFICE OF ELECTRIC TRANSMISSION AND DISTRIBUTION.

''(a) ESTABLISHMENT.—There is established within the Department an Office of Electric Transmission and Distribution. This Office shall be headed by a Director, subject to the authority of the Secretary. The Director shall be appointed by the Secretary. The Director shall be compensated at the annual rate prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

''(b) DIRECTOR.—The Director shall—

''(1) coordinate and develop a comprehensive, multi-year strategy to improve the Nation's electricity transmission and distribution;

''(2) implement or, where appropriate, coordinate the implementation of, the recommendations made in the Secretary's May 2002 National Transmission Grid Study;

''(3) oversee research, development, and demonstration to support Federal energy policy related to electricity transmission and distribution;

''(4) grant authorizations for electricity import and export pursuant to section 202(c), (d), (e), and (f) of the Federal Power Act (16 U.S.C. 824a);

''(5) perform other functions, assigned by the Secretary, related to electricity transmission and distribution; and

''(6) develop programs for workforce training in power and transmission engineering.''.

(b) CONFORMING AMENDMENTS.—(1) The table of contents of the Department of Energy Organization Act (42 U.S.C. 7101 note) is amended by inserting after the item relating to section 217 the following new item:

''Sec. 218. Office of Electric Transmission and Distribution.''.

(2) Section 5315 of title 5, United States Code, is amended by inserting after the item relating to ''Inspector General, Department of Energy.'' the following:

''Director, Office of Electric Transmission and Distribution, Department of Energy.''.

Subtitle C—Transmission Operation Improvements

SEC. 1231. OPEN NONDISCRIMINATORY ACCESS.

Part II of the Federal Power Act (16 U.S.C. 824 et seq.) is amended by inserting after section 211 the following new section:

''SEC. 211A. OPEN ACCESS BY UNREGULATED TRANSMITTING UTILITIES.

''(a) TRANSMISSION SERVICES.—Subject to section 212(h), the Commission may, by rule or order, require an unregulated transmitting utility to provide transmission services—

''(1) at rates that are comparable to those that the unregulated transmitting utility charges itself; and

''(2) on terms and conditions (not relating to rates) that are comparable to those under which such unregulated transmitting utility provides transmission services to itself and that are not unduly discriminatory or preferential.

''(b) EXEMPTION.—The Commission shall exempt from any rule or order under this section any unregulated transmitting utility that—

''(1) sells no more than 4,000,000 megawatt hours of electricity per year; or

''(2) does not own or operate any transmission facilities that are necessary for operating an interconnected transmission system (or any portion thereof); or

''(3) meets other criteria the Commission determines to be in the public interest.

''(c) LOCAL DISTRIBUTION FACILITIES.—The requirements of subsection (a) shall not apply to facilities used in local distribution.

''(d) EXEMPTION TERMINATION.—Whenever the Commission, after an evidentiary hearing held upon a complaint and after giving consideration to reliability standards established under section 215, finds on the basis of a preponderance of the evidence that any exemption granted pursuant to subsection (b) unreasonably impairs the continued reliability of an interconnected transmission system, it shall revoke the exemption granted to that transmitting utility.

''(e) APPLICATION TO UNREGULATED TRANSMITTING UTILITIES.—The rate changing procedures applicable to public utilities under subsections (c) and (d) of section 205 are applicable to unregulated transmitting utilities for purposes of this section.

''(f) REMAND.—In exercising its authority under paragraph (1) of subsection (a), the Commission may remand transmission rates to an unregulated transmitting utility for review and revision where necessary to meet the requirements of subsection (a).

''(g) OTHER REQUESTS.—The provision of transmission services under subsection (a) does not preclude a request for transmission services under section 211.

''(h) LIMITATION.—The Commission may not require a State or municipality to take action under this section that would violate a private activity bond rule for purposes of section 141 of the Internal Revenue Code of 1986 (26 U.S.C. 141).

''(i) TRANSFER OF CONTROL OF TRANSMITTING FACILITIES.—Nothing in this section authorizes the Commission to require an unregulated transmitting utility to transfer control or operational control of its transmitting facilities to an RTO or any other Commission-approved independent transmission organization designated to provide nondiscriminatory transmission access.

''(j) DEFINITION.—For purposes of this section, the term 'unregulated transmitting utility' means an entity that—

''(1) owns or operates facilities used for the transmission of electric energy in interstate commerce; and

''(2) is an entity described in section 201(f).''.

SEC. 1232. SENSE OF CONGRESS ON REGIONAL TRANSMISSION ORGANIZATIONS.

It is the sense of Congress that, in order to promote fair, open access to electric transmission service, benefit retail consumers, facilitate wholesale competition, improve efficiencies in transmission grid management, promote grid reliability, remove opportunities for unduly discriminatory or preferential transmission practices, and provide for the efficient development of transmission infrastructure needed to meet the growing demands of competitive wholesale power markets, all transmitting utilities in interstate commerce should voluntarily become

members of Regional Transmission Organizations as defined in section 3 of the Federal Power Act.

SEC. 1233. REGIONAL TRANSMISSION ORGANIZATION APPLICATIONS PROGRESS REPORT.

Not later than 120 days after the date of enactment of this section, the Federal Energy Regulatory Commission shall submit to Congress a report containing each of the following:

(1) A list of all regional transmission organization applications filed at the Commission pursuant to subpart F of part 35 of title 18, Code of Federal Regulations (in this section referred to as ''Order No. 2000''), including an identification of each public utility and other entity included within the proposed membership of the regional transmission organization.

(2) A brief description of the status of each pending regional transmission organization application, including a precise explanation of how each fails to comply with the minimal requirements of Order No. 2000 and what steps need to be taken to bring each application into such compliance.

(3) For any application that has not been finally approved by the Commission, a detailed description of every aspect of the application that the Commission has determined does not conform to the requirements of Order No. 2000.

(4) For any application that has not been finally approved by the Commission, an explanation by the Commission of why the items described pursuant to paragraph (3) constitute material noncompliance with the requirements of the Commission's Order No. 2000 sufficient to justify denial of approval by the Commission.

(5) For all regional transmission organization applications filed pursuant to the Commission's Order No. 2000, whether finally approved or not—

(A) a discussion of that regional transmission organization's efforts to minimize rate seams between itself and—

(i) other regional transmission organizations; and

(ii) entities not participating in a regional transmission organization;

(B) a discussion of the impact of such seams on consumers and wholesale competition; and

(C) a discussion of minimizing cost-shifting on consumers.

SEC. 1234. FEDERAL UTILITY PARTICIPATION IN REGIONAL TRANSMISSION ORGANIZATIONS.

(a) DEFINITIONS.—For purposes of this section—

(1) APPROPRIATE FEDERAL REGULATORY AUTHORITY.—The term ''appropriate Federal regulatory authority'' means—

(A) with respect to a Federal power marketing agency (as defined in the Federal Power Act), the Secretary of Energy, except that the Secretary may designate the Administrator of a Federal power marketing agency to act as the appropriate Federal regulatory authority with respect to the transmission system of that Federal power marketing agency; and

(B) with respect to the Tennessee Valley Authority, the Board of Directors of the Tennessee Valley Authority.

(2) FEDERAL UTILITY.—The term ''Federal utility'' means a Federal power marketing agency or the Tennessee Valley Authority.

(3) TRANSMISSION SYSTEM.—The term ''transmission system'' means electric transmission facilities owned, leased, or contracted for by the United States and operated by a Federal utility.

(b) TRANSFER.—The appropriate Federal regulatory authority is authorized to enter into a contract, agreement or other arrangement transferring control and use of all or part of the Federal utility's transmission system to an RTO or ISO (as defined in the Federal Power Act), approved by the Federal Energy Regulatory Commission. Such contract, agreement or arrangement shall include—

(1) performance standards for operation and use of the transmission system that the head of the Federal utility determines necessary or appropriate, including standards that assure recovery of all the Federal utility's costs and expenses related to the transmission facilities that are the subject of the contract, agreement or other arrangement; consistency with existing contracts and third-party financing arrangements; and consistency with said Federal utility's statutory authorities, obligations, and limitations;

(2) provisions for monitoring and oversight by the Federal utility of the RTO's or ISO's fulfillment of the terms and conditions of the contract, agreement or other arrangement, including a provision for the resolution of disputes through arbitration or other means with the regional transmission organization or with other participants, notwithstanding the obligations and limitations of any other law regarding arbitration; and

(3) a provision that allows the Federal utility to withdraw from the RTO or ISO and terminate the contract, agreement or other arrangement in accordance with its terms.

Neither this section, actions taken pursuant to it, nor any other transaction of a Federal utility using an RTO or ISO shall confer upon the Federal Energy Regulatory Commission jurisdiction or authority over the Federal utility's electric generation assets, electric capacity or energy that the Federal utility is authorized by law to market, or the Federal utility's power sales activities.

(c) EXISTING STATUTORY AND OTHER OBLIGATIONS.—

(1) SYSTEM OPERATION REQUIREMENTS.—No statutory provision requiring or authorizing a Federal utility to transmit electric power or to construct, operate or maintain its transmission system shall be construed to prohibit a transfer of control and use of its transmission system pursuant to, and subject to all requirements of subsection (b).

(2) OTHER OBLIGATIONS.—This subsection shall not be construed to—

(A) suspend, or exempt any Federal utility from, any provision of existing Federal law, including but not limited to any requirement or direction relating to the use of the Federal utility's transmission system, environmental protection, fish and wildlife protection, flood control, navigation, water delivery, or recreation; or

(B) authorize abrogation of any contract or treaty obligation.

(3) REPEAL.—Section 311 of title III of Appendix B of the Act of October 27, 2000 (Public Law 106–377, section 1(a)(2); 114 Stat. 1441, 1441A–80; 16 U.S.C. 824n) is repealed.

SEC. 1235. STANDARD MARKET DESIGN.

(a) REMAND.—The Commission's proposed rulemaking entitled ''Remedying Undue Discrimination through Open Access Transmission Service and Standard Electricity Market Design'' (Docket No. RM01–12–000) (''SMD NOPR'') is remanded to the Commission for reconsideration. No final rule mandating a standard electricity market design pursuant to the proposed rulemaking, including any rule or order of general applicability within the scope of the proposed rulemaking, may be issued before October 31, 2006, or take effect before December 31, 2006. Any final rule issued by the Commission pursuant to the proposed rulemaking shall be preceded by a second notice of proposed rulemaking issued after the date of enactment of this Act and an opportunity for public comment.

(b) SAVINGS CLAUSE.—This section shall not be construed to modify or diminish any authority or obligation the Commission has under this division, the Federal Power Act, or other applicable law, including, but not limited to, any authority to—

(1) issue any rule or order (of general or particular applicability) pursuant to any such authority or obligation; or

(2) act on a filing or filings by 1 or more transmitting utilities for the voluntary formation of a Regional Transmission Organization or Independent System Operator (as defined in the Federal Power Act) (and related market structures or rules) or voluntary modification of an existing Regional Transmission Organization or Independent System Operator (and related market structures or rules).

SEC. 1236. NATIVE LOAD SERVICE OBLIGATION.

Part II of the Federal Power Act (16 U.S.C. 824 et seq.) is amended by adding at the end the following:

''SEC. 217. NATIVE LOAD SERVICE OBLIGATION.

''(a) MEETING SERVICE OBLIGATIONS.—(1) Any load-serving entity that, as of the date of enactment of this section—

''(A) owns generation facilities, markets the output of Federal generation facilities, or holds rights under 1 or more wholesale contracts to purchase electric energy, for the purpose of meeting a service obligation, and

''(B) by reason of ownership of transmission facilities, or 1 or more contracts or service agreements for firm transmission service, holds firm transmission rights for delivery of the output of such generation facilities or such purchased energy to meet such service obligation,

is entitled to use such firm transmission rights, or, equivalent tradable or financial transmission rights, in order to deliver such output or purchased energy, or the output of other generating facilities or purchased energy to the extent deliverable using such rights, to the extent required to meet its service obligation.

''(2) To the extent that all or a portion of the service obligation covered by such firm transmission rights or equivalent tradable or financial transmission rights is transferred to another load-serving entity, the successor load-serving entity shall be entitled to use the firm transmission rights or equivalent tradable or financial transmission rights associated with the transferred service obligation. Subsequent transfers to another load-serving entity, or back to the original load-serving entity, shall be entitled to the same rights.

''(3) The Commission shall exercise its authority under this Act in a manner that facilitates the planning and expansion of transmission facilities to meet the reasonable needs of load-serving entities to satisfy their service obligations.

''(b) ALLOCATION OF TRANSMISSION RIGHTS.—Nothing in this section shall affect any methodology approved by the Commission prior to September 15, 2003, for the allocation of transmission rights by an RTO or ISO that has been authorized by the Commission to allocate transmission rights.

''(c) CERTAIN TRANSMISSION RIGHTS.—The Commission may exercise authority under this Act to make transmission rights not used to meet an obligation covered by subsection (a) available to other entities in a manner determined by the Commission to be just, reasonable, and not unduly discriminatory or preferential.

''(d) OBLIGATION TO BUILD.—Nothing in this Act shall relieve a load-serving entity from any obligation under State or local law to build transmission or distribution facilities adequate to meet its service obligations.

''(e) CONTRACTS.—Nothing in this section shall provide a basis for abrogating any contract or service agreement for firm transmission service or rights in effect as of the date of the enactment of this subsection.

''(f) WATER PUMPING FACILITIES.—The Commission shall ensure that any entity described in section 201(f) that owns transmission facilities used predominately to support its own water pumping facilities shall have, with respect to such facilities, protections for transmission service comparable to those provided to load-serving entities pursuant to this section.

''(g) ERCOT.—This section shall not apply within the area referred to in section 212(k)(2)(A).

''(h) JURISDICTION.—This section does not authorize the Commission to take any action not otherwise within its jurisdiction.

''(i) EFFECT OF EXERCISING RIGHTS.—An entity that lawfully exercises rights granted under subsection (a) shall not be considered by such action as engaging in undue discrimination or preference under this Act.

''(j) TVA AREA.—For purposes of subsection (a)(1)(B), a load-serving entity that is located within the service area of the Tennessee Valley Authority and that has a firm wholesale power supply contract with the Tennessee Valley Authority shall be deemed to hold firm transmission rights for the transmission of such power.

''(k) DEFINITIONS.—For purposes of this section:

''(1) The term 'distribution utility' means an electric utility that has a service obligation to end-users or to a State utility or electric cooperative that, directly or indirectly, through 1 or more additional State utilities or electric cooperatives, provides electric service to end-users.

''(2) The term 'load-serving entity' means a distribution utility or an electric utility that has a service obligation.

''(3) The term 'service obligation' means a requirement applicable to, or the exercise of authority granted to, an electric utility under Federal, State or local law or under long-term contracts to provide electric service to end-users or to a distribution utility.

''(4) The term 'State utility' means a State or any political subdivision of a State, or any agency, authority, or instrumentality of any 1 or more of the foregoing, or a corporation which is wholly owned, directly or indirectly, by any 1 or more of the foregoing, competent to carry on the business of developing, transmitting, utilizing or distributing power.''.

SEC. 1237. STUDY ON THE BENEFITS OF ECONOMIC DISPATCH.

(a) STUDY.—The Secretary of Energy, in coordination and consultation with the States, shall conduct a study on—

(1) the procedures currently used by electric utilities to perform economic dispatch;

(2) identifying possible revisions to those procedures to improve the ability of nonutility generation resources to offer their output for sale for the purpose of inclusion in economic dispatch; and

(3) the potential benefits to residential, commercial, and industrial electricity consumers nationally and in each State if economic dispatch procedures were revised to improve the ability of nonutility generation resources to offer their output for inclusion in economic dispatch.

(b) DEFINITION.—The term ''economic dispatch'' when used in this section means the operation of generation facilities to produce energy at the lowest cost to reliably serve consumers, recognizing any operational limits of generation and transmission facilities.

(c) REPORT TO CONGRESS AND THE STATES.—Not later than 90 days after the date of enactment of this Act, and on a yearly basis following, the Secretary of Energy shall submit a report to Congress and the States on the results of the study conducted under subsection (a), including recommendations to Congress and the States for any suggested legislative or regulatory changes.

Subtitle D—Transmission Rate Reform

SEC. 1241. TRANSMISSION INFRASTRUCTURE INVESTMENT.

Part II of the Federal Power Act (16 U.S.C. 824 et seq.) is amended by adding at the end the following:

''SEC. 218. TRANSMISSION INFRASTRUCTURE INVESTMENT.

''(a) RULEMAKING REQUIREMENT.—Within 1 year after the enactment of this section, the Commission shall establish, by rule, incentive-based (including, but not limited to performance-based) rate treatments for the transmission of electric energy in interstate commerce by public utilities for the purpose of benefiting consumers by ensuring reliability and reducing the cost of delivered power by reducing transmission congestion. Such rule shall—

''(1) promote reliable and economically efficient transmission and generation of electricity by promoting capital investment in the enlargement, improvement, maintenance and operation of facilities for the transmission of electric energy in interstate commerce;

''(2) provide a return on equity that attracts new investment in transmission facilities (including related transmission technologies);

''(3) encourage deployment of transmission technologies and other measures to increase the capacity and efficiency of existing transmission facilities and improve the operation of such facilities; and

''(4) allow recovery of all prudently incurred costs necessary to comply with mandatory reliability standards issued pursuant to section 215 of this Act.

The Commission may, from time to time, revise such rule.

''(b) ADDITIONAL INCENTIVES FOR RTO PARTICIPATION.—In the rule issued under this section, the Commission shall, to the extent within its jurisdiction, provide for incentives to each transmitting utility or electric utility that joins a Regional Transmission Organization or Independent System Operator. Incentives provided by the Commission pursuant to such rule shall include—

''(1) recovery of all prudently incurred costs to develop and participate in any proposed or approved RTO, ISO, or independent transmission company;

''(2) recovery of all costs previously approved by a State commission which exercised jurisdiction over the transmission facilities prior to the utility's participation in the RTO or ISO, including costs necessary to honor preexisting transmission service contracts, in a manner which does not reduce the revenues the utility receives for transmission services for a reasonable transition period after the utility joins the RTO or ISO;

''(3) recovery as an expense in rates of the costs prudently incurred to conduct transmission planning and reliability activities, including the costs of participating in RTO, ISO and other regional planning activities and design, study and other precertification costs involved in seeking permits and approvals for proposed transmission facilities;

''(4) a current return in rates for construction work in progress for transmission facilities and full recovery of prudently incurred costs for constructing transmission facilities;

''(5) formula transmission rates; and

''(6) a maximum 15-year accelerated depreciation on new transmission facilities for rate treatment purposes.

The Commission shall ensure that any costs recoverable pursuant to this subsection may be recovered by such utility through the transmission rates charged by such utility or through the transmission rates charged by the RTO or ISO that provides transmission service to such utility.

''(c) JUST AND REASONABLE RATES.—All rates approved under the rules adopted pursuant to this section, including any revisions to such rules, are subject to the requirement of sections 205 and 206 that all rates, charges, terms, and conditions be just and reasonable and not unduly discriminatory or preferential.''.

SEC. 1242. VOLUNTARY TRANSMISSION PRICING PLANS.

Part II of the Federal Power Act (16 U.S.C. 824 et seq.) is amended by adding at the end the following:

''SEC. 219. VOLUNTARY TRANSMISSION PRICING PLANS.

''(a) IN GENERAL.—Any transmission provider, including an RTO or ISO, may submit to the Commission a plan or plans under section 205 containing the criteria for determining the person or persons that will be required to pay for any construction of new transmission facilities or expansion, modification or upgrade of transmission facilities (in this section referred to as 'transmission service related expansion') or new generator interconnection.

''(b) VOLUNTARY TRANSMISSION PRICING PLANS.—(1) Any plan or plans submitted under subsection (a) shall specify the method or methods by which costs may be allocated or assigned. Such methods may include, but are not limited to:

''(A) directly assigned;

''(B) participant funded; or

''(C) rolled into regional or sub-regional rates.

''(2) FERC shall approve a plan or plans submitted under subparagraph (B) of paragraph (1) if such plan or plans—

''(A) result in rates that are just and reasonable and not unduly discriminatory or preferential consistent with section 205; and

''(B) ensure that the costs of any transmission service related expansion or new generator interconnection not required to meet applicable reliability standards established under section 215 are assigned in a fair manner, meaning that those who benefit from the transmission service related expansion or new generator interconnection pay an appropriate share of the associated costs, provided that—

''(i) costs may not be assigned or allocated to an electric utility if the native load customers of that utility would not have required such transmission service related expansion or new generator interconnection absent the request for transmission service related expansion or new generator interconnection that necessitated the investment;

''(ii) the party requesting such transmission service related expansion or new generator interconnection shall not be required to pay for both—

''(I) the assigned cost of the upgrade; and

''(II) the difference between—

''(aa) the embedded cost paid for transmission services (including the cost of the requested upgrade); and

''(bb) the embedded cost that would have been paid absent the upgrade; and

''(iii) the party or parties who pay for facilities necessary for the transmission service related expansion or new generator interconnection receives full compensation for its costs for the participant funded facilities in the form of—

''(I) monetary credit equal to the cost of the participant funded facilities (accounting for the time value of money at the Gross Domestic Product deflator), which credit shall

be pro-rated in equal installments over a period of not more than 30 years and shall not exceed in total the amount of the initial investment, against the transmission charges that the funding entity or its assignee is otherwise assessed by the transmission provider;

''(II) appropriate financial or physical rights; or

''(III) any other method of cost recovery or compensation approved by the Commission.

''(3) A plan submitted under this section shall apply only to—

''(A) a contract or interconnection agreement executed or filed with the Commission after the date of enactment of this section; or

''(B) an interconnection agreement pending rehearing as of November 1, 2003.

''(4) Nothing in this section diminishes or alters the rights of individual members of an RTO or ISO under this Act.

''(5) Nothing in this section shall affect the allocation of costs or the cost methodology employed by an RTO or ISO authorized by the Commission to allocate costs (including costs for transmission service related expansion or new generator interconnection) prior to the date of enactment of this section.

''(6) This section shall not apply within the area referred to in section 212(k)(2)(A).

''(7) The term 'transmission provider' means a public utility that owns or operates facilities that provide interconnection or transmission service in interstate commerce.''.

Subtitle E—Amendments to PURPA

SEC. 1251. NET METERING AND ADDITIONAL STANDARDS.

(a) ADOPTION OF STANDARDS.—Section 111(d) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2621(d)) is amended by adding at the end the following:

''(11) NET METERING.—Each electric utility shall make available upon request net metering service to any electric consumer that the electric utility serves. For purposes of this paragraph, the term 'net metering service' means service to an electric consumer under which electric energy generated by that electric consumer from an eligible on-site generating facility and delivered to the local distribution facilities may be used to offset electric energy provided by the electric utility to the electric consumer during the applicable billing period.

''(12) FUEL SOURCES.—Each electric utility shall develop a plan to minimize dependence on 1 fuel source and to ensure that the electric energy it sells to consumers is generated using a diverse range of fuels and technologies, including renewable technologies.

''(13) FOSSIL FUEL GENERATION EFFICIENCY.—Each electric utility shall develop and implement a 10-year plan to increase the efficiency of its fossil fuel generation.''.

(b) COMPLIANCE.—

(1) TIME LIMITATIONS.—Section 112(b) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2622(b)) is amended by adding at the end the following:

''(3)(A) Not later than 2 years after the enactment of this paragraph, each State regulatory authority (with respect to each electric utility for which it has ratemaking authority) and each nonregulated electric utility shall commence the consideration referred to in section 111, or set a hearing date for such consideration, with respect to each standard established by paragraphs (11) through (13) of section 111(d).

''(B) Not later than 3 years after the date of the enactment of this paragraph, each State regulatory authority (with respect to each electric utility for which it has ratemaking authority), and each nonregulated electric utility, shall complete the consideration, and shall make the determination, referred to in section 111 with respect to each standard established by paragraphs (11) through (13) of section 111(d).''.

(2) FAILURE TO COMPLY.—Section 112(c) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2622(c)) is amended by adding at the end the following:

''In the case of each standard established by paragraphs (11) through (13) of section 111(d), the reference contained in this subsection to the date of enactment of this Act shall be deemed to be a reference to the date of enactment of such paragraphs (11) through (13).''.

(3) PRIOR STATE ACTIONS.—

(A) IN GENERAL.—Section 112 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2622) is amended by adding at the end the following:

''(d) PRIOR STATE ACTIONS.—Subsections (b) and (c) of this section shall not apply to the standards established by paragraphs (11) through (13) of section 111(d) in the case of any electric utility in a State if, before the enactment of this subsection—

''(1) the State has implemented for such utility the standard concerned (or a comparable standard);

''(2) the State regulatory authority for such State or relevant nonregulated electric utility has conducted a proceeding to consider implementation of the standard concerned (or a comparable standard) for such utility; or

''(3) the State legislature has voted on the implementation of such standard (or a comparable standard) for such utility.''.

(B) CROSS REFERENCE.—Section 124 of such Act (16 U.S.C. 2634) is amended by adding the following at the end thereof: ''In the case of each standard established by paragraphs (11) through (13) of section 111(d), the reference contained in this subsection to the date of enactment of this Act shall be deemed to be a reference to the date of enactment of such paragraphs (11) through (13).''.

SEC. 1252. SMART METERING.

(a) IN GENERAL.—Section 111(d) of the Public Utilities Regulatory Policies Act of 1978 (16 U.S.C. 2621(d)) is amended by adding at the end the following:

''(14) TIME-BASED METERING AND COMMUNICATIONS.—

''(A) Not later than 18 months after the date of enactment of this paragraph, each electric utility shall offer each of its customer classes, and provide individual customers upon customer request, a time-based rate schedule under which the rate charged by the electric utility varies during different time periods and reflects the variance, if any, in the utility's costs of generating and purchasing electricity at the wholesale level. The time-based rate schedule shall enable the electric consumer to manage energy use and cost through advanced metering and communications technology.

''(B) The types of time-based rate schedules that may be offered under the schedule referred to in subparagraph (A) include, among others—

''(i) time-of-use pricing whereby electricity prices are set for a specific time period on an advance or forward basis, typically not changing more often than twice a year, based on the utility's cost of generating and/or purchasing such electricity at the wholesale level for the benefit of the consumer. Prices paid for energy consumed during these periods shall be pre-established and known to consumers in advance of such consumption, allowing them to vary their demand and usage in response to such prices and manage their energy costs by shifting usage to a lower cost period or reducing their consumption overall;

''(ii) critical peak pricing whereby time-of-use prices are in effect except for certain peak days, when prices may reflect the costs of generating and/or purchasing electricity at the wholesale level and when consumers may receive additional discounts for reducing peak period energy consumption; and

''(iii) real-time pricing whereby electricity prices are set for a specific time period on an advanced or forward basis, reflecting the utility's cost of generating and/or purchasing electricity at the wholesale level, and may change as often as hourly.

''(C) Each electric utility subject to subparagraph (A) shall provide each customer requesting a time-based rate with a time-based meter capable of enabling the utility and customer to offer and receive such rate, respectively.

''(D) For purposes of implementing this paragraph, any reference contained in this section to the date of enactment of the Public Utility Regulatory Policies Act of 1978 shall be deemed to be a reference to the date of enactment of this paragraph.

''(E) In a State that permits third-party marketers to sell electric energy to retail electric consumers, such consumers shall be entitled to receive the same time-based metering and communications device and service as a retail electric consumer of the electric utility.

''(F) Notwithstanding subsections (b) and (c) of section 112, each State regulatory authority shall, not later than 18 months after the date of enactment of this paragraph conduct an investigation in accordance with section 115(i) and issue a decision whether it is appropriate to implement the standards set out in subparagraphs (A) and (C).''.

(b) STATE INVESTIGATION OF DEMAND RESPONSE AND TIME-BASED METERING.—Section 115 of the Public Utilities Regulatory Policies Act of 1978 (16 U.S.C. 2625) is amended as follows:

(1) By inserting in subsection (b) after the phrase ''the standard for time-of-day rates established by section 111(d)(3)'' the following: ''and the standard for time-based metering and communications established by section 111(d)(14)''.

(2) By inserting in subsection (b) after the phrase ''are likely to exceed the metering'' the following: ''and communications''.

(3) By adding at the end the following:

''(i) TIME-BASED METERING AND COMMUNICATIONS.—In making a determination with respect to the standard established by section 111(d)(14), the investigation requirement of section 111(d)(14)(F) shall be as follows: Each State regulatory authority shall conduct an investigation and issue a decision whether or not it is appropriate for electric utilities to provide and install time-based meters and communications devices for each of their customers which enable such customers to participate in time-based pricing rate schedules and other demand response programs.''.

(c) FEDERAL ASSISTANCE ON DEMAND RESPONSE.—Section 132(a) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2642(a)) is amended by striking ''and'' at the end of paragraph (3), striking the period at the end of paragraph (4) and inserting ''; and'', and by adding the following at the end thereof:

''(5) technologies, techniques, and ratemaking methods related to advanced metering and communications and the use of these technologies, techniques and methods in demand response programs.''.

(d) FEDERAL GUIDANCE.—Section 132 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2642) is amended by adding the following at the end thereof:

''(d) DEMAND RESPONSE.—The Secretary shall be responsible for—

''(1) educating consumers on the availability, advantages, and benefits of advanced metering and communications technologies,

including the funding of demonstration or pilot projects;

''(2) working with States, utilities, other energy providers and advanced metering and communications experts to identify and address barriers to the adoption of demand response programs; and

''(3) not later than 180 days after the date of enactment of the Energy Policy Act of 2003, providing Congress with a report that identifies and quantifies the national benefits of demand response and makes a recommendation on achieving specific levels of such benefits by January 1, 2005.''.

(e) DEMAND RESPONSE AND REGIONAL COORDINATION.—

(1) IN GENERAL.—It is the policy of the United States to encourage States to coordinate, on a regional basis, State energy policies to provide reliable and affordable demand response services to the public.

(2) TECHNICAL ASSISTANCE.—The Secretary of Energy shall provide technical assistance to States and regional organizations formed by 2 or more States to assist them in—

(A) identifying the areas with the greatest demand response potential;

(B) identifying and resolving problems in transmission and distribution networks, including through the use of demand response;

(C) developing plans and programs to use demand response to respond to peak demand or emergency needs; and

(D) identifying specific measures consumers can take to participate in these demand response programs.

(3) REPORT.—Not later than 1 year after the date of enactment of the Energy Policy Act of 2003, the Commission shall prepare and publish an annual report, by appropriate region, that assesses demand response resources, including those available from all consumer classes, and which identifies and reviews—

(A) saturation and penetration rate of advanced meters and communications technologies, devices and systems;

(B) existing demand response programs and time-based rate programs;

(C) the annual resource contribution of demand resources;

(D) the potential for demand response as a quantifiable, reliable resource for regional planning purposes; and

(E) steps taken to ensure that, in regional transmission planning and operations, demand resources are provided equitable treatment as a quantifiable, reliable resource relative to the resource obligations of any load-serving entity, transmission provider, or transmitting party.

(f) FEDERAL ENCOURAGEMENT OF DEMAND RESPONSE DEVICES.—It is the policy of the United States that time-based pricing and other forms of demand response, whereby electricity customers are provided with electricity price signals and the ability to benefit by responding to them, shall be encouraged, and the deployment of such technology and devices that enable electricity customers to participate in such pricing and demand response systems shall be facilitated. It is further the policy of the United States that the benefits of such demand response that accrue to those not deploying such technology and devices, but who are part of the same regional electricity entity, shall be recognized.

(g) TIME LIMITATIONS.—Section 112(b) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2622(b)) is amended by adding at the end the following:

''(4)(A) Not later than 1 year after the enactment of this paragraph, each State regulatory authority (with respect to each electric utility for which it has ratemaking authority) and each nonregulated electric utility shall commence the consideration referred to in section 111, or set a hearing date for such consideration, with respect to the standard established by paragraph (14) of section 111(d).

''(B) Not later than 2 years after the date of the enactment of this paragraph, each State regulatory authority (with respect to each electric utility for which it has ratemaking authority), and each nonregulated electric utility, shall complete the consideration, and shall make the determination, referred to in section 111 with respect to the standard established by paragraph (14) of section 111(d).''.

(h) FAILURE TO COMPLY.—Section 112(c) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2622(c)) is amended by adding at the end the following:

''In the case of the standard established by paragraph (14) of section 111(d), the reference contained in this subsection to the date of enactment of this Act shall be deemed to be a reference to the date of enactment of such paragraph (14).''.

(i) PRIOR STATE ACTIONS REGARDING SMART METERING STANDARDS.—

(1) IN GENERAL.—Section 112 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2622) is amended by adding at the end the following:

''(e) PRIOR STATE ACTIONS.—Subsections (b) and (c) of this section shall not apply to the standard established by paragraph (14) of section 111(d) in the case of any electric utility in a State if, before the enactment of this subsection—

''(1) the State has implemented for such utility the standard concerned (or a comparable standard);

''(2) the State regulatory authority for such State or relevant nonregulated electric utility has conducted a proceeding to consider implementation of the standard concerned (or a comparable standard) for such utility within the previous 3 years; or

''(3) the State legislature has voted on the implementation of such standard (or a comparable standard) for such utility within the previous 3 years.''.

(2) CROSS REFERENCE.—Section 124 of such Act (16 U.S.C. 2634) is amended by adding the following at the end thereof: ''In the case of the standard established by paragraph (14) of section 111(d), the reference contained in this subsection to the date of enactment of this Act shall be deemed to be a reference to the date of enactment of such paragraph (14).''.

SEC. 1253. COGENERATION AND SMALL POWER PRODUCTION PURCHASE AND SALE REQUIREMENTS.

(a) TERMINATION OF MANDATORY PURCHASE AND SALE REQUIREMENTS.—Section 210 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 824a–3) is amended by adding at the end the following:

''(m) TERMINATION OF MANDATORY PURCHASE AND SALE REQUIREMENTS.—

''(1) OBLIGATION TO PURCHASE.—After the date of enactment of this subsection, no electric utility shall be required to enter into a new contract or obligation to purchase electric energy from a qualifying cogeneration facility or a qualifying small power production facility under this section if the Commission finds that the qualifying cogeneration facility or qualifying small power production facility has nondiscriminatory access to—

''(A)(i) independently administered, auction-based day ahead and real time wholesale markets for the sale of electric energy; and (ii) wholesale markets for long-term sales of capacity and electric energy; or

''(B)(i) transmission and interconnection services that are provided by a Commission-approved regional transmission entity and administered pursuant to an open access transmission tariff that affords nondiscriminatory treatment to all customers; and (ii) competitive wholesale markets that provide a meaningful opportunity to sell capacity, including long-term and short-term sales, and electric energy, including long-term, short-term and real-time sales, to buyers other than the utility to which the qualifying facility is interconnected. In determining whether a meaningful opportunity to sell exists, the Commission shall consider, among other factors, evidence of transactions within the relevant market; or

''(C) wholesale markets for the sale of capacity and electric energy that are, at a minimum, of comparable competitive quality as markets described in subparagraphs (A) and (B).

''(2) REVISED PURCHASE AND SALE OBLIGATION FOR NEW FACILITIES.—(A) After the date of enactment of this subsection, no electric utility shall be required pursuant to this section to enter into a new contract or obligation to purchase from or sell electric energy to a facility that is not an existing qualifying cogeneration facility unless the facility meets the criteria for qualifying cogeneration facilities established by the Commission pursuant to the rulemaking required by subsection (n).

''(B) For the purposes of this paragraph, the term 'existing qualifying cogeneration facility' means a facility that—

''(i) was a qualifying cogeneration facility on the date of enactment of subsection (m); or

''(ii) had filed with the Commission a notice of self-certification, self recertification or an application for Commission certification under 18 CFR 292.207 prior to the date on which the Commission issues the final rule required by subsection (n).

''(3) COMMISSION REVIEW.—Any electric utility may file an application with the Commission for relief from the mandatory purchase obligation pursuant to this subsection on a service territory-wide basis. Such application shall set forth the factual basis upon which relief is requested and describe why the conditions set forth in subparagraphs (A), (B) or (C) of paragraph (1) of this subsection have been met. After notice, including sufficient notice to potentially affected qualifying cogeneration facilities and qualifying small power production facilities, and an opportunity for comment, the Commission shall make a final determination within 90 days of such application regarding whether the conditions set forth in subparagraphs (A), (B) or (C) of paragraph (1) have been met.

''(4) REINSTATEMENT OF OBLIGATION TO PURCHASE.—At any time after the Commission makes a finding under paragraph (3) relieving an electric utility of its obligation to purchase electric energy, a qualifying cogeneration facility, a qualifying small power production facility, a State agency, or any other affected person may apply to the Commission for an order reinstating the electric utility's obligation to purchase electric energy under this section. Such application shall set forth the factual basis upon which the application is based and describe why the conditions set forth in subparagraphs (A), (B) or (C) of paragraph (1) of this subsection are no longer met. After notice, including sufficient notice to potentially affected utilities, and opportunity for comment, the Commission shall issue an order within 90 days of such application reinstating the electric utility's obligation to purchase electric energy under this section if the Commission finds that the conditions set forth in subparagraphs (A), (B) or (C) of paragraph (1) which relieved the obligation to purchase, are no longer met.

''(5) OBLIGATION TO SELL.—After the date of enactment of this subsection, no electric utility shall be required to enter into a new contract or obligation to sell electric energy to a qualifying cogeneration facility or a qualifying small power production facility under this section if the Commission finds that—

''(A) competing retail electric suppliers are willing and able to sell and deliver electric energy to the qualifying cogeneration facility or qualifying small power production facility; and

''(B) the electric utility is not required by State law to sell electric energy in its service territory.

''(6) NO EFFECT ON EXISTING RIGHTS AND REMEDIES.—Nothing in this subsection affects the rights or remedies of any party under any contract or obligation, in effect or pending approval before the appropriate State regulatory authority or non-regulated electric utility on the date of enactment of this subsection, to purchase electric energy or capacity from or to sell electric energy or capacity to a qualifying cogeneration facility or qualifying small power production facility under this Act (including the right to recover costs of purchasing electric energy or capacity).

''(7) RECOVERY OF COSTS.—(A) The Commission shall issue and enforce such regulations as are necessary to ensure that an electric utility that purchases electric energy or capacity from a qualifying cogeneration facility or qualifying small power production facility in accordance with any legally enforceable obligation entered into or imposed under this section recovers all prudently incurred costs associated with the purchase.

''(B) A regulation under subparagraph (A) shall be enforceable in accordance with the provisions of law applicable to enforcement of regulations under the Federal Power Act (16 U.S.C. 791a et seq.).

''(n) RULEMAKING FOR NEW QUALIFYING FACILITIES.—(1)(A) Not later than 180 days after the date of enactment of this section, the Commission shall issue a rule revising the criteria in 18 CFR 292.205 for new qualifying cogeneration facilities seeking to sell electric energy pursuant to section 210 of this Act to ensure—

''(i) that the thermal energy output of a new qualifying cogeneration facility is used in a productive and beneficial manner;

''(ii) the electrical, thermal, and chemical output of the cogeneration facility is used fundamentally for industrial, commercial, or institutional purposes and is not intended fundamentally for sale to an electric utility, taking into account technological, efficiency, economic, and variable thermal energy requirements, as well as State laws applicable to sales of electric energy from a qualifying facility to its host facility; and

''(iii) continuing progress in the development of efficient electric energy generating technology.

''(B) The rule issued pursuant to section (n)(1)(A) shall be applicable only to facilities that seek to sell electric energy pursuant to section 210 of this Act. For all other purposes, except as specifically provided in section (m)(2)(A), qualifying facility status shall be determined in accordance with the rules and regulations of this Act.

''(2) Notwithstanding rule revisions under paragraph (1), the Commission's criteria for qualifying cogeneration facilities in effect prior to the date on which the Commission issues the final rule required by paragraph (1) shall continue to apply to any cogeneration facility that—

''(A) was a qualifying cogeneration facility on the date of enactment of subsection (m), or

''(B) had filed with the Commission a notice of self-certification, self-recertification or an application for Commission certification under 18 CFR 292.207 prior to the date on which the Commission issues the final rule required by paragraph (1).''.

(b) ELIMINATION OF OWNERSHIP LIMITATIONS.—

(1) QUALIFYING SMALL POWER PRODUCTION FACILITY.—Section 3(17)(C) of the Federal Power Act (16 U.S.C. 796(17)(C)) is amended to read as follows:

''(C) 'qualifying small power production facility' means a small power production facility that the Commission determines, by rule, meets such requirements (including requirements respecting fuel use, fuel efficiency, and reliability) as the Commission may, by rule, prescribe;''.

(2) QUALIFYING COGENERATION FACILITY.—Section 3(18)(B) of the Federal Power Act (16 U.S.C. 796(18)(B)) is amended to read as follows:

''(B) 'qualifying cogeneration facility' means a cogeneration facility that the Commission determines, by rule, meets such requirements (including requirements respecting minimum size, fuel use, and fuel efficiency) as the Commission may, by rule, prescribe;''.

Subtitle F—Repeal of PUHCA

SEC. 1261. SHORT TITLE.

This subtitle may be cited as the ''Public Utility Holding Company Act of 2003''.

SEC. 1262. DEFINITIONS.

For purposes of this subtitle:

(1) AFFILIATE.—The term ''affiliate'' of a company means any company, 5 percent or more of the outstanding voting securities of which are owned, controlled, or held with power to vote, directly or indirectly, by such company.

(2) ASSOCIATE COMPANY.—The term ''associate company'' of a company means any company in the same holding company system with such company.

(3) COMMISSION.—The term ''Commission'' means the Federal Energy Regulatory Commission.

(4) COMPANY.—The term ''company'' means a corporation, partnership, association, joint stock company, business trust, or any organized group of persons, whether incorporated or not, or a receiver, trustee, or other liquidating agent of any of the foregoing.

(5) ELECTRIC UTILITY COMPANY.—The term ''electric utility company'' means any company that owns or operates facilities used for the generation, transmission, or distribution of electric energy for sale.

(6) EXEMPT WHOLESALE GENERATOR AND FOREIGN UTILITY COMPANY.—The terms ''exempt wholesale generator'' and ''foreign utility company'' have the same meanings as in sections 32 and 33, respectively, of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79z–5a, 79z–5b), as those sections existed on the day before the effective date of this subtitle.

(7) GAS UTILITY COMPANY.—The term ''gas utility company'' means any company that owns or operates facilities used for distribution at retail (other than the distribution only in enclosed portable containers or distribution to tenants or employees of the company operating such facilities for their own use and not for resale) of natural or manufactured gas for heat, light, or power.

(8) HOLDING COMPANY.—The term ''holding company'' means—

(A) any company that directly or indirectly owns, controls, or holds, with power to vote, 10 percent or more of the outstanding voting securities of a public-utility company or of a holding company of any public-utility company; and

(B) any person, determined by the Commission, after notice and opportunity for hearing, to exercise directly or indirectly (either alone or pursuant to an arrangement or understanding with 1 or more persons) such a controlling influence over the management or policies of any public-utility company or holding company as to make it necessary or appropriate for the rate protection of utility customers with respect to rates that such person be subject to the obligations, duties, and liabilities imposed by this subtitle upon holding companies.

(9) HOLDING COMPANY SYSTEM.—The term ''holding company system'' means a holding company, together with its subsidiary companies.

(10) JURISDICTIONAL RATES.—The term ''jurisdictional rates'' means rates accepted or established by the Commission for the transmission of electric energy in interstate commerce, the sale of electric energy at wholesale in interstate commerce, the transportation of natural gas in interstate commerce, and the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use.

(11) NATURAL GAS COMPANY.—The term ''natural gas company'' means a person engaged in the transportation of natural gas in interstate commerce or the sale of such gas in interstate commerce for resale.

(12) PERSON.—The term ''person'' means an individual or company.

(13) PUBLIC UTILITY.—The term ''public utility'' means any person who owns or operates facilities used for transmission of electric energy in interstate commerce or sales of electric energy at wholesale in interstate commerce.

(14) PUBLIC-UTILITY COMPANY.—The term ''public-utility company'' means an electric utility company or a gas utility company.

(15) STATE COMMISSION.—The term ''State commission'' means any commission, board, agency, or officer, by whatever name designated, of a State, municipality, or other political subdivision of a State that, under the laws of such State, has jurisdiction to regulate public utility companies.

(16) SUBSIDIARY COMPANY.—The term ''subsidiary company'' of a holding company means—

(A) any company, 10 percent or more of the outstanding voting securities of which are directly or indirectly owned, controlled, or held with power to vote, by such holding company; and

(B) any person, the management or policies of which the Commission, after notice and opportunity for hearing, determines to be subject to a controlling influence, directly or indirectly, by such holding company (either alone or pursuant to an arrangement or understanding with 1 or more other persons) so as to make it necessary for the rate protection of utility customers with respect to rates that such person be subject to the obligations, duties, and liabilities imposed by this subtitle upon subsidiary companies of holding companies.

(17) VOTING SECURITY.—The term ''voting security'' means any security presently entitling the owner or holder thereof to vote in the direction or management of the affairs of a company.

SEC. 1263. REPEAL OF THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935.

The Public Utility Holding Company Act of 1935 (15 U.S.C. 79 et seq.) is repealed.

SEC. 1264. FEDERAL ACCESS TO BOOKS AND RECORDS.

(a) IN GENERAL.—Each holding company and each associate company thereof shall maintain, and shall make available to the Commission, such books, accounts, memoranda, and other records as the Commission determines are relevant to costs incurred by

a public utility or natural gas company that is an associate company of such holding company and necessary or appropriate for the protection of utility customers with respect to jurisdictional rates.

(b) AFFILIATE COMPANIES.—Each affiliate of a holding company or of any subsidiary company of a holding company shall maintain, and shall make available to the Commission, such books, accounts, memoranda, and other records with respect to any transaction with another affiliate, as the Commission determines are relevant to costs incurred by a public utility or natural gas company that is an associate company of such holding company and necessary or appropriate for the protection of utility customers with respect to jurisdictional rates.

(c) HOLDING COMPANY SYSTEMS.—The Commission may examine the books, accounts, memoranda, and other records of any company in a holding company system, or any affiliate thereof, as the Commission determines are relevant to costs incurred by a public utility or natural gas company within such holding company system and necessary or appropriate for the protection of utility customers with respect to jurisdictional rates.

(d) CONFIDENTIALITY.—No member, officer, or employee of the Commission shall divulge any fact or information that may come to his or her knowledge during the course of examination of books, accounts, memoranda, or other records as provided in this section, except as may be directed by the Commission or by a court of competent jurisdiction.

SEC. 1265. STATE ACCESS TO BOOKS AND RECORDS.

(a) IN GENERAL.—Upon the written request of a State commission having jurisdiction to regulate a public-utility company in a holding company system, the holding company or any associate company or affiliate thereof, other than such public-utility company, wherever located, shall produce for inspection books, accounts, memoranda, and other records that—

(1) have been identified in reasonable detail in a proceeding before the State commission;

(2) the State commission determines are relevant to costs incurred by such public-utility company; and

(3) are necessary for the effective discharge of the responsibilities of the State commission with respect to such proceeding.

(b) LIMITATION.—Subsection (a) does not apply to any person that is a holding company solely by reason of ownership of 1 or more qualifying facilities under the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2601 et seq.).

(c) CONFIDENTIALITY OF INFORMATION.—The production of books, accounts, memoranda, and other records under subsection (a) shall be subject to such terms and conditions as may be necessary and appropriate to safeguard against unwarranted disclosure to the public of any trade secrets or sensitive commercial information.

(d) EFFECT ON STATE LAW.—Nothing in this section shall preempt applicable State law concerning the provision of books, accounts, memoranda, and other records, or in any way limit the rights of any State to obtain books, accounts, memoranda, and other records under any other Federal law, contract, or otherwise.

(e) COURT JURISDICTION.—Any United States district court located in the State in which the State commission referred to in subsection (a) is located shall have jurisdiction to enforce compliance with this section.

SEC. 1266. EXEMPTION AUTHORITY.

(a) RULEMAKING.—Not later than 90 days after the effective date of this subtitle, the Commission shall issue a final rule to exempt from the requirements of section 1264 (relating to Federal access to books and records) any person that is a holding company, solely with respect to 1 or more—

(1) qualifying facilities under the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2601 et seq.);

(2) exempt wholesale generators; or

(3) foreign utility companies.

(b) OTHER AUTHORITY.—The Commission shall exempt a person or transaction from the requirements of section 1264 (relating to Federal access to books and records) if, upon application or upon the motion of the Commission—

(1) the Commission finds that the books, accounts, memoranda, and other records of any person are not relevant to the jurisdictional rates of a public utility or natural gas company; or

(2) the Commission finds that any class of transactions is not relevant to the jurisdictional rates of a public utility or natural gas company.

SEC. 1267. AFFILIATE TRANSACTIONS.

(a) COMMISSION AUTHORITY UNAFFECTED.—Nothing in this subtitle shall limit the authority of the Commission under the Federal Power Act (16 U.S.C. 791a et seq.) to require that jurisdictional rates are just and reasonable, including the ability to deny or approve the pass through of costs, the prevention of cross-subsidization, and the issuance of such rules and regulations as are necessary or appropriate for the protection of utility consumers.

(b) RECOVERY OF COSTS.—Nothing in this subtitle shall preclude the Commission or a State commission from exercising its jurisdiction under otherwise applicable law to determine whether a public-utility company, public utility, or natural gas company may recover in rates any costs of an activity performed by an associate company, or any costs of goods or services acquired by such public-utility company from an associate company.

SEC. 1268. APPLICABILITY.

Except as otherwise specifically provided in this subtitle, no provision of this subtitle shall apply to, or be deemed to include—

(1) the United States;

(2) a State or any political subdivision of a State;

(3) any foreign governmental authority not operating in the United States;

(4) any agency, authority, or instrumentality of any entity referred to in paragraph (1), (2), or (3); or

(5) any officer, agent, or employee of any entity referred to in paragraph (1), (2), (3), or (4) acting as such in the course of his or her official duty.

SEC. 1269. EFFECT ON OTHER REGULATIONS.

Nothing in this subtitle precludes the Commission or a State commission from exercising its jurisdiction under otherwise applicable law to protect utility customers.

SEC. 1270. ENFORCEMENT.

The Commission shall have the same powers as set forth in sections 306 through 317 of the Federal Power Act (16 U.S.C. 825e–825p) to enforce the provisions of this subtitle.

SEC. 1271. SAVINGS PROVISIONS.

(a) IN GENERAL.—Nothing in this subtitle, or otherwise in the Public Utility Holding Company Act of 1935, or rules, regulations, or orders thereunder, prohibits a person from engaging in or continuing to engage in activities or transactions in which it is legally engaged or authorized to engage on the date of enactment of this Act, if that person continues to comply with the terms (other than an expiration date or termination date) of any such authorization, whether by rule or by order.

(b) EFFECT ON OTHER COMMISSION AUTHORITY.—Nothing in this subtitle limits the authority of the Commission under the Federal Power Act (16 U.S.C. 791a et seq.) or the Natural Gas Act (15 U.S.C. 717 et seq.).

SEC. 1272. IMPLEMENTATION.

Not later than 12 months after the date of enactment of this subtitle, the Commission shall—

(1) issue such regulations as may be necessary or appropriate to implement this subtitle (other than section 1265, relating to State access to books and records); and

(2) submit to Congress detailed recommendations on technical and conforming amendments to Federal law necessary to carry out this subtitle and the amendments made by this subtitle.

SEC. 1273. TRANSFER OF RESOURCES.

All books and records that relate primarily to the functions transferred to the Commission under this subtitle shall be transferred from the Securities and Exchange Commission to the Commission.

SEC. 1274. EFFECTIVE DATE.

(a) IN GENERAL.—Except for section 1272 (relating to implementation), this subtitle shall take effect 12 months after the date of enactment of this subtitle.

(b) COMPLIANCE WITH CERTAIN RULES.—If the Commission approves and makes effective any final rulemaking modifying the standards of conduct governing entities that own, operate, or control facilities for transmission of electricity in interstate commerce or transportation of natural gas in interstate commerce prior to the effective date of this subtitle, any action taken by a public-utility company or utility holding company to comply with the requirements of such rulemaking shall not subject such public-utility company or utility holding company to any regulatory requirement applicable to a holding company under the Public Utility Holding Company Act of 1935 (15 U.S.C. 79 et seq.).

SEC. 1275. SERVICE ALLOCATION.

(a) FERC REVIEW.—In the case of nonpower goods or administrative or management services provided by an associate company organized specifically for the purpose of providing such goods or services to any public utility in the same holding company system, at the election of the system or a State commission having jurisdiction over the public utility, the Commission, after the effective date of this subtitle, shall review and authorize the allocation of the costs for such goods or services to the extent relevant to that associate company in order to assure that each allocation is appropriate for the protection of investors and consumers of such public utility.

(b) COST ALLOCATION.—Nothing in this section shall preclude the Commission or a State commission from exercising its jurisdiction under other applicable law with respect to the review or authorization of any costs allocated to a public utility in a holding company system located in the affected State as a result of the acquisition of nonpower goods or administrative and management services by such public utility from an associate company organized specifically for that purpose.

(c) RULES.—Not later than 6 months after the date of enactment of this Act, the Commission shall issue rules (which rules shall be effective no earlier than the effective date of this subtitle) to exempt from the requirements of this section any company in a holding company system whose public utility operations are confined substantially to a single State and any other class of transactions that the Commission finds is not relevant to the jurisdictional rates of a public utility.

(d) PUBLIC UTILITY.—As used in this section, the term ''public utility'' has the meaning given that term in section 201(e) of the Federal Power Act.

SEC. 1276. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such funds as may be necessary to carry out this subtitle.

SEC. 1277. CONFORMING AMENDMENTS TO THE FEDERAL POWER ACT.

(a) CONFLICT OF JURISDICTION.—Section 318 of the Federal Power Act (16 U.S.C. 825q) is repealed.

(b) DEFINITIONS.—(1) Section 201(g)(5) of the Federal Power Act (16 U.S.C. 824(g)(5)) is amended by striking ''1935'' and inserting ''2003''.

(2) Section 214 of the Federal Power Act (16 U.S.C. 824m) is amended by striking ''1935'' and inserting ''2003''.

Subtitle G—Market Transparency, Enforcement, and Consumer Protection

SEC. 1281. MARKET TRANSPARENCY RULES.

Part II of the Federal Power Act (16 U.S.C. 824 et seq.) is amended by adding at the end the following:

''SEC. 220. MARKET TRANSPARENCY RULES.

''(a) IN GENERAL.—Not later than 180 days after the date of enactment of this section, the Commission shall issue rules establishing an electronic information system to provide the Commission and the public with access to such information as is necessary or appropriate to facilitate price transparency and participation in markets subject to the Commission's jurisdiction under this Act. Such systems shall provide information about the availability and market price of wholesale electric energy and transmission services to the Commission, State commissions, buyers and sellers of wholesale electric energy, users of transmission services, and the public on a timely basis. The Commission shall have authority to obtain such information from any electric utility or transmitting utility, including any entity described in section 201(f).

''(b) EXEMPTIONS.—The Commission shall exempt from disclosure information it determines would, if disclosed, be detrimental to the operation of an effective market or jeopardize system security. This section shall not apply to transactions for the purchase or sale of wholesale electric energy or transmission services within the area described in section 212(k)(2)(A). In determining the information to be made available under this section and time to make such information available, the Commission shall seek to ensure that consumers and competitive markets are protected from the adverse effects of potential collusion or other anti-competitive behaviors that can be facilitated by untimely public disclosure of transaction-specific information.

''(c) COMMODITY FUTURES TRADING COMMISSION.—This section shall not affect the exclusive jurisdiction of the Commodity Futures Trading Commission with respect to accounts, agreements, contracts, or transactions in commodities under the Commodity Exchange Act (7 U.S.C. 1 et seq.). Any request for information to a designated contract market, registered derivatives transaction execution facility, board of trade, exchange, or market involving accounts, agreements, contracts, or transactions in commodities (including natural gas, electricity and other energy commodities) within the exclusive jurisdiction of the Commodity Futures Trading Commission shall be directed to the Commodity Futures Trading Commission.

''(d) SAVINGS PROVISION.—In exercising its authority under this section, the Commission shall not—

''(1) compete with, or displace from the market place, any price publisher; or

''(2) regulate price publishers or impose any requirements on the publication of information.''.

SEC. 1282. MARKET MANIPULATION.

Part II of the Federal Power Act (16 U.S.C. 824 et seq.) is amended by adding at the end the following:

''SEC. 221. PROHIBITION ON FILING FALSE INFORMATION.

''No person or other entity (including an entity described in section 201(f)) shall willfully and knowingly report any information relating to the price of electricity sold at wholesale or availability of transmission capacity, which information the person or any other entity knew to be false at the time of the reporting, to a Federal agency with intent to fraudulently affect the data being compiled by such Federal agency.

''SEC. 222. PROHIBITION ON ROUND TRIP TRADING.

''(a) PROHIBITION.—No person or other entity (including an entity described in section 201(f)) shall willfully and knowingly enter into any contract or other arrangement to execute a 'round trip trade' for the purchase or sale of electric energy at wholesale.

''(b) DEFINITION.—For the purposes of this section, the term 'round trip trade' means a transaction, or combination of transactions, in which a person or any other entity—

''(1) enters into a contract or other arrangement to purchase from, or sell to, any other person or other entity electric energy at wholesale;

''(2) simultaneously with entering into the contract or arrangement described in paragraph (1), arranges a financially offsetting trade with such other person or entity for the same such electric energy, at the same location, price, quantity and terms so that, collectively, the purchase and sale transactions in themselves result in no financial gain or loss; and

''(3) enters into the contract or arrangement with a specific intent to fraudulently affect reported revenues, trading volumes, or prices.''.

SEC. 1283. ENFORCEMENT.

(a) COMPLAINTS.—Section 306 of the Federal Power Act (16 U.S.C. 825e) is amended as follows:

(1) By inserting ''electric utility,'' after ''Any person,''.

(2) By inserting '', transmitting utility,'' after ''licensee'' each place it appears.

(b) REVIEW OF COMMISSION ORDERS.—Section 313(a) of the Federal Power Act (16 U.S.C. 8251) is amended by inserting 'electric utility,' after 'person,' in the first 2 places it appears and by striking 'any person unless such person' and inserting 'any entity unless such entity'.

(c) INVESTIGATIONS.—Section 307(a) of the Federal Power Act (16 U.S.C. 825f(a)) is amended as follows:

(1) By inserting ', electric utility, transmitting utility, or other entity' after 'person' each time it appears.

(2) By striking the period at the end of the first sentence and inserting the following: ''or in obtaining information about the sale of electric energy at wholesale in interstate commerce and the transmission of electric energy in interstate commerce.''.

(d) CRIMINAL PENALTIES.—Section 316 of the Federal Power Act (16 U.S.C. 825o) is amended—

(1) in subsection (a), by striking ''$5,000'' and inserting ''$1,000,000'', and by striking ''two years'' and inserting ''5 years'';

(2) in subsection (b), by striking ''$500'' and inserting ''$25,000''; and

(3) by striking subsection (c).

(e) CIVIL PENALTIES.—Section 316A of the Federal Power Act (16 U.S.C. 825o–1) is amended as follows:

(1) In subsections (a) and (b), by striking ''section 211, 212, 213, or 214'' each place it appears and inserting ''Part II''.

(2) In subsection (b), by striking ''$10,000'' and inserting ''$1,000,000''.

SEC. 1284. REFUND EFFECTIVE DATE.

Section 206(b) of the Federal Power Act (16 U.S.C. 824e(b)) is amended as follows:

(1) By striking ''the date 60 days after the filing of such complaint nor later than 5 months after the expiration of such 60-day period'' in the second sentence and inserting ''the date of the filing of such complaint nor later than 5 months after the filing of such complaint''.

(2) By striking ''60 days after'' in the third sentence and inserting ''of''.

(3) By striking ''expiration of such 60-day period'' in the third sentence and inserting ''publication date''.

(4) By striking the fifth sentence and inserting the following: ''If no final decision is rendered by the conclusion of the 180-day period commencing upon initiation of a proceeding pursuant to this section, the Commission shall state the reasons why it has failed to do so and shall state its best estimate as to when it reasonably expects to make such decision.''.

SEC. 1285. REFUND AUTHORITY.

Section 206 of the Federal Power Act (16 U.S.C. 824e) is amended by adding the following new subsection at the end thereof:

''(e)(1) Except as provided in paragraph (2), if an entity described in section 201(f) voluntarily makes a short-term sale of electric energy and the sale violates Commission rules in effect at the time of the sale, such entity shall be subject to the Commission's refund authority under this section with respect to such violation.

''(2) This section shall not apply to—

''(A) any entity that sells less than 8,000,000 megawatt hours of electricity per year; or

''(B) any electric cooperative.

''(3) For purposes of this subsection, the term 'short-term sale' means an agreement for the sale of electric energy at wholesale in interstate commerce that is for a period of 31 days or less (excluding monthly contracts subject to automatic renewal).

''(4) The Commission shall have refund authority under subsection (e)(1) with respect to a voluntary short-term sale of electric energy by the Bonneville Power Administration (in this section 'Bonneville') only if the sale is at an unjust and unreasonable rate and, in that event, may order a refund only for short-term sales made by Bonneville at rates that are higher than the highest just and reasonable rate charged by any other entity for a short-term sale of electric energy in the same geographic market for the same, or most nearly comparable, period as the sale by Bonneville.

''(5) With respect to any Federal power marketing agency or the Tennessee Valley Authority, the Commission shall not assert or exercise any regulatory authority or powers under subsection (e)(1) other than the ordering of refunds to achieve a just and reasonable rate.''.

SEC. 1286. SANCTITY OF CONTRACT.

(a) IN GENERAL.—The Federal Energy Regulatory Commission (in this section, ''the Commission'') shall have no authority to abrogate or modify any provision of an executed contract or executed contract amendment described in subsection (b) that has been entered into or taken effect, except upon a finding that failure to take such action would be contrary to the public interest.

(b) LIMITATION.—Except as provided in subsection (c), this section shall apply only to a contract or contract amendment—

(1) executed on or after the date of enactment of this Act; and

(2) entered into—

(A) for the purchase or sale of electric energy under section 205 of the Federal Power Act (16 U.S.C. 824d) where the seller has been authorized by the Commission to charge market-based rates; or

(B) under section 4 of the Natural Gas Act (15 U.S.C. 717c) where the natural gas company has been authorized by the Commission to charge market-based rates for the service described in the contract.

(c) EXCLUSION.—This section shall not apply to an executed contract or executed contract amendment that expressly provides for a standard of review other than the public interest standard.

(d) SAVINGS PROVISION.—With respect to contracts to which this section does not apply, nothing in this section alters existing law regarding the applicable standard of review for a contract subject to the jurisdiction of the Commission.

SEC. 1287. CONSUMER PRIVACY AND UNFAIR TRADE PRACTICES.

(a) PRIVACY.—The Federal Trade Commission may issue rules protecting the privacy of electric consumers from the disclosure of consumer information obtained in connection with the sale or delivery of electric energy to electric consumers.

(b) SLAMMING.—The Federal Trade Commission may issue rules prohibiting the change of selection of an electric utility except with the informed consent of the electric consumer or if approved by the appropriate State regulatory authority.

(c) CRAMMING.—The Federal Trade Commission may issue rules prohibiting the sale of goods and services to an electric consumer unless expressly authorized by law or the electric consumer.

(d) RULEMAKING.—The Federal Trade Commission shall proceed in accordance with section 553 of title 5, United States Code, when prescribing a rule under this section.

(e) STATE AUTHORITY.—If the Federal Trade Commission determines that a State's regulations provide equivalent or greater protection than the provisions of this section, such State regulations shall apply in that State in lieu of the regulations issued by the Commission under this section.

(f) DEFINITIONS.—For purposes of this section:

(1) STATE REGULATORY AUTHORITY.—The term ''State regulatory authority'' has the meaning given that term in section 3(21) of the Federal Power Act (16 U.S.C. 796(21)).

(2) ELECTRIC CONSUMER AND ELECTRIC UTILITY.—The terms ''electric consumer'' and ''electric utility'' have the meanings given those terms in section 3 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2602).

Subtitle H—Merger Reform

SEC. 1291. MERGER REVIEW REFORM AND ACCOUNTABILITY.

(a) MERGER REVIEW REFORM.—Within 180 days after the date of enactment of this Act, the Secretary of Energy, in consultation with the Federal Energy Regulatory Commission and the Attorney General of the United States, shall prepare, and transmit to Congress each of the following:

(1) A study of the extent to which the authorities vested in the Federal Energy Regulatory Commission under section 203 of the Federal Power Act are duplicative of authorities vested in—

(A) other agencies of Federal and State Government; and

(B) the Federal Energy Regulatory Commission, including under sections 205 and 206 of the Federal Power Act.

(2) Recommendations on reforms to the Federal Power Act that would eliminate any unnecessary duplication in the exercise of regulatory authority or unnecessary delays in the approval (or disapproval) of applications for the sale, lease, or other disposition of public utility facilities.

(b) MERGER REVIEW ACCOUNTABILITY.—Not later than 1 year after the date of enactment of this Act and annually thereafter, with respect to all orders issued within the preceding year that impose a condition on a sale, lease, or other disposition of public utility facilities under section 203(b) of the Federal Power Act, the Federal Energy Regulatory Commission shall transmit a report to Congress explaining each of the following:

(1) The condition imposed.

(2) Whether the Commission could have imposed such condition by exercising its authority under any provision of the Federal Power Act other than under section 203(b).

(3) If the Commission could not have imposed such condition other than under section 203(b), why the Commission determined that such condition was consistent with the public interest.

SEC. 1292. ELECTRIC UTILITY MERGERS.

(a) AMENDMENT.—Section 203(a) of the Federal Power Act (16 U.S.C. 824b(a)) is amended to read as follows:

''(a)(1) No public utility shall, without first having secured an order of the Commission authorizing it to do so—

''(A) sell, lease, or otherwise dispose of the whole of its facilities subject to the jurisdiction of the Commission, or any part thereof of a value in excess of $10,000,000;

''(B) merge or consolidate, directly or indirectly, such facilities or any part thereof with those of any other person, by any means whatsoever; or

''(C) purchase, acquire, or take any security with a value in excess of $10,000,000 of any other public utility.

''(2) No holding company in a holding company system that includes a public utility shall purchase, acquire, or take any security with a value in excess of $10,000,000 of, or, by any means whatsoever, directly or indirectly, merge or consolidate with, a public utility or a holding company in a holding company system that includes a public utility with a value in excess of $10,000,000 without first having secured an order of the Commission authorizing it to do so.

''(3) Upon receipt of an application for such approval the Commission shall give reasonable notice in writing to the Governor and State commission of each of the States in which the physical property affected, or any part thereof, is situated, and to such other persons as it may deem advisable.

''(4) After notice and opportunity for hearing, the Commission shall approve the proposed disposition, consolidation, acquisition, or change in control, if it finds that the proposed transaction will be consistent with the public interest. In evaluating whether a transaction will be consistent with the public interest, the Commission shall consider whether the proposed transaction—

''(A) will adequately protect consumer interests;

''(B) will be consistent with competitive wholesale markets;

''(C) will impair the financial integrity of any public utility that is a party to the transaction or an associate company of any party to the transaction; and

''(D) satisfies such other criteria as the Commission considers consistent with the public interest.

''(5) The Commission shall, by rule, adopt procedures for the expeditious consideration of applications for the approval of dispositions, consolidations, or acquisitions under this section. Such rules shall identify classes of transactions, or specify criteria for transactions, that normally meet the standards established in paragraph (4). The Commission shall provide expedited review for such transactions. The Commission shall grant or deny any other application for approval of a transaction not later than 180 days after the application is filed. If the Commission does not act within 180 days, such application shall be deemed granted unless the Commission finds, based on good cause, that further consideration is required to determine whether the proposed transaction meets the standards of paragraph (4) and issues an order tolling the time for acting on the application for not more than 180 days, at the end of which additional period the Commission shall grant or deny the application.

''(6) For purposes of this subsection, the terms 'associate company', 'holding company', and 'holding company system' have the meaning given those terms in the Public Utility Holding Company Act of 2003.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect 12 months after the date of enactment of this section.

Subtitle I—Definitions

SEC. 1295. DEFINITIONS.

(a) ELECTRIC UTILITY.—Section 3(22) of the Federal Power Act (16 U.S.C. 796(22)) is amended to read as follows:

''(22) ELECTRIC UTILITY.—The term 'electric utility' means any person or Federal or State agency (including any entity described in section 201(f)) that sells electric energy; such term includes the Tennessee Valley Authority and each Federal power marketing administration.''.

(b) TRANSMITTING UTILITY.—Section 3(23) of the Federal Power Act (16 U.S.C. 796(23)) is amended to read as follows:

''(23) TRANSMITTING UTILITY.—The term 'transmitting utility' means an entity, including any entity described in section 201(f), that owns, operates, or controls facilities used for the transmission of electric energy—

''(A) in interstate commerce; or

''(B) for the sale of electric energy at wholesale.''.

(c) ADDITIONAL DEFINITIONS.—Section 3 of the Federal Power Act (16 U.S.C. 796) is amended by adding at the end the following:

''(26) ELECTRIC COOPERATIVE.—The term 'electric cooperative' means a cooperatively owned electric utility.

''(27) RTO.—The term 'Regional Transmission Organization' or 'RTO' means an entity of sufficient regional scope approved by the Commission to exercise operational or functional control of facilities used for the transmission of electric energy in interstate commerce and to ensure nondiscriminatory access to such facilities.

''(28) ISO.—The term 'Independent System Operator' or 'ISO' means an entity approved by the Commission to exercise operational or functional control of facilities used for the transmission of electric energy in interstate commerce and to ensure nondiscriminatory access to such facilities.''.

(d) COMMISSION.—For the purposes of this title, the term ''Commission'' means the Federal Energy Regulatory Commission.

(e) APPLICABILITY.—Section 201(f) of the Federal Power Act (16 U.S.C. 824(f)) is amended by adding after ''political subdivision of a state,'' the following: ''an electric cooperative that has financing under the Rural Electrification Act of 1936 (7 U.S.C. 901 et seq.) or that sells less than 4,000,000 megawatt hours of electricity per year,''.

Subtitle J—Technical and Conforming Amendments

SEC. 1297. CONFORMING AMENDMENTS.

The Federal Power Act is amended as follows:

(1) Section 201(b)(2) of such Act (16 U.S.C. 824(b)(2)) is amended as follows:

(A) In the first sentence by striking ''210, 211, and 212'' and inserting ''203(a)(2), 206(e), 210, 211, 211A, 212, 215, 216, 217, 218, 219, 220, 221, and 222''.

(B) In the second sentence by striking ''210 or 211'' and inserting ''203(a)(2), 206(e), 210, 211, 211A, 212, 215, 216, 217, 218, 219, 220, 221, and 222''.

(C) Section 201(b)(2) of such Act is amended by striking ''The'' in the first place it appears and inserting ''Notwithstanding section 201(f), the'' and in the second sentence after ''any order'' by inserting ''or rule''.

(2) Section 201(e) of such Act is amended by striking ''210, 211, or 212'' and inserting ''206(e), 206(f), 210, 211, 211A, 212, 215, 216, 217, 218, 219, 220, 221, and 222''.

(3) Section 206 of such Act (16 U.S.C. 824e) is amended as follows:

(A) In subsection (b), in the seventh sentence, by striking ''the public utility to make''.

(B) In the first sentence of subsection (a), by striking 'hearing had' and inserting ''hearing held''.

(4) Section 211(c) of such Act (16 U.S.C. 824j(c)) is amended by—

(A) striking ''(2)'';

(B) striking ''(A)'' and inserting ''(1)''

(C) striking ''(B)'' and inserting ''(2)''; and

(D) striking ''termination of modification'' and inserting ''termination or modification''.

(5) Section 211(d)(1) of such Act (16 U.S.C. 824j(d)(1)) is amended by striking ''electric utility'' the second time it appears and inserting ''transmitting utility''.

(6) Section 315 (c) of such Act (16 U.S.C. 825n(c)) is amended by striking ''subsection'' and inserting ''section''.

TITLE XIII—STUDIES

SEC. 1301. STUDY ON INVENTORY OF PETROLEUM AND NATURAL GAS STORAGE.

(a) DEFINITION.—For purposes of this section ''petroleum'' means crude oil, motor gasoline, jet fuel, distillates, and propane.

(b) STUDY.—The Secretary of Energy shall conduct a study on petroleum and natural gas storage capacity and operational inventory levels, nationwide and by major geographical regions.

(c) CONTENTS.—The study shall address—

(1) historical normal ranges for petroleum and natural gas inventory levels;

(2) historical and projected storage capacity trends;

(3) estimated operation inventory levels below which outages, delivery slowdown, rationing, interruptions in service, or other indicators of shortage begin to appear;

(4) explanations for inventory levels dropping below normal ranges; and

(5) the ability of industry to meet United States demand for petroleum and natural gas without shortages or price spikes, when inventory levels are below normal ranges.

(d) REPORT TO CONGRESS.—Not later than 1 year after the date of enactment of this Act, the Secretary of Energy shall submit a report to Congress on the results of the study, including findings and any recommendations for preventing future supply shortages.

SEC. 1302. NATURAL GAS SUPPLY SHORTAGE REPORT.

(a) REPORT.—Not later than 6 months after the date of enactment of this Act, the Secretary of Energy shall submit to Congress a report on natural gas supplies and demand. In preparing the report, the Secretary shall consult with experts in natural gas supply and demand as well as representatives of State and local units of government, tribal organizations, and consumer and other organizations. As the Secretary deems advisable, the Secretary may hold public hearings and provide other opportunities for public comment. The report shall contain recommendations for Federal actions that, if implemented, will result in a balance between natural gas supply and demand at a level that will ensure, to the maximum extent practicable, achievement of the objectives established in subsection (b).

(b) OBJECTIVES OF REPORT.—In preparing the report, the Secretary shall seek to develop a series of recommendations that will result in a balance between natural gas supply and demand adequate to—

(1) provide residential consumers with natural gas at reasonable and stable prices;

(2) accommodate long-term maintenance and growth of domestic natural gas-dependent industrial, manufacturing, and commercial enterprises;

(3) facilitate the attainment of national ambient air quality standards under the Clean Air Act;

(4) permit continued progress in reducing emissions associated with electric power generation; and

(5) support development of the preliminary phases of hydrogen-based energy technologies.

(c) CONTENTS OF REPORT.—The report shall provide a comprehensive analysis of natural gas supply and demand in the United States for the period from 2004 to 2015. The analysis shall include, at a minimum—

(1) estimates of annual domestic demand for natural gas that take into account the effect of Federal policies and actions that are likely to increase and decrease demand for natural gas;

(2) projections of annual natural gas supplies, from domestic and foreign sources, under existing Federal policies;

(3) an identification of estimated natural gas supplies that are not available under existing Federal policies;

(4) scenarios for decreasing natural gas demand and increasing natural gas supplies comparing relative economic and environmental impacts of Federal policies that—

(A) encourage or require the use of natural gas to meet air quality, carbon dioxide emission reduction, or energy security goals;

(B) encourage or require the use of energy sources other than natural gas, including coal, nuclear, and renewable sources;

(C) support technologies to develop alternative sources of natural gas and synthetic gas, including coal gasification technologies;

(D) encourage or require the use of energy conservation and demand side management practices; and

(E) affect access to domestic natural gas supplies; and

(5) recommendations for Federal actions to achieve the objectives of the report, including recommendations that—

(A) encourage or require the use of energy sources other than natural gas, including coal, nuclear, and renewable sources;

(B) encourage or require the use of energy conservation or demand side management practices;

(C) support technologies for the development of alternative sources of natural gas and synthetic gas, including coal gasification technologies; and

(D) will improve access to domestic natural gas supplies.

SEC. 1303. SPLIT-ESTATE FEDERAL OIL AND GAS LEASING AND DEVELOPMENT PRACTICES.

(a) REVIEW.—In consultation with affected private surface owners, oil and gas industry, and other interested parties, the Secretary of the Interior shall undertake a review of the current policies and practices with respect to management of Federal subsurface oil and gas development activities and their effects on the privately owned surface. This review shall include—

(1) a comparison of the rights and responsibilities under existing mineral and land law for the owner of a Federal mineral lease, the private surface owners and the Department;

(2) a comparison of the surface owner consent provisions in section 714 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1304) concerning surface mining of Federal coal deposits and the surface owner consent provisions for oil and gas development, including coalbed methane production; and

(3) recommendations for administrative or legislative action necessary to facilitate reasonable access for Federal oil and gas activities while addressing surface owner concerns and minimizing impacts to private surface.

(b) REPORT.—The Secretary of the Interior shall report the results of such review to Congress not later than 180 days after the date of enactment of this Act.

SEC. 1304. RESOLUTION OF FEDERAL RESOURCE DEVELOPMENT CONFLICTS IN THE POWDER RIVER BASIN.

The Secretary of the Interior shall—

(1) undertake a review of existing authorities to resolve conflicts between the development of Federal coal and the development of Federal and non-Federal coalbed methane in the Powder River Basin in Wyoming and Montana; and

(2) not later than 6 months after the date of enactment of this Act, report to Congress on alternatives to resolve these conflicts and identification of a preferred alternative with specific legislative language, if any, required to implement the preferred alternative.

SEC. 1305. STUDY OF ENERGY EFFICIENCY STANDARDS.

The Secretary of Energy shall contract with the National Academy of Sciences for a study, to be completed within 1 year after the date of enactment of this Act, to examine whether the goals of energy efficiency standards are best served by measurement of energy consumed, and efficiency improvements, at the actual site of energy consumption, or through the full fuel cycle, beginning at the source of energy production. The Secretary shall submit the report to Congress.

SEC. 1306. TELECOMMUTING STUDY.

(a) STUDY REQUIRED.—The Secretary, in consultation with the Commission, the Director of the Office of Personnel Management, the Administrator of General Services, and the Administrator of NTIA, shall conduct a study of the energy conservation implications of the widespread adoption of telecommuting by Federal employees in the United States.

(b) REQUIRED SUBJECTS OF STUDY.—The study required by subsection (a) shall analyze the following subjects in relation to the energy saving potential of telecommuting by Federal employees:

(1) Reductions of energy use and energy costs in commuting and regular office heating, cooling, and other operations.

(2) Other energy reductions accomplished by telecommuting.

(3) Existing regulatory barriers that hamper telecommuting, including barriers to broadband telecommunications services deployment.

(4) Collateral benefits to the environment, family life, and other values.

(c) REPORT REQUIRED.—The Secretary shall submit to the President and Congress a report on the study required by this section not later than 6 months after the date of enactment of this Act. Such report shall include a description of the results of the analysis of each of the subject described in subsection (b).

(d) DEFINITIONS.—As used in this section:

(1) SECRETARY.—The term ''Secretary'' means the Secretary of Energy.

(2) COMMISSION.—The term ''Commission'' means the Federal Communications Commission.

(3) NTIA.—The term ''NTIA'' means the National Telecommunications and Information Administration of the Department of Commerce.

(4) TELECOMMUTING.—The term ''telecommuting'' means the performance of work functions using communications technologies, thereby eliminating or substantially reducing the need to commute to and from traditional worksites.

(5) FEDERAL EMPLOYEE.—The term ''Federal employee'' has the meaning provided the term ''employee'' by section 2105 of title 5, United States Code.

SEC. 1307. LIHEAP REPORT.

Not later than 1 year after the date of enactment of this Act, the Secretary of Health and Human Services shall transmit to Congress a report on how the Low-Income Home Energy Assistance Program could be used more effectively to prevent loss of life from extreme temperatures. In preparing such report, the Secretary shall consult with appropriate officials in all 50 States and the District of Columbia.

SEC. 1308. OIL BYPASS FILTRATION TECHNOLOGY.

The Secretary of Energy and the Administrator of the Environmental Protection Agency shall—

(1) conduct a joint study of the benefits of oil bypass filtration technology in reducing demand for oil and protecting the environment;

(2) examine the feasibility of using oil bypass filtration technology in Federal motor vehicle fleets; and

(3) include in such study, prior to any determination of the feasibility of using oil bypass filtration technology, the evaluation of products and various manufacturers.

SEC. 1309. TOTAL INTEGRATED THERMAL SYSTEMS.

The Secretary of Energy shall—

(1) conduct a study of the benefits of total integrated thermal systems in reducing demand for oil and protecting the environment; and

(2) examine the feasibility of using total integrated thermal systems in Department of Defense and other Federal motor vehicle fleets.

SEC. 1310. UNIVERSITY COLLABORATION.

Not later than 2 years after the date of enactment of this Act, the Secretary of Energy shall transmit to Congress a report that examines the feasibility of promoting collaborations between large institutions of higher education and small institutions of higher education through grants, contracts, and cooperative agreements made by the Secretary for energy projects. The Secretary shall also consider providing incentives for the inclusion of small institutions of higher education, including minority-serving institutions, in energy research grants, contracts, and cooperative agreements.

SEC. 1311. RELIABILITY AND CONSUMER PROTECTION ASSESSMENT.

Not later than 5 years after the date of enactment of this Act, and each 5 years thereafter, the Federal Energy Regulatory Commission shall assess the effects of the exemption of electric cooperatives and government-owned utilities from Commission regulation under section 201(f) of the Federal Power Act. The assessment shall include any effects on—

(1) reliability of interstate electric transmission networks;

(2) benefit to consumers, and efficiency, of competitive wholesale electricity markets;

(3) just and reasonable rates for electricity consumers; and

(4) the ability of the Commission to protect electricity consumers.

If the Commission finds that the 201(f) exemption results in adverse effects on consumers or electric reliability, the Commission shall make appropriate recommendations to Congress pursuant to section 311 of the Federal Power Act.

TITLE XIV—MISCELLANEOUS

Subtitle A—Rural and Remote Electricity Construction

SEC. 1401. DENALI COMMISSION PROGRAMS.

(a) POWER COST EQUALIZATION PROGRAM.—There are authorized to be appropriated to the Denali Commission established by the Denali Commission Act of 1998 (42 U.S.C. 3121 note) not more than $5,000,000 for each of fiscal years 2005 through 2011 for the purposes of funding the power cost equalization program established under section 42.45.100 of the Alaska Statutes.

(b) AVAILABILITY OF FUNDS.—

(1) PURPOSE.—Amounts authorized in paragraph (2) shall be available to the Denali Commission to permit energy generation and development (including fuel cells, hydroelectric, solar, wind, wave, and tidal energy, and alternative energy sources), energy transmission (including interties), fuel tank replacement and clean-up, fuel transportation networks and related facilities, power cost equalization programs, and other energy programs, notwithstanding any other provision of law.

(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Denali Commission to carry out paragraph (1) $50,000,000 for each of fiscal years 2004 through 2013.

SEC. 1402. RURAL AND REMOTE COMMUNITY ASSISTANCE.

(a) PROGRAM.—Section 19 of the Rural Electrification Act of 1936 (7 U.S.C. 918a) is amended by striking all that precedes subsection (b) and inserting the following:

''SEC. 19. ELECTRIC GENERATION, TRANSMISSION, AND DISTRIBUTION FACILITIES EFFICIENCY GRANTS AND LOANS TO RURAL AND REMOTE COMMUNITIES WITH EXTREMELY HIGH ELECTRICITY COSTS.

''(a) IN GENERAL.—The Secretary, acting through the Rural Utilities Service, may—

''(1) in coordination with State rural development initiatives, make grants and loans to persons, States, political subdivisions of States, and other entities organized under the laws of States, to acquire, construct, extend, upgrade, and otherwise improve electric generation, transmission, and distribution facilities serving communities in which the average revenue per kilowatt hour of electricity for all consumers is greater than 150 percent of the average revenue per kilowatt hour of electricity for all consumers in the United States (as determined by the Energy Information Administration using the most recent data available);

''(2) make grants and loans to the Denali Commission established by the Denali Commission Act of 1998 (42 U.S.C. 3121 note; Public 105–277) to be used for the purpose of providing funds to acquire, construct, extend, upgrade, finance, and otherwise improve electric generation, transmission, and distribution facilities serving communities described in paragraph (1); and

''(3) make grants to State entities to establish and support a revolving fund to provide a more cost-effective means of purchasing fuel in areas where the fuel cannot be shipped by means of surface transportation.''.

(b) DEFINITION OF PERSON.—Section 13 of the Rural Electrification Act of 1936 (7 U.S.C. 913) is amended by striking ''or association'' and inserting ''association, or Indian tribe (as defined in section 4 of the Indian Self-Determination and Education Assistance Act)''.

Subtitle B—Coastal Programs

SEC. 1411. ROYALTY PAYMENTS UNDER LEASES UNDER THE OUTER CONTINENTAL SHELF LANDS ACT.

(a) ROYALTY RELIEF.—

(1) IN GENERAL.—For purposes of providing compensation for lessees and a State for which amounts are authorized by section 6004(c) of the Oil Pollution Act of 1990 (Public Law 101–380), effective beginning October 1, 2008, a lessee may withhold from payment any royalty due and owing to the United States under any leases under the Outer Continental Shelf Lands Act (43 U.S.C. 1301 et seq.) for offshore oil or gas production from a covered lease tract if, on or before the date that the payment is due and payable to the United States, the lessee makes a payment to the Secretary of the Interior of 44 cents for every $1 of royalty withheld.

(2) USE OF AMOUNTS PAID TO SECRETARY.—Within 30 days after the Secretary of the Interior receives payments under paragraph (1), the Secretary of the Interior shall—

(A) make 47.5 percent of such payments available to the State referred to in section 6004(c) of the Oil Pollution Act of 1990; and

(B) make 52.5 percent of such payments available equally, only for the programs and purposes identified as number 282 at page 1389 of House Report number 108–10 and for a program described at page 1159 of that Report in the State referred to in such section 6004(c).

(3) TREATMENT OF AMOUNTS.—Any royalty withheld by a lessee in accordance with this section (including any portion thereof that is paid to the Secretary of the Interior under paragraph (1)) shall be treated as paid for purposes of satisfaction of the royalty obligations of the lessee to the United States.

(4) CERTIFICATION OF WITHHELD AMOUNTS.—The Secretary of the Treasury shall—

(A) determine the amount of royalty withheld by a lessee under this section; and

(B) promptly publish a certification when the total amount of royalty withheld by the lessee under this section is equal to—

(i) the dollar amount stated at page 47 of Senate Report number 101–534, which is designated therein as the total drainage claim for the West Delta field; plus

(ii) interest as described at page 47 of that Report.

(b) PERIOD OF ROYALTY RELIEF.—Subsection (a) shall apply to royalty amounts that are due and payable in the period beginning on January 1, 2008, and ending on the date on which the Secretary of the Treasury publishes a certification under subsection (a)(4)(B).

(c) DEFINITIONS.—As used in this section:

(1) COVERED LEASE TRACT.—The term ''covered lease tract'' means a leased tract (or portion of a leased tract)—

(A) lying seaward of the zone defined and governed by section 8(g) of the Outer Continental Shelf Lands Act (43 U.S.C. 1337(g)); or

(B) lying within such zone but to which such section does not apply.

(2) LESSEE.—The term ''lessee''—

(A) means a person or entity that, on the date of the enactment of the Oil Pollution Act of 1990, was a lessee referred to in section 6004(c) of that Act (as in effect on that date of the enactment), but did not hold lease rights in Federal offshore lease OCS–G–5669; and

(B) includes successors and affiliates of a person or entity described in subparagraph (A).

SEC. 1412. DOMESTIC OFFSHORE ENERGY REINVESTMENT.

(a) DOMESTIC OFFSHORE ENERGY REINVESTMENT PROGRAM.—The Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.) is amended by adding at the end the following:

"SEC. 32. DOMESTIC OFFSHORE ENERGY REINVESTMENT PROGRAM.

''(a) DEFINITIONS.—In this section:

''(1) APPROVED PLAN.—The term 'approved plan' means a Secure Energy Reinvestment Plan approved by the Secretary under this section.

''(2) COASTAL ENERGY STATE.—The term 'Coastal Energy State' means a Coastal State off the coastline of which, within the seaward lateral boundary as determined by the map referenced in subsection (c)(2)(A), Outer Continental Shelf bonus bids or royalties are generated, other than bonus bids or royalties from a leased tract within any area of the Outer Continental Shelf for which a moratorium on new leasing was in effect as of January 1, 2002, unless the lease was issued before the establishment of the moratorium and was in production on such date.

''(3) COASTAL POLITICAL SUBDIVISION.—The term 'coastal political subdivision' means a county, parish, or other equivalent subdivision of a Coastal Energy State, all or part of which lies within the boundaries of the coastal zone of the State, as identified in the State's approved coastal zone management program under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.) on the date of the enactment of this section.

''(4) COASTAL POPULATION.—The term 'coastal population' means the population of a coastal political subdivision, as determined by the most recent official data of the Census Bureau.

''(5) COASTLINE.—The term 'coastline' has the same meaning as the term 'coast line' in subsection 2(c) of the Submerged Lands Act (43 U.S.C. 1301(c)).

''(6) FUND.—The term 'Fund' means the Secure Energy Reinvestment Fund established by this section.

''(7) LEASED TRACT.—The term 'leased tract' means a tract maintained under section 6 or leased under section 8 for the purpose of drilling for, developing, and producing oil and natural gas resources.

''(8) QUALIFIED OUTER CONTINENTAL SHELF REVENUES.—(A) Except as provided in subparagraph (B), the term 'qualified Outer Continental Shelf revenues' means all amounts received by the United States on or after October 1, 2003, from each leased tract or portion of a leased tract lying seaward of the zone defined and governed by section 8(g), or lying within such zone but to which section 8(g) does not apply, including bonus bids, rents, royalties (including payments for royalties taken in kind and sold), net profit share payments, and related interest.

''(B) Such term does not include any revenues from a leased tract or portion of a leased tract that is included within any area of the Outer Continental Shelf for which a moratorium on new leasing was in effect as of January 1, 2002, unless the lease was issued before the establishment of the moratorium and was in production on such date.

''(9) SECRETARY.—The term 'Secretary' means the Secretary of the Interior.

''(b) SECURE ENERGY REINVESTMENT FUND.—

''(1) ESTABLISHMENT.—There is established in the Treasury of the United States a separate account which shall be known as the 'Secure Energy Reinvestment Fund'. The Fund shall consist of amounts deposited under paragraph (2), and such other amounts as may be appropriated to the Fund.

''(2) DEPOSITS.—For each fiscal year after fiscal year 2003, the Secretary of the Treasury shall deposit into the Fund the following:

''(A) Notwithstanding section 9, all qualified Outer Continental Shelf revenues attributable to royalties received by the United States in the fiscal year that are in excess of the following amount:

''(i) $3,455,000,000 in the case of royalties received in fiscal year 2004.

''(ii) $3,726,000,000 in the case of royalties received in fiscal year 2005.

''(iii) $4,613,000,000 in the case of royalties received in fiscal year 2006.

''(iv) $5,226,000,000 in the case of royalties received in fiscal year 2007.

''(v) $5,841,000,000 in the case of royalties received in fiscal year 2008.

''(vi) $5,763,000,000 in the case of royalties received in fiscal year 2009.

''(vii) $6,276,000,000 in the case of royalties received in fiscal year 2010.

''(viii) $6,351,000,000 in the case of royalties received in fiscal year 2011.

''(ix) $6,551,000,000 in the case of royalties received in fiscal year 2012.

''(x) $5,120,000,000 in the case of royalties received in fiscal year 2013.

''(B) Notwithstanding section 9, all qualified Outer Continental shelf revenues attributable to bonus bids received by the United States in each of the fiscal years 2004 through 2013 that are in excess of $1,000,000,000.

''(C) Notwithstanding section 9, in addition to amounts deposited under subparagraphs (A) and (B), $35,000,000 of amounts received by the United States each fiscal year as royalties for oil or gas production on the Outer Continental Shelf, except that no amounts shall be deposited under this subparagraph before fiscal year 2004 or after fiscal year 2013.

''(D) All interest earned under paragraph (4).

''(E) All repayments under subsection (f).

''(3) REDUCTION IN DEPOSIT.—(A) For each fiscal year after fiscal year 2013 in which amounts received by the United States as royalties for oil or gas production on the Outer Continental Shelf are less than the sum of the amounts described in subparagraph (B) (before the application of this subparagraph), the Secretary of the Treasury shall reduce each of the amounts described in subparagraph (B) proportionately.

''(B) The amounts referred to in subparagraph (A) are the following:

''(i) The amount required to be covered into the Historic Preservation Fund under section 108 of the National Historic Preservation Act (16 U.S.C. 470h) on the date of the enactment of this paragraph.

''(ii) The amount required to be credited to the Land and Water Conservation Fund under section 2(c)(2) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601–5(c)(2)) on the date of the enactment of this paragraph.

''(iii) The amount required to be deposited under subparagraph (C) of paragraph (2) of this subsection.

''(4) INVESTMENT.—The Secretary of the Treasury shall invest moneys in the Fund (including interest) in public debt securities with maturities suitable to the needs of the Fund, as determined by the Secretary of the Treasury, and bearing interest at rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturity. Such invested moneys shall remain invested until needed to meet requirements for disbursement under this section.

''(5) REVIEW AND REVISION OF BASELINE AMOUNTS.—Not later than December 31, 2008, the Secretary of the Interior, in consultation with the Secretary of the Treasury, shall—

''(A) determine the amount and composition of Outer Continental Shelf revenues that were received by the United States in each of the fiscal years 2004 through 2008;

''(B) project the amount and composition of Outer Continental Shelf revenues that will be received in the United States in each of the fiscal years 2009 through 2013; and

''(C) submit to the Congress a report regarding whether any of the dollar amounts set forth in clauses (v) through (x) of paragraph (2)(A) or paragraph (2)(B) should be modified to reflect those projections.

''(6) AUTHORIZATION OF APPROPRIATION OF ADDITIONAL AMOUNTS.—In addition to the amounts deposited into the Fund under paragraph (2) there are authorized to be appropriated to the Fund—

''(A) for each of fiscal years 2004 through 2013 up to $500,000,000; and

''(B) for each fiscal year after fiscal year 2013 up to 25 percent of qualified Outer Continental Shelf revenues received by the United States in the preceding fiscal year.

''(c) USE OF SECURE ENERGY REINVESTMENT FUND.—

''(1) IN GENERAL.—(A) Amounts into the Fund shall be available for obligation or expenditure only for the purposes of this section, and only as provided for in an appropriations Act. The appropriations may be made without fiscal year limitation.

''(B) Of amounts made available under subsection (m), the Secretary shall use amounts remaining after the application of subsections (h) and (i) to pay to each Coastal Energy State that has a Secure Energy Reinvestment Plan approved by the Secretary under this section, and to coastal political subdivisions of such State, the amount allocated to the State or coastal political subdivision, respectively, under this subsection.

''(C) The Secretary shall make payments under this paragraph in December of 2004, and of each year thereafter, or as soon as practicable thereafter.

''(2) ALLOCATION.—The Secretary shall allocate amounts made available under subsection (m) in a fiscal year, and other amounts determined by the Secretary to be available to carry out this section, among Coastal Energy States that have an approved plan, and to coastal political subdivisions of such States, as follows:

''(A)(i) Of the amounts made available for each of the first 10 fiscal years for which amounts are available for allocation under this paragraph, the allocation for each Coastal Energy State shall be calculated based on the ratio of qualified Outer Continental Shelf revenues generated off the coastline of the Coastal Energy State to the qualified Outer Continental Shelf revenues generated off the coastlines of all Coastal Energy States for the period beginning January 1, 1992, and ending December 31, 2001.

''(ii) Of the amounts available for a fiscal year in a subsequent 10-fiscal-year period, the allocation for each Coastal Energy State shall be calculated based on such ratio determined by the Secretary with respect to qualified Outer Continental Shelf revenues generated in each subsequent corresponding 10-year period.

''(iii) For purposes of this subparagraph, qualified Outer Continental Shelf revenues shall be considered to be generated off the coastline of a Coastal Energy State if the geographic center of the lease tract from which the revenues are generated is located within the area formed by the extension of the State's seaward lateral boundaries, calculated using the strict and scientifically derived conventions established to delimit international lateral boundaries under the Law of the Sea, as indicated on the map entitled 'Calculated Seaward Lateral Boundaries' and dated October 2003, on file in the

Office of the Director, Minerals Management Service.

''(B) 35 percent of each Coastal Energy State's allocable share as determined under subparagraph (A) shall be allocated among and paid directly to the coastal political subdivisions of the State by the Secretary based on the following formula:

''(i) 25 percent shall be allocated based on the ratio of each coastal political subdivision's coastal population to the coastal population of all coastal political subdivisions of the Coastal Energy State.

''(ii) 25 percent shall be allocated based on the ratio of each coastal political subdivision's coastline miles to the coastline miles of all coastal political subdivisions of the State. In the case of a coastal political subdivision without a coastline, the coastline of the political subdivision for purposes of this clause shall be one-third the average length of the coastline of the other coastal political subdivisions of the State.

''(iii) 50 percent shall be allocated based on a formula that allocates 75 percent of the funds based on such coastal political subdivision's relative distance from any leased tract used to calculate that State's allocation and 25 percent of the funds based on the relative level of Outer Continental Shelf oil and gas activities in a coastal political subdivision to the level of Outer Continental Shelf oil and gas activities in all coastal political subdivisions in such State, as determined by the Secretary, except that in the case of a coastal political subdivision in the State of California that has a coastal shoreline, that is not within 200 miles of the geographic center of a leased tract or portion of a leased tract, and in which there is located one or more oil refineries the allocation under this clause shall be determined as if that coastal political subdivision were located within a distance of 50 miles from the geographic center of the closest leased tract with qualified Outer Continental Shelf revenues.

''(3) REALLOCATION.—Any amount allocated to a Coastal Energy State or coastal political subdivision of such a State but not disbursed because of a failure of a Coastal Energy State to have an approved plan shall be reallocated by the Secretary among all other Coastal Energy States in a manner consistent with this subsection, except that the Secretary—

''(A) shall hold the amount in escrow within the Fund until the earlier of the end of the next fiscal year in which the allocation is made or the final resolution of any appeal regarding the disapproval of a plan submitted by the State under this section; and

''(B) shall continue to hold such amount in escrow until the end of the subsequent fiscal year thereafter, if the Secretary determines that such State is making a good faith effort to develop and submit, or update, a Secure Energy Reinvestment Plan under subsection (d).

''(4) MINIMUM SHARE.—Notwithstanding any other provision of this subsection, the amount allocated under this subsection to each Coastal Energy State each fiscal year shall be not less than 5 percent of the total amount available for that fiscal year for allocation under this subsection to Coastal Energy States, except that for any Coastal Energy State determined by the Secretary to have an area formed by the extension of the State's seaward lateral boundary, as designated by the map referenced in paragraph (2)(A)(iii), of less than 490 square statute miles, the amount allocated to such State shall not be less than 10 percent of the total amount available for that fiscal year for allocation under this subsection.

''(5) RECOMPUTATION.—If the allocation to one or more Coastal Energy States under paragraph (4) with respect to a fiscal year is greater than the amount that would be allocated to such States under this subsection if paragraph (4) did not apply, then the allocations under this subsection to all other Coastal Energy States shall be paid from the amount remaining after deduction of the amounts allocated under paragraph (4), but shall be reduced on a pro rata basis by the sum of the allocations under paragraph (4) so that not more than 100 percent of the funds available in the Fund for allocation with respect to that fiscal year is allocated.

''(d) SECURE ENERGY REINVESTMENT PLAN.—

''(1) DEVELOPMENT AND SUBMISSION OF STATE PLANS.—The Governor of each State seeking to receive funds under this section shall prepare, and submit to the Secretary, a Secure Energy Reinvestment Plan describing planned expenditures of funds received under this section. The Governor shall include in the State plan submitted to the Secretary plans prepared by the coastal political subdivisions of the State. The Governor and the coastal political subdivision shall solicit local input and provide for public participation in the development of the State plan. In describing the planned expenditures, the State and coastal political subdivisions shall include only items that are uses authorized under subsection (e).

''(2) APPROVAL OR DISAPPROVAL.—

''(A) IN GENERAL.—The Secretary may not disburse funds to a State or coastal political subdivision of a State under this section before the date the State has an approved plan. The Secretary shall approve a Secure Energy Reinvestment Plan submitted by a State under paragraph (1) if the Secretary determines that the expenditures provided for in the plan are uses authorized under subsection (e), and that the plan contains each of the following:

''(i) The name of the State agency that will have the authority to represent and act for the State in dealing with the Secretary for purposes of this section.

''(ii) A program for the implementation of the plan, that (I) has as a goal improving the environment, (II) has as a goal addressing the impacts of oil and gas production from the Outer Continental Shelf, and (III) includes a description of how the State and coastal political subdivisions of the State will evaluate the effectiveness of the plan.

''(iii) Certification by the Governor that ample opportunity has been accorded for public participation in the development and revision of the plan.

''(iv) Measures for taking into account other relevant Federal resources and programs. The plan shall be correlated so far as practicable with other State, regional, and local plans.

''(v) For any State for which the ratio determined under subsection (c)(2)(A)(i) or (c)(2)(A)(ii), as appropriate, expressed as a percentage, exceeds 25 percent, a plan to spend not less than 30 percent of the total funds provided under this section each fiscal year to that State and appropriate coastal political subdivisions, to address the socioeconomic or environmental impacts identified in the plan that remain significant or progressive after implementation of mitigation measures identified in the most current environmental impact statement (as of the date of the enactment of this clause) required under the National Environmental Protection Act of 1969 for lease sales under this Act.

''(vi) A plan to utilize at least one-half of the funds provided pursuant to subsection (c)(2)(B), and a portion of other funds provided to such State under this section, on programs or projects that are coordinated and conducted in partnership between the State and coastal political subdivision.

''(B) PROCEDURE AND TIMING.—The Secretary shall approve or disapprove each plan submitted in accordance with this subsection within 90 days after its submission.

''(3) AMENDMENT OR REVISION.—Any amendment to or revision of an approved plan shall be prepared and submitted in accordance with the requirements under this paragraph for the submittal of plans, and shall be approved or disapproved by the Secretary in accordance with paragraph (2)(B).

''(e) AUTHORIZED USES.—A Coastal Energy State, and a coastal political subdivision of such a State, shall use amounts paid under this section (including any such amounts deposited into a trust fund administered by the State or coastal political subdivision dedicated to uses consistent with this subsection), in compliance with Federal and State law and the approved plan of the State, only for one or more of the following purposes:

''(1) Projects and activities, including educational activities, for the conservation, protection, or restoration of coastal areas including wetlands.

''(2) Mitigating damage to, or the protection of, fish, wildlife, or natural resources.

''(3) To the extent of such sums as are considered reasonable by the Secretary, planning assistance and administrative costs of complying with this section.

''(4) Implementation of federally approved plans or programs for marine, coastal, subsidence, or conservation management or for protection of resources from natural disasters.

''(5) Mitigating impacts of Outer Continental Shelf activities through funding onshore infrastructure and public service needs.

''(f) COMPLIANCE WITH AUTHORIZED USES.—If the Secretary determines that an expenditure of an amount made by a Coastal Energy State or coastal political subdivision is not in accordance with the approved plan of the State (including the plans of coastal political subdivisions included in such plan), the Secretary shall not disburse any further amounts under this section to that Coastal Energy State or coastal political subdivision until—

''(1) the amount is repaid to the Secretary; or

''(2) the Secretary approves an amendment to the plan that authorizes the expenditure.

''(g) ARBITRATION OF STATE AND LOCAL DISPUTES.—The Secretary may require, as a condition of any payment under this section, that a State or coastal political subdivision in a State must submit to arbitration—

''(1) any dispute between the State or coastal political subdivision (or both) and the Secretary regarding implementation of this section; and

''(2) any dispute between the State and political subdivision regarding implementation of this section, including any failure to include, in the plan submitted by the State for purposes of subsection (d), any spending plan of the coastal political subdivision.

''(h) ADMINISTRATIVE EXPENSES.—Of amounts made available under subsection (m) for each fiscal year, the Secretary may use up to one-half of one percent for the administrative costs of implementing this section.

''(i) FUNDING FOR CONSORTIUM.—

''(1) IN GENERAL.—Of amounts made available under subsection (m) for each of fiscal year 2004 through 2013, 2 percent shall be used by the Secretary of the Interior to provide funding for the Coastal Restoration and Enhancement through Science and Technology program.

''(2) TREATMENT.—Any amount provided by the Secretary of the Interior under this subsection for a fiscal year shall, for purposes of

determining the amount appropriated under any other provision of law that authorizes appropriations to carry out the program referred to in paragraph (1), be treated as appropriated under that other provision.

''(j) DISPOSITION OF FUNDS.—A Coastal Energy State or coastal political subdivision may use funds provided to such entity under this section, subject to subsection (e), for any payment that is eligible to be made with funds provided to States under section 35 of the Mineral Leasing Act (30 U.S.C. 191).

''(k) REPORTS.—Each fiscal year following a fiscal year in which a Coastal Energy State or coastal political subdivision of a Coastal Energy State receives funds under this section, the Governor of the Coastal Energy State, in coordination with such State's coastal political subdivisions, shall account for all funds so received for the previous fiscal year in a written report to the Secretary. The report shall include, in accordance with regulations prescribed by the Secretary, a description of all projects and activities that received such funds. In order to avoid duplication, such report may incorporate, by reference, any other reports required to be submitted under other provisions of law.

''(l) SIGNS.—The Secretary shall require, as a condition of any allocation of funds provided with amounts made available by this section, that each State and coastal political subdivision shall include on any sign otherwise installed at any site at or near an entrance or public use focal point area for which such funds are used, a statement that the existence or development of the site (or both), as appropriate, is a product of such funds.

''(m) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated from the Fund to the Secretary to carry out this section, for fiscal year 2004 and each fiscal year thereafter, the amounts deposited into the Fund during the preceding fiscal year.''.

(b) ADDITIONAL AMENDMENTS.—Section 31 of the Outer Continental Shelf Lands Act (43 U.S.C. 1356a) is amended—

(1) by striking subsection (a);

(2) in subsection (c) by striking ''For fiscal year 2001, $150,000,000 is'' and inserting ''Such sums as may be necessary to carry out this section are'';

(3) in subsection (d)(1)(B) by striking '', except'' and all that follows through the end of the sentence and inserting a period;

(4) by redesignating subsections (b) through (g) in order as subsection (a) through (f); and

(5) by striking ''subsection (f)'' each place it appears and inserting ''subsection (e)''.

(c) UTILIZATION OF COASTAL RESTORATION AND ENHANCEMENT THROUGH SCIENCE AND TECHNOLOGY PROGRAM.—

(1) AUTHORIZATION.—The Secretary of the Interior and the Secretary of Commerce may each use the Coastal Restoration and Enhancement through Science and Technology program for the purposes of—

(A) assessing the effects of coastal habitat restoration techniques;

(B) developing improved ecosystem modeling capabilities for improved predictions of coastal conditions and habitat change and for developing new technologies for restoration activities; and

(C) identifying economic options to address socioeconomic consequences of coastal degradation.

(2) CONDITION.—The Secretary of the Interior, in consultation with the Secretary of Commerce, shall ensure that the program—

(A) establishes procedures designed to avoid duplicative activities among Federal agencies and entities receiving Federal funds;

(B) coordinates with persons involved in similar activities; and

(C) establishes a mechanism to collect, organize, and make available information and findings on coastal restoration.

(3) REPORT.—Not later than September 30, 2008, the Secretary of the Interior, in consultation with the Secretary of Commerce, shall transmit a report to the Congress on the effectiveness of any Federal and State restoration efforts conducted pursuant to this subsection and make recommendations to improve coordinated coastal restoration efforts.

(4) FUNDING.—For each of fiscal years 2004 through 2013, there is authorized to be appropriated to the Secretary $10,000,000 to carry out activities under this subsection.

Subtitle C—Reforms to the Board of Directors of the Tennessee Valley Authority

SEC. 1431. CHANGE IN COMPOSITION, OPERATION, AND DUTIES OF THE BOARD OF DIRECTORS OF THE TENNESSEE VALLEY AUTHORITY.

The Tennessee Valley Authority Act of 1933 (16 U.S.C. 831 et seq.) is amended by striking section 2 and inserting the following:

''SEC. 2. MEMBERSHIP, OPERATION, AND DUTIES OF THE BOARD OF DIRECTORS.

''(a) MEMBERSHIP.—

''(1) APPOINTMENT.—The Board of Directors of the Corporation (referred to in this Act as the 'Board') shall be composed of 9 members appointed by the President by and with the advice and consent of the Senate, at least 5 of whom shall be a legal resident of a State any part of which is in the service area of the Corporation.

''(2) CHAIRMAN.—The members of the Board shall select 1 of the members to act as Chairman of the Board.

''(b) QUALIFICATIONS.—To be eligible to be appointed as a member of the Board, an individual—

''(1) shall be a citizen of the United States;

''(2) shall have management expertise relative to a large for-profit or nonprofit corporate, government, or academic structure;

''(3) shall not be an employee of the Corporation; and

''(4) shall make full disclosure to Congress of any investment or other financial interest that the individual holds in the energy industry.

''(c) RECOMMENDATIONS.—In appointing members of the Board, the President shall—

''(1) consider recommendations from such public officials as—

''(A) the Governors of States in the service area;

''(B) individual citizens;

''(C) business, industrial, labor, electric power distribution, environmental, civic, and service organizations; and

''(D) the congressional delegations of the States in the service area; and

''(2) seek qualified members from among persons who reflect the diversity, including the geographical diversity, and needs of the service area of the Corporation.

''(d) TERMS.—

''(1) IN GENERAL.—A member of the Board shall serve a term of 5 years. A member of the Board whose term has expired may continue to serve after the member's term has expired until the date on which a successor takes office, except that the member shall not serve beyond the end of the session of Congress in which the term of the member expires.

''(2) VACANCIES.—A member appointed to fill a vacancy on the Board occurring before the expiration of the term for which the predecessor of the member was appointed shall be appointed for the remainder of that term.

''(e) QUORUM.—

''(1) IN GENERAL.—Five of the members of the Board shall constitute a quorum for the transaction of business.

''(2) VACANCIES.—A vacancy on the Board shall not impair the power of the Board to act.

''(f) COMPENSATION.—

''(1) IN GENERAL.—A member of the Board shall be entitled to receive—

''(A) a stipend of—

''(i) $45,000 per year; or

''(ii)(I) in the case of the chairman of any committee of the Board created by the Board, $46,000 per year; or

''(II) in the case of the chairman of the Board, $50,000 per year; and

''(B) travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in Government service under section 5703 of title 5, United States Code.

''(2) ADJUSTMENTS IN STIPENDS.—The amount of the stipend under paragraph (1)(A)(i) shall be adjusted by the same percentage, at the same time and manner, and subject to the same limitations as are applicable to adjustments under section 5318 of title 5, United States Code.

''(g) DUTIES.—

''(1) IN GENERAL.—The Board shall—

''(A) establish the broad goals, objectives, and policies of the Corporation that are appropriate to carry out this Act;

''(B) develop long-range plans to guide the Corporation in achieving the goals, objectives, and policies of the Corporation and provide assistance to the chief executive officer to achieve those goals, objectives, and policies;

''(C) ensure that those goals, objectives, and policies are achieved;

''(D) approve an annual budget for the Corporation;

''(E) adopt and submit to Congress a conflict-of-interest policy applicable to members of the Board and employees of the Corporation;

''(F) establish a compensation plan for employees of the Corporation in accordance with subsection (i);

''(G) approve all compensation (including salary or any other pay, bonuses, benefits, incentives, and any other form of remuneration) of all managers and technical personnel that report directly to the chief executive officer (including any adjustment to compensation);

''(H) ensure that all activities of the Corporation are carried out in compliance with applicable law;

''(I) create an audit committee, composed solely of Board members independent of the management of the Corporation, which shall—

''(i) in consultation with the inspector general of the Corporation, recommend to the Board an external auditor;

''(ii) receive and review reports from the external auditor of the Corporation and inspector general of the Corporation; and

''(iii) make such recommendations to the Board as the audit committee considers necessary;

''(J) create such other committees of Board members as the Board considers to be appropriate;

''(K) conduct such public hearings as it deems appropriate on issues that could have a substantial effect on—

''(i) the electric ratepayers in the service area; or

''(ii) the economic, environmental, social, or physical well-being of the people of the service area;

''(L) establish the electricity rates charged by the Corporation; and

''(M) engage the services of an external auditor for the Corporation.

''(2) MEETINGS.—The Board shall meet at least 4 times each year.

''(h) CHIEF EXECUTIVE OFFICER.—

''(1) APPOINTMENT.—The Board shall appoint a person to serve as chief executive officer of the Corporation.

''(2) QUALIFICATIONS.—

''(A) IN GENERAL.—To serve as chief executive officer of the Corporation, a person—

''(i) shall have senior executive-level management experience in large, complex organizations;

''(ii) shall not be a current member of the Board or have served as a member of the Board within 2 years before being appointed chief executive officer; and

''(iii) shall comply with the conflict-of-interest policy adopted by the Board.

''(B) EXPERTISE.—In appointing a chief executive officer, the Board shall give particular consideration to appointing an individual with expertise in the electric industry and with strong financial skills.

''(3) TENURE.—The chief executive officer shall serve at the pleasure of the Board.

''(i) COMPENSATION PLAN.—

''(1) IN GENERAL.—The Board shall approve a compensation plan that specifies all compensation (including salary or any other pay, bonuses, benefits, incentives, and any other form of remuneration) for the chief executive officer and employees of the Corporation.

''(2) ANNUAL SURVEY.—The compensation plan shall be based on an annual survey of the prevailing compensation for similar positions in private industry, including engineering and electric utility companies, publicly owned electric utilities, and Federal, State, and local governments.

''(3) CONSIDERATIONS.—The compensation plan shall provide that education, experience, level of responsibility, geographic differences, and retention and recruitment needs will be taken into account in determining compensation of employees.

''(4) POSITIONS AT OR BELOW LEVEL IV.—The chief executive officer shall determine the salary and benefits of employees whose annual salary is not greater than the annual rate payable for positions at level IV of the Executive Schedule under section 5315 of title 5, United States Code.

''(5) POSITIONS ABOVE LEVEL IV.—On the recommendation of the chief executive officer, the Board shall approve the salaries of employees whose annual salaries would be in excess of the annual rate payable for positions at level IV of the Executive Schedule under section 5315 of title 5, United States Code.''.

SEC. 1432. CHANGE IN MANNER OF APPOINTMENT OF STAFF.

Section 3 of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831b) is amended—

(1) by striking the first undesignated paragraph and inserting the following:

''(a) APPOINTMENT BY THE CHIEF EXECUTIVE OFFICER.—The chief executive officer shall appoint, with the advice and consent of the Board, and without regard to the provisions of the civil service laws applicable to officers and employees of the United States, such managers, assistant managers, officers, employees, attorneys, and agents as are necessary for the transaction of the business of the Corporation.''; and

(2) by striking ''All contracts'' and inserting the following:

''(b) WAGE RATES.—All contracts''.

SEC. 1433. CONFORMING AMENDMENTS.

(a) The Tennessee Valley Authority Act of 1933 (16 U.S.C. 831 et seq.) is amended—

(1) by striking ''board of directors'' each place it appears and inserting ''Board of Directors''; and

(2) by striking ''board'' each place it appears and inserting ''Board''.

(b) Section 9 of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831h) is amended—

(1) by striking ''The Comptroller General of the United States shall audit'' and inserting the following:

''(c) AUDITS.—The Comptroller General of the United States shall audit''; and

(2) by striking ''The Corporation shall determine'' and inserting the following:

''(d) ADMINISTRATIVE ACCOUNTS AND BUSINESS DOCUMENTS.—The Corporation shall determine''.

(c) Title 5, United States Code, is amended—

(1) in section 5314, by striking ''Chairman, Board of Directors of the Tennessee Valley Authority.''; and

(2) in section 5315, by striking ''Members, Board of Directors of the Tennessee Valley Authority.''.

SEC. 1434. APPOINTMENTS; EFFECTIVE DATE; TRANSITION.

(a) APPOINTMENTS.—

(1) IN GENERAL.—As soon as practicable after the date of enactment of this Act, the President shall submit to the Senate nominations of 6 persons to serve as members of the Board of Directors of the Tennessee Valley Authority in addition to the members serving on the date of enactment of this Act.

(2) INITIAL TERMS.—Notwithstanding section 2(d) of the Tennessee Valley Authority Act of 1933 (as amended by this subtitle), in making the appointments under paragraph (1), the President shall appoint—

(A) 2 members for a term to expire on May 18, 2006;

(B) 2 members for a term to expire on May 18, 2008; and

(C) 2 members for a term to expire on May 18, 2010.

(b) EFFECTIVE DATE.—The amendments made by this section and sections 1431, 1432, and 1433 take effect on the later of the date on which at least 3 persons nominated under subsection (a) take office or May 18, 2005.

(c) SELECTION OF CHAIRMAN.—The Board of Directors of the Tennessee Valley Authority shall select 1 of the members to act as Chairman of the Board not later than 30 days after the effective date of this section.

(d) CONFLICT-OF-INTEREST POLICY.—The Board of Directors of the Tennessee Valley Authority shall adopt and submit to Congress a conflict-of-interest policy, as required by section 2(g)(1)(E) of the Tennessee Valley Authority Act of 1933 (as amended by this subtitle), as soon as practicable after the effective date of this section.

(e) TRANSITION.—A person who is serving as a member of the Board of Directors of the Tennessee Valley Authority on the date of enactment of this Act—

(1) shall continue to serve until the end of the current term of the member; but

(2) after the effective date specified in subsection (b), shall serve under the terms of the Tennessee Valley Authority Act of 1933 (as amended by this subtitle); and

(3) may not be reappointed.

Subtitle D—Other Provisions

SEC. 1441. CONTINUATION OF TRANSMISSION SECURITY ORDER.

Department of Energy Order No. 202–03–2, issued by the Secretary of Energy on August 28, 2003, shall remain in effect unless rescinded by Federal statute.

SEC. 1442. REVIEW OF AGENCY DETERMINATIONS.

Section 7 of the Natural Gas Act (15 U.S.C. 717f) is amended by adding at the end the following:

''(i)(1) The United States Court of Appeals for the District of Columbia Circuit shall have original and exclusive jurisdiction over any civil action—

''(A) for review of any order or action of any Federal or State administrative agency or officer to issue, condition, or deny any permit, license, concurrence, or approval issued under authority of any Federal law, other than the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.), required for the construction of a natural gas pipeline for which a certificate of public convenience and necessity is issued by the Commission under this section;

''(B) alleging unreasonable delay by any Federal or State administrative agency or officer in entering an order or taking other action described in subparagraph (A); or

''(C) challenging any decision made or action taken under this subsection.

''(2)(A) If the Court finds that the order, action, or failure to act is not consistent with the public convenience and necessity (as determined by the Commission under this section), or would prevent the construction and operation of natural gas facilities authorized by the certificate of public convenience and necessity, the permit, license, concurrence, or approval that is the subject of the order, action, or failure to act shall be deemed to have been issued subject to any conditions set forth in the reviewed order or action that the Court finds to be consistent with the public convenience and necessity.

''(B) For purposes of paragraph (1)(B), the failure of an agency or officer to issue any such permit, license, concurrence, or approval within the later of 1 year after the date of filing of an application for the permit, license, concurrence, or approval or 60 days after the date of issuance of the certificate of public convenience and necessity under this section, shall be considered to be unreasonable delay unless the Court, for good cause shown, determines otherwise.

''(C) The Court shall set any action brought under paragraph (1) for expedited consideration.''.

SEC. 1443. ATTAINMENT DATES FOR DOWNWIND OZONE NONATTAINMENT AREAS.

Section 181 of the Clean Air Act (42 U.S.C. 7511) is amended by adding the following new subsection at the end thereof:

''(d) EXTENDED ATTAINMENT DATE FOR CERTAIN DOWNWIND AREAS.—

''(1) DEFINITIONS.—(A) The term 'upwind area' means an area that—

''(i) significantly contributes to nonattainment in another area, hereinafter referred to as a 'downwind area'; and

''(ii) is either—

''(I) a nonattainment area with a later attainment date than the downwind area, or

''(II) an area in another State that the Administrator has found to be significantly contributing to nonattainment in the downwind area in violation of section 110(a)(2)(D) and for which the Administrator has established requirements through notice and comment rulemaking to eliminate the emissions causing such significant contribution.

''(B) The term 'current classification' means the classification of a downwind area under this section at the time of the determination under paragraph (2).

''(2) EXTENSION.—If the Administrator—

''(A) determines that any area is a downwind area with respect to a particular national ambient air quality standard for ozone; and

''(B) approves a plan revision for such area as provided in paragraph (3) prior to a reclassification under subsection (b)(2)(A)—

the Administrator, in lieu of such reclassification, shall extend the attainment date for such downwind area for such standard in accordance with paragraph (5).

''(3) REQUIRED APPROVAL.—In order to extend the attainment date for a downwind

area under this subsection, the Administrator must approve a revision of the applicable implementation plan for the downwind area for such standard that—

''(A) complies with all requirements of this Act applicable under the current classification of the downwind area, including any requirements applicable to the area under section 172(c) for such standard; and

''(B) includes any additional measures needed to demonstrate attainment by the extended attainment date provided under this subsection.

''(4) PRIOR RECLASSIFICATION DETERMINATION.—If, no more than 18 months prior to the date of enactment of this subsection, the Administrator made a reclassification determination under subsection (b)(2)(A) for any downwind area, and the Administrator approves the plan revision referred to in paragraph (3) for such area within 12 months after the date of enactment of this subsection, the reclassification shall be withdrawn and the attainment date extended in accordance with paragraph (5) upon such approval. The Administrator shall also withdraw a reclassification determination under subsection (b)(2)(A) made after the date of enactment of this subsection and extend the attainment date in accordance with paragraph (5) if the Administrator approves the plan revision referred to in paragraph (3) within 12 months of the date the reclassification determination under subsection (b)(2)(A) is issued. In such instances the 'current classification' used for evaluating the revision of the applicable implementation plan under paragraph (3) shall be the classification of the downwind area under this section immediately prior to such reclassification.

''(5) EXTENDED DATE.—The attainment date extended under this subsection shall provide for attainment of such national ambient air quality standard for ozone in the downwind area as expeditiously as practicable but no later than the date on which the last reductions in pollution transport necessary for attainment in the downwind area are required to be achieved by the upwind area or areas.''.

SEC. 1444. ENERGY PRODUCTION INCENTIVES.

(a) IN GENERAL.—A State may provide to any entity—

(1) a credit against any tax or fee owed to the State under a State law, or

(2) any other tax incentive—

determined by the State to be appropriate, in the amount calculated under and in accordance with a formula determined by the State, for production described in subsection (b) in the State by the entity that receives such credit or such incentive.

(b) ELIGIBLE ENTITIES.—Subsection (a) shall apply with respect to the production in the State of—

(1) electricity from coal mined in the State and used in a facility, if such production meets all applicable Federal and State laws and if such facility uses scrubbers or other forms of clean coal technology,

(2) electricity from a renewable source such as wind, solar, or biomass, or

(3) ethanol.

(c) EFFECT ON INTERSTATE COMMERCE.—Any action taken by a State in accordance with this section with respect to a tax or fee payable, or incentive applicable, for any period beginning after the date of the enactment of this Act shall—

(1) be considered to be a reasonable regulation of commerce; and

(2) not be considered to impose an undue burden on interstate commerce or to otherwise impair, restrain, or discriminate, against interstate commerce.

SEC. 1445. USE OF GRANULAR MINE TAILINGS.

(a) AMENDMENT.—Subtitle F of the Solid Waste Disposal Act (42 U.S.C. 6961 et seq.) is amended by adding at the end the following:

''SEC. 6006. USE OF GRANULAR MINE TAILINGS.

''(a) MINE TAILINGS.—

''(1) IN GENERAL.—Not later than 180 days after the date of enactment of this section, the Administrator, in consultation with the Secretary of Transportation and heads of other Federal agencies, shall establish criteria (including an evaluation of whether to establish a numerical standard for concentration of lead and other hazardous substances) for the safe and environmentally protective use of granular mine tailings from the Tar Creek, Oklahoma Mining District, known as 'chat', for—

''(A) cement or concrete projects; and

''(B) transportation construction projects (including transportation construction projects involving the use of asphalt) that are carried out, in whole or in part, using Federal funds.

''(2) REQUIREMENTS.—In establishing criteria under paragraph (1), the Administrator shall consider—

''(A) the current and previous uses of granular mine tailings as an aggregate for asphalt; and

''(B) any environmental and public health risks and benefits derived from the removal, transportation, and use in transportation projects of granular mine tailings.

''(3) PUBLIC PARTICIPATION.—In establishing the criteria under paragraph (1), the Administrator shall solicit and consider comments from the public.

''(4) APPLICABILITY OF CRITERIA.—On the establishment of the criteria under paragraph (1), any use of the granular mine tailings described in paragraph (1) in a transportation project that is carried out, in whole or in part, using Federal funds, shall meet the criteria established under paragraph (1).

''(b) EFFECT OF SECTIONS.—Nothing in this section or section 6005 affects any requirement of any law (including a regulation) in effect on the date of enactment of this section.''.

(b) CONFORMING AMENDMENT.—The table of contents of the Solid Waste Disposal Act (42 U.S.C. prec. 6901) is amended by adding at the end of the items relating to subtitle F the following:

''Sec. 6006. Use of granular mine tailings.''.

TITLE XV—ETHANOL AND MOTOR FUELS

Subtitle A—General Provisions

SEC. 1501. RENEWABLE CONTENT OF MOTOR VEHICLE FUEL.

(a) IN GENERAL.—Section 211 of the Clean Air Act (42 U.S.C. 7545) is amended—

(1) by redesignating subsection (o) as subsection (q); and

(2) by inserting after subsection (n) the following:

''(o) RENEWABLE FUEL PROGRAM.—

''(1) DEFINITIONS.—In this section:

''(A) ETHANOL.—(i) The term 'cellulosic biomass ethanol' means ethanol derived from any lignocellulosic or hemicellulosic matter that is available on a renewable or recurring basis, including—

''(I) dedicated energy crops and trees;

''(II) wood and wood residues;

''(III) plants;

''(IV) grasses;

''(V) agricultural residues; and

''(VI) fibers.

''(ii) The term 'waste derived ethanol' means ethanol derived from—

''(I) animal wastes, including poultry fats and poultry wastes, and other waste materials; or

''(II) municipal solid waste.

''(B) RENEWABLE FUEL.—

''(i) IN GENERAL.—The term 'renewable fuel' means motor vehicle fuel that—

''(I)(aa) is produced from grain, starch, oilseeds, or other biomass; or

''(bb) is natural gas produced from a biogas source, including a landfill, sewage waste treatment plant, feedlot, or other place where decaying organic material is found; and

''(II) is used to replace or reduce the quantity of fossil fuel present in a fuel mixture used to operate a motor vehicle.

''(ii) INCLUSION.—The term 'renewable fuel' includes cellulosic biomass ethanol, waste derived ethanol, and biodiesel (as defined in section 312(f) of the Energy Policy Act of 1992 (42 U.S.C. 13220(f)) and any blending components derived from renewable fuel (provided that only the renewable fuel portion of any such blending component shall be considered part of the applicable volume under the renewable fuel program established by this subsection).

''(C) SMALL REFINERY.—The term 'small refinery' means a refinery for which average aggregate daily crude oil throughput for the calendar year (as determined by dividing the aggregate throughput for the calendar year by the number of days in the calendar year) does not exceed 75,000 barrels.

''(2) RENEWABLE FUEL PROGRAM.—

''(A) IN GENERAL.—Not later than 1 year after the enactment of this subsection, the Administrator shall promulgate regulations ensuring that motor vehicle fuel sold or dispensed to consumers in the contiguous United States, on an annual average basis, contains the applicable volume of renewable fuel as specified in subparagraph (B). Regardless of the date of promulgation, such regulations shall contain compliance provisions for refiners, blenders, and importers, as appropriate, to ensure that the requirements of this section are met, but shall not restrict where renewable fuel can be used, or impose any per-gallon obligation for the use of renewable fuel. If the Administrator does not promulgate such regulations, the applicable percentage referred to in paragraph (4), on a volume percentage of gasoline basis, shall be 2.2 in 2005.

''(B) APPLICABLE VOLUME.—

''(i) CALENDAR YEARS 2005 THROUGH 2012.—For the purpose of subparagraph (A), the applicable volume for any of calendar years 2005 through 2012 shall be determined in accordance with the following table:

''Applicable volume of renewable fuel

Calendar year:	(In billions of gallons)
2005	3.1
2006	3.3
2007	3.5
2008	3.8
2009	4.1
2010	4.4
2011	4.7
2012	5.0

''(ii) CALENDAR YEAR 2013 AND THEREAFTER.—For the purpose of subparagraph (A), the applicable volume for calendar year 2013 and each calendar year thereafter shall be equal to the product obtained by multiplying—

''(I) the number of gallons of gasoline that the Administrator estimates will be sold or introduced into commerce in the calendar year; and

''(II) the ratio that—

''(aa) 5.0 billion gallons of renewable fuels; bears to

''(bb) the number of gallons of gasoline sold or introduced into commerce in calendar year 2012.

''(3) NON-CONTIGUOUS STATE OPT-IN.—Upon the petition of a non-contiguous State, the Administrator may allow the renewable fuel

program established by subtitle A of title XV of the Energy Policy Act of 2003 to apply in such non-contiguous State at the same time or any time after the Administrator promulgates regulations under paragraph (2). The Administrator may promulgate or revise regulations under paragraph (2), establish applicable percentages under paragraph (4), provide for the generation of credits under paragraph (6), and take such other actions as may be necessary to allow for the application of the renewable fuels program in a non-contiguous State.

''(4) APPLICABLE PERCENTAGES.—

''(A) PROVISION OF ESTIMATE OF VOLUMES OF GASOLINE SALES.—Not later than October 31 of each of calendar years 2004 through 2011, the Administrator of the Energy Information Administration shall provide to the Administrator of the Environmental Protection Agency an estimate of the volumes of gasoline that will be sold or introduced into commerce in the United States during the following calendar year.

''(B) DETERMINATION OF APPLICABLE PERCENTAGES.—

''(i) IN GENERAL.—Not later than November 30 of each of the calendar years 2004 through 2011, based on the estimate provided under subparagraph (A), the Administrator shall determine and publish in the Federal Register, with respect to the following calendar year, the renewable fuel obligation that ensures that the requirements of paragraph (2) are met.

''(ii) REQUIRED ELEMENTS.—The renewable fuel obligation determined for a calendar year under clause (i) shall—

''(I) be applicable to refiners, blenders, and importers, as appropriate;

''(II) be expressed in terms of a volume percentage of gasoline sold or introduced into commerce; and

''(III) subject to subparagraph (C)(i), consist of a single applicable percentage that applies to all categories of persons specified in subclause (I).

''(C) ADJUSTMENTS.—In determining the applicable percentage for a calendar year, the Administrator shall make adjustments—

''(i) to prevent the imposition of redundant obligations to any person specified in subparagraph (B)(ii)(I); and

''(ii) to account for the use of renewable fuel during the previous calendar year by small refineries that are exempt under paragraph (11).

''(5) EQUIVALENCY.—For the purpose of paragraph (2), 1 gallon of either cellulosic biomass ethanol or waste derived ethanol—

''(A) shall be considered to be the equivalent of 1.5 gallon of renewable fuel; or

''(B) if the cellulosic biomass ethanol or waste derived ethanol is derived from agricultural residue or is an agricultural byproduct (as that term is used in section 919 of the Energy Policy Act of 2003), shall be considered to be the equivalent of 2.5 gallons of renewable fuel.

''(6) CREDIT PROGRAM.—

''(A) IN GENERAL.—The regulations promulgated to carry out this subsection shall provide for the generation of an appropriate amount of credits by any person that refines, blends, or imports gasoline that contains a quantity of renewable fuel that is greater than the quantity required under paragraph (2). Such regulations shall provide for the generation of an appropriate amount of credits for biodiesel fuel. If a small refinery notifies the Administrator that it waives the exemption provided paragraph (11), the regulations shall provide for the generation of credits by the small refinery beginning in the year following such notification.

''(B) USE OF CREDITS.—A person that generates credits under subparagraph (A) may use the credits, or transfer all or a portion of the credits to another person, for the purpose of complying with paragraph (2).

''(C) LIFE OF CREDITS.—A credit generated under this paragraph shall be valid to show compliance—

''(i) in the calendar year in which the credit was generated or the next calendar year; or

''(ii) in the calendar year in which the credit was generated or next two consecutive calendar years if the Administrator promulgates regulations under paragraph (7).

''(D) INABILITY TO PURCHASE SUFFICIENT CREDITS.—The regulations promulgated to carry out this subsection shall include provisions allowing any person that is unable to generate or purchase sufficient credits to meet the requirements under paragraph (2) to carry forward a renewable fuel deficit provided that, in the calendar year following the year in which the renewable fuel deficit is created, such person shall achieve compliance with the renewable fuel requirement under paragraph (2), and shall generate or purchase additional renewable fuel credits to offset the renewable fuel deficit of the previous year.

''(7) SEASONAL VARIATIONS IN RENEWABLE FUEL USE.—

''(A) STUDY.—For each of the calendar years 2005 through 2012, the Administrator of the Energy Information Administration shall conduct a study of renewable fuels blending to determine whether there are excessive seasonal variations in the use of renewable fuels.

''(B) REGULATION OF EXCESSIVE SEASONAL VARIATIONS.—If, for any calendar year, the Administrator of the Energy Information Administration, based on the study under subparagraph (A), makes the determinations specified in subparagraph (C), the Administrator shall promulgate regulations to ensure that 35 percent or more of the quantity of renewable fuels necessary to meet the requirement of paragraph (2) is used during each of the periods specified in subparagraph (D) of each subsequent calendar year.

''(C) DETERMINATIONS.—The determinations referred to in subparagraph (B) are that—

''(i) less than 35 percent of the quantity of renewable fuels necessary to meet the requirement of paragraph (2) has been used during one of the periods specified in subparagraph (D) of the calendar year;

''(ii) a pattern of excessive seasonal variation described in clause (i) will continue in subsequent calendar years; and

''(iii) promulgating regulations or other requirements to impose a 35 percent or more seasonal use of renewable fuels will not prevent or interfere with the attainment of national ambient air quality standards or significantly increase the price of motor fuels to the consumer.

''(D) PERIODS.—The two periods referred to in this paragraph are—

''(i) April through September; and

''(ii) January through March and October through December.

''(E) EXCLUSIONS.—Renewable fuels blended or consumed in 2005 in a State which has received a waiver under section 209(b) shall not be included in the study in subparagraph (A).

''(8) WAIVERS.—

''(A) IN GENERAL.—The Administrator, in consultation with the Secretary of Agriculture and the Secretary of Energy, may waive the requirement of paragraph (2) in whole or in part on petition by one or more States by reducing the national quantity of renewable fuel required under this subsection—

''(i) based on a determination by the Administrator, after public notice and opportunity for comment, that implementation of the requirement would severely harm the economy or environment of a State, a region, or the United States; or

''(ii) based on a determination by the Administrator, after public notice and opportunity for comment, that there is an inadequate domestic supply or distribution capacity to meet the requirement.

''(B) PETITIONS FOR WAIVERS.—The Administrator, in consultation with the Secretary of Agriculture and the Secretary of Energy, shall approve or disapprove a State petition for a waiver of the requirement of paragraph (2) within 90 days after the date on which the petition is received by the Administrator.

''(C) TERMINATION OF WAIVERS.—A waiver granted under subparagraph (A) shall terminate after 1 year, but may be renewed by the Administrator after consultation with the Secretary of Agriculture and the Secretary of Energy.

''(9) STUDY AND WAIVER FOR INITIAL YEAR OF PROGRAM.—Not later than 180 days after the enactment of this subsection, the Secretary of Energy shall complete for the Administrator a study assessing whether the renewable fuels requirement under paragraph (2) will likely result in significant adverse consumer impacts in 2005, on a national, regional, or State basis. Such study shall evaluate renewable fuel supplies and prices, blendstock supplies, and supply and distribution system capabilities. Based on such study, the Secretary shall make specific recommendations to the Administrator regarding waiver of the requirements of paragraph (2), in whole or in part, to avoid any such adverse impacts. Within 270 days after the enactment of this subsection, the Administrator shall, consistent with the recommendations of the Secretary, waive, in whole or in part, the renewable fuels requirement under paragraph (2) by reducing the national quantity of renewable fuel required under this subsection in 2005. This paragraph shall not be interpreted as limiting the Administrator's authority to waive the requirements of paragraph (2) in whole, or in part, under paragraph (8) or paragraph (10), pertaining to waivers.

''(10) ASSESSMENT AND WAIVER.—The Administrator, in consultation with the Secretary of Energy and the Secretary of Agriculture, shall evaluate the requirement of paragraph (2) and determine, prior to January 1, 2007, and prior to January 1 of any subsequent year in which the applicable volume of renewable fuel is increased under paragraph (2)(B), whether the requirement of paragraph (2), including the applicable volume of renewable fuel contained in paragraph (2)(B) should remain in effect, in whole or in part, during 2007 or any year or years subsequent to 2007. In evaluating the requirement of paragraph (2) and in making any determination under this section, the Administrator shall consider the best available information and data collected by accepted methods or best available means regarding—

''(A) the capacity of renewable fuel producers to supply an adequate amount of renewable fuel at competitive prices to fulfill the requirement of paragraph (2);

''(B) the potential of the requirement of paragraph (2) to significantly raise the price of gasoline, food (excluding the net price impact on the requirement in paragraph (2) on commodities used in the production of ethanol), or heating oil for consumers in any significant area or region of the country above the price that would otherwise apply to such commodities in the absence of such requirement;

''(C) the potential of the requirement of paragraph (2) to interfere with the supply of fuel in any significant gasoline market or region of the country, including interference with the efficient operation of refiners, blenders, importers, wholesale suppliers, and

retail vendors of gasoline, and other motor fuels; and

''(D) the potential of the requirement of paragraph (2) to cause or promote exceedances of Federal, State, or local air quality standards.

If the Administrator determines, by clear and convincing information, after public notice and the opportunity for comment, that the requirement of paragraph (2) would have significant and meaningful adverse impact on the supply of fuel and related infrastructure or on the economy, public health, or environment of any significant area or region of the country, the Administrator may waive, in whole or in part, the requirement of paragraph (2) in any one year for which the determination is made for that area or region of the country, except that any such waiver shall not have the effect of reducing the applicable volume of renewable fuel specified in paragraph (2)(B) with respect to any year for which the determination is made. In determining economic impact under this paragraph, the Administrator shall not consider the reduced revenues available from the Highway Trust Fund (section 9503 of the Internal Revenue Code of 1986) as a result of the use of ethanol.

''(11) SMALL REFINERIES.—

''(A) IN GENERAL.—The requirement of paragraph (2) shall not apply to small refineries until the first calendar year beginning more than 5 years after the first year set forth in the table in paragraph (2)(B)(i). Not later than December 31, 2007, the Secretary of Energy shall complete for the Administrator a study to determine whether the requirement of paragraph (2) would impose a disproportionate economic hardship on small refineries. For any small refinery that the Secretary of Energy determines would experience a disproportionate economic hardship, the Administrator shall extend the small refinery exemption for such small refinery for no less than two additional years.

''(B) ECONOMIC HARDSHIP.—

''(i) EXTENSION OF EXEMPTION.—A small refinery may at any time petition the Administrator for an extension of the exemption from the requirement of paragraph (2) for the reason of disproportionate economic hardship. In evaluating a hardship petition, the Administrator, in consultation with the Secretary of Energy, shall consider the findings of the study in addition to other economic factors.

''(ii) DEADLINE FOR ACTION ON PETITIONS.—The Administrator shall act on any petition submitted by a small refinery for a hardship exemption not later than 90 days after the receipt of the petition.

''(C) CREDIT PROGRAM.—If a small refinery notifies the Administrator that it waives the exemption provided by this Act, the regulations shall provide for the generation of credits by the small refinery beginning in the year following such notification.

''(D) OPT-IN FOR SMALL REFINERS.—A small refinery shall be subject to the requirements of this section if it notifies the Administrator that it waives the exemption under subparagraph (A).

''(12) ETHANOL MARKET CONCENTRATION ANALYSIS.—

''(A) ANALYSIS.—

''(i) IN GENERAL.—Not later than 180 days after the date of enactment of this subsection, and annually thereafter, the Federal Trade Commission shall perform a market concentration analysis of the ethanol production industry using the Herfindahl-Hirschman Index to determine whether there is sufficient competition among industry participants to avoid price setting and other anticompetitive behavior.

''(ii) SCORING.—For the purpose of scoring under clause (i) using the Herfindahl-Hirschman Index, all marketing arrangements among industry participants shall be considered.

''(B) REPORT.—Not later than December 1, 2004, and annually thereafter, the Federal Trade Commission shall submit to Congress and the Administrator a report on the results of the market concentration analysis performed under subparagraph (A)(i).''.

(b) PENALTIES AND ENFORCEMENT.—Section 211(d) of the Clean Air Act (42 U.S.C. 7545(d)) is amended as follows:

(1) In paragraph (1)—

(A) in the first sentence, by striking ''or (n)'' each place it appears and inserting ''(n), or (o)''; and

(B) in the second sentence, by striking ''or (m)'' and inserting ''(m), or (o)''.

(2) In the first sentence of paragraph (2), by striking ''and (n)'' each place it appears and inserting ''(n), and (o)''.

(c) SURVEY OF RENEWABLE FUEL MARKET.—

(1) SURVEY AND REPORT.—Not later than December 1, 2006, and annually thereafter, the Administrator of the Environmental Protection Agency (in consultation with the Secretary of Energy acting through the Administrator of the Energy Information Administration) shall—

(A) conduct, with respect to each conventional gasoline use area and each reformulated gasoline use area in each State, a survey to determine the market shares of—

(i) conventional gasoline containing ethanol;

(ii) reformulated gasoline containing ethanol;

(iii) conventional gasoline containing renewable fuel; and

(iv) reformulated gasoline containing renewable fuel; and

(B) submit to Congress, and make publicly available, a report on the results of the survey under subparagraph (A).

(2) RECORDKEEPING AND REPORTING REQUIREMENTS.—The Administrator of the Environmental Protection Agency (hereinafter in this subsection referred to as the ''Administrator'') may require any refiner, blender, or importer to keep such records and make such reports as are necessary to ensure that the survey conducted under paragraph (1) is accurate. The Administrator, to avoid duplicative requirements, shall rely, to the extent practicable, on existing reporting and recordkeeping requirements and other information available to the Administrator including gasoline distribution patterns that include multistate use areas.

(3) APPLICABLE LAW.—Activities carried out under this subsection shall be conducted in a manner designed to protect confidentiality of individual responses.

SEC. 1502. FINDINGS AND MTBE TRANSITION ASSISTANCE.

(a) FINDINGS.—Congress finds that—

(1) since 1979, methyl tertiary butyl ether (hereinafter in this section referred to as ''MTBE'') has been used nationwide at low levels in gasoline to replace lead as an octane booster or anti-knocking agent;

(2) Public Law 101–549 (commonly known as the ''Clean Air Act Amendments of 1990'') (42 U.S.C. 7401 et seq.) established a fuel oxygenate standard under which reformulated gasoline must contain at least 2 percent oxygen by weight;

(3) at the time of the adoption of the fuel oxygen standard, Congress was aware that significant use of MTBE would result from the adoption of that standard, and that the use of MTBE would likely be important to the cost-effective implementation of that program;

(4) Congress was aware that gasoline and its component additives can and do leak from storage tanks;

(5) the fuel industry responded to the fuel oxygenate standard established by Public Law 101–549 by making substantial investments in—

(A) MTBE production capacity; and

(B) systems to deliver MTBE-containing gasoline to the marketplace;

(6) having previously required oxygenates like MTBE for air quality purposes, Congress has—

(A) reconsidered the relative value of MTBE in gasoline;

(B) decided to establish a date certain for action by the Environmental Protection Agency to prohibit the use of MTBE in gasoline; and

(C) decided to provide for the elimination of the oxygenate requirement for reformulated gasoline and to provide for a renewable fuels content requirement for motor fuel; and

(7) it is appropriate for Congress to provide some limited transition assistance—

(A) to merchant producers of MTBE who produced MTBE in response to a market created by the oxygenate requirement contained in the Clean Air Act; and

(B) for the purpose of mitigating any fuel supply problems that may result from the elimination of the oxygenate requirement for reformulated gasoline and from the decision to establish a date certain for action by the Environmental Protection Agency to prohibit the use of MTBE in gasoline.

(b) PURPOSES.—The purpose of this section is to provide assistance to merchant producers of MTBE in making the transition from producing MTBE to producing other fuel additives.

(c) MTBE MERCHANT PRODUCER CONVERSION ASSISTANCE.—Section 211(c) of the Clean Air Act (42 U.S.C. 7545(c)) is amended by adding at the end the following:

''(5) MTBE MERCHANT PRODUCER CONVERSION ASSISTANCE.—

''(A) IN GENERAL.—

''(i) GRANTS.—The Secretary of Energy, in consultation with the Administrator, may make grants to merchant producers of methyl tertiary butyl ether (hereinafter in this subsection referred to as 'MTBE') in the United States to assist the producers in the conversion of eligible production facilities described in subparagraph (C) to the production of iso-octane, iso-octene, alkylates, or renewable fuels.

''(ii) DETERMINATION.—The Administrator, in consultation with the Secretary of Energy, may determine that transition assistance for the production of iso-octane, iso-octene, alkylates, or renewable fuels is inconsistent with the provisions of subparagraph (B) and, on that basis, may deny applications for grants authorized by this paragraph.

''(B) FURTHER GRANTS.—The Secretary of Energy, in consultation with the Administrator, may also further make grants to merchant producers of MTBE in the United States to assist the producers in the conversion of eligible production facilities described in subparagraph (C) to the production of such other fuel additives (unless the Administrator determines that such fuel additives may reasonably be anticipated to endanger public health or the environment) that, consistent with this subsection—

''(i) have been registered and have been tested or are being tested in accordance with the requirements of this section; and

''(ii) will contribute to replacing gasoline volumes lost as a result of amendments made to subsection (k) of this section by sections 1503(a) and 1505 of the Energy Policy Act of 2003.

''(C) ELIGIBLE PRODUCTION FACILITIES.—A production facility shall be eligible to receive a grant under this paragraph if the production facility—

''(i) is located in the United States; and

''(ii) produced MTBE for consumption before April 1, 2003 and ceased production at any time after the date of enactment of this paragraph.

''(D) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this paragraph $250,000,000 for each of fiscal years 2005 through 2012, to remain available until expended.''.

(d) EFFECT ON STATE LAW.—The amendments made to the Clean Air Act by this title have no effect regarding any available authority of States to limit the use of methyl tertiary butyl ether in motor vehicle fuel.

SEC. 1503. USE OF MTBE.

(a) IN GENERAL.—Subject to subsections (e) and (f), not later than December 31, 2014, the use of methyl tertiary butyl ether (hereinafter in this section referred to as ''MTBE'') in motor vehicle fuel in any State other than a State described in subsection (c) is prohibited.

(b) REGULATIONS.—The Administrator of the Environmental Protection Agency (hereafter referred to in this section as the ''Administrator'') shall promulgate regulations to effect the prohibition in subsection (a).

(c) STATES THAT AUTHORIZE USE.—A State described in this subsection is a State in which the Governor of the State submits a notification to the Administrator authorizing the use of MTBE in motor vehicle fuel sold or used in the State.

(d) PUBLICATION OF NOTICE.—The Administrator shall publish in the Federal Register each notice submitted by a State under subsection (c).

(e) TRACE QUANTITIES.—In carrying out subsection (a), the Administrator may allow trace quantities of MTBE, not to exceed 0.5 percent by volume, to be present in motor vehicle fuel in cases that the Administrator determines to be appropriate.

(f) LIMITATION.—The Administrator, under authority of subsection (a), shall not prohibit or control the production of MTBE for export from the United States or for any other use other than for use in motor vehicle fuel.

SEC. 1504. NATIONAL ACADEMY OF SCIENCES REVIEW AND PRESIDENTIAL DETERMINATION.

(a) NAS REVIEW.—Not later than May 31, 2013, the Secretary shall enter into an arrangement with the National Academy of Sciences to review the use of methyl tertiary butyl ether (hereafter referred to in this section as ''MTBE'') in fuel and fuel additives. The review shall only use the best available scientific information and data collected by accepted methods or the best available means. The review shall examine the use of MTBE in fuel and fuel additives, significant beneficial and detrimental effects of this use on environmental quality or public health or welfare including the costs and benefits of such effects, likely effects of controls or prohibitions on MTBE regarding fuel availability and price, and other appropriate and reasonable actions that are available to protect the environment or public health or welfare from any detrimental effects of the use of MTBE in fuel or fuel additives. The review shall be peer-reviewed prior to publication and all supporting data and analytical models shall be available to the public. The review shall be completed no later than May 31, 2014.

(b) PRESIDENTIAL DETERMINATION.—No later than June 30, 2014, the President may make a determination that restrictions on the use of MTBE to be implemented pursuant to section 1503 shall not take place and that the legal authority contained in section 1503 to prohibit the use of MTBE in motor vehicle fuel shall become null and void.

SEC. 1505. ELIMINATION OF OXYGEN CONTENT REQUIREMENT FOR REFORMULATED GASOLINE.

(a) ELIMINATION.—

(1) IN GENERAL.—Section 211(k) of the Clean Air Act (42 U.S.C. 7545(k)) is amended as follows:

(A) In paragraph (2)—

(i) in the second sentence of subparagraph (A), by striking ''(including the oxygen content requirement contained in subparagraph (B))'';

(ii) by striking subparagraph (B); and

(iii) by redesignating subparagraphs (C) and (D) as subparagraphs (B) and (C), respectively.

(B) In paragraph (3)(A), by striking clause (v).

(C) In paragraph (7)—

(i) in subparagraph (A)—

(I) by striking clause (i); and

(II) by redesignating clauses (ii) and (iii) as clauses (i) and (ii), respectively; and

(ii) in subparagraph (C)—

(I) by striking clause (ii).

(II) by redesignating clause (iii) as clause (ii).

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) take effect 270 days after the date of enactment of this Act, except that such amendments shall take effect upon such date of enactment in any State that has received a waiver under section 209(b) of the Clean Air Act.

(b) MAINTENANCE OF TOXIC AIR POLLUTANT EMISSION REDUCTIONS.—Section 211(k)(1) of the Clean Air Act (42 U.S.C. 7545(k)(1)) is amended as follows:

(1) By striking ''Within 1 year after the enactment of the Clean Air Act Amendments of 1990,'' and inserting the following:

''(A) IN GENERAL.—Not later than November 15, 1991,''.

(2) By adding at the end the following:

''(B) MAINTENANCE OF TOXIC AIR POLLUTANT EMISSIONS REDUCTIONS FROM REFORMULATED GASOLINE.—

''(i) DEFINITIONS.—In this subparagraph the term 'PADD' means a Petroleum Administration for Defense District.

''(ii) REGULATIONS REGARDING EMISSIONS OF TOXIC AIR POLLUTANTS.—Not later than 270 days after the date of enactment of this subparagraph the Administrator shall establish, for each refinery or importer, standards for toxic air pollutants from use of the reformulated gasoline produced or distributed by the refinery or importer that maintain the reduction of the average annual aggregate emissions of toxic air pollutants for reformulated gasoline produced or distributed by the refinery or importer during calendar years 1999 and 2000, determined on the basis of data collected by the Administrator with respect to the refinery or importer.

''(iii) STANDARDS APPLICABLE TO SPECIFIC REFINERIES OR IMPORTERS.—

''(I) APPLICABILITY OF STANDARDS.—For any calendar year, the standards applicable to a refinery or importer under clause (ii) shall apply to the quantity of gasoline produced or distributed by the refinery or importer in the calendar year only to the extent that the quantity is less than or equal to the average annual quantity of reformulated gasoline produced or distributed by the refinery or importer during calendar years 1999 and 2000.

''(II) APPLICABILITY OF OTHER STANDARDS.—For any calendar year, the quantity of gasoline produced or distributed by a refinery or importer that is in excess of the quantity subject to subclause (I) shall be subject to standards for toxic air pollutants promulgated under subparagraph (A) and paragraph (3)(B).

''(iv) CREDIT PROGRAM.—The Administrator shall provide for the granting and use of credits for emissions of toxic air pollutants in the same manner as provided in paragraph (7).

''(v) REGIONAL PROTECTION OF TOXICS REDUCTION BASELINES.—

''(I) IN GENERAL.—Not later than 60 days after the date of enactment of this subparagraph, and not later than April 1 of each calendar year that begins after that date of enactment, the Administrator shall publish in the Federal Register a report that specifies, with respect to the previous calendar year—

''(aa) the quantity of reformulated gasoline produced that is in excess of the average annual quantity of reformulated gasoline produced in 1999 and 2000; and

''(bb) the reduction of the average annual aggregate emissions of toxic air pollutants in each PADD, based on retail survey data or data from other appropriate sources.

''(II) EFFECT OF FAILURE TO MAINTAIN AGGREGATE TOXICS REDUCTIONS.—If, in any calendar year, the reduction of the average annual aggregate emissions of toxic air pollutants in a PADD fails to meet or exceed the reduction of the average annual aggregate emissions of toxic air pollutants in the PADD in calendar years 1999 and 2000, the Administrator, not later than 90 days after the date of publication of the report for the calendar year under subclause (I), shall—

''(aa) identify, to the maximum extent practicable, the reasons for the failure, including the sources, volumes, and characteristics of reformulated gasoline that contributed to the failure; and

''(bb) promulgate revisions to the regulations promulgated under clause (ii), to take effect not earlier than 180 days but not later than 270 days after the date of promulgation, to provide that, notwithstanding clause (iii)(II), all reformulated gasoline produced or distributed at each refinery or importer shall meet the standards applicable under clause (ii) not later than April 1 of the year following the report in subclause (II) and for subsequent years.

''(vi) REGULATIONS TO CONTROL HAZARDOUS AIR POLLUTANTS FROM MOTOR VEHICLES AND MOTOR VEHICLE FUELS.—Not later than July 1, 2004, the Administrator shall promulgate final regulations to control hazardous air pollutants from motor vehicles and motor vehicle fuels, as provided for in section 80.1045 of title 40, Code of Federal Regulations (as in effect on the date of enactment of this subparagraph).''.

(c) CONSOLIDATION IN REFORMULATED GASOLINE REGULATIONS.—Not later than 180 days after the date of enactment of this Act, the Administrator of the Environmental Protection Agency shall revise the reformulated gasoline regulations under subpart D of part 80 of title 40, Code of Federal Regulations, to consolidate the regulations applicable to VOC-Control Regions 1 and 2 under section 80.41 of that title by eliminating the less stringent requirements applicable to gasoline designated for VOC-Control Region 2 and instead applying the more stringent requirements applicable to gasoline designated for VOC-Control Region 1.

(d) SAVINGS CLAUSE.—Nothing in this section is intended to affect or prejudice either any legal claims or actions with respect to regulations promulgated by the Administrator of the Environmental Protection Agency (hereinafter in this subsection referred to as the ''Administrator'') prior to the date of enactment of this Act regarding emissions of toxic air pollutants from motor vehicles or the adjustment of standards applicable to a specific refinery or importer made under such prior regulations and the

Administrator may apply such adjustments to the standards applicable to such refinery or importer under clause (iii)(I) of section 211(k)(1)(B) of the Clean Air Act, except that—

(1) the Administrator shall revise such adjustments to be based only on calendar years 1999–2000; and

(2) for adjustments based on toxic air pollutant emissions from reformulated gasoline significantly below the national annual average emissions of toxic air pollutants from all reformulated gasoline, the Administrator may revise such adjustments to take account of the scope of Federal or State prohibitions on the use of methyl tertiary butyl ether imposed after the date of the enactment of this paragraph, except that any such adjustment shall require such refiner or importer, to the greatest extent practicable, to maintain the reduction achieved during calendar years 1999–2000 in the average annual aggregate emissions of toxic air pollutants from reformulated gasoline produced or distributed by the refinery or importer: *Provided,* That any such adjustment shall not be made at a level below the average percentage of reductions of emissions of toxic air pollutants for reformulated gasoline supplied to PADD I during calendar years 1999–2000.

SEC. 1506. ANALYSES OF MOTOR VEHICLE FUEL CHANGES.

Section 211 of the Clean Air Act (42 U.S.C. 7545) is amended by inserting after subsection (o) the following:

''(p) ANALYSES OF MOTOR VEHICLE FUEL CHANGES AND EMISSIONS MODEL.—

''(1) ANTI-BACKSLIDING ANALYSIS.—

''(A) DRAFT ANALYSIS.—Not later than 4 years after the date of enactment of this subsection, the Administrator shall publish for public comment a draft analysis of the changes in emissions of air pollutants and air quality due to the use of motor vehicle fuel and fuel additives resulting from implementation of the amendments made by subtitle A of title XV of the Energy Policy Act of 2003.

''(B) FINAL ANALYSIS.—After providing a reasonable opportunity for comment but not later than 5 years after the date of enactment of this paragraph, the Administrator shall publish the analysis in final form.

''(2) EMISSIONS MODEL.—For the purposes of this subsection, as soon as the necessary data are available, the Administrator shall develop and finalize an emissions model that reasonably reflects the effects of gasoline characteristics or components on emissions from vehicles in the motor vehicle fleet during calendar year 2005.''.

SEC. 1507. DATA COLLECTION.

Section 205 of the Department of Energy Organization Act (42 U.S.C. 7135) is amended by adding at the end the following:

''(m) RENEWABLE FUELS SURVEY.—(1) In order to improve the ability to evaluate the effectiveness of the Nation's renewable fuels mandate, the Administrator shall conduct and publish the results of a survey of renewable fuels demand in the motor vehicle fuels market in the United States monthly, and in a manner designed to protect the confidentiality of individual responses. In conducting the survey, the Administrator shall collect information both on a national and regional basis, including each of the following:

''(A) The quantity of renewable fuels produced.

''(B) The quantity of renewable fuels blended.

''(C) The quantity of renewable fuels imported.

''(D) The quantity of renewable fuels demanded.

''(E) Market price data.

''(F) Such other analyses or evaluations as the Administrator finds is necessary to achieve the purposes of this section.

''(2) The Administrator shall also collect or estimate information both on a national and regional basis, pursuant to subparagraphs (A) through (F) of paragraph (1), for the 5 years prior to implementation of this subsection.

''(3) This subsection does not affect the authority of the Administrator to collect data under section 52 of the Federal Energy Administration Act of 1974 (15 U.S.C. 790a).''.

SEC. 1508. REDUCING THE PROLIFERATION OF STATE FUEL CONTROLS.

(a) EPA APPROVAL OF STATE PLANS WITH FUEL CONTROLS.—Section 211(c)(4)(C) of the Clean Air Act (42 U.S.C. 7545(c)(4)(C)) is amended by adding at the end the following: ''The Administrator shall not approve a control or prohibition respecting the use of a fuel or fuel additive under this subparagraph unless the Administrator, after consultation with the Secretary of Energy, publishes in the Federal Register a finding that, in the Administrator's judgment, such control or prohibition will not cause fuel supply or distribution interruptions or have a significant adverse impact on fuel producibility in the affected area or contiguous areas.''.

(b) STUDY.—The Administrator of the Environmental Protection Agency (hereinafter in this subsection referred to as the ''Administrator''), in cooperation with the Secretary of Energy, shall undertake a study of the projected effects on air quality, the proliferation of fuel blends, fuel availability, and fuel costs of providing a preference for each of the following:

(A) Reformulated gasoline referred to in subsection (k) of section 211 of the Clean Air Act.

(B) A low RVP gasoline blend that has been certified by the Administrator as having a Reid Vapor Pressure of 7.0 pounds per square inch (psi).

(C) A low RVP gasoline blend that has been certified by the Administrator as having a Reid Vapor Pressure of 7.8 pounds per square inch (psi).

In carrying out such study, the Administrator shall obtain comments from affected parties. The Administrator shall submit the results of such study to the Congress not later than 18 months after the date of enactment of this Act, together with any recommended legislative changes.

SEC. 1509. FUEL SYSTEM REQUIREMENTS HARMONIZATION STUDY.

(a) STUDY.—

(1) IN GENERAL.—The Administrator of the Environmental Protection Agency (hereinafter in this section referred to as the ''Administrator'') and the Secretary of Energy shall jointly conduct a study of Federal, State, and local requirements concerning motor vehicle fuels, including—

(A) requirements relating to reformulated gasoline, volatility (measured in Reid vapor pressure), oxygenated fuel, and diesel fuel; and

(B) other requirements that vary from State to State, region to region, or locality to locality.

(2) REQUIRED ELEMENTS.—The study shall assess—

(A) the effect of the variety of requirements described in paragraph (1) on the supply, quality, and price of motor vehicle fuels available to consumers in various States and localities;

(B) the effect of the requirements described in paragraph (1) on achievement of—

(i) national, regional, and local air quality standards and goals; and

(ii) related environmental and public health protection standards and goals;

(C) the effect of Federal, State, and local motor vehicle fuel regulations, including multiple motor vehicle fuel requirements, on—

(i) domestic refineries;

(ii) the fuel distribution system; and

(iii) industry investment in new capacity;

(D) the effect of the requirements described in paragraph (1) on emissions from vehicles, refineries, and fuel handling facilities;

(E) the feasibility of developing national or regional motor vehicle fuel slates for the 48 contiguous States that, while improving air quality at the national, regional and local levels consistent with the attainment of national ambient air quality standards, could—

(i) enhance flexibility in the fuel distribution infrastructure and improve fuel fungibility;

(ii) reduce price volatility and costs to consumers and producers;

(iii) provide increased liquidity to the gasoline market; and

(iv) enhance fuel quality, consistency, and supply;

(F) the feasibility of providing incentives to promote cleaner burning motor vehicle fuel; and

(G) the extent to which improvements in air quality and any increases or decreases in the price of motor fuel can be projected to result from the Environmental Protection Agency's Tier II requirements for conventional gasoline and vehicle emission systems, the reformulated gasoline program, the renewable content requirements established by this subtitle, State programs regarding gasoline volatility, and any other requirements imposed by States or localities affecting the composition of motor fuel.

(b) REPORT.—

(1) IN GENERAL.—Not later than December 31, 2007, the Administrator and the Secretary of Energy shall submit to Congress a report on the results of the study conducted under subsection (a).

(2) RECOMMENDATIONS.—

(A) IN GENERAL.—The report under this subsection shall contain recommendations for legislative and administrative actions that may be taken—

(i) to improve air quality;

(ii) to reduce costs to consumers and producers; and

(iii) to increase supply liquidity.

(B) REQUIRED CONSIDERATIONS.—The recommendations under subparagraph (A) shall take into account the need to provide advance notice of required modifications to refinery and fuel distribution systems in order to ensure an adequate supply of motor vehicle fuel in all States.

(3) CONSULTATION.—In developing the report under this subsection, the Administrator and the Secretary of Energy shall consult with—

(A) the Governors of the States;

(B) automobile manufacturers;

(C) motor vehicle fuel producers and distributors; and

(D) the public.

SEC. 1510. COMMERCIAL BYPRODUCTS FROM MUNICIPAL SOLID WASTE AND CELLULOSIC BIOMASS LOAN GUARANTEE PROGRAM.

(a) DEFINITION OF MUNICIPAL SOLID WASTE.—In this section, the term ''municipal solid waste'' has the meaning given the term ''solid waste'' in section 1004 of the Solid Waste Disposal Act (42 U.S.C. 6903).

(b) ESTABLISHMENT OF PROGRAM.—The Secretary of Energy (hereinafter in this section referred to as the ''Secretary'') shall establish a program to provide guarantees of loans by private institutions for the construction of facilities for the processing and conversion of municipal solid waste and cellulosic

biomass into fuel ethanol and other commercial byproducts.

(c) REQUIREMENTS.—The Secretary may provide a loan guarantee under subsection (b) to an applicant if—

(1) without a loan guarantee, credit is not available to the applicant under reasonable terms or conditions sufficient to finance the construction of a facility described in subsection (b);

(2) the prospective earning power of the applicant and the character and value of the security pledged provide a reasonable assurance of repayment of the loan to be guaranteed in accordance with the terms of the loan; and

(3) the loan bears interest at a rate determined by the Secretary to be reasonable, taking into account the current average yield on outstanding obligations of the United States with remaining periods of maturity comparable to the maturity of the loan.

(d) CRITERIA.—In selecting recipients of loan guarantees from among applicants, the Secretary shall give preference to proposals that—

(1) meet all applicable Federal and State permitting requirements;

(2) are most likely to be successful; and

(3) are located in local markets that have the greatest need for the facility because of—

(A) the limited availability of land for waste disposal;

(B) the availability of sufficient quantities of cellulosic biomass; or

(C) a high level of demand for fuel ethanol or other commercial byproducts of the facility.

(e) MATURITY.—A loan guaranteed under subsection (b) shall have a maturity of not more than 20 years.

(f) TERMS AND CONDITIONS.—The loan agreement for a loan guaranteed under subsection (b) shall provide that no provision of the loan agreement may be amended or waived without the consent of the Secretary.

(g) ASSURANCE OF REPAYMENT.—The Secretary shall require that an applicant for a loan guarantee under subsection (b) provide an assurance of repayment in the form of a performance bond, insurance, collateral, or other means acceptable to the Secretary in an amount equal to not less than 20 percent of the amount of the loan.

(h) GUARANTEE FEE.—The recipient of a loan guarantee under subsection (b) shall pay the Secretary an amount determined by the Secretary to be sufficient to cover the administrative costs of the Secretary relating to the loan guarantee.

(i) FULL FAITH AND CREDIT.—The full faith and credit of the United States is pledged to the payment of all guarantees made under this section. Any such guarantee made by the Secretary shall be conclusive evidence of the eligibility of the loan for the guarantee with respect to principal and interest. The validity of the guarantee shall be incontestable in the hands of a holder of the guaranteed loan.

(j) REPORTS.—Until each guaranteed loan under this section has been repaid in full, the Secretary shall annually submit to Congress a report on the activities of the Secretary under this section.

(k) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this section.

(l) TERMINATION OF AUTHORITY.—The authority of the Secretary to issue a loan guarantee under subsection (b) terminates on the date that is 10 years after the date of enactment of this Act.

SEC. 1511. RESOURCE CENTER.

(a) DEFINITION.—In this section, the term ''RFG State'' means a State in which is located one or more covered areas (as defined in section 211(k)(10)(D) of the Clean Air Act (42 U.S.C. 7545(k)(10)(D)).

(b) AUTHORIZATION OF APPROPRIATIONS FOR RESOURCE CENTER.—There are authorized to be appropriated, for a resource center to further develop bioconversion technology using low-cost biomass for the production of ethanol at the Center for Biomass-Based Energy at the University of Mississippi and the University of Oklahoma, $4,000,000 for each of fiscal years 2004 through 2006.

(c) RENEWABLE FUEL PRODUCTION RESEARCH AND DEVELOPMENT GRANTS.—

(1) IN GENERAL.—The Administrator of the Environmental Protection Agency shall provide grants for the research into, and development and implementation of, renewable fuel production technologies in RFG States with low rates of ethanol production, including low rates of production of cellulosic biomass ethanol.

(2) ELIGIBILITY.—

(A) IN GENERAL.—The entities eligible to receive a grant under this subsection are academic institutions in RFG States, and consortia made up of combinations of academic institutions, industry, State government agencies, or local government agencies in RFG States, that have proven experience and capabilities with relevant technologies.

(B) APPLICATION.—To be eligible to receive a grant under this subsection, an eligible entity shall submit to the Administrator an application in such manner and form, and accompanied by such information, as the Administrator may specify.

(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subsection $25,000,000 for each of fiscal years 2004 through 2008.

SEC. 1512. CELLULOSIC BIOMASS AND WASTE-DERIVED ETHANOL CONVERSION ASSISTANCE.

Section 211 of the Clean Air Act (42 U.S.C. 7545) is amended by adding at the end the following:

''(r) CELLULOSIC BIOMASS AND WASTE-DERIVED ETHANOL CONVERSION ASSISTANCE.—

''(1) IN GENERAL.—The Secretary of Energy may provide grants to merchant producers of cellulosic biomass ethanol and waste-derived ethanol in the United States to assist the producers in building eligible production facilities described in paragraph (2) for the production of ethanol.

''(2) ELIGIBLE PRODUCTION FACILITIES.—A production facility shall be eligible to receive a grant under this subsection if the production facility—

''(A) is located in the United States; and

''(B) uses cellulosic biomass or waste-derived feedstocks derived from agricultural residues, municipal solid waste, or agricultural byproducts as that term is used in section 919 of the Energy Policy Act of 2003.

''(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated the following amounts to carry out this subsection:

''(A) $100,000,000 for fiscal year 2004.

''(B) $250,000,000 for fiscal year 2005.

''(C) $400,000,000 for fiscal year 2006.''.

SEC. 1513. BLENDING OF COMPLIANT REFORMULATED GASOLINES.

Section 211 of the Clean Air Act (42 U.S.C. 7545) is amended by adding at the end the following:

''(s) BLENDING OF COMPLIANT REFORMULATED GASOLINES.—

''(1) IN GENERAL.—Notwithstanding subsections (h) and (k) and subject to the limitations in paragraph (2) of this subsection, it shall not be a violation of this subtitle for a gasoline retailer, during any month of the year, to blend at a retail location batches of ethanol-blended and non-ethanol-blended reformulated gasoline, provided that—

''(A) each batch of gasoline to be blended has been individually certified as in compliance with subsections (h) and (k) prior to being blended;

''(B) the retailer notifies the Administrator prior to such blending, and identifies the exact location of the retail station and the specific tank in which such blending will take place;

''(C) the retailer retains and, as requested by the Administrator or the Administrator's designee, makes available for inspection such certifications accounting for all gasoline at the retail outlet; and

''(D) the retailer does not, between June 1 and September 15 of each year, blend a batch of VOC-controlled, or 'summer', gasoline with a batch of non-VOC-controlled, or 'winter', gasoline (as these terms are defined under subsections (h) and (k)).

''(2) LIMITATIONS.—

''(A) FREQUENCY LIMITATION.—A retailer shall only be permitted to blend batches of compliant reformulated gasoline under this subsection a maximum of two blending periods between May 1 and September 15 of each calendar year.

''(B) DURATION OF BLENDING PERIOD.—Each blending period authorized under subparagraph (A) shall extend for a period of no more than 10 consecutive calendar days.

''(3) SURVEYS.—A sample of gasoline taken from a retail location that has blended gasoline within the past 30 days and is in compliance with subparagraphs (A), (B), (C), and (D) of paragraph (1) shall not be used in a VOC survey mandated by 40 CFR Part 80.

''(4) STATE IMPLEMENTATION PLANS.—A State shall be held harmless and shall not be required to revise its State implementation plan under section 110 to account for the emissions from blended gasoline authorized under paragraph (1).

''(5) PRESERVATION OF STATE LAW.—Nothing in this subsection shall—

''(A) preempt existing State laws or regulations regulating the blending of compliant gasolines; or

''(B) prohibit a State from adopting such restrictions in the future.

''(6) REGULATIONS.—The Administrator shall promulgate, after notice and comment, regulations implementing this subsection within one year after the date of enactment of this subsection.

''(7) EFFECTIVE DATE.—This subsection shall become effective 15 months after the date of its enactment and shall apply to blended batches of reformulated gasoline on or after that date, regardless of whether the implementing regulations required by paragraph (6) have been promulgated by the Administrator by that date.

''(8) LIABILITY.—No person other than the person responsible for blending under this subsection shall be subject to an enforcement action or penalties under subsection (d) solely arising from the blending of compliant reformulated gasolines by the retailers.

''(9) FORMULATION OF GASOLINE.—This subsection does not grant authority to the Administrator or any State (or any subdivision thereof) to require reformulation of gasoline at the refinery to adjust for potential or actual emissions increases due to the blending authorized by this subsection.''.

Subtitle B—Underground Storage Tank Compliance

SEC. 1521. SHORT TITLE.

This subtitle may be cited as the ''Underground Storage Tank Compliance Act of 2003''.

SEC. 1522. LEAKING UNDERGROUND STORAGE TANKS.

(a) IN GENERAL.—Section 9004 of the Solid Waste Disposal Act (42 U.S.C. 6991c) is amended by adding at the end the following:

''(f) TRUST FUND DISTRIBUTION.—

''(1) IN GENERAL.—

''(A) AMOUNT AND PERMITTED USES OF DISTRIBUTION.—The Administrator shall distribute to States not less than 80 percent of the funds from the Trust Fund that are made available to the Administrator under section 9014(2)(A) for each fiscal year for use in paying the reasonable costs, incurred under a cooperative agreement with any State for—

''(i) actions taken by the State under section 9003(h)(7)(A);

''(ii) necessary administrative expenses, as determined by the Administrator, that are directly related to State fund or State assurance programs under subsection (c)(1);

''(iii) any State fund or State assurance program carried out under subsection (c)(1) for a release from an underground storage tank regulated under this subtitle to the extent that, as determined by the State in accordance with guidelines developed jointly by the Administrator and the States, the financial resources of the owner and operator of the underground storage tank (including resources provided by a program in accordance with subsection (c)(1)) are not adequate to pay the cost of a corrective action without significantly impairing the ability of the owner or operator to continue in business; or

''(iv) enforcement, by a State or a local government, of State or local regulations pertaining to underground storage tanks regulated under this subtitle.

''(B) USE OF FUNDS FOR ENFORCEMENT.—In addition to the uses of funds authorized under subparagraph (A), the Administrator may use funds from the Trust Fund that are not distributed to States under subparagraph (A) for enforcement of any regulation promulgated by the Administrator under this subtitle.

''(C) PROHIBITED USES.—Funds provided to a State by the Administrator under subparagraph (A) shall not be used by the State to provide financial assistance to an owner or operator to meet any requirement relating to underground storage tanks under subparts B, C, D, H, and G of part 280 of title 40, Code of Federal Regulations (as in effect on the date of enactment of this subsection).

''(2) ALLOCATION.—

''(A) PROCESS.—Subject to subparagraphs (B) and (C), in the case of a State with which the Administrator has entered into a cooperative agreement under section 9003(h)(7)(A), the Administrator shall distribute funds from the Trust Fund to the State using an allocation process developed by the Administrator.

''(B) DIVERSION OF STATE FUNDS.—The Administrator shall not distribute funds under subparagraph (A)(iii) of subsection (f)(1) to any State that has diverted funds from a State fund or State assurance program for purposes other than those related to the regulation of underground storage tanks covered by this subtitle, with the exception of those transfers that had been completed earlier than the date of enactment of this subsection.

''(C) REVISIONS TO PROCESS.—The Administrator may revise the allocation process referred to in subparagraph (A) after—

''(i) consulting with State agencies responsible for overseeing corrective action for releases from underground storage tanks; and

''(ii) taking into consideration, at a minimum, each of the following:

''(I) The number of confirmed releases from federally regulated leaking underground storage tanks in the States.

''(II) The number of federally regulated underground storage tanks in the States.

''(III) The performance of the States in implementing and enforcing the program.

''(IV) The financial needs of the States.

''(V) The ability of the States to use the funds referred to in subparagraph (A) in any year.

''(3) DISTRIBUTIONS TO STATE AGENCIES.—Distributions from the Trust Fund under this subsection shall be made directly to a State agency that—

''(A) enters into a cooperative agreement referred to in paragraph (2)(A); or

''(B) is enforcing a State program approved under this section.

''(4) COST RECOVERY PROHIBITION.—Funds from the Trust Fund provided by States to owners or operators under paragraph (1)(A)(iii) shall not be subject to cost recovery by the Administrator under section 9003(h)(6).''.

(b) WITHDRAWAL OF APPROVAL OF STATE FUNDS.—Section 9004(c) of the Solid Waste Disposal Act (42 U.S.C. 6991c(c)) is amended by inserting the following new paragraph at the end thereof:

''(6) WITHDRAWAL OF APPROVAL.—After an opportunity for good faith, collaborative efforts to correct financial deficiencies with a State fund, the Administrator may withdraw approval of any State fund or State assurance program to be used as a financial responsibility mechanism without withdrawing approval of a State underground storage tank program under section 9004(a).''.

SEC. 1523. INSPECTION OF UNDERGROUND STORAGE TANKS.

(a) INSPECTION REQUIREMENTS.—Section 9005 of the Solid Waste Disposal Act (42 U.S.C. 6991d) is amended by inserting the following new subsection at the end thereof:

''(c) INSPECTION REQUIREMENTS.—

''(1) UNINSPECTED TANKS.—In the case of underground storage tanks regulated under this subtitle that have not undergone an inspection since December 22, 1998, not later than 2 years after the date of enactment of this subsection, the Administrator or a State that receives funding under this subtitle, as appropriate, shall conduct on-site inspections of all such tanks to determine compliance with this subtitle and the regulations under this subtitle (40 CFR 280) or a requirement or standard of a State program developed under section 9004.

''(2) PERIODIC INSPECTIONS.—After completion of all inspections required under paragraph (1), the Administrator or a State that receives funding under this subtitle, as appropriate, shall conduct on-site inspections of each underground storage tank regulated under this subtitle at least once every 3 years to determine compliance with this subtitle and the regulations under this subtitle (40 CFR 280) or a requirement or standard of a State program developed under section 9004. The Administrator may extend for up to one additional year the first 3-year inspection interval under this paragraph if the State demonstrates that it has insufficient resources to complete all such inspections within the first 3-year period.

''(3) INSPECTION AUTHORITY.—Nothing in this section shall be construed to diminish the Administrator's or a State's authorities under section 9005(a).''.

(b) STUDY OF ALTERNATIVE INSPECTION PROGRAMS.—The Administrator of the Environmental Protection Agency, in coordination with a State, shall gather information on compliance assurance programs that could serve as an alternative to the inspection programs under section 9005(c) of the Solid Waste Disposal Act (42 U.S.C. 6991d(c)) and shall, within 4 years after the date of enactment of this Act, submit a report to the Congress containing the results of such study.

SEC. 1524. OPERATOR TRAINING.

(a) IN GENERAL.—Section 9010 of the Solid Waste Disposal Act (42 U.S.C. 6991i) is amended to read as follows:

''SEC. 9010. OPERATOR TRAINING.

''(a) GUIDELINES.—

''(1) IN GENERAL.—Not later than 2 years after the date of enactment of the Underground Storage Tank Compliance Act of 2003, in consultation and cooperation with States and after public notice and opportunity for comment, the Administrator shall publish guidelines that specify training requirements for persons having primary daily on-site management responsibility for the operation and maintenance of underground storage tanks.

''(2) CONSIDERATIONS.—The guidelines described in paragraph (1) shall take into account—

''(A) State training programs in existence as of the date of publication of the guidelines;

''(B) training programs that are being employed by tank owners and tank operators as of the date of enactment of the Underground Storage Tank Compliance Act of 2003;

''(C) the high turnover rate of tank operators and other personnel;

''(D) the frequency of improvement in underground storage tank equipment technology;

''(E) the nature of the businesses in which the tank operators are engaged; and

''(F) such other factors as the Administrator determines to be necessary to carry out this section.

''(b) STATE PROGRAMS.—

''(1) IN GENERAL.—Not later than 2 years after the date on which the Administrator publishes the guidelines under subsection (a)(1), each State that receives funding under this subtitle shall develop State-specific training requirements that are consistent with the guidelines developed under subsection (a)(1).

''(2) REQUIREMENTS.—State requirements described in paragraph (1) shall—

''(A) be consistent with subsection (a);

''(B) be developed in cooperation with tank owners and tank operators;

''(C) take into consideration training programs implemented by tank owners and tank operators as of the date of enactment of this section; and

''(D) be appropriately communicated to tank owners and operators.

''(3) FINANCIAL INCENTIVE.—The Administrator may award to a State that develops and implements requirements described in paragraph (1), in addition to any funds that the State is entitled to receive under this subtitle, not more than $200,000, to be used to carry out the requirements.

''(c) OPERATORS.—All persons having primary daily on-site management responsibility for the operation and maintenance of any underground storage tank shall—

''(1) meet the training requirements developed under subsection (b); and

''(2) repeat the applicable requirements developed under subsection (b), if the tank for which they have primary daily on-site management responsibilities is determined to be out of compliance with—

''(A) a requirement or standard promulgated by the Administrator under section 9003; or

''(B) a requirement or standard of a State program approved under section 9004.''.

(b) STATE PROGRAM REQUIREMENT.—Section 9004(a) of the Solid Waste Disposal Act (42 U.S.C. 6991c(a)) is amended by striking ''and'' at the end of paragraph (7), by striking the period at the end of paragraph (8) and inserting ''; and'', and by adding the following new paragraph at the end thereof:

''(9) State-specific training requirements as required by section 9010.''.

(c) ENFORCEMENT.—Section 9006(d)(2) of such Act (42 U.S.C. 6991e) is amended as follows:

(1) By striking ''or'' at the end of subparagraph (B).

(2) By adding the following new subparagraph after subparagraph (C):

''(D) the training requirements established by States pursuant to section 9010 (relating to operator training); or''.

(d) TABLE OF CONTENTS.—The item relating to section 9010 in table of contents for the Solid Waste Disposal Act is amended to read as follows:

''Sec. 9010. Operator training.''.

SEC. 1525. REMEDIATION FROM OXYGENATED FUEL ADDITIVES.

Section 9003(h) of the Solid Waste Disposal Act (42 U.S.C. 6991b(h)) is amended as follows:

(1) In paragraph (7)(A)—

(A) by striking ''paragraphs (1) and (2) of this subsection'' and inserting ''paragraphs (1), (2), and (12)'' ; and

(B) by striking ''and including the authorities of paragraphs (4), (6), and (8) of this subsection'' and inserting ''and the authority under sections 9011 and 9012 and paragraphs (4), (6), and (8),''.

(2) By adding at the end the following:

''(12) REMEDIATION OF OXYGENATED FUEL CONTAMINATION.—

''(A) IN GENERAL.—The Administrator and the States may use funds made available under section 9014(2)(B) to carry out corrective actions with respect to a release of a fuel containing an oxygenated fuel additive that presents a threat to human health or welfare or the environment.

''(B) APPLICABLE AUTHORITY.—The Administrator or a State shall carry out subparagraph (A) in accordance with paragraph (2), and in the case of a State, in accordance with a cooperative agreement entered into by the Administrator and the State under paragraph (7).''.

SEC. 1526. RELEASE PREVENTION, COMPLIANCE, AND ENFORCEMENT.

(a) RELEASE PREVENTION AND COMPLIANCE.—Subtitle I of the Solid Waste Disposal Act (42 U.S.C. 6991 et seq.) is amended by adding at the end the following:

''SEC. 9011. USE OF FUNDS FOR RELEASE PREVENTION AND COMPLIANCE.

''Funds made available under section 9014(2)(D) from the Trust Fund may be used to conduct inspections, issue orders, or bring actions under this subtitle—

''(1) by a State, in accordance with a grant or cooperative agreement with the Administrator, of State regulations pertaining to underground storage tanks regulated under this subtitle; and

''(2) by the Administrator, for tanks regulated under this subtitle (including under a State program approved under section 9004).''.

(b) GOVERNMENT-OWNED TANKS.—Section 9003 of the Solid Waste Disposal Act (42 U.S.C. 6991b) is amended by adding at the end the following:

''(i) GOVERNMENT-OWNED TANKS.—

''(1) STATE COMPLIANCE REPORT.—(A) Not later than 2 years after the date of enactment of this subsection, each State that receives funding under this subtitle shall submit to the Administrator a State compliance report that—

''(i) lists the location and owner of each underground storage tank described in subparagraph (B) in the State that, as of the date of submission of the report, is not in compliance with section 9003; and

''(ii) specifies the date of the last inspection and describes the actions that have been and will be taken to ensure compliance of the underground storage tank listed under clause (i) with this subtitle.

''(B) An underground storage tank described in this subparagraph is an underground storage tank that is—

''(i) regulated under this subtitle; and

''(ii) owned or operated by the Federal, State, or local government.

''(C) The Administrator shall make each report, received under subparagraph (A), available to the public through an appropriate media.

''(2) FINANCIAL INCENTIVE.—The Administrator may award to a State that develops a report described in paragraph (1), in addition to any other funds that the State is entitled to receive under this subtitle, not more than $50,000, to be used to carry out the report.

''(3) NOT A SAFE HARBOR.—This subsection does not relieve any person from any obligation or requirement under this subtitle.''.

(c) PUBLIC RECORD.—Section 9002 of the Solid Waste Disposal Act (42 U.S.C. 6991a) is amended by adding at the end the following:

''(d) PUBLIC RECORD.—

''(1) IN GENERAL.—The Administrator shall require each State that receives Federal funds to carry out this subtitle to maintain, update at least annually, and make available to the public, in such manner and form as the Administrator shall prescribe (after consultation with States), a record of underground storage tanks regulated under this subtitle.

''(2) CONSIDERATIONS.—To the maximum extent practicable, the public record of a State, respectively, shall include, for each year—

''(A) the number, sources, and causes of underground storage tank releases in the State;

''(B) the record of compliance by underground storage tanks in the State with—

''(i) this subtitle; or

''(ii) an applicable State program approved under section 9004; and

''(C) data on the number of underground storage tank equipment failures in the State.''.

(d) INCENTIVE FOR PERFORMANCE.—Section 9006 of the Solid Waste Disposal Act (42 U.S.C. 6991e) is amended by adding at the end the following:

''(e) INCENTIVE FOR PERFORMANCE.—Both of the following may be taken into account in determining the terms of a civil penalty under subsection (d):

''(1) The compliance history of an owner or operator in accordance with this subtitle or a program approved under section 9004.

''(2) Any other factor the Administrator considers appropriate.''.

(e) TABLE OF CONTENTS.—The table of contents for such subtitle I is amended by adding the following new item at the end thereof:

''Sec. 9011. Use of funds for release prevention and compliance.''.

SEC. 1527. DELIVERY PROHIBITION.

(a) IN GENERAL.—Subtitle I of the Solid Waste Disposal Act (42 U.S.C. 6991 et seq.) is amended by adding at the end the following:

''SEC. 9012. DELIVERY PROHIBITION.

''(a) REQUIREMENTS.—

''(1) PROHIBITION OF DELIVERY OR DEPOSIT.—Beginning 2 years after the date of enactment of this section, it shall be unlawful to deliver to, deposit into, or accept a regulated substance into an underground storage tank at a facility which has been identified by the Administrator or a State implementing agency to be ineligible for fuel delivery or deposit.

''(2) GUIDANCE.—Within 1 year after the date of enactment of this section, the Administrator and States that receive funding under this subtitle shall, in consultation with the underground storage tank owner and product delivery industries, for territory for which they are the primary implementing agencies, publish guidelines detailing the specific processes and procedures they will use to implement the provisions of this section. The processes and procedures include, at a minimum—

''(A) the criteria for determining which underground storage tank facilities are ineligible for delivery or deposit;

''(B) the mechanisms for identifying which facilities are ineligible for delivery or deposit to the underground storage tank owning and fuel delivery industries;

''(C) the process for reclassifying ineligible facilities as eligible for delivery or deposit; and

''(D) a delineation of, or a process for determining, the specified geographic areas subject to paragraph (4).

''(3) DELIVERY PROHIBITION NOTICE.—

''(A) ROSTER.—The Administrator and each State implementing agency that receives funding under this subtitle shall establish within 24 months after the date of enactment of this section a Delivery Prohibition Roster listing underground storage tanks under the Administrator's or the State's jurisdiction that are determined to be ineligible for delivery or deposit pursuant to paragraph (2).

''(B) NOTIFICATION.—The Administrator and each State, as appropriate, shall make readily known, to underground storage tank owners and operators and to product delivery industries, the underground storage tanks listed on a Delivery Prohibition Roster by:

''(i) posting such Rosters, including the physical location and street address of each listed underground storage tank, on official web sites and, if the Administrator or the State so chooses, other electronic means;

''(ii) updating these Rosters periodically; and

''(iii) installing a tamper-proof tag, seal, or other device blocking the fill pipes of such underground storage tanks to prevent the delivery of product into such underground storage tanks.

''(C) ROSTER UPDATES.—The Administrator and the State shall update the Delivery Prohibition Rosters as appropriate, but not less than once a month on the first day of the month.

''(D) TAMPERING WITH DEVICE.—

''(i) PROHIBITION.—It shall be unlawful for any person, other than an authorized representative of the Administrator or a State, as appropriate, to remove, tamper with, destroy, or damage a device installed by the Administrator or a State, as appropriate, under subparagraph (B)(iii) of this subsection.

''(ii) CIVIL PENALTIES.—Any person violating clause (i) of this subparagraph shall be subject to a civil penalty not to exceed $10,000 for each violation.

''(4) LIMITATION.—

''(A) RURAL AND REMOTE AREAS.—Subject to subparagraph (B), the Administrator or a State shall not include an underground storage tank on a Delivery Prohibition Roster under paragraph (3) if an urgent threat to public health, as determined by the Administrator, does not exist and if such a delivery prohibition would jeopardize the availability of, or access to, fuel in any rural and remote areas.

''(B) APPLICABILITY OF LIMITATION.—The limitation under subparagraph (A) shall apply only during the 180-day period following the date of a determination by the Administrator or the appropriate State that exercising the authority of paragraph (3) is limited by subparagraph (A).

''(b) EFFECT ON STATE AUTHORITY.—Nothing in this section shall affect the authority of a State to prohibit the delivery of a regulated substance to an underground storage tank.

''(c) DEFENSE TO VIOLATION.—A person shall not be in violation of subsection (a)(1) if the underground storage tank into which a regulated substance is delivered is not listed

on the Administrator's or the appropriate State's Prohibited Delivery Roster 7 calendar days prior to the delivery being made.''.

(b) ENFORCEMENT.—Section 9006(d)(2) of such Act (42 U.S.C. 6991e(d)(2)) is amended as follows:

(1) By adding the following new subparagraph after subparagraph (D):

''(E) the delivery prohibition requirement established by section 9012,''.

(2) By adding the following new sentence at the end thereof: ''Any person making or accepting a delivery or deposit of a regulated substance to an underground storage tank at an ineligible facility in violation of section 9012 shall also be subject to the same civil penalty for each day of such violation.''.

(c) TABLE OF CONTENTS.—The table of contents for such subtitle I is amended by adding the following new item at the end thereof:

''Sec. 9012. Delivery prohibition.''.

SEC. 1528. FEDERAL FACILITIES.

Section 9007 of the Solid Waste Disposal Act (42 U.S.C. 6991f) is amended to read as follows:

''SEC. 9007. FEDERAL FACILITIES.

''(a) IN GENERAL.—Each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government (1) having jurisdiction over any underground storage tank or underground storage tank system, or (2) engaged in any activity resulting, or which may result, in the installation, operation, management, or closure of any underground storage tank, release response activities related thereto, or in the delivery, acceptance, or deposit of any regulated substance to an underground storage tank or underground storage tank system shall be subject to, and comply with, all Federal, State, interstate, and local requirements, both substantive and procedural (including any requirement for permits or reporting or any provisions for injunctive relief and such sanctions as may be imposed by a court to enforce such relief), respecting underground storage tanks in the same manner, and to the same extent, as any person is subject to such requirements, including the payment of reasonable service charges. The Federal, State, interstate, and local substantive and procedural requirements referred to in this subsection include, but are not limited to, all administrative orders and all civil and administrative penalties and fines, regardless of whether such penalties or fines are punitive or coercive in nature or are imposed for isolated, intermittent, or continuing violations. The United States hereby expressly waives any immunity otherwise applicable to the United States with respect to any such substantive or procedural requirement (including, but not limited to, any injunctive relief, administrative order or civil or administrative penalty or fine referred to in the preceding sentence, or reasonable service charge). The reasonable service charges referred to in this subsection include, but are not limited to, fees or charges assessed in connection with the processing and issuance of permits, renewal of permits, amendments to permits, review of plans, studies, and other documents, and inspection and monitoring of facilities, as well as any other nondiscriminatory charges that are assessed in connection with a Federal, State, interstate, or local underground storage tank regulatory program. Neither the United States, nor any agent, employee, or officer thereof, shall be immune or exempt from any process or sanction of any State or Federal Court with respect to the enforcement of any such injunctive relief. No agent, employee, or officer of the United States shall be personally liable for any civil penalty under any Federal, State, interstate, or local law concerning underground storage tanks with respect to any act or omission within the scope of the official duties of the agent, employee, or officer. An agent, employee, or officer of the United States shall be subject to any criminal sanction (including, but not limited to, any fine or imprisonment) under any Federal or State law concerning underground storage tanks, but no department, agency, or instrumentality of the executive, legislative, or judicial branch of the Federal Government shall be subject to any such sanction. The President may exempt any underground storage tank of any department, agency, or instrumentality in the executive branch from compliance with such a requirement if he determines it to be in the paramount interest of the United States to do so. No such exemption shall be granted due to lack of appropriation unless the President shall have specifically requested such appropriation as a part of the budgetary process and the Congress shall have failed to make available such requested appropriation. Any exemption shall be for a period not in excess of one year, but additional exemptions may be granted for periods not to exceed one year upon the President's making a new determination. The President shall report each January to the Congress all exemptions from the requirements of this section granted during the preceding calendar year, together with his reason for granting each such exemption.

''(b) REVIEW OF AND REPORT ON FEDERAL UNDERGROUND STORAGE TANKS.—

''(1) REVIEW.—Not later than 12 months after the date of enactment of the Underground Storage Tank Compliance Act of 2003, each Federal agency that owns or operates 1 or more underground storage tanks, or that manages land on which 1 or more underground storage tanks are located, shall submit to the Administrator, the Committee on Energy and Commerce of the United States House of Representatives, and the Committee on the Environment and Public Works of the United States Senate a compliance strategy report that—

''(A) lists the location and owner of each underground storage tank described in this paragraph;

''(B) lists all tanks that are not in compliance with this subtitle that are owned or operated by the Federal agency;

''(C) specifies the date of the last inspection by a State or Federal inspector of each underground storage tank owned or operated by the agency;

''(D) lists each violation of this subtitle respecting any underground storage tank owned or operated by the agency;

''(E) describes the operator training that has been provided to the operator and other persons having primary daily on-site management responsibility for the operation and maintenance of underground storage tanks owned or operated by the agency; and

''(F) describes the actions that have been and will be taken to ensure compliance for each underground storage tank identified under subparagraph (B).

''(2) NOT A SAFE HARBOR.—This subsection does not relieve any person from any obligation or requirement under this subtitle.''.

SEC. 1529. TANKS ON TRIBAL LANDS.

(a) IN GENERAL.—Subtitle I of the Solid Waste Disposal Act (42 U.S.C. 6991 et seq.) is amended by adding the following at the end thereof:

''SEC. 9013. TANKS ON TRIBAL LANDS.

''(a) STRATEGY.—The Administrator, in coordination with Indian tribes, shall, not later than 1 year after the date of enactment of this section, develop and implement a strategy—

''(1) giving priority to releases that present the greatest threat to human health or the environment, to take necessary corrective action in response to releases from leaking underground storage tanks located wholly within the boundaries of—

''(A) an Indian reservation; or

''(B) any other area under the jurisdiction of an Indian tribe; and

''(2) to implement and enforce requirements concerning underground storage tanks located wholly within the boundaries of—

''(A) an Indian reservation; or

''(B) any other area under the jurisdiction of an Indian tribe.

''(b) REPORT.—Not later than 2 years after the date of enactment of this section, the Administrator shall submit to Congress a report that summarizes the status of implementation and enforcement of this subtitle in areas located wholly within—

''(1) the boundaries of Indian reservations; and

''(2) any other areas under the jurisdiction of an Indian tribe.

The Administrator shall make the report under this subsection available to the public.

''(c) NOT A SAFE HARBOR.—This section does not relieve any person from any obligation or requirement under this subtitle.

''(d) STATE AUTHORITY.—Nothing in this section applies to any underground storage tank that is located in an area under the jurisdiction of a State, or that is subject to regulation by a State, as of the date of enactment of this section.''.

(b) TABLE OF CONTENTS.—The table of contents for such subtitle I is amended by adding the following new item at the end thereof:

''Sec. 9013. Tanks on Tribal lands.''.

SEC. 1530. FUTURE RELEASE CONTAINMENT TECHNOLOGY.

Not later than 2 years after the date of enactment of this Act, the Administrator of the Environmental Protection Agency, after consultation with States, shall make available to the public and to the Committee on Energy and Commerce of the House of Representatives and the Committee on Environment and Public Works of the Senate information on the effectiveness of alternative possible methods and means for containing releases from underground storage tanks systems.

SEC. 1531. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—Subtitle I of the Solid Waste Disposal Act (42 U.S.C. 6991 et seq.) is amended by adding at the end the following:

''SEC. 9014. AUTHORIZATION OF APPROPRIATIONS.

''There are authorized to be appropriated to the Administrator the following amounts:

''(1) To carry out subtitle I (except sections 9003(h), 9005(c), 9011 and 9012) $50,000,000 for each of fiscal years 2004 through 2008.

''(2) From the Trust Fund, notwithstanding section 9508(c)(1) of the Internal Revenue Code of 1986:

''(A) to carry out section 9003(h) (except section 9003(h)(12)) $200,000,000 for each of fiscal years 2004 through 2008;

''(B) to carry out section 9003(h)(12), $200,000,000 for each of fiscal years 2004 through 2008;

''(C) to carry out sections 9004(f) and 9005(c) $100,000,000 for each of fiscal years 2004 through 2008; and

''(D) to carry out sections 9011 and 9012 $55,000,000 for each of fiscal years 2004 through 2008.''.

(b) TABLE OF CONTENTS.—The table of contents for such subtitle I is amended by adding the following new item at the end thereof:

''Sec. 9014. Authorization of appropriations.''.

SEC. 1532. CONFORMING AMENDMENTS.

(a) IN GENERAL.—Section 9001 of the Solid Waste Disposal Act (42 U.S.C. 6991) is amended as follows:

(1) By striking ''For the purposes of this subtitle—'' and inserting ''In this subtitle:''.

(2) By redesignating paragraphs (1), (2), (3), (4), (5), (6), (7), and (8) as paragraphs (10), (7), (4), (3), (8), (5), (2), and (6), respectively.

(3) By inserting before paragraph (2) (as redesignated by paragraph (2) of this subsection) the following:

''(1) INDIAN TRIBE.—

''(A) IN GENERAL.— The term 'Indian tribe' means any Indian tribe, band, nation, or other organized group or community that is recognized as being eligible for special programs and services provided by the United States to Indians because of their status as Indians.

''(B) INCLUSIONS.—The term 'Indian tribe' includes an Alaska Native village, as defined in or established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.); and''.

(4) By inserting after paragraph (8) (as redesignated by paragraph (2) of this subsection) the following:

''(9) TRUST FUND.— The term 'Trust Fund' means the Leaking Underground Storage Tank Trust Fund established by section 9508 of the Internal Revenue Code of 1986.''.

(b) CONFORMING AMENDMENTS.—The Solid Waste Disposal Act (42 U.S.C. 6901 and following) is amended as follows:

(1) Section 9003(f) (42 U.S.C. 6991b(f)) is amended—

(A) in paragraph (1), by striking ''9001(2)(B)'' and inserting ''9001(7)(B)''; and

(B) in paragraphs (2) and (3), by striking ''9001(2)(A)'' each place it appears and inserting ''9001(7)(A)''.

(2) Section 9003(h) (42 U.S.C. 6991b(h)) is amended in paragraphs (1), (2)(C), (7)(A), and (11) by striking ''Leaking Underground Storage Tank Trust Fund'' each place it appears and inserting ''Trust Fund''.

(3) Section 9009 (42 U.S.C. 6991h) is amended—

(A) in subsection (a), by striking ''9001(2)(B)'' and inserting ''9001(7)(B)''; and

(B) in subsection (d), by striking ''section 9001(1) (A) and (B)'' and inserting ''subparagraphs (A) and (B) of section 9001(10)''.

SEC. 1533. TECHNICAL AMENDMENTS.

The Solid Waste Disposal Act is amended as follows:

(1) Section 9001(4)(A) (42 U.S.C. 6991(4)(A)) is amended by striking ''sustances'' and inserting ''substances''.

(2) Section 9003(f)(1) (42 U.S.C. 6991b(f)(1)) is amended by striking ''subsection (c) and (d) of this section'' and inserting ''subsections (c) and (d)''.

(3) Section 9004(a) (42 U.S.C. 6991c(a)) is amended by striking ''in 9001(2) (A) or (B) or both'' and inserting ''in subparagraph (A) or (B) of section 9001(7)''.

(4) Section 9005 (42 U.S.C. 6991d) is amended—

(A) in subsection (a), by striking ''study taking'' and inserting ''study, taking'';

(B) in subsection (b)(1), by striking ''relevent'' and inserting ''relevant''; and

(C) in subsection (b)(4), by striking ''Evironmental'' and inserting ''Environmental''.

TEXT OF AMENDMENTS

SA 3052. Mrs. FEINSTEIN submitted an amendment intended to be proposed to amendment SA 3048 proposed by Mr. MCCAIN to the bill S. 150, to make permanent the moratorium on taxes on Internet access and multiple and discriminatory taxes on electronic commerce imposed by the Internet Tax Freedom Act; which was ordered to lie on the table; as follows:

On page 5, line 2, strike ''2006.'' and insert ''2007.''.

On page 5, line 20, strike ''2005.'' and insert ''2007.''.

SA 3053. Mr. ROCKEFELLER submitted an amendment intended to be proposed to amendment SA 3048 proposed by Mr. MCCAIN to the bill S. 150, to make permanent the moratorium on taxes on Internet access and multiple and discriminatory taxes on electronic commerce imposed by the Internet Tax Freedom Act; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. . BROADBAND INTERNET ACCESS TAX CREDIT.

(a) IN GENERAL.—Subpart E of part IV of chapter 1 of the Internal Revenue Code of 1986 (relating to rules for computing investment credit) is amended by inserting after section 48 the following:

''SEC. 48A. BROADBAND INTERNET ACCESS CREDIT.

''(a) GENERAL RULE.—For purposes of section 46, the broadband credit for any taxable year is the sum of—

''(1) the current generation broadband credit, plus

''(2) the next generation broadband credit.

''(b) CURRENT GENERATION BROADBAND CREDIT; NEXT GENERATION BROADBAND CREDIT.—For purposes of this section—

''(1) CURRENT GENERATION BROADBAND CREDIT.—The current generation broadband credit for any taxable year is equal to 10 percent of the qualified expenditures incurred with respect to qualified equipment providing current generation broadband services to qualified subscribers and taken into account with respect to such taxable year.

''(2) NEXT GENERATION BROADBAND CREDIT.—The next generation broadband credit for any taxable year is equal to 20 percent of the qualified expenditures incurred with respect to qualified equipment providing next generation broadband services to qualified subscribers and taken into account with respect to such taxable year.

''(c) WHEN EXPENDITURES TAKEN INTO ACCOUNT.—For purposes of this section—

''(1) IN GENERAL.—Qualified expenditures with respect to qualified equipment shall be taken into account with respect to the first taxable year in which—

''(A) current generation broadband services are provided through such equipment to qualified subscribers, or

''(B) next generation broadband services are provided through such equipment to qualified subscribers.

''(2) LIMITATION.—

''(A) IN GENERAL.—Qualified expenditures shall be taken into account under paragraph (1) only with respect to qualified equipment—

''(i) the original use of which commences with the taxpayer, and

''(ii) which is placed in service, after December 31, 2003.

''(B) SALE-LEASEBACKS.—For purposes of subparagraph (A), if property—

''(i) is originally placed in service after December 31, 2003, by any person, and

''(ii) sold and leased back by such person within 3 months after the date such property was originally placed in service, such property shall be treated as originally placed in service not earlier than the date on which such property is used under the leaseback referred to in clause (ii).

''(d) SPECIAL ALLOCATION RULES.—

''(1) CURRENT GENERATION BROADBAND SERVICES.—For purposes of determining the current generation broadband credit under subsection (a)(1) with respect to qualified equipment through which current generation broadband services are provided, if the qualified equipment is capable of serving both qualified subscribers and other subscribers, the qualified expenditures shall be multiplied by a fraction—

''(A) the numerator of which is the sum of the number of potential qualified subscribers within the rural areas and the underserved areas which the equipment is capable of serving with current generation broadband services, and

''(B) the denominator of which is the total potential subscriber population of the area which the equipment is capable of serving with current generation broadband services.

''(2) NEXT GENERATION BROADBAND SERVICES.—For purposes of determining the next generation broadband credit under subsection (a)(2) with respect to qualified equipment through which next generation broadband services are provided, if the qualified equipment is capable of serving both qualified subscribers and other subscribers, the qualified expenditures shall be multiplied by a fraction—

''(A) the numerator of which is the sum of—

''(i) the number of potential qualified subscribers within the rural areas and underserved areas, plus

''(ii) the number of potential qualified subscribers within the area consisting only of residential subscribers not described in clause (i),

which the equipment is capable of serving with next generation broadband services, and

''(B) the denominator of which is the total potential subscriber population of the area which the equipment is capable of serving with next generation broadband services.

''(e) DEFINITIONS.—For purposes of this section—

''(1) ANTENNA.—The term 'antenna' means any device used to transmit or receive signals through the electromagnetic spectrum, including satellite equipment.

''(2) CABLE OPERATOR.—The term 'cable operator' has the meaning given such term by section 602(5) of the Communications Act of 1934 (47 U.S.C. 522(5)).

''(3) COMMERCIAL MOBILE SERVICE CARRIER.—The term 'commercial mobile service carrier' means any person authorized to provide commercial mobile radio service as defined in section 20.3 of title 47, Code of Federal Regulations.

''(4) CURRENT GENERATION BROADBAND SERVICE.—The term 'current generation broadband service' means the transmission of signals at a rate of at least 1,000,000 bits per second to the subscriber and at least 128,000 bits per second from the subscriber.

''(5) MULTIPLEXING OR DEMULTIPLEXING.—The term 'multiplexing' means the transmission of 2 or more signals over a single channel, and the term 'demultiplexing' means the separation of 2 or more signals previously combined by compatible multiplexing equipment.

''(6) NEXT GENERATION BROADBAND SERVICE.—The term 'next generation broadband service' means the transmission of signals at a rate of at least 22,000,000 bits per second to the subscriber (or its equivalent when the data rate is measured before being compressed for transmission) and at least 5,000,000 bits per second from the subscriber (or its equivalent as so measured).

''(7) NONRESIDENTIAL SUBSCRIBER.—The term 'nonresidential subscriber' means any

person who purchases broadband services which are delivered to the permanent place of business of such person.

''(8) OPEN VIDEO SYSTEM OPERATOR.—The term 'open video system operator' means any person authorized to provide service under section 653 of the Communications Act of 1934 (47 U.S.C. 573).

''(9) OTHER WIRELESS CARRIER.—The term 'other wireless carrier' means any person (other than a telecommunications carrier, commercial mobile service carrier, cable operator, open video system operator, or satellite carrier) providing current generation broadband services or next generation broadband service to subscribers through the wireless transmission of energy through radio or light waves.

''(10) PACKET SWITCHING.—The term 'packet switching' means controlling or routing the path of a digitized transmission signal which is assembled into packets or cells.

''(11) PROVIDER.—The term 'provider' means, with respect to any qualified equipment any—

''(A) cable operator,

''(B) commercial mobile service carrier,

''(C) open video system operator,

''(D) satellite carrier,

''(E) telecommunications carrier, or

''(F) other wireless carrier,

providing current generation broadband services or next generation broadband services to subscribers through such qualified equipment.

''(12) PROVISION OF SERVICES.—A provider shall be treated as providing services to 1 or more subscribers if—

''(A) such a subscriber has been passed by the provider's equipment and can be connected to such equipment for a standard connection fee,

''(B) the provider is physically able to deliver current generation broadband services or next generation broadband services, as applicable, to such a subscriber without making more than an insignificant investment with respect to such subscriber,

''(C) the provider has made reasonable efforts to make such subscribers aware of the availability of such services,

''(D) such services have been purchased by 1 or more such subscribers, and

''(E) such services are made available to such subscribers at average prices comparable to those at which the provider makes available similar services in any areas in which the provider makes available such services.

''(13) QUALIFIED EQUIPMENT.—

''(A) IN GENERAL.—The term 'qualified equipment' means equipment which provides current generation broadband services or next generation broadband services—

''(i) at least a majority of the time during periods of maximum demand to each subscriber who is utilizing such services, and

''(ii) in a manner substantially the same as such services are provided by the provider to subscribers through equipment with respect to which no credit is allowed under subsection (a)(1).

''(B) ONLY CERTAIN INVESTMENT TAKEN INTO ACCOUNT.—Except as provided in subparagraph (C) or (D), equipment shall be taken into account under subparagraph (A) only to the extent it—

''(i) extends from the last point of switching to the outside of the unit, building, dwelling, or office owned or leased by a subscriber in the case of a telecommunications carrier,

''(ii) extends from the customer side of the mobile telephone switching office to a transmission/receive antenna (including such antenna) owned or leased by a subscriber in the case of a commercial mobile service carrier,

''(iii) extends from the customer side of the headend to the outside of the unit, building, dwelling, or office owned or leased by a subscriber in the case of a cable operator or open video system operator, or

''(iv) extends from a transmission/receive antenna (including such antenna) which transmits and receives signals to or from multiple subscribers, to a transmission/receive antenna (including such antenna) on the outside of the unit, building, dwelling, or office owned or leased by a subscriber in the case of a satellite carrier or other wireless carrier, unless such other wireless carrier is also a telecommunications carrier.

''(C) PACKET SWITCHING EQUIPMENT.—Packet switching equipment, regardless of location, shall be taken into account under subparagraph (A) only if it is deployed in connection with equipment described in subparagraph (B) and is uniquely designed to perform the function of packet switching for current generation broadband services or next generation broadband services, but only if such packet switching is the last in a series of such functions performed in the transmission of a signal to a subscriber or the first in a series of such functions performed in the transmission of a signal from a subscriber.

''(D) MULTIPLEXING AND DEMULTIPLEXING EQUIPMENT.—Multiplexing and demultiplexing equipment shall be taken into account under subparagraph (A) only to the extent it is deployed in connection with equipment described in subparagraph (B) and is uniquely designed to perform the function of multiplexing and demultiplexing packets or cells of data and making associated application adaptions, but only if such multiplexing or demultiplexing equipment is located between packet switching equipment described in subparagraph (C) and the subscriber's premises.

''(14) QUALIFIED EXPENDITURE.—

''(A) IN GENERAL.—The term 'qualified expenditure' means any amount—

''(i) chargeable to capital account with respect to the purchase and installation of qualified equipment (including any upgrades thereto) for which depreciation is allowable under section 168, and

''(ii) incurred after December 31, 2003, and before January 1, 2008.

''(B) CERTAIN SATELLITE EXPENDITURES EXCLUDED.—Such term shall not include any expenditure with respect to the launching of any satellite equipment.

''(C) LEASED EQUIPMENT.—Such term shall include so much of the purchase price paid by the lessor of equipment subject to a lease described in subsection (c)(2)(B) as is attributable to expenditures incurred by the lessee which would otherwise be described in subparagraph (A).

''(15) QUALIFIED SUBSCRIBER.—The term 'qualified subscriber' means—

''(A) with respect to the provision of current generation broadband services—

''(i) any nonresidential subscriber maintaining a permanent place of business in a rural area, or underserved area, or

''(ii) any residential subscriber residing in a dwelling located in a rural area or underserved area which is not a saturated market, and

''(B) with respect to the provision of next generation broadband services—

''(i) any nonresidential subscriber maintaining a permanent place of business in a rural area, or underserved area, or

''(ii) any residential subscriber.

''(16) RESIDENTIAL SUBSCRIBER.—The term 'residential subscriber' means any individual who purchases broadband services which are delivered to such individual's dwelling.

''(17) RURAL AREA.—The term 'rural area' means any census tract which—

''(A) is not within 10 miles of any incorporated or census designated place containing more than 25,000 people, and

''(B) is not within a county or county equivalent which has an overall population density of more than 500 people per square mile of land.

''(18) RURAL SUBSCRIBER.—The term 'rural subscriber' means any residential subscriber residing in a dwelling located in a rural area or nonresidential subscriber maintaining a permanent place of business located in a rural area.

''(19) SATELLITE CARRIER.—The terns 'satellite carrier' means any person using the facilities of a satellite or satellite service licensed by the Federal Communications Commission and operating in the Fixed-Satellite Service under part 25 of title 47 of the Code of Federal Regulations or the Direct Broadcast Satellite Service under part 100 of title 47 of such Code to establish and operate a channel of communications for distribution of signals, and owning or leasing a capacity or service on a satellite in order to provide such distribution.

''(20) SATURATED MARKET.—The term 'saturated market' means any census tract in which; as of the date of the enactment of this section—

''(A) current generation broadband services have been provided by a, single provider to 85 percent or more of the total number of potential residential subscribers residing in dwellings located within such census tract, and

''(B) such services can be utilized—

''(i) at least a majority of the time during periods of maximum demand by each such subscriber who is utilizing such services, and

''(ii) in a manner substantially the same as such services are provided by the provider to subscribers through equipment with respect to which no credit is allowed under subsection (a)(1).

''(21) SUBSCRIBER.—The term 'subscriber' means any person who purchases current generation broadband services or next generation broadband services.

''(22) TELECOMMUNICATIONS CARRIER.—The term 'telecommunications carrier' has the meaning given such term by section 3(44) of the Communications Act of 1934 (47 U.S.C. 153(44)), but—

''(A) includes all members of an affiliated group of which a telecommunications carrier is a member, and

''(B) does not include any commercial mobile service carrier.

''(23) TOTAL POTENTIAL SUBSCRIBER POPULATION.—The term 'total potential subscriber population' means, with respect to any area and based on the most recent census data, the total number of potential residential subscribers residing in dwellings located in such area and potential nonresidential subscribers maintaining permanent places of business located in such area.

''(24) UNDERSERVED AREA.—The term 'underserved area,' means any census tract which is located in—

''(A) an empowerment zone or enterprise community designated under section 1391,

''(B) the District of Columbia. Enterprise Zone established under section 1400,

''(C) a renewal community designated under section 1400E, or

''(D) a low-income community designated under section 45D.

''(25) UNDERSERVED SUBSCRIBER.— The term 'underserved subscriber' means any residential subscriber residing in a dwelling located in an underserved area or nonresidential subscriber maintaining a permanent place of business located in an underserved area.''.

(b) CREDIT TO BE PART OF INVESTMENT CREDIT.—Section 46 of the Internal Revenue Code of 1986 (relating to the amount of investment credit) is amended by striking

''and'' at the end of paragraph (2), by striking the period at the end of paragraph (3) and inserting '', and'', and by adding at the end the following:

''(4) the broadband Internet access credit.''

(c) SPECIAL RULE FOR MUTUAL OR COOPERATIVE TELEPHONE COMPANIES.—Section 501(c)(12)(B) of the Internal Revenue Code of 1986 (relating to list of exempt organizations) is amended by striking ''or'' at the end of clause (iii), by striking the period at the end of clause (iv) and inserting '', or'', and by adding at the end the following new clause:

''(v) from the sale of property subject to a lease described in section 48A(c)(2)(B), but only to the extent such income does not in any year exceed amount equal to the credit for qualified expenditures which would be determined under section 48A for such year if the mutual or cooperative telephone company was not exempt from taxation and was treated as the owner of the property subject to such lease.''.

(d) CONFORMING AMENDMENT.—The table of sections for subpart E of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after the item relating to section 48 the following:

''Sec. 48A. Broadband internet access credit.''.

(e) DESIGNATION OF CENSUS TRACTS.—

(1) IN GENERAL.—The Secretary of the Treasury shall, not later than 90 days after the date of the enactment of this Act, designate and publish those census tracts meeting the criteria described in paragraphs (17) and (24) of section 48A(e) of the Internal Revenue Code of 1986 (as added by this section). In making such designations, the Secretary of the Treasury shall consult with such other departments and agencies as the Secretary determines appropriate.

(2) SATURATED MARKET.—

(A) IN GENERAL.—For purposes of designating and publishing those census tracts meeting the criteria described in subsection (e)(20) of such section 48A—

(i) the Secretary of the Treasury shall prescribe not later than 30 days after the date of the enactment of this Act the form upon which any provider which takes the position that it meets such criteria with respect to any census tract shall submit a list of such census tracts (and any other information required by the Secretary) not later, than 60 days after the date of the publication of such form, and

(ii) the Secretary of the Treasury shall publish an aggregate list of such census tracts submitted and the applicable providers not later than 30 days after the last date such submissions are allowed under clause (i).

(B) NO SUBSEQUENT LISTS REQUIRED.—The Secretary of the Treasury shall not be required to publish any list of census tracts meeting such criteria subsequent to the list described in subparagraph (A)(ii).

(C) AUTHORITY TO DISREGARD FALSE SUBMISSIONS.—In addition to imposing any other applicable penalties, the Secretary of the Treasury shall have the discretion to disregard any form described in subparagraph (A)(i) on which a provider knowingly submitted false information.

(f) OTHER REGULATORY MATTERS.—

(1) PROHIBITION.—No Federal or State agency or, instrumentality shall adopt regulations or rate making procedures that would have the effect of confiscating any credit or portion thereof allowed under section 48A of the Internal Revenue Code of 1986 (as added by this section) or otherwise subverting the purpose of this section.

(2) TREASURY REGULATORY AUTHORITY.—It is the intent of Congress in providing the broadband Internet access credit under section 48A of the Internal Revenue Code of 1986 (as added by this section) to provide incentives for the purchase, installation, and connection of equipment and facilities offering expanded broadband access to the Internet for users in certain low income and rural areas of the United States, as well as to residential users nationwide, in a manner that maintains competitive neutrality among the various classes of providers of broadband services. Accordingly, the Secretary of the Treasury shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of section 48A of such Code, including—

(A) regulations to determine how and when a taxpayer that incurs qualified expenditures satisfies the requirements of section 48A of such Code to provide broadband services, and (B) regulations describing the information, records, and data taxpayers are required to provide the Secretary to substantiate compliance with the requirements of section 48A of such Code.

(g) EFFECTIVE DATE.—The amendments made by this section shall apply to expenditures incurred after December 31, 2003.

SA 3054. Mr. ROCKEFELLER submitted an amendment intended to be proposed to amendment SA 3048 proposed by Mr. MCCAIN to the bill S. 150, to make permanent the moratorium on taxes on Internet access and multiple and discriminatory taxes on electronic commerce imposed by the Internet Tax Freedom Act; which was ordered to lie on the table; as follows:

At the end add the following:

TITLE —PHONE BILL FAIRNESS ACT.

SECTION—01. SHORT TITLE.

This title may be cited as the ''Phone Bill Fairness Act''.

SEC.—02. FINDINGS; PURPOSE.

(a) FINDINGS.—Congress makes the following findings:

(1) Customer bills for telecommunications services are unreasonably complicated, and many Americans are unable to understand the nature of services provided to them and the charges for which they are responsible.

(2) One of the purposes of the Telecommunications Act of 1996 (Public Law 104–104) was to unleash competitive and market forces for telecommunications services.

(3) Unless customers can understand their telecommunications bills they cannot take advantage of the newly competitive market for telecommunications services.

(4) Confusing telecommunications bills allow a small minority of providers of telecommunications services to commit fraud more easily. The best defense against telecommunications fraud is a well informed consumer. Consumers cannot be well informed when their telecommunications bills are incomprehensible.

(5) Certain providers of telecommunications services have established new, specific charges on customer bills commonly known as ''line-item charges''.

(6) These line-item charges have proliferated and are often described with inaccurate and confusing names.

(7) These line-item charges have generated significant confusion among customers regarding the nature and scope of universal service and of the fees associated with universal service.

(8) The National Association of Regulatory Utility Commissioners adopted a resolution in February 1998 supporting action by the Federal Communications Commission to require interstate telecommunications carriers to provide accurate customer notice regarding the implementation and purpose of end-user charges for telecommunications services.

(b) PURPOSE.—It is the purpose of this Act to require the Federal Communications Commission and the Federal Trade Commission to protect and empower consumers of telecommunications services by assuring that telecommunications bills, including line-item charges, issued by telecommunications carriers nationwide are both accurate and comprehensible.

SEC.—03. INVESTIGATION OF TELECOMMUNICATIONS CARRIER BILLING PRACTICES.

(a) INVESTIGATION.—

(1) REQUIREMENT.—The Federal Communications Commission and the Federal Trade Commission shall jointly conduct an investigation of the billing practices of telecommunications carriers.

(2) PURPOSE.—The purpose of the investigation is to determine whether the bills sent by telecommunications carriers to their customers accurately assess and correctly characterize the services received and fees charged for such services, including any fees imposed as line-item charges.

(b) DETERMINATIONS.—In carrying out the investigation under subsection (a), the Federal Communications Commission and the Federal Trade Commission shall determine the following:

(1) The prevalence of incomprehensible or confusing telecommunications bills.

(2) The most frequent causes for confusion on telecommunications bills.

(3) Whether or not any best practices exist, which, if utilized as an industry standard, would reduce confusion and improve comprehension of telecommunications bills.

(4) Whether or not telecommunications bills that impose fees through line-item charges characterize correctly the nature and basis of such fees, including, in particular, whether or not such fees are required by the Federal Government or State governments.

(c) REVIEW OF RECORDS.—

(1) AUTHORITY.—For purposes of the investigation under subsection (a), the Federal Communications Commission and the Federal Trade Commission may obtain from any telecommunications carrier any record of such carrier that is relevant to the investigation, including any record supporting such carrier's basis for setting fee levels or percentages.

(2) USE.—The Federal Communications Commission and the Federal Trade Commission may use records obtained under this subsection only for purposes of the investigation.

(d) DISCIPLINARY ACTIONS.—

(1) IN GENERAL.—If the Federal Communications Commission or the Federal Trade Commission determines as a result of the investigation under subsection (a) that the bills sent by a telecommunications carrier to its customers do not accurately assess or correctly characterize any service or fee contained in such bills, the Federal Communications Commission or the Federal Trade Commission, as the case may be, may take such action against such carrier as such Commission is authorized to take under law.

(2) CHARACTERIZATION OF FEES.—If the Federal Communications Commission or the Federal Trade Commission determines as a result of the investigation under subsection (a) that a telecommunications carrier has characterized a fee on bills sent to its customers as mandated or otherwise required by the Federal Government or a State and that such characterization is incorrect, the Federal Communications Commission or the Federal Trade Commission, as the case may

be, may require the carrier to discontinue such characterization.

(3) ADDITIONAL ACTIONS.—If the Federal Communications Commission or the Federal Trade Commission determines that such Commission does not have authority under law to take actions under paragraph (1) that would be appropriate in light of a determination described in paragraph (1), the Federal Communications Commission or the Federal Trade Commission, as the case may be, shall notify Congress of the determination under this paragraph in the report under subsection (e).

(e) REPORT.—Not later than one year after the date of the enactment of this Act, the Federal Communications Commission and the Federal Trade Commissions shall jointly submit to Congress a report on the results of the investigation under subsection (a). The report shall include the determination, if any, of either Commission under subsection (d)(3) and any recommendations for further legislative action that such Commissions consider appropriate.

SEC. __04. TREATMENT OF MISLEADING TELECOMMUNICATIONS BILLS AND TELECOMMUNICATIONS RATE PLANS.

(a) FEDERAL TRADE COMMISSION.—The Federal Trade Commission shall treat any telecommunications billing practice or telecommunications rate plan that the Commission determines to be intentionally misleading as an unfair business practice under the Federal Trade Commission Act (15 U.S.C. 41 et seq.).

(b) FEDERAL COMMUNICATIONS COMMISSION.—The Federal Communications Commissions shall, upon finding that any holder of a license under the Commission has repeatedly and intentionally engaged in a telephone billing practice, or has repeatedly and intentionally utilized a telephone rate plan, that is misleading, treat such holder as acting against the public interest for purposes of the Communications Act of 1934 (47 U.S.C. 151 et seq.).

SEC. __05. REQUIREMENTS FOR ALL BILLS FOR TELECOMMUNICATIONS SERVICES.

(a) AVERAGE PER MINUTE RATE CALCULATION.—Each telecommunications carrier shall display on the first page of each customer bill for telecommunications services the average per-minute charge of telecommunications services of such customer for the billing period covered by such bill.

(b) CALLING PATTERNS.—Each telecommunications carrier shall display on the first page of each customer bill for telecommunications services the percentage of the total number of telephone calls of such customer for the billing period covered by such bill as follows:

(1) That began on a weekday.

(2) That began on a weekend.

(3) That began from 8 a.m. to 8 p.m.

(4) That began from 8:01 p.m. to 7:59 a.m.

(5) That were billed to a calling card.

(c) AVERAGE PER-MINUTE CHARGE DEFINED.—IN THIS SECTION, THE TERM ''AVERAGE PER-MINUTE CHARGE'', IN THE CASE OF A BILL OF A CUSTOMER FOR A BILLING PERIOD, MEANS

(1) the sum of—

(A) the aggregate amount of monthly or other recurring charges, if any, for telecommunications services imposed on the customer by the bill for the billing period; and

(B) the total amount of all per-minute charges for telecommunications services imposed on the customer by the bill for the billing period; divided by

(2) the total number of minutes of telecommunications services provided to the customer during the billing period and covered by the bill.

SEC. __06. REQUIREMENTS FOR TELECOMMUNICATIONS CARRIERS IMPOSING CERTAIN CHARGES FOR SERVICES.

(a) BILLING REQUIREMENTS.—Any telecommunications carrier shall include on the bills for telecommunications services sent to its customers the following:

(1) An accurate name and description of any covered charge.

(2) The recipient or class of recipients of the monies collected through each such charge.

(3) A statement whether each such charge is required by law or collected pursuant to a requirement imposed by a governmental entity under its discretionary authority.

(4) A specific explanation of any reduction in charges or fees to customers, and the class of telephone customer that such reduction, that are related to each such charge.

(b) UNIVERSAL SERVICE CONTRIBUTIONS AND RECEIPTS.—Not later than January 31 each year, each telecommunications carrier required to contribute to universal service during the previous year under section 254(d) of the Communications Act of 1934 (47 U.S.C. 254(d)) shall submit to the Federal Communications Commission a report on the following:

(1) The total contributions of the carrier to the universal service fund during the previous year.

(2) The total receipts from customers during such year designed to recover contributions to the fund.

(c) ACTION ON UNIVERSAL SERVICE CONTRIBUTIONS AND RECEIPTS DATA.—

(1) REVIEW.—The Federal Communications Commission shall review the reports submitted to the Commission under subsection (b) in order to determine whether or not the amount of the contributions of a telecommunications carrier to the universal service fund in any year is equal to the amount of the receipts of the telecommunications carrier from its customers in such year for purposes of contributions to the fund.

(2) ADDITIONAL CONTRIBUTIONS.—If the Commission determines as a result of a review under paragraph (1) that the amount of the receipts of a telecommunications carrier from its customers in a year for purposes of contributions to the universal service fund exceeded the amount contributed by the carrier in such year to the fund, the Commission shall have the authority to require the carrier to deposit in the fund an amount equal to the amount of such excess.

(d) COVERED CHARGES.—For purposes of subsection (a), a covered charge shall include any charge on a bill for telecommunications services that is separate from a per-minute rate charge, including a universal service charge, a subscriber line charge, and a resubscribed interchange carrier charge.

SEC. __07. TELECOMMUNICATIONS CARRIER DEFINED.

In this Act, the term ''telecommunications carrier'' has the meaning given that term in section 3(44) of the Communications Act of 1934 (47 U.S.C. 153(44)).

SA 3055. Mr. ALLEN submitted an amendment intended to be proposed to amendment SA 3048 proposed by Mr. MCCAIN to the bill S. 150, to make permanent the moratorium on taxes on Internet access and multiple and discriminatory taxes on electronic commerce imposed by the Internet Tax Freedom Act; which was ordered to lie on the table; as follows:

On page 5, line 2, strike ''2006.'' and insert ''2005.''.

SA 3056. Mr. ALLEN submitted an amendment intended to be proposed to amendment SA 3048 proposed by Mr. MCCAIN to the bill S. 150, to make permanent the moratorium on taxes on Internet access and multiple and discriminatory taxes on electronic commerce imposed by the Internet Tax Freedom Act; which was ordered to lie on the table; as follows:

On page 4, beginning with line 9, strike through line 20 on page 5, and insert the following:

''SEC. 1104. GRANDFATHERING OF PRE-OCTOBER 1998 TAXES.

''(a) IN GENERAL.—Section 1101(a) does not apply to a tax on Internet access that was generally imposed and actually enforced prior to October 1, 1998, if, before that date, the tax was authorized by statute and either—

''(1) a provider of Internet access services had a reasonable opportunity to know, by virtue of a rule or other public proclamation made by the appropriate administrative agency of the State or political subdivision thereof, that such agency has interpreted and applied such tax to Internet access servics; or

''(2) a State or political subdivision thereof generally collected such tax on charges for Internet access.

''(b) TERMINATION.—Subsection (a) shall not apply after November 1, 2006.''.

SA 3057. Mr. ALLEN submitted an amendment intended to be proposed to amendment SA 3048 proposed by Mr. MCCAIN to the bill S. 150, to make permanent the moratorium on taxes on Internet access and multiple and discriminatory taxes on electronic commerce imposed by the Internet Tax Freedom Act; which was ordered to lie on the table; as follows:

On page 2, strike lines 1 through 6, and insert the following:

''(a) MORATORIA.—

''(1) MULTIPLE OR DISCRIMINATORY TAXES ON ELECTRONIC COMMERCE.—No State or political subdivision thereof may impose multiple or discriminatory taxes on electronic commerce.

''(2) TAXES ON INTERNET ACCESS.—No State or political subdivision thereof may impose a tax on Internet access during the period beginning November 1, 2003, and ending November 1, 2007.''.

SA 3058. Mr. ALLEN submitted an amendment intended to be proposed to amendment SA 3048 proposed by Mr. MCCAIN to the bill S. 150, to make permanent the moratorium on taxes on Internet access and multiple and discriminatory taxes on electronic commerce imposed by the Internet Tax Freedom Act; which was ordered to lie on the table; as follows:

On page 2, strike lines 1 through 7, and insert the following:

''(a) MORATORIUM.—No State or political subdivision thereof may impose any of the following taxes:

''(1) Taxes on Intenet access.

''(2) Multiple or discriminatory taxes on electronic commerce.''.

On page 8, between lines 9 and 10, insert the following:

SEC. 7. RESTORATION OF ORIGINAL DEFINITION OF INTERNET ACCESS AFTER 4 YEARS.

''(a) IN GENERAL.—

''(1) Paragraph (3)(D) of section 1101(d) (as redesignated by section 2(b)(1) of this Act) is amended by striking the second sentence and

inserting ''Such term does not include telecommunications services.''.

''(2) Paragraph (5) of section 1105 (as redesignated by section 3(1) of this Act) is amended by striking the second sentence and inserting ''Such term does not include telecommunications services.''.

''(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on November 2, 2007.

On page 8, line 10, strike ''**SEC. 7.**'' and insert ''**SEC. 8.**''.

On page 8, line 11, strike ''The'' and insert ''Except as provided in section 7(b), the''.

SA 3059. Mr. BINGAMAN submitted an amendment intended to be proposed to amendment SA 3048 proposed by Mr. MCCAIN to the bill S. 150, to make permanent the moratorium on taxes on Internet access and multiple and discriminatory taxes on electronic commerce imposed by the Internet Tax Freedom Act; which was ordered to lie on the table; as follows:

On page 5, line 2, strike ''2006'' and insert ''2007''.

SA 3060. Mr. CARPER submitted an amendment intended to be proposed to amendment SA 3048 proposed by Mr. MCCAIN to the bill S. 150, to make permanent the moratorium on taxes on Internet access and multiple and discriminatory taxes on electronic commerce imposed by the Internet Tax Freedom Act; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. _. INTERNET TAX PROVIDERS MUST PAY OTHER STATE TAXES THEY ARE REQUIRED TO PAY.

Nothing in the Internet Tax Freedom Act (47 U.S.C. 151 note) may be construed to exempt an Internet access provider (within the meaning of that Act) from liability to pay any tax that is—

(1) generally applied under the authority of State law; and

(2) the legal liability of that Internet access provider.

SA 3061. Mr. CARPER submitted an amendment intended to be proposed to amendment SA 3048 proposed by Mr. MCCAIN to the bill S. 150, to make permanent the moratorium on taxes on Internet access and multiple and discriminatory taxes on electronic commerce imposed by the Internet Tax Freedom Act; which was ordered to lie on the table; as follows:

On page 2, line 1, strike ''No State or political subdivision thereof may'' and insert ''The Federal Government and a State or political subdivision thereof may not''.

SA 3062. Mr. CARPER submitted an amendment intended to be proposed to amendment SA 3048 proposed by Mr. MCCAIN to the bill S. 150, to make permanent the moratorium on taxes on Internet access and multiple and discriminatory taxes on electronic commerce imposed by the Internet Tax Freedom Act; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. SENSE OF THE SENATE.

(a) FINDINGS.—The Senate finds that the Unfunded Mandates Reform Act of 1995 (P.L. 104–4) was passed—

(1) ''to end the imposition, in the absence of full consideration by Congress, of Federal mandates on State, local, and tribal governments without adequate Federal funding, in a manner that may displace other essential State, local, and tribal governmental priorities'';

(2) to provide ''for the development of information about the nature and size of mandates in proposed legislation'';

(3) ''to establish a point-of-order vote on the consideration in the Senate and House of Representatives of legislation containing significant Federal intergovernmental mandates without providing adequate funding to comply with such mandates'';

(4) to require that ''Federal agencies prepare and consider better estimates of the budgetary impact of regulations containing Federal mandates upon State, local, and tribal governments before adopting such regulations, and ensuring that small governments are given special consideration in that process''; and

(5) to establish the general rule that Congress shall not impose Federal mandates on State, local, and tribal governments without providing adequate funding to comply with such mandates.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that—

(1) the Unfunded Mandates Reform Act of 1995 constituted an important pledge on the part of the Federal Government, in general, and Congress, in particular, to refrain from imposing Federal mandates on State, local, and tribal governments without providing adequate resources to compensate State, local, and tribal governments for the cost of complying with such mandates;

(2) at this time when State, local, and tribal governments are struggling to cope with the worst State and local fiscal crisis since World War II, it is urgently important that Congress adhere to its commitments under the Unfunded Mandates Reform Act of 1995; and

(3) Congress should not pass laws mandating that States or localities spend new money or forgo collecting currently collected revenues, unless Congress—

(A) has clear and precise estimates of the budgetary impacts of such mandates upon States, local governments, and tribal governments; and

(B) provides adequate funding to cover the cost to States and localities of complying with such mandates.

SA 3063. Mr. CARPER submitted an amendment intended to be proposed to amendment SA 3048 proposed by Mr. MCCAIN to the bill S. 150, to make permanent the moratorium on taxes on Internet access and multiple and discriminatory taxes on electronic commerce imposed by the Internet Tax Freedom Act; which was ordered to lie on the table; as follows:

At the end of the bill, add the following:

TITLE II—CORPORATE SUBSIDY REFORM

SEC. 201. SHORT TITLE.

This title may be cited as the ''Corporate Subsidy Reform Commission Act of 2004''.

SEC. 202. FINDINGS.

The Congress finds that—

(1) Federal subsidies, including tax advantages, which may have been enacted with a valid purpose for specific industries or industry segments can—

(A) fall subject to abuse, causing unanticipated and unjustified windfalls to some industries and industry segments; or

(B) become obsolete, anticompetitive, or no longer in the public interest, making such subsidies unnecessary or undesired;

(2) it is unfair to force the United States taxpayer to support unnecessary subsidies, including tax advantages, that do not provide a substantial public benefit or serve the public interest;

(3) the Congress has been unable to evaluate methodically those Federal subsidies that are unfair and unnecessary and require reform or elimination; and

(4) a Commission to advise the Congress is essential to a comprehensive review of such unfair corporate subsidies and to the reform or elimination of such subsidies.

SEC. 203. PURPOSE.

The purpose of this title is to establish a fair and deliberative process that will result in the timely identification, review, and reform or elimination of unnecessary and inequitable subsidies, including tax advantages, provided by the Federal Government to entities or industries engaged in profit-making enterprises.

SEC. 204. DEFINITION.

For purposes of this title, the term ''inequitable Federal subsidy''—

(1) except as provided in paragraph (2), means a payment, benefit, service, or tax advantage that—

(A) is provided by the Federal Government to any corporation, partnership, joint venture, association, or business trust other than—

(i) a nonprofit organization described under section 501(c)(3) of the Internal Revenue Code of 1986 that is exempt from taxation under section 501(a) of the Internal Revenue Code of 1986; or

(ii) a State or local government or Indian Tribe; and

(B) provides an unfair competitive advantage or financial windfall; and

(2) does not include a payment, benefit, service, or tax advantage that is awarded for the purposes of research and development in the broad public interest on the basis of a peer reviewed or other open, competitive, merit-based procedure.

SEC. 205. THE COMMISSION.

(a) ESTABLISHMENT.—There is established an independent commission to be known as the ''Corporate Subsidy Reform Commission'' (hereafter in this title referred to as the ''Commission'').

(b) DUTIES.—The Commission shall—

(1) examine the programs and laws of the Federal Government and identify such programs and laws that provide inequitable Federal subsidies;

(2) review inequitable Federal subsidies; and

(3) submit the report required under section 206(c) to the Congress, making recommendations regarding the termination, modification, or retention of inequitable Federal subsidies.

(c) LIMITATIONS.—

(1) CREATION OF NEW PROGRAMS OR TAXES.—This title is not intended to result in the creation of new programs or taxes. The Commission established in this section shall limit its activities to reviewing existing programs or laws with the goal of ensuring fairness and equity in the operation and application thereof.

(2) ELIMINATION OF AGENCIES AND DEPARTMENTS.—The Commission—

(A) shall limit its recommendations to the termination or reform of payments, benefits, services, or tax advantages; and

(B) shall not recommend the termination of any Federal agency or department.

(d) ADVISORY COMMITTEE.—The Commission shall be considered an advisory committee within the meaning of that term in the Federal Advisory Committee Act (5 U.S.C. App.).

(e) APPOINTMENT.—

(1) MEMBERS.—The members of the Commission—

(A) shall be appointed for the life of the Commission; and

(B) shall be composed of 8 members, of whom—

(i) 2 shall be appointed by the Speaker of the House of Representatives;

(ii) 2 shall be appointed by the minority leader of the House of Representatives;

(iii) 2 shall be appointed by the majority leader of the Senate, one of whom shall be designated by the majority leader to serve as a co-chair; and

(iv) 2 shall be appointed by the minority leader of the Senate, one of whom shall be designated by the minority leader to serve as a co-chair.

(2) CONSULTATION REQUIRED.—The Speaker of the House of Representatives, the minority leader of the House of Representatives, the majority leader of the Senate, and the minority leader of the Senate shall consult among themselves prior to the appointment of the members of the Commission in order to achieve, to the maximum extent possible, fair and equitable representation of various points of view with respect to the matters to be studied by the Commission under subsection (b).

(3) BACKGROUND.—The members shall represent a broad array of expertise covering, to the extent practical, all subject matter, programs, and laws the Commission is likely to review.

(f) MEETINGS.—

(1) INITIAL MEETING.—No later than April 1, 2004, the Commission shall conduct its first meeting.

(2) OPEN MEETINGS.—Each meeting of the Commission shall be open to the public, except that in cases in which classified information, trade secrets, or personnel matters are discussed, the co-chairs may close the meeting. All proceedings, information, and deliberations of the Commission shall be available, upon request, to the Chairman and ranking minority member of the relevant Committee of the Congress having jurisdiction to report legislation regarding the subject matter thereof.

(g) VACANCIES.—A vacancy on the Commission shall be filled in the same manner as the original appointment.

(h) PAY AND TRAVEL EXPENSES.—

(1) PAY.—Notwithstanding section 7 of the Federal Advisory Committee Act (5 App. U.S.C.), each member of the Commission, other than the co-chairs, shall be paid at a rate equal to the daily equivalent of the minimum annual rate of basic pay for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which the member is engaged in the actual performance of duties vested in the Commission.

(2) CHAIRMEN.—Notwithstanding section 7 of the Federal Advisory Committee Act (5 App. U.S.C.), the co-chairs shall be paid for each day referred to in paragraph (1) at a rate equal to the daily payment of the minimum annual rate of basic pay payable for level III of the Executive Schedule under section 5314 of title 5, United States Code.

(3) TRAVEL EXPENSES.—Members of the Commission shall receive travel expenses, including per diem in lieu of subsistence, in accordance with section 5702 and 5703 of title 5, United States Code.

(i) DIRECTOR OF STAFF.—

(1) QUALIFICATIONS.—The co-chairs shall appoint as Director an individual who has not, during the 12 months preceding the date of such appointment, served in any of the entities or industries that the Commission intends to review.

(2) PAY.—Notwithstanding section 7 of the Federal Advisory Committee Act (5 App. U.S.C.), the Director shall be paid at the rate of basic pay payable for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

(3) REPORTS.—The Director shall submit periodic reports on administrative and personnel matters to the co-chairs of the Commission and the Chairman and ranking minority member of the Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives.

(j) STAFF.—

(1) ADDITIONAL PERSONNEL.—Subject to paragraphs (2) and (4), the Director, with the approval of the Commission, may appoint and fix the pay of additional personnel.

(2) APPOINTMENTS.—The Director may make such appointments without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and any personnel so appointed may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of that title relating to classification and General Schedule pay rates.

(3) LEGAL STAFF.—The Director shall appoint under paragraph (2) such professional legal staff as are necessary for the performance of the functions of the Commission.

(4) DETAILEES.—Upon the request of the Director, the head of any Federal department or agency may detail any of the personnel of that department or agency to the Commission to assist the Commission in accordance with an agreement entered into with the Commission.

(5) RESTRICTIONS ON PERSONNEL AND DETAILEES.—The following restrictions shall apply to personnel and detailees of the Commission:

(A) PERSONNEL.—No more than one-third of the personnel detailed to the Commission may be on detail from Federal agencies that deal directly or indirectly with the Federal subsidies the Commission intends to review.

(B) ANALYSTS.—No more than one-fifth of the professional analysts of the Commission may be persons detailed from a Federal agency that deals directly or indirectly with the Federal subsidies the Commission intends to review.

(C) LEAD ANALYST.—No person detailed from a Federal agency to the Commission may be assigned as the lead professional analyst with respect to an entity or industry the Commission intends to review if the person has been involved in regulatory or policy-making decisions affecting any such entity or industry in the 12 months preceding such assignment.

(D) DETAILEE.—A person may not be detailed from a Federal agency to the Commission if, within 12 months before the detail is to begin, that person participated personally and substantially in any matter within that particular agency concerning the preparation of recommendations under this title.

(E) FEDERAL OFFICER OR EMPLOYEE.—No officer or employee of a Federal agency may—

(i) prepare any report concerning the effectiveness, fitness, or efficiency of the performance on the staff of the Commission of any person detailed from a Federal agency to that staff;

(ii) review the preparation of such report; or

(iii) approve or disapprove such a report.

(F) LIMITATION ON STAFF SIZE.—(i) Subject to clause (ii), there may not be more than 25 persons (including any detailees) on the staff at any time.

(ii) The Commission may increase the member of its personnel in excess of the limitation under clause (i), 15 days after submitting notification of such increase to the Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives.

(G) LIMITATION ON FEDERAL OFFICER.—No member of a Federal agency and no employee of a Federal agency may serve as a member of the Commission or as a paid member of its staff.

(6) ASSISTANCE.—

(A) IN GENERAL.—The Comptroller General of the United States may provide assistance, including the detailing of employees, to the Commission in accordance with an agreement entered into with the Commission.

(B) CONSULTATION.—The Commission and the Comptroller General of the United States shall consult with the Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives on the agreement referred to under subparagraph (A) before entering into such agreement.

(k) OTHER AUTHORITY.—

(1) EXPERTS AND CONSULTANTS.—The Commission may procure by contract, to the extent funds are available, the temporary or intermittent services of experts or consultants pursuant to section 3109 of title 5, United States Code.

(2) LEASING.—The Commission may lease space and acquire personal property to the extent that funds are available.

(l) FUNDING.—There is authorized to be appropriated to the Commission $4,000,000 to carry out its duties under this title.

(m) TERMINATION.—The Commission shall terminate on January 1, 2006.

SEC. 206. PROCEDURE FOR MAKING RECOMMENDATIONS TO TERMINATE CORPORATE SUBSIDIES.

(a) AGENCY PLAN.—

(1) IN GENERAL.—The head of each Federal department or agency shall include in the documents submitted in support of the budget of the agency for fiscal year 2005 a list identifying all programs and laws administered by that department or agency that the head of the department or agency determines provide inequitable Federal subsidies.

(2) CONTENTS.—Such list shall include—

(A) a detailed description of each program or law in question;

(B) a statement identifying and detailing the extent to which each payment, benefit, service, or tax advantage under such program or law is an inequitable Federal subsidy;

(C) a statement summarizing the legislative history and purpose of such payment, benefit, service, or tax advantage, and the laws or policies directly or indirectly giving rise to the need for such programs or law; and

(D) a recommendation to the Commission regarding the termination, modification, or retention of each inequitable Federal subsidy identified in the list.

(b) REVIEW BY THE COMMISSION.—

(1) IN GENERAL.—At any time after the submission of the budget documents to the Congress, the Commission shall conduct public hearings on the termination, modification, or retention of inequitable Federal subsidies, including the recommendations included in the lists required under subsection (a).

(2) TESTIMONY UNDER OATH.—All testimony before the Commission at a public hearing conducted under this paragraph shall be presented under oath.

(c) REPORT AND RECOMMENDATIONS OF COMMISSION.—

(1) REPORT TO CONGRESS.—

(A) REQUIREMENT.—No later than March 31, 2005, the Commission shall submit a report to the Congress containing the Commission's findings and recommendations for termination, modification, or retention of each of the inequitable Federal subsidies reviewed by the Commission.

(B) CONTENTS.—Such findings and recommendations shall specify—

(i) all actions, circumstances, and considerations relating to or bearing upon the recommendations; and

(ii) to the maximum extent practicable, the estimated effect of the recommendations upon the policies, laws, and programs directly or indirectly affected by the recommendations.

(C) SUPERMAJORITY REQUIREMENT.—The Commission may not include a recommendation in the report unless inclusion of the recommendation is approved by at least 6 members of the Commission.

(2) INFORMATION AND JUSTIFICATIONS.—The Commission shall include in its report information specifying—

(A) the reasons and justifications for the recommendations of the Commission;

(B) to the maximum extent practicable, the estimated fiscal, economic, and budgetary impact of accepting its recommendations;

(C) the amount of the projected savings resulting from each of its recommendations;

(D) all actions, circumstances, and considerations relating to or bearing upon the recommendations and to the maximum extent practicable, the estimated effect of the recommendations upon the policies, laws and programs directly or indirectly affected by the recommendations; and

(E) the specific changes in Federal statutes necessary to implement the recommendations, including citation of the relevant provisions of existing law.

(3) SUBMISSION TO CONGRESS.—The report submitted to the Congress under this subsection shall be submitted to the Senate and the House of Representatives on the same day, and shall be delivered to the Secretary of the Senate if the Senate is not in session, and to the Clerk of the House of the Representatives if the House is not in session.

(4) FEDERAL REGISTER.—The report submitted under this subsection shall be printed in the first issue of the Federal Register after such submission.

(5) CHANGES IN AGENCY OR DEPARTMENT RECOMMENDATIONS.—

(A) IN GENERAL.—Subject to the deadline in paragraph (1) and to subparagraphs (B) and (C) of this paragraph, in making its recommendations, the Commission may make changes in any of the recommendations made by a department or agency if the Commission determines that such department or agency, in treating any matter as an inequitable Federal subsidy, deviated substantially from the provisions of section 204.

(B) LIMITATION.—The Commission may make a change in the recommendations made by a department or agency, only if the Commission—

(i) makes the determination required under subparagraph (B); and

(ii) conducts a public hearing on the Commission's proposed changes.

(C) APPLICATION OF LIMITATION.—Subparagraph (B) shall apply only to a change by the Commission in a department or agency recommendation that would—

(i) add or delete a payment, benefit, service, or tax advantage to or from, respectively, the list recommended for termination;

(ii) add or delete a payment, benefit, service, or tax advantage to or from, respectively, the list recommended for modification; or

(iii) increase or decrease the extent of a recommendation to modify a payment, benefit, service, or tax advantage included in a department's or agency's recommendation.

(D) JUSTIFICATION.—The Commission shall explain and justify in the report submitted to the Congress under this subsection any recommendation made by the Commission that is different from a recommendation made by an agency under subsection (a).

(6) PROVISION OF INFORMATION TO MEMBERS OF CONGRESS.—After March 31, 2005, the Commission shall, upon request, promptly provide to any Member of Congress the information used by the Commission in making its recommendations.

(7) COMPTROLLER GENERAL.—The Comptroller General of the United States shall—

(A) assist the Commission, to the extent requested, in the Commission's review and analysis of the lists, statements, and recommendations made by departments and agencies under subsection (a); and

(B) no later than 60 days after April 1, 2004, or the public release of the President's budget documents in 2004, whichever is earlier, submit to the Congress and to the Commission a report containing a detailed analysis of the list, statements, and recommendations of each department or agency.

SEC. 207. CONGRESSIONAL ACTION ON COMMISSION RECOMMENDATIONS.

It is the sense of the Congress that, following submission of the report of the Corporate Subsidy Reform Commission under section 206, the House of Representatives and the Senate should promptly consider legislation that would enact changes in Federal statutes necessary to implement the recommendations of the Commission.

SA 3064. Mrs. FEINSTEIN submitted an amendment intended to be proposed to amendment SA 3048 proposed by Mr. MCCAIN to the bill S. 150, to make permanent the moratorium on taxes on Internet access and multiple and discriminatory taxes on electronic commerce imposed by the Internet Tax Freedom Act; which was ordered to lie on the table; as follows:

At the end of the bill, add the following:

SEC. . 4–YEAR GRANDFATHER FOR EXISTING TAXES.

(a) IN GENERAL.—Notwithstanding any provision of the Internet Tax Freedom Act (47 U.S.C. 151 note), as amended by this Act, to the contrary section 1101(a) of that Act does not apply to—

(1) a tax on Internet access that was generally imposed and actually enforced prior to October 1, 1998, if, before that date, the tax was authorized by statute and either—

(A) a provider of Internet access services had a reasonable opportunity to know, by virtue of a rule or other public proclamation made by the appropriate administrative agency of the State or political subdivision thereof, that such agency has interpreted and applied such tax to Internet access services; or

(B) a State or political subdivision thereof generally collected such tax on charges for Internet access; or

(2) a tax on Internet access that was generally imposed and actually enforced as of November 1, 2003, if, as of that date, the tax was authorized by statute and—

(A) a provider of Internet access services had a reasonable opportunity to know, by virtue of a public rule or other public proclamation made by the appropriate administrative agency of the State or political subdivision thereof, that such agency has interpreted and applied such tax to Internet access services; and

(B) a State or political subdivision thereof generally collected such tax on charges for Internet access.

(b) TERMINATION.—This section shall not apply after November l, 2007.

SA 3065. Mrs. FEINSTEIN submitted an amendment intended to be proposed by her to the bill S. 150, to make permanent the moratorium on taxes on Internet access and multiple and discriminatory taxes on electronic commerce imposed by the Internet Tax Freedom Act; which was ordered to lie on the table; as follows:

At the end of the bill, add the following:

SEC. . GRANDFATHER FOR EXISTING TAXES.

(a) IN GENERAL.—Notwithstanding any provision of the Internet Tax Freedom Act (47 U.S.C. 151 note), as amended by this Act, to the contrary section 1101(a) of that Act does not apply to—

(1) a tax on Internet access that was generally imposed and actually enforced prior to October 1, 1998, if, before that date, the tax was authorized by statute and either—

(A) a provider of Internet access services had a reasonable opportunity to know, by virtue of a rule or other public proclamation made by the appropriate administrative agency of the State or political subdivision thereof, that such agency has interpreted and applied such tax to Internet access services; or

(B) a State or political subdivision thereof generally collected such tax on charges for Internet access; or

(2) a tax on Internet access that was generally imposed and actually enforced as of November 1, 2003, if, as of that date, the tax was authorized by statute and—

(A) a provider of Internet access services had a reasonable opportunity to know by virtue of a public rule or other public proclamation made by the appropriate administrative agency of the State or political subdivision thereof, that such agency has interpreted and applied such tax to Internet access services; and

(B) a State or political subdivision thereof generally collected such tax on charges for Internet access.

SA 3066. Mr. DORGAN submitted an amendment intended to be proposed by him to the bill S. 150, to make permanent the moratorium on taxes on Internet access and multiple and discriminatory taxes on electronic commerce imposed by the Internet Tax Freedom Act; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. . RESTORATION OF EXISTING DEFINITION OF INTERNET ACCESS.

(a) IN GENERAL.—

(1) Paragraph (3)(D) of section 1101(d) (as redesignated by section 2(b)(1) of this Act) is amended by striking the second sentence and inserting ''Such term does not include telecommunications services.''.

(2) Paragraph (5) of section 1105 (as redesignated by section 3(1) of this Act) is amended by striking the second sentence and inserting ''Such term does not include telecommunications services.''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on November 3, 2003.

SEC. . LIMITATION ON TAXATION OF TELECOMMUNICATIONS SERVICES RELATED TO ADVANCED TELECOMMUNICATIONS CAPABILITY.

Notwithstanding any provision of the Internet Tax Freedom Act (47 U.S.C. 151 note) to the contrary, no State or political subdivision thereof may impose a tax on the retail provision of advanced telecommunications capability (as defined in section 706(c)(1) of the Telecommunications Act of 1996 (47 U.S.C. 157 note)) to consumers during the period specified in section 1101(a) of that Act.

SEC. . VOIP AND BROADBAND TELEPHONY EXCLUSION.

Section 1101(a) of the Internet Tax Freedom Act (47 U.S.C. 151 note) shall not apply to the imposition or collection of any tax, fee, or charge on a service advertised or offered to consumers for the provision of realtime voice telecommunications regardless of whether such service employs circuit-switched technology, packet switched technology, or any successor technology or transmission protocol.

SEC. . GRANDFATHERING OF EXISTING TAXES.

(a) IN GENERAL.—Section 1104 of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended to read as follows:

"SEC. 1104. EXCEPTIONS FOR CERTAIN TAXES.

''(a) PRE-OCTOBER, 1998, TAXES.—Section 1101(a) does not apply to a tax on Internet access (as that term was defined in section 1104(5) of this Act as that section was in effect on the day before the date of enactment of the Internet Tax Ban Extension and Improvement Act) that was generally imposed and actually enforced prior to October 1, 1998, if, before that date, the tax was authorized by statute and either—

''(1) a provider of Internet access services had a reasonable opportunity to know by virtue of a rule or other public proclamation made by the appropriate administrative agency of the State or political subdivision thereof, that such agency has interpreted and applied such tax to Internet access services; or

''(2) a State or political subdivision thereof generally collected such tax on charges for Internet access.

''(b) TAXES ON TELECOMMUNICATIONS SERVICES.—Section 1101(a) does not apply to a tax on Internet access that was generally imposed and actually enforced as of November 1, 2003, if, as of that date, the tax was authorized by statute and either—

''(1) a provider of Internet access services had a reasonable opportunity to know by virtue of a rule or other public proclamation made by the appropriate administrative agency of the State or political subdivision thereof, that such agency has interpreted and applied such tax to Internet access services; or

''(2) a State or political subdivision thereof generally collected such tax on charges for Internet access service.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) takes effect on November 3, 2003.

SA 3067. Mr. DORGAN submitted an amendment intended to be proposed by him to the bill S. 150, to make permanent the moratorium on taxes on Internet access and multiple and discriminatory taxes on electronic commerce imposed by the Internet Tax Freedom Act; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. . RESTORATION OF EXISTING DEFINITION OF INTERNET ACCESS.

(a) IN GENERAL.—

(1) Paragraph (3)(D) of section 1101(d) (as redesignated by section 2(b)(1) of this Act) is amended by striking the second sentence and inserting ''Such term does not include telecommunications services.''.

(2) Paragraph (5) of section 1105 (as redesignated by section 3(l) of this Act) is amended by striking the second sentence and inserting ''Such term does not include telecommunications services.''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on November 3, 2003.

SEC. . LIMITATION ON TAXATION OF TELECOMMUNICATIONS SERVICES RELATED TO ADVANCED TELECOMMUNICATIONS CAPABILITY.

Notwithstanding any provision of the Internet Tax Freedom Act (47 U.S.C. 151 note) to the contrary, no State or political subdivision thereof may impose a tax on the retail provision of advanced telecommunications capability (as defined in section 706(c)(1) of the Telecommunications Act of 1996 (47 U.S.C. 157 note)) to consumers during the period specified in section 1101 (a) of that Act.

SEC. . VOIP AND BROADBAND TELEPHONY EXCLUSION.

Section 1101(a) of the Internet Tax Freedom Act (47 U.S.C. 151 note) shall not apply to the imposition or collection of any tax, fee, or charge on a service advertised or offered to consumers for the provision of realtime voice telecommunications regardless of whether such service employs circuit-switched technology, packet switched technology, or any successor technology or transmission protocol.

SA 3068. Mr. ALEXANDER submitted an amendment intended to be proposed to amendment SA 3048 proposed by Mr. MCCAIN to the bill S. 150, to make permanent the moratorium on taxes on Internet access and multiple and discriminatory taxes on electronic commerce imposed by the Internet Tax Freedom Act; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. . REIMBURSEMENT OF STATE AND LOCAL GOVERNMENTS FOR REVENUES FORGONE DUE TO INTERNET TAX FREEDOM ACT.

(a) APPLICATION.—Upon a proper accounting and showing, at such time, in such form, and containing such information as the Secretary of the Treasury shall require, each State, local government, or other taxing authority shall request reimbursement from the Treasury of the United States for tax revenues forgone by that State, local government, or other taxing authority because of section 1101 of the Internet Tax Freedom Act (47 U.S.C. 151). Any such request shall be made by written application, signed under penalty of perjury, by the chief executive officer of the State, local government, or other taxing authority requesting reimbursement.

(b) CERTAIN TAXES INELIGIBLE FOR REIMBURSEMENT.—Subsection (a) shall not apply to revenues lost from—

(1) any tax imposed only on Internet access; or

(2) any rate of tax imposed on Internet access that exceeds the rate at which that tax is imposed on other taxable activities to which the tax applies.

(c) NO INTEREST OR PENALTIES.—No payment may be made under this section for any amount attributable to interest or penalties.

(d) AUTHORITY TO PAY.—The Secretary of the Treasury shall pay, upon application, such amounts as the Secretary determines to be requested in accordance with subsection (a) and supported by such documentation as the Secretary may require, to any State, local government, or other taxing authority that requests reimbursement under subsection (a).

(e) FUNDING.—Notwithstanding any other provision of law to the contrary, amounts received in the general fund of the Treasury attributable to taxes imposed and collected under subchapter B of chapter 33 of the Internal Revenue Code of 1986 shall be available, without further appropriation, to make payments under this section.

SA 3069. Mr. ALEXANDER submitted an amendment intended to be proposed to amendment SA 3048 proposed by Mr. MCCAIN to the bill S. 150, to make permanent the moratorium on taxes on Internet access and multiple and discriminatory taxes on electronic commerce imposed by the Internet Tax Freedom Act; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. . $25 PER MONTH CAP.

Notwithstanding any provision of the Internet Tax Freedom Act (47 U.S.C. 151 note) to the contrary, the prohibition on the imposition of tax on Internet access provided by section 1101(a) of that Act shall apply only with respect to the first $25 of charges per month per subscriber for Internet access.

SA 3070. Mr. ALEXANDER submitted an amendment intended to be proposed to amendment SA 3048 proposed by Mr. MCCAIN to the bill S. 150, to make permanent the moratorium on taxes on Internet access and multiple and discriminatory taxes on electronic commerce imposed by the Internet Tax Freedom Act; which was ordered to lie on the table; as follows:

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Internet Tax Ban Extension and Improvement Act''.

SEC. 2. 2–YEAR EXTENSION OF MORATORIUM.

Section 1101(a) of the Internet Tax Freedom Act (47 U.S.C. 151 nt) is amended—

(1) by striking ''2003—'' and inserting ''2005:'';

(2) by striking paragraph (1) and inserting the following:

''(1) Taxes on Internet access.''; and

(3) by striking ''multiple'' in paragraph (2) and inserting ''Multiple''.

SEC. 3. EXCEPTIONS FOR CERTAIN TAXES.

The Internet Tax Freedom Act (47 U.S.C. 151 note) is amended—

(1) by redesignating section 1104 as section 1105; and

(2) by inserting after section 1103 the following:

"SEC. 1104. EXCEPTIONS FOR CERTAIN TAXES.

''(a) PRE-OCTOBER, 1998, TAXES.—Section 1101(a) does not apply to a tax on Internet access (as that term was defined in section 1104(5) of this Act as that section was in effect on the day before the date of enactment of the Internet Tax Ban Extension and Improvement Act) that was generally imposed and actually enforced prior to October 1, 1998, if, before that date, the tax was authorized by statute and either—

''(1) a provider of Internet access services had a reasonable opportunity to know by virtue of a rule or other public proclamation made by the appropriate administrative agency of the State or political subdivision thereof, that such agency has interpreted and applied such tax to Internet access services; or

''(2) a State or political subdivision thereof generally collected such tax on charges for Internet access.

''(b) TAXES ON TELECOMMUNICATIONS SERVICES.—Section 1101(a) does not apply to a tag on Internet access that was generally imposed and actually enforced as of November 1, 2003, if, as of that date, the tax was authorized by statute and either—

''(1) a provider of Internet access services had a reasonable opportunity to know by virtue of a rule or other public proclamation

made by the appropriate administrative agency of the State or political subdivision thereof, that such agency has interpreted and applied such tax to Internet access services; or

''(2) a State or political subdivision thereof generally collected such tax on charges for Internet access service.''.

SEC. 4. CHANGE IN DEFINITIONS. OF INTERNET ACCESS SERVICE.

(a) IN GENERAL. Paragraph (3)(D) of section 1101(e) of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended by striking the second sentence and inserting ''The term 'Internet access service' does not include telecommunications services, except to the extent such services are purchased, used, or sold by an Internet access provider to connect a purchaser of Internet access to the Internet access provider.''.

(b) CONFORMING AMENDMENTS.—

(1) Paragraph (2)(B)(1) of section 1105 of that Act, as redesignated by subsection (a), is amended by striking ''except with respect to a tax (on Inter net access) that was generally imposed and actually enforced prior to October 1, 1998,''.

(2) INTERNET ACCESS.—Paragraph (5) of section 1105 of that Act, as redesignated by subsection (a), is amended by striking the second sentence and inserting ''The term 'Internet access'' does not include telecommunications services, except to the extent such services are purchased, used, or sold by an Internet access provider to connect a purchaser of Internet access to the Internet access provider.''.

(3) Paragraph (10) of section 1105 of that Act, as redesignated by subsection (a), is amended to read as follows:

''(10) TAX ON INTERNET ACCESS.—

''(A) IN GENERAL.—The term 'tax on Internet access'' means a tax on Internet access, regardless of whether such tax is imposed on a provider of Internet access or a buyer of Internet access and regardless of the terminology used to describe the tax.

''(B) GENERAL EXCEPTION.—The term 'tax on Internet access'' does not include a tax levied upon or measured by net income, capital stock, net worth, or property value.''.

SEC. 5. ACCOUNTING RULE.

The Internet Tax Freedom Act (47 U.S.C. 151 note) is amended by adding at the end the following:

''SEC. 1106. ACCOUNTING RULE.

''(a) IN GENERAL.—If charges for Internet access are aggregated with and not separately stated from charges for telecommunications services or other charges that are subject to taxation, then the charges for Internet access may be subject to taxation unless the Internet access provider can reasonably identify the charges for Internet access from its books and records kept in the regular course of business.

''(b) DEFINITIONS.—In this section:

''(1) CHARGES FOR INTERNET ACCESS.—The term 'charges for Internet access' means all charges for Internet access as defined in section 1105(5).

''(2) CHARGES FOR TELECOMMUNICATIONS SERVICES.—The term 'charges for telecommunications services' means all charges for telecommunications services except to the extent such services are purchased, used, or sold by an Internet access provider to connect a purchaser of Internet access to the Internet access provider.''.

SEC. 6. EFFECT ON OTHER LAWS.

The Internet Tax Freedom Act (47 U.S.C. 151 note), amended by section 4, is amended by adding at the end the following:

''SEC. 1107. EFFECT ON OTHER LAWS.

''(a) UNIVERSAL SERVICE.—Nothing in this Act shall prevent the imposition or collection of any fees or charges used to preserve and advance Federal universal service or similar State programs—

''(1) authorized by section 254 of the Communications Act of 1934 (47 U.S.C. 254); or

''(2) in effect on February 8, 1996.

''(b) 911 AND E–911 SERVICES.—Nothing in this Act shall prevent the imposition or collection on a service used for access to 911 or E–911 services, of any fee or charge specifically designated or presented as dedicated by a State or political subdivision thereof for the support of 911 or E–911 services if no portion of the revenue derived from such fee or charge is obligated or expended for any purpose other than support of 911 or E–911 services.

''(c) NON-TAX REGULATORY PROCEEDINGS.—Nothing in this Act shall be construed to affect any Federal or State regulatory proceeding that is not related to taxation.''.

SEC. 7. EFFECTIVE DATE.

The amendments made by this Act take effect November 1, 2003.

SA 3071. Mr. ALEXANDER submitted an amendment intended to be proposed to amendment SA 3048 proposed by Mr. MCCAIN to the bill S. 150, to make permanent the moratorium on taxes on Internet access and multiple and discriminatory taxes on electronic commerce imposed by the Internet Tax Freedom Act; which was ordered to lie on the table; as follows:

Strike all after the first word and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Internet Tax Nondiscrimination Act''.

SEC. 2. TWO-YEAR EXTENSION OF INTERNET TAX MORATORIUM.

(a) IN GENERAL.—Subsection (a) of section 1101 of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended to read as follows:

''(a) MORATORIUM.—No State or political subdivision thereof may impose any of the following taxes during the period beginning November 1, 2003, and ending November 1, 2005:

''(1) Taxes on Internet access.

''(2) Multiple or discriminatory taxes on electronic commerce.''.

(b) CONFORMING AMENDMENTS.—

(1) Section 1101 of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended by striking subsection (d) and redesignating subsections (e) and (f) as subsections (d) and (e), respectively.

(2) Section 1104(10) of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended to read as follows:

''(10) TAX ON INTERNET ACCESS.—

''(A) IN GENERAL.—The term 'tax on Internet access' means a tax on Internet access, regardless of whether such tax is imposed on a provider of Internet access or a buyer of Internet access and regardless of the terminology used to describe the tax.

''(B) GENERAL EXCEPTION.—The term 'tax on Internet access' does not include a tax levied upon or measured by net income, capital stock, net worth, or property value.''.

(3) Section 1104(2)(B)(1) of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended by striking ''except with respect to a tax (on Internet access) that was generally imposed and actually enforced prior to October 1, 1998,''.

(c) INTERNET ACCESS SERVICE; INTERNET ACCESS.—

(1) INTERNET ACCESS SERVICE.—Paxagraph (3)(D) of section 1101(d) (as redesignated by subsection (b)(1) of this section) of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended by striking the second sentence and inserting ''The term 'Internet access service' does not include telecommunications services, except to the extent such services are purchased, used, or sold by an Internet access provider to connect a purchaser of Internet access to the Internet access provider.''.

(2) INTERNET ACCESS.—Section 1104(5) of that Act is amended by striking the second sentence and inserting ''The term 'Internet access' does not include telecommunications services, except to the extent such services are purchased, used, or sold by an Internet access provider to connect a purchaser of Internet access to the Internet access provider.''.

SEC. 3. GRANDFATHERING OF STATES THAT TAX INTERNET ACCESS.

The Internet Tax Freedom Act (47 U.S.C. 151 note) is amended—

(1) by redesignating section 1104 as section 1105; and

(2) by inserting after section 1103 the following:

''SEC. 1104. GRANDFATHERING OF STATES THAT TAX INTERNET ACCESS.

''(a) PRE-OCTOBER 1998 TAXES.—

''(1) IN GENERAL.—Section 1101(a) does not apply to a tax on Internet access (as that term was defined in section 1104(5) of this Act as that section was in effect on the day before the date of enactment of the Internet Tax Nondiscrimination Act) that was generally imposed and actually enforced prior to October 1, 1998, if, before that date, the tax was authorized by statute and either—

''(A) a provider of Internet access services had a reasonable opportunity to know, by virtue of a rule or other public proclamation made by the appropriate administrative agency of the State or political subdivision thereof, that such agency has interpreted and applied such tax to Internet access services; or

''(B) a State or political subdivision thereof generally collected such tax on charges for Internet access.

''(2) TERMINATION.—This subsection shall not apply after November 1, 2006.

''(b) PRE-NOVEMBER 2003 TAXES.—

''(1) IN GENERAL.—Section 1101(a) does not apply to a tax on Internet access that was generally imposed and actually enforced as of November 1, 2003, if, as of that date, the tax was authorized by statute and—

''(A) a provider of Internet access services had a reasonable opportunity to know by virtue of a public rule or other public proclamation made by the appropriate administrative agency of the State or political subdivision thereof, that such agency has interpreted and applied such tax to Internet access services; and

''(B) a State or political subdivision thereof generally collected such tax on charges for Internet access.

''(2) TERMINATION.—This subsection shall not apply after November 1, 2005.''.

SEC. 4. ACCOUNTING RULE.

The Internet Tax Freedom Act (47 U.S.C. 151 note) is amended by adding at the end the following:

''SEC. 1106. ACCOUNTING RULE.

''(a) IN GENERAL.—If charges for Internet access are aggregated with and not separately stated from charges for telecommunications services or other charges that are subject to taxation, then the charges for Internet access may be subject to taxation unless the Internet access provider can reasonably identify the charges for Internet access from its books and records kept in the regular course of business.

''(b) DEFINITIONS.—In this section:

''(1) CHARGES FOR INTERNET ACCESS.—The term 'charges for Internet access' means all charges for Internet access as defined in section 1105(5).

''(2) CHARGES FOR TELECOMMUNICATIONS SERVICES.—The term 'charges for telecommunications services' means all charges for telecommunications services, except, to the extent such services are purchased, used, or sold by an Internet access provider to connect a purchaser of Internet access to the Internet access provider.''.

SEC. 5. EFFECT ON OTHER LAWS.

The Internet Tax Freedom Act (47 U.S.C. 151 note), as amended by section 4, is amended by adding at the end the following:

''SEC. 1107. EFFECT ON OTHER LAWS.

''(a) UNIVERSAL SERVICE.—Nothing in this Act shall prevent the imposition or collection of any fees or charges used to preserve and advance Federal universal service or similar State programs—

''(1) authorized by section 254 of the Communications Act of 1934 (47 U.S.C. 254); or

''(2) in effect on February 8, 1996.

''(b) 911 AND E–911 SERVICES.—Nothing in this Act shall prevent the imposition or collection, on a service used for access to 911 or E–911 services, of any fee or charge specifically designated or presented as dedicated by a State or political subdivision thereof for the support of 911 or E–911 services if no portion of the revenue derived from such fee or charge is obligated or expended for any purpose other than support of 911 or E–911 services.

''(c) NON-TAX REGULATORY PROCEEDINGS.—Nothing in this Act shall be construed to affect any Federal or State regulatory proceeding that is not related to taxation.''.

SEC. 6. EXCEPTION FOR VOICE AND OTHER SERVICES OVER THE INTERNET.

The Internet Tax Freedom Act (47 U.S.C. 151 note), as amended by section 5, is amended by adding at the end the following:

''SEC. 1108. TAXATION OF TELEPHONE SERVICE.

Section 1101(a) of the Internet Tax Freedom Act (47 U.S.C. 151 note) shall not apply to the imposition or collection of any tax, fee, or charge on a service advertised or offered to consumers for the provision of realtime voice telecommunications regardless of whether such service employs circuit-switched technology, packet switched technology, or any successor technology or transmission protocol.

SEC. 7. EFFECTIVE DATE.

The amendments made by this Act take effect on November 1, 2003.

SA 3072. Mr. ALEXANDER submitted an amendment intended to be proposed to amendment SA 3048 proposed by Mr. MCCAIN to the bill S. 150, to make permanent the moratorium on taxes on Internet access and multiple and discriminatory taxes on electronic commerce imposed by the Internet Tax Freedom Act; which was ordered to lie on the table; as follows:

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Internet Tax Nondiscrimination Act''.

SEC. 2. TWO-YEAR, EXTENSION OF INTERNET TAX MORATORIUM.

(a) IN GENERAL.—Subsection (a) of section 1101 of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended to read as follows:

''(a) MORATORIUM.—No State or political subdivision thereof may impose any of the following taxes during the period beginning November 1, 2003, and ending November 1, 2005:

''(1) Taxes on Internet access.

''(2) Multiple or discriminatory taxes on electronic commerce.''.

(b) CONFORMING AMENDMENTS.—

(1) Section 1101 of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended by striking subsection (d) and redesignating subsections (e) and (f) as subsections (d) and (e), respectively.

(2) Section 1104(10) of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended to read as follows:

''(10) TAX ON INTERNET ACCESS.—

''(A) IN GENERAL.—The term 'tax on Internet access' means a tax on Internet access, regardless of whether such tax is imposed on a provider of Internet access or a buyer of Internet access and regardless of the terminology used to describe the tax.

''(B) GENERAL EXCEPTION.—The term 'tax on Internet access' does not include a tax levied upon or measured by net income, capital stock, net worth, or property value.''.

(3) Section 1104(2)(B)(i) of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended by striking ''except with respect to a tax (on Internet access) that was generally imposed and actually enforced prior to October 1, 1998,''.

(c) INTERNET ACCESS SERVICE; INTERNET ACCESS.—

(1) INTERNET ACCESS SERVICE.—Paragraph (3)(D) of section 1101(d) (as redesignated by subsection (b)(1) of this section) of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended by striking the second sentence and inserting ''The term 'Internet access service' does not include telecommunications services, except to the extent such services are purchased, used, or sold by an Internet access provider to connect a purchaser of Internet access to the Internet access provider.''.

(2) INTERNET ACCESS.—Section 1104(5) of that Act is amended by striking the second sentence and inserting ''The term 'Internet access' does not include telecommunications services, except to the extent such services are purchased, used, or sold by an Internet access provider to connect a purchaser of Internet access to the Internet access provider.''.

SEC. 3. GRANDFATHERING OF STATES THAT TAX INTERNET ACCESS.

The Internet Tax Freedom Act (47 U.S.C. 151 note) is amended—

(1) by redesignating section 1104 as section 1105; and

(2) by inserting after section 1103 the following:

''SEC. 1104. GRANDFATHERING OF STATES THAT TAX INTERNET ACCESS.

''(a) PRE-OCTOBER 1998 TAXES.—

''(1) IN GENERAL.—Section 1101(a) does not apply to a tax on Internet access (as that term was defined in section 1104(5) of this Act as that section was in effect on the day before the date of enactment of the Internet Tax Nondiscrimination Act) that was generally imposed and actually enforced prior to October 1, 1998, if, before that date, the tax was authorized by statute and either—

''(A) a provider of Internet access services had a reasonable opportunity to know, by virtue of a rule or other public proclamation made by the appropriate administrative agency of the State or political subdivision thereof, that such agency has interpreted and applied such tax to Internet access services; or

''(B) a State or political subdivision thereof generally collected such tax on charges for Internet access.

''(2) TERMINATION.—This subsection shall not apply after November 1, 2006.

''(b) PRE-NOVEMBER 2003 TAXES.—

''(1) IN GENERAL.—Section 1101(a) does not apply to a tax on Internet access that was generally imposed and actually enforced as of November 1, 2003, if, as of that date, the tax was authorized by statute and—

''(A) a provider of Internet access services had a reasonable opportunity to know by virtue of a public rule or other public proclamation made by the appropriate administrative agency of the State or political subdivision thereof, that such agency has interpreted and applied such tax to Internet access services; and

''(B) a State or political subdivision thereof generally collected such tax on charges for Internet access.

''(2) TERMINATION.—This subsection shall not apply after November 1, 2005.''.

SEC. 4. ACCOUNTING RULE.

The Internet Tax Freedom Act (47 U.S.C. 151 note) is amended by adding at the end the following:

''SEC. 1106. ACCOUNTING RULE.

''(a) IN GENERAL.—If charges for Internet access are aggregated with and not separately stated from charges for telecommunications services or other charges that are subject to taxation, then the charges for Internet access may be subject to taxation unless the Internet access provider can reasonably identify the charges for Internet access from its books and records kept in the regular course of business.

''(b) DEFINITIONS.—In this section:

''(1) CHARGES FOR INTERNET ACCESS.—The term 'charges for Internet access'' means all charges for Internet access as defined in section 1105(5).

''(2) CHARGES FOR TELECOMMUNICATIONS SERVICES.—The term 'charges for telecommunications services' means all charges for telecommunications services, except to the extent such services are purchased, used, or sold by an Internet access provider to connect a purchaser of Internet access to the Internet access provider.''.

SEC. 5. EFFECT ON OTHER LAWS.

The Internet Tax Freedom Act (47 U.S.C. 151 note), as amended by section 4, is amended by adding at the end the following:

''SEC. 1107. EFFECT ON OTHER LAWS.

''(a) UNIVERSAL SERVICE.—Nothing in this Act shall prevent the imposition or collection of any fees or charges used to preserve and advance Federal universal service or similar State programs—

''(1) authorized by section 254 of the Communications Act of 1934 (47 U.S.C. 254); or

''(2) in effect on February 8, 1996.

''(b) 911 AND E–911 SERVICES.—Nothing in this Act shall prevent the imposition or collection, on a service used for access to 911 or E–911 services, of any fee or charge specifically designated or presented as dedicated by a State or political subdivision thereof for the support of 911 or E–911 services if no portion of the revenue derived from such fee or charge is obligated or expended for any purpose other than support of 911 or E–911 services.

''(c) NON-TAX REGULATORY PROCEEDINGS.—Nothing in this Act shall be construed to affect any Federal or State regulatory proceeding that is not related to taxation.''.

SEC. 6. EXCEPTION FOR VOICE AND OTHER SERVICES OVER THE INTERNET.

The Internet Tax Freedom Act (47 U.S.C. 151 note), as amended by section 5, is amended by adding at the end the following:

''SEC. 1108. TAXATION OF TELEPHONE SERVICE.

Section 1101(a) of the Internet Tax Freedom Act (47 U.S.C. 151 note) shall not apply to the imposition or collection of any tax, fee, or charge on a service advertised or offered to consumers for the provision of realtime voice telecommunications regardless of whether such service employs circuit-switched technology, packet switched technology, or any successor technology or transmission protocol.

SEC. 7. EFFECTIVE DATE.

The amendments made by this Act take effect on November 1, 2003.

SA 3073. Mr. ALEXANDER submitted an amendment intended to be proposed to amendment SA 3048 proposed by Mr. MCCAIN to the bill S. 150, to make permanent the moratorium on taxes on Internet access and multiple and discriminatory taxes on electronic commerce imposed by the Internet Tax Freedom Act; which was ordered to lie on the table; as follows:

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Internet Tax Ban Extension and Improvement Act''.

SEC. 2. 2–YEAR EXTENSION OF MORATORIUM.

Section 1101 (a) of the Internet Tax Freedom Act (47 U.S.C. 151 nt) is amended—

(1) by striking ''2003—'' and inserting ''2005:'';

(2) by striking paragraph (1) and inserting the following:

''(1) Taxes on Internet access.''; and

(3) by striking ''multiple'' in paragraph (2) and inserting ''Multiple''.

SEC. 3. EXCEPTIONS FOR CERTAIN TAXES.

The Internet Tax Freedom Act (47 U.S.C. 151 note) is amended—

(1) by redesignating section 1104 as section 1105; and

(2) by inserting after section 1103 the following:

''SEC. 1104. EXCEPTIONS FOR CERTAIN TAXES.

''(a) PRE-OCTOBER, 1998, TAXES.—Section 1101(a) does not apply to a tax on Internet access (as that term was defined in section 1104(5) of this Act as that section was in effect on the day before the date of enactment of the Internet Tax Ban Extension and Improvement Act) that generally imposed and actually enforced prior to October 1, 1998, if, before that date, the tax was authorized by statute and either—

''(1) a provider of Internet access services had a reasonable opportunity to know by virtue of a rule or other public proclamation made by the appropriate administrative agency of the State or political subdivision thereof, that such agency has interpreted and applied such tax to Internet, access services; or

''(2) a State or political subdivision thereof generally collected such tax on charges for Internet access.

''(b) TAXES ON TELECOMMUNICATIONS SERVICES.—Section 1101(a) does not apply to a tax on Internet access that was generally imposed and actually enforced as of November 1, 2003, if, as of that date, the tax was authorized by statute and either—

''(1) a provider of Internet access services had a reasonable opportunity to know by virtue of a rule or other public proclamation made by the appropriate administrative agency of the State or political subdivision thereof, that such agency has interpreted and applied such tax to Internet access services; or

''(2) a State or political subdivision thereof generally collected such tax on charges for Internet access service.''.

SEC. 4. CHANGE IN DEFINITIONS OF INTERNET ACCESS SERVICE.

(a) IN GENERAL.—Paragraph (3)(D) of section 1101(e) of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended by striking the second sentence and inserting ''The term 'Internet access service' does not include telecommunications services, except to the extent such services are purchased, used, or sold by an Internet access provider to connect a purchaser of Internet access to the Internet access provider.''.

(b) CONFORMING AMENDMENTS.—

(1) Paragraph (2)(B)(i) of section 1105 of that Act, as redesignated by subsection (a), is amended by striking ''except with respect, to a tax (on Internet access) that was generally imposed and actually enforced prior to October 1, 1998,''.

(2) INTERNET ACCESS.—Paragraph (5) of section 1105 of that Act, as redesignated by subsection (a), is amended by striking the second sentence and inserting ''The term 'Internet access' does not include telecommunications services, except to the extent such services are purchased, used, or sold by an Internet access provider to connect a purchaser of Internet access to the Internet access provider.''.

(3) Paragraph (10) of section 1105 of that Act, as redesignated by subsection (a), is amended to read as follows:

''(10) TAX ON INTERNET ACCESS.

''(A) IN GENERAL.—The term 'tax on Internet access' means a tax on Internet access, regardless of whether such tax is imposed on a provider of Internet access or a buyer of Internet access and regardless of the terminology used to describe the tax.

''(B) GENERAL EXCEPTION.—The term 'tax on Internet access' does not include a tax levied upon or measured by net income, capital stock, net worth, or property value.''.

SEC. 5. ACCOUNTING RULE.

The Internet Tax Freedom Act (47 U.S.C. 151 note) is amended by adding at the end the following:

''SEC. 1106. ACCOUNTING RULE.

''(a) IN GENERAL.—If charges for Internet access are aggregated with and not separately stated from charges for telecommunications services or other charges that are subject to taxation, then the charges for Internet access may be subject to taxation unless the Internet access provider can reasonably identify the charges for Internet access from its books and records kept in the regular course of business.

''(b) DEFINITIONS.—In this section:

''(1) CHARGES FOR INTERNET ACCESS.—The term 'charges for Internet access' means all charges for Internet access as defined in section 1105(5).

''(2) CHARGES FOR TELECOMMUNICATIONS SERVICE.—The term 'charges for telecommunications services' means all charges for telecommunications services except to the extent such services are purchased, used, or sold by an Internet access provider to connect a purchaser of Internet access to the Internet access provider.''.

SEC. 6. EFFECT ON OTHER LAWS.

The Internet Tax Freedom Act (47 U.S.C. 151 note), as amended by section 4, is amended by adding at the end the following:

''SEC. 1107. EFFECT ON OTHER LAWS.

''(a) UNIVERSAL SERVICE.—Nothing in this Act shall prevent the imposition or collection of any fees or charges used to preserve and advance Federal universal service or similar State programs—

''(1) authorized by section 254 of the Communications Act of 1934 (47 U.S.C. 254); or

''(2) in effect on February 8, 1996.

''(b) 911 AND E–911 SERVICES.—Nothing in this Act shall prevent the imposition or collection, on a service used for access to 911 or E–911 services, of any fee or charge specifically designated or presented as dedicated by a State or political subdivision thereof for the support of 911 or E–911 services if no portion of the revenue derived from such fee or charge is obligated or expended for any purpose other than support of 911 or E–911 services.

''(c) NON-TAX REGULATORY PROCEEDINGS.—Nothing in this Act shall be construed to affect any Federal or State regulatory proceeding that is not related to taxation.''.

SEC. 7. EFFECTIVE DATE.

The amendments made by this Act take effect November 1, 2003.

SEC. VOIP AND BROADBAND TELEPHONY EXCLUSION.

Section 1101(a) of the Internet Tax Freedom Act (47 U.S.C. 151 note) shall not apply to the imposition or collection of any tax, fee, or charge on a service advertised or offered to consumers for the provision of realtime voice telecommunications regardless of whether such service employs circuit-switched technology, packet switched technology, or any successor technology or transmission protocol.

SA 3074. Mr. GRAHAM of Florida submitted an amendment intended to be proposed to amendment SA 3048 proposed by Mr. MCCAIN to the bill S. 150, to make permanent the moratorium on taxes on Internet access and multiple and discriminatory taxes on electronic commerce imposed by the Internet Tax Freedom Act; which was ordered to lie on the table; as follows:

At the appropriate place, add the following:

Whereas the United States, its people and its armed forces, are committed to winning the war on terrorism;

Whereas winning this global war will require a sustained sacrifice from our troops, an expensive commitment of U.S. resources, and effective and credible intelligence community, and considerable cooperation of the international community;

Whereas winning this global war will also require that our leaders correctly prioritize the national security threats facing this nation, develop a plan for defeating those threats, and urgently implement the measures required to defeat those threats;

Whereas senior Bush Administration officials have acknowledged that terrorism was not their top priority prior to September 11, 2001, their strategy to counter this threat took eight months to develop, and this strategy was not implemented until after September 11, 2001.

Whereas Richard Clarke, President Bush's former senior counter-terrorism advisor, has testified under oath that the Bush Administration did not consider terrorism the top priority and reports indicate that terrorism was discussed at only two of the 100 meetings of the Bush Administration's National Security Council prior to September 11, 2001;

Whereas Richard Clarke also testified that he provided Bush Administration officials a memo on January 25, 2001 outlining a counter-terrorism strategy and in September, 2001 the Administration approved a counter-terrorism strategy that, according to Clarke, was virtually identical to the strategy outlined in his January memo;

Whereas the terrorist attacks of September 11, 2001, were the deadliest ever directed against the United States and there have been more terrorist attacks by al-Qaeda and related groups in the 30 months since September 11, 2001 than there were in the 30 months before September 11;

Whereas the Administration's policies have generated growing hostility and resentment of the United States throughout the Middle East and the world and majorities in key Muslim countries have a more favorable opinion of Osama Bin Laden than they do the United States;

Whereas the assessment by David Kay, the Administration's chief weapons inspector, that there are no weapons of mass destruction in Iraq has eroded the confidence of the American people and the world in the assessment of our intelligence community and our policymakers;

Whereas the bipartisan, bicameral joint congressional inquiry into the intelligence

community's activities before and after September 11, 2001, discovered many strengths and weaknesses within the community pertaining to counter-terrorism;

Whereas many of the joint inquiry's testimony and documents remain classified and inaccessible, including June 11, 2002 testimony by Richard Clarke and a twenty-eight page section that addresses the involvement of a foreign government in supporting several of the hijackers who carried out the September 11 attacks;

Whereas Richard Clarke and the Majority and Minority Leaders of the United States Senate have requested that Clarke's June 11, 2002, testimony before the Joint Inquiry be declassified; and

Whereas an Administration decision to selectively declassify parts of documents or of individual documents will not present to our troops and the American people the complete information they need and deserve;

Now, therefore, be it

Resolved, that it is the sense of the Senate that—

(1) the June 11, 2002 testimony of Richard Clarke before the joint inquiry should immediately be declassified and publicly released in its entirety;

(2) the twenty-eight pages of the joint inquiry report discussing foreign government involvement in the September 11 terrorist plot should be immediately declassified and publicly released in their entirety, as well as any other joint inquiry documents and testimony whose classification can no longer be justified;

(3) the January 25, 2001 memorandum prepared by Richard Clarke outlining a plan of action against the al-Qaeda terrorist organization and the Bush Administration's September 4, 2001 National Security Directive addressing terrorism should be immediately declassified and publicly released in their entirety; and

(4) the Bush Administration should immediately prepare and publicly release a list of the dates and topics of all National Security Council meetings that took place before September 11, 2001.

SA 3075. Mr. HOLLINGS submitted an amendment intended to be proposed by him to the bill S. 150, to make permanent the moratorium on taxes on Internet access and multiple and discriminatory taxes on electronic commerce imposed by the Internet Tax Freedom Act; which was ordered to lie on the table; as follows:

At the appropriate place add the following:

TITLE —BROADBAND DEPLOYMENT

SEC.—01. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This title may be cited as the ''Broadband Telecommunications Deployment Act of 2004.''.

(b) TABLE OF CONTENTS.—

The table of contents for this title is as follows:

SEC. —02. FINDINGS.

The Congress finds the following:

(1) Broadband service could revolutionize the way Americans live. Therefore, it is important that Congress examine the issues surrounding the availability and subscription to broadband service.

(2) The Federal Communications Commission recently concluded that advanced telecommunications capability is being deployed in a reasonable and timely manner and that although investment trends in general have slowed recently, investment in infrastructure for advanced telecommunications remains strong.

(3) Approximately 89 percent of Americans have access to broadband service provided by either the cable or telephone companies.

(4) Some communities, such as those in rural and urban areas do not have access to broadband service.

(5) According to numerous reports approximately 21 percent of consumers subscribe to broadband service, leading many to believe that the low adoption of broadband by consumers is not due to low availability, but instead to a lack of demand by consumers.

(6) Cable and telephone companies generally provide broadband service with speeds of up to 1.5 megabits per second to residential consumers. How ever, many in the technology industry state that higher speeds are needed to provide telemedicine, video conferencing, movie and music over the internet and other internet applications.

(7) The Federal Communications Commission's policies for promoting broadband deployment must not undermine competition or universal service.

(8) Congress must explore ways to ensure that broadband service is available to all Americans and that no one is left behind. This includes exploring ways to increase deployment in unserved and underserved areas, address consumer demand factors, facilitate innovation that results in higher service speeds, and promote consumer confidence when using the Internet.

Subtitle A—Trust Fund for Broadband Loans and Grants

SEC. —101. BROADBAND DEPLOYMENT TRUST FUND.

(a) IN GENERAL.—The National Telecommunications and Information Administration Organization Act is amended—

(1) by redesignating part C as part D; and

(2) by inserting after part B (47 U.S.C. 921 et seq.) the following new part:

''PART C—ASSISTANCE TO PROMOTE BROADBAND DEPLOYMENT AND DEMAND

''SEC. 131. BROADBAND DEPLOYMENT AND DEMAND TRUST FUND.

''(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the Broadband Deployment and Demand Trust Fund.

''(b) EXPENDITURES FROM TRUST FUND.—Amounts in the Trust Fund shall be available for making expenditures to carry out the provisions of the Broadband Telecommunications Deployment Act of 2004, and for such expenditures as may be necessary to administer the programs established therein.

''(c) TREATMENT AS TRUST FUND.—Subchapter B of chapter 98 of the Internal Revenue Code of 1986 shall apply to the administration of the Trust Fund.

''SEC. 132. REGULATIONS.

''The Secretary of Commerce may prescribe such regulations as may be necessary to carry out this part.

''SEC. 133. AUTHORIZATION OF APPROPRIATIONS.

''(a) AUTHORIZATION.—For each of fiscal years 2005 through 2009 there are authorized to be appropriated to the Broadband Deployment and Demand Trust Fund an amount equivalent to 50 percent of the taxes received in the Treasury after September 30, 2004, and before October 1, 2009, under section 4251 (relating to tax on communications) of the Internal Revenue Code of 1986.

''(b) SUNSET OF APPROPRIATIONS STREAM.—The authorization of appropriations by subsection (a) to the Trust Fund shall terminate at the end of fiscal year 2009, but any balances remaining in the Trust Fund at the close of that fiscal year, and any repayments of loans made from the Trust Fund received after fiscal year 2009, shall remain available for obligation and expenditure from the Trust Fund.''.

Subtitle B—Access to Broadband Telecommunications Services in Rural Areas

SEC. —201. LOAN PROGRAM.

(a) PURPOSE.—The purpose of this section is to provide loans to fund the costs of the construction, improvement, and acquisition of facilities and equipment for broadband service in eligible rural and underserved communities.

(b) DEFINITIONS.—In this section:

(1) BROADBAND SERVICE.—The term ''broadband service'' means any technology identified by the National Telecommunications and Information Administration, in consultation with the Rural Utilities Service of the Department of Agriculture, as having the capacity to transmit data to enable a subscriber to the service to originate and receive high-quality voice, high-speed data, graphics, or video.

(2) ELIGIBLE RURAL COMMUNITY.—The term ''eligible rural community'' means any incorporated or unincorporated place that—

(A) has not more than 50,000 inhabitants, based on the most recent available population statistics of the Bureau of the Census; and

(B) is not located in an area designated as a standard metropolitan statistical area.

(3) ELIGIBLE UNDERSERVED COMMUNITY.—The term ''eligible underserved community'' means any census tract located in—

(A) an empowerment zone or enterprise community designated under section 1391 of the Internal Revenue Code of 1986;

(B) the District of Columbia Enterprise Zone established under section 1400 of such Code;

(C) a renewal community designated under section 1400E of such Code; or

(D) a low-income community designated under section 45D of such Code.

(c) LOANS.—

(1) IN GENERAL.—The Rural Utilities Service, in consultation with National Telecommunications and Information Administration, shall make loans to eligible entities to provide funds for the construction, improvement, or acquisition of facilities and equipment for the provision of broadband service in eligible rural and underserved communities.

(2) LOANS TO LECS.—The Rural Utilities Service, in consultation with National Telecommunications and Information Administration, shall make loans to local exchange carriers (as defined in section 3(26) of the Communications Act of 1934 (47 U.S.C. 151(26)) that are eligible entities to provide funds to upgrade or install remote terminals located more than 25,000 feet from the closest central office of the local exchange carrier, and for the installation of fiber optic cable or broadband wireless facilities between such remote terminals and the closest central office of a local exchange carrier, in order to provide broadband service to eligible rural and underserved communities.

(3) EFFECT OF COMMUNICATIONS POLICY.—Notwithstanding any other provision of this section, the Rural Utilities Service may not make a loan under this subsection if the National Telecommunications and Information Administration determines that the loan would have an adverse effect on communications policy, including competition in the communications marketplace.

(d) ELIGIBLE ENTITIES.—To be eligible to obtain a loan under this section, an entity shall—

(1) be able to furnish, improve, or extend a broadband service to an eligible rural or underserved community; and

(2) submit to the Rural Utilities Service a proposal for a project that meets the requirements of this section.

(e) BROADBAND SERVICE.—The National Telecommunications and Information Administration shall, from time to time as advances in technology warrant, re view and recommend modifications to the rate-of-data transmission criteria for purposes of the identification of broadband service technologies under subsection (b) (1).

(f) TECHNOLOGICAL NEUTRALITY.—For purposes of determining whether to make a loan for a project under this section, the Rural Utilities Service shall apply technologically neutral criteria and encourage the use of a variety of landline and wireless technologies among applications.

(g) TERMS AND CONDITIONS FOR LOANS.—A loan under subsection (d) shall—

(1) be made available in accordance with the requirements of the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.);

(2) bear interest at an annual rate, as determined by the National Telecommunications and Information Administration, in consultation with the Rural Utilities Service, of—

(A) 4 percent per annum; or

(B) the current applicable market rate; and

(3) have a term not to exceed the useful life of the assets constructed, improved, or acquired with the proceeds of the loan or extension of credit.

(h) USE OF LOAN PROCEEDS TO REFINANCE LOANS FOR DEPLOYMENT OF BROADBAND SERVICE.—Notwithstanding any other provision of this title, the proceeds of any loan made by the Rural Utilities Service under this title may be used by the recipient of the loan for the purpose of refinancing an outstanding obligation of the recipient on another telecommunications loan made under this title if the use of the proceeds for that purpose will further the construction, improvement, or acquisition of facilities and equipment for the provision of broadband service in eligible rural and underserved communities.

(i) INCUMBENT LOCAL EXCHANGE CARRIER MUST MAKE UPGRADED FACILITIES AVAILABLE.—In addition to any other requirement to provide unbundled network elements, any incumbent local exchange carrier (as defined in section 251(h) of the Communications Act of 1934 (47 U.S.C. 251(h))) that uses funds made available under subsection (c)(2) shall make remote terminals and fiber optic cable so funded, and any loop that includes such components, available to a requesting telecommunications carrier on an unbundled basis in accordance with the requirements of sections 251 and 252 of the Communications Act of 1934 (47 U.S.C. 251, 252).

(j) FUNDING.—

(1) IN GENERAL.—The Secretary of Commerce shall make available from amounts in the Broadband Deployment and Demand Trust Fund not more than $125,000,000 for each of fiscal years 2005 through 2009 for loans under this section, of which $25,000,000 shall be for loans under subsection (c) (2).

(2) VALUE OF LOANS OUTSTANDING.—The aggregate value of all loans made under this section shall be at least $2,500,000,000 for each such fiscal year, including not more than $500,000,000 for outstanding loans under subsection (c)(2).

(3) ALLOCATION OF FUNDS.—

(A) IN GENERAL.—From amounts made available for each fiscal year under paragraph (1), the Rural Utilities Service shall establish a national reserve for loans to eligible entities in States under this section.

(B) UNOBLIGATED AMOUNTS.—Any amounts in the reserve established for a State for a fiscal year under subparagraph (A) that are not obligated by April 1 of the fiscal year shall be available to the Rural Utilities Service to make loans under this section to eligible entities in any State, as determined by the Rural Utilities Service.

SEC. ___202. GRANTS FOR PLANNING AND FEASIBILITY STUDIES ON BROADBAND DEPLOYMENT.

(a) IN GENERAL.—The National Telecommunications and Information Administration shall make grants to non-profit organizations for planning and feasibility studies on the deployment of broadband services in different geographic areas, including towns, cities, counties, and States.

(b) ELIGIBILITY CRITERIA.—

(1) IN GENERAL.—The National Telecommunications and Information Administration may establish additional criteria for eligibility for grants under this section, including criteria for the scope of the planning and feasibility studies to be carried out with grants under this section.

(2) CONTRIBUTION BY GRANTEE.—An organization may not be awarded a grant under this section unless the entity agrees to contribute (out of funds other than the grant amount) to the planning and feasibility study to be funded by the grant an amount equal to the amount of the grant.

(c) APPLICATION.—An organization seeking a grant under this section shall submit an application for the grant to National Telecommunications and Information Administration that is in such form, and that contains such information, as the National Telecommunications and Information Administration shall require.

(d) LIMITATION ON USE OF GRANT AMOUNTS.—Grant amounts under this section may not be used for the acquisition of office equipment, the construction of buildings or other facilities, the acquisition or improvement of existing buildings or facilities, or the leasing of office space.

(e) RESERVATION OF FUNDS FOR GRANTS.—

(1) IN GENERAL.—The Secretary of Commerce shall make available from amounts in the Broadband Deployment and Demand Trust Fund not more than $60,000,000 for each of fiscal years 2005 through 2009 as a reserve for grants under this section.

(2) RELEASE.—Funds reserved under paragraph (1) for a fiscal year shall be reserved only until April 1 of the fiscal year.

(f) SUPPLEMENT NOT SUPPLANT.—

(1) IN GENERAL.—Eligibility for a grant under this section shall not affect eligibility for a grant or loan under another section of this title.

(2) CONSIDERATIONS.—The National Telecommunications and Information Administration may not take into account the award of a grant under this section, or the award of a grant or loan under another section of this title, in awarding a grant or loan under this section or another section of this title, as the case may be.

(g) TERMINATION OF AUTHORITY.—

(1) IN GENERAL.—No grant may be made under this section after September 30, 2009.

(2) EFFECT ON VALIDITY OF GRANT.—Notwithstanding paragraph (1), any grant made under this section before the date specified in paragraph (1) shall be valid.

SEC. ___203. PILOT PROGRAM FOR WIRELESS OR SATELLITE BROADBAND TRIALS IN RURAL AREAS.

(a) IN GENERAL.—The National Telecommunications and Information Administration shall support up to 7 pilot programs in each of fiscal years 2005 through 2009 for conducting innovative applications of wireless, satellite, and other non-wireline technologies capable of delivering broadband service (as defined in section ___201(b)(1)) to an eligible rural community (as defined in section ___201(b)(2)) or an eligible underserved community (as defined in section ___201(b)(3)). The National Telecommunications and Information Administration shall support 1 pilot program per year for fiber-to-the-home technology under this subsection except for any year for which no application is received for such a program.

(b) APPLICATION PROCEDURES AND CONDITIONS.—The National Telecommunications and Information Administration shall establish such application procedures and conditions for grants under this section as it deems appropriate.

(c) FUNDING.—The Secretary of Commerce shall make available from the Broadband Deployment and Demand Trust Fund up to $2,000,000 per year for each pilot program under subsection (a).

SEC. ___204. RURAL AND UNDERSERVED COMMUNITY BROADBAND TECHNOLOGY INITIATIVE.

The Director of the National Institute of Standards and Technology, through the Advanced Technology Program, may hold a portion of the Institute's competitions in thematic areas, selected after consultation with industry, academics, and other Federal Agencies, designed to develop and improve technical capabilities with respect to the speed, quality, and availability of technologies that will extend the reach of broadband Internet services to individuals living in eligible rural communities (as defined in section —201(b)(2)) and eligible underserved communities (as defined in section ___201(b)(3)).

SEC. ___205. REPORT ON UNIVERSAL SERVICE AND COMPETITION.

No later than May 1, 2005, a Federal-State Joint Board established pursuant to section 410(c) of the Communications Act of 1934 (47 U.S.C. 410(c)) and the National Exchange Carriers Association shall report to the Federal Communications Commission and to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce on—

(1) the effect of reclassifying telecommunications services provided by incumbent local exchange carriers on—

(A) the level of support available for universal service;

(B) the universal service contribution obligations of telecommunications carriers and other providers of telecommunications; and

(C) the ability of the Commission and State commissions to fulfill the requirements of subsections (b), (h), and (i) of section 254 of the Communications Act of 1934 (47 U.S.C. 254);

(2) the effect on universal service of—

(A) reducing the availability of network elements provided by incumbent local exchange carriers;

(B) modifying the rates, terms, and conditions for the purchasing or leasing of such elements; and

(C) reducing the oversight of the rates, charges, terms, and conditions for the purchasing or leasing of telecommunications services provided by such carriers; and

(3) the effect of such changes on competition in the provision of telecommunications services.

SEC. —206. BLOCK GRANTS TO STATES FOR BROADBAND DEPLOYMENT.

(a) IN GENERAL.—The Secretary of Commerce shall establish a grant program to provide funding to State and local governments to encourage and support the deployment of broadband technologies and services, particularly in eligible rural communities (as defined in section —201(b)(2)) and eligible underserved communities (as defined in section —201(b)(3)).

(b) PURPOSES.—State and local governments receiving grants under this section shall use the funds—

(1) to spur investment in broadband facilities;

(2) to stimulate deployment of broadband technology and services;

(3) to encourage the adoption of broadband in eligible rural communities (as defined in section —201(b)(2)) and eligible underserved communities (as defined in section —201(b)(3)); and

(4) to provide e-government services through improved access to government services through broadband Internet connections.

(c) APPLICATIONS.—To be eligible to receive a grant under this section, a State or local government shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require. The Secretary shall establish a procedure for accepting, processing, and evaluating applications and publish an announcement of the procedure, including a statement regarding the availability of funds, in the Federal Register.

(d) FUNDING.—The Secretary shall make available from amounts in the Broadband Deployment and Demand Trust Fund $1,000,000,000 for each of fiscal years 2005 through 2009 for grants under this section, of which $250,000,000 shall be made available for each such fiscal year for e-government enhancement activities described in subsection (b)(4) in all communities.

SEC. —207. GAO TO STUDY BROADBAND DEPLOYMENT IN OTHER COUNTRIES.

The Comptroller General shall survey countries with broadband deployment and subscriber rates that are similar to, or greater than, the broadband deployment and subscriber rates in the United States in order to determine the actions governments, carriers, and other parties have taken to facilitate the deployment of broadband (including the factors that encourage consumers to subscribe to broadband service) and report the results of his survey to the Congress by May 1, 2005.

SEC. —208. ASSESSMENT OF HOMELAND SECURITY AND PUBLIC SAFETY NEEDS IN RURAL AND UNDERSERVED AREAS.

(a) IN GENERAL.—No later than 6 months after the date of enactment of this title, the National Telecommunications and Information Administration shall issue a report on the potential role of broadband in rural and underserved areas in addressing homeland security and public safety needs, and, as necessary, make recommendations to enhance deployment to improve emergency response systems.

(b) FUNDING.—The Secretary of Commerce shall make available from the Broadband Deployment and Demand Trust Fund up to $500,000 for the study under subsection (a).

SUBTITLE C—RESEARCH ON TECHNICAL AND FINANCIAL REQUIREMENTS FOR FASTER BROADBAND SERVICES

SEC. —301. RESEARCH ENHANCEMENT OF BROADBAND TELECOMMUNICATIONS SERVICES.

(a) IN GENERAL.—

(1) NATIONAL SCIENCE BOARD RESEARCH.—The Director of the National Science Board, without considering any changes in telecommunications regulation, shall research—

(A) technical changes that would be necessary with respect to wireline, wireless facilities, and satellite facilities to provide broadband telecommunications services in order to provide speeds between 50 megabits-per-second and 100 megabits-per-second; and

(B) the financial cost of ensuring that all Americans have access to broadband services with speeds between 50 megabits-per-second and 100 megabits-per-second.

(2) ITS BROADBAND RESEARCH.—The Director of the Institute of Telecommunications Sciences of the National Telecommunications and Information Administration, in consultation with the Director of the National Institute of Science and Technology Laboratories, shall engage in research and development—

(A) of wireline, wireless facilities, and satellite facilities to provide broadband telecommunications services in order to provide speeds between 50 megabits-per-second and 100 megabits-per-second;

(B) of new broadband technologies to meet government and commercial needs; and

(C) with respect to the technical capabilities of existing technologies to improve their speed, quality, and availability and extend the reach of broadband services to individuals living in rural areas.

(3) SPECTRUM-SHARING AND INTERFERENCE ISSUES.—The Director of the Institute of Telecommunications Sciences shall also conduct research or studies—

(A) to enhance spectrum-sharing between governmental and private sector users of broadband services;

(B) to develop technologies that would enable government and private sector users to use spectrum more efficiently; and

(C) to provide recommendations to the Administrator of the National Telecommunications and Information Administration that would enhance—

(i) government and private sector spectrum sharing opportunities and coordination; and

(ii) private sector innovation of new wireless technologies that benefit government and private sector users.

(b) CONSULTATION AND COORDINATION.—The Directors of the National Science Board, the Institute of Telecommunications Sciences, and the National Institute of Science and Technology Laboratories shall—

(1) consult with governmental and commercial users of broadband services as appropriate to facilitate research under subsection (a); and

(2) consult with each other in order to coordinate their activities under subsection (a).

(c) RESULTS OF RESEARCH.—The Director shall make available to the public, in such manner as the Director considers appropriate, the results of any research carried out under this section.

(d) FUNDING.—The Secretary of Commerce shall make available from amounts in the Broadband Deployment and Demand Trust Fund for each of fiscal years 2005 through 2009 to carry out this section not more than—

(1) $60,000,000 to the Director of the Institute of Telecommunications Sciences of the National Telecommunications and Information Administration, of which not more than $10,000,000 shall be used to carry out subsection (a)(2);

(2) $15,000,000 to the Director of the National Institute of Science and Technology Laboratories; and

(3) $50,000,000 to the Director of the National Science Board.

SEC. —302. GRANTS TO COLLEGES AND UNIVERSITIES TO RESEARCH FASTER BROADBAND TECHNOLOGY.

(a) IN GENERAL.—The Director of the National Science Foundation shall establish and administer a grant program to fund research at colleges and universities into advancing the technical aspects of broadband technology in order to provide speeds between 50 megabits-per-second and 100 megabits-per-second. In carrying out this subsection, the Director shall ensure that grants are geographically distributed nationwide.

(b) FUNDING.—The Secretary of Commerce shall make available from amounts in the Broadband Deployment and Demand Trust Fund not more than $50,000,000 for each of fiscal years 2005 through 2009 to the National Science Board for purposes of activities under this section.

Subtitle D—Stimulating Demand for Broadband Services

SEC.—401. GRANTS TO COLLEGES AND UNIVERSITIES FOR RESEARCH.

(a) IN GENERAL.—The National Telecommunications and Information Administration shall establish and administer a grant program to fund research at colleges and universities to develop computer or Internet applications that require broadband facilities and are of particular use to residential consumers.

(b) FUNDING.—The Secretary of Commerce shall make available from amounts in the Broadband Deployment and Demand Trust Fund not more than $50,000,000 for each of fiscal years 2005 through 2009 for grants under this section.

SEC.—402. GRANTS TO LIBRARIES TO DIGITIZE COLLECTIONS.

(a) IN GENERAL.—The National Telecommunications and Information Administration shall establish and administer a grant program for libraries to enable them to make a record in digital format of their collections.

(b) CONSULTATION WITH KNOWLEDGEABLE PERSONS.—In making grants under subsection (a), the National Telecommunications and Information Administration shall consult with—

(1) the Librarian of Congress;

(2) the Archivist of the United States; and

(4) representatives of libraries, academic institutions, and other individuals with professional responsibilities related to collection, curation, preservation, and display of books, records, films, and other written or recorded matter of public interest.

(c) FUNDING.—The Secretary of Commerce shall make available from amounts in the Broadband Deployment and Demand Trust Fund not more than $100,000,000 for each of fiscal years 2005 through 2009 for grants under this section.

SEC.—403. GRANTS TO MUSEUMS TO DIGITIZE COLLECTIONS.

(a) IN GENERAL.—The National Telecommunications and Information Administration shall establish and administer a

grant program for museums to enable them to make a record in digital format of their collections.

(b) CONSULTATION WITH KNOWLEDGEABLE PERSONS.—In making grants under subsection (a), the National Telecommunications and Information Administration shall consult with—

(1) the Secretary of the Smithsonian Institution;

(2) the Chairman of the National Endowment for the Arts;

(3) the Chairman of the National Endowment for the Humanities; and

(4) representatives of museums, academic institutions, and other individuals with professional responsibilities related to collection, curation, preservation, and display of objects of significant public interest.

(c) FUNDING.—The Secretary of Commerce shall make available from amounts in the Broadband Deployment and Demand Trust Fund not more than $100,000,000 for each of fiscal years 2005 through 2009 for grants under this section.

SEC.—404. GRANTS FOR DTV CONVERSION AND PROGRAMMING.

The Secretary of Commerce shall make available from amounts in the Broadband Deployment and Demand Trust Fund not more than $50,000,000 for each of fiscal years 2005 through 2009 to the National Telecommunications and Information Administration for grants under the Public Telecommunications Facilities Program for facility upgrades to transmit digital television programming and to develop educational and public interest digital programming.

SA 3076. Mr. GRAHAM of Florida submitted an amendment intended to be proposed to amendment SA 3048 proposed by Mr. MCCAIN to the bill S. 150, to make permanent the moratorium on taxes on Internet access and multiple and discriminatory taxes on electronic commerce imposed by the Internet Tax Freedom Act; which was ordered to lie on the table; as follows:

At the appropriate place, add the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Sales and Use Tax Fairness Act''.

SEC. 2. FINDINGS.

The Congress finds that—

(1) the November 12, 2002, Streamlined Sales and Use Tax Agreement establishes minimum requirements for a sales and use tax system that simplifies and harmonizes State sales and use tax laws and administrative procedures; and

(2) the Agreement, once implemented, will eliminate any undue burden on interstate commerce associated with requiring remote sellers to collect and remit sales and use taxes.

SEC. 3. SENSE OF THE CONGRESS.

It is the sense of the Congress that the sales and use tax system established by the Streamlined Sales and Use Tax Agreement provides sufficient simplification and uniformity to warrant Federal authorization to States that are parties to the Agreement to require remote sellers, subject to the conditions provided in this Act, to collect and remit the sales and use taxes of such States and of local taxing jurisdictions of such States.

SEC. 4. AUTHORIZATION TO REQUIRE COLLECTION OF SALES AND USE TAXES.

(a) GRANT OF AUTHORITY.—Once ten States comprising at least twenty percent of the total population of all States imposing a sales tax, as determined by the 2000 Federal census, have petitioned for membership under the Streamlined Sales and Use Tax Agreement in the manner required by the Agreement, have been found to be in compliance with the Agreement pursuant to the terms of the Agreement, and have become Member States under the Agreement, any Member State under the Agreement is authorized, notwithstanding any other provision of law, to require all sellers not qualifying for the small business exception provided under subsection (b) to collect and remit sales and use taxes with respect to remote sales to purchasers located in such State. Such authorization shall terminate if the requirements of the preceding sentence cease to be met. Such authorization shall also terminate for any Member State if such Member State no longer complies with the minimum requirements of the Agreement existing on November 12, 2002, or if such requirements are no longer complied with by ten States that otherwise meet the requirements of this subsection. Determinations regarding compliance with the requirements of this subsection shall be made by the Governing Board (or, where provided by the Agreement, the States petitioning for membership under the Agreement) subject to the governance provisions of Section 5.

(b) SMALL BUSINESS EXCEPTION.—No seller shall be subject to a requirement of any State to collect and remit sales and use taxes with respect to a remote sale where the seller and its affiliates collectively had gross sales nationwide of less than $5,000,000 in the calendar year preceding the date of such sale.

(c) REASONABLE SELLER COMPENSATION.—The authority provided in subsection (a) shall be conditioned on acceptance and implementation by all Member States under the Agreement of a requirement that such States provide reasonable and uniform compensation for expenses incurred by sellers related to the collection and remittance of the sales and use taxes of such States.

SEC. 5. GOVERNANCE.

(a) PETITION.—Any person who may be affected by the Agreement may petition the Governing Board for a determination on any issue relating to the implementation of the Agreement.

(b) REVIEW IN COURT OF FEDERAL CLAIMS.—Any person who has submitted a petition under subsection (a) may bring an action against the Governing Board in the United States Court of Federal Claims for judicial review of the action of the Governing Board on that petition if—

(1) The petition related to (A) an issue of whether a State has met or continues to meet the requirements for Member State status under the Agreement, or (B) an issue of whether the Governing Board has performed a non-discretionary duty of the Governing Board under the Agreement; and

(2) The petition was denied by the Governing Board in whole or in part with respect to that issue, or the Governing Board failed to act on the petition with respect to that issue within six months of the date on which the petition was submitted.

(c) TIMING OF ACTION FOR REVIEW.—An action for review under this section shall be initiated within 60 days of the Governing Board's denial of the petition as provided in subsection (b), or, if the Governing Board failed to act on the petition as provided in subsection (b), within 90 days following the expiration of the six-month period following the date on which the petition was submitted.

(d) STANDARD OF REVIEW.—In any action for review under this section, the court shall set aside the actions, findings, and conclusions of the Governing Board found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

(e) JURISDICTION.—Chapter 91 of Title 28 of the United States Code is amended by adding at the end thereof:

§1510. Jurisdiction regarding the Streamlined Sales and Use Tax Agreement

The United States Court of Federal Claims shall have exclusive jurisdiction over actions for judicial review of determination of the Governing Board of the Streamlined Sales and Use Tax Agreement under the terms and conditions provided in section 5 of the Sales and Tax Fairness Act.

SEC. 6. LIMITATION.

(a) IN GENERAL.—Nothing in this Act shall be construed as subjecting sellers to franchise taxes, income taxes, or licensing requirements of a State or political subdivision thereof, nor shall anything in this Act be construed as affecting the application of such taxes or requirements or enlarging or reducing the authority of any State to impose such taxes or requirements.

(b) NO EFFECT ON NEXUS, ETC.—No obligation imposed by virtue of the authority granted by section 4 of this Act shall be considered in determining whether a seller has a nexus with any State for any other tax purpose. Except as provided in Section 4 of this Act, nothing in this Act permits or prohibits a State—

(1) to license or regulate any person;

(2) to require any person to qualify to transact intrastate business; or

(3) to subject any person to State taxes not related to the sale of goods or services.

SEC. 7. DEFINITIONS.

For the purposes of this Act—

(1) AFFILIATE.—The term ''affiliate'' means any entity that controls, is controlled by, or is under common control with a seller.

(2) GOVERNING BOARD.—The term ''Governing Board'' means the governing board established by the Streamlined Sales and Use Tax Agreement.

(3) MEMBER STATE.—The term ''Member State'' means a member state under the Streamlined Sales and Use Tax Agreement.

(4) PERSON.—The term ''person'' means an individual, trust, estate, fiduciary, partnership, corporation, or any other legal entity, and includes a State or local government.

(5) REMOTE SALE.—The terms ''remote sale'' and ''remote seller'' refer to a sale of goods or services attributed to a particular taxing jurisdiction with respect to which the seller did not have adequate nexus under the law existing on the day before the date of enactment of this Act to allow such jurisdiction to require the seller to collect and remit sales or use taxes with respect to such sale.

(6) STATE.—The term ''State'' means any State of the United States of America and includes the District of Columbia.

(7) STREAMLINED SALES AND USE TAX AGREEMENT.—The term ''Streamlined Sales and Use Tax Agreement'' (or ''the Agreement'') means the multistate agreement with the title adopted on November 12, 2002, and as amended from time to time.

SA 3077. Mr. LAUTENBERG submitted an amendment intended to be proposed by him to the bill S. 150, to make permanent the moratorium on taxes on Internet access and multiple and discriminatory taxes on electronic commerce imposed by the Internet Tax Freedom Act; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. GAO STUDY OF EFFECTS OF INTERNET TAX MORATORIUM ON STATE AND LOCAL GOVERNMENTS AND ON BROADBAND DEPLOYMENT.

The Comptroller General shall conduct a study of the impact of the Internet tax moratorium, including its effects on the revenues of State and local governments and on the deployment and adoption of broadband technologies for Internet access throughout the United States, including the impact of the Internet Tax Freedom Act (47 U.S.C. 151 note) on build-out of broadband technology resources in rural under served areas of the country. The study shall compare deployment and adoption rates in States that tax broadband Internet access service with States that do not tax such service, and take into account other factors to determine whether the Internet Tax Freedom Act has had an impact on the deployment or adoption of broadband Internet access services. The Comptroller General shall report the findings, conclusions, and any recommendations from the study to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce no later than November 1, 2005.

SA 3078. Mr. LAUTENBERG submitted an amendment intended to be proposed to amendment SA 3048 proposed by Mr. MCCAIN to the bill S. 150, to make permanent the moratorium on taxes on Internet access and multiple and discriminatory taxes on electronic commerce imposed by the Internet Tax Freedom Act; which was ordered to lie on the table; as follows:

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Internet Tax Nondiscrimination Act''.

SEC. 2. TWO-YEAR EXTENSION OF INTERNET TAX MORATORIUM.

(a) IN GENERAL.—Subsection (a) of section 1101 of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended to read as follows:

''(a) MORATORIUM.—No State or political subdivision thereof may impose any of the following taxes during the period beginning November 1, 2003, and ending November 1, 2005:

''(1) Taxes on Internet access.

''(2) Multiple or discriminatory taxes on electronic commerce.''.

(b) CONFORMING AMENDMENTS.—

(1) Section 1101 of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended by striking subsection (d) and redesignating subsections (e) and (f) as subsections (d) and (e), respectively.

(2) Section 1104(10) of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended to read as follows:

''(10) TAX ON INTERNET ACCESS.—

''(A) IN GENERAL.—The term 'tax on Internet access' means a tax on Internet access, regardless of whether such tax is imposed on a provider of Internet access or a buyer of Internet access and regardless of the terminology used to describe the tax.

''(B) GENERAL EXCEPTION.—The term 'tax on Internet access' does not include a tax levied upon or measured by net income, capital stock, net worth, or property value.''.

(3) Section 1104(2)(B)(i) of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended by striking ''except with respect to a tax (on Internet access) that was generally imposed and actually enforced prior to October 1, 1998,''.

(c) INTERNET ACCESS SERVICE; INTERNET ACCESS.—

(1) INTERNET ACCESS SERVICE.—Paragraph (3)(D) of section 1101(d) (as redesignated by subsection (b)(1) of this section) of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended by striking the second sentence and inserting ''The term 'Internet access service' does not include telecommunications services, except to the extent such services are purchased, used, or sold by a provider of Internet access to provide Internet access.''.

(2) INTERNET ACCESS.—Section 1104(5) of that Act is amended by striking the second sentence and inserting ''The term 'Internet access' does not include telecommunications services, except to the extent such services are purchased, used, or sold by a provider of Internet access to provide Internet access.''.

SEC. 3. GRANDFATHERING OF STATES THAT TAX INTERNET ACCESS.

The Internet Tax Freedom Act (47 U.S.C. 151 note) is amended—

(1) by redesignating section 1104 as section 1105; and

(2) by inserting after section 1103 the following:

''SEC. 1104. GRANDFATHERING OF STATES THAT TAX INTERNET ACCESS.

''(a) PRE-OCTOBER 1998 TAXES.—

''(1) IN GENERAL.—Section 1101(a) does not apply to a tag on Internet access that was generally imposed and actually enforced prior to October 1, 1998, if, before that date, the tax was authorized by statute and either—

''(A) a provider of Internet access services had a reasonable opportunity to know, by virtue of a rule or other public proclamation made by the appropriate administrative agency of the State or political subdivision thereof, that such agency has interpreted and applied such tax to Internet access services; or

''(B) a State or political subdivision thereof generally collected such tax on charges for Internet access.

''(2) TERMINATION.—This subsection shall not apply after November 1, 2005.

''(b) PRE-NOVEMBER 2003 TAXES.—

''(1) IN GENERAL.—Section 1101(a) does not apply to a tax on Internet access that was generally imposed and actually enforced as of November 1, 2003, if, as of that date, the tax was authorized by statute and—

''(A) a provider of Internet access services had a reasonable opportunity to know by virtue of a public rule or other public proclamation made by the appropriate administrative agency of the State or political subdivision thereof, that such agency has interpreted and applied such tax to Internet access services; and

''(B) a State or political subdivision thereof generally collected such tax on charges for Internet access.

''(2) TERMINATION.—This subsection shall not apply after November 1, 2005.''.

SEC. 4. ACCOUNTING RULE.

The Internet Tax Freedom Act (47 U.S.C. 151 note) is amended by adding at the end the following:

''SEC. 1106. ACCOUNTING RULE.

''(a) IN GENERAL.—If charges for Internet access are aggregated with and not separately stated from charges for telecommunications services or other charges that are subject to taxation, then the charges for Internet access may be subject to taxation unless the Internet access provider can reasonably identify the charges for Internet access from its books and records kept in the regular course of business.

''(b) DEFINITIONS.—In this section:

''(1) CHARGES FOR INTERNET ACCESS.—The term 'charges for Internet access' means all charges for Internet access as defined in section 1105(5).

''(2) CHARGES FOR TELECOMMUNICATIONS SERVICES.—The term 'charges for telecommunications services' means all charges for telecommunications services, except to the extent such services are purchased, used, or sold by a provider of Internet access to provide Internet access.''.

SEC. 5. EFFECT ON OTHER LAWS.

The Internet Tax Freedom Act (47 U.S.C. 151 note), as amended by section 4, is amended by adding at the end the following:

''SEC. 1107. EFFECT ON OTHER LAWS.

''(a) UNIVERSAL SERVICE.—Nothing in this Act shall prevent the imposition or collection of any fees or charges used to preserve and advance Federal universal service or similar State programs—

''(1) authorized by section 254 of the Communications Act of 1934 (47 U.S.C. 254); or

''(2) in effect on February 8, 1996.

''(b) 911 AND E–911 SERVICES.—Nothing in this Act shall prevent the imposition or collection, on a service used for access to 911 or E–911 services, of any fee or charge specifically designated or presented as dedicated by a State or political subdivision thereof for the support of 911 or E–911 services if no portion of the revenue derived from such fee or charge is obligated or expended for any purpose other than support of 911 or E–911 services.

''(c) NON-TAX REGULATORY PROCEEDINGS.—Nothing in this Act shall be construed to affect any Federal or State regulatory proceeding that is not related to taxation.''.

SEC. 6. EXCEPTION FOR VOICE AND OTHER SERVICES OVER THE INTERNET.

The Internet Tax Freedom Act (47 U.S.C. 151 note), as amended by section 5, is amended by adding at the end the following:

''SEC. 1108. EXCEPTION FOR VOICE AND OTHER SERVICES OVER THE INTERNET.

''Nothing in this Act shall be construed to affect the imposition of tax on a charge for voice or any other service utilizing Internet Protocol or any successor protocol. This section shall not apply to Internet access or to any services that are incidental to Internet access, such as e-mail, text instant messaging, and instant messaging with voice capability.''.

SEC. 7. EFFECTIVE DATE.

The amendments made by this Act take effect on November 1, 2003.

SA 3079. Mr. GRAHAM of Florida submitted an amendment intended to be proposed to amendment SA 3048 proposed by Mr. MCCAIN to the bill S. 150, to make permanent the moratorium on taxes on Internet access and multiple and discriminatory taxes on electronic commerce imposed by the Internet Tax Freedom Act; which was ordered to lie on the table; as follows:

At the appropriate place in Amdt. No. 3048, insert the following:

SEC. ___. SENSE OF THE SENATE.

(a) FINDINGS.—The Senate finds that the Unfunded Mandates Reform Act of 1995 (P.L. 104–4) was passed—

(1) ''to end the imposition, in the absence of full consideration by Congress, of Federal mandates on State, local, and tribal governments without adequate Federal funding, in a manner that may displace other essential State, local, and tribal governmental priorities'';

(2) to provide ''for the development of information about the nature and size of mandates in proposed legislation'';

(3) ''to establish a point-of-order vote on the consideration in the Senate and House of Representatives of legislation containing significant Federal intergovernmental mandates without providing adequate funding to comply with such mandates'';

(4) to require that ''Federal agencies prepare and consider better estimates of the budgetary impact of regulations containing Federal mandates upon State, local, and tribal governments before adopting such regulations, and ensuring that small governments are given special consideration in that process''; and

(5) to establish the general rule that Congress shall not impose Federal mandates on State, local, and tribal governments without providing adequate funding to comply with such mandates.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that—

(1) the Unfunded Mandates Reform Act of 1995 constituted an important pledge on the part of the Federal Government, in general, and Congress, in particular, to refrain from imposing Federal mandates on State, local, and tribal governments without providing adequate resources to compensate State, local, and tribal governments for the cost of complying with such mandates;

(2) at this time when State, local, and tribal governments are struggling to cope with the worst State and local fiscal crisis since World War II, it is urgently important that Congress adhere to its commitments under the Unfunded Mandates Reform Act of 1995; and

(3) Congress should not pass laws mandating that States or localities spend new money or forgo collecting currently collected revenues, unless Congress—

(A) has clear and precise estimates of the budgetary impacts of such mandates upon States, local governments, and tribal governments; and

(B) provides adequate funding to cover the cost to States and localities of complying with such mandates.

SA 3080. Mr. ENZI submitted an amendment intended to be proposed by him to the bill S. 150, to make permanent the moratorium on taxes on Internet access and multiple and discriminatory taxes on electronic commerce imposed by the Internet Tax Freedom Act; which was ordered to lie on the table; as follows:

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

SECTION 1. EXTENSION OF THE INTERNET TAX FREEDOM ACT.

Section 1101(a) of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended by striking ''November 1, 2003'' and inserting ''May 31, 2005''.

SA 3081. Mr. ENZI submitted an amendment intended to be proposed by him to the bill S. 150, to make permanent the moratorium on taxes on Internet access and multiple and discriminatory taxes on electronic commerce imposed by the Internet Tax Freedom Act; which was ordered to lie on the table; as follows:

Strike all after the first word and insert the following:

1. EXTENSION OF THE INTERNET TAX FREEDOM ACT.

Section 1101(a) of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended by striking ''November 1, 2003'' and inserting ''June 1, 2005''.

SA 3082. Mr. LOTT submitted an amendment intended to be proposed to amendment SA 3048 proposed by Mr. MCCAIN to the bill S. 150, to make permanent the moratorium on taxes on Internet access and multiple and discriminatory taxes on electronic commerce imposed by the Internet Tax Freedom Act; which was ordered to lie on the table; as follows:

On page 5, line 2, strike ''2006'' and insert ''2007''.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. ALLEN. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet during the session of the Senate on April 28, 2004, at 11 a.m., in closed session, to receive a briefing regarding the performance of force protection equipment for ground forces in Iraq, including the up-armored HMMWV, and potential alternatives to meet force protection needs of the combatant commander.

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

COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION

Mr. ALLEN. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet on Wednesday, April 28, 2004, at 9:30 a.m., on Telecommunications Policy Review: A Look Ahead, in SR–253.

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

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. ALLEN. 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 Wednesday, April 28 at 11:30 a.m. to consider pending calendar business.

Agenda Item 1: S. 203—A bill to open certain withdrawn land in Big Horn County, WY to locatable mineral development for bentonite mining.

Agenda Item 5: S. 1071—A bill to authorize the Secretary of the Interior, through the Bureau of Reclamation, to conduct a feasibility study on a water conservation project within the Arch Hurley Conservancy District in the State of New Mexico, and for other purposes.

Agenda Item 6: S. 1097—A bill to authorize the Secretary of the Interior to implement the Calfed Bay-Delta Program.

Agenda Item 9: S. 1467—A bill to establish the Rio Grande Outstanding Natural Area in the State of Colorado, and for other purposes.

Agenda Item 10: S. 1582—A bill to amend the Valles Preservation Act to improve the preservation of the Valles Caldera, and for other purposes.

Agenda Item 11: S. 1649—A bill to designate the Ojito Wilderness Study Area as wilderness, to take certain land into trust for the Pueblo of Zia, and for other purposes.

Agenda Item 12: S. 1687—A bill to direct the Secretary of the Interior to conduct a study on the preservation and interpretation of the historic sites of the Manhattan Project for potential inclusion in the National Park System.

Agenda Item 13: S. 1778—A bill to authorize a land conveyance between the United States and the City of Craig, AK, and for other purposes.

Agenda Item 14: S. 1791—A bill to amend the Lease Lot Conveyance Act of 2002 to provide that the amounts received by the United States under that Act shall be deposited in the reclamation fund, and for other purposes.

Agenda Item 15: S. 2180—A bill to direct the Secretary of Agriculture to exchange certain lands in the Arapaho and Roosevelt National Forests in the State of Colorado.

Agenda Item 16: S. Res. 321—A resolution recognizing the loyal service and outstanding contributions of J. Robert Oppenheimer to the United States and calling on the Secretary of Energy to observe the 100th anniversary of Dr. Oppenheimer's birth with appropriate programs at the Department of Energy and the Los Alamos National Laboratory.

Agenda Item 20: H.R. 1521—To provide for additional lands to be included within the boundary of the Johnstown Flood National Memorial in the State of Pennsylvania, and for other purposes.

Agenda Item 21: H.R. 3249—To extend the term of the Forest Counties Payments Committee.

In addition, the Committee may turn to any other measures that are ready for consideration.

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

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

Mr. ALLEN. Mr. President, I ask unanimous consent that the Committee on Environment and Public Works be authorized to meet on Wednesday, April 28th at 9:30 a.m. to conduct a hearing to receive testimony on the reauthorization of the Economic Development Administration.

The hearing will be held in SD 406, hearing room.

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

COMMITTEE ON FINANCE

Mr. ALLEN. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session on Wednesday, April 28, 2004, at 10 a.m., in 215 Dirksen Senate Office Building, to hear testimony on ''Taking the Taxpayers for a Ride: Fraud and Abuse in the Power Wheelchair Program.''

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

COMMITTEE ON FOREIGN RELATIONS

Mr. ALLEN. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Wednesday, April 28, 2004 at 10 a.m. to hold a Nomination hearing.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. ALLEN. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Wednesday, April 28, 2004 at 3 p.m. to hold a Nomination hearing.

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

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. ALLEN. Mr. President, I ask unanimous consent that the Committee on Governmental Affairs be authorized to meet on Wednesday, April 28, 2004, at 10 a.m. for a hearing titled ''Government Purchase Cards: Smarter Use Can Save Taxpayers Hundreds of Millions of Dollars.''

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

COMMITTEE ON INDIAN AFFAIRS

Mr. ALLEN. Mr. President, I ask unanimous consent that the Committee on Indian Affairs be authorized to meet on Wednesday, April 28, 2004, at 10 a.m. in room 485 of the Russell Senate Office Building to conduct a hearing on S. 2172, Tribal Contract Support Cost Technical Amendments of 2004.

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

COMMITTEE ON THE JUDICIARY

Mr. ALLEN. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet to conduct a hearing on Wednesday, April 28, 2004 at 2 p.m. on ''The Playwrights Licensing Antitrust Initiative Act: Safeguarding the Future of American Live Theater'' in the Dirksen Senate Office Building, Room 226

Witness List

Arthur Miller, Playwright (Death of a Salesman, The Crucible, All My Sons); Roxbury, CT.

Stephen Sondheim, Lyricist (West Side Story, Gypsy, Sweeney Tood); New York, NY.

Wendy Wasserstein, Playwright (Uncommon Women and Others, Isn't It Romantic, The Heidi Chronicles); New York, NY.

Gerald Schoenfeld, Chairman, League of American Theaters and Producers; Chairman, The Shubert Organization; New York, NY.

Roger Berlind, Producer, Berlind Productions (Kiss Me Kate, City of Angels, Wonderful Town, Caroline or Change); New York, NY.

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

COMMITTEE ON SMALL BUSINESS AND ENTREPRENEURSHIP

Mr. ALLEN. Mr. President, I ask unanimous consent that the Committee on Small Business and Entrepreneurship be authorized to meet during the session of the Senate for a hearing entitled, ''Impact of Stock Option Expensing on Small Businesses'' on Wednesday, April 28, 2004, beginning at 10 a.m. in Room 428A of the Russell Senate Office Building.

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

JOINT ECONOMIC COMMITTEE

Mr. ALLEN. Mr. President, I ask unanimous consent that the Joint Economic Committee be authorized to conduct a hearing in Room 628 of the Dirksen Senate Office Building, Wednesday, April 28, 2004, from 10 a.m. to 1 p.m.

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. ALLEN. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on April 28, 2004, at 2:30 p.m., to hold a closed hearing on Intelligence Matters.

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

SUBCOMMITTEE ON CHILDREN AND FAMILIES

Mr. ALLEN. Mr. President, I ask unanimous consent that the Committee on Health, Education, Labor, and Pensions, Subcommittee on Children and Families, be authorized to meet for a hearing on Healthy Marriage: What is it and why should we promote it? During the session of the Senate on Wednesday, April 28, 2004, at 2 p.m.

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

SUBCOMMITTEE ON SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES

Mr. ALLEN. Mr. President, I ask unanimous consent that the Committee on Health, Education, Labor, and Pensions, Subcommittee on Substance Abuse and Mental Health Services be authorized to meet for a hearing on Mental Health in Children and Youth: Issues Throughout the Development Process during the session of the Senate on Wednesday April 28, 2004, at 10 a.m.

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

NATIONAL MOTORCYCLE SAFETY AND AWARENESS MONTH

Mr. FRIST. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of S. Res. 168 and that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 168) designating May 2004 as ''National Motorcycle Safety and Awareness Month.''

There being no objection, the Senate proceeded to consider the resolution.

Mr. FRIST. Mr. President, I ask unanimous consent that the resolution be agreed to; that the preamble be agreed to; that the motions to reconsider be laid upon the table; and that any statement relating to the resolution be printed in the RECORD.

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

The resolution (S. Res. 168) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 168

Whereas the United States of America is the world leader in motorcycle safety, promoting education, training, and motorcycle awareness;

Whereas motorcycles occupy a very important position in the history of this Nation and of the world;

Whereas over two-thirds of car-motorcycle crashes and nearly one-half of all motorcycle crashes are caused by car drivers, not by motorcyclists;

Whereas of the 1,400 fatal car-motorcycle crashes in 2001, 36 percent involved another vehicle violating the motorcyclist's right-of-way by turning left while the motorcycle was going straight, passing, or overtaking the vehicle;

Whereas although the motorcycling community has made efforts to mitigate these right-of-way crashes through enhancing motorcycle awareness via billboards, posters, media, and other campaigns, the message to 'watch for motorcycles' continues to go unheeded by the general motoring public;

Whereas the motorcycling community has invested considerable time and effort to improve its safety record through safety initiatives such as increased rider training and licensing campaigns, but many times demand for rider training exceeds enrollment capacity and the programs often lack support from the larger traffic safety community;

Whereas the larger traffic safety community, highway designers, law enforcement, the medical community, designers of other vehicles, government, researchers working in related areas, insurers, and all road users can accomplish much more toward improving motorcycle safety;

Whereas the motorcycle is an efficient vehicle which conserves fuel, has little impact on our overworked roads and highway system, is an important mode of transportation involving such activities as commuting, touring, and recreation, and promotes friendship by attracting riders from all over the world through various clubs and organizations;

Whereas the month of May marks the traditional start of the motorcycle riding season; and

Whereas, due to the increased number of motorcycles on the road, it is appropriate to set aside the month of May 2004 to promote motorcycle awareness and safety and to encourage all citizens to safely share the roads and highways of this great Nation by paying extra attention to those citizens who ride motorcycles: Now, therefore, be it

Resolved, That the Senate—

(1) designates May 2004 as ''National Motorcycle Safety and Awareness Month''; and

(2) requests that the President issue a proclamation calling upon the people of the United States to observe the month with appropriate ceremonies and activities.

NATIONAL RAILROAD HALL OF FAME

Mr. FRIST. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of S. Res. 255 and that the Senate then proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 255) supporting the National Railroad Hall of Fame, Inc., of Galesburg, Illinois, in its endeavor to erect a monument known as the National Railroad Hall of Fame.

There being no objection, the Senate proceeded to consider the resolution.

Mr. FRIST. Mr. President, I ask unanimous consent that the resolution and preamble be agreed to, en bloc; that the motion to reconsider be laid upon the table; and that any statements relating to the resolution be printed in the RECORD, with the above occurring with no intervening action or debate.

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

The resolution (S. Res. 255) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 255

Whereas Galesburg, Illinois, has been linked to the history of railroading since 1849 when the Peoria and Oquawka Railroad was organized;

Whereas the citizens of Galesburg supported a railroad to Chicago which was chartered as the Central Military Tract Railroad in 1851;

Whereas upon completion of the Central Military Tract Railroad, the Northern Cross Railroad joined the Central Military Tract Railroad at Galesburg;

Whereas in 1886 Galesburg secured the Atchison, Topeka, and Santa Fe Railway and became one of the few places in the world served by 2 major railroads;

Whereas the National Railroad Hall of Fame, Inc., has been established in Galesburg and chartered under the laws of the State of Illinois as a not-for-profit corporation;

Whereas the objectives of the National Railroad Hall of Fame, Inc., include (1) perpetuating the memory of leaders and innovators in the railroad industry, (2) fostering, promoting, and encouraging a better understanding of the origins and growth of railroads, especially in the United States, and (3) establishing and maintaining a library and collection of documents, reports, and other items of value to contribute to the education of all persons interested in railroading; and

Whereas the National Railroad Hall of Fame, Inc., is planning to erect a monument known as the National Railroad Hall of Fame to honor the men and women who actively participated in the founding and development of the railroad industry in the United States: Now, therefore, be it

Resolved, That the Senate supports the National Railroad Hall of Fame, Inc., of Galesburg, Illinois, in its endeavor to erect a monument known as the National Railroad Hall of Fame.

NATIONAL GOOD NEIGHBOR DAY

Mr. FRIST. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of S. Res. 340 and that the Senate then proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. 340) expressing the sense of the Senate that the President should designate September 26, 2004, as National Good Neighbor Day.

There being no objection, the Senate proceeded to consider the resolution.

Mr. FRIST. I ask unanimous consent that the resolution and preamble be agreed to en bloc; the motion to reconsider be laid upon the table; that any statements relating thereto be printed in the RECORD; and the above occur with no intervening action or debate.

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

The resolution (S. Res. 340) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 340

Whereas our society has developed highly effective means of speedy communication around the world, but has failed to ensure meaningful communication among people living across the globe, or even across the street, from one another;

Whereas the endurance of human values and consideration for others are critical to the survival of civilization; and

Whereas being good neighbors to those around us is the first step toward human understanding: Now, therefore, be it

Resolved,

SECTION 1. DESIGNATION OF NATIONAL GOOD NEIGHBOR DAY.

(a) SENSE OF THE SENATE.—It is the sense of the Senate that the President should designate September 26, 2004, as ''National Good Neighbor Day''.

(b) PROCLAMATION.—The Senate requests the President to issue a proclamation—

(1) designating September 26, 2004, as ''National Good Neighbor Day''; and

(2) calling on the people of the United States and interested groups and organizations to observe ''National Good Neighbor Day'' with appropriate ceremonies and activities.

DIA DE LOS NINOS: CELEBRATING YOUNG AMERICANS

Mr. FRIST. I ask unanimous consent that the Judiciary Committee be discharged from further consideration of S. Res. 342, and the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 342) designating April 30, 2004, as Dia de los Ninos: Celebrating Young Americans, and for other purposes.

There being no objection, the Senate proceeded to consider the resolution.

Mr. FRIST. I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motion to reconsider be laid upon the table, and that any statements relating to the resolution be printed in the RECORD.

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

The resolution (S. Res. 342) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 342

Whereas many nations throughout the world, and especially within the Western hemisphere, celebrate ''Día de los Niños'' on the 30th of April, in recognition and celebration of their country's future—their children;

Whereas children represent the hopes and dreams of the people of the United States;

Whereas children are the center of American families;

Whereas children should be nurtured and invested in to preserve and enhance economic prosperity, democracy, and the American spirit;

Whereas Hispanics in the United States, the youngest and fastest growing ethnic community in the Nation, continue the tradition of honoring their children on this day, and wish to share this custom with the rest of the Nation;

Whereas 1 in 4 Americans is projected to be of Hispanic descent by the year 2050, and as of 2003, approximately 12,300,000 Hispanic children live in the United States;

Whereas traditional Hispanic family life centers largely on children;

Whereas the primary teachers of family values, morality, and culture are parents and family members, and we rely on children to pass on these family values, morals, and culture to future generations;

Whereas more than 500,000 children drop out of school each year, and Hispanic drop-out rates are unacceptably high;

Whereas the importance of literacy and education are most often communicated to children through family members;

Whereas families should be encouraged to engage in family and community activities that include extended and elderly family members and encourage children to explore, develop confidence, and pursue their dreams;

Whereas the designation of a day to honor the children of the United States will help affirm for the people of the United States the significance of family, education, and community;

Whereas the designation of a day of special recognition for the children of the United States will provide an opportunity for children to reflect on their future, to articulate their dreams and aspirations, and to find comfort and security in the support of their family members and communities;

Whereas the National Latino Children's Institute, serving as a voice for children, has worked with cities throughout the country to declare April 30 as ''Día de los Niños: Celebrating Young Americans''—a day to bring together Hispanics and other communities nationwide to celebrate and uplift children; and

Whereas the children of a nation are the responsibility of all its people, and people should be encouraged to celebrate the gifts of children to society—their curiosity, laughter, faith, energy, spirit, hopes, and dreams: Now, therefore, be it

Resolved, That the Senate—

(1) designates April 30, 2004, as ''Día de los Niños: Celebrating Young Americans''; and

(2) requests that the President issue a proclamation calling on the people of the United States to join with all children, families, organizations, communities, churches, cities, and States across the United States to observe the day with appropriate ceremonies, including—

(A) activities that center around children, and are free or minimal in cost so as to encourage and facilitate the participation of all our people;

(B) activities that are positive and uplifting and that help children express their hopes and dreams;

(C) activities that provide opportunities for children of all backgrounds to learn

about one another's cultures and to share ideas;

(D) activities that include all members of the family, and especially extended and elderly family members, so as to promote greater communication among the generations within a family, enabling children to appreciate and benefit from the experiences and wisdom of their elderly family members;

(E) activities that provide opportunities for families within a community to get acquainted; and

(F) activities that provide children with the support they need to develop skills and confidence, and to find the inner strength—the will and fire of the human spirit—to make their dreams come true.

ORDERS FOR THURSDAY, APRIL 29, 2004

Mr. FRIST. I ask unanimous consent that when the Senate completes its business today, it adjourn until 9:30 a.m. on Thursday, April 29. I further ask that following the prayer and the pledge, the Journal of proceedings be approved to date, the morning hour be deemed to have expired, and following the time for the two leaders the Senate then begin a period of morning business for up to 90 minutes, with the first 30 minutes of the time under the control of the Democratic leader or his designee, the second 30 minutes under the control of the majority leader or his designee, and the final 30 minutes equally divided between the assistant majority leader and Senator FEINSTEIN; provided that following that 90-minute period the Senate resume consideration of S. 150, the Internet tax bill; provided further that there then be up to 1 hour of debate only equally divided between the two leaders or their designees.

I further ask consent that following the use or yielding back of the time, the Senate proceed to the cloture vote on Daschle amendment No. 3050.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

PROGRAM

Mr. FRIST. Mr. President, tomorrow morning, following morning business, the Senate will resume consideration of the Internet tax bill. There will be up to 1 hour of debate prior to the cloture vote on the Daschle amendment on renewable fuels. If all time is used, the cloture vote on the Daschle amendment will occur at approximately 12 tomorrow, and that will be the first rollcall vote of the day. If cloture is not invoked on the Daschle amendment, the Senate will immediately proceed to a cloture vote on Domenici amendment No. 3051 on energy policy. If cloture fails on the Domenici amendment, the Senate will proceed to a cloture vote on the pending McCain substitute. Therefore, up to three rollcall votes are possible beginning at 12 tomorrow.

It is my hope we will be able to make progress on the bill tomorrow. If we are able to invoke cloture, we would move forward with Internet-tax-related amendments.

Senators should therefore anticipate additional votes during tomorrow's session.

The PRESIDING OFFICER. The assistant Democratic leader.

Mr. REID. I chose not to object to the unanimous consent request dealing with what we are going to be doing tomorrow. We would just hope that the good offices of the majority leader would allow, if, in fact, cloture is not invoked on Daschle or Domenici, and we have to go to McCain, that we could have some arrangement that we could have a little bit of debate before voting on the McCain cloture because we have our party policy luncheon tomorrow. It may not be a bad idea, and we can certainly discuss this with others on the majority side, for Senator MCCAIN and others, if, in fact, cloture is not invoked on those first two motions that have been filed, that we have a little time to get rid of the two energy matters and get back on Internet and discuss that, and that would put us with just a short debate of maybe an hour or so into the end of the policy luncheon.

Mr. FRIST. Mr. President, I understand their policy luncheon is tomorrow, and clearly we will make every consideration for them to continue with that. We will schedule the votes—it depends on how each of these cloture votes go—after discussion over the course of the morning. Again, the first rollcall vote will begin at approximately noon tomorrow.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. FRIST. If there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 6:16 p.m., adjourned until Thursday, April 29, 2004, at 9:30 a.m.