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Senate

The Senate met at 9:45 a.m. and was called to order by the Honorable JIM DEMINT, a Senator from the State of South Carolina.

PRAYER

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

Let us pray.

Eternal Spirit, the skies display Your marvelous craftsmanship. When we consider Your heavens, the works of Your fingers, we become aware of our deficiencies. Lord, we are flawed people seeking salvation. We are lost people seeking direction. We are doubting people seeking faith. Show us the path to meaningful life. Reveal to us the steps of faith. Quicken our hearts and purify our minds. Broaden our concerns and strengthen our commitments.

Bless our Senators today. Show them the duties left undone. Reveal to them tasks unattended. Lead each of them to a richer and more rewarding experience with You. Amen.

PLEDGE OF ALLEGIANCE

The Honorable JIM DEMINT led the Pledge of Allegiance, as follows:

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

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, April 19, 2005.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable JIM DEMINT, a Senator from the State of South Carolina, to perform the duties of the Chair.

TED STEVENS,
President pro tempore.

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

RECOGNITION OF THE ACTING MAJORITY LEADER

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

SCHEDULE

Mr. MCCONNELL. Mr. President, this morning we will resume consideration of the emergency supplemental appropriations bill. Under the consent agreement reached last night, the time until 11:45 this morning will be divided for debate in relation to the two pending AgJOBS amendments. At 11:45, we will proceed to two cloture votes on those amendments. Following those votes, the Senate will recess until 2:15 for the weekly policy luncheons. We will return then to the supplemental bill this afternoon, and as a reminder there will be two additional cloture votes today.

If cloture is not invoked on either of the AgJOBS amendments, then at 4:30 today we will have another cloture vote in relation to the Mikulski visa amendment. Upon the disposition of that amendment, the Senate will proceed to a cloture vote on the underlying emergency appropriations bill.

As the majority leader stated last night, it is hoped that the Senate will invoke cloture this afternoon on the underlying bill. This is the only way of assuring that this important bill will be completed this week. I remind all of our colleagues that if cloture is invoked on the bill, it will still be open for debate and amendments for up to 30 more hours.

It is clear we have a lot of work to do over the course of today and tomorrow.

I yield the floor.

RESERVATION OF LEADER TIME

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

EMERGENCY SUPPLEMENTAL APPROPRIATIONS ACT, 2005

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of H.R. 1268, which the clerk will report.

The legislative clerk read as follows:

A bill (H.R. 1268) making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes.

Pending:

Mikulski amendment No. 387, to revise certain requirements for H–2B employers and require submission of information regarding H–2B nonimmigrants.

Feinstein amendment No. 395, to express the sense of the Senate that the text of the REAL ID Act of 2005 should not be included in the conference report.

Bayh amendment No. 406, to protect the financial condition of members of the reserve components of the Armed Forces who are ordered to long-term active duty in support of a contingency operation.

Durbin amendment No. 427, to require reports on Iraqi security services.

Salazar amendment No. 351, to express the sense of the Senate that the earned income tax credit provides critical support to many military and civilian families.

Dorgan/Durbin amendment No. 399, to prohibit the continuation of the independent counsel investigation of Henry Cisneros past June 1, 2005 and request an accounting of costs from GAO.

Reid amendment No. 445, to achieve an acceleration and expansion of efforts to reconstruct and rehabilitate Iraq and to reduce the future risks to United States Armed Forces personnel and future costs to United States taxpayers, by ensuring that the people of Iraq and other nations do their fair share to secure and rebuild Iraq.

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

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Frist (for Chambliss/Kyl) amendment No. 432, to simplify the process for admitting temporary alien agricultural workers under section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act, to increase access to such workers.

Frist (for Craig/Kennedy) modified amendment No. 375, to provide for the adjustment of status of certain foreign agricultural workers, to amend the Immigration and Nationality Act to reform the H–2A worker program under that Act, to provide a stable, legal agricultural workforce, to extend basic legal protections and better working conditions to more workers.

DeWine amendment No. 340, to increase the period of continued TRICARE coverage of children of members of the uniformed services who die while serving on active duty for a period of more than 30 days.

DeWine amendment No. 342, to appropriate $10,000,000 to provide assistance to Haiti using Child Survival and Health Programs funds, $21,000,000 to provide assistance to Haiti using Economic Support Fund funds, and $10,000,000 to provide assistance to Haiti using International Narcotics Control and Law Enforcement funds, to be designated as an emergency requirement.

Schumer amendment No. 451, to lower the burden of gasoline prices on the economy of the United States and circumvent the efforts of OPEC to reap windfall oil profits.

Reid (for Reed/Chafee) amendment No. 452, to provide for the adjustment of status of certain nationals of Liberia to that of lawful permanent residence.

Chambliss modified amendment No. 418, to prohibit the termination of the existing joint-service multiyear procurement contract for C/KC–130J aircraft.

Bingaman amendment No. 483, to increase the appropriation to Federal courts by $5,000,000 to cover increased immigration-related filings in the southwestern United States.

Bingaman (for Grassley) amendment No. 417, to provide emergency funding to the Office of the United States Trade Representative.

Isakson amendment No. 429, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, and to ensure expeditious construction of the San Diego border fence.

Byrd amendment No. 463, to require a quarterly report on audits conducted by the Defense Contract Audit Agency of task or delivery order contracts and other contracts related to security and reconstruction activities in Iraq and Afghanistan and to address irregularities identified in such reports.

Warner amendment No. 499, relative to the aircraft carriers of the Navy.

Sessions amendment No. 456, to provide for accountability in the United Nations Headquarters renovation project.

Boxer/Bingaman amendment No. 444, to appropriate an additional $35,000,000 for Other Procurement, Army, and make the amount available for the fielding of Warlock systems and other field jamming systems.

Lincoln amendment No. 481, to modify the accumulation of leave by members of the National Guard.

Reid (for Durbin) amendment No. 443, to affirm that the United States may not engage in torture or cruel, inhuman, or degrading treatment under any circumstances.

Reid (for Bayh) amendment No. 388, to appropriate an additional $742,000,000 for Other Procurement, Army, for the procurement of up to 3,300 Up Armored High Mobility Multipurpose Wheeled Vehicles (UAHMMVs).

Reid (for Biden) amendment No. 537, to provide funds for the security and stabilization of Iraq and Afghanistan and for other defense-related activities by suspending a portion of the reduction in the highest income tax rate for individual taxpayers.

Reid (for Feingold) amendment No. 459, to extend the termination date of Office of the Special Inspector General for Iraq Reconstruction, expand the duties of the Inspector General, and provide additional funds for the Office.

The ACTING PRESIDENT pro tempore. Under the previous order, the time until 11:45 a.m. shall be equally divided with the Senator from Georgia, Mr. CHAMBLISS, in control of half of the time, and the Senator from Idaho, Mr. CRAIG, and the Senator from Massachusetts, Mr. KENNEDY, in control of the other half of the time.

Who yields time?

Mr. CRAIG. Mr. President, could I understand the time allocation? The Senator from Georgia has 1 hour.

The ACTING PRESIDENT pro tempore. The Senator from Georgia has 58 minutes.

Mr. CRAIG. The Senator from Idaho has?

The ACTING PRESIDENT pro tempore. The Senator from Idaho has 29 minutes.

Mr. CRAIG. And the Senator from Massachusetts has?

The ACTING PRESIDENT pro tempore. The Senator from Massachusetts has 29 minutes.

Who yields time?

The Senator from Georgia.

Mr. CHAMBLISS. I yield to the coauthor of our amendment, the Senator from Arizona, Mr. KYL.

The ACTING PRESIDENT pro tempore. The Chair recognizes the Senator from Arizona.

AMENDMENT NO. 432

Mr. KYL. Mr. President, first I compliment my colleague from Idaho for bringing to the Nation's attention a problem which does deserve consideration, and that is how to both fulfill our need for workers in this country for difficult labor that some Americans have not been willing to perform and at the same time deal with the very difficult problem of the status of illegal immigrants who are currently in the country and who have been relied upon by employers in the field of agriculture to perform some of this work.

Both the Senator from Georgia and I intend to work with the Senator from Idaho in the future to try to develop the very best kind of guest worker program we can to achieve the objective of providing matching, willing employers and willing employees and at the same time doing it within the construct of the rule of law. We look forward to that debate at a later time.

Earlier in the debate on the supplemental appropriations bill, which is the legislation before us, the Senate adopted overwhelmingly a sense-of-the-Senate resolution that we should not be trying to deal with these immigration problems in this legislation. This bill is too important. It requires that we provide funding for our war efforts in Iraq and Afghanistan. The reason it is called a supplemental appropriations bill is because it is supplemental to the regular process. It accounts for the fact that there are unforeseen expenditures in the conduct of this war we have to fund and we have to get the money to our troops as soon as we possibly can.

With that in mind, the full Senate voted we should be deferring the debate on these difficult and complicated issues such as immigration reform to a later date when we can take that up in the full consideration it deserves and not delay important legislation such as the funding of the war effort. We are already into the second week on the supplemental appropriation for that purpose. We hoped to finish this bill last Thursday.

I provide that as background to simply note this: We have two votes this morning. The first is on an alternative proposal that has been set out by the Senator from Georgia and myself that would provide a way to match these willing employers and employees but to do so without granting amnesty to illegal immigrants. We will then vote on a second alternative of the Senator from Idaho and the Senator from Massachusetts.

The key point I want to make to my colleagues is if both of these propositions are defeated—and they both require 60 votes to pass under the agreement—then we can move on to complete the work on the supplemental appropriations bill and we might be able to finish that bill this week. In fact, hopefully, presumably, ideally, we will finish that bill this week. There is no reason why we cannot do our work and fund our troops. However, if the Craig-Kennedy legislation were to receive 60 votes, we are in for a tough time because that bill is then open for amendment, and we are already aware of numerous amendments that are going to be filed, all of which are going to delay consideration of the supplemental appropriations bill.

Some of my colleagues signed on to this legislation before the bill was actually printed or before they realized it contained amnesty. The point I would make to anybody who is in that position is whether they support the Craig-Kennedy version or the Chambliss-Kyl version of guest worker legislation, it is not the time to be considering that legislation. We voted already to not have that debate but rather to get on to the supplemental appropriation bill. Therefore, anyone wishing to move on should vote literally against the first vote we will have on Chambliss-Kyl and the second vote on Craig-Kennedy. If either one of them gets 60 votes, then we are in for a long time of debate on immigration, with an awful lot of amendments on that subject and delaying the time that we can get back to considering the supplemental appropriations bill.

Even though it argues against an affirmative vote on our proposition, for

those who are interested in moving on to the supplemental appropriation bill, frankly, the correct vote is a ''no'' vote on both of these amendments.

Let me explain to my colleagues a second reason to vote ''no'' on the second vote and ''yes'' on the first vote. The first vote is Chambliss-Kyl. What we have attempted to do in our guest worker legislation is provide an expedited, streamlined, simplified way for employers to hire the people they need in agriculture, something they are not able to do today. We have a law today, but they do not use it because it is so cumbersome, expensive, and time consuming. The idea is to make it more streamlined so it will work.

In that respect, we think we have a much superior product and that is why I think the Farm Bureau supports our legislation, because they realize farmers will actually use it. I am very concerned that they would not use the Craig-Kennedy legislation because it has so many other things built into it that I believe would make it difficult, at least as difficult to use as the current law.

I will cite one of the reasons now. Up to now it has been the law in the United States that Legal Services Corporation does not represent illegal immigrants or illegal aliens. It represents Americans, people who are here either on legal permanent residency status, green card status, or citizens. There is little funding available to begin representing illegal immigrants and I am afraid the representation of American citizens who are residents would significantly suffer if the Legal Services Corporation is now going to begin representing these illegal immigrants as is called for under the Craig-Kennedy legislation. That represents a significant departure from current law and it certainly will make it more complicated for employers to use that law.

I will move to the other point, because the primary question is whether we want to embark on a road to granting amnesty to illegal immigrants.

Folks on the other side will say it is earned amnesty, but it is still amnesty by any name one wants to call it. It reminds me of that old saying, put lipstick on a pig and it is still a pig. The fact of the matter is it is still amnesty and here is why specifically Craig-Kennedy is amnesty.

Under section 101 of S. 359, an illegal alien shall—it is not ''may'' but ''shall''—be given status after working, and then the periods of time are laid out, but essentially in as little as 2½ weeks, one could accomplish the accumulated 3½-month labor period, but a maximum of 3½ months, minimum of 2½ weeks. They then have a legal status in the country. One year later, they get their green card.

A green card is legal permanent residency, and I underline the word permanent. When one gets their card in this country, they have a status which enables them to live here for the rest of their life. Under existing law, it enables them to do something else. They can also apply for citizenship. They can apply to chain migrate their family into the country.

The point is that while that status should be available to anyone who desires to immigrate to the United States, we believe it should be available to people who abide by the law. We also do not discriminate against those who have violated the law and who seek to apply for this status. We simply urge that they not be given an advantage over those who have done everything right, who have followed the law, applied for the legal permanent residency status from their country of origin, and have sought to get in line the same as everybody else. As the President says, if one wants to come here and stay, they need to get in line with everybody else. They should not be given an advantage. That is what amnesty is. When one is given an advantage over those who have conformed to the law, who have abided by the law, and one is given an advantage because they violated the law, that is frankly a concept I think most Americans would deem not only very unfair but getting on a very slippery slope in this country where people who do it wrong, who violate the law, have an advantage over those who are willing to do it right. That is not the American way and that is the key difference between the Craig-Kennedy legislation and the Chambliss-Kyl legislation.

We say one can work here and continue to work here. In fact, we have three different 3-year periods, one right after the other, in which one can work in the United States. But we say if they seek to become a legal permanent resident, as opposed to a legal temporary resident, that permanent residency should require them to apply for it the same as everybody else. They have to go home, make the application—it takes 1 year to do it—and then they have their green card. Once they get their green card, it is true they can apply for citizenship, but at least they have to follow the rules. They have done it the same as everybody else and they have not gotten an advantage because they came here illegally and stayed in this country illegally.

The final point I want to make is there is another provision of the Craig-Kennedy legislation which I do not understand. It has been alluded to by the Senator from California, Mrs. FEINSTEIN, and others. It is a provision which actually attracts people who have previously violated the law. They snuck in, they came into the United States illegally, they illegally used documents to gain employment, they have been employed illegally in the United States, and the fact of all of those illegal activities is what permits them to come back into the United States. In other words, they have gone home for some reason, and if they can establish that they were here illegally, then they get to come back into the country legally. I don't know of anything that stands the law on its head more than that. Why would somebody try to abide by the law if they realized that, with counterfeit documents, they can simply show up at the border and say, Hey, I worked in the United States illegally and I want to come back in now and get this new status you are creating for me.

It is a magnet not only for counterfeit and fraud but for people to come back into the United States who are now not here illegally, claiming that they have a right to do so on one basis and one basis only—because they violated our law. It seems to me to be totally upside-down to grant legal status to people, to invite them into our country, on the basis that they violated our law when there are not enough visas to grant to people who are trying to do it legally.

This is amnesty, and it is wrong. What we are saying is there is a perfectly legal way to do this, to get all of the employers matched up that we need. We have no cap on the number of people who can apply through our streamlined H–2A process. As many workers as we need, we can get. I think that is why the Farm Bureau supports this. They know whatever labor needs we have in this country, we can fulfill them through a legal process, and there will not be any magnet for illegal immigrants to come to the country anymore.

To conclude, there are two reasons to vote against the Craig-Kennedy legislation and one good reason to vote for the Chambliss-Kyl legislation. The reason to vote against both, frankly, is that unless both of these are defeated, we are going to be on this immigration issue for a long, long time. Who knows when we are going to conclude the supplemental appropriations legislation? We are certainly not going to finish it this week again. This will be the second full week we have been on it.

Second, I don't think at the end of the day we are going to pass legislation—through the Senate and House and have it signed by the President—that grants amnesty to illegal immigrants or invites illegal immigrants back into the United States because of their illegal status. For that reason, we suggest we have a better approach, an approach which can meet our labor needs but do so within the rule of law and without granting a reward to those who have violated our law.

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. CRAIG. Mr. President, I will yield to the Senator from Nevada for the purpose of the introduction of an amendment to the underlying bill. It would not take time from me. Then I will claim the floor for a few moments.

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

AMENDMENT NO. 487

Mr. ENSIGN. I ask unanimous consent the pending business be set aside and Senate amendment No. 487 be called up.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Nevada [Mr. ENSIGN] proposes an amendment numbered 487.

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

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

The amendment is as follows:

(Purpose: To provide for additional border patrol agents for the remainder of fiscal year 2005)

On page 191, after line 25, insert the following:

CUSTOMS AND BORDER PROTECTION

SALARIES AND EXPENSES

For an additional amount for ''Salaries and Expenses'', for hiring border patrol agents, $105,451,000: *Provided*, That the amount provided under this heading is designated as an emergency requirement pursuant to section 402 of the conference report to accompany S. Con. Res. 95 (108th Congress).

CONSTRUCTION

For an additional amount for ''Construction'', $41,500,000, to remain available until expended: *Provided*, That the amount provided under this heading is designated as an emergency requirement pursuant to section 402 of the conference report to accompany S. Con. Res. 95 (108th Congress).

REDUCTION IN FUNDING

The amount appropriated by title II for ''Contributions to International Peacekeeping Activities'' is hereby reduced by $146,951,000 and the total amount appropriated by title II is hereby reduced by $146,951,000.

Mr. ENSIGN. I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Idaho.

AMENDMENT NO. 432

Mr. CRAIG. Mr. President, the Senator from Arizona has come up with some fascinating and interesting explanations of why his is not and ours is amnesty. By that I simply mean there are a lot of people who believe that if people have broken the law and that you grant them any forgiveness whatsoever, that is amnesty. But now, according to Mr. CHAMBLISS and Mr. KYL, we have a whole new definition of why theirs is not, even though they grant those who have broken the law a blue card to continue to stay and work. They say there is a difference.

You know, there really is not a difference in this respect. If I am not amnestied by the Chambliss-Kyl amendment, there is no stretch of the imagination that would suggest otherwise about the Craig-Kennedy bill. I do not believe our bill has amnesty, because I think when you ask someone who has broken the law to pay back to society and to limit their rights, then recognizing that they have done so and allowing them to earn that legal status—and certainly that is what we do in the Craig-Kennedy bill. We demand, if you will, 360 days over 3 to 6 years in the field, working hard, so you gain the right to apply for a green card. I do not call that amnesty; I call that hard-earned, labor-paid-for, to get the ability to stay and work. You can have your own thoughts about amnesty, but nowadays I am finding out anyone can have his or her own definition of amnesty. Amnesty is in the eye of the beholder. The word is an epithet, like calling someone a communist.

In other ways, there is a very real difference between these two approaches. Let me outline it. We have 200-some-odd agriculture groups, part of a coalition of 509 groups, supporting our bill. It is very bipartisan. It is a significant reform of the H–2A program. It is not just crafted in the last minutes as a stopgap measure to block and divide. It is not so narrowly crafted that it delivers almost no real benefit. Most important, we say something that is fundamental to Americans who are concerned that our border to the south is now out of control and people are pouring over it. We say you had to be here last year, working for 100 days last year, not just here on April 1 of this year, like the other amendment. So regarding that problem we are all hearing about on our borders to the south, where people are pouring over, if they made it by April 1, the Kyl-Chambliss bill says: You get a blue card. You can stay 3 years, 6 years, 9 years, and in 9 years, if you are capable of developing your job into a supervisory position, you can stay permanently.

That is not amnesty? Again, I think I have well established, no matter who tries to interpret what amnesty is, that it is in the mind of the beholder.

The reason I am on the floor today and the reason we have been allowed to come to the floor is because in this particular bill we became germane by an action of the House. I know the Senator from Arizona talks urgency. We have been 3 months producing an urgent supplemental. It has been 3 months since the President asked us to respond. That is not the fault of the Senate. The House took 2 of those months. The House turned this appropriations bill into an immigration bill. We can take a few more hours to discuss AgJOBS.

Can't we take a day and a half to solve what Americans believe is the No. 1 problem in our country, or a problem that is in the top three, and that is uncontrolled immigration and uncontrolled borders? What we are trying to do with a segment of our economy and a segment of our workforce that works predominantly in agriculture is to gain control of the process, shape it, identify it, and stop the flood that is coming across our borders.

Let me show you some of the work we have done. I think it better explains to America the urgency of the problem. They hear the reports on the borders. Now let's look at the statistics as to what we have been doing since 9/11.

The morning of 9/11, we woke up to a rude awakening, that America had slacked off way too long on its immigration laws and that we had 8 to 12 million undocumented foreign nationals in our country—undocumented. That meant that they were here, by definition, illegally. Most were hard working, and most are hard working. Most are law abiding. But some were here to do us evil. Some were here to kill us. We found that out to our great surprise.

That was more than 1,300 days ago, and Congress has done nothing about the laws that were so slack as to create that problem. So over the last 5 years—prior to that and now after that—I have worked with a diverse bunch of groups across the country to come up with a significant change in policy specific to a segment of that larger group—about 1.6 million in that particular workforce. But on this chart is a good example of what we are attempting to do at this moment.

Here is 1994 through the year 2005: total funding level from all sources in the billions of dollars that we are spending on the borders of America today to try to control our borders, and on enforcement of our immigration laws within those borders. Here this red line on this chart goes. Starting in 2001 and up, you see this tremendous increase in what we spend on enforcement. We are now, today, spending $7 billion a year on the borders and on internal enforcement. That is ''b,'' $7 billion on enforcement. The Senator from Arizona would be the first to admit that the borders south of his State are still like sieves—people are pouring across them in an illegal way. Yet, today, for America's sake, we are spending $7 billion on our borders and on internal enforcement.

Look at the green line that represents apprehensions in millions of individuals. Last year we apprehended more than 1.2 million individuals and sent them back across the border. These are dramatic increases. Did it stem the tide of illegality? No, it didn't. The Senator from Arizona is sitting there agreeing with me. They are pouring over the border. Seven billion dollars later, with thousands more new law enforcement people on the borders and with apprehensions up, more people are coming. What is wrong with that picture?

Let me show you what is wrong with that picture. We could build a fence along the border. We could build it high and dig it deep, and we could man it with people every few feet, but if the laws that backed up the fence were not working, somebody would come through. Somebody would get through. They would dig under it. They would go around it. There are more than 7,000 miles of land borders in our country and more than 88,000 miles of tidal shoreline and water inlets. They would come. The reason they would come is that the law is not effective, nor is it deterring them. They would come because our economy and our way of life are a powerful magnet and because our laws provide no reasonable way to

match those willing workers with jobs here that would go begging.

Here is another interesting graph. There was a time in our country when the laws did work. Starting in the 1950s we had a program for guest workers to come into our country and work. They were identified and the worker matched to the work. They came and worked, and they went home. As a result of that, this green line represents the developing of the Bracero Program, which did just that.

From a humanitarian point of view, it was not a good program. Many of these people were not well treated. But the side of it that worked was the side that identified the worker and the work, and here is the result. The red line represents apprehensions, those illegally crossing the border who were caught. Look at the drop, the dramatic drop in illegal activity going on in our country in the 1950s. Illegal immigration dropped more than 90 percent stayed low for a long period of time.

Here we are in 1954: over 1 million apprehensions. What did I say about last year? Over a million apprehensions. Millions were coming across the border illegally before we changed the law. We changed it and, in 1953 and 1954, and we implemented it. These crossings stayed law all through the 1950s and into the 1960s, until somebody did not like it anymore because of the way people were being treated, and they repealed it. Eventually we wound up with the law we have today, the H–2A program. Guest workers in the 1950s, you can see, remained relatively constant at a few hundred thousand, but those numbers dropped and flattened out because there were those in Congress who did not like the old law. They repealed it and up went the number of illegals again. Why? The system did not work. Over the years, the government and the people knew it. We watched it. We ignored it. That is why we are here today, because Americans are asking us not to ignore it any longer. It is almost the same scenario—my goodness, 40 years later, 50 years later.

Did we learn lessons? History has a way of repeating itself, and it appears it is repeating itself today—1954, apprehension of illegals, 1.2 million; last year, 1.2 million. But in the interim we had laws working for a period of time that clearly demonstrated that if this Congress has the will to deal with the problem, it can. My legislation, the Craig-Kennedy legislation, clearly does so. We would dramatically changed the underlying H–2A program in a way that has produced support of over 500 organizations, 200 of them agricultural organizations, and we do so in a bipartisan way and a broad-based way.

The Kyl-Chambliss bill is very narrow in who benefits from limited changes in the current program, and it does not reflect that bipartisan approach, nor does it reflect a national approach in large part on this issue. Their bill would benefit a few employers and a few labor contractors in some parts of the country. We have brought all stakeholders, all communities of interest to the table with our bill. That is why it is significant for all of us to understand that there are very real differences in these bills. Besides, as long as you just made it here by April 1 of this year, you can stay under the Kyl-Chambliss bill. You get a blue card, and you can stay 3 years, 6 years, 9 years, and if you elevate yourself to a supervisory position, you stay forever.

Under our legislation you have to have been here last year. By January 1, 2005, you will have to have proved you worked 100 days and then you get a temporary card, and then you continue to work, and meet a higher standard of good behavior under the law than other, legal immigrants, to pay for your right to stay to work, to pay for your right to eventually apply for a green card, to be able to move back and forth in a continuum and to be, if you will, a permanent employee in this country.

The Senator from Arizona is talking about a quick pathway to citizenship in our bill. I would not suggest that 10 to 15 years of hard work, standing in line and making application is a quick path to anything. Most Americans would never stand in line for 10 years for anything, let alone work at least 360 days in temporary, seasonal farm labor, over several years in 100-degree heat in fields in Yuma, AR, or Twin Falls, ID. There are some who will, and they work very hard to earn that right. But they will work to earn the right, it will not be given to them unconditionally.

There is one thing the Craig-Kennedy and Chambliss-Kyl bills have in common. We do not make a free gift, of citizenship regardless of circumstance, unconditionally. I would call that amnesty. We give people—our legislation gives people—the right to come here and work, to earn the right to stay, and the right to continue to work. So there is a very real difference. Don't fall off on the idea of this quick fix in the substitute amendment that was just produced in the last few weeks because they know that I knew I was going to be here on the Senate floor with a bill that has been 5 years in the crafting and has literally a nationwide base of support from all groups—from labor, from agriculture, from Hispanic groups, from taxpayer groups, from religious and community groups, and has strong bipartisanship.

Last year, it was cosponsored by 63 Republicans and Democrats alike. This year, we are again building the numbers, and cosponsorship is now nearly 50—again, Democrats and Republicans alike—supporting this. That is why we are here on the Senate floor. Americans are demanding that we control this immigration problem. We are offering an approach, a solution to a portion of that.

I hope the Congress will then continue to work its will to get to a much broader based, comprehensive program.

I retain the remainder of my time.

The ACTING PRESIDENT pro tempore. The Senator from Arizona.

Mr. KYL. Mr. President, let me respond to a couple of comments which my colleague just made. He characterized his legislation as enabling people to earn the right to stay. This is the earned amnesty provision. But the point is, there is no difference between coming across the border illegally and working here illegally and working under the Craig-Kennedy bill. You are working in the field, and after a period of time you get permanent legal residency. Between 2½ weeks and 3½ months, you get legal status. Then a year later you get legal permanent residency by doing the very same thing you are illegally doing today.

Mr. CRAIG. Mr. President, will the Senator yield?

Mr. KYL. I am happy to yield.

Mr. CRAIG. There is a difference. If you come forth and say, I have been here and have worked 100 days and I want to get a temporary green card, we do a background check.

Mr. KYL. The green card is permanent, not temporary.

Mr. CRAIG. The temporary card is for people working 360 days over 3 to 6 years, and then you apply for permanency. It is at least 3 years, and maybe 6 years before you can even apply for permanent residency. Then that processing and adjudication takes about 2 to 3 additional years, because there are backlogs. It is not immediately permanent. It is at least 5 years, and maybe 9 years before you have permanent residency. Then it takes another 5 years before citizenship, if you qualify. Do you do a background check? And do you make those who have a blue card—those whom you are giving the right to stay here legally—go through a full background check in full compliance with immigration law today? Are they drug dealers, felons, three-misdemeanor conductors? We do that. We do a thorough background check to make sure we have the right people working here and not have criminals slipping through our borders. Do you do the same?

Mr. KYL. Will the Senator yield 2 minutes to me on his time?

Mr. CRAIG. I would be happy to yield.

Mr. KYL. The answer is yes. We have a much more effective way because we have biometric identifiers, a fingerprint check, or other kinds of biometric identifiers so the individual identifies himself both as being in legal status for employment and being the person he says he is. That, of course, requires documents to demonstrate legality, in the first instance, so we can absolutely confirm that the only people who are being hired are here legally. You can make the card whatever color you want to, but under today's law, legal permanent residency is called green card status. Everybody knows you get a green card when you have legal permanent residency.

Under your legislation, it is, in fact, the case that with as little as 2½ weeks but no more than 3½ months a status of legality is granted. After 1 year an application can be made for legal permanent residency. The only question is how much time it takes to complete that application process. That is when you can apply for it, 1 year. It may take several more months to gain the status. Once the application has been made, you are a legal permanent resident in this country.

Mr. CRAIG. If the Senator will yield, then we both have identification with the background check. We would require a Homeland Security identifier program. They are working on those kinds of efforts now. We would require the same.

The real difference is your folks could work 1 hour and get a blue card. Ours have to work at least 100 days and have been here prior to January 1. I think we agree on that. I do not know where the Senator gets his reference to 2½ weeks. No one last year worked in agriculture one hour a day for 100 days. That was before AgJOBS was even introduced. That kind of employment arrangement would be irrational. If someone did show up and claim they had worked 1 hour a day for 100 days, that would be a reason to investigate them for fraud.

Mr. KYL. Mr. President, let me reclaim my time.

The key difference is how you gain the status of legal permanent resident. Under the Craig-Kennedy bill, you get that after working here doing the very same thing that you are doing illegally today. You are not doing anything different. You are just doing it now under a new status as opposed to the old status. Once you do that, you get legal permanent residency. That is the difference. Under the Chambliss-Kyl legislation, you never get legal permanent residency.

Second, under the Craig-Kennedy legislation, I think the Senator from Idaho misspoke when he said we don't grant citizenship. I think it is fair to say we don't grant citizenship, but it is that status of legal permanent residency which entitles you to apply for citizenship under the United States Code—8, United States Code, section 1427(a).

The point is, the granting of the legal permanent status under the Craig-Kennedy legislation automatically entitles you to apply for citizenship. That is the amnesty. You can't do that under the Chambliss-Kyl legislation. There is no path to citizenship for people who violated the law except to go back to the country of origin and do it just like everybody else—to get in line like everybody else.

The final point I want to make is this: I think it is a very dangerous proposition to argue that we can't control our borders. We can. I have talked to the Tucson sector chief of the Border Patrol who says if we have enough resources, we can get control of our borders. It has largely been accomplished in California and Texas. It is not accomplished in Arizona because illegal immigrants came to where we don't have the control. We spent the money in California, we spent the money in Texas, and sure enough they are coming through Arizona. Over half of the illegal immigrants are coming through one sector in the State of Arizona.

The statistic which the Senator from Idaho pointed out is exactly correct in that regard. They are mushrooming.

He is also correct in saying we need two things. I hope he will agree with me we need both. We need both an effort to enforce the law—after all, if the country cannot protect its own borders, it cannot protect its sovereignty. If we do that, we need to devote the resources to do that. We also need enforceable legislation for people who work in this country. We can do that by having a simplified H–2A program and some language similar to what we are talking about here, matching willing workers and employers within the legal construct, and with combined efforts to control the border and enforce those laws we can end up with a legal regime.

But I think it is a very dangerous proposition for us to say we can't, under any circumstances, control our borders. We can, and we must.

The ACTING PRESIDENT pro tempore. Who yields time?

The Senator from Georgia.

Mr. CHAMBLISS. Mr. President, this is going to be a very interesting debate. I hope all of our colleagues are watching this.

I wish to respond to a couple of things my friend said relative to our legislation.

First of all, this is not a stop-gap measure. This is not something we conceived over the last several weeks—even the last several months. I have actually been working on this issue for the entire 11 years I have served in the House of Representatives and now in this body. In fact, on the floor of the House of Representatives in 1995, Congressman RICHARD POMBO of California and myself proposed a very similar piece of legislation to what the Chambliss-Kyl amendment is today to reform the H–2A program. We weren't as expansive back then because we didn't conceive the blue card concept. But we had a very similar proposition relative to H–2A because H–2A has been a good program, if it were streamlined. And if it were not so cumbersome for employees to use, it would be used more often than what it is today.

Second, I want to talk about this issue relative to the control of the borders. Senator KYL is exactly right. I think it is very dangerous for anybody to argue during this process or any other process that we cannot control the borders. We can control the borders, and we must control the borders. If we don't control the borders to our country during this process or conceive of some way to make sure that Homeland Security does so during this process, then we are going to accomplish nothing.

Our goal is—I know what the goal of Senator CRAIG and Senator KENNEDY is—to provide our agricultural sector in this country with a stable, with a quality, and with an abundant labor force pool from which to choose, and that they must be legal. That we can agree on. But we can control the border, and under our legislation—it is absent from Senator CRAIG's legislation—we demand that the Department of Homeland Security, within 6 months after the effective date of this amendment, come forward to Congress with a proposal as to how they want to seal the border and control it from allowing illegal immigrants to come across that border.

It can be done, it should be done, and it must be done as a part of this process.

I want to go back to the AgJOBS bill and talk about what is truly the major significant difference; that is, the issue of amnesty.

Under the AgJOBS bill that Senator CRAIG and Senator KENNEDY have, first, illegal aliens are eligible for temporary work visas if they have worked in agriculture a minimal amount of time. I will not go through what Senator KYL just said but, basically, if they have been here for 100 days and worked 1 hour each day, then they can apply for what is known as ''temporary adjustment status'' under the Craig-Kennedy bill. That makes them legal. We simply do not do that. We intentionally put the burden on the employer to make sure the employee is who he says he is.

First of all, I need the workers; second, that these workers will be coming here as law-abiding citizens; and, they have not violated the law—as you can do under Senator CRAIG's and Senator KENNEDY's amendment, not once, not twice, but you can have three misdemeanors on your record and still get the legal adjustment status.

We have zero tolerance. We think folks who come here and say they want to work in the United States must be law-abiding citizens, if that is what they want to do. We say, unlike Craig-Kennedy, that the burden must be on the employer to, first of all, go out and say, I want to hire American workers to fill these jobs. Then, if he can't do that, it is the employer who comes in and says: I have tried to hire American workers to fill these jobs. I cannot find the American workers to do it. Therefore, under the H–2A reform provision, I need these workers for a temporary period of time—X number of days—to do this job. Then they will return to their native country.

In the case of the blue card, it is a little bit different. There are some agricultural industries in this country—for example, the landscape or the nursery business—where employees are needed for a 12-month period every time, not just for a temporary 90-day

or 120-day period of time. In that particular instance, these employers—again, the burden is on the employer—make the estimation that they need these employees—this individual is here, is law abiding, and that they want to have a blue card issued to that individual.

That individual, again, can work only for that employer. When he leaves the employ of that individual, the burden is on the employer to let the Department of Labor know he has left. If he goes to work for another employer, which he can do in the agricultural sector, the employer for whom he goes to work must again file the proper documentation with the Department of Labor as well as with the Department of Homeland Security so they can track that individual. That is critically important.

The major difference in that provision versus the Craig-Kennedy provision is they grant the temporary adjustment status which says they are here illegally. After a 3½ month period of time, they can then work for a year and get a green card, which means they basically can stay in the United States forever with that green card. If they want to apply for citizenship, they can apply for citizenship while they are in the United States.

Under Chambliss-Kyl, they must comply with current law in order to get a green card. In order to do that, you must go back to your native country. You must stand in line, as everyone else is required to do today, in order to make application for a green card. They do not get any preferential treatment.

If they want to secure what we think is the most precious asset an American has, and that is American citizenship, that individual, under the Craig-Kennedy amendment, simply can stay in this country legally with a green card, and while they are here under that green card—even though they came illegally—they can make application for citizenship. I don't know whether it will be granted in 5, 6, 7 years, but that is immaterial. They can do so outside of what is current law.

Under the Chambliss-Kyl amendment, you cannot do that. If you are going to apply for a green card, you must go back to your native country and stand in line with everyone else and come in under the cap provided for in current law, make application, go through all the process, and maybe get your green card. If you want to apply for citizenship, again, you have to follow current law. You have to go back to your native country, you have to make the proper application, and go through all the appropriate steps before you can secure citizenship.

That major difference of rewarding those people here illegally in the Craig-Kennedy AgJOBS amendment versus not rewarding individuals who are here illegally but only granting them a temporary status under the Chambliss-Kyl amendment is the major difference in these two bills.

Why should we even grant anyone here illegally the right to stay in this country? The Department of Labor estimated 2 years ago we have between 8 million and 13 million people in this country illegally. We have no idea who they are. Sure, we see them standing on the street corner from time to time looking for jobs. We know, in the agriculture sector, about 85 percent of the employees are here illegally. They all have false documentations. They are pretty easy to get. You can go to almost any street corner, unfortunately, or across the border in Senator KYL's State of Arizona and pay somebody somewhere between $300 and $1,000—I understand is the current market rate—and you will get a fake Social Security card and other fake documentation that will allow you to stay here.

It is illegal for an employer, before he hires somebody, whether it is the agricultural sector or not, to ask that person for further verification of the fact they are here legally in this country. That is a weird provision in our law, but it is a fact, so we don't know who these people are. The mere fact we have a 5-million gap between 8 million and 13 million tells how serious the problem is. It is serious from the standpoint these people are taxing our education system, our judicial system, and our health care system. We need to identify who these people are.

We are firing the first rifle shot. Again, on this, Senator CRAIG, Senator KENNEDY, and I agree. I applaud them, particularly Senator CRAIG, for continuing to push this ball forward. We need this debate in the Senate as well as in the House of Representatives. Once we identify those people who are involved in agriculture and are here illegally, we have to make a fundamental determination, as legislators, and that is are we going to try to round those people up? Are we going to try to hire the hundreds of thousands of additional border patrol agents and INS agents, round those people up, and send them back from where they came and expect them to stay there? Or are we going to be practical, and are we going to identify those people—we will not look at them and say: We will give you permanent status in this country, but we will allow you to stay here legally for a temporary period of time if you are law abiding. As I say, we have zero tolerance. The AgJOBS bill will allow for three misdemeanors and still allow them to stay here.

Second, we ask: Are you displacing an American worker? We agree on that. Both of us say we should not displace an American worker. But if they are not displacing American workers, if they are law abiding, and if their employer—one other critical difference in the two bills—if their employers make the attestation here he has complied with all the laws, he has sought to hire American workers, and he cannot do so, the employer will be granted the right to either have those workers come in under the streamlined H2–A process or the employer will be the one who secures the blue card for that employee that he needs on more of a full-time basis.

I submit there are significant differences in these two bills but the basic overall difference is we think the Federal Government has the obligation, No. 1, to control the border. We think you can control the border. We think, if you did not control the border, I don't care how sophisticated a piece of legislation we pass in this Senate or the House of Representatives, or it might go to the President's desk, we will have accomplished nothing.

We do request and mandate the Department of Homeland Security give us that plan within 6 months as to how they will control the border. As Senator KYL said, they have a plan in place in Texas and California that is working better than what we have in place in Arizona, where it simply is not working. It is working much better than what we have in my home county of Colquitt County, GA, where it is not working. They are getting into our county somehow. We need a provision to control the border.

Second, the major difference is a question of whether you want to vote to grant somebody who is here illegally, who may have violated our law on three separate occasions with misdemeanors, a pathway to citizenship or whether you want to give somebody who is here for the right reasons, and who has not violated the law but who is needed by an agricultural employer, give them the opportunity to work for that agricultural employer for a temporary period of time and never, during the whole time he stays in the United States, be given anything other than a temporary status.

Mr. KYL. Might I ask the Senator from Georgia to yield for a quick question?

Mr. CHAMBLISS. Sure.

Mr. KYL. I was told a colleague was watching this debate from his office and is under the impression a point was made, under our legislation, a supervisor could apply for citizenship or be granted citizenship or legal permanent residency under the Chambliss-Kyl legislation. I wonder if the Senator would clarify that is not the case.

Mr. CHAMBLISS. That is absolutely not the case. There is no way, under the Chambliss-Kyl amendment, anyone, anybody who is here illegally and who gets a blue card by virtue of the employer of that individual requesting the blue card, ever becomes anything other than a temporary resident of this country.

Under our law—and we maintain current law—under current law, there is no way someone who is in this country on a temporary basis can ever apply for a green card—and can never apply for citizenship.

Mr. CRAIG. Will the Senator yield?

Mr. CHAMBLISS. I am happy to yield.

Mr. CRAIG. I ask you to respond on my time. I appreciate that.

I understand what you are saying, ''greening'' versus ''blueing,'' but if you give someone a blue card and he becomes a supervisor, he may not be a permanent resident but he is permanently in this country by your legislation.

We all identify with the green card today because it has been around a long time. When you get a permanent green card, you can become a permanent resident and not a citizen. I suggest, and you may disagree, if you become a supervisor after 9 years of being here with a blue card, it is permanent, is it not?

Mr. CHAMBLISS. I appreciate the question of the Senator from Idaho. That is exactly the opposite from what is the truth. The truth is, he is always a temporary employee, and if he has a supervisory position and if he is granted additional time after 9 years, his temporary status never changes.

Mr. CRAIG. But he is permanently here if he wants to be.

Mr. CHAMBLISS. That is not true because if his employer ever released him from his employment, he has to notify the Department of Homeland Security and the Department of Labor, and that individual must go back to where he came from. Or if he secures a——

Mr. CRAIG. So I am right, but under certain conditions I am wrong. Thank you.

Mr. CHAMBLISS. You are wrong, but there are exceptions to everything.

Mr. CRAIG. I thought so.

Mr. CHAMBLISS. He is never a permanent citizen as he becomes under your bill after about 2½ weeks.

Mr. CRAIG. Mr. President, I have to come back on that. Not after 2½ weeks.

He gets a temporary green card for 360 days or 5 years. Then he applies for permanency. That is the way the bill reads. That is an additional 2 years. Math is math and it adds up and that is 6 years. I am sorry, that is not 2 weeks. It does not work that way. That we disagree on.

Mr. CHAMBLISS. Will the Senator yield?

Mr. CRAIG. I am happy to yield.

Mr. CHAMBLISS. Is it not true, under your bill, an individual can get the temporary adjustment status after working 100 hours?

Mr. CRAIG. As of 2004, not in 2005. January 1, he had to be here last year working, cannot come across the border through Arizona. March 29, before April 1 of this year.

Mr. CHAMBLISS. Is it true that 1 hour is defined in the Fair Labor Standards Act, or 1 day's work is defined as 1 hour, and it is actually 100 days?

Mr. CRAIG. I understand it is kind of the semantics we played a few moments ago. Temporary is not permanent, even though they are permanently here temporarily. I understand those semantics, yes.

Under the Fair Labor Standards Act, 1 hour is a day. But I do require not 1 hour, I require 100 days. You require 1 hour.

Mr. CHAMBLISS. Is it not true this is a fundamental difference in our two amendments? Under your amendment, the employee or the illegal alien comes in and says: I worked here for those 100 hours last year or 2 years ago.

Mr. CRAIG. And must demonstrate through tax returns——

Mr. CHAMBLISS. Where under our bill they come in and an employer says: I need this employee, and I want to make application for the H2–A or the blue card.

Mr. CRAIG. That employee must demonstrate tax records and an employment record during that 100-hour period by an employee prior to January 1, 2005.

Mr. CHAMBLISS. Would the Senator not agree a fundamental difference is, under your bill, the employee is the one who makes that attestation. Whereas, under our bill, it is the employer—the American employer—says: I need you.

Under your bill, the employee says: I have been here for this period of time, and therefore I deserve to receive this adjustment.

Mr. CRAIG. In my situation, they must have worked and, of course, they must do that full background check we all go through.

It is a time-consuming thing. One of the things the American people want that we are both doing is to control the current illegal population, to identify and find out who they are, to make sure they are not bad people, if we are going to grant them the right to stay and work. That we both accomplish.

It is not just, oh, get a card because you got 100 hours or, oh, you get a card because you got 1 hour, in your circumstance. It is because you have submitted yourself to a full background check. That is 14 pages in the current code of this country as it relates to immigration. That is very significant for all of us.

Mr. CHAMBLISS. Mr. President, I yield the Senator from Alabama 10 minutes.

Mr. SESSIONS. I thank the Senator from Georgia. I appreciate the debate that has been going on. It is an important debate. It is something we need to be discussing.

I say, with real conviction, we can improve the immigration system in America. We can make it work better. We must do that.

This is a defense supplemental bill, early in this Senate calendar. We are not ready, in any way, shape or form, to be debating this comprehensive legislation today.

If the American people were to know what is being proposed, they would be very unhappy with us. I certainly hope we are not about to make this law.

I understand, at one point, there were over 50 cosponsors to the Craig-Kennedy legislation, which is breathtaking, in a way. But I don't think the American people and Members of this body fully understand the import of it. It is a big deal.

I say to my colleagues, you will be voting on this soon. I urge you to get your mind focused on what we are about to vote on and I urge you to say, ''I am not ready to vote on such comprehensive legislation—this is a Defense bill''—and vote no. That is the first thing we ought to do.

Let me see if I can summarize, from reading this legislation carefully, what I think the AgJOBS amendment says without any doubt.

People who are here illegally, for any number of reasons, who should not be here contrary to the law, and, therefore, are who also working illegally and violating American law—under this bill, if they have worked 100 hours in 100 days, meaning 1 hour per day, within 18 months—virtually no real work is required in the 18 months—they become, immediately, just like that, a lawful temporary resident. They immediately become able, legally, to stay here. If they have brought their families here unlawfully, their families also get to stay and can not be deported.

Then, in the next 6 years, if they work 2,060 hours—this has been explained as somehow earning your citizenship. I want to remind us that these people are here voluntarily, they are working and they are being paid what they earn. They are simply doing what they wanted to come here and do. This should not earn them a path to citizenship. They are not doing volunteer work in the community. They are earning a living and being paid for their work. Some say they should be earning more than their pay, that they are earning amnesty as well. But if they work 2,060 hours in 6 years—now, 2,060 hours is about 1 year's work for an American worker; that is how much you work a year—if they do that, some say they are then entitled to legal permanent resident status. At that point, they can bring in their family if they are out of the country. They can come into the country with you and also become legal permanent residents—even if you never intended for your family to follow you when you decided to come to the U.S. illegally and work illegally.

Then, if you wait 5 years, as a legal permanent resident in the United States, and you work, and you are not convicted of a felony, you are not convicted of three misdemeanors—three will block you, but two will not. You can be convicted of two misdemeanors. You can be investigated for drug smuggling, for murder, for child exploitation, all of these things. You can even be indicted for those charges. But the statute says, if you are not convicted, the Secretary shall make you a lawful temporary resident and shall make you a legal permanent resident. It is mandatory on the Secretary. They are not able to do a background check and say: Well, the FBI is investigating this guy for drug smuggling or being a member of some gang or involved in

child sexual exploitation. It says ''conviction'' is necessary to keep you from getting amnesty. Otherwise, you shall be approved as a temporary and permanent resident. And being a legal permanent resident puts you on the road to citizenship.

That is what it is all about. If, indeed, a person has in 18 months met this 100-hour work status and has gone back to their home country, maybe without any intention of returning to America—this amendment will effectively be a notice to them from Uncle Sam that says: By the way, you once worked here illegally. We know you have left and gone back, but you should come back and become a temporary resident, then a permanent resident, and then a citizen.

So it says: Come on back. They may not even have been intending to do this, but this may be an offer they feel they can't refuse because they may think: Well, the illegal alien is thinking—''I can go to the U.S. and become a lawful temporary resident, and then I can become a legal permanent resident. And, I can bring my family. I will move to the U.S.''

That is not the way we want to be doing immigration in America. It is not the way we need to be doing it. There is no dispute that this is amnesty. How can it not be amnesty? If this is not amnesty, what is amnesty? You take someone who violated the law, give them a guaranteed path to citizenship, not subject to review by the Department of Homeland Security and the Immigration and Customs Enforcement, ICE, people—a guaranteed path. You shall be made a temporary resident if you meet these qualities. You shall be made a permanent resident if you meet this standard. And if you meet the legal permanent resident status, you are on the road to citizenship. That is what it is all about.

If we ever want to create a legal immigration system—and I know we do—that is generous and allows people to come here who will be contributors to our country, that has any integrity whatsoever, we must not adopt this AgJOBS bill. It is a capitulation. It is a total collapse of any attempt to create an enforceable legal system. I must say that. We absolutely do not need to be sneaking it in on a Defense supplemental without the American people knowing what is going on here. They are not going to be happy.

Now, how do these amnesty programs work? My colleague earlier challenged my numbers. I said it could be a million or even more people. He said it would be a half a million, plus children. But Dr. Phillip Martin, professor of agricultural economics of UC Davis and a member of the Agricultural Workers Commission says that at least 860,000 workers will come, and then their family members on top of that.

We know last time we had an agricultural workers amnesty, in 1986, that amnesty drastically underestimated the number that would be approved. I think the number was two or three times as many as expected that were approved. So I think the numbers will be huge.

Now, the commission that was called upon to study the 1986 amnesty said the program legalized ''many more workers than expected. It appears that the number of undocumented workers who had worked in agricultural seasonal services prior to the IRCA was generally underestimated.''

The commission also said that the 1986 agricultural amnesty, which was similar to the amnesty we are voting on today in fundamental principles, did not solve agriculture worker problems, rather they found that ''six years after IRCA was signed into law, the problems within the system of agricultural labor continue to exist.'' That was an official finding of a commission created by that act. Additionally, the commission found that ''an increasing number of newly arriving undocumented workers'' were still coming to the U.S.

And finally, they said, ''Worker-specific and/or industry-specific legalization programs, as contained in IRCA, should not be the basis of future immigration policy.'' That is exactly what we will be doing if we pass this amendment.

Mr. President, I do not know how much time I have.

The ACTING PRESIDENT pro tempore. The Senator has 1 additional minute.

Mr. SESSIONS. Mr. President, I am going to put this chart up and make a couple of points in relation to some of the details in the act that are really breathtaking in their scope.

I mentioned the amnesty provisions already. The AgJOBS amendment also overrides State law by eliminating ''at will'' employment, where an employer or employee can leave the employment whenever they chose. This says, if you come in under this act, unlike an American citizen, you cannot be terminated, except for just cause. To make sure that happens, this act has about six pages creating an arbitration situation where the Federal Government pays to arbitrate these disputes, an arbitration system that is not made available to an American citizen worker. They do not get that protection. It will also provide illegal aliens with taxpayer-funded legal assistance through the Legal Services Corporation to process their applications for legal status.

The ACTING PRESIDENT pro tempore. The Senator from Alabama has used 10 minutes.

Mr. SESSIONS. Mr. President, I ask if the Senator would not mind if I have 3 additional minutes.

Mr. CHAMBLISS. How about 2?

Mr. SESSIONS. Two minutes.

Mr. CHAMBLISS. Mr. President, I yield 2 additional minutes to the Senator from Alabama.

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

Mr. SESSIONS. I thank the Senator.

By the way, the AgJOBS amendment also provides they shall be given fully paid-for health insurance, which American workers do not get.

It provides that the worker organizations and employer associations are the ones to receive the applications for temporary status. But, they cannot provide that application or the information in the application to the Department of Homeland Security unless the alien consents. They might receive information or evidence in the application pertaining to a crime, but, apparently the sponsors of this amendment are not concerned about that. Instead, they want the applications and the information that is given to the organizations and associations that are authorized to receive them kept from the Department of Homeland Security. As a matter of fact, the only way your application is allowed to go to the Department Homeland Security and its Secretary—the only way it can go there—is if you have a lawyer. If you do not have a lawyer, your application has to go to one of these groups who will send it to DHS for you. These groups are not independent, fair groups.

The employer groups and the worker organizations are groups that have a special interest in promoting this. So this is not protecting the interests of the people of the United States to give this process over to two groups, both of which have a special interest in promoting people coming into this country. And, of course, there are no numerical limits on the number of aliens who would be given amnesty.

Also, finally, I would note, as the Senator from Georgia is well aware, group after group that are said to have been in favor of this legislation have changed their mind or oppose it. The National Farm Bureau no longer supports AgJOBS. Farm groups all over the country are opposed to it. I know that the largest individual H2A employer in the country opposes the AgJOBS amendment. I also know that the largest co-op user of the H2A program—the North Carolina Growers Association—oppose the amendment. I have received letters from Mid-Atlantic Solutions, the Georgia Peach Council, AgWorks, the Georgia Fruit and Vegetable Growers Association, the Virginia Agricultural Growers Association, the Vidalia Onion Business Council, and the Kentucky-Tennessee Growers Association all of which oppose the passage of AgJOBS.

The ACTING PRESIDENT pro tempore. The Senator has used his additional 2 minutes.

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

The ACTING PRESIDENT pro tempore. The Senator from Georgia.

Mr. CHAMBLISS. Mr. President, how much time remains on each side?

The ACTING PRESIDENT pro tempore. The Senator from Georgia has 11 minutes 10 seconds. The Senator from

Idaho has 9 minutes. The Senator from Massachusetts has 29 minutes.

Mr. CHAMBLISS. Mr. President, I reserve the remainder of my time.

The ACTING PRESIDENT pro tempore. Who yields time?

The Senator from Idaho.

Mr. CRAIG. Mr. President, I believe the Senator from Massachusetts will be arriving soon. His time and my time are for the same purpose. He has given me the ability to use up some of that time. I will not, at this moment, ask unanimous consent for those purposes because there is no one on the floor from the other side to visit with about that.

Senator CHAMBLISS mentioned year round work in the nursery and landscape industry. The nation's premiere nursery and landscape association is the co-chair of the vast coalition supporting AgJOBS. Why? Because they know AgJOBS will work. It will provide the workers they need. The blue card system in the substitute amendment will not. It is written so narrowly that there will be little incentive for workers to come forward and it will be cumbersome to use.

The Senator mentioned misdemeanors. AgJOBS goes beyond current law in the good behavior it requires. We would deport for a single felony, for any three misdemeanors, however minor, and for any one serious misdemeanor, which involves 6 months jail time. But if you say deport for any misdemeanor, you are talking about some truly minor things, like loitering, jaywalking, parking a house trailer in a roadside park, depositing trash from a home or farm in a roadside trash can, having untethered animal stock on a highway, or making known in any manner what library book another person borrowed. These are misdemeanors in different states. We do tighten up the law. We do require better behavior than current law and better than that of other, legal immigrants. But the punishment should be proportional to the offense. We provide for that.

I want to go through one thing again in some of the time we have left because what Americans are frustrated about today—whether it is the solution we have offered up or the solution our other colleagues have offered up—is that history has shown us what works and what does not work. For border security alone—and I know I have been corrected by the Senator from Arizona for the language I have used, and appropriately so—my guess is, if we did not put $7 billion on the border and into internal enforcement, if we put $14 or $15 or $20 billion on the border, we could probably finally do a fairly good job of locking that border up. Of course, the more persons we lock out, the more undocumented persons we lock in. We need to deal with that, too.

Americans are frustrated. They want that border controlled, as do all of us. But what we know works well is the coupling of more security with a law that provides for a legal work force. And that is what we are offering today, some $7 billion a year worth of certification and better internal enforcement. We are putting law enforcement money on the ground in the local communities. And because there is a segment of our economy that needs this particular type of employee, we have a guest worker program that faces up to the economic reality of our country.

That is what we are talking about. We did that some time ago. We did that in the 1950s, and it worked. We were, here on this chart in 1954, apprehending nearly 1.2 million illegals a year and taking them back across the border. Then we created the Bracero Program. Now, the program worked because it matched employee and employer. It received a lot of criticism, and I will not step back from being very clear about it in the way the employee was treated. That is partly what brought the program down. But we literally saw numbers of illegals drop almost to nothing and flat-lined from through the 1950s into the early 1960s, as the Bracero Program worked.

What had we done? We matched Border Patrol along with effective law enforcement along with a guest worker program that worked. Along came the 1960s. We changed it and eventually wound up with the current law. We flat-lined, by bureaucracy, the number of guest workers we allowed legally into the program on an annual basis.

You can see what happened. Here it is, as shown on this chart. Apprehensions of illegals and illegal entry began to rise. What happened last year, as this very dysfunctional program all but broke down? We were back at 1.2 million apprehensions. America has asked for a solution. We have brought a solution to the floor. The only experience our country has had on a broad basis with the a legal guest worker program is the one I have outlined.

AgJOBS is a groundbreaking, necessary part of balancing a realistic approach to solving this problem. American agriculture has boldly stepped forward and admitted they have a problem.

They are not hiding behind lobbyists saying: Lift the lid in a certain program, allow more people in. They are almost in a panicked way saying to us: We have a 70-plus-percent illegal problem that we are dependent upon for the harvesting of our fruits and vegetables, for the supplying of the American food shelf with its food. Please do something about it. Please provide a vehicle that allows these people to be legal, and we will agree to work with you in setting up the necessary mechanisms to make sure they are treated right, the housing is there, they are paid well, and all of those kinds of things.

If we don't have a legal work force in place, and we continue to lock up the border—and we should—and we do all of the other things such as uncounterfeitable ID cards, we literally could collapse American agriculture. That is something this Congress should not be responsible for doing simply by being negligent.

That is why for the last 5 years and more I have worked on this issue. We have worked cooperatively, Democrat and Republican alike—Congressman HOWARD BERMAN, who is on the floor at this moment from the House, Congressman CHRIS CANNON, Senator TED KENNEDY, and I—for hours and hours, with all the interested groups, now 509 groups, over 200 of them in agriculture. We have come up with this approach. We didn't come up with it, as my colleagues have, as a blocking measure to stop this legislation by throwing at the last minute something into the mix, by changing the color from green to blue and suggesting that it is new because it is blue. They do a few of the things we do, but ours is a much broader program and bipartisan. That is significant as we try to move legislation forward to solve this problem.

As I have said, the agricultural sector is facing its worst problems ever. Fifty to 75 percent of its farmworkers are undocumented. As internal law enforcement has stepped up, farms large and small are going out of business because they can't get the workforce at the right time to plant the crop, to tend the crop, to harvest the crop. This mighty machine we call American agriculture, which has fed us so well for hundreds of years, is at a very dangerous precipice, perhaps the most dangerous it has ever seen in its history.

This year for the first time since records were kept, the United States will be on the verge of becoming a net importer of foodstuffs. Hard to imagine, isn't it? The great American agricultural machine, and now we are at a point of being a near net importer of foodstuffs. We did that with energy. When I came to Congress in 1980, we supplied the majority of our own energy. Now we are a net importer. We did that with minerals. When I got here, we were supplying most all of our minerals. Now we are a net importer. Are we going to let this happen with food because we can't agree on a reasonable program to have one of the most valuable inputs into agriculture stabilized, secured, and legal, and that is the workforce?

No, we have all come together, Democrats and Republicans, labor, farmworker organizations, Hispanic groups. That is what you have before you in AgJOBS. That is why it got 63 cosponsors last year. We are nearly at 50 today, and building. Its time is now. It is important we have this vote that will occur this morning. It is a critical piece of legislation.

Aside from that, every year on the Arizona border, the California border, New Mexico, Texas border, over 300 people die trying to get into this country to earn a wage. They do that because of a dysfunctional H–2A law, because of a system that does not provide for a legal work force, and because of bad people who prey upon them as victims, and they are literally victims of

a law and victims of a broken process. We ought not stand idly by and allow that to happen, either. Control our borders? You bet. Create a legal work force? Absolutely. Apprehend illegals after we have created this system that works well? Absolutely. The integrity of a country is based on the control of its borders and the ability to openly and fairly assimilate into its culture immigrants who come here for the purpose of benefiting not only from the American dream but by being a part of us. That is one side of it.

The other side is the realistic understanding that there will be those who simply want to come and work and go home. There are types of work that they can qualify for that Americans cannot do or choose not to qualify for, and they ought to be allowed to do that. American agriculture depends on it, as do many other segments of our economy. It is critically important that we respond accordingly.

Last year under the program, the broken law, about 40 plus thousand H–2A workers were identified and brought in legally by that law. Yet, in the same agricultural group, there are a total of 1.6 million workers. That is how we come up with those numbers of some 70-plus percent undocumented workers or somewhere in that area. There has been a great effort by the other side to confuse the argument. We believe in the Department of Labor Statistics. The Department of Labor statistics show that, under the Craig-Kennedy provision, about 500,000 workers would be eligible to apply for adjustment, to start the process, and they have about 200,000, maybe 300,000 dependents who would qualify, not millions and millions and millions. That is so unrealistic when we are looking only at a field of 1.6 million to begin with. That is the reality. That is the honest figure. We didn't come up with it just in the dark of night. This has been 5 years and more of study, working with the Department of Labor and analyzing and understanding what the workforce is, who would stay and who would go home, who would not come forth to be identified and who would.

That is why it is time now that we allow this legislation to move forward for the purpose of it becoming law. America demands that we respond. Thirteen hundred days after 9/11 and we have not yet responded to the reality that is probably one of the most significant challenges the United States as a nation has ever faced—to control our borders, control our destiny, recognize our needs, understand our economy, be humane and fair to people, and do all of those things within the law. That is our responsibility to make that happen. It is without question a very important process.

I ask unanimous consent that time under the quorum call be equally divided.

Mr. KYL. Mr. President, reserving the right to object, we don't have very much time on our side, and that would mean that we could get out of time without the other side even coming down here until the very end. May I ask the Chair—I would like to pose a parliamentary question—under the agreement that was entered into, the time is not taken equally off of both sides in a quorum call, is it?

The ACTING PRESIDENT pro tempore. No, it is not. That requires unanimous consent.

Mr. KYL. Further reserving the right to object, because I think there is only about 10 minutes left on this side and a half hour left on the other side, that would mean our time could be wiped out without another word even being spoken. I would not agree to that at this time.

The ACTING PRESIDENT pro tempore. The Senator from Idaho is currently using the time of the Senator from Massachusetts.

Mr. CRAIG. How much time, then, is left on all three?

The ACTING PRESIDENT pro tempore. The Senator from Idaho has consumed his time. The Senator from Massachusetts now has 24 minutes. The Senator from Georgia has 11 minutes.

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

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

The legislative clerk proceeded to call the roll.

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

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

Mr. CRAIG. I will continue to consume time of the Senator from Massachusetts. I understand he is en route to speak on behalf of AgJOBS. We will continue to do that. Over the course of the last day, I have sent to the desk and provided to my colleagues a comprehensive list of over 509 organizations nationwide, some 200 of them in agriculture, that have been a part of this growing broad coalition of Democrats, Republicans, liberals, conservatives, labor, employer, and other groups that have recognized the very critical nature of American agriculture today and the importance of stabilizing its workforce and causing that workforce to become legal. That is exactly why the Senator from Massachusetts and I are here.

We have obviously had other colleagues of ours come forward with legislation proposing another approach. It is nowhere near as broad based, nor does it solve the kinds of very real problems all of us want to solve; that is, clearly creating a legal workforce.

Here are some of the frustrations I wish to talk about for a few moments that are important. There is an opinion in this country that if you just throw money at it, the problem will go away. Let me suggest right now that that is what we are doing. We are throwing a lot of money at it. In so doing, we are throwing about $7 billion a year at the border and at internal enforcement, $7 billion well spent. In part, it is beginning to build systems that are getting better as they relate to controlling dominantly our southern border, but our northern border, as well, and our shoreline.

We did it for two reasons. Actually, we started doing it after 9/11 for terrorist purposes because we were fearful that we would see terrorists coming up through Mexico and into the southern part of the United States or across our southern border or, for that matter, across our northern border. At the same time we were recognizing a near flood of people coming across those borders attempting to identify with work in our country. As you can see, the number of apprehensions of illegals peaked in about the year 2000. It was dropping. We started pushing heavy money at it. But it has begun to climb again.

The reality is, we are now putting about $7 billion a year into it and last year apprehended approximately 1.2 million illegals. We are stepping up to that plate now and stepping up aggressively, and we will do more.

I have just joined with the Senator from West Virginia, Mr. BYRD, to take money out of this supplemental in areas where we didn't think it was needed to put more into Border Patrol.

But as I have said earlier, there is not just a single solution to this problem. We have to be able to control the numbers of people coming across by stopping their belief that if they get across the border, there is a job. We have to provide a legal work force system that works. You do that by identifying the employees and the employers, and doing so as we did historically in the past, and as AgJOBS clearly does in the major reform of the existing law, the old H–2A program, which has allowed these problems to occur and is totally not functional today.

That is what we have offered. We think it is tremendously important. It is not without criticism, and we certainly know that. Any time you touch the immigration issue, it is not without criticism because there are those who simply don't believe anybody ought to be allowed into the country under nearly any circumstance, even though we are a nation of immigrants. Our strength, energy, and dynamics have been based on the phenomenal immigration from all over the world that has produced the great American story as we know it. That immigration, to keep our economy moving, to keep our culture where it is, strong and vital, is going to need to continue. But we need to control it in a way that allows the reasonable kind of assimilation that successful cultures have been able to accomplish down through the centuries, as we have allowed controlled, managed immigration into our country. We are not doing that, and we have not done it for 2 decades.

As I have said several times on the floor in the last day and a half, awakening from 9/11 was a clear demonstration of that reality, that there were 8 million to 12 million undocumented foreign nationals in our country whom we were ignoring. No longer can that happen, we say. Well, it is happening. We have let it happen for more than 1,300 days since 9/11. That is why we are on the floor at this moment. That is why we should not wait for a better day and push this back. Several Senators have been saying: Oh, we will get something done by late this year or early next year. There is nothing on the drafting table. There are some hearings being held. No comprehensive work is going on that will identify the broader picture and the very important, specific segment of our economy. Meanwhile, there will be crops in the fields, and we need a legal work force, identified and trusted, to put that food on the tables of American families.

The authors of this legislation, AgJOBS, recognize this is not a comprehensive piece but it is a piece that deals with a segment of our economy that is in the most critical need of their problems being solved today—the economy that feeds us, puts the food on the market shelves for consumers in a safe, reliable, healthy fashion. That is what we are talking about today. We are talking about the need of American agriculture to be able to respond to what is so very important on a seasonal basis—planting, tending, harvesting of America's food supply.

So that is why I am here, and I am not taking it lightly. We are most serious about our effort to try to respond to this problem. We have been attempting to gain access to the floor for well over a year for this debate and not to deny it as something we simply put off. That is the importance of what we do. That is why the Senator from Massachusetts—who is much different from I politically—and I have come together, as that broad-based coalition demonstrates. All politics have come together on this issue—left, right, and center, Democrat, Republican, labor, employer. Why? Because of the very critical nature of the problem before us and the importance that we effectively respond, for the sake of America, to control our borders, to identify the undocumenteds who are within, to provide American agriculture with a safe, identifiable and, most importantly, legal labor supply. I see my colleague from Massachusetts has joined us on the floor. With that, I retain the balance of our time.

The ACTING PRESIDENT pro tempore. Who yields time?

The Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, I ask the Chair, what is the time allocation presently?

The ACTING PRESIDENT pro tempore. The Senator has 13 minutes 40 seconds.

Mr. KENNEDY. I yield myself 8 minutes.

Mr. President, I want to thank my friend, Senator CRAIG, for his leadership in this area. As he just mentioned at the end of his comments, Senator CRAIG and I do not share a great many common positions but we both are enthusiastic about this legislation. We come to it from different interests, over long periods of time. He may remember, as I very well do, in the early 1960s, we had what was called the Bracero issue and problem. It was a very deep problem, where we had this extraordinary exploitation of workers who came across the border living in these absolutely inhumane conditions and being exploited like workers in no other part of the world. It took us a long time to get away from the Bracero problem and issue. There was enormous conflict between the workers and the growers for many years. I remember very distinctly the work of Cesar Chavez and the great interest that my brother Robert Kennedy had in the rights of immigrant workers. It was a poisonous atmosphere year after year.

And now, through the hard work of many of those who were enlightened in the agribusiness, as well as the leadership with farmworkers, they came together to recommend legislation. I paid great respect to our House colleagues, Congressman BERMAN and Congressman CANNON, for their constancy in watching this issue develop.

Mr. President, we have an opportunity in the Senate now to take a dramatic step forward toward true, meaningful, significant immigration reform. Agribusiness is only about 10 or 12 percent of the total problem. But should the Senate of the United States, in a bipartisan way, come to grips with this issue in a meaningful way, it will open the path for further action in these next few weeks and months so we can have a total kind of different view and way of handling immigration in our country.

The current system is a disaster. It is enormously costly and unworkable. We have spent more than $24 billion over the period of the last 6 years, and the problem has gotten worse and worse. We hear talk about extending a fence across the borders in southern California for a number of miles. We have to be reminded the total border in the South is 1,880 miles. Are we going to have a fence that is going to extend that far, that long, over the period of the future? This system just does not work. We do not have enough border guards or policemen out there who are going to the borders. We have to have a dramatic alteration and change. We are not going to deport the 7 million or 8 million undocumented that are here, that are absolutely indispensable, primarily in the agricultural sector, but are playing increasing roles in other sectors as well.

So we have an extraordinary problem. With all due respect to those who have tried the hard-line way of doing it, they have not been able to demonstrate any success. We hear those voices in the Senate, again: Give us another 500 border guards or some more barbed wire or another extension of the fence, let us just provide some additional kinds of technology, and we will solve our problem.

No way. We have learned that lesson. We should have learned that lesson. Now we have an opportunity, under the proposal Senator CRAIG and I have proposed, and in a bipartisan way, to try a different way.

With all respect to those who oppose this, we believe this is absolutely consistent in terms of our national security issues. The dangers to national security are what happens in the shadows, the alleyways. What is happening in the shadows and alleyways is happening among the undocumented. People are able to hide in those areas. If we bring the sunlight of legality to an immigration policy, we are going to make it much more difficult. We are going to free up border guards to be able to go after those who might be terrorists, instead of constantly looking out for the undocumented that are traveling back and forth across the border. If we have learned something over the period of time, it is immigration is not the problem. The problem is the terrorists. The best way to deal with that is to focus both manpower and technology to be able to deal with that.

Now, our effort also responds to and rebuts the idea that this is amnesty. That is the quickest way to kill the legislation. People can say, look, this is amnesty, and then go back to their offices, and that shakes people up enough to say they are not going to support that. We are talking about men and women who have lived and worked here, paid their taxes here, and they have to have done it some time ago. We are not talking over the last year; we are talking about people who have worked and have been a part of the communities a number of years ago, to permit them a long period of time, probably stretched over a period of 7 to 9 years before they would even be eligible to start down the path toward citizenship—a long period of time, Mr. President. It just seems to me that these issues have been debated and discussed. Some have been misrepresented.

Finally, this has a dramatic impact in terms of both working conditions and labor conditions for those who are going to be impacted by this issue. It is going to have a similar kind of impact in terms of American workers. You have undocumented, you have illegal workers; they are going to be exploited, and they are going to drive wages down, they are going to fear their boss or their employer might tell on them. Therefore, they are going to settle for less in terms of payment. That is only natural. We can understand that. We have the figures and statistics to demonstrate that. But when you drive those wages down, you drive the wages down for American

workers in related industries in those areas, and we have the figures to show that, too. This has a depressing impact in terms of legitimate American workers as well.

So I think this is an enormously important vote. If we are able to get support for this legislation, this will be a pathway to try to deal with the rest of the scene on immigration. If we are able to get the downpayment, which this is, this will open a new day and new opportunity.

I don't often agree with the President of the United States, but he has at least addressed this issue. We come to different conclusions with regard to the ability to be able to earn their way into legitimacy on this issue. Nonetheless, he understands. We can understand why; he has been a Governor of a border State. I hope we can find a way of developing a common ground here—Republicans and Democrats, those who have been interested and have followed the challenges out there in terms of agribusiness, those of us who have been proud to represent the workers who, over a long period of time, have been exploited in too many instances and who have suffered. All they are looking for is fairness and respect and some ability to rejoin with members of their families. Not long ago, the Senate considered fast-track legislation regarding those individuals who were serving in the Armed Forces overseas—a number of them had actually lost their lives—who were permanent resident aliens—not even citizens, but were permanent resident aliens who served in our Armed Forces. The President gave citizenship to some who were killed in Iraq. We were able to try to provide for those going into the military at least some ability to faster citizenship. They were prepared to go to Iraq to die and fight for this country. All they wanted to do was be able to live in this country as well. If they were going to do that, we were going to understand and respect their service to this Nation. We provided an opportunity to move their process toward citizenship faster, if they were going to serve in the Armed Forces or be in the Guard and Reserve, with the real prospects of going to Iraq. Are we going to say those individuals, they are going to be able to get consideration, and their brothers and sisters who may not have gone into the service are still going to have to live in the shadows of illegality?

It seems to me we ought to be able to find common ground. We ought to be able to provide common ground here when we recognize the current process and system is a disaster.

We have an unregulated system where illegality is running rampant and, quite frankly, those who are opposed to us and offer alternatives are offering more of the same.

This is an opportunity for a breakthrough. This is an opportunity for a new start. This is an opportunity for a bipartisan effort that is going to do something significant about the challenges we are facing with immigration. I hope it will be successful.

I withhold the remainder of our time.

Mr. LEAHY. Mr. President, I am a cosponsor of the AgJOBS bill, which will do a world of good for farmers and farmworkers in Vermont and around our Nation.

First, this amendment would reform the H2A program for temporary agricultural labor. As it currently exists, this program is cumbersome and deeply unpopular with farmers. As a result, it is underused and promotes the widespread use of illegal labor on our Nation's farms. Indeed, experts estimate that more than half of our Nation's farmworkers are here illegally.

Second, this amendment would provide an opportunity for that illegal workforce to come out of the shadows and obtain legal permanent residency in return for the contributions they have made and will make to American agriculture, both before and after enactment. It would allow undocumented aliens who can demonstrate that they have worked in agriculture for 100 or more days in a 12-month period during the last 18 months to apply for legal status. Eligible applicants would be granted temporary resident status. If the farmworker then works at least 360 days in agriculture during the next 6 years, he or she may apply for permanent resident status. Workers would be free to choose from any employer. These provisions would create a substantially larger legal, stable workforce from which farmers around the country could hire. And without these provisions, it is difficult to see why farmworkers currently here illegally would come forward and announce their presence.

The AgJOBS bill is supported by a broad coalition of the agriculture industry and farmworker union and advocacy groups. It has broad bipartisan support in the Senate, and I urge all Senators to vote for cloture.

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. CHAMBLISS. Mr. President, what is the time remaining?

The ACTING PRESIDENT pro tempore. The Senator from Georgia has 11 minutes. The Senator from Massachusetts has 2 minutes 45 seconds.

Mr. CHAMBLISS. Mr. President, I yield myself 5½ minutes.

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

Mr. CHAMBLISS. Mr. President, we are coming to the close of the debate on this issue. I think it is important that we review for those of our colleagues who are listening, as well as to the American people who are listening relative to this issue, concerning whether we should grant amnesty to illegal aliens who are in this country, who are working in the agricultural field and given a pathway to citizenship, or should we grant to those individuals an accommodation to stay here, assuming they are law abiding, assuming they are working in agriculture for an employer who needs them and they are not displacing an American worker, and where they will always be categorized as a temporary worker. That is the fundamental difference between our two bills.

I say to the Senator from Idaho, as well as the Senator from Massachusetts, again, I appreciate the debate we have had this morning because we have struck at the nerve of this issue relative to the agricultural sector.

The Senator from Massachusetts is right. This is, in all probability, going to lay the groundwork for the broader overall issue we will deal with relative to immigration. I hoped we could have dealt with this issue in a broader immigration bill, but with the rules of the Senate being what they are, we are here today talking about the supplemental for the Iraq war, and this is an issue which, under our rules, can be brought forth, has been brought forth, and that is obviously why we are here.

There are a number of organizations on both sides that have come out in favor of the AgJOBS bill, as well as the Chambliss-Kyl amendment. I want to make sure that all of my colleagues understand that the most recognized agricultural group in America, the American Farm Bureau, has endorsed the Chambliss-Kyl amendment. They have sent a letter to every Member of the Senate. They have sent letters to all of their membership around the country, as well as being on the telephone calling those folks today asking that they contact their Senators and request that they vote for the Chambliss-Kyl amendment.

The reason the American Farm Bureau has done that is the American Farm Bureau knows and understands that we do need that stable, quality supply of agricultural employees for our farmers and ranchers around America, and they agree with Senator KYL and myself that we need to do it in a way that gives these workers a temporary status, does not displace American workers, allows our employers—our farmers and ranchers—to only hire those individuals who have had a background check by the Department of Homeland Security and have no criminal record whatsoever, as we provide for in the Chambliss-Kyl amendment. Only then can you come to the United States and be recognized as an eligible agricultural employee under the Chambliss-Kyl amendment.

Under the AgJOBS bill, you can have up to three misdemeanors and still qualify for the adjusted status, which means you are here legally, which means you can apply for a green card while you are here, which then means you can apply for citizenship while you are here, even though you came to this country illegally to start with and even though you have committed up to three misdemeanors and have been convicted of three misdemeanors while you have been here.

We know a supply of agricultural workers is needed. Senator KYL and I

have worked very hard on this measure over the last several months to try to ensure that we accommodate all of our farmers' and ranchers' needs across America. Today we think streamlining the H–2A process, which will give us a prevailing wage rate that our employers can pay to their agricultural employees, will provide a streamlined paperwork process to allow our H–2A employers to have that ready supply of labor in a short period of time and to make sure that when they complete the job they have been allowed to come here to do, they go back to their country as available to our farmers and ranchers.

Also, with the blue card provision we have in our bill, farmers and ranchers who need employees for a period in excess of a small window will have available to them employees who can be here for up to 3 years provided the Department of Homeland Security has done a background check and determined that they have never violated the law in this country, provided that those employees never be given anything but a temporary status, and provided that those employees agree and acknowledge that they will never be allowed to apply for a green card for permanent status or for citizenship in any way whatsoever, other than under what is existing law today.

Mr. President, I yield the floor and reserve the remainder of my time.

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. KENNEDY. Mr. President, what is the time situation again?

The ACTING PRESIDENT pro tempore. The Senator from Massachusetts has 2 minutes 45 seconds.

Mr. KENNEDY. The other side?

The ACTING PRESIDENT pro tempore. Four minutes 51 seconds.

Mr. KENNEDY. I yield myself 2 minutes.

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

Mr. KENNEDY. Mr. President, one of the favorite techniques around here is people misstate what is in a particular proposal and then differ with it. I do not accuse anyone of doing that on this particular legislation, but I do believe they ought to listen to Senator CRAIG and myself as to exactly what our bill does and what it is intended to do. If there are some changes that will make these points clear, we are glad to do it. We want to free ourselves from distortions and misrepresentations.

Opponents of reform continually mislabel any initiative they oppose as amnesty in a desperate attempt to stop any significant reform. Instead of proposing ways to fix our current broken system, they are calling for more of the same—increased enforcement of broken laws. However, enforcing a dysfunctional system only leads to greater dysfunction.

To be eligible for legal status, applicants must present no criminal or national security problems. All applicants will be required to undergo rigorous security clearances. Their names and birth dates have to be checked against our Government's criminal and terrorist databases. Applicants' fingerprints will be sent to the FBI for a criminal background check which includes comparing the applicants' fingerprints with all arrest records in the FBI's database.

Contrary to arguments made by detractors of AgJOBS, terrorists will not be able to exploit this program to obtain legal status. Anyone with any terrorist activity is ineligible for legal status under our current immigration laws and would be ineligible under the AgJOBS bill. Our proposal has no loopholes for terrorists.

Opponents of AgJOBS claim this bill is soft on criminals. Wrong again. AgJOBS has the toughest provisions against those who commit crimes—tougher than current immigration law. Convictions for most crimes will make them ineligible to obtain a green card. Applicants can also be denied legal status if they commit a felony or three misdemeanors. It does not matter whether the misdemeanors involve minor offenses. In addition, anyone convicted of a single misdemeanor who served a sentence of 6 months or more would also be ineligible.

Finally, opponents of the AgJOBS bill also claim it will be a magnet for further illegal immigration. Once again, they are wrong. To be eligible for the earned adjustment program, farmworkers must establish that they worked in agriculture in the past. Farmworkers must have entered the United States prior to October 2004; otherwise, they are not eligible. The magnet argument is false. New entrants who have worked in agriculture will not qualify for this program.

This is a sensible, responsible, well-thought-out program that has had days of hearings and weeks and months of negotiations. It is a sensible answer, a downpayment to a problem this country needs to address. I believe, with all respect to my friends and colleagues on the other side, their proposal is more of the same. I hope the Senate will support our amendment.

The ACTING PRESIDENT pro tempore. The Senator's time has expired.

Who yields the time?

Mr. CHAMBLISS. Mr. President, I yield the remainder of our time to the Senator from Arizona, Mr. KYL.

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

Mr. KYL. Mr. President, let me try to summarize the status of this debate over the last couple of hours as pertains to both of these propositions.

The first to be voted on is the Chambliss-Kyl proposal, and then the second will be the Craig-Kennedy proposal. Both need 60 votes to proceed.

The first point I make to my colleagues is that we voted in this body on a sense-of-the-Senate resolution saying we should have this immigration debate later when we can do it right and can take all the time we need, where everybody can participate in it and know how to approach the problem not just from the standpoint of agriculture, in fact, but for a total attempt to solve our immigration reform issues in this country.

We decided that it would not be a good idea to try to have that debate on the supplemental appropriations bill because it would hold up the bill. Guess what has happened. We are in the second week of debate on this bill to fund our troops in Afghanistan and Iraq, and there is still no end in sight. If either one of these proposals gets 60 votes, we are off to the races with lots more amendments, debate time, and I do not know when we will get to finish the supplemental appropriations bill, which the distinguished chairman of the committee has been urging us to get about the business doing. In that sense, it would be a shame if either one of these two propositions got the 60 votes. That is my first point.

The second point is that as between the two, both attempt to reform our immigration system and match willing employer with willing employee, but one of them does so in a way that is going to, in fact, attract people to this country who have been here illegally in the past and under the provisions of the bill would enable them to come back.

People who have already gone home would be able to present themselves at the border and simply claim and try to document that they worked in this country illegally in the past and, therefore, they get to come back in again. I do not know of anything that makes less sense than having an illegal immigrant who worked here illegally go back home and then we invite them to come back into the country to get legal status simply by working in the fields again. That makes no sense.

Secondly, it is very clear that one version is amnesty and the other version is not. One simply cannot argue that when you give an advantage to people who broke the law in terms of obtaining legal permanent residency, which Chambliss-Kyl does not do, and, therefore, a path to citizenship, which Chambliss-Kyl does not do, you cannot argue that advantage given to these people who have broken our laws is not a form of amnesty.

That is the key substantive difference between these two bills. Both try to match willing employer and willing employee. One does it without amnesty and the other does it with amnesty. What we mean by that is amnesty meaning legal permanent residency and a pathway to citizenship which is achieved by virtue of the fact that somebody worked here illegally in the past. That is not, we believe, a good idea and a way to start off with a new guest worker program that we all agree needs to be enforceable and enforced.

We need to control our borders. We need to have a workable law. It needs

to be a law that matches willing employer and willing employee and does not do so with amnesty, and until we are ready to do that, I suggest we should defer that debate, get on with our supplemental appropriations bill, and have that debate when we consider it in the context of overall immigration reform.

Therefore, how do people vote on the first vote? As I said, the first vote is on the Chambliss-Kyl proposal. We urge a ''yes'' vote on that proposal. The second vote is on the Kennedy-Craig proposal. We urge a ''no'' vote on that. If they both fail, then we can get on with the business of the supplemental appropriations bill to fund our troops in Afghanistan and Iraq.

Mr. President, if there is no other speaker, I suggest we yield back all time and proceed with the votes.

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

CLOTURE MOTION

The ACTING PRESIDENT pro tempore. Under the previous order, pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will state.

The legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the pending Chambliss amendment to Calendar No. 67, H.R. 1268.

Bill Frist, Saxby Chambliss, Mitch McConnell, Elizabeth Dole, Larry E. Craig, Judd Gregg, Norm Coleman, Trent Lott, Arlen Specter, George V. Voinovich, Bob Bennett, Pete Domenici, Pat Roberts, Orrin Hatch, Richard Burr, John Cornyn, James Talent, Chuck Hagel.

The ACTING PRESIDENT pro tempore. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on amendment No. 432, offered by the Senator from Georgia, Mr. CHAMBLISS, shall be brought to a close? The yeas and nays are mandatory under the rule. The clerk will call the roll.

The bill clerk called the roll.

Ms. STABENOW announced that the Senator from Illinois (Mr. DURBIN), and the Senator from Illinois (Mr. OBAMA) are necessarily absent.

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

The yeas and nays resulted—yeas 21, nays 77, as follows:

[Rollcall Vote No. 97 Leg.]

YEAS—21

Allard	DeMint	Lott
Bond	Dole	Salazar
Burns	Graham	Santorum
Burr	Grassley	Stevens
Chambliss	Gregg	Sununu
Cochran	Kyl	Thomas
Collins	Landrieu	Warner

NAYS—77

Akaka	Allen	Bayh
Alexander	Baucus	Bennett
Biden	Feingold	Mikulski
Bingaman	Feinstein	Murkowski
Boxer	Frist	Murray
Brownback	Hagel	Nelson (FL)
Bunning	Harkin	Nelson (NE)
Byrd	Hatch	Pryor
Cantwell	Hutchison	Reed
Carper	Inhofe	Reid
Chafee	Inouye	Roberts
Clinton	Isakson	Rockefeller
Coburn	Jeffords	Sarbanes
Coleman	Johnson	Schumer
Conrad	Kennedy	Sessions
Cornyn	Kerry	Shelby
Corzine	Kohl	Smith
Craig	Lautenberg	Snowe
Crapo	Leahy	Specter
Dayton	Levin	Stabenow
DeWine	Lieberman	Talent
Dodd	Lincoln	Thune
Domenici	Lugar	Vitter
Dorgan	Martinez	Voinovich
Ensign	McCain	Wyden
Enzi	McConnell	

NOT VOTING—2

Durbin	Obama

The PRESIDING OFFICER. On this vote, the yeas are 21, the nays are 77. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

Mr. COCHRAN. I move to reconsider the vote.

Mr. KYL. I move to lay the motion on the table.

The motion to lay on the table was agreed to.

COMMITTEE MEETINGS

Mr. FRIST. Before we vote, I have 10 unanimous consent requests for committees to meet. The request has been cleared on both sides, and I ask for these requests and ask that the requests be printed in the RECORD.

Mr. REID. Reserving the right to object, does this include—

Mr. FRIST. This is for 10 requests for committees to meet, other than the Committee on Foreign Relations.

I add that there was one committee left out of this request due to an objection on the other side of the aisle. Chairman LUGAR is holding a business meeting in the Foreign Relations Committee at 2:15, and there is an objection. I ask unanimous consent that committee request be granted and the committee be allowed to meet at 2:15.

Mr. REID. I object.

Mr. FRIST. I am disappointed there is an objection to allowing this important committee to do its work. That will make it necessary to recess for a period this afternoon to give Chairman LUGAR an opportunity to have his committee meeting. I understand there may be a request from the other side for a vote on the motion to recess. Senators should be on notice that if we are unable to work out this objection, we will vote at 2:15 this afternoon. Unfortunately, this recess will not allow debate and votes on additional amendments to the underlying emergency appropriations prior to this afternoon's cloture vote.

I yield the floor.

CLOTURE MOTION

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

The assistant legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the pending Craig amendment to Calendar No. 67, H.R. 1268.

Bill Frist, Larry E. Craig, Mitch McConnell, Elizabeth Dole, Judd Gregg, Saxby Chambliss, Trent Lott, George V. Voinovich, Arlen Specter, Bob Bennett, Pete Domenici, Pat Roberts, John E. Sununu, Orrin Hatch, Richard Burr, John Cornyn, James Talent, Chuck Hagel.

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

The question is, Is it the sense of the Senate that the debate on amendment No. 375, offered by the Senator from Idaho, Mr. CRAIG, shall be brought to a close? The yeas and nays are mandatory under the rule. The clerk will call the roll.

The assistant legislative clerk called the roll.

Ms. STABENOW. I announce that the Senator from Illinois (Mr. DURBIN) and the Senator from Illinois (Mr. OBAMA) are necessarily absent.

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

The yeas and nays resulted—yeas 53, nays 45, as follows:

[Rollcall Vote No. 98 Leg.]

YEAS—53

Akaka	Feingold	Mikulski
Baucus	Hagel	Murray
Bayh	Harkin	Nelson (FL)
Biden	Inouye	Nelson (NE)
Bingaman	Jeffords	Pryor
Boxer	Johnson	Reed
Burns	Kennedy	Reid
Cantwell	Kerry	Salazar
Carper	Kohl	Sarbanes
Chafee	Landrieu	Schumer
Clinton	Lautenberg	Smith
Coleman	Leahy	Snowe
Corzine	Levin	Specter
Craig	Lieberman	Stabenow
Dayton	Lincoln	Voinovich
DeWine	Lugar	Warner
Dodd	Martinez	Wyden
Domenici	McCain	

NAYS—45

Alexander	Crapo	Kyl
Allard	DeMint	Lott
Allen	Dole	McConnell
Bennett	Dorgan	Murkowski
Bond	Ensign	Roberts
Brownback	Enzi	Rockefeller
Bunning	Feinstein	Santorum
Burr	Frist	Sessions
Byrd	Graham	Shelby
Chambliss	Grassley	Stevens
Coburn	Gregg	Sununu
Cochran	Hatch	Talent
Collins	Hutchison	Thomas
Conrad	Inhofe	Thune
Cornyn	Isakson	Vitter

NOT VOTING—2

Durbin	Obama

The PRESIDING OFFICER. On this vote, the yeas are 53, the nays are 45. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is not agreed to.

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

The motion to lay on the table was agreed to.

Mr. COCHRAN. Mr. President, we have several amendments that have been cleared on both sides, and I am prepared to bring those to the attention of the Senate.

AMENDMENT NO. 547

Mr. President, I send to the desk an amendment on behalf of Mr. BOND regarding Federal Housing Enterprises Oversight, and I ask that it be reported.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Mississippi [Mr. COCHRAN], for Mr. BOND, proposes an amendment numbered 547.

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

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

The amendment is as follows:

(Purpose: To appropriate $5,000,000 for OFHEO to meet emergency funding needs; these funds are supported by fees collected from the regulated GSEs)

Insert the following on page 203, after line 17:

OFFICE OF FEDERAL HOUSING ENTERPRISE OVERSIGHT SALARIES AND EXPENSES (INCLUDING TRANSFER OF FUNDS)

For an additional amount of the ''Office of Federal Housing Enterprise Oversight'' for carrying out the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, $5,000,000 to remain available until expended, to be derived from the Federal Housing Enterprises Oversight Fund: *Provided,* That not to exceed the amount provided herein shall be available from the general fund of the Treasury to the extent necessary to incur obligations and make expenditures pending the receipt of collections to the Fund: *Provided further,* That the general fund amount shall be reduced as collections are received during the fiscal year so as to result in a final appropriation from the general fund estimated at not more than $0..

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment.

The amendment (No. 547) was agreed to.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 527

Mr. COCHRAN. Mr. President, I call up amendment No. 527 on behalf of Ms. LANDRIEU regarding oil and gas fabrication ports.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Mississippi [Mr. COCHRAN], for Ms. LANDRIEU, proposes an amendment numbered 527.

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

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

The amendment is as follows:

(Purpose: To modify the provision relating to offshore oil and gas fabrication ports)

On page 209, lines 15 and 16, strike ''benefits'' and insert ''value''.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment.

The amendment (No. 527) was agreed to.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 441

Mr. COCHRAN. Mr. President, I call up amendment No. 441 on behalf of Mr. SANTORUM regarding loan guarantees.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Mississippi [Mr. COCHRAN], for Mr. SANTORUM, proposes an amendment numbered 441.

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

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

The amendment is as follows:

(Purpose: To allow certain appropriated funds to be used to provide loan guarantees)

On page 231, between lines 3 and 4, insert the following:

SEC. 6047. Notwithstanding any other provision of law, funds that have been appropriated to and awarded by the Secretary of Energy under the Clean Coal Power Initiative in accordance with financial assistance solicitation number DE-PS26-02NT41428 (as described in 67 Fed. Reg. 575) to construct a Fischer-Tropsch coal-to-oil project may be used by the Secretary to provide a loan guarantee for the project.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment.

The amendment (No. 441) was agreed to.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 407

Mr. COCHRAN. Mr. President, I call up amendment No. 407 on behalf of Mr. REID regarding the Walker River Basin.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Mississippi [Mr. COCHRAN], for Mr. REID of Nevada, proposes an amendment numbered 407.

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

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

The amendment is as follows:

(Purpose: To provide assistance for the conduct of agricultural and natural resource conservation activities in the Walker River Basin, Nevada)

On page 211, strike lines 3 through 8 and insert the following:

AGRICULTURAL AND NATURAL RESOURCES OF THE WALKER RIVER BASIN

SEC. 6017. (a)(1) Using amounts made available under section 2507 of the Farm and Security Rural Investment Act of 2002 (43 U.S.C. 2211 note; Public Law 107–171), the Secretary of the Interior (referred to in this section as the ''Secretary''), acting through the Commissioner of Reclamation, shall provide not more than $850,000 to pay the State of Nevada's share of the costs for the Humboldt Project conveyance required under—

(A) title VIII of the Clark County Conservation of Public Land and Natural Resources Act of 2002 (116 Stat. 2016); and

(B) section 217(a)(3) of the Energy and Water Development Appropriations Act, 2004 (117 Stat. 1853).

(2) Amounts provided under paragraph (1) may be used to pay—

(A) administrative costs;

(B) the costs associated with complying with—

(i) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and

(ii) the National Historic Preservation Act (16 U.S.C. 470 et seq.); and

(C) real estate transfer costs.

(b)(1) Using amounts made available under section 2507 of the Farm and Security Rural Investment Act of 2002 (43 U.S.C. 2211 note; Public Law 107–171), the Secretary shall provide not more than $70,000,000 to the University of Nevada—

(A) to acquire from willing sellers land, water, and related interests in the Walker River Basin, Nevada; and

(B) to establish and administer an agricultural and natural resources center, the mission of which shall be to undertake research, restoration, and educational activities in the Walker River Basin relating to—

(i) innovative agricultural water conservation;

(ii) cooperative programs for environmental restoration;

(iii) fish and wildlife habitat restoration; and

(iv) wild horse and burro research and adoption marketing.

(2) In acquiring land, water, and related interests under paragraph (1)(A), the University of Nevada shall make acquisitions that the University determines are the most beneficial to—

(A) the establishment and operation of the agricultural and natural resources research center authorized under paragraph (1)(B); and

(B) environmental restoration in the Walker River Basin.

(c)(1) Using amounts made available under section 2507 of the Farm and Security Rural Investment Act of 2002 (43 U.S.C. 2211 note; Public Law 107–171), the Secretary shall provide not more than $10,000,000 for a water lease and purchase program for the Walker River Paiute Tribe.

(2) Water acquired under paragraph (1) shall be—

(A) acquired only from willing sellers; and

(B) designed to maximize water conveyances to Walker Lake.

(d) Using amounts made available under section 2507 of the Farm and Security Rural Investment Act of 2002 (43 U.S.C. 2211 note; Public Law 107–171), the Secretary shall provide—

(1) $10,000,000 for tamarisk eradication, riparian area restoration, and channel restoration efforts within the Walker River Basin that are designed to enhance water delivery to Walker Lake, with priority given to activities that are expected to result in the greatest increased water flows to Walker Lake; and

(2) $5,000,000 to the United States Fish and Wildlife Service, the Walker River Paiute

Tribe, and the Nevada Division of Wildlife to undertake activities, to be coordinated by the Director of the United States Fish and Wildlife Service, to complete the design and implementation of the Western Inland Trout Initiative and Fishery Improvements in the State of Nevada with an emphasis on the Walker River Basin.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment.

The amendment (No. 407) was agreed to.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 476

Mr. COCHRAN. Mr. President, I call up amendment No. 476 on behalf of Mr. BYRD regarding the Upper Tygart Watershed project.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Mississippi [Mr. COCHRAN], for Mr. BYRD, proposes an amendment numbered 476.

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

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

The amendment is as follows:

(Purpose: To transfer funds relating to certain watershed programs of the Department of Agriculture)

On page 198, between lines 21 and 22, insert the following:

SEC. 5134. Of the amount provided to the Secretary of Agriculture under the Consolidated Appropriations Act, 2005 (Public Law 108–447) for the Lost River Watershed project, West Virginia, $4,000,000 shall be transferred to the Upper Tygart Watershed project, West Virginia, to be used under the same terms and conditions under which funds for that project were appropriated in section 735 of the Consolidated Appropriations Act, 2004 (Public Law 108–199; 118 Stat. 36).

Mr. BYRD. Mr. President, the amendment I am offering today is technical in nature in that it will provide for the transfer of previously appropriated funds from one ongoing Natural Resources Conservation Service, NRCS, project in West Virginia to another. The two projects involved are the Upper Tygart Valley Watershed project and the Lost River Watershed project. The Upper Tygart project will, once completed, provide water service to at least 16,000 residents in Randolph County, WV. The Lost River project is a series of dams that were designed to provide flood control, water supply, and recreation in Hardy County, WV.

The Upper Tygart Valley Watershed project requires a final $4 million in funding to initiate construction. The additional funds are necessary due to the fact that the project design was not yet completed when cost estimates for the project were formed. There has also been a dramatic rise in the cost of building materials for the project.

Funding in the amount of $4.2 million was provided to the Lost River Watershed project in the fiscal year 2005 Agriculture Appropriations bill. However, the project cannot proceed to construction in the current fiscal year due to a change in the project purpose requested by the project sponsor and subsequent requirements for the NRCS to reevaluate the project.

Due to these circumstances, I am offering this amendment which will provide the Natural Resources Conservation Service authority to transfer the previously appropriated construction funds from the Lost River Watershed project to the Upper Tygart Valley Watershed project. This action will enable the NRCS to initiate construction of the Upper Tygart project during the coming months. Again, I would like to reemphasize to my colleagues that this amendment does not appropriate new funds but instead transfers previously appropriated funds between two existing Natural Resources Conservation Service projects in West Virginia.

I thank my colleagues for their support of my amendment.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment.

The amendment (No. 476) was agreed to.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 548

Mr. COCHRAN. Mr. President, I send to the desk an amendment on behalf of Mr. LEAHY regarding the protection of the Galapogas.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Mississippi [Mr. COCHRAN], for Mr. LEAHY, proposes an amendment numbered 548.

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

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

The amendment is as follows:

To encourage the Government of Ecuador to take urgent measures to protect the biodiversity of the Galapagos.

At the appropriate place in the bill, insert the following:

PROTECTION OF THE GALAPAGOS

SEC.__. (a) FINDINGS.—The Senate makes the following findings—

(1) The Galapagos Islands are a global treasure and World Heritage Site, and the future of the Galapagos is in the hands of the Gqvernment of Ecuador;

(2) The world depends on the Government of Ecuador to implement the necessary policies and programs to ensure the long term protection of the biodiversity of the Galapagos, including enforcing the Galapagos Special Law;

(3) There are concerns with the current leadership of the Galapagos National Park Service and that the biodiversity of the Galapagos and the Marine Reserve are not being properly managed or adequately protected; and

(4) The Government of Ecuador has reportedly given preliminary approval for commercial airplane flights to the Island of Isabela, which may cause irreparable harm to the biodiversity of the Galapagos, and has allowed the export of fins from sharks caught accidentally in the Marine Reserve, which encourages illegal fishing.

(b) Whereas, now therefore, be it

Resolved, That—

(1) the Senate strongly encourages the Government of Ecuador to—

(A) refrain from taking any action that could cause harm to the biodiversity of the Galapagos or encourage illegal fishing in the Marine Reserve;

(B) abide by the agreement to select the Directorship of the Galapagos National Park Service through a transparent process based on merit as previously agreed by the Government of Ecuador, international donors, and nongovernmental organizations; and

(C) enforce the Galapagos Special Law in its entirety, including the governance structure defined by the law to ensure effective control of migration to the Galapagos and sustainable fishing practices, and prohibit long-line fishing which threatens the survival of shark and marine turtle populations.

(2) The Department of State should—

(A) emphasize to the Government of Ecuador the importance the United States gives to these issues; and

(B) offer assistance to implement the necessary policies and programs to ensure the long-term protection of the biodiversity of the Galapagos and the Marine Reserve and to sustain the livelihoods of the Galapagos population who depend on the marine ecosystem for survival.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to amendment No. 548.

The amendment (No. 548) was agreed to.

Mr. COCHRAN. Mr. President, I move to reconsider the vote by which the amendment was agreed to, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. COCHRAN. Mr. President, I have no further amendments to present to the Senate at this time.

I yield the floor.

AMENDMENT NO. 499

The PRESIDING OFFICER. The Senator from Virginia.

Mr. ALLEN. Mr. President, I rise in support of the amendment offered by the senior Senator from Virginia, Mr. WARNER, of which I am a cosponsor as well as the two Senators from Florida.

The Department of Defense is on an ill-timed course to weaken our military strength by reducing the number of aircraft carriers from 12 to 11 and maybe even more. This decision is completely inconsistent with recent past statements on the absolute number of carriers needed to conduct operations.

According to ADM Vernon Clark, Chief of Naval Operations, just a little over 2 years ago:

The current force of 12 carriers and 12 amphibious groups is the minimum we can have and sustain the kind of operations we are in.

According to the 2002 Naval Posture Statement:

Aircraft carrier force levels have been set at 12 ships as a result of fiscal constraints;

however, real-world experience and analysis indicate that a carrier force level of 15 ships is necessary to meet the warfighting Commander in Chief's requirements for carrier presence in all regions of importance to the United States.

I am not convinced that reducing our carrier fleet is the best strategic decision in the midst of our global war against terrorism. Realistically, it looks like the Department of Defense and the Navy are maneuvering quickly to negate any legislative oversight. But we in Congress should make sure that all considerations are taken into account before we rush into a decision that may hamper our military's ability to fight this global war on terrorism. That is why this amendment is being offered.

What does this amendment achieve? First, the amendment ensures that the Navy proceeds on the scheduled necessary maintenance of the USS *John F. Kennedy* so that the carrier is kept in active status. In addition, this amendment requires the Navy to keep 12 carriers until the latter of the following: 180 days after the quadrennial defense review comes before Congress or that the Secretary of Defense has certified to Congress that agreements have been entered into to provide port facilities for the permanent forward deployment of such numbers of aircraft carriers that are necessary in the Pacific Command Area of Responsibility to fulfill the roles and missions of that command.

Moreover, it is important that we keep the *Kennedy* available because Admiral Clark stated that it is essential to have a carrier home ported in Japan. However, we know that Japan has serious reservations—in fact, prohibitions—about allowing us to port a nuclear carrier there, and currently there is no sign that that prohibition would be removed for nuclear carriers. Therefore, with Japan's prohibition on nuclear vessels, it is unwise to limit our options by retiring one of the only two nonnuclear aircraft carriers. The other is the *Kitty Hawk*, which is actually an older vessel than the *JFK*.

The bottom line is that the United States must have maximum flexibility in protecting our security interests in the Pacific and the Indian oceans. I believe any plan to mothball the *Kennedy* is shortsighted, especially during this time of war and with China's rapid naval buildup. In addition, as far as China is concerned, with the continued tension between China and Taiwan, it is imperative that we have a carrier in the region that can respond quickly to any possible conflict that may arise.

In that regard, the Washington Post published a story written by Edward Cody on April 12, 2005, entitled ''China Builds A Smaller, Stronger Military; Modernization Can Alter Regional Balance Of Power Raising Stakes For The U.S.''

I ask unanimous consent that this article be printed in the RECORD.

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

[From the Washington Post, Apr. 12, 2005]

CHINA BUILDS A SMALLER, STRONGER MILITARY; MODERNIZATION COULD ALTER REGIONAL BALANCE OF POWER, RAISING STAKES FOR U.S.

(By Edward Cody)

A top-to-bottom modernization is transforming the Chinese military, raising the stakes for U.S. forces long dominant in the Pacific.

Several programs to improve China's armed forces could soon produce a stronger nuclear deterrent against the United States, soldiers better trained to use high-technology weapons, and more effective cruise and anti-ship missiles for use in the waters around Taiwan, according to foreign specialists and U.S. officials.

In the past several weeks, President Bush and his senior aides, including Defense Secretary Donald H. Rumsfeld, Secretary of State Condoleezza Rice and Director of Central Intelligence Porter J. Goss, have expressed concern over the recent pace of China's military progress and its effect on the regional balance of power.

Their comments suggested the modernization program might be on the brink of reaching one of its principal goals. For the last decade—at least since two U.S. aircraft carrier battle groups steamed in to show resolve during a moment of high tension over Taiwan in 1996—Chinese leaders have sought to field enough modern weaponry to ensure that any U.S. decision to intervene again would be painful and fraught with risk.

As far as is known, China's military has not come up with a weapon system that suddenly changes the equation in the Taiwan Strait or surrounding waters where Japanese and U.S. forces deploy, the specialists said. China has been trying to update its military for more than two decades, seeking to push the low-tech, manpower-heavy force it calls a people's army into the 21st-century world of computers, satellites and electronic weapons. Although results have been slow in coming, they added, several programs will come to fruition simultaneously in the next few years, promising a new level of firepower in one of the world's most volatile regions.

''This is the harvest time,'' said Lin Chong-pin, a former Taiwanese deputy defense minister and an expert on the Chinese military at the Foundation on International and Cross-Strait Studies in Taipei.

U.S. and Taiwanese military officials pointed in particular to China's rapid development of cruise and other antiship missiles designed to pierce the electronic defenses of U.S. vessels that might be dispatched to the Taiwan Strait in case of conflict.

The Chinese navy has taken delivery of two Russian-built Sovremenny-class guided missile destroyers and has six more on order, equipped with Sunburn missiles able to skim 4½ feet above the water at a speed of Mach 2.5 to evade radar. In addition, it has contracted with Russia to buy eight Kilo-class diesel submarines that carry Club anti-ship missiles with a range of 145 miles.

''These systems will present significant challenges in the event of a U.S. naval force response to a Taiwan crisis,'' Vice Adm. Lowell E. Jacoby, director of the Defense Intelligence Agency, told the Senate Armed Services Committee in testimony March 17.

Strategically, China's military is also close to achieving an improved nuclear deterrent against the United States, according to foreign officials and specialists.

The Type 094 nuclear missile submarine, launched last July to replace a trouble-prone Xia-class vessel, can carry 16 intercontinental ballistic missiles. Married with the newly developed Julang–2 missile, which has a range of more than 5,000 miles and the ability to carry independently targeted warheads, the 094 will give China a survivable nuclear deterrent against the continental United States, according to ''Modernizing China's Military,'' a study by David Shambaugh of George Washington University.

In addition, the Dongfeng–31 solid-fuel mobile ballistic missile, a three-stage, land-based equivalent of the Julang-2, has been deployed in recent years to augment the approximately 20 Dongfeng–5 liquid-fuel missiles already in service, according to academic specialists citing U.S. intelligence reports.

It will be joined in coming years by an 8,000-mile Dongfeng–41, these reports said, putting the entire United States within range of land-based Chinese ICBMs as well. ''The main purpose of that is not to attack the United States,'' Lin said. ''The main purpose is to throw a monkey wrench into the decision-making process in Washington, to make the Americans think, and think again, about intervening in Taiwan, and by then the Chinese have moved in.''

With a $1.3 trillion economy growing at more than 9 percent a year, China has acquired more than enough wealth to make these investments in a modern military. The announced defense budget has risen by double digits in most recent years. For 2005, it jumped 12.6 percent to hit nearly $30 billion.

The Pentagon estimates that real military expenditures, including weapons acquisitions and research tucked into other budgets, should be calculated at two or three times the announced figure. That would make China's defense expenditures among the world's largest, but still far behind the $400 billion budgeted this year by the United States.

Taiwan, the self-ruled island that China insists must reunite with the mainland, has long been at the center of this growth in military spending; one of the military's chief missions is to project a threat of force should Taiwan's rulers take steps toward formal independence.

Embodying the threat, the 2nd Artillery Corps has deployed more than 600 short-range ballistic missiles aimed at Taiwan from southeastern China's Fujian and Jiangxi provinces, according to Taiwan's deputy defense minister, Michael M. Tsai. Medium-range missiles have also been developed, he said, and much of China's modernization campaign is directed at acquiring weapons and support systems that would give it air and sea superiority in any conflict over the 100-mile-wide Taiwan Strait.

But the expansion of China's interests abroad, particularly energy needs, has also broadened the military's mission in recent years. Increasingly, according to foreign specialists and Chinese commentators, China's navy and air force have set out to project power in the South China Sea, where several islands are under dispute and vital oil supplies pass through, and in the East China Sea, where China and Japan are at loggerheads over mineral rights and several contested islands.

China has acquired signals-monitoring facilities on Burma's Coco Islands and, according to U.S. reports, at a port it is building in cooperation with Pakistan near the Iranian border at Gwadar, which looks out over tankers exiting the Persian Gulf. According to a report prepared for Rumsfeld's office by Booz Allen Hamilton, the consulting firm, China has developed a ''string of pearls'' strategy, seeking military-related agreements with Bangladesh, Cambodia and Thailand in addition to those with Burma and Pakistan.

Against this background, unifying Taiwan with the mainland has become more than

just a nationalist goal. The 13,500–square-mile territory has also become a platform that China needs to protect southern sea lanes, through which pass 80 percent of its imported oil and tons of other imported raw materials. It could serve as a base for Chinese submarines to have unfettered access to the deep Pacific, according to Tsai, Taiwan's deputy defense minister. ''Taiwan for them now is a strategic must and no longer just a sacred mission,'' Lin said.

Traditionally, China's threat against Taiwan has been envisaged as a Normandy-style assault by troops hitting the beaches. French, German, British and Mexican military attaches were invited to observe such landing exercises by specialized Chinese troops last September.

Also in that vein, specialists noted, the Chinese navy's fast-paced ship construction program includes landing vessels and troop transports. Two giant transports that were seen under construction in Shanghai's shipyards a year ago, for instance, have disappeared, presumably to the next stage of their preparation for deployment.

But U.S. and Taiwanese officials noted that China's amphibious forces had the ability to move across the strait only one armored division—about 12,000 men with their vehicles. That would be enough to occupy an outlying Taiwanese island as a gesture, they said, but not to seize the main island.

Instead, Taiwanese officials said, if a conflict arose, they would expect a graduated campaign of high-tech pinpoint attacks, including cruise missile strikes on key government offices or computer sabotage, designed to force the leadership in Taipei to negotiate short of all-out war. The 1996 crisis, when China test-fired missiles off the coast, cost the Taiwanese economy $20 billion in lost business and mobilization expenses, a senior security official recalled.

A little-discussed but key facet of China's military modernization has been a reduction in personnel and an intensive effort to better train and equip the soldiers who remain, particularly those who operate high-technology weapons. Dennis J. Blasko, a former U.S. military attache in Beijing who is writing a book on the People's Liberation Army, said that forming a core of skilled commissioned and noncommissioned officers and other specialists who can make the military run in a high-tech environment may be just as important in the long run as buying sophisticated weapons.

Premier Wen Jiabao told the National People's Congress last month that his government would soon complete a 200,000–soldier reduction that has been underway since 2003. That would leave about 2.3 million troops in the Chinese military, making it still the world's biggest, according to a report issued recently by the Defense Ministry.

Because of pensions and retraining for dismissed soldiers, the training and personnel reduction program has so far been an expense rather than a cost-cutter, according to foreign specialists. But it has encountered competition for funds from the high-tech and high-expense program to make China's military capable of waging what former president Jiang Zemin called ''war under informationalized conditions.''

The emphasis on high-tech warfare, as opposed to China's traditional reliance on masses of ground troops, was dramatized by shifts last September in the Communist Party's decision-making Central Military Commission, which had long been dominated by the People's Liberation Army. Air force commander Qiao Qingchen, Navy commander Zhang Dingfa and 2nd Artillery commander Jing Zhiyuan, whose units control China's ballistic missiles, joined the commission for the first time, signaling the importance of their responsibilities under the modernization drive.

Striving for air superiority over the Taiwan Strait, the air force has acquired from Russia more than 250 Sukhoi Su27 single-role and Su–30 all-weather, multi-role fighter planes, according to Richard D. Fisher, vice president of the International Assessment and Strategy Center in Washington. The Pentagon has forecast that, as the Sukhoi program continues to add to China's aging inventory, the air force will field about 2,000 warplanes by 2020, of which about 150 will be fourth-generation craft equipped with sophisticated avionics.

But specialists noted that many of China's Su–27s have spent most of the time on the ground for lack of maintenance. In addition, according to U.S. and Taiwanese experts, China has remained at the beginning stages of its effort to acquire the equipment and skills necessary for midair refueling, space-based information systems, and airborne reconnaissance and battle management platforms.

A senior Taiwanese military source said Chinese pilots started training on refueling and airborne battle management several years ago, but so far have neither the equipment nor the technique to integrate such operations into their order of battle. Similarly, he said, China has been testing use of Global Positioning System devices to guide its cruise missiles but remains some time away from deploying such technology.

Buying such electronic equipment would be China's most likely objective if the European Union goes ahead with plans to lift its arms sales embargo despite objections from Washington, a senior European diplomat in Beijing said. A Chinese effort to acquire Israel's Phalcon airborne radar system was stymied in 2000 when the United States prevailed on Israel to back out of the $1 billion deal.

Mr. ALLEN. At a time when our military is already stretched thin, why would we want to eliminate one of the most effective methods of projecting our power and possibly opening up an area of vulnerability for the United States and our allies. The decision is clear: We must preserve at least a 12-carrier minimum for the safety of Americans and for the rest of the world, particularly our allies.

I strongly support this amendment and urge my colleagues to do the same. This amendment offers a lifeline to the USS *John F. Kennedy*, and I am pleased that my good partner, Senator WARNER, was able to offer this commonsense approach to keeping the Kennedy viable as well as our deterrence and our ability to protect our interests in the western Pacific.

I yield the floor.

The PRESIDING OFFICER. The Senator from Mississippi.

AMENDMENT NO. 407, AS MODIFIED

Mr. COCHRAN. Mr. President, in the amendments we cleared and approved a moment ago, there were two modifications which I neglected to send to the desk. The first was a modification of the Reid amendment. I ask unanimous consent that the Reid amendment be so modified.

The PRESIDING OFFICER. Without objection, the amendment, as previously agreed to, is so modified.

The amendment, as modified, is as follows:

On page 211, strike lines 3 through 8 and insert the following:

AGRICULTURAL AND NATURAL RESOURCES OF THE WALKER RIVER BASIN

SEC. 6017. (a)(1) Using amounts made available under section 2507 of the Farm and Security Rural Investment Act of 2002 (43 U.S.C. 2211 note; Public Law 107–171), the Secretary of the Interior (referred to in this section as the ''Secretary''), acting through the Commissioner of Reclamation, shall provide not more than $850,000 to pay the State of Nevada's share of the costs for the Humboldt Project conveyance required under—

(A) title VIII of the Clark County Conservation of Public Land and Natural Resources Act of 2002 (116 Stat. 2016); and

(B) section 217(a)(3) of the Energy and Water Development Appropriations Act, 2004 (117 Stat. 1853).

(2) Amounts provided under paragraph (1) may be used to pay—

(A) administrative costs;

(B) the costs associated with complying with—

(i) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and

(ii) the National Historic Preservation Act (16 U.S.C. 470 et seq.); and

(C) real estate transfer costs.

(b)(1) Using amounts made available under section 2507 of the Farm and Security Rural Investment Act of 2002 (43 U.S.C. 2211 note; Public Law 107–171), the Secretary shall provide not more than $70,000,000 to the University of Nevada—

(A) to acquire from willing sellers land, water, and related interests in the Walker River Basin, Nevada; and

(B) to establish and administer an agricultural and natural resources center, the mission of which shall be to undertake research, restoration, and educational activities in the Walker River Basin relating to—

(i) innovative agricultural water conservation;

(ii) cooperative programs for environmental restoration;

(iii) fish and wildlife habitat restoration; and

(iv) wild horse and burro research and adoption marketing.

(2) In acquiring land, water, and related interests under paragraph (1)(A), the University of Nevada shall make acquisitions that the University determines are the most beneficial to—

(A) the establishment and operation of the agricultural and natural resources research center authorized under paragraph (1)(B); and

(B) environmental restoration in the Walker River Basin.

(c)(1) Using amounts made available under section 2507 of the Farm and Security Rural Investment Act of 2002 (43 U.S.C. 2211 note; Public Law 107–171), the Secretary shall provide not more than $10,000,000 for a water lease and purchase program for the Walker River Paiute Tribe.

(2) Water acquired under paragraph (1) shall be—

(A) acquired only from willing sellers; and

(B) designed to maximize water conveyances to Walker Lake.

(d) Using amounts made available under section 2507 of the Farm and Security Rural Investment Act of 2002 (43 U.S.C. 2211 note; Public Law 107–171), the Secretary, acting through the Commissioner of Reclamation, shall provide—

(1) $10,000,000 for tamarisk eradication, riparian area restoration, and channel restoration efforts within the Walker River Basin that are designed to enhance water delivery to Walker Lake, with priority given to activities that are expected to result in the

greatest increased water flows to Walker Lake; and

(2) $5,000,000 to the United States Fish and Wildlife Service, the Walker River Paiute Tribe, and the Nevada Division of Wildlife to undertake activities, to be coordinated by the Director of the United States Fish and Wildlife Service, to complete the design and implementation of the Western Inland Trout Initiative and Fishery Improvements in the State of Nevada with an emphasis on the Walker River Basin.

AMENDMENT NO. 476, AS MODIFIED

Mr. COCHRAN. Mr. President, I make the same request with respect to modification of the amendment previously agreed to by the Senate on behalf of Senator BYRD.

The PRESIDING OFFICER. Without objection, the amendment, as previously agreed to, is so modified.

The amendment, as modified, is as follows:

On page 198, between lines 21 and 22, insert the following:

SEC. 5134. Of the amount provided to the Secretary of Agriculture under the Consolidated Appropriations Act, 2005 (Public Law 108-447) for the Lost River Watershed project, West Virginia, $4,000,000 may be transferred to the Upper Tygart Watershed project, West Virginia, to be used under the same terms and conditions under which funds for that project were appropriated in section 735 of the Consolidated Appropriations Act, 2004 (Public Law 108-199; 118 Stat. 36).

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

RECESS

The PRESIDING OFFICER. Under the previous order, the hour of 12:30 p.m. having arrived, the Senate will stand in recess until 2:17 p.m.

Thereupon, at 12:52 p.m., the Senate recessed until 2:17 p.m. and reassembled when called to order by the Presiding Officer (Mr. COBURN).

EMERGENCY SUPPLEMENTAL APPROPRATIONS ACT, 2005—Continued

Mr. FRIST. Mr. President, I ask unanimous consent that, notwithstanding the provisions of rule XXII, Senators have until 4:30 p.m. today to file second-degree amendments to both the Mikulski amendment and the underlying bill.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

UNANIMOUS-CONSENT REQUEST

Mr. FRIST. Mr. President, given the objection to the Foreign Relations Committee meeting, I ask unanimous consent that the Senate stand in recess until 4:20.

Mrs. BOXER. I object.

Mr. REED. I object.

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate recess until 4:20.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk called the roll, and the following Senators entered the Chamber and answered to their names:

[Quorum No. 2]

Coburn	Cornyn	Frist

The PRESIDING OFFICER. A quorum is not present. The clerk will call the names of absent Senators.

Mr. FRIST. Mr. President, I move that the Sergeant at Arms be instructed to request the attendance of absent Senators, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion. The yeas and nays are ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

Ms. STABENOW. I announce that the Senator from Illinois (Mr. DURBIN) and the Senator from Illinois (Mr. OBAMA) are necessarily absent.

The result was announced—yeas 91, nays 7, as follows:

[Rollcall Vote No. 99 Leg.]

YEAS—91

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

NAYS—7

Allen	Dodd	Mikulski
Baucus	Feingold	
Boxer	Leahy	

NOT VOTING—2

Durbin	Obama

The motion was agreed to.

The PRESIDING OFFICER. A quorum is present.

The majority leader.

MOTION TO RECESS

Mr. FRIST. Mr. President, I modify the pending motion to recess until 5 p.m. I send the motion to the desk.

The PRESIDING OFFICER. The motion is so modified.

Mrs. BOXER. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

Mr. FRIST. I ask unanimous consent that at 5 p.m., Senator MIKULSKI have 5 minutes before the cloture vote.

The PRESIDING OFFICER. Is there objection?

Mrs. HUTCHISON. Reserving the right to object.

Mr. WARNER. Mr. President, as a cosponsor, I would like to have 2 minutes.

The PRESIDING OFFICER. The Senator from Texas.

Mrs. HUTCHISON. Is the Senator saying we are going to go immediately to cloture on the whole bill or the Mikulski amendment at 5 o'clock?

Mr. FRIST. For clarification, at 5 o'clock Senator MIKULSKI will be given 5 minutes before the cloture vote on her amendment.

Mrs. HUTCHISON. I thank the Senator.

The PRESIDING OFFICER. Is there objection?

Mr. WARNER. Mr. President, as a cosponsor, may I have 2 minutes?

Mr. FRIST. Mr. President, I think that will be fine, with the leadership on both sides for 2 additional minutes, Senator MIKULSKI for 5 minutes, and Senator WARNER for 2 minutes.

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

Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the motion. The clerk will call the roll.

The legislative clerk called the roll.

Ms. STABENOW. I announce that the Senator from Illinois (Mr. DURBIN) and the Senator from Illinois (Mr. OBAMA) are necessarily absent.

The result was announced—yeas 56, nays 42, as follows:

[Rollcall Vote No. 100 Leg.]

YEAS—56

Alexander	DeWine	McCain
Allard	Dole	McConnell
Allen	Domenici	Murkowski
Bennett	Ensign	Roberts
Bond	Enzi	Santorum
Brownback	Frist	Sessions
Bunning	Graham	Shelby
Burns	Grassley	Smith
Burr	Gregg	Snowe
Chafee	Hagel	Specter
Chambliss	Hatch	Stevens
Coburn	Hutchison	Sununu
Cochran	Inhofe	Talent
Coleman	Isakson	Thomas
Collins	Kohl	Thune
Cornyn	Kyl	Vitter
Craig	Lott	Voinovich
Crapo	Lugar	Warner
DeMint	Martinez	

NAYS—42

Akaka	Dorgan	Lincoln
Baucus	Feingold	Mikulski
Bayh	Feinstein	Murray
Biden	Harkin	Nelson (FL)
Bingaman	Inouye	Nelson (NE)
Boxer	Jeffords	Pryor
Byrd	Johnson	Reed
Cantwell	Kennedy	Reid
Carper	Kerry	Rockefeller
Clinton	Landrieu	Salazar
Conrad	Lautenberg	Sarbanes
Corzine	Leahy	Schumer
Dayton	Levin	Stabenow
Dodd	Lieberman	Wyden

NOT VOTING—2

Durbin Obama

The motion was agreed to.

RECESS

Thereupon, the Senate, at 3:16 p.m., recessed until 5 p.m. and reassembled when called to order by the Presiding Officer (Mr. GRAHAM).

EMERGENCY SUPPLEMENTAL APPROPRIATIONS ACT, 2005—Continued

AMENDMENT NO. 387

The PRESIDING OFFICER. Under the previous order, the Senator from Maryland, Ms. MIKULSKI, will be recognized for 5 minutes, and the Senator from Virginia, Mr. WARNER, will be recognized for 2 minutes.

The Senator from Maryland.

Ms. MIKULSKI. Mr. President, I rise to ask my colleagues to support cloture on the amendment I offered last week on the H–2B visas. This amendment is desperately needed by small and seasonal business throughout the United States. This amendment is identical to the bipartisan bill I introduced in February called the Save Our Small and Seasonal Business Act. It is designed to be a temporary solution to the seasonal worker shortage that many coastal and resort States are facing.

My amendment helps keep American jobs, keep American companies open, and yet retains control of our borders. Small and seasonal businesses all over our country are in crisis. They need seasonal workers before the summer can begin so they can survive. For years they relied on an H–2B visa program to meet their needs. The program allows businesses to hire temporary seasonal foreign workers with a mandated return to their home country when no other American workers are available. But this year they can't get temporary labor. They have been facing this for the last couple of years because they have been shut out of the program because there is a cap and the cap is reached by the wintertime.

My amendment will help these employers by doing three things. One, it temporarily exempts good actor workers from the H–2B cap so employers can apply for and name employees who have already come back and forth to the United States. It protects against fraud, and it provides a fair and balanced allocation of the H–2B visas between winter and summer people.

Let me be clear about my amendment. First, it protects American jobs. Second, it is a short-term remedy because it is only a 2-year solution. What it does is exempt seasonal workers from the cap. That means there are no new workers. There are no new immigrants. It means no more new guest workers. It means people who have worked here before, who have played by the rules and gone back home, are the only ones who will be eligible. They have to have been here in the last 3 years, worked in absolute compliance with the law, and returned back home to Mexico as required. So it is not new people who will be exempt. It is an employment program for them and for us.

The employer has to go through the whole Department of Labor and Homeland Security process so we are in compliance with labor rules and we also ensure our national security.

Like my colleagues, I worry about fraud, so we have very strong antifraud provisions. We also make the system better by creating this fair allocation. We recognize that States need them in the winter, but summertime people need them, too.

There is a crisis. Thousands of small businesses are affected by this. Hitting the cap so early had a great impact on my own State of Maryland. We had a lot of summer seasonal business, particularly over there on the Eastern Shore, working that wonderful, fabulous Chesapeake Bay I share with my colleagues from Virginia. Many of our businesses used this program year after year. First they hire all the American workers they can find. Then they turn to the H–2B to find additional workers. I could give example after example, but I can tell you, if they don't get this legislation, they will have to either lay off their permanent workers or close their doors.

So what my legislation is all about is a simple legislative remedy with strong bipartisan support. It is realistic. It is specific. It is narrow. It stands up for American companies, protects our borders.

I know there is great urgency about this. We absolutely need it. Many of my companies have been around for 100 years working in the Chesapeake Bay. Many of them provide the livelihoods not only on the Eastern Shore but because of our fabulous seafood processing industry. We provide jobs also in Baltimore and Bethesda and other parts. We have to pass this legislation because if they can't start to hire within the next few weeks, we are going to close American companies and end up with an even more porous border.

I urge the adoption of my amendment, but now I urge my colleagues to vote for cloture.

I yield the floor.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I thank my distinguished colleague from Maryland. We have in the Senate a great respect and admiration for the junior Senator from Maryland for her commitment for the little person. I cannot think of another example in her long and distinguished career in the Senate where there is a clearer case for the small business, that individual who is struggling to make an honest living and provide jobs for others.

We have before us today a tremendous challenge as it relates to immigration on a wide range of issues. This program works. It is very small in comparison to others, but it works. It serves the small businesses, not only seafood, which we have talked about before in the context of this amendment, but other small things—the bed and breakfasts, the small hotels that are so important in our respective States and elsewhere in America.

I say to our colleagues, as they come to join us, it is essential that we pass this to help this category of small businesspersons and to lend credence to a program that works. For every one of these individuals who is brought in, it would be my judgment—and I concur, with my distinguished colleague—that there are two or three permanent American workers whose jobs are supported by their efforts. Oftentimes most of these come in for a short period, some several months, largely in the summertime; some in the fall. Then they go back to their homes beyond the borders of the United States. But the American worker then takes their work product and it enables them to have a full-time, 12-month means of employment.

This is one on which my colleagues will be proud to vote for cloture. In effect, it will enable this legislation to pass.

On behalf of the leadership of the Senate, I ask unanimous consent that the filing deadline for second-degree amendments be extended until the beginning of the cloture vote on the Mikulski amendment.

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

Ms. MIKULSKI. Mr. President, I yield whatever time I have remaining to the other Senator from Virginia.

Mr. WARNER. Do I not have a bit of time on mine? On behalf of my colleague from Virginia, I ask unanimous consent that he proceed for 2 minutes.

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

The Senator from Virginia.

Mr. ALLEN. Mr. President, I thank my colleague from Virginia and the Senator from Maryland. I urge my colleagues to support the cloture motion on this amendment. It is an immigration issue, but it is more importantly a small business issue.

There are a lot of small businesses that are seasonal in nature. It may be construction, landscaping, tourism, or the seafood industry. It is vitally important that we get this immigration, this H–2B visa issue, in order logically. These are law-abiding citizens who want to keep their small business in operation, providing the services that people in their communities so desire.

I thank the Chair and my colleagues. I hope all colleagues will vote for small businesses, to keep them operating in States all across the Nation and bring some common sense with this temporary remedy, to bring some common sense and reasonableness to a program that every year ends up in a crisis. I thank Senator MIKULSKI of Maryland and my colleague from Virginia, Senator WARNER, of course. All of us are

working together for the betterment of many family businesses.

Mr. WARNER. Mr. President, the two Senators from Virginia accept the challenge of the Senator from Maryland to a cookoff on crabcakes. Before we started this, the Senator talked about her mother's formula. We have ours.

Ms. MIKULSKI. I thank the Senator from Virginia. I accept the challenge. If it takes two of you to take me on, so be it.

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

CLOTURE MOTION

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

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the Mikulski amendment No. 387 to H.R. 1268.

B.A. Mikulski, J. Lieberman, Jon Corzine, Jeff Bingaman, Byron Dorgan, Ron Wyden, Ken Salazar, Hillary Clinton, Mark Pryor, Dick Durbin, Bill Nelson, Chuck Schumer, Barack Obama, Frank Lautenberg, Patrick Leahy, Debbie Stabenow, Chris Dodd.

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

The question is, Is it the sense of the Senate that debate on amendment No. 387, offered by the Senator from Maryland, shall be brought to a close? The yeas and nays are mandatory under the rule. The clerk will call the roll.

The legislative clerk called the roll.

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

The yeas and nays resulted—yeas 83, nays 17, as follows:

[Rollcall Vote No. 101 Leg.]

YEAS—83

Akaka	Dole	McCain
Allard	Domenici	Mikulski
Allen	Dorgan	Murkowski
Baucus	Durbin	Murray
Bayh	Enzi	Nelson (FL)
Bennett	Feingold	Nelson (NE)
Biden	Feinstein	Obama
Bingaman	Graham	Pryor
Bond	Gregg	Reed
Boxer	Hagel	Reid
Burns	Harkin	Rockefeller
Burr	Hatch	Salazar
Cantwell	Inouye	Santorum
Carper	Isakson	Sarbanes
Chafee	Jeffords	Schumer
Chambliss	Johnson	Smith
Clinton	Kennedy	Snowe
Coburn	Kerry	Specter
Coleman	Kohl	Stabenow
Collins	Kyl	Stevens
Conrad	Landrieu	Sununu
Corzine	Lautenberg	Talent
Craig	Leahy	Thomas
Crapo	Levin	Thune
Dayton	Lieberman	Voinovich
DeMint	Lincoln	Warner
DeWine	Lugar	Wyden
Dodd	Martinez	

NAYS—17

Alexander	Cochran	Grassley
Brownback	Cornyn	Hutchison
Bunning	Ensign	Inhofe
Byrd	Frist	
Lott	Roberts	Shelby
McConnell	Sessions	Vitter

The PRESIDING OFFICER. On this vote, the yeas are 83, the nays are 17. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

Ms. MIKULSKI. Mr. President, I ask for the yeas and nays on my amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. ENZI. Mr. President, I rise today in support of the Save Our Small and Seasonal Business Act, offered as an amendment by Senator MIKULSKI to the Supplemental Appropriations Act.

As many of my colleagues have stated, this amendment is very simple and straightforward. It is a temporary fix and does not reward illegal workers. It basically allows those workers who have followed the rules and returned home at the end of their season to come back to work in the United States and not count against the H–2B visa cap.

As the situation stands right now, the many businesses across our Nation that use the visas are limited by how many can be approved each year. The demand of the visas is high and the Department of Labor has certified that there are positions that cannot be filled locally. With the cap being for the entire fiscal year, those businesses with their season in the fall and winter have a better chance of getting the employees they need. In Wyoming, we have strong summer and winter seasons. Our winter businesses have been able to get their workers and yet see the impact of not having enough employees in the summer.

The H–2B visas are used in Wyoming by small businesses in a variety of areas. I have heard from hotels, restaurants, touring companies, hunting companies, art and framing stores, and others. Many of these people depend on their return workers to keep their businesses going. While some may consider this unskilled labor, a return worker who knows the job and knows the customers is invaluable for a small business.

This amendment is about helping our small and seasonal businesses survive another year—to give them a chance to stay in business until the Senate can fully debate needed changes in immigration reform. It does not provide amnesty or benefit those who have broken our laws.

This type of visa actually puts such a high level of responsibility on the employers that we should consider putting some of these requirements on other types of visas. Under Federal law, the employer must certify that they cannot hire locally, the employer must guarantee wages, and the employer accepts responsibility for the worker. The amendment we are considering today keeps that built-in protection. It also increases fraud protection to help us ensure that those who have the visa applications approved are those who need the employees.

The support we have already heard for this amendment is evidence of the wide impact of the H–2B visa program. Businesses from mountain States and coastal States are in need of help. We have an opportunity to take positive action in support of the small businesses that drive our economy. I encourage all my colleagues to support the Mikulski amendment.

AMENDMENT NO. 555

Mr. KYL. Mr. President, I have an amendment at the desk, No. 555.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Arizona [Mr. KYL] proposes an amendment numbered 555.

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

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

The amendment is as follows:

(Purpose: To modify the criteria for excluding certain H–2B workers from the numerical limitations under section 214(g)(1)(B) of the Immigration and Nationality Act)

On page 2, strike lines 5 through 11, and insert the following:

''(9)(A) Subject to subparagraphs (B) and (C), an alien counted toward the numerical limitations of paragraph (1)(B) during any 1 of the 3 fiscal years prior to the submission of a petition for a nonimmigrant worker described in section 101(a)(15)(H)(ii)(b) may not be counted toward such limitation for the fiscal year in which the petition is approved.

''(B) A petition referred to in subparagraph (A) shall include, with respect to an alien—

''(i) the full name of the alien; and

''(ii) a certification to the Department of Homeland Security that the alien is a returning worker.

''(C) An H–2B visa for a returning worker shall be approved only if the name of the individual on the petition is confirmed by—

''(i) the Department of State; or

''(ii) if the alien is visa exempt, the Department of Homeland Security.''.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 555) was agreed to.

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

The motion to lay on the table was agreed to.

VOTE ON AMENDMENT NO. 387, AS AMENDED

Ms. MIKULSKI. Mr. President, there is no further debate on the amendment. I yield all of my time and, therefore, request a vote on my amendment, as amended.

The PRESIDING OFFICER. The question is on agreeing to the amendment, as amended. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

The result was announced—yeas 94, nays 6, as follows:

[Rollcall Vote No. 102 Leg.]

YEAS—94

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

NAYS—6

Byrd	Nelson (FL)	Shelby
Inhofe	Sessions	Vitter

The amendment (No. 387), as amended, was agreed to.

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

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. FRIST. Mr. President, the next vote will be on invoking cloture on the bill. I hope we will, in fact, invoke cloture. If cloture is invoked this evening, it will be the last vote of the evening. This will give the two managers time to work through the pending amendments to determine which are germane. We will resume consideration of the bill tomorrow and complete action on it. I say this in advance of the cloture vote. If cloture is not invoked tonight, then we would have additional votes this evening.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. COCHRAN. Mr. President, for the purpose of completing action on cleared amendments, there are two amendments that do not require a rollcall vote. Senator HUTCHISON has an amendment and Senator CHAMBLISS has an amendment. I ask unanimous consent that it be in order for them to offer those amendments at this time.

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

The Senator from Texas.

AMENDMENT NO. 379, AS MODIFIED

Mrs. HUTCHISON. Mr. President, I call up amendment No. 379 and send a modification to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Texas [Mrs. HUTCHISON], for herself, Mr. SCHUMER, and Mr. DOMENICI, proposes an amendment numbered 379, as modified.

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

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

The amendment, as modified, is as follows:

(Purpose: To make unused EB3 visas available to bring nurses to the United States through Department of State procedures)

On page 231, between lines 3 and 4, insert the following new section:

RECAPTURE OF VISAS

SEC. 6047. Section 106(d)(2)(A) of the American Competitiveness in the Twenty-first Century Act of 2000 (Public Law 106–313; 8 U.S.C. 1153 note) is amended—

(1) in paragraph (1), by inserting before the period at the end of the second sentence ''and any such visa that is made available due to the difference between the number of employment-based visas that were made available in fiscal year 2001, 2002, 2003, or 2004 and the number of such visas that were actually used in such fiscal year shall be available only to employment-based immigrants, and the dependents of such immigrants, and 50% of such visas shall be made available to those whose immigrant worker petitions were approved based on schedule A, as defined in section 656.5 of title 20, Code of Federal Regulations, as promulgated by the Secretary of Labor''; and

(2) in paragraph (2)(A), by striking ''and 2000'' and inserting ''through 2004''.

Mrs. HUTCHISON. Mr. President, this is an amendment to recapture unused EB–3 visas. Senator SCHUMER, Senator KENNEDY and I have worked on this to try to assure that 50 percent of the unused EB–3 visas help resolve our serious nursing shortage. It is very important. These visas go out of existence and cannot be recaptured except by an act of Congress. They have already been authorized. We need to recapture the unused visas from 2001 to 2004, add to the number of nurses we can bring to our country, as well as the EB–3 engineers and educated workforce that are waiting in the wings.

Mr. President, I ask all of my colleagues to support this amendment.

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. Mr. President, I thank my colleague from Texas. This is an amendment we have worked on together. As she said, it fills some badly needed positions without increasing the overall number. I hope we will support it.

I yield the floor.

The PRESIDING OFFICER. The question is on agreeing to the amendment, as modified, of the Senator from Texas.

The Senator from Georgia.

AMENDMENT NO. 418, AS FURTHER MODIFIED

Mr. CHAMBLISS. Mr. President, I ask unanimous consent to further modify my amendment No. 418 with the changes that are at the desk, and also add a number of cosponsors whose names are also at the desk.

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

The amendment, as further modified, is as follows:

On page 169, between lines 8 and 9, insert the following:

PROHIBITION ON TERMINATION OF EXISTING JOINT-SERVICE MULTIYEAR PROCUREMENT CONTRACT FOR C/KC–130J AIRCRAFT

SEC. 1122. No funds in this Act may be obligated or expended to terminate the joint service multiyear procurement contract for C/KC–130J aircraft that is in effect on the date of the enactment of this Act.

Mr. CHAMBLISS. I thank the Chair.

Mr. PRYOR. Mr. President, I stand with Senator SAXBY CHAMBLISS and strongly support his amendment to ensure the C–130J contracts continue without interruption this year.

The C–130J has quickly been adapted to play vital and unique roles in our national defense efforts. Today, both U.S. and Allied C–130Js are performing operational missions in CENTCOM with a mission capable rate of over 90 percent. The J performs missions in Iraq in 1 day that requires the C–130E or H model 2 days. It is equally critical for relief operations like the Tsunami effort in Asia, where lives were spared due to the C–130Js quick capabilities.

I have made several visits to the Little Rock Air Force Base, the premier training facility for the C–130J, and I have seen first hand the J model's new features and capabilities. The C–130Js climb higher and faster, flies at higher cruise speeds, takes off and lands in a shorter distance, and is easier, safer and cheaper to operate than its predecessor.

The military officials and troops who I have talked with want to continue using C–130Js and they depend on the model's new features on the ground. Cutting production of the C–130Js would not only deny our soldiers the cutting-edge technology they need on today's battlefield, but it would leave the Air Force and Marine Corps with an aging and far less capable tactical airlift.

As I am sure my colleagues are aware, the Air Force recently grounded or severely restricted the flying of 90 C–130s due to old age. Eighty-four of these carriers are assigned to the Active-Duty Air Force. By further terminating the contracts for C–130Js, we would be leaving the Air Force unable to meet its future tactical requirements. The Air Force will be 116 aircraft short of requirement and the Marine Corps will be short 18 aircraft.

Terminating the C–130J contracts is short-sighted from a tactical standpoint, but it is also foolish from a financial standpoint. Terminating the current contracts could cost taxpayers more than the cost of building new carriers. Liability fees for ending the C–130J multiyear contracts are estimated at $1.3 billion for the Air Force and $0.3 billion for the Marine Corps for a total of $1.6 billion. This estimate does not

include the increased costs of maintaining aging planes.

I urge my colleagues to support this amendment and help ensure our military has the equipment it needs to effectively and safely carry out their missions, now and in the future.

AMENDMENT NO. 379, AS MODIFIED

Mrs. HUTCHISON. Mr. President, I ask for a voice vote on my amendment. We need to dispose of amendment No. 379, as modified.

The PRESIDING OFFICER. The question is on agreeing to the amendment, as modified.

The amendment (No. 379), as modified, was agreed to.

Mrs. HUTCHISON. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

CLOTURE MOTION

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

The legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on Calendar No. 67, H.R. 1268.

Bill Frist, Mitch McConnell, Elizabeth Dole, Olympia Snowe, Norm Coleman, Pat Roberts, Orrin Hatch, John Cornyn, Craig Thomas, Michael Enzi, Larry E. Craig, Trent Lott, George V. Voinovich, Bob Bennett, Pete Domenici, Richard Burr, James Talent.

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

The question is, Is it the sense of the Senate that debate on H.R. 1268, the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005, Humanitarian Assistance Code of Conduct Act of 2005, shall be brought to a close?

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The yeas and nays resulted—yeas 100, nays 0, as follows:

[Rollcall Vote No. 103 Leg.]

YEAS—100

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

The PRESIDING OFFICER. On this vote, the yeas are 100, the nays are 0. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

Mr. COCHRAN. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, I ask unanimous consent to yield to the Senator from West Virginia for the purposes of proposing an amendment and then following that, I regain the floor.

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

AMENDMENT NO. 516

Mr. BYRD. Mr. President, I thank the very distinguished Senator from Arizona for his characteristic courtesy.

I call up amendment No. 516 and ask that it be stated and temporarily laid aside.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from West Virginia [Mr. BYRD] proposes an amendment numbered 516.

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

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

The amendment is as follows:

(Purpose: To increase funding for border security)

On page 187, after line 4, insert the following:

REDUCTION IN FUNDING FOR DIPLOMATIC AND CONSULAR PROGRAMS

The amount for ''Diplomatic and Consular Programs'' under chapter 2 of title II shall be $357,700,000.

IMMIGRATION AND CUSTOMS ENFORCEMENT

SALARIES AND EXPENSES

For an additional amount for ''Salaries and Expenses'', $389,613,000, of which $128,000,000, to remain available until September 30, 2006, shall be available for the enforcement of immigration and customs laws, detention and removal, and investigations, including the hiring of immigration investigators, enforcement agents, and deportation officers, and the provision of detention bed space, and of which the Assistant Secretary for Immigration and Customs Enforcement shall transfer (1) $179,745,000, to Customs and Border Protection, to remain available until September 30, 2006, for ''SALARIES AND EXPENSES'', for the hiring of Border Patrol agents and related mission support expenses and continued operation of unmanned aerial vehicles along the Southwest Border; (2) $67,438,000, to Customs and Border Protection, to remain available until expended, for ''CONSTRUCTION''; (3) $10,471,000, to the Federal Law Enforcement Training Center, to remain available until September 30, 2006, for ''SALARIES AND EXPENSES''; and (4) $3,959,000, to the Federal Law Enforcement Training Center, to remain available until expended, for ''ACQUISITION, CONSTRUCTION, IMPROVEMENTS, AND RELATED EXPENSES'', for the provision of training at the Border Patrol Academy.

Mr. BYRD. Mr. President, I ask that the amendment be temporarily laid aside.

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

Mr. BYRD. Mr. President, I thank the distinguished Senator from Arizona.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, I am obviously always glad to accommodate the most distinguished Member of the Senate from West Virginia.

The emergency supplemental appropriations for Defense, the global war on terror, and tsunami relief for 2005 provides critical resources for our men and women in uniform and for our foremost foreign policy priorities. While I recognize the importance of its timely passage, I am concerned it includes a number of provisions that do not constitute ''emergency spending.'' These items clearly should be debated and funded under the regular order.

Before I go further, I would like to congratulate the distinguished chairman of the Appropriations Committee for the hard work that he and his staff have done in putting together this very vital appropriations measure to pursue the war on terror and, of course, the war in Afghanistan and Iraq.

We ought to ask a basic question: What is the purpose of emergency appropriations? It is twofold. First, it is supposed to provide funding for critical expenditures beyond what was anticipated in the President's annual budget request; second, it is supposed to pay for vital priorities that simply cannot wait until next year's budget.

What are the common elements? The unexpected and the time sensitive. Simply put, the purpose of the supplemental appropriations bill is to fund our country's urgent and unanticipated needs.

We have to consider this in the context of a couple of comments that have been made recently. At a conference in February, David Walker, the Comptroller General of the United States, said:

> If we are to continue on our present path, we'll see pressure for deep spending cuts or dramatic tax increases. GAO's long-term budget simulations paint a chilling picture. If we do nothing, by 2040 we may have to cut federal spending by more than half or raise federal taxes by more than two and a half times to balance the budget. Clearly, the status quo is both unsustainable and difficult choices are unavoidable. And the longer we wait, the more onerous our options will become and the less transition time we will have.

Is that really the kind of legacy we should leave to future generations of Americans?

Referring to our economic outlook, Federal Reserve Chairman Alan Greenspan testified before Congress:

(T)he dimension of the challenge is enormous. The one certainty is that the resolution of this situation will require difficult choices and that the future performance of the economy will depend on those choices. No changes will be easy, as they all will involve lowering claims on resources or raising financial obligations. It falls on the Congress to determine how best to address the competing claims.

He said it falls on Congress. The head of the U.S. Government's chief watchdog agency and the Nation's chief economist agree we are in real trouble. We are in real trouble. Here is a radical idea for my colleagues to consider to help secure our economic future: Stop using scarce Federal dollars, taxpayers' dollars to fund unnecessary earmarks and all the other frivolous projects that do nothing to provide for the greater good of our Nation.

A case in point of what this legislation is and should be all about is the urgent need of Balad Air Base in Iraq, a U.S. Army camp on the very front line of the war on terror. The service members who live there have nicknamed it ''Mortaritaville'' because of the frequency of insurgent mortar attacks. Balad is quickly becoming a hub for military operations in the Sunni Triangle and is home to more than 20,000 U.S. troops. As a result, the camp's infrastructure is becoming overwhelmed and requires more than $63 million to remain functional and effective. This camp needs emergency funding.

The Department of Defense listed construction of a hospital facility, command and control buildings, and related equipment among its emergency needs for Balad, and appropriators in the House and Senate have rightly agreed to such funding. The DOD and our appropriators recognize these improvements to Balad are critical to our efforts in Iraq and the broader war on terror, and this is why we have an emergency supplemental appropriations bill to fund these types of needs.

The bill includes many important provisions such as increased death benefits, military operational costs, recapitalization of equipment, and research and development associated with the war on terror to which I lend my strongest support.

For example, this bill provides $1.285 billion in assistance to the security forces of Afghanistan; $5.7 billion for the security forces of Iraq; $227 million for counternarcotics activities in Afghanistan and Pakistan; and $44 million for humanitarian assistance in Darfur, Sudan.

The foreign affairs provisions of this bill are remarkably free of pork. As one who supports ensuring that taxpayers' dollars are spent properly, I commend my colleagues and the chairman for their restraint in this area. Unfortunately, due to its ''must pass'' nature, a number of unauthorized provisions and funding not requested by the President and unrelated to defense or foreign affairs have been included in this bill, and literally hundreds of amendments have been attempted to be added to the bill. The administration's proposed definition of an emergency requirement is ''a necessary expenditure that is sudden, urgent, unforeseen, and not permanent.''

We should do everything in our power to ensure this bill passes. But we must also ensure every item in it is of a true emergency nature.

It is evident that some of my colleagues misunderstand the purpose of supplemental appropriations, and continue to seek to add spending to this bill that should be addressed as part of the regular appropriations process. In fact, there is an unmistakable trend turning emergency supplementals into a second budget request. Many programs that should be in the baseline budget are somehow finding their way into this supplemental. We must not allow this trend to continue—we must not allow the supplemental to become a de facto second budget.

Let's look at a few examples of the kind of non-emergency spending that has found its way into this bill.

There is $10 million for the University of Hawaii Library. I was unaware that the war in Iraq and Afghanistan was also being fought at the University of Hawaii's library.

There is $2.4 million to the Forest Service to repair damage to national forest lands—surely a necessary expense—but one that should be funded through the proper process, beginning with an authorization and testimony by officials from the Forest Service in a public hearing.

There is $23 million to the Capitol Police for the construction of an ''offsite delivery facility.'' I'll be the first one around here to praise the U.S. Capitol police for the good work that they do—I am sure this facility is a high priority to them. But, again, let's provide funding for this through the proper process—public hearings, authorizing legislation, and the proper appropriations vehicle.

There is language in the bill to increase authorized funds for a fish hatchery in Fort Peck, Montana, from $20 million to $25 million. I would like to know how a ''multi-species fish hatchery'' is related to the War on Terror. Does the author of such language believe the hatched fish may enlist in our armed forces? Was it requested by the President as an emergency need? No. Is this authorization related to the stated purpose of the supplemental? No.

The bill also includes language authorizing the Secretary of the Interior to analyze the viability of a sanctuary for the Rio Grande Silvery Minnow in the Middle Rio Grande Valley. The Rio Grande Silvery Minnow is a stout silvery minnow with moderately small eyes and a small mouth. Adults minnows may reach 3.5 inches in total length. Perhaps the silvery minnow could enlist with the Fort Peck, MT fish. I will await the Secretary's study.

The bill includes $500,000 for a study of wind energy in North Dakota and South Dakota. I believe we can all agree that this expenditure earmark is not urgent. In fact, I am not certain there is a need for a study as the wind energy potential in the Dakotas is well-established. And I don't know what it has to do with fighting the war on terror or aiding the tsunami disaster victims.

Another $500,000 is earmarked to the University of Nevada Reno for the Oral History of the Negotiated Settlement project. I ask my colleagues, how is this useful to the war on terror? How is this an emergency need?

No bill would be complete without several projects for the State of Alaska. The bill includes language that addresses how the Agriculture Department pays dairy farmers in Alaska. I certainly don't wish to neglect our Alaskan dairy farmers, but I cannot support prioritizing their payment issues over the needs of our soldiers.

The bill includes $175,000 not requested by the President to remove the sunken vessel *State of Pennsylvania* from the Christina River in Delaware. That particular vessel has been at the bottom of the Christina River for more than a decade, is not endangering commercial traffic on the river, and I am sure Congress can wait to fund its removal during the regular appropriations process.

Another $55 million is earmarked for a wastewater treatment facility in Desoto County, MS. How exactly does this help the troops?

Not only do I have concerns with some of the provisions the Appropriations Committee included in this bill, as I have highlighted, I am very troubled by some of the amendments being proposed. I am well aware that many of my colleagues—and their staffs—have expressed frustrations about my objections to their amendments. I have, and will continue, to object to adopting certain amendments by unanimous consent. This is an ''emergency supplemental''—its not a Christmas wish list. I frankly do not understand the managers willingness to agree to some of these proposals. Some of them sound reasonable, but who can be sure? That is why the President's request is so important—it is thought out and designed to carry out specific objectives that are urgent and necessary. I do not particularly care for being in the position of ''bad cop'', but so be it. But I cannot agree to unanimous approval of amendments that appear more wishful and urgent. For example, $1 million for lobster disease in the northeast. I do not doubt that this may be a problem but it simply does not belong on an emergency supplemental appropriations bill to fund the war. There is legislation regarding State regulation of hunting and fishing. I support this concept, and even cosponsored a bill last year to reaffirm the authority of State governments to regulate their own hunting and fishing programs. But the simple

fact remains that tacking this legislation onto a war-time emergency supplemental is both inappropriate and unnecessary. We can and should pass this bill through the regular legislative process.

Tomorrow I will be joining with my friend from Oklahoma, Senator COBURN, in offering amendments to strike the most egregious, unnecessary, and non-emergency provisions from this bill. I urge my colleagues to support our efforts to keep this important legislation free from non-essential, pork barrel projects.

Let me close by noting that I appreciate the hard work of the Appropriations Committee and their staff. Field visits were conducted in Afghanistan and the Middle East as the Committee diligently researched the DoD's many requests pursuant to the war on terror. But I am concerned about their decision to include unnecessary, non-emergency earmarks in this bill and the accompanying report. When considering military construction projects like those in Balad, Iraq, consideration was taken to determine whether the project was truly of an emergency nature. Why did the Committee not apply the same consideration to the fish hatchery in Montana?

As I mentioned, on tomorrow I have a couple of amendments we will be seeking votes on. I hope we realize we have a looming deficit, a trade deficit, and unanticipated expenses concerning the war in Iraq. There was one high-ranking Defense official at the time of the beginning of the war in Iraq who said the oil revenues would pay for United States expenses. We are now up to close to $300 billion and we are not yet able to reduce our forces. I think we ought to take into consideration the fact that we will have continued, very significant expenses associated with the conflict in Iraq and in Afghanistan before we begin appropriating money for fish hatcheries and for libraries.

I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. I thank the Chair.

(The remarks of Mr. SPECTER and Mr. LEAHY pertaining to the introduction of S. 852 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

The PRESIDING OFFICER. The Senator from Nevada.

AMENDMENT NO. 440

Mr. REID. Mr. President, on behalf of Senator BIDEN, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Nevada [Mr. REID], for Mr. BIDEN, proposes an amendment numbered 440.

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

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

The amendment is as follows:

(Purpose: To appropriate, with an offset, $6,000,000 for the Defense Health Program for force protection work and medical care at the Vaccine Health Care Centers)

On page 169, between lines 8 and 9, insert the following:

FORCE PROTECTION WORK AND MEDICAL CARE AT VACCINE HEALTH CARE CENTERS

SEC. 1122. (a) INCREASE IN AMOUNT FOR DEFENSE HEALTH PROGRAM.—The amount appropriated by this chapter under the heading ''DEFENSE HEALTH PROGRAM'' is hereby increased by $6,000,000.

(b) AVAILABILITY OF AMOUNT.—Of the amount appropriated or otherwise made available by this chapter under the heading ''DEFENSE HEALTH PROGRAM'', as increased by subsection (a), $6,000,000 shall be available for force protection work and medical care at the Vaccine Health Care Centers.

(c) OFFSET.—The amount appropriated by chapter 2 of this title under the heading ''GLOBAL WAR ON TERROR PARTNERS FUND'' is hereby reduced by $6,000,000.

Mr. BIDEN. Mr. President, I rise to offer amendment No. 440 on behalf of myself, Senator BINGAMAN, and Senator CARPER to fully protect the health of our military personnel. Let me explain. The military regularly protects our troops by vaccinating them. There are vaccines to keep personnel healthy in the face of common illnesses like the flu and to protect them from biological warfare agents such as anthrax or smallpox.

These force protection measures are important. Equally important is the recognition that not every person will react positively to a vaccination.

Vaccines, even those generally considered safe, are still drugs put into the body. There will always be a small number of personnel whose bodies have an adverse reaction to a safe vaccine. In order to deal with this, the Vaccine Health Care Centers Network was established in 2001.

The centers act as a specialized medical unit that can provide the best possible clinical care to any military member, active duty, Guard or Reserve, or their family that has a severe reaction. They also advise the Department of Defense regarding vaccine administration policies and educate military health care professionals regarding the safest and best practices for vaccine administration. Their overall mission is to promote vaccine safety and provide expert knowledge to patients and physicians.

Why is this so important? As many of my colleagues know, the number of adults who get regular vaccines is fairly small. While we have specialists who deal with childhood vaccinations and problems that might develop, the population of adults regularly vaccinated with anything more than the flu vaccine is small.

In the military, the reverse is true. Military personnel are regularly vaccinated for travel, for threats relating to their theater of operation, and for thinks such as the flu.

For this reason, it is essential that the military have a centralized place to capture the information on those who experience severe problems. In particular, because serious problems are rare, it is difficult for the average base physician to develop the expertise needed to provide the best treatment.

Let me give my colleagues more specifics.

In fiscal year 2004, the centers responded to over 120,000 emails and other consultation inquiries.

They managed over 600 cases of prolonged adverse events, which means literally over 58,000 pages of medical information reviewed. These are very complex and specialized medical cases. They require personnel with expertise and the ability to dedicate significant time.

Since beginning operations in 2001, the total number of cases managed through fiscal year 2004 is 1,341.

Without the centers, that is over one thousand military personnel who would not have gotten the care they deserve. The best possible care we can provide.

In addition to providing care and consultative services, the centers developed clinical guidelines and aids for physicians and nurses giving vaccines. Over 28,000 immunization ''tool kits'' were distributed. They have also provided ongoing education at bases through lectures and training.

In addition, they have worked collaboratively with outside researchers to get the best possible analysis of the trends in cases that they do see.

This has all been done by an extremely small staff—only one full-time doctor, three nurse practitioners, and five educators and support staff at each of the four regional facilities. The value and medical services they have provided to the entire military family—Army, Navy, Air Force, Marines, and Coast Guard—has been extraordinary.

Military personnel and their dependents are more confident in the vaccination programs and reports from those who do suffer adverse reactions are extremely positive regarding the care they now get from the centers.

Why do we need to provide $6 million on the emergency supplemental for this? The reason is simple. The centers are in danger of losing part of their funding this fiscal year. They are currently funded with Army global war on terror money.

I applaud the Army for recognizing the need for the centers and providing those funds from their wartime allocation. But the Army is only the executive agent for what is a defense-wide service. They cannot be the sole funder. I am very concerned that the funding this year is being redirected because other services have not budgeted for the centers' work, despite the fact that 46 percent of their cases were related to Air Force, Navy, and Marines personnel.

Clearly, force protection in this time of war demands a good vaccination program. Equally clear, that program must include quality care for those who suffer adverse events in every service, not just the Army.

In addition, as we look ahead, we all anticipate a growing need for biological defenses, particularly vaccines. We established Project BioShield for that very reason.

At this point, there is no civilian equivalent to the Vaccine Health Care Centers Network, but I think we are going to need to consider setting up some collaborative effort to take advantage of their knowledge should a mass civilian inoculation become necessary.

Let me also remind my colleagues that the Department of Defense asked for and received an emergency authority from the Department of Health and Human Services to begin administering the anthrax vaccine.

I will not go into the technicalities of that, but it basically allows the military to vaccinate personnel with informed consent. If the Department believes it is an emergency to resume that vaccine, how can we consider preserving the Vaccine Health Care Centers any less?

At the end of the day, this is very simple. We simply cannot mandate that military personnel take these vaccines and then abandon them when a problem arises.

This is the same as providing a prosthesis to someone who loses a limb.

If military personnel are injured because of their service to this Nation, we have an absolute obligation to give them the best possible care. Anything less is unconscionable.

I urge my colleagues to support this amendment.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. COCHRAN. Mr. President, we have some requests to make on behalf of the managers of the bill with respect to amendments that have been cleared on both sides of the aisle. We understand there has been a review undertaken by staff to try to ensure that the amendments which are going to be presented to the Senate are consistent with the vote taken on cloture earlier in the day.

AMENDMENT NO. 343

With that information, I call up amendment No. 343 on behalf of Mr. Pryor regarding Camp Joseph T. Robinson.

The PRESIDING OFFICER. Without objection, the pending amendment is laid aside.

The clerk will report.

The legislative clerk read as follows:

The Senator from Mississippi [Mr. COCHRAN], for Mr. Pryor, proposes an amendment numbered 343.

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

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

The amendment is as follows:

(Purpose: To release to the State of Arkansas a reversionary interest in Camp Joseph T. Robinson)

On page 231, between lines 3 and 4, insert the following:

SEC. 6047. The United States releases to the State of Arkansas the reversionary interest described in sections 2 and 3 of the Act entitled ''An Act authorizing the transfer of part of Camp Joseph T. Robinson to the State of Arkansas'', approved June 30, 1950 (64 Stat. 311, chapter 429), in and to the surface estate of the land constituting Camp Joseph T. Robinson, Arkansas, which lies east of the Batesville Pike county road, in sections 24, 25, and 36, township 3 north, range 12 west, Pulaski County, Arkansas.

Mr. COCHRAN. Mr. President, I know of no request for debate on the amendment.

The PRESIDING OFFICER. If there is no debate, the question is on agreeing to the amendment.

The amendment (No. 343) was agreed to.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 427, AS MODIFIED

Mr. COCHRAN. Mr. President, I call up amendment No. 427 on behalf of Mr. DURBIN regarding Iraqi security services.

Mr. President, I also send a modification of the amendment to the desk.

The PRESIDING OFFICER. Without objection, the amendment is modified.

The amendment (No. 427), as modified, is as follows:

On page 169, between lines 8 and 9, insert the following:

REPORTS ON IRAQI SECURITY FORCES

SEC. 1122. Not later than 60 days after the date of enactment of this Act, and every 90 days thereafter, the President shall submit an unclassified report to Congress, which may include a classified annex, that includes a description of the following:

(1) The extent to which funding appropriated by this Act will be used to train and equip capable and effectively led Iraqi security services and promote stability and security in Iraq.

(2) The estimated strength of the Iraqi insurgency and the extent to which it is composed of non-Iraqi fighters, and any changes over the previous 90-day period.

(3) A description of all militias operating in Iraq, including their number, size, strength, military effectiveness, leadership, sources of external support, sources of internal support, estimated types and numbers of equipment and armaments in their possession, legal status, and the status of efforts to disarm, demobilize, and reintegrate each militia.

(4) The extent to which recruiting, training, and equipping goals and standards for Iraqi security forces are being met, including the number of Iraqis recruited and trained for the army, air force, navy, and other Ministry of Defense forces, police, and highway patrol of Iraq, and all other Ministry of Interior forces, and the extent to which personal and unit equipment requirements have been met.

(5) A description of the criteria for assessing the capabilities and readiness of Iraqi security forces.

(6) An evaluation of the operational readiness status of Iraqi military forces and special police, including the type, number, size, and organizational structure of Iraqi battalions that are—

(A) capable of conducting counterinsurgency operations independently;

(B) capable of conducting counterinsurgency operations with United States or Coalition mentors and enablers; or

(C) not ready to conduct counterinsurgency operations.

(7) The extent to which funding appropriated by this Act will be used to train capable, well-equipped, and effectively led Iraqi police forces, and an evaluation of Iraqi police forces, including—

(A) the number of police recruits that have received classroom instruction and the duration of such instruction;

(B) the number of veteran police officers who have received classroom instruction and the duration of such instruction;

(C) the number of police candidates screened by the Iraqi Police Screening Service screening project, the number of candidates derived from other entry procedures, and the overall success rates of those groups of candidates;

(D) the number of Iraqi police forces who have received field training by international police trainers and the duration of such instruction;

(E) a description of the field training program, including the number, the planned number, and nationality of international field trainers;

(F) the number of police present for duty;

(G) data related to attrition rates; and

(H) a description of the training that Iraqi police have received regarding human rights and the rule of law.

(8) The estimated total number of Iraqi battalions needed for the Iraqi security forces to perform duties now being undertaken by the Coalition Forces, including defending Iraq's borders, defeating the insurgency, and providing law and order.

(9) The extent to which funding appropriated by this Act will be used to train Iraqi security forces in counterinsurgency operations and the estimated total number of Iraqi security force personnel expected to be trained, equipped, and capable of participating in counterinsurgency operations by the end of 2005 and of 2006.

(10) The estimated total number of adequately trained, equipped, and led Iraqi battalions expected to be capable of conducting counterinsurgency operations independently and the estimated total number expected to be capable of conducting counterinsurgency operations with United States or Coalition mentors and enablers by the end of 2005 and of 2006.

(11) An assessment of the effectiveness of the chain of command of the Iraqi military.

(12) The number and nationality of Coalition mentors and advisers working with Iraqi security forces as of the date of the report, plans for decreasing or increasing the number of such mentors and advisers, and a description of their activities.

(13) A list of countries of the North Atlantic Treaty Organisation (''NATO'') participating in the NATO mission for training of Iraqi security forces and the number of troops from each country dedicated to the mission.

(14) A list of countries participating in training Iraqi security forces outside the NATO training mission and the number of troops from each country dedicated to the mission.

(15) For any country, which made an offer to provide forces for training that has not been accepted, an explanation of the reasons why the offer was not accepted.

(16) For offers to provide forces for training that have been accepted by the Iraqi government, a report on the status of such training efforts, including the number of troops involved by country and the number of Iraqi security forces trained.

(17) An assessment of the progress of the National Assembly of Iraq in drafting and ratifying the permanent constitution of Iraq, and the performance of the new Iraqi Government in its protection of the rights of minorities and individual human rights, and its adherence to common democratic practices.

(18) The estimated number of United States military forces who will be needed in Iraq 6, 12, and 18 months from the date of the report.

Mr. COCHRAN. Mr. President, I know of no requests for debate on the amendment as modified.

The PRESIDING OFFICER. If there is no further debate, the question is on agreeing to the amendment, as modified.

The amendment (No. 427), as modified, was agreed to.

Mr. COCHRAN. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 399

Mr. COCHRAN. I call up amendment numbered 399, on behalf of Mr. DORGAN, regarding the independent counsel investigation of Henry Cisneros.

I know of no requests for debate on the amendment.

The PRESIDING OFFICER. If there is no further debate, the question is on agreeing to the amendment.

The amendment (No. 399) was agreed to.

Mr. COCHRAN. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 560

Mr. COCHRAN. I send to the desk an amendment on behalf of Mr. SHELBY, regarding judicial security enhancements.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Mississippi, [Mr. COCHRAN], for Mr. SHELBY, for Mr. KENNEDY, for himself, Mr. DURBIN and Mr. OBAMA, proposes an amendment numbered 560.

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

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

The amendment is as follows:

(Purpose: To clarify funding for judicial security enhancements)

On page 184, line 16, after ''$11,935,000,'', insert ''for increased judicial security outside of courthouse facilities, including priority consideration of home intrusion detection systems in the homes of federal judges,''.

Mr. COCHRAN. I know of no requests for debate on the amendment

The PRESIDING OFFICER. If there is no further debate, the question is on agreeing to the amendment.

The amendment (No. 560) was agreed to.

Mr. COCHRAN. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 561

Mr. COCHRAN. I send to the desk an amendment on behalf of Mr. REID of Nevada—technical in nature—and ask it be reported.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Mississippi, [Mr. COCHRAN], for Mr. REID of Nevada, proposes an amendment numbered 561.

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

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

The amendment is as follows:

(Purpose: To modify the provision relating to agricultural and natural resource conservation activities in the Walker River Basin, Nevada)

In section 6017(b)(1)(A), insert ''appurtenant to the land'' after ''water''.

Mr. COCHRAN. Mr. President, I know of no requests for debate.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 561) was agreed to.

Mr. COCHRAN. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 562

Mr. COCHRAN. My final request is to send to the desk another amendment on behalf of Mr. REID of Nevada that is technical in nature. I ask that it be reported.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Mississippi [Mr. COCHRAN], for Mr. REID of Nevada, proposes an amendment numbered 562.

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

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

The amendment is as follows:

(Purpose: To modify the provision relating to the water lease and purchase program for the Walker River Paiute Tribe)

In section 6017(c)(2), strike subparagraphs (A) and (B) and insert the following:

(A) acquired only from willing sellers;

(B) designed to maximize water conveyances to Walker Lake; and

(C) located only within the Walker River Paiute Indian Reservation.

Mr. COCHRAN. Mr. President, I know of no requests for debate.

The PRESIDING OFFICER. If there is no further debate, the question is on agreeing to the amendment.

The amendment (No. 562) was agreed to.

Mr. COCHRAN. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. COCHRAN. Mr. President, I thank the distinguished Senator, my friend from Vermont. He is a valuable member of the Appropriations Committee.

Mr. President, I am pleased with the progress we have been able to make on this supplemental appropriations bill today. The Senate is working hard to ensure we consider requests that have merit which should be included in this bill.

The focus of the bill, as everyone realizes, though, is on assisting and providing for our troops, the Department of Defense facilities that are located in Iraq, trying to help ensure we protect the forces we have there, giving them what they need to bring these operations to a successful conclusion. We have made tremendous progress there, as well as in Afghanistan, bringing an opportunity for peace and freedom to the people of both of those countries. It is quite amazing to see the success that has been achieved in that direction, as those nations continue to work to build the infrastructure for democracy and a growing economy.

Our troops still need additional assistance, and that is why it is important for us to respond in a positive way to the requests of the administration to fund those needs and provide that assistance which will play such a critical role in their success.

The funds appropriated in this bill will provide support, pay in allowances. It will provide additional equipment, more modern and more effective equipment, so that the chances of success will be enhanced.

We do not want to drag out this supplemental unnecessarily. We need to complete action on the bill so we can go to conference with our counterpart committee, the Appropriations Committee in the House, and work out differences between the two bodies on this bill.

We do not want to delay this supplemental. We do not want to endanger our troops and our national interests in those areas of the world and here at home by unnecessary delay.

We appreciate the cooperation of all Senators. I thank everyone who has played a part today in our success in moving forward with this legislation.

Mr. President, 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. STEVENS. 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. STEVENS. Mr. President, I ask unanimous consent that there now be a

period of morning business, with Senators permitted to speak therein for up to 10 minutes each.

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

LOCAL LAW ENFORCEMENT ENHANCEMENT ACT OF 2005

Mr. SMITH. Mr. President, I rise today to speak about the need for hate crimes legislation. Each Congress, Senator KENNEDY and I introduce hate crimes legislation that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society. Likewise, each day I have come to the floor to highlight a separate hate crime that has occurred in our country.

Last March, 29-year-old Jason Gage, who is gay, was beaten and stabbed in his home. According to police reports, his attacker acknowledged striking Gage twice with a bottle in the head and stabbing him with a piece of glass. There have been reports that the victim was targeted solely because of his sexual orientation.

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

HONORING OUR ARMED FORCES

SPECIALIST SASCHA STRUBLE

Mr. BAYH. Mr. President, I rise today with a heavy heart and deep sense of gratitude to honor the life of a brave young man from Hanna. SPC Struble, twenty years old, died on April 6 in a military helicopter crash near Ghazni city, 80 miles southwest of Kabul. With his entire life before him, Sascha risked everything to fight for the values Americans hold close to our hearts, in a land halfway around the world.

Two years out of high school, Sascha had joined the Army in the hopes of getting the education he needed to become a paralegal, even working in the Army Judge Advocate General unit while stationed in Afghanistan. A former teacher recounted that Sascha was ''a terrific kid . . . Sascha made us all want to be a better person.'' Described as a father figure to his younger siblings, Sascha never liked conflict and was often the family peacekeeper. His younger sister described Sascha to a local television station as ''always a happy person, always making us laugh. I can't think of a time that he wasn't smiling.''

Sascha was killed while serving his country in Operation Enduring Freedom. He served in the 1st Battalion, 173rd Airborne Brigade, 508 Infantry.

Today, I join Sascha's family and friends in mourning his death. While we struggle to bear our sorrow over this loss, we can also take pride in the example he set, bravely fighting to make the world a safer place. It is his courage and strength of character that people will remember when they think of Sascha, a memory that will burn brightly during these continuing days of conflict and grief.

Sascha was known for his dedication to his family and his love of country. Today and always, Sascha will be remembered by family members, friends and fellow Hoosiers as a true American hero and we honor the sacrifice he made while dutifully serving his country.

As I search for words to do justice in honoring Sascha's sacrifice, I am reminded of President Lincoln's remarks as he addressed the families of the fallen soldiers in Gettysburg: ''We cannot dedicate, we cannot consecrate, we cannot hallow this ground. The brave men, living and dead, who struggled here, have consecrated it, far above our poor power to add or detract. The world will little note nor long remember what we say here, but it can never forget what they did here.'' This statement is just as true today as it was nearly 150 years ago, as I am certain that the impact of Sascha's actions will live on far longer than any record of these words.

It is my sad duty to enter the name of Specialist Sascha Struble in the Official Record of the United States Senate for his service to this country and for his profound commitment to freedom, democracy and peace. When I think about this just cause in which we are engaged, and the unfortunate pain that comes with the loss of our heroes, I hope that families like Sascha's can find comfort in the words of the prophet Isaiah who said, ''He will swallow up death in victory; and the Lord God will wipe away tears from off all faces.''

May God grant strength and peace to those who mourn, and may God be with all of you, as I know He is with Sascha.

FAMILY ENTERTAINMENT AND COPYRIGHT ACT OF 2005

Mr. LEAHY. Mr. President, I am pleased that today the House has voted to pass the Family Entertainment and Copyright Act of 2005, clearing the way for the President to sign this important bill into law. That signature will mark the completion of our unfinished intellectual property business from last year. As we work to enact an equally ambitious intellectual property agenda in this new Congress, we have started off on the right foot.

The Family Entertainment and Copyright Act will help protect the rights of our innovators and support efforts at preserving America's cultural heritage. Title I of the bill, the ''Artists' Rights and Theft Prevention Act,'' will criminalize a growing scourge: the use of camcorders to surreptitiously swipe movies from the big screen. Theft of intellectual property does not involve stealing something tangible, but the economic impact is very real. According to the Motion Picture Association of America, our film industries lose $3 billion annually due to piracy. We already know of high profile examples of movies showing up in other parts of the world on DVD while still in theaters in the United States. Theft of intellectual property is a global problem, and we need to ensure that our own IP house is in order even as we continue efforts at stronger international enforcement.

I have long been an enthusiastic proponent of the Library of Congress's efforts at protecting and promoting our nation's rich and diverse film heritage. Thus, I am particularly pleased that the bill passed today also contains the National Film Preservation Act, legislation that I sponsored in the last Congress to continue support for this extraordinary project. It reauthorizes a Library of Congress program dedicated to preserving precisely those types of films most in need of archival preservation: ''orphaned'' works that do not enjoy the protection of the major studios. The movies saved include culturally significant silent-era films, ethnic films, newsreels, and avant-garde works. The Act will allow the Library of Congress to continue its important work, and to provide assistance to libraries, museums, and archives in preserving films and in making these works available to researchers and the public. We know that more than 50 percent of the works made before 1950 have disintegrated and that only 10 percent of films made before 1929 still exist. Once these works are gone, they are lost to history forever. The Librarian of Congress, James Billington, has referred to our film heritage as ''America's living past.'' The National Film Preservation Act will help ensure that this past is accessible in order to entertain and enlighten future generations.

I am also glad that a small but significant component of the bill is the Preservation of Orphan Works Act, which corrects a drafting error in the Sonny Bono Copyright Term Extension Act. Correction of this error will allow libraries to create copies of orphan works, copyrighted materials that are in the last 20 years of their copyright term, are no longer commercially exploited, and are not available at a reasonable price. The last provision in the bill is the Family Movie Act, which ensures that in-home viewing of movies can be done as families see fit.

I noted when this bill was introduced that while I might well have drafted specific components of this package differently, the Family Entertainment and Copyright Act was built around collegiality and compromise, both across the aisle and between chambers. As a result, we have produced good law worthy of the broad support it has enjoyed. I thank the bill's Senate cosponsors, Senators HATCH, CORNYN, FEINSTEIN, and ALEXANDER, for all of their

hard work. I also wish to thank in particular Chairmen SENSENBRENNER, Congressman CONYERS, Congressman SMITH, and Congressman BERMAN, without whose efforts this bill could not become law.

EQUAL PAY DAY

Mr. CORZINE. Mr. President, I stand today to speak in support of an issue that affects every woman in this country—the fight for equal pay for men and women.

Today is Equal Pay Day—the day when the wages paid to American women ''catch up'' to the wages paid to men last year. So, essentially, women have to work almost four months more than men who do the same job just to bring home the same amount of income.

Until the early 1960s, newspapers published separate want-ads for men and women. Some newspapers even printed the same job in the male and female listings, but with separate pay scales. Full-time working women would earn on average between 59–64 cents for every dollar their male counterparts earned doing the exact same job.

Finally, in 1963, Congress passed the Equal Pay Act making it illegal to pay women lower rates for the same job strictly on the basis of gender. Since its passage, we have made significant progress in the fight for equal pay. Women now earn 76 cents for every dollar earned by a man in the same position.

While we have improved over the last 40 years, however, we still have a long way to go. Apparently this Administration, however, thinks we can stop fighting for equal pay. The Department of Labor quietly eliminated its Equal Pay Matters Initiative, removed all information about narrowing the wage gap from its Web site, and refused to use available tools to identify violations of equal pay laws.

Today, we teach our young girls that they can be anything they want to be, that no job or career is out of their reach. What we do not tell our young girls is that once they get that job and start their career, they will make 24 percent less than their fellow male coworker even if they do the same exact and work just as hard. And if they are women of color, they will make 34 percent less. If the U.S. Department of Labor thinks that this is acceptable, then we may as well tell those young girls to stop dreaming because their work will not be valued as much as their brother's will.

I think we should continue to encourage women who are in the workforce and young girls who will be in the workforce that working hard will payoff. That is why I am proud to be a cosponsor of two bills that will move this country toward equal pay for women—Senator CLINTON's Paycheck Fairness Act and Senator HARKIN's Fair Pay Act.

The Paycheck Fairness Act will enforce equal pay laws for Federal contractors and prohibit employers from retaliating against employees who share salary information with their coworkers. This bill also addresses what is known as the ''negotiation gap.'' Women are eight times less likely to negotiate their starting salaries then men. In order to empower women to negotiate their salaries, the Paycheck Fairness Act creates a training program to help women strengthen their negotiation skills. Finally, the bill requires the Department of Labor to continue collecting and disseminating information about women workers.

While the Paycheck Fairness Act addresses pay inequity among men and women for performing the same job, the Fair Pay Act addresses the problem of women not getting paid what they are worth for doing jobs that may be different than those performed by men, but are of equal value to the employer. The Fair Pay Act requires employers to provide equal pay for jobs that are comparable in skill, effort, responsibility and working conditions. The Fair Pay Act would apply to each company individually and would prohibit companies from reducing other employees' wages to achieve pay equity.

This issue is not just one of equality among men and women—it is a bread-and-butter issue for working families. According to the National Women's Law Center, if working women earned the same as men, those who work the same number of hours; have the same education, age, and union status; and live in the same region of the country, their annual family incomes would rise by $4,000 and poverty rates would be cut in half. As we all know, family earnings determine where and how a family lives, the education of their children, the family's health care, their standard of living, including whether workers have a pension on which to retire comfortably. We're talking about serious consequences to this pervasive problem.

Since the beginning of my tenure, I have been very involved with this issue. When the administration wanted to eliminate the Equal Pay Initiative within the Department of Labor's Women's Bureau, I wrote a letter to President Bush expressing my outrage at the Department's actions. In addition, I was also a co-sponsor of the Civil Rights Act of 2004, which included the Paycheck Fairness Act.

I commend my colleagues, Senator CLINTON and Senator HARKIN, for their commitment to the equal pay issue. I am proud to join them as co-sponsors of the Paycheck Fairness Act and the Fair Pay Act. I believe that these two pieces of legislation will help put an end to the pay disparity between men and women and bring us closer to the year when we celebrate Equal Pay Day on January 1.

COMMEMORATING THE LIFE OF MARLA RUZICKA

Mrs. FEINSTEIN. Mr. President, I rise today to commemorate the life and work of Marla Ruzicka, a remarkable woman and humanitarian who was killed last Saturday in a car bomb blast in Baghdad.

My thoughts and prayers go out to her parents, Cliff and Nancy, her siblings, and her friends and coworkers. She will be sorely missed.

Born and raised in Lakeport, CA, Marla dedicated her life to helping the innocent victims of war who needed a voice and needed a champion.

She traveled to war zones like Afghanistan and Iraq on her own and at her own risk to document civilian casualties and find ways to provide the needed humanitarian assistance.

Two years ago, at the age of 26, she founded the Campaign for Innocent Victims in Conflict to ''mitigate the impact of the conflict and its aftermath on the people of Iraq by ensuring that timely and effective life-saving assistance is provided to those in need''.

A tireless and relentless advocate for her cause, she talked to anyone who would listen and would win over doubters with her smile, kindness, and compassion.

In fact, in no small part to her own initiative, she helped convince Congress and the U.S. military to provide $30 million for innocent victims of the wars in Afghanistan and Iraq, something that had not been accomplished before.

Few have done so much and helped so many at such a young age.

Her father said he would remember her as a ''lady with a tremendously open heart and warm feelings toward the people who've been in conflict and war.''

As we mourn the loss of a loving and caring American, let us also celebrate the life of Marla Ruzicka and rededicate ourselves to the cause she personified. In her memory, let us reach out to Afghan and Iraqi civilians who have suffered in silence and be their voice and champion.

I can think of no finer tribute.

ADDITIONAL STATEMENTS

CONGRATULATING EL CAMINO REAL HIGH SCHOOL

• Mrs. FEINSTEIN. Mr. President, I rise today to congratulate El Camino Real High School of Woodland Hills, CA, on winning the prestigious U.S. Academic Decathlon for a second year in a row an astonishing achievement for all the students, teachers, and parents involved.

Each year, the U.S. Academic Decathlon brings together some of our Nation's brightest students for 2 days of competition on a broad range of subjects including mathematics, literature, economics, art, science, and music. I am very proud to report that

in the 24 years of this competition, schools representing California have finished first or second every year except for one.

El Camino's tremendous victory represents an incredible fourth title in the last 8 years. Only one other school in the Nation has been more successful. El Camino is the first school to win back-to-back championships since their fellow Californians, Palo Alto High School, achieved that distinction in 1982 and 1983.

This triumph is the result of much effort and sacrifice. These amazingly dedicated students have given up spring and summer vacations and spent up to 10 hours a day preparing. Their hard work and commitment have certainly paid great dividends.

El Camino finished first with 49,009 points out of a possible 60,000, beating their nearest opponent by 723, and were led by their top scorer—Laura Descher.

It is important to note that the Academic Decathlon is set up to award versatility and breadth of knowledge, requiring each student to prepare for all the various academic events. This means that each student has developed a diverse and robust degree of scholarship rather than just specializing in one given topic.

The nine students whose effort and determination have made our State so proud are Micah Roth, Benjamin Farahmand, Jihwan Kim, Lindsey Cohen, Laura Descher, Lindsay Gibbs, Sean Follmer, Brian Hwang, and Kevin Rosenberg.

A great deal of the credit must be given to the dedicated coaches—Christian Cerone and Lissa Gregorio. This whole experience has certainly been just as memorable for them as it has for their students.

Of course, no congratulations would be complete without mentioning the contributions of the parents and family members who have been there each step of the way to cheer these young people on and support them in their lofty goals.

Again, I congratulate El Camino Real High School on this great achievement and wish all the students involved continued success in whatever they decide to do. You have made your State, your parents, your school, and your Senator very proud.●

MRS. SUE PANETTA-LEE

● Mr. BOND. Mr. President, Mrs. Sue Panetta-Lee will soon be installed as president of the Business and Professional Women's Clubs, Incorporated, of Missouri for 2005–2006. Sue is dedicated to the mission and vision of Business and Professional Women, BMW, and supports the legislative platform at the State and national levels.

Sue has been an active member since 1990 when she was introduced to BMW through the Young Careerist Program. She is a member of the St. Louis Metropolitan BMW in good standing and has served on and chaired many committees. Sue has experience in grant writing, program creation and implementation. She has presented training on numerous occasions in the community and for BMW on leadership, legislation, and many other topics of interest. Sue was instrumental in planning the state legislative conference in February 2000.

Sue is a team player and is a self-starter with decision making and leadership abilities. She has experience as a mentor and is devoted to empowering all persons to be equal as human beings. Sue is a dedicated and creative person who will speak up for ideas that promote BMW and women's issues. She believes that we grow more from embracing our differences and learning from each other's experiences and knowledge.

Sue is currently self-employed since 1998 in private practice as a Licensed Mental Health Therapist. Prior to that, Sue was clinical director for a community health agency for eight years. She has worked in other capacities as a social worker in the community for hospitals and in long-term care facilities, working with all age groups. Sue has a total of 22 years of work experience in the mental health field.

Currently Sue is serving as part of the Executive Board in the position of First Vice President, and is a member of American Association of University Women, Illinois Counselors' Association, and the Illinois Coalition to End Homelessness. Sue was a Young Careerist representing her district at the state level. She has held all positions at the local level with the exception of treasurer. At the state level Sue has served as Legislative, Membership, and Fund-raising Chairs. At the National level Sue has served on the Governance Task Force Committee.

As President of BMW, Sue will make executive committee and various other appointments. She will represent the State Federation at numerous national and state functions, and interpret the BMW/USA programs, policies, procedures, and objectives to the State Federation. I commend Sue for her outstanding service to the St. Louis Metropolitan Area. I wish Mrs. Panetta-Lee and her husband all the best.●

KEN MURPHREE

● Mr. COCHRAN. Mr. President, I am pleased to commend Ken Murphree of Tunica for his distinguished service as president of Delta Council this year.

Delta Council is an economic development organization representing the 18 Delta and part-Delta counties of northwest Mississippi. Delta Council was organized in 1935 to bring together the agriculture and business leadership of the region to focus on the challenges which face the economy and society of the Delta.

Ken Murphree has served admirably as president of Delta Council; and with his distinguished record of public service as a county administrator for DeSoto County during its early years as a growth-area for the Memphis metropolitan region, and more recently, as the county administrator for Tunica County, MS, he has provided careful and responsible leadership for orderly economic growth in our State. The growth of the local tax base in Tunica County, MS, resulting from the rapid expansion of the gaming industry in that area, has ben characterized as a model and a standard by which other rural growth areas are measured.

Ken Murphree has been a strong proponent of Delta Council's programs of education and health care during the past year. His history of involvement in transportation improvements has served Delta Council well this year. The progress being registered on the development of Interstate 69 and the U.S. Highway 82—Mississippi River Bridge has also benefited from his leadership.

Ken has coordinated the activities of Delta Council in a way which has brought consensus throughout the region in areas such as flood control, industrial development, higher education funding, and transportation improvements.

Ken has been a leader in his community, and as he concludes his year as president of Delta Council I congratulate him for the contributions which he has made to this special region of our country. I look forward to his future contributions in improving the quality of life for our citizens in the Mississippi Delta.●

NEW MEXICO TECH

● Mr. DOMENICI. Mr. President, I rise today to congratulate the New Mexico Institute of Mining and Technology in Socorro, NM for the school's No. 2 ranking in The Princeton Review's 2006 edition of the Nation's ''best value'' colleges. New Mexico Tech is an outstanding school and I am very proud of what they have accomplished. This is a well deserved recognition for the excellent work being done by the faculty and students at this fine university.

The New Mexico Institute of Mining and Technology, known to New Mexicans as New Mexico Tech, was originally founded in 1889 as the New Mexico School of Mines. At that time the Territorial Legislature, wanting to boost New Mexico's economy, decided to establish a School of Mines to train young mining engineers. Silver and lead ores taken from the nearby Magdalena Mountains were processed nearby and the new School of Mines would allow young mining engineers to train near the eventual site of their work. The New Mexico school of mines opened with one building, two professors, and seven students.

Over the years, their mission has expanded to say the least. Today the enrollment at this university exceeds 1,800 students from different parts of the country and the world. New Mexico Tech is an outstanding research university, recognized for their excellence

as a leader in many areas of research, including homeland security, hydrology, astrophysics, atmospheric physics, geophysics, information technology, geosciences, energetic materials engineering, and petroleum recovery. Students come to tech for its outstanding academic reputation, hands-on laboratory learning experiences, opportunities for employment in one of their many research facilities, and its beautiful Southwestern setting.

In the past, I have strongly supported New Mexico Tech and have helped them secure defense and homeland security appropriations funding. In return, they have provided the country with first rate research giving American defense and homeland security planners' better technology to protect military personnel and civilians from attack. They have been on the forefront of homeland security research, antiterrorism efforts, and bringing new job opportunities to the central New Mexico region. The school's hard work and record of success has made it easy for me to convince my colleagues that New Mexico Tech is a good investment. I am very pleased with the dynamic coming out of this wonderful school and I encourage them to keep up the good work.

I ask unanimous consent that a copy of a article entitled ''New Mexico Tech Second on 'Best Value' College List'' be printed in the RECORD.

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

[From the ABQJOURNAL, Apr. 18, 2005]

NEW MEXICO TECH SECOND ON 'BEST VALUE' COLLEGE LIST

SOCORRO—The New Mexico Institute of Mining and Technology ranked second on The Princeton Review's 2006 edition of the nation's ''best value'' colleges.

New Mexico Tech's Web site listed its annual undergraduate cost for tuition, room and board and books as $8,750 for 2004–2005 academic year, which includes $3,280 a year in tuition and fees. Earlier this month, Tech's regents approved a 10 percent tuition increase.

Bates College in Lewiston, Maine, whose tuition, room and board costs roughly $40,000 a year, was ranked the nation's ''best value'' college. Bates, fifth in the previous year's rankings, topped the new ''America's Best Value Colleges,'' which hits the bookstores Tuesday.

The Princeton Review said all 81 schools on the list offer outstanding academics, generous financial aid packages and relatively low costs.

''It's always pleasing to be recognized and acknowledged for the good work of our faculty as well as our students,'' Dan Lopez, president of Tech, said Monday. ''It does give us a certain amount of presence in the higher education community.''

And, he said, it makes people aware of a small school in a more remote area.

''We really have an outstanding school,'' Lopez said. ''We're very proud of it.''

George Zamora, a spokesman for Tech, said it's the first time the school has cracked the top 10, although it has been on the overall ''best value'' list for years.

New Mexico Tech primarily focuses on science and engineering at both the undergraduate and graduate level.

The rest of the 2006 top 10: Brigham Young University of Provo, Utah; Hendrix College, Conway, Ark.; University of California-Los Angeles; New College of Florida, Sarasota; City University of New York-Brooklyn College; City University of New York-Queens College; William Jewell College, Liberty, Mo.; and Hanover College, Hanover, Ind.

The Princeton Review, an education services company with no connection to Princeton University, compiled the list and its book from data obtained from administrators at more than 350 colleges and from surveys of college students.

The Princeton Review said its rankings were based on more than 30 factors in four categories: academics, tuition, financial aid and student borrowing.

''Bottom line: the 81 schools that met our criteria for this book are all great college education deals,''' said Robert Franek, the company's vice president for publishing.●

MESSAGES FROM THE PRESIDENT

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

EXECUTIVE MESSAGES REFERRED

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

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

MESSAGES FROM THE HOUSE

At 5:07 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that pursuant to 22 U.S.C. 276h, and the order of the House of January 4, 2005, the Speaker appoints the following Members of the House of Representatives to the Mexico-United States Interparliamentary Group: Mr. KOLBE of Arizona, Chairman and Ms. HARRIS of Florida, Vice Chairman.

The message also announced that pursuant to 14 U.S.C. 194(a), and the order of the House of January 4, 2005, the Speaker appoints the following Member of the House of Representatives to the Board of Visitors to the United States Coast Guard Academy: Mr. SIMMONS of Connecticut.

The message also announced that pursuant to 10 U.S.C. 4355(a), and the order of the House of January 4, 2005, the Speaker appoints the following Members of the House of Representatives to the Board of Visitors to the United States Military Academy: Mrs. KELLY of New York and Mr. TAYLOR of North Carolina.

The message also announced that pursuant to 46 U.S.C. 1295b(h), and the order of the House of January 4, 2005, the Speaker appoints the following Member of the House of Representatives to the Board of Visitors to the United States Merchant Marine Academy: Mr. KING of New York.

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–1811. A communication from the Secretary of Transportation, transmitting, the report of a proposed bill entitled ''Passenger Rail Investment Reform Act'' received on April 18, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1812. A communication from the Commandant, United States Coast Guard, transmitting, pursuant to law, a report of proposed legislation entitled ''Coast Guard Authorization Act of 2005''; to the Committee on Commerce, Science, and Transportation.

EC–1813. A communication from the Under Secretary, Food, Nutrition, and Consumer Services, Department of Agriculture, the report of a rule entitled ''Food Stamp Program, Regulatory Review: Standards for Approval and Operation of the Food Stamp Electronic Benefit Transfer (EBT) Systems'' (RIN0584–AC37) received on April 18, 2005; to the Committee on Agriculture, Nutrition, and Forestry.

EC–1814. 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 in Cattle and Bison; State and Zone Designations; California'' (APHIS Docket No. 05–010–1) received on April 18, 2005; to the Committee on Agriculture, Nutrition, and Forestry.

EC–1815. A communication from the Acting Administrator, Agricultural Marketing Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Milk in the Northeast Marketing Area—Final Order'' (DA–02–01; AO–14–A70) received on April 18, 2005; to the Committee on Agriculture, Nutrition, and Forestry.

EC–1816. A communication from the Acting Administrator, Agricultural Marketing Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Milk in the Pacific Northwest Marketing Area—Final Order'' (DA–01–08–PNW; AO–368–A30) received on April 18, 2005; to the Committee on Agriculture, Nutrition, and Forestry.

EC–1817. A communication from the Acting Chief, Publications and Regulation Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Tax Exempt Bond Partnership Lookthrough II'' (Rev. Proc. 2005–20) received on April 18, 2005; to the Committee on Finance.

EC–1818. A communication from the Acting Chief, Publications and Regulation Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Withholding Exemptions'' ((RIN1545–BE21) (TD 9196)) received on April 18, 2005; to the Committee on Finance.

EC–1819. A communication from the Acting Chief, Publications and Regulation Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Classification of Certain Foreign Entities'' ((RIN1545–BD78) (TD 9197)) received on April 18, 2005; to the Committee on Finance.

EC–1820. A communication from the President and Chairman, Export-Import Bank of the United States, transmitting, pursuant to law, a report relative to a transaction involving U.S. exports to Kenya; to the Committee on Banking, Housing, and Urban Affairs.

EC–1821. A communication from the President and Chairman, Export-Import Bank of the United States, transmitting, pursuant to law, a report of the Bank's operations for Fiscal Year 2004; to the Committee on Banking, Housing, and Urban Affairs.

EC–1822. A communication from the Deputy Secretary, Office of the Chief Accountant, Securities and Exchange Commission, transmitting, pursuant to law, the report of a rule entitled ''Rule 4–01(a)(3) of Regulation S–X, Form, Order, and Terminology'' (RIN3235–AJ39) received on April 18, 2005; to the Committee on Banking, Housing, and Urban Affairs.

EC–1823. A communication from the General Counsel, Office of Federal Housing Enterprise Oversight, transmitting, pursuant to law, the report of a rule entitled ''Corporate Governance; Final Amendments'' (RIN2550–AA24) received on April 18, 2005; to the Committee on Banking, Housing, and Urban Affairs.

EC–1824. A communication from the Assistant Secretary, Division of Corporation Finance, Securities and Exchange Commission, transmitting, pursuant to law, the report of a rule entitled ''First-Time Application of International Financial Reporting Standards'' (RIN3235–AI92) received on April 18, 2005; to the Committee on Banking, Housing, and Urban Affairs.

EC–1825. A communication from the Principal Deputy for Personnel and Readiness, Office of the Under Secretary of Defense, Department of Defense, transmitting, pursuant to law, a report of the authorization to wear the insignia of the grade of rear admiral (lower half); to the Committee on Armed Services.

EC–1826. A communication from the Principal Deputy, Personnel and Readiness, Office of the Under Secretary of Defense, Department of Defense, transmitting, pursuant to law, a report of officers authorized to wear the insignia of the next higher grade; to the Committee on Armed Services.

EC–1827. A communication from the Under Secretary of Defense, Personnel and Readiness, Department of Defense, transmitting, the report of a retirement; to the Committee on Armed Services.

EC–1828. A communication from the Secretary of the Air Force, transmitting, pursuant to law, the report of an Average Procurement Unit Cost (APUC) breach; to the Committee on Armed Services.

EC–1829. A communication from the Director of the Defense Finance and Accounting Service, transmitting, pursuant to law, a report on Conversion of Department of Defense Commercial Activity to a Government most Efficient Organization; to the Committee on Armed Services.

EC–1830. A communication from the General Counsel of the Department of Defense, transmitting, the report of legislative proposals; to the Committee on Armed Services.

EC–1831. A communication from the Assistant Secretary of the Army (Acquisition, Logistics and Technology), Department of the Army, transmitting, pursuant to law, a report entitled ''Annual Status Report on the Disposal of Chemical Weapons and Materiel for Fiscal Year 2004''; to the Committee on Armed Services.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. STEVENS, from the Committee on Commerce, Science, and Transportation, with an amendment in the nature of a substitute:

S. 50. A bill to authorize and strengthen the National Oceanic and Atmospheric Administration's tsunami detection, forecast, warning, and mitigation program, and for other purposes (Rept. No. 109–59).

By Mr. STEVENS, from the Committee on Commerce, Science, and Transportation, without amendment:

S. 361. A bill to develop and maintain an integrated system of ocean and coastal observations for the Nation's coasts, oceans and Great Lakes, improve warnings of tsunamis and other natural hazards, enhance homeland security, support maritime operations, and for other purposes (Rept. No. 109–60).

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. FEINGOLD:

S. 838. A bill to allow modified bloc voting by cooperative associations of milk producers in connection with a referendum on Federal Milk Marketing Order reform; to the Committee on Agriculture, Nutrition, and Forestry.

By Mrs. BOXER:

S. 839. A bill to repeal the law that gags doctors and denies women information and referrals concerning their reproductive health options; read the first time.

By Mr. HARKIN (for himself, Mrs. MURRAY, Mr. KENNEDY, Ms. MIKULSKI, Mr. DURBIN, Mr. LEAHY, Mr. AKAKA, Mr. FEINGOLD, Mrs. LINCOLN, Mr. CORZINE, and Mr. KERRY):

S. 840. A bill to amend the Fair Labor Standards Act of 1938 to prohibit discrimination in the payment of wages on account of sex, race, or national origin, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mrs. CLINTON (for herself, Mr. REID, Mr. KENNEDY, Mr. HARKIN, Mr. DURBIN, Ms. LANDRIEU, Mr. CORZINE, Mr. LEAHY, Mr. SCHUMER, and Ms. STABENOW):

S. 841. A bill to amend the Fair Labor Standards Act of 1938 to provide more effective remedies to victims of discrimination in the payment of wages on the basis of sex, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. KENNEDY (for himself, Mr. SPECTER, Mr. REID, Mr. DURBIN, Mr. SCHUMER, Mr. DODD, Mr. BINGAMAN, Mr. HARKIN, Ms. MIKULSKI, Mrs. MURRAY, Mrs. CLINTON, Mr. BYRD, Mr. INOUYE, Mr. BIDEN, Mr. LEAHY, Mr. SARBANES, Mr. LEVIN, Mr. KERRY, Mr. ROCKEFELLER, Mr. LIEBERMAN, Mr. AKAKA, Mr. DORGAN, Mrs. BOXER, Mr. FEINGOLD, Mr. WYDEN, Ms. LANDRIEU, Mr. BAYH, Mr. CARPER, Ms. STABENOW, Ms. CANTWELL, Mr. CORZINE, Mr. DAYTON, Mr. LAUTENBERG, Mr. OBAMA, Mr. SALAZAR, and Mr. REED):

S. 842. A bill to amend the National Labor Relations Act to establish an efficient system to enable employees to form, join, or assist labor organizations, to provide for mandatory injunctions for unfair labor practices during organizing efforts, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. SANTORUM (for himself and Mr. DODD):

S. 843. A bill to amend the Public Health Service Act to combat autism through research, screening, intervention and education; to the Committee on Health, Education, Labor, and Pensions.

By Mrs. CLINTON (for herself and Mr. REID):

S. 844. A bill to expand access to preventive health care services that help reduce unintended pregnancy, reduce the number of abortions, and improve access to women's health care; read the first time.

By Mr. REID:

S. 845. A bill to amend title 10, United States Code, to permit retired servicemembers who have a service-connected disability to receive disability compensation and either retired pay or Combat-Related Special Compensation and to eliminate the phase-in period with respect to such concurrent receipt; read the first time.

By Mr. DURBIN:

S. 846. A bill to provide fair wages for America's workers; read the first time.

By Ms. STABENOW (for herself and Mr. SCHUMER):

S. 847. A bill to lower the burden of gasoline prices on the economy of the United States and circumvent the efforts of OPEC to reap windfall oil profits; read the first time.

By Mr. BINGAMAN:

S. 848. A bill to improve education, and for other purposes; read the first time.

By Mr. ALLEN (for himself, Mr. WYDEN, Mr. SUNUNU, Mr. ENSIGN, Mr. LEAHY, Mr. BURNS, Mr. SMITH, Mr. WARNER, and Mr. MCCAIN):

S. 849. A bill to make the moratorium on Internet access taxes and multiple and discriminatory taxes on electronic commerce permanent; to the Committee on Commerce, Science, and Transportation.

By Mr. FRIST (for himself and Mr. LUGAR):

S. 850. A bill to establish the Global Health Corps, and for other purposes; to the Committee on Foreign Relations.

By Mr. CONRAD (for himself, Mr. REID, Mr. FEINGOLD, Ms. MIKULSKI, Ms. STABENOW, Mr. INOUYE, Mr. LEAHY, Mr. SALAZAR, Mr. ROCKEFELLER, Mr. SCHUMER, Mrs. FEINSTEIN, Mr. DAYTON, Mr. DODD, Mrs. CLINTON, Mrs. BOXER, Mr. DORGAN, Mr. KOHL, Mr. LEVIN, and Mr. NELSON of Florida):

S. 851. A bill to reduce budget deficits by restoring budget enforcement and strengthening fiscal responsibility; read the first time.

By Mr. SPECTER (for himself, Mr. LEAHY, Mr. HATCH, Mrs. FEINSTEIN, Mr. GRASSLEY, Mr. DEWINE, Mr. BAUCUS, and Mr. VOINOVICH):

S. 852. A bill to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; to the Committee on the Judiciary.

By Mr. BROWNBACK (for himself, Mr. CRAPO, and Mr. SMITH):

S.J. Res. 14. A joint resolution providing for the recognition of Jerusalem as the undivided capital of Israel before the United States recognizes a Palestinian state, and for other purposes; to the Committee on Foreign Relations.

By Mr. BROWNBACK (for himself, Mr. DORGAN, and Mr. DODD):

S.J. Res. 15. A joint resolution to acknowledge a long history of official depredations and ill-conceived policies by the United States Government regarding Indian tribes and offer an apology to all Native Peoples on behalf of the United States; to the Committee on Indian Affairs.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

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

By Mrs. DOLE (for herself and Mr. BURR):

S. Res. 113. A resolution expressing support for the International Home Furnishings Market in High Point, North Carolina; to the Committee on the Judiciary.

ADDITIONAL COSPONSORS

S. 173

At the request of Mr. DEWINE, the name of the Senator from Ohio (Mr. VOINOVICH) was added as a cosponsor of S. 173, a bill to amend title XVIII of the Social Security Act to provide adequate coverage for immunosuppressive drugs furnished to beneficiaries under the Medicare program that have received an organ transplant.

S. 185

At the request of Mr. NELSON of Florida, the name of the Senator from Maryland (Ms. MIKULSKI) was added as a cosponsor of S. 185, a bill to amend title 10, United States Code, to repeal the requirement for the reduction of certain Survivor Benefit Plan annuities by the amount of dependency and indemnity compensation and to modify the effective date for paid-up coverage under the Survivor Benefit Plan.

S. 241

At the request of Ms. SNOWE, the name of the Senator from Michigan (Ms. STABENOW) was added as a cosponsor of S. 241, a bill to amend section 254 of the Communications Act of 1934 to provide that funds received as universal service contributions and the universal service support programs established pursuant to that section are not subject to certain provisions of title 31, United States Code, commonly known as the Antideficiency Act.

S. 260

At the request of Mr. INHOFE, the name of the Senator from Vermont (Mr. JEFFORDS) was added as a cosponsor of S. 260, a bill to authorize the Secretary of the Interior to provide technical and financial assistance to private landowners to restore, enhance, and manage private land to improve fish and wildlife habitats through the Partners for Fish and Wildlife Program.

S. 267

At the request of Mr. CRAIG, the name of the Senator from Florida (Mr. NELSON) was added as a cosponsor of S. 267, a bill to reauthorize the Secure Rural Schools and Community Self-Determination Act of 2000, and for other purposes.

S. 337

At the request of Mr. GRAHAM, the name of the Senator from New Jersey (Mr. LAUTENBERG) was added as a cosponsor of S. 337, a bill to amend title 10, United States Code, to revise the age and service requirements for eligibility to receive retired pay for nonregular service, to expand certain authorities to provide health care benefits for Reserves and their families, and for other purposes.

S. 365

At the request of Mr. COLEMAN, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 365, a bill to amend the Torture Victims Relief Act of 1998 to authorize appropriations to provide assistance for domestic and foreign centers and programs for the treatment of victims of torture, and for other purposes.

S. 378

At the request of Mr. BIDEN, the name of the Senator from Utah (Mr. HATCH) was added as a cosponsor of S. 378, a bill to make it a criminal act to willfully use a weapon with the intent to cause death or serious bodily injury to any person while on board a passenger vessel, and for other purposes.

S. 391

At the request of Mr. LAUTENBERG, the name of the Senator from Wisconsin (Mr. FEINGOLD) was added as a cosponsor of S. 391, a bill to amend the Federal Election Campaign Act of 1971 to prohibit certain State election administration officials from actively participating in electoral campaigns.

S. 420

At the request of Mr. KYL, the names of the Senator from North Carolina (Mr. BURR) and the Senator from Oregon (Mr. SMITH) were added as cosponsors of S. 420, a bill to make the repeal of the estate tax permanent.

S. 467

At the request of Mr. DODD, the name of the Senator from Massachusetts (Mr. KERRY) was added as a cosponsor of S. 467, a bill to extend the applicability of the Terrorism Risk Insurance Act of 2002.

S. 495

At the request of Mr. BROWNBACK, the name of the Senator from North Carolina (Mrs. DOLE) was added as a cosponsor of S. 495, a bill to impose sanctions against perpetrators of crimes against humanity in Darfur, Sudan, and for other purposes.

S. 603

At the request of Ms. LANDRIEU, the names of the Senator from Kentucky (Mr. BUNNING) and the Senator from Missouri (Mr. TALENT) were added as cosponsors of S. 603, a bill to amend the Consumer Credit Protection Act to assure meaningful disclosures of the terms of rental-purchase agreements, including disclosures of all costs to consumers under such agreements, to provide certain substantive rights to consumers under such agreements, and for other purposes.

S. 633

At the request of Mr. JOHNSON, the name of the Senator from New Mexico (Mr. BINGAMAN) was added as a cosponsor of S. 633, a bill to require the Secretary of the Treasury to mint coins in commemoration of veterans who became disabled for life while serving in the Armed Forces of the United States.

S. 649

At the request of Ms. MURKOWSKI, her name was added as a cosponsor of S. 649, a bill to amend the Omnibus Crime Control and Safe Streets Act of 1968 to make volunteer members of the Civil Air Patrol eligible for Public Safety Officer death benefits.

S. 806

At the request of Mr. CRAIG, the name of the Senator from Colorado (Mr. SALAZAR) was added as a cosponsor of S. 806, a bill to amend title 38, United States Code, to provide a traumatic injury protection rider to servicemembers insured under section 1967(a)(1) of such title.

S. 815

At the request of Mr. THOMAS, the name of the Senator from Kentucky (Mr. BUNNING) was added as a cosponsor of S. 815, a bill to amend the Internal Revenue Code of 1986 to allow a 15-year applicable recovery period for depreciation of certain electric transmission property.

S. 830

At the request of Mr. INHOFE, the names of the Senator from Oklahoma (Mr. COBURN), the Senator from Kansas (Mr. ROBERTS) and the Senator from Texas (Mr. CORNYN) were added as cosponsors of S. 830, a bill to amend the Federal Water Pollution Control Act to insert a new definition relating to oil and gas exploration and production.

S.J. RES. 7

At the request of Mr. KENNEDY, the name of the Senator from Minnesota (Mr. DAYTON) was added as a cosponsor of S.J. Res. 7, a joint resolution proposing an amendment to the Constitution of the United States relative to equal rights for men and women.

S. RES. 64

At the request of Mr. JEFFORDS, the name of the Senator from New York (Mrs. CLINTON) was added as a cosponsor of S. Res. 64, a resolution expressing the sense of the Senate that the United States should prepare a comprehensive strategy for advancing and entering into international negotiations on a binding agreement that would swiftly reduce global mercury use and pollution to levels sufficient to protect public health and the environment.

AMENDMENT NO. 338

At the request of Mr. KERRY, the name of the Senator from New York (Mrs. CLINTON) was added as a cosponsor of amendment No. 338 intended to be proposed to H.R. 1268, making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes.

AMENDMENT NO. 379

At the request of Mrs. HUTCHISON, the name of the Senator from New Mexico (Mr. DOMENICI) was added as a cosponsor of amendment No. 379 proposed to H.R. 1268, making emergency supplemental appropriations for the fiscal

year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes.

AMENDMENT NO. 409

At the request of Mr. JEFFORDS, the name of the Senator from Minnesota (Mr. DAYTON) was added as a cosponsor of amendment No. 409 intended to be proposed to H.R. 1268, making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes.

AMENDMENT NO. 418

At the request of Mr. ROBERTS, his name was added as a cosponsor of amendment No. 418 proposed to H.R. 1268, making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes.

AMENDMENT NO. 427

At the request of Mr. DURBIN, the name of the Senator from Minnesota (Mr. DAYTON) was added as a cosponsor of amendment No. 427 proposed to H.R. 1268, making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes.

AMENDMENT NO. 441

At the request of Mr. SPECTER, his name was added as a cosponsor of amendment No. 441 proposed to H.R. 1268, making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes.

AMENDMENT NO. 502

At the request of Mr. DODD, the name of the Senator from Oklahoma (Mr. INHOFE) was added as a cosponsor of amendment No. 502 intended to be proposed to H.R. 1268, making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes.

AMENDMENT NO. 504

At the request of Mrs. CLINTON, the names of the Senator from Washington (Mrs. MURRAY), the Senator from New Jersey (Mr. LAUTENBERG), the Senator from New Jersey (Mr. CORZINE) and the Senator from Vermont (Mr. LEAHY) were added as cosponsors of amendment No. 504 intended to be proposed to H.R. 1268, making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

MONDAY, APRIL 18, 2005

By Mr. INHOFE:

S. 830. A bill to amend the Federal Water Pollution Control Act to insert a new definition relating to oil and gas exploration and production; to the Committee on Environment and Public Works.

Mr. INHOFE. 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. 830

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DEFINITION RELATING TO OIL AND GAS EXPLORATION AND PRODUCTION.

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, PRODUCTION, PROCESSING, TREATMENT OPERATION, OR TRANSMISSION.—

''(A) IN GENERAL.—The term 'oil and gas exploration, production, processing, treatment operation, or transmission' means all field activities or operations associated with oil or gas exploration, production, or processing, or oil or gas treatment operations or transmission facilities.

''(B) INCLUSIONS.—The term 'oil and gas exploration, production, processing, treatment operation, or transmission' includes activities necessary to prepare a site for oil or gas drilling and for the movement and placement of drilling equipment, whether or not the field activities or operations may be considered to be construction activities.''.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. FEINGOLD:

S. 838. A bill to allow modified bloc voting by cooperative associations of milk producers in connection with a referendum on Federal Milk Marketing Order reform; to the Committee on Agriculture, Nutrition, and Forestry.

Mr. FEINGOLD. Mr. President, today I am re-introducing a measure that will begin to restore democracy for dairy farmers throughout the Nation.

When dairy farmers across the country voted on a referendum six years ago, perhaps the most significant change in dairy policy in sixty years, they didn't actually get to vote. Instead, their dairy marketing cooperatives cast their votes for them.

This procedure is called ''bloc voting'' and it is used all the time. Basically, a Cooperative's Board of Directors decides that, in the interest of time, bloc voting will be implemented for that particular vote. It may serve the interest of time, but it doesn't always serve the interests of their producer owner-members.

While I think that bloc voting can be a useful tool in some circumstances, I have serious concerns about its use in every circumstance. Farmers in Wisconsin and in other States tell me that they do not agree with their cooperative's view on every vote. Yet, they have no way to preserve their right to make their single vote count.

I have learned from farmers and officials at the U.S. Department of Agriculture (USDA) that if a cooperative bloc votes, individual members have no opportunity to voice opinions separately. That seems unfair when you consider what significant issues may be at stake. Co-ops and their individual members do not always have identical interests. Considering our nation's longstanding commitment to freedom of expression, our Federal rules should allow farmers to express a differing opinion from their co-ops, if they choose to.

The Democracy for Dairy Producers Act of 2005 is simple and fair. It provides that a cooperative cannot deny any of its members a ballot to opt to vote separately from the co-op.

This will in no way slow down the process at USDA; implementation of any rule or regulation would proceed on schedule. Also, I do not expect that this would often change the final outcome of any given vote. Co-ops could still cast votes for their members who do not exercise their right to vote individually. And to the extent that co-ops

represent farmers' interests, in the majority of cases farmers are likely to vote the same as their co-ops. But whether they join the co-ops or not in voting for or against a measure, farmers deserve the right to vote according to their own views.

I urge my colleagues to return the democratic process to America's farmers, by supporting the Democracy for Dairy Producers Act.

I ask unanimous consent that the text of my bill be printed in the RECORD.

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

S. 838

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

The Act may be cited as the ''Democracy for Dairy Producers Act of 2005''.

SEC. 2. MODIFIED BLOC VOTING.

(a) IN GENERAL.—Notwithstanding paragraph (12) of section 8c of the Agricultural Adjustment Act (7 U.S.C. 608c), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937, in the case of the referendum conducted as part of the consolidation of Federal milk marketing orders and related reforms under section 143 of the Agricultural Market Transition Act (7 U.S.C. 7253), if a cooperative association of milk producers elects to hold a vote on behalf of its members as authorized by that paragraph, the cooperative association shall provide to each producer, on behalf of which the cooperative association is expressing approval or disapproval, written notice containing—

(1) a description of the questions presented in the referendum;

(2) a statement of the manner in which the cooperative association intends to cast its vote on behalf of the membership; and

(3) information regarding the procedures by which a producer may cast an individual ballot.

(b) TABULATION OF BALLOTS.—At the time at which ballots from a vote under subsection (a) are tabulated by the Secretary of Agriculture, the Secretary shall adjust the vote of a cooperative association to reflect individual votes submitted by producers that are members of, stockholders in, or under contract with, the cooperative association.

By Mr. HARKIN (for himself, Mrs. MURRAY, Mr. KENNEDY, Ms. MIKULSKI, Mr. DURBIN, Mr. LEAHY, Mr. AKAKA, Mr. FEINGOLD, Mrs. LINCOLN, Mr. CORZINE, and Mr. KERRY):

S. 840. A bill to amend the Fair Labor Standards Act of 1938 to prohibit discrimination in the payment of wages on account of sex, race, or national origin, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. HARKIN. Mr. President, on behalf of myself and Senators MURRAY, KENNEDY, MIKULSKI, DURBIN, LEAHY, AKAKA, FEINGOLD, LINCOLN, CORZINE and KERRY, I am introducing the Fair Pay Act.

April 19th is Equal Pay Day. Even though the Equal Pay Act was passed more than 40 years ago, women working full time, year-round, still make only 76 cents for every dollar that a man makes. On April 19th, four days after tax returns for 2004 are due, U.S. women will finally reach the earnings mark that their male counterparts achieved by December 31st of last year. April 19th reminds us that the 60 million working women in this country are suffering economically because equal pay is still not a reality.

We've got millions of families struggling to make ends meet. The White House and the Republican House leadership believes a $750 billion tax cut for the rich is the solution, a permanent one.

I disagree. One way we can put more money in the pockets of working families is to pay women what they're worth. Nearly 40 years after the Equal Pay Act became law, women are still paid only 76 cents for every dollar a man earns.

Working women at all income and education levels are affected by the wage gap. In 2003, the GAO found that the pay gap continues to affect women in management and that, for these women, the pay gap has actually widened since 1995.

Regardless of education, the impact is the same. These women work as hard as men, but have less money to pay the bills, to put food on the table, or to save for their retirement or their child's education. That is simply wrong and it must end. We must close the wage gap once and for all.

First, we need to do a better job by enforcing and strengthening the penalties for the law that demands equal pay for equal work. That's why I support the Paycheck Fairness Act, sponsored by Senator CLINTON and Congresswoman DELAURO.

However, an even more important part of discrimination against women in the work place is the historic pattern of undervaluing and underpaying so-called ''women's jobs.''

Millions of women today working in female-dominated jobs—as social workers, teachers, child care workers and nurses—are ''equivalent'' in skills, effort, responsibility and working conditions to similar jobs dominated by men, but these women aren't paid the same as men.

That's what the Fair Pay Act—that Congresswoman NORTON and I are reintroducing today—would address. Unfairly low pay in jobs dominated by women is un-American, it is discriminatory and our bill would make it illegal.

Twenty States have ''fair pay'' laws and policies in place for their employees, including my State of Iowa. And Iowa had a Republican legislature and Governor when this bill passed into law, so ending wage discrimination against women is a nonpartisan issue.

Some say we don't need any more laws; market forces will take care of the wage gap. If we had relied on market forces we would have never passed the Equal Pay Act, the Civil Rights Act, the Family Medical Leave Act or the Americans with Disabilities Act.

I first introduced the Fair Pay Act in 1996 after the Iowa Business and Professional Women alerted me to this problem. And as long as I'm in the U.S. Senate, I will continue to fight to pass this important legislation so we can end wage discrimination against women once and for all.

By Mrs. CLINTON (for herself, Mr. REID, Mr. KENNEDY, Mr. HARKIN, Mr. DURBIN, Ms. LANDRIEU, Mr. CORZINE, Mr. LEAHY, Mr. SCHUMER, and Ms. STABENOW):

S. 841. A bill to amend the Fair Labor Standards Act of 1938 to provide more effective remedies to victims of discrimination in the payment of wages on the basis of sex, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mrs. CLINTON. Mr. President, I rise today to discuss the Paycheck Fairness Act, which I am introducing along with my colleagues Senators REID, KENNEDY, HARKIN, DURBIN, LANDRIEU, CORZINE, LEAHY, SCHUMER, and STABENOW. I also want to acknowledge Senator Daschle for his longstanding support of this critical issue and Congresswoman DELAURO for being a champion in the House of Representatives.

This morning I met Brenda Wholey, a plaintiff in the Wal-Mart class action sex discrimination lawsuit. Brenda came all the way to Washington from Philadelphia to share her story with us. She worked hard, put in her time, and watched as time in and time out, men were promoted above her and compensated with higher salaries.

Too often when we talk about equal pay we talk about numbers—the 76 cents on the dollar that women earn, the 54 cents that Hispanic women earn. We talk about GAO reports and violations and litigation. But what this is really about is women like Brenda. Women who get up every day and go to work so they can provide for their families. Women who work hard and play by the rules and want to build a better life for their children. Women like Brenda who just want to be treated fairly.

The Equal Pay Act was an important step forward for women. It gave women a real chance to be full, equal participants in the workforce and to earn equal pay for equal work.

In the 42 years since the Equal Pay Act was enacted, women have shattered so many barriers. And for young women entering the workforce today, the sky is the limit. But we still have work to do to truly level the playing field.

That means making sure that employers treat men and women equally in the workplace. It also means giving women the tools they need to acquire the pay and recognition they deserve.

That is why I am pleased to be introducing the Paycheck Fairness Act—a bill that will build on the promise of the Equal Pay Act and help close the pay gap.

The Paycheck Fairness Act has three main components.

First, it prevents pay discrimination before it starts. By helping women strengthen their negotiation skills and providing outreach and technical assistance to employers to ensure they fairly evaluate and pay their employees, the Paycheck Fairness Act gives employers the tools they need to level the playing field between men and women.

Second, the Paycheck Fairness Act creates strong penalties to punish those who do violate the act. By strengthening the penalties for employers who violate the Equal Pay Act, this bill sends a strong message—Equal Pay is a matter to be taken seriously.

And finally, the Paycheck Fairness Act ensures that the Federal Government, which should be a model employer when it comes to enforcing Federal employment laws, uses every tool in its toolbox to ensure that women are paid the same amount as men for doing the same jobs.

From ending the Clinton administration's Equal Pay Matters Initiative, to halting the collection of data on women workers, to removing important information about the wage gap from the Department of Labor's website, to tying its own hands in enforcing the Equal Pay Act among Federal contractors, the Bush administration has taken this country backwards in the fight for equal pay. You might say the Bush administration has taken one giant step backwards for womenkind.

The Paycheck Fairness Act would stop the Bush administration's rollbacks and make sure, once again, that our Federal Government sets a standard of excellence for making sure women are paid the same as men.

There is no question that we've come a long way since the Equal Pay Act became law 42 years ago. And women have earned every step they have gained in the journey toward equality.

But what has made this country great is that we have never accepted that ''less discrimination'' is ''good enough.'' The history of our country is one of constant striving to live up to the ideal of our founding. And the most basic element of our American character is the belief that all of us deserve to be treated as equals.

Our country in its history has faced lots of difficult questions, questions on which reasonable people could disagree. Equal pay is not one of those hard questions. It is common sense, it is basic fairness. It is simply right.

And frankly, when it comes to equal pay, we still have a lot of work to do. Women's compensation still lags behind men's in nearly every occupation and every field. As the American Association of University Women study being unveiled today shows us, this fact is not lost on most Americans. Young, old, Democrat, Republican, male, female—there is universal recognition that a wage gap exists. Well, the Paycheck Fairness Act will do something about it.

This issue is about our mothers, our sisters, our daughters. It's about women being able to earn an equal wage for equal work. It is in all of our interests to allow women to support their families and to live with the dignity and respect accorded to fully engaged members of the workforce.

Equality works for all of us. Now is the time to make sure that we all work towards equality.

By Mr. KENNEDY (for himself, Mr. SPECTER, Mr. REID, Mr. DURBIN, Mr. SCHUMER, Mr. DODD, Mr. BINGAMAN, Mr. HARKIN, Ms. MIKULSKI, Mrs. MURRAY, Mrs. CLINTON, Mr. BYRD, Mr. INOUYE, Mr. BIDEN, Mr. LEAHY, Mr. SARBANES, Mr. LEVIN, Mr. KERRY, Mr. ROCKEFELLER, Mr. LIEBERMAN, Mr. AKAKA, Mr. DORGAN, Mrs. BOXER, Mr. FEINGOLD, Mr. WYDEN, Ms. LANDRIEU, Mr. BAYH, Mr. CARPER, Ms. STABENOW, Ms. CANTWELL, Mr. CORZINE, Mr. DAYTON, Mr. LAUTENBERG, Mr. OBAMA, Mr. SALAZAR, and Mr. REED):

S. 842. A bill to amend the National Labor Relations Act to establish an efficient system to enable employees to form, join, or assist labor organizations, to provide for mandatory injunctions for unfair labor practices during organizing efforts, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. KENNEDY. Mr. President, in recognition of our country's longstanding commitment to basic fairness for the Nation's hard-working men and women, I am introducing the Employee Free Choice Act. I want to thank my distinguished colleague, Senator ARLEN SPECTER, for also supporting this important legislation to protect workers' right to free association.

The essence of the American dream is the ability to provide a better life for yourself and your family. At the very heart of that dream are a good job, a good workplace, good health care, and a good retirement. Unfortunately, too many families today find that dream increasingly beyond their reach in today's global economy. Vast numbers of citizens suddenly find themselves in a race to the bottom against workers in other countries. Whoever is willing to work for the lowest pay gets the work.

That is why the labor movement is more important today than ever. It's not the profits of business that are being shipped overseas. They're higher than ever. It is the jobs of American workers that are being outsourced, and they're being outsourced in droves. Hardworking Americans are paying a high price for this intense new era of worldwide competition. Our economy is growing, but workers are not benefiting. Business profits are up 70 percent since 2001, but wages have been stagnant.

Labor unions have always led the fight for working families—for the 8-hour day and the 40-hour week—for overtime protections—for a fair minimum wage—for a safe and healthy workplace—for decent health insurance and a decent pension. Every working American deserves these protections. But when they try to organize, employers typically respond with threats and intimidation. They hire union-busting firms and force employees to listen to anti-union speeches. Companies close down departments—or even entire operations—to avoid negotiating a union contract.

These are not isolated abuses. Every year, over 20,000 workers are illegally fired or discriminated against for exercising their labor rights. In at least one quarter of all organizing efforts, an employer illegally fires a worker for supporting the union. For these anti-union employers, union-busting is just another cost of doing business. America's workers deserve better, and our democracy deserves better.

That is why I am introducing the Employee Free Choice Act, to protect the right of workers to choose a union. This bill seeks to level the playing field for employees attempting to organize a union or negotiate their first contract. It requires employers to come to the table to talk. And it puts real teeth in existing protections by strengthening the penalties for discriminating against workers who support a union.

These protections are long overdue. For too long, Congress has failed to act against the anti-labor, anti-worker, anti-union tactics now far too prevalent in the workplace. This bill is an important step towards ensuring that millions of American workers and their families can do better in today's economy. I urge my colleagues to join me in this fight to support the Employee Free Choice Act.

By Mr. REID:

S. 845. A bill to amend title 10, United States Code, to permit retired servicemembers who have a service-connected disability to receive disability compensation and either retired pay or Combat-Related Special Compensation and to eliminate the phase-in period with respect to such concurrent receipt; read the first time.

Mr. REID. 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. 845

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. FINDINGS.

Congress finds the following:

(1) For more than 100 years before 1999, all disabled military retirees were required to fund their own veterans' disability compensation by forfeiting $1 of earned retired pay for each $1 received in veterans' disability compensation.

(2) Since 1999, Congress has enacted legislation every year to progressively expand eligibility criteria for relief of the retired pay disability offset and further reduce the burden of financial sacrifice on disabled military retirees.

(3) Absent adequate funding to eliminate the sacrifice for all disabled retirees, Congress has given initial priority to easing financial inequities for the most severely disabled and for combat-disabled retirees.

(4) In the interest of maximizing eligibility within cost constraints, Congress effectively has authorized full concurrent receipt for all qualifying retirees with 100 percent disability ratings and all with combat-related disability ratings, while phasing out the disability offset to retired pay over 10 years for retired members with noncombat-related, service-connected disability ratings of 50 percent to 90 percent.

(5) In pursuing these good-faith efforts, Congress acknowledges the regrettable necessity of creating new thresholds of eligibility that understandably are disappointing to disabled retirees who fall short of meeting those new thresholds.

(6) Congress is not content with the status quo.

SEC. 2. SENSE OF CONGRESS.

It is the sense of Congress that military retired pay earned by service and sacrifice in defending the Nation should not be reduced because a military retiree is also eligible for veterans' disability compensation awarded for service-connected disability.

SEC. 3. ELIGIBILITY FOR PAYMENT OF BOTH RETIRED PAY AND VETERANS' DISABILITY COMPENSATION FOR CERTAIN ADDITIONAL MILITARY RETIREES WITH COMPENSABLE SERVICE-CONNECTED DISABILITIES.

(a) EXTENSION OF CONCURRENT RECEIPT AUTHORITY TO RETIREES WITH SERVICE-CONNECTED DISABILITIES RATED LESS THAN 50 PERCENT.—Section 1414(a) of title 10, United States Code, is amended to read as follows:

''(a) PAYMENT OF BOTH RETIRED PAY AND COMPENSATION.—

''(1) IN GENERAL.—Subject to subsection (b), an individual who is a qualified retiree for any month is entitled to be paid both retired pay and veterans' disability compensation for that month without regard to sections 5304 and 5305 of title 38.

''(2) QUALIFIED RETIREES.—For purposes of this section, a qualified retiree, with respect to any month, is a member or former member of the uniformed services who—

''(A) is entitled to retired pay, other than in the case of a member retired under chapter 61 of this title with less than 20 years of service creditable under section 1405 of this title and less than 20 years of service computed under section 12732 of this title; and

''(B) is entitled for that month to veterans' disability compensation.''.

(b) REPEAL OF PHASE-IN OF CONCURRENT RECEIPT OF RETIRED PAY AND VETERANS' DISABILITY COMPENSATION.—Section 1414 of title 10, United States Code, is further amended—

(1) by striking subsection (c);

(2) by redesignating subsections (d) and (e) as subsections (c) and (d), respectively; and

(3) in subsection (d), as redesignated, by striking subparagraph (4).

(c) CLERICAL AMENDMENTS.—

(1) The heading for section 1414 of title 10, United States Code, is amended to read as follows:

''§ 1414. Members eligible for retired pay who are also eligible for veterans' disability compensation: concurrent payment of retired pay and disability compensation''.

(2) The item relating to such section in the table of sections at the beginning of chapter 71 of such title is amended to read as follows:

''1414. Members eligible for retired pay who are also eligible for veterans' disability compensation: concurrent payment of retired pay and disability compensation.''.

SEC. 4. COORDINATION OF SERVICE ELIGIBILITY FOR COMBAT-RELATED SPECIAL COMPENSATION AND CONCURRENT RECEIPT.

(a) ELIGIBILITY FOR TERA RETIREES.—Section of section 1413a(c) of title 10, United States Code, is amended by striking ''entitled to retired pay who—'' and all that follows and inserting ''who—

''(1) is entitled to retired pay, other than a member retired under chapter 61 of this title with less than 20 years of service creditable under section 1405 of this title and less than 20 years of service computed under section 12732 of this title; and

''(2) has a combat-related disability''.

(b) AMENDMENTS TO STANDARDIZE SIMILAR PROVISIONS.—

(1) CLERICAL AMENDMENT.—The heading for paragraph (3) of section 1413a(b) of title 10, United States Code, is amended by striking ''RULES'' and inserting ''RULE''.

(2) STANDARDIZATION WITH CRSC RULE FOR CHAPTER 61 RETIREES.—Section 1414(b) of such title is amended—

(A) by striking ''SPECIAL RULES'' and all that follows through ''is subject to'' in paragraph (1) and inserting ''SPECIAL RULE FOR CHAPTER 61 DISABILITY RETIREES.—In the case of a qualified retiree who is retired under chapter 61 of this title, the retired pay of the member is subject to''; and

(B) by striking paragraph (2).

SEC. 5. EFFECTIVE DATE.

The amendments made by this Act shall take effect as of January 1, 2006, and shall apply to payments for months beginning on or after that date.

By Mr. DURBIN:

S. 846. A bill to provide fair wages for America's workers; read the first time.

Mr. DURBIN. 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. 846

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—OVERTIME RIGHTS PROTECTION

SEC. 101. CLARIFICATION OF REGULATIONS RELATING TO OVERTIME COMPENSATION.

Section 13 of the Fair Labor Standards Act of 1938 (29 U.S.C. 213) is amended by adding at the end the following:

''(k)(1) Notwithstanding the provisions of subchapter II of chapter 5 and chapter 7 of title 5, United States Code (commonly referred to as the Administrative Procedures Act) or any other provision of law, any portion of the final rule promulgated on April 23, 2004, revising part 541 of title 29, Code of Federal Regulations, that exempts from the overtime pay provision of section 7 of this Act any employee who would not otherwise be exempt if the regulations in effect on March 31, 2003, remained in effect, shall have no force or effect and that portion of such regulations (as in effect on March 31, 2003) that would prevent such employee from being exempt shall be reinstated.

''(2) The Secretary shall adjust the minimum salary level for exemption under section 13(a)(1) in the following manner:

''(A) Not later than 60 days after the date of enactment of this subsection, the Secretary shall increase the minimum salary level for exemption under subsection (a)(1) for executive, administrative, and managerial occupations from the level of $155 per week in 1975 to $591 per week (an amount equal to the increase in the Employment Cost Index (published by the Bureau of Labor Statistics) for executive, administrative, and managerial occupations between 1975 and 2005).

''(B) Not later than December 31 of the calendar year following the increase required in subparagraph (A), and each December 31 thereafter, the Secretary shall increase the minimum salary level for exemption under subsection (a)(1) by an amount equal to the increase in the Employment Cost Index for executive, administrative, and managerial occupations for the year involved.''.

TITLE II—FAIR MINIMUM WAGE

SEC. 111. MINIMUM WAGE.

(a) IN GENERAL.—Section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) is amended to read as follows:

''(1) except as otherwise provided in this section, not less than—

''(A) $5.85 an hour, beginning on the 60th day after the date of enactment of this paragraph;

''(B) $6.55 an hour, beginning 12 months after that 60th day; and

''(C) $7.25 an hour, beginning 24 months after that 60th day;''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect 60 days after the date of enactment of this Act.

TITLE III—SENSE OF THE SENATE REGARDING MULTIEMPLOYER PENSION PLANS

SEC. 121. SENSE OF THE SENATE REGARDING MULTIEMPLOYER PENSION PLANS.

(a) FINDINGS.—The Senate makes the following findings:

(1) Multiemployer pension plans have been a major force in the delivery of employee benefits to active and retired American workers and their dependents for over half a century.

(2) There are approximately 1,700 multiemployer defined benefit pension plans in which approximately 9,700,000 workers and retirees participate.

(3) Three-quarters of the approximately 60,000 to 65,000 employers that participate in multiemployer plans have fewer that 100 employees.

(4) Multiemployer plans allow for greater access and affordability for smaller employers and pension portability for their employees as they move from one job to another, and permit workers to earn a pension where they might otherwise not be able to do so.

(5) The 2000–2002 drop in the stock market and decline in equity values has affected all investors, including multiemployer plans.

(6) The decline in value sustained by multiemployer defined benefit pension plans have threatened the stability of this private sector source of secure retirement income.

(7) Participating employers could face onerous excise taxes and other penalties as a result of the serious, adverse financial impact due to these market losses.

(8) In 2004, the United States Senate recognized the severity of this situation and passed by an overwhelmingly, large bipartisan margin of 86 to 9 temporary relief provisions for single and multiemployer defined benefit pension plans.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that the Senate—

(1) expresses its strong support for multiemployer defined benefit pension plans;

(2) recognizes the importance of an environment in which multiemployer plans can continue their vital role in providing benefits to working men and women;

(3) recognizes that multiemployer pension plan relief must be designed for the multiemployer labor-relations environment that supports the plans; and

(4) supports legislation to strengthen and protect the viability of multiemployer pension plans for the continued benefit of current and retired members, and their families and survivors, and to strengthen the ability of all plans to address funding problems that occur.

By Mr. FRIST (for himself and Mr. LUGAR):

S. 850. A bill to establish the Global Health Corps, and for other purposes; to the Committee on Foreign Relations.

Mr. FRIST. 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. 850

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 ''Global Health Corps Act of 2005''.

SEC. 2. GLOBAL HEALTH CORPS.

Title II of the Public Health Services Act (42 U.S.C. 202 et seq.) is amended by adding at the end the following:

PART D—GLOBAL HEALTH CORPS

''SEC. 271. DEFINITIONS.

''In this part:

''(1) AGENCY.—The term 'Agency' means the United States Agency for International Development.

''(2) CANDIDATE.—The term 'candidate' means an individual described in section 273(d).

''(3) CORPS.—Except as otherwise provided, the term 'Corps' means the Global Health Corps established under section 273(a).

''(4) DEPARTMENT.—Except as otherwise provided, the term 'Department' means the Department of Health and Human Services.

''(5) DIRECTOR.—The term 'Director' means the Director of the Global Health Corps described in section 272(a)(3).

''(6) OFFICE.—The term 'Office' means the Office of the Global Health Corps established under section 272(a)(1).

''(7) PARTICIPANT.—The term 'participant' means a member of the Corps as described in section 273(e).

''SEC. 272. OFFICE OF THE GLOBAL HEALTH CORPS.

''(a) OFFICE OF THE GLOBAL HEALTH CORPS.—

''(1) ESTABLISHMENT.—There is established within the Department an Office of the Global Health Corps to assist in improving the health, welfare, and development of communities in foreign countries and regions through the provision of health care personnel, items, and related services.

''(2) PURPOSES.—The purposes of the Office are—

''(A) to expand the availability of health care personnel, items, and related services to improve the health, welfare, and development of communities in select foreign countries and regions;

''(B) to promote United States public diplomacy in such foreign countries and regions by matching the needs of such communities with the services available from the Global Health Corps;

''(C) to provide for the effective management and administration of the Global Health Corps; and

''(D) to coordinate, unify, strengthen, and focus the provision of health care personnel, items, and related services to foreign countries and regions by departments, agencies, and offices of the United States, by non-Federal volunteers, and by private voluntary organizations.

''(3) DIRECTOR.—The head of the Office shall be the Director of the Global Health Corps, who shall be appointed by, and report directly to, the Secretary.

''(b) FUNCTIONS OF THE OFFICE.—The functions of the Office include the following:

''(1) Recruiting individuals to serve in the Corps, including distributing recruiting information to colleges, universities, hospitals, clinics, and nongovernmental organizations. Such individuals may include those with fellowship or scholarship support from private or public institutions and organizations.

''(2) Processing applications for enrollment in the Corps.

''(3) Verifying the training and credentials of candidates seeking to participate in the Corps

''(4) Reviewing requests for Corps personnel and services made by the head of a United States mission, a foreign country, a nongovernmental organization, an agency of the Government of the United States or other person, as determined by the Secretary.

''(5) Matching the skills of participants with the requests for health care personnel, items, and related services described in paragraph (4) to provide such services effectively and efficiently.

''(6) Providing administrative support and management for the Corps, including—

''(A) assisting candidates in the application and training process, as appropriate;

''(B) facilitating the travel of participants to foreign countries and regions and the work of participants in foreign countries and regions;

''(C) ensuring participants have appropriate legal protections and immunities through mechanisms including bilateral agreements with agencies, organizations, or countries receiving participants, hiring non-Federal volunteers as intermittent Federal employees, or providing participants status as employees of the Government of the United States for the purposes of such protections, as appropriate;

''(D) providing strategic guidance and policy for the human resources management of the Corps;

''(E) carrying out activities to retain participants in the Corps, including maintaining a database of current and former participants; and

''(F) ensuring participants have appropriate health, security, and cultural training prior to arriving in a foreign country.

''(7) Serving as a liaison between the Corps and other appropriate persons or government agencies, including—

''(A) leading or participating in interagency working groups, as appropriate;

''(B) coordinating the activities of the Corps with activities carried out by other bureaus of the Department and by the Agency, the Department of Defense, the Department of State, the Peace Corps, and other executive department, as appropriate, to advance and promote the purpose and activities of the Corps as effectively and efficiently as possible;

''(C) meeting routinely with representatives from the Agency, the Peace Corps, the National Disaster Medical System, the Medical Reserve Corps, the Office of Force Readiness and Deployment, Volunteers for Prosperity, the Office of Foreign Disaster Assistance of the Agency, the Bureau of Global Health Affairs of the Agency, the Coordinator of United States Government Activities to Combat HIV/AIDS Globally, and others, as appropriate, to improve the health, welfare, and development of communities in foreign countries and regions through the provision of health care personnel, items, and related services on a short-term or long-term basis; and

''(D) maintaining contact with appropriate international organizations to carry out the purpose of the Corps and with foreign governments that are current or prospective recipients of services provided by the Corps.

''(8) Providing participants with appropriate training and equipment, including—

''(A) ensuring participants have the appropriate medical equipment, supplies, and other resources necessary to provide health care services under austere and challenging conditions while serving in the Corps; and

''(B) establishing, managing, and directing any training provided under section 274(e).

''(9) Maintaining contact with participants during their service in the Corps.

''(10) Establishing performance objectives for the Corps, and appropriate metrics to assess the performance of the Corps in achieving its purposes, consistent with this part, and assessing the performance of the Office in achieving its purposes, consistent with section 272.

''(11) Submitting to Congress an annual report on the objectives and metrics described in paragraph (10) and on the Corps performance in meeting such objectives.

''SEC. 273. ESTABLISHMENT OF THE GLOBAL HEALTH CORPS.

''(a) ESTABLISHMENT.—The Secretary, in consultation with the Secretary of State, shall establish a Global Health Corps.

''(b) PURPOSE.—The purpose of the Corps is to improve the health, welfare, and development of communities in select foreign countries and regions, to advance United States public diplomacy in such locations, and to provide individuals in the United States with the opportunity to serve such communities by providing a broad range of needed health care and related services in such communities.

''(c) COMPOSITION OF THE CORPS.—

''(1) IN GENERAL.—The Corps shall include the following components:

''(A) Volunteers who are not employees of the Government of the United States or enrolled in the Peace Corps.

''(B) Employees of the Government of the United States.

''(C) Peace Corps volunteers who participate in the Corps under section 5A of the Peace Corps Act.

''(D) The Director and any staff of the Office.

''(E) Any other individual that the Director determines is appropriate to include in the Corps.

''(d) CANDIDATE.—An individual may be a candidate for the Corps if such individual meets the following:

''(1) NON-FEDERAL VOLUNTEER.—A individual who—

''(A)(i) is citizen or national of the United States; or

''(ii) is a resident of the United States, at the discretion of the Secretary;

''(B) is not an employee of the Government of the United States;

''(C)(i) is a trained health care professional and meets the educational and licensure requirements necessary to be such a professional, including a physician, nurse, dentist, veterinarian, or other professional determined to be appropriate by the Director; or

''(ii) is a trained health care practitioner or other professional that meets the educational requirements determined to be appropriate by the Secretary; and

''(D) is seeking membership in the Corps and is willing to work under austere and challenging conditions.

''(2) FEDERAL EMPLOYEE.—A citizen, national, or resident of the United States who—

''(A) is an employee of the Government of the United States;

''(B) meets the requirements of clause (i) or (ii) of paragraph (1)(C); and

''(C) is seeking membership in the Corps, or is designated as a candidate by the head of the executive department that employs such citizen, national, or resident.

''(3) PEACE CORPS VOLUNTEER.—A citizen or national of the United States who—

''(A) is a Peace Corp volunteer

''(B)(i) meets the requirements of clause (i) or (ii) of paragraph (1)(C); or

''(ii) is qualified to participate in the comprehensive training program established under section 274(e)(2), as determined by the Director; and

''(C) is seeking enrollment in the Corps.

''(e) MEMBERSHIP IN THE CORPS.—

''(1) IN GENERAL.—The Director may—

''(A) enroll and accept the services of candidates who are not employees of the Government of the United States in the Corps, without regard to section 1342 of title 31, United States Code;

''(B) designate candidates who are employees of the Government of the United States as members of the Corps, with the approval of the head of the executive department that employs such employee; and

''(C) accept details or assignments of employees of the Government of the United States to serve in the Corps on a reimbursable or nonreimbursable basis.

''(2) APPLICATION.—The Director shall establish procedures for individuals to submit applications for enrollment in the Corps.

''SEC. 274. FUNCTIONS AND TRAINING OF THE CORPS.

''(a) IN GENERAL.—Participants shall be available to provide the services described in subsection (b) to individuals and communities in the locations described in subsection (c).

''(b) SERVICES.—Subject to subsection (f), the services referred to in subsection (a) are services, including assistance and training, provided to individuals and communities to carry out the purpose of the Corps, including the provision of—

''(1) health care items and related services, including dental care;

''(2) preventive care, treatment, and services;

''(3) veterinary and related services;

''(4) sanitation, hygiene, food preparation, and clean water training;

''(5) disease surveillance and basic health care services to individuals and communities affected by diseases or illnesses as identified by the Director;

''(6) education and training related to the services described in paragraphs (1) through (5);

''(7) education and training to local persons to improve health care outcomes, and to assist in the development of local and indigenous health care delivery capacity and self-sufficiency; and

''(8) other health care items and related services determined to be appropriate by the Director, including health care training, health systems development, and technical support.

''(c) LOCATIONS.—The Director is authorized to provide, with the concurrence of the Secretary of State, the services described in subsection (b) to individuals and communities in a foreign country or region if—

''(1) the Secretary of State has determined that such country or region is in need of such services; and

''(2) the Secretary of State has determined that the provision of such services may help promote a better understanding of the people of the United States on the part of the peoples served in such a foreign country or region.

''(d) PLACEMENT OF PARTICIPANTS.—

''(1) IN GENERAL.—The Director shall decide on the placement of a participant in a foreign country or region described in subsection (c) after—

''(A) determining that the location or organization is in need of the services provided by the Corps in which the participant has expertise and training;

''(B) consulting with the Secretary of State on the extent to which the placement of the participant in a particular location or organization advances the foreign policy and public diplomacy objectives of the United States; and

''(C) considering the skills, qualifications, and availability of the participant.

''(2) REQUIRED CONSULTATION.—The Director shall, prior to placing a participant in a foreign country or region, consult with—

''(A) the head of the executive department that employs the participant, if the participant is an employee of the Government of the United States;

''(B) the United States Ambassador to such foreign country; and

''(C) the head of any executive department that is providing health care or related services in such foreign country.

''(e) TRAINING.—

''(1) REQUIREMENT.—The Secretary shall ensure that appropriate training programs are available, including the comprehensive training program described in paragraph (2) and appropriate health, security, and cultural training for participants, to prepare participants to provide the services described in subsection (b).

''(2) COMPREHENSIVE TRAINING PROGRAM.—

''(A) ESTABLISHMENT.—The Director shall establish and carry out a program, either separately or jointly with a Federal, public, or private sector health care provider or health care institution, to provide members of Corps selected by the Director training in a variety of health care disciplines, including basic medical, dental, public health, nursing, epidemiological services, and veterinary care.

''(B) TRAINING PROVIDED.—The program established under subparagraph (A) shall be designed by the Director, in consultation with the Secretary, Administrator of the Agency, the Secretary of Agriculture, the Secretary of Defense, the Secretary of State and the Director of the Peace Corps, to provide comprehensive basic training for a period of not more than 6 months to each participant who is a member of the Peace Corps and each other participant that the Director determines is appropriate to enable such participant to provide the services described in subsection (b), including training in a variety of health care disciplines, including basic medical, dental, public health, nursing, epidemiological service, and veterinary care.

''(C) REIMBURSEMENT.—The Director is authorized to permit a participant who is not a member of the Peace Corps to receive training in the program established under subparagraph (A) on a reimbursable basis, unless determined otherwise by the Secretary.

''(D) PROGRAM MODEL.—The program established under subparagraph (A) should be modeled on successful public and private programs, including the Joint Special Operations Medical Training Center program conducted by the Department of Defense and those conducted by various medical and nursing schools around the country.

''(E) PROHIBITION ON PARTICIPATION IN SIMILAR TRAINING.—A participant may not participate in the Joint Special Operations Medical Training Center program conducted at Fort Bragg, North Carolina.

''(3) SERVICE REQUIREMENT.—

''(A) NON-FEDERAL VOLUNTEERS.—A participant who is not an employee of the Government of the United States or a Peace Corps volunteer and who attends a training program established under paragraph (1), other than the training program established under paragraph (2), shall be obligated to complete the amount of service in the Corps, commensurate with the type and amount of training received, that the Secretary determines is appropriate.

''(B) ALL PARTICIPANTS.—A participant who attends the training program established under paragraph (2) shall be obligated to complete the amount of service in the Corps, commensurate with the type and amount of training received, that the Secretary deems appropriate. Such service shall be at the discretion of the Director, during any 5-year period, and in a manner consistent with this part and with the concurrence of the Director of the Peace Corps if such participant is a Peace Corps volunteer.

''(f) PROHIBITION.—A member of the Corps may not carry out an activity under this part if—

''(1) section 104(f) of the Foreign Assistance Act of 1961 (22 U.S.C. 2151b(f)) prohibits providing funding for such activity; or

''(2) any provision of the annual Foreign Operations, Export Financing, and Related Programs Appropriations Act that relates to abortion prohibits providing assistance for such activity.

''SEC. 275. PERSONNEL AND ADMINISTRATIVE PROVISIONS.

''(a) COMPENSATION OF PARTICIPANTS.—

''(1) NON-FEDERAL VOLUNTEERS.—A participant who is not an employee of the Government of the United States or a Peace Corps volunteer shall serve in the Corps without compensation from the Government of the United States to either the participant or to any other person.

''(2) FEDERAL EMPLOYEES.—A participant who is an officer or employee of the Government of the United States shall serve without compensation in addition to that received for their services as officers or employees of the United States.

''(3) PEACE CORPS VOLUNTEERS.—A participant who is a Peace Corps volunteer shall serve without compensation in addition to that received for their services in the Peace Corps under the Peace Corps Act (22 U.S.C. 2501 et seq.).

''(b) TRAVEL EXPENSES.—

''(1) NON-FEDERAL VOLUNTEERS.—The Director may provide a participant who is a not an employee of the Government of the United States or a Peace Corps volunteer travel expenses, excluding per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while such participant is serving in the Corps.

''(2) FEDERAL EMPLOYEES.—The Director shall provide a participant who is an employee of the Government of the United States travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Corps.

''(3) PEACE CORPS VOLUNTEERS.—The Director may not provide a participant who is a Peace Corps volunteer travel expenses in addition to such expenses provided for under the Peace Corp Act (22 U.S.C. 2501 et seq.).

''(c) APPLICABILITY OF LAWS TO NON-FEDERAL VOLUNTEERS.—

''(1) IN GENERAL.—A member of the Corps who is not an employee of the Government of the United States or a Peace Corps volunteer may not be considered an employee of the Government of the United States, except for the purposes of—

''(A) section 272(b)(6)(C);

''(B) chapter 81 of title 5, United States Code (relating to compensation for work-related injuries); and

''(C) chapter 11 of title 18, United States Code (relating to conflicts of interest).

''(2) VOLUNTEER PROTECTION ACT OF 1997.—

''(A) VOLUNTEER STATUS.—A member of the Corps who is not an employee of the United States or a Peace Corps volunteer shall be deemed to be a volunteer for a nonprofit organization or governmental entity for the purposes of the Volunteer Protection Act of 1997 (42 U.S.C. 14501 et seq.).

''(B) INAPPLICABILITY OF EXCEPTIONS.—Section 4(d) of such Act (42 U.S.C. 14503(d)) may not apply to a member of the Corps who is not an employee of the United States or a Peace Corps volunteer.

''(d) TERMS AND CONDITIONS.—With respect to the membership of a candidate in the Corps, the terms and conditions of the enrollment, training, compensation, hours of work, benefits, leave, termination, and all other terms and conditions of the service of such participant shall be exclusively those set forth in this part and those consistent with such terms and conditions which the Secretary may prescribe.

''(e) TERMINATION.—The membership in the Corps of a participant may be terminated at any time at the pleasure of the Director.

''SEC. 276. PUBLIC HEALTH SERVICE MEMBERS IN THE GLOBAL HEALTH CORPS.

''(a) AUTHORITY TO ENROLL.—A member of the Service may enroll in the Corps and provide services as a member of the Corps described in this part.

''(b) MINIMUM NUMBER.—Not later than 2 years after the date of enactment of the Global Health Corps Act of 2005, the Secretary shall designate not less than 500 employees of the Service as members of the Corps and make such employees available to provide non-emergency, routine health care items and related services in the Corps, as the Secretary and the Secretary of State determine appropriate.

''(c) RAPID RESPONSE CAPACITY.—Not later than 2 years after the date of enactment of the Global Health Corps Act of 2005, the Secretary shall establish within the Commissioned Corps of the Service a rapid response capacity, consisting of not less than 250 individuals, to provide health care items and related services in foreign countries or regions to carry out the purpose of the Corps on short notice, in coordination with the Secretary of State. A member of the Commissioned Corps who is included in such rapid response capacity shall—

''(1) be trained, equipped, and able to deploy to a foreign country or region within 72 hours of notification of such deployment; and

''(2) be considered a participant in the Corps.''.

SEC. 3. PEACE CORPS VOLUNTEERS IN THE CORPS.

The Peace Corps Act (22 U.S.C. 2501) is amended by inserting after section 5 the following new section:

''GLOBAL HEALTH CORPS VOLUNTEERS

''SEC. 5A. (a) Volunteers are authorized to participate in the Global Health Corps, established in section 273 of the Public Health Service Act.

''(b) Not later than 2 years after the date of enactment of the Global Health Corps Act of 2005, the Director of the Peace Corps shall make available not less than 250 positions within the Peace Corps for volunteers to serve in the Global Health Corps.

''(c) A volunteer may apply and be approved for enrollment in the Global Health Corps at such time and in such manner as the Director of the Peace Corps and the Secretary of Health and Human Services require.

''(d) A volunteer who is enrolled in the Global Health Corps shall receive training under section 274(e)(2) of the Public Health Service Act, unless such volunteer meets the requirements of clause (i) or (ii) of section 273(d)(1)(C) of such Act.

''(e) A volunteer who is enrolled in the Global Health Corps shall provide services as a member of the Global Health Corps as described in part D of title II of the Public Health Service Act.

''(f) A volunteer who is enrolled in the Global Health Corps shall be subject to all other terms and conditions of service under this Act.''.

SEC. 4. VOLUNTEERS FOR PROSPERITY.

(a) FINDING.—Congress finds that the Volunteers for Prosperity program, organized pursuant to Executive Order 13317 (42 U.S.C. 12501 note), is a model to link non-Federal volunteers with non-Federal organizations to carry out important initiatives.

(b) REQUIREMENT FOR CORPS INITIATIVE.—The head of the Volunteers for Prosperity program shall establish an initiative known as the Health Care for Peace initiative within such program for the purpose of making available non-Federal volunteers to participate in the Global Health Corps established under section 273 of the Public Health Service Act.

SEC. 5. PUBLIC-PRIVATE PARTNERSHIPS.

(a) IN GENERAL.—Under the authority of subsections (a) and (b) of section 601 of the Foreign Assistance Act of 1961 (22 U.S.C. 2351) and section 635(d) of such Act (22 U.S.C. 2395(d)), the Director of the Global Health Corps may establish private-public partnerships in furtherance of the purposes of this Act and the Global Health Corps. Such partnerships may include activities such as—

(1) corporate volunteer programs;

(2) training;

(3) transportation;

(4) field support;

(5) volunteer identification;

(6) lodging;

(7) communications;

(8) fellowships and scholarships; and

(9) other activities relevant to the mission of the Global Health Corps or the operation of the Office of the Global Health Corps, as determined by the Director of the Global Health Corps.

(b) CONSULTATION.—The Director of the Global Health Corps shall consult with the Global Development Alliance Secretariat at the United States Agency for International Development to develop a model for such public-private partnerships and gain information on established best practices.

SEC. 6. REPORT ON IMPLEMENTATION.

Not later than 120 days after the date of enactment of this Act, the Secretary of Health and Human Services shall submit to Congress a detailed plan for the implementation of this Act and the amendments made by this Act. Such report shall include recommendations for improving the functioning and activities of the Global Health Corps, including the feasibility, cost, utility, and desirability of establishing incentives to recruit candidates into the Corps.

SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out this Act and the amendments made by this Act.

By Mr. SPECTER (for himself, Mr. LEAHY, Mr. HATCH, Mrs. FEINSTEIN, Mr. GRASSLEY, Mr. DEWINE, Mr. BAUCUS, and Mr. VOINOVICH):

S. 852. A bill to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; to the Committee on the Judiciary.

Mr. SPECTER. Mr. President, I have sought recognition to introduce legislation which may be cited as the Fairness In Asbestos Injury Resolution Act of 2005. I do so on behalf of Senator LEAHY, the ranking member of the Judiciary Committee, Senator HATCH, the former chairman of the committee, Senator FEINSTEIN, Senator DEWINE, Senator BAUCUS, Senator VOINOVICH and Senator GRASSLEY. There are others in the wings waiting to cosponsor, but this is a very complex bill, ranging over 300 pages. Quite a number of my colleagues have told me they are supportive of the bill and are making the final check to determine cosponsorship.

Several months ago, a discussion draft was circulated. Last week, after a great many refinements had been added, the current bill was circulated. There have been a couple of relatively minor changes which have been added to this bill, but it is essentially the same as the circulation bill which was submitted a week ago.

I compliment my distinguished colleague, Senator LEAHY, the ranking member, for his diligence, hard work and cooperation in structuring a bill with a great many moving parts, which he and I have been able to agree upon on the core principles.

We have adopted a position that we will work jointly to retain these core provisions. We are open to suggestions and amendments and modifications which do not impact on these core provisions. But it is a very difficult matter to structure an asbestos bill which can pass the Senate. There are 55 Republicans. You need at least five Democrats. It has to be a balanced bill, and it is our submission that this is a balanced bill.

A great deal of credit is due to senior Federal Judge Edward R. Becker, who until May 5, his 70th birthday, in the year 2003 was the chief judge of the Court of Appeals for the Third Circuit who wrote the opinion on the asbestos litigation which reached the Supreme Court of the United States.

When the Judiciary Committee passed out of committee legislation on asbestos in July of 2003, the distinguished Presiding Officer was on the committee at that time and can attest to the 12-hour marathon session we had. We did so significantly along party lines to move the legislation along, recognizing it had many problems. At my request, Judge Becker then convened the so-called stakeholders in his chambers in Philadelphia for 2 days in August, the stakeholders being identified as the manufacturers, the AFL–CIO, the insurance industry, and the trial lawyers.

To recite the power and diversity and difference of opinion of these groups is to suggest the complication of bringing the stakeholders together on a piece of complex legislation.

Following those 2 days of meetings in Judge Becker's chambers, we have had some 36 sessions in my conference room here in the Hart Senate Office Building where Judge Becker presided and I assisted, and we worked out a great many of the issues to the satisfaction of the stakeholders.

One of the core provisions of the bill is that there is a trust fund of $140 billion. It is always difficult on projections to be absolutely certain, but I believe there is a very high probability that this trust fund will be adequate to pay all of the claims.

In very extensive testimony from Goldman Sachs on very carefully calculated projections, it was projected that the total cost of payments would be $118 billion. There is a considerable cushion between $118 billion and $140 billion. If for some unexpected reason the trust fund is insufficient, then those who have been injured by exposure to asbestos will be able to revert to jury trials.

All of us are mindful of the very substantial factor when a claimant gives up a constitutional right to jury trial, but in a program structured largely along lines of workmen's compensation, it is our conclusion that it is a fair exchange.

When you find that there are many people who are suffering deadly ailments from asbestos, mesothelioma and other deadly injuries, who are not being compensated, this is a way to compensate those individuals whose companies have gone bankrupt. Over 75 companies have gone bankrupt at a tremendous impact to the economy. This will relieve the companies of the onerous threat of bankruptcy—and they are taking additional companies with rapidity.

On one development which candidly surprised me, last week, when we circulated the draft bill a week ago today, there was a 25-point bump in the stock market for asbestos companies. When we had a meeting later in the day and deferred production of the bill, the stock market went down to some extent. There is some consideration that the stock market is wiser even than Congress. Perhaps that would take a whole lot. But the reaction of the stock market is an indication of the importance of resolving this asbestos issue in order to give the economy a start.

The hour is late. There are others who wish to seek recognition. The distinguished chairman of the Appropriations Committee is waiting through this nongermane part of his business, and the distinguished Democratic leader, I know, wants to seek recognition.

I shall include the remainder of my statement in the RECORD and ask unanimous consent that it be printed.

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

Mr. President, I have sought recognition to introduce new legislation, the Fairness in Asbestos Injury Resolution Act of 2005, FAIR Act, the successor to S. 1125 and S. 2290, the FAIR Acts of 2003 and 2004. My colleagues Senator Frist, Senator Hatch and Senator Leahy deserve enormous credit for the drafting of these acts and for the development of this legislation. There is a will in the Senate to enact legislation that should put an end to the ongoing rash of bankruptcies, growing monthly; diverting resources from those who are truly sick; endangering jobs and pensions; and creating the worst litigation crisis in the history of the American judicial system. The Congress plainly wants a more rational asbestos claims system, and I believe that this legislation offers a realistic prospect of accomplishing that result.

This legislation provides substantial assurances of acceptable compensation to asbestos victims and substantial assurances to manufacturers and insurers to resolve, with finality, asbestos claims. For more than two decades, a solution to the asbestos crisis has eluded Congress and the courts. Seventy-four companies have gone bankrupt, thousands of individuals who have been exposed to asbestos have deadly diseases—mesothelioma and other such ailments—and are not being compensated. According to The Rand Institute for Civil Justice, ''about two-thirds of the claims are now filed by the unimpaired, while in the past they were filed only by the manifestly ill.'' According to Rand, the number of claims continues to rise, with over 600,000 claims filed already and 300,000 pending. The number of asbestos defendants also has risen sharply, from about 300 in the 1980s, to more than 8,400 today and most are users of the product, not its manufacturers. These companies span 85 percent of the U.S. economy and nearly every U.S. industry, and include automakers, shipbuilders, textile mills, retailers, insurers, shipbuilders, electric utilities and virtually any company involved in manufacturing or construction in the last 30 years.

Asbestos leaves many victims in its wake. First and foremost, the sick and their families have suffered. But the flawed asbestos litigation system not only hurts the sick and their chance at receiving fair compensation, but also claims other victims. These include employees, retirees and shareholders of affected companies whose jobs, savings and retirement plans are also jeopardized by the tide of asbestos cases. With asbestos litigation affecting so many companies, this also impacts the overall economy, including jobs, pensions, stock prices, tax revenues and insurance costs. According to a 2002 study by Nobel laureate Joseph Stiglitz, asbestos bankruptcies have cost nearly 60,000 workers their jobs and $200 million in lost wages. Employees' retirement funds have shrunken by 25 percent.

In July 2003, the Judiciary Committee voted out S. 1125, a bill with many problems, largely along party lines, in an effort to move the legislation. S. 1125 created the basic structure of the legislation, and made a huge stride in working out the medical criteria. However, the bill floundered on other issues. In August 2003, at my request, Judge Edward R. Becker, a Federal judge for 34 years, convened in his chambers in Philadelphia for 2 days the so-called stakeholders—manufacturers, labor, AFL–CIO, insurers and trial lawyers—to determine if some common ground could be found. Until the preceding May, Judge Becker had been the chief judge of the Third Circuit Court of Appeals and wrote the opinion in the asbestos class action suit which was affirmed by the U.S. Supreme Court.

From September 2003 through January 2005, there were some 36 stakeholder meetings held in my conference room, with Judge Becker as a pro-bono mediator, usually attended by 25 to 40 representatives and sometimes over 75 present. I have also met 15 times since January with various officials from the administration, members of the Senate Judiciary Committee and their staffs, the Senate leadership and other various senators all in an effort to move this bill forward. Judge Becker and I have sought an equitable bill which took into account, to the maximum extent possible, the concerns of the stakeholders and to get their input on drafting of the bill. After analysis and deliberation, we found we could accommodate many of the competing interests.

This process commenced with the blessing of Chairman Hatch and Ranking Member Leahy of the Judiciary Committee. This extended process allowed the stakeholders an extraordinary ''hearing'' process and really amounted to the longest ''mark-up'' in Senate history although not in the customary framework. We have had the cooperation of many Senators. Senators Hatch and Leahy have had representatives at all the meetings. The majority leader, Senator Hatch, and Senator Leahy have addressed this ''working group'' at our meetings. Senator Hatch and Senator Leahy's representatives have been active participants at every meeting, as well as the members of the staffs of Senators Baucus, Biden, Brownback, Burns, Carper, Chafee, Chambliss, Coburn, Cornyn, Craig, DeWine, Dodd, Durbin, Feingold, Feinstein, L. Graham, Grassley, Hagel, Kennedy, Kohl, Kyl, Landrieu, Levin, Lincoln, Murray, Ben Nelson, Pryor, Schumer, Sessions, Snowe, Stabenow, and Voinovich.

The concept of a trust fund is an outstanding idea. Senator Hatch deserves great credit for moving the legislation in the direction of a trust fund with a schedule of payments analogous to workers' compensation so the cases would not have to go through the litigation process. Under this proposal, the Federal Government would establish a national trust fund privately financed by asbestos defendant companies and insurers. No taxpayer money would be involved. Asbestos victims would simply submit their claims to the fund. Claimants would be fairly compensated if they meet medical criteria for certain illnesses and show past asbestos exposure. The trust fund would guarantee compensation for impaired victims.

Through the series of meetings with Judge Becker, we have wrestled with and have been able to solve a number of very complex issues. The size of the trust fund was always a principal issue of dispute, starting at $108 billion. The manufacturers/insurers raised their offer to $140 billion. Last October, Majority Leader Frist and then-Democratic Leader Daschle agreed to $140 billion. When Senator Frist and Senator Daschle, in an adversarial context, agreed to the adequacy of the $140 billion figure, it is difficult to exceed it even though the AFL–CIO did not contemporaneously agree.

It is not possible to say definitely what figure would be adequate because it depends on the uncertainty of how many claims will be filed. There is support for the adequacy of the $140 billion figure from reputable projections. But they are, admittedly, only projections.

The real safety valve, if the fund is unable to pay claims, is for the injured to have the ability to go back to court if the system is not operational and able to pay exigent health claims within 9 months after enactment, and all other valid claims within 24 months of enactment. Upon reversion to the tort system, the bill provides that claimants may file suits either in Federal court or

State court in the state in which the plaintiff resides or State court in the state where the asbestos exposure took place.

The claimants object to any hiatus between access to the courts and an operating system; but the reality is that court delays are customarily longer than the delay structured in this system. The defendants and insurers object saying it is too short a time frame, but they have the power to expedite the process by promptly paying their assessments. I am confident that there will be no problem in administering the system and processing the claims. The leaders of the Manville Trust and the Rand Institute study and point out that the volume of claims can be efficiently administered by the fund administrator using a technique developed by the Manville Trust and other similar claims facilities that have processed asbestos claims for many years. The Manville Trust has processed as many as 150,000 claims per year. The number of exigent claims anticipated in the first 9 months of the fund is vastly smaller and even the total number of claims anticipated in the first 24 months is significantly less that which the Manville Trust has handled in a comparable period. Additionally, the bill provides the administrator with the option to contract out the exigent claims to a claims facility for expedited processing under the standards of the fund on a voluntary basis. The short time frame will prod the system to become operative at an early date. The bill sends the claims back to the fund as soon as it is certified operational with a credit for any payment of the scheduled amount.

Similarly, the defendants seek a commitment that the legislation will bar return to the courts for at least 7½ years. It is hard to see how the substantial fund would be expended in a lesser period. Here again, the legislation gives the defendant substantial assurances that the system will last at least 7½ years. If it collapses, the claimants should not bear the burden, but should reclaim their constitutional right to a jury trial. However, sunset cannot take place before there is an extensive and rigorous ''program review.'' This would give the administrator an opportunity re-fashion the program to compensate for any major shortcomings.

The claimants sought $60 billion in startup contributions within 5 years and the defendants countered with a maximum of $40 billion. The fund's borrowing power should enable it to borrow at least the balance of $20 billion because of the defendants continuing substantial financial commitments. Here again, the bill meets the standard of substantial assurances, albeit not perfect certainty, that $60 billion will be in hand within the first 5 years.

A key issue for the claimant has been that of workers' compensation subrogation. This issue is important because the value of an award to the claimant depends on whether the claimant may have to pay a substantial amount of it to others. While the precise picture is different from State to State, in general, workers' compensation laws give employers—and their insurance carriers—subrogation rights against third-party tortfeasors and a lien on the injured employee's recovery from a third-part tortfeasor. This is a big issue because workers' compensation covers the employee's medical costs.

I closely examined and considered including a proposal that would have called for a so-called workers' compensation ''holiday.'' Such a proposal would have provided for a ''holiday'' from worker's compensation payments during the period of receipt of payments from trust fund except to the extent that the compensation would exceed them, with a waiver of past and future subrogation. However, as each State has different workers' compensation laws and I concluded that such a proposal may go beyond the practice in a number of States, leaving some claimants with a significantly reduced award.

Furthermore, while not undisputed like some other matters on this legislation, there is some significant basis in the assertion by claimants that the award values in the bill were designed with the concept in mind that there would be no liens or rights of subrogation against the claimants based on workers' compensation awards and health insurance payments.

Therefore, in the final analysis, it has been determined that to be fair to victims, claimants should be allowed to retain and receive the full value of both their fund awards and workers' compensation payments. It is important that the bill must extinguish any liens or rights of subrogation that other parties might otherwise assert against the claimants based on workers' compensation awards and health insurance payments.

Another key issue for the claimants has been the legislation's treatment of asbestos disease claims under the Federal Employers' Liability Act, FELA, the workers' compensation system for rail workers. Earlier versions of the bill would have preempted FELA claims for asbestos-related diseases, limiting victim's recovery to compensation under a national asbestos trust fund. Rail labor asserts that such an approach is unfair to rail workers, since for all other workers, the bill maintains workers' compensation rights. Alternative approaches to dealing with the FELA issue have been proposed, including providing for a supplemental payment, in addition to awards under the bill, to provide compensation to rail workers for work-related asbestos diseases. The AFL–CIO's affiliates who represent workers in the rail industry have been engaged in discussions with industry on this issue, and a fair resolution has been reached. The bill provides for a principled compromise that would allow for a special adjustment for railroad workers so that the compensation award would be structured in a manner that would allow for corollary benefits—similar benefits for workers under FELA and workers compensation. It also clarifies that this legislation intends to deal solely with asbestos claims and does not in any manner impact FELA.

In these marathon discussions, plus the January 11 and February 2 hearings, I understand the deep concerns expressed by the stakeholder representatives on more concessions for their clients. On the state of the 20-year record, this choice is not between this bill and one which would give their clients more concessions. The choice is between this bill and the continuation of the present chaotic system which leaves uncompensated thousands of victims suffering from deadly diseases and litigation driving more companies into bankruptcy.

We considered at length the manufactures/insurers objections to medical screening, but concluded such a provision was necessary as an offset to the reduced role of claimant's attorney. With the previous potential of a substantial contingent fee, claimant's attorneys identified those damaged by exposure to asbestos. Absent that motivation, with the attorneys fees capped at 5 percent, it is reasonable to have routine examinations for people who would not be expected to go for such checkups on their own; so as a matter of basic fairness, such screening is provided. By establishing a program with rigorous standards, as we have done in this bill, unmeritorious claims can be avoided with the fair determination of those entitled to compensation under the statutory standard.

The legislation has closely examined the issues of so-called ''leakage'' in the fund and has provided that all asbestos claims pending on the date of enactment, except for nonconsolidated cases actually on trial, and except cases subject to a verdict or final order or final judgment, will be brought into the asbestos trust fund. Furthermore, only written settlement agreements, executed prior to date of enactment, between a defendant and a specifically identifiable plaintiff will be preserved outside of the fund; the settlement agreement must contain an express obligation by the settling defendant to make a future monetary payment to the individual plaintiff, but gives the plaintiff 30 days to fulfill all conditions of the settlement agreement.

The legislation includes language which is designed to ensure prompt judicial review of a variety of regulatory actions and to ensure that any constitutional uncertainties with regard to the legislation are resolved as quickly as possible. Specifically, it provides that any action challenging the constitutionality of any provision of the act must be brought in the United States District Court for the District of Columbia. The bill also authorizes direct appeal to the Supreme Court on an expedited basis. An action under this section is to be filed within 60 days after the date of enactment or 60 days after the final action of the administrator or the commission giving rise to the action, whichever is later. The district court and Supreme Court are required to expedite to the greatest possible extent the disposition of the action and appeal.

Claimants also expressed the need for assurances that the manufacturers payment into the fund. Therefore, the legislation also requires enhanced ''transparency'' of the payments by the defendants and insurers into the fund. The proposal provides that 20 days after the end of such 60-day period, the administrator shall publish in the Federal Register a list of such submissions, including the name of such persons or ultimate parents and the likely tier to which such persons or affiliated groups may be assigned. After publication of such list, any person may submit to the administrator information on the identity of any other person that may have obligations under the fund. In addition, there are enhanced notice and disclosure requirements included in the draft. It also provides that within 60 days after the date of enactment, any person who, acting in good faith, has knowledge that such person or such person's affiliated group would result in placement in the top tiers, shall submit to the administrator either the name of such person or such person's ultimate parent; and the likely tier to which such person or affiliated group may be assigned under this act.

This legislation deals with a number of very complex issues, one of them being that of ''mixed-dust.'' I held a hearing in the Judiciary Committee on this issue on February 2, 2005. The manufacturers fear that many asbestos claims will be ''repackaged'' as silica claims in the tort system. Evidence adduced at the hearing reflects that this has been happening in a number of jurisdictions. If a claim is due to asbestos exposure at all, the program should be the exclusive means of compensation. The stakeholders agree that this is an asbestos bill, designed to dispose of all asbestos claims but that workers with genuine silica exposure disease ought to be able to pursue their claims in the tort system. The problem is that with those claims where the point of demarcation is unclear. Silica/asbestos defendants are worried that they will find themselves in court with the burden of proving that the plaintiff's injury is due to asbestos rather than silica. This legislation makes clear that pure silica claims are not preempted, but claims involving asbestos disease are preempted. A claimant must provide rigorous medical evidence

establishing by a preponderance of evidence that their functional impairment was caused by exposure to silica, and asbestos exposure was not a significant contributing factor. Although this does impose the burden on the claimant, this is no different than the burden the plaintiff or any party advancing a position has in producing medical evidence in any case that the will physician will state that a disease was caused by some condition or exposure or that it was not caused by some condition or exposure. In addition, the testimony given at the February 2 hearing on the issue established that asbestos and silica are easily distinguishable on xray and that asbestos and silica rarely are found in the same patient.

Another very complicated issue addressed this legislation, is that of providing for award adjustments for exceptional mesothelioma cases based on age and the number of dependents of the claimant. For example, a mesothelioma victim who is 40 years old with two children will be able to get an upwards adjustment in his award amount as compared to a 80 years mesothelioma victim with no dependents. The impact of such adjustments to the fund will remain revenue-neutral.

There has been a strong concern that this bill should not become a ''smokers'' bill rather than an asbestos bill—that thousands of smokers will claim to be in the Level VII compensation tier in order to get money even if asbestos had nothing to do with their disease. After long discussions with the various sides, it has been decided to remove Level VII cases from the fund, cases which had the potential to bring down the entire fund.

There has also been a concern with the legitimacy of the Level VI compensation tier. I requested that the Institute of Medicine, IOM, commence a study to assess the medical evidence so as to determine whether colorectal, laryngeal, esophageal, pharyngeal or stomach cancer can be caused by asbestos exposure. The IOM will conclude its study of Level VI causation by April 2006. With a 270-day stay on exigent cases and 2-year stay of all other cases, this has the practical impact of the IOM study results being conclusive on inclusion or exclusion of Level VI prior to any claim being filed.

Therefore, the bill retains the Level VI tier pending the IOM study conclusions but continues to provide extensive safeguards to the fund against those individuals with these diseases making claims against the asbestos trust fund. Any Level VI claim must be based on findings by a board certified pathologists accompanied by evidence of a bilateral asbestos-related nonmalignant disease; evidence of 15 or more weighted years of substantial occupations exposure to asbestos; and supporting medical documentation establishing asbestos exposure as a contributing factor in causing the cancer in question. The claim must also be referred to a physicians panel for a determination that it is more probable than not that asbestos exposure was a substantial contributing factor in causing the other cancer in question. Further, the bill mandates that the physicians panel review the claimants smoking history as opposed to ''claimant may request.''

This is a complicated bill, but one that is both integrated and comprehensive and reflective of a remarkable will to enact legislation. If this bill is rejected, I do not see the agenda of this Senate Judiciary Committee revisiting the issue. I cannot conceive of a more strenuous effort being directed to this subject that has been done over the past two years. This is the last best chance.

I remain confident that we can forge and enact a bill that is fair to the claimants and to business and that will put an end once and for all to this nightmare chapter in American legal, economic and social history. If We can summon the legislative will in a bipartisan spirit, it can be done.

Mr. SPECTER. Mr. President, I ask unanimous consent that the text of the bill be printed.

Mr. President, I ask unanimous consent between the comments I have made, which have not been made from a text, and the text of my language which I am currently stating, be included, so that those who read the CONGRESSIONAL RECORD, if anyone does, will know the repetition in the prepared text is occasioned by the fact that the initial statement was made without reference to a text and there will necessarily be some repetition in the prepared text.

I thank the Chair. I yield the floor.

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

S. 852

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Fairness in Asbestos Injury Resolution Act of 2005'' or the ''FAIR Act of 2005''.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds the following:

(1) Millions of Americans have been exposed to forms of asbestos that can have devastating health effects.

(2) Various injuries can be caused by exposure to some forms of asbestos, including pleural disease and some forms of cancer.

(3) The injuries caused by asbestos can have latency periods of up to 40 years, and even limited exposure to some forms of asbestos may result in injury in some cases.

(4) Asbestos litigation has had a significant detrimental effect on the country's economy, driving companies into bankruptcy, diverting resources from those who are truly sick, and endangering jobs and pensions.

(5) The scope of the asbestos litigation crisis cuts across every State and virtually every industry.

(6) The United States Supreme Court has recognized that Congress must act to create a more rational asbestos claims system. In 1991, a Judicial Conference Ad Hoc Committee on Asbestos Litigation, appointed by Chief Justice William Rehnquist, found that the ''ultimate solution should be legislation recognizing the national proportions of the problem . . . and creating a national asbestos dispute resolution scheme . . .''. The Court found in 1997 in Amchem Products Inc. v. Windsor, 521 U.S. 591, 595 (1997), that ''[t]he

argument is sensibly made that a nationwide administrative claims processing regime would provide the most secure, fair, and efficient means of compensating victims of asbestos exposure.'' In 1999, the Court in Ortiz v. Fibreboard Corp., 527 U.S. 819, 821 (1999), found that the ''elephantine mass of asbestos cases . . . defies customary judicial administration and calls for national legislation.'' That finding was again recognized in 2003 by the Court in Norfolk & Western Railway Co. v. Ayers, 123 S. Ct. 1210 (2003).

(7) This crisis, and its significant effect on the health and welfare of the people of the United States, on interstate and foreign commerce, and on the bankruptcy system, compels Congress to exercise its power to regulate interstate commerce and create this legislative solution in the form of a national asbestos injury claims resolution program to supersede all existing methods to compensate those injured by asbestos, except as specified in this Act.

(8) This crisis has also imposed a deleterious burden upon the United States bankruptcy courts, which have assumed a heavy burden of administering complicated and protracted bankruptcies with limited personnel.

(9) This crisis has devastated many communities across the country, but hardest hit has been Libby, Montana, where tremolite asbestos, 1 of the most deadly forms of asbestos, was contained in the vermiculite ore mined from the area and despite ongoing cleanup by the Environmental Protection Agency, many still suffer from the deadly dust.

(b) PURPOSE.—The purpose of this Act is to—

(1) create a privately funded, publicly administered fund to provide the necessary resources for a fair and efficient system to resolve asbestos injury claims that will provide compensation for legitimate present and future claimants of asbestos exposure as provided in this Act;

(2) provide compensation to those present and future victims based on the severity of their injuries, while establishing a system flexible enough to accommodate individuals whose conditions worsens;

(3) relieve the Federal and State courts of the burden of the asbestos litigation; and

(4) increase economic stability by resolving the asbestos litigation crisis that has bankrupted companies with asbestos liability, diverted resources from the truly sick, and endangered jobs and pensions.

SEC. 3. DEFINITIONS.

In this Act, the following definitions shall apply:

(1) ADMINISTRATOR.—The term ''Administrator'' means the Administrator of the Office of Asbestos Disease Compensation appointed under section 101(b).

(2) ASBESTOS.—The term ''asbestos'' includes—

(A) chrysotile;

(B) amosite;

(C) crocidolite;

(D) tremolite asbestos;

(E) winchite asbestos;

(F) richterite asbestos;

(G) anthophyllite asbestos;

(H) actinolite asbestos;

(I) amphibole asbestos;

(J) any of the minerals listed under subparagraphs (A) through (I) that has been chemically treated or altered, and any asbestiform variety, type, or component thereof; and

(K) asbestos-containing material, such as asbestos-containing products, automotive or industrial parts or components, equipment, improvements to real property, and any other material that contains asbestos in any physical or chemical form.

(3) ASBESTOS CLAIM.—

(A) IN GENERAL.—The term ''asbestos claim'' means any claim, premised on any theory, allegation, or cause of action for damages or other relief presented in a civil action or bankruptcy proceeding, directly, indirectly, or derivatively arising out of, based on, or related to, in whole or part, the health effects of exposure to asbestos, including loss of consortium, wrongful death, and any derivative claim made by, or on behalf of, any exposed person or any representative, spouse, parent, child, or other relative of any exposed person.

(B) EXCLUSION.—The term does not include—

(i) claims alleging damage or injury to tangible property;

(ii) claims for benefits under a workers' compensation law or veterans' benefits program;

(iii) claims arising under any governmental or private health, welfare, disability, death or compensation policy, program or plan;

(iv) claims arising under any employment contract or collective bargaining agreement; or

(v) claims arising out of medical malpractice.

(4) ASBESTOS CLAIMANT.—The term ''asbestos claimant'' means an individual who files a claim under section 113.

(5) CIVIL ACTION.—The term ''civil action'' means all suits of a civil nature in State or Federal court, whether cognizable as cases at law or in equity or in admiralty, but does not include an action relating to any workers' compensation law, or a proceeding for benefits under any veterans' benefits program.

(6) COLLATERAL SOURCE COMPENSATION.—The term ''collateral source compensation'' means the compensation that the claimant received, or is entitled to receive, from a defendant or an insurer of that defendant, or compensation trust as a result of a final judgment or settlement for an asbestos-related injury that is the subject of a claim filed under section 113.

(7) ELIGIBLE DISEASE OR CONDITION.—The term ''eligible disease or condition'' means the extent that an illness meets the medical criteria requirements established under subtitle C of title I.

(8) EMPLOYERS' LIABILITY ACT.—The term ''Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Employer's Liability Act'' shall, for all purposes of this Act, include the Act of June 5, 1920 (46 U.S.C. App. 688), commonly known as the Jones Act, and the related phrase ''operations as a common carrier by railroad'' shall include operations as an employer of seamen.

(9) FUND.—The term ''Fund'' means the Asbestos Injury Claims Resolution Fund established under section 221.

(10) INSURANCE RECEIVERSHIP PROCEEDING.—The term ''insurance receivership proceeding'' means any State proceeding with respect to a financially impaired or insolvent insurer or reinsurer including the liquidation, rehabilitation, conservation, supervision, or ancillary receivership of an insurer under State law.

(11) LAW.—The term ''law'' includes all law, judicial or administrative decisions, rules, regulations, or any other principle or action having the effect of law.

(12) PARTICIPANT.—

(A) IN GENERAL.—The term ''participant'' means any person subject to the funding requirements of title II, including—

(i) any defendant participant subject to liability for payments under subtitle A of that title;

(ii) any insurer participant subject to a payment under subtitle B of that title; and

(iii) any successor in interest of a participant.

(B) EXCEPTION.—

(i) IN GENERAL.—A defendant participant shall not include any person protected from any asbestos claim by reason of an injunction entered in connection with a plan of reorganization under chapter 11 of title 11, United States Code, that has been confirmed by a duly entered order or judgment of a court that is no longer subject to any appeal or judicial review, and the substantial consummation, as such term is defined in section 1101(2) of title 11, United States Code, of such plan of reorganization has occurred.

(ii) APPLICABILITY.—Clause (i) shall not apply to a person who may be liable under subtitle A of title II based on prior asbestos expenditures related to asbestos claims that are not covered by an injunction described under clause (i).

(13) PERSON.—The term ''person''—

(A) means an individual, trust, firm, joint stock company, partnership, association, insurance company, reinsurance company, or corporation; and

(B) does not include the United States, any State or local government, or subdivision thereof, including school districts and any general or special function governmental unit established under State law.

(14) STATE.—The term ''State'' means any State of the United States and also includes the District of Columbia, Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and any other territory or possession of the United States or any political subdivision of any of the entities under this paragraph.

(15) SUBSTANTIALLY CONTINUES.—The term ''substantially continues'' means that the business operations have not been significantly modified by the change in ownership.

(16) SUCCESSOR IN INTEREST.—The term ''successor in interest'' means any person that acquires assets, and substantially continues the business operations, of a participant. The factors to be considered in determining whether a person is a successor in interest include—

(A) retention of the same facilities or location;

(B) retention of the same employees;

(C) maintaining the same job under the same working conditions;

(D) retention of the same supervisory personnel;

(E) continuity of assets;

(F) production of the same product or offer of the same service;

(G) retention of the same name;

(H) maintenance of the same customer base;

(I) identity of stocks, stockholders, and directors between the asset seller and the purchaser; or

(J) whether the successor holds itself out as continuation of previous enterprise, but expressly does not include whether the person actually knew of the liability of the participant under this Act.

(17) VETERANS' BENEFITS PROGRAM.—The term ''veterans' benefits program'' means any program for benefits in connection with military service administered by the Veterans' Administration under title 38, United States Code.

(18) WORKERS' COMPENSATION LAW.—The term ''workers' compensation law''—

(A) means a law respecting a program administered by a State or the United States to provide benefits, funded by a responsible employer or its insurance carrier, for occupational diseases or injuries or for disability or death caused by occupational diseases or injuries;

(B) includes the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 901 et

seq.) and chapter 81 of title 5, United States Code; and

(C) does not include the Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Employers' Liability Act, or damages recovered by any employee in a liability action against an employer.

TITLE I—ASBESTOS CLAIMS RESOLUTION

Subtitle A—Office of Asbestos Disease Compensation

SEC. 101. ESTABLISHMENT OF OFFICE OF ASBESTOS DISEASE COMPENSATION.

(a) IN GENERAL.—

(1) ESTABLISHMENT.—There is established within the Department of Labor the Office of Asbestos Disease Compensation (hereinafter referred to in this Act as the ''Office''), which shall be headed by an Administrator.

(2) PURPOSE.—The purpose of the Office is to provide timely, fair compensation, in the amounts and under the terms specified in this Act, on a no-fault basis and in a non-adversarial manner, to individuals whose health has been adversely affected by exposure to asbestos.

(3) EXPENSES.—There shall be available from the Asbestos Injury Claims Resolution Fund to the Administrator such sums as are necessary for the administrative expenses of the Office, including the sums necessary for conducting the studies provided for in section 121(e).

(b) APPOINTMENT OF ADMINISTRATOR.—

(1) IN GENERAL.—The Administrator of the Office of Asbestos Disease Compensation shall be appointed by the President, by and with the advice and consent of the Senate. The Administrator shall serve for a term of 5 years.

(2) REPORTING.—The Administrator shall report directly to the Assistant Secretary of Labor for the Employment Standards Administration.

(c) DUTIES OF ADMINISTRATOR.—

(1) IN GENERAL.—The Administrator shall be responsible for—

(A) processing claims for compensation for asbestos-related injuries and paying compensation to eligible claimants under the criteria and procedures established under title I;

(B) determining, levying, and collecting assessments on participants under title II;

(C) appointing or contracting for the services of such personnel, making such expenditures, and taking any other actions as may be necessary and appropriate to carry out the responsibilities of the Office, including entering into cooperative agreements with other Federal agencies or State agencies and entering into contracts with nongovernmental entities;

(D) conducting such audits and additional oversight as necessary to assure the integrity of the program;

(E) managing the Asbestos Injury Claims Resolution Fund established under section 221, including—

(i) administering, in a fiduciary capacity, the assets of the Fund for the exclusive purpose of providing benefits to asbestos claimants and their beneficiaries;

(ii) defraying the reasonable expenses of administering the Fund;

(iii) investing the assets of the Fund in accordance with section 222(b);

(iv) retaining advisers, managers, and custodians who possess the necessary facilities and expertise to provide for the skilled and prudent management of the Fund, to assist in the development, implementation and maintenance of the Fund's investment policies and investment activities, and to provide for the safekeeping and delivery of the Fund's assets; and

(v) borrowing amounts authorized by section 221(b) on appropriate terms and conditions, including pledging the assets of or payments to the Fund as collateral;

(F) promulgating such rules, regulations, and procedures as may be necessary and appropriate to implement the provisions of this Act;

(G) making such expenditures as may be necessary and appropriate in the administration of this Act;

(H) excluding evidence and disqualifying or debarring any attorney, physician, provider of medical or diagnostic services, including laboratories and others who provide evidence in support of a claimant's application for compensation where the Administrator determines that materially false, fraudulent, or fictitious statements or practices have been submitted or engaged in by such individuals or entities; and

(I) having all other powers incidental, necessary, or appropriate to carrying out the functions of the Office.

(2) CERTAIN ENFORCEMENTS.—For each infraction relating to paragraph (1)(H), the Administrator also may impose a civil penalty not to exceed $10,000 on any person or entity found to have submitted or engaged in a materially false, fraudulent, or fictitious statement or practice under this Act. The Administrator shall prescribe appropriate regulations to implement paragraph (1)(H).

(3) SELECTION OF DEPUTY ADMINISTRATORS.—The Administrator shall select a Deputy Administrator for Claims Administration to carry out the Administrator's responsibilities under this title and a Deputy Administrator for Fund Management to carry out the Administrator's responsibilities under title II of this Act. The Deputy Administrators shall report directly to the Administrator and shall be in the Senior Executive Service.

(d) EXPEDITIOUS DETERMINATIONS.—The Administrator shall prescribe rules to expedite claims for asbestos claimants with exigent circumstances in order to expedite the payment of such claims as soon as possible after startup of the Fund. The Administrator shall contract out the processing of such claims.

(e) AUDIT AND PERSONNEL REVIEW PROCEDURES.—The Administrator shall establish audit and personnel review procedures for evaluating the accuracy of eligibility recommendations of agency and contract personnel.

(f) APPLICATION OF FOIA.—

(1) IN GENERAL.—Section 552 of title 5, United States Code (commonly referred to as the Freedom of Information Act) shall apply to the Office of Asbestos Disease Compensation and the Asbestos Insurers Commission.

(2) CONFIDENTIALITY.—Any person may designate any record submitted under this section as a confidential commercial or financial record for purposes of section 552 of title 5, United States Code. The Administrator and the Chairman of the Asbestos Insurers Commission shall adopt procedures for designating such records as confidential. Information on reserves and asbestos-related liabilities submitted by any participant for the purpose of the allocation of payments under subtitles A and B of title II shall be deemed to be confidential financial records.

SEC. 102. ADVISORY COMMITTEE ON ASBESTOS DISEASE COMPENSATION.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—Not later than 120 days after the date of enactment of this Act, the Administrator shall establish an Advisory Committee on Asbestos Disease Compensation (hereinafter the ''Advisory Committee'').

(2) COMPOSITION AND APPOINTMENT.—The Advisory Committee shall be composed of 24 members, appointed as follows—

(A) The Majority and Minority Leaders of the Senate, the Speaker of the House, and the Minority Leader of the House shall each appoint 4 members. Of the 4—

(i) 2 shall be selected to represent the interests of claimants, at least 1 of whom shall be selected from among individuals recommended by recognized national labor federations; and

(ii) 2 shall be selected to represent the interests of participants, 1 of whom shall be selected to represent the interests of the insurer participants and 1 of whom shall be selected to represent the interests of the defendant participants.

(B) The Administrator shall appoint 8 members, who shall be individuals with qualifications and expertise in occupational or pulmonary medicine, occupational health, workers' compensation programs, financial administration, investment of funds, program auditing, or other relevant fields.

(3) QUALIFICATIONS.—All of the members described in paragraph (2) shall have expertise or experience relevant to the asbestos compensation program, including experience or expertise in diagnosing asbestos-related diseases and conditions, assessing asbestos exposure and health risks, filing asbestos claims, administering a compensation or insurance program, or as actuaries, auditors, or investment managers. None of the members described in paragraph (2)(B) shall be individuals who, for each of the 5 years before their appointments, earned more than 15 percent of their income by serving in matters related to asbestos litigation as consultants or expert witnesses.

(b) DUTIES.—The Advisory Committee shall advise the Administrator on—

(1) claims filing and claims processing procedures;

(2) claimant assistance programs;

(3) audit procedures and programs to ensure the quality and integrity of the compensation program;

(4) the development of a list of industries, occupations and time periods for which there is a presumption of substantial occupational exposure to asbestos;

(5) recommended analyses or research that should be conducted to evaluate past claims and to project future claims under the program;

(6) the annual report required to be submitted to Congress under section 405; and

(7) such other matters related to the implementation of this Act as the Administrator considers appropriate.

(c) OPERATION OF THE COMMITTEE.—

(1) Each member of the Advisory Committee shall be appointed for a term of 3 years, except that, of the members first appointed—

(A) 8 shall be appointed for a term of 1 year;

(B) 8 shall be appointed for a term of 2 years; and

(C) 8 shall be appointed for a term of 3 years, as determined by the Administrator at the time of appointment.

(2) Any member appointed to fill a vacancy occurring before the expiration of the term shall be appointed only for the remainder of such term.

(3) The Administrator shall designate a Chairperson and Vice Chairperson from among members of the Advisory Committee appointed under subsection (a)(2)(B).

(4) The Advisory Committee shall meet at the call of the Chairperson or the majority of its members, and at a minimum shall meet at least 4 times per year during the first 5 years of the asbestos compensation program, and at least 2 times per year thereafter.

(5) The Administrator shall provide to the Committee such information as is necessary and appropriate for the Committee to carry out its responsibilities under this section. The Administrator may, upon request of the

Advisory Committee, secure directly from any Federal, State, or local department or agency such information as may be necessary and appropriate to enable the Advisory Committee to carry out its duties under this section. Upon request of the Administrator, the head of such department or agency shall furnish such information to the Advisory Committee.

(6) The Administrator shall provide the Advisory Committee with such administrative support as is reasonably necessary to enable it to perform its functions.

(d) EXPENSES.—Members of the Advisory Committee, other than full-time employees of the United States, while attending meetings of the Advisory Committee or while otherwise serving at the request of the Administrator, and while serving away from their homes or regular places of business, shall be allowed travel and meal expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for individuals in the Government serving without pay.

SEC. 103. MEDICAL ADVISORY COMMITTEE.

(a) IN GENERAL.—The Administrator shall establish a Medical Advisory Committee to provide expert advice regarding medical issues arising under the statute.

(b) QUALIFICATIONS.—None of the members of the Medical Advisory Committee shall be individuals who, for each of the 5 years before their appointments, earned more than 15 percent of their income by serving in matters related to asbestos litigation as consultants or expert witnesses.

SEC. 104. CLAIMANT ASSISTANCE.

(a) ESTABLISHMENT.—Not later than 180 days after the enactment of this Act, the Administrator shall establish a comprehensive asbestos claimant assistance program to—

(1) publicize and provide information to potential claimants about the availability of benefits for eligible claimants under this Act, and the procedures for filing claims and for obtaining assistance in filing claims;

(2) provide assistance to potential claimants in preparing and submitting claims, including assistance in obtaining the documentation necessary to support a claim;

(3) respond to inquiries from claimants and potential claimants;

(4) provide training with respect to the applicable procedures for the preparation and filing of claims to persons who provide assistance or representation to claimants; and

(5) provide for the establishment of a website where claimants may access all relevant forms and information.

(b) RESOURCE CENTERS.—The claimant assistance program shall provide for the establishment of resource centers in areas where there are determined to be large concentrations of potential claimants. These centers shall be located, to the extent feasible, in facilities of the Department of Labor or other Federal agencies.

(c) CONTRACTS.—The claimant assistance program may be carried out in part through contracts with labor organizations, community-based organizations, and other entities which represent or provide services to potential claimants, except that such organizations may not have a financial interest in the outcome of claims filed with the Office.

(d) LEGAL ASSISTANCE.—

(1) IN GENERAL.—As part of the program established under subsection (a), the Administrator shall establish a legal assistance program to provide assistance to asbestos claimants concerning legal representation issues.

(2) LIST OF QUALIFIED ATTORNEYS.—As part of the program, the Administrator shall maintain a roster of qualified attorneys who have agreed to provide pro bono services to asbestos claimants under rules established by the Administrator. The claimants shall not be required to use the attorneys listed on such roster.

(3) NOTICE.—

(A) NOTICE BY ADMINISTRATOR.—The Administrator shall provide asbestos claimants with notice of, and information relating to—

(i) pro bono services for legal assistance available to those claimants; and

(ii) any limitations on attorneys fees for claims filed under this title.

(B) NOTICE BY ATTORNEYS.—Before a person becomes a client of an attorney with respect to an asbestos claim, that attorney shall provide notice to that person of pro bono services for legal assistance available for that claim.

(e) ATTORNEY'S FEES.—

(1) IN GENERAL.—Notwithstanding any contract, the representative of an individual may not receive, for services rendered in connection with the claim of an individual under the Fund, more than 5 percent of a final award made (whether by the Administrator initially or as a result of administrative review) under the Fund on such claim.

(2) PENALTY.—Any representative of an asbestos claimant who violates this subsection shall be fined not more than the greater of—

(A) $5,000; or

(B) twice the amount received by the representative for services rendered in connection with each such violation.

SEC. 105. PHYSICIANS PANELS.

(a) APPOINTMENT.—The Administrator shall, in accordance with section 3109 of title 5, United States Code, appoint physicians with experience and competency in diagnosing asbestos-related diseases to be available to serve on Physicians Panels, as necessary to carry out this Act.

(b) FORMATION OF PANELS.—

(1) IN GENERAL.—The Administrator shall periodically determine—

(A) the number of Physicians Panels necessary for the efficient conduct of the medical review process under section 121;

(B) the number of Physicians Panels necessary for the efficient conduct of the exceptional medical claims process under section 121; and

(C) the particular expertise necessary for each panel.

(2) EXPERTISE.—Each Physicians Panel shall be composed of members having the particular expertise determined necessary by the Administrator, randomly selected from among the physicians appointed under subsection (a) having such expertise.

(3) PANEL MEMBERS.—

(A) IN GENERAL.—Except as provided under subparagraph (B), each Physicians Panel shall consist of 3 physicians, 2 of whom shall be designated to participate in each case submitted to the Physicians Panel, and the third of whom shall be consulted in the event of disagreement.

(B) WAIVER.—The Administrator may waive the provisions of subparagraph (A) and may provide for panels of less than 3 physicians, if the Administrator determines that—

(i) there is a shortage of qualified physicians available for service on panels; and

(ii) such shortage will result in administrative delay in the claims process.

(c) QUALIFICATIONS.—To be eligible to serve on a Physicians Panel under subsection (a), a person shall be—

(1) a physician licensed in any State;

(2) board-certified in pulmonary medicine, occupational medicine, internal medicine, oncology, or pathology; and

(3) an individual who, for each of the 5 years before and during his or her appointment to a Physicians Panel, has earned not more than 15 percent of his or her income as an employee of a participating defendant or insurer or a law firm representing any party in asbestos litigation or as a consultant or expert witness in matters related to asbestos litigation.

(d) DUTIES.—Members of a Physicians Panel shall—

(1) make such medical determinations as are required to be made by Physicians Panels under section 121; and

(2) perform such other functions as required under this Act.

(e) COMPENSATION.—Notwithstanding any limitation otherwise established under section 3109 of title 5, United States Code, the Administrator shall be authorized to pay members of a Physician Panel such compensation as is reasonably necessary to obtain their services.

(f) FEDERAL ADVISORY COMMITTEE ACT.—A Physicians Panel established under this section shall not be subject to the Federal Advisory Committee Act (5 U.S.C. App. 2).

SEC. 106. PROGRAM STARTUP.

(a) INTERIM REGULATIONS.—Not later than 90 days after the date of enactment of this Act, the Administrator shall promulgate interim regulations and procedures for the processing of claims under title I and the operation of the Fund under title II, including procedures for the expediting of exigent health claims.

(b) INTERIM PERSONNEL.—The Secretary of Labor and the Assistant Secretary of Labor for the Employment Standards Administration may make available to the Administrator on a temporary basis such personnel and other resources as may be necessary to facilitate the expeditious startup of the program. The Administrator may in addition contract with individuals or entities having relevant experience to assist in the expeditious startup of the program. Such relevant experience shall include, but not be limited to, experience with the review of workers' compensation, occupational disease, or similar claims and with financial matters relevant to the operation of the program.

(c) EXIGENT HEALTH CLAIMS.—

(1) IN GENERAL.—The Administrator shall develop procedures to provide for an expedited process to categorize, evaluate, and pay exigent health claims. Such procedures shall include, pending promulgation of final regulations, adoption of interim regulations as needed for processing of exigent health claims.

(2) ELIGIBLE EXIGENT HEALTH CLAIMS.—A claim shall qualify for treatment as an exigent health claim if the claimant is living and the claimant provides—

(A) a diagnosis of mesothelioma meeting the requirements of section 121(d)(10); or

(B) a declaration or affidavit, from a physician who has examined the claimant within 120 days before the date of such declaration or affidavit, that the physician has diagnosed the claimant as being terminally ill from an asbestos-related illness and having a life expectancy of less than 1 year.

(3) ADDITIONAL EXIGENT HEALTH CLAIMS.—The Administrator may, in final regulations promulgated under section 101(c), designate additional categories of claims that qualify as exigent health claims under this subsection.

(4) CLAIMS FACILITY.—To facilitate the prompt payment of exigent health claims, the Administrator shall contract with a claims facility, which applying the medical criteria of section 121, may enter into settlements with claimants. In the absence of an offer of judgment as provided under section 106(f)(2), the claimant may submit a claim to that claims facility. The claims facility shall receive the claimant's submissions and

evaluate the claim in accordance with subtitles B and C. The claims facility shall then submit the file to the Administrator for payment in accordance with subtitle D. This subsection shall not apply to exceptional medical claims under section 121(f). A claimant may appeal any decision at a claims facility with the Administrator in accordance with section 114.

(5) AUTHORIZATION FOR CONTRACTS WITH CLAIMS FACILITIES.—The Administrator may enter into contracts with claims facilities for the processing of claims (except for exceptional medical claims) in accordance with this title.

(d) EXTREME FINANCIAL HARDSHIP CLAIMS.—The Administrator shall, in final regulations promulgated under section 101(c), designate categories of claims to be handled on an expedited basis as a result of extreme financial hardship.

(e) INTERIM ADMINISTRATOR.—Until an Administrator is appointed and confirmed under section 101(b), the responsibilities of the Administrator under this Act shall be performed by the Assistant Secretary of Labor for the Employment Standards Administration, who shall have all the authority conferred by this Act on the Administrator and who shall be deemed to be the Administrator for purposes of this Act. Before final regulations being promulgated relating to claims processing, the Interim Administrator may prioritize claims processing, without regard to the time requirements prescribed in subtitle B of this title, based on severity of illness and likelihood that the illness in question was caused by exposure to asbestos.

(f) STAY OF CLAIMS; RETURN TO TORT SYSTEM.—

(1) STAY OF CLAIMS.—Notwithstanding any other provision of this Act, any asbestos claim pending as of the date of enactment of this Act, other than a claim to which section 403(d)(2)(A) applies, shall be subject to a stay.

(2) EXIGENT HEALTH CLAIMS.—

(A) PROCEDURES FOR SETTLEMENT OF EXIGENT HEALTH CLAIMS.—

(i) IN GENERAL.—Any person that has filed a timely exigent health claim seeking a judgment or order for monetary damages in any Federal or State court before or after the date of enactment of this Act, may immediately seek an offer of judgment of such claim in accordance with this subparagraph.

(ii) FILING.—

(I) IN GENERAL.—The claimant shall file with the Administrator and serve upon all defendants in the pending court action an election to pursue an offer of judgment—

(aa) within 60 days after the date of enactment of this Act, if the claim was filed in a Federal or State court before such date of enactment; and

(bb) within 60 days after the date of the filing of the claim, if the claim is filed in a Federal or State court on or after the date of enactment of this Act.

(II) STAY.—If the claimant fails to file and serve a timely election under this clause, the stay under subparagraph (B) shall remain in effect.

(iii) INFORMATION.—A claimant who has filed a timely election under clause (ii) shall within 60 days after filing provide to each defendant and to the Administrator—

(I) the amount received or due to be received as a result of all settlements that would qualify as a collateral source under section 134, together with copies of all settlement agreements and related documents sufficient to show the accuracy of that amount;

(II) all information that the claimant would be required to provide to the Administrator in support of a claim under sections 115 and 121; and

(III) a certification by the claimant that the information provided is true and complete.

(iv) CERTIFICATION.—The certification provided under clause (iii) shall be subject to the same penalties for false or misleading statements that would be applicable with regard to information provided to the Administrator in support of a claim.

(v) OFFER OF JUDGMENT.—Within 30 days after service of a complete set of the information described in clause (iii), any defendant may file and serve on all parties a good faith offer of judgment in an aggregate amount not to exceed the total amount to which the claimant may be entitled under section 131 after adjustment for collateral sources under section 134. If the aggregate amount offered by all defendants exceeds the limitation in this clause, all offers shall be deemed reduced pro-rata until the aggregate amount equals the amount provided under section 131.

(vi) ACCEPTANCE OR REJECTION.—Within 20 days after the service of the last offer of judgment, the claimant shall either accept or reject such offers. If the amount of the offer made by any defendant individually, or by any defendants jointly, equals or exceeds 100 percent of what the claimant would receive under the Fund, the claimant shall accept such offer and release any outstanding asbestos claims.

(vii) LUMP SUM PAYMENT.—Any accepted offer of judgment shall be payable within 30 days and in 1 lump sum in order to settle the pending claim.

(viii) RECOVERY OF COSTS.—Any defendant whose offer of judgment is accepted and has settled an asbestos claim under clauses (vi) and (vii) may recover the cost of such settlement by deducting from its next and subsequent contributions to the Fund for the full amount of the payment made by such defendant to the exigent health claimant, unless the Administrator finds, on the basis of clear and convincing evidence, that—

(I) the claimant did not meet the requirements of an exigent health claim; and

(II) the defendant's offer was collusive or otherwise not in good faith.

(ix) INDEMNIFICATION.—In any case in which the Administrator refuses to grant full indemnification under clause (viii), the Administrator may provide such partial indemnification as may be fair and just in the circumstances. If Administrator denies indemnification, the defendant may seek contribution from other non-settling defendants, as well as reimbursement under the defendant's applicable insurance policies. If the Administrator refuses to grant full or partial indemnification based on collusive action, the defendant may pursue any available remedy against the claimant.

(x) REFUSAL TO MAKE OFFER.—If a defendant refuses to make an offer of judgment, the claimant may continue to seek a judgment or order for monetary damages from the court where the case is currently pending in an amount not to exceed 150 percent of what the claimant would receive if the claimant had filed a claim with the Fund. Such a judgment or order may also provide an award for claimant's attorneys' fees and the costs of litigation.

(xi) REJECTION OF OFFER.—If the claimant rejects the offer as less than what the claimant would qualify to receive under section 131, the claimant may immediately pursue the claim in court where the claimant shall demonstrate, in addition to all other essential elements of the claimant's claim against any defendant, that the claimant meets the requirements of section 121.

(B) PURSUAL OF EXIGENT HEALTH CLAIMS.—

(i) STAY.—If a claimant does not elect to seek an offer of judgment under subparagraph (A), the pending claim is stayed for 9 months after the date of enactment of this Act.

(ii) DEFENDANT OFFER.—If a claimant does not elect to seek an offer of judgment under subparagraph (A), the defendant may elect to make an offer according to the provisions of this paragraph, except that a claimant shall not be required to accept that offer. The claimant shall accept or reject the offer within 20 days.

(iii) CLAIMS FACILITY.—If a claimant does not elect to seek an offer of judgment under subparagraph (A), the claimant may seek an award from the Fund through the claims facility under section 106 (c)(4).

(iv) CONTINUANCE OF CLAIMS.—If, after 9 months after the date of enactment of this Act, the Administrator cannot certify to Congress that the Fund is operational and paying exigent health claims at a reasonable rate, each person that has filed an exigent health claim before such date of enactment and stayed under this paragraph may continue their exigent health claims in the court where the case was pending on the date of enactment of this Act. For exigent claims filed after the date of enactment of this Act, by claimants who do not elect to seek an offer of judgment under subparagraph (A), the pending claim is stayed for 9 months after the date the claim is filed, unless during that period the Administrator can certify to Congress that the Fund is operational and paying valid claims at a reasonable rate.

(C) CREDIT OF CLAIM AND EFFECT OF OPERATIONAL FUND.—If an asbestos claim is pursued in Federal or State court in accordance with this paragraph, any recovery by the claimant shall be a collateral source compensation for purposes of section 134.

(3) PURSUAL OF ASBESTOS CLAIMS IN FEDERAL OR STATE COURT.—

(A) IN GENERAL.—Notwithstanding any other provision of this Act, if, not later than 24 months after the date of enactment of this Act, the Administrator cannot certify to Congress that the Fund is operational and paying all valid claims at a reasonable rate, any person with a non-exigent asbestos claim stayed under this paragraph, except for any person whose claim does not exceed a Level I claim, may pursue that claim in the Federal district court or State court located within—

(i) the State of residence of the claimant; or

(ii) the State in which the asbestos exposure arose.

(B) DEFENDANTS NOT FOUND.—If any defendant cannot be found in the State described in clause (i) or (ii) of subparagraph (A), the claim may be pursued in the Federal district court or State court located within any State in which the defendant may be found.

(C) DETERMINATION OF MOST APPROPRIATE FORUM.—If a person alleges that the asbestos exposure occurred in more than 1 county (or Federal district), the trial court shall determine which State and county (or Federal district) is the most appropriate forum for the claim. If the court determines that another forum would be the most appropriate forum for a claim, the court shall dismiss the claim. Any otherwise applicable statute of limitations shall be tolled beginning on the date the claim was filed and ending on the date the claim is dismissed under this subparagraph.

(D) STATE VENUE REQUIREMENTS.—Nothing in this paragraph shall preempt or supersede any State's law relating to venue requirements within that State which are more restrictive.

(E) CREDIT OF CLAIM AND EFFECT OF OPERATIONAL OR NONOPERATIONAL FUND.—

(i) CREDIT OF CLAIM.—If an asbestos claim is pursued in Federal or State court in accordance with this paragraph, any recovery by the claimant shall be a collateral source compensation for purposes of section 134.

(ii) OPERATIONAL FUND.—If the Administrator subsequently certifies to Congress that the Fund has become operational and paying all valid asbestos claims at a reasonable rate, any claim in a civil action in Federal or State court that is not actually on trial before a jury which has been impaneled and presentation of evidence has commenced, but before its deliberation, or before a judge and is at the presentation of evidence, may, at the option of the claimant, be deemed a reinstated claim against the Fund and the civil action before the Federal or State court shall be null and void.

(iii) NONOPERATIONAL FUND.—Notwithstanding any other provision of this Act, if the Administrator subsequently certifies to Congress that the Fund cannot become operational and paying all valid asbestos claims at a reasonable rate, all asbestos claims that have a stay may be filed or reinstated.

SEC. 107. AUTHORITY OF THE ADMINISTRATOR.

The Administrator, on any matter within the jurisdiction of the Administrator under this Act, may—

(1) issue subpoenas for and compel the attendance of witnesses within a radius of 200 miles;

(2) administer oaths;

(3) examine witnesses;

(4) require the production of books, papers, documents, and other evidence; and

(5) request assistance from other Federal agencies with the performance of the duties of the Administrator under this Act.

Subtitle B—Asbestos Disease Compensation Procedures

SEC. 111. ESSENTIAL ELEMENTS OF ELIGIBLE CLAIM.

To be eligible for an award under this Act for an asbestos-related disease or injury, an individual shall—

(1) file a claim in a timely manner in accordance with section 113; and

(2) prove, by a preponderance of the evidence, that the claimant suffers from an eligible disease or condition, as demonstrated by evidence that meets the requirements established under subtitle C.

SEC. 112. GENERAL RULE CONCERNING NO-FAULT COMPENSATION.

An asbestos claimant shall not be required to demonstrate that the asbestos-related injury for which the claim is being made resulted from the negligence or other fault of any other person.

SEC. 113. FILING OF CLAIMS.

(a) WHO MAY SUBMIT.—

(1) IN GENERAL.—Any individual who has suffered from a disease or condition that is believed to meet the requirements established under subtitle C (or the personal representative of the individual, if the individual is deceased or incompetent) may file a claim with the Office for an award with respect to such injury.

(2) DEFINITION.—In this Act, the term ''personal representative'' shall have the same meaning as that term is defined in section 104.4 of title 28 of the Code of Federal Regulations, as in effect on December 31, 2004.

(3) LIMITATION.—A claim may not be filed by any person seeking contribution or indemnity.

(b) STATUTE OF LIMITATIONS.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, if an individual fails to file a claim with the Office under this section within 5 years after the date on which the individual first—

(A) received a medical diagnosis of an eligible disease or condition as provided for under this subtitle and subtitle C; or

(B) discovered facts that would have led a reasonable person to obtain a medical diagnosis with respect to an eligible disease or condition,

any claim relating to that injury, and any other asbestos claim related to that injury, shall be extinguished, and any recovery thereon shall be prohibited.

(2) EXCEPTION.—The statute of limitations in paragraph (1) does not apply to the progression of nonmalignant diseases once the initial claim has been filed.

(3) EFFECT ON PENDING CLAIMS.—

(A) IN GENERAL.—If, on the date of enactment of this Act, an asbestos claimant has any timely filed asbestos claim that is preempted under section 403(e), such claimant shall file a claim under this section within 5 years after such date of enactment, or any claim relating to that injury, and any other asbestos claim related to that injury shall be extinguished, and recovery there shall be prohibited.

(B) SPECIAL RULE.—For purposes of this paragraph, a claim shall not be treated as pending with a trust established under title 11, United States Code, solely because a claimant whose claim was previously compensated by the trust has or alleges—

(i) a non-contingent right to the payment of future installments of a fixed award; or

(ii) a contingent right to recover some additional amount from the trust on the occurrence of a future event, such as the reevaluation of the trust's funding adequacy or projected claims experience.

(4) EFFECT OF MULTIPLE INJURIES.—

(A) IN GENERAL.—An asbestos claimant who receives an award under this title for an eligible disease or condition, and who subsequently develops another such injury, shall be eligible for additional awards under this title (subject to appropriate setoffs for such prior recovery of any award under this title and from any other collateral source) and the statute of limitations under paragraph (1) shall not begin to run with respect to such subsequent injury until such claimant obtains a medical diagnosis of such other injury or discovers facts that would have led a reasonable person to obtain such a diagnosis.

(B) SETOFFS.—Except as provided in subparagraph (C), any amounts paid or to be paid for a prior award under this Act shall be deducted as a setoff against amounts payable for the second injury claim.

(C) EXCEPTION.—Any amounts paid or to be paid for a prior claim for a nonmalignant disease (Levels I through V) filed against the Fund shall not be deducted as a setoff against amounts payable for the second injury claim for a malignant disease (Levels VI through IX), unless the malignancy was diagnosed, or the asbestos claimant had discovered facts that would have led a reasonable person to obtain such a diagnosis, before the date on which the nonmalignancy claim was compensated.

(c) REQUIRED INFORMATION.—A claim filed under subsection (a) shall be in such form, and contain such information in such detail, as the Administrator shall by regulation prescribe. At a minimum, a claim shall include—

(1) the name, social security number, gender, date of birth, and, if applicable, date of death of the claimant;

(2) information relating to the identity of dependents and beneficiaries of the claimant;

(3) an employment history sufficient to establish required asbestos exposure, accompanied by social security or other payment records or a signed release permitting access to such records;

(4) a description of the asbestos exposure of the claimant, including, to the extent known, information on the site, or location of exposure, and duration and intensity of exposure;

(5) a description of the tobacco product use history of the claimant, including frequency and duration;

(6) an identification and description of the asbestos-related diseases or conditions of the claimant, accompanied by a written report by the claimant's physician with medical diagnoses and x-ray films, and other test results necessary to establish eligibility for an award under this Act;

(7) a description of any prior or pending civil action or other claim brought by the claimant for asbestos-related injury or any other pulmonary, parenchymal, or pleural injury, including an identification of any recovery of compensation or damages through settlement, judgment, or otherwise; and

(8) for any claimant who asserts that he or she is a nonsmoker or an ex-smoker, as defined in section 131, for purposes of an award under Malignant Level VI, Malignant Level VII, or Malignant Level VIII, evidence to support the assertion of nonsmoking or ex-smoking, including relevant medical records.

(d) DATE OF FILING.—A claim shall be considered to be filed on the date that the claimant mails the claim to the Office, as determined by postmark, or on the date that the claim is received by the Office, whichever is the earliest determinable date.

(e) INCOMPLETE CLAIMS.—If a claim filed under subsection (a) is incomplete, the Administrator shall notify the claimant of the information necessary to complete the claim and inform the claimant of such services as may be available through the Claimant Assistance Program established under section 104 to assist the claimant in completing the claim. Any time periods for the processing of the claim shall be suspended until such time as the claimant submits the information necessary to complete the claim. If such information is not received within 1 year after the date of such notification, the claim shall be dismissed.

SEC. 114. ELIGIBILITY DETERMINATIONS AND CLAIM AWARDS.

(a) IN GENERAL.—

(1) REVIEW OF CLAIMS.—The Administrator shall, in accordance with this section, determine whether each claim filed under the Fund or claims facility satisfies the requirements for eligibility for an award under this Act and, if so, the value of the award. In making such determinations, the Administrator shall consider the claim presented by the claimant, the factual and medical evidence submitted by the claimant in support of the claim, the medical determinations of any Physicians Panel to which a claim is referred under section 121, and the results of such investigation as the Administrator may deem necessary to determine whether the claim satisfies the criteria for eligibility established by this Act.

(2) ADDITIONAL EVIDENCE.—The Administrator may request the submission of medical evidence in addition to the minimum requirements of section 113(c) if necessary or appropriate to make a determination of eligibility for an award, in which case the cost of obtaining such additional information or testing shall be borne by the Office.

(b) PROPOSED DECISIONS.—Not later than 90 days after the filing of a claim, the Administrator shall provide to the claimant (and the claimant's representative) a proposed decision accepting or rejecting the claim in whole or in part and specifying the amount of the proposed award, if any. The proposed decision shall be in writing, shall contain findings of fact and conclusions of law, and shall contain an explanation of the procedure for obtaining review of the proposed decision.

(c) PAYMENTS IF NO TIMELY PROPOSED DECISION.—If the Administrator has received a

complete claim and has not provided a proposed decision to the claimant under subsection (b) within 180 days after the filing of the claim, the claim shall be deemed accepted and the claimant shall be entitled to payment under section 133(a)(2). If the Administrator subsequently rejects the claim the claimant shall receive no further payments under section 133. If the Administrator subsequently rejects the claim in part, the Administrator shall adjust future payments due the claimant under section 133 accordingly. In no event may the Administrator recover amounts properly paid under this section from a claimant.

(d) REVIEW OF PROPOSED DECISIONS.—

(1) RIGHT TO HEARING.—

(A) IN GENERAL.—Any claimant not satisfied with a proposed decision of the Administrator under subsection (b) shall be entitled, on written request made within 90 days after the date of the issuance of the decision, to a hearing on the claim of that claimant before a representative of the Administrator. At the hearing, the claimant shall be entitled to present oral evidence and written testimony in further support of that claim.

(B) CONDUCT OF HEARING.—When practicable, the hearing will be set at a time and place convenient for the claimant. In conducting the hearing, the representative of the Administrator shall not be bound by common law or statutory rules of evidence, by technical or formal rules of procedure, or by section 554 of title 5, United States Code, except as provided by this Act, but shall conduct the hearing in such manner as to best ascertain the rights of the claimant. For this purpose, the representative shall receive such relevant evidence as the claimant adduces and such other evidence as the representative determines necessary or useful in evaluating the claim.

(C) REQUEST FOR SUBPOENAS.—

(i) IN GENERAL.—A claimant may request a subpoena but the decision to grant or deny such a request is within the discretion of the representative of the Administrator. The representative may issue subpoenas for the attendance and testimony of witnesses, and for the production of books, records, correspondence, papers, or other relevant documents. Subpoenas are issued for documents only if such documents are relevant and cannot be obtained by other means, and for witnesses only where oral testimony is the best way to ascertain the facts.

(ii) REQUEST.—A claimant may request a subpoena only as part of the hearing process. To request a subpoena, the requester shall—

(I) submit the request in writing and send it to the representative as early as possible, but no later than 30 days after the date of the original hearing request; and

(II) explain why the testimony or evidence is directly relevant to the issues at hand, and a subpoena is the best method or opportunity to obtain such evidence because there are no other means by which the documents or testimony could have been obtained.

(iii) FEES AND MILEAGE.—Any person required by such subpoena to attend as a witness shall be allowed and paid the same fees and mileage as are paid witnesses in the district courts of the United States. Such fees and mileage shall be paid from the Fund.

(2) REVIEW OF WRITTEN RECORD.—In lieu of a hearing under paragraph (1), any claimant not satisfied with a proposed decision of the Administrator shall have the option, on written request made within 90 days after the date of the issuance of the decision, of obtaining a review of the written record by a representative of the Administrator. If such review is requested, the claimant shall be afforded an opportunity to submit any written evidence or argument which the claimant believes relevant.

(e) FINAL DECISIONS.—

(1) IN GENERAL.—If the period of time for requesting review of the proposed decision expires and no request has been filed, or if the claimant waives any objections to the proposed decision, the Administrator shall issue a final decision. If such decision materially differs from the proposed decision, the claimant shall be entitled to review of the decision under subsection (d).

(2) TIME AND CONTENT.—If the claimant requests review of all or part of the proposed decision the Administrator shall issue a final decision on the claim not later than 180 days after the request for review is received, if the claimant requests a hearing, or not later than 90 days after the request for review is received, if the claimant requests review of the written record. Such decision shall be in writing and contain findings of fact and conclusions of law.

(f) REPRESENTATION.—A claimant may authorize an attorney or other individual to represent him or her in any proceeding under this Act.

SEC. 115. MEDICAL EVIDENCE AUDITING PROCEDURES.

(a) IN GENERAL.—

(1) DEVELOPMENT.—The Administrator shall develop methods for auditing and evaluating the medical evidence submitted as part of a claim. The Administrator may develop additional methods for auditing and evaluating other types of evidence or information received by the Administrator.

(2) REFUSAL TO CONSIDER CERTAIN EVIDENCE.—

(A) IN GENERAL.—If the Administrator determines that an audit conducted in accordance with the methods developed under paragraph (1) demonstrates that the medical evidence submitted by a specific physician or medical facility is not consistent with prevailing medical practices or the applicable requirements of this Act, any medical evidence from such physician or facility shall be unacceptable for purposes of establishing eligibility for an award under this Act.

(B) NOTIFICATION.—Upon a determination by the Administrator under subparagraph (A), the Administrator shall notify the physician or medical facility involved of the results of the audit. Such physician or facility shall have a right to appeal such determination under procedures issued by the Administrator.

(b) REVIEW OF CERTIFIED B-READERS.—

(1) IN GENERAL.—At a minimum, the Administrator shall prescribe procedures to randomly assign claims for evaluation by an independent certified B-reader of x-rays submitted in support of a claim, the cost of which shall be borne by the Office.

(2) DISAGREEMENT.—If an independent certified B-reader assigned under paragraph (1) disagrees with the quality grading or ILO level assigned to an x-ray submitted in support of a claim, the Administrator shall require a review of such x-rays by a second independent certified B-reader.

(3) EFFECT ON CLAIM.—If neither certified B-reader under paragraph (2) agrees with the quality grading and the ILO grade level assigned to an x-ray as part of the claim, the Administrator shall take into account the findings of the 2 independent B readers in making the determination on such claim.

(4) CERTIFIED B-READERS.—The Administrator shall maintain a list of a minimum of 50 certified B-readers eligible to participate in the independent reviews, chosen from all certified B-readers. When an x-ray is sent for independent review, the Administrator shall choose the certified B-reader at random from that list.

(c) SMOKING ASSESSMENT.—

(1) IN GENERAL.—

(A) RECORDS AND DOCUMENTS.—To aid in the assessment of the accuracy of claimant representations as to their smoking status for purposes of determining eligibility and amount of award under Malignant Level VI, Malignant Level VII, or Malignant Level VIII, and exceptional medical claims, the Administrator shall have the authority to obtain relevant records and documents, including—

(i) records of past medical treatment and evaluation;

(ii) affidavits of appropriate individuals;

(iii) applications for insurance and supporting materials; and

(iv) employer records of medical examinations.

(B) CONSENT.—The claimant shall provide consent for the Administrator to obtain such records and documents where required.

(2) REVIEW.—The frequency of review of records and documents submitted under paragraph (1)(A) shall be at the discretion of the Administrator, but shall address at least 5 percent of the claimants asserting status as nonsmokers or ex-smokers.

(3) CONSENT.—The Administrator may require the performance of blood tests or any other appropriate medical test, such as serum cotinine screening, where claimants assert they are nonsmokers or ex-smokers for purposes of an award under Malignant Level VI, Malignant Level VII, or Malignant Level VIII, or as an exceptional medical claim, the cost of which shall be borne by the Office.

(4) PENALTY FOR FALSE STATEMENTS.—Any false information submitted under this subsection shall be subject to criminal prosecution or civil penalties as provided under section 1348 of title 18, United States Code (as added by this Act) and section 101(c)(2).

Subtitle C—Medical Criteria

SEC. 121. MEDICAL CRITERIA REQUIREMENTS.

(a) DEFINITIONS.—In this section, the following definitions shall apply:

(1) ASBESTOSIS DETERMINED BY PATHOLOGY.—The term ''asbestosis determined by pathology'' means indications of asbestosis based on the pathological grading system for asbestosis described in the Special Issues of the Archives of Pathology and Laboratory Medicine, ''Asbestos-associated Diseases'', Vol. 106, No. 11, App. 3 (October 8, 1982).

(2) BILATERAL ASBESTOS-RELATED NONMALIGNANT DISEASE.—The term ''bilateral asbestos-related nonmalignant disease'' means a diagnosis of bilateral asbestos-related nonmalignant disease based on—

(A) an x-ray reading of 1/0 or higher based on the ILO grade scale;

(B) bilateral pleural plaques;

(C) bilateral pleural thickening; or

(D) bilateral pleural calcification.

(3) BILATERAL PLEURAL DISEASE OF B2.—The term ''bilateral pleural disease of B2'' means a chest wall pleural thickening or plaque with a maximum width of at least 5 millimeters and a total length of at least ¼ of the projection of the lateral chest wall.

(4) CERTIFIED B-READER.—The term ''certified B-reader'' means an individual who is certified by the National Institute of Occupational Safety and Health and whose certification by the National Institute of Occupational Safety and Health is up to date.

(5) DIFFUSE PLEURAL THICKENING.—The term ''diffuse pleural thickening'' means blunting of either costophrenic angle and bilateral pleural plaque or bilateral pleural thickening.

(6) DLCO.—The term ''DLCO'' means the single-breath diffusing capacity of the lung

(carbon monoxide) technique used to measure the volume of carbon monoxide transferred from the alveoli to blood in the pulmonary capillaries for each unit of driving pressure of the carbon monoxide.

(7) FEV1.—The term ''FEV1'' means forced expiratory volume (1 second), which is the maximal volume of air expelled in 1 second during performance of the spirometric test for forced vital capacity.

(8) FVC.—The term ''FVC'' means forced vital capacity, which is the maximal volume of air expired with a maximally forced effort from a position of maximal inspiration.

(9) ILO GRADE.—The term ''ILO grade'' means the radiological ratings for the presence of lung changes as determined from a chest x-ray, all as established from time to time by the International Labor Organization.

(10) LOWER LIMITS OF NORMAL.—The term ''lower limits of normal'' means the fifth percentile of healthy populations as defined in the American Thoracic Society statement on lung function testing (Amer. Rev. Resp. Disease 1991, 144:1202–1218) and any future revision of the same statement.

(11) NONSMOKER.—The term ''nonsmoker'' means a claimant who—

(A) never smoked; or

(B) has smoked fewer than 100 cigarettes or the equivalent amount of other tobacco products during the claimant's lifetime.

(12) PO_2.—The term ''PO_2'' means the partial pressure (tension) of oxygen, which measures the amount of dissolved oxygen in the blood.

(13) PULMONARY FUNCTION TESTING.—The term ''pulmonary function testing'' means spirometry testing that is in material compliance with the quality criteria established by the American Thoracic Society and is performed on equipment which is in material compliance with the standards of the American Thoracic Society for technical quality and calibration.

(14) SUBSTANTIAL OCCUPATIONAL EXPOSURE TO ASBESTOS.—

(A) IN GENERAL.—The term ''substantial occupational exposure'' means employment in an industry and an occupation where for a substantial portion of a normal work year for that occupation, the claimant—

(i) handled raw asbestos fibers;

(ii) fabricated asbestos-containing products so that the claimant in the fabrication process was exposed to raw asbestos fibers;

(iii) altered, repaired, or otherwise worked with an asbestos-containing product such that the claimant was exposed on a regular basis to asbestos fibers; or

(iv) worked in close proximity to other workers engaged in the activities described under clause (i), (ii), or (iii), such that the claimant was exposed on a regular basis to asbestos fibers.

(B) REGULAR BASIS.—In this paragraph, the term ''on a regular basis'' means on a frequent or recurring basis.

(15) TLC.—The term ''TLC'' means total lung capacity, which is the total volume of air in the lung after maximal inspiration.

(16) WEIGHTED OCCUPATIONAL EXPOSURE.—

(A) IN GENERAL.—The term ''weighted occupational exposure'' means exposure for a period of years calculated according to the exposure weighting formula under subparagraphs (B) through (E).

(B) MODERATE EXPOSURE.—Subject to subparagraph (E), each year that a claimant's primary occupation, during a substantial portion of a normal work year for that occupation, involved working in areas immediate to where asbestos-containing products were being installed, repaired, or removed under circumstances that involved regular airborne emissions of asbestos fibers, shall count as 1 year of substantial occupational exposure.

(C) HEAVY EXPOSURE.—Subject to subparagraph (E), each year that a claimant's primary occupation, during a substantial portion of a normal work year for that occupation, involved the direct installation, repair, or removal of asbestos-containing products such that the person was exposed on a regular basis to asbestos fibers, shall count as 2 years of substantial occupational exposure.

(D) VERY HEAVY EXPOSURE.—Subject to subparagraph (E), each year that a claimant's primary occupation, during a substantial portion of a normal work year for that occupation, was in primary asbestos manufacturing, a World War II shipyard, or the asbestos insulation trades, such that the person was exposed on a regular basis to asbestos fibers, shall count as 4 years of substantial occupational exposure.

(E) DATES OF EXPOSURE.—Each year of exposure calculated under subparagraphs (B), (C), and (D) that occurred before 1976 shall be counted at its full value. Each year from 1976 to 1986 shall be counted as ½ of its value. Each year after 1986 shall be counted as 1/10 of its value.

(F) OTHER CLAIMS.—Individuals who do not meet the provisions of subparagraphs (A) through (E) and believe their post-1976 or post-1986 exposures exceeded the Occupational Safety and Health Administration standard may submit evidence, documentation, work history, or other information to substantiate noncompliance with the Occupational Safety and Health Administration standard (such as lack of engineering or work practice controls, or protective equipment) such that exposures would be equivalent to exposures before 1976 or 1986, or to documented exposures in similar jobs or occupations where control measures had not been implemented. Claims under this subparagraph shall be evaluated on an individual basis by a Physicians Panel.

(b) MEDICAL EVIDENCE.—

(1) LATENCY.—Unless otherwise specified, all diagnoses of an asbestos-related disease for a level under this section shall be accompanied by—

(A) a statement by the physician providing the diagnosis that at least 10 years have elapsed between the date of first exposure to asbestos or asbestos-containing products and the diagnosis; or

(B) a history of the claimant's exposure that is sufficient to establish a 10-year latency period between the date of first exposure to asbestos or asbestos-containing products and the diagnosis.

(2) DIAGNOSTIC GUIDELINES.—All diagnoses of asbestos-related diseases shall be based upon—

(A) for disease Levels I through V, in the case of a claimant who was living at the time the claim was filed—

(i) a physical examination of the claimant by the physician providing the diagnosis;

(ii) an evaluation of smoking history and exposure history before making a diagnosis;

(iii) an x-ray reading by a certified B-reader; and

(iv) pulmonary function testing in the case of disease Levels III, IV, and V;

(B) for disease Levels I through V, in the case of a claimant who was deceased at the time the claim was filed, a report from a physician based upon a review of the claimant's medical records which shall include—

(i) pathological evidence of the nonmalignant asbestos-related disease; or

(ii) an x-ray reading by a certified B-reader;

(C) for disease Levels VI through IX, in the case of a claimant who was living at the time the claim was filed—

(i) a physical examination by the claimant's physician providing the diagnosis; or

(ii) a diagnosis of such a malignant asbestos-related disease, as described in this section, by a board-certified pathologist; and

(D) for disease Levels VI through IX, in the case of a claimant who was deceased at the time the claim was filed—

(i) a diagnosis of such a malignant asbestos-related disease, as described in this section, by a board-certified pathologist; and

(ii) a report from a physician based upon a review of the claimant's medical records.

(3) CREDIBILITY OF MEDICAL EVIDENCE.—To ensure the medical evidence provided in support of a claim is credible and consistent with recognized medical standards, a claimant under this title may be required to submit—

(A) x-rays or computerized tomography;

(B) detailed results of pulmonary function tests;

(C) laboratory tests;

(D) tissue samples;

(E) results of medical examinations;

(F) reviews of other medical evidence; and

(G) medical evidence that complies with recognized medical standards regarding equipment, testing methods, and procedure to ensure the reliability of such evidence as may be submitted.

(c) EXPOSURE EVIDENCE.—

(1) IN GENERAL.—To qualify for any disease level, the claimant shall demonstrate—

(A) a minimum exposure to asbestos or asbestos-containing products;

(B) the exposure occurred in the United States, its territories or possessions, or while a United States citizen, while an employee of an entity organized under any Federal or State law regardless of location, or while a United States citizen while serving on any United States flagged or owned ship, provided the exposure results from such employment or service; and

(C) any additional asbestos exposure requirement under this section.

(2) PROOF OF EXPOSURE.—

(A) AFFIDAVITS.—Exposure to asbestos sufficient to satisfy the exposure requirements for any disease level may be established by an affidavit of—

(i) the claimant; or

(ii) if the claimant is deceased, a co-worker or a family member, if the affidavit of the claimant, co-worker or family member is found in proceedings under this title to be reasonably reliable, attesting to the claimant's exposure; and is credible and is not contradicted by other evidence.

(B) OTHER PROOF.—Exposure to asbestos may alternatively be established by invoices, construction or other similar records, or any other reasonably reliable evidence.

(3) TAKE-HOME EXPOSURE.—

(A) IN GENERAL.—A claimant may alternatively satisfy the medical criteria requirements of this section where a claim is filed by a person who alleges their exposure to asbestos was the result of living with a person who, if the claim had been filed by that person, would have met the exposure criteria for the given disease level, and the claimant lived with such person for the time period necessary to satisfy the exposure requirement, for the claimed disease level.

(B) REVIEW.—Except for claims for disease Level IX (mesothelioma), all claims alleging take-home exposure shall be submitted as an exceptional medical claim under section 121(f) for review by a Physicians Panel.

(4) WAIVER FOR WORKERS AND RESIDENTS OF LIBBY, MONTANA.—Because of the unique nature of the asbestos exposure related to the vermiculite mining and milling operations in Libby, Montana, the Administrator shall waive the exposure requirements under this

subtitle for individuals who worked at the vermiculite mining and milling facility in Libby, Montana, or lived or worked within a 20-mile radius of Libby, Montana, for at least 12 consecutive months before December 31, 2004. Claimants under this section shall provide such supporting documentation as the Administrator shall require.

(5) EXPOSURE PRESUMPTIONS.—

(A) IN GENERAL.—The Administrator shall prescribe rules identifying specific industries, occupations within such industries, and time periods in which workers employed in those industries or occupations typically had substantial occupational exposure to asbestos as defined under section 121(a). Until 5 years after the Administrator certifies that the Fund is paying claims at a reasonable rate, the industries, occupations and time periods identified by the Administrator shall at a minimum include those identified in the 2002 Trust Distribution Process of the Manville Personal Injury Settlement Trust as of January 1, 2005, as industries, occupations and time periods in which workers were presumed to have had significant occupational exposure to asbestos. Thereafter, the Administrator may by rule modify or eliminate those exposure presumptions required to be adopted from the Manville Personal Injury Settlement Trust, if there is evidence that demonstrates that the typical exposure for workers in such industries and occupations during such time periods did not constitute substantial occupational exposure in asbestos.

(B) CLAIMANTS ENTITLED TO PRESUMPTIONS.—Any claimant who demonstrates through meaningful and credible evidence that such claimant was employed during relevant time periods in industries or occupations identified under subparagraph (A) shall be entitled to a presumption that the claimant had substantial occupational exposure to asbestos during those time periods. That presumption shall not be conclusive, and the Administrator may find that the claimant does not have substantial occupational exposure if other information demonstrates that the claimant did not in fact have substantial occupational exposure during any part of the relevant time periods.

(6) PENALTY FOR FALSE STATEMENT.—Any false information submitted under this subsection shall be subject to section 1348 of title 18, United States Code (as added by this Act).

(d) ASBESTOS DISEASE LEVELS.—

(1) NONMALIGNANT LEVEL I.—To receive Level I compensation, a claimant shall provide—

(A) a diagnosis of bilateral asbestos-related nonmalignant disease; and

(B) evidence of 5 years cumulative occupational exposure to asbestos.

(2) NONMALIGNANT LEVEL II.—To receive Level II compensation, a claimant shall provide—

(A) a diagnosis of bilateral asbestos-related nonmalignant disease with ILO grade of 1/1 or greater, and showing small irregular opacities of shape or size, either ss, st, or tt, and present in both lower lung zones, or asbestosis determined by pathology, or blunting of either costophrenic angle and bilateral pleural plaque or bilateral pleural thickening of at least grade B2 or greater, or bilateral pleural disease of grade B2 or greater;

(B) evidence of TLC less than 80 percent or FVC less than the lower limits of normal, and FEV1/FVC ratio less than 65 percent;

(C) evidence of 5 or more weighted years of substantial occupational exposure to asbestos; and

(D) supporting medical documentation establishing asbestos exposure as a substantial contributing factor in causing the pulmonary condition in question.

(3) NONMALIGNANT LEVEL III.—To receive Level III compensation a claimant shall provide—

(A) a diagnosis of bilateral asbestos-related nonmalignant disease with ILO grade of 1/0 or greater and showing small irregular opacities of shape or size, either ss, st, or tt, and present in both lower lung zones, or asbestosis determined by pathology, or diffuse pleural thickening, or bilateral pleural disease of B2 or greater;

(B) evidence of TLC less than 80 percent, FVC less than the lower limits of normal and FEV1/FVC ratio greater than or equal to 65 percent, or evidence of a decline in FVC of 20 percent or greater, after allowing for the expected decrease due to aging, and an FEV1/FVC ratio greater than or equal to 65 percent documented with a second spirometry;

(C) evidence of 5 or more weighted years of substantial occupational exposure to asbestos; and

(D) supporting medical documentation—

(i) establishing asbestos exposure as a substantial contributing factor in causing the pulmonary condition in question; and

(ii) excluding other more likely causes of that pulmonary condition.

(4) NONMALIGNANT LEVEL IV.—To receive Level IV compensation a claimant shall provide—

(A) diagnosis of bilateral asbestos-related nonmalignant disease with ILO grade of 1/1 or greater and showing small irregular opacities of shape or size, either ss, st, or tt, and present in both lower lung zones, or asbestosis determined by pathology, or diffuse pleural thickening, or bilateral pleural disease of B2 or greater;

(B) evidence of TLC less than 60 percent or FVC less than 60 percent, and FEV1/FVC ratio greater than or equal to 65 percent;

(C) evidence of 5 or more weighted years of substantial occupational exposure to asbestos before diagnosis; and

(D) supporting medical documentation—

(i) establishing asbestos exposure as a substantial contributing factor in causing the pulmonary condition in question; and

(ii) excluding other more likely causes of that pulmonary condition.

(5) NONMALIGNANT LEVEL V.—To receive Level V compensation a claimant shall provide—

(A) diagnosis of bilateral asbestos-related nonmalignant disease with ILO grade of 1/1 or greater and showing small irregular opacities of shape or size, either ss, st, or tt, and present in both lower lung zones, or asbestosis determined by pathology, or diffuse pleural thickening, or bilateral pleural disease of B2 or greater;

(B)(i) evidence of TLC less than 50 percent or FVC less than 50 percent, and FEV1/FVC ratio greater than or equal to 65 percent;

(ii) DLCO less than 40 percent of predicted, plus a FEV1/FVC ratio not less than 65 percent; or

(iii) PO_2 less than 55 mm/Hg, plus a FEV1/FVC ratio not less than 65 percent;

(C) evidence of 5 or more weighted years of substantial occupational exposure to asbestos; and

(D) supporting medical documentation—

(i) establishing asbestos exposure as a substantial contributing factor in causing the pulmonary condition in question; and

(ii) excluding other more likely causes of that pulmonary condition.

(6) MALIGNANT LEVEL VI.—

(A) IN GENERAL.—To receive Level VI compensation a claimant shall provide—

(i) a diagnosis of a primary colorectal, laryngeal, esophageal, pharyngeal, or stomach cancer on the basis of findings by a board certified pathologist;

(ii) evidence of a bilateral asbestos-related nonmalignant disease;

(iii) evidence of 15 or more weighted years of substantial occupational exposure to asbestos; and

(iv) supporting medical documentation establishing asbestos exposure as a substantial contributing factor in causing the cancer in question.

(B) REFERRAL TO PHYSICIANS PANEL.—All claims filed with respect to Level VI under this paragraph shall be referred to a Physicians Panel for a determination that it is more probable than not that asbestos exposure was a substantial contributing factor in causing the other cancer in question. If the claimant meets the requirements of subparagraph (A), there shall be a presumption of eligibility for the scheduled value of compensation unless there is evidence determined by the Physicians Panel that rebuts that presumption. In making its determination under this subparagraph, the Physicians Panel shall consider the intensity and duration of exposure, smoking history, and the quality of evidence relating to exposure and smoking. Claimants shall bear the burden of producing meaningful and credible evidence of their smoking history as part of their claim submission.

(7) MALIGNANT LEVEL VII.—

(A) IN GENERAL.—To receive Level VII compensation, a claimant shall provide—

(i) a diagnosis of a primary lung cancer disease on the basis of findings by a board certified pathologist;

(ii) evidence of bilateral pleural plaques or bilateral pleural thickening or bilateral pleural calcification;

(iii) evidence of 12 or more weighted years of substantial occupational exposure to asbestos; and

(iv) supporting medical documentation establishing asbestos exposure as a substantial contributing factor in causing the lung cancer in question.

(B) PHYSICIANS PANEL.—A claimant filing a claim relating to Level VII under this paragraph may request that the claim be referred to a Physicians Panel for a determination of whether the claimant qualifies for the disease category and relevant smoking status. In making its determination under this subparagraph, the Physicians Panel shall consider the intensity and duration of exposure, smoking history, and the quality of evidence relating to exposure and smoking. Claimants shall bear the burden of producing meaningful and credible evidence of their smoking history as part of their claim submission.

(8) MALIGNANT LEVEL VIII.—

(A) IN GENERAL.—To receive Level VIII compensation, a claimant shall provide a diagnosis of—

(i) a primary lung cancer disease on the basis of findings by a board certified pathologist;

(ii)(I)(aa) asbestosis based on a chest x-ray of at least 1/0 on the ILO scale and showing small irregular opacities of shape or size, either ss, st, or tt, and present in both lower lung zones; and

(bb) 10 or more weighted years of substantial occupational exposure to asbestos;

(II)(aa) asbestosis based on a chest x-ray of at least 1/1 on the ILO scale and showing small irregular opacities of shape or size, either ss, st, or tt, and present in both lower lung zones; and

(bb) 8 or more weighted years of substantial occupational exposure to asbestos;

(III) asbestosis determined by pathology and 10 or more weighted years of substantial occupational exposure to asbestos; or

(IV) asbestosis as determined by CT Scan, the cost of which shall not be borne by the Fund. The CT Scan must be interpreted by a

board certified radiologist and confirmed by a board certified radiologist; and

(iii) supporting medical documentation establishing asbestos exposure as a substantial contributing factor in causing the lung cancer in question; and 10 or more weighted years of substantial occupational exposure to asbestos.

(B) PHYSICIANS PANEL.—A claimant filing a claim with respect to Level VIII under this paragraph may request that the claim be referred to a Physicians Panel for a determination of whether the claimant qualifies for the disease category and relevant smoking status. In making its determination under this subparagraph, the Physicians Panel shall consider the intensity and duration of exposure, smoking history, and the quality of evidence relating to exposure and smoking. Claimants shall bear the burden of producing meaningful and credible evidence of their smoking history as part of their claim submission.

(9) MALIGNANT LEVEL IX.—To receive Level IX compensation, a claimant shall provide—

(A) a diagnosis of malignant mesothelioma disease on the basis of findings by a board certified pathologist; and

(B) credible evidence of identifiable exposure to asbestos resulting from—

(i) occupational exposure to asbestos;

(ii) exposure to asbestos fibers brought into the home of the claimant by a worker occupationally exposed to asbestos;

(iii) exposure to asbestos fibers resulting from living or working in the proximate vicinity of a factory, shipyard, building demolition site, or other operation that regularly released asbestos fibers into the air due to operations involving asbestos at that site; or

(iv) other identifiable exposure to asbestos fibers, in which case the claim shall be reviewed by a Physicians Panel under section 121(f) for a determination of eligibility.

(e) INSTITUTE OF MEDICINE STUDY.—Not later than April 1, 2006, the Institute of Medicine of the National Academy of Sciences shall complete a study contracted with the National Institutes of Health of the causal link between asbestos exposure and other cancers, including colorectal, laryngeal, esophageal, pharyngeal, and stomach cancers, except for mesothelioma and lung cancers. The Institute of Medicine shall issue a report on its findings on causation, which shall be transmitted to Congress, the Administrator, the Advisory Committee on Asbestos Disease Compensation or the Medical Advisory Committee, and the Physicians Panels. The Institute of Medicine report shall be binding on the Administrator and the Physicians Panels for purposes of determining whether asbestos exposure is a substantial contributing factor under section 121(d)(6)(B).

(f) EXCEPTIONAL MEDICAL CLAIMS.—

(1) IN GENERAL.—A claimant who does not meet the medical criteria requirements under this section may apply for designation of the claim as an exceptional medical claim.

(2) APPLICATION.—When submitting an application for review of an exceptional medical claim, the claimant shall—

(A) state that the claim does not meet the medical criteria requirements under this section; or

(B) seek designation as an exceptional medical claim within 60 days after a determination that the claim is ineligible solely for failure to meet the medical criteria requirements under subsection (d).

(3) REPORT OF PHYSICIAN.—

(A) IN GENERAL.—Any claimant applying for designation of a claim as an exceptional medical claim shall support an application filed under paragraph (1) with a report from a physician meeting the requirements of this section.

(B) CONTENTS.—A report filed under subparagraph (A) shall include—

(i) a complete review of the claimant's medical history and current condition;

(ii) such additional material by way of analysis and documentation as shall be prescribed by rule of the Administrator; and

(iii) a detailed explanation as to why the claim meets the requirements of paragraph (4)(B).

(4) REVIEW.—

(A) IN GENERAL.—The Administrator shall refer all applications and supporting documentation submitted under paragraph (2) to a Physicians Panel for review for eligibility as an exceptional medical claim.

(B) STANDARD.—A claim shall be designated as an exceptional medical claim if the claimant, for reasons beyond the control of the claimant, cannot satisfy the requirements under this section, but is able, through comparably reliable evidence that meets the standards under this section, to show that the claimant has an asbestos-related condition that is substantially comparable to that of a medical condition that would satisfy the requirements of a category under this section.

(C) ADDITIONAL INFORMATION.—A Physicians Panel may request additional reasonable testing to support the claimant's application.

(D) CT SCAN.—A claimant may submit a CT Scan in addition to an x-ray.

(5) APPROVAL.—

(A) IN GENERAL.—If the Physicians Panel determines that the medical evidence is sufficient to show a comparable asbestos-related condition, it shall issue a certificate of medical eligibility designating the category of asbestos-related injury under this section for which the claimant shall be eligible to seek compensation.

(B) REFERRAL.—Upon the issuance of a certificate under subparagraph (A), the Physicians Panel shall submit the claim to the Administrator, who shall give due consideration to the recommendation of the Physicians Panel in determining whether the claimant meets the requirements for compensation under this Act.

(6) RESUBMISSION.—Any claimant whose application for designation as an exceptional medical claim is rejected may resubmit an application if new evidence becomes available. The application shall identify any prior applications and state the new evidence that forms the basis of the resubmission.

(7) RULES.—The Administrator shall promulgate rules governing the procedures for seeking designation of a claim as an exceptional medical claim.

(8) LIBBY, MONTANA.—

(A) IN GENERAL.—A Libby, Montana, claimant may elect to have the claimant's claims designated as exceptional medical claims and referred to a Physicians Panel for review. In reviewing the medical evidence submitted by a Libby, Montana claimant in support of that claim, the Physicians Panel shall take into consideration the unique and serious nature of asbestos exposure in Libby, Montana, including the nature of the pleural disease related to asbestos exposure in Libby, Montana.

(B) CLAIMS.—For all claims for Levels II through IV filed by Libby, Montana claimants, as described under subsection (c)(4), once the Administrator or the Physicians Panel issues a certificate of medical eligibility to a Libby, Montana claimant, and notwithstanding the disease category designated in the certificate or the eligible disease or condition established in accordance with this section, or the value of the award determined in accordance with section 114, the Libby, Montana claimant shall be entitled to an award that is not less than that awarded to claimants who suffer from asbestosis, Level IV. For all malignant claims filed by Libby, Montana claimants, the Libby, Montana claimant shall be entitled to an award that corresponds to the malignant disease category designated by the Administrator or the Physicians Panel.

Subtitle D—Awards

SEC. 131. AMOUNT.

(a) IN GENERAL.—An asbestos claimant who meets the requirements of section 111 shall be entitled to an award in an amount determined by reference to the benefit table and the matrices developed under subsection (b).

(b) BENEFIT TABLE.—

(1) IN GENERAL.—An asbestos claimant with an eligible disease or condition established in accordance with section 121 shall be eligible for an award as determined under this subsection. The award for all asbestos claimants with an eligible disease or condition established in accordance with section 121 shall be according to the following schedule:

Level	Scheduled Condition or Disease	Scheduled Value
I	Asbestosis/ Pleural Disease A	Medical Monitoring
II	Mixed Disease With Impairment	$25,000
III	Asbestosis/ Pleural Disease B	$100,000
IV	Severe Asbestosis	$400,000
V	Disabling Asbestosis	$850,000
VI	Other Cancer	$200,000
VII	Lung Cancer With Pleural Disease	smokers, $300,000; ex-smokers, $725,000; non-smokers, $800,000
VIII	Lung Cancer With Asbestosis	smokers, $600,000; ex-smokers, $975,000; non-smokers, $1,100,000
IX	Mesothelioma	$1,100,000

(2) DEFINITIONS.—In this section—

(A) the term ''nonsmoker'' means a claimant who—

(i) never smoked; or

(ii) has smoked fewer than 100 cigarettes or the equivalent of other tobacco products during the claimant's lifetime; and

(B) the term ''ex-smoker'' means a claimant who has not smoked during any portion of the 12-year period preceding the diagnosis of lung cancer.

(3) LEVEL IX ADJUSTMENTS.—

(A) IN GENERAL.—If the Administrator determines that the impact of all adjustments under this paragraph on the Fund is cost neutral, the Administrator may—

(i) increase awards for Level IX claimants who are less than 51 years of age with dependent children; and

(ii) decrease awards for Level IX claimants who are at least 65 years of age, but in no case shall an award for Level IX be less than $1,000,000.

(B) IMPLEMENTATION.—Before making adjustments under this paragraph, the Administrator shall publish in the Federal Register notice of, and a plan for, making such adjustments.

(4) SPECIAL ADJUSTMENT FOR FELA CASES.—

(A) IN GENERAL.—A claimant who would be eligible to bring a claim under the Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Employers' Liability Act, but for section 403 of this Act, shall be eligible for a special adjustment under this paragraph.

(B) REGULATIONS.—

(i) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Administrator shall promulgate regulations relating to special adjustments under this paragraph.

(ii) JOINT PROPOSAL.—Not later than 45 days after the date of enactment of this Act, representatives of railroad management and representatives of railroad labor shall submit to the Administrator a joint proposal for regulations describing the eligibility for and amount of special adjustments under this paragraph. If a joint proposal is submitted, the Administrator shall promulgate regulations that reflect the joint proposal.

(iii) ABSENCE OF JOINT PROPOSAL.—If railroad management and railroad labor are unable to agree on a joint proposal within 45 days after the date of enactment of this Act, the benefits prescribed in subparagraph (E) shall be the benefits available to claimants, and the Administrator shall promulgate regulations containing such benefits.

(iv) REVIEW.—The parties participating in the arbitration may file in the United States District Court for the District of Columbia a petition for review of the Administrator's order. The court shall have jurisdiction to affirm the order of the Administrator, or to set it aside, in whole or in part, or it may remand the proceedings to the Administrator for such further action as it may direct. On such review, the findings and order of the Administrator shall be conclusive on the parties, except that the order of the Administrator may be set aside, in whole or in parts or remanded to the Administrator, for failure of the Administrator to comply with the requirements of this section, for failure of the order to conform, or confine itself, to matters within the scope of the Administrator's jurisdiction, or for fraud or corruption.

(C) ELIGIBILITY.—An individual eligible to file a claim under the Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Employers' Liability Act, shall be eligible for a special adjustment under this paragraph if such individual meets the criteria set forth in subparagraph (F).

(D) AMOUNT.—

(i) IN GENERAL.—The amount of the special adjustment shall be based on the type and severity of asbestos disease, and shall be 110 percent of the average amount an injured individual with a disease caused by asbestos, as described in section 121(d) of this Act, would have received, during the 5-year period before the enactment of this Act, adjusted for inflation. This adjustment shall be in addition to any other award for which the claimant is eligible under this Act. The amount of the special adjustment shall be reduced by an amount reasonably calculated to take into account all expenses of litigation normally borne by plaintiffs, including attorney's fees.

(ii) LIMITATION.—The amount under clause (i) may not exceed the amount the claimant is eligible to receive before applying the special adjustment under that clause.

(E) ARBITRATED BENEFITS.—If railroad management and railroad labor are unable to agree on a joint proposal within 45 days after the date of enactment of this Act, the Administrator shall appoint an arbitrator to determine the benefits under subparagraph (D). The Administrator shall appoint an arbitrator who shall be acceptable to both railroad management and railroad labor. Railroad management and railroad labor shall each designate their representatives to participate in the arbitration. The arbitrator shall submit the benefits levels to the Administrator not later than 30 days after appointment and such benefits levels shall be based on information provided by rail labor and rail management. The information submitted to the arbitrator by railroad management and railroad labor shall be considered confidential and shall be disclosed to the other party upon execution of an appropriate confidentiality agreement. Unless the submitting party provides written consent, neither the arbitrator nor either party to the arbitration shall divulge to any third party any information or data, in any form, submitted to the arbitrator under this section. Nor shall either party use such information or data for any purpose other than participation in the arbitration proceeding, and each party shall return to the other any information it has received from the other party as soon the arbitration is concluded. Information submitted to the arbitrator may not be admitted into evidence, nor discovered, in any civil litigation in Federal or State court. The nature of the information submitted to the arbitrator shall be within the sole discretion of the submitting party, and the arbitrator may not require a party to submit any particular information, including information subject to a prior confidentiality agreement.

(F) DEMONSTRATION OF ELIGIBILITY.—

(i) IN GENERAL.—A claimant under this paragraph shall be required to demonstrate—

(I) employment of the claimant in the railroad industry;

(II) exposure of the claimant to asbestos as part of that employment; and

(III) the nature and severity of the asbestos-related injury.

(ii) MEDICAL CRITERIA.—In order to be eligible for a special adjustment a claimant shall meet the criteria set forth in section 121 that would qualify a claimant for a payment under Level II or greater.

(5) MEDICAL MONITORING.—An asbestos claimant with asymptomatic exposure, based on the criteria under section 121(d)(1), shall only be eligible for medical monitoring reimbursement as provided under section 132.

(6) COST-OF-LIVING ADJUSTMENT.—

(A) IN GENERAL.—Beginning January 1, 2007, award amounts under paragraph (1) shall be annually increased by an amount equal to such dollar amount multiplied by the cost-of-living adjustment, rounded to the nearest $1,000 increment.

(B) CALCULATION OF COST-OF-LIVING ADJUSTMENT.—For the purposes of subparagraph (A), the cost-of-living adjustment for any calendar year shall be the percentage, if any, by which the consumer price index for the succeeding calendar year exceeds the consumer price index for calendar year 2005.

(C) CONSUMER PRICE INDEX.—

(i) IN GENERAL.—For the purposes of subparagraph (B), the consumer price index for any calendar year is the average of the consumer price index as of the close of the 12-month period ending on August 31 of such calendar year.

(ii) DEFINITION.—For purposes of clause (i), the term ''consumer price index'' means the consumer price index published by the Department of Labor. The consumer price index series to be used for award escalations shall include the consumer price index used for all-urban consumers, with an area coverage of the United States city average, for all items, based on the 1982–1984 index based period, as published by the Department of Labor.

SEC. 132. MEDICAL MONITORING.

(a) RELATION TO STATUTE OF LIMITATIONS.—The filing of a claim under this Act that seeks reimbursement for medical monitoring shall not be considered as evidence that the claimant has discovered facts that would otherwise commence the period applicable for purposes of the statute of limitations under section 113(b).

(b) COSTS.—Reimbursable medical monitoring costs shall include the costs of a claimant not covered by health insurance for an examination by the claimant's physician, x-ray tests, and pulmonary function tests every 3 years.

(c) REGULATIONS.—The Administrator shall promulgate regulations that establish—

(1) the reasonable costs for medical monitoring that is reimbursable; and

(2) the procedures applicable to asbestos claimants.

SEC. 133. PAYMENT.

(a) STRUCTURED PAYMENTS.—

(1) IN GENERAL.—An asbestos claimant who is entitled to an award should receive the amount of the award through structured payments from the Fund, made over a period of 3 years, and in no event more than 4 years after the date of final adjudication of the claim.

(2) PAYMENT PERIOD AND AMOUNT.—There shall be a presumption that any award paid under this subsection shall provide for payment of—

(A) 40 percent of the total amount in year 1;

(B) 30 percent of the total amount in year 2; and

(C) 30 percent of the total amount in year 3.

(3) EXTENSION OF PAYMENT PERIOD.—

(A) IN GENERAL.—The Administrator shall develop guidelines to provide for the payment period of an award under subsection (a) to be extended to a 4-year period if such action is warranted in order to preserve the overall solvency of the Fund. Such guidelines shall include reference to the number of claims made to the Fund and the awards made and scheduled to be paid from the Fund as provided under section 405.

(B) LIMITATIONS.—In no event shall less than 50 percent of an award be paid in the first 2 years of the payment period under this subsection.

(4) ACCELERATED PAYMENTS.—The Administrator shall develop guidelines to provide for accelerated payments to asbestos claimants who are mesothelioma victims and who are alive on the date on which the Administrator receives notice of the eligibility of the claimant. Such payments shall be credited against the first regular payment under the structured payment plan for the claimant.

(5) EXPEDITED PAYMENTS.—The Administrator shall develop guidelines to provide for expedited payments to asbestos claimants in cases of exigent circumstances or extreme hardship caused by asbestos-related injury.

(6) ANNUITY.—An asbestos claimant may elect to receive any payments to which that claimant is entitled under this title in the form of an annuity.

(b) LIMITATION ON TRANSFERABILITY.—A claim filed under this Act shall not be assignable or otherwise transferable under this Act.

(c) CREDITORS.—An award under this title shall be exempt from all claims of creditors and from levy, execution, and attachment or other remedy for recovery or collection of a debt, and such exemption may not be waived.

(d) MEDICARE AS SECONDARY PAYER.—No award under this title shall be deemed a payment for purposes of section 1862 of the Social Security Act (42 U.S.C. 1395y).

(e) EXEMPT PROPERTY IN ASBESTOS CLAIMANT'S BANKRUPTCY CASE.—If an asbestos claimant files a petition for relief under section 301 of title 11, United States Code, no award granted under this Act shall be treated as property of the bankruptcy estate of the asbestos claimant in accordance with section 541(b)(6) of title 11, United States Code.

SEC. 134. REDUCTION IN BENEFIT PAYMENTS FOR COLLATERAL SOURCES.

(a) IN GENERAL.—The amount of an award otherwise available to an asbestos claimant

under this title shall be reduced by the amount of collateral source compensation.

(b) EXCLUSIONS.—In no case shall statutory benefits under workers' compensation laws, special adjustments made under section 131(b)(3), occupational or total disability benefits under the Railroad Retirement Act (45 U.S.C. 201 et seq.), sickness benefits under the Railroad Unemployment Insurance Act (45 U.S.C 351 et seq.), and veterans' benefits programs be deemed as collateral source compensation for purposes of this section.

SEC. 135. CERTAIN CLAIMS NOT AFFECTED BY PAYMENT OF AWARDS.

(a) IN GENERAL.—The payment of an award under section 106 or 133 shall not be considered a form of compensation or reimbursement for a loss for purposes of imposing liability on any asbestos claimant receiving such payment to repay any—

(1) insurance carrier for insurance payments; or

(2) person or governmental entity on account of worker's compensation, health care, or disability payments.

(b) NO EFFECT ON CLAIMS.—The payment of an award to an asbestos claimant under section 106 or 133 shall not affect any claim of an asbestos claimant against—

(1) an insurance carrier with respect to insurance; or

(2) against any person or governmental entity with respect to worker's compensation, healthcare, or disability.

TITLE II—ASBESTOS INJURY CLAIMS RESOLUTION FUND

Subtitle A—Asbestos Defendants Funding Allocation

SEC. 201. DEFINITIONS.

In this subtitle, the following definitions shall apply:

(1) AFFILIATED GROUP.—The term ''affiliated group''—

(A) means a defendant participant that is an ultimate parent and any person whose entire beneficial interest is directly or indirectly owned by that ultimate parent on the date of enactment of this Act; and

(B) shall not include any person that is a debtor or any direct or indirect majority-owned subsidiary of a debtor.

(2) CLASS ACTION TRUST.—The term ''class action trust'' means a trust or similar entity established to hold assets for the payment of asbestos claims asserted against a debtor or participating defendant, under a settlement that—

(A) is a settlement of class action claims under rule 23 of the Federal Rules of Civil Procedure; and

(B) has been approved by a final judgment of a United States district court before the date of enactment of this Act.

(3) DEBTOR.—The term ''debtor''—

(A) means—

(i) a person that is subject to a case pending under a chapter of title 11, United States Code, on the date of enactment of this Act or at any time during the 1-year period immediately preceding that date, irrespective of whether the debtor's case under that title has been dismissed; and

(ii) all of the direct or indirect majority-owned subsidiaries of a person described under clause (i), regardless of whether any such majority-owned subsidiary has a case pending under title 11, United States Code; and

(B) shall not include an entity—

(i) subject to chapter 7 of title 11, United States Code, if a final decree closing the estate shall have been entered before the date of enactment of this Act; or

(ii) subject to chapter 11 of title 11, United States Code, if a plan of reorganization for such entity shall have been confirmed by a duly entered order or judgment of a court that is no longer subject to any appeal or judicial review, and the substantial consummation, as such term is defined in section 1101(2) of title 11, United States Code, of such plan of reorganization has occurred.

(4) INDEMNIFIABLE COST.—The term ''indemnifiable cost'' means a cost, expense, debt, judgment, or settlement incurred with respect to an asbestos claim that, at any time before December 31, 2002, was or could have been subject to indemnification, contribution, surety, or guaranty.

(5) INDEMNITEE.—The term ''indemnitee'' means a person against whom any asbestos claim has been asserted before December 31, 2002, who has received from any other person, or on whose behalf a sum has been paid by such other person to any third person, in settlement, judgment, defense, or indemnity in connection with an alleged duty with respect to the defense or indemnification of such person concerning that asbestos claim, other than under a policy of insurance or reinsurance.

(6) INDEMNITOR.—The term ''indemnitor'' means a person who has paid under a written agreement at any time before December 31, 2002, a sum in settlement, judgment, defense, or indemnity to or on behalf of any person defending against an asbestos claim, in connection with an alleged duty with respect to the defense or indemnification of such person concerning that asbestos claim, except that payments by an insurer or reinsurer under a contract of insurance or reinsurance shall not make the insurer or reinsurer an indemnitor for purposes of this subtitle.

(7) PRIOR ASBESTOS EXPENDITURES.—The term ''prior asbestos expenditures''—

(A) means the gross total amount paid by or on behalf of a person at any time before December 31, 2002, in settlement, judgment, defense, or indemnity costs related to all asbestos claims against that person;

(B) includes payments made by insurance carriers to or for the benefit of such person or on such person's behalf with respect to such asbestos claims, except as provided in section 204(g);

(C) shall not include any payment made by a person in connection with or as a result of changes in insurance reserves required by contract or any activity or dispute related to insurance coverage matters for asbestos-related liabilities; and

(D) shall not include any payment made by or on behalf of persons who are or were common carriers by railroad for asbestos claims brought under the Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Employers' Liability Act, as a result of operations as a common carrier by railroad, including settlement, judgment, defense, or indemnity costs associated with these claims.

(8) TRUST.—The term ''trust'' means any trust, as described in sections 524(g)(2)(B)(i) or 524(h) of title 11, United States Code, or established in conjunction with an order issued under section 105 of title 11, United States Code, established or formed under the terms of a chapter 11 plan of reorganization, which in whole or in part provides compensation for asbestos claims.

(9) ULTIMATE PARENT.—The term ''ultimate parent'' means a person—

(A) that owned, as of December 31, 2002, the entire beneficial interest, directly or indirectly, of at least 1 other person; and

(B) whose entire beneficial interest was not owned, on December 31, 2002, directly or indirectly, by any other single person (other than a natural person).

SEC. 202. AUTHORITY AND TIERS.

(a) LIABILITY FOR PAYMENTS TO THE FUND.—

(1) IN GENERAL.—Defendant participants shall be liable for payments to the Fund in accordance with this section based on tiers and subtiers assigned to defendant participants.

(2) AGGREGATE PAYMENT OBLIGATIONS LEVEL.—The total payments required of all defendant participants over the life of the Fund shall not exceed a sum equal to $90,000,000,000 less any bankruptcy trust credits under section 222(e). The Administrator shall have the authority to allocate the payments required of the defendant participants among the tiers as provided in this title.

(3) ABILITY TO ENTER REORGANIZATION.—Notwithstanding any other provision of this Act, all debtors that, together with all of their direct or indirect majority-owned subsidiaries, have prior asbestos expenditures less than $1,000,000 may proceed with the filing, solicitation, and confirmation of a plan of reorganization that does not comply with the requirements of this Act, including a trust and channeling injunction under section 524(g) of title 11, United States Code. Any asbestos claim made in conjunction with a plan of reorganization allowable under the preceding sentence shall be subject to section 403(d) of this Act.

(b) TIER I.—Tier I shall include all debtors that, together with all of their direct or indirect majority-owned subsidiaries, have prior asbestos expenditures greater than $1,000,000.

(c) TREATMENT OF TIER I BUSINESS ENTITIES IN BANKRUPTCY.—

(1) DEFINITION.—

(A) IN GENERAL.—In this subsection, the term ''bankrupt business entity'' means a person that is not a natural person that—

(i) filed a petition for relief under chapter 11, of title 11, United States Code, before January 1, 2003;

(ii) has not substantially consummated, as such term is defined under section 1101(2) of title 11, United States Code, a plan of reorganization as of the date of enactment of this Act; and

(iii) the bankruptcy court presiding over the business entity's case determines, after notice and a hearing upon motion filed by the entity within 30 days after the date of enactment of this Act, that asbestos liability was not the sole or precipitating cause of the entity's chapter 11 filing.

(B) MOTION AND RELATED MATTERS.—A motion under subparagraph (A)(iii) shall be supported by—

(i) an affidavit or declaration of the chief executive officer, chief financial officer, or chief legal officer of the business entity; and

(ii) copies of the entity's public statements and securities filings made in connection with the entity's filing for chapter 11 protection.

Notice of such motion shall be as directed by the bankruptcy court, and the hearing shall be limited to consideration of the question of whether or not asbestos liability was the sole or precipitating cause of the entity's chapter 11 filing. The bankruptcy court shall hold a hearing and make its determination with respect to the motion within 60 days after the date the motion is filed. In making its determination, the bankruptcy court shall take into account the affidavits, public statements, and securities filings, and other information, if any, submitted by the entity and all other facts and circumstances presented by an objecting party. Any review of this determination shall be an expedited appeal and limited to whether the decision was against the weight of the evidence. Any appeal of a determination shall be an expedited review to the United States Circuit Court of Appeals for the circuit in which the bankruptcy is filed.

(2) PROCEEDING WITH REORGANIZATION PLAN.—A bankrupt business entity may proceed with the filing, solicitation, confirmation, and consummation of a plan of reorganization that does not comply with the requirements of this Act, including a trust and channeling injunction described in section 524(g) of title 11, United States Code, notwithstanding any other provisions of this Act, if the bankruptcy court makes a favorable determination under paragraph (1)(B), unless the bankruptcy court's determination is overruled on appeal and all appeals are final. Such a bankrupt business entity may continue to so proceed, if—

(A) on request of a party in interest or on a motion of the court, and after a notice and a hearing, the bankruptcy court presiding over the chapter 11 case of the bankrupt business entity determines that—

(i) confirmation is necessary to permit the reorganization of that entity and assure that all creditors and that entity are treated fairly and equitably; and

(ii) confirmation is clearly favored by the balance of the equities; and

(B) an order confirming the plan of reorganization is entered by the bankruptcy court within 9 months after the date of enactment of this Act or such longer period of time approved by the bankruptcy court for cause shown.

(3) APPLICABILITY.—If the bankruptcy court does not make the determination required under paragraph (2), or if an order confirming the plan is not entered within 9 months after the date of enactment of this Act or such longer period of time approved by the bankruptcy court for cause shown, the provisions of this Act shall apply to the bankrupt business entity notwithstanding the certification. Any timely appeal under title 11, United States Code, from a confirmation order entered during the applicable time period shall automatically extend the time during which this Act is inapplicable to the bankrupt business entity, until the appeal is fully and finally resolved.

(4) OFFSETS.—

(A) PAYMENTS BY INSURERS.—To the extent that a bankrupt business entity or debtor successfully confirms a plan of reorganization, including a trust, and channeling injunction that involves payments by insurers who are otherwise subject to this Act as described under section 524(g) of title 11, United States Code, an insurer who makes payments to the trust shall obtain a dollar-for-dollar reduction in the amount otherwise payable by that insurer under this Act to the Fund.

(B) CONTRIBUTIONS TO FUND.—Any cash payments by a bankrupt business entity, if any, to a trust described under section 524(g) of title 11, United States Code, may be counted as a contribution to the Fund.

(d) TIERS II THROUGH VI.—Except as provided in section 204 and subsection (b) of this section, persons or affiliated groups are included in Tier II, III, IV, V, or VI, according to the prior asbestos expenditures paid by such persons or affiliated groups as follows:

(1) Tier II: $75,000,000 or greater.

(2) Tier III: $50,000,000 or greater, but less than $75,000,000.

(3) Tier IV: $10,000,000 or greater, but less than $50,000,000.

(4) Tier V: $5,000,000 or greater, but less than $10,000,000.

(5) Tier VI: $1,000,000 or greater, but less than $5,000,000.

(e) TIER PLACEMENT AND COSTS.—

(1) PERMANENT TIER PLACEMENT.—After a defendant participant or affiliated group is assigned to a tier and subtier under section 204(i)(6), the participant or affiliated group shall remain in that tier and subtier throughout the life of the Fund, regardless of subsequent events, including—

(A) the filing of a petition under a chapter of title 11, United States Code;

(B) a discharge of debt in bankruptcy;

(C) the confirmation of a plan of reorganization; or

(D) the sale or transfer of assets to any other person or affiliated group, unless the Administrator finds that the information submitted by the participant or affiliated group to support its inclusion in that tier was inaccurate.

(2) COSTS.—Payments to the Fund by all persons that are the subject of a case under a chapter of title 11, United States Code, after the date of enactment of this Act—

(A) shall constitute costs and expenses of administration of the case under section 503 of title 11, United States Code, and shall be payable in accordance with the payment provisions under this subtitle notwithstanding the pendency of the case under that title 11;

(B) shall not be stayed or affected as to enforcement or collection by any stay or injunction power of any court; and

(C) shall not be impaired or discharged in any current or future case under title 11, United States Code.

(f) SUPERSEDING PROVISIONS.—

(1) IN GENERAL.—All of the following shall be superseded in their entireties by this Act:

(A) The treatment of any asbestos claim in any plan of reorganization with respect to any debtor included in Tier I.

(B) Any asbestos claim against any debtor included in Tier I.

(C) Any agreement, understanding, or undertaking by any such debtor or any third party with respect to the treatment of any asbestos claim filed in a debtor's bankruptcy case or with respect to a debtor before the date of enactment of this Act, whenever such debtor's case is either still pending, if such case is pending under a chapter other than chapter 11 of title 11, United States Code, or subject to confirmation or substantial consummation of a plan of reorganization under chapter 11 of title 11, United States Code.

(2) PRIOR AGREEMENTS OF NO EFFECT.—Notwithstanding section 403(c)(3), any plan of reorganization, agreement, understanding, or undertaking by any debtor (including any pre-petition agreement, understanding, or undertaking that requires future performance) or any third party under paragraph (1), and any agreement, understanding, or undertaking entered into in anticipation, contemplation, or furtherance of a plan of reorganization, to the extent it relates to any asbestos claim, shall be of no force or effect, and no person shall have any right or claim with respect to any such agreement, understanding, or undertaking.

SEC. 203. SUBTIERS.

(a) IN GENERAL.—

(1) SUBTIER LIABILITY.—Except as otherwise provided under subsections (b), (d), and (l) of section 204, persons or affiliated groups shall be included within Tiers I through VII and shall pay amounts to the Fund in accordance with this section.

(2) REVENUES.—

(A) IN GENERAL.—For purposes of this section, revenues shall be determined in accordance with generally accepted accounting principles, consistently applied, using the amount reported as revenues in the annual report filed with the Securities and Exchange Commission in accordance with the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) for the most recent fiscal year ending on or before December 31, 2002. If the defendant participant or affiliated group does not file reports with the Securities and Exchange Commission, revenues shall be the amount that the defendant participant or affiliated group would have reported as revenues under the rules of the Securities and Exchange Commission in the event that it had been required to file.

(B) INSURANCE PREMIUMS.—Any portion of revenues of a defendant participant that is derived from insurance premiums shall not be used to calculate the payment obligation of that defendant participant under this subtitle.

(C) DEBTORS.—Each debtor's revenues shall include the revenues of the debtor and all of the direct or indirect majority-owned subsidiaries of that debtor, except that the pro forma revenues of a person that is included in Subtier 2 of Tier I shall not be included in calculating the revenues of any debtor that is a direct or indirect majority owner of such Subtier 2 person. If a debtor or affiliated group includes a person in respect of whose liabilities for asbestos claims a class action trust has been established, there shall be excluded from the 2002 revenues of such debtor or affiliated group—

(i) all revenues of the person in respect of whose liabilities for asbestos claims the class action trust was established; and

(ii) all revenues of the debtor and affiliated group attributable to the historical business operations or assets of such person, regardless of whether such business operations or assets were owned or conducted during the year 2002 by such person or by any other person included within such debtor and affiliated group.

(b) TIER I SUBTIERS.—

(1) IN GENERAL.—Each debtor in Tier I shall be included in subtiers and shall pay amounts to the Fund as provided under this section.

(2) SUBTIER 1.—

(A) IN GENERAL.—All persons that are debtors with prior asbestos expenditures of $1,000,000 or greater, shall be included in Subtier 1.

(B) PAYMENT.—Each debtor included in Subtier 1 shall pay on an annual basis 1.67024 percent of the debtor's 2002 revenues.

(C) OTHER ASSETS.—The Administrator, at the sole discretion of the Administrator, may allow a Subtier 1 debtor to satisfy its funding obligation under this paragraph with assets other than cash if the Administrator determines that requiring an all-cash payment of the debtor's funding obligation would render the debtor's reorganization infeasible.

(D) LIABILITY.—

(i) IN GENERAL.—If a person who is subject to a case pending under a chapter of title 11, United States Code, as defined in section 201(3)(A)(i), does not pay when due any payment obligation for the debtor, the Administrator shall have the right to seek payment of all or any portion of the entire amount due (as well as any other amount for which the debtor may be liable under sections 223 and 224) from any of the direct or indirect majority-owned subsidiaries under section 201(3)(A)(ii).

(ii) CAUSE OF ACTION.—Notwithstanding section 221(e), this Act shall not preclude actions among persons within a debtor under section 201(3)(A) (i) and (ii) with respect to the payment obligations under this Act.

(iii) RIGHT OF CONTRIBUTION.—

(I) IN GENERAL.—Notwithstanding any other provision of this Act, if a direct or indirect majority-owned foreign subsidiary of a debtor participant (with such relationship to the debtor participant as determined on the date of enactment of this Act) is or becomes subject to any foreign insolvency proceedings, and such foreign direct or indirect-majority owned subsidiary is liquidated in connection with such foreign insolvency proceedings (or if the debtor participant's interest in such foreign subsidiary is otherwise

canceled or terminated in connection with such foreign insolvency proceedings), the debtor participant shall have a claim against such foreign subsidiary or the estate of such foreign subsidiary in an amount equal to the greater of—

(aa) the estimated amount of all current and future asbestos liabilities against such foreign subsidiary; or

(bb) the foreign subsidiary's allocable share of the debtor participant's funding obligations to the Fund as determined by such foreign subsidiary's allocable share of the debtor participant's 2002 gross revenue.

(II) DETERMINATION OF CLAIM AMOUNT.—The claim amount under subclause (I) (aa) or (bb) shall be determined by a court of competent jurisdiction in the United States.

(III) EFFECT ON PAYMENT OBLIGATION.—The right to, or recovery under, any such claim shall not reduce, limit, delay, or otherwise affect the debtor participant's payment obligations under this Act.

(iv) MAXIMUM ANNUAL PAYMENT OBLIGATION.—Subject to any payments under sections 204(l) and 222(d), and paragraphs (3), (4), and (5) of this subsection, the annual payment obligation by a debtor under subparagraph (B) of this paragraph shall not exceed $80,000,000.

(3) SUBTIER 2.—

(A) IN GENERAL.—Notwithstanding paragraph (2), all persons that are debtors that have no material continuing business operations but hold cash or other assets that have been allocated or earmarked for the settlement of asbestos claims shall be included in Subtier 2.

(B) ASSIGNMENT OF ASSETS.—Not later than 90 days after the date of enactment of this Act, each person included in Subtier 2 shall assign all of its assets to the Fund.

(4) SUBTIER 3.—

(A) IN GENERAL.—Notwithstanding paragraph (2), all persons that are debtors other than those included in Subtier 2, which have no material continuing business operations and no cash or other assets allocated or earmarked for the settlement of any asbestos claim, shall be included in Subtier 3.

(B) ASSIGNMENT OF UNENCUMBERED ASSETS.—Not later than 90 days after the date of enactment of this Act, each person included in Subtier 3 shall contribute an amount equal to 50 percent of its total unencumbered assets.

(C) CALCULATION OF UNENCUMBERED ASSETS.—Unencumbered assets shall be calculated as the Subtier 3 person's total assets, excluding insurance-related assets, less—

(i) all allowable administrative expenses;

(ii) allowable priority claims under section 507 of title 11, United States Code; and

(iii) allowable secured claims.

(5) CLASS ACTION TRUST.—The assets of any class action trust that has been established in respect of the liabilities for asbestos claims of any person included within a debtor and affiliated group that has been included in Tier I (exclusive of any assets needed to pay previously incurred expenses and asbestos claims within the meaning of section 403(d)(1), before the date of enactment of this Act) shall be transferred to the Fund not later than 6 months after the date of enactment of this Act.

(c) TIER II SUBTIERS.—

(1) IN GENERAL.—Each person or affiliated group in Tier II shall be included in 1 of the 5 subtiers of Tier II, based on the person's or affiliated group's revenues. Such subtiers shall each contain as close to an equal number of total persons and affiliated groups as possible, with—

(A) those persons or affiliated groups with the highest revenues included in Subtier 1;

(B) those persons or affiliated groups with the next highest revenues included in Subtier 2;

(C) those persons or affiliated groups with the lowest revenues included in Subtier 5;

(D) those persons or affiliated groups with the next lowest revenues included in Subtier 4; and

(E) those persons or affiliated groups remaining included in Subtier 3.

(2) PAYMENTS.—Each person or affiliated group within each subtier shall pay, on an annual basis, the following:

(A) Subtier 1: $27,500,000.

(B) Subtier 2: $24,750,000.

(C) Subtier 3: $22,000,000.

(D) Subtier 4: $19,250,000.

(E) Subtier 5: $16,500,000.

(d) TIER III SUBTIERS.—

(1) IN GENERAL.—Each person or affiliated group in Tier III shall be included in 1 of the 5 subtiers of Tier III, based on the person's or affiliated group's revenues. Such subtiers shall each contain as close to an equal number of total persons and affiliated groups as possible, with—

(A) those persons or affiliated groups with the highest revenues included in Subtier 1;

(B) those persons or affiliated groups with the next highest revenues included in Subtier 2;

(C) those persons or affiliated groups with the lowest revenues included in Subtier 5;

(D) those persons or affiliated groups with the next lowest revenues included in Subtier 4; and

(E) those persons or affiliated groups remaining included in Subtier 3.

(2) PAYMENTS.—Each person or affiliated group within each subtier shall pay, on an annual basis, the following:

(A) Subtier 1: $16,500,000.

(B) Subtier 2: $13,750,000.

(C) Subtier 3: $11,000,000.

(D) Subtier 4: $8,250,000.

(E) Subtier 5: $5,500,000.

(e) TIER IV SUBTIERS.—

(1) IN GENERAL.—Each person or affiliated group in Tier IV shall be included in 1 of the 4 subtiers of Tier IV, based on the person's or affiliated group's revenues. Such subtiers shall each contain as close to an equal number of total persons and affiliated groups as possible, with those persons or affiliated groups with the highest revenues in Subtier 1, those with the lowest revenues in Subtier 4. Those persons or affiliated groups with the highest revenues among those remaining will be included in Subtier 2 and the rest in Subtier 3.

(2) PAYMENT.—Each person or affiliated group within each subtier shall pay, on an annual basis, the following:

(A) Subtier 1: $3,850,000.

(B) Subtier 2: $2,475,000.

(C) Subtier 3: $1,650,000.

(D) Subtier 4: $550,000.

(f) TIER V SUBTIERS.—

(1) IN GENERAL.—Each person or affiliated group in Tier V shall be included in 1 of the 3 subtiers of Tier V, based on the person's or affiliated group's revenues. Such subtiers shall each contain as close to an equal number of total persons and affiliated groups as possible, with those persons or affiliated groups with the highest revenues in Subtier 1, those with the lowest revenues in Subtier 3, and those remaining in Subtier 2.

(2) PAYMENT.—Each person or affiliated group within each subtier shall pay, on an annual basis, the following:

(A) Subtier 1: $1,000,000.

(B) Subtier 2: $500,000.

(C) Subtier 3: $200,000.

(g) TIER VI SUBTIERS.—

(1) IN GENERAL.—Each person or affiliated group in Tier VI shall be included in 1 of the 3 subtiers of Tier VI, based on the person's or affiliated group's revenues. Such subtiers shall each contain as close to an equal number of total persons and affiliated groups as possible, with those persons or affiliated groups with the highest revenues in Subtier 1, those with the lowest revenues in Subtier 3, and those remaining in Subtier 2.

(2) PAYMENT.—Each person or affiliated group within each subtier shall pay, on an annual basis, the following:

(A) Subtier 1: $500,000.

(B) Subtier 2: $250,000.

(C) Subtier 3: $100,000.

(h) TIER VII.—

(1) IN GENERAL.—Notwithstanding prior asbestos expenditures that might qualify a person or affiliated group to be included in Tiers II, III, IV, V, or VI, a person or affiliated group shall also be included in Tier VII, if the person or affiliated group—

(A) is or has at any time been subject to asbestos claims brought under the Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Employers' Liability Act, as a result of operations as a common carrier by railroad; and

(B) has paid (including any payments made by others on behalf of such person or affiliated group) not less than $5,000,000 in settlement, judgment, defense, or indemnity costs relating to such claims.

(2) ADDITIONAL AMOUNT.—The payment requirement for persons or affiliated groups included in Tier VII shall be in addition to any payment requirement applicable to such person or affiliated group under Tiers II through VI.

(3) SUBTIER 1.—Each person or affiliated group in Tier VII with revenues of $6,000,000,000 or more is included in Subtier 1 and shall make annual payments of $11,000,000 to the Fund.

(4) SUBTIER 2.—Each person or affiliated group in Tier VII with revenues of less than $6,000,000,000, but not less than $4,000,000,000 is included in Subtier 2 and shall make annual payments of $5,500,000 to the Fund.

(5) SUBTIER 3.—Each person or affiliated group in Tier VII with revenues of less than $4,000,000,000, but not less than $500,000,000 is included in Subtier 3 and shall make annual payments of $550,000 to the Fund.

(6) JOINT VENTURE REVENUES AND LIABILITY.—

(A) REVENUES.—For purposes of this subsection, the revenues of a joint venture shall be included on a pro rata basis reflecting relative joint ownership to calculate the revenues of the parents of that joint venture. The joint venture shall not be responsible for a contribution amount under this subsection.

(B) LIABILITY.—For purposes of this subsection, the liability under the Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Employers' Liability Act, shall be attributed to the parent owners of the joint venture on a pro rata basis, reflecting their relative share of ownership. The joint venture shall not be responsible for a payment amount under this provision.

SEC. 204. ASSESSMENT ADMINISTRATION.

(a) IN GENERAL.—Each defendant participant or affiliated group shall pay to the Fund in the amounts provided under this subtitle as appropriate for its tier and subtier each year until the earlier to occur of the following:

(1) The participant or affiliated group has satisfied its obligations under this subtitle during the 30 annual payment cycles of the operation of the Fund.

(2) The amount received by the Fund from defendant participants, excluding any amounts rebated to defendant participants under subsection (d), equals the maximum aggregate payment obligation of section 202(a)(2).

(b) SMALL BUSINESS EXEMPTION.—Notwithstanding any other provision of this subtitle, a person or affiliated group that is a small business concern (as defined under section 3 of the Small Business Act (15 U.S.C. 632)), on December 31, 2002, is exempt from any payment requirement under this subtitle and shall not be included in the subtier allocations under section 203.

(c) PROCEDURES.—The Administrator shall prescribe procedures on how amounts payable under this subtitle are to be paid, including, to the extent the Administrator determines appropriate, procedures relating to payment in installments.

(d) ADJUSTMENTS.—

(1) IN GENERAL.—Under expedited procedures established by the Administrator, a defendant participant may seek adjustment of the amount of its payment obligation based on severe financial hardship or demonstrated inequity. The Administrator may determine whether to grant an adjustment and the size of any such adjustment, in accordance with this subsection. A defendant participant has a right to obtain a rehearing of the Administrator's determination under this subsection under the procedures prescribed in subsection (i)(10). The Administrator may adjust a defendant participant's payment obligations under this subsection, either by forgiving the relevant portion of the otherwise applicable payment obligation or by providing relevant rebates from the defendant hardship and inequity adjustment account created under subsection (j) after payment of the otherwise applicable payment obligation, at the discretion of the Administrator.

(2) FINANCIAL HARDSHIP ADJUSTMENTS.—

(A) IN GENERAL.—A defendant participant may apply for an adjustment based on financial hardship at any time during the period in which a payment obligation to the Fund remains outstanding and may qualify for such adjustment by demonstrating that the amount of its payment obligation under the statutory allocation would constitute a severe financial hardship.

(B) TERM.—Subject to the annual availability of funds in the defendant hardship and inequity adjustment account established under subsection (j), a financial hardship adjustment under this subsection shall have a term of 3 years.

(C) RENEWAL.—After an initial hardship adjustment is granted under this paragraph, a defendant participant may renew its hardship adjustment by demonstrating that it remains justified.

(D) REINSTATEMENT.—Following the expiration of the hardship adjustment period provided for under this section and during the funding period prescribed under subsection (a), the Administrator shall annually determine whether there has been a material change in the financial condition of the defendant participant such that the Administrator may, consistent with the policies and legislative intent underlying this Act, reinstate under terms and conditions established by the Administrator any part or all of the defendant participant's payment obligation under the statutory allocation that was not paid during the hardship adjustment term.

(3) INEQUITY ADJUSTMENTS.—

(A) IN GENERAL.—A defendant participant—

(i) may qualify for an adjustment based on inequity by demonstrating that the amount of its payment obligation under the statutory allocation is exceptionally inequitable—

(I) when measured against the amount of the likely cost to the defendant participant net of insurance of its future liability in the tort system in the absence of the Fund;

(II) when compared to the median payment rate for all defendant participants in the same tier; or

(III) when measured against the percentage of the prior asbestos expenditures of the defendant that were incurred with respect to claims that neither resulted in an adverse judgment against the defendant, nor were the subject of a settlement that required a payment to a plaintiff by or on behalf of that defendant;

(ii) shall qualify for a two-tier main tier and a two-tier subtier adjustment reducing the defendant participant's payment obligation based on inequity by demonstrating that not less than 95 percent of such person's prior asbestos expenditures arose from claims related to the manufacture and sale of railroad locomotives and related products, so long as such person's manufacture and sale of railroad locomotives and related products is temporally and causally remote, and for purposes of this clause, a person's manufacture and sale of railroad locomotives and related products shall be deemed to be temporally and causally remote if the asbestos claims historically and generally filed against such person relate to the manufacture and sale of railroad locomotives and related products by an entity dissolved more than 25 years before the date of enactment of this Act; and

(iii) shall be granted a two-tier adjustment reducing the defendant participant's payment obligation based on inequity by demonstrating that not less than 95 percent of such participant's prior asbestos expenditures arose from asbestos claims based on successor liability arising from a merger to which the participant or its predecessor was a party that occurred at least 30 years before the date of enactment of this Act, and that such prior asbestos expenditures exceed the inflation-adjusted value of the assets of the company from which such liability was derived in such merger, and upon such demonstration the Administrator shall grant such adjustment for the life of the Fund and amounts paid by such defendant participant prior to such adjustment in excess of its adjusted payment obligation under this clause shall be credited against next succeeding required payment obligations.

(B) PAYMENT RATE.—For purposes of subparagraph (A), the payment rate of a defendant participant is the payment amount of the defendant participant as a percentage of such defendant participant's gross revenues for the year ending December 31, 2002.

(C) TERM.—Subject to the annual availability of funds in the defendant hardship and inequity adjustment account established under subsection (j), an inequity adjustment under this subsection shall have a term of 3 years.

(D) RENEWAL.—A defendant participant may renew an inequity adjustment every 3 years by demonstrating that the adjustment remains justified.

(E) REINSTATEMENT.—

(i) IN GENERAL.—Following the termination of an inequity adjustment under subparagraph (A), and during the funding period prescribed under subsection (a), the Administrator shall annually determine whether there has been a material change in conditions which would support a finding that the amount of the defendant participant's payment under the statutory allocation was not inequitable. Based on this determination, the Administrator may, consistent with the policies and legislative intent underlying this Act, reinstate any or all of the payment obligations of the defendant participant as if the inequity adjustment had not been granted for that 3-year period.

(ii) TERMS AND CONDITIONS.—In the event of a reinstatement under clause (i), the Administrator may require the defendant participant to pay any part or all of amounts not paid due to the inequity adjustment on such terms and conditions as established by the Administrator.

(4) LIMITATION ON ADJUSTMENTS.—The aggregate total of financial hardship adjustments under paragraph (2) and inequity adjustments under paragraph (3) in effect in any given year shall not exceed $300,000,000, except to the extent additional monies are available for such adjustments as a result of carryover of prior years' funds under subsection (j)(3) or as a result of monies being made available in that year under subsection (k)(1)(A).

(5) ADVISORY PANELS.—

(A) APPOINTMENT.—The Administrator shall appoint a Financial Hardship Adjustment Panel and an Inequity Adjustment Panel to advise the Administrator in carrying out this subsection.

(B) MEMBERSHIP.—The membership of the panels appointed under subparagraph (A) may overlap.

(C) COORDINATION.—The panels appointed under subparagraph (A) shall coordinate their deliberations and advice.

(e) LIMITATION ON LIABILITY.—The liability of each defendant participant to pay to the Fund shall be limited to the payment obligations under this Act, and, except as provided in subsection (f) and section 203(b)(2)(D), no defendant participant shall have any liability for the payment obligations of any other defendant participant.

(f) CONSOLIDATION OF PAYMENTS.—

(1) IN GENERAL.—For purposes of determining the payment levels of defendant participants, any affiliated group including 1 or more defendant participants may irrevocably elect, as part of the submissions to be made under paragraphs (1) and (3) of subsection (i), to report on a consolidated basis all of the information necessary to determine the payment level under this subtitle and pay to the Fund on a consolidated basis.

(2) ELECTION.—If an affiliated group elects consolidation as provided in this subsection—

(A) for purposes of this Act other than this subsection, the affiliated group shall be treated as if it were a single participant, including with respect to the assessment of a single annual payment under this subtitle for the entire affiliated group;

(B) the ultimate parent of the affiliated group shall prepare and submit each submission to be made under subsection (i) on behalf of the entire affiliated group and shall be solely liable, as between the Administrator and the affiliated group only, for the payment of the annual amount due from the affiliated group under this subtitle, except that, if the ultimate parent does not pay when due any payment obligation for the affiliated group, the Administrator shall have the right to seek payment of all or any portion of the entire amount due (as well as any other amount for which the affiliated group may be liable under sections 223 and 224) from any member of the affiliated group;

(C) all members of the affiliated group shall be identified in the submission under subsection (i) and shall certify compliance with this subsection and the Administrator's regulations implementing this subsection; and

(D) the obligations under this subtitle shall not change even if, after the date of enactment of this Act, the beneficial ownership interest between any members of the affiliated group shall change.

(3) CAUSE OF ACTION.—Notwithstanding section 221(e), this Act shall not preclude actions among persons within an affiliated group with respect to the payment obligations under this Act.

(g) DETERMINATION OF PRIOR ASBESTOS EXPENDITURES.—

(1) IN GENERAL.—For purposes of determining a defendant participant's prior asbestos expenditures, the Administrator shall prescribe such rules as may be necessary or appropriate to assure that payments by indemnitors before December 31, 2002, shall be counted as part of the indemnitor's prior asbestos expenditures, rather than the indemnitee's prior asbestos expenditures, in accordance with this subsection.

(2) INDEMNIFIABLE COSTS.—If an indemnitor has paid or reimbursed to an indemnitee any indemnifiable cost or otherwise made a payment on behalf of or for the benefit of an indemnitee to a third party for an indemnifiable cost before December 31, 2002, the amount of such indemnifiable cost shall be solely for the account of the indemnitor for purposes under this Act.

(3) INSURANCE PAYMENTS.—When computing the prior asbestos expenditures with respect to an asbestos claim, any amount paid or reimbursed by insurance shall be solely for the account of the indemnitor, even if the indemnitor would have no direct right to the benefit of the insurance, if—

(A) such insurance has been paid or reimbursed to the indemnitor or the indemnitee, or paid on behalf of or for the benefit of the indemnitee; and

(B) the indemnitor has either, with respect to such asbestos claim or any similar asbestos claim, paid or reimbursed to its indemnitee any indemnifiable cost or paid to any third party on behalf of or for the benefit of the indemnitee any indemnifiable cost.

(4) TREATMENT OF CERTAIN EXPENDITURES.—Notwithstanding any other provision of this Act, where—

(A) an indemnitor entered into a stock purchase agreement in 1988 that involved the sale of the stock of businesses that produced friction and other products; and

(B) the stock purchase agreement provided that the indemnitor indemnified the indemnitee and its affiliates for losses arising from various matters, including asbestos claims—

(i) asserted before the date of the agreement; and

(ii) filed after the date of the agreement and prior to the 10-year anniversary of the stock sale,

then the prior asbestos expenditures arising from the asbestos claims described in clauses (i) and (ii) shall not be for the account of either the indemnitor or indemnitee.

(h) MINIMUM ANNUAL PAYMENTS.—

(1) IN GENERAL.—The aggregate annual payments of defendant participants to the Fund shall be at least $3,000,000,000 for each calendar year in the first 30 years of the Fund, or until such shorter time as the condition set forth in subsection (a)(2) is attained.

(2) GUARANTEED PAYMENT ACCOUNT.—To the extent payments in accordance with sections 202 and 203 (as modified by subsections (b), (d), (f) and (g) of this section) fail in any year to raise at least $3,000,000,000 net of any adjustments under subsection (d), the balance needed to meet this required minimum aggregate annual payment shall be obtained from the defendant guaranteed payment account established under subsection (k).

(3) GUARANTEED PAYMENT SURCHARGE.—To the extent the procedure set forth in paragraph (2) is insufficient to satisfy the required minimum aggregate annual payment net of any adjustments under subsection (d), the Administrator may assess a guaranteed payment surcharge under subsection (l).

(i) PROCEDURES FOR MAKING PAYMENTS.—

(1) INITIAL YEAR: TIERS II–VI.—

(A) IN GENERAL.—Not later than 120 days after enactment of this Act, each defendant participant that is included in Tiers II, III, IV, V, or VI shall file with the Administrator—

(i) a statement of whether the defendant participant irrevocably elects to report on a consolidated basis under subsection (f);

(ii) a good-faith estimate of its prior asbestos expenditures;

(iii) a statement of its 2002 revenues, determined in accordance with section 203(a)(2); and

(iv) payment in the amount specified in section 203 for the lowest subtier of the tier within which the defendant participant falls, except that if the defendant participant, or the affiliated group including the defendant participant, had 2002 revenues exceeding $3,000,000,000, it or its affiliated group shall pay the amount specified for Subtier 3 of Tiers II, III, or IV or Subtier 2 of Tiers V or VI, depending on the applicable Tier.

(B) RELIEF.—

(i) IN GENERAL.—The Administrator shall establish procedures to grant a defendant participant relief from its initial payment obligation if the participant shows that—

(I) the participant is likely to qualify for a financial hardship adjustment; and

(II) failure to provide interim relief would cause severe irreparable harm.

(ii) JUDICIAL RELIEF.—The Administrator's refusal to grant relief under clause (i) is subject to immediate judicial review under section 303.

(2) INITIAL YEAR: TIER I.—Not later than 60 days after enactment of this Act, each debtor shall file with the Administrator—

(A) a statement identifying the bankruptcy case(s) associated with the debtor;

(B) a statement whether its prior asbestos expenditures exceed $1,000,000;

(C) a statement whether it has material continuing business operations and, if not, whether it holds cash or other assets that have been allocated or earmarked for asbestos settlements;

(D) in the case of debtors falling within Subtier 1 of Tier I, a statement of the debtor's 2002 revenues, determined in accordance with section 203(a)(2), and a payment under section 203(b)(2)(B);

(E) in the case of debtors falling within Subtier 2 of Tier I, an assignment of its assets under section 203(b)(3)(B); and

(F) in the case of debtors falling within Subtier 3 of Tier I, a payment under section 203(b)(4)(B), and a statement of how such payment was calculated.

(3) INITIAL YEAR: TIER VII.—Not later than 90 days after enactment of this Act, each defendant participant in Tier VII shall file with the Administrator—

(A) a good-faith estimate of all payments of the type described in section 203(h)(1) (as modified by section 203(h)(6));

(B) a statement of revenues calculated in accordance with sections 203(a)(2) and 203(h); and

(C) payment in the amount specified in section 203(h).

(4) NOTICE TO PARTICIPANTS.—Not later than 240 days after enactment of this Act, the Administrator shall—

(A) directly notify all reasonably identifiable defendant participants of the requirement to submit information necessary to calculate the amount of any required payment to the Fund; and

(B) publish in the Federal Register a notice—

(i) setting forth the criteria in this Act, and as prescribed by the Administrator in accordance with this Act, for paying under this subtitle as a defendant participant and requiring any person who may be a defendant participant to submit such information; and

(ii) that includes a list of all defendant participants notified by the Administrator under subparagraph (A), and provides for 30 days for the submission by the public of comments or information regarding the completeness and accuracy of the list of identified defendant participants.

(5) RESPONSE REQUIRED.—

(A) IN GENERAL.—Any person who receives notice under paragraph (4)(A), and any other person meeting the criteria specified in the notice published under paragraph (4)(B), shall provide the Administrator with an address to send any notice from the Administrator in accordance with this Act and all the information required by the Administrator in accordance with this subsection no later than the earlier of—

(i) 30 days after the receipt of direct notice; or

(ii) 30 days after the publication of notice in the Federal Register.

(B) CERTIFICATION.—The response submitted under subparagraph (A) shall be signed by a responsible corporate officer, general partner, proprietor, or individual of similar authority, who shall certify under penalty of law the completeness and accuracy of the information submitted.

(C) CONSENT TO AUDIT AUTHORITY.—The response submitted under subparagraph (A) shall include, on behalf of the defendant participant or affiliated group, a consent to the Administrator's audit authority under section 221(d).

(6) NOTICE OF INITIAL DETERMINATION.—

(A) IN GENERAL.—

(i) NOTICE TO INDIVIDUAL.—Not later than 60 days after receiving a response under paragraph (5), the Administrator shall send the person a notice of initial determination identifying the tier and subtier, if any, into which the person falls and the annual payment obligation, if any, to the Fund, which determination shall be based on the information received from the person under this subsection and any other pertinent information available to the Administrator and identified to the defendant participant.

(ii) PUBLIC NOTICE.—Not later than 7 days after sending the notification of initial determination to defendant participants, the Administrator shall publish in the Federal Register a notice listing the defendant participants that have been sent such notification, and the initial determination identifying the tier and subtier assignment and annual payment obligation of each identified participant.

(B) NO RESPONSE; INCOMPLETE RESPONSE.—If no response in accordance with paragraph (5) is received from a defendant participant, or if the response is incomplete, the initial determination shall be based on the best information available to the Administrator.

(C) PAYMENTS.—Within 30 days of receiving a notice of initial determination requiring payment, the defendant participant shall pay the Administrator the amount required by the notice, after deducting any previous payment made by the participant under this subsection. If the amount that the defendant participant is required to pay is less than any previous payment made by the participant under this subsection, the Administrator shall credit any excess payment against the future payment obligations of that defendant participant. The pendency of a petition for rehearing under paragraph (10) shall not stay the obligation of the participant to make the payment specified in the Administrator's notice.

(7) EXEMPTIONS FOR INFORMATION REQUIRED.—

(A) PRIOR ASBESTOS EXPENDITURES.—In lieu of submitting information related to prior asbestos expenditures as may be required for purposes of this subtitle, a non-debtor defendant participant may consent to be assigned to Tier II.

(B) REVENUES.—In lieu of submitting information related to revenues as may be required for purposes of this subtitle, a nondebtor defendant participant may consent to be assigned to Subtier 1 of the defendant participant's applicable tier.

(8) NEW INFORMATION.—

(A) EXISTING PARTICIPANT.—The Administrator shall adopt procedures for requiring additional payment, or refunding amounts already paid, based on new information received.

(B) ADDITIONAL PARTICIPANT.—If the Administrator, at any time, receives information that an additional person may qualify as a defendant participant, the Administrator shall require such person to submit information necessary to determine whether that person is required to make payments, and in what amount, under this subtitle and shall make any determination or take any other act consistent with this Act based on such information or any other information available to the Administrator with respect to such person.

(9) SUBPOENAS.—The Administrator may request the Attorney General to subpoena persons to compel testimony, records, and other information relevant to its responsibilities under this section. The Attorney General may enforce such subpoena in appropriate proceedings in the United States district court for the district in which the person to whom the subpoena was addressed resides, was served, or transacts business.

(10) REHEARING.—A defendant participant has a right to obtain rehearing of the Administrator's determination under this subsection of the applicable tier or subtier and of the Administrator's determination under subsection (d) of a financial hardship or inequity adjustment, if the request for rehearing is filed within 30 days after the defendant participant's receipt of notice from the Administrator of the determination. A defendant participant may not file an action under section 303 unless the defendant participant requests a rehearing under this paragraph. The Administrator shall publish a notice in the Federal Register of any change in a defendant participant's tier or subtier assignment or payment obligation as a result of a rehearing.

(j) DEFENDANT HARDSHIP AND INEQUITY ADJUSTMENT ACCOUNT.—

(1) IN GENERAL.—To the extent the total payments by defendant participants in any given year exceed the minimum aggregate annual payments under subsection (h), excess monies up to a maximum of $300,000,000 in any such year shall be placed in a defendant hardship and inequity adjustment account established within the Fund by the Administrator.

(2) USE OF ACCOUNT MONIES.—Monies from the defendant hardship and inequity adjustment account shall be preserved and administered like the remainder of the Fund, but shall be reserved and may be used only—

(A) to make up for any relief granted to a defendant participant for severe financial hardship or demonstrated inequity under subsection (d) or to reimburse any defendant participant granted such relief after its payment of the amount otherwise due; and

(B) if the condition set forth in subsection (a)(2) is met, for any purpose that the Fund may serve under this Act.

(3) CARRYOVER OF UNUSED FUNDS.—To the extent the Administrator does not, in any given year, use all of the funds allocated to the account under paragraph (1) for adjustments granted under subsection (d), remaining funds in the account shall be carried forward for use by the Administrator for adjustments in subsequent years.

(k) DEFENDANT GUARANTEED PAYMENT ACCOUNT.—

(1) IN GENERAL.—Subject to subsections (h) and (j), if there are excess monies paid by defendant participants in any given year, including any bankruptcy trust credits that may be due under section 222(e), such monies—

(A) at the discretion of the Administrator, may be used to provide additional adjustments under subsection (d), up to a maximum aggregate of $50,000,000 in such year; and

(B) to the extent not used under subparagraph (A), shall be placed in a defendant guaranteed payment account established within the Fund by the Administrator.

(2) USE OF ACCOUNT MONIES.—Monies from the defendant guaranteed payment account shall be preserved and administered like the remainder of the Fund, but shall be reserved and may be used only—

(A) to ensure the minimum aggregate annual payment set forth in subsection (h) net of any adjustments under subsection (d) is reached each year; and

(B) if the condition set forth in subsection (a)(2) is met, for any purpose that the Fund may serve under this Act.

(l) GUARANTEED PAYMENT SURCHARGE.—

(1) IN GENERAL.—To the extent there are insufficient monies in the defendant guaranteed payment account established in subsection (k) to attain the minimum aggregate annual payment net of any adjustments under subsection (d) in any given year, the Administrator may impose on each defendant participant a surcharge as necessary to raise the balance required to attain the minimum aggregate annual payment net of any adjustments under subsection (d), as provided in this subsection. Any such surcharge shall be imposed on a pro rata basis, in accordance with each defendant participant's relative annual liability under sections 202 and 203 (as modified by subsections (b), (d), (f), and (g) of this section).

(2) CERTIFICATION.—

(A) IN GENERAL.—Before imposing a guaranteed payment surcharge under this subsection, the Administrator shall certify that he or she has used all reasonable efforts to collect mandatory payments for all defendant participants, including by using the authority in subsection (i)(9) of this section and section 223.

(B) NOTICE AND COMMENT.—Before making a final certification under subparagraph (C), the Administrator shall publish a notice in the Federal Register of a proposed certification and provide in such notice for a public comment period of 30 days.

(C) FINAL CERTIFICATION.—

(i) IN GENERAL.—The Administrator shall publish a notice of the final certification in the Federal Register after consideration of all comments submitted under subparagraph (B).

(ii) WRITTEN NOTICE.—Not later than 30 days after publishing any final certification under clause (i), the Administrator shall provide each defendant participant with written notice of that defendant participant's payment, including the amount of any surcharge.

SEC. 205. STEPDOWNS AND FUNDING HOLIDAYS.

(a) STEPDOWNS.—

(1) IN GENERAL.—Subject to paragraph (2), the minimum aggregate annual funding obligation under section 204(h) shall be reduced by 10 percent of the initial minimum aggregate funding obligation at the end of the tenth, fifteenth, twentieth, and twenty-fifth years after the date of enactment of this Act. The reductions under this paragraph shall be applied on an equal pro rata basis to the funding obligations of all defendant participants, except with respect to defendant participants in Tier 1, Subtiers 2 and 3, and class action trusts.

(2) LIMITATION.—The Administrator shall suspend, cancel, reduce, or delay any reduction under paragraph (1) if at any time the Administrator finds, in accordance with subsection (c), that such action is necessary and appropriate to ensure that the assets of the Fund and expected future payments remain sufficient to satisfy the Fund's anticipated obligations.

(b) FUNDING HOLIDAYS.—

(1) IN GENERAL.—If the Administrator determines, at any time after 10 years following the date of enactment of this Act, that the assets of the Fund at the time of such determination and expected future payments, taking into consideration any reductions under subsection (a), are sufficient to satisfy the Fund's anticipated obligations without the need for all, or any portion of, that year's payment otherwise required under this subtitle, the Administrator shall reduce or waive all or any part of the payments required from defendant participants for that year.

(2) ANNUAL REVIEW.—The Administrator shall undertake the review required by this subsection and make the necessary determination under paragraph (1) every year.

(3) LIMITATIONS ON FUNDING HOLIDAYS.—Any reduction or waiver of the defendant participants' funding obligations shall—

(A) be made only to the extent the Administrator determines that the Fund will still be able to satisfy all of its anticipated obligations; and

(B) be applied on an equal pro rata basis to the funding obligations of all defendant participants, except with respect to defendant participants in Subtiers 2 and 3 of Tier I and class action trusts, for that year.

(4) NEW INFORMATION.—If at any time the Administrator determines that a reduction or waiver under this section may cause the assets of the Fund and expected future payments to decrease to a level at which the Fund may not be able to satisfy all of its anticipated obligations, the Administrator shall revoke all or any part of such reduction or waiver to the extent necessary to ensure that the Fund's obligations are met. Such revocations shall be applied on an equal pro rata basis to the funding obligations of all defendant participants, except defendant participants in Subtiers 2 and 3 of Tier I and class action trusts, for that year.

(c) CERTIFICATION.—

(1) IN GENERAL.—Before suspending, canceling, reducing, or delaying any reduction under subsection (a) or granting or revoking a reduction or waiver under subsection (b), the Administrator shall certify that the requirements of this section are satisfied.

(2) NOTICE AND COMMENT.—Before making a final certification under this subsection, the Administrator shall publish a notice in the Federal Register of a proposed certification and a statement of the basis therefor and provide in such notice for a public comment period of 30 days.

(3) FINAL CERTIFICATION.—

(A) IN GENERAL.—The Administrator shall publish a notice of the final certification in the Federal Register after consideration of all comments submitted under paragraph (2).

(B) WRITTEN NOTICE.—Not later than 30 days after publishing any final certification under subparagraph (A), the Administrator shall provide each defendant participant with written notice of that defendant's funding obligation for that year.

Subtitle B—Asbestos Insurers Commission

SEC. 210. DEFINITION.

In this subtitle, the term ''captive insurance company'' means a company—

(1) whose entire beneficial interest is owned on the date of enactment of this Act,

directly or indirectly, by a defendant participant or by the ultimate parent or the affiliated group of a defendant participant;

(2) whose primary commercial business during the period from calendar years 1940 through 1986 was to provide insurance to its ultimate parent or affiliated group, or any portion of the affiliated group or a combination thereof; and

(3) that was incorporated or operating no later than December 31, 2003.

SEC. 211. ESTABLISHMENT OF ASBESTOS INSURERS COMMISSION.

(a) ESTABLISHMENT.—There is established the Asbestos Insurers Commission (referred to in this subtitle as the ''Commission'') to carry out the duties described in section 212.

(b) MEMBERSHIP.—

(1) APPOINTMENT.—The Commission shall be composed of 5 members who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) QUALIFICATIONS.—

(A) EXPERTISE.—Members of the Commission shall have sufficient expertise to fulfill their responsibilities under this subtitle.

(B) CONFLICT OF INTEREST.—

(i) IN GENERAL.—No member of the Commission appointed under paragraph (1) may be an employee or immediate family member of an employee of an insurer participant. No member of the Commission shall be a shareholder of any insurer participant. No member of the Commission shall be a former officer or director, or a former employee or former shareholder of any insurer participant who was such an employee, shareholder, officer, or director at any time during the 2-year period ending on the date of the appointment, unless that is fully disclosed before consideration in the Senate of the nomination for appointment to the Commission.

(ii) DEFINITION.—In clause (i), the term ''shareholder'' shall not include a broadly based mutual fund that includes the stocks of insurer participants as a portion of its overall holdings.

(C) FEDERAL EMPLOYMENT.—A member of the Commission may not be an officer or employee of the Federal Government, except by reason of membership on the Commission.

(3) PERIOD OF APPOINTMENT.—Members shall be appointed for the life of the Commission.

(4) VACANCIES.—Any vacancy in the Commission shall be filled in the same manner as the original appointment.

(5) CHAIRMAN.—The President shall select a Chairman from among the members of the Commission.

(c) MEETINGS.—

(1) INITIAL MEETING.—Not later than 30 days after the date on which all members of the Commission have been appointed, the Commission shall hold its first meeting.

(2) SUBSEQUENT MEETINGS.—The Commission shall meet at the call of the Chairman, as necessary to accomplish the duties under section 212.

(3) QUORUM.—No business may be conducted or hearings held without the participation of a majority of the members of the Commission.

SEC. 212. DUTIES OF ASBESTOS INSURERS COMMISSION.

(a) DETERMINATION OF INSURER PAYMENT OBLIGATIONS.—

(1) IN GENERAL.—

(A) DEFINITIONS.—For the purposes of this Act, the terms ''insurer'' and ''insurer participant'' shall, unless stated otherwise, include direct insurers and reinsurers, as well as any run-off entity established, in whole or in part, to review and pay asbestos claims.

(B) PROCEDURES FOR DETERMINING INSURER PAYMENTS.—The Commission shall determine the amount that each insurer participant shall be required to pay into the Fund under the procedures described in this section. The Commission shall make this determination by first promulgating a rule establishing a methodology for allocation of payments among insurer participants and then applying such methodology to determine the individual payment for each insurer participant. The methodology may include 1 or more allocation formulas to be applied to all insurer participants or groups of similarly situated participants. The Commission's rule shall include a methodology for adjusting payments by insurer participants to make up, during any applicable payment year, any amount by which aggregate insurer payments fall below the level required in paragraph (3)(C). The Commission shall conduct a thorough study (within the time limitations under this subparagraph) of the accuracy of the reserve allocation of each insurer participant, and may request information from the Securities and Exchange Commission or any State regulatory agency. Under this procedure, not later than 120 days after the initial meeting of the Commission, the Commission shall commence a rulemaking proceeding under section 213(a) to propose and adopt a methodology for allocating payments among insurer participants. In proposing an allocation methodology, the Commission may consult with such actuaries and other experts as it deems appropriate. After hearings and public comment on the proposed allocation methodology, the Commission shall as promptly as possible promulgate a final rule establishing such methodology. After promulgation of the final rule, the Commission shall determine the individual payment of each insurer participant under the procedures set forth in subsection (b).

(C) SCOPE.—Every insurer, reinsurer, and runoff entity with asbestos-related obligations in the United States shall be subject to the Commission's and Administrator's authority under this Act, including allocation determinations, and shall be required to fulfill its payment obligation without regard as to whether it is licensed in the United States. Every insurer participant not licensed or domiciled in the United States shall, upon the first payment to the Fund, submit a written consent to the Commission's and Administrator's authority under this Act, and to the jurisdiction of the courts of the United States for purposes of enforcing this Act, in a form determined by the Administrator. Any insurer participant refusing to provide a written consent shall be subject to fines and penalties as provided in section 223.

(D) ISSUERS OF FINITE RISK POLICIES.—

(i) IN GENERAL.—The issuer of any policy of reinsurance purchased by an insurer participant or its affiliate after 1990 that provides for a loss transfer to insure for incurred asbestos losses and other losses (both known and unknown), including those policies commonly referred to as ''finite risk'', ''aggregate stop loss'', ''aggregate excess of loss'', or ''loss portfolio transfer'' policies, shall be obligated to make payments required under this Act directly to the Fund on behalf of the insurer participant who is the beneficiary of such policy, subject to the underlying retention and the limits of liability applicable to such policy.

(ii) PAYMENTS.—Payments to the Fund required under this Act shall be treated as loss payments for asbestos bodily injury (as if such payments were incurred as liabilities imposed in the tort system) and shall not be subject to exclusion under policies described under clause (i) as a liability with respect to tax or assessment. Within 90 days after the scheduled date to make an annual payment to the Fund, the insurer participant shall, at its discretion, direct the reinsurer issuing such policy to pay all or a portion of the annual payment directly to the Fund up to the full applicable limits of liability under the policy. The reinsurer issuing such policy shall be obligated to make such payments directly to the Fund and shall be subject to the enforcement provisions under section 223. The insurer participant shall remain obligated to make payment to the Fund of that portion of the annual payment not directed to the issuer of such reinsurance policy.

(2) AMOUNT OF PAYMENTS.—

(A) AGGREGATE PAYMENT OBLIGATION.—The total payment required of all insurer participants over the life of the Fund shall be equal to $46,025,000,000.

(B) ACCOUNTING STANDARDS.—In determining the payment obligations of participants that are not licensed or domiciled in the United States or that are runoff entities, the Commission shall use accounting standards required for United States licensed direct insurers.

(C) CAPTIVE INSURANCE COMPANIES.—No payment to the Fund shall be required from a captive insurance company, unless and only to the extent a captive insurance company, on the date of enactment of this Act, has liability, directly or indirectly, for any asbestos claim of a person or persons other than and unaffiliated with its ultimate parent or affiliated group or pool in which the ultimate parent participates or participated, or unaffiliated with a person that was its ultimate parent or a member of its affiliated group or pool at the time the relevant insurance or reinsurance was issued by the captive insurance company.

(D) SEVERAL LIABILITY.—Unless otherwise provided under this Act, each insurer participant's obligation to make payments to the Fund is several. Unless otherwise provided under this Act, there is no joint liability, and the future insolvency by any insurer participant shall not affect the payment required of any other insurer participant.

(3) PAYMENT OF CRITERIA.—

(A) INCLUSION IN INSURER PARTICIPANT CATEGORY.—

(i) IN GENERAL.—Insurers that have paid, or been assessed by a legal judgment or settlement, at least $1,000,000 in defense and indemnity costs before the date of enactment of this Act in response to claims for compensation for asbestos injuries arising from a policy of liability insurance or contract of liability reinsurance or retrocessional reinsurance shall be insurer participants in the Fund. Other insurers shall be exempt from mandatory payments.

(ii) INAPPLICABILITY OF SECTION 202.—Since insurers may be subject in certain jurisdictions to direct action suits, and it is not the intent of this Act to impose upon an insurer, due to its operation as an insurer, payment obligations to the Fund in situations where the insurer is the subject of a direct action, no insurer subject to mandatory payments under section 212 shall also be liable for payments to the Fund as a defendant participant under section 202.

(B) INSURER PARTICIPANT ALLOCATION METHODOLOGY.—

(i) IN GENERAL.—The Commission shall establish the payment obligations of individual insurer participants to reflect, on an equitable basis, the relative tort system liability of the participating insurers in the absence of this Act, considering and weighting, as appropriate (but exclusive of workers' compensation), such factors as—

(I) historic premium for lines of insurance associated with asbestos exposure over relevant periods of time;

(II) recent loss experience for asbestos liability;

(III) amounts reserved for asbestos liability;

(IV) the likely cost to each insurer participant of its future liabilities under applicable insurance policies; and

(V) any other factor the Commission may determine is relevant and appropriate.

(ii) DETERMINATION OF RESERVES.—The Commission may establish procedures and standards for determination of the asbestos reserves of insurer participants. The reserves of a United States licensed reinsurer that is wholly owned by, or under common control of, a United States licensed direct insurer shall be included as part of the direct insurer's reserves when the reinsurer's financial results are included as part of the direct insurer's United States operations, as reflected in footnote 33 of its filings with the National Association of Insurance Commissioners or in published financial statements prepared in accordance with generally accepted accounting principles.

(C) PAYMENT SCHEDULE.—The aggregate annual amount of payments by insurer participants over the life of the Fund shall be as follows:

(i) For years 1 and 2, $2,700,000,000 annually.

(ii) For years 3 through 5, $5,075,000,000 annually.

(iii) For years 6 through 27, $1,147,000,000 annually.

(iv) For year 28, $166,000,000.

(D) CERTAIN RUNOFF ENTITIES.—

(i) IN GENERAL.—Whenever the Commission requires payments by a runoff entity that has assumed asbestos-related liabilities from a Lloyd's syndicate or names that are members of such a syndicate, the Commission shall not require payments from such syndicates and names to the extent that the runoff entity makes its required payments. In addition, such syndicates and names shall be required to make payments to the Fund in the amount of any adjustment granted to the runoff entity for severe financial hardship or exceptional circumstances.

(ii) INCLUDED RUNOFF ENTITIES.—Subject to clause (i), a runoff entity shall include any direct insurer or reinsurer whose asbestos liability reserves have been transferred, directly or indirectly, to the runoff entity and on whose behalf the runoff entity handles or adjusts and, where appropriate, pays asbestos claims.

(E) FINANCIAL HARDSHIP AND EXCEPTIONAL CIRCUMSTANCE ADJUSTMENTS.—

(i) IN GENERAL.—Under the procedures established in subsection (b), an insurer participant may seek adjustment of the amount of its payments based on exceptional circumstances or severe financial hardship.

(ii) FINANCIAL ADJUSTMENTS.—An insurer participant may qualify for an adjustment based on severe financial hardship by demonstrating that payment of the amounts required by the Commission's methodology would jeopardize the solvency of such participant.

(iii) EXCEPTIONAL CIRCUMSTANCE ADJUSTMENT.—An insurer participant may qualify for an adjustment based on exceptional circumstances by demonstrating—

(I) that the amount of its payments under the Commission's allocation methodology is exceptionally inequitable when measured against the amount of the likely cost to the participant of its future liability in the tort system in the absence of the Fund;

(II) an offset credit as described in subparagraphs (A) and (C) of subsection (b)(4); or

(III) other exceptional circumstances.

The Commission may determine whether to grant an adjustment and the size of any such adjustment, but adjustments shall not reduce the aggregate payment obligations of insurer participants specified in paragraph (2)(A) and subparagraph (C) of this paragraph.

(iv) TIME PERIOD OF ADJUSTMENT.—Except for adjustments for offset credits, adjustments granted under this subsection shall have a term not to exceed 3 years. An insurer participant may renew its adjustment by demonstrating to the Administrator that it remains justified.

(b) PROCEDURE FOR NOTIFYING INSURER PARTICIPANTS OF INDIVIDUAL PAYMENT OBLIGATIONS.—

(1) NOTICE TO PARTICIPANTS.—Not later than 30 days after promulgation of the final rule establishing an allocation methodology under subsection (a)(1), the Commission shall—

(A) directly notify all reasonably identifiable insurer participants of the requirement to submit information necessary to calculate the amount of any required payment to the Fund under the allocation methodology; and

(B) publish in the Federal Register a notice—

(i) requiring any person who may be an insurer participant (as determined by criteria outlined in the notice) to submit such information; and

(ii) that includes a list of all insurer participants notified by the Commission under subparagraph (A), and provides for 30 days for the submission of comments or information regarding the completeness and accuracy of the list of identified insurer participants.

(2) RESPONSE REQUIRED BY INDIVIDUAL INSURER PARTICIPANTS.—

(A) IN GENERAL.—Any person who receives notice under paragraph (1)(A), and any other person meeting the criteria specified in the notice published under paragraph (1)(B), shall respond by providing the Commission with all the information requested in the notice under a schedule or by a date established by the Commission.

(B) CERTIFICATION.—The response submitted under subparagraph (A) shall be signed by a responsible corporate officer, general partner, proprietor, or individual of similar authority, who shall certify under penalty of law the completeness and accuracy of the information submitted.

(3) NOTICE TO INSURER PARTICIPANTS OF INITIAL PAYMENT DETERMINATION.—

(A) IN GENERAL.—

(i) NOTICE TO INSURERS.—Not later than 120 days after receipt of the information required by paragraph (2), the Commission shall send each insurer participant a notice of initial determination requiring payments to the Fund, which shall be based on the information received from the participant in response to the Commission's request for information. An insurer participant's payments shall be payable over the schedule established in subsection (a)(3)(C), in annual amounts proportionate to the aggregate annual amount of payments for all insurer participants for the applicable year.

(ii) PUBLIC NOTICE.—Not later than 7 days after sending the notification of initial determination to insurer participants, the Commission shall publish in the Federal Register a notice listing the insurer participants that have been sent such notification, and the initial determination on the payment obligation of each identified participant.

(B) NO RESPONSE; INCOMPLETE RESPONSE.—If no response is received from an insurer participant, or if the response is incomplete, the initial determination requiring a payment from the insurer participant shall be based on the best information available to the Commission.

(4) COMMISSION REVIEW, REVISION, AND FINALIZATION OF INITIAL PAYMENT DETERMINATIONS.—

(A) COMMENTS FROM INSURER PARTICIPANTS.—Not later than 30 days after receiving a notice of initial determination from the Commission, an insurer participant may provide the Commission with additional information to support adjustments to the required payments to reflect severe financial hardship or exceptional circumstances, including the provision of an offset credit for an insurer participant for the amount of any asbestos-related payments it made or was legally obligated to make, including payments released from an escrow, as the result of a bankruptcy judicially confirmed after May 22, 2003, but before the date of enactment of this Act.

(B) ADDITIONAL PARTICIPANTS.—If, before the final determination of the Commission, the Commission receives information that an additional person may qualify as an insurer participant, the Commission shall require such person to submit information necessary to determine whether payments from that person should be required, in accordance with the requirements of this subsection.

(C) REVISION PROCEDURES.—The Commission shall adopt procedures for revising initial payments based on information received under subparagraphs (A) and (B), including a provision requiring an offset credit for an insurer participant for the amount of any asbestos-related payments it made or was legally obligated to make, including payments released from an escrow, as the result of a bankruptcy confirmed after May 22, 2003, but before the date of enactment of this Act.

(5) EXAMINATIONS AND SUBPOENAS.—

(A) EXAMINATIONS.—The Commission may conduct examinations of the books and records of insurer participants to determine the completeness and accuracy of information submitted, or required to be submitted, to the Commission for purposes of determining participant payments.

(B) SUBPOENAS.—The Commission may request the Attorney General to subpoena persons to compel testimony, records, and other information relevant to its responsibilities under this section. The Attorney General may enforce such subpoena in appropriate proceedings in the United States district court for the district in which the person to whom the subpoena was addressed resides, was served, or transacts business.

(6) ESCROW PAYMENTS.—Without regard to an insurer participant's payment obligation under this section, any escrow or similar account established before the date of enactment of this Act by an insurer participant in connection with an asbestos trust fund that has not been judicially confirmed by final order by the date of enactment of this Act shall be the property of the insurer participant and returned to that insurer participant.

(7) NOTICE TO INSURER PARTICIPANTS OF FINAL PAYMENT DETERMINATIONS.—Not later than 60 days after the notice of initial determination is sent to the insurer participants, the Commission shall send each insurer participant a notice of final determination.

(c) INSURER PARTICIPANTS VOLUNTARY ALLOCATION AGREEMENT.—

(1) IN GENERAL.—Not later than 30 days after the Commission proposes its rule establishing an allocation methodology under subsection (a)(1), direct insurer participants licensed or domiciled in the United States, other direct insurer participants, reinsurer participants licensed or domiciled in the United States, or other reinsurer participants, may submit an allocation agreement, approved by all of the participants in the applicable group, to the Commission.

(2) ALLOCATION AGREEMENT.—To the extent the participants in any such applicable group voluntarily agree upon an allocation arrangement, any such allocation agreement shall only govern the allocation of payments

within that group and shall not determine the aggregate amount due from that group.

(3) CERTIFICATION.—The Commission shall determine whether an allocation agreement submitted under subparagraph (A) meets the requirements of this subtitle and, if so, shall certify the agreement as establishing the allocation methodology governing the individual payment obligations of the participants who are parties to the agreement. The authority of the Commission under this subtitle shall, with respect to participants who are parties to a certified allocation agreement, terminate on the day after the Commission certifies such agreement. Under subsection (f), the Administrator shall assume responsibility, if necessary, for calculating the individual payment obligations of participants who are parties to the certified agreement.

(d) COMMISSION REPORT.—

(1) RECIPIENTS.—Until the work of the Commission has been completed and the Commission terminated, the Commission shall submit an annual report, containing the information described under paragraph (2), to—

(A) the Committee on the Judiciary of the Senate;

(B) the Committee on the Judiciary of the House of Representatives; and

(C) the Administrator.

(2) CONTENTS.—The report under paragraph (1) shall state the amount that each insurer participant is required to pay to the Fund, including the payment schedule for such payments.

(e) INTERIM PAYMENTS.—

(1) AUTHORITY OF ADMINISTRATOR.—During the period between the date of enactment of this Act and the date when the Commission issues its final determinations of payments, the Administrator shall have the authority to require insurer participants to make interim payments to the Fund to assure adequate funding by insurer participants during such period.

(2) AMOUNT OF INTERIM PAYMENTS.—During any applicable year, the Administrator may require insurer participants to make aggregate interim payments not to exceed the annual aggregate amount specified in subsection (a)(3)(C).

(3) ALLOCATION OF PAYMENTS.—Interim payments shall be allocated among individual insurer participants on an equitable basis as determined by the Administrator. All payments required under this subparagraph shall be credited against the participant's ultimate payment obligation to the Fund established by the Commission. If an interim payment exceeds the ultimate payment, the Fund shall pay interest on the amount of the overpayment at a rate determined by the Administrator. If the ultimate payment exceeds the interim payment, the participant shall pay interest on the amount of the underpayment at the same rate. Any participant may seek an exemption from or reduction in any payment required under this subsection under the financial hardship and exceptional circumstance standards established in subsection (a)(3)(D).

(4) APPEAL OF INTERIM PAYMENT DECISIONS.—A decision by the Administrator to establish an interim payment obligation shall be considered final agency action and reviewable under section 303, except that the reviewing court may not stay an interim payment during the pendency of the appeal.

(f) TRANSFER OF AUTHORITY FROM THE COMMISSION TO THE ADMINISTRATOR.—

(1) IN GENERAL.—Upon termination of the Commission under section 215, the Administrator shall assume all the responsibilities and authority of the Commission, except that the Administrator shall not have the power to modify the allocation methodology established by the Commission or by certified agreement or to promulgate a rule establishing any such methodology.

(2) FINANCIAL HARDSHIP AND EXCEPTIONAL CIRCUMSTANCE ADJUSTMENTS.—Upon termination of the Commission under section 215, the Administrator shall have the authority, upon application by any insurer participant, to make adjustments to annual payments upon the same grounds as provided in subsection (a)(3)(D). Adjustments granted under this subsection shall have a term not to exceed 3 years. An insurer participant may renew its adjustment by demonstrating that it remains justified. Upon the grant of any adjustment, the Administrator shall increase the payments required of all other insurer participants so that there is no reduction in the aggregate payment required of all insurer participants for the applicable years. The increase in an insurer participant's required payment shall be in proportion to such participant's share of the aggregate payment obligation of all insurer participants.

(3) FINANCIAL SECURITY REQUIREMENTS.—Whenever an insurer participant's A.M. Best's claims payment rating or Standard and Poor's financial strength rating falls below A−, and until such time as either the insurer participant's A.M. Best's Rating or Standard and Poor's rating is equal to or greater than A−, the Administrator shall have the authority to require that the participating insurer either—

(A) pay the present value of its remaining Fund payments at a discount rate determined by the Administrator; or

(B) provide an evergreen letter of credit or financial guarantee for future payments issued by an institution with an A.M. Best's claims payment rating or Standard & Poor's financial strength rating of at least A+.

(g) JUDICIAL REVIEW.—The Commission's rule establishing an allocation methodology, its final determinations of payment obligations and other final action shall be judicially reviewable as provided in title III.

SEC. 213. POWERS OF ASBESTOS INSURERS COMMISSION.

(a) RULEMAKING.—The Commission shall promulgate such rules and regulations as necessary to implement its authority under this Act, including regulations governing an allocation methodology. Such rules and regulations shall be promulgated after providing interested parties with the opportunity for notice and comment.

(b) HEARINGS.—The Commission may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers advisable to carry out this Act. The Commission shall also hold a hearing on any proposed regulation establishing an allocation methodology, before the Commission's adoption of a final regulation.

(c) INFORMATION FROM FEDERAL AND STATE AGENCIES.—The Commission may secure directly from any Federal or State department or agency such information as the Commission considers necessary to carry out this Act. Upon request of the Chairman of the Commission, the head of such department or agency shall furnish such information to the Commission.

(d) POSTAL SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(e) GIFTS.—The Commission may not accept, use, or dispose of gifts or donations of services or property.

(f) EXPERT ADVICE.—In carrying out its responsibilities, the Commission may enter into such contracts and agreements as the Commission determines necessary to obtain expert advice and analysis.

SEC. 214. PERSONNEL MATTERS.

(a) COMPENSATION OF MEMBERS.—Each member of the Commission shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which such member is engaged in the performance of the duties of the Commission.

(b) TRAVEL EXPENSES.—The members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

(c) STAFF.—

(1) IN GENERAL.—The Chairman of the Commission may, without regard to the civil service laws and regulations, appoint and terminate an executive director and such other additional personnel as may be necessary to enable the Commission to perform its duties. The employment of an executive director shall be subject to confirmation by the Commission.

(2) COMPENSATION.—The Chairman of the Commission may fix the compensation of the executive director and other personnel without regard to chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay for the executive director and other personnel may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title.

(d) DETAIL OF GOVERNMENT EMPLOYEES.—Any Federal Government employee may be detailed to the Commission without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(e) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Chairman of the Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals which do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of such title.

SEC. 215. TERMINATION OF ASBESTOS INSURERS COMMISSION.

The Commission shall terminate 90 days after the last date on which the Commission makes a final determination of contribution under section 212(b) or 90 days after the last appeal of any final action by the Commission is exhausted, whichever occurs later.

SEC. 216. EXPENSES AND COSTS OF COMMISSION.

All expenses of the Commission shall be paid from the Fund.

Subtitle C—Asbestos Injury Claims Resolution Fund

SEC. 221. ESTABLISHMENT OF ASBESTOS INJURY CLAIMS RESOLUTION FUND.

(a) ESTABLISHMENT.—There is established in the Office of Asbestos Disease Compensation the Asbestos Injury Claims Resolution Fund, which shall be available to pay—

(1) claims for awards for an eligible disease or condition determined under title I;

(2) claims for reimbursement for medical monitoring determined under title I;

(3) principal and interest on borrowings under subsection (b);

(4) the remaining obligations to the asbestos trust of a debtor and the class action trust under section 405(f)(8); and

(5) administrative expenses to carry out the provisions of this Act.

(b) BORROWING AUTHORITY.—

(1) IN GENERAL.—The Administrator is authorized to borrow from time to time amounts as set forth in this subsection, for purposes of enhancing liquidity available to the Fund for carrying out the obligations of the Fund under this Act. The Administrator may authorize borrowing in such form, over such term, with such necessary disclosure to its lenders as will most efficiently enhance the Fund's liquidity.

(2) FEDERAL FINANCING BANK.—In addition to the general authority in paragraph (1), the Administrator may borrow from the Federal Financing Bank in accordance with section 6 of the Federal Financing Bank Act of 1973 (12 U.S.C. 2285), as needed for performance of the Administrator's duties under this Act for the first 5 years.

(3) BORROWING CAPACITY.—The maximum amount that may be borrowed under this subsection at any given time is the amount that, taking into account all payment obligations related to all previous amounts borrowed in accordance with this subsection and all committed obligations of the Fund at the time of borrowing, can be repaid in full (with interest) in a timely fashion from—

(A) the available assets of the Fund as of the time of borrowing; and

(B) all amounts expected to be paid by participants during the subsequent 10 years.

(4) REPAYMENT OBLIGATIONS.—Repayment of monies borrowed by the Administrator under this subsection is limited solely to amounts available in the Asbestos Injury Claims Resolution Fund established under this section.

(c) LOCKBOX FOR SEVERE ASBESTOS-RELATED INJURY CLAIMANTS.—

(1) IN GENERAL.—Within the Fund, the Administrator shall establish the following accounts:

(A) A Mesothelioma Account, which shall be used solely to make payments to claimants eligible for an award under the criteria of Level IX.

(B) A Lung Cancer Account, which shall be used solely to make payments to claimants eligible for an award under the criteria of Level VIII.

(C) A Severe Asbestosis Account, which shall be used solely to make payments to claimants eligible for an award under the criteria of Level V.

(D) A Moderate Asbestosis Account, which shall be used solely to make payments to claimants eligible for an award under the criteria of Level IV.

(2) ALLOCATION.—The Administrator shall allocate to each of the 4 accounts established under paragraph (1) a portion of payments made to the Fund adequate to compensate all anticipated claimants for each account. Within 60 days after the date of enactment of this Act, and periodically during the life of the Fund, the Administrator shall determine an appropriate amount to allocate to each account after consulting appropriate epidemiological and statistical studies.

(d) AUDIT AUTHORITY.—

(1) IN GENERAL.—For the purpose of ascertaining the correctness of any information provided or payments made to the Fund, or determining whether a person who has not made a payment to the Fund was required to do so, or determining the liability of any person for a payment to the Fund, or collecting any such liability, or inquiring into any offense connected with the administration or enforcement of this title, the Administrator is authorized—

(A) to examine any books, papers, records, or other data which may be relevant or material to such inquiry;

(B) to summon the person liable for a payment under this title, or officer or employee of such person, or any person having possession, custody, or care of books of account containing entries relating to the business of the person liable or any other person the Administrator may deem proper, to appear before the Administrator at a time and place named in the summons and to produce such books, papers, records, or other data, and to give such testimony, under oath, as may be relevant or material to such inquiry; and

(C) to take such testimony of the person concerned, under oath, as may be relevant or material to such inquiry.

(2) FALSE, FRAUDULENT, OR FICTITIOUS STATEMENTS OR PRACTICES.—If the Administrator determines that materially false, fraudulent, or fictitious statements or practices have been submitted or engaged in by persons submitting information to the Administrator or to the Asbestos Insurers Commission or any other person who provides evidence in support of such submissions for purposes of determining payment obligations under this Act, the Administrator may impose a civil penalty not to exceed $10,000 on any person found to have submitted or engaged in a materially false, fraudulent, or fictitious statement or practice under this Act. The Administrator shall promulgate appropriate regulations to implement this paragraph.

(e) IDENTITY OF CERTAIN DEFENDANT PARTICIPANTS; TRANSPARENCY.—

(1) SUBMISSION OF INFORMATION.—Not later than 60 days after the date of enactment of this Act, any person who, acting in good faith, has knowledge that such person or such person's affiliated group has prior asbestos expenditures of $1,000,000 or greater, shall submit to the Administrator—

(A) either the name of such person, or such person's ultimate parent; and

(B) the likely tier to which such person or affiliated group may be assigned under this Act.

(2) PUBLICATION.—Not later than 20 days after the end of the 60-day period referred to in paragraph (1), the Administrator or Interim Administrator, if the Administrator is not yet appointed, shall publish in the Federal Register a list of submissions required by this subsection, including the name of such persons or ultimate parents and the likely tier to which such persons or affiliated groups may be assigned. After publication of such list, any person who, acting in good faith, has knowledge that any other person has prior asbestos expenditures of $1,000,000 or greater may submit to the Administrator or Interim Administrator information on the identity of that person and the person's prior asbestos expenditures.

(f) NO PRIVATE RIGHT OF ACTION.—Except as provided in sections 203(b)(2)(D)(ii) and 204(f)(3), there shall be no private right of action under any Federal or State law against any participant based on a claim of compliance or noncompliance with this Act or the involvement of any participant in the enactment of this Act.

SEC. 222. MANAGEMENT OF THE FUND.

(a) IN GENERAL.—Amounts in the Fund shall be held for the exclusive purpose of providing benefits to asbestos claimants and their beneficiaries, including those provided in subsection (c), and to otherwise defray the reasonable expenses of administering the Fund.

(b) INVESTMENTS.—

(1) IN GENERAL.—Amounts in the Fund shall be administered and invested with the care, skill, prudence, and diligence, under the circumstances prevailing at the time of such investment, that a prudent person acting in a like capacity and manner would use.

(2) STRATEGY.—The Administrator shall invest amounts in the Fund in a manner that enables the Fund to make current and future distributions to or for the benefit of asbestos claimants. In pursuing an investment strategy under this subparagraph, the Administrator shall consider, to the extent relevant to an investment decision or action—

(A) the size of the Fund;

(B) the nature and estimated duration of the Fund;

(C) the liquidity and distribution requirements of the Fund;

(D) general economic conditions at the time of the investment;

(E) the possible effect of inflation or deflation on Fund assets;

(F) the role that each investment or course of action plays with respect to the overall assets of the Fund;

(G) the expected amount to be earned (including both income and appreciation of capital) through investment of amounts in the Fund; and

(H) the needs of asbestos claimants for current and future distributions authorized under this Act.

(c) MESOTHELIOMA RESEARCH AND TREATMENT CENTERS.—

(1) IN GENERAL.—The Administrator shall provide $1,000,000 from the Fund for each of fiscal years 2005 through 2009 for each of up to 10 mesothelioma disease research and treatment centers.

(2) REQUIREMENTS.—The Centers shall—

(A) be chosen by the Director of the National Institutes of Health;

(B) be chosen through competitive peer review;

(C) be geographically distributed throughout the United States with special consideration given to areas of high incidence of mesothelioma disease;

(D) be closely associated with Department of Veterans Affairs medical centers to provide research benefits and care to veterans who have suffered excessively from mesothelioma;

(E) be engaged in research to provide mechanisms for detection and prevention of mesothelioma, particularly in the areas of pain management and cures;

(F) be engaged in public education about mesothelioma and prevention, screening, and treatment;

(G) be participants in the National Mesothelioma Registry; and

(H) be coordinated in their research and treatment efforts with other Centers and institutions involved in exemplary mesothelioma research.

(d) BANKRUPTCY TRUST GUARANTEE.—

(1) IN GENERAL.—Notwithstanding any other provision of this Act, the Administrator shall have the authority to impose a pro rata surcharge on all participants under this subsection to ensure the liquidity of the Fund, if—

(A) the declared assets from 1 or more bankruptcy trusts established under a plan of reorganization confirmed and substantially consummated on or before July 31, 2004, are not available to the Fund because a final judgment that has been entered by a court and is no longer subject to any appeal or review has enjoined the transfer of assets required under section 524(j)(2) of title 11, United States Code (as amended by section 402(f) of this Act); and

(B) borrowing is insufficient to assure the Fund's ability to meet its obligations under this Act such that the required borrowed amount is likely to increase the risk of termination of this Act under section 405 based on reasonable claims projections.

(2) ALLOCATION.—Any surcharge imposed under this subsection shall be imposed over a period of 5 years on a pro rata basis upon all participants, in accordance with each participant's relative annual liability under this subtitle and subtitle B for those 5 years.

(3) CERTIFICATION.—

(A) IN GENERAL.—Before imposing a surcharge under this subsection, the Administrator shall publish a notice in the Federal Register and provide in such notice for a public comment period of 30 days.

(B) CONTENTS OF NOTICE.—The notice required under subparagraph (A) shall include—

(i) information explaining the circumstances that make a surcharge necessary and a certification that the requirements under paragraph (1) are met;

(ii) the amount of the declared assets from any trust established under a plan of reorganization confirmed and substantially consummated on or before July 31, 2004, that was not made, or is no longer, available to the Fund;

(iii) the total aggregate amount of the necessary surcharge; and

(iv) the surcharge amount for each tier and subtier of defendant participants and for each insurer participant.

(C) FINAL NOTICE.—The Administrator shall publish a final notice in the Federal Register and provide each participant with written notice of that participant's schedule of payments under this subsection. In no event shall any required surcharge under this subsection be due before 60 days after the Administrator publishes the final notice in the Federal Register and provides each participant with written notice of its schedule of payments.

(4) MAXIMUM AMOUNT.—In no event shall the total aggregate surcharge imposed by the Administrator exceed the lesser of—

(A) the total aggregate amount of the declared assets of the trusts established under a plan of reorganization confirmed and substantially consummated prior to July 31, 2004, that are no longer available to the Fund; or

(B) $4,000,000,000.

(5) DECLARED ASSETS.—

(A) IN GENERAL.—In this subsection, the term ''declared assets'' means—

(i) the amount of assets transferred by any trust established under a plan of reorganization confirmed and substantially consummated on or before July 31, 2004, to the Fund that is required to be returned to that trust under the final judgment described in paragraph (1)(A); or

(ii) if no assets were transferred by the trust to the Fund, the amount of assets the Administrator determines would have been available for transfer to the Fund from that trust under section 402(f).

(B) DETERMINATION.—In making a determination under subparagraph (A)(ii), the Administrator may rely on any information reasonably available, and may request, and use subpoena authority of the Administrator if necessary to obtain, relevant information from any such trust or its trustees.

(e) BANKRUPTCY TRUST CREDITS.—

(1) IN GENERAL.—Notwithstanding any other provision of this Act, but subject to paragraph (2) of this subsection, the Administrator shall provide a credit toward the aggregate payment obligations under sections 202(a)(2) and 212(a)(2)(A) for assets received by the Fund from any bankruptcy trust established under a plan of reorganization confirmed and substantially consummated after July 31, 2004.

(2) ALLOCATION OF CREDITS.—The Administrator shall allocate, for each such bankruptcy trust, the credits for such assets between the defendant and insurer aggregate payment obligations as follows:

(A) DEFENDANT PARTICIPANTS.—The aggregate amount that all persons other than insurers contributing to the bankruptcy trust would have been required to pay as Tier I defendants under section 203(b) if the plan of reorganization under which the bankruptcy trust was established had not been confirmed and substantially consummated and the proceeding under chapter 11 of title 11, United States Code, that resulted in the establishment of the bankruptcy trust had remained pending as of the date of enactment of this Act.

(B) INSURER PARTICIPANTS.—The aggregate amount of all credits to which insurers are entitled to under section 202(c)(4)(A) of the Act.

SEC. 223. ENFORCEMENT OF PAYMENT OBLIGATIONS.

(a) DEFAULT.—If any participant fails to make any payment in the amount of and according to the schedule under this Act or as prescribed by the Administrator, after demand and a 30-day opportunity to cure the default, there shall be a lien in favor of the United States for the amount of the delinquent payment (including interest) upon all property and rights to property, whether real or personal, belonging to such participant.

(b) BANKRUPTCY.—In the case of a bankruptcy or insolvency proceeding, the lien imposed under subsection (a) shall be treated in the same manner as a lien for taxes due and owing to the United States for purposes of the provisions of title 11, United States Code, or section 3713(a) of title 31, United States Code. The United States Bankruptcy Court shall have jurisdiction over any issue or controversy regarding lien priority and lien perfection arising in a bankruptcy case due to a lien imposed under subsection (a).

(c) CIVIL ACTION.—

(1) IN GENERAL.—In any case in which there has been a refusal or failure to pay any liability imposed under this Act, the Administrator may bring a civil action in the United States District Court for the District of Columbia, or any other appropriate lawsuit or proceeding outside of the United States—

(A) to enforce the liability and any lien of the United States imposed under this section;

(B) to subject any property of the participant, including any property in which the participant has any right, title, or interest to the payment of such liability; or

(C) for temporary, preliminary, or permanent relief.

(2) ADDITIONAL PENALTIES.—In any action under paragraph (1) in which the refusal or failure to pay was willful, the Administrator may seek recovery—

(A) of punitive damages;

(B) of the costs of any civil action under this subsection, including reasonable fees incurred for collection, expert witnesses, and attorney's fees; and

(C) in addition to any other penalty, of a fine equal to the total amount of the liability that has not been collected.

(d) ENFORCEMENT AUTHORITY AS TO INSURER PARTICIPANTS.—

(1) IN GENERAL.—In addition to or in lieu of the enforcement remedies described in subsection (c), the Administrator may seek to recover amounts in satisfaction of a payment not timely paid by an insurer participant under the procedures under this subsection.

(2) SUBROGATION.—To the extent required to establish personal jurisdiction over nonpaying insurer participants, the Administrator shall be deemed to be subrogated to the contractual rights of participants to seek recovery from nonpaying insuring participants that are domiciled outside the United States under the policies of liability insurance or contracts of liability reinsurance or retrocessional reinsurance applicable to asbestos claims, and the Administrator may bring an action or an arbitration against the nonpaying insurer participants under the provisions of such policies and contracts, provided that—

(A) any amounts collected under this subsection shall not increase the amount of deemed erosion allocated to any policy or contract under section 404, or otherwise reduce coverage available to a participant; and

(B) subrogation under this subsection shall have no effect on the validity of the insurance policies or reinsurance, and any contrary State law is expressly preempted.

(3) RECOVERABILITY OF CONTRIBUTION.—For purposes of this subsection—

(A) all contributions to the Fund required of a participant shall be deemed to be sums legally required to be paid for bodily injury resulting from exposure to asbestos;

(B) all contributions to the Fund required of any participant shall be deemed to be a single loss arising from a single occurrence under each contract to which the Administrator is subrogated; and

(C) with respect to reinsurance contracts, all contributions to the Fund required of a participant shall be deemed to be payments to a single claimant for a single loss.

(4) NO CREDIT OR OFFSET.—In any action brought under this subsection, the nonpaying insurer or reinsurer shall be entitled to no credit or offset for amounts collectible or potentially collectible from any participant nor shall such defaulting participant have any right to collect any sums payable under this section from any participant.

(5) COOPERATION.—Insureds and cedents shall cooperate with the Administrator's reasonable requests for assistance in any such proceeding. The positions taken or statements made by the Administrator in any such proceeding shall not be binding on or attributed to the insureds or cedents in any other proceeding. The outcome of such a proceeding shall not have a preclusive effect on the insureds or cedents in any other proceeding and shall not be admissible against any subrogee under this section. The Administrator shall have the authority to settle or compromise any claims against a nonpaying insurer participant under this subsection.

(e) BAR ON UNITED STATES BUSINESS.—If any direct insurer or reinsurer refuses to furnish any information requested by or to pay any contribution required by this Act, then, in addition to any other penalties imposed by this Act, the Administrator may issue an order barring such entity and its affiliates from insuring risks located within the United States or otherwise doing business within the United States. Insurer participants or their affiliates seeking to obtain a license from any State to write any type of insurance shall be barred from obtaining any such license until payment of all contributions required as of the date of license application.

(f) CREDIT FOR REINSURANCE.—If the Administrator determines that an insurer participant that is a reinsurer is in default in paying any required contribution or otherwise not in compliance with this Act, the Administrator may issue an order barring any direct insurer participant from receiving credit for reinsurance purchased from the defaulting reinsurer. Any State law governing credit for reinsurance to the contrary is preempted.

(g) DEFENSE LIMITATION.—In any proceeding under this section, the participant shall be barred from bringing any challenge to any determination of the Administrator or the Asbestos Insurers Commission regarding its liability under this Act, or to the constitutionality of this Act or any provision thereof, if such challenge could have been made during the review provided under section 204(i)(10), or in a judicial review proceeding under section 303.

(h) DEPOSIT OF FUNDS.—

(1) IN GENERAL.—Any funds collected under subsection (c)(2) (A) or (C) shall be—

(A) deposited in the Fund; and

(B) used only to pay—

(i) claims for awards for an eligible disease or condition determined under title I; or

(ii) claims for reimbursement for medical monitoring determined under title I.

(2) NO EFFECT ON OTHER LIABILITIES.—The imposition of a fine under subsection (c)(2)(C) shall have no effect on—

(A) the assessment of contributions under subtitles A and B; or

(B) any other provision of this Act.

(i) PROPERTY OF THE ESTATE.—Section 541(b) of title 11, United States Code, is amended—

(1) in paragraph (4)(B)(ii), by striking ''or'' at the end;

(2) in paragraph (5), by striking ''prohibition.'' and inserting ''prohibition; or''; and

(3) by inserting after paragraph (5) and before the last undesignated sentence the following:

''(6) the value of any pending claim against or the amount of an award granted from the Asbestos Injury Claims Resolution Fund established under the Fairness in Asbestos Injury Resolution Act of 2005.''.

SEC. 224. INTEREST ON UNDERPAYMENT OR NONPAYMENT.

If any amount of payment obligation under this title is not paid on or before the last date prescribed for payment, the liable party shall pay interest on such amount at the Federal short-term rate determined under section 6621(b) of the Internal Revenue Code of 1986, plus 5 percentage points, for the period from such last date to the date paid.

SEC. 225. EDUCATION, CONSULTATION, SCREENING, AND MONITORING.

(a) IN GENERAL.—The Administrator shall establish a program for the education, consultation, medical screening, and medical monitoring of persons with exposure to asbestos. The program shall be funded by the Fund.

(b) OUTREACH AND EDUCATION.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Administrator shall establish an outreach and education program, including a website designed to provide information about asbestos-related medical conditions to members of populations at risk of developing such conditions.

(2) INFORMATION.—The information provided under paragraph (1) shall include information about—

(A) the signs and symptoms of asbestos-related medical conditions;

(B) the value of appropriate medical screening programs; and

(C) actions that the individuals can take to reduce their future health risks related to asbestos exposure.

(3) CONTRACTS.—Preference in any contract under this subsection shall be given to providers that are existing nonprofit organizations with a history and experience of providing occupational health outreach and educational programs for individuals exposed to asbestos.

(c) MEDICAL SCREENING PROGRAM.—

(1) ESTABLISHMENT OF PROGRAM.—Not sooner than 18 months or later than 24 months after the Administrator certifies that the Fund is fully operational and processing claims at a reasonable rate, the Administrator shall adopt guidelines establishing a medical screening program for individuals at high risk of asbestos-related disease resulting from an asbestos-related disease. In promulgating such guidelines, the Administrator shall consider the views of the Advisory Committee on Asbestos Disease Compensation, the Medical Advisory Committee, and the public.

(2) ELIGIBILITY CRITERIA.—

(A) IN GENERAL.—The guidelines promulgated under this subsection shall establish criteria for participation in the medical screening program.

(B) CONSIDERATIONS.—In promulgating eligibility criteria the Administrator shall take into consideration all factors relevant to the individual's effective cumulative exposure to asbestos, including—

(i) any industry in which the individual worked;

(ii) the individual's occupation and work setting;

(iii) the historical period in which exposure took place;

(iv) the duration of the exposure;

(v) the intensity and duration of non-occupational exposures; and

(vi) any other factors that the Administrator determines relevant.

(3) PROTOCOLS.—The guidelines developed under this subsection shall establish protocols for medical screening, which shall include—

(A) administration of a health evaluation and work history questionnaire;

(B) an evaluation of smoking history;

(C) a physical examination by a qualified physician with a doctor-patient relationship with the individual;

(D) a chest x-ray read by a certified B-reader as defined under section 121(a)(4); and

(E) pulmonary function testing as defined under section 121(a)(13).

(4) FREQUENCY.—The Administrator shall establish the frequency with which medical screening shall be provided or be made available to eligible individuals, which shall be not less than every 5 years.

(5) PROVISION OF SERVICES.—The Administrator shall provide medical screening to eligible individuals directly or by contract with another agency of the Federal Government, with State or local governments, or with private providers of medical services. The Administrator shall establish strict qualifications for the providers of such services, and shall periodically audit the providers of services under this subsection, to ensure their integrity, high degree of competence, and compliance with all applicable technical and professional standards. No provider of medical screening services may have earned more than 15 percent of their income from the provision of services of any kind in connection with asbestos litigation in any of the 3 years preceding the date of enactment of this Act. All contracts with providers of medical screening services under this subsection shall contain provisions allowing the Administrator to terminate such contracts for cause if the Administrator determines that the service provider fails to meet the qualifications established under this subsection.

(6) LIMITATION OF COMPENSATION FOR SERVICES.—The compensation required to be paid to a provider of medical screening services for such services furnished to an eligible individual shall be limited to the amount that would be reimbursed at the time of the furnishing of such services under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) for similar services if—

(A) the individual were entitled to benefits under part A of such title and enrolled under part B of such title; and

(B) such services are covered under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.).

(7) FUNDING; PERIODIC REVIEW.—

(A) FUNDING.—The Administrator shall make such funds available from the Fund to implement this section, but not more than $30,000,000 each year in each of the 5 years following the effective date of the medical screening program. Notwithstanding the preceding sentence, the Administrator shall suspend the operation of the program or reduce its funding level if necessary to preserve the solvency of the Fund and to prevent the sunset of the overall program under section 405(f).

(B) REVIEW.—The Administrator's first annual report under section 405 following the close of the 4th year of operation of the medical screening program shall include an analysis of the usage of the program, its cost and effectiveness, its medical value, and the need to continue that program for an additional 5-year period. The Administrator shall also recommend to Congress any improvements that may be required to make the program more effective, efficient, and economical, and shall recommend a funding level for the program for the 5 years following the period of initial funding referred to under subparagraph (A).

(d) LIMITATION.—In no event shall the total amount allocated to the medical screening program established under this subsection over the lifetime of the Fund exceed $600,000,000.

(e) MEDICAL MONITORING PROGRAM AND PROTOCOLS.—

(1) IN GENERAL.—The Administrator shall establish procedures for a medical monitoring program for persons exposed to asbestos who have been approved for level I compensation under section 131.

(2) PROCEDURES.—The procedures for medical monitoring shall include—

(A) specific medical tests to be provided to eligible individuals and the periodicity of those tests, which shall initially be provided every 3 years and include—

(i) administration of a health evaluation and work history questionnaire;

(ii) physical examinations, including blood pressure measurement, chest examination, and examination for clubbing;

(iii) AP and lateral chest x-ray; and

(iv) spirometry performed according to ATS standards;

(B) qualifications of medical providers who are to provide the tests required under subparagraph (A); and

(C) administrative provisions for reimbursement from the Fund of the costs of monitoring eligible claimants, including the costs associated with the visits of the claimants to physicians in connection with medical monitoring, and with the costs of performing and analyzing the tests.

(3) PREFERENCES.—

(A) IN GENERAL.—In administering the monitoring program under this subsection, preference shall be given to medical and program providers with—

(i) a demonstrated capacity for identifying, contacting, and evaluating populations of workers or others previously exposed to asbestos; and

(ii) experience in establishing networks of medical providers to conduct medical screening and medical monitoring examinations.

(B) PROVISION OF LISTS.—Claimants that are eligible to participate in the medical monitoring program shall be provided with a list of approved providers in their geographic area at the time such claimants become eligible to receive medical monitoring.

(f) CONTRACTS.—The Administrator may enter into contracts with qualified program providers that would permit the program providers to undertake large-scale medical screening and medical monitoring programs by means of subcontracts with a network of medical providers, or other health providers.

(g) REVIEW.—Not later than 5 years after the date of enactment of this Act, and every 5 years thereafter, the Administrator shall review, and if necessary update, the protocols and procedures established under this section.

TITLE III—JUDICIAL REVIEW

SEC. 301. JUDICIAL REVIEW OF RULES AND REGULATIONS.

(a) EXCLUSIVE JURISDICTION.—The United States Court of Appeals for the District of Columbia Circuit shall have exclusive jurisdiction over any action to review rules or regulations promulgated by the Administrator or the Asbestos Insurers Commission under this Act.

(b) PERIOD FOR FILING PETITION.—A petition for review under this section shall be filed not later than 60 days after the date notice of such promulgation appears in the Federal Register.

(c) EXPEDITED PROCEDURES.—The United States Court of Appeals for the District of Columbia shall provide for expedited procedures for reviews under this section.

SEC. 302. JUDICIAL REVIEW OF AWARD DECISIONS.

(a) IN GENERAL.—Any claimant adversely affected or aggrieved by a final decision of the Administrator awarding or denying compensation under title I may petition for judicial review of such decision. Any petition for review under this section shall be filed within 90 days of the issuance of a final decision of the Administrator.

(b) EXCLUSIVE JURISDICTION.—A petition for review may only be filed in the United States Court of Appeals for the circuit in which the claimant resides at the time of the issuance of the final order.

(c) STANDARD OF REVIEW.—The court shall uphold the decision of the Administrator unless the court determines, upon review of the record as a whole, that the decision is not supported by substantial evidence, is contrary to law, or is not in accordance with procedure required by law.

(d) EXPEDITED PROCEDURES.—The United States Court of Appeals shall provide for expedited procedures for reviews under this section.

SEC. 303. JUDICIAL REVIEW OF PARTICIPANTS' ASSESSMENTS.

(a) EXCLUSIVE JURISDICTION.—The United States Court of Appeals for the District of Columbia Circuit shall have exclusive jurisdiction over any action to review a final determination by the Administrator or the Asbestos Insurers Commission regarding the liability of any person to make a payment to the Fund, including a notice of applicable subtier assignment under section 204(i), a notice of financial hardship or inequity determination under section 204(d), and a notice of insurer participant obligation under section 212(b).

(b) PERIOD FOR FILING ACTION.—A petition for review under subsection (a) shall be filed not later than 60 days after a final determination by the Administrator or the Commission giving rise to the action. Any defendant participant who receives a notice of its applicable subtier under section 204(i) or a notice of financial hardship or inequity determination under section 204(d) shall commence any action within 30 days after a decision on rehearing under section 204(i)(10), and any insurer participant who receives a notice of a payment obligation under section 212(b) shall commence any action within 30 days after receiving such notice. The court shall give such action expedited consideration.

SEC. 304. OTHER JUDICIAL CHALLENGES.

(a) EXCLUSIVE JURISDICTION.—The United States District Court for the District of Columbia shall have exclusive jurisdiction over any action for declaratory or injunctive relief challenging any provision of this Act. An action under this section shall be filed not later than 60 days after the date of enactment of this Act or 60 days after the final action by the Administrator or the Commission giving rise to the action, whichever is later.

(b) DIRECT APPEAL.—A final decision in the action shall be reviewable on appeal directly to the Supreme Court of the United States. Such appeal shall be taken by the filing of a notice of appeal within 30 days, and the filing of a jurisdictional statement within 60 days, of the entry of the final decision.

(c) EXPEDITED PROCEDURES.—It shall be the duty of the United States District Court for the District of Columbia and the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of the action and appeal.

SEC. 305. STAYS, EXCLUSIVITY, AND CONSTITUTIONAL REVIEW.

(a) NO STAYS.—No court may issue a stay of payment by any party into the Fund pending its final judgment.

(b) EXCLUSIVITY OF REVIEW.—An action of the Administrator or the Asbestos Insurers Commission for which review could have been obtained under section 301, 302, or 303 shall not be subject to judicial review in any other proceeding.

(c) CONSTITUTIONAL REVIEW.—

(1) IN GENERAL.—Notwithstanding any other provision of law, any interlocutory or final judgment, decree, or order of a Federal court holding this Act, or any provision or application thereof, unconstitutional shall be reviewable as a matter of right by direct appeal to the Supreme Court.

(2) PERIOD FOR FILING APPEAL.—Any such appeal shall be filed not more than 30 days after entry of such judgment, decree, or order.

(3) REPAYMENT TO ASBESTOS TRUST AND CLASS ACTION TRUST.—If the transfer of the assets of any asbestos trust of a debtor or any class action trust (or this Act as a whole) is held to be unconstitutional or otherwise unlawful, the Fund shall transfer the remaining balance of such assets (determined under section 405(f)(1)(A)(iii)) back to the appropriate asbestos trust or class action trust within 90 days after final judicial action on the legal challenge, including the exhaustion of all appeals.

TITLE IV—MISCELLANEOUS PROVISIONS

SEC. 401. FALSE INFORMATION.

(a) IN GENERAL.—Chapter 63 of title 18, United States Code, is amended by adding at the end the following:

''§ 1348. Fraud and false statements in connection with participation in Asbestos Injury Claims Resolution Fund

''(a) FRAUD RELATING TO ASBESTOS INJURY CLAIMS RESOLUTION FUND.—Whoever knowingly and willfully executes, or attempts to execute, a scheme or artifice to defraud the Office of Asbestos Disease Compensation or the Asbestos Insurers Commission under title II of the Fairness in Asbestos Injury Resolution Act of 2005 shall be fined under this title or imprisoned not more than 20 years, or both.

''(b) FALSE STATEMENT RELATING TO ASBESTOS INJURY CLAIMS RESOLUTION FUND.—Whoever, in any matter involving the Office of Asbestos Disease Compensation or the Asbestos Insurers Commission, knowingly and willfully—

''(1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;

''(2) makes any materially false, fictitious, or fraudulent statements or representations; or

''(3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry, in connection with the award of a claim or the determination of a participant's payment obligation under title I or II of the Fairness in Asbestos Injury Resolution Act of 2005 shall be fined under this title or imprisoned not more than 10 years, or both.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 63 of title 18, United States Code, is amended by adding at the end the following:

''1348. Fraud and false statements in connection with participation in Asbestos Injury Claims Resolution Fund.''.

SEC. 402. EFFECT ON BANKRUPTCY LAWS.

(a) NO AUTOMATIC STAY.—Section 362(b) of title 11, United States Code, is amended—

(1) in paragraph (17), by striking ''or'' at the end;

(2) in paragraph (18), by striking the period at the end and inserting ''; or''; and

(3) by inserting after paragraph (18) the following:

''(19) under subsection (a) of this section of the enforcement of any payment obligations under section 204 of the Fairness in Asbestos Injury Resolution Act of 2005, against a debtor, or the property of the estate of a debtor, that is a participant (as that term is defined in section 3 of that Act).''.

(b) ASSUMPTION OF EXECUTORY CONTRACT.—Section 365 of title 11, United States Code, is amended by adding at the end the following:

''(p) If a debtor is a participant (as that term is defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2005), the trustee shall be deemed to have assumed all executory contracts entered into by the participant under section 204 of that Act. The trustee may not reject any such executory contract.''.

(c) ALLOWED ADMINISTRATIVE EXPENSES.—Section 503 of title 11, United States Code, is amended by adding at the end the following:

''(c)(1) Claims or expenses of the United States, the Attorney General, or the Administrator (as that term is defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2005) based upon the asbestos payment obligations of a debtor that is a Participant (as that term is defined in section 3 of that Act), shall be paid as an allowed administrative expense. The debtor shall not be entitled to either notice or a hearing with respect to such claims.

''(2) For purposes of paragraph (1), the term 'asbestos payment obligation' means any payment obligation under title II of the Fairness in Asbestos Injury Resolution Act of 2005.''.

(d) NO DISCHARGE.—Section 523 of title 11, United States Code, is amended by adding at the end the following:

''(f) A discharge under section 727, 1141, 1228, or 1328 of this title does not discharge any debtor that is a participant (as that term is defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2005) of the debtor's payment obligations assessed against the participant under title II of that Act.''.

(e) PAYMENT.—Section 524 of title 11, United States Code, is amended by adding at the end the following:

''(i) PARTICIPANT DEBTORS.—

''(1) IN GENERAL.—Paragraphs (2) and (3) shall apply to a debtor who—

''(A) is a participant that has made prior asbestos expenditures (as such terms are defined in the Fairness in Asbestos Injury Resolution Act of 2005); and

''(B) is subject to a case under this title that is pending—

''(i) on the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2005; or

''(ii) at any time during the 1-year period preceding the date of enactment of that Act.

''(2) TIER I DEBTORS.—A debtor that has been assigned to Tier I under section 202 of

the Fairness in Asbestos Injury Resolution Act of 2005, shall make payments in accordance with sections 202 and 203 of that Act.

''(3) TREATMENT OF PAYMENT OBLIGATIONS.—All payment obligations of a debtor under sections 202 and 203 of the Fairness in Asbestos Injury Resolution Act of 2005 shall—

''(A) constitute costs and expenses of administration of a case under section 503 of this title;

''(B) notwithstanding any case pending under this title, be payable in accordance with section 202 of that Act;

''(C) not be stayed;

''(D) not be affected as to enforcement or collection by any stay or injunction of any court; and

''(E) not be impaired or discharged in any current or future case under this title.''.

(f) TREATMENT OF TRUSTS.—Section 524 of title 11, United States Code, as amended by this Act, is amended by adding at the end the following:

''(j) ASBESTOS TRUSTS.—

''(1) IN GENERAL.—A trust shall assign a portion of the corpus of the trust to the Asbestos Injury Claims Resolution Fund (referred to in this subsection as the 'Fund') as established under the Fairness in Asbestos Injury Resolution Act of 2005 if the trust qualifies as a 'trust' under section 201 of that Act.

''(2) TRANSFER OF TRUST ASSETS.—

''(A) IN GENERAL.—

''(i) Except as provided under subparagraphs (B), (C), and (E), the assets in any trust established to provide compensation for asbestos claims (as defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2005) shall be transferred to the Fund not later than 6 months after the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2005 or 30 days following funding of a trust established under a reorganization plan subject to section 202(c) of that Act. Except as provided under subparagraph (B), the Administrator of the Fund shall accept such assets and utilize them for any purposes of the Fund under section 221 of such Act, including the payment of claims for awards under such Act to beneficiaries of the trust from which the assets were transferred.

''(ii) Notwithstanding any other provision of Federal or State law, no liability of any kind may be imposed on a trustee of a trust for transferring assets to the Fund in accordance with clause (i).

''(B) AUTHORITY TO REFUSE ASSETS.—The Administrator of the Fund may refuse to accept any asset that the Administrator determines may create liability for the Fund in excess of the value of the asset.

''(C) ALLOCATION OF TRUST ASSETS.—If a trust under subparagraph (A) has beneficiaries with claims that are not asbestos claims, the assets transferred to the Fund under subparagraph (A) shall not include assets allocable to such beneficiaries. The trustees of any such trust shall determine the amount of such trust assets to be reserved for the continuing operation of the trust in processing and paying claims that are not asbestos claims. The trustees shall demonstrate to the satisfaction of the Administrator, or by clear and convincing evidence in a proceeding brought before the United States District Court for the District of Columbia in accordance with paragraph (4), that the amount reserved is properly allocable to claims other than asbestos claims.

''(D) SALE OF FUND ASSETS.—The investment requirements under section 222 of the Fairness in Asbestos Injury Resolution Act of 2005 shall not be construed to require the Administrator of the Fund to sell assets transferred to the Fund under subparagraph (A).

''(E) LIQUIDATED CLAIMS.—Except as specifically provided in this subparagraph, all asbestos claims against a trust are superseded and preempted as of the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2005, and a trust shall not make any payment relating to asbestos claims after that date. If, in the ordinary course and the normal and usual administration of the trust consistent with past practices, a trust had before the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2005, made all determinations necessary to entitle an individual claimant to a noncontingent cash payment from the trust, the trust shall (i) make any lump-sum cash payment due to that claimant, and (ii) make or provide for all remaining noncontingent payments on any award being paid or scheduled to be paid on an installment basis, in each case only to the same extent that the trust would have made such cash payments in the ordinary course and consistent with past practices before enactment of that Act. A trust shall not make any payment in respect of any alleged contingent right to recover any greater amount than the trust had already paid, or had completed all determinations necessary to pay, to a claimant in cash in accordance with its ordinary distribution procedures in effect as of June 1, 2003.

''(3) INJUNCTION.—

''(A) IN GENERAL.—Any injunction issued as part of the formation of a trust described in paragraph (1) shall remain in full force and effect. No court, Federal or State, may enjoin the transfer of assets by a trust to the Fund in accordance with this subsection pending resolution of any litigation challenging such transfer or the validity of this subsection or of any provision of the Fairness in Asbestos Injury Resolution Act of 2005, and an interlocutory order denying such relief shall not be subject to immediate appeal under section 1291(a) of title 28.

''(B) AVAILABILITY OF FUND ASSETS.—Notwithstanding any other provision of law, once such a transfer has been made, the assets of the Fund shall be available to satisfy any final judgment entered in such an action and such transfer shall no longer be subject to any appeal or review—

''(i) declaring that the transfer effected a taking of a right or property for which an individual is constitutionally entitled to just compensation; or

''(ii) requiring the transfer back to a trust of any or all assets transferred by that trust to the Fund.

''(4) JURISDICTION.—Solely for purposes of implementing this subsection, personal jurisdiction over every covered trust, the trustees thereof, and any other necessary party, and exclusive subject matter jurisdiction over every question arising out of or related to this subsection, shall be vested in the United States District Court for the District of Columbia. Notwithstanding any other provision of law, including section 1127 of this title, that court may make any order necessary and appropriate to facilitate prompt compliance with this subsection, including assuming jurisdiction over and modifying, to the extent necessary, any applicable confirmation order or other order with continuing and prospective application to a covered trust. The court may also resolve any related challenge to the constitutionality of this subsection or of its application to any trust, trustee, or individual claimant. The Administrator of the Fund may bring an action seeking such an order or modification, under the standards of rule 60(b) of the Federal Rules of Civil Procedure or otherwise, and shall be entitled to intervene as of right in any action brought by any other party seeking interpretation, application, or invalidation of this subsection. Any order denying relief that would facilitate prompt compliance with the transfer provisions of this subsection shall be subject to immediate appeal under section 304 of the Fairness in Asbestos Injury Resolution Act of 2005. Notwithstanding any other provision of this paragraph, for purposes of implementing the sunset provisions of section 402(f) of such Act which apply to asbestos trusts and the class action trust, the bankruptcy court or United States district court having jurisdiction over any such trust as of the date of enactment of such Act shall retain such jurisdiction.''.

(g) NO AVOIDANCE OF TRANSFER.—Section 546 of title 11, United States Code, is amended by adding at the end the following:

''(h) Notwithstanding the rights and powers of a trustee under sections 544, 545, 547, 548, 549, and 550 of this title, if a debtor is a participant (as that term is defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2005), the trustee may not avoid a transfer made by the debtor under its payment obligations under section 202 or 203 of that Act.''.

(h) CONFIRMATION OF PLAN.—Section 1129(a) of title 11, United States Code, is amended by adding at the end the following:

''(14) If the debtor is a participant (as that term is defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2005), the plan provides for the continuation after its effective date of payment of all payment obligations under title II of that Act.''.

(i) EFFECT ON INSURANCE RECEIVERSHIP PROCEEDINGS.—

(1) LIEN.—In an insurance receivership proceeding involving a direct insurer, reinsurer or runoff participant, there shall be a lien in favor of the Fund for the amount of any assessment and any such lien shall be given priority over all other claims against the participant in receivership, except for the expenses of administration of the receivership and the perfected claims of the secured creditors. Any State law that provides for priorities inconsistent with this provision is preempted by this Act.

(2) PAYMENT OF ASSESSMENT.—Payment of any assessment required by this Act shall not be subject to any automatic or judicially entered stay in any insurance receivership proceeding. This Act shall preempt any State law requiring that payments by a direct insurer, reinsurer or runoff participant in an insurance receivership proceeding be approved by a court, receiver or other person. Payments of assessments by any direct insurer or reinsurer participant under this Act shall not be subject to the avoidance powers of a receiver or a court in or relating to an insurance receivership proceeding.

(j) STANDING IN BANKRUPTCY PROCEEDINGS.—The Administrator shall have standing in any bankruptcy case involving a debtor participant. No bankruptcy court may require the Administrator to return property seized to satisfy obligations to the Fund.

SEC. 403. EFFECT ON OTHER LAWS AND EXISTING CLAIMS.

(a) EFFECT ON FEDERAL AND STATE LAW.—The provisions of this Act shall supersede any Federal or State law insofar as such law may relate to any asbestos claim, including any claim described under subsection (e)(2).

(b) EFFECT ON SILICA CLAIMS.—

(1) IN GENERAL.—

(A) RULE OF CONSTRUCTION.—Nothing in this Act shall be construed to preempt, bar, or otherwise preclude any personal injury claim attributable to exposure to silica as to which the plaintiff—

(i) pleads with particularity and establishes by a preponderance of evidence either that—

(I) no claim has been asserted or filed by or with respect to the exposed person in any forum for any asbestos-related condition and the exposed person (or another claiming on behalf of or through the exposed person) is not eligible for any monetary award under this Act; or

(II)(aa) the exposed person suffers or has suffered a functional impairment that was caused by exposure to silica; and

(bb) asbestos exposure was not a substantial contributing factor to such functional impairment; and

(ii) satisfies the requirements of paragraph (2) .

(B) PREEMPTION.—Claims attributable to exposure to silica that fail to meet the requirements of subparagraph (A) shall be preempted by this Act.

(2) REQUIRED EVIDENCE.—

(A) IN GENERAL.—In any claim to which paragraph (1) applies, the initial pleading (or, for claims pending on the date of enactment of this Act, an amended pleading to be filed within 60 days after such date, but not later than 60 days before trial, shall plead with particularity the elements of subparagraph (A)(i)(I) or (II) and shall be accompanied by the information described under subparagraph (B)(i) through (iv).

(B) PLEADINGS.—If the claim pleads the elements of paragraph (1)(A)(i)(II) and by the information described under clauses (i) through (iv) of this subparagraph if the claim pleads the elements of paragraph (1)(A)(i)(I)—

(i) admissible evidence, including at a minimum, a B-reader's report, the underlying x-ray film and such other evidence showing that the claim may be maintained and is not preempted under paragraph (1);

(ii) notice of any previous lawsuit or claim for benefits in which the exposed person, or another claiming on behalf of or through the injured person, asserted an injury or disability based wholly or in part on exposure to asbestos;

(iii) if known by the plaintiff after reasonable inquiry by the plaintiff or his representative, the history of the exposed person's exposure, if any, to asbestos; and

(iv) copies of all medical and laboratory reports pertaining to the exposed person that refer to asbestos or asbestos exposure.

(c) SUPERSEDING PROVISIONS.—

(1) IN GENERAL.—Except as provided under paragraph (3), any agreement, understanding, or undertaking by any person or affiliated group with respect to the treatment of any asbestos claim that requires future performance by any party, insurer of such party, settlement administrator, or escrow agent shall be superseded in its entirety by this Act.

(2) NO FORCE OR EFFECT.—Except as provided under paragraph (3), any such agreement, understanding, or undertaking by any such person or affiliated group shall be of no force or effect, and no person shall have any rights or claims with respect to any such agreement, understanding, or undertaking.

(3) EXCEPTION.—

(A) IN GENERAL.—Except as provided in section 202(f), nothing in this Act shall abrogate a binding and legally enforceable written settlement agreement between any defendant participant or its insurer and a specific named plaintiff with respect to the settlement of an asbestos claim of the plaintiff if—

(i) before the date of enactment of this Act, the settlement agreement was executed directly by the settling defendant or the settling insurer and the individual plaintiff, or on behalf of the plaintiff where the plaintiff is incapacitated and the settlement agreement is signed by an authorized legal representative;

(ii) the settlement agreement contains an express obligation by the settling defendant or settling insurer to make a future direct monetary payment or payments in a fixed amount or amounts to the individual plaintiff; and

(iii) within 30 days after the date of enactment of this Act, or such shorter time period specified in the settlement agreement, all conditions to payment under the settlement agreement have been fulfilled, so that the only remaining performance due under the settlement agreement is the payment or payments by the settling defendant or the settling insurer.

(B) BANKRUPTCY-RELATED AGREEMENTS.—The exception set forth in this paragraph shall not apply to any bankruptcy-related agreement.

(C) COLLATERAL SOURCE.—Any settlement payment under this section is a collateral source if the plaintiff seeks recovery from the Fund.

(D) ABROGATION.—Nothing in subparagraph (A) shall abrogate a settlement agreement otherwise satisfying the requirements of that subparagraph if such settlement agreement expressly anticipates the enactment of this Act and provides for the effects of this Act.

(E) HEALTH CARE INSURANCE OR EXPENSES SETTLEMENTS.—Nothing in this Act shall abrogate or terminate an otherwise fully enforceable settlement agreement which was executed before the date of enactment of this Act directly by the settling defendant or the settling insurer and a specific named plaintiff to pay the health care insurance or health care expenses of the plaintiff.

(d) EXCLUSIVE REMEDY.—

(1) IN GENERAL.—Except as provided under paragraph (2), the remedies provided under this Act shall be the exclusive remedy for any asbestos claim, including any claim described in subsection (e)(2), under any Federal or State law.

(2) CIVIL ACTIONS AT TRIAL.—

(A) IN GENERAL.—This Act shall not apply to any asbestos claim that—

(i) is a civil action filed in a Federal or State court (not including a filing in a bankruptcy court);

(ii) is not part of a consolidation of actions or a class action; and

(iii) on the date of enactment of this Act—

(I) in the case of a civil action which includes a jury trial, is before the jury after its impanelling and commencement of presentation of evidence, but before its deliberations;

(II) in the case of a civil action which includes a trial in which a judge is the trier of fact, is at the presentation of evidence at trial; or

(III) a verdict, final order, or final judgment has been entered by a trial court.

(B) NONAPPLICABILITY.—This Act shall not apply to a civil action described under subparagraph (A) throughout the final disposition of the action.

(e) BAR ON ASBESTOS CLAIMS.—

(1) IN GENERAL.—No asbestos claim (including any claim described in paragraph (2)) may be pursued, and no pending asbestos claim may be maintained, in any Federal or State court, except as provided under subsection (d)(2).

(2) CERTAIN SPECIFIED CLAIMS.—

(A) IN GENERAL.—Subject to section 404 (d) and (e)(3) of this Act, no claim may be brought or pursued in any Federal or State court or insurance receivership proceeding—

(i) relating to any default, confessed or stipulated judgment on an asbestos claim if the judgment debtor expressly agreed, in writing or otherwise, not to contest the entry of judgment against it and the plaintiff expressly agreed, in writing or otherwise, to seek satisfaction of the judgment only against insurers or in bankruptcy;

(ii) relating to the defense, investigation, handling, litigation, settlement, or payment of any asbestos claim by any participant, including claims for bad faith or unfair or deceptive claims handling or breach of any duties of good faith; or

(iii) arising out of or relating to the asbestos-related injury of any individual and—

(I) asserting any conspiracy, concert of action, aiding or abetting, act, conduct, statement, misstatement, undertaking, publication, omission, or failure to detect, speak, disclose, publish, or warn relating to the presence or health effects of asbestos or the use, sale, distribution, manufacture, production, development, inspection, advertising, marketing, or installation of asbestos; or

(II) asserting any conspiracy, act, conduct, statement, omission, or failure to detect, disclose, or warn relating to the presence or health effects of asbestos or the use, sale, distribution, manufacture, production, development, inspection, advertising, marketing, or installation of asbestos, asserted as or in a direct action against an insurer or reinsurer based upon any theory, statutory, contract, tort, or otherwise; or

(iv) by any third party, and premised on any theory, allegation, or cause of action, for reimbursement of healthcare costs allegedly associated with the use of or exposure to asbestos, whether such claim is asserted directly, indirectly or derivatively.

(B) EXCEPTIONS.—Subparagraph (A) (ii) and (iii) shall not apply to claims against participants by persons—

(i) with whom the participant is in privity of contract;

(ii) who have received an assignment of insurance rights not otherwise voided by this Act; or

(iii) who are beneficiaries covered by the express terms of a contract with that participant.

(3) PREEMPTION.—Any action asserting an asbestos claim (including a claim described in paragraph (2)) in any Federal or State court is preempted by this Act, except as provided under subsection (d)(2).

(4) DISMISSAL.—Except as provided under subsection (d)(2), no judgment other than a judgment of dismissal may be entered in any such action, including an action pending on appeal, or on petition or motion for discretionary review, on or after the date of enactment of this Act. A court may dismiss any such action on its motion. If the court denies the motion to dismiss, it shall stay further proceedings until final disposition of any appeal taken under this Act.

(5) REMOVAL.—

(A) IN GENERAL.—If an action in any State court under paragraph (3) is preempted, barred, or otherwise precluded under this Act, and not dismissed, or if an order entered after the date of enactment of this Act purporting to enter judgment or deny review is not rescinded and replaced with an order of dismissal within 30 days after the filing of a motion by any party to the action advising the court of the provisions of this Act, any party may remove the case to the district court of the United States for the district in which such action is pending.

(B) TIME LIMITS.—For actions originally filed after the date of enactment of this Act, the notice of removal shall be filed within the time limits specified in section 1441(b) of title 28, United States Code.

(C) PROCEDURES.—The procedures for removal and proceedings after removal shall be in accordance with sections 1446 through 1450 of title 28, United States Code, except as may be necessary to accommodate removal of any

actions pending (including on appeal) on the date of enactment of this Act.

(D) REVIEW OF REMAND ORDERS.—

(i) IN GENERAL.—Section 1447 of title 28, United States Code, shall apply to any removal of a case under this section, except that notwithstanding subsection (d) of that section, a court of appeals may accept an appeal from an order of a district court granting or denying a motion to remand an action to the State court from which it was removed if application is made to the court of appeals not less than 7 days after entry of the order.

(ii) TIME PERIOD FOR JUDGMENT.—If the court of appeals accepts an appeal under clause (i), the court shall complete all action on such appeal, including rendering judgment, not later than 60 days after the date on which such appeal was filed, unless an extension is granted under clause (iii).

(iii) EXTENSION OF TIME PERIOD.—The court of appeals may grant an extension of the 60-day period described in clause (ii) if—

(I) all parties to the proceeding agree to such extension, for any period of time; or

(II) such extension is for good cause shown and in the interests of justice, for a period not to exceed 10 days.

(iv) DENIAL OF APPEAL.—If a final judgment on the appeal under clause (i) is not issued before the end of the period described in clause (ii), including any extension under clause (iii), the appeal shall be denied.

(E) JURISDICTION.—The jurisdiction of the district court shall be limited to—

(i) determining whether removal was proper; and

(ii) determining, based on the evidentiary record, whether the claim presented is preempted, barred, or otherwise precluded under this Act.

(6) CREDITS.—

(A) IN GENERAL.—If, notwithstanding the express intent of Congress stated in this section, any court finally determines for any reason that an asbestos claim is not barred under this subsection and is not subject to the exclusive remedy or preemption provisions of this section, then any participant required to satisfy a final judgment executed with respect to any such claim may elect to receive a credit against any assessment owed to the Fund equal to the amount of the payment made with respect to such executed judgment.

(B) REQUIREMENTS.—The Administrator shall require participants seeking credit under this paragraph to demonstrate that the participant—

(i) timely pursued all available remedies, including remedies available under this paragraph to obtain dismissal of the claim; and

(ii) notified the Administrator at least 20 days before the expiration of any period within which to appeal the denial of a motion to dismiss based on this section.

(C) INFORMATION.—The Administrator may require a participant seeking credit under this paragraph to furnish such further information as is necessary and appropriate to establish eligibility for, and the amount of, the credit.

(D) INTERVENTION.—The Administrator may intervene in any action in which a credit may be due under this paragraph.

SEC. 404. EFFECT ON INSURANCE AND REINSURANCE CONTRACTS.

(a) EROSION OF INSURANCE COVERAGE LIMITS.—

(1) DEFINITIONS.—In this section, the following definitions shall apply:

(A) DEEMED EROSION AMOUNT.—The term ''deemed erosion amount'' means the amount of erosion deemed to occur at enactment under paragraph (2).

(B) EARLY SUNSET.—The term ''early sunset'' means an event causing termination of the program under section 405(f) which relieves the insurer participants of paying some portion of the aggregate payment level of $46,025,000,000 required under section 212(a)(2)(A).

(C) EARNED EROSION AMOUNT.—The term ''earned erosion amount'' means, in the event of any early sunset under section 405(f), the percentage, as set forth in the following schedule, depending on the year in which the defendant participants' funding obligations end, of those amounts which, at the time of the early sunset, a defendant participant has paid to the fund and remains obligated to pay into the fund.

Year After Enactment In Which Defendant Participant's Funding Obligation Ends:	Applicable Percentage:
2	67.06
3	86.72
4	96.55
5	102.45
6	90.12
7	81.32
8	74.71
9	69.58
10	65.47
11	62.11
12	59.31
13	56.94
14	54.90
15	53.14
16	51.60
17	50.24
18	49.03
19	47.95
20	46.98
21	46.10
22	45.30
23	44.57
24	43.90
25	43.28
26	42.71
27	42.18
28	40.82
29	39.42

(D) REMAINING AGGREGATE PRODUCTS LIMITS.—The term ''remaining aggregate products limits'' means aggregate limits that apply to insurance coverage granted under the ''products hazard'', ''completed operations hazard'', or ''Products—Completed Operations Liability'' in any comprehensive general liability policy issued between calendar years 1940 and 1986 to cover injury which occurs in any State, as reduced by—

(i) any existing impairment of such aggregate limits as of the date of enactment of this Act; and

(ii) the resolution of claims for reimbursement or coverage of liability or paid or incurred loss for which notice was provided to the insurer before the date of enactment of this Act.

(E) SCHEDULED PAYMENT AMOUNTS.—The term ''scheduled payment amounts'' means the future payment obligation to the Fund under this Act from a defendant participant in the amount established under sections 203 and 204.

(F) UNEARNED EROSION AMOUNT.—The term ''unearned erosion amount'' means, in the event of any early sunset under section 405(f), the difference between the deemed erosion amount and the earned erosion amount.

(2) QUANTUM AND TIMING OF EROSION.—

(A) EROSION UPON ENACTMENT.—The collective payment obligations to the Fund of the insurer and reinsurer participants as assessed by the Administrator shall be deemed as of the date of enactment of this Act to erode remaining aggregate products limits available to a defendant participant only in an amount of 38.1 percent of each defendant participant's scheduled payment amount.

(B) NO ASSERTION OF CLAIM.—No insurer or reinsurer may assert any claim against a defendant participant or captive insurer for insurance, reinsurance, payment of a deductible, or retrospective premium adjustment arising out of that insurer's or reinsurer's payments to the Fund or the erosion deemed to occur under this section.

(C) POLICIES WITHOUT CERTAIN LIMITS OR WITH EXCLUSION.—Except as provided under subparagraph (E), nothing in this section shall require or permit the erosion of any insurance policy or limit that does not contain an aggregate products limit, or that contains an asbestos exclusion.

(D) TREATMENT OF CONSOLIDATION ELECTION.—If an affiliated group elects consolidation as provided in section 204(f), the total erosion of limits for the affiliated group under paragraph (2)(A) shall not exceed 59.64 percent of the scheduled payment amount of the single payment obligation for the entire affiliated group. The total erosion of limits for any individual defendant participant in the affiliated group shall not exceed its individual share of 59.64 percent of the affiliated group's scheduled payment amount, as measured by the individual defendant participant's percentage share of the affiliated group's prior asbestos expenditures.

(E) RULE OF CONSTRUCTION.—Notwithstanding any other provision of this section, nothing in this Act shall be deemed to erode remaining aggregate products limits of a defendant participant that can demonstrate by a reponderance of the evidence that 75 percent of its prior asbestos expenditures were made in defense or satisfaction of asbestos claims alleging bodily injury arising exclusively from the exposure to asbestos at premises owned, rented, or controlled by the defendant participant (a ''premises defendant''). In calculating such percentage, where expenditures were made in defense or satisfaction of asbestos claims alleging bodily injury due to exposure to the defendant participant's products and to asbestos at premises owned, rented, or controlled by the defendant participant, half of such expenditures shall be deemed to be for such premises exposures. If a defendant participant establishes itself as a premises defendant, 75 percent of the payments by such defendant participant shall erode coverage limits, if any, applicable to premises liabilities under applicable law.

(3) METHOD OF EROSION.—

(A) ALLOCATION.—The amount of erosion allocated to each defendant participant shall be allocated among periods in which policies with remaining aggregate product limits are available to that defendant participant pro rata by policy period, in ascending order by attachment point.

(B) OTHER EROSION METHODS.—

(i) IN GENERAL.—Notwithstanding subparagraph (A), the method of erosion of any remaining aggregate products limits which are subject to—

(I) a coverage-in-place or settlement agreement between a defendant participant and 1 or more insurance participants as of the date of enactment; or

(II) a final and nonappealable judgment as of the date of enactment or resulting from a claim for coverage or reimbursement pending as of such date, shall be as specified in such agreement or judgment with regard to erosion applicable to such insurance participants' policies.

(ii) REMAINING LIMITS.—To the extent that a final nonappealable judgment or settlement agreement to which an insurer participant and a defendant participant are parties in effect as of the date of enactment of this Act extinguished a defendant participant's right to seek coverage for asbestos claims under an insurer participant's policies, any

remaining limits in such policies shall not be considered to be remaining aggregate products limits under subsection (a)(1)(A).

(4) RESTORATION OF AGGREGATE PRODUCTS LIMITS UPON EARLY SUNSET.—

(A) RESTORATION.—In the event of an early sunset, any unearned erosion amount will be deemed restored as aggregate products limits available to a defendant participant as of the date of enactment.

(B) METHOD OF RESTORATION.—The unearned erosion amount will be deemed restored to each defendant participant's policies in such a manner that the last limits that were deemed eroded at enactment under this subsection are deemed to be the first limits restored upon early sunset.

(C) TOLLING OF COVERAGE CLAIMS.—In the event of an early sunset, the applicable statute of limitations and contractual provisions for the filing of claims under any insurance policy with restored aggregate products limits shall be deemed tolled after the date of enactment through the date 6 months after the date of early sunset.

(5) PAYMENTS BY DEFENDANT PARTICIPANT.—Payments made by a defendant participant shall be deemed to erode, exhaust, or otherwise satisfy applicable self-insured retentions, deductibles, retrospectively rated premiums, and limits issued by nonparticipating insolvent or captive insurance companies. Reduction of remaining aggregate limits under this subsection shall not limit the right of a defendant participant to collect from any insurer not a participant.

(6) EFFECT ON OTHER INSURANCE CLAIMS.—Other than as specified in this subsection, this Act does not alter, change, modify, or affect insurance for claims other than asbestos claims.

(b) DISPUTE RESOLUTION PROCEDURE.—

(1) ARBITRATION.—The parties to a dispute regarding the erosion of insurance coverage limits under this section may agree in writing to settle such dispute by arbitration. Any such provision or agreement shall be valid, irrevocable, and enforceable, except for any grounds that exist at law or in equity for revocation of a contract.

(2) TITLE 9, UNITED STATES CODE.—Arbitration of such disputes, awards by arbitrators, and confirmation of awards shall be governed by title 9, United States Code, to the extent such title is not inconsistent with this section. In any such arbitration proceeding, the erosion principles provided for under this section shall be binding on the arbitrator, unless the parties agree to the contrary.

(3) FINAL AND BINDING AWARD.—An award by an arbitrator shall be final and binding between the parties to the arbitration, but shall have no force or effect on any other person. The parties to an arbitration may agree that in the event a policy which is the subject matter of an award is subsequently determined to be eroded in a manner different from the manner determined by the arbitration in a judgment rendered by a court of competent jurisdiction from which no appeal can or has been taken, such arbitration award may be modified by any court of competent jurisdiction upon application by any party to the arbitration. Any such modification shall govern the rights and obligations between such parties after the date of such modification.

(c) EFFECT ON NONPARTICIPANTS.—

(1) IN GENERAL.—No insurance company or reinsurance company that is not a participant, other than a captive insurer, shall be entitled to claim that payments to the Fund erode, exhaust, or otherwise limit the nonparticipant's insurance or reinsurance obligations.

(2) OTHER CLAIMS.—Nothing in this Act shall preclude a participant from pursuing any claim for insurance or reinsurance from any person that is not a participant other than a captive insurer.

(d) FINITE RISK POLICIES NOT AFFECTED.—

(1) IN GENERAL.—Notwithstanding any other provision of this Act, except subject to section 212(a)(1)(D), this Act shall not alter, affect or impair any rights or obligations of—

(A) any party to an insurance contract that expressly provides coverage for governmental charges or assessments imposed to replace insurance or reinsurance liabilities in effect on the date of enactment of this Act; or

(B) subject to paragraph (2), any person with respect to any insurance or reinsurance purchased by a participant after December 31, 1990, that expressly (but not necessarily exclusively) provides coverage for asbestos liabilities, including those policies commonly referred to as ''finite risk'' policies.

(2) LIMITATION.—No person may assert that any amounts paid to the Fund in accordance with this Act are covered by any policy described under paragraph (1)(B) purchased by a defendant participant, unless such policy specifically provides coverage for required payments to a Federal trust fund established by a Federal statute to resolve asbestos injury claims.

(e) EFFECT ON CERTAIN INSURANCE AND REINSURANCE CLAIMS.—

(1) NO COVERAGE FOR FUND ASSESSMENTS.—No participant or captive insurer may pursue an insurance or reinsurance claim against another participant or captive insurer for payments to the Fund required under this Act, except under a contract specifically providing insurance or reinsurance for required payments to a Federal trust fund established by a Federal statute to resolve asbestos injury claims or, where applicable, under finite risk policies under subsection (d).

(2) CERTAIN INSURANCE ASSIGNMENTS VOIDED.—Any assignment of any rights to insurance coverage for asbestos claims to any person who has asserted an asbestos claim before the date of enactment of this Act, or to any trust, person, or other entity not part of an affiliated group as defined in section 201(1) of this Act established or appointed for the purpose of paying asbestos claims which were asserted before such date of enactment, or by any Tier I defendant participant, before any sunset of this Act, shall be null and void. This subsection shall not void or affect in any way any assignments of rights to insurance coverage other than to asbestos claimants or to trusts, persons, or other entities not part of an affiliated group as defined in section 201(1) of this Act established or appointed for the purpose of paying asbestos claims, or by Tier I defendant participants.

(3) INSURANCE CLAIMS PRESERVED.—Notwithstanding any other provision of this Act, this Act shall not alter, affect, or impair any rights or obligations of any person with respect to any insurance or reinsurance for amounts that any person pays, has paid, or becomes legally obligated to pay in respect of asbestos or other claims, except to the extent that—

(A) such person pays or becomes legally obligated to pay claims that are superseded by section 403;

(B) any such rights or obligations of such person with respect to insurance or reinsurance are prohibited by paragraph (1) or (2) of subsection (e); or

(C) the limits of insurance otherwise available to such participant in respect of asbestos claims are deemed to be eroded under subsection (a).

SEC. 405. ANNUAL REPORT OF THE ADMINISTRATOR AND SUNSET OF THE ACT.

(a) IN GENERAL.—The Administrator shall submit an annual report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives on the operation of the Asbestos Injury Claims Resolution Fund within 6 months after the close of each fiscal year.

(b) CONTENTS OF REPORT.—The annual report submitted under this subsection shall include an analysis of—

(1) the claims experience of the program during the most recent fiscal year, including—

(A) the number of claims made to the Office and a description of the types of medical diagnoses and asbestos exposures underlying those claims;

(B) the number of claims denied by the Office and a description of the types of medical diagnoses and asbestos exposures underlying those claims, and a general description of the reasons for their denial;

(C) a summary of the eligibility determinations made by the Office under section 114;

(D) a summary of the awards made from the Fund, including the amount of the awards; and

(E) for each eligible condition, a statement of the percentage of asbestos claimants who filed claims during the prior calendar year and were determined to be eligible to receive compensation under this Act, who have received the compensation to which such claimants are entitled according to section 131;

(2) the administrative performance of the program, including—

(A) the performance of the program in meeting the time limits prescribed by law and an analysis of the reasons for any systemic delays;

(B) any backlogs of claims that may exist and an explanation of the reasons for such backlogs;

(C) the costs to the Fund of administering the program; and

(D) any other significant factors bearing on the efficiency of the program;

(3) the financial condition of the Fund, including—

(A) statements of the Fund's revenues, expenses, assets, and liabilities;

(B) the identity of all participants, the funding allocations of each participant, and the total amounts of all payments to the Fund;

(C) a list of all financial hardship or inequity adjustments applied for during the fiscal year, and the adjustments that were made during the fiscal year;

(D) a statement of the investments of the Fund; and

(E) a statement of the borrowings of the Fund;

(4) the financial prospects of the Fund, including—

(A) an estimate of the number and types of claims, the amount of awards, and the participant payment obligations for the next fiscal year;

(B) an analysis of the financial condition of the Fund, including an estimation of the Fund's ability to pay claims for the subsequent 5 years in full as and when required, an evaluation of the Fund's ability to retire its existing debt and assume additional debt, and an evaluation of the Fund's ability to satisfy other obligations under the program; and

(C) a report on any changes in projections made in earlier annual reports or sunset analyses regarding the Fund's ability to meet its financial obligations;

(5) any recommendations from the Advisory Committee on Asbestos Disease Compensation and the Medical Advisory Committee of the Fund to improve the diagnostic, exposure, and medical criteria so as to pay only those claimants whose injuries are caused by exposure to asbestos;

(6) a summary of the results of audits conducted under section 115; and

(7) a summary of prosecutions under section 1348 of title 18, United States Code (as added by this Act).

(c) CLAIMS ANALYSIS.—If the Administrator concludes, on the basis of the annual report submitted under this section, that the Fund is compensating claims for injuries that are not caused by exposure to asbestos and compensating such claims may, currently or in the future, undermine the Fund's ability to compensate persons with injuries that are caused by exposure to asbestos, the Administrator shall include in the report an analysis of the reasons for the situation, a description of the range of reasonable alternatives for responding to the situation, and a recommendation as to which alternative best serves the interest of claimants and the public. The report shall include a description of changes in the diagnostic, exposure, or medical criteria of section 121 that the Administrator believes may be necessary to protect the Fund from compensating claims not caused by exposure to asbestos.

(d) SHORTFALL ANALYSIS.—

(1) IN GENERAL.—

(A) ANALYSIS.—If the Administrator concludes, on the basis of the information contained in the annual report submitted under this section, that the Fund may not be able to pay claims as such claims become due at any time within the next 5 years, the Administrator shall include in the report an analysis of the reasons for the situation, an estimation of when the Fund will no longer be able to pay claims as such claims become due, a description of the range of reasonable alternatives for responding to the situation, and a recommendation as to which alternative best serves the interest of claimants and the public. The report may include a description of changes in the diagnostic, exposure, or medical criteria of section 121 that the Administrator believes may be necessary to protect the Fund.

(B) RANGE OF ALTERNATIVES.—The range of alternatives under subparagraph (A) may include—

(i) triggering the termination of this Act under subsection (f) at any time after the date of enactment of this Act; and

(ii) reform of the program set forth in titles I and II of this Act (including changes in the diagnostic, exposure, or medical criteria, changes in the enforcement or application of those criteria, changes in the timing of payments, changes in contributions by defendant participants, insurer participants (or both such participants), or changes in award values).

(2) CONSIDERATIONS.—In formulating recommendations, the Administrator shall take into account the reasons for any shortfall, actual or projected, which may include—

(A) financial factors, including return on investments, borrowing capacity, interest rates, ability to collect contributions, and other relevant factors;

(B) the operation of the Fund generally, including administration of the claims processing, the ability of the Administrator to collect contributions from participants, potential problems of fraud, the adequacy of the criteria to rule out idiopathic mesothelioma, and inadequate flexibility to extend the timing of payments;

(C) the appropriateness of the diagnostic, exposure, and medical criteria, including the adequacy of the criteria to rule out idiopathic mesothelioma;

(D) the actual incidence of asbestos-related diseases, including mesothelioma, based on epidemiological studies and other relevant data;

(E) compensation of diseases with alternative causes; and

(F) other factors that the Administrator considers relevant.

(3) RECOMMENDATION OF TERMINATION.—Any recommendation of termination should include a plan for winding up the affairs of the Fund (and the program generally) within a defined period, including paying in full all claims resolved at the time the report is prepared. Any plan under this paragraph shall provide for priority in payment to the claimants with the most serious illnesses.

(4) RESOLVED CLAIMS.—For purposes of this section, a claim shall be deemed resolved when the Administrator has determined the amount of the award due the claimant, and either the claimant has waived judicial review or the time for judicial review has expired.

(e) RECOMMENDATIONS OF ADMINISTRATOR AND COMMISSION.—

(1) IN GENERAL.—If the Administrator recommends changes to this Act under subsection (c), the recommendations and accompanying analysis shall be referred to a special commission consisting of the Attorney General, the Secretary of Labor, the Secretary of Health and Human Services, the Secretary of the Treasury, and the Secretary of Commerce, or their designees. The Commission shall hold expedited public hearings on the Administrator's alternatives and recommendations and then make its own recommendations for reform of the program set forth in titles I and II of this Act. Within 180 days after receiving the Administrator's recommendations, the Commission shall transmit its own recommendations to the Congress in the same manner as set forth in subsection (a).

(2) REFERRAL.—If the Administrator recommends changes to, or termination of, this Act under subsection (d), the recommendations and accompanying analysis shall be referred to the Commission. The Commission shall hold expedited public hearings on the Administrator's alternatives and recommendations and then make its own recommendations for reform of the program set forth in titles I and II of this Act. Within 180 days after receiving the Administrator's recommendations, the Commission shall transmit its own recommendations to Congress in the same manner as set forth in subsection (a).

(f) SUNSET OF ACT.—

(1) IN GENERAL.—

(A) TERMINATION.—Subject to paragraph (4), titles I (except subtitle A) and II and sections 403 and 404(e)(2) shall terminate as provided under paragraph (2), if the Administrator—

(i) has begun the processing of claims; and

(ii) as part of the review conducted to prepare an annual report under this section, determines that if any additional claims are resolved, the Fund will not have sufficient resources when needed to pay 100 percent of all resolved claims while also meeting all other obligations of the Fund under this Act, including the payment of—

(I) debt repayment obligations; and

(II) remaining obligations to the asbestos trust of a debtor and the class action trust.

(B) REMAINING OBLIGATIONS.—For purposes of subparagraph (A)(ii), the remaining obligations to the asbestos trust of the debtor and the class action trust shall be determined by the Administrator by assuming that, instead of a lump-sum payment, such trust had transferred its assets to the Fund on an annual basis, taking into consideration relevant factors, including the most recent projections made by the trust's actuary before the date of enactment of this Act of the amount and timing of future claim payments and administrative and operating expenses.

(2) EFFECTIVE DATE OF TERMINATION.—A termination under paragraph (1) shall take effect 180 days after the date of a determination of the Administrator under paragraph (1) and shall apply to all asbestos claims that have not been resolved by the Fund as of the date of the determination.

(3) RESOLVED CLAIMS.—If a termination takes effect under this subsection, all resolved claims shall be paid in full by the Fund.

(4) EXTINGUISHED CLAIMS.—A claim that is extinguished under the statute of limitations provisions in section 113(b) is not revived at the time of sunset under this subsection.

(5) CONTINUED FUNDING.—If a termination takes effect under this subsection, participants will still be required to make payments as provided under subtitles A and B of title II. If the full amount of payments required by title II is not necessary for the Fund to pay claims that have been resolved as of the date of termination, pay the Fund's debt and obligations to the asbestos trusts and class action trust, and support the Fund's continued operation as needed to pay such claims, debt, and obligations, the Administrator may reduce such payments. Any such reductions shall be allocated among participants in approximately the same proportion as the liability under subtitles A and B of title II.

(6) SUNSET CLAIMS.—

(A) DEFINITIONS.—In this paragraph—

(i) the term ''sunset claims'' means claims filed with the Fund, but not yet resolved, when this Act has terminated; and

(ii) the term ''sunset claimants'' means persons asserting sunset claims.

(B) IN GENERAL.—If a termination takes effect under this subsection, the applicable statute of limitations for the filing of sunset claims under subsection (g) shall be tolled for any past or pending sunset claimants while such claimants were pursuing claims filed under this Act. For those claimants who decide to pursue a sunset claim in accordance with subsection (g), the applicable statute of limitations shall apply, except that claimants who filed a claim against the Fund under this Act before the date of termination shall have 2 years after the date of termination to file a sunset claim in accordance with subsection (g).

(7) ASBESTOS TRUSTS AND CLASS ACTION TRUST.—On and after the date of termination under this subsection, the trust distribution program of any asbestos trust and the class action trust shall be replaced with the medical criteria requirements of section 121.

(8) PAYMENT TO ASBESTOS TRUSTS AND CLASS ACTION TRUST.—The amounts determined under paragraph (1)(B) for payment to the asbestos trusts and the class action trust shall be transferred to the respective asbestos trusts of the debtor and the class action trust within 90 days.

(g) NATURE OF CLAIM AFTER SUNSET.—

(1) IN GENERAL.—

(A) RELIEF.—On and after the date of termination under subsection (f), any individual with an asbestos claim who has not previously had a claim resolved by the Fund, may in a civil action obtain relief in damages subject to the terms and conditions under this subsection and paragraph (6) of subsection (f).

(B) RESOLVED CLAIMS.—An individual who has had a claim resolved by the Fund may not pursue a court action, except that an individual who received an award for a nonmalignant disease (Levels I through V) from the Fund may assert a claim for a subsequent or progressive disease under this subsection, unless the disease was diagnosed or the claimant had discovered facts that would have led a reasonable person to obtain such

a diagnosis before the date on which the previous claim against the Fund was disposed.

(C) MESTHELIOMA CLAIM.—An individual who received an award for a nonmalignant or malignant disease (except mesothelioma) (Levels I through VIII) from the Fund may assert a claim for mesothelioma under this subsection, unless the mesothelioma was diagnosed or the claimant had discovered facts that would have led a reasonable person to obtain such a diagnosis before the date on which the nonmalignant or other malignant claim was disposed.

(2) EXCLUSIVE REMEDY.—As of the effective date of a termination of this Act under subsection (f), an action under paragraph (1) shall be the exclusive remedy for any asbestos claim that might otherwise exist under Federal, State, or other law, regardless of whether such claim arose before or after the date of enactment of this Act or of the termination of this Act, except that claims against the Fund that have been resolved before the date of the termination determination under subsection (f) may be paid by the Fund.

(3) VENUE.—

(A) IN GENERAL.—Actions under paragraph (1) may be brought in—

(i) any Federal district court;

(ii) any State court in the State where the claimant resides; or

(iii) any State court in a State where the asbestos exposure occurred.

(B) DEFENDANTS NOT FOUND.—If any defendant cannot be found in the State described in clause (ii) or (iii) of subparagraph (A), the claim may be pursued only against that defendant in the Federal district court or the State court located within any State in which the defendant may be found.

(C) DETERMINATION OF MOST APPROPRIATE FORUM.—If a person alleges that the asbestos exposure occurred in more than one county (or Federal district), the trial court shall determine which State and county (or Federal district) is the most appropriate forum for the claim. If the court determines that another forum would be the most appropriate forum for a claim, the court shall dismiss the claim. Any otherwise applicable statute of limitations shall be tolled beginning on the date the claim was filed and ending on the date the claim is dismissed under this subparagraph.

(D) STATE VENUE REQUIREMENTS.—Nothing in this paragraph shall preempt or supersede any State's law relating to venue requirements within that State which are more restrictive.

(4) CLASS ACTION TRUSTS.—Notwithstanding any other provision of this section—

(A) after the assets of any class action trust have been transferred to the Fund in accordance with section 203(b)(5), no asbestos claim may be maintained with respect to asbestos liabilities arising from the operations of a person with respect to whose liabilities for asbestos claims a class action trust has been established, whether such claim names the person or its successors or affiliates as defendants; and

(B) if a termination takes effect under subsection (f), the exclusive remedy for all asbestos claims (including sunset claims and claims first arising or first presented after termination of the Fund) arising from such operations will be a claim against the class action trust to which the Administrator has transferred funds under subsection (f)(8) to pay asbestos claims, if necessary in proportionally reduced amounts.

SEC. 406. RULES OF CONSTRUCTION RELATING TO LIABILITY OF THE UNITED STATES GOVERNMENT.

(a) CAUSES OF ACTIONS.—Except as otherwise specifically provided in this Act, nothing in this Act shall be construed as creating a cause of action against the United States Government, any entity established under this Act, or any officer or employee of the United States Government or such entity.

(b) FUNDING LIABILITY.—Nothing in this Act shall be construed to—

(1) create any obligation of funding from the United States Government, other than the funding for personnel and support as provided under this Act; or

(2) obligate the United States Government to pay any award or part of an award, if amounts in the Fund are inadequate.

SEC. 407. RULES OF CONSTRUCTION.

(a) LIBBY, MONTANA CLAIMANTS.—Nothing in this Act shall preclude the formation of a fund for the payment of eligible medical expenses related to treating asbestos-related disease for current and former residents of Libby, Montana. The payment of any such medical expenses shall not be collateral source compensation as defined under section 134(a).

(b) HEALTHCARE FROM PROVIDER OF CHOICE.—Nothing in this Act shall be construed to preclude any eligible claimant from receiving healthcare from the provider of their choice.

SEC. 408. VIOLATIONS OF ENVIRONMENTAL HEALTH AND SAFETY REQUIREMENTS.

(a) ASBESTOS IN COMMERCE.—If the Administrator receives information concerning conduct occurring after the date of enactment of this Act that may have been a violation of standards issued by the Environmental Protection Agency under the Toxic Substances Control Act (15 U.S.C. 2601 et seq.), relating to the manufacture, importation, processing, disposal, and distribution in commerce of asbestos-containing products, the Administrator shall refer the matter in writing within 30 days after receiving that information to the Administrator of the Environmental Protection Agency and the United States attorney for possible civil or criminal penalties, including those under section 17 of the Toxic Substances Control Act (15 U.S.C. 2616), and to the appropriate State authority with jurisdiction to investigate asbestos matters.

(b) ASBESTOS AS AIR POLLUTANT.—If the Administrator receives information concerning conduct occurring after the date of enactment of this Act that may have been a violation of standards issued by the Environmental Protection Agency under the Clean Air Act (42 U.S.C. 7401 et seq.), relating to asbestos as a hazardous air pollutant, the Administrator shall refer the matter in writing within 30 days after receiving that information to the Administrator of the Environmental Protection Agency and the United States attorney for possible criminal and civil penalties, including those under section 113 of the Clean Air Act (42 U.S.C. 7413), and to the appropriate State authority with jurisdiction to investigate asbestos matters.

(c) OCCUPATIONAL EXPOSURE.—If the Administrator receives information concerning conduct occurring after the date of enactment of this Act that may have been a violation of standards issued by the Occupational Safety and Health Administration under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.), relating to occupational exposure to asbestos, the Administrator shall refer the matter in writing within 30 days after receiving that information and refer the matter to the Secretary of Labor or the appropriate State agency with authority to enforce occupational safety and health standards, for investigation for possible civil or criminal penalties under section 17 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 666).

(d) ENHANCED CRIMINAL PENALTIES FOR WILLFUL VIOLATIONS OF OCCUPATIONAL STANDARDS FOR ASBESTOS.—Section 17(e) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656(e)) is amended—

(1) by striking ''Any'' and inserting ''(1) Except as provided in paragraph (2), any''; and

(2) by adding at the end the following:

''(2) Any employer who willfully violates any standard issued under section 6 with respect to the control of occupational exposure to asbestos, shall upon conviction be punished by a fine in accordance with section 3571 of title 18, United States Code, or by imprisonment for not more than 5 years, or both, except that if the conviction is for a violation committed after a first conviction of such person, punishment shall be by a fine in accordance with section 3571 of title 18, United States Code, or by imprisonment for not more than 10 years, or both.''.

(e) CONTRIBUTIONS TO THE ASBESTOS TRUST FUND BY EPA AND OSHA ASBESTOS VIOLATORS.—

(1) IN GENERAL.—The Administrator shall assess employers or other individuals determined to have violated asbestos statutes, standards, or regulations administered by the Department of Labor, the Environmental Protection Agency, and their State counterparts, for contributions to the Asbestos Injury Claims Resolution Fund (in this section referred to as the ''Fund'').

(2) IDENTIFICATION OF VIOLATORS.—Each year, the Administrator shall—

(A) in consultation with the Assistant Secretary of Labor for Occupational Safety and Health, identify all employers that, during the previous year, were subject to final orders finding that they violated standards issued by the Occupational Safety and Health Administration for control of occupational exposure to asbestos (29 CFR 1910.1001, 1915.1001, and 1926.1101) or the equivalent asbestos standards issued by any State under section 18 of the Occupational Safety and Health Act (29 U.S.C. 668); and

(B) in consultation with the Administrator of the Environmental Protection Agency, identify all employers or other individuals who, during the previous year, were subject to final orders finding that they violated asbestos regulations administered by the Environmental Protection Agency (including the National Emissions Standard for Asbestos established under the Clean Air Act (42 U.S.C. 7401 et seq.), the asbestos worker protection standards established under part 763 of title 40, Code of Federal Regulations, and the regulations banning asbestos promulgated under section 501 of this Act), or equivalent State asbestos regulations.

(3) ASSESSMENT FOR CONTRIBUTION.—The Administrator shall assess each such identified employer or other individual for a contribution to the Fund for that year in an amount equal to—

(A) 2 times the amount of total penalties assessed for the first violation of occupational health and environmental statutes, standards, or regulations;

(B) 4 times the amount of total penalties for a second violation of such statutes, standards, or regulations; and

(C) 6 times the amount of total penalties for any violations thereafter.

(4) LIABILITY.—Any assessment under this subsection shall be considered a liability under this Act.

(5) PAYMENTS.—Each such employer or other individual assessed for a contribution to the Fund under this subsection shall make the required contribution to the Fund within 90 days of the date of receipt of notice from the Administrator requiring payment.

(6) ENFORCEMENT.—The Administrator is authorized to bring a civil action under section 223(c) against any employer or other individual who fails to make timely payment of contributions assessed under this section.

(f) REVIEW OF FEDERAL SENTENCING GUIDELINES FOR ENVIRONMENTAL CRIMES RELATED TO ASBESTOS.—Under section 994 of title 28, United States Code, and in accordance with this section, the United States Sentencing Commission shall review and amend, as appropriate, the United States Sentencing Guidelines and related policy statements to ensure that—

(1) appropriate changes are made within the guidelines to reflect any statutory amendments that have occurred since the time that the current guideline was promulgated;

(2) the base offense level, adjustments, and specific offense characteristics contained in section 2Q1.2 of the United States Sentencing Guidelines (relating to mishandling of hazardous or toxic substances or pesticides; recordkeeping, tampering, and falsification; and unlawfully transporting hazardous materials in commerce) are increased as appropriate to ensure that future asbestos-related offenses reflect the seriousness of the offense, the harm to the community, the need for ongoing reform, and the highly regulated nature of asbestos;

(3) the base offense level, adjustments, and specific offense characteristics are sufficient to deter and punish future activity and are adequate in cases in which the relevant offense conduct—

(A) involves asbestos as a hazardous or toxic substance; and

(B) occurs after the date of enactment of this Act;

(4) the adjustments and specific offense characteristics contained in section 2B1.1 of the United States Sentencing Guidelines related to fraud, deceit, and false statements, adequately take into account that asbestos was involved in the offense, and the possibility of death or serious bodily harm as a result;

(5) the guidelines that apply to organizations in chapter 8 of the United States Sentencing Guidelines are sufficient to deter and punish organizational criminal misconduct that involves the use, handling, purchase, sale, disposal, or storage of asbestos; and

(6) the guidelines that apply to organizations in chapter 8 of the United States Sentencing Guidelines are sufficient to deter and punish organizational criminal misconduct that involves fraud, deceit, or false statements against the Office of Asbestos Disease Compensation.

SEC. 409. NONDISCRIMINATION OF HEALTH INSURANCE.

(a) DENIAL, TERMINATION, OR ALTERATION OF HEALTH COVERAGE.—No health insurer offering a health plan may deny or terminate coverage, or in any way alter the terms of coverage, of any claimant or the beneficiary of a claimant, on account of the participation of the claimant or beneficiary in a medical monitoring program under this Act, or as a result of any information discovered as a result of such medical monitoring.

(b) DEFINITIONS.—In this section:

(1) HEALTH INSURER.—The term ''health insurer'' means—

(A) an insurance company, healthcare service contractor, fraternal benefit organization, insurance agent, third-party administrator, insurance support organization, or other person subject to regulation under the laws related to health insurance of any State;

(B) a managed care organization; or

(C) an employee welfare benefit plan regulated under the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.).

(2) HEALTH PLAN.—The term ''health plan'' means—

(A) a group health plan (as such term is defined in section 607 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1167)), and a multiple employer welfare arrangement (as defined in section 3(4) of such Act) that provides health insurance coverage; or

(B) any contractual arrangement for the provision of a payment for healthcare, including any health insurance arrangement or any arrangement consisting of a hospital or medical expense incurred policy or certificate, hospital or medical service plan contract, or health maintenance organizing subscriber contract.

(c) CONFORMING AMENDMENTS.—

(1) ERISA.—Section 702(a)(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1182(a)(1)), is amended by adding at the end the following:

''(I) Participation in a medical monitoring program under the Fairness in Asbestos Injury Resolution Act of 2005.''.

(2) PUBLIC SERVICE HEALTH ACT.—Section 2702(a)(1) of the Public Health Service Act (42 U.S.C. 300gg–1(a)(1)) is amended by adding at the end the following:

''(I) Participation in a medical monitoring program under the Fairness in Asbestos Injury Resolution Act of 2005.''.

(3) INTERNAL REVENUE CODE OF 1986.—Section 9802(a)(1) of the Internal Revenue Code of 1986 is amended by adding at the end the following:

''(I) Participation in a medical monitoring program under the Fairness in Asbestos Injury Resolution Act of 2005.''.

TITLE V—ASBESTOS BAN

SEC. 501. PROHIBITION ON ASBESTOS CONTAINING PRODUCTS.

(a) IN GENERAL.—Title II of the Toxic Substances Control Act (15 U.S.C. 2641 et seq.) is amended—

(1) by inserting before section 201 (15 U.S.C. 2641) the following:

''Subtitle A—General Provisions'';

and

(2) by adding at the end the following:

''Subtitle B—Ban of Asbestos Containing Products

''SEC. 221. BAN OF ASBESTOS CONTAINING PRODUCTS.

''(a) DEFINITIONS.—In this chapter:

''(1) ADMINISTRATOR.—The term 'Administrator' means the Administrator of the Environmental Protection Agency.

''(2) ASBESTOS.—The term 'asbestos' includes—

''(A) chrysotile;

''(B) amosite;

''(C) crocidolite;

''(D) tremolite asbestos;

''(E) winchite asbestos;

''(F) richterite asbestos;

''(G) anthophyllite asbestos;

''(H) actinolite asbestos;

''(I) amphibole asbestos; and

''(J) any of the minerals listed under subparagraphs (A) through (I) that has been chemically treated or altered, and any asbestiform variety, type, or component thereof.

''(3) ASBESTOS CONTAINING PRODUCT.—The term 'asbestos containing product' means any product (including any part) to which asbestos is deliberately or knowingly added or used because the specific properties of asbestos are necessary for product use or function. Under no circumstances shall the term 'asbestos containing product' be construed to include products that contain de minimus levels of naturally occurring asbestos as defined by the Administrator not later than 1 year after the date of enactment of this chapter.

''(4) DISTRIBUTE IN COMMERCE.—The term 'distribute in commerce'—

''(A) has the meaning given the term in section 3 of the Toxic Substances Control Act (15 U.S.C. 2602); and

''(B) shall not include—

''(i) an action taken with respect to an asbestos containing product in connection with the end use of the asbestos containing product by a person that is an end user, or an action taken by a person who purchases or receives a product, directly or indirectly, from an end user; or

''(ii) distribution of an asbestos containing product by a person solely for the purpose of disposal of the asbestos containing product in compliance with applicable Federal, State, and local requirements.

''(b) IN GENERAL.—Subject to subsection (c), the Administrator shall promulgate—

''(1) not later than 1 year after the date of enactment of this chapter, proposed regulations that—

''(A) prohibit persons from manufacturing, processing, or distributing in commerce asbestos containing products; and

''(B) provide for implementation of subsections (c) and (d); and

''(2) not later than 2 years after the date of enactment of this chapter, final regulations that, effective 60 days after the date of promulgation, prohibit persons from manufacturing, processing, or distributing in commerce asbestos containing products.

''(c) EXEMPTIONS.—

''(1) IN GENERAL.—Any person may petition the Administrator for, and the Administrator may grant, an exemption from the requirements of subsection (b), if the Administrator determines that—

''(A) the exemption would not result in an unreasonable risk of injury to public health or the environment; and

''(B) the person has made good faith efforts to develop, but has been unable to develop, a substance, or identify a mineral that does not present an unreasonable risk of injury to public health or the environment and may be substituted for an asbestos containing product.

''(2) TERMS AND CONDITIONS.—An exemption granted under this subsection shall be in effect for such period (not to exceed 5 years) and subject to such terms and conditions as the Administrator may prescribe.

''(3) GOVERNMENTAL USE.—

''(A) IN GENERAL.—The Administrator of the Environmental Protection Agency shall provide an exemption from the requirements of subsection (b), without review or limit on duration, if such exemption for an asbestos containing product is—

''(i) sought by the Secretary of Defense and the Secretary certifies, and provides a copy of that certification to Congress, that—

''(I) use of the asbestos containing product is necessary to the critical functions of the Department;

''(II) no reasonable alternatives to the asbestos containing product exist for the intended purpose; and

''(III) use of the asbestos containing product will not result in an unreasonable risk to health or the environment; or

''(ii) sought by the Administrator of the National Aeronautics and Space Administration and the Administrator of the National Aeronautics and Space Administration certifies, and provides a copy of that certification to Congress, that—

''(I) the asbestos containing product is necessary to the critical functions of the National Aeronautics and Space Administration;

''(II) no reasonable alternatives to the asbestos containing product exist for the intended purpose; and

''(III) the use of the asbestos containing product will not result in an unreasonable risk to health or the environment.

''(B) ADMINISTRATIVE PROCEDURE ACT.—Any certification required under subparagraph (A) shall not be subject to chapter 5 of title 5, United States Code (commonly referred to as the 'Administrative Procedure Act').

''(4) SPECIFIC EXEMPTIONS.—The following are exempted:

''(A) Asbestos diaphragms for use in the manufacture of chlor-alkali and the products and derivative therefrom.

''(B) Roofing cements, coatings, and mastics utilizing asbestos that is totally encapsulated with asphalt, subject to a determination by the Administrator of the Environmental Protection Agency under paragraph (5).

''(5) ENVIRONMENTAL PROTECTION AGENCY REVIEW.—

''(A) REVIEW IN 18 MONTHS.—Not later than 18 months after the date of enactment of this chapter, the Administrator of the Environmental Protection Agency shall complete a review of the exemption for roofing cements, coatings, and mastics utilizing asbestos that are totally encapsulated with asphalt to determine whether—

''(i) the exemption would result in an unreasonable risk of injury to public health or the environment; and

''(ii) there are reasonable, commercial alternatives to the roofing cements, coatings, and mastics utilizing asbestos that is totally encapsulated with asphalt.

''(B) REVOCATION OF EXEMPTION.—Upon completion of the review, the Administrator of the Environmental Protection Agency shall have the authority to revoke the exemption for the products exempted under paragraph (4)(B), if warranted.

''(d) DISPOSAL.—

''(1) IN GENERAL.—Except as provided in paragraph (2), not later than 3 years after the date of enactment of this chapter, each person that possesses an asbestos containing product that is subject to the prohibition established under this section shall dispose of the asbestos containing product, by a means that is in compliance with applicable Federal, State, and local requirements.

''(2) EXEMPTION.—Nothing in paragraph (1)—

''(A) applies to an asbestos containing product that—

''(i) is no longer in the stream of commerce; or

''(ii) is in the possession of an end user or a person who purchases or receives an asbestos containing product directly or indirectly from an end user; or

''(B) requires that an asbestos containing product described in subparagraph (A) be removed or replaced.''.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—The table of contents in section 1 of the Toxic Substances Control Act (15 U.S.C. prec. 2601) is amended—

(1) by inserting before the item relating to section 201 the following:

''SUBTITLE A—GENERAL PROVISIONS'';

and

(2) by adding at the end of the items relating to title II the following:

''SUBTITLE B—BAN OF ASBESTOS CONTAINING PRODUCTS

''Sec. 221. Ban of asbestos containing products.''.

Mr. LEAHY. Mr. President, this day has been a long time in coming, and I am pleased to join the Chairman of the Judiciary Committee, Senator FEINSTEIN, and others in sponsoring bipartisan legislation to address the serious problem of asbestos-related disease. It is the product of years of difficult and conscientious craftsmanship and negotiation. Building on the Committee's work under Chairman HATCH, we have striven to bring a fair and efficient plan to the Congress, a plan that will ensure adequate compensation to the thousands of victims of asbestos exposure, but that also will give due consideration to the industries and the insurers that should, and will, provide that compensation. Our bipartisan legislation does that. Asbestos exposure has created a maze of arduous problems, and we have worked hard to produce a balanced bill that offers fair solutions.

Senator SPECTER, with whom I have worked so hard on this legislation, rightly calls this one of the most complex issues we have ever tackled. It is not the bill that I would have written, were I alone responsible for its drafting, nor is it the bill that Senator SPECTER might have produced. Nor should anyone be surprised to hear that the interested groups—the labor organizations, the industrial participants in the trust fund, their insurers, the trial bar—are each less than pleased with some portion of the bill or another. That is the essence of legislative compromise: We have kept the ultimate goal of fair compensation to victims as the lodestar of our efforts, and we have all had to make sacrifices on a variety of subsidiary issues as we worked together to resolve this emergency. What we have achieved is important and a significant step toward a better, more efficient method to compensate asbestos victims.

Asbestos is among the most lethal substances ever to be widely used in the workplace. Between 1940 and 1980, more than 27.5 million workers were exposed to asbestos on the job, and nearly 19 million of them had high levels of exposure over long periods of time. We even know of family members who have suffered asbestos-related disease from washing the clothes of loved ones. The ravages of disease caused by asbestos have affected tens of thousands of American families. We need better health screening and swifter compensation for those affected. In light of the devastating damage it has wreaked, it is hard to believe that asbestos is still being used today, yet it is. This bill will change that as well, protect against yet another generation of victims.

The economic harm caused by asbestos is also real, and the bankruptcies that have resulted are a different kind of tragedy for everyone—for workers and retirees, for shareholders, and for the families that built these companies. In my home State of Vermont, the Rutland Fire and Clay Company is among the more than 70 companies to have declared bankruptcy.

As Chief Justice Rehnquist noted several years ago, ''the elephantine mass of asbestos cases cries out for a legislative solution.'' *Ortiz* v. *Fibreboard Corp.*, 527 U.S. 815, 865 1999). In another Supreme Court opinion, Justice Ginsburg declared that ''a nationwide administrative claims processing regime would provide the most secure, fair, and efficient means of compensating victims of asbestos exposure.'' *Amchem Products* v. *Windsor*, 521 U.S. 591, 628–29, 1997). I agree, the Chairman agrees, Senator FEINSTEIN agrees, and we hope that many others in the Senate will agree.

Weare encouraged by the favorable reception that this bill has already generated from a wide array of interested parties. In the past week, I have received letters of support from the International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, UAW, the Veterans of Foreign Wars of the United States, VFW, the Asbestos Study Group, and others. The UAW notes in its April 13th letter, ''[The Specter-Leahy Proposal] will provide more equitable, timely and certain compensation to the victims of asbestos-related disease.'' The VFW letter of April 14 declares: ''The national trust fund that you are proposing offers our members who are sick and dying the opportunity to secure timely and fair compensation for the injury they suffered in the course of serving their country.'' The National Association of Manufacturers also released a statement expressing their hope that this legislation will engender broad support.

These statements in many ways tell the story of what we have already accomplished: We have drafted a bill that has garnered a favorable response from labor, manufacturers, and companies with considerable asbestos liabilities. We have worked on this legislation for several years now, and I can assure you that garnering this level of consensus has been no small feat. I ask unanimous consent that the text of these letters be printed in the RECORD.

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

UAW,

Washington, DC, April 13, 2005.

DEAR SENATOR: Senators Specter and Leahy recently put forward a compromise asbestos compensation proposal, and have indicated that they intend to introduce legislation incorporating this proposal early next week. The UAW supports the Specter-Leahy asbestos compensation proposal because we believe it will provide more equitable, timely and certain compensation to the victims of asbestos-related diseases.

There is widespread agreement that the current tort system fails miserably in compensating asbestos victims. There are often years of delay before victims receive any compensation. Awards to victims are highly unpredictable, with similarly situated individuals receiving vastly different amounts. Too often compensation goes disproportionately to the less sick at the expense of the most seriously ill victims. The transaction costs, including lawyers' fees, are very high and reduce the amounts received by victims. And even when victims are awarded substantial compensation by the courts, these judgments are often not collectable because the

defendant companies have filed for bankruptcy, leaving the victims with little effective recourse.

The Specter-Leahy proposal would address these serious problems by replacing the current tort system with a national asbestos trust fund to compensate the victims of asbestos-related diseases. By creating a no-fault administrative system for process claims, this approach would provide victims with speedier compensation, while reducing the substantial lawyers' fees and other transaction costs in the current adversarial litigation system. By compensating victims pursuant to a fixed schedule of payments for specified disease levels, this approach would also provide predictable awards to individuals with similar illnesses, and ensure that the most compensation goes to the most seriously ill victims. Perhaps most importantly, by providing compensation through a national asbestos trust fund, this approach would ensure that victims will receive the full amount of their award regardless of whether a particular company had filed for bankruptcy.

The UAW is especially pleased that the Specter-Leahy proposal does not permit any subrogation against worker compensation or health care payments received by asbestos victims. This will ensure that awards are not largely offset by worker compensation or health care payments to which victims are otherwise entitled. In our judgment, the provisions barring any subrogation are essential to ensuring that victims receive adequate compensation.

The UAW also is pleased that the Specter-Leahy proposal establishes a mechanism for defendant companies and insurers to contribute to the national asbestos compensation fund, thereby spreading the costs of compensating victims across a broad section of the business and insurance community. We believe this broad-based, predictable financing mechanism is vastly preferable to the current tort system, which has driven most asbestos manufacturers into bankruptcy and is threatening the economic viability of many other companies that used products containing asbestos, thereby jeopardizing the jobs of tens of thousands of workers.

The Specter-Leahy proposal provides for reversion of asbestos claims to the tort system in the event the national asbestos trust fund does not have sufficient funds to pay all claims, or in the event the compensation system does not become operational quickly enough. Although the UAW hopes that these reversion provisions will never be triggered, we believe these provisions are essential to ensure that victims will always have some effective recourse for receiving compensation, and to give all stakeholders an incentive to help make the compensation system operate properly.

The UAW recognizes that the Specter-Leahy proposal represents a compromise that reflects countless hours of negotiations with the key stakeholders in this issue. We commend Senator Specter and Senator Leahy for their leadership and persistence in moving forward with efforts to fashion this compromise. We also understand that some issues are still under discussion as the Specter-Leahy proposal is translated into legislative language that will be introduced next week. We look forward to reviewing the final details of the legislation when it is available.

It is easy for critics who want to maintain the current tort system to point to flaws or shortcomings in the Specter-Leahy proposal. But the issue before the Senate is not whether this proposal is perfect or solves all problems. Rather, the issue is whether the Specter-Leahy proposal is better than the current tort system. The UAW believes that the answer to this question is clearly yes. In our judgment, the Specter-Leahy proposal will provide the victims of asbestos-related diseases with speedier, more equitable and more certain compensation than the current tort system. For this reason, we urge you to support the Specter-Leahy proposal when it is considered by the Senate.

Thank you for considering our views on this important issue.

Sincerely,

ALAN REUTHER,
Legislative Director.

APRIL 13, 2005.

Hon. PATRICK J. LEAHY,
Ranking Democratic Member, Senate Judiciary Committee, U.S. Senate, Washington, DC.

DEAR SENATOR LEAHY: We are writing today to implore you not to forget about our Nation's veterans as you continue your important work of fixing the broken asbestos litigation system. A lot has been written on this issue in the media recently. Yesterday, Senator Arlen Specter said he expects to formally introduce an asbestos victims compensation fund bill later this week. Even before Specter's announcement, some had raised questions about whether an asbestos victims compensation fund is the best solution to the asbestos crisis.

But the critics often overlook one crucial element: what is best for asbestos victims?

Clearly, the most important outcome for victims, many of whom are veterans dying as a result of asbestos exposure, is a system that provides timely, fair and certain compensation.

We believe the compensation fund approach is the only solution that will provide veterans suffering from asbestos-related illnesses with fair and certain compensation.

Asbestos has taken a heavy toll on our Nation's veterans. This dangerous substance was widely used by the military during and after World War II, particularly in insulation aboard U.S. Navy ships. Because of the long latency periods of asbestos-related diseases, many veterans are still being diagnosed today with life-threatening diseases that are the result of exposure that occurred during military service decades ago.

Veterans are in a unique situation in that we have virtually no avenue for compensation under the current system. Veterans with asbestos-related illnesses are prevented by law from seeking compensation from the U.S. government through the courts. Since most of the companies that supplied the U.S. military with asbestos are long gone, seeking relief from the suppliers is also a dead end.

Some have suggested that a medical criteria bill might provide a better solution to the asbestos problem. A medical criteria bill, however, will do little, if anything, to provide certainty for victims. And because it leaves asbestos claims in the courts, the medical criteria bill certainly wouldn't benefit veterans who are sick from asbestos. Under a medical criteria bill, the asbestos litigation system will remain unchanged for veterans.

The Senate Judiciary Committee shouldn't let special interests hijack veterans' only chance to receive the just compensation they deserve.

We urge the Senate Judiciary Committee to approve the asbestos victims compensation fund as quickly as possible and bring this critically important legislation to the floor. Our Nation's veterans deserve fair compensation—and nothing less.

Sincerely,

Veterans of Foreign Wars of the United States
Military Order of the Purple Heart
Blinded Veterans Association
Veterans of the Vietnam War, Inc.
Women in Military Service for America
Non Commissioned Officers Association
National Association for Uniformed Services
Paralyzed Veterans of America
Jewish War Veterans of the United States
Fleet Reserve Association
The Retired Enlisted Association
National Association of State Directors of Veterans Affairs
Military Officers Association of America
Marine Corps League
American Ex-Prisoners of War
National Association for Black Veterans, Inc.
Pearl Harbor Survivors Association.

ASBESTOS STUDY GROUP,
April 18, 2005.

Hon. ARLEN SPECTER,
Chairman, Committee on the Judiciary, U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR CHAIRMAN SPECTER: The Asbestos Study Group, a group of U.S. companies representing over 1.5 million workers, is greatly appreciative of the Chairman's tireless efforts in working with all interested Senators and private stakeholders to reach a bipartisan consensus that can bring a much needed solution to the Nation's asbestos litigation crisis. We are very pleased and encouraged that the revised April 12th draft has earned bipartisan support. We believe it brings us considerably closer to a long-overdue resolution. While our analysis of the new draft is continuing, we look forward to working with the Chairman and other Senators to obtain final passage of this critically important legislation as soon as possible.

In the last two decades Congress has debated asbestos litigation reform, the opportunity now before us represents our best chance for success. Too much progress has been made and too much is at stake for our Nation to miss this unique opportunity to finally solve the asbestos problem.

Thank you for your continuing leadership and commitment to this critically important issue.

Sincerely,

BARRY B. DIRENFELD,
Counsel, Asbestos Study Group.

[From the National Association of Manufacturers, April 14, 2005]

ENGLER STATEMENT ON SENATOR SPECTER'S LATEST ASBESTOS BILL LANGUAGE DRAFT

WASHINGTON, D.C.—National Association of Manufacturers President John Engler today issued this statement in support of Senator Arlen Specter's (R–PA) ongoing effort to end America's asbestos litigation crisis:

''Manufacturers and the business community more broadly are grateful to Chairman Specter for the energy and determination he has shown in working to craft a legislative solution to our Nation's economy-sapping problem with asbestos litigation.

''The comprehensive Specter draft is now being reviewed by the NAM and the members of the Asbestos Alliance. Since the draft has already earned bipartisan support in the Senate, we are hopeful it will engender similarly broad support in the nationwide business community. When our review and those of our Asbestos Alliance colleagues are complete, we hope a solution will finally be at hand.

''There is much to like in the Chairman's draft, I'm encouraged by the renewed commitment on both sides of the aisle, and I am more hopeful about prospects for consensus than I have been in weeks.

''We look forward to working with Chairman Specter and other Senators toward final

passage of a bill that fairly resolves compensation problems and ends the scandal of asbestos lawsuit abuse once and for all.''

Mr. LEAHY. The bipartisan efforts of the last 2 years have been productive. With the help of Judge Edward Becker, the primary stakeholders have worked diligently and as a result we have reached a compromise agreement on a national trust fund that will fairly compensate victims of asbestos exposure. With the Chairman's leadership, the disparate interests have reached consensus on many issues such as overall funding of $140 billion and a streamlined administrative process within the Department of Labor. Compensation will be awarded and paid outside of the court system through a simplified administrative claims process. There is no need to prove liability or identify a particular defendant. There is, instead, a claims process wherein all those who exhibit certain medical symptoms and evidence of disease are compensated.

Last Congress I was disappointed by the bill reported by the Judiciary Committee and by the partisan bill, S. 2290, that was subsequently introduced as a substitute for that legislation. As compared to those efforts, our bipartisan bill includes significant and necessary improvements: Our bill provides higher compensation awards for victims, with $1.1 million for victims of mesothelioma, $300,000 to $1.1 million for lung cancer victims, $200,000 for victims of other cancers caused by asbestos, $100,000 to $850,000 for asbestosis, and $25,000 for what we call ''mixed disease cases.'' All likely asbestos victims are eligible for medical monitoring, and unlike last year's bills, this bill provides for medical screening for high-risk workers, a relatively low-cost way to help make sure that those most likely to be harmed are diagnosed.

Another essential improvement is the important provision ensuring that victims' awards under the new trust fund will not be subject to subrogation by insurance companies. This means that victims will not have to give up any of their much-deserved compensation just because they received workers' compensation or other insurance benefits in the past. The initial funding of this trust is both more realistic and more substantial than the partisan bill from the last Congress, providing for almost $43 billion of the total $140 billion in the first five years. And unlike the earlier bill, this bill ensures that the contributors into the fund will be a matter of public record, as are their obligations to the fund. Our bill also guarantees that court cases that are well under way, and certainly those that have reached judgment, will not be upset by the new trust fund. Similarly, last year's bill would also have overridden all civil settlements that had any remaining conduct outstanding. Our bipartisan asbestos bill protects those settlements between named defendants and named victims, and also protects settlements that provide for health insurance or health care.

There are other improvements to the trust fund plan over last year's effort. The previous legislation provided no incentive for the fund to start processing claims. The Specter-Leahy-Feinstein bill creates an incentive for the fund to begin processing claims quickly: If it is not operational within 9 months, the sickest victims will be able to return to the tort system. If the fund is not operational within 24 months, all victims can return to the tort system.

In improving the way the asbestos legislation handles exigent claims—those victims who are sickest and may not have long to live—Senator FEINSTEIN was instrumental in developing a creative solution. I thank the senior Senator from California for her tireless efforts on behalf of sick and dying asbestos victims. These victims should not be forced to wait a year while this new trust fund gets organized and ready to process claims. Under Senator FEINSTEIN's approach, which we adopted, exigent cases would receive an immediate lump-sum payment, and, as I noted earlier, if the fund is not operational in nine months, these sickest victims will be able to continue their cases in court.

As part of this compromise legislation, a particular class of lung cancer sufferers, those who have had significant asbestos exposure but no markings of asbestos-related disease, are not treated as compensable victims for purposes of the asbestos trust fund. Because of the absence of markings, it is not possible to establish asbestos as the cause of their disease. If they develop markings, however, they will become eligible for compensation from the asbestos trust fund. As with many other administrative claims processes, this bill sets a limit on attorneys' fee. In connection with this asbestos fund, the limit is set at 5 percent on victims' awards within the fund. In addition, in order to prevent victims of asbestos exposure from retooling their complaints to circumvent the asbestos trust fund, the bill also imposes a higher burden of proof within the tort system for plaintiffs seeking damages resulting from exposure to silica.

The problems we are addressing are complex, this bill necessarily reflects these complexities, and its drafting was not easy. The compromises we had to make were difficult but necessary to ensure that we created a trust fund that would provide adequate compensation to the thousands of workers who have suffered, and continue to suffer, the devastating health effect of asbestos. The history of asbestos use in our country must come to an end. Under a provision authored by Senator MURRAY that we have included, which was accepted during the last Congress by the Judiciary Committee, this bill will ban its use. We must halt the harm asbestos creates, and ameliorate the harm it has already caused. The industrial and insurer participants in the trust fund will gain the benefits of financial certainty and relief from the stresses of litigation in the tort system, and the victims will have a quicker and more efficient path to recovery.

I thank Chairman SPECTER, Senator FEINSTEIN and others for working so hard with me on this bipartisan legislation. I urge Senators to support this compromise legislation to, at long last, help solve the asbestos problem by providing fair compensation to victims of asbestos exposure.

I think of the staffs who have worked so diligently on this. On my staff, I single out Ed Pagano, who was a lead counsel of the Democrats, along with Kristine Lucius on our side. On Senator SPECTER's side, we were helped so much by Seema Singh.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 113—EXPRESSING SUPPORT FOR THE INTERNATIONAL HOME FURNISHINGS MARKET IN HIGH POINT, NORTH CAROLINA

Mrs. DOLE (for herself and Mr. BURR) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 113

Whereas the International Home Furnishings Market in High Point, North Carolina (commonly known as the ''High Point Market'') is the largest home furnishings industry trade show of its kind in the world;

Whereas the High Point Market takes place every April and October, and is the largest event in North Carolina, attended by more people for a longer period of time over a larger area than any other event in the State;

Whereas an average of 70,000 manufacturers, exhibitors, sales representatives, retail buyers, interior designers, architects, support personnel, suppliers, and news media attend the High Point Market each April and October;

Whereas people from all 50 States and more than 100 foreign countries attend the High Point Market;

Whereas the High Point Market attracts an average of 2,500 exhibitors from around the world, with international exhibitors constituting more than 10 percent of the exhibitors at the event;

Whereas the exhibits at the High Point Market encompass a wide variety of finished products, including case goods (wood furniture), upholstery, accessories, lighting, bedding, and rugs;

Whereas the High Point Market has more than 11,500,000 square feet of permanent showroom space in more than 180 separate buildings in High Point and Thomasville, North Carolina;

Whereas the High Point Market brings $1,140,000,000 and more than 13,000 jobs to North Carolina annually, and creates a significant, lasting, and positive economic impact on a State in which the manufacturing economy is declining due to offshore production;

Whereas the Federal Government has invested in the High Point Market by providing funding to help meet critical transportation infrastructure needs; and

Whereas the High Point Market is a vital engine for economic growth for North Carolina, especially for the region commonly

known as the Triad Region: Now, therefore, be it

Resolved, That the Senate—

(1) expresses support for the International Home Furnishings Market in High Point, North Carolina;

(2) commends those who organize and participate in the International Home Furnishings Market for their contributions to economic growth and vitality in North Carolina; and

(3) recognizes that the International Home Furnishings Market has a positive economic impact on North Carolina and is vital to a region and State adversely affected by a decline in traditional manufacturing.

AMENDMENTS SUBMITTED & PROPOSED

SA 538. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 375 proposed by Mr. CRAIG (for himself and Mr. KENNEDY) to the bill H.R. 1268, Making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes; which was ordered to lie on the table.

SA 539. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 375 proposed by Mr. CRAIG (for himself and Mr. KENNEDY) to the bill H.R. 1268, supra; which was ordered to lie on the table.

SA 540. Mr. CORNYN submitted an amendment intended to be proposed by him to the bill H.R. 1268, supra; which was ordered to lie on the table.

SA 541. Mr. KYL submitted an amendment intended to be proposed to amendment SA 375 proposed by Mr. CRAIG (for himself and Mr. KENNEDY) to the bill H.R. 1268, supra; which was ordered to lie on the table.

SA 542. Mr. KYL submitted an amendment intended to be proposed to amendment SA 387 proposed by Ms. MIKULSKI (for herself, Mr. ALLEN, Mr. LEAHY, Mr. CORZINE, Mr. WARNER, Mr. JEFFORDS, Mr. SARBANES, Mr. DAYTON, Mr. KENNEDY, Ms. LANDRIEU, Mr . REED, Mr. LAUTENBERG, Mr. FEINGOLD, Mr. DORGAN, Mr. KERRY, Mr. CONRAD, Mr. THOMAS, Mr. STEVENS, Mr. DEWINE, Mr. COLEMAN, Ms. SNOWE, and Ms. COLLINS) to the bill H.R. 1268, supra; which was ordered to lie on the table.

SA 543. Mr. REED (for himself and Mr. CHAFEE) submitted an amendment intended to be proposed to amendment SA 375 proposed by Mr. CRAIG (for himself and Mr. KENNEDY) to the bill H.R. 1268, supra; which was ordered to lie on the table.

SA 544. Mr. REED (for himself and Mr. CHAFEE) submitted an amendment intended to be proposed to amendment SA 432 proposed by Mr. CHAMBLISS (for himself and Mr. KYL) to the bill H.R. 1268, supra; which was ordered to lie on the table.

SA 545. Mr. WYDEN submitted an amendment intended to be proposed to amendment SA 376 submitted by Mr. WYDEN (for himself, Mr. SMITH, and Mrs. MURRAY) and intended to be proposed to the bill H.R. 1268, supra; which was ordered to lie on the table.

SA 546. Mr. CHAMBLISS submitted an amendment intended to be proposed to amendment SA 375 proposed by Mr. CRAIG (for himself and Mr. KENNEDY) to the bill H.R. 1268, supra; which was ordered to lie on the table.

SA 547. Mr. COCHRAN (for Mr. BOND) proposed an amendment to the bill H.R. 1268, supra.

SA 548. Mr. COCHRAN (for Mr. LEAHY) proposed an amendment to the bill H.R. 1268, supra.

SA 549. Mr. BAUCUS submitted an amendment intended to be proposed to amendment SA 475 submitted by Mr. CRAIG (for himself, Mr. BAUCUS, Mr. ROBERTS, and Mr. ENZI) and intended to be proposed to the bill H.R. 1268, supra; which was ordered to lie on the table.

SA 550. Mr. VITTER submitted an amendment intended to be proposed by him to the bill H.R. 1268, supra; which was ordered to lie on the table.

SA 551. Mr. DEWINE submitted an amendment intended to be proposed to amendment SA 439 submitted by Mr. CRAIG (for himself and Mr. AKAKA) and intended to be proposed to the bill H.R. 1268, supra; which was ordered to lie on the table.

SA 552. Mr. BAUCUS submitted an amendment intended to be proposed to amendment SA 475 submitted by Mr. CRAIG (for himself, Mr. BAUCUS, Mr. ROBERTS, and Mr. ENZI) and intended to be proposed to the bill H.R. 1268, supra; which was ordered to lie on the table.

SA 553. Mr. WYDEN submitted an amendment intended to be proposed to amendment SA 376 submitted by Mr. WYDEN (for himself, Mr. SMITH, and Mrs. MURRAY) and intended to be proposed to the bill H.R. 1268, supra; which was ordered to lie on the table.

SA 554. Mr. WYDEN submitted an amendment intended to be proposed to amendment SA 376 submitted by Mr. WYDEN (for himself, Mr. SMITH, and Mrs. MURRAY) and intended to be proposed to the bill H.R. 1268, supra; which was ordered to lie on the table.

SA 555. Mr. KYL submitted an amendment intended to be proposed to amendment SA 387 proposed by Ms. MIKULSKI (for herself, Mr. ALLEN, Mr. LEAHY, Mr. CORZINE, Mr. WARNER, Mr. JEFFORDS, Mr. SARBANES, Mr. DAYTON, Mr. KENNEDY, Ms. LANDRIEU, Mr . REED, Mr. LAUTENBERG, Mr. FEINGOLD, Mr. DORGAN, Mr. KERRY, Mr. CONRAD, Mr. THOMAS, Mr. STEVENS, Mr. DEWINE, Mr. COLEMAN, Ms. SNOWE, and Ms. COLLINS) to the bill H.R. 1268, supra.

SA 556. Mr. STEVENS submitted an amendment intended to be proposed by him to the bill H.R. 1268, supra; which was ordered to lie on the table.

SA 557. Ms. SNOWE submitted an amendment intended to be proposed to amendment SA 530 submitted by Mr. DOMENICI and intended to be proposed to the bill H.R. 1268, supra; which was ordered to lie on the table.

SA 558. Ms. SNOWE submitted an amendment intended to be proposed to amendment SA 529 submitted by Mr. DOMENICI and intended to be proposed to the bill H.R. 1268, supra; which was ordered to lie on the table.

SA 559. Mr. ROBERTS submitted an amendment intended to be proposed to amendment SA 437 submitted by Mr. ROCKEFELLER and intended to be proposed to the bill H.R. 1268, supra; which was ordered to lie on the table.

SA 560. Mr. COCHRAN (for Mr. SHELBY (for himself, Mr. KENNEDY, Mr. DURBIN, and Mr. OBAMA)) proposed an amendment to the bill H.R. 1268, supra.

SA 561. Mr. COCHRAN (for Mr. REID) proposed an amendment to the bill H.R. 1268, supra.

SA 562. Mr. COCHRAN (for Mr. REID) proposed an amendment to the bill H.R. 1268, supra.

TEXT OF AMENDMENTS

SA 538. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 375 proposed by Mr. CRAIG (for himself and Mr. KENNEDY) to the bill H.R. 1268, Making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes; which was ordered to lie on the table; as follows:

On page 4, strike line 1 and all that follows through page 35, line 23.

SA 539. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 375 proposed by Mr. CRAIG (for himself and Mr. KENNEDY) to the bill H.R. 1268, Making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes; which was ordered to lie on the table; as follows:

Beginning on page 58, strike line 10 and all that follows through page 65, line 21, and insert the following:

''(3) REQUIRED WAGES.—

''(A) IN GENERAL.—An employer applying for workers shall offer to pay, and shall pay, all workers in the occupation for which the employer has applied for workers, not less than the prevailing wage.

''(B) INFORMATION FROM STATES.—In complying with subparagraph (A), an employer may request and obtain a prevailing wage determination from the State employment security agency.

''(C) INFORMATION FROM SURVEYS.—In lieu of the procedure described in subparagraph (B), an employer may rely on other wage information, including a survey of the prevailing wages of workers in the occupation in the area of intended employment that has been conducted or funded by the employer or a group of employers, that meets criteria specified by the Secretary of Labor in regulations.

''(D) COMPLIANCE.—An employer who obtains such prevailing wage determination, or who relies on a qualifying survey of prevailing wages, and who pays the wage determined to be prevailing, shall be considered to have complied with the requirement of subparagraph (A).

''(E) MINIMUM WAGES.—No worker shall be paid less than the greater of the prevailing wage or the applicable State minimum wage.

SA 540. Mr. CORNYN submitted an amendment intended to be proposed by him to the bill H.R. 1268, Making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border

fence, and for other purposes; which was ordered to lie on the table; as follows:

On page 28, line 5, strike ''not''.

SA 541. Mr. KYL submitted an amendment intended to be proposed to amendment SA 375 proposed by Mr. CRAIG (for himself and Mr. KENNEDY) to the bill H.R. 1268, Making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes; which was ordered to lie on the table; as follows:

Beginning on page 13, strike line 4 and all that follows through page 35, line 23, and insert the following:

(d) APPLICATIONS.—

(1) TO WHOM MAY BE MADE.—

(A) WITHIN THE UNITED STATES.—The Secretary shall provide that applications for temporary resident status under subsection (a) may be filed—

(i) with the Secretary, but only if the applicant is represented by an attorney; or

(ii) with a qualified designated entity (designated under paragraph (2)), but only if the applicant consents to the forwarding of the application to the Secretary.

(B) PRELIMINARY APPLICATIONS.—

(i) IN GENERAL.—During the application period described in subsection (a)(1)(B), the Secretary may grant admission to the United States as a temporary resident and provide an ''employment authorized'' endorsement or other appropriate work permit to any alien who presents a preliminary application for such status under subsection (a) at a designated port of entry on the southern land border of the United States. An alien who does not enter through a port of entry is subject to deportation and removal as otherwise provided in this Act.

(ii) DEFINITION.—For purposes of clause (i), the term ''preliminary application'' means a fully completed and signed application which contains specific information concerning the performance of qualifying employment in the United States, together with the payment of the appropriate fee and the submission of photographs and the documentary evidence which the applicant intends to submit as proof of such employment.

(iii) ELIGIBILITY.—An applicant under clause (i) shall otherwise be admissible to the United States under subsection (e)(2) and shall establish to the satisfaction of the examining officer during an interview that the applicant's claim to eligibility for temporary resident status is credible.

(C) TRAVEL DOCUMENTATION.—The Secretary shall provide each alien granted status under this section with a counterfeit-resistant document of authorization to enter or reenter the United States that meets the requirements established by the Secretary.

(2) DESIGNATION OF ENTITIES TO RECEIVE APPLICATIONS.—

(A) IN GENERAL.—For purposes of receiving applications under subsection (a), the Secretary—

(i) shall designate qualified farm labor organizations and associations of employers; and

(ii) may designate such other persons as the Secretary determines are qualified and have substantial experience, demonstrate competence, and have traditional long-term involvement in the preparation and submission of applications for adjustment of status under section 209, 210, or 245 of the Immigration and Nationality Act, Public Law 89–732, Public Law 95–145, or the Immigration Reform and Control Act of 1986.

(B) REFERENCES.—Organizations, associations, and persons designated under subparagraph (A) are referred to in this Act as ''qualified designated entities''.

(3) PROOF OF ELIGIBILITY.—

(A) IN GENERAL.—An alien may establish that the alien meets the requirement of subsection (a)(1)(A) through government employment records or records supplied by employers or collective bargaining organizations, and other reliable documentation as the alien may provide. The Secretary shall establish special procedures to properly credit work in cases in which an alien was employed under an assumed name.

(B) DOCUMENTATION OF WORK HISTORY.—

(i) BURDEN OF PROOF.—An alien applying for status under subsection (a)(1) has the burden of proving by a preponderance of the evidence that the alien has worked the requisite number of hours or days (as required under subsection (a)(1)(A)).

(ii) TIMELY PRODUCTION OF RECORDS.—If an employer or farm labor contractor employing such an alien has kept proper and adequate records respecting such employment, the alien's burden of proof under clause (i) may be met by securing timely production of those records under regulations to be promulgated by the Secretary.

(iii) SUFFICIENT EVIDENCE.—An alien can meet the burden of proof under clause (i) to establish that the alien has performed the work described in subsection (a)(1)(A) by producing sufficient evidence to show the extent of that employment as a matter of just and reasonable inference.

(4) TREATMENT OF APPLICATIONS BY QUALIFIED DESIGNATED ENTITIES.—Each qualified designated entity shall agree to forward to the Secretary applications filed with it in accordance with paragraph (1)(A)(i)(II) but shall not forward to the Secretary applications filed with it unless the applicant has consented to such forwarding. No such entity may make a determination required by this section to be made by the Secretary. Upon the request of the alien, a qualified designated entity shall assist the alien in obtaining documentation of the work history of the alien.

(5) LIMITATION ON ACCESS TO INFORMATION.—Files and records prepared for purposes of this subsection by qualified designated entities operating under this subsection are confidential and the Secretary shall not have access to such files or records relating to an alien without the consent of the alien, except as allowed by a court order issued pursuant to paragraph (6).

(7) PENALTIES FOR FALSE STATEMENTS IN APPLICATIONS.—

(A) CRIMINAL PENALTY.—Any person who—

(i) files an application for status under subsection (a) and knowingly and willfully falsifies, conceals, or covers up a material fact or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry; or

(ii) creates or supplies a false writing or document for use in making such an application,

shall be fined in accordance with title 18, United States Code, imprisoned not more than 5 years, or both.

(B) INADMISSIBILITY.—An alien who is convicted of a crime under subparagraph (A) shall be considered to be inadmissible to the United States on the ground described in section 212(a)(6)(C)(i) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(6)(C)(i)).

(8) APPLICATION FEES.—

(A) FEE SCHEDULE.—The Secretary shall provide for a schedule of fees that—

(i) shall be charged for the filing of applications for status under subsection (a); and

(ii) may be charged by qualified designated entities to help defray the costs of services provided to such applicants.

(B) PROHIBITION ON EXCESS FEES BY QUALIFIED DESIGNATED ENTITIES.—A qualified designated entity may not charge any fee in excess of, or in addition to, the fees authorized under subparagraph (A)(ii) for services provided to applicants.

(C) DISPOSITION OF FEES.—

(i) IN GENERAL.—There is established in the general fund of the Treasury a separate account, which shall be known as the ''Agricultural Worker Immigration Status Adjustment Account''. Notwithstanding any other provision of law, there shall be deposited as offsetting receipts into the account all fees collected under subparagraph (A)(i).

(ii) USE OF FEES FOR APPLICATION PROCESSING.—Amounts deposited in the ''Agricultural Worker Immigration Status Adjustment Account'' shall remain available to the Secretary until expended for processing applications for status under subsection (a).

(e) WAIVER OF NUMERICAL LIMITATIONS AND CERTAIN GROUNDS FOR INADMISSIBILITY.—

(1) NUMERICAL LIMITATIONS DO NOT APPLY.—The numerical limitations of sections 201 and 202 of the Immigration and Nationality Act (8 U.S.C. 1151 and 1152) shall not apply to the adjustment of aliens to lawful permanent resident status under this section.

(2) WAIVER OF CERTAIN GROUNDS OF INADMISSIBILITY.—In the determination of an alien's eligibility for status under subsection (a)(1)(C), the following rules shall apply:

(A) GROUNDS OF EXCLUSION NOT APPLICABLE.—The provisions of paragraphs (5), (6)(A), (7)(A), and (9)(B) of section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)) shall not apply.

(B) WAIVER OF OTHER GROUNDS.—

(i) IN GENERAL.—Except as provided in clause (ii), the Secretary may waive any other provision of such section 212(a) in the case of individual aliens for humanitarian purposes, to ensure family unity, or if otherwise in the public interest.

(ii) GROUNDS THAT MAY NOT BE WAIVED.—Paragraphs (2)(A), (2)(B), (2)(C), (3), and (4) of such section 212(a) may not be waived by the Secretary under clause (i).

(iii) CONSTRUCTION.—Nothing in this subparagraph shall be construed as affecting the authority of the Secretary other than under this subparagraph to waive provisions of such section 212(a).

(C) SPECIAL RULE FOR DETERMINATION OF PUBLIC CHARGE.—An alien is not ineligible for status under this section by reason of a ground of inadmissibility under section 212(a)(4) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(4)) if the alien demonstrates a history of employment in the United States evidencing self-support without reliance on public cash assistance.

(f) TEMPORARY STAY OF REMOVAL AND WORK AUTHORIZATION FOR CERTAIN APPLICANTS.—

(1) BEFORE APPLICATION PERIOD.—Effective on the date of enactment of this Act, the Secretary shall provide that, in the case of an alien who is apprehended before the beginning of the application period described in subsection (a)(1)(B) and who can establish a nonfrivolous case of eligibility for temporary resident status under subsection (a) (but for the fact that the alien may not apply for such status until the beginning of

such period), until the alien has had the opportunity during the first 30 days of the application period to complete the filing of an application for temporary resident status, the alien—

(A) may not be removed; and

(B) shall be granted authorization to engage in employment in the United States and be provided an ''employment authorized'' endorsement or other appropriate work permit for such purpose.

(2) DURING APPLICATION PERIOD.—The Secretary shall provide that, in the case of an alien who presents a nonfrivolous application for temporary resident status under subsection (a) during the application period described in subsection (a)(1)(B), including an alien who files such an application within 30 days of the alien's apprehension, and until a final determination on the application has been made in accordance with this section, the alien—

(A) may not be removed; and

(B) shall be granted authorization to engage in employment in the United States and be provided an ''employment authorized'' endorsement or other appropriate work permit for such purpose.

(g) ADMINISTRATIVE AND JUDICIAL REVIEW.—

(1) IN GENERAL.—There shall be no administrative or judicial review of a determination respecting an application for status under subsection (a) or (c) except in accordance with this subsection.

(2) ADMINISTRATIVE REVIEW.—

(A) SINGLE LEVEL OF ADMINISTRATIVE APPELLATE REVIEW.—The Secretary shall establish an appellate authority to provide for a single level of administrative appellate review of such a determination.

(B) STANDARD FOR REVIEW.—Such administrative appellate review shall be based solely upon the administrative record established at the time of the determination on the application and upon such additional or newly discovered evidence as may not have been available at the time of the determination.

(3) JUDICIAL REVIEW.—

(A) LIMITATION TO REVIEW OF REMOVAL.—There shall be judicial review of such a determination only in the judicial review of an order of removal under section 242 of the Immigration and Nationality Act (8 U.S.C. 1252).

(B) STANDARD FOR JUDICIAL REVIEW.—Such judicial review shall be based solely upon the administrative record established at the time of the review by the appellate authority and the findings of fact and determinations contained in such record shall be conclusive unless the applicant can establish abuse of discretion or that the findings are directly contrary to clear and convincing facts contained in the record considered as a whole.

(h) DISSEMINATION OF INFORMATION ON ADJUSTMENT PROGRAM.—Beginning not later than the first day of the application period described in subsection (a)(1)(B), the Secretary, in cooperation with qualified designated entities, shall broadly disseminate information respecting the benefits that aliens may receive under this section and the requirements to be satisfied to obtain such benefits.

(i) REGULATIONS.—The Secretary shall issue regulations to implement this section not later than the first day of the seventh month that begins after the date of enactment of this Act.

(j) EFFECTIVE DATE.—This section shall take effect on the date that regulations are issued implementing this section on an interim or other basis.

(k) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary to carry out this section $40,000,000 for each of fiscal years 2006 through 2009.

SEC. 712. CORRECTION OF SOCIAL SECURITY RECORDS.

(a) IN GENERAL.—Section 208(d)(1) of the Social Security Act (42 U.S.C. 408(d)(1)) is amended—

(1) in subparagraph (B)(ii), by striking ''or'' at the end;

(2) in subparagraph (C), by inserting ''or'' at the end;

(3) by inserting after subparagraph (C) the following:

''(D) who is granted status as a lawful temporary resident under the Agricultural Job Opportunity, Benefits, and Security Act of 2005,''; and

(4) by striking ''1990.'' and inserting ''1990, or in the case of an alien described in subparagraph (D), if such conduct is alleged to have occurred before the date on which the alien was granted lawful temporary resident status.''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the first day of the seventh month that begins after the date of enactment of this Act.

SA 542. Mr. KYL submitted an amendment intended to be proposed to amendment SA 387 proposed by Ms. MIKULSKI (for herself, Mr. ALLEN, Mr. LEAHY, Mr. CORZINE, Mr. WARNER, Mr. JEFFORDS, Mr. SARBANES, Mr. DAYTON, Mr. KENNEDY, Ms. LANDRIEU, Mr. REED, Mr. LAUTENBERG, Mr. FEINGOLD, Mr. DORGAN, Mr. KERRY, Mr. CONRAD, Mr. THOMAS, Mr. STEVENS, Mr. DEWINE, Mr. COLEMAN, Ms. SNOWE, and Ms. COLLINS) to the bill H.R. 1268, Making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes; which was ordered to lie on the table; as follows:

On page 2, strike lines 5 through 11, and insert the following:

''(9)(A) Subject to subparagraphs (B) and (C), an alien counted toward the numerical limitations of paragraph (1)(B) during any 1 of the 3 fiscal years prior to the submission of a petition for a nonimmigrant worker described in section 101(a)(15)(H)(ii)(b) may not be counted toward such limitation for the fiscal year in which the petition is approved.

''(B) A petition referred to in subparagraph (A) shall include, with respect to an alien—

''(i) the full name of the alien; and

''(ii) a certification to the Department of Homeland Security that the alien is a returning worker.

''(C) An H–2B petition for a returning worker shall be approved only if the name of the individual on the petition is confirmed by—

''(i) the Department of State; or

''(ii) if the alien is visa exempt, the Department of Homeland Security.''.

SA 543. Mr. REED (for himself and Mr. CHAFEE) submitted an amendment intended to be proposed to amendment SA 375 proposed by Mr. CRAIG (for himself and Mr. KENNEDY) to the bill H.R. 1268, Making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. ADJUSTMENT OF STATUS.

(a) ADJUSTMENT OF STATUS.—

(1) IN GENERAL.—

(A) ELIGIBILITY.—The Secretary of Homeland Security (referred to in this section as the ''Secretary'') shall adjust the status of an alien described in subsection (b) to that of an alien lawfully admitted for permanent residence, if the alien—

(i) applies for adjustment before April 1, 2007; and

(ii) is otherwise eligible to receive an immigrant visa and admissible to the United States for permanent residence, except that, in determining such admissibility, the grounds for inadmissibility specified in paragraphs (4), (5), (6)(A), and (7)(A) of section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)) shall not apply.

(B) INELIGIBLE ALIENS.—An alien shall not be eligible for adjustment of status under this section if the Secretary finds that the alien has been convicted of—

(i) any aggravated felony (as defined in section 101(a)(43) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(43)); or

(ii) 2 or more crimes involving moral turpitude.

(2) RELATIONSHIP OF APPLICATION TO CERTAIN ORDERS.—

(A) IN GENERAL.—An alien present in the United States who has been ordered excluded, deported, removed, or to depart voluntarily from the United States under any provision of the Immigration and Nationality Act may, notwithstanding such order, apply for adjustment of status under paragraph (1) if otherwise qualified under that paragraph.

(B) SEPARATE MOTION NOT REQUIRED.—An alien described in subparagraph (A) may not be required, as a condition of submitting or granting such application, to file a separate motion to reopen, reconsider, or vacate the order described in subparagraph (A).

(C) EFFECT OF DECISION BY SECRETARY.—If the Secretary grants the application, the Secretary shall cancel the order. If the Secretary makes a final decision to deny the application, the order shall be effective and enforceable to the same extent as if the application had not been made.

(b) ALIENS ELIGIBLE FOR ADJUSTMENT OF STATUS.—

(1) IN GENERAL.—The benefits provided under subsection (a) shall apply to any alien—

(A) who is—

(i) a national of Liberia; and

(ii) has been continuously present in the United States from January 1, 2005, through the date of application under subsection (a); or

(B) who is the spouse, child, or unmarried son or daughter of an alien described in subparagraph (A).

(2) DETERMINATION OF CONTINUOUS PHYSICAL PRESENCE.—For purposes of establishing the period of continuous physical presence referred to in paragraph (1), an alien shall not be considered to have failed to maintain continuous physical presence by reasons of an absence, or absences, from the United States

for any period or periods amounting in the aggregate to not more than 180 days.

(c) STAY OF REMOVAL.—

(1) IN GENERAL.—The Secretary shall provide by regulation for an alien who is subject to a final order of deportation or removal or exclusion to seek a stay of such order based on the filing of an application under subsection (a).

(2) DURING CERTAIN PROCEEDINGS.—Notwithstanding any provision in the Immigration and Nationality Act, the Secretary shall not order an alien to be removed from the United States if the alien is in exclusion, deportation, or removal proceedings under any provision of such Act and has applied for adjustment of status under subsection (a), except where the Secretary has made a final determination to deny the application.

(3) WORK AUTHORIZATION.—

(A) IN GENERAL.—The Secretary may authorize an alien who has applied for adjustment of status under subsection (a) to engage in employment in the United States during the pendency of such application and may provide the alien with an ''employment authorized'' endorsement or other appropriate document signifying authorization of employment.

(B) PENDING APPLICATIONS.—If an application under subsection (a) is pending for a period exceeding 180 days and has not been denied, the Secretary shall authorize such employment.

(d) RECORD OF PERMANENT RESIDENCE.—Upon approval of an alien's application for adjustment of status under subsection (a), the Secretary shall establish a record of the alien's admission for permanent record as of the date of the alien's arrival in the United States.

(e) AVAILABILITY OF ADMINISTRATIVE REVIEW.—The Secretary shall provide to applicants for adjustment of status under subsection (a) the same right to, and procedures for, administrative review as are provided to—

(1) applicants for adjustment of status under section 245 of the Immigration and Nationality Act (8 U.S.C. 1255); or

(2) aliens subject to removal proceedings under section 240 of such Act.

(f) LIMITATION ON JUDICIAL REVIEW.—A determination by the Secretary as to whether the status of any alien should be adjusted under this section is final and shall not be subject to review by any court.

(g) NO OFFSET IN NUMBER OF VISAS AVAILABLE.—If an alien is granted the status of having been lawfully admitted for permanent residence pursuant to this section, the Secretary of State shall not be required to reduce the number of immigrant visas authorized to be issued under any provision of the Immigration and Nationality Act.

(h) APPLICATION OF IMMIGRATION AND NATIONALITY ACT PROVISIONS.—

(1) DEFINITIONS.—Except as otherwise specifically provided in this section, the definitions contained in the Immigration and Nationality Act shall apply in this section.

(2) SAVINGS PROVISION.—Nothing in this section shall be construed to repeal, amend, alter, modify, effect, or restrict the powers, duties, function, or authority of the Secretary in the administration and enforcement of the Immigration and Nationality Act or any other law relating to immigration, nationality, or naturalization.

(3) EFFECT OF ELIGIBILITY FOR ADJUSTMENT OF STATUS.—Eligibility to be granted the status of having been lawfully admitted for permanent residence under this section shall not preclude an alien from seeking any status under any other provision of law for which the alien may otherwise be eligible.

SA 544. Mr. REED (for himself and Mr. CHAFEE) submitted an amendment intended to be proposed to amendment SA 432 proposed by Mr. CHAMBLISS (for himself and Mr. KYL) to the bill H.R. 1268, Making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. ADJUSTMENT OF STATUS.

(a) ADJUSTMENT OF STATUS.—

(1) IN GENERAL.—

(A) ELIGIBILITY.—The Secretary of Homeland Security (referred to in this section as the ''Secretary'') shall adjust the status of an alien described in subsection (b) to that of an alien lawfully admitted for permanent residence, if the alien—

(i) applies for adjustment before April 1, 2007; and

(ii) is otherwise eligible to receive an immigrant visa and admissible to the United States for permanent residence, except that, in determining such admissibility, the grounds for inadmissibility specified in paragraphs (4), (5), (6)(A), and (7)(A) of section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)) shall not apply.

(B) INELIGIBLE ALIENS.—An alien shall not be eligible for adjustment of status under this section if the Secretary finds that the alien has been convicted of—

(i) any aggravated felony (as defined in section 101(a)(43) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(43)); or

(ii) 2 or more crimes involving moral turpitude.

(2) RELATIONSHIP OF APPLICATION TO CERTAIN ORDERS.—

(A) IN GENERAL.—An alien present in the United States who has been ordered excluded, deported, removed, or to depart voluntarily from the United States under any provision of the Immigration and Nationality Act may, notwithstanding such order, apply for adjustment of status under paragraph (1) if otherwise qualified under that paragraph.

(B) SEPARATE MOTION NOT REQUIRED.—An alien described in subparagraph (A) may not be required, as a condition of submitting or granting such application, to file a separate motion to reopen, reconsider, or vacate the order described in subparagraph (A).

(C) EFFECT OF DECISION BY SECRETARY.—If the Secretary grants the application, the Secretary shall cancel the order. If the Secretary makes a final decision to deny the application, the order shall be effective and enforceable to the same extent as if the application had not been made.

(b) ALIENS ELIGIBLE FOR ADJUSTMENT OF STATUS.—

(1) IN GENERAL.—The benefits provided under subsection (a) shall apply to any alien—

(A) who is—

(i) a national of Liberia; and

(ii) has been continuously present in the United States from January 1, 2005, through the date of application under subsection (a); or

(B) who is the spouse, child, or unmarried son or daughter of an alien described in subparagraph (A).

(2) DETERMINATION OF CONTINUOUS PHYSICAL PRESENCE.—For purposes of establishing the period of continuous physical presence referred to in paragraph (1), an alien shall not be considered to have failed to maintain continuous physical presence by reasons of an absence, or absences, from the United States for any period or periods amounting in the aggregate to not more than 180 days.

(c) STAY OF REMOVAL.—

(1) IN GENERAL.—The Secretary shall provide by regulation for an alien who is subject to a final order of deportation or removal or exclusion to seek a stay of such order based on the filing of an application under subsection (a).

(2) DURING CERTAIN PROCEEDINGS.—Notwithstanding any provision in the Immigration and Nationality Act, the Secretary shall not order an alien to be removed from the United States if the alien is in exclusion, deportation, or removal proceedings under any provision of such Act and has applied for adjustment of status under subsection (a), except where the Secretary has made a final determination to deny the application.

(3) WORK AUTHORIZATION.—

(A) IN GENERAL.—The Secretary may authorize an alien who has applied for adjustment of status under subsection (a) to engage in employment in the United States during the pendency of such application and may provide the alien with an ''employment authorized'' endorsement or other appropriate document signifying authorization of employment.

(B) PENDING APPLICATIONS.—If an application under subsection (a) is pending for a period exceeding 180 days and has not been denied, the Secretary shall authorize such employment.

(d) RECORD OF PERMANENT RESIDENCE.—Upon approval of an alien's application for adjustment of status under subsection (a), the Secretary shall establish a record of the alien's admission for permanent record as of the date of the alien's arrival in the United States.

(e) AVAILABILITY OF ADMINISTRATIVE REVIEW.—The Secretary shall provide to applicants for adjustment of status under subsection (a) the same right to, and procedures for, administrative review as are provided to—

(1) applicants for adjustment of status under section 245 of the Immigration and Nationality Act (8 U.S.C. 1255); or

(2) aliens subject to removal proceedings under section 240 of such Act.

(f) LIMITATION ON JUDICIAL REVIEW.—A determination by the Secretary as to whether the status of any alien should be adjusted under this section is final and shall not be subject to review by any court.

(g) NO OFFSET IN NUMBER OF VISAS AVAILABLE.—If an alien is granted the status of having been lawfully admitted for permanent residence pursuant to this section, the Secretary of State shall not be required to reduce the number of immigrant visas authorized to be issued under any provision of the Immigration and Nationality Act.

(h) APPLICATION OF IMMIGRATION AND NATIONALITY ACT PROVISIONS.—

(1) DEFINITIONS.—Except as otherwise specifically provided in this section, the definitions contained in the Immigration and Nationality Act shall apply in this section.

(2) SAVINGS PROVISION.—Nothing in this section shall be construed to repeal, amend, alter, modify, effect, or restrict the powers, duties, function, or authority of the Secretary in the administration and enforcement of the Immigration and Nationality Act or any other law relating to immigration, nationality, or naturalization.

(3) EFFECT OF ELIGIBILITY FOR ADJUSTMENT OF STATUS.—Eligibility to be granted the status of having been lawfully admitted for permanent residence under this section shall not preclude an alien from seeking any status under any other provision of law for which the alien may otherwise be eligible.

SA 545. Mr. WYDEN submitted an amendment intended to be proposed to amendment SA 376 submitted by Mr. WYDEN (for himself, Mr. SMITH, and Mrs. MURRAY) and intended to be proposed to the bill H.R. 1268, Making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes; which was ordered to lie on the table; as follows:

On page 1, strike ''At the appropriate place,'' and insert ''On page 204, between lines 4 and 5,''.

On page 2, strike lines 1 through 11 and insert the following:

CHAPTER 5

DEPARTMENT OF DEFENSE

OPERATIONS AND MAINTENANCE

(a) For an additional amount for the Secretary of the Army, acting through the Chief of Engineers, for emergency repair of the Fern Ridge Dam, Oregon, $31,000,000, to remain available until expended: *Provided*, That the amounts provided under this heading are designated as an emergency requirement pursuant to section 402 of the conference report to accompany S. Con. Res. 95 (108th Congress).

(b) For an additional amount for the Secretary of the Army, acting through the Chief of Engineers, for emergency work on the Los Angeles-Long Beach Harbor, Mojave River Dam, Port San Luis, and Santa Barbara Harbor, $7,500,000, to remain available until expended: *Provided*, That the amounts provided under this heading are designated as an emergency requirement pursuant to section 402 of the conference report to accompany S. Con. Res. 95 (108th Congress).

(c) For an additional amount for the Secretary of the Army, acting through the Chief of Engineers, for emergency construction at Lower Santa Ana River Reaches 1 and 2 of the Santa Ana River Project, Prado Dam of the Santa Ana River Project, San Timoteo of the Santa Ana River Project, Murrieta Creek, and Santa Paula Creek, $12,500,000, to remain available until expended: *Provided*, That the amounts provided under this heading are designated as an emergency requirement pursuant to section 402 of the conference report to accompany S. Con. Res. 95 (108th Congress).

(d) The project for navigation, Los Angeles Harbor, California, authorized by section 101(b)(5) of the Water Resources Development Act of 2000 (114 Stat. 2577) is modified to authorize the Secretary of the Army to carry out the project at a total cost of $222,000,000.

(e) The Secretary of the Army, acting through the Chief of Engineers, shall use any funds appropriated to the Secretary pursuant to this Act to repair, restore, and maintain projects and facilities of the Corps of Engineers, including by dredging navigation channels, cleaning area streams, providing emergency streambank protection, restoring such public infrastructure as the Secretary determines to be necessary (including sewer and water facilities), conducting studies of the impacts of floods, and providing such flood relief as the Secretary determines to be appropriate: *Provided*, That of those funds, $32,000,000 shall be used by the Secretary for the Upper Peninsula, Michigan.

SA 546. Mr. CHAMBLISS submitted an amendment intended to be proposed to amendment SA 375 proposed by Mr. CRAIG (for himself and Mr. KENNEDY) to the bill H.R. 1268, Making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes; which was ordered to lie on the table; as follows:

Strike all after the first word and insert the following:

TITLE VII—TEMPORARY AGRICULTURAL WORKERS

SEC. 701. SHORT TITLE.

This title may be cited as the ''Temporary Agricultural Work Reform Act of 2005''.

Subtitle A—Temporary H–2A Workers

SEC. 711. ADMISSION OF TEMPORARY H–2A WORKERS.

Section 218 of the Immigration and Nationality Act (8 U.S.C. 1188) is amended to read as follows:

''ADMISSION OF TEMPORARY H–2A WORKERS

''SEC. 218. (a) APPLICATION.—An alien may not be admitted as an H–2A worker unless the employer has filed with the Secretary of Homeland Security a petition attesting to the following:

''(1) TEMPORARY OR SEASONAL WORK OR SERVICES.—

''(A) IN GENERAL.—The agricultural employment for which the H–2A worker or workers is or are sought is temporary or seasonal, the number of workers sought, and the wage rate and conditions under which they will be employed.

''(B) TEMPORARY OR SEASONAL WORK.—For purposes of subparagraph (A), a worker is employed on a 'temporary' or 'seasonal' basis if the employment is intended not to exceed 10 months.

''(2) BENEFITS, WAGE, AND WORKING CONDITIONS.—The employer will provide, at a minimum, the benefits, wages, and working conditions required by subsection (m) to all workers employed in the jobs for which the H–2A worker or workers is or are sought and to all other temporary workers in the same occupation at the place of employment.

''(3) NONDISPLACEMENT OF UNITED STATES WORKERS.—The employer did not displace and will not displace a United States worker employed by the employer during the period of employment and during a period of 30 days preceding the period of employment in the occupation at the place of employment for which the employer seeks approval to employ H–2A workers.

''(4) RECRUITMENT.—

''(A) IN GENERAL.—The employer shall attest that the employer—

''(i) conducted adequate recruitment in the metropolitan statistical area of intended employment before filing the attestation; and

''(ii) was unsuccessful in locating qualified United States workers for the job opportunity for which the certification is sought.

''(B) RECRUITMENT.—The adequate recruitment requirement under subparagraph (A) is satisfied if the employer—

''(i) places a job order with America's Job Bank Program of the Department of Labor; and

''(ii) places a Sunday advertisement in a newspaper of general circulation or an advertisement in an appropriate trade journal or ethnic publication that is likely to be patronized by a potential worker in the area of intended employment.

''(C) ADVERTISEMENT CRITERIA.—The advertisement requirement under subparagraph (B)(ii) is satisfied if the advertisement—

''(i) names the employer;

''(ii) directs applicants to report or send resumes, as appropriate for the occupation, to the employer;

''(iii) provides a description of the vacancy that is specific enough to apprise United States workers of the job opportunity for which certification is sought;

''(iv) describes the geographic area with enough specificity to apprise applicants of any travel requirements and where applicants will likely have to reside to perform the job;

''(v) states the rate of pay, which must equal or exceed the wage paid for the occupation in the area of intended employment; and

''(vi) offers wages, terms, and conditions of employment, which are at least as favorable as those offered to the alien.

''(5) OFFERS TO UNITED STATES WORKERS.—The employer has offered or will offer the job for which the nonimmigrant is, or the nonimmigrants are, sought to any eligible United States worker who applies and is equally or better qualified for the job and who will be available at the time and place of need.

''(6) PROVISION OF INSURANCE.—If the job for which the nonimmigrant is, or the nonimmigrants are, sought is not covered by State workers' compensation law, the employer will provide, at no cost to the worker, insurance covering injury and disease arising out of, and in the course of, the worker's employment which will provide benefits at least equal to those provided under the State workers' compensation law for comparable employment.

''(7) STRIKE OR LOCKOUT.—The specific job opportunity for which the employer is requesting an H–2A worker is not vacant because the former occupant is on strike or being locked out in the course of a labor dispute.

''(8) PREVIOUS VIOLATIONS.—The employer has not, during the previous 5-year period, employed H–2A workers and knowingly violated a material term or condition of approval with respect to the employment of domestic or nonimmigrant workers, as determined by the Secretary of Labor after notice and opportunity for a hearing.

''(b) PUBLICATION.—The employer shall make available for public examination, within 1 working day after the date on which a petition under this section is filed, at the employer's principal place of business or worksite, a copy of each such petition (and such accompanying documents as are necessary).

''(c) LIST.—The Secretary of Labor shall compile, on a current basis, a list (by employer) of the petitions filed under subsection (a). Such list shall include the wage rate, number of aliens sought, period of intended employment, and date of need. The Secretary of Labor shall make such list available for public examination in Washington, District of Columbia.

''(d) SPECIAL RULES FOR CONSIDERATION OF PETITIONS.—The following rules shall apply in the case of the filing and consideration of a petition under subsection (a):

''(1) DEADLINE FOR FILING APPLICATIONS.—The Secretary of Homeland Security may not require that the petition be filed more than 28 days before the first date the employer requires the labor or services of the H–2A worker or workers.

''(2) ISSUANCE OF APPROVAL.—Unless the Secretary of Homeland Security finds that the petition is incomplete or obviously inaccurate, the Secretary of Homeland Security shall provide a decision within 7 days of the date of the filing of the petition.

''(e) ROLES OF AGRICULTURAL ASSOCIATIONS.—

''(1) PERMITTING FILING BY AGRICULTURAL ASSOCIATIONS.—A petition to hire an alien as a temporary agricultural worker may be filed by an association of agricultural producers which use agricultural services.

''(2) TREATMENT OF ASSOCIATIONS ACTING AS EMPLOYERS.—If an association is a joint or sole employer of temporary agricultural workers, such workers may be transferred among its producer members to perform agricultural services of a temporary or seasonal nature for which the petition was approved.

''(3) STATEMENT OF LIABILITY.—The application form shall include a clear statement explaining the liability under this section of an employer who places an H–2A worker with another H–2A employer if the other employer displaces a United States worker in violation of the condition described in subsection (a)(7).

''(4) TREATMENT OF VIOLATIONS.—

''(A) MEMBER'S VIOLATION DOES NOT NECESSARILY DISQUALIFY ASSOCIATION OR OTHER MEMBERS.—If an individual producer member of a joint employer association is determined to have committed an act that is in violation of the conditions for approval with respect to the member's petition, the denial shall apply only to that member of the association unless the Secretary of Labor determines that the association or other member participated in, had knowledge of, or had reason to know of the violation.

''(B) ASSOCIATION'S VIOLATION DOES NOT NECESSARILY DISQUALIFY MEMBERS.—

''(i) JOINT EMPLOYER.—If an association representing agricultural producers as a joint employer is determined to have committed an act that is in violation of the conditions for approval with respect to the association's petition, the denial shall apply only to the association and does not apply to any individual producer member of the association, unless the Secretary of Labor determines that the member participated in, had knowledge of, or had reason to know of the violation.

''(ii) SOLE EMPLOYER.—If an association of agricultural producers approved as a sole employer is determined to have committed an act that is in violation of the conditions for approval with respect to the association's petition, no individual producer member of such association may be the beneficiary of the services of temporary alien agricultural workers admitted under this section in the commodity and occupation in which such aliens were employed by the association which was denied approval during the period such denial is in force, unless such producer member employs such aliens in the commodity and occupation in question directly or through an association which is a joint employer of such workers with the producer member.

''(f) EXPEDITED ADMINISTRATIVE APPEALS OF CERTAIN DETERMINATIONS.—Regulations shall provide for an expedited procedure for the review of a denial of approval under this section, or at the applicant's request, for a de novo administrative hearing respecting the denial.

''(g) MISCELLANEOUS PROVISIONS.—

''(1) ENDORSEMENT OF DOCUMENTS.—The Secretary of Homeland Security shall provide for the endorsement of entry and exit documents of nonimmigrants described in section 101(a)(15)(H)(ii)(a) as may be necessary to carry out this section and to provide notice for purposes of section 274A.

''(2) PREEMPTION OF STATE LAWS.—The provisions of subsections (a) and (c) of section 214 and the provisions of this section preempt any State or local law regulating admissibility of nonimmigrant workers.

''(3) FEES.—

''(A) IN GENERAL.—The Secretary of Homeland Security may require, as a condition of approving the petition, the payment of a fee in accordance with subparagraph (B) to recover the reasonable costs of processing petitions.

''(B) AMOUNTS.—

''(i) EMPLOYER.—The fee for each employer that receives a temporary alien agricultural labor certification shall be equal to $100 plus $10 for each job opportunity for H–2A workers certified, provided that the fee to an employer for each temporary alien agricultural labor certification received shall not exceed $1,000.

''(ii) JOINT EMPLOYER ASSOCIATION.—In the case of a joint employer association that receives a temporary alien agricultural labor certification, each employer-member receiving such certification shall pay a fee equal to $100 plus $10 for each job opportunity for H–2A workers certified, provided that the fee to an employer for each temporary alien agricultural labor certification received shall not exceed $1,000. The joint employer association shall not be charged a separate fee.

''(C) PAYMENTS.—The fees collected under this paragraph shall be paid by check or money order made payable to the 'Department of Homeland Security'. In the case of employers of H–2A workers that are members of a joint employer association applying on their behalf, the aggregate fees for all employers of H–2A workers under the petition may be paid by 1 check or money order.

''(D) INFLATION ADJUSTMENT.—In the case of any calendar year beginning after 2005, each dollar amount in subparagraph (B) may be increased by an amount equal to—

''(i) such dollar amount; multiplied by

''(ii) the percentage (if any) by which the average of the Consumer Price Index for all urban consumers (United States city average) for the 12-month period ending with August of the preceding calendar year exceeds such average for the 12-month period ending with August 2004.

''(h) FAILURE TO MEET CONDITIONS.—If the Secretary of Labor finds, after notice and opportunity for a hearing, a failure to meet a condition of subsection (a), or a material misrepresentation of fact in a petition under subsection (a)—

''(1) the Secretary of Labor shall notify the Secretary of Homeland Security of such finding and may, in addition, impose such other administrative remedies (including civil money penalties in an amount not to exceed $1,000 per violation) as the Secretary of Labor determines to be appropriate; and

''(2) the Secretary of Homeland Security may disqualify the employer from the employment of H–2A workers for a period of 1 year.

''(i) WILLFUL FAILURES AND WILLFUL MISREPRESENTATIONS.—If the Secretary of Labor finds, after notice and opportunity for a hearing, a willful failure to meet a material condition of subsection (a) or a willful misrepresentation of a material fact in a petition under subsection (a)—

''(1) the Secretary of Labor shall notify the Secretary of Homeland Security of such finding and may, in addition, impose such other administrative remedies (including civil money penalties in an amount not to exceed $5,000 per violation) as the Secretary of Labor determines to be appropriate;

''(2) the Secretary of Homeland Security may disqualify the employer from the employment of H–2A workers for a period of 2 years;

''(3) for a second violation, the Secretary of Homeland Security may disqualify the employer from the employment of H–2A workers for a period of 5 years; and

''(4) for a third violation, the Secretary of Homeland Security may permanently disqualify the employer from the employment of H–2A workers.

''(j) DISPLACEMENT OF UNITED STATES WORKERS.—If the Secretary of Labor finds, after notice and opportunity for a hearing, a willful failure to meet a material condition of subsection (a) or a willful misrepresentation of a material fact in a petition under subsection (a), in the course of which failure or misrepresentation the employer displaced a United States worker employed by the employer during the period of employment on the employer's petition under subsection (a) or during the period of 30 days preceding such period of employment—

''(1) the Secretary of Labor shall notify the Secretary of Homeland Security of such finding and may, in addition, impose such other administrative remedies (including civil money penalties in an amount not to exceed $15,000 per violation) as the Secretary of Labor determines to be appropriate;

''(2) the Secretary of Homeland Security may disqualify the employer from the employment of H–2A workers for a period of 5 years; and

''(3) for a second violation, the Secretary of Homeland Security may permanently disqualify the employer from the employment of H–2A workers.

''(k) LIMITATIONS ON CIVIL MONEY PENALTIES.—The Secretary of Labor shall not impose total civil money penalties with respect to a petition under subsection (a) in excess of $90,000.

''(l) FAILURES TO PAY WAGES OR REQUIRED BENEFITS.—If the Secretary of Labor finds, after notice and opportunity for a hearing, that the employer has failed to pay the wages, or provide the housing allowance, transportation, subsistence reimbursement, or guarantee of employment required under subsection (a)(2), the Secretary of Labor shall assess payment of back wages, or other required benefits, due any United States worker or H–2A worker employed by the employer in the specific employment in question. The back wages or other required benefits under subsection (a)(2) shall be equal to the difference between the amount that should have been paid and the amount that actually was paid to such worker.

''(m) MINIMUM BENEFITS, WAGES, AND WORKING CONDITIONS.—

''(1) PREFERENTIAL TREATMENT OF ALIENS PROHIBITED.—

''(A) IN GENERAL.—Employers seeking to hire United States workers shall offer the United States workers not less than the same benefits, wages, and working conditions that the employer is offering, intends to offer, or will provide to H–2A workers. Conversely, no job offer may impose on United States workers any restrictions or obligations which will not be imposed on the employer's H–2A workers.

''(B) INTERPRETATIONS AND DETERMINATIONS.—While benefits, wages, and other terms and conditions of employment specified in this subsection are required to be provided in connection with employment under

this section, every interpretation and determination made under this Act or under any other law, regulation, or interpretative provision regarding the nature, scope, and timing of the provision of these and any other benefits, wages, and other terms and conditions of employment shall be made in conformance with the governing principles that the services of workers to their employers and the employment opportunities afforded to workers by their employers, including those employment opportunities that require United States workers or H–2A workers to travel or relocate in order to accept or perform employment, mutually benefit such workers, as well as their families, and employers, principally benefitting neither, and that employment opportunities within the United States further benefit the United States economy as a whole and should be encouraged.

''(2) REQUIRED WAGES.—

''(A) An employer applying for workers under subsection (a) shall offer to pay, and shall pay, all workers in the occupation for which the employer has applied for workers, not less than the prevailing wage.

''(B) In complying with subparagraph (A), an employer may request and obtain a prevailing wage determination from the State employment security agency.

''(C) In lieu of the procedure described in subparagraph (B), an employer may rely on other wage information, including a survey of the prevailing wages of workers in the occupation in the area of intended employment that has been conducted or funded by the employer or a group of employers, that meets criteria specified by the Secretary of Labor in regulations.

''(D) An employer who obtains such prevailing wage determination, or who relies on a qualifying survey of prevailing wages, and who pays the wage determined to be prevailing, shall be considered to have complied with the requirement of subparagraph (A).

''(E) No worker shall be paid less than the greater of the prevailing wage or the applicable State minimum wage.

''(3) REQUIREMENT TO PROVIDE HOUSING OR A HOUSING ALLOWANCE.—

''(A) IN GENERAL.—An employer applying for workers under subsection (a) shall offer to provide housing at no cost to all workers in job opportunities for which the employer has applied under that section and to all other workers in the same occupation at the place of employment, whose place of residence is beyond normal commuting distance.

''(B) TYPE OF HOUSING.—In complying with subparagraph (A), an employer may, at the employer's election, provide housing that meets applicable Federal standards for temporary labor camps or secure housing that meets applicable local standards for rental or public accommodation housing, or other substantially similar class of habitation, or in the absence of applicable local standards, State standards for rental or public accommodation housing or other substantially similar class of habitation. In the absence of applicable State or local standards, Federal temporary labor camp standards shall apply.

''(C) CERTIFICATE OF INSPECTION.—Prior to any occupation by a worker in housing described in subparagraph (B), the employer shall submit a certificate of inspection by an approved Federal or State agency to the Secretary of Labor.

''(D) WORKERS ENGAGED IN THE RANGE PRODUCTION OF LIVESTOCK.—The Secretary of Labor shall issue regulations that address the specific requirements for the provision of housing to workers engaged in the range production of livestock.

''(E) LIMITATION.—Nothing in this paragraph shall be construed to require an employer to provide or secure housing for persons who were not entitled to such housing under the temporary labor certification regulations in effect on June 1, 1986.

''(F) HOUSING ALLOWANCE AS ALTERNATIVE.—

''(i) IN GENERAL.—The employer may provide a reasonable housing allowance in lieu of offering housing under subparagraph (A) if the requirement under clause (v) is satisfied.

''(ii) ASSISTANCE TO LOCATE HOUSING.—Upon the request of a worker seeking assistance in locating housing, the employer shall make a good-faith effort to assist the worker in locating housing in the area of intended employment.

''(iii) LIMITATION.—A housing allowance may not be used for housing which is owned or controlled by the employer. An employer who offers a housing allowance to a worker, or assists a worker in locating housing which the worker occupies, pursuant to this clause shall not be deemed a housing provider under section 203 of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1823) solely by virtue of providing such housing allowance.

''(iv) REPORTING REQUIREMENT.—The employer must provide the Secretary of Labor with a list of the names of all workers assisted under this subparagraph and the local address of each such worker.

''(v) CERTIFICATION.—The requirement of this clause is satisfied if the Governor of the State certifies to the Secretary of Labor that there is adequate housing available in the area of intended employment for migrant farm workers, and H–2A workers, who are seeking temporary housing while employed at farm work. Such certification shall expire after 3 years unless renewed by the Governor of the State.

''(vi) AMOUNT OF ALLOWANCE.—

''(I) NONMETROPOLITAN COUNTIES.—If the place of employment of the workers provided an allowance under this subparagraph is a nonmetropolitan county, the amount of the housing allowance under this subparagraph shall be equal to the statewide average fair market rental for existing housing for nonmetropolitan counties for the State, as established by the Secretary of Housing and Urban Development pursuant to section 8(c) of the United States Housing Act of 1937 (42 U.S.C. 1437f(c)), based on a 2-bedroom dwelling unit and an assumption of 2 persons per bedroom.

''(II) METROPOLITAN COUNTIES.—If the place of employment of the workers provided an allowance under this paragraph is in a metropolitan county, the amount of the housing allowance under this subparagraph shall be equal to the statewide average fair market rental for existing housing for metropolitan counties for the State, as established by the Secretary of Housing and Urban Development pursuant to section 8(c) of the United States Housing Act of 1937 (42 U.S.C. 1437f(c)), based on a 2-bedroom dwelling unit and an assumption of 2 persons per bedroom.

''(G) EXEMPTION.—An employer applying for workers under subsection (a) whose primary job site is located 150 miles or less from the United States border shall not be required to provide housing or a housing allowance.

''(4) REIMBURSEMENT OF TRANSPORTATION.—

''(A) TO PLACE OF EMPLOYMENT.—

''(i) IN GENERAL.—A worker who completes 50 percent of the period of employment of the job opportunity for which the worker was hired, measured from the worker's first day of work in such employment, shall be reimbursed by the employer for the cost of the worker's transportation and subsistence from the place from which the worker was approved to enter the United States to work for the employer (or place of last employment, if the worker traveled from such place) to the place of employment by the employer.

''(ii) OTHER FEES.—The employer shall not be required to reimburse visa, passport, consular, or international border-crossing fees or any other fees associated with the worker's lawful admission into the United States to perform employment that may be incurred by the worker.

''(iii) TIMELY REIMBURSEMENT.—Reimbursement to the worker of expenses for the cost of the worker's transportation and subsistence to the place of employment shall be considered timely if such reimbursement is made not later than the worker's first regular payday after the worker completes 50 percent of the period of employment of the job opportunity as provided under this paragraph.

''(B) FROM PLACE OF EMPLOYMENT.—A worker who completes the period of employment for the job opportunity involved shall be reimbursed by the employer for the cost of the worker's transportation and subsistence from the place from which the worker was approved to enter the United States to work for the employer.

''(C) LIMITATION.—

''(i) AMOUNT OF REIMBURSEMENT.—Except as provided in clause (ii), the amount of reimbursement provided under subparagraph (A) or (B) to a worker or alien shall not exceed the lesser of—

''(I) the actual cost to the worker or alien of the transportation and subsistence involved; or

''(II) the most economical and reasonable common carrier transportation charges and subsistence costs for the distance involved.

''(ii) DISTANCE TRAVELED.—No reimbursement under subparagraph (A) or (B) shall be required if the distance traveled is 100 miles or less or if the worker is not residing in employer-provided housing or housing secured through an allowance as provided in paragraph (3).

''(D) EARLY TERMINATION.—If the worker is laid off or employment is terminated for contract impossibility (as described in paragraph (5)(D)) before the anticipated ending date of employment, the employer shall provide the transportation and subsistence required by subparagraph (B) and, notwithstanding whether the worker has completed 50 percent of the period of employment, shall provide the transportation reimbursement required by subparagraph (A).

''(E) TRANSPORTATION BETWEEN LIVING QUARTERS AND WORKSITE.—The employer shall provide transportation between the worker's living quarters (such as housing provided by the employer pursuant to paragraph (3), including housing provided through a housing allowance) and the employer's worksite without cost to the worker, and such transportation will be in accordance with applicable laws and regulations.

''(5) GUARANTEE OF EMPLOYMENT.—

''(A) OFFER TO WORKER.—The employer shall guarantee to offer the worker employment for the hourly equivalent of at least 75 percent of the work days of the total period of employment, beginning with the first work day after the arrival of the worker at the place of employment and ending on the expiration date specified in the job offer. For purposes of this subparagraph, the hourly equivalent means the number of hours in the work days as stated in the job offer and shall exclude the worker's Sabbath and Federal holidays. If the employer affords the United States or H–2A worker less employment than that required under this subparagraph, the employer shall pay such worker the amount which the worker would have earned had the worker, in fact, worked for the guaranteed number of hours.

''(B) FAILURE TO WORK.—Any hours which the worker fails to work, up to a maximum of the number of hours specified in the job offer for a work day, when the worker has been offered an opportunity to do so, and all hours of work actually performed (including voluntary work in excess of the number of hours specified in the job offer in a work day, on the worker's Sabbath, or on Federal holidays) may be counted by the employer in calculating whether the period of guaranteed employment has been met.

''(C) ABANDONMENT OF EMPLOYMENT; TERMINATION FOR CAUSE.—If the worker voluntarily abandons employment before the end of the contract period, or is terminated for cause, the worker is not entitled to the 75 percent guarantee described in subparagraph (A).

''(D) CONTRACT IMPOSSIBILITY.—If, before the expiration of the period of employment specified in the job offer, the services of the worker are no longer required for reasons beyond the control of the employer due to any form of natural disaster (including a flood, hurricane, freeze, earthquake, fire, or drought), plant or animal disease, pest infestation, or regulatory action, before the employment guarantee in subparagraph (A) is fulfilled, the employer may terminate the worker's employment. In the event of such termination, the employer shall fulfill the employment guarantee in subparagraph (A) for the work days that have elapsed from the first work day after the arrival of the worker to the termination of employment. In such cases, the employer will make efforts to transfer the United States worker to other comparable employment acceptable to the worker.

''(n) PETITIONING FOR ADMISSION.—An employer, or an association acting as an agent or joint employer for its members, that seeks the admission into the United States of an H–2A worker must file a petition with the Secretary of Homeland Security. The petition shall include the attestations for the certification described in section 101(a)(15)(H)(ii)(a).

''(o) EXPEDITED ADJUDICATION BY THE SECRETARY.—The Secretary of Homeland Security—

''(1) shall establish a procedure for expedited adjudication of petitions filed under subsection (n); and

''(2) not later than 7 working days after such filing shall, by fax, cable, or other means assuring expedited delivery transmit a copy of notice of action on the petition—

''(A) to the petitioner; and

''(B) in the case of approved petitions, to the appropriate immigration officer at the port of entry or United States consulate where the petitioner has indicated that the alien beneficiary or beneficiaries will apply for a visa or admission to the United States.

''(p) DISQUALIFICATION.—

''(1) Subject to paragraph (2), an alien shall be considered inadmissible to the United States and ineligible for nonimmigrant status under section 101(a)(15)(H)(ii)(a) if the alien has, at any time during the past 5 years, violated a term or condition of admission into the United States as a nonimmigrant, including overstaying the period of authorized admission.

''(2) WAIVERS.—

''(A) IN GENERAL.—An alien outside the United States, and seeking admission under section 101(a)(15)(H)(ii)(a), shall not be deemed inadmissible under such section by reason of paragraph (1) or section 212(a)(9)(B) if the previous violation occurred on or before April 1, 2005.

''(B) LIMITATION.—In any case in which an alien is admitted to the United States upon having a ground of inadmissibility waived under subparagraph (A), such waiver shall be considered to remain in effect unless the alien again violates a material provision of this section or otherwise violates a term or condition of admission into the United States as a nonimmigrant, in which case such waiver shall terminate.

''(q) ABANDONMENT OF EMPLOYMENT.—

''(1) IN GENERAL.—An alien admitted or provided status under section 101(a)(15)(H)(ii)(a) who abandons the employment which was the basis for such admission or status shall be considered to have failed to maintain nonimmigrant status as an H–2A worker and shall depart the United States or be subject to removal under section 237(a)(1)(C)(i).

''(2) REPORT BY EMPLOYER.—The employer (or association acting as agent for the employer) shall notify the Secretary of Homeland Security within 7 days of an H–2A worker's having prematurely abandoned employment.

''(3) REMOVAL BY THE SECRETARY.—The Secretary of Homeland Security shall promptly remove from the United States any H–2A worker who violates any term or condition of the worker's nonimmigrant status.

''(4) VOLUNTARY TERMINATION.—Notwithstanding paragraph (1), an alien may voluntarily terminate his or her employment if the alien promptly departs the United States upon termination of such employment.

''(r) REPLACEMENT OF ALIEN.—

''(1) IN GENERAL.—Upon presentation of the notice to the Secretary of Homeland Security required by subsection (q)(2), the Secretary of State shall promptly issue a visa to, and the Secretary of Homeland Security shall admit into the United States, an eligible alien designated by the employer to replace an H–2A worker who abandons or prematurely terminates employment.

''(2) CONSTRUCTION.—Nothing in this subsection shall limit any preference required to be accorded United States workers under any other provision of this Act.

''(s) IDENTIFICATION DOCUMENT.—

''(1) IN GENERAL.—The Department of Homeland Security shall provide each alien authorized to be admitted under section 101(a)(15)(H)(ii)(a) with a single machine-readable, tamper-resistant, and counterfeit-resistant document that—

''(A) authorizes the alien's entry into the United States; and

''(B) serves, for the appropriate period, as an employment eligibility document.

''(2) REQUIREMENTS.—No identification and employment eligibility document may be issued which does not meet the following requirements:

''(A) The document shall be capable of reliably determining whether—

''(i) the individual with the identification and employment eligibility document whose eligibility is being verified is in fact eligible for employment;

''(ii) the individual whose eligibility is being verified is claiming the identity of another person; and

''(iii) the individual whose eligibility is being verified is authorized to be admitted into, and employed in, the United States as an H–2A worker.

''(B) The document shall—

''(i) be compatible with other databases of the Secretary of Homeland Security for the purpose of excluding aliens from benefits for which they are not eligible and determining whether the alien is unlawfully present in the United States; and

''(ii) be compatible with law enforcement databases to determine if the alien has been convicted of criminal offenses.

''(t) EXTENSION OF STAY OF H–2A WORKERS IN THE UNITED STATES.—

''(1) EXTENSION OF STAY.—

''(A) IN GENERAL.—An employer may seek up to 2 10-month extensions under this subsection.

''(B) PETITION.—If an employer seeks to employ an H–2A worker who is lawfully present in the United States, the petition filed by the employer or an association pursuant to subsection (n) shall request an extension of the alien's stay.

''(C) COMMENCEMENT; MAXIMUM PERIOD.—An extension of stay under this subsection—

''(i) may only commence upon the termination of the H–2A worker's contract with an employer; and

''(ii) may not exceed 10 months unless the employer files a written request for up to an additional 30 days accompanied by justification that the need for such additional time is necessitated by adverse weather conditions, acts of God, or economic hardship beyond the control of the employer.

''(D) FUTURE ELIGIBILITY.—At the conclusion of 3 10-month employment periods authorized under this section, the alien so employed may not be employed in the United States as an H–2A worker until the alien has returned to the alien's country of nationality or country of last residence for not less than 6 months.

''(2) WORK AUTHORIZATION UPON FILING PETITION FOR EXTENSION OF STAY.—

''(A) IN GENERAL.—An alien who is lawfully present in the United States may commence or continue the employment described in a petition under paragraph (1) on the date on which the petition is filed. The employer shall provide a copy of the employer's petition to the alien, who shall keep the petition with the alien's identification and employment eligibility document, as evidence that the petition has been filed and that the alien is authorized to work in the United States.

''(B) APPROVAL.—Upon approval of a petition for an extension of stay or change in the alien's authorized employment, the Secretary of Homeland Security shall provide a new or updated employment eligibility document to the alien indicating the new validity date, after which the alien is not required to retain a copy of the petition.

''(C) DEFINITION.—In this paragraph, the term 'file' means sending the petition by certified mail via the United States Postal Service, return receipt requested, or delivered by guaranteed commercial delivery which will provide the employer with a documented acknowledgment of the date of receipt of the petition.

''(u) SPECIAL RULE FOR ALIENS EMPLOYED AS SHEEPHERDERS, GOATHERDERS, OR DAIRY WORKERS.—Notwithstanding any other provision of this section, an alien admitted under section 101(a)(15)(H)(ii)(a) for employment as a sheepherder, goatherder, or dairy worker may be admitted for a period of up to 2 years.

''(v) DEFINITIONS.—For purposes of this section:

''(1) AREA OF EMPLOYMENT.—The term 'area of employment' means the area within normal commuting distance of the worksite or physical location where the work of the H–2A worker is or will be performed. If such worksite or location is within a Metropolitan Statistical Area, any place within such area is deemed to be within the area of employment.

''(2) ELIGIBLE INDIVIDUAL.—The term 'eligible individual' means, with respect to employment, an individual who is not an unauthorized alien (as defined in section 274A(h)(3)) with respect to that employment.

''(3) DISPLACE.—In the case of a petition with respect to 1 or more H–2A workers by an employer, the employer is considered to 'displace' a United States worker from a job if the employer lays off the worker from a job that is essentially the equivalent of the

job for which the H–2A worker or workers is or are sought. A job shall not be considered to be essentially equivalent of another job unless it involves essentially the same responsibilities, was held by a United States worker with substantially equivalent qualifications and experience, and is located in the same area of employment as the other job.

''(4) H–2A WORKER.—The term 'H–2A worker' means a nonimmigrant described in section 101(a)(15)(H)(ii)(a).

''(5) LAYS OFF.—

''(A) IN GENERAL.—The term 'lays off', with respect to a worker—

''(i) means to cause the worker's loss of employment, other than through a discharge for inadequate performance, violation of workplace rules, cause, voluntary departure, voluntary retirement, or the expiration of a grant or contract (other than a temporary employment contract entered into in order to evade a condition described in paragraph (3) or (7) of subsection (a); but

''(ii) does not include any situation in which the worker is offered, as an alternative to such loss of employment, a similar employment opportunity with the same employer (or, in the case of a placement of a worker with another employer under subsection (a)(7), with either employer described in such subsection) at equivalent or higher compensation and benefits than the position from which the employee was discharged, regardless of whether or not the employee accepts the offer.

''(B) CONSTRUCTION.—Nothing in this paragraph is intended to limit an employee's rights under a collective bargaining agreement or other employment contract.

''(6) PREVAILING WAGE.—The term 'prevailing wage' means, with respect to an agricultural occupation in an area of intended employment, the rate of wages that includes the 51st percentile of employees with similar experience and qualifications in the agricultural occupation in the area of intended employment, expressed in terms of the prevailing method of pay for the occupation in the area of intended employment.

''(7) UNITED STATES WORKER.—The term 'United States worker' means any worker, whether a United States citizen or national, a lawfully admitted permanent resident alien, or any other alien authorized to work in the relevant job opportunity within the United States, except—

''(A) an alien admitted or otherwise provided status under section 101(a)(15)(H)(ii)(a); and

''(B) an alien provided status under section 220.''.

SEC. 712. LEGAL ASSISTANCE PROVIDED BY THE LEGAL SERVICES CORPORATION.

Section 305 of the Immigrant Reform and Control Act of 1986 (8 U.S.C. 1101 note) is amended—

(1) by striking ''A nonimmigrant'' and inserting the following:

''(a) IN GENERAL.—A nonimmigrant''; and

(2) by adding at the end the following:

''(b) LEGAL ASSISTANCE.—The Legal Services Corporation may not provide legal assistance for or on behalf of any alien, and may not provide financial assistance to any person or entity that provides legal assistance for or on behalf of any alien, unless the alien—

''(1) is present in the United States at the time the legal assistance is provided; and

''(2) is an alien to whom subsection (a) applies.''

''(c) REQUIRED MEDIATION.—No party may bring a civil action for damages on behalf of a nonimmigrant described in section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)) or pursuant to those in the Blue Card Program established under section 220 of such Act, unless at least 90 days before bringing the action a request has been made to the Federal Mediation and Conciliation Service to assist the parties in reaching a satisfactory resolution of all issues involving all parties to the dispute and mediation has been attempted.''.

Subtitle B—Blue Card Status

SEC. 721. BLUE CARD PROGRAM.

(a) IN GENERAL.—Chapter 2 of title II of the Immigration and Nationality Act (8 U.S.C. 1181 et seq.) is amended by adding at the end the following:

''BLUE CARD PROGRAM

''SEC. 220. (a) DEFINITIONS.—As used in this section—

''(1) the term 'agricultural employment'—

''(A) means any service or activity that is considered to be agricultural under section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)) or agricultural labor under section 3121(g) of the Internal Revenue Code of 1986; and

''(B) includes any service or activity described in—

''(i) title 37, 37–3011, or 37–3012 (relating to landscaping) of the Department of Labor 2004–2005 Occupational Information Network Handbook;

''(ii) title 45 (relating to farming fishing, and forestry) of such handbook; or

''(iii) title 51, 51–3022, or 51–3023 (relating to meat, poultry, fish processors and packers) of such handbook.

''(2) the term 'blue card status' means the status of an alien who has been—

''(A) lawfully admitted for a temporary period under subsection (b); and

''(B) issued a tamper-resistant, machine-readable document that serves as the alien's visa, employment authorization, and travel documentation and contains such biometrics as are required by the Secretary;

''(3) the term 'employer' means any person or entity, including any farm labor contractor and any agricultural association, that employs workers in agricultural employment;

''(4) the term 'Secretary' means the Secretary of Homeland Security;

''(5) the term 'small employer' means an employer employing fewer than 500 employees based upon the average number of employees for each of the pay periods for the preceding 10 calendar months, including the period in which the employer employed H–2A workers; and

''(6) the term 'United States worker' means any worker, whether a United States citizen or national, a lawfully admitted permanent resident alien, or any other alien authorized to work in the relevant job opportunity within the United States, except—

''(A) an alien admitted or otherwise provided status under section 101(a)(15)(H)(ii)(a); and

''(B) an alien provided status under this section.

''(b) BLUE CARD PROGRAM.—

''(1) BLUE CARD PROGRAM.—Notwithstanding any other provision of law, the Secretary shall confer blue card status upon an alien who qualifies under this subsection if the Secretary determines that the alien—

''(A) has been in the United States continuously as of April 1, 2005;

''(B) has performed more than 50 percent of total annual weeks worked in agricultural employment in the United States (except in the case of a child provided derivative status as of April 1, 2005);

''(C) is otherwise admissible to the United States under section 212, except as otherwise provided under paragraph (2); and

''(D) is the beneficiary of a petition filed by an employer, as described in paragraph (3).

''(2) WAIVER OF CERTAIN GROUNDS FOR INADMISSIBILITY.—In determining an alien's eligibility for blue card status under paragraph (1)(C)—

''(A) the provisions of paragraphs (5), (6)(A), (7)(A), and (9)(B) of section 212(a) shall not apply;

''(B) the provisions of section 212(a)(6)(C) shall not apply with respect to prior or current agricultural employment; and

''(C) the Secretary may not waive paragraph (1), (2), or (3) of section 212(a) unless such waiver is permitted under another provision of law.

''(3) PETITIONS.—

''(A) IN GENERAL.—An employer seeking blue card status under this section for an alien employee shall file a petition for blue card status with the Secretary.

''(B) EMPLOYER PETITION.—An employer filing a petition under subparagraph (A) shall—

''(i) pay a registration fee of—

''(I) $1,000, if the employer employs more than 500 employees; or

''(II) $500, if the employer is a small employer employing 500 or fewer employees;

''(ii) pay a processing fee to cover the actual costs incurred in adjudicating the petition; and

''(iii) attest that the employer conducted adequate recruitment in the metropolitan statistical area of intended employment before filing the attestation and was unsuccessful in locating qualified United States workers for the job opportunity for which the certification is sought, which attestation shall be valid for a period of 60 days.

''(C) RECRUITMENT.—

''(i) The adequate recruitment requirement under subparagraph (B)(iii) is satisfied if the employer—

''(I) places a job order with America's Job Bank Program of the Department of Labor; and

''(II) places a Sunday advertisement in a newspaper of general circulation or an advertisement in an appropriate trade journal or ethnic publication that is likely to be patronized by a potential worker in the metropolitan statistical area of intended employment.

''(ii) An advertisement under clause (i)(II) shall—

''(I) name the employer;

''(II) direct applicants to report or send resumes, as appropriate for the occupation, to the employer;

''(III) provide a description of the vacancy that is specific enough to apprise United States workers of the job opportunity for which certification is sought;

''(IV) describe the geographic area with enough specificity to apprise applicants of any travel requirements and where applicants will likely have to reside to perform the job;

''(V) state the rate of pay, which must equal or exceed the wage paid for the occupation in the area of intended employment; and

''(VI) offer wages, terms, and conditions of employment, which are at least as favorable as those offered to the alien.

''(D) NOTIFICATION OF DENIAL.—The Secretary shall provide notification of a denial of a petition filed for an alien to the alien and the employer who filed such petition.

''(E) EFFECT OF DENIAL.—If the Secretary denies a petition filed for an alien, such alien shall return to the country of the alien's nationality or last residence outside the United States.

''(4) BLUE CARD STATUS.—

''(A) BLUE CARD.—

''(i) ALL-IN-ONE CARD.—The Secretary, in conjunction with the Secretary of State, shall develop a single machine-readable, tamper-resistant document that—

''(I) authorizes the alien's entry into the United States;

''(II) serves, during the period an alien is in blue card status, as an employment authorized endorsement or other appropriate work permit for agricultural employment only; and

''(III) serves as an entry and exit document to be used in conjunction with a proper visa or as a visa and as other appropriate travel and entry documentation using biometric identifiers that meet the biometric identifier standards jointly established by the Secretary of State and the Secretary.

''(ii) BIOMETRICS.—

''(I) After a petition is filed by an employer and receipt of such petition is confirmed by the Secretary, the alien, in order to further adjudicate the petition, shall submit 2 biometric identifiers, as required by the Secretary, at an Application Support Center.

''(II) The Secretary shall prescribe a process for the submission of a biometric identifier to be incorporated electronically into an employer's prior electronic filing of a petition. The Secretary shall prescribe an alternative process for employers to file a petition in a manner other than electronic filing, as needed.

''(B) DOCUMENT REQUIREMENTS.—The Secretary shall issue a blue card that is—

''(i) capable of reliably determining if the individual with the blue card whose eligibility is being verified is—

''(I) eligible for employment;

''(II) claiming the identify of another person; and

''(III) authorized to be admitted; and

''(ii) compatible with—

''(I) other databases maintained by the Secretary for the purpose of excluding aliens from benefits for which they are not eligible and determining whether the alien is unlawfully present in the United States; and

''(II) law enforcement databases to determine if the alien has been convicted of criminal offenses.

''(C) AUTHORIZED TRAVEL.—During the period an alien is in blue card status granted under this section and pursuant to regulations established by the Secretary, the alien may make brief visits outside the United States. An alien may be readmitted to the United States after such a visit without having to obtain a visa if the alien presents the alien's blue card document. Such periods of time spent outside the United States shall not cause the period of blue card status in the United States to be extended.

''(D) PORTABILITY.—

''(i) During the period in which an alien is in blue card status, the alien issued a blue card may accept new employment upon the Secretary's receipt of a petition filed by an employer on behalf of the alien. Employment authorization shall continue for such alien until such petition is adjudicated.

''(ii) If a petition filed under clause (i) is denied and the alien has ceased employment with the previous employer, the authorization under clause (i) shall terminate and the alien shall be required to return to the country of the alien's nationality or last residence.

''(iii) A fee may be required by the Secretary to cover the actual costs incurred in adjudicating a petition under this subparagraph. No other fee may be required under this subparagraph.

''(iv) A petition by an employer under this subparagraph may not be accepted within 90 days after the adjudication of a previous petition on behalf of an alien.

''(E) ANNUAL CHECK IN.—The employer of an alien in blue card status who has been employed for 1 year in blue card status shall confirm the alien's continued employment status with the Secretary electronically or in writing. Such confirmation will not require a further labor attestation.

''(F) TERMINATION OF BLUE CARD STATUS.—

''(i) During the period of blue card status granted an alien, the Secretary may terminate such status upon a determination by the Secretary that the alien is deportable or has become inadmissible.

''(ii) The Secretary may terminate blue card status granted to an alien if—

''(I) the Secretary determines that, without the appropriate waiver, the granting of blue card status was the result of fraud or willful misrepresentation (as described in section 212(a)(6)(C)(i));

''(II) the alien is convicted of a felony or a misdemeanor committed in the United States; or

''(III) the Secretary determines that the alien is deportable or inadmissible under any other provision of this Act.

''(5) PERIOD OF AUTHORIZED ADMISSION.—

''(A) IN GENERAL.—The initial period of authorized admission for an alien with blue card status shall be not more than 3 years. The employer of such alien may petition for extensions of such authorized admission for 2 additional periods of not more than 3 years each.

''(B) EXCEPTION.—The limit on renewals shall not apply to a nonimmigrant in a position of full-time, non-temporary employment who has managerial or supervisory responsibilities. The employer of such nonimmigrant shall be required to make an additional attestation to such an employment classification with the filing of a petition.

''(C) REPORTING REQUIREMENT.—If an alien with blue card status ceases to be employed by an employer, such employer shall immediately notify the Secretary of such cessation of employment. The Secretary shall provide electronic means for making such notification.

''(D) LOSS OF EMPLOYMENT.—

''(i) An alien's blue card status shall terminate if the alien is unemployed for 60 or more consecutive days.

''(ii) An alien whose period of authorized admission terminates under clause (i) shall be required to return to the country of the alien's nationality or last residence.

''(6) GROUNDS FOR INELIGIBILITY.—

''(A) BAR TO FUTURE VISAS FOR CONDITION VIOLATIONS.—Any alien having blue card status shall not again be eligible for the same blue card status if the alien violates any term or condition of such status.

''(B) ALIENS UNLAWFULLY PRESENT.—Any alien who enters the United States after April 1, 2005, without being admitted or paroled shall be ineligible for blue card status.

''(C) ALIENS IN H–2A STATUS.—Any alien in lawful H–2A status as of April 1, 2005, shall be ineligible for blue card status.

''(7) BAR ON CHANGE OR ADJUSTMENT OF STATUS.—

''(A) IN GENERAL.—An alien having blue card status shall not be eligible to change or adjust status in the United States or obtain a different nonimmigrant or immigrant visa from a United States Embassy or consulate.

''(B) LOSS OF ELIGIBILITY.—An alien having blue card status shall lose eligibility for such status if the alien—

''(i) files a petition to adjust status to legal permanent residence in the United States; or

''(ii) requests a consular processing for an immigrant visa outside the United States.

''(C) EXCEPTION.—An alien having blue card status may not adjust status to legal permanent resident status or obtain another nonimmigrant or immigrant status unless—

''(i)(I) the alien renounces his or her blue card status by providing written notification to the Secretary of Homeland Security or the Secretary of State; or

''(II) the alien's blue card status otherwise expires; and

''(ii) the alien has resided and been physically present in the alien's country of nationality or last residence for not less than 1 year after leaving the United States and the renouncement or expiration of blue card status.

''(8) JUDICIAL REVIEW.—There shall be no judicial review of a denial of blue card status.

''(c) SAFE HARBOR.—

''(1) SAFE HARBOR OF ALIEN.—An alien for whom a nonfrivolous petition is filed under this section—

''(A) shall be granted employment authorization pending final adjudication of the petition;

''(B) may not be detained, determined inadmissible or deportable, or removed pending final adjudication of the petition for change in status, unless the alien commits an act which renders the alien ineligible for such change of status; and

''(C) may not be considered an unauthorized alien as defined in section 274A(h)(3) until such time as the petition for status is adjudicated.

''(2) SAFE HARBOR FOR EMPLOYER.—An employer that files a petition for blue card status for an alien shall not be subject to civil and criminal tax liability relating directly to the employment of such alien. An employer that provides unauthorized aliens with copies of employment records or other evidence of employment pursuant to the petition shall not be subject to civil and criminal liability pursuant to section 274A for employing such unauthorized aliens.

''(d) TREATMENT OF SPOUSES AND CHILDREN.—

''(1) SPOUSES.—A spouse of an alien having blue card status shall not be eligible for derivative status by accompanying or following to join the alien. Such a spouse may obtain status based only on an independent petition filed by an employer petitioning under subsection (b)(3) with respect to the employment of the spouse.

''(2) CHILDREN.—A child of an alien having blue card status shall not be eligible for the same temporary status unless—

''(A) the child is accompanying or following to join the alien; and

''(B) the alien is the sole custodial parent of the child or both custodial parents of the child have obtained such status.''.

(b) CLERICAL AMENDMENT.—The table of contents of the Immigration and Nationality Act is amended by inserting after the item relating to section 219 the following:

''Sec. 220 Blue card program.''.

SEC. 722. PENALTIES FOR FALSE STATEMENTS.

Section 1546 of title 18, United States Code, is amended—

(1) by redesignating subsection (c) as subsection (d); and

(2) by inserting after subsection (b) the following:

''(c) Any person, including the alien who is the beneficiary of a petition, who—

''(1) files a petition under section 220(b)(3) of the Immigration and Nationality Act; and

''(2)(A) knowingly and willfully falsifies, conceals, or covers up a material fact related to such a petition;

''(B) makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry related to such a petition; or

''(C) creates or supplies a false writing or document for use in making such a petition, shall be fined in accordance with this title, imprisoned not more than 5 years, or both.''.

SEC. 723. SECURING THE BORDERS.

Not later than 6 months after the date of enactment of this Act, the Secretary of Homeland Security shall submit to Congress a comprehensive plan for securing the borders of the United States.

SEC. 724. EFFECTIVE DATE.

This subtitle shall take effect on the date that is 6 months after the date of enactment of this Act.

SA 547. Mr. COCHRAN (for Mr. BOND) proposed an amendment to the bill H.R. 1268, Making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes; as follows:

Insert the following on page 203, after line 17:

''OFFICE OF FEDERAL HOUSING ENTERPRISE OVERSIGHT SALARIES AND EXPENSES

(INCLUDING TRANSFER OF FUNDS)

For an additional amount for the ''Office of Federal Housing Enterprise Oversight'' for carrying out the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, $5,000,000 to remain available until expended, to be derived from the Federal Housing Enterprises Oversight Fund: Provided, That not to exceed the amount provided herein shall be available from the general fund of the Treasury to the extent necessary to incur obligations and make expenditures pending the receipt of collections to the Fund: Provided further, That the general fund amount shall be reduced as collections are received during the fiscal year so as to result in a final appropriation from the general fund estimated at not more than $0.''.

SA 548. Mr. COCHRAN (for Mr. LEAHY) proposed an amendment to the bill H.R. 1268, Making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes; as follows:

At the appropriate place in the bill, insert the following:

PROTECTION OF THE GALAPAGOS

Sec. ____. (a) FINDINGS.—The Senate makes the following findings—

(1) The Galapagos Islands are a global treasure and World Heritage Site, and the future of the Galapagos is in the hands of the Government of Ecuador;

(2) The world depends on the Government of Ecuador to implement the necessary policies and programs to ensure the long term protection of the biodiversity of the Galapagos, including enforcing the Galapagos Special Law;

(3) There are concerns with the current leadership of the Galapagos National Park Service and that the biodiversity of the Galapagos and the Marine Reserve are not being properly managed or adequately protected; and

(4) The Government of Ecuador has reportedly given preliminary approval for commercial airplane flights to the Island of Isabela, which may cause irreparable harm to the biodiversity of the Galapagos, and has allowed the export of fins from sharks caught accidentally in the Marine Reserve, which encourages illegal fishing.

(b) Whereas, now therefore, be it

Resolved, that—

(1) the Senate strongly encourages the Government of Ecuador to—

(A) refrain from taking any action that could cause harm to the biodiversity of the Galapagos or encourage illegal fishing in the Marine Reserve;

(B) abide by the agreement to select the Directorship of the Galapagos National Park Service though a transparent process based on merit as previously agreed by the Government of Ecuador, international donors, and nongovernmental organizations; and

(C) enforce the Galapagos Special Law in its entirety, including the governance structure defined by the law to ensure effective control of migration to the Galapagos and sustainable fishing practices, and prohibit long-line fishing which threatens the survival of shark and marine turtle populations.

(2) The Department of State should—

(A) emphasize to the Government of Ecuador the importance the United States gives to these issues; and

(B) offer assistance to implement the necessary policies and programs to ensure the long term protection of the biodiversity of the Galapagos and the Marine Reserve and to sustain the livelihoods of the Galapagos population who depend on the marine ecosystem for survival.

SA 549. Mr. BAUCUS submitted an amendment intended to be proposed to amendment SA 475 submitted by Mr. CRAIG (for himself, Mr. BAUCUS, Mr. ROBERTS, and Mr. ENZI) and intended to be proposed to the bill H.R. 1268, making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes; which was ordered to lie on the table; as follows:

Strike all after ''Sec.'', and insert the following:

6407. CLARIFICATION OF PAYMENT TERMS UNDER TRADE SANCTIONS REFORM AND EXPORT ENHANCEMENT ACT OF 2000.

(a) IN GENERAL.—Section 908(b)(1) of the Trade Sanctions Reform and Export Enhancement Act of 2000 (22 U.S.C. 7207(b)(1)) is amended by inserting after subparagraph (B) the following:

''(C) Notwithstanding any other provision of law, the term 'payment of cash in advance' means the payment by the purchaser of an agricultural commodity or product and the receipt of such payment by the seller prior to—

''(i) the transfer of title of such commodity or product to the purchaser; and

''(ii) the release of control of such commodity or product to the purchaser.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to sales of agricultural commodities made on or after February 22, 2005.

SA 550. Mr. VITTER submitted an amendment intended to be proposed by him to the bill H.R. 1268, making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes; which was ordered to lie on the table; as follows:

On page 231, between lines 3 and 4, insert the following:

SEC. 6047. (a) Not later than 30 days after the date of enactment of this Act, the Secretary of the Interior shall determine whether there is enough evidence—

(1) to determine the ownership of the subsurface mineral rights described in subsection (b); and

(2) to bring an action to quiet title with respect to the ownership of the subsurface mineral rights described in that subsection.

(b) The subsurface mineral rights referred to in subsection (a) are the subsurface mineral rights underlying 3588.34 acres of land in the Sabine National Wildlife Refuge (referred to in this section as the ''Refuge'') originally reserved by Stanolind Oil and Gas Company and described as tract 5c in a Judgment of Taking dated December 14, 1937, as recorded in the records of Cameron Parish, Louisiana.

(c) If the Secretary of the Interior determines that sufficient evidence exists under subsection (a), not later than 30 days after the date of the determination, the Secretary shall bring an action in the United States District Court for the State of Louisiana to resolve the title issue.

(d) Notwithstanding section 137 of Public Law 98–151 (97 Stat. 981) and section 3101.5–1 of title 43, Code of Federal Regulations (or a successor regulation), if the action brought under subsection (c) is resolved in favor of the United States, the Secretary of the Interior shall make available for leasing at the first Bureau of Land Management-Eastern States lease sale occurring after the date of enactment of this Act the subsurface mineral rights described in subsection (b).

(e) Any lease sale that takes place under subsection (d) and any exploration, development, or production of the subsurface mineral rights under a lease issued under that subsection shall be carried out in accordance with applicable regulations of the Department of the Interior, including regulations relating to a binding oral bid.

(f)(1) Any exploration, development, or production from a lease issued under subsection (d) shall be from an area outside the Refuge.

(2) No exploration or production activities shall be conducted on the surface of the Refuge.

SA 551. Mr. DEWINE submitted an amendment intended to be proposed to amendment SA 439 submitted by Mr. CRAIG (for himself and Mr. AKAKA) and intended to be proposed to the bill H.R. 1268, making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and

rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes; which was ordered to lie on the table; as follows:

On page 10, line 3, strike ''(c)'' and insert the following:

(c) RETROACTIVE PROVISION.—

(1) IN GENERAL.—Any member who experienced a traumatic injury (as described in section 1980A(b)(1) of title 38, United States Code) between October 7, 2001, and the effective date under subsection (d), is eligible for coverage provided in such section 1980A if the qualifying loss was a direct result of injuries incurred in Operation Enduring Freedom or Operation Iraqi Freedom.

(2) CERTIFICATION; PAYMENT.—The Secretary of Defense shall—

(A) certify to the Office of Servicemembers' Group Life Insurance the names and addresses of those members the Secretary of Defense determines to be eligible for retroactive traumatic injury benefits under such section 1980A; and

(B) forward to the Secretary of Veterans Affairs, at the time the certification is made under subparagraph (A), an amount of money equal to the amount the Secretary of Defense determines to be necessary to pay all cost related to claims for retroactive benefits under such section 1980A.

(d)

SA 552. Mr. BAUCUS submitted an amendment intended to be proposed to amendment SA 475 submitted by Mr. CRAIG (for himself, Mr. BAUCUS, Mr. ROBERTS, and Mr. ENZI) and intended to be proposed to the bill H.R. 1268, making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes; which was ordered to lie on the table; as follows:

In the matter proposed to be inserted—

(1) strike subsections (b) and (c), and

(2)At the end, add the following:

(b) EFFECTIVE DATE.—The amendment made by this section applies to sales of agricultural commodities made on or after October 28, 2000.

SA 553. Mr. WYDEN submitted an amendment intended to be proposed to amendment SA 376 submitted by Mr. WYDEN (for himself, Mr. SMITH, and Mrs. MURRAY) and intended to be proposed to the bill H.R. 1268, making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes; which was ordered to lie on the table; as follows:

On page 2, strike lines 1 through 11 and insert the following:

DEPARTMENT OF DEFENSE—CIVIL

OPERATIONS AND MAINTENANCE

(a) For an additional amount for the Secretary of the Army, acting through the Chief of Engineers, for emergency repair of the Fern Ridge Dam, Oregon, $31,000,000, to remain available until expended: *Provided*, That the amounts provided under this heading are designated as an emergency requirement pursuant to section 402 of the conference report to accompany S. Con. Res. 95 (108th Congress).

(b) For an additional amount for the Secretary of the Army, acting through the Chief of Engineers, for emergency work on the Los Angeles-Long Beach Harbor, Mojave River Dam, Port San Luis, and Santa Barbara Harbor, $7,500,000, to remain available until expended: *Provided*, That the amounts provided under this heading are designated as an emergency requirement pursuant to section 402 of the conference report to accompany S. Con. Res. 95 (108th Congress).

(c) For an additional amount for the Secretary of the Army, acting through the Chief of Engineers, for emergency construction at Lower Santa Ana River Reaches 1 and 2 of the Santa Ana River Project, Prado Dam of the Santa Ana River Project, San Timoteo of the Santa Ana River Project, Murrieta Creek, and Santa Paula Creek, $12,500,000, to remain available until expended: *Provided*, That the amounts provided under this heading are designated as an emergency requirement pursuant to section 402 of the conference report to accompany S. Con. Res. 95 (108th Congress).

(d) The project for navigation, Los Angeles Harbor, California, authorized by section 101(b)(5) of the Water Resources Development Act of 2000 (114 Stat. 2577) is modified to authorize the Secretary of the Army to carry out the project at a total cost of $222,000,000.

(e) The Secretary of the Army, acting through the Chief of Engineers, shall use any funds appropriated to the Secretary pursuant to this Act to repair, restore, and maintain projects and facilities of the Corps of Engineers, including by dredging navigation channels, cleaning area streams, providing emergency streambank protection, restoring such public infrastructure as the Secretary determines to be necessary (including sewer and water facilities), conducting studies of the impacts of floods, and providing such flood relief as the Secretary determines to be appropriate: *Provided*, That of those funds, $32,000,000 shall be used by the Secretary for the Upper Peninsula, Michigan.

SA 554. Mr. WYDEN submitted an amendment intended to be proposed to amendment SA 376 submitted by Mr. WYDEN (for himself, Mr. SMITH, and Mrs. MURRAY) and intended to be proposed to the bill H.R. 1268, making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes; which was ordered to lie on the table; as follows:

On page 2, strike lines 1 through 11 and insert the following:

DEPARTMENT OF DEFENSE—CIVIL

CORPS OF ENGINEERS

(a) For an additional amount for the Secretary of the Army, acting through the Chief of Engineers, for general construction, $13,000,000, to remain available until expended: *Provided*, That the amounts provided under this heading are designated as an emergency requirement pursuant to section 402 of the conference report to accompany S. Con. Res. 95 (108th Congress).

(b) For an additional amount for the Secretary of the Army, acting through the Chief of Engineers, for operations and maintenance, $163,000,000, to remain available until expended: *Provided*, That the amounts provided under this heading are designated as an emergency requirement pursuant to section 402 of the conference report to accompany S. Con. Res. 95 (108th Congress).

(c) For an additional amount for the Secretary of the Army, acting through the Chief of Engineers, for the Mississippi River and its tributaries, $15,000,000, to remain available until expended: *Provided*, That the amounts provided under this heading are designated as an emergency requirement pursuant to section 402 of the conference report to accompany S. Con. Res. 95 (108th Congress).

SA 555. Mr. KYL submitted an amendment intended to be proposed to amendment SA 387 proposed by Ms. MIKULSKI (for herself, Mr. ALLEN, Mr. LEAHY, Mr. CORZINE, Mr. WARNER, Mr. JEFFORDS, Mr. SARBANES, Mr. DAYTON, Mr. KENNEDY, Ms. LANDRIEU, Mr. REED, Mr. LAUTENBERG, Mr. FEINGOLD, Mr. DORGAN, Mr. KERRY, Mr. CONRAD, Mr. THOMAS, Mr. STEVENS, Mr. DEWINE, Mr. COLEMAN, Ms. SNOWE, and Ms. COLLINS) to the bill H.R. 1268, making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes; as follows:

On page 2, strike lines 5 through 11, and insert the following:

''(9)(A) Subject to subparagraphs (B) and (C), an alien counted toward the numerical limitations of paragraph (1)(B) during any 1 of the 3 fiscal years prior to the submission of a petition for a nonimmigrant worker described in section 101(a)(15)(H)(ii)(b) may not be counted toward such limitation for the fiscal year in which the petition is approved.

''(B) A petition referred to in subparagraph (A) shall include, with respect to an alien—

''(i) the full name of the alien; and

''(ii) a certification to the Department of Homeland Security that the alien is a returning worker.

''(C) An H–2B visa for a returning worker shall be approved only if the name of the individual on the petition is confirmed by—

''(i) the Department of State; or

''(ii) if the alien is visa exempt, the Department of Homeland Security.''.

SA 556. Mr. STEVENS submitted an amendment intended to be proposed by him to the bill H.R. 1268, making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes; which was ordered to lie on the table; as follows:

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

(e) REQUIREMENTS REGARDING ELECTIONS OF MEMBERS TO REDUCE OR DECLINE INSURANCE.—Section 1967(a) of such title is further amended—

(1) in paragraph (2), by adding at the end the following new subparagraph:

''(C) Pursuant to regulations prescribed by the Secretary of Defense, notice of an election of a member not to be insured under this subchapter, or to be insured under this subchapter in an amount less than the maximum amount provided under paragraph (3)(A)(i)(I), shall be provided to the spouse of the member.''; and

(2) in paragraph (3)—

(A) in the matter preceding clause (i), by striking ''and (C)'' and inserting '', (C), and (D)''; and

(B) by adding at the end the following new subparagraph:

''(D) A member with a spouse may not elect not to be insured under this subchapter, or to be insured under this subchapter in an amount less than the maximum amount provided under subparagraph (A)(i)(I), without the written consent of the spouse.''.

(f) REQUIREMENT REGARDING REDESIGNATION OF BENEFICIARIES.—Section 1970 of such title is amended by adding at the end the following new subsection:

''(j) A member with a spouse may not modify the beneficiary or beneficiaries designated by the member under subsection (a) without providing written notice of such modification to the spouse.''.

SA 557. Ms. SNOWE submitted an amendment intended to be proposed to amendment SA 530 submitted by Mr. DOMENICI and intended to be proposed to the bill H.R. 1268, making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes; which was ordered to lie on the table; as follows:

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

SEC. 6023. (a) Not later than January 31, 2006, the Comptroller General of the United States and the Chief Counsel for Advocacy of the Small Business Administration shall each conduct a study, in consultation with each other and with the Administrator of the Small Business Administration and the Secretary of Energy, regarding the feasibility of—

(1) changing the management and operating contracts and other similar facilities management contracts between the Department of Energy and its prime contractors, which are other than small business concerns, for the purpose of rendering such prime contractors agents of the Department of Energy in accordance with the standards established in U.S. West Communications Services, Inc. v. United States, 940 F.2d 622 (Fed. Cir. 1991) and related judicial precedent;

(2) instituting adequate policies, regulations, procedures, and practices to ensure that prime contractors, which are other than small business concerns and which have entered into the management and operating contracts and other similar facilities management contracts with the Department of Energy, treat small businesses seeking to do business with the Department of Energy through such prime contractors according to the ''federal norm'', as recognized by the Comptroller General of the United States;

(3) recognizing subcontracts awarded by the prime contractors, which have entered into the management and operating contracts and other similar facilities management contracts proposed to be changed based on the findings under paragraph (1), as prime contracts for all purposes;

(4) instituting policies, regulations, procedures, and practices adequate to ensure that small business contracts awarded by the prime contractors acting as agents for the Department of Energy under the standards described in paragraphs (1) and (2) are treated as Federal prime contracts for all purposes; and

(5) ensuring that the Department of Energy's prime contractors can simultaneously continue to award, and small businesses can simultaneously continue to receive, subcontracts not subject to treatment or recognition as prime contracts.

(b) The Comptroller General of the United States and the Chief Counsel for Advocacy of the Small Business Administration, in conducting their respective studies under subsection (a) shall consider the impact of—

(1) the changes studied on accountability, integrity, competition, and sound management practices at the Department of Energy and its facilities managed by prime contractors; and

(2) the agency relationship between the Department of Energy and some of its prime contractors on the ability of small businesses to compete for government business.

(c) The Comptroller General and the Chief Counsel for Advocacy of the Small Business Administration shall separately report their findings to—

(1) the Committee on Energy and Natural Resources, the Committee on Homeland Security and Governmental Affairs, and the Committee on Small Business and Entrepreneurship of the Senate; and

(2) the Committee on Energy and Commerce, the Committee on Government Reform, and the Committee on Small Business of the House of representatives.

(d) The Secretary of Energy may, until January 31, 2006—

(1) make changes to contracts, including the management and operating contracts and other similar facilities management contracts between the Department of Energy and its prime contractors, which are other than small business concerns, consistent with those changes being studied under subsection (a); and

(2) implement policies, regulations, procedures, and practices consistent with those being studied under subsection (a).

SA 558. Ms. SNOWE submitted an amendment intended to be proposed to amendment SA 529 submitted by Mr. DOMENICI and intended to be proposed to the bill H.R. 1268, making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes; which was ordered to lie on the table; as follows:

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

SEC. 6023. (a) Not later than January 31, 2006, the Comptroller General of the United States and the Chief Counsel for Advocacy of the Small Business Administration shall each conduct a study, in consultation with each other and with the Administrator of the Small Business Administration and the Secretary of Energy, regarding the feasibility of—

(1) changing the management and operating contracts and other similar facilities management contracts between the Department of Energy and its prime contractors, which are other than small business concerns, for the purpose of rendering such prime contractors agents of the Department of Energy in accordance with the standards established in U.S. West Communications Services, Inc. v. United States, 940 F.2d 622 (Fed. Cir. 1991) and related judicial precedent;

(2) instituting adequate policies, regulations, procedures, and practices to ensure that prime contractors, which are other than small business concerns and which have entered into the management and operating contracts and other similar facilities management contracts with the Department of Energy, treat small businesses seeking to do business with the Department of Energy through such prime contractors according to the ''federal norm'', as recognized by the Comptroller General of the United States;

(3) recognizing subcontracts awarded by the prime contractors, which have entered into the management and operating contracts and other similar facilities management contracts proposed to be changed based on the findings under paragraph (1), as prime contracts for all purposes;

(4) instituting policies, regulations, procedures, and practices adequate to ensure that small business contracts awarded by the prime contractors acting as agents for the Department of Energy under the standards described in paragraphs (1) and (2) are treated as Federal prime contracts for all purposes; and

(5) ensuring that the Department of Energy's prime contractors can simultaneously continue to award, and small businesses can simultaneously continue to receive, subcontracts not subject to treatment or recognition as prime contracts.

(b) The Comptroller General of the United States and the Chief Counsel for Advocacy of the Small Business Administration, in conducting their respective studies under subsection (a) shall consider the impact of—

(1) the changes studied on accountability, integrity, competition, and sound management practices at the Department of Energy and its facilities managed by prime contractors; and

(2) the agency relationship between the Department of Energy and some of its prime contractors on the ability of small businesses to compete for government business.

(c) The Comptroller General and the Chief Counsel for Advocacy of the Small Business Administration shall separately report their findings to—

(1) the Committee on Energy and Natural Resources, the Committee on Homeland Security and Governmental Affairs, and the Committee on Small Business and Entrepreneurship of the Senate; and

(2) the Committee on Energy and Commerce, the Committee on Government Reform, and the Committee on Small Business of the House of representatives.

(d) The Secretary of Energy may, until January 31, 2006—

(1) make changes to contracts, including the management and operating contracts and other similar facilities management contracts between the Department of Energy and its prime contractors, which are other than small business concerns, consistent with those changes being studied under subsection (a); and

(2) implement policies, regulations, procedures, and practices consistent with those being studied under subsection (a).

SA 559. Mr. ROBERTS submitted an amendment intended to be proposed to amendment SA 437 submitted by Mr. ROCKEFELLER and intended to be proposed to the bill H.R. 1268, making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes; which was ordered to lie on the table; as follows:

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

SENSE OF SENATE

SEC. ____. (a) FINDINGS.—The Senate makes the following findings:

(1) On September 11, 2001, terrorists hijacked and destroyed four civilian aircraft, crashing two of them into the towers of the World Trade Center in New York, New York, and a third into the Pentagon outside Washington, District of Columbia.

(2) The valor of the passengers and crew on the fourth aircraft prevented it from also being used as a weapon against the United States.

(3) The September 11, 2001, attacks stand as the deadliest terrorist attacks ever perpetrated against the United States.

(4) By targeting symbols of American strength and success, the attacks clearly were intended to assail the principles, values, and freedoms of the United States and the American people, to intimidate the Nation, and to weaken the national resolve.

(5) On September 14, 2001, Congress, in Public Law 107–40, authorized the use of ''all necessary and appropriate force'' against those responsible for the terrorist attacks.

(6) The Armed Forces subsequently moved swiftly against Al Qaeda and the Taliban regime in Afghanistan, whom the President and Congress had identified as enemies of the United States.

(7) In doing so, brave servicemembers and intelligence officers left family and friends in order to defend the Nation.

(8) More than three years later, many servicemembers and intelligence officers remain abroad, shielding the Nation from further terrorist attacks.

(9) Terrorists continue to attack United States servicemembers and continue to plan attacks against the United States and its interests.

(10) Terrorists continue to target civilians and military personnel alike through such insidious and cowardly methods as kidnappings and bombings.

(11) Intelligence information derived from the interrogation of captured terrorists is essential to the protection of servicemembers deployed around world, to the protection of the homeland, and to the protection of United States interests.

(12) It is the policy of the President and Congress that the interrogation of terrorists conform to the Constitution, laws, and treaty obligations of the United States.

(13) In those rare instances in which individuals have been alleged to have violated the Constitution, laws, or treaty obligations of the United States during the course of an interrogation, the departments and agencies of the United States Government, and the inspectors general of each department or agency concerned, have investigated allegations of such violations.

(14) In the few cases in which officers of the United States intelligence community are determined to have actually violated the Constitution, laws, or treaty obligations of the United States, such officers have been, or should be, punished.

(15) The Select Committee on Intelligence of the Senate was established, among other things, to provide vigorous legislative oversight of the intelligence activities of the United States in order to assure that such activities conform to the Constitution, laws, and treaty obligations of the United States.

(16) The Select Committee on Intelligence of the Senate was deliberately structured with a unified staff under the joint supervision of the Chairman and the Vice Chairman of the Select Committee through a single staff director in order to avoid, to the maximum extent possible, the politicization of oversight of the intelligence activities of the United States. Because of its unique structure and rules, as currently written, the Select Committee is ideally suited to continue oversight of United States interrogation, detention, and rendition operations.

(17) The Chairman and Vice Chairman of the Select Committee on Intelligence of the Senate have directed the staff of the Select Committee to continue to exercise the oversight authority of the Select Committee to ensure that intelligence activities of the United States relating to the detention, interrogation, and rendition of terrorists conform to the Constitution, laws, and treaty obligations of the United States.

(18) As part of its ongoing review, the staff of the Select Committee on Intelligence of the Senate have interviewed individuals and reviewed documents relating to the detention, interrogation, and rendition of terrorists, and have inspected United States detention and interrogation operations and facilities in Guantanamo Bay, Cuba.

(19) The staff of the Select Committee on Intelligence of the Senate continue to interview individuals, receive information, and review documents relating to the detention, interrogation, and rendition of terrorists.

(b) SENSE OF SENATE.—It is the sense of the Senate—

(1) to recognize that terrorists continue to seek to attack the United States at home and the interests of the United States abroad;

(2) to stand with the people of the United States in great debt to the members of the Armed Forces and officers of the United States intelligence community serving at home and abroad;

(3) to remain resolved to pursue all those responsible for the terrorist attacks of September 11, 2001, and their sponsors, until they are discovered and punished; and

(4) to reaffirm that Congress will—

(A) honor the memory of those who lost their lives as a result of the September 11, 2001, terrorist attacks; and

(B) bravely defend the citizens of the United States in the face of all future challenges.

SA 560. Mr. COCHRAN (for Mr. SHELBY (for himself, Mr. KENNEDY, Mr. DURBIN, and Mr. OBAMA)) proposed an amendment to the bill H.R. 1268, making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes; as follows:

On page 184, line 16, after ''$11,935,000,'', insert ''for increased judicial security outside of courthouse facilities, including priority consideration of home intrusion detection systems in the homes of federal judges,''.

SA 561. Mr. COCHRAN (for Mr. REID) proposed an amendment to the bill H.R. 1268, making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes; as follows:

In section 6017(b)(1)(A), insert ''appurtenant to the land'' after ''water''.

SA 562. Mr. COCHRAN (for Mr. REID) proposed an amendment to the bill H.R. 1268, making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes; as follows:

In section 6017(c)(2), strike subparagraphs (A) and (B) and insert the following:

(A) acquired only from willing sellers;

(B) designed to maximize water conveyances to Walker Lake; and

(C) located only within the Walker River Paiute Indian Reservation.

NOTICES OF HEARINGS/MEETINGS

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

Mr. COLEMAN. Mr. President, I would like to announce for the information of the Senate and the public that the Permanent Subcommittee on Investigations will hold a hearing entitled ''The Container Security Initiative and the Customs-Trade Partnership Against Terrorism: Securing the Global Supply Chain or Trojan Horse?'' In light of the September 11, 2001, terrorist attacks, concern has increased that terrorists could smuggle weapons of mass destruction in the approximately 9 million ocean going containers that arrive in the United States every year. As part of its overall response to the threat of terrorism, the Department of Homeland Security's Bureau of Customs and Border Protection (Customs) implemented the Container Security Initiative (CSI) to screen high-risk containers at sea ports overseas, thus employing screening tools before potentially dangerous cargoes reach our shores. Customs also implemented the Customs Trade Partnership Against Terrorism (C-TPAT) to improve the security of the global supply chain in partnership with the private sector.

Both CSI and C-TPAT face a number of compelling challenges that impact their ability to safeguard our Nation from terrorism. The Subcommittee's April 26 hearing will examine how Customs utilizes CSI and C-TPAT in connection with its other enforcement programs and review the requirements for and challenges involved in transitioning CSI and C-TPAT from promising risk management concepts to effective and sustained enforcement operations. These important Customs initiatives required sustained Congressional oversight. As such, this will be the first of several hearings the Subcommittee intends to hold on the response of the Federal Government to terrorist threats.

The Subcommittee hearing is scheduled for Tuesday, April 26, 2005, at 9:30 a.m. in Room 562 of the Dirksen Senate Office Building. For further information, please contact Raymond V. Shepherd, III, Staff Director and Chief Counsel to the Permanent Subcommittee on Investigations, at 224–3721.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. FRIST. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet during the session of the Senate on April 19, 2005, at 9:30 a.m., in open session to consider the following nominations: (1) Honorable Gordon R. England to be Deputy Secretary of Defense; and (2) Admiral Michael G. Mullen, USN, for reappointment to the grade of Admiral and to be Chief of Naval Operations.

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

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. FRIST. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on April 19, 2005, at 3 p.m., to conduct a hearing on ''Proposals for Improving the Regulation of the Housing Government Sponsored Enterprises.''

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

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. FRIST. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate on Tuesday, April 19, at 10 a.m. in room SD–366.

The purpose of this hearing is to receive testimony concerning offshore hydrocarbon production and the future of alternate energy resources on the Outer Continental Shelf. Issues to be discussed include: recent technological advancements made in the offshore exploration and production of traditional forms of energy, and the future of deep shelf and deepwater production. Enhancements in worker safety, and steps taken by the offshore oil and gas industry to meet environmental challenges. Participants in the hearing will also address ways that the Federal Government can facilitate increased exploration and production offshore while protecting the environment. New approaches to help diversify the offshore energy mix will also be discussed.

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

COMMITTEE ON FINANCE

Mr. FRIST. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet in open Executive Session during the session on Tuesday, April 19, 2005, at 10 a.m., to consider an original bill entitled, ''Highway Reauthorization and Excise Tax Simplification Act of 2005'' and, S. 661, ''the United States Tax Court Modernization Act''.

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

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS

Mr. FRIST. Mr. President, I ask unanimous consent that the committee on Health, Education, Labor, and Pensions be authorized to hold a hearing during the session of the Senate on Tuesday, April 19, 2005 at 10 a.m. in SD–430.

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

COMMITTEE ON VETERANS' AFFAIRS

Mr. FRIST. Mr. President, I ask unanimous consent that the Committee on Veterans' Affairs be authorized to meet during the session of the Senate on Tuesday, April 19, 2005, to mark up the nomination of Mr. Jonathan B. Perlin to be Under Secretary for Health, Department of Veterans' Affairs; and to hold a Committee hearing titled ''Back from the Battlefield, Part II: Seamless Transition to Civilian Life.''.

The meeting will take place in room 418 of the Russell Senate Office Building at 10:15 a.m.

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. FRIST. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on April 19, 2005 at 2:30 p.m. to hold a hearing.

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

AUTHORITY FOR COMMITTEES TO MEET

SUBCOMMITTEE ON ANTITRUST, COMPETITION POLICY, AND CONSUMER RIGHTS

Mr. FRIST. Mr. President, I ask unanimous consent that the Subcommittee on Antitrust, Competition Policy, and Consumer Rights be authorized to meet on Tuesday, April 19, 2005 to conduct a hearing on ''SBC/ATT and Verizon/MCI Mergers: Remaking the Telecommunications Industry, Part II—Another View'', at 2:30 p.m. in Room 226 of the Dirksen Senate Office Building.

Witness List: Mr. Carl Grivner, CEO, XO Communications, Reston, VA.; Mr. Jeffrey Citron, CEO, Vonage, Edison, NJ.; Mr. Scott Cleland, CEO, Precursor Group, Washington, DC; and Mr. Gene Kimmelman, Director, Washington, DC. Office, Consumers Union, Washington, DC.

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

SUBCOMMITTEE ON SEAPOWER

Mr. FRIST. Mr. President, I ask unanimous consent that the Subcommittee on Seapower be authorized to meet during the session of the Senate on April 19, 2005, at 3 p.m., in open session to receive testimony on United States Marine Corps Ground and Rotary Wing Program and Seabasing, in review of the defense authorization request for fiscal year 2006.

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

SUBCOMMITTEE ON WATER AND POWER

Mr. FRIST. Mr. President, I ask unanimous consent that the subcommittee on Water and Power be authorized to meet during the session of the Senate on Tuesday, April 19 a 2:30 p.m.

The purpose of the hearing is to receive testimony on S. 166, to amend the Oregon Resource Conservation Act of

1996 to reauthorize the participation of the Bureau of Reclamation in the Deschutes River Conservancy, and for other purposes; S. 251, to authorize the Secretary of the Interior to conduct a water resource feasibility study for the Little Butte/Bear Creek subbasins in Oregon; S. 310, to direct the Secretary of the Interior to convey the Newlands Protect headquarters and maintenance yard facility to the Truckee-Carson Irrigation District in the State of Nevada; S. 519, to amend the Lower Rio Grande Valley Water Resources Conservation and Improvement Act of 2000 to authorize additional projects and activities under that act, and for other purposes; and S. 592, to extend the contract for the Glendo Unit of the Missouri River Basin Project in the State of Wyoming.

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

MEASURES READ THE FIRST TIME—S. 839, S. 844, S. 845, S. 846, S. 847, S. 848, S. 851, H.R. 8

Mr. STEVENS. Mr. President, I understand there are eight bills at the desk. I ask for their first reading, en bloc.

The PRESIDING OFFICER. The clerk will read the titles of the bills for the first time, en bloc.

The legislative clerk read as follows:

A bill (S. 839) to repeal the law that gags doctors and denies women information and referrals concerning their reproductive health options.

A bill (S. 844) to expand access to preventive health care services that help reduce unintended pregnancy, reduce the number of abortions, and improve access to women's health care.

A bill (S. 845) to amend title 10, United States Code, to permit retired servicemembers who have a service-connected disability to receive disability compensation and either retired pay or Combat-Related Special Compensation and to eliminate the phase-in period with respect to such concurrent receipt.

A bill (S. 846) to provide fair wages for America's workers.

A bill (S. 847) to lower the burden of gasoline prices on the economy of the United States and circumvent the efforts of OPEC to reap windfall oil profits.

A bill (S. 848) to improve education, and for other purposes.

A bill (S. 851) to reduce the budget deficits By restoring budget enforcement and strengthening fiscal responsibility.

A bill (H.R. 8) to make the repeal of the estate tax permanent.

Mr. STEVENS. Mr. President, I now ask for a second reading and, in order to place the bills on the calendar under the provisions of rule XIV, I object to my own request, en bloc.

The PRESIDING OFFICER. Objection having been heard, the bills will receive their second reading on the next legislative day.

ORDERS FOR APRIL 20, 2005

Mr. STEVENS. Mr. President, I now ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 9:30 a.m. on Wednesday, April 20. I further ask that following the prayer and the pledge, the morning hour be deemed to have expired, the Journal of the proceedings be approved to date, the time for the two leaders be reserved, and there then be a period of morning business for up to 60 minutes, with the first 30 minutes under the control of the Democratic leader or his designee, and the final 30 minutes under the control of the majority leader or his designee; provided that following morning business the Senate resume consideration of H.R. 1268, the Iraq-Afghanistan supplemental appropriations bill; provided further that notwithstanding morning business and the adjournment of the Senate, all time be counted against cloture under rule XXII.

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

PROGRAM

Mr. STEVENS. Mr. President, on behalf of the leader, I make this announcement: Tomorrow, following morning business, the Senate will resume consideration of the Iraq-Afghanistan supplemental appropriations bill. We have invoked cloture on the bill, and therefore the only amendments that qualify under the cloture rule will be in order to the bill.

There are still quite a few germane amendments that are pending, and therefore we will need a number of rollcall votes prior to final passage. It is the leader's hope that we can finish tomorrow, and we can finish if we can show restraint and not require votes on each of these amendments. Senators should expect a late evening tomorrow as we try to finish the bill on Wednesday.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. STEVENS. 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 7:42, p.m., adjourned until Wednesday, April 20, 2005, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate April 19, 2005:

DEPARTMENT OF HEALTH AND HUMAN SERVICES

ALEX AZAR II, OF MARYLAND, TO BE DEPUTY SECRETARY OF HEALTH AND HUMAN SERVICES, VICE CLAUDE A. ALLEN, RESIGNED.

IN THE ARMY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES ARMY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general

LT. GEN. DAVID W. BARNO, 0000