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Senate

The Senate met at 9:30 a.m. and was called to order by the Honorable LAMAR ALEXANDER, a Senator from the State of Tennessee.

The PRESIDING OFFICER. Today's prayer will be offered by the guest Chaplain, Rev. Kim Swithinbank of Falls Church, VA.

PRAYER

The guest Chaplain offered the following prayer:

Please pray with me.

Almighty God and Heavenly Father, we thank You for those who had the vision for this country as One Nation Under God. We thank You that it has become a home for people from many different nationalities and ethnic backgrounds and for the rich diversity of life and culture that flows therefrom.

However, we acknowledge, too, the challenge that this diversity presents to those who have the responsibility of governing and guiding this Nation. So we pray for this Senate and all its Members that they would be given wisdom in their decisions, the ability to hear and respond constructively to colleagues whose views may differ, and a true desire to serve all the people of this Nation.

Send Your Holy Spirit, we pray, to guide this Senate in Your ways of justice, compassion, and truth that they may exercise their duty of care for this Nation with integrity, imagination, and skill. We ask these prayers in the name of Your Son, Jesus Christ our Lord, who was unafraid to speak the truth, who had compassion for all people and who now reigns with You and the Holy Spirit, one God, now and forever. Amen.

PLEDGE OF ALLEGIANCE

The Honorable LAMAR ALEXANDER led the Pledge of Allegiance, as follows:

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

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, May 20, 2003.

To the Senate:

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

TED STEVENS,
President pro tempore.

Mr. ALEXANDER assumed the Chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

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

SCHEDULE

Mr. FRIST. Mr. President, this morning there will be a period of morning business with the time equally divided between Senator CORNYN and the minority leader or his designee. Following morning business, the Senate will resume debate on the Department of Defense authorization bill. Two amendments are pending which relate to TRICARE. This morning, the chairman and the ranking member will be working on a time agreement as to when we may dispose of those pending amendments. Rollcall votes are, therefore, expected prior to the recess for the respective party luncheons.

Other Members who intend to offer amendments to the Defense authorization bill are encouraged to notify the chairman and ranking member in order to schedule consideration of their amendments. Senators should expect rollcall votes on amendments throughout the day in order to make progress on this important bill. It is hoped that we can finish the bill either today or tomorrow. As a reminder, this week the Senate will consider the debt limit extension under a previous consent agreement.

Finally, I would add it is hoped that final action on the jobs and economic growth package from conference will be voted on this week. In fact, I want to notify my colleagues that it is my intention, as soon as we receive that conference report, to bring it to the floor. An agreement is being reached between the two Houses on this conference report. I am very optimistic that we will be able to address that this week.

We will have a very busy week with the Department of Defense authorization, the jobs and economic growth conference report that I just mentioned, the debt limit, and we are working to make progress on unemployment insurance which has to be addressed also this week. That expires on May 30. Thus, we are responsible for acting on that as well this week.

MEDICARE AND PRESCRIPTION DRUGS

Mr. FRIST. Mr. President, I have a few opening comments I wanted to briefly mention on an issue we are going to be talking about and debating on the floor during the last 2 weeks of next month; that is, Medicare and prescription drugs. At this point, let me make those comments, and then we will proceed with the schedule as planned.

It was in 1963 that President John F. Kennedy said, when leading the fight to enact Medicare at that time:

A proud and resourceful nation can no longer ask its people to live in constant fear of a serious illness for which adequate funds are not available.

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

These are the words I want to stress. He said:

We owe the right of dignity in sickness, as well as in health.

Protecting the health of our Nation's seniors was the right thing to do in the early 1960s, and it is the right thing for us to do now. Back in 1965, Medicare was designed for the way medicine was practiced at that point in time, and that was to treat acute or episodic illnesses that would bring people to the hospitals. It was not designed at that time, nor could it be designed at that time, to keep up with the dazzling innovations, the creativity, and the dynamic discoveries that were being made almost on a daily basis. These great advances have and will continue to transform medicine. We have a structure with Medicare that simply is not flexible enough or adaptable enough to assimilate or capture those great discoveries that are being made. That leads us to unacceptable gaps in coverage. One of those gaps has become apparent to us all, whether we are seniors or individuals with disabilities, or those of us in the political arena listening very carefully to our constituents. That is the gap for prescription drugs.

What seniors deserve is health care security. Unlike in the 1960s when it was designed—there haven't been that many changes, really, since the 1960s—today that health care security does involve good preventive care, access to affordable prescription drug protection from those unexpected catastrophic costs which can reach astronomical levels, and access to the modern technology that I mentioned before.

Since it doesn't include all of those things, it has not given the security I and I believe all of us believe seniors deserve.

If you look at certain technologies such as preventive tests for breast cancer and prostate cancer, it literally required an act of Congress before they could be covered by Medicare. We in Congress simply cannot respond, with all of the other responsibilities, to each and every innovation that comes through. We simply can't do it.

More basic care, such as cholesterol screening in my own field of heart-lung cardiology—you all know the importance of cholesterol—is not covered today. In the end, it creates lapses in a very good system. Medicare is a very good system, but it is simply not a system that is up to date with the quality of care that we could give our seniors today.

I would say that we do have an obligation—I would call it a moral obligation—to ensure that Medicare does provide the highest quality of care to our seniors that we are able to provide and which I believe we can provide.

The Senate Finance Committee has been working for the past several months to develop such a plan. We are building on the work of a lot of past bipartisan efforts in this body: the Breaux-Frist plan, the House-passed legislation, the Senate tripartisan plan of the last Congress, and the President's framework for reform.

In early June, the Finance Committee will be addressing this matter under the leadership of Senator GRASSLEY, working with Senator BAUCUS, and we will take this proposal to the floor, as amended through committee, sometime in those last 2 weeks of June.

It is my hope and it is my intention to vote on final passage of such legislation before we adjourn for the July 4 Independence Day recess.

Once passed, we will begin to provide that prescription drug coverage for seniors and improve that system for health care security for our seniors.

I do think we need to address this issue in a bipartisan way. This is a big bill. It is a big expansion of Medicare. It is going to take people on both sides of the aisle to address this important goal of protecting the health of our seniors.

I mention all this only because it is so big and so large that I encourage my colleagues to start studying and restudying the issue, even though we have a very busy week now, and then we have our recess during which we will be with our constituents back at home, and then we will come back to an energy bill, and then Medicare. I want people to start preparing for that right now because it is such a large challenge before us.

Our Nation's seniors are depending on us to do the right thing for them. With the appropriate planning, with the appropriate discussions, again, in a bipartisan way, we will be able to deliver on that promise.

The ACTING PRESIDENT pro tempore. The Senator from Nevada.

Mr. REID. Would the Chair announce morning business. Has that been done?

The ACTING PRESIDENT pro tempore. It has not.

RESERVATION OF LEADER TIME

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

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business until the hour of 10 a.m., with the time equally divided between the Senator from Texas, Mr. CORNYN, and the Democratic leader, or their designees.

The Senator from Nevada.

Mr. REID. Mr. President, I know the junior Senator from Texas is in the Chamber and wishes to speak.

I am wondering how long he wishes to speak. I direct the question through the Chair to the Senator from Texas.

Mr. CORNYN. About 10 minutes.

Mr. REID. Mr. President, I have some remarks I wish to give while the majority leader is on the floor. I ask unanimous consent that morning business be extended until 10:10, and that the extra time be equally divided.

The ACTING PRESIDENT pro tempore. Is there objection?

Without objection, it is so ordered.

MEDICARE

Mr. REID. Mr. President, the subject of Medicare is extremely important. Medicare is not a perfect program, but it is a good program. It has done so much to help the American people.

I am glad to see we are going to address the issue. I hope we address it with the intent of doing more than just calling it Medicare reform. It has to be real Medicare reform. I hope that can be accomplished.

(The remarks of Mr. REID pertaining to the submission of S. Res. 146 are printed in today's RECORD under ''Submitted Resolutions.'')

The ACTING PRESIDENT pro tempore. The Senator from Texas.

REBUILDING IRAQ

Mr. CORNYN. Mr. President, I rise today to say a few words about the rebuilding of Iraq and, more importantly, the creation of a democratic Iraq.

Iraq is situated in the very cradle of civilization. It has an ancient and colorful history. And although it is easy to overlook now, Baghdad itself was once viewed as a center of learning and cultural activity until it was hijacked by the fascist regime of Saddam Hussein.

Today, Iraq is a hive of clan warfare, looting, and violent chaos. There are competing political groups, armed criminal gangs, and street thugs. The Iraqi people are free of Saddam, but they are not yet free of fear.

The situation is complex, delicate, and decidedly unpleasant. But unless America and our coalition partners act quickly and decisively, self-government will be recalled years from now as only a fleeting dream for the people of Iraq.

I believe there is still hope and opportunity—hope that the free people of Iraq can conquer the anarchy that controls their streets, and opportunity to fulfill the promise of a thriving democratic Iraq.

That dream may seem far off in Baghdad today, but as John Adams once said: ''People and nations are forged in the fires of adversity.''

In order for Iraq to grow and blossom from the rubble, it requires security. It requires order. It requires the rule of law.

First, we must begin by ensuring the basic security of the Iraqi people. People must be able to buy food at the market without fearing armed robbery or kidnapping. They must be able to worship without fearing snipers or skirmishes. Their children must be able to go to school without hearing the sound of gunfire nearby.

The Middle East looks like the Old West right now, and we need lawmen to help restore the peace. We must eliminate the threats posed by what remains

of the Baathist Party and the common criminals who control the streets and highways. We must end the looting and restore the property rights of the Iraqi people. We simply cannot construct the foundation of a peaceful and just society when there is still no security in Iraq.

Dr. Karim Hassan, director general of Iraq's electricity commission put it this way: ''Give me security, and I will give you electricity.''

The brave men and women of our Armed Forces have done heroic work in Iraq. I know I speak for the people of my State of Texas, for all Americans, and indeed for all freedom-loving people when I give thanks that the operation in Iraq was concluded swiftly with a minimum loss of coalition lives. But it would be a grave mistake to burden our military alone with the job of ensuring security for the Iraqi people. Indeed, that is not their principal mission.

After security is restored, a functioning legal system must be established. There is the immediate problem of establishing a police force. Under Saddam's regime, the police were nothing more than shock troops bent on fulfilling the dictator's tyrannical bidding. Now they must act to protect and defend the people they formerly dominated and abused. The police in Iraq are no longer the law, violently expressed; they must now enforce and be held accountable to the law.

No system of justice can survive long in the absence of law and order, and there can be no democratic Iraqi state as long as lawlessness reigns.

Secondly, we must help the Iraqi people forge a nation governed by laws, not men. There are multiple proposals being considered for the Iraqi Constitution. While Iraq is clearly in a state of transition, it has a rich and ancient legal history. These traditions should be the foundation for the laws of this reborn nation, the constitution for a reborn Iraq.

We should not kid ourselves that we will see a mirror image of Jeffersonian America circa 1787. The Iraqis will build on their own historical traditions, a history that stretches all the way back to the Code of Hammurabi.

Despite our relatively short history, America has one of the longest uninterrupted political traditions of any nation in the world. The late Allan Bloom once pointed out that what sets America apart is the unambiguous nature of that tradition: ''[I]t's meaning is articulated in simple, rational speech, that is immediately comprehensible and powerfully persuasive to all normal human beings. America tells one story: the unbroken, ineluctable progress of freedom and equality.''

There are clear differences between America, where government from its inception existed to preserve and protect freedom, and Iraq, where government, until recently, existed to limit freedom and serve as the instrument of oppression.

Iraq's government must undergo a fundamental change, and a constitution that guarantees basic human rights will go a long way towards changing it. The constitution of Iraq must, like the constitution of America, tell one story.

The Japanese constitution of 1947 is one example that can show the way. Following World War II, Japan's new constitution placed sovereign authority with the people and their representatives, in place of the longstanding authoritarian system under rule of the emperor. It renounced war as a sovereign right, and required that the country maintain armed forces for purposes of defense and police functions alone, not for purposes of aggression.

If there is to be a reasonable chance of success for this national democratic experiment, similar measures must be included in the new Iraqi constitution.

At the inception of this country, George Washington, instead of seeking to rule as an emperor, a king, a president for life, returned to his Virginia farm, handing over the reins of the fledgling American nation at the end of two terms in office. The act was astounding at the time, a political humility unknown since the era of Cincinnatus. It prompted his old foe, King George the Third, to call Washington ''the greatest character of the age.''

But Washington's actions were no accident. Washington recognized that for America to truly be a nation where the people were sovereign, it must first be a nation of laws.

We do not yet know which leader Iraqis will choose. But the identity of the democratic leader is far less important in the long term than the establishment of the rule of law, and not men. While leaders come and go, it is the law that makes a nation.

Third, the Iraqis need a strong and independent judicial system. This process will be difficult and slow going, but we ignore its importance at our peril.

Chief Justice Rehnquist has called an independent judiciary ''one of the crown jewels of our system of government.'' With tireless effort by freedom-loving Iraqis and their friends dedicated to the cause, I believe that the same can be true for the new Iraq.

The central authority in Baghdad currently exists in a vague and indeterminate form, and it is likely that the political climate there will fluctuate frequently over the next few years. The judiciary must exist as an independent actor in this process, to enforce basic human rights, protect private property, and ensure stable conditions that will lay the foundation for the prosperity and happiness of the Iraqi people.

To understand the full measure of Iraq's cruel and inhumane regime, you need look no further than Iraq's mass graves and the packed prisons of Baghdad, where the children of Saddam's political opponents were imprisoned and viciously abused. Under Saddam Hussein, prisoners were routinely starved, tortured, and murdered. The new government of Iraq must be just and humane, carrying out the duly rendered penalties of a civilized society based on the rule of law.

The rule of law will foster and facilitate prosperity that will improve the quality of life for all Iraqis. There is great promise in a nation where 60% of the population is under the age of 25, and more than 40 per cent under the age of 14. All that most have known is brutal dictatorship, fear and poverty. Soon, they will know freedom, security, and a better life.

With the foundation of legally enforced rights in place, Iraq will no longer be a place of fear for travelers or economic investors. As a nation, they will once again fulfill the true calling of the Qur'an, where it is written: ''Be kind . . . unto the neighbor who is of kin, and to the neighbor who is a stranger, and to the companion at your side, and to the traveler.''

The Iraqi people will be free to start businesses and open shops, to speak and to assemble, to experiment and study—all in pursuit of better lives, rather than the interest of Saddam Hussein or any other despot. Iraq will flourish as a nation of law and order, where the invisible hand of the free market will benefit both the society of Iraq and the entire region of the Middle East.

The world is watching Iraq closely. And in order for Iraq to grow and blossom, in order to ensure the freedom of the Iraqi people, the new Iraq must be founded on security and the rule of law.

I am thankful—as I know my colleagues are—that the armed conflict in Iraq reached such a swift end, with so few coalition lives lost. The tasks that lie before us in Iraq are in many ways are more complex and intricate, and their end is not yet in sight.

For the sake of those who risked and lost their lives so that the Iraqi people might know the blessings of liberty—for the sake of the promise of peace in the Middle East—and for the sake of the children of Iraq—we must not fail.

Thank you, Mr. President. I yield the floor and suggest the absence of a quorum.

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

The assistant legislative clerk proceeded to call the roll.

Mr. REID. 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.

MEASURE PLACED ON CALENDAR—S. 1079

Mr. WARNER. Mr. President, I understand that S. 1079 is at the desk and is due for a second reading.

The PRESIDING OFFICER. The clerk will state the title of the bill for the second time.

The legislative clerk read as follows:

A bill (S. 1079) to extend the Temporary Extended Unemployment Compensation Act of 2002.

Mr. WARNER. I ask that the Senate proceed to the measure and I object to further proceedings.

The PRESIDING OFFICER. Objection is heard. Under the rule, the bill will be placed on the calendar.

Mr. REID. What is the business before the Senate?

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2004

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

The assistant legislative clerk read as follows:

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

Pending:

Daschle amendment No. 689, to ensure that members of the Ready Reserve of the Armed Forces are treated equitably in the provision of health care benefits under TRICARE and otherwise under the Defense Health Program.

Graham (SC) amendment No. 696 (to amendment No. 689), in the nature of a substitute.

The PRESIDING OFFICER (Ms. MURKOWSKI). The Senator from Virginia is recognized.

Mr. WARNER. Madam President, the ranking member of the committee and myself are prepared this morning to entertain any amendments that colleagues wish to bring to the floor. I will be on the floor, and I am sure my colleague will outline a timetable for the amendments he knows of thus far on his side. On my side, there are no amendments that I know of right now. I do urge our colleagues to come forward.

The distinguished majority leader and the Democratic leader have made possible these 2 days for us to work on this bill. I know my colleague from Michigan, the ranking member, and I are ready to move right along on it. At this time, I yield the floor, hopefully for the purpose of my colleague speaking to the amendments he knows of.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Madam President, I thank my good friend from Virginia. I think the business before us is to dispose of the Graham of South Carolina second-degree amendment and then the underlying Daschle amendment. I do not know if any of the opponents of the two amendments are on the floor to speak, but I think we should dispose of those. It is my understanding that after those amendments are disposed of, Senator JACK REED will be ready to proceed with an amendment.

Mr. REID. Will the Senator from Michigan yield?

Mr. LEVIN. I am happy to yield.

Mr. REID. On this side, we are ready for a vote on the Graham of South Carolina amendment. We ask that vote occur around 11:30 today, if at all possible.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. I will consult with the majority leader. I will note a willingness on this side to voice-vote the Graham of South Carolina amendment.

Mr. REID. We would not be willing to do that. We want a rollcall vote on that amendment.

Mr. WARNER. The time the Senator is recommending would be?

Mr. REID. The time would be 11:30 to have a vote.

Mr. WARNER. Fine.

Mr. REID. I think we will probably only need one vote. We would accept Daschle by voice if, in fact, the Graham of South Carolina amendment passes, which I have an indication that it will. In the meantime, staff will work toward that goal with the two leaders and other people can come to the floor and offer amendments, which are certainly waiting to be offered.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. If the chairman will yield for an inquiry, if we could put in a very brief quorum call, I think I would be able to straighten out which of the other amendments might be offered while we are awaiting a vote on the Graham of South Carolina amendment. I need to make two quick calls and could then give a report.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Madam President, I understand we are now on the Defense authorization bill. I will speak about a number of matters in the legislation. I also will talk about a couple of amendments I am hoping to offer. I deeply appreciate the leadership of Senator WARNER and Senator LEVIN. There are few in the Senate for whom I have higher regard. I think both of them do an extraordinary job for this country. Our country is blessed to have their leadership during these difficult times.

Much of what is in the Defense authorization bill I support. I think they have done quite a remarkable job in bringing that bill to the Senate floor. I do, however, want to talk about a couple of areas that concern me and a couple of amendments I wish to offer.

Obviously, our first responsibility in this legislation is to support a strong military for this country. This is a dangerous world. All of us understand the uncertainties in the world. We understand especially that our sons and daughters were called upon to go halfway around the world and fight in the country of Iraq. They did so with great skill and our thoughts and prayers go with them as well. We understand from that experience what these investments mean for our country, the investments in military preparedness.

Being prepared, making the investments, being able to defend our country's liberty against terrorists, aggressors, and others, is very important. The single most important threat that faces our children and our grandchildren is the threat of nuclear weapons. If there is a leader in this world that has a responsibility to stop the spread of nuclear weapons, it surely must be us. It must be the United States of America.

Some many months ago there was a story, not widely told, about a rumor. The rumor was a nuclear weapon had been stolen from the Russian arsenal and that one nuclear weapon stolen by terrorists from the Russian arsenal was to be detonated in an American city. It caused an epileptic seizure in the intelligence community: Terrorists stealing a nuclear weapon, detonating it in an American city; talk about 3,000 people dying at the World Trade Center; then talk about one nuclear weapon killing half a million people in a major American city. That is the specter of what will happen with the threat of nuclear weapons in the wrong hands.

It was discovered some time after that rumor was moving around the intelligence community that, in fact, they believed it was not credible; a terrorist had not stolen a nuclear weapon from the Russian arsenal. Interestingly enough, it was not beyond belief of most intelligence analysts that it could have happened.

We know there are thousands of nuclear weapons in the hands of the Russians. We know the command and control of those weapons is not what we would like. We hear rumors and stories about the recordkeeping for nuclear weapons in Russia being in a three-ring binder. So we worry about the command and control of nuclear weapons. We think somewhere in this world, between us and the Russians and a few others, there are nearly 25,000 to 30,000 nuclear weapons. I will say that again. Although there is not an exact known number, we expect between 25,000 and 30,000 nuclear weapons exist, both theater and strategic nuclear weapons.

The rumor that one had been stolen by a terrorist and might be detonated in an American city caused great concern. Again, the intelligence people apparently felt it was entirely possible that could have happened and, having happened, it was entirely plausible they could have detonated a nuclear weapon in an American city.

So with this arsenal of 25,000 or 30,000 nuclear weapons, both theater and strategic nuclear weapons, the question for us, our children, and their children is: Will someone someday get hold of a nuclear weapon, build one, create one, steal one, perhaps? Will those terrorists someday have access to one nuclear weapon? Will it be detonated in a city of millions of people? Will it kill hundreds of thousands of people? Or before then, will we be a world leader in trying to stop the spread of nuclear weapons, prevent the theft of nuclear weapons, improve the command and control of nuclear weapons, especially

those in Russia, and begin to reduce the stock of nuclear weapons?

Will we do that in our country? Will we send a signal to the world that nuclear weapons cannot ever again be used in anger, cannot ever again be used? The whole purpose of a nuclear weapon is a deterrent. It is not to be used.

In this legislation before us, we have provisions that talk about the development of new low-yield nuclear weapons. I think that is a horrible mistake. We have plenty of nuclear weapons. Our effort ought not to be to develop new ones. It ought to be to assume the mantle of leadership to stop the spread of nuclear weapons and begin the reduction of warheads.

In this bill, there is a provision that talks about the money that needs to be spent to study the development of a new designer bunker buster nuclear weapon. What kind of signal does that send to the rest of the world—the United States decides it wants to create a new nuclear weapon; it wants to study the design of a bunker buster nuclear weapon. We say to other countries we do not want them to have a nuclear weapon. We do not want them to develop a nuclear weapon.

We are worried about Pakistan and India. They do not like each other. They both have nuclear weapons. We are trying to say to them they cannot ever even think about using a nuclear weapon.

Yet we are saying nuclear weapons are all right, what we ought to do is develop different kinds, develop more, use them perhaps in the future against terrorists who would burrow themselves into caves. What a terrible idea. What an awful message for this country to send to the rest of the world. The message ought to be we are going to do everything that is humanly possible in the United States of America to stop the spread of nuclear weapons because our future depends on it.

We have a lot of challenges. If, in fact, North Korea is now producing additional nuclear weapons using those spent fuel rods, if, in fact, we have a country that has the capacity and is now building nuclear weapons and is perfectly willing to sell them to most anybody, can those nuclear weapons end up in the hands of terrorists 12 and 14 months from now and be used by those terrorists to threaten an American city?

The answer is yes. This is a very serious issue. Is the answer to this issue for us to be talking about developing new kinds of nuclear weapons so that perhaps we can burrow into a cave somewhere with a designer bunker buster nuclear weapon? The answer to that is clearly no. Our message, it seems to me, as a country, ought to be to the rest of the world that we want to stop the spread of nuclear weapons, and we want to reduce the number of nuclear weapons, and we want to in every single possible way say to the rest of the world nuclear weapons cannot be used, nuclear weapons will not be used.

So I am hoping to offer an amendment that will strike that money to study the development of a new designer bunker buster nuclear weapon. We cannot do that. That makes no sense to me. It is exactly the wrong message to the rest of the world. Our job is not to begin determining how we can create new nuclear weapons. Our job is to find ways to stop the spread and to begin the reduction of nuclear weapons. We have plenty—thousands and thousands and thousands. The Russians have a similar number. A few other countries also have much smaller numbers. One defection will cause a catastrophe in this world.

It just seems to me we cannot be sending a message to the rest of the world that we are seriously wanting now to develop a new kind of nuclear weapon to bust bunkers. That is just the wrong message to the world, in my judgment. I know that both the chairman and ranking member will oppose the amendment, but I believe very strongly that this country has a leadership responsibility to the rest of the world that we are strong, we are going to preserve liberty, we will fight for this country's right to preserve liberty, but part of that, in my judgment, is to produce stability in the world, to say to other countries we don't ever want to see nuclear weapons used again; we want to stop the spread of nuclear weapons and we don't want to create new nuclear weapons and do not need to create nuclear weapons. Doing so would send exactly the wrong message to the rest of the world.

There is one other issue on which I know the chairman and the ranking member will disagree. Senator LOTT and I intend to offer an amendment to strike the base closing round in 2005. The legislation approving a new Base Closure Commission in 2005 was written prior to 9/11. The shadow of 9/11 has been long and broad. It has changed almost everything. The President came to the Congress and gave one of the most remarkable speeches I think I have ever heard a few days after 9/11. He said: Everything is changed. We now fight a war against terrorism, and that war against terrorism includes a war in Afghanistan, a war in Iraq, actions in other parts of the world, and a revamping of homeland security.

The creation and revamping of homeland security in our country, it seems to me, says to us that everything has changed. We have a Secretary of Defense who wants to dramatically change the entire structure of our Defense Department and our military.

So if everything has changed, then how do we proceed with a Base Closure Commission in the year 2005 that was developed in prior to 2001? Some of us believe we need to strike that 2005 base closing BRAC commission, get our breath, evaluate what kind of future we are going to have, what kind of base structure we want, both here and abroad, but instead of rushing into a mandate that was imposed prior to 9/11, what we ought to do is remove that mandate and have the flexibility to proceed in a manner that is consistent with the new realities since 9/11.

It is interesting to me that there are so many new realities around the world. We have heavy mechanized divisions in Western Europe. Well, I understood why we would have had tank divisions, for example, when we had a Warsaw Pact and Eastern Europe was Communist and we were protecting Western Europe from the invasion of the Communists. But that, of course, is not the case any more. There is no Warsaw Pact. Eastern Europe is democratic and free in almost all cases, and so it ought to lead us to ask the question: What are we doing with those kinds of divisions in Europe?

It seems to me there is a lot for us to evaluate in base closing, but if we are going to take a look at where the excess capacities exist in our military, let us do it with the background of 9/11, understanding virtually everything has changed long after we decided to have a base closing round in 2005 and the smarter approach for us would be to step back a bit, rescind that requirement in 2005, and, with the Secretary of Defense and others, try to think through what our new reality is, what will our new force structure be, what does this new changing world require of us, and what kind of bases will be required to meet that need.

We don't know what the military will look like in 10 or 20 years from now. We don't know how big it will be, what the force structure will be. We don't know where our forces will be based.

Just recently, we had a callup of the National Guard and Reserve. God knows those wonderful citizen soldiers who leave their homes and their loved ones. The 142nd Engineering Battalion in North Dakota got 2 days' notice and dug their trucks out of the snow and put them on the road to Fort Carson, CO. The fact is they were not ready for them at Fort Carson, unfortunately, they did not have the capacity on that base to handle the 142nd when they got there.

Part of it was because the troops got backed up; they could not go through Turkey; the ships were backed up; they were not able to move soldiers out of Fort Carson, so we had people being mobilized in the Guard and Reserve going to Fort Carson, CO, and they didn't have facilities to handle them at that point.

The question is, What needs and requirements will we face in the future? We don't know. Everything is changing. Everything has changed in the last few years.

The Secretary of Defense says we should have a base closing round, one round in 2005 that closes bases, I believe he said, equivalent to the number of bases closed in the first four rounds. I do not see how he or anyone else has the knowledge to understand where we would close those bases at the moment because we don't understand what the

force structure will be, what the requirements will be. And that is not a decision just for the Defense Department. It is also a decision for the Congress.

Homeland defense may require more bases, not fewer. Homeland defense combined with the Defense Department and the efforts of both may require bases in different places, may require us to retain a base that in another area might otherwise close, may suggest you close a base in a circumstance where you otherwise might retain it. We don't know. Homeland Security as an agency is less than a year old. We have had terrorists exploding bombs around the world in recent days—Morocco, Saudi Arabia. The fact is we don't know how all of this comes together, and yet we have a mandate for a BRAC round, part of which will begin in 2004 with respect to the requirements and in 2005 we will have the commission.

Let me suggest also, in addition to the fact that I don't think it makes any sense now, in the shadow of 9/11, to continue with the requirement that was imposed prior to 9/11, especially when virtually everyone says everything has changed, I don't think it makes any sense to stubbornly stick to that requirement. We would be much better off, in my judgment, for long-term preparedness and long-term flexibility to strike that provision for the 2005 round.

Let me make one other point. We have an economy that is stuttering. Everybody understands that. The Congress and the President are struggling to try to find a way to put this economy back together. It is not producing jobs. It is losing jobs. We don't have the kind of economic growth we want or need. All of us understand that. We all understand that.

Want to talk about a retardant economic growth? Let me tell you what that is. Tell every community in this country with a major military installation, by the way, if you invest in that community, do not build an apartment building now because between now and mid-2005 that base may be closed and you have no certainty it will be there beyond 2005 or past; so make sure you do not make that long-term investment. In every community where there is a major military installation this stunts economic growth because there is a target on the front: Get out of every military installation in the country. All of them are in play. No one knows which may remain open or remain closed. This Commission will meet in 2005 and on its own make that decision. Want to stunt economic growth, retard the ability of the economy to expand? The quick way to do that is to say let's leave in place the 2005 requirement for a base-closing commission.

I guarantee, in community after community around this country, we have investors who will not, who cannot possibly make the investment in those communities because that military installation is a big part of the community and its economy and its future and they do not know whether it will be there in the future.

At a time when our economy is sputtering, to have that retardant on the economic growth of so many communities in our country, in my judgment, is totally counterproductive.

Mr. WARNER. Will my colleague be willing to engage in a colloquy?

Mr. DORGAN. I am happy to yield for a question.

Mr. WARNER. By way of senatorial courtesy, I bring to the Senator's attention the unanimous consent request drafted carefully and put into the calendar today. Would the Senator be willing to check with the Parliamentarian at his earliest opportunity?

On this amendment, the Senator is a cosponsor, I think I heard.

Mr. DORGAN. Senator LOTT and I.

Mr. WARNER. Would the Senator be gracious enough to check with the Parliamentarian? It seems to me before we get the body stirred up on the issue of BRAC, we ought to determine the relevance on that amendment with these unanimous consent requests. I say that by way of courtesy.

Mr. DORGAN. Well, I appreciate the Senator's courtesy. Of course, I am familiar that last week, perhaps for the last time, the committee has gotten unanimous consent requests for relevancy. I say ''for the last time'' because I have discovered both last evening and this morning that the amendment, as originally drafted, would be nonrelevant. Let me describe my surprise at that.

Mr. REID. Will the Senator yield?

Mr. DORGAN. Let me finish the explanation and I will be happy to yield.

The Base Closure Commission was established in this bill by this committee some years ago. One would expect the ability to strike that requirement would be in this bill. That is where it would be relevant, in this bill.

This bill itself contains provisions dealing with base closings because the bill contains some hundreds of millions of dollars in conformance with the requirements and the costs of previous Base Closure Commission actions.

I was told this morning the way our amendment is currently drafted is nonrelevant. I don't have the foggiest idea who could come up with that sort of judgment. I will not demean anyone who does, but to say there is no way on God's Earth that anybody can suggest that it is not relevant in this legislation to deal with base closing because this is where base closing came about. This is where it originated.

If the idea of relevancy is to get unanimous consent to shut people out from being able to offer amendments such as this on this bill, it is the last time—I say this again—it is the last time any committee will ever get a unanimous consent in this Senate as long as I am here during this session of the Congress on relevancy. It is the last time it will happen.

I am certainly not upset at the Senator from Virginia, but I am upset with this process because I will find a way to draft this so it is relevant and we will have a vote on it.

Frankly, I am upset that we have a Byzantine process by which someone says you cannot strike a provision that was put in the bill because it is not relevant. What on Earth are we thinking about?

I say to the Senator, your courtesy is understood. I was aware last evening and this morning that there was preparation to say to me, this is not relevant the way it is written. Then I will write it the way I hope someone around here can think clearly to say it is relevant. There is already a provision in this bill that deals with the Base Closure Commission; I can cite it.—There is no way my amendment can be nonrelevant.

I will work on that in the next couple of hours. I know the Senator from Virginia will want to oppose the amendment, as will the Senator from Michigan. I hope the Senator from Virginia will agree with me that he will not want a process by which he brings a bill to the floor, as chairman of the Armed Services Committee, and will want to prevent someone such as me who is not on the committee from offering an amendment to strike a provision put in this bill some years ago.

I don't expect that the Senator from Virginia would want that to be happening. I don't think you will want to prevent me from offering an amendment that you think is relevant. I appreciate the comment.

Mr. WARNER. Madam President, I suggest maybe a revision in your commentary. It is not in this bill. You keep referring to ''it's in this bill.''

Some years ago this bill, by the authorization committee, did contain it. I happen to have been a drafter of it. But it became law. So it is in law today. But there is no provision, to my understanding, in this bill that relates to the generic subject of the BRAC.

Mr. DORGAN. When I say ''this bill,'' I am referring generically to the Defense Authorization bill that we do each year. This bill is where the Senators who wanted to add the base-closing BRAC commission put it. It is in this piece of legislation. Generically.

Now, this bill you wrote this year that comes to the floor does not create the BRAC because the BRAC now is in law. I am trying to strike it.

Let me say, however, that on page 349 of your bill:

> For base closure and realignment activities as authorized by the Defense Base Closure and Realignment Act of 1990 (Part A of title XXIX of public law 101–510—

My point is, that portion of law is already referenced in your bill because you are proposing to spend $370 million in pursuit of certain requirements there.

My point is, it is not as if base closing as a concept or as a subject is not there. It is there.

I assume that neither you nor the Senator from Michigan—perhaps I should ask both of you. I assume that neither of you would anticipate when you propound a unanimous consent request on relevancy that you would want to prevent someone from coming to the floor to offer an amendment that is clearly relevant. I assume you would not want to try to prevent this kind of amendment.

I assume you want to prevent an element that deals with, say, CAFE standards on automobiles, having nothing to do with defense or something dealing with health care that has nothing to do with defense. That is what relevance, in my judgment, is about.

I ask the Senator from Virginia, if I may reserve my time and ask for a response, or perhaps the Senator from Michigan, did you anticipate last Thursday preventing amendments such as the amendment I was intending to offer with Senator REID on concurrent receipt, which clearly deals with the military, or the amendment that I intend to offer on base closing, is that what you intended to prevent with the unanimous consent request?

I am happy to yield.

Mr. WARNER. Madam President, the distinguished ranking member and myself at the time, with the leadership, had no specific subject or amendment in mind. We simply recognized the magnitude of this bill, some $400 billion, covering many subjects; in years past we have been on the floor, I can remember in my 25 years, 2 weeks at a time. Given the urgency of this situation, the calendar before the Senate, we thought we could best serve the institution of the Senate by proposing the Parliamentarian the decisionmaking with reference to relevancy. We had nothing in mind, I assure the Senator.

Mr. DORGAN. Let me ask this, if I might ask the Senator from Michigan. I don't disagree with you at all. I understand you don't want 100 extraneous amendments that have nothing to do with this, so you want a relevancy test.

But as I understand, the provision in law that I reference in my amendment is exactly the provision in law that is referenced on page 349, lines 16 to 19. That will now be prevented, so I will have to rewrite this amendment. The Parliamentarian says he thinks it is not relevant—their office thinks it is not relevant, ''after consultation with both the majority and minority staff of the Armed Services Committee.'' I might wonder what kind of consultation exists there. Can either of the Senators tell me?

Mr. LEVIN. If the Senator will yield, I don't know what consultation exists between the Parliamentarian and the staffs of committees relative——

Mr. DORGAN. Might I——

Mr. LEVIN. If I could just complete my statement?

Mr. DORGAN. Yes, go ahead.

Mr. LEVIN. Relative to bills that come before them.

These are complex bills. I assume they consult all the time. I cannot imagine it is unusual for the Parliamentarian to talk to either Members of the Senate or to our staff.

By the way, this requirement of relevance is not unusual. I just ask the Parliamentarian, is this an uncommon provision? It is not an uncommon provision. In fact, it seems to me, in a bill that recently came before us it had a provision, although I cannot remember which one it was—but it is not an uncommon provision. It was not intended to prevent any particular amendment.

As the Senator from Virginia said, it was just simply intended to give some kind of parameter to a very lengthy and complex bill. It was not aimed at a BRAC amendment or aimed at any particular amendment.

Mr. DORGAN. Let me ask the question further, if I might retain my right to the floor, if the Parliamentarian's office consulted with the Senator from Michigan, would the Senator from Michigan think an amendment that would strike the Base Closure Commission is not relevant to the bill?

Mr. LEVIN. I would ask the Parliamentarian for a definition of ''relevance.'' I would follow his definition. If the Parliamentarian asked me whether or not that provision was germane to the bill under the common germaneness definition, I would say, Boy, it sure sounds germane to me. But the Parliamentarian would tell me, No, sorry, that's not germane to the bill.

I don't know what the technical definition of ''relevance'' is. But it is technically defined like the word ''germane.'' It is not just a general word which is taken from the dictionary. There is a parliamentary definition of the word ''relevant.'' That is the definition which is incorporated, I believe, in every single unanimous consent request that there be a relevance standard.

Again, I repeat, and I think it is important we find this out, it is not uncommon to have a relevance standard in a unanimous consent request to limit amendments to debate so we can keep within the parameters of the bill.

If I could add one other thing, to my friend from North Dakota. It seems to me what the Senator from North Dakota may be arguing at the moment is that, in fact, his amendment is relevant, or that it could be made relevant within the meaning of the word as defined by the Parliamentarian. If so, it seems to me that takes care of the issue.

I know the Senator from North Dakota——

Mr. DORGAN. But, yes, the Senator is correct. I darn well expect to be able to offer this amendment. If I have to reword it, I will reword it. But I was trying to ask the question, Is this what you expected to try to prevent?

You say we were just trying to deal with something that was ''relevant,'' and that is a standard that existed for a long period of time. You know and I know that standard has changed over the last 20 years.

I, frankly, am surprised this morning at this. I think a number of others are as well because I don't think this is what I thought relevancy was about.

My amendment is three lines long. It repeals the base-closing round. If this is not what you intended to prevent, let me ask consent that you would agree this be deemed as relevant.

Mr. WARNER. Madam President, I would not agree with that.

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

Mr. DORGAN. I will be happy to yield for a question.

Mr. REID. The Senator is aware, is he not, that on our side we have very competent staff, Marty Paone, Lula Davis, who help us with parliamentary issues that come before this body; the Senator is aware of that, of course?

Mr. DORGAN. I am.

Mr. REID. Is the Senator aware that we have been told by them that the rulings that have been made on this bill have been a surprise to even them, in the many, many years they have served in the Senate? The new—I am talking about new in the last few days—determination of what is relevant has surprised even our very competent floor staff. Is the Senator aware of that?

Mr. DORGAN. That is correct.

Mr. REID. Is the Senator aware that, generally speaking, relevance is not germaneness? They are two totally different concepts; is that correct?

Mr. DORGAN. The Senator is correct.

Mr. REID. I was surprised, flabbergasted, disappointed last night when the amendment that you and I and Senator MCCAIN—I didn't mention his name last night and I apologize for not doing that because I was so taken aback by the ruling of the Chair—that our concurrent receipt amendment was ruled nonrelevant. That is an amendment to allow the military to receive their disability pay and their retirement pay.

I would have to think this huge bill we have here—there are copies on the desk, here it is right here—in this huge bill here, I would have to think there is something about pay for the military, about retirement pay, about disability. But the Chair ruled that was not the case.

I accept the ruling of the Chair. I do not like it, but I certainly support the statement made by the Senator from Michigan last night. I thought that was a very fair statement. We have to go along with what the Chair rules. There is no other alternative, but that does not take away that this has been a tremendous surprise, disappointment to me, and I would think to the Senator from North Dakota. Is that a fair statement?

Here is a situation that has arisen that is totally against what we have learned has been the rule of relevance. This is not some magical concept that just came out of the sky, but in the

last few hours there is a new determination of what relevance is. Is this a fair statement, I say to the Senator from North Dakota?

Mr. DORGAN. That is my feeling. I hope the Senator from Virginia and the Senator from Michigan were surprised as well.

If not, if their suggestion last Thursday of what relevance was, by unanimous consent, in effect, was to say: Oh, by the way, those of you who want to come with a base-closing round, we are not willing to fight you on that; You can't offer it; We will find a way to prevent you from offering it.

It is partly our fault. I had no idea that what you were doing last Thursday with a relevancy request, by consent, would have prevented Senator REID from offering the concurrent receipt issue. The fact is, we were going to offer the concurrent receipt issue last week on the tax bill and decided not to do that, decided to offer it here because here is where it ought to be offered.

When someone works 20 years in the military for this country and then retires and earns a retirement pay, if during that time they were disabled, what our current law says, in most cases—not all, but in most cases—is that you are not going to be able to collect your disability and your retirement; concurrent receipt is prohibited.

That is wrong. We ought to change that. Most of us know we ought to change that. The place to change that is on the Defense authorization bill. Of course it is the place to change it.

I am just as stunned that Senator REID has been told it is not relevant as I am about my amendment. I have spent more time this morning trying to figure out how on Earth someone could determine that this may not be relevant. I do not know what else that someone might want to offer here that deals directly with a defense issue, deals directly with policy in defense, will now be ruled as nonrelevant. What on Earth are we talking about here?

I hope the two of you, the chairman and the ranking member, will agree that at least those issues that appear well within the scope of what we have always thought to be relevant, and Senator REID described it exactly, about which those in our caucus who are the experts—I am not an expert on relevancy—are surprised, I hope those issues that you are preventing with a unanimous consent, at least by this latest rule, I hope we will be able to offer them.

I will try to offer to the Parliamentarian's office some version of this amendment that will meet the relevancy test. I hope I can do that. If I can't, I hope it is not your intent that relevancy should be described in the way that prevents the offering of legislation that would strike a provision that you put in the law in 1990 in this very Defense authorization bill. I hope that is not your intent.

Mr. WARNER. I have to say to my friend, I would not want him to leave the floor under the illusion that if the amendment fails to meet the requirements of the Parliamentarian, that my colleague, the distinguished ranking member, and myself, would begin to sit as a supreme court with regard to the Parliamentarian's decision and render exceptions. If we were to do that, the whole efficiency of this process would soon disintegrate and put us in an impossible situation.

The institution of the Senate relies upon the fairness and objectivity of the Parliamentarians. It is an institution since the beginning of times here. We, as Members, should not be asked or put in a position in which to overrule them, as you are fully aware.

Mr. DORGAN. The Senator from Virginia has been here longer than I have, but he understands when one comes to the floor to manage a bill with the ranking member, that there will be dozens of opportunities for you, in the next couple of days, to have unanimous consent agreements between the two of you. That is the way you manage a bill on the floor of the Senate. I am not suggesting some new approach. You will be required to ask unanimous consent for a number of things to happen on the floor of the Senate. One of those will, I hope, be to say that you want to allow to be considered on the floor of the Senate concurrent receipt, for example. I think it would be a travesty if you leave the floor, or I should say if we leave the floor—the Senate takes the floor for final vote on a Defense authorization bill, having prevented those retired soldiers who are disabled from having had a vote on this issue. What a travesty that is going to be.

I hope it will not be your intention to prevent that amendment from being offered. It is clearly right in the bull's-eye of this bill. Clearly it is.

I guarantee you, to the extent I can guarantee you as a non-Parliamentarian, that 3 years ago, 5 years ago, or 10 years ago, if this were offered on this bill, it would be relevant. We all know that. The only reason we are surprised this morning is because relevancy is changing in a way that I hope surprises you because I don't expect that you last Thursday would have wanted to prevent the concurrent receipts being debated and voted on. And I wouldn't expect that you want my amendment to be voted on. As I said before, I have great respect for the chairman and ranking members of this committee. I think they do wonderful work for this country. I have great admiration for them. I support much of what they have done. I will offer a couple of amendments. One which I very much hope you will allow to be offered is the one Senator REID, myself, and Senator MCCAIN want to offer on concurrent receipts. And one that certainly should never be prevented from being offered is on the Base Closure Commission. I have already made the comments about that amendment and why I think it is important and why I think it is timely to offer it today. I know that both Senators will object to that. But there is a very solid and strong group of Senators who feel the other way. I and Senator LOTT intend to offer this amendment to the extent that we can find a way to offer it, either by rewording it or finding a way to allow us a consent to offer it. It would be a mistake not to do this before the bill leaves the floor.

Mr. WARNER. Madam President, I think this colloquy undoubtedly is being followed by a number of colleagues. I already now have petitions by several on my side of the aisle seeking to ask whether we can go ahead and take this up even though the Parliamentarian has indicated to those Senators in a formal and appropriate way that it is acting within the description of their job function here to say the amendment fails the test. Again, I do not intend to sit here in judgment and overrule the Parliamentarian. But the Senator is perfectly willing under the rules of the Senate to seek to do that.

Mr. DORGAN. You do not have to overrule the Parliamentarian. If one were to move to do that, that would be a different issue. But by consent we can—and you know we will—do most anything on the floor of the Senate. My point is not to ask you to overrule the Parliamentarian. My point is to ask you whether you believe, whether the committee believes that it is somehow not relevant to this bill to be talking about the Base Closure Commission that was created by the Defense authorization bill in the Senate, or to be talking about concurrent receipts which affect emolument and reimbursements for veterans and retired veterans. Clearly, the Senators from Virginia and Michigan could not feel that is somehow outside the scope of this bill. If you believe it is in the scope of the bill, let us not be technical. Let us by consent allow amendments that are at the heart of this bill to be offered.

That is what I am asking. That is my point.

Mr. LEVIN. Madam President, if the Senator from North Dakota was asking me do I believe that a BRAC amendment is germane to this bill, not relevant but germane to this bill—look up the word ''germane'' in the dictionary—it sure sounds germane to me. But then I ask the Parliamentarian if it is germane, and the Parliamentarian says, no, it is not germane to this bill, and if this were a postcloture situation, it would be allowed, the Senator could get up and ask, Does the Senator from Michigan really believe the BRAC amendment should not be allowed on this bill because under the rules of the Senate it is apparently not germane? The Parliamentarian has told us that.

What intrigues me is the relevance standard which the Senator from North Dakota has raised as to whether or not, in fact, there has been a change. I use the words ''whether or not'' there has

been a change in the standard of relevancy. It seems to me that is an important issue for this body to review, as to whether there has been a change in that definition. I haven't talked to the Parliamentarian about it. I don't know. Does the Senator from North Dakota suggest that there has been a change? Whether there is, has been, would be or not, we should know as a body what the standard of relevance is and whether there has been a change and, if so, how did it come about.

I hope the Parliamentarian, given this exchange, would advise the Senate as to the standard of relevance and as to whether or not there has been a change in that standard. I am not suggesting, obviously, that the Parliamentarian speak on the floor at this point. I am suggesting the Parliamentarian advise the Senate in some written form relative to the standard of relevancy because the Senator is raising an absolutely essential issue. We use the word ''relevant'' here all the time. If there is a change in the definition of that word, then it seems to me we ought to know about it and decide whether or not we are comfortable with it.

Mr. WARNER. Madam President, will the Senator yield?

Mr. DORGAN. I would be happy to yield to the Senator from Virginia.

Mr. WARNER. Madam President, let us place before the Chair a parliamentary inquiry as to whether or not there has been any change in the definition of the word ''relevancy'' as used by the Parliamentarian, say, in the last decade.

Mr. DORGAN. Madam President, the Senator from Michigan made a suggestion which is I think perhaps a better approach, to have the Parliamentarian communicate with us about that subject. I don't know.

Mr. REID. Madam President, will my friend yield?

Mr. DORGAN. I would be happy to yield.

Mr. REID. I have the greatest affection for my friend from Virginia. If there were ever a southern gentleman, he is it. But this question will not do the trick. It is like asking Al Capone if he is a criminal. I am not saying that the Parliamentarian is a criminal, but you can't ask him to defend himself. That is what this amounts to. That is what is happening, especially here in the Senate. This is not the way to do it. I say to those on that side of the aisle that I have the greatest confidence in our floor staff, as they do theirs. They are not Johnny-come-lately. They have been here a long time. They knew when this unanimous consent agreement was entered into what it was. They knew what the standard basic definition was. They are dumbfounded as to the rulings of the Chair. Marty Paone and Lula Davis—who I lived with on this floor, and spend days and weeks and months of my life, I depend on for advice and counsel every day, are dumbfounded.

I say to my friend from Virginia that to ask the Chair to determine a change in the definition in the last 2 days is not the way to go.

Mr. DORGAN. Let me make the point that there has not been a ruling of the Chair. The issue is what the Parliamentarian views to be relevant and not relevant at this point. There is an important distinction. But we don't want to have a half hour of debate on this point.

The only reason I came to the floor to talk about this was because I wanted to talk about two amendments which I wanted to offer, recognizing that one of them at this point has been described as not relevant. I was stunned by that. I expect to be able to redraft it to make it relevant. But I was especially interested in whether the managers of the bill, the chairman and ranking member, would want to prevent us from offering amendments that are so central to the Defense authorization bill. If not now, where would I offer this amendment? I ask the question: If not here, where would I offer it? Is there an alternative to offering this type of amendment somewhere else? Clearly the answer is no. If there is a place, this is the time to offer this amendment.

My hope is that working with the chairman and ranking member I will be able to do that. Quite clearly, this amendment is central to the consideration of this bill. It is right in the middle of the defense authorization. I am not coming here with some amendment that is extraneous.

My colleague from Michigan used the world ''germane'' which introduces a new subject. I thought he was going to debate that subject. But then he used that to describe its relationship to ''relevance.'' This will be lost on a lot of people in the country. But it would be lost on people as well if they understand what this bill is, and then look at the amendment that is proposed to be offered by the Senator from Nevada and the amendment that I propose to offer and hear that those somehow are not relevant to the bill. They would ask, Is there some common sense missing here someplace?

Clearly, clearly——

Mr. WARNER. Madam President, if the Senator will yield?

Mr. DORGAN. I am happy to yield.

Mr. WARNER. The Senator from Virginia propounded a question to the Chair. My distinguished colleague from Nevada suggested maybe we shouldn't follow that procedure.

I have now consulted with the Parliamentarian. They are prepared to answer the question propounded by the Senator from Virginia with regard to this practice over the last several years. Whatever period of time is stipulated I think is not that important. So I once again propound to the Chair the question of whether or not the means by which the Parliamentarian through the years has judged a question's relevancy—has it changed, say, in the last 5 years?

The PRESIDING OFFICER. It has not.

Mr. LEVIN. I am sorry?

Mr. WARNER. We can't hear.

The PRESIDING OFFICER. It has not.

Mr. WARNER. What did the Chair say?

Mr. REID. It has not.

The PRESIDING OFFICER. It has not changed in the past few years.

Mr. WARNER. Thank you.

Mr. DORGAN. Well, Madam President, that is patently absurd. The chairman asked—the first time he asked the question, he asked in the last decade.

Mr. WARNER. Fine. I will repeat the question.

Mr. DORGAN. No, no, no. I am not asking him to repeat the question. I have the floor.

He asked the last decade. Then he asked the last several years. Then he asked the last 5 years. The fact is, people who watch this, going back through several Parliamentarians, are surprised this is not a relevant amendment.

Relevancy is purely judgmental. If I were a Parliamentarian, a member of the Parliamentarian's Office, I would say nothing has changed in 200 years. God bless us.

Mr. REID. Will the Senator yield for a unanimous consent request?

I would like the RECORD to reflect, following the statement of the Chair, a big smile and a laugh from the Senator from Nevada based on that decision by the Chair.

Mr. DORGAN. Well, Madam President, it is hard to describe the smile the Senator from Nevada blesses us with, but if he wishes the RECORD to include that, we will do that.

Look, we have gone on long enough. My interest is in substance, not procedure. I understand the Senate operates based on procedures and precedent, but I am not very happy today because the fact is, people whose judgment I rely on are very surprised by this. I just don't have the foggiest idea—not the foggiest idea—how my ability to strike a provision that was put in this bill 2 years ago is thwarted because it is not relevant to this bill. I don't have any idea.

I would ask the question, if I can't do it now, then when can I do it? If I can't do it in this bill, then where can I do it? I don't have any understanding of that. Sometimes logic gets turned on its head. That is clearly the case here.

Now, to the Parliamentarian's Office, I say I am sorry we have this disagreement. But the fact is that what I heard this morning, both with respect to retired veterans who are prohibited from getting their disability payments—you know something, they have been shunted around this Chamber now for years—for years—and the fact is a whole lot of them deserve more than they have gotten from this Congress. These are people who served this country, earned a retirement, and then were disabled while serving their country and can't collect full disability payments. And every time we try to solve

that, there is one reason or another it can't be done.

It is just one amendment Senator REID and I and Senator MCCAIN want to offer. But it just does not make sense to me to be in this position. I hope my two colleagues, Senator WARNER and Senator LEVIN, would not intend for these amendments to be nonrelevant. They have some notion of what is relevant, what is nonrelevant in terms of what they wanted to prevent, and I assume they didn't want to prevent these types of amendments from being offered.

So I will be working with them and seeing if we can find a way through this. I will work with the Parliamentarian's Office. But I must tell you, this is the first time—I have been in this Senate for a long time. I have never come to the floor ever, not one instance I think you will find where I have come to the floor and been upset with the Parliamentarian's Office or others. I am not a complainer. But I tell you what, this defies common sense. And I think, frankly, in a quiet moment, off the floor, the chairman and ranking member would tell me they didn't intend to preclude these two amendments. And if that is the case—and I think that is the case—then they ought not be precluded, and we need to find a way to allow them to be offered.

So I will come back. I intended to come and speak to the substance and raise the question, and then try to solve it. I am sorry we got into a longer discussion than that.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. ENZI). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Colorado.

Mr. ALLARD. Mr. President, I have a statement I would like to make on the bill. It is my understanding we are in order to move forward with the debate.

The PRESIDING OFFICER. The Senator is correct.

Mr. ALLARD. Mr. President, today the Senate is considering the National Defense Authorization Act of fiscal year 2004. While there will be much debate on a few of the provisions in this bill, there is one thing we can all agree on—the defense of this Nation is our No. 1 priority.

The bill before us is a reflection of that priority. With the passage of this bill, we are saying this body is determined to ensure our Armed Forces have the resources, tools, and equipment they need to effectively combat those who threaten the United States, its interests overseas, and its friends and allies. With the passage of this bill we are saying our military personnel are the best in the world and should be paid and equipped as such. Modern equipment and sophisticated technology were certainly critical factors in recent operations. However, it was the extensive training, superb leadership, and valiant service of thousands of soldiers, sailors, airmen, marines, and coastguardsmen which has been the deciding factor time and time again.

With the passage of this bill, we are also admitting that threats to our way of life persist in many parts of the world. The global reach of terrorist networks is extensive, as demonstrated by the recent bombings in Saudi Arabia. The proliferation of weapons of mass destruction is growing. There are reports, for example, that North Korea may try to sell a nuclear weapon. These threats and others require us to remain vigilant. Our military must be prepared and ready to respond in a moment's notice.

I would like to take a few moments to draw the attention of the body to some of the more important provisions in this legislation.

Section 534 of the bill, which I sponsored, lays out several actions the Secretary of Defense and the Secretaries of each military department must take to address sexual misconduct at service academies. These include promulgating policies on sexual misconduct, conducting annual cadet surveys, and submitting a report to Congress on the board of visitors of each academy. The recent sexual assault scandal at the United States Air Force Academy highlighted the importance of being proactive and taking appropriate action at the first sign of trouble. This provision will be helpful in discovering sexual misconduct problems at the academies. This provision will also help academy leaders develop new tools for addressing sexual misconduct and give Congress and the board of visitors insight into the size and scope of the problem.

Another provision which I sponsored focuses on improving the Defense Department's management of travel credit cards. This provision builds on the purchase card legislation of Senators GRASSLEY and BYRD which was approved by this body last year in the Defense appropriations bill. Federal agencies are required by law to use purchase cards for certain transactions and travel cards for official trips. While utilization of these cards has yielded considerable savings for the American taxpayer, abuse has continued.

Recent GAO audits have reported these cards have been used at brothels, adult clubs, sporting events, and even Internet pornographic Web sites. Section 1013 will help address this deficiency. It requires the Secretary of Defense to prescribe guidelines and procedures regarding disciplinary action against personnel guilty of improper, fraudulent, or abusive use of Defense travel cards. The provision recommends to the Secretary that he consider enforcing various penalties allowed in law, including assessing a fine three times the size of the abuse, requiring the guilty party to pay court and administrative costs, and firing or court-martialing Department of Defense personnel.

Lastly, the provision requires the Secretary to report to Congress on these guidelines and provide legislative proposals should legislative action become necessary.

The bill before us also includes two provisions I sponsored regarding military voters. With the current deployments resulting from the war on terrorism, Operation Iraqi Freedom, and numerous other military actions, we must do all we can to ensure these military men and women are given every available opportunity to exercise their right to vote. I believe it is our duty to remove as many barriers as possible for military voters to be heard.

One provision included by the Armed Services Committee addresses those voters who fall through the cracks when they leave the military and move before an election but after the residency deadline. The other provision addresses problems with overseas military absentee ballots. After the 2000 election there were numerous reports of ballots mailed without the benefit of postmarking facilities. Sometimes mail is bundled from deployed ships or other distant postings and the whole group gets one postmark which would invalidate them under current law. The provision adopted will change the law so our military personnel would be ensured their votes count.

I am encouraged by the $40 million added to the President's request for formerly-used defense sites, better known as FUDS. As noted in the committee report, there are over 9,000 FUDS in the program which historically have been underfunded. The longer these sites wait to be remediated, the more expensive they become. That is why I am pleased to see the extra funds and encourage the Army to address these problems in an expeditious and thorough manner.

Turning to the provisions that originated from the Strategic Forces Subcommittee, which I chair, these provisions reflect a net increase of $85 million in procurement, a net increase of $202 million in research and development. They also reflect the requested level of funding for the Department of Energy programs and activities. The total net increase was $287 million.

These provisions fully fund the President's $9.1 billion request for missile defense. I was pleased that my ranking member, Senator BILL NELSON, and I were able to work together effectively on these issues. I am hopeful any missile defense amendments considered as part of this debate will be noncontroversial.

Significant funding actions in the committee's bill for missile defense include an increase of $100 million for the

ground-based missile defense system for additional testing and hardware improvements to reduce risk and enhance operational effectiveness, and a $70 million decrease for the ballistic missile defense system intercept project.

The bill before us also includes a number of space-related provisions that originated from my subcommittee. One would help to more fully develop an effective cadre of space professionals. Another would establish assured access to space for national security payloads as national policy.

Significant funding actions for space include the following: An $80 million increase for the GPS III, which is an advanced navigation satellite; a $60 million increase for the Advanced EHF Satellite communication system; a $60 million increase for assured access to space; and a $50 million decrease for the Advanced Wideband system, which will put this program on a sounder schedule.

There are two significant legislative provisions regarding the intelligence, surveillance, and reconnaissance, referred to as ISR. The first would require establishment of a Department of Defense ISR Integration Council, and formulation of a 15-year ISR roadmap to ensure the development of an efficient, interoperable, complementary ISR architecture for the Department.

The second reemphasizes the committee's support for the acquisition and use of commercial imagery to meet Department of Defense and Intelligence Community needs. The bill also adds funds to a number of high-priority ISR programs.

Another set of provisions originated from my subcommittee focuses on Department of Energy programs. These provisions authorize the weapons activities within the National Nuclear Security Administration at the budget request level of $6.4 million; the Naval Reactors program at $788 million; and the Defense Environmental Management program at $7.7 billion.

Another DOE provision would authorize $21 million for the National Nuclear Security Administration to begin research on advanced concepts, and $15 million of that research money will be used to continue the feasibility study on the robust nuclear earth penetrator. A repeal of the ban on low-yield nuclear weapons research and development was also included—emphasizing just the repeal, and this involved the research and development.

Mr. President, our Armed Forces are highly capable, superbly led, and devoted to the protection of the American people. During Operation Enduring Freedom, the Taliban unwittingly discovered our military has the capability to deploy and supply thousands of soldiers in the most remote of regions of the world. And during Operation Iraqi Freedom, Saddam Hussein experienced firsthand the devastating precision firepower our forces can unleash from a multitude of platforms.

Yet despite these capabilities, we cannot stand still because, most assuredly, our enemies will not. We must be determined, committed, and focused on the task before us. It is our duty.

The Armed Services Committee, under the outstanding leadership of Chairman WARNER, has spent many hours developing, analyzing, and reviewing the provisions in this bill. I also want to thank the ranking member of the Strategic Forces Subcommittee, Senator BILL NELSON, and his staff for their cooperation and leadership during our hearings and committee markup. While we may not all agree on the merits of some of the provisions, we can all agree the overall bill will go a long way toward meeting the growing needs of our men and women in uniform.

The American people depend on us, just as we depend on our Armed Forces. Let us do our duty and quickly approve this bill.

I yield the floor. Seeing no other member seeking recognition, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. REED. Mr. President, I ask unanimous consent that the pending amendment be laid aside.

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

AMENDMENT NO. 711

Mr. REED. Mr. President, I call up amendment No. 711.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Rhode Island [Mr. REED], for himself and Mr. LEVIN, proposes an amendment numbered 711.

Mr. REED. 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 provide under section 223 for oversight of procurement, performance criteria, and operational test plans for ballistic missile defense programs)

Strike section 223, and insert the following:

SEC. 223. OVERSIGHT OF PROCUREMENT, PERFORMANCE CRITERIA, AND OPERATIONAL TEST PLANS FOR BALLISTIC MISSILE DEFENSE PROGRAMS.

(a) PROCUREMENT.—(1) Chapter 9 of title 10, United States Code, is amended by inserting after section 223 the following new section:

''§ 223a. Ballistic missile defense programs: procurement

''(a) BUDGET JUSTIFICATION MATERIALS.—(1) In the budget justification materials submitted to Congress in support of the Department of Defense budget for any fiscal year (as submitted with the budget of the President under section 1105(a) of title 31), the Secretary of Defense shall specify, for each ballistic missile defense system element, the following information:

''(A) For each ballistic missile defense element for which the Missile Defense Agency in engaged in planning for production and initial fielding, the following information:

''(i) The production rate capabilities of the production facilities planned to be used.

''(ii) The potential date of availability of the element for initial fielding.

''(iii) The expected costs of the initial production and fielding planned for the element.

''(iv) The estimated date on which the administration of the acquisition of the element is to be transferred to the Secretary of a military department.

''(B) The performance criteria prescribed under subsection (b).

''(C) The plans and schedules established and approved for operational testing under subsection (c).

''(D) The annual assessment of the progress being made toward verifying performance through operational testing, as prepared under subsection (d).

''(2) The information provided under paragraph (1) shall be submitted in an unclassified form, but may include a classified annex as necessary.

''(b) PERFORMANCE CRITERIA.—(1) The Director of the Missile Defense Agency shall prescribe measurable performance criteria for all planned development phases (known as ''blocks'') of each ballistic missile defense system program element. The performance criteria shall be updated as necessary while the program and any follow-on program remain in development.

''(2) The performance criteria prescribed under paragraph (1) for a block of a program for a system shall include, at a minimum, the following:

''(A) One or more criteria that specifically describe, in relation to that block, the types and quantities of threat missiles for which the system is being designed as a defense, including the types and quantities of the countermeasures assumed to be employed for the protection of the threat missiles.

''(B) One or more criteria that specifically describe, in relation to that block, the intended effectiveness of the system against the threat missiles and countermeasures identified for the purposes of subparagraph (A).

''(c) OPERATIONAL TEST PLANS.—The Director of Operational Test and Evaluation, in consultation with the Director of the Missile Defense Agency, shall establish and approve for each ballistic missile defense system program element appropriate plans and schedules for operational testing to determine whether the performance criteria prescribed for the program under subsection (b) have been met. The test plans shall include an estimate of when successful performance of the system in accordance with each performance criterion is to be verified by operational testing. The test plans for a program shall be updated as necessary while the program and any follow-on program remain in development.

''(d) ANNUAL TESTING PROGRESS REPORTS.—The Director of Operational Test and Evaluation shall perform an annual assessment of the progress being made toward verifying through operational testing the performance of the system under a missile defense system program as measured by the performance criteria prescribed for the program under subsection (b).

''(e) FUTURE-YEARS DEFENSE PROGRAM.—The future-years defense program submitted to Congress each year under section 221 of this title shall include an estimate of the

amount necessary for procurement for each ballistic missile defense system element, together with a discussion of the underlying factors and reasoning justifying the estimate.''.

(2) The table of contents at the beginning of such chapter 9 is amended by inserting after the item relating to section 223 the following new item:

''223a. Ballistic missile defense programs: procurement.''.

(b) EXCEPTION FOR FIRST ASSESSMENT.—For the first assessment required under subsection (d) of section 223a of title 10, United States Code (as added by subsection (a))—

(1) the budget justification materials submitted to Congress in support of the Department of Defense budget for fiscal year 2005 (as submitted with the budget of the President under section 1105(a) of title 31, United States Code) need not include such assessment; and

(2) the Director of Operational Test and Evaluation shall submit the assessment to the Committees on Armed Services of the Senate and the House of Representatives not later than July 31, 2004.

Mr. REED. I thank the Chair.

Mr. President, there is a very simple, but important, premise underlying this amendment. I believe Congress should know the capabilities of any missile defense system that is deployed, and that these capabilities should be subject to rigorous testing. I understand this information may very well be classified, and we would receive it on a classified basis, but it is essential for us, as we make decisions about a huge program, not only in terms of dollars, but in terms of consequences to our security, that we know how capable this program is.

My amendment would request and require the Department of Defense develop measurable performance criteria for missile defense systems and an operational test plan for those systems, and an estimate of when operational testing would be done to verify the performance criteria are met. The performance criteria would include the characteristics of the threat missiles that each missile defense system is being designed to counter.

The amendment would require the Secretary of Defense to submit the performance criteria and operational test plan to the Congress each year.

The amendment would also require the Director of Operational Test and Evaluation to provide an annual assessment of the progress being made to verify, through operational testing, whether the systems are meeting their established performance criteria.

Both the performance criteria and test plans could be revised as necessary by the Department of Defense, but I do believe we need to have an idea at least of the capabilities of these systems and also, again, these capabilities must be established by operational testing.

The Patriot PAC–3 system, the only currently deployed ballistic missile defense system, conducted operational testing to prove it met established performance criteria prior to being deployed. This is the right way to develop a missile defense system; indeed, all defense programs. This amendment would model other missile defense programs on the very successful PAC–3 program in terms of performance criteria, operational testing, and then deployment.

There are a number of important things this amendment will not do. This amendment does not reduce funding for any missile defense system.

It would not prevent the administration from fielding missile defense by 2004, although, hopefully, we will have an idea of exactly what they field in 2004, and, frankly, I do not think this Congress has such an idea at this moment.

It would not dictate what performance any missile defense system should have, nor does it establish any dates for when certain performance must be attained.

It would, however, enable Congress to understand what missile defense capabilities are being bought for the $9.1 billion provided in the defense bill for missile defense. I think that is a threshold issue our constituents expect us to know. If we are investing $9.1 billion, we have to know, and the American people should feel confident we know, what are we buying, how much will it protect us against what type of threat.

I believe also it would improve the chances of developing effective missile defenses by establishing clear standards of performance.

Currently, none of the missile defense programs under development, under the Missile Defense Agency, have established performance criteria, meaning essentially there are no standards for when a system reaches any particular milestone or has completed its development. These standards did exist under the Clinton administration but were removed by the current administration.

The administration claims it cannot develop performance criteria for missile defense because the systems are too complex and difficult, and no one can predict how they will perform.

However, despite this seeming quandary about not knowing what will happen, the administration plans to field both ground- and sea-based missile defenses in 2004 and possibly an airborne missile defense by 2005. Frankly, a system that is ready to be fielded is presumably far enough along to be able to tell its performance, or one can only assume a system is being fielded without any knowledge of how it actually will work. That to me would not be a very prudent or a very wise deployment.

Other defense programs are also complex and difficult, yet they have measurable performance criteria against which they are tested. The F/A–22 aircraft program is a very complex and difficult system, as is the V–22 Osprey program. Yet both of these programs have well-established performance criteria.

In fact, all major military programs, except missile defense, have performance criteria or requirements which were approved relatively early in a system's development and revised as necessary as the program matures. I do not think it is incompatible to have a flexible system that can be adapted, yet still have performance criteria, but it seems in our discussion of missile defense these two notions are completely separated: Flexibility, innovation, seizing technological breakthroughs, and simple performance criteria. They should be part and parcel of any program we undertake.

For example, all unmanned aerial vehicle programs, such as the Predator, have requirements stating how long they need to stay aloft, how high they should fly, and how well their sensors can see. Yet this has not interfered with their innovation, their development, and their deployment.

The administration has claimed because it has adopted the new spiral development, capabilities-based acquisition approach, that establishing actual performance criteria and operational test plans is not appropriate because we just do not know for sure what missile defense capabilities will ultimately emerge. But there are a number of other spiral development programs in the Department of Defense, and all of them, except missile defense, have performance criteria and operational test plans.

For example, the Global Hawk Unmanned Aerial Vehicle, which saw service in Afghanistan and Iraq, is a spiral development program. Yet it has well-established performance requirements and a documented operational test plan.

There is absolutely no reason that missile defense should not have the same sort of yardsticks for measuring progress.

Ballistic missile programs used to have performance criteria, such as how many incoming missiles they should be able to engage, and how much area a system should defend. This enabled Congress to understand the characteristics of missile defense programs that were being funded and why they were necessary. Such criteria have been removed, and Congress does not know, for example, how many incoming missiles each missile defense system is being designed to defend against or how much area the system is being designed to defend.

Without such information, Congress is essentially writing an $8 billion to $9 billion blank check each year to the administration for missile defense.

Over the previous 2 years, Congress has tried and tried again to get the administration to provide the most basic information on its missile defense programs. Time and again, the administration has refused to provide it.

In fiscal year 2002, Congress directed the Department of Defense to provide its most basic cost, schedule and performance goals for missile defense.

We also asked the General Accounting Office to assess the progress being made towards achieving these goals.

As late as the end of fiscal year 2002, when the first GAO assessment was due, the Department had still not established a single meaningful goal for its missile defense programs. GAO was forced to write to Congress saying that it could not complete its assess because there were no goals to measure missile defense programs.

Lately, in response to continued Congressional pressure, the administration has begun to establish a few very broad, very near-term goals. But even these goals are misleading.

Secretary Aldridge, the Pentagon's acquisition chief, recently testified before the Senate Armed Services Committee that he thought the administration's 2004 missile defense would have a 90 percent chance of hitting an incoming warhead from North Korea.

Whether this is a firmly established goal or simply the individual opinion of a very sophisticated observer but nevertheless an individual opinion, it is hard to tell. Indeed, one can raise many questions about whether this 90-percent figure as a goal is being achieved and can be achieved by 2004. Secretary Rumsfeld has said in public that the 2004 system is rudimentary. Does that mean a 90-percent goal will be achieved or does it mean something less?

Indeed, if we look at the system closely, there are many issues that emerge which would suggest that this is such a situation in which there are no goals. For example, the booster for the system that is designed to be deployed in 2004 has yet to be flown in an actual intercept. So there is the question of making it work with the actual kill vehicle in an operationally feasible mode. That is a pretty significant issue when it comes to whether this system will have a certain degree of reliability.

The radar for the system was never designed for missile defense and can never be actually tested in an actual intercept attempt. The Pentagon's chief tester has told the Senate Armed Services Committee that the 2004 missile defense, in his words, has not yet demonstrated operational capability. Yet it seems clear that, regardless, there is an intention to field this system in 2004.

All of these issues raise real questions as to the capability of this system. If we accept, in fact, that it might be 90 percent, is it 90 percent of hitting a missile with defense decoys or 90 percent of hitting a missile without a decoy? These are important points that I think can be answered and should be answered by the Department of Defense as we go forward to invest something on the order of $9 billion a year in missile defense.

The administration also claims that the missile defense system it plans to field in 2004 will protect all 50 States, but if we look at the details such a defense is only possible if we have Navy ships constantly patrolling the waters of North Korea using their radars to pick up any ICBM launches headed towards Hawaii.

Initially, in the Clinton proposal there was a plan to build a very large radar designed particularly for ballistic missile defense that was intended to and had established criteria that would include protecting and covering all 50 States.

This new approach may in fact be effective, but, once again, we are not sure—the Congress is not officially on record in either an unclassified or a classified sense—of what is the standard. Is it all 50 States? Is it 50 States assuming that the Navy will have ships constantly patrolling the waters off North Korea? Indeed, it is not quite sure whether those ships can constantly be patrolling the waters off of North Korea given the numerous missions in the war on terror, given the numerous military operations. That, too, has to be looked at and examined based upon some clear criteria.

Another point is that the radar on these ships is being adapted, but it was not originally designed to identify and track ICBM-type targets. There is a question of whether the radar would be accurate enough to perform this mission.

If the Navy ships are not there, if the radar truly does not work as they hope it works or it is not modified quickly enough, there is a real question about the coverage of the system.

All of these points are being made to say in order to assess what we are buying, it helps to have these performance goals, to have them clearly delineated, to have the assumption laid out, and to have all of this operationally tested, so when we deploy a system we can say with great confidence to the American people that it will provide this level of protection. I do not think we can say that at this point.

This amendment in no way inhibits the administration from fielding a system, any type of system, in 2004, but what it will give us is an opportunity to measure that system. How effective is that system? What threats will this system engage? That type of knowledge is very important for us as we make our decisions. It is also incumbent upon the administration to provide such knowledge. Again, I emphasize it can be done either on a classified or unclassified basis because I understand there is a utility sometimes to have a system which our adversaries might assume is 100-percent effective. But at least the Congress must know this information.

The other fact of this lack of clarity and goals is it inhibits operational testing. Administrative witnesses have testified as to the need for operational testing. We have passed laws establishing operational testing. This is the traditional routine way in which we verify whether a system works and also, as we improve the system, how effective the modifications and improvements are.

Every major defense program I can think of, except missile defense, has established plans for operational testing. Without these criteria for performance and operational testing, I do not know if we can, in fact, create and deploy a system of which we can be confident.

As we reestablish these performance criteria for missile defense programs and require a plan for operational testing, Congress will regain an important tool to understand how well our missile defense program is succeeding, how our money is being spent—not our money, frankly, but the American people's money. Without such criteria and operational testing, none of that clarity will be available to us.

I think something else will be very important. It will require the Department of Defense to face squarely these tough issues: What type of threats can we defeat? How wide is the coverage of our system? What additional resources must we bring to bear to make it effective? Is this investment cost effective and cost efficient in terms of protecting the American people?

Right now all of that is very amorphous, very nebulous because there is no standard to measure it, even a general standard, these general goals I talked about. I hope this amendment could be accepted because it builds on provisions in the law that were adopted by the committee.

I commend Senator ALLEN for his efforts to include more cost data, more lifetime cycles of the cost, what it will cost to field this system. This is an attempt to build on that foundation. I hope my colleagues will see it as such, agree to this amendment, and provide the kind of goals, operational testing and clarity that are needed so we can assure the American public that when we deploy a missile defense system, it will live up at least to the standards that are disclosed to the U.S. Congress.

I yield the floor.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. ALLARD. Mr. President, I rise in opposition to the Reed amendment. First, there have been a number of issues that Senator REED and myself have worked together on, and I think quite effectively. It is with considerable regret that I stand today and oppose his amendment.

It is an amendment that would add a number of reporting requirements for the Missile Defense Agency and the Office of Test and Evaluation. I cannot buy into the argument that a few good, well-thought-out regulations does the job; that if we just put in more regulations it is even better. There is a good balance we need to sustain. We have found that balance. This is an issue that in previous years has been hotly debated within the Armed Services Committee and within my subcommittee in which this issue comes out.

This year we did not have any amendment—we had some debate but no amendment in the Subcommittee on Strategic Forces, which I chair; we did not have any amendments in the full

committee. Now we are dealing with this issue in the Senate.

The Missile Defense Agency is attempting to develop an effective missile defense system as rapidly as possible. They are structuring the program to meet the threats we currently face, while recognizing that the missile threats will unpredictably evolve in the future. That is one of the problems I have with the Reed amendment, its unpredictability. To do so, the Missile Defense Agency has taken a capabilities-based approach that focused on developing a number of systems.

The Reed amendment attempts to relate ballistic missile defense element performance criteria to specific threats that these elements are designed to defeat. If it takes effect, the amendment would push the Missile Defense Agency back toward threat specific development and acquisition, away from capabilities-based development and acquisition.

Why is that a problem? We do not always understand the threat facing the United States. I can take us back to a couple of current situations where we did not understand what was happening with potential adversaries. In 1991, for example, in the Persian Gulf conflict, we got into Iraq. Only then did we begin to recognize how far along the nuclear development program was in Iraq. That was 1991. The people in the Defense Department, our experts, were surprised. People in defense intelligence were surprised. We looked back to the North Korea situation. For some time we suspected there was, perhaps, nuclear development going on but we were not able to get that confirmed until just recently where North Korea finally admitted they were developing nuclear weapons.

My point is, when we have the development of a weapons program based on what you think the threats are, it may not truly reflect what is happening. The best thing we can do is decide, for example, on missile defense, it is a capability that we need to have and we base it on the capability of being able to develop that technology so we have the best technology. That is where we get the best deterrence in a program such as the ballistic missile system.

The systems or capabilities will be upgraded on a 2-year spiral, or blocks, as the technology matures. The Missile Defense Agency is seeking to develop a single integrated missile defense system consisting of a seamless web of sensors and shooters tied together by command and control, battle management and communication systems. Each system element, such as THAAD or PAC–3 or the sea-based aegis systems, can support the other, and it makes the other more effective.

Congress has already approved a number of Missile Defense Agency reporting and process requirements in the fiscal year 2002–2003 National Defense Authorization Acts. Yet the Reed amendment requires another layer of reporting requirements.

In response to the previous 2 years of legislation, the Missile Defense Agency provided a 300-plus-page system capability specification that describes block 2004 system specifications and metrics in painful detail, including battle manager, sensor, weapons by each element such as THAAD, PAC–3, and ABL and ground-based, midcourse, among others.

ABL also provided over 1,000 pages of a 2-volume adversary capabilities document which describes all the performance characteristics that might be embodied in foreign threat missiles that U.S. missile defense systems might have to defeat. The budget justification document provides a funding breakdown by element and block—a detailed set of goals for 2004 and more general goals for block 2006 and beyond.

The amendment in question appears to require much that is already provided by the Missile Defense Agency as well as reporting that is already required by law. The Director of the Missile Defense Agency already provides performance criteria. The Director of OTNE already established and provides operational test plans for missile defense systems and also provides an annual assessment of the Missile Defense Agency test plan.

Here we are, saying a few well-thought-out regulations are good, they are fine, and we are making the assumption if a few are good, more regulations ought to be better. I don't agree with that. That takes away from and delays a program that needs to be moving forward in an expeditious and thoughtful way. What we have in the present system provides the accountability we need as lawmakers.

The other point is, when you tailor your development of your technology to the threats or perceived threats from your enemy, you will be left in the dust. We do not always know what our enemies or potential enemies are doing. We have a capability to defend this country. If we want a strong defense system, we need to move ahead with that defense system. It does have a deterrent effect.

It should be noted that the Missile Defense Agency already provides more reporting than any other program in the Department of Defense. There is no reason for Congress to require duplicative reporting on top of what is already authored or required. We cannot and should not be in the business of micromanaging missile defense.

I yield the floor.

The PRESIDING OFFICER (Mr. SESSIONS). The Senator from Rhode Island.

Mr. REED. I listened to Chairman ALLARD and I commend him for his leadership on the committee's subcommittee. The committee addressed a series of issues and in this legislation they have made progress on trying to do something we are all committed to do.

I point out in terms of reporting requirements, the legislation itself includes additional reporting requirements. For each ballistic missile defense element, the production rate capabilities, the potential data availability, the expected cost, et cetera, the notion of having more reporting requirements has already found its way into the legislation.

My point is that we are not, as yet, asking effectively—we have asked before but ineffectively—for some simple language about what are the goals, and also how are we going to validate these goals through operational testing.

I do know the value of a capabilities approach but you have to ask a more detailed question: The capability to defeat what? The Missile Defense Agency can answer what they know they are not going to defeat. They have absolutely no plans at this point to be able to engage a sophisticated MIRVed weapon with multiple decoys. They tell you that flat, that is not 2004. What they will not tell us is what they prepare to engage, what they can engage.

I think, if they clearly understand they are not attempting a capability to defeat one or multiple missiles launched from a significant power, such as Russia or China, they can tell us what precisely they are engaged in trying to defeat.

So the notion about capabilities cannot be divorced from threats. That is not possible in any type of military concept. The notion they have to have a capabilities base does not excuse them from that because they defined already their capability. It is a limited capability.

So I guess I would ask the question: What are the limits to that capability?

What I am proposing is not inconsistent with the notion of capabilities in an evolving system. This amendment clearly lets them revise these criteria daily, if they like. But at least it insists that there be some criteria, some goals.

The reluctance to provide us this information has, perhaps, many reasons. One possibility is they don't know. But if they don't know this, that is even more shocking. We are spending $9 billion a year and they don't know, in the Missile Defense Agency, what type of threat they are trying to defeat with this deployment in 2004? The alternative is they know but they will not tell us, and that is equally disturbing.

Frankly, I think this amendment makes sense. It does not restrict deployment. It does not restrict funding. Every major weapons development system has goals, has operational testing plans, except for the Missile Defense Program.

I, again, urge my colleagues to accept or adopt or support this amendment because it answers a very fundamental question, a question I think every Member of this body and every American wants answered: What are we buying for $9 billion each year? How will it protect us? From what will it protect us?

I think the people of my State—capability—threats—they want to know

what this system will be valuable to do.

I am happy to yield to the chairman.

Mr. WARNER. Mr. President, I would like to ask the following question: We have a process in our committee that is not unlike what other committees do. We have our subcommittee structure where these issues are brought up and worked through the subcommittee. Then they are fully worked in the full committee in a series of two markups.

I say to my distinguished colleague from Rhode Island, one for whom I have tremendous admiration, you have been a watchdog on this subject for some period of time. I have listened carefully to the debate today.

Where I am perplexed is that in our bill, on pages 26 and 27—you need not go to that; I will just read it to you—''Oversight and procurement of ballistic missile defense,'' we enumerate a series of matters that we have in the nature of reports. This was carefully worked out by the staff of the majority and staff of the minority. Your concerns were not raised, as I understand it, at the subcommittee level. They were not raised at the full markup level. Here we are now confronting the entire Senate with the issue of whether we should go into more reporting requirements, above and beyond what is in the bill.

I say to my distinguished colleague, if you go back—for instance, last year you had similarly at the last minute, the last amendment on the bill, a series of further reporting requirements. We ended up working that out, accepting parts of it, and went ahead with the bill. But according to my calculation, the Armed Services Committee receives more than 2,000 pages of reporting each year now from the Missile Defense Agency. I repeat, 2,000 pages. We are putting more and more requirements on this Agency, requiring more and more staff on subjects which, for reasons perhaps you will give now, you did not raise in the subcommittee and you didn't raise in the full committee.

The purpose of our staffs is to try to work out and reconcile, in the course of the preparation of the bill before it is finally marked up and brought to the Senate, such matters as this. After all, reporting requirements are fairly arcane and as a general rule we try to accede to the requests of Members who feel strongly about it. Unfortunately, they pile up and become quite onerous, but nevertheless, the practice of the Senate is to accord courtesy to fellow Members.

But now we are up to 2,000 pages from one agency of the Department of Defense. To the best of my knowledge, I don't know how many people on the committee, members and staff, go through all these 2,000 pages at the moment.

Could the Senator, then, advise me as to the procedure in the subcommittee, procedure in the full committee, and why the staff didn't have these matters under their cognizance at the time they were trying to reconcile the differences and prepare the bill language on reporting requirements?

Mr. REED. I will be happy to respond to the chairman.

First, this is an issue I think is not only important but at a level where it is not just a detail of reporting. I think it goes to the heart of the accountability, not just for our committee but for the whole Senate.

Frankly, all of our colleagues have to be able to answer the question to their constituents: How much protection are we getting for these resources?

I understand the Missile Defense Agency, as so many Department of Defense organizations, is required to submit reports. But they certainly have the resources to do these reports.

What I find striking—again, it is a reflection, too, of the previous years—we have in the past tried to get this information. We required goal setting and a GAO assessment. I was, frankly, amazed—and this amazement came about in the preparation, not only for the committee markup but also coming to the floor—that the GAO simply sort of threw up its hands because the Missile Defense Agency says we really don't have any goals; we can't tell you; they are too imprecise.

So I think this is an issue that should be engaged by the entire Senate. There was no intention on my part to undermine the procedures on the committee, the Armed Services Committee or the subcommittee. I was not aware in order to bring a matter to the floor one had to offer it first in subcommittee or full committee.

I think this is an issue that is of a magnitude and of a degree of clarity that Members of the entire Senate can make a judgment and should make a judgment. That is my response.

Mr. WARNER. I take it from your reply that one Senator thinks it is a matter of enormous importance. Was there a reason it wasn't brought up in the subcommittee of jurisdiction? We have the distinguished chairman here. So those members who, on our committee, have the first—should we say the first response? I like that phrase, first response—to look at matters of this nature, if it is that important why wasn't it brought up then? Then we had the subsequent markup session. If it was that important, why wasn't it brought up then?

It seems to me that the way the members of the committee can best serve the Senate is to take those entrusted with specific subjects, put their minds on it, put it in the bill. If you had endeavored to put it in, it was rejected at subcommittee, rejected at full committee, then come on out on the floor and roll it out with all the guns and say: Look, colleagues, the committee didn't do its work.

Mr. REED. If I may reclaim my time, first, I do not assume—just on a procedural basis—that is a requirement. I think by law every Member of the Senate can offer amendments on any bill when it comes to the floor, whether you are on the committee or not. Being on the committee does not prevent you from offering an amendment if you did not offer it before.

Mr. WARNER. I am not contesting that. You recognize that. I am just pointing out, in 25 years, how the committee has to do its work.

Mr. REED. If there are procedural oppositions to the bill, that is one thing. But I think the substance is compelling enough to respond, and I think everyone here is capable to respond in substance. Either you are going to let the system continue to operate, which I think either because of—whatever number of reasons, it has not clearly identified goals and objectives, has not conducted robust testing that I think we all believe should be concomitant with the defense program. I am trying to remedy those issues. I think this is a perfectly appropriate place to introduce such an amendment, to have the committee engaged. All our colleagues are here. The staff is here. The arguments can be made here, and I hope they will be. I think it is an important issue. I am prepared to submit it to a vote. That is my understanding of the procedure.

Mr. WARNER. Mr. President, I do not in any way contest the Senator's assertion that this is an important subject. I simply ask, can't we as a committee better serve our colleagues if we make an assessment first at the subcommittee, where the members are fully conversant with all these issues, and then at the full committee where, again, members are conversant, rather than to spring it out on the floor?

If I may say to my good friend, it is almost as if the chairman of the subcommittee didn't do his work and the ranking member didn't do his work and the members of the committee didn't do their work because this matter is of such great importance because it goes to the very heart of the Missile Defense Program.

Mr. ALLARD. Mr. President, if I might make a comment or two?

The PRESIDING OFFICER. The Senator from Colorado.

Mr. ALLARD. Our committee has worked and put in hours of effort and testimony on this issue of spiral development, or whether we have an inflexible program, which I think the Reed amendment leads us, to where you have specific timelines for specific parts of the system. What happens if you run into a problem in one particular part of the system? It delays the whole development.

With the spiral concept, it gives the developers of the system, the Missile Defense Agency, the opportunity to move forward in other aspects of development. It is a multifaceted system. It has to do with communications for a number of different systems and parts.

In my view, one of the problems we have had in the past, with cost overruns and whatnot, is where you have had inflexibility in the system and you

find one real problem area and then all of a sudden it ties up moving forward.

That is the whole concept between spiral development. We have had hours upon hours of this concept of spiral development. We have General Kadish and many of the individuals who are ''in the know'' testify about how important it is that we take this new approach so we can move forward with some of the more difficult and more technologically advanced programs, such as missile defense.

Again, the assumption is that we have some regulations which I think are reasonable which we put in bills in years past, and we put some more in this year's bill. The assumption has been made that if we have fewer regulations, it is better. That is not an assumption we should make. I think there is a proper balance. I think the committee has worked and studied that issue.

That we didn't have any amendments in the Strategic Subcommittee, as well as the Armed Services Committee, indicates that members of those committees having heard testimony for hours upon hours are comfortable where we are right now.

I hope we oppose the Reed amendment.

Mr. WARNER. Mr. President, may I pose a question to my colleague? I see that Senator BILL NELSON of Florida is the ranking member on this subcommittee, together with Senator BYRD, Senator REED, Senator NELSON of Nebraska, and Senator DAYTON.

The Senator has looked at this very carefully. Is there a means by which to work this out in some way—as to portions of it which you believe we will not go back over, and the issue of why it wasn't raised but now that it is raised—is there a means by which we can do it rather than taking up further time in the Senate on reporting requirements?

Mr. ALLARD. I think maybe we can sit down and have some further discussion. All of a sudden, this gets brought up on the floor of the Senate and we need some time to maybe talk with the parties.

As the Senator mentioned in his comments, we felt as if we pretty well worked this out in committee. The various members on my subcommittee who are knowledgeable on the subject, the Senator from Virginia and myself have worked out what we thought was a reasonable level of rules and regulations. Now we have an amendment that is calling for more rules and regulations. We might be able to work it out. I think we need some time. I hope this could be set aside at least for the time being to give us an opportunity to kind of work this issue a little bit more on the floor of the Senate and then perhaps come back to it at a later time.

Mr. WARNER. Is that an acceptable offer?

Mr. REED. Mr. President, I have no opposition to taking some time prior to coming forward to see if we can reach an agreement, if we can't ask for a vote. I have absolutely no opposition to setting aside and working it to try to come up with something with which we feel comfortable.

Mr. WARNER. Mr. President, I ask unanimous consent that the amendment be laid aside with due diligence and good faith to see what might be added. I will come back to the 2,000 pages.

Mr. LEVIN. If the Senator will withhold that for a moment, I would like to add one quick comment on this amendment as to what the stakes are.

First, I want to commend Senator REED for bringing this amendment to the attention of the Senate. This is not, in all fairness, simply a reporting amendment. This is not just more reports. This tells the Missile Defense Office to adopt performance criteria which are measurable, adopt an operational test plan for your systems, adopt a timetable, all of which can be changed any time they want to. I don't think it is fair to characterize this as some inflexible thing which is laid upon the Ballistic Missile Defense Office. It is highly flexible. It just tells the Ballistic Missile Defense Office to do whatever other program managers do, of every major weapons system—adopt a measurable performance criteria and adopt an operational test plan, including some kind of timetable. It is neither inflexible, nor is it unusual.

I don't know of any other major weapons system that does not have these kind of criteria. I just didn't agree with that characterization of it. Where I do agree totally with our chairman is that if there is a way to work this matter out, it should be worked out. This is an important system. The issue is no longer whether a ballistic missile defense is going to be fielded. That is not the issue anymore. The question now is whether it will have any kind of performance criteria by which it can be judged. That is the issue.

It seems to me we ought to be grateful as a body to the Senator from Rhode Island for bringing to our attention the fact that these important measurements are absent. But in fairness, I think it is not simply more reports to the Congress. It is saying to the Ballistic Missile Defense Office: We want you to adopt performance criteria that are measurable. It is not a matter of reporting to us. It is a matter of doing it for yourself and for the American people. That is what the issue is here. Send us a copy, by the way, will you?

Mr. WARNER. I simply say to my colleague that if there was a serious issue in the function of the Missile Defense Agency, in your judgment—and you attach enormous importance to this—why did we not consider it in the course of the subcommittee hearing?

Mr. LEVIN. There are all kinds of amendments that have not been considered. Senator REED is one human being who has taken upon himself a huge amount of material to digest and present to the committee. He did a magnificent job. I think my good friend from Virginia would agree with that. There are other things which, as a matter of time, one is not able to put together and present to the committee at that moment but which are important to present to the entire Senate. I don't think we can fault Senator REED in that regard. That is purely a matter, it seems to me, of what human limitations might be in terms of what one human being can do. But he surely did more than his share in terms of the work that was presented to the committee.

Mr. WARNER. It simply says: Agency, if it is that important in your judgment in reporting, it goes to the very heart of the oversight process. We should have raised it in subcommittee, adopted an amendment of this type, and worked it out.

I was told the staff worked very closely with one another on the provisions we did put in the bill as to reporting on missile defense which we believed was a closed-out item.

Mr. LEVIN. It is always ideal to try to bring matters before the committee. The chairman knows I agree with him on that. Sometimes it is not possible just it terms of the workload to do that. I don't think we can fault any member of the committee if and when that load is such that they have to present it to the floor because they were not able to get together in place all the material at the time of the committee hearings. The Senator from Rhode Island would be involved in the debate on many nuclear weapons systems even though those matters in some cases were brought to the attention of the committee.

There are new formulations just because new thinking has been brought to bear since our committee hearings and markup on those subjects.

But, in any event, I fully concur with the Senator from Virginia. If we can possibly work this out to fill in an omission in what the Ballistic Missile Defense Office should be doing, which is to develop these performance criteria which are measurable for this major system to have an operational test plan for this major weapons system, it seems to me if that can be worked out either over lunch or during the afternoon, I fully concur with the chairman that we ought to do that.

Mr. WARNER. I thank both of my colleagues. We have had a good colloquy.

I yield the floor.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. REED. Mr. President, I want to clarify. We are putting this aside for a period of time to work on this. But if we can't reach—and I hope we can—an understanding, we will have a vote, I presume, early in the evening.

I think that is correct.

Mr. WARNER. Those are matters we delegate to the leadership, the majority leader, and the Democratic leader.

There is no way we will deny you a vote, if we fail to work it out.

Mr. REED. I will endeavor to reach an understanding, and hopefully we can.

Mr. LEVIN. Mr. President, parliamentary inquiry. Is the Reed amendment now laid aside? Has that action been taken?

The PRESIDING OFFICER. That is correct.

Mr. LEVIN. So that we now at this point have three amendments which are laid aside, and there is no amendment which is pending before the Senate, is that correct?

The PRESIDING OFFICER. I believe there are two first degrees and a second-degree amendment laid aside.

Mr. LEVIN. Did the Chair say two first-degree amendments and one second degree?

The PRESIDING OFFICER. That is correct.

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

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

Mr. REID. Is the Republican manager of the bill ready to move forward on any unanimous consent requests?

Mr. WARNER. We are about to work out a timing for the vote on the Daschle-Graham or Graham-Daschle amendment. I simply ask that the 5 minutes equally divided be expanded to 10 minutes, so I think we are prepared to go ahead and set that, if that is the desire of the leader.

Mr. REID. That would be certainly fine.

Mr. WARNER. I believe we will propound that UC in a moment. In the meantime I will attend to some other housekeeping matters.

MORNING BUSINESS

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

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

AUTHORIZING LEGAL COUNSEL REPRESENTATION

Mr. WARNER. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 147 which was submitted earlier today and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 147) to authorize representation by the Senate Legal Counsel in the case of John Jenkel v. Bill Frist.

There being no objection, the Senate proceeded to consider the resolution.

Mr. WARNER. Mr. President, I ask unanimous consent that the resolution and preamble be agreed to, the motion to reconsider be laid upon the table, and any statements relating to this matter be printed in the RECORD.

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

The resolution (S. Res. 147) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 147

Whereas, Senator Bill Frist has been named as a defendant in the case of John Jenkel v. Bill Frist, No. C–03–1235 (MEJ), now pending in the United States District Court for the Northern District of California;

Whereas, pursuant to sections 703(a) and 704(a)(1) of the Ethics in Government Act of 1978, 2 U.S.C. §§288b(a) and 288c(a)(1), the Senate may direct its counsel to defend Members of the Senate in civil actions relating to their official responsibilities: Now therefore, be it

Resolved, That the Senate Legal Counsel is authorized to represent Senator Frist in the case of John Jenkel v. Bill Frist.

AUTHORIZING LEGAL COUNSEL REPRESENTATION

Mr. WARNER. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 148 which was submitted earlier today and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 148) to authorize representation by the Senate Legal Counsel in the case of John Jenkel v. 77 U.S. Senators.

There being no objection, the Senate proceeded to consider the resolution.

Mr. WARNER. Mr. President, I ask unanimous consent that the resolution and preamble be agreed to, the motion to reconsider be laid upon the table, and any statements relating to this matter be printed in the RECORD.

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

The resolution (S. Res. 148) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 148

Whereas, in the case of John Jenkel v. 77 U.S. Senators, No. C–03–1234 (VRW), pending in the United States District Court for the Northern District of California, the plaintiff has named as defendants seventy-seven Members of the Senate;

Whereas, pursuant to sections 703(a) and 704(a)(1) of the Ethics in Government Act of 1978, 2 U.S.C. §§288b(a) and 288c(a)(1), the Senate may direct its counsel to defend Members of the Senate in civil actions relating to their official responsibilities: Now therefore, be it

Resolved, That the Senate Legal Counsel is authorized to represent the Members of the Senate who are defendants in the case of John Jenkel v. 77 U.S. Senators.

Mr. MCCONNELL. Mr. President, these resolutions concern pro se civil actions commenced in the United States District Court for the Northern District of California by the same plaintiff. The first resolution concerns a suit that the plaintiff has brought against seventy-seven Members of the Senate claiming that their votes approving the joint resolution authorizing the use of military force against Iraq violated the law. Included among the 77 defendants plaintiff has sued are the new Members who were not even in the Senate at the time of the vote on the resolution authorizing the use of force.

This suit is without merit as the court has no jurisdiction over the matter and the Speech or Debate Clause bars suits against legislators for the performance of their legislative duties under the Constitution. There is simply no legal basis for suing Senators for their role in authorizing the use of military force against Iraq. While a Senator's vote on whether to authorize the use of military force by the President is an appropriate subject for political debate, it cannot be the basis for filing a lawsuit against the Senator in court.

The second resolution concerns a lawsuit filed by the same plaintiff against Senator FRIST for allegedly failing to schedule for consideration by the Senate the repeal of provisions enacted as part of the Homeland Security Act of 2002. This suit is also without any merit as the court has no jurisdiction over the matter and the suit is barred by the Speech or Debate Clause. Senator FRIST's decisions on the agenda and schedule for the legislative business of this body do not present a justiciable issue for the courts.

These resolutions authorize the Senate Legal Counsel to represent the Senate defendants in these two actions.

Mr. REID. Before we go into the quorum call, I ask unanimous consent that I be allowed to speak as in morning business.

The PRESIDING OFFICER. The Senator from Virginia has the floor.

Mr. WARNER. I yield the floor.

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

The Senator from Nevada.

IRAQI AND AFGHAN WOMEN

Mr. REID. Mr. President, over the past year and a half I have spoken on many occasions of including women in the reconstruction of Afghanistan. Since then we have seen the inclusion of two women cabinet members give hope to the women of Afghanistan. We have also learned the inclusion of only two women is certainly not enough. Greater representation of women is necessary in Afghanistan. Likewise, Iraqi women should play some part, and I believe an important one, in the rebuilding of their country. Iraqi

women should be an effective force for peace, for democracy, and for human rights. Women must be included, and not just symbolically but substantively, in the charting of the future of these two nations. So today I urge the Bush administration to, No. 1, ensure women are included as full participants in the new government of Iraq and, No. 2, that there be an improvement and expansion of our security mission in Afghanistan so that women are free to fully participate all over that country.

The first U.S.-sponsored planning meetings for Iraq give me concern. In a meeting of Iraqi expatriates in London, 3 out of 65 participants were women. Women at this meeting urged greater representation in subsequent meetings, but at the next meeting in Iraq in April there were still only 4 women out of 80 participants. In fact, women were losing, not gaining, representation in Iraq. Women must be included in leadership roles in the planning of the new interim government as well as in cabinet positions in the interim government itself.

In spite of Saddam Hussein's impression, women in Iraq have a proud history and involvement in the workforce in public service. We can't let this history be lost.

In recent history women have held 20 percent of Iraq's parliamentary seats which is significantly more than the 3.5 percent average among Arab states. Let me repeat that: In the Iraq parliament, 20 percent of the seats were held by women and in the rest of the Middle East Arab states 3.5 percent women are in the parliamentary seats. Even though many of these parliaments—in fact, I think I could say all of them, are really not without a lot of power—I am sorry, they are without a lot of power—it still says a great deal as to the makeup of these parliamentary bodies—3.5 percent as the average among Arab states.

We need to do better in Iraq. We need to do better in Afghanistan. Iraqi women prior to the war held professional jobs. They were well represented in medicine, engineering, academia, and in civil service. In 2002, 38 percent of Iraqi doctors were women.

Women in Iraq are well educated. Last year, almost 35 percent of university and polytechnic students in Iraq were women.

We also cannot allow a lack of security to destroy women's rights in Iraq as they have done and continue to do in Afghanistan. Frightened by the chaos and lawlessness on the streets of Baghdad, many Iraqi women are prisoners in their own homes. Few, if any, women are seen in public. The markets and the gas stations are occupied almost entirely by men. This is a grim picture for a country whose women have enjoyed a level of independence that is unusual in most Arab countries.

Security problems are eroding the hope of many Afghan women, as well, and it is a concern. In light of this situation, I was pleased to see that Germany's Chancellor, who is the head of the International Security Assistance Force (ISAF), has called for an expansion of this international peace-keeping mission in Afghanistan. This request is supported by UN officials, Afghan women leaders, humanitarian organizations and women's rights groups and even by Congress.

Last year, we passed the Afghan Freedom Support Act, a bi-partisan initiative—which called for expansion of peace-keeping forces. The President signed this legislation into law, but still, we have no expansion of ISAF, International Security Assistance Force, in Afghanistan.

Afghanistan cannot wait much longer for improvements in security. In some areas, warlords are imposing Taliban-like restrictions on women and girls. Girls schools have been bombed. Humanitarian aid workers have been killed. Security in the southern part of the country is so bad that UN workers now have to be accompanied by armed guards.

This fall, Afghans will assemble to adopt a Constitution. One year from now, elections will be held—we hope. Only if security is dramatically improved throughout the country will it be possible for people who advocate women's rights and human rights to participate in deliberations about their constitution. Fair and democratic voter registration and elections will not happen without improvements in the security situation. Without proper security, without the full inclusion of women in the constitution, and without the ability for women to participate in elections as voters and candidates, women's rights will have no chance in Afghanistan.

We have won the war in both Iraq and Afghanistan—the military has certainly triumphed—but we are in jeopardy of losing the peace. Women in Afghanistan and Iraq—indeed the citizens of these nations, and the world community will not be able to sustain this loss.

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

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

HEALTH CARE CRISIS FOR SMALL BUSINESS

Mr. DASCHLE. Mr. President, I will speak for a moment on an unrelated matter. I know we are working on a schedule to accommodate a vote on the amendment that was offered last night by Senator GRAHAM of South Carolina, myself, and others.

Last week, I spoke about the burden of the high cost of health care on families in South Dakota and across the country.

I spoke of citizens who were forced to pay health care premiums as high as $10,000 per year but received only the sparest benefits in return.

I spoke of citizens with serious health problems who were not able to acquire coverage because insurers decided it wasn't profitable for them.

I spoke of the millions of Americans living in fear because they were just one layoff, one bad crop, or one illness away from losing their health insurance and being driven into poverty and poor health.

But the high costs of health insurance are a burden not only to individuals, they are also a huge burden to small business. In the past year alone, health care premiums for businesses have risen more than 13 percent. If this keeps up, the cost of health care for businesses will double every 7 years—six times faster than their revenues.

Small businesses, which employ 50 percent of the workers in this country, face the greatest pressure of all. Because they are not big enough to bargain with insurers for better rates, small businesses too often are forced to pay for the nationwide increase in health care costs.

In the past year, in the midst of the toughest business environment in a generation, the total cost for insuring employees of small businesses rose 18 percent. Seventy percent of small businesses that do not cover their workers say that high costs are the No. 1 obstacle.

Many businesses are forced to shift costs to their workers in the form of higher copayments and fewer benefits. Many others cut benefits altogether. Those who want to keep their commitment to their employees pay a penalty for having less capital to grow their business and create more jobs.

Entrepreneurs with good ideas and solid business plans are scared off because health premiums are making the cost of starting and growing a business higher and higher. Skyrocketing health costs could pose the single greatest obstacle to entrepreneurship and growth in our economy today.

I recently heard from the Jensen family. Daren and Paula Jensen live with their three boys in Langford, a small town of about 300 in the northeast corner of South Dakota.

Daren and Paula own a body shop, Jensen's Auto, which Daren runs. The Jensens have one employee, but because the cost of insurance is so high, they cannot afford to pay for the insurance to provide health benefits.

Daren used to receive coverage through his wife who worked at the local bank, but when she quit her job to take care of their children, the family was covered through COBRA, the law that provides temporary access to a former employer's insurance.

Their COBRA monthly premium was $525, but to keep that same coverage after COBRA expired would cost them more than twice that. The Jensens could not afford to spend $14,000 a year

on health coverage. So they had to find another health plan.

They researched every possible plan and could not find an affordable one to cover the whole family. In the end, it made more sense to seek insurance separately. Daren enrolled in a plan that cost $250 a month and has a $500 deductible. Since Daren is a diabetic and spends $150 per month on medication, his coverage was the most important. The rest of the family—Paula and the three boys—enrolled in a plan with a $3,000 annual premium and a $1,000 deductible.

After a year, the premiums went up to almost $5,000. They could no longer afford coverage so Paula dropped hers, and her children have found coverage through South Dakota's Children's Health Insurance Program, CHIP.

Too many small business owners face exactly that challenge, but we can do something to help them and support the efforts of entrepreneurs who drive our economy. A recent study shows that nearly 9 out of 10 small businesses favor a tax credit that would help employers buy health insurance for their employees.

In January, a number of us introduced a small business tax credit provision in S. 10, the Health Care Coverage Expansion and Quality Improvement Act of 2003. This 50-percent tax credit will help small businesses with less than 50 employees obtain affordable health coverage.

The small business tax credit will help small business owners, such as the Jensens, spark more investment and growth by small business and move us closer to health care for every American.

This problem will not solve itself. Unless we act, health care premiums will continue to rise, driving more people on to the rolls of the uninsured and keeping more businesses from growing and creating jobs.

We can do better. It is a national problem, and it demands national leadership to fix it. Small businesses can, once again, be the engine for growth in our economy, but we need to provide them with the opportunities to remove the obstacles to that growth.

This is a critical moment in our Nation's history. We have an obligation to focus on the troubles of our economy and the Americans who are struggling to work and raise families.

We intend to do all we can to keep the Senate's attention focused on the crisis in health care. Our citizens are asking for this kind of leadership, and we have an obligation to answer their call.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2004—Continued

AMENDMENT NO. 696, AS MODIFIED

Mr. WARNER. Mr. President, I ask unanimous consent that the Graham amendment No. 696 be modified with the changes that are at the desk.

Mr. REID. We have no objection.

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

The amendment, as modified, is as follows:

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

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

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

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

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

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

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

''(i) Self alone coverage.

''(ii) Self and family coverage.

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

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

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

''(F)(i) An enlisted member of the armed forces enrolled in the TRICARE program under this section shall pay an annual premium of $330 for self-only coverage and $560 for self and family coverage for which enrolled under this section.

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

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

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

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

''(H) A member enrolled in the TRICARE program under this paragraph may terminate the enrollment only during an open enrollment period provided under subparagraph (D), except as provided in subparagraph (I). An enrollment of a member for self alone or for self and family under this paragraph shall terminate on the first day of the first month beginning after the date on which the member ceases to be eligible under subparagraph (A). The enrollment of a member under this paragraph may be terminated on the basis of failure to pay the premium charged the member under this paragraph.

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

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

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

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

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

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

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

''(iii) the coverage has not lapsed.

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

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

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

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

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

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

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

''(G) Notwithstanding any other provision of law—

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

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

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

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

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

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

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

Mr. WARNER. Mr. President, I ask unanimous consent that at 2:15 p.m. today, there be a period of 5 minutes prior to a vote in relation to the modified Graham amendment No. 696; provided further, that if the amendment is agreed to, the underlying amendment No. 689 then be agreed to, as amended.

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

Mr. WARNER. Mr. President, for clarification, the 5 minutes will be equally divided between the two sides.

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

Mr. REID. Also, Mr. President, there are some arrangements being made to have some disposition of the Reed of Rhode Island amendment sometime this afternoon.

Mr. WARNER. Mr. President, the distinguished leader is correct. Efforts are being made to see if that can be worked out. If those good-faith efforts do not materialize, then, of course, the Senator is entitled to a recorded vote or a voice vote, whatever is his preference.

Mr. REID. It is my understanding Senator KENNEDY will be here early this afternoon to offer his amendment or amendments.

Mr. WARNER. The Senator is correct. The Senator from Michigan spoke to me before he departed the floor saying that was his desire and he will be speaking.

We can now stand in recess until the hour of 2:15 p.m.

RECESS

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess until 2:15 p.m.

Thereupon, the Senate, at 12:49 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. BENNETT).

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2004—CONTINUED

AMENDMENT NO. 696

The PRESIDING OFFICER. Under the previous order, there will now be 5 minutes equally divided prior to a vote with respect to the Graham of South Carolina amendment.

Who yields time?

The Senator from South Carolina.

Mr. GRAHAM of South Carolina. If it is appropriate with Senator SESSIONS, I will proceed.

Mr. SESSIONS. Mr. President, I understand we are in 5 minutes debate on each side and then there will be a vote on this amendment.

The PRESIDING OFFICER (Mr. CHAMBLISS). It is 5 minutes evenly divided.

Mr. SESSIONS. I am pleased to yield to the Senator from South Carolina on his time.

The PRESIDING OFFICER. The Senator from South Carolina is recognized.

Mr. GRAHAM of South Carolina. Mr. President, I thank the Senator for yielding. I have been working with Senators on both sides of the aisle to approve a compensation package for guardsmen and reservists. We have a modification to Senator DASCHLE's amendment. I second-degreed his amendment last night. We have reached a compromise where we merged the best of the two packages. Basically, what we are trying to do is make sure that Guard and Reserve members, if they choose to, can become members of TRICARE, the military health care network for military members and their families, by paying a premium. It would be what a retiree pays plus $100 for an enlisted Guard or Reserve member, $150 for an officer. So it is a very good deal for the Reserve and Guard families. They pay into the system if they choose to be a member of TRICARE. That way when they are called to active duty they do not leave one health care plan for another. They will have continuity of health care. They do not get bounced around between systems. It would really help with recruitment and retention. It has been a bipartisan effort like none I have ever experienced.

I want to add cosponsors, and then I will yield for Senator DEWINE, who has been a tremendous leader on this issue. I ask unanimous consent that the following Senators be added as cosponsors to this compromise product: Senators CLINTON, DEWINE, KENNEDY, MILLER, ALLEN, LEAHY, STABENOW, MIKULSKI, LANDRIEU, CHAMBLISS, CAMPBELL, COLLINS, and DORGAN.

I compliment Senator DASCHLE for his fine efforts in making this possible.

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

The Senator from Ohio.

Mr. DEWINE. I thank the entire military coalition for all their hard work and support for this effort. I thank all of my colleagues. I also thank General Smith of the Ohio National Guard for all they have done to keep this initiative moving forward.

As my colleagues are well aware, our amendment would offer a comprehensive approach to health coverage for members of our military reserve component. Put simply, it would provide a critical health care safety net for service members and their families by offering uninterrupted, affordable health insurance.

I can't emphasize enough how important this is both as a readiness and as a retention issue.

We know how important it is that we fund our military hardware and base installations. But, at the same time, we can't ignore our military personnel. We can't ignore the very men and women who voluntarily lay their lives on the line to protect our national security. It's the very least we can do, particularly as we continue to rely more and more on our Reserve and National Guard.

Our amendment is an important sign of support for those called to serve, as well as their families. I urge my colleagues to support it.

I yield the floor.

Mr. KENNEDY. Mr. President, this amendment is intended to close an unfortunate and unacceptable gap in health insurance coverage for families of Reserve and Guard members who are called up for active duty in the Armed Forces. The amendment is a needed step forward in taking care of our troops and their families, and it includes most of the provisions of S. 647 that I introduced earlier this year to close the gap.

Today's military relies more heavily than ever on the Reserve and Guard.

Over 215,000 Guard and Reserve soldiers, sailors, marines, and airmen have been mobilized in support of Operation Iraqi Freedom, Operation Enduring Freedom, and Operation Noble Eagle. One challenge they should not have to face is maintaining their health insurance coverage. The problem is that few employers are willing to continue health insurance coverage for Guard and Reserve employees and family members when they are activated.

According to the General Accounting Office, nearly 80 percent of reservists have health care coverage when they are working in the private sector. Almost all of them would like to maintain that coverage when they are activated, in order to provide continued health benefits for their family members. The military's TRICARE coverage works well for the reservists when they are activated, but it is not a realistic alternative for family members since more TRICARE providers are located close to military bases that are often far from the homes where the family members of the reservists continue to live.

In fact, 95 percent of active-duty military families live near bases and health care facilities, so TRICARE is readily available to them. But only 25 percent of Guard and Reserve families live near bases, so TRICARE is inaccessible for them. Nevertheless, the other reservists feel they have no alternative, since their private insurance has lapsed. So they change to TRICARE while they are activated, and then change back to their former plan when the activation ends.

This amendment will enable them to enroll their family members in TRICARE, too. It is the right thing to do but it solves only part of the problem.

When TRICARE is not a realistic alternative for family members, they have the option to maintain their private health insurance plan during the activation. The frequency and length of activations for Guard and Reserves are disruptive and stressful enough. We should do everything we can to enable families to maintain their coverage and avoid unnecessary upheaval.

We had hoped to achieve that goal in this amendment as well, but the consent agreement means we cannot include it. So I urge the Senate to adopt the pending amendment to make TRICARE available to Reserve and Guard personnel and families and let us work together to deal with this other aspect of the problem, too.

Mr. LEAHY. Mr. President, I rise today in strong support of the Graham-Daschle amendment to the fiscal year 2004 Defense authorization bill. This amendment will take a much needed step to improve the readiness and strength of the National Guard and Reserve by ensuring that more of our citizen-soldiers have adequate health insurance.

Almost 220,000 members of the Guard and Reserve answered the call to duty for the war in Iraq. These volunteer soldiers, sailors, airmen, and marines have responded with professionalism, skill, and honor. In my own State, hundreds of members of the Green Mountain Boys from the Vermont National Guard were deployed to Iraq, Afghanistan and throughout the United States to answer the call to service. Our Nation's military would not be as large or as strong without these dedicated—and often-used—soldiers. Time and time again, the Total Force concept that we in Congress developed and promoted has given our military unparalled strength and unity.

The increased callups of the Reserves since September 11 has raised some problems that threaten the long-term readiness of this critical force and—in turn—of our entire military structure. A recent GAO study underscored that more than 20 percent of those reservists ready to deploy at a moment's notice do not have health insurance. At least 500 of the 4,000 members of the Vermont National Guard currently do not have coverage. These shortfalls mean that there are reservists who are reporting for duty who have not had routine access to doctors, to treatment, or medicine they might need, or to hospitals. These soldiers—ready to make the ultimate sacrifice at any moment—may not be in the best physical shape because our Government is not protecting its investment.

At the same time, many families in Vermont and in other States have told me about substantial turbulence from the callups. Even beyond the understandable worry of watching a loved one head off for battle and dealing with loss of income from the temporary departure from a civilian job, families have had to experience the frustration and confusion created by switching health insurance plans. This disruption has resonated from the home front to the frontlines, becoming a factor in reservists' willingness to stay in service. These patriots make selfless decisions to sacrifice time with their families. Some sacrifice their own lives in the line of duty to their country. When we ask a reservist or a guardsman to answer the call, it is our duty to help them take proper care of their families and to make the transition to active duty as easy as possible.

This amendment is a version of S. 852, the National Guard and Reserve Comprehensive Health Benefits Act of 2003. I worked closely with Senators GRAHAM, DASCHLE, DEWINE, CLINTON, and SMITH in crafting this legislation to deal with medical readiness problems for our National Guard in two main ways. First, the legislation makes members of the Guard and Reserve eligible to enroll in TRICARE on a cost-share basis. Second, it allows families to apply to the Defense Department to receive reimbursement for keeping their current health plans during a deployment. The reimbursement is capped to ensure that the costs are no greater than putting the family on TRICARE.

This legislation is cost-effective, solving the problem with the minimum necessary expenditures. The Congressional Budget Office has informally scored the entire bill at $4 billion over 5 years, going from about $350 million in the first year and leveling out at about $1.1 billion per year in the fifth year. Figures from the GAO report confirm these cost estimates.

This Reserve health care amendment will cost far less than increasing active-duty end-strength or than having to substantially increase recruiting and retention programs—steps which will be necessary if adequate support is not provided to our Reserves.

Let me make sure everyone is clear about what this vote means. A vote in support of the amendment is a vote to ensure a vibrant future for the Guard and Reserve. It is a vote that recognizes, as have all of the major military associations, that we cannot continue to have a Total Force if the benefit structure for the Reserves is not improved. A vote against the Daschle amendment means treating the Guard and Reserve as low-paid contractors to the militry—the temporary hires who can do the job but who cost less because they do not have the proper salaries, benefits, and protections as their full-time counterparts.

At a time when the Nation has never relied more heavily on the National Guard and Reserve, I urge all Senators to vote in support of the Graham-Daschle amendment, which will ensure a healthy, effective military into the foreseeable future.

I ask unanimous consent that several endorsement letters from various military Reserve associations be printed in the RECORD.

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

NATIONAL GUARD ASSOCIATION
OF THE UNITED STATES,
Washington, DC, April 10, 2003.

Hon. PATRICK LEAHY,
U.S. Senate,
Washington, DC.

DEAR SENATOR LEAHY. On behalf of the men and women of the National Guard Association of the United States (NGAUS), I thank you for the stalwart support you have given the National Guard over the years. The NGAUS is pleased to offer its support for your legislation entitled the National Guard and Reserve Comprehensive Health Benefits Act of 2003. This important legislation would offer members of the selected reserve and their families, the opportunity to participate in the Tricare on a cost-share basis; provide a partial subsidy of private health insurance premiums for family members of Guardsmen who wish to retain their private health insurance; and improve transition coverage upon deactivation.

The National Guard and Reserve contributions to the ongoing operations in Iraq, fighting the global war on terrorism, protecting the homeland, and supporting contingency operations around the world are a key indicator of the importance of maintaining a high level of readiness. The General Accounting Office recently found more than twenty-one percent of National Guard and Reserve members do not have health coverage. Forty percent of those individuals

without insurance are in the junior enlisted ranks.

Units with nearly twenty-one percent of its member unable to deploy due to medical reasons has a major impact on the ability of that unit to complete its mission. Providing Tricare during all phases of service can decrease an already lengthy mobilization process by ensuring medical readiness is routinely sustained. Medical readiness is an important factor in unit readiness.

Recent National Guard mobilizations have demonstrated how quickly the guard can be ready to fulfill their federal mission. Some of these notifications for mobilization have given Guardsmen hours and days, as opposed to the days and weeks normally required. This reduced ramp also requires members of the Guard to maintain their family readiness plans in order to lessen the complications and distractions during deployments. Providing continuity of health coverage for family members will ensure those who support our service members and make it possible for them to serve, are provided for while their loved ones are away.

As always, the NGAUS stands ready to assist you and looks forward to our continued relationship ensuring a strong and viable National Guard.

Sincerely,

RICHARD C. ALEXANDER,
Major General (RET), AUS,
President.

THE MILITARY COALITION,
Alexandria, VA, April 15, 2003.

Hon. MIKE DEWINE,
U.S. Senate,
Washington, DC.

DEAR SENATOR DEWINE: The Military Coalition (TMC), a consortium of nationally prominent uniformed services and veterans organizations representing more than 5.5 million current and former members of the seven uniformed services, plus their families and survivors, would like to thank you for introducing S. 852, the National Guard and Reserve Comprehensive Health Benefits Act of 2003. This important legislation would offer members of the Selected Reserve and their families the opportunity to participate in the Tricare program on a cost-share basis; provide a partial subsidy of private health insurance premiums for family members of Guardsmen and Reservists who wish to retain their private health insurance; and improve transition coverage upon demobilization. This initiative to improve healthcare readiness for members of the National Guard and Reserve components and their families is at the forefront of TMC's priorities for that community.

The National Guard and Reserve components' contributions to the ongoing operations in Iraq, fighting the global war on terrorism, protecting the homeland, and supporting contingency operations around the world are key indicators of the importance of maintaining a high level of readiness. The General Accounting Office recently found more than 21 percent of National Guard and Reserve members do not have health coverage. Forty percent of those individuals without insurance are in the junior enlisted ranks.

Providing Tricare during all phases of service can decrease an already lengthy mobilization process by ensuring medical readiness is routinely sustained. Medical readiness is a critical factor in mission readiness.

Recent National Guard and Reserve mobilizations have demonstrated how quickly these forces can be ready to fulfill their warfighting mission. Some notifications for mobilization have given Guardsmen and Reservists hours and days, rather than weeks and months once required. This reduced alert ramp also requires members of the Guard and Reserve to maintain their family readiness plans in order to lessen the complications and distractions during deployments. Providing continuity of health coverage for family members will ensure those who support our service members and make it possible for them to serve, are provided for while their loved ones are away.

The Military Coalition supports S. 852 and applauds your efforts to ensure a strong and viable National Guard and Reserve as an integral component of our nation's total force.

Sincerely,

THE MILITARY COALITION.

ADJUTANTS GENERAL ASSOCIATION
OF THE UNITED STATES,
Washington, DC,

Senator MIKE DEWINE,
U.S. Senate, Russell Senate Office Building, Washington, DC.
Senator TOM DASCHLE,
U.S. Senate, Hart Senate Office Building, Washington, DC.
Senator PATRICK LEAHY,
U.S. Senate, Russell Senate Office Building, Washington, DC.
Senator GORDON SMITH,
U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATORS DEWINE, DASCHLE, LEAHY AND SMITH: On behalf of the Adjutants General of the 54 states and territories I want to thank you for your introduction and support of S. 852, National Guard and Reserve Comprehensive Health Benefits Act of 2003. The introduction of S. 852 brings the Adjutants General Association of the United States another step closer to its goal of providing optional, contributory TRICARE coverage to members of the Guard and Reserve and their families.

The provision of health care to Guard and Reserve members has been a priority of our Association since our Strategic Planning Committee introduced the issue to the Adjutants General in August 2000. Your legislation encompasses all of the essential elements that our Association has sought since that time.

All of my fellow Adjutants General have indicated their support of your initiative. We pledge our support in securing passage of S. 852 and we will continue to request additional co-sponsorship of the bill by the senators from our respective states. Please share this letter of support with your Senate colleagues as you consider further action.

Once again, we thank you for your outstanding effort on behalf of the Guard and Reserve.

Sincerely,

JOHN F. KANE,
Major General, President.

The PRESIDING OFFICER. Who seeks time? The time of the sponsors has expired.

Who yields time in opposition? The Senator from Alabama.

Mr. SESSIONS. Two and a half minutes per side?

The PRESIDING OFFICER. Two and a half minutes in opposition.

Mr. SESSIONS. Mr. President, I served as a reservist for over 10 years. Some of my best friends are reservists. My Army Reserve partner is now my chief of staff. I have a lot of good friends in the Army Reserve and National Guard. They have a lot of needs. There is much we can do for them. I have not specifically been hearing in my State this insurance question, although I can list half a dozen other items reservists have told me that are important to them. I do not think we have had the kind of serious study about what should be our priority in helping reservists be more willing to serve. They are doing a tremendous job at this point in time. We have had 400 special forces National Guardsmen from my State in Iraq and Afghanistan; several have been wounded. They are critical to our Nation.

But we have not thought this through. We do not have the $2 billion to $3 billion to spend on this program at this time. I do not believe the conferees can take that much out of existing active-duty accounts to pay for this. At this point, it is unwise. What we need to do is continue to study this matter. I chair that subcommittee, and we can talk about it and come back with priorities that benefit all reservists in a fair and equitable way and fund those expenditures.

I yield the remainder of my time to the Senator from South Dakota.

Mr. DASCHLE. I will use my leader time, but I thank the Senator from Alabama for his kindness.

Let me thank and congratulate all Members who have had so much to do with offering this amendment—Senator GRAHAM of South Carolina, Senator DEWINE, Senator LEAHY, and so many others who have made this effort over the course of the last several months.

The distinguished Senator from Alabama said we need to think this through. This has been the subject of a great deal of study. The GAO has studied it; various economic analyses have been done on it.

There are three numbers I call to my colleagues' attention. The first is 700. There has been a 700 percent increase in the utilization of Guard and Reserve in active-duty and law enforcement roles since September 11—700 percent. The dislocation caused by that new role has been remarkable in all of our States. We are asking them to be law enforcement officers. We are asking them to be soldiers. We are asking them to fight in wars. We are asking them to play a role they did not play before.

The second number I ask my colleagues to remember is one-tenth of 1 percent. That is what the cost of this amendment would be, one-tenth of 1 percent of the Defense Department budget. We can afford one-tenth of 1 percent to say to all of those Guard and Reserve personnel: You are playing a role; you have never played a role before by seven times.

Now we are going to give them the chance just to purchase health insurance. That is all they are going to do, purchase TRICARE insurance. We are not going to give it to them, but we will let them purchase it.

The final number is this: 30; there is a 30 percent uninsured roster right now among the National Guardsmen who are under 30. Thirty is an important threshold. We have a vast number of people we have called upon to serve

their country in war and in peace, in roles involving National Guard, as well as in the military. All we are saying through this amendment is: You have a chance to buy health insurance, so you can do it better. And when you do it, you are going to be healthy.

I urge my colleagues to support this amendment.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to the amendment.

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

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. MCCONNELL. I announce that the Senator from Nevada (Mr. ENSIGN) and the Senator from Ohio (Mr. VOINOVICH) are necessarily absent.

Mr. REID. I announce that the Senator from Florida (Mr. GRAHAM), the Senator from Hawaii (Mr. INOUYE), and the Senator from Massachusetts (Mr. KERRY) are necessarily absent.

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

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

The result was announced—yeas 85, nays 10, as follows:

[Rollcall Vote No. 185 Leg.]

YEAS—85

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

NAYS—10

Allard	Nickles	Thomas
Bond	Santorum	Warner
Craig	Sessions	
Kyl	Sununu	

NOT VOTING—5

Ensign	Inouye	Voinovich
Graham (FL)	Kerry	

The amendmentl (No. 696) was agreed to.

Mr. REID. Mr. President, 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. Without objection, the underlying amendment, as amended, is agreed to.

The amendment (No. 689), as amended, was agreed to.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, we accept the expression of the will of the Senate on this matter. I had the difficult position to oppose it, which I did.

As we look toward the benefits for the Guard and Reserve, they are deserved, richly, in most instances, but there is a balance that is somewhere not clearly definable between what we do for the regulars and what we do for the Guard and Reserve. If it gets out of balance, we could precipitate a bit of civil strife between these two magnificent categories of men and women who proudly serve in the uniform for our country and carry out their duties side by side on the battlefield and here at home. We will move on.

It is my intention to carefully consider this amendment, which was strongly adopted by the Senate, in the context of the overall bill and such other amendments in the House and the Senate as may contribute to the benefit of the men and women of the Armed Forces.

I yield the floor.

The PRESIDING OFFICER. The Senator from California.

AMENDMENT NO. 715

Mrs. FEINSTEIN. Mr. President, I send an amendment to the desk on behalf of Senator KENNEDY and myself, and we are joined by Senators FEINGOLD, DAYTON, and STABENOW.

The PRESIDING OFFICER. Without objection, the pending amendment is set aside. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from California [Mrs. FEINSTEIN], for herself, Mr. KENNEDY, Mr. FEINGOLD, Mr. DAYTON, and Ms. STABENOW, proposes an amendment numbered 715:

(Purpose: To strike the repeal of the prohibition on research and development of low-yield nuclear weapons)

Strike section 3131.

Mrs. FEINSTEIN. Mr. President, I think the Senator probably knows this would strike the Spratt-Furse language.

Mr. WARNER. Mr. President, we understood a number of Senators were going to introduce it.

Mrs. FEINSTEIN. I was 12 years old when the Enola Gay went out of the Pacific. I remember that big mushroom cloud on the San Francisco Chronicle and then, for months afterward, I remember the pictures that came back from Hiroshima and Nagasaki. It may well be that we are too far removed from that day to really understand the repercussions of what this bill is going to begin to allow to happen in the United States. What is going to be allowed to happen is a reopening of the door to nuclear development which has been closed for decades.

This amendment would strike section 3131, and that is the repeal of the Spratt-Furse language which prohibits the development of so-called low-yield nuclear weapons. This prohibition of nuclear development was adopted in the 1994 Defense authorization bill. It has been the law of the land for the last decade.

The language of Spratt-Furse—I would like to read it—says that with respect to U.S. policy, ''it shall be the policy of the United States not to conduct research and development which could lead to the production by the United States of a new low-yield nuclear weapon, including a precision low-yield warhead. The Secretary of Energy may not conduct or provide for the conduct of research and development which could lead to the production by the United States of a low-yield nuclear weapon which, as of the date of the enactment of this act, has not entered production.''

And then it has a section on the effect on other research and development, and it says that nothing in this section shall prohibit the Secretary of Energy from conducting or providing for the conduct of research and development necessary to design a testing device that has a yield of less than 5 kilotons; secondly, to modify an existing weapon for the purpose of addressing safety and reliability concerns, or, three, to address proliferation concerns.

President Bush is right when he says the greatest threat facing the United States lies in the global proliferation of weapons of mass destruction and terrorist access to these weapons. But by adopting a new approach to national security in the wake of 9/11 that stresses unilateralism and preemption and increases U.S. reliance on nuclear weapons, I am deeply concerned that this administration may actually be encouraging the very proliferation we seek to prevent.

This bill, left intact, clearly opens the door to the development of new nuclear weapons and will, if left as is, begin a new era of nuclear proliferation, as sure as I am standing here.

A couple of weeks ago, former Secretary of State Madeleine Albright talked with the Democratic Senate Caucus and she said something interesting. She said, in all of American history, there never has been a greater change in foreign policy and national security than between this administration and the last one.

Indeed, I deeply believe this bill places America at a crossroad in the conduct of foreign policy, and how we determine nuclear weapons policy will go a long way to determining whether we control nuclear proliferation or expand it. This bill will expand it. Let there be no doubt.

To my mind, even considering the use of these weapons threatens to undermine our efforts to stop proliferation. In fact, it actually encourages other nations to pursue nuclear weapons by emphasizing their importance.

For decades the United States relied on its nuclear arsenal for deterrence

only. In the symmetric world of the Cold War, we faced the Soviet Union with nuclear weapons and a conventional military that was stronger than ours. Nuclear weapons were used to deter not only a nuclear attack on our homeland but also a conventional attack against our allies in western Europe and Asia.

Today the Soviet Union is gone, but the world is not a safer place. Rather, we have seen new nuclear states emerge—India, Pakistan, and lately North Korea. As we continue to prosecute the war on terror, it should be a central tenet of U.S. policy to do everything at our disposal to make nuclear weapons less desirable, less available, and less likely to be used.

This bill will do exactly the opposite. Instead of ratcheting back our reliance on nuclear weapons, this administration is looking for new ways to use nuclear weapons and to make them more usable. Does anyone in this Chamber doubt that others will follow? I do not. The administration's Nuclear Posture Review, released in January of 2002, did not focus solely on the role of nuclear weapons for deterrence. It stressed the importance of being prepared to use nuclear weapons in the future. In fact, the review noted that we must now plan to possibly use them against a wider range of countries.

The Nuclear Posture Review said that we need to develop new types of nuclear weapons so we can use them in a wider variety of circumstances and against a wider range of targets such as hard and deeply buried targets or to defeat chemical or biological agents. And indeed, a few months after issuing the Nuclear Posture Review, President Bush signed National Security Presidential Directive 17, saying the United States might use nuclear weapons to respond to a chemical or biological attack.

In the past, U.S. officials have only hinted at that possibility. But this administration has made it formal policy. In doing so, it has telegraphed the importance of nuclear weapons and the administration's apparent willingness to use them.

In the legislation before us today, there is language requested by the administration asking Congress to repeal the Spratt-Furse provision—a decade old law that bans research on weapons with yields of 5 kilotons. Now, that is a third the size of the bomb used at Hiroshima.

I believe Spratt-Furse is an important prohibition with positive security equities for the United States. Since it has been in effect, no nation has developed lower yield nuclear weapons.

This administration wants to repeal Spratt-Furse for one reason, and one reason only: to build new nuclear weapons, particularly for missions against the hardened bunkers that rogue states may be using to store chemical and biological weapons.

By seeking to build nuclear weapons that produce smaller explosions and develop weapons which dig deeper, the administration is suggesting we can make nuclear weapons less deadly. It is suggesting we can make them more acceptable to use. But there is no such thing as a clean nuclear weapon that minimizes collateral damage.

Consider the following facts: According to a Stanford physicist, Sidney Drell, destroying a target buried 1,000 feet into rock would require a nuclear weapon with the yield of 100 kilotons. That is 10 times the size of the bomb dropped on Hiroshima.

According to Dr. Drell, even the effects of a small bomb would be dramatic. A 1-kiloton nuclear weapon detonated 20 to 50 feet underground would dig a crater the size of Ground Zero in New York and eject 1 million cubic feet of radioactive debris into the air.

According to models done by the Natural Resources Defense Council, detonating a similar weapon on the surface of a city would kill a quarter of a million people and injure hundreds of thousands more.

So there really is no such thing as a ''usable nuclear weapon.''

Moreover, nuclear weapons cannot be engineered to penetrate deeply enough to prevent fallout. Based on technical analysis at the Nevada Test Site, a weapon with a 10-kiloton yield must be buried deeper than 850 feet to prevent spewing of radioactive debris. Yet a weapon dropped from a plane at 40,000 feet will penetrate less than 100 feet of loose dirt and less than 30 feet of rock.

Ultimately, the depth of penetration is limited by the strength of the missile casing. The deepest our current earth penetrators can burrow is 20 feet of dry earth. Casing made of even the strongest material cannot withstand the physical forces of burrowing through 100 feet of granite, much less 850 feet.

In addition, the United States already has a usable nuclear bunker buster, the B61–11, which has a ''dial-a-yield'' feature, allowing its yield to range from less than a kiloton to several hundred kilotons. When configured to have a 10-kiloton yield and detonated 4 feet underground, the B61–11 can produce a shock wave sufficient to crush a bunker buried beneath 350 feet of layered rock. We have the weapons to do the job. We don't need another.

But the U.S. military, the strongest and most capable military force the world has ever seen, bar none, has plenty of effective conventional options at hand designed to penetrate deeply into the earth and destroy underground bunkers and storage facilities.

Those conventional bunker busters range in size from 500 to 5,000 pounds, and most are equipped with either a laser or GPS guidance system. A 5,000-pound bunker buster like the Guided Bomb Unit 28/B is capable of penetrating up to 20 feet of reinforced concrete or 100 feet of earth. It was used with much success in Operation Enduring Freedom in Afghanistan.

Other conventional bunker busters were used to take out Saddam Hussein's underground lairs in Operation Iraqi Freedom. In fact, the U.S. military possesses a conventional bunker buster, the GBU–37, which is thought to be capable of taking out a silo-based ICBM. With this conventional arsenal at our disposal, there is little military utility that a low-yield nuclear weapon provides to the U.S. military.

While I agree that nuclear weapons may have some military utility in certain circumstances, the benefit of the development of new mini-nukes appears to me to be far outweighed by the costs. But with the sought-for repeal of Spratt-Furse, the administration seems to be moving toward a military posture in which nuclear weapons are considered just like other weapons—in which their purpose is not simply to serve as a deterrent but as a usable instrument of military power, like a tank, a fighter aircraft, or a cruise missile.

But there are several things wrong with that logic. Nuclear weapons are different.

First, using them—even small ones—would cross a line that has been in place for 60 years. If the Spratt-Furse prohibition is repealed, the development of new nuclear weapons could lead to the resumption of underground nuclear testing in order to test the new weapons. This would overturn the 10-year moratorium on nuclear testing and could lead other nuclear powers, and nuclear aspirants, to resume or start testing, actions that would fundamentally alter future nonproliferation and counterproliferation efforts.

I understand Secretary of State Powell has written a letter supporting this, and I must express my profound disappointment. I must restate something he said last year on ''The NewsHour With Jim Lehrer.'' I quote Secretary Powell:

> I mean, the thought of nuclear conflict in 2002, with what that would mean with respect to loss of life, what that would mean to the condemnation—the worldwide condemnation—that would come down on whatever nation chose to take that course of action, would be such that I can see very little military, political, or other kind of justification for the use of nuclear weapons. Nuclear weapons in this day and age may serve some deterrent effect, and so be it; but to think of using them as just another weapon in what might start out as a conventional conflict in this day and age seems to me something that no side should be contemplating.

This was 1 year ago. What has changed, Mr. President? Why would we open the door to nuclear development at the very time we are trying to say to North Korea this is unacceptable, at the very time we are worried as to whether Pakistan can securitize its nuclear weapons, and whether there may be a nuclear holocaust between Pakistan and India?

I have never been more concerned about where this Nation is going than I am today. Let me give another example. China has a no-first-use nuclear policy. Their warheads have been stable at between 18 and 24 ICBMs. Yet we

have a policy document, the Nuclear Posture Review, that says we would countenance a first use of nuclear weapons against China if they were to use military action against Taiwan, and we said the same thing about North Korea going into South Korea. This is in writing.

Does no one think anybody reads these things? Does no one believe that we do not set the tenor of the world with respect to weapons? We are the largest weapons seller on Earth, and I do not want to see us develop more nuclear weapons, nor do I believe the American people want to see it either. This bill allows that to happen.

I do not believe this side of the aisle can sit by and let it happen to our children and our grandchildren. Tactical nuclear weapons in the most sophisticated military in the world should play no part.

I cannot think of a single issue that should more define the political agenda today than whether the United States should go back into the nuclear business again, and repeal of Spratt-Furse is the first step in that direction.

In the Energy Committee, I suspected this was coming, and I asked Secretary Abraham: Are there any plans? He said no. Last Wednesday, in Defense Appropriations, I asked Secretary Rumsfeld what is going on. He said: Oh, it is just a study. Just a study, baloney. Does anyone really believe that?

The repeal of Spratt-Furse opens the door for America to begin to develop nuclear weapons again, and I for one do not believe we should sit by and see that happen.

We are telling others not to develop nuclear weapons. We are telling others not to sell fissile materials. We are concerned when North Korea has plutonium and uranium and Iran begins to start up refining uranium. Yet it is all right for us to go out and begin to develop weapons that are one-third the size of the weapon that hit Hiroshima and killed instantly 175,000 people? I do not think so. And I do not believe that is what the American people stand for either.

This is a big vote. This is a vote that opens the door. How we can repeal language that says to all the world the United States is not in the nuclear development business, I do not know, but I find it absolutely chilling and even diabolical, particularly when we preach to other nations.

At a time when we brand as evil certain countries based in part on their pursuit of nuclear arms and weapons of mass destruction, we must be careful how we consider our own options and our own contingencies regarding nuclear weapons. So I urge my colleagues to think very carefully about the implications this defense bill is going to carry throughout the world.

The 10-year old prohibition on study, on testing, and on developing nuclear weapons is going to be thrown out the window, and it is a major signal that the United States is going to get back into the nuclear arms business.

I urge this Senate to join Senator KENNEDY and I in support of this amendment. I yield time to Senator KENNEDY, as much time as he requires.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. I thank the Chair.

Mr. President, over the past years, we have had the opportunity to consider the Defense authorization bill, and a number of extremely important weapons systems have been debated on the floor of the Senate. By and large, over that period, we have seen the results in our military.

All of us recognize the extraordinary performance of our military in these past weeks where they performed with, first, extraordinary courage; second, with extraordinary leadership; and third, with the latest and the best of technology. I think all of us want to make sure those are the items which are going to be there for the security of our military. They are going to be the best trained, best led, and best equipped with the latest technology.

We ought to consider the various proposals that are before us and ask what is the military significance of any of the matters we are asked to consider on the Defense authorization bill. It is against the background that the Senator from California has pointed out that we ought to examine what is the possible need for this kind of a weapons system and another opening of the debate on the testing of nuclear weapons.

Make no mistake about it, we may hear that all we are interested in is the design of the nuclear weapon, but we will come back to that because it is the clear intention of the administration to move ahead with not only the design but also the testing of nuclear weaponry.

We have to ask: How does that affect our national security? How does that affect our national defense? First of all, we ought to be asking ourselves, given the fact that our Armed Forces were in battle over the past weeks, resulting in an enormous success: What came out of that conflict that would make us take this step of lifting the ban on any kind of nuclear test? What happened in Iraq? What was the objective? What was the military objective in Iraq that would make us say what we want to do on the Defense authorization bill is move us back from the successful negotiations over the last 50 years of Republican and Democratic Presidents in moving us away from nuclear proliferation and moving us away from the possibility of nuclear confrontation? That is what the record has been over the last 50 years under Republican and Democratic Presidents alike.

The Senator from California has reviewed that. We remember times when we came dangerously close—I certainly do—in the Cuban missile crisis to the real possibilities of nuclear conflict and nuclear exchange which effectively would have annihilated the United States and the Soviet Union as we knew it. It came dangerously close, and since that time Republican and Democrat leaders have said, OK, we do not want to see an escalation of the nuclear arms race. We have seen step after step to contain it. One of the most important ways of containing it is to have a moratorium on testing and also to have a battle against the proliferation of weapons.

What we have with this administration is basically an effort to lift what they call the Spratt amendment, which is a prohibition for research and development into the nuclear weapons. One can call them mini nukes. One can call them small nukes. Basically, I call them low-death weapons because that is what they are. We are talking about the killing of thousands of individuals with these weapons systems, and the administration is attempting to open this whole process again.

Over the period of the last 5 years we have not had any testing of nuclear weapons by India or by Pakistan, two nuclear powers. We have not seen any testing either by the United States, Russia, or China probably for the last 15 years. Progress was being made. We have seen five countries that have basically gone nonnuke, basically renounced their nuclear weapons in the world. We have been making real progress.

What do we hear from the other side? We are living in a dangerous world. Well, I hope on the other side they are going to be able to tell us how nuclear weapons are going to solve the problem of dealing with al-Qaida, how nuclear weapons would have solved our problem in dealing with the threats in Morocco this week or Saudi Arabia, for example, the last week.

What do they intend to do with these nuclear weapons? Well, we hear maybe they can be used in our new, dangerous world to deal with the problems of biological and chemical weapons.

Have my colleagues read the reports on what would happen if we have nuclear weapons incinerating large storage spaces of gas or chemical weapons, and if those were to fractionate into the air in terms of critical masses, the amount of devastation and death that would mean to thousands or tens of thousands of troops if they were near or hundreds of thousands of civilians who were near?

What is the singular purpose? What is the military necessity? What do the Joint Chiefs want to do with this weapons system?

We will hear the other side say, let's not get all worked up about this because all we are trying to do is some research on this issue.

Listen to what some of the principal spokespeople for the administration say about that. In February, the Pentagon's Deputy Assistant Secretary for Nuclear Affairs, Fred Celec, was asked: What would happen if a nuclear bomb could be developed that would crash

through rock and concrete and still explode?

He said: It will ultimately get fielded.

And you are talking about all we are trying to do is a little research in this area? Come back to us later on; we will come back and talk to you if we are really going to get into testing of nuclear weapons.

This is what the head of the nuclear affairs weapons system at the Pentagon said: It will ultimately get fielded.

Then we go to Linton Brooks, who is the administration's nuclear weapons chief at the Department of Energy, who said the same thing to the Armed Services Committee in April: I have a bias in favor of the lowest usable yield because I have a bias in favor of something that is the minimum destruction. I have a bias in favor of things that might be usable.

There he is, Linton Brooks, the administration's nuclear weapons chief at the Department of Energy. Come on, now. You are talking about we are just going to do a little research and then we will come back and talk to you? Do you think our friends and adversaries around the world are going to believe that is what is going to happen in the United States? They will read those statements and they will start their programs of testing. That is what we are risking.

For what? We still have not heard from the military as to what it is our conventional bombs cannot do. What is it that our conventional artillery cannot achieve and accomplish? Where were their failings? Where is the potential target out there somewhere in the world? It was never told to us in the Armed Services Committee. It was never revealed to us in the Armed Services Committee.

Nonetheless, we want to find out if we want to go ahead—with all of the potential dangers that we know in terms of the dangers of proliferation of weaponry and the dangers from testing.

We have the administration's own Nuclear Posture Review in January of last year outlining the plans for developing new nuclear weapons, including improved weapons and warheads that reduce collateral damage. Do you know what that means in layman's language, reduced collateral damage? That means these smaller nuclear weapons. That is what it means.

Now, let us look at what these low-death weapons—I call them low-death weapons—could do. We have seen the administration talk about not exploding them even in their testimony before the Armed Services Committee. They refused to rule out the use of any nuclear weapons in the battle with Iraq; although Tony Blair did, our Secretary would not.

Well, now we have the 5-kiloton, earth-penetrating nuclear explosion. This chart depicts the average wind patterns for a winter day in the Middle East. It depicts a hypothetical attack outside of Damascus, Syria, using the nuclear weapon with a yield of 5 kilotons. The threshold of this ban exploded at a depth of 30 feet. This is the level, approximately 50 feet. This is at 30 feet.

This blast would cause 230,000 fatalities and another 280,000 casualties from radiation exposure within 2 years of the blast.

This is a plume pattern developed by the Defense Threat Reduction Agency computer model. We are talking about tens of thousands—hundreds of thousands—of casualties. That is what we are talking about with this weapon system.

What is the challenge? Are we finding that the Russians are building up to develop this kind of capability? No, we have not heard that. Have we heard the Chinese are now trying to build up their capability somehow to be a threat to us? No, we have not heard that. Have we heard the Pakistanis are going to do it? No. The Indians are going to do it? No, we have not heard they are going to do it. They have actually complied with the test ban treaties by not having any explosions, and they have been working with us in terms of the reduction. Certainly the Russians have in terms of reducing the total number of nuclear weapons.

We stood on the floor and passed an agreement with Russia not many weeks ago. So what is out there? What is out there that is going to put us on the track toward the reassumption of nuclear testing? What is the threat to us today?

It seems to me we do live in a dangerous world, with what is called al-Qaida. Everyone in the United States understands it, if they read the newspapers in the last few days and they see what has happened in the Middle East and what has happened in Morocco. We have to ask ourselves: How in the world will this particular weapon system help us deal with that particular threat? That reason has not been made.

The reason for this weapon system other than, well, let's take a chance, we can move ahead, it will be nice to add this to our stockpile, add one more weapon system, seems to be the argument. We have the possibility of going ahead; why not go ahead and do it.

I don't hear the other questions being raised about the range of activities that are going to take place in countries around the world. Make no mistake, this will release a chain of reactions across this world in nuclear testing. On the one hand, the United States says, look, we are trying to negotiate with the North Koreans in order to reduce the possibilities of nuclear exchange and miscalculation on the Korean peninsula. But do not pay attention to what we do. We are going over here to develop some new nuclear weapons. How does that work? What kind of message does that send in this world today? Who will buy that? Maybe those who support it are going to say how that kind of activity has worked in the recent past, how that kind of threat has resulted in other countries being cowed and intimidated into laying off on that. It will be the contrary.

Now, should these systems ever need to be developed, other colleagues want to speak about what the dangers would be, as to the possibilities of terrorists being able to purloin, steal, a small weapon system and being able to use that more effectively. We all know it is enormously complicated and difficult for them to do it today—not an impossibility—and we are realistic in terms of trying to do more to make sure that is done, but there is a whole range of additional threats by smaller systems that can cause devastation to hundreds of thousands of people.

Finally, we see what this administration will do; they will deploy the dangerous nuclear weapons. They could be developed to penetrate, according to their Deputy Assistant Secretary of Defense for Nuclear Affairs. Linton Brooks: ''I have a bias in things that might be usable.''

And there is the administration's nuclear policy review that indicates deployed warheads reduce collateral damage. That is what we are talking about. This is a matter of enormous risk.

If this risk were balanced by the danger, sign me up. But that case has not been made. This would be a remarkable step backward from the firewall established going back to GEN Eisenhowser, all the way through, a firewall between conventional and nuclear.

This administration, this policy, will break that down. It is wrong. It is not in our national security interests. That ought to be the test. This fails to meet that test.

I hope our amendment is acceptable.

The PRESIDING OFFICER (Mr. CRAPO). The Senator from California.

Mrs. FEINSTEIN. I ask unanimous consent that Senator REED from Rhode Island be added as a cosponsor, Senator DURBIN of Illinois, I believe Senator DAYTON already is, and Senator BINGAMAN, as well.

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

The Senator from Alabama.

Mr. SESSIONS. Mr. President, this is an issue we have considered in the Armed Services Committee, of which I am a member. I note it passed on a vote of 15 to 10 with bipartisan support.

I hear the opponents to this amendment using words such as ''these matters should not even been contemplated.'' ''We should not even think about a new type of nuclear weapon that may be less dangerous, have less collateral damage than the ones we already have. That is not where the United States should be.''

I note for my colleagues, the cold war approach to life has changed. We are in a new world environment. We need to be thoughtful about how we go forward. We should not shut off any study, any evaluation, of nuclear weapons in what we might need in the future, what

would be better, what could create peace in a more effective way than the current armament system we have.

They say if we do anything, if we study, if we go out and do any research, if we even think about what other nations might be doing, we can no longer encourage countries not to proliferate their weapons. I don't think so.

What is happening now? They say Pakistan, they talk about India, Korea, Iran, and other countries that are, in fact, working on nuclear weapons. They are doing that now, are they not? Aren't they doing that right now, this very minute? The fact we have not done any research or development or built any weapons in over a decade, I suppose, how has that had any impact on what they decide to do? These countries make decisions on what they think might be in their best interest. We have to work with them and encourage them not to do certain things.

If a lot of countries around this world—a lot of them are our Allies like Japan—if they felt we did not have an adequate military capability or option or weapon system that would allow us to effectively defend their interests, they may decide they have to have nuclear weapons, too. The United States has a peacekeeping role in the world. It is a high calling. It requires us to be very thoughtful. We cannot exercise blind fear about the world we are in and the technology that is out there and what is going to happen.

A lot of people may not know, of all the nuclear powers in the world, this country is the only one incapable at this moment of building a new weapon. We do not have the capability at this point to build new weapons. Despite that, the President has called for a reduction in our nuclear stockpile by one half or more. We are in an unprecedented reduction in the nuclear capability of this country, removing thousands of weapons from our inventories. However, we do not need to stick our head in the sand. We do not need to assume other countries are not out there studying nuclear weapons and will study nuclear weapons whether we study nuclear weapons. That is silly. That has no logical basis.

Think about it. Whether we have a laboratory somewhere that is studying nuclear weapons, this is going to determine whether Kim Jong Il decides to build new weapons? Whether Iran or China decides to build more weapons? No sir, not at all. That makes no sense whatever.

We have had smaller weapons in the past. They have been removed from stockpiles. I don't think that destabilized the world during that period.

They say, well, even though we are reducing our stocks by half, even though we have no weapons program, even though we are not doing nuclear testing, it is our fault. We are somehow destabilizing the world. We are causing Kim Jong Il to create weapons. I don't think it is our fault. I am not part of the ''blame America first'' crowd. Anyone wants to go to the DMZ up there and look into that depraved country of North Korea, stand in that wonderful, free, progressive country of South Korea, and see what he has done to the people of North Korea and has no moral rejection of him and his would-be empire, his regime, and has no sense of compassion for the people he oppresses, and now we are going to blame ourselves for his misbehavior? And we are sending him food to feed his own people because he cannot raise the food to do so? I don't think so.

I believe this country has a moral responsibility to lead in this world and we will not be an effective leader if we don't maintain leadership in all forms of weaponry—yes, including nuclear weaponry. It is just that simple.

I hope we do not have to develop any new systems, but I don't see anything wrong with doing some research. We might learn what others are doing out there, too, and that might be important to our national defense.

We are the premier nuclear power in the world—premier power in general and the premier nuclear power in the world. If we ever got to the point where we had some smaller weapons, why would that make the world more dangerous than the big ones we have, let me ask you? I think that is not where we need to be heading. We need to be rational about where we are. Nuclear power remains a part of our arsenal. A growing number of nations around the world, as they have been from time to time since nuclear power became available, are studying ways to develop their own nuclear power.

They say we can't use it against al-Qaida. Maybe we can, maybe we can't. Probably we would not use a nuclear weapon against a group like al-Qaida. But who would have thought we would have been at this level of conflict in Afghanistan or Kosovo or Bosnia 15 years ago? Who knows what the future may bring? A great nation, a great Congress, who has a responsibility to protect and defend this Constitution and this Nation, should be thinking ahead to make sure we have the capability, as time goes by, to deal with any threat that faces us. To do otherwise would be irresponsible.

Let's be clear about this. This amendment we passed 15 to 10 in committee does not authorize building small weapons. It does not authorize testing weapons. It talks about study and research. If any step further than that has to be taken, this Congress would explicitly have to approve it. Then we can hear these debates about whether or not we want to go forward, depending on what the state of the world is at that time.

I used to be a Federal prosecutor. As I understand the law, it would be a crime to utilize the language in this bill to build one of these weapons or to test one of these weapons because it would not be authorized in law. You cannot use money appropriated by Congress for things not authorized. This language does not authorize testing. It does not authorize building of a nuclear weapon.

We have also to be concerned in this age of increasing knowledge about nuclear power, with the increasing ability through technology and other capabilities to transmit that knowledge around the world. We ought to be aware that others could step forward and make breakthroughs in nuclear power that could in many ways undermine the leadership we have in the world today. We do not need to have other nations studying nuclear power, nuclear weaponry, and us not.

Think about this. We have cut our power down substantially. We are cutting down the number of our weapons very substantially—half or more than half. We absolutely cannot make a commitment that we will never do anything else in the future. That would simply set out a marker that would be the goal any nation could seek to attain and then they would be on equal power with the United States of America militarily, in terms of nuclear weapons. We should not do that.

We need to make it clear to the entire world we care about peace, we care about world harmony, but we will not allow our Nation to be vulnerable to attack because our Nation—I can say it with confidence—our Nation stands for peace, prosperity, trade, and freedom in this world. That is what we stand for. A lot of nations don't. If somebody in this body is not capable of making that value judgment, then I think they need to go back and study their history a little bit. So we can stand for right in this dangerous world; we simply have to be militarily strong.

Americans expect us to be thinking about it and going forward. President Bush supports this amendment that passed with bipartisan support in the committee. Secretary of State Powell supports this amendment, as do Admiral Ellis and General Jumper, two of our key military people who deal with these issues.

I simply think it would be irrational to prohibit research that could inform future decisions as to whether such weapons would enhance the national security of our country. It would not prejudice our Congress to decide these questions in the future. Let us not fear greater knowledge that would inform our future decisions. Let's make sure this Nation does not have its head in the sand. Let's make sure our Nation is alert to what our capabilities are, what our enemies' capabilities are, and to the need for change if that need arises. I think that is the right approach. I think that is why the Armed Services Committee sent this amendment to the floor as part of this bill.

I thank Senator WARNER for his leadership. He has led us in this way, in a careful way. There is nothing extreme about this amendment. It is the right step at this time.

I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, the Senate considers a myriad of topics. Every week those who follow our debates will hear us discuss far-reaching topics from the farm bill to a transportation bill to a tax bill, how to move the economy, how to deal with health care and education. All of those are critically important issues. But I cannot believe I have witnessed in my time on Capitol Hill a more historic debate than what we are undertaking at this moment.

We are literally talking about whether the United States will initiate a nuclear arms race again. Nothing I can think of meets this, in terms of gravity and its impact on the future of the world.

If I might, I would like to ask the ranking member of the Armed Services Committee, my colleague from the State of Michigan, if he would be kind enough, before I say a few words here, since he was in on the committee debate on this bill and understands what is included in it, if he would answer a couple of questions relative to this issue of nuclear weapons so we can put this debate in context.

Is it a fact, I ask the Senator from Michigan, without yielding the floor—is it a fact we are embarking on at least two dramatic changes in the policy of the United States of America toward research and building of nuclear weapons in this legislation?

Mr. LEVIN. The Senator is correct. There are at least two provisions here.

Mr. DURBIN. Would the Senator be kind enough to tell me, when we use the term low-yield nuclear weapons, is it not true these are weapons which have about one-third of the killing power of the nuclear weapon used, the atomic bomb used in Hiroshima which killed, in a matter of seconds, 140,000 people? Is that true?

Mr. LEVIN. The Senator is correct. The so-called low-yield weapons indeed are about one-third the power of the weapon that was used at Hiroshima.

Mr. DURBIN. Could the Senator from Michigan tell us how we are changing our policy in relation to the building or research on these types of low-yield nuclear weapons?

Mr. LEVIN. Under the law that exists today, the so-called Spratt-Furse language which exists in law today, there is a prohibition on research and development which could lead to the production of a so-called low-yield weapon. Under the bill, that language would be stricken from the law and there would be no such prohibition.

Mr. DURBIN. Could the Senator also tell me in relation to even more powerful nuclear weapons, the so-called bunker busters—which name, I think, does not do justice to the gravity of the weapon, the severity of the weapon we are considering—I am told by some these weapons have detonation power up to 70 times the power of the bomb we dropped on Hiroshima. Could the Senator from Michigan tell me, in terms of developing and building these new doomsday weapons, 70 times more powerful than the bomb dropped on Hiroshima, what does this bill do?

Mr. LEVIN. The so-called bunker busters, which is a total misnomer in my book because these are city busters—they may indeed be nation busters or world busters, but nevertheless the so-called bunker busters are two weapons. There is a so-called B–61 weapon, which is about the power of 28 Hiroshimas, and the other one is the B–83, which is up to 71 Hiroshima weapons, in terms of power.

Mr. DURBIN. If I could put that in context, if the bomb in Hiroshima killed 140,000 people instantly, can the Senator even calculate how many people may be casualties from the largest nuclear weapon which is envisioned by this new piece of legislation?

My calculations are that up to 9 or 10 million people could be killed with that type bomb.

Mr. LEVIN. I don't have a calculator. Whatever 140 times 70 would amount to would be that number, assuming the same approximate density in Hiroshima.

Mr. DURBIN. I thank the Senator from Michigan for his diligent work on this committee.

Consider the gravity of this debate. Consider for a moment what we are embarking on if we accept President Bush's vision and the administration's vision of the future of America and the world. We have just come off a war in Iraq—a war which once again proved decisively the strength of the American military. We have a military operation without peer in the world, the very best in skill when it comes to men and women in uniform, and the best technology on Earth. We spend upwards of $400 billion a year and more to develop this weaponry and this national defense. When called upon as in Iraq, as in the Persian Gulf, and so many other times, they have shown they are decisive in their goals. Frankly, there is nothing on Earth to match it. I don't think there was a moment in the invasion of Iraq when people said, If we just had another weapon, perhaps this would go more smoothly. Within 3 weeks, we conquered that nation. We brought to bear a dictator and his army. No one ever questioned that we have the most powerful military in the world prepared to do that.

What the Bush administration tells us is it is not enough. Whatever conventional weaponry we own, it is not enough when we consider the future of the world; and we, as the United States, need to move forward, as the Senator from Michigan has told us, to develop so-called ''low-yield nuclear weapons''—these compact nuclear weapons and these bunker buster nuclear weapons some 70 times the power of what was detonated in Hiroshima. I think this is a dramatic departure in American foreign policy.

I agree with the Senator from California and thank her for her leadership in offering this amendment, which I cosponsored with the Senator from Massachusetts.

I hope my colleagues, despite their warm and strong feelings for the President and his administration, will pause for a moment and think about what we are doing today and the road and the course we are about to follow.

This bill is a declaration that the United States is prepared to launch a nuclear arms race in the world again—a nuclear arms race which is no longer the province of a handful of nations.

There was a time when ownership of a nuclear weapon reflected a prosperous country with great military capability. Look at North Korea today, as poor as they come, suffering from famine. This country is in the process of developing a new nuclear weapon every single month. To think that the United States could initiate a new nuclear arms race with our research and development and not see this replicated around the world in other countries is naive and wrong and dangerous. That is what is wrong with this proposal of the Bush administration.

I also ask my colleagues to put in context the Bush administration's overall view of foreign policy, which is a departure from 200 years of thinking in America. President Bush came to this office and said we will no longer wait for nations that are an imminent threat to the United States. Since 9/11, we need to change the strategy, and change the rules. We will now be engaged in preemption. That is, we will attack those countries which we think could be a threat to the United States. That is dramatic change. With that dramatic change, coupled with this change in policy, think about what we are saying to the rest of the world. Whether you are a threat to the United States, if we perceive you to be a threat to the United States, we can attack you. Whether you are a threat to the United States, if we perceive you to be a threat, we can use nuclear weapons in attacking you. And we are about to develop several new generations of nuclear weapons to do it.

Step back for a second, as any rational person would do, and ask, What does some other country in the world do in response to that? I know I am about to be attacked. Whether I threaten the United States, I have to be on guard. If I know they will use nuclear weapons, even if I don't, then what are you going to do? You are going to arm yourself to the teeth, as the North Koreans have done. Develop as many weapons as quickly as you can to let the United States know that if they use preemptive foreign policy and nuclear weapons in that preemption, there will be an answer coming back from that country. That is a recipe for a global arms race. There is no end in sight, if we allow that to occur. It is exactly what is being suggested by this policy.

The Senator from Alabama came to the floor and said we should be thinking ahead. That is why he supports this. I would say to the Senator I agree with him completely. We should be thinking ahead, and that is why we

should oppose this. The United States ought to make it clear we are not going to initiate any nuclear testing to develop new weapons, that we are not looking for a new generation of nuclear weapons, and that we, frankly, don't believe it makes for a stable and a peaceful world for other countries to develop these nuclear weapons either.

If we set an example with this new generation of nuclear weapons called for by this bill, how do we then turn to the rest of the world, and say, Stand in place, don't change, let the United States develop new nuclear, but you don't do the same? That isn't going to work. It is not rational. It doesn't show the kind of direct thinking I think we should ask from this administration and every other administration.

I support the amendment offered by my colleagues to strike the section of the bill that repeals the prohibition on R&D of low-yield nuclear weapons. This is calling for a study for the development of nuclear weapons.

Sadly, we know the spokesmen for the administration have made it clear that after one study they will be developed, in no uncertain terms. That, of course, is an invitation for a global arms race.

I ask unanimous consent to have printed in the RECORD a letter of May 19 of this year from several prominent scientists across the United States in support of this amendment.

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

May 19, 2003.

DEAR SENATOR, As scientists and engineers with long experience on nuclear weapons and defense issues, we are writing to urge you to retain the Spratt-Furse law banning development leading to the production of nuclear weapons with yields of less than five kilotons.

There is no need for the United States to develop new low-yield nuclear weapons beyond those it has already developed and tested. Opponents of the law argue that the ban impedes exploration of nuclear weapons concepts for attacking deep underground targets and destroying chemical and biological agents. However, technical analysis shows that low-yield weapons would not be effective for these tasks. Low-yield earth penetrating weapons cannot burrow deep enough and do not have a large enough yield to destroy deep underground targets; moreover, the explosion would not be contained for even low-yield earth-penetrating weapons, and would necessarily result in large amounts of radioactive fallout. If a nuclear weapon was used to attack chemical or biological agents, it is far more likely that this would result in the dissemination of these agents rather than their destruction.

Moreover, the law does not restrict research and early development of low-yield weapons, and places no restriction at all on work on higher yield weapons. The law only prohibits later stages of development and engineering that are geared toward production of a low-yield weapon.

Some opponents of the law argue that maintaining expertise at the U.S. weapons labs requires weapons scientists to explore and develop new weapons concepts, and that ambiguities in Spratt-Furse law have had a ''chilling effect'' on such efforts. However, last week the House Armed Services Committee adopted an amendment that clarifies the wording of the law. We urge you and your colleagues to support such a clarification in the Senate to make clear that the ban permits research and early stages of development, while prohibiting the engineering and development of new low-yield nuclear weapons for deployment.

Arguments that low-yield weapons serve U.S. interests because they produce less collateral damage and are therefore more usable than high-yield weapons are shortsighted. Any use of nuclear weapons would demolish a firebrake that has held for nearly 60 years and would be a disaster for the world. The United States should be seeking to increase the barriers to using nuclear weapons, not decreasing them.

Moreover, it is counter to U.S. interests for the United States to pursue new nuclear weapons at a time when the highest U.S. priority is preventing other countries or groups from obtaining them. The perception that the United States is pursuing these weapons and considering their use would give legitimacy to the development of similar weapons by other countries, and would be an incentive to countries that are concerned they may be a target of such weapons to develop their own nuclear weapons as a deterrent.

The act of repealing this 10-year-old law would send a strong, negative message to the rest of the world about U.S. intentions with respect to maintaining the existing international moratorium on nuclear testing. If the pursuit of new low-yield weapons leads to the resumption of U.S. nuclear testing, this would inevitably lead to testing by other countries—thereby reducing U.S. security and undermining U.S. efforts to stop the spread of nuclear weapons.

Given the technical realities and limitations of low-yield nuclear weapons, as well as the likely security costs of developing new low-yield nuclear weapons, we urge you to retain the Spratt-Furse law.

Sincerely,

HANS BETHE,
Professor Emeritus, Cornell University.
SIDNEY D. DRELL,
Professor Emeritus, Stanford Linear Accelerator Center, Stanford University.
RICHARD L. GARWIN,
Philip D. Reed Senior Fellow and Director, Science and Technology Studies Program, Council on Foreign Relations.
MARVIN GOLDBERGER,
President Emeritus, California Institute of Technology.
JOHN P. HOLDREN,
Professor and Director, Program on Science, Technology, and Public Policy, Kennedy School of Government, Harvard University.
ALBERT NARATH,
Former Laboratory Director, Sandia National Laboratories.
WOLFGANG K.H. PANOFSKY,
Professor Emeritus and Director Emeritus, Stanford Linear Accelerator Center, Stanford University.
BOB PEURIFOY,
Former Vice-President, Sandia National Laboratories.

Mr. DURBIN. Mr. President, let me also say the policy implications of crossing the line toward the use of nuclear weapons and actually making them useful weapons argues most forcefully against developing such weapons.

I am particularly concerned that this administration's policy of preemption, combined with the policy of first use of nuclear weapons, is an incentive to proliferation of weapons of mass destruction, especially nuclear weapons.

Let me go back to the point made by the Senator from Massachusetts. The threat we face today is not a threat of nuclear power against the United States. It is a threat of terrorism. No one has rationally suggested that the development of these nuclear weapons can be used as a deterrent against al-Qaida and terrorism. How could our possession of even a low-yield nuclear weapon have stopped September 11? It could not have. We are dealing with asymmetrical power, to use a cliche which you find on Capitol Hill in most committee hearings involving the military. It just says you don't have to match the United States strength. You can find a vulnerability where you have the strength to inflict casualties and damage. That is what happened on September 11.

Otto Bismarck once said, ''Preventive war is like committing suicide out of fear of death.'' I believe we should remember those words of wisdom.

Let me elaborate on a few points.

The September 17, 2002 National Security Strategy of the United States stated as a matter of self-defense that America will act against such emerging threats before they are fully formed to forestall or prevent such hostile acts by our adversaries. The United States will, if necessary, act preemptively.

When you put together a policy of preemption, a policy of first use of nuclear weapons, and a new generation of nuclear weapons, which this bill calls for, it does not make for a safer world. It is an invitation for a world of uncertainty and a world of danger we will be leaving our children.

I have watched this administration come forward with many proposals I disagree with. I cannot think of any proposal they have suggested which is more dangerous than what we are considering today.

For those who are following this debate, this is not another routine bill. This bill is about to discard 50 years of American foreign policy and 50 years of American nuclear policy. It is going into uncharted territory with a new approach which invites danger, retaliation, and proliferation. It will, in my mind, increase the likelihood of nuclear confrontation in the future.

I hope on a bipartisan basis the Senate will adopt the amendment offered by the Senators from California and Massachusetts.

I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. DAYTON. Mr. President, I wanted to say to the distinguished chairman of the Armed Services Committee, who suggested earlier that we alternate back and forth, even though there is no agreement, I would be more than happy to defer to someone on his side.

Mr. WARNER. Mr. President, I thank our colleague. I am perfectly contented and listening carefully to the debate. At the appropriate time I will make my remarks and then move to table. I

want to in no way inhibit the debate on this important subject. I feel very strongly a contrary form of view, as do a majority of the colleagues I know. We certainly witnessed in the Armed Services Committee a strong vote in favor of going ahead with this provision in our bill. I am respectful of the views of others, but I am mindful of what we did on the Committee on Armed Services in our vote on this issue.

Mr. DAYTON. Mr. President, if the chairman wants to wait, I will look forward to hearing his remarks. I have the greatest respect for him, and also many of my colleagues from the other side of the aisle who will offer their comments at a later time.

At the request of Senator FEINSTEIN, I ask unanimous consent that Senator JEFFORDS be added as an original cosponsor of the amendment.

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

Mr. DAYTON. I am proud to rise with my very distinguished colleagues who have introduced this measure, Senator FEINSTEIN and Senator KENNEDY; they who have eloquently stated, along with the Senator from Illinois, the reasons why this drastic change in American policy is so ill-advised—to resume the testing, development, and deployment of nuclear bombs. That would put the United States back into the front of the world pack of nations now proceeding with nuclear weapons development. We should be leading the world in the opposite direction, to stop the future proliferation of nuclear bombs. We can't do both.

We can't tell other nations around the world not to build even a single nuclear weapon and then do it ourselves. We already have thousands of nuclear bombs. Yet we are going to tell other governments: You can't have even one.

We should be negotiating those agreements. We should prevent other nations that do not presently have nuclear weapons from developing them. We should negotiate agreements with North Korea, Iran, whereby they would stop and dismantle their nuclear weapons production in return for economic assistance, food, technological development, whatever it is we can do to improve their peaceful standard of living and help bring them back into the civilized world.

We should proceed to carry out the agreement which President Bush and President Putin reached over a year ago to consolidate and reduce the nuclear weapons which our two countries have. We should discuss with the new Chinese leadership their doing the same. We should redouble our efforts to track down and purchase and to lock up the nuclear weapons and materials that are loose from the old Soviet Union or from any other source, before they fall into the very dangerous hands of terrorist organizations which, if they get nuclear weapons, will use them against us. How can we do all that if we ourselves are developing our own next generation of nuclear bombs? It is crazy. It is crazy to do it. And it is crazy to think that the rest of the world would stand idly by while we proceed to do so.

Why do we need to do this? We have the most overwhelming military force in the world, as we just demonstrated in Iraq. We have the greatest, most overwhelming military dominance of any nation in the history of the world over every other nation. We must maintain that overwhelming military superiority, and we will. President Bush has proposed increasing our military spending every year that he has been in office, and this Congress has provided him with every dollar he requested. I voted for every one of them myself.

We are now spending this year more money on our military strength than the next nine nations of the world combined. I agree with my colleague from Alabama who is properly vigilant about what other nations are doing. We do need to look ahead and make sure that we maintain the kind of superiority and dominance which we can then use to prevent nuclear wars or any kind of wars around the world. But we don't need those devices today, and we don't see anybody else in the world developing them. So we should be trying to stop it, not move it forward.

We don't need the so-called low-yield nuclear devices to win a war, not any war anywhere in the world and not for any time in the foreseeable future. Parenthetically, there is no such thing as a low-yield nuclear device. It is an oxymoron, low-yield nuclear device. There is only one description of these devices: They are nuclear bombs. They are nuclear bombs more powerful than the ones used in Hiroshima and Nagasaki 58 years ago. My understanding is that in terms of yield, in terms of radioactive fallout they may be more constrained, but in terms of the explosive power of these advanced weapons, they go beyond anything that was used in World War II, which is, as we recall, the only time in the history of the planet that nuclear bombs have ever been unleashed by one nation against another.

It is our responsibility as the leader of the world to assure that they are never used again. Nothing is more dangerous to our national security than the continued development and production and ultimately proliferation of more nuclear weapons anywhere in the world. The reality is we can't prevent their use once they are produced. We can try, and we have. And we will continue to do so. With treaties, through negotiation, we can build a national missile defense system as the President has proposed, as Congress has appropriated initial funding. But even if it could be made to work perfectly, a terrorist group could put a nuclear weapon in a briefcase or in a car's glove compartment and annihilate New York City or San Francisco or Mobile, AL, or Minneapolis, MN.

We can't prevent the use of one of these nuclear weapons once it has been produced, which is why we can and must stop their production before. We still have a chance to do that. We still have that opportunity, and that is what this administration's priority should be, to put an end to the nuclear arms race and those who want to enter it and to negotiate these agreements. But to do that, we have to set the example. We have to lead the world in the direction we want it to go.

We can't say, we are the exception; everybody else follow this set of rules, but we are different. We know that our intentions are honorable. We know that we would not use them inappropriately. But we are not viewed that way by anyone else, as we would not view anyone else that way. We have to lead by our actions as well as by our words.

As others have pointed out, if we were to do this now as we try to put the lid on other nations' development of their nuclear industry weapons industry, it would be catastrophic. In the eyes of the world we would look as though we don't really understand how we are viewed by them.

This is an historic opportunity. It is so critical that this administration, which has proven that it knows how to win wars with military might—that we have established—which they inherited from President Clinton's administration, shows that we know how to win the peace.

We know how to win the peace in Afghanistan, where our efforts to rebuild the country have been minimal, tragically, in the last year and a half compared to the scope of the need and the opportunity to showcase the American economic social system, our way of life, so that the people of that country can benefit, and people especially in the Arab nations can see the benefits and advantages of our system. We need to do the same in Iraq—seize control and security there and bring in the U.N. and other nations in efforts to bring that country over to a democracy and a stable government, encourage and assist their economic recovery, and negotiate with others.

That is the direction in which we need to go, but it is not the direction this administration is going, or cares to go, or knows how to go. It is the wrong signal to send to the rest of the world that we intend to proceed further down the path of our domination militarily and our use of weapons of any level of destruction in order to achieve future goals; and if we proceed in that direction, we must expect that the rest of the world will follow. That would be more dangerously destabilizing to this Nation and to the planet than anything I can imagine.

I yield the floor.

The PRESIDING OFFICER (Mr. CHAFEE). The Senator from South Carolina is recognized.

Mr. REID. Mr. President, we have a number of speakers who wish to speak on this legislation. I wonder if it would

be more orderly if we tried to arrange the time so that people——

The PRESIDING OFFICER. The Chair recognized the Senator from South Carolina.

Mr. GRAHAM of South Carolina. I am glad to yield to the Senator for a moment.

Mr. REID. I am sorry, I didn't know. We might be better off—we have a number of Senators waiting, so that there will be some order—I wonder how long the Senator from South Carolina is going to speak approximately.

Mr. GRAHAM of South Carolina. About 5 minutes.

Mr. REID. I am wondering if it would be appropriate, I say to my friend from Michigan, if we had one on our side, Senator BINGAMAN, for 20 minutes, and Senator FEINGOLD wishes 20 minutes, and Senator DORGAN wants 5 minutes. I am wondering—if there is someone from the Republican side who wishes to speak interspersed with ours, they would be allowed to speak.

I ask unanimous consent that following the statement of the Senator from South Carolina, Senator BINGAMAN be recognized for 20 minutes, and following him, the Senator from Wisconsin for 5 minutes, and then the Senator from North Dakota for 10 minutes.

Mr. LEVIN. Reserving the right to object, Mr. President, I just suggest two things: One, the interspersed order include Republican speakers, should they desire——

Mr. REID. That was part of the request.

Mr. LEVIN. Secondly, there will be additional speakers beyond that. I would not want to suggest that the debate would end then because we have additional speakers.

Mr. REID. Senator FEINSTEIN is here. She wishes to speak for a considerable period of time. We need to confer with the Senator.

Mr. LEVIN. Prior to that, Senator BYRD wanted to speak. I wanted to speak for 10 minutes, and Senator JACK REED of Rhode Island and Senator AKAKA want to speak as well.

Mr. REID. Why don't we lock these in?

Mrs. FEINSTEIN. I wish the opportunity to speak at the end for 1 hour.

Mr. REID. I say to my friend, a number of other people wish to speak.

Mrs. FEINSTEIN. At the end. If it is a unanimous consent agreement, I don't want to be cut off.

Mr. REID. You will not be cut off. This is just to line speakers up for an hour or so. There is plenty of time for debate after that.

Mr. GRAHAM of South Carolina. Reserving the right to object, what was the last thing the Senator said?

Mr. REID. Senator FEINSTEIN wanted to be protected for future time.

The PRESIDING OFFICER. Is there objection to the request?

Without objection, it is so ordered.

The Senator from South Carolina is recognized.

Mr. GRAHAM of South Carolina. Mr. President, I rise in opposition to the amendment. As quickly as I can—a lot of people want to speak—I will frame the debate for those who are listening.

The Armed Services Committee was asked by the Pentagon to give some relief on a 10-year prohibition on research and development of low-yield nuclear weapons for a specific military purpose. The Pentagon and others tell us that the warfare of the future is going to have a component to it about which we need to be thinking.

As we have seen in Afghanistan, Iraq, and other places, the enemies of tomorrow and today have gone underground in a deep fashion—underground not only to hide their forces, but to hide weaponry and to potentially build chemical or biological weapons facilities, underground to develop hydrogen nuclear weapons, underground to protect their troops from the awesome power that we have today.

The committee, after listening to the Pentagon's request, in the bill we have before us, lifted the ban on research and development to allow the Pentagon to do research and development in this area as they could on any other weapons system.

The question becomes for the Senate, after having received input from our Department of Defense and those experts who are paid to follow such matters, whether saying no to their request to do research and development only is a wise decision.

My colleague who previously spoke mentioned the word ''crazy.'' I think it would be incumbent upon us to listen, as the committee has done. And the committee, in a bipartisan fashion, after listening, voted to lift the ban on research and development, to go forward and look at the ability to combat the threats of the future by having a low-yield nuclear weapon that could go to the underground chemical or biological weapons factory that may exist in the future—to go to the underground nuclear weapons facility that may exist in the future.

As we have seen from Afghanistan and Iraq, the enemy has dug deep into the earth. From the last gulf war to Operation Iraqi Freedom, we have seen how the military has modernized and transformed itself. In the first gulf war—Desert Shield and Desert Storm—only about 10 percent of the weapons used were precision-guided munitions. That changed to the point where 90 percent of the weapons used in Operation Iraqi Freedom were precision guided. I argue that that modernization effort, keeping that technological edge, saved a lot of American and Iraqi lives.

I suggest to my colleagues that this is a dramatic moment in our Nation's history. We have just upgraded the threat level to orange. We have seen last week what is going on in the world—al-Qaida is still alive. They are on the run, but they have the ability to hurt people. They desire nuclear weapons. There are a lot of rogue states that are going to try to pursue a nuclear weapon, or fissile materials, and they will most likely be successful. People are going to enhance their biological and nuclear weapons ability.

I argue that to stop research and development on a potential weapon that could destroy a terrorist group or prevent a rogue nation from creating a chemical or biological capacity that is deep underground is illogical—just to take it off the table in a blind fashion, trying to say we are doing something that is going to spread nuclear weapons. I don't believe we are.

Secretary Powell has written a letter on this matter, on May 5, in which he says:

> I do not believe that repealing the ban on low-yield nuclear weapons research will complicate our ongoing efforts with North Korea.

It is a reality that the enemies of today and tomorrow will go underground. They will go deep into the earth, and they will have laboratories and research facilities available to them to develop weapons of mass destruction. I hope the Senate will listen to the Pentagon and develop a weapon that counteracts that threat. Whether or not we deploy that weapon we will decide later. But to take the research component off the table and not even plan for that possibility is very irresponsible. We will take up as a body whether or not to authorize this development, as we should.

I implore my colleagues, please do not ignore the threats that exist today, an enemy going deep into the Earth where conventional weapons may not be able to destroy that chemical or biological factory or that nuclear weapons program. Let's at least look at the possibility of having a weapons mix in the future that protects us from the evil that exists today.

I think what the committee has done is very responsible. I congratulate the chairman and all those involved in lifting this ban at the Pentagon's request. History will judge us poorly—who knows what is going to happen down the road—if we as a political body do not listen to what I believe to be a real threat and try to at least talk about and develop a counteraction to that threat for the future. That is what this debate is about.

If this amendment is adopted, it would tie the hands of the American military in looking at weapons systems to combat a real threat at a time when the threats we face are growing, not lessening. I think that would be a very bad move on the Senate's part. It would tie the hands of the Department of Defense unnecessarily.

We are not talking about deploying a weapon. We are talking about researching and developing a weapon that may save lives in the future, and I hope the Senate as a whole will follow the lead of the committee and vote this amendment down. I yield the floor.

The PRESIDING OFFICER. Under the previous order, the Senator from New Mexico is recognized.

Mr. BINGAMAN. I thank the Chair.

Mr. President, I start by saying I have always been a strong supporter of maintaining our nuclear arsenal. I do believe that nuclear weapons have a significant role in our defense strategy, but their use for us in that defense strategy is to deter others from using nuclear weapons. That has been the essential role they played.

It has been a very important role. It was an important role in winning the cold war, and it remains an important role for our military. But the amendment that has been put forward by Senator FEINSTEIN and Senator KENNEDY is not dealing with nuclear weapons as a deterrent. What it is trying to get at is the change in philosophy that seems to have taken place among some in the administration that nuclear weapons are not just to be used as a deterrent; they are also to be used as a weapon. They are to be used in warfighting. They are to be used to counter preemptive threats that may present themselves to us, and that is a substantial change from what we have done with nuclear weapons in the past. I strongly believe it is important to maintain in law the ban that was put in law sometime ago.

This Spratt language, named for Congressman SPRATT, whom we all know and respect, was developed in 1994, and it was developed as a follow-on to an action by George H. W. Bush, Sr., our current President's father, when he was in the White House. He made the decision on September 27, 1991, to take out of our inventory nuclear artillery shells, tactical bombs, landmines—the various tactical low-yield nuclear weapons we had fielded at that time, primarily in Europe.

That decision was made as a follow-on to the end of the cold war. It was a decision which was intended to reduce the risk of some kind of nuclear misstep by a field commander or by accident. It was a step intended to reduce the risk of a nuclear weapon being detonated when, in fact, it was not desired.

There is a lot of history behind this issue. Some might think, if they just tune in and watch this debate, this is a new idea this administration has come up with: Let's develop new low-yield nuclear weapons; let's do the research and gear up for development.

The truth is, we have had many so-called low-yield nuclear weapons in our stockpile in the past. Let me review a little bit of that history.

This first paragraph I have reproduced for folks to look at is the Davy Crockett MK–54 warhead which was a nuclear warhead that was capable of producing the same damage as up to 1,000 tons of TNT. When they talk about low-yield nuclear weapons, they are talking about up to 5,000 tons of TNT. So this is substantially less powerful than that. This was developed back in the fifties. It is technology about which everyone knows. It was launched from a recoilless rifle. This was a weapon capable of being launched that way. One could send it off anywhere. The range was 1.2 to 2.5 miles. As I say, it had a yield of up to 1,000 tons of TNT. This, to me, is an example of some of the history we know about on low-yield nuclear weapons.

Let me also point to a second example. This is the so-called MADM, the Medium Atomic Demolition Munition. Looking at the photograph, you might say I am talking about the one in the center. I am not. I am talking about the much smaller warhead that is over on the left in this photograph. This could go up to as high as 15,000 tons of TNT. It was in our arsenal until 1986. It was intended for use in destroying dams or bridges, and it was entirely portable. As one can see from the size of this warhead, this would be easily carried by a single person.

The third example, and the last example I want to show, is this W–79. This is one of the weapons that was in our arsenal and was taken out of our arsenal. This is the so-called neutron bomb. We have heard of the neutron bomb. There was a lot of discussion about the neutron bomb a couple decades ago. It had what was then designated a C-plus safety rating because they determined after a while that they could detonate one of these if there was a stray bullet that hit the high explosive and, therefore, one of the reasons it was taken out of the field as an artillery shell was because of the safety problem involved.

To give an idea of the detonation of this neutron bomb, it is pictured in this photograph. One can see that the amount of radioactivity, the amount of damage, the collateral damage from it was very substantial.

Let me go to the last of these charts just to make another point.

My colleague from South Carolina was saying what we need is a nuclear weapon; we need to see about developing a nuclear weapon that can be used to go deep underground and, thereby, get at chemical weapons fabrication activities or perhaps biological weapons fabrication activities.

The truth is, if you put one of these weapons on a rocket and send it off, you cannot get it very deep into the ground. If it is a 12-foot long weapon, the maximum it can go is 48 feet into the ground. If it is 100-ton TNT equivalent, the experts tell us you have to bury that at least 140 feet under the ground or else you are going to have radioactive fallout. If you have a 1,000-ton weapon, you have to bury it at least 450 feet when it is exploded to contain the fallout. The truth is, we cannot put this on a rocket and get it down 450 feet. It is just not practical.

The points I am making are these are not sophisticated weapons. This is not a new technology all of a sudden which someone decided to develop.

This is technology that was in our arsenal. We are now seeing this administration say, OK, let's come back and once again begin to look at this as a viable part of our warfighting capability. I do not see the justification for it; I do not think it makes sense; and it poses enormous additional risks for us in terms of proliferation potential.

One of the other comments the Senator from Alabama made a few minutes ago was: We already have a great many nuclear weapons. What can be so wrong about developing some that are small?

One thing that could be wrong is that the risk of proliferation of much smaller, more portable weapons, is substantially greater. The smaller the weapon, the easier it is to move. These weapons are not sophisticated. These are not like the very large, high-yield weapons that are difficult to reproduce. There are many countries in this world that have the capability to produce low-yield nuclear weapons, and many of them, I am sure, will get more interested as time goes on if they see this is the direction in which we are moving.

I think Senator KENNEDY made reference to the speech Mr. Putin gave last Friday. The article in the New York Times on Saturday summed it up well when speaking of President Putin. He appeared to be responding to the Bush administration's new nuclear strategy announced last year when he said Russia, too, was considering developing new variants of nuclear weapons.

This was his statement to the Russian Duma. He said: I can inform you that at present the work to create new types of Russian weapons, weapons of the new generation, including those regarded by specialists as strategic weapons, is in the practical implementation stage.

He did not elaborate, nor did his advisers, though some analysts said he appeared to be referring to Russia's efforts to modernize its nuclear arsenal and to develop low-yield nuclear devices. That remark was greeted with applause.

This is a dangerous road we start down if we decide to rely more on tactical nuclear weapons and once again commence the development of tactical nuclear weapons. I think it is an unwise course. My own view of our overall defense strategy is that we have always thought it served our interests to emphasize those areas in which we have a comparative advantage.

We know today, more than perhaps ever in our history, that we have an enormous comparative advantage over any potential adversary in the world in the area of conventional weaponry. We have precision-guided weapons. We have smart weapons. We have demonstrated their use extremely effectively in the recent conflict in Iraq. Our comparative advantage does not lie in developing small, easily transportable nuclear weapons. Many other countries have the capability to do that, and not only countries but perhaps groups as well.

Once development of those weapons is pursued by us, the likelihood of proliferation increases and the likelihood of similar activities by other countries

increases. Those types of weapons can be easily fabricated. They can be easily transported. They can be easily concealed. It is certainly not in our interest.

I know several of my colleagues have said all this provision is, that everyone is getting upset about, is a provision to repeal the ban on research and development, so what could be so wrong with repealing the ban on research and development?

I do think that the reason many of us are concerned is we believe very much that if one of these weapons—if a new type or a new suite of these weapons is developed, it will ultimately be fielded. We believe that is the wrong way to go to maintain our security and to maintain the security of the world in general.

Fred Celec, who is the Deputy Assistant to the Secretary of Defense for Nuclear Matters, recently said that the administration wants the weapon; that is, the robust nuclear earth penetrator—and that is a separate amendment. Senator DORGAN from North Dakota is going to be offering an amendment relating to the robust nuclear earth penetrator sometime later this afternoon. But Mr. Celec said the administration wants the weapon and will move forward with its development and production. If a hydrogen bomb can be successfully designed to survive a crash through hard rock or concrete and still explode, it will ultimately be fielded. That is a news article from the San Jose Mercury.

So there is reason to be concerned with this provision. Congressman SPRATT, I believe, showed good judgment when he proposed this provision in 1994. The Congress showed good judgment when it adopted this provision as a follow-on to the decision by former President Bush to take these kinds of weapons out of our arsenal. I believe we would do well to keep this ban on research and development in place. I hope my colleagues will agree and support the amendment by the Senator from California and the Senator from Massachusetts.

I yield the floor.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. In terms of alternating now, I think we should have the Senator from New Mexico address the Senate on this issue.

I yield the floor.

Mr. LEVIN. I wonder if the Senator from New Mexico will yield for an inquiry.

Mr. DOMENICI. I am pleased to.

Mr. LEVIN. Can the Senator give an approximation of how long he will speak?

Mr. DOMENICI. I will be very brief. An hour and a half.

Mr. LEVIN. An hour and a half?

Mr. DOMENICI. No, sir. About 15 minutes.

Mr. WARNER. Mr. President, the Senator can take such time as he feels necessary.

Mr. DOMENICI. I understand.

Mr. WARNER. Because he brings to this debate a very important aspect of many years in the Senate dealing with this subject.

The PRESIDING OFFICER. The senior Senator from New Mexico.

Mr. DOMENICI. Mr. President, I acknowledge upfront the very astute and academically sound argument of my colleague from New Mexico, Mr. BINGAMAN. While I have been working in this field for the last 25 to 26 years in particular, and the last 10 with more emphasis, this has occurred in the last period of time. My work has come as the United States has prepared its great nuclear weapons laboratories to use new kinds of science to determine the viability and credibility of the existing warheads without underground testing.

As everyone recalls, this body passed an amendment, rather overwhelmingly, saying we should not use underground testing for our weapons. I have learned since then how little we knew about that proposition when we cast that vote. Nonetheless, it is the law of the land. It has cost the American taxpayer, in my way of looking at it, billions of dollars.

Frankly, as I look at the risk in the world, I do not think it has saved the world from nuclear weapons as people had thought. Already with that ban, there are new countries with new nuclear weapons, and they did not need underground testing. At least they did not need it as we had assumed they would need it when we stopped ourselves from doing it. Yet we have the greatest scientific community of men and women in the world, believe it or not, accumulated in three laboratories, and about 85 percent of their work goes to that one item.

How can we make sure that the weapons we have are valid without testing, all of which was done in the hope that nobody else would get bombs, get any nuclear weapons, because an underground test would proliferate the desire, if nothing else, for more nuclear weapons?

I was not on the Senate floor for the entire argument when that amendment of nonnuclear testing occurred. My great friend Mark Hatfield was a proponent. But I do know the argument was of the type that if we did not do that, we would be inviting other countries to do what is necessary to develop nuclear weapons. If we did not do it, we could dampen that.

Now, I do not suggest the arguments are analogous.

It is interesting that this enormous debate is taking place regarding an amendment that says nothing in the repeal of the previous amendment regarding low-yield weapons. ''Nothing in the repeal made by subsection (a) shall be construed as authorizing the testing, acquisition, or deployment of low-yield nuclear weapons.''

We could say we do not believe what we are saying, that it is not true, if America wants to direct its scientists—the same scientists I just spoke of, incidentally—it will be the same laboratories. They will not invent some new ones. In addition to everything you are doing, you will be given permission to think about, to hypothesize, to ponder, to make pictures of, draw diagrams of low-yield bombs and what they are all about.

Does it make sense, in the kind of world we live, to say to the greatest scientists in the world—we are spending about $6 billion a year for them to make sure the current nuclear weapons are OK, safe, and will deliver, if called upon, without underground testing, but to say to that same group, you cannot spend any time—you cannot have a department, you cannot have a division, you cannot have your smartest people or even any people in those institutions thinking about low-level nuclear bombs—not making them, not preparing to deploy them, for this statute forbids it.

Our laboratories are filled with dedicated Americans. They want to do their jobs. They want to do no more or no less than they are authorized. They do not want to be called upon by a congressional committee to respond to doing more than they had authority to do; and clearly they never want to be accused of having done less than they were supposed to.

On the other hand, does it seem possible we should be saying to these most brilliant of scientists, here on the wall is a statute and regardless of what comes to your great minds about low-level nuclear bombs, stop thinking about it. It is against the law. We do not want you thinking about it.

Maybe that is a little farfetched. But it is not farfetched to say thinking about it and writing something down about it is against the law, at least if what my colleague from New Mexico says on the floor prevails.

Those scientists know so much more than us about the world and the changes occurring, and we are wondering about what Russia is going to be doing. There is apt to be 3 or 4 nuclear powers in the next 10 years and there is nothing in the world we can do about it. We can sit on the floor and talk about low yield; maybe that is what they are after. There will be nuclear devices that can be delivered long distances causing huge amounts of damage. They are going to happen. The people working on those are not going to spend one iota of concern on whether we have this provision in our law.

Some of our scientists might just come up with a great idea about a low-level bomb that could be great for America considering what they see going on in the world, converse to what the argument has been. The argument has been, we will teach the world to do what we are doing. I am suggesting our scientists will say to us, we are learning from the world what we might want to do in order to keep the peace longer and better and be able to tell our adversaries what you are thinking of doing.

I thought that was what we were all about. I thought that is what Los Alamos scientists are all about. I thought they were part of this great deterrent. I still believe they are. I believe to permit them to work in this area is part of the deterrent. It does not commit the country to build new kinds of weapons. It does not permit us to produce or test new weapons. It does not suggest we should deploy new weapons. It allows our scientists to study and perform research and development options that policymakers in the administration and even in the Congress may want to know more about.

I know this for sure when I say ''may want to know more about it.'' I say that because these smart people might come to us and tell us, believe it or not, something we do not know. Would that be preposterous to some of us sitting in the Senate? Would it be preposterous that after this prohibition is lifted in 5 years they could come to us and say, We have been studying and here is what we have found. It is something you never had in mind, we never had in mind. But think about it. All of that seems to me to come on the good side.

On the negative side, I cannot see where researching, thinking about, intellectualizing about low-level waste, is adding to the proliferation of nuclear weapons problem in the world. Remember, even if someone in the administration wanted the new weapons, they could not proceed to full-scale development, the production and deployment, unless Congress authorizes and appropriates funds required to do so. This has not been done. It should not be done without more information or debate, and it will not be done.

Finally, there are very important intelligence, nonproliferation reasons why our scientists should be able to develop their thinking in these important areas of research. If anyone in this world is thinking about low-level weapons, we must know as much as we can about them. I just said that in a different way a moment ago.

NNSA, the new semiautonomous agency that controls our weapons development, should challenge their scientists and engineers to think, to explore, to discover, to innovate. By removing the prohibition on research and development on low-level yield weapons, our experts will expand their own understanding and capabilities without artificial restrictions.

I repeat, if anything comes out of this that is surprising, it will be what we will be able to do to prevent proliferation from happening somehow, somewhere in the world. In fact, I think that is more apt to happen as a result of the thinking and the development that occurs here by our scientists than the reverse. We have no idea what these great minds can be thinking, but the great minds of the other scientists in the world are thinking about them also.

As a matter of fact, we heard some statements about Russia thinking about them as if we ought to be afraid of that, because if we do not do it, they will not do it. If anyone believes that, they probably would believe almost anything. They are busy looking at whatever kind of new nuclear weapons that do not break any of the agreements with us. We will soon be greatly reducing our arsenals of heavy weapons, and at the same time other countries and their scientists will develop nuclear weapons. They will be developing low yield ones, too. They will be developing low yield ones with very different ways of using them than we ever thought. We ought to have the very best looking at how that might happen, if it might happen.

I yield the floor.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. LEVIN. Mr. President, will the Senator from Wisconsin yield just for a unanimous consent request?

Mr. FEINGOLD. I yield.

Mr. LEVIN. Mr. President, I ask unanimous consent that after Senator FEINGOLD, Senator INHOFE be recognized and then Senator BYRD be recognized after that Senator, and then Senator TALENT be recognized after Senator BYRD.

The PRESIDING OFFICER. Is there an objection? Without objection, it is so ordered.

The Senator from Wisconsin.

Mr. FEINGOLD. Mr. President, I rise in support of the amendment offered by the Senator from California and the Senator from Massachusetts. I am pleased to have cosponsored it. I commend the Senators for offering this important amendment, and I am extremely pleased to be one of a large group of Senators who have come to the floor to express their concern about this policy and to support this amendment.

I share their concern, as I know that many of our colleagues do, about the provision in the underlying bill that would repeal the 10-year ban on research and development of low-yield nuclear weapons. Lifting this ban could be the first step in the resumption of nuclear testing and the creation of new classes of nuclear weapons which I oppose.

Our men and women in uniform are facing new threats, but our defense procurement policy remains planted firmly in the cold war by calling for more nuclear weapons. We should not endorse a policy that could start or spark another nuclear arms race.

I am deeply concerned that the administration's Nuclear Posture Review represents a departure from this country's longstanding nuclear weapons policy. Lifting the ban on low-yield nuclear weapons and funding a feasibility study on the so-called robust earth penetrator and directing the Secretary of Energy to accelerate the readiness posture for the Nevada Test Site from 24 to 36 months to 18 months all point toward a disturbing destination—the resumption of an active nuclear weapons program, including underground testing by the United States.

These decisions send dangerous signals to our allies and adversaries alike. The United States has urged nonnuclear states and rogue operators not to pursue nuclear programs. But if we, as a nuclear power with enough of these weapons to destroy the world many times over, begin developing mini-nukes or other new forms of these dangerous weapons, I think we run the risk of inviting other countries and other organizations to do so as well.

I supported the Moscow Treaty earlier this year because, while it is not perfect, it does move us closer to the goal of reducing the strategic nuclear arsenals of the United States and Russia. I don't think we should undermine this worthy goal by now starting down the path toward smaller, more easily transported nuclear weapons that could fall into the wrong hands.

I recognize that the underlying bill would lift the ban on research and development of low-yield nuclear weapons without authorizing that such weapons be tested, acquired, or deployed by the United States. But I still think this is a perilous first step toward a new class of nuclear weapons. It is one we should not take. I, therefore, urge my colleagues to support the amendment offered by the Senators from Massachusetts and California.

I yield the remainder of my time and I yield the floor.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. INHOFE. Mr. President, first, let me make real clear things that somehow get lost in the discussion. I have heard it said by the last four or five speakers that doing this is moving forward with the development and production of low-yield nuclear weapons. Nothing could be further from the truth.

By repealing the ban on low-yield nuclear weapons research, our nuclear weapons experts will be able to explore weapons concepts that could help us to respond to new threats. We ought to treat research and development of low-yield nuclear weapons like research and development of any weapon. For any weapon that we have had, any weapon, conventional or otherwise, we have had to go through this period of time. That doesn't mean we are going to make one. It means we are going to be prepared if need be.

By repealing the ban as we did in the Senate bill, the administration is still required to specifically request funding at each phase of the research and development as required by the National Advanced Authorization Act of Fiscal Year 2003. The Congress has the prerogative whether to authorize and appropriate for such activities. With the many new and emerging threats in the world, we cannot afford to be unprepared.

I was listening to the Senator from Wisconsin talk about how, somehow, this starts some kind of a nuclear race.

Really that is just not true. People argue that research on nuclear weapons would encourage nuclear proliferation. Since 1993, when the ban went into effect, the ban we are seeking to repeal right now, several nations have sought and in some cases achieved nuclear capabilities—in other words, countries such as India and Pakistan and North Korea. There is no correlation between U.S. weapons research and proliferation. More significant is the U.S. track record of nuclear reductions.

Our top military people and diplomatic leaders support repeal of this prohibition: ADM James Ellis, GEN John Jumper, Secretary of State Colin Powell.

In 1994, Congress prohibited any research and development which could lead to the production of a low-yield nuclear weapon. That is less than 5 kilotons. This is an arbitrary restriction and it impedes the ability of scientists and engineers who support our national defense to explore a full range of scientific and technical concepts for the nuclear weapons stockpile.

It has a chilling effect on creative thinking when scientists have to consult a lawyer before exploring concepts involving nuclear weapons. It restricts the ability of this or any administration to explore options to modify our nuclear weapons capability to prepare for changing defense needs in the 21st century.

These needs are changing. I remember 8 years ago, sitting in the Senate Armed Services Committee hearings, when there was a proposal that said we would no longer need ground troops in the next 10 years. It was about 10 years ago. Yet here we come up with the problems that we had in Afghanistan. We had the great battles there, ground troop battles. We went into Iraq. That was on the ground; it wasn't in the air. Now we are looking at other options and possible risks and we don't know what they are going to be.

The point is, we have to be ready for whatever does come. It is prudent national security policy to allow the administration to consider weapons concepts that would hold at risk deeply buried and hardened targets to defeat chemical and biological agents and reduce collateral damage.

Reducing collateral damage—if we were to be able to do this research and ultimately it became necessary to have this, we would be able to penetrate deeply into the ground to knock out chemical threats, to knock out biological threats, maybe even nuclear threats, and not cause any collateral damage. In the absence of that, you would have to use something else, a MOAB, for example, that would clear an area of maybe 5 or 10 square miles, killing everything within that range. So it would be an effort to reduce collateral damage.

Repealing this prohibition would not authorize the administration to build any nuclear weapon. I think it is very important people understand that.

What happens if all of a sudden there is a changing threat out there and we discover we need to be able to develop a low-yield nuclear weapon, if every Senator in here, every Democrat and every Republican, agreed that we had to have this? If we don't do research and development now, it could be years before we would be able to have it. If we go ahead, then we would be able to have it in a very short period of time.

I chaired the Senate Armed Services Subcommittee on Readiness for quite a number of years. I see my colleague from Hawaii over there, who is my ranking member. Of course he chaired it also. We know that the threats change all the time. The whole idea of readiness is to be ready for anything that should come up. Unfortunately, we cannot predict what the future holds.

We predicted it wrong 10 years ago. We predicted it wrong 5 years ago. We could predict it wrong this time. Just by doing research and development, we are not coming out with any kind of production on any kind of low-yield nuclear weapon. It is just a matter of being prepared in the event that everyone should decide that we have to have this capability.

I hope we vote down this effort to stop our ability to be able to do research and development in this area. Again, on every weapons system we have, we have had to go through an extensive and long period of time on research and development. It doesn't cost us any more to be ready in the event that capability should be required.

I thank you very much.

The PRESIDING OFFICER (Mrs. DOLE). The Senator from North Dakota is recognized.

Mr. DORGAN. Madam President, I ask unanimous consent to modify the previous agreement: That I be recognized next and the next Senator to be recognized following the movement back and forth on our side would be Senator AKAKA.

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

Mr. DORGAN. Madam President, I am listening to this debate, and I guess I just do not understand. We are hearing that it is important for our country to begin studying or developing, researching a new class of nuclear weapons, a new design of nuclear weapons, low yield—which is an oxymoron—low-yield nuclear weapons, bunker buster nuclear weapons.

I was thinking of something Martin Luther King said, which was: ''The means by which we live have outdistanced the ends for which we live. We have learned the secret of the atom but forgotten the sermon on the Mount.''

I don't understand what we are thinking about here. At a moment in history when we need to be the world leader in stopping the spread of nuclear weapons and reducing the threat of nuclear weapons, we are debating whether we ought to begin producing more nuclear weapons. Is there someone here who can't sleep because we don't have enough nuclear weapons? There is roughly 30,000 nuclear weapons on this Earth.

About 2 years ago, or 1½ years ago, our intelligence community thought one was missing. They thought that one from the Russian stockpile had been stolen. At least there was the rumor. They had an epileptic seizure about one nuclear weapon missing. Would it be detonated in an American city? They were concerned about one nuclear weapon.

There are 30,000, roughly, nuclear weapons, and we have people here worried about not having enough of the right kind. I just do not understand.

We just heard there is a change in threat. There may be a change in threat. Everybody knows the threat isn't being addressed in this bill. There is $9 billion in this bill to build a big, old antiballistic missile system; a national missile defense system. Take a look at the threat meter and find out what the least likely threat against this country is. It isn't that a terrorist or terrorist group will have access to an ICBM with a nuclear tip on it and fire it against the United States. A nuclear weapon, if sent here by a terrorist, isn't coming in here at 14,000 miles per hour on an intercontinental ballistic missile. It will be pulled up at 2 miles an hour at a dock at an American city in a container loaded by terrorists. Yet we are going to spend $9 billion on national missile defense.

I understand we have been doing that for the last several years. It doesn't make any sense to me. We are unprepared in other areas. At a time when we ought to be leading, to say to the rest of the world, don't build more nuclear weapons, don't use nuclear weapons, this country is sending a signal to the rest of the world in dozens of ways saying, you know, we will not renounce first use. We believe in the opportunity for preemptive attack, if we are challenged; we ought to study new nuclear weapons, a bunker buster design of nuclear weapons.

Again, this issue of low yield is nuts. I don't want to hear people talk about low yield. The people who talk about low-yield nuclear weapons are the same people who talk about the ability to use nuclear weapons. If anybody here thinks there is an ability in this world to use nuclear weapons in a war, then I don't know what planet you are living on. Once the movement of nuclear weapons goes back and forth between adversaries, I am sorry, your children will have no future. If 30,000 isn't enough, I am just wondering what hours of the night you are awake worried about your lack of protection.

I do not understand this at all. If ever this world needed this country in all of its majesty and in all of its wonders of leadership capability, if ever this world needed this country, it is now.

My colleagues are no doubt tired of this. I will point out again what I have

in this desk. I have some pieces of metal that were given to me that came from an ICBM. This came from an ICBM which used to have a warhead on it aimed at the United States. It could have destroyed an American city. We didn't shoot it down. It was never launched. That is how I have this.

We, with Nunn-Lugar funds, destroyed this missile in its silo. Where this missile used to exist, there is now planted sunflowers. Yes. This missile is gone. We sawed wings off bombers. We have destroyed submarines, and we paid for it. We didn't shoot them down. We paid for their destruction under arms control agreements and arms reduction agreements.

Our job at the moment is to continue the Nunn-Lugar program and continue these efforts to say to other countries that all of us must back away from this madness.

This is not modernization; it is madness. How many more nuclear weapons do we want? What kind of an additional signal do we want to give to countries around the world that it is OK to build nuclear weapons and it is OK to be doing research on classes of new nuclear weapons?

I say to those of you and to the administration that I guess they are getting the message. We hear it from Russia. They got the message. We are going to do some research on these so-called low-yield nuclear weapons. They can do some research on low-yield nuclear weapons. I guess they are getting the message. I suppose the Chinese got the message. All of them will get the message. Then our children will have a much less bright future because we will have not seized the opportunity and the responsibility as the world's leading power, economic and military, to steer us in a direction away from nuclear confrontation, away from building more nuclear weapons, and away from first use. We will not have done that. We will have instead flexed our muscles and said that we have unlimited money. Let us just go ahead and spend billions here and billions there.

I found it interesting. Last week I couldn't get one-fourth of $1 billion through this Senate that had been approved previously to try to feed hungry kids in Africa who are on the abyss of starvation. Forty-thousand people a day die because they do not have enough to eat, mostly kids. That is the equivalent of one Hiroshima bomb every 3 days.

We have plenty of money for all the things we are talking about today. We didn't have enough money to deal with the issue of hunger and famine in Africa a couple of days ago. But aside from the issue of priorities, which, in my judgment, is a twisted set of priorities, losing the opportunity and failing to seize the moment in which American leadership is demanding to move this world away from a belief that we need more nuclear weapons and that it is OK for countries to potentially use nuclear weapons is a miserable failure on the part of a country and a legacy, in my judgment, in a very negative way.

My hope is that before we go too far we will have the votes on this amendment and subsequent amendments. I intend to offer another amendment in a group of four. I hope we will have the votes to begin to turn this country in a constructive direction in this debate on the authorization bill.

This is about judgment. There is an unending appetite in this Chamber right now to do all of these things. But, in my opinion, this is about using good judgment as a nation to assume our responsibility in the world.

I regret very much that if the work of the committee prevails on the floor of the Senate today, then we will this evening find a world that is much less secure than it was before this committee began its work.

We have the capability to do awfully good things. But it requires our leadership. It requires our character and our judgment to decide there is a right direction and a wrong direction. The wrong direction, in my judgment, is for our country to say to the rest of the world, let us all build some more nuclear weapons. Let us worry about some threat or some rogue nation digging tunnels so deeply we can't catch them or explode them. So let us deal with new nuclear weapons.

I can't think of a more destructive course or a more destructive set of policies than those coming to us in this bill dealing with these issues. Some say it is irrelevant; it doesn't matter; this is only research. Are you kidding? That is what the other countries will say as well as they begin to ramp up their programs. It is only ''research'' on their next group of designer nuclear weapons. It is only research. But we will have taken the cork out of the bottle, and it won't be easily put back in.

I hope my colleagues will support the amendment. This is a very important vote, perhaps one of the most important votes on the Defense authorization bill.

I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. It is my understanding that the debate has been going back and forth. Senator ALLARD was in the queue but has graciously allowed me to get in front of him. What I would like to do is propound a very limited request. I ask unanimous consent that after I speak, Senator AKAKA be recognized to speak, and after he has completed, Senator ALLARD be recognized to speak.

Mr. WARNER. Madam President, I am in agreement with that. I want to consult my distinguished ranking member. The Senator from Michigan and I had worked out a schedule.

Mr. LEVIN. I wonder if the Senator from Arizona would modify the request to add Senator REED immediately after Senator ALLARD on his side.

Mr. KYL. Senator AKAKA would be after me, and then Senator ALLARD, then Senator REED.

Mr. LEVIN. Senator REED of Rhode Island.

Mr. WARNER. In that order.

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

Mr. KYL. Madam President, I appreciate the cooperation of my colleagues. This is a very serious debate. We need to be careful of the language we use and the arguments we make. I would like to respond to a couple arguments just made. I think we can clearly be sending some very bad signals to some very bad countries of the world in the Senate. When a Member of the Senate speaks about low-yield nuclear weapons as ''nuts,'' we make a grave mistake.

The majority of the Armed Services Committee of the Senate, the Secretary of Defense, the Chairman of the Joint Chiefs of Staff, the Secretary of Energy—these are very serious people who have a very serious reason for asking that this language be retained in the bill.

The reason low-yield weapons research is being sought is because the world has changed since the time we developed these huge megaton nuclear weapons that can kill millions in just a few seconds. Instead of wanting to use those kinds of weapons, the United States would prefer, if it had to, to use a much smaller weapon, a low-yield weapon.

There are several potential uses for this kind of weapon. To digress for a moment, we used to have a lot of these. They are called tactical nuclear weapons. Russia still does. The United States got rid of ours. Russia says it is going to be getting rid of its tactical nuclear weapons as well. Tactical nuclear weapons are not new. Low-yield nuclear weapons are not new. But the United States, in order to have a credible deterrent against a strategic nuclear attack, developed these very robust weapons that can take out cities, that can take out huge military targets with one weapon. One of the reasons was because we were not very accurate 20 years ago when the weapons were designed. We could get pretty close but nothing like the precision with which our weapons can be targeted today.

In the most recent conflict in Iraq, we literally saw missiles flying through windows of buildings in downtown Baghdad. The kind of precision we have today enables us to use much smaller yield weapons to achieve the same results that large conventional weapons are being used for today. But they can do so much more effectively. For example, we know that some so-called conventional bunker busters were used in an attempt to decapitate the Iraqi leadership in the early stages of the war. We were impressed with the fact that these missiles could actually go through a hole in the floor board by one missile and then three or four more in the same hole and destroy a lot below. But it did not do the job. As good as they were, apparently the leadership of the Iraqi regime lived on. So

we cannot say we have the capability, even in dealing with that regime, to destroy those kinds of targets.

What we know from intelligence is that there are a lot of other nations in the world that know one thing: If you get deep enough underground with enough concrete and steel above your head, they can't get you. That is exactly the kind of facility being built by our potential enemies today. There is only one way to get those, and that is through a precise low-yield nuclear weapon. The design of those weapons is certainly in the mind of our scientists. And if they are allowed to think about this, to do some research on it, we think at least we would be prepared, should the Pentagon decide that it wants to ask the Congress for the authority to go forward with the program, to be able to do so.

The point has been made adequately, this does not authorize anything. This merely removes a self-imposed prohibition on the United States. No other country in the world is suffering under this same prohibition. We legislated this restriction on ourselves. Russia does not have it. China does not have it. Great Britain does not have it. France does not have it, nor do the countries of the world that are proliferating or building weapons of mass destruction, including nuclear weapons in violation of the Nuclear Non-Proliferation Treaty.

There may be a reason for us to need these kinds of weapons in the future. It has also been noted that they could be very useful in the destruction of chemical and biological agents or weapons which are not easily destroyed by conventional weaponry and in any event where the fallout can be more dangerous than the weapon just sitting there on the ground. If you put a large conventional explosion on top of chemical or biological agents, you could end up dispersing those agents in a very dangerous way over a far greater area than if the enemy actually tried to use the weapon. But with a precise low-yield nuclear weapon, you might well be able to destroy that biological or chemical agent or weapon. In this new world there may well be reasons to have these weapons. For somebody to suggest it is nuts is simply an uneducated approach to this very serious issue.

I made the point that this is not an authorization. All we are doing is removing a self-imposed restriction on thinking about this, on doing research. If the researchers conclude it could be done and the Pentagon decided it should be done, Congress would still have to authorize such a program and fund it through appropriations. So I don't think we should be against thinking in the Senate, against researching something that we may well wish we had down the road.

This could save lives. Think about the application of such a weapon as we have today on one of these targets. We would risk killing millions, and there is no point in doing that. It would be immoral to do that.

A second point made earlier was to demonstrate the ICBMs that have been destroyed and to suggest that if we now move forward with rebuilding some nuclear weapons, we would be signalling to other nations that it is OK to build these nuclear weapons. Let's parse that a little more carefully.

The reason we are destroying nuclear weapons is because we want to get rid of some of these very large nuclear weapons that we don't think we need anymore because circumstances have changed. Frankly, I don't think it is a very credible deterrent for us to say—I will say this regarding Iraq because that is over and so I think one can safely talk about the situation there. I don't want to talk about potential future situations—to Saddam Hussein, if you use chemical weapons against our troops, since we have foresworn chemical weapons and we have foresworn the use of biological weapons—we don't even have them; our only big ticket type here is a nuclear weapon—we won't take any option off the table. We just might use a nuclear weapon if you use biological or chemical weapons against us.

We threatened that once before, and some say it worked to deter his use of those chemical weapons. Would it work today? Does anybody really believe the United States would kill maybe 3 or 4 or 5 million innocent Iraqi citizens by bombing Baghdad with one of our big nuclear weapons today? Those are the kinds of weapons we have. They kill lots of people real fast. As a deterrent when the cold war was going on, we wanted to let the Soviet Union know that they better not launch against us because they would suffer just as much destruction as we would and, therefore, we could deter their actions.

Would it really deter a Saddam Hussein from using biological or chemical weapons against us? Would he really think we would use one of our great big nuclear weapons? I don't think so. So, ironically, these great big weapons are too big to use.

The deterrent may not be credible. As a result, it makes sense for us to destroy a large number of those weapons, to take them out of our inventory and keep only enough that we think would really be necessary in the event we needed to deter a nuclear-armed country, such as Russia or China today. The other legal nuclear countries, of course, are France and Britain. In addition, we have India and Pakistan, which are not part of the Nuclear Non-Proliferation Treaty.

So we say we can deter an action by a Saddam Hussein with a far smaller, less destructive kind of weapon. If he knows that we have a low-yield nuclear weapon that can bust his bunker and all of the other leadership, maybe he will think twice before he orders the use of chemical or biological weapons.

Today, the experience in Iraq shows that we could not get the leadership of Iraq. So what does this teach other potential enemies? If you burrow deep enough underground and put enough steel and concrete over your head, like Saddam Hussein apparently did, you are not going to be able to get him, or get us, and therefore we have nothing to fear. That is another reason we need these weapons. We are willing to get rid of our great big weapons; that is the signal we are sending. We also will continue to have a credible deterrent with much smaller kinds of weapons.

I mentioned the Nuclear Non-Proliferation Treaty. I will make this point. The nuclear countries of the world that signed the NPT agreed we would be the nuclear powers; but in exchange for other countries that signed up, including countries such as Iran, we said we would provide them with information and assistance regarding atomic energy—the peaceful uses of nuclear energy. We have done that.

When countries have come to us and asked, we have provided that assistance because that is what the NPT calls for. We have abided by it; they have not. What makes anyone think that a self-imposed congressional limitation on the United States has deterred countries such as North Korea and Iran—or India and Pakistan for that matter—from developing weapons in contravention of the NPT?

Obviously, our action hasn't prevented them from developing these weapons. So what kind of an argument is it that this law on the books has been effective at stopping other countries? It didn't stop Saddam Hussein, Iran, or North Korea; and other countries are also trying to work on a nuclear capability.

So let's not kid ourselves. This isn't stopping proliferation. What will stop it is a strong signal from the U.S. that it will not be countenanced, because if you have signed the NPT, like Iran, you don't have any right; you signed that right away for something we gave you. We are going to have a credible deterrent to your use of such a weapon.

Finally, I am astonished at the argument that was made earlier that we should be ''setting our priorities straight,'' we should be willing to spend money on hunger in Africa rather than defending the United States of America. That was the argument made on this Senate floor. I am concerned that we are sending the wrong signals to the world—especially our potential adversaries—if that kind of a statement is left unresponded to.

The U.S. Government has an obligation above all others, and that is to protect and defend the people of the United States of America. That is our primary obligation as Members of this body. If it is necessary not to spend one nickel but simply remove a provision of the law that prevents our scientists from even thinking about this problem, and if we are saying that has a lower priority than spending money on hunger in Africa, then something is gravely wrong.

Fortunately, we are not going to do this. The Armed Services Committee understood the need to remove the restriction on thinking. The Secretary of Defense, the Chairman of the Joint Chiefs, and Secretary of Energy have said to remove that restriction so our people can think about this problem. I think that is the priority here. That is why we should support the action of the Armed Services Committee. It should not be illegal to think of ways of defending America.

I will conclude with this statement. Everybody would like to see a day when there are no nuclear weapons. But we cannot disinvent the nuclear weapon. Either we have confidence in the United States of America as a power that can help do something to stop the wrong people from acquiring these weapons and using them, or we do not. If we have so little confidence in America that we don't trust ourselves with these weapons to be used as a way of stopping the likes of Saddam Hussein, then we have lost our way indeed.

Americans must have the confidence that we will do the right thing as a government. Members of the U.S. Congress make this kind of policy. Do we have so little confidence in ourselves that we are not willing to let our scientists think about this problem?

We hold the decision in our hands to authorize a program, to appropriate the money for a program. So it is not as if we are giving anything up by allowing our scientists to think about this.

Yet that is what the opponents of the committee bill would have us do. I find it incredible that we would, like the Luddites of old, say we don't want to know any more about this because nuclear weapons are really icky things. Well, they are not nice, but somebody needs to have the ability to deter others from gaining their capability or, God forbid, invoking the use of these weapons.

Only a country that is willing to think about what kinds of deterrents may be required in the future is going to be able to provide that degree of stability in the world. That burden rests upon the United States of America. I gladly accept it as a representative of the Government that I think we can trust.

That is what it boils down to today. Do we trust the President, the Secretary of Defense, the Chairman of the Joint Chiefs of Staff, and a majority of the Committee on Armed Services or don't we? I think we can put our trust in them. I do, and I urge my colleagues to support the committee action and defeat the amendment against the committee action.

The PRESIDING OFFICER. The Senator from Hawaii is recognized.

Mr. AKAKA. Madam President, I rise today to support the amendment offered by Senators FEINSTEIN and KENNEDY to the fiscal year 2004 Defense authorization bill to strike section 3131 and to keep the prohibition on the research and development of low-yield nuclear weapons.

Let me explain to you and my colleagues why I am supporting this amendment. In 1993, Congress placed a prohibition on research and development that could lead to the production of new low-yield nuclear weapons that would have an explosive yield of less than 5 kilotons. I am informed that this administration has sought to eliminate this prohibition.

The administration's Nuclear Posture Review calls for exploring new nuclear weapons ''concepts'' to be able to attack hard and buried targets in so-called rogue nations with reduced collateral damage.

According to the administration, the restriction on research on low-yield nuclear weapons impedes this effort. But the existing law gives nuclear weapons laboratories sufficient room to explore new nuclear weapons concepts. Adequate research is permitted but not production.

However, the fiscal year 2004 authorization bill follows the administration's request and repeals the 1993 prohibition. Yet the development and production of low-yield nuclear weapons would create many problems. As I noted in my statement to the Senate on April 11, 2003, although the administration is looking to reduce collateral damage from a nuclear explosion, low-yield weapons could still cause widespread devastation if used, threatening civilian populations and U.S. forces.

We already have several conventional weapons that can be used to destroy or incapacitate buried bunkers. Rather than pursuing new nuclear weapons, we could devote additional resources to improving the ability of our conventional forces to render deeply buried targets inoperable.

Developing the new low-yield nuclear weapons could also encourage a new arms race in tactical nuclear weapons and setback U.S. nonproliferation efforts. There is already some evidence of a new action-reaction arms race cycle starting.

Just last Friday, Russian President Vladimir Putin told the Russian Duma in his annual address that Russia is working on a new generation of nuclear weapons. Russian military experts were quoted as saying that President Putin was probably referring to new low-yield nuclear weapons like those proposed by the administration.

Last month, Secretary of State Colin Powell sent a message to the Nuclear Non-Proliferation Treaty Preparatory Committee conference in Geneva in which he said the United States ''remains firmly committed to its obligations under the NPT.'' Assistant Secretary of State John Wolf outlines the steps the United States had taken to fulfill its article VI obligations to the conference. But he expressed very strong worries that the NPT regime was being weakened by nonnuclear countries covertly pursuing nuclear weapons programs.

The majority of the signatories to the NPT treaty agreed to its indefinite extension in 1995 on the assumption the nuclear weapons powers would continue to reduce their nuclear arsenals and ratify a Comprehensive Test Ban Treaty. The administration's pursuit of new nuclear weapons makes it harder to convince the world to crack down on possible NPT violators.

I urge my colleagues to vote for this amendment. We should act to stop the further proliferation of nuclear weapons and prevent the start of a new mini-nuke arms race.

I yield back the remainder of my time.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. WARNER. Madam President, we have had excellent cooperation on both sides of the aisle in this very important debate. I would like to propound a unanimous consent request on which my distinguished colleague from Michigan, the leader, Senator REID, and I have worked. This is on the pending Feinstein-Kennedy amendment.

I ask unanimous consent that prior to a vote in relation to the pending Feinstein-Kennedy amendment No. 715, the following Members be recognized to address the Senate: Senator REED, 20 minutes; Senator BIDEN, 20 minutes; Senator KENNEDY, 5 minutes; Senator FEINSTEIN, 15 minutes; Senator LEVIN, 25 minutes; and under the control of the Senator from Virginia will be 60 minutes, which I will allocate.

Mr. REID. Madam President, if I can ask the Senator to accept this modification, that the order of the speakers on our side be Senator REED of Rhode Island, Senator BIDEN, Senator BOXER, Senator KENNEDY, Senator FEINSTEIN, and Senator LEVIN.

Mr. WARNER. With that addition, I say to my colleague, we would add more time for Senator BOXER?

Mr. REID. Senator BOXER is scheduled for 5 minutes. Senator LEVIN does not want to be the final speaker, so we will have him go before Senator FEINSTEIN. That is a total of 90 minutes.

Mr. WARNER. That is acceptable.

Let me finish the request. I ask unanimous consent that following the use or yielding back of time, the Senate proceed to a vote in relation to the amendment, with no amendment in order to the language proposed to be stricken prior to the vote.

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

Mr. WARNER. I thank the Presiding Officer.

I say to colleagues on my side of the aisle, I hope they will approach me as soon as possible to indicate such time

as they might wish to take of the hour under the control of the Senator from Virginia. The Senator from Colorado wishes to address the Senate. I yield the floor for that purpose.

Mr. ALLARD. I wish to make a few comments in regard to the Kennedy-Feinstein amendment currently before us.

Mr. WARNER. Madam President, I say to the Senator, since we discussed what he intends to do, I yield to him such time as he may require.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. ALLARD. Madam President, I think it behooves all of us to take the time and review where we are in this debate.

The current law prohibits research and development of low-yield nuclear weapons. It prevents scientists from even thinking about low-yield nuclear weapons. There is a provision in the bill before us that says we will be able to think about low-yield nuclear weapons, but it specifically prevents testing, acquisition, or deployment of low-yield nuclear weapons unless you come to the Congress and ask permission to move forward with that type of effort.

The Kennedy-Feinstein amendment we are currently considering takes it back to the current prohibition of even thinking about what it is we need to do about low-yield nuclear weapons.

During the Easter break, which was a 2-week break, I spent the first week on townhall meetings in Colorado. The second week I spent visiting our National Laboratories.

Our National Laboratories are pretty much known for their responsibility of managing the nuclear stockpile to make sure that it is safe and reliable. As I visited these laboratories, I found out they do much more than that. They give a lot of thought to what type of deterrence should we have as far as being a superpower. They do a lot of thinking about our vulnerabilities. They think about our potential threats and what might be the proper response to those threats.

So the nuclear laboratory scientists tell me that they wish at least they could study the low-nuclear weapon alternative. I agree. I think at least we ought to look at the pros and cons. We ought to try to gather the scientific data and understand which situations may be needed. Maybe we do not need low-yield nuclear weapons, but they at least need to think about it and they need to have a study.

Ambassador Linton Brooks testified before the Armed Services Committee, and he was the acting administrator of the National Nuclear Security Administration. He also testified before the Strategic Forces Subcommittee on April 8, 2003. This is what he said: Repeal of the low-yield restriction simply removes the chilling effect on scientific inquiry that could hamper our ability to maintain and exercise our intellectual capabilities and to respond to the needs that one day might be articulated by the President.

He also noted that such warhead concepts could not proceed to full-scale development, much less production and deployment, unless Congress authorizes and appropriates the funds required to do this.

As a point of reference in the ban on research and development of low-yield nuclear weapons—low yield is defined as below 5 kilotons as a comparison. So in nuclear technology, we are talking about a relatively small type of warhead.

I respect the view of the scientists I visited at our various laboratories. One thing I came away thinking is they are dedicated Americans. They are dedicated scientists. They have a lot of ingenuity, and they are supported by a tremendous workforce that is dedicated to making sure we have a safer world and that we can actually preserve freedom. They are concerned that we remain a world leader. My view is we are a world leader, but we are a world leader in reducing nuclear weapons.

Earlier the Senator from North Dakota commented about the fact that where he had silos for missiles with nuclear warheads, he now has sunflowers growing in the field. Well, right now, under the Presidential directive of President Bush, we are removing peacekeepers from the ground. We are taking out a sizable proportion of some of the cold war relics that are supposed to act as deterrents as far as a nuclear war is concerned.

While these sunflowers are growing and the President is removing more of our nuclear warheads, what is the rest of the world doing? What I have observed is that there are countries such as Iran and Iraq—no longer Iraq but at one point in time at least—Afghanistan, Pakistan, and North Korea are building more nuclear weapons. They are trying to develop that technology.

We have been a leader. The problem is nobody is following. I think these countries are more concerned not so much about what the United States is doing but about what their neighbors are doing, what it is that they are going to have to require to defend their borders. So this is beyond what we do in this country.

Even though this country remains committed and has shown leadership in reducing our nuclear weapons, we have to remember that other countries are moving ahead, regardless of what we are doing. We need to give some thought to that. We need to study that issue.

I am looking at some figures on nuclear testing which we postponed on September 23, 1992. That was the last date of underground nuclear tests by the United States. Since that date, we have had a number of nuclear tests by China, France, India, and Pakistan. I have a whole list of them.

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

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

NUCLEAR TESTING POST SEPTEMBER 23, 1992

Date	Country	Source
9/25/92	China	The Washington Times 10/24/92.
10/5/93—Banon low yield.	Do	Associated Press 10/5/93.
6/10/94	Do	The New York Times 6/11/94.
10/7/94	Do	The Washington Post 10/8/94.
5/15/95	Do	The Washington Post 5/16/95.
8/17/95	Do	The Washington Post 8/18/95.
9/5/95	France	Reuters 12/27/95.
10/2/95	Do	Do.
10/27/95	Do	Do.
11/21/95	Do	Do.
12/27/95	Do	Do.
1/27/96	France	Associated Press 1/28/96.
6/8/96	China	The Washington Post 6/9/96.
7/29/96	Do	The Washington Post 7/30/96.
5/11/98	India	The New York Times 5/12/98.
5/13/98	Do	The New York Times 5/14/98.
5/28/98	Pakistan	The Washington Post 5/29/98.
5/30/98	Do	The New York Times 5/31/98.

Note: Sept. 23, 1992 was the date of the last underground nuclear test conducted by the United States.

Mr. ALLARD. I do not see that other countries are responding to our efforts. So I think we need to think about our own vulnerabilities and our own potential threats. That is what we are trying to do in the armed services bill. We are trying to at least give our scientists an opportunity to study our nuclear weapon vulnerabilities.

Earlier on in the debate, some comment was made—I think we had a dialogue between a couple of Members who were supporting the Kennedy-Feinstein amendment. The point was made during that dialogue that this provision we have in the bill would lead to the building of new weapons. That is not true. We have a specific provision in the bill that says nothing in the provision shall be construed as authorizing the testing, acquisition, or deployment of low-yield nuclear weapons.

What it does provide for is study and thinking about our vulnerabilities, our deterrence efforts, and our potential threats.

I mentioned that Ambassador Linton Brooks testified in front of our subcommittee. I have a letter from General Jumper explaining how important it is that we at least study the low-yield nuclear weapons. I have a letter from Admiral Ellis talking about that need. We also have a letter from Secretary of State Colin Powell talking about the need of having low-yield nuclear weapons. I ask unanimous consent these three letters be printed in the RECORD.

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

DEPARTMENT OF THE AIR FORCE,
OFFICE OF THE CHIEF OF STAFF,
Washington, DC, May 8, 2003.

Hon. JOHN W. WARNER,
Chairman, Committee on Armed Services, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: I seek your support for repealing Section 3136 of the Fiscal Year 1994 National Defense Authorization Act (42 USC §2121). This section of the law, commonly referred to as the Precision Low-Yield Weapon Development (PLYWD) limitation, prohibits the Department of Energy and by extension the Air Force from conducting any research and development on a new nuclear weapon design with a yield of five kilotons or less.

Research and development of new low-yield weapon concepts is required in order to evaluate all potential options to meet current and emerging combatant commanders'

requirements. Low-yield nuclear weapons currently in the stockpile simply are not suited to satisfy all these requirements.

We are pursuing full rescission of this section of the law instead of just an amendment. A partial repeal that only permits basic research and development with no prospect for production would effectively have the same impact as the current law.

A similar letter has been sent to the Ranking Minority Member of your Committee and to the Chairman and Ranking Minority Member of the House Armed Services Committee.

Sincerely,

JOHN P. JUMPER,
General, USAF,
Chief of Staff.

DEPARTMENT OF DEFENSE,
United States Strategic Command,

Hon. JOHN W. WARNER,
Chairman, Senate Armed Services Committee,
Russell Senate Office Building,
Washington, DC.

DEAR MR. CHAIRMAN: The Nuclear Posture Review put in motion a major change in the role of our nuclear forces. As we continue to strategize the most effective methods of addressing new and emerging threats to our National Security, it is an inherent responsibility of the Department of Defense to not only reevaluate the capabilities of our nuclear arsenal, but to thoroughly analyze the potential of advanced concepts that could enhance our overall deterrent posture.

US Strategic Command is interested in conducting rigorous studies of all new technologies, and examining the merits of precision, increased penetration, and reduced yields for our nuclear weapons. The nation needs to understand the technical capabilities of threats under development by potential adversaries and to thoroughly explore the range of options available to the United States to deter or defeat them. Once we complete the precise engineering analyses necessary to validate facts related to nascent advanced concepts, the results of the research will enable dispassionate, fact-based discussions on very important defense and policy issues.

The findings of the Nuclear Posture Review were strongly endorsed by the Service Chiefs. Repealing Section 3136 of Fiscal Year 1994 NDAA (42 USC, 2121) will allow US Strategic Command the ability to evaluate the full range of advanced concepts through research and development activities.

Your support in repealing the prohibition on low-yield research and development for nuclear weapons is greatly appreciated. A similar letter has been sent to the Ranking Member of your committee.

Sincerely,

J.O. ELLIS,
Admiral, U.S. Navy,
Commander.

THE SECRETARY OF STATE,
Washington, May 5, 2003.

Hon. JOHN WARNER,
Chairman, Committee on Armed Services,
U.S. Senate.

DEAR MR. CHAIRMAN: I am writing to express support for the President's FY2004 budget request to fund the feasibility and cost study for the Robust Nuclear Earth Penetrator (RNEP), and to repeal the FY1994 legislation that prohibits the United States from conducting research and development on low yield nuclear weapons. I do not believe that these legislative steps will complicate our ongoing efforts with North Korea. Inasmuch as work on the RNEP was authorized and funded in last year's National Defense Authorization Act, I believe that North Korea already has factored the RNEP into its calculations and will not vary those calculations depending on how Congress acts on this element of the FY2004 budget request.

Thank you for your important work on these issues and please do not hesitate to ask if I can be of further assistance in the future.

Sincerely,

COLIN L. POWELL.

Mr. ALLARD. Many rogue nations have built and are continuing to build hard and deeply buried facilities to protect their most valuable assets such as their leadership, communications equipment, and facilities for the manufacture of weapons of mass destruction. We know that conventional weapons cannot hold all of these targets at risk. A recent report by the Congressional Research Service cited a DIA estimate of some 1,400 known or suspected strategic underground facilities world wide. It further states that the only way to destroy them is with a strong shock wave that travels through the ground.

The question that the Congress and the administration must now grapple with is how to ensure the continued credibility of the Nation's nuclear deterrent into the 21st century. We must recognize that today's stockpile was designed and manufactured to deter the threat by the former Soviet Union. As we all know, that threat no longer exists. Today, we are faced with a multi-dimensional challenge that requires a different set of tools.

By repealing the ban on research and development of low-yield nuclear weapons, this does not mean the United States is about to resume nuclear weapons production. In fact, the United States has not manufactured a new nuclear weapon for more than a decade. The advanced concepts initiative merely allows the labs to explore the technical boundaries of providing solutions to new and emerging national security challenges. Advanced concepts work will allow the labs to train the next generation of scientists and engineers that the Nation will need to ensure a safe, secure and reliable nuclear deterrent.

The fear of the erosion of the firewall between the use of nuclear and conventional weapons use is another unfounded issue. During the 1950s, 1960s, 1970s, and 1980s, when U.S. tactical nuclear weapons were deployed throughout the world and warfighting plans were in place, no U.S. nuclear weapons were ever used. We still maintain the policy that only the President can authorize the use of nuclear weapons and there are no plans to change that very important policy, nor is there any desire on the part of the Department of Defense to develop battlefield nuclear weapons to accomplish what our conventional weapons can already do.

Now I will review the bill that is before us.

It states specifically in the legislation that nothing in the repeal made by section A shall be construed as authorizing the testing, acquisition, or deployment of a low-yield nuclear weapon.

We are just talking about studying, thinking about low-yield nuclear weapons.

The key is if the U.S. President is faced with a situation so grave that the use of nuclear weapons is considered, we must have a full sweep of options. Options in our current stockpile are very limited and would result in a significant level of collateral damage if the nuclear weapon is required to resolve a crisis in terms of the best interests of the United States.

These are challenging times, but they are crucial times, important times, and it is important we make the right decision because the world is changing. We need to know that. We need to know what the parameters are as we move forward in determining what is best to protect America. To have a provision in law that says you cannot study or think about all the options when you are looking at your vulnerabilities and where you need to go to protect America is foolhardy.

I hope the Senate today will defeat the Kennedy-Feinstein amendment and at least allow for study and our scientists to think about various alternatives, including a low-yield nuclear weapon. I am here to ask my colleagues in the Senate to join me in voting no on the Kennedy-Feinstein amendment.

The PRESIDING OFFICER. Under the previous order, the Senator from Rhode Island is recognized.

Mr. REED. Madam President, I rise in support of the Kennedy-Feinstein amendment. First, we should explain the terminology better because there is a suggestion implicit in many of the comments today that a low-yield nuclear device is something akin to a big conventional weapon.

Nuclear weapons are sui generis, the most horrific weapon that man has ever developed. Under this bill we remove a ban on the research and development, and therefore testing and deployment of so-called low-yield weapons, 5 kilotons or less.

Let me put that in perspective. The weapon dropped on Hiroshima was 14 kilotons. The weapon dropped on Nagasaki was 21 kilotons. A 5-kiloton weapon, a 1-kiloton weapon, is a significant weapon causing significant damage.

When we talk about low-yield nuclear weapons, it is almost like talking about a small apocalypse because nuclear weapons have apocalyptic qualities in their destruction and in their fear.

As a result, for more than 50 years we have attempted to put them beyond use. This language in this bill lowers that threshold dramatically. It says we will begin after a 10-year prohibition not just research, but this bill takes away the prohibition on developing, engineering, testing, and deploying weapons. Low-yield weapons. But again, those low-yield weapons have fantastic power.

I heard some of my colleagues talk about the fact if we had such weapons

like this we surely would have gotten Saddam Hussein. Dropping a weapon, even a ''low-yield nuclear weapon,'' in an urban area will create incredible collateral damage. Not as much, of course, as a 400-kiloton weapon but the damage is huge. In fact, Sidney Drell, a physicist and arms control advocate, calculated that a 1-kiloton weapon penetrating at 40 feet, a penetrating type weapon, would create a crater larger than the impact area at the World Trade Center and put about 1 million cubic feet of radioactive material in the air. If we had dropped such a weapon on Baghdad, we would not be in Baghdad today. Our troops would be ringing the city waiting for the radiation to clear and trying to minister to the civilians.

The notion we need these weapons for military purposes is unsubstantiated. There is no military requirement for a so-called low-yield nuclear weapon.

In testimony before the Armed Services Committee on April 8, 2003, Ambassador Brooks, the head of NNSA, testified after a question from Bill Nelson:

Well, is there a requirement in your opinion for a new low yield?

Ambassador BROOKS: No.

Senator BILL NELSON. Is there a requirement for such a weapon under consideration or being developed?

Ambassador BROOKS: There is no requirement being developed. To the best of my knowledge there is no requirement under consideration. There is no military need for this weapon.

That is the testimony of the administration.

I am sure there are many people who would say yes, it is nice to study. There are lots of things that are nice to study. But without a military requirement for such a weapon, why are we abandoning a significant prohibition that has aided, I believe, our efforts in trying to tame or at least contain the proliferation of nuclear weapons?

It seems to me counterintuitive that one could argue, as I think some of my colleagues do, the way to stop the proliferation of nuclear weapons is to build more nuclear weapons. I don't think that makes sense.

There is a suggestion also throughout the discussion this afternoon that this is just about research, nothing else. I was intrigued by this notion and I asked Ambassador Brooks about it at a hearing. His initial justification for the language requested by the administration was it would, in his words, ''remove the chilling effect on scientific inquiry that could hamper our ability to maintain and exercise our intellectual capabilities to respond to needs that one day might be articulated by the President.''

I asked a very obvious question. Why didn't the administration simply send up a modification to section 3136, the ban, simply to carve out language that will allow research but still would maintain the prohibition against engineering, development, testing, and deployment? I said:

For example, the language could simply say: It shall be the policy of the United States not to produce a low-yield nuclear weapon, including precision low-yield nuclear weapon.

Ambassador Brooks replied to my query:

It is accurate that that would eliminate one of the concerns I have with the language, though the language now does have, we fear, a potentially chilling effect on R&D and, as you described a possible modification, it might not. So speaking narrowly from the prospect of trying to get a robust advanced concept program working, language like that might be entirely suitable.

But that is not what this legislation includes. Not a limited exception to research, but a categorical elimination of the ban on research, engineering, development, testing, deployment of so-called low-yield nuclear weapons.

It is pretty clear here we are really not talking about just research. In fact, I hope this amendment of Senator KENNEDY and Senator FEINSTEIN passes. I support it. If it fails, I am prepared to offer language that will, in fact, limit it just to research.

Now, we also heard before the committee that one of the reasons we need this research project is so scientists can continue to work on it, maintain their skills. It turns out if that is the case, there are plenty of opportunities with existing weapons in the inventory to go ahead and hone those skills.

Even if such opportunities were not readily available, to give up a significant and recognized prohibition on at least one class of nuclear weapons simply to satisfy technical training would at least suggest to me that other ways should be found to train our scientists, and other ways, I think, could be found to train the scientists.

There is also a perception, I think inherent in the discussions here—and I have alluded to it in my initial comments—that the effect of one of these so-called low-yield weapons is that it will produce less collateral damage. That is true, but less than what? Less than the bomb at Hiroshima which, to my recollection, took over 100,000 lives. Are we willing to engage or use or tactically employ weapons that only take, in one fell swoop, 10,000, 20,000, 30,000 lives and claim they are low yield and therefore innocuous? There is nothing innocuous about the weapons we are talking about.

I believe very strongly that it is incumbent upon this Senate to maintain the ban. I think it is wise policy. I think it is a policy that has given us advantages as we have urged other nations to refrain from the development of nuclear weapons.

There are some discussions about whether arms control has succeeded or failed. I think many times we point to those cases in which countries acquire nuclear weapons, but we fail to recognize the many instances where countries have given up their nuclear weapons—such as several countries in the former Soviet Union like the Ukraine, Belarus and Kazakstan. Because of the spirit of the nonproliferation treaty and because of the efforts of the United States and other countries urging that they become compliant with the nonproliferation treaty, these countries voluntarily gave up nuclear weapons. I do not know that today, if they were watching what we are doing here, they would be so eager to give up their nuclear weapons.

So we lose a great deal more than simply this language in the bill. I think we lose a diplomatic advantage, in terms of the goal which I hope we are still pursuing, which is the elimination, I hope, or certainly the containment, of nuclear weapons.

I urge all my colleagues to think very clearly and to recall several, for me, salient points. These are weapons of horrendous effect. Don't think low-yield, think small apocalypse. These are weapons that have no military requirement today.

What we do here will be emulated by other countries. That is the nature of world leadership. We have a chance to preserve at least this aspect of arms control, which will give us the opportunity, I hope, to argue for even more, and more effective means of nonproliferation.

I urge my colleagues to support the Feinstein-Kennedy amendment.

I yield my time to the Senator from Michigan.

The PRESIDING OFFICER (Mr. ALEXANDER). Who yields time?

The Senator from Virginia.

Mr. WARNER. Mr. President, we are now operating under a time agreement. We will have our distinguished colleague from Nevada here momentarily. For the moment, let's put in a quorum call and this side will bear the time on the quorum call because I see my two colleagues are engaged in a colloquy. So I observe the absence of a quorum and ask that it be charged to this side.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. WARNER. I yield to the Senator from Nevada such time as he may require.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. ENSIGN. Mr. President, the 1994 National Defense Authorization Act stipulated that:

It shall be the policy of the United States not to conduct research and development which could lead to the production by the United States of a new low-yield nuclear weapon, including a precision low-yield warhead. The Secretary of Energy may not conduct, or provide for the conduct of, research and development which could lead to the production by the United States of a low-yield nuclear weapon.

This legislation has been effective in preventing our nuclear weapon scientists from conducting any research into these low-yield nuclear weapons.

I believe that repeal of the low-yield research and development prohibition is in the national interest. The National Security Strategy outlined in the 2001 Nuclear Posture Review included the long-term goal to maintain a strong nuclear deterrent with a smaller nuclear arsenal by utilizing missile defense and conventional strike capabilities. To accomplish this without putting U.S. safety or security at risk requires that the Department of Defense and the National Nuclear Security Administration be allowed to adapt and/or rebuild the existing nuclear stockpile to meet current and emerging threats.

The United States has deployed low-yield nuclear weapons throughout the history of the stockpile and has them today. These weapons have enhanced nuclear deterrence by providing the President with credible options for attacking targets of national importance. The existence of low-yield weapons over the last 50 years has not blurred the nuclear threshold and it is unlikely that future conceptual studies will either. Maintaining a strong research and development capability will, more likely, assure our allies and dissuade and deter our adversaries.

The Department of Defense has important and emerging missions that low-yield weapons can uniquely address. For example, low-yield weapons have the potential to significantly reduce collateral effects and yet still provide the high temperatures needed to destroy chemical and biological agents stored in bunkers. The 1994 legislation has been a significant barrier to the advanced development program needed to study this capability and other innovative technologies.

Maintaining a viable nuclear weapons enterprise is vital to both the National Nuclear Security Administration and the Department of Defense. The low-yield research and development prohibition has had a chilling effect on the ability of National Nuclear Security Administration scientists to respond to Department of Defense requirements and in fulfilling the goal of developing the responsive infrastructure needed to respond decisively to changes in the international security environment or to stockpile surprises.

The low-yield research and development prohibition has been called ''a pillar of arms control'' by its supporters and its repeal a possible cause of increased global nuclear proliferation. However, nuclear proliferation occurred steadily throughout the 1990s. India, Pakistan, North Korea and others have pursued active nuclear weapon development programs despite the United States self-imposed refrain from low-yield studies.

Repeal will not commit the United States to producing new or modified warheads. Congressional approval is required prior to any full-scale development.

The Feinstein-Kennedy amendment would strike the repeal of the prohibition on research and development of low-yield nuclear weapons in the defense authorization bill.

It should not be illegal to think of, or research, ways to defend America. I urge my colleagues to vote against the Feinstein-Kennedy amendment.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. Mr. President, how much time do I have available under the unanimous consent agreement?

The PRESIDING OFFICER. Twenty minutes.

Mr. BIDEN. I thank the Chair.

Before I begin speaking in support of the Kennedy amendment, I would like to make just one generic point. I find it fascinating that the United States of America, of all countries in the world, feels the need to increase its nuclear arsenal at this moment—low-yield, high-yield, no-yield, any yield.

It is fascinating that, at this moment in the world's history, in our relative strength and power, we are the ones who think we need another nuclear weapon in our arsenal. But that is just, as a friend of mine named Arlen Mekler used to say, a random thought.

Let me get to the heart of this. I obviously support the Feinstein-Kennedy amendment which would keep the 1993 Spratt-Furse amendment in place. That amendment, as we all know, bans all work on low-yield nuclear weapons, those with a yield below 5 kilotons. We had a lot of reasons to do that. It is sometimes useful to remember why we did these things in the first place. I might add we enacted that amendment at a time when the Russians had a whole heck of a lot more weapons than exist now; at a time when things were actually a little more dangerous, when our vulnerability to nuclear attack was greater than it is today.

But the question now is, Why should we oppose the repeal of that ban? After all, section 3131 states:

> Nothing in the repeal . . . shall be construed as authorizing, testing, acquisition, or development of a low-yield nuclear weapon.

So why stop our nuclear weapons labs from just thinking about these low-yield weapons?

One answer is that the current law doesn't restrict research and early development on these low-yield weapons. It only prohibits later stages of development and engineering that are geared toward the production of low-yield nuclear weapons.

Obviously, what we would do by lifting this ban is to be in the position of being able to move toward production of those weapons, a notion that will not be lost on the rest of the world.

The other answer is that low-yield nuclear weapons are not like regular ones. Regular nuclear weapons are designed to deter adversaries. The massive destruction and civilian casualties that they can cause make nuclear weapons unlike even other weapons of mass destruction. Low-yield nuclear weapons are different. They bridge the gap between conventional weapons and the city-busting weapons of the cold war, and they offer the lure of a better way to destroy point targets. Supporters of low-yield weapons argue they could deter an adversary, and that is true. All nuclear weapons have a deterrent function. But the deterrent benefits that low-yield weapons provide are far outweighed by both the risk that they will actually be used and the dangerous signal they send to other countries, whether intentional or not, that we intend to fight a nuclear war.

Low-yield weapons also blur the distinction between nuclear and conventional war, and they begin to make nuclear war more ''thinkable,'' as Herman Kahn might have said. Herman Kahn's book was titled ''Thinking About the Unthinkable.'' He understood that nuclear war was unthinkable, even as he demanded that we think about how to fight one, if we had to.

Looking at the foreign defense policies of the current administration, I fear they fail to understand that very vital point. They want to make nuclear war ''thinkable.'' Section 3131 of this bill could make it ''thinkable'' that we could use these low-yield weapons—as if we needed to have these low-yield nuclear weapons, despite the overwhelming conventional deterrent we have. Had we had them, I wonder if anyone might have suggested that we use these low-yield nuclear weapons that we may produce against any of the bunkers Saddam Hussein was in. I am sure we could hear a voice today that if we had a low-yield nuclear weapon, we could have used it that first night and guaranteed he was gone. The fact that we would have been the only country for the second time in world history to use a nuclear weapon, in this case unlike the first, without any real need, would have been lost on some people. But, I wonder what that message that would have sent to India and Pakistan, which are cheek to jowl with nuclear capability.

The administration's failure, in my view, to understand that nuclear is still ''unthinkable'' is, I think, the most fatal flaw in this approach. That failure to understand could lead to bigger failures—a failure to understand how to keep other countries from developing nuclear weapons, a failure to view nonproliferation as a vital and a workable policy objective, and perhaps even a failure to avoid nuclear war which would do horrible damage to any country involved, including ourselves.

Consider what the administration has said regarding nuclear weapons. We parse out what the administration says a piece at a time. I don't think we understand that the rest of the world, friend and foe alike, takes it in its total context. Let us look at the whole range of what they have said so far about nuclear weapons.

The Nuclear Posture Review of December 2001 spoke of reducing U.S. reliance on nuclear weapons. But it also

reportedly listed not only Russia and China but also North Korea, Iraq, Iran, Syria, and Libya as potential enemies in a nuclear war with the use of nuclear weapons. I emphasize ''reportedly listed''—I have not looked at the classified document. I am referring to what has been printed on the Web and what has been in the press. The Nuclear Posture Review spoke of possibly needing to develop and test new types of nuclear weapons, and gave that as a reason for increasing our nuclear test readiness, and further said nuclear weapons might be used to neutralize chemical and biological agents.

More recently, civilian Pentagon leaders ordered a task force to consider possible requirements for new low-yield nuclear weapons, even while assuring the Senate that no formal requirement has yet been established.

A Presidential strategy document reportedly stated the United States might use nuclear weapons against a country with chemical or biological weapons. Then, in a runup to the war in Iraq, the administration proclaimed (but never explained) a new doctrine of preemption against any potential foe that acquired weapons of mass destruction.

All that taken individually is understandable. Taken collectively, it could give someone a very foreboding picture. And do those statements increase our leverage over potential foes, and with a world community at large, or do they only give the rogue states the argument that they really are threatened and, therefore, really need nuclear weapons? Do our statements enable the rest of the world to ''blame the victim,'' as the neo-conservatives would say—and I would agree with them on the outrageousness of that—instead of blaming those responsible for setting disorder in motion?

If you are North Korea, or Iran, or Libya, or Syria, which part of the reports I just referenced are you likely to rely on to make your specious case to the rest of the world?

We have seen the willingness of the rest of the world to engage in the suspension of disbelief. As a friend of mine said, never underestimate the ability of the human mind to rationalize. We have seen our friends, from the French on, rationalize why we shouldn't do what needs to be done.

Which part of the administration's strategy statements, which I briefly outlined, do you think the bad guys—North Korea, Iran, Libya, and Syria—are likely to rely on? The part where we say we reduce our reliance on nuclear bombs, or the part that names those countries as a possible target for nuclear preemption?

As long as you are already listed on the possible target list, what are you going to say, and what are you going to do? Obviously, they are going to say, ''We have to do this because of what the United States is doing.''

There is no one in the world who doubts our capacity to annihilate, by conventional weapons alone, any other country in the world. There is no doubt in anyone's mind. And now we are saying that for our defense, we need another nuclear weapon. How do you think the world will interpret that? Some will say it doesn't matter what the rest of the world thinks. But it surely matters, in 1,000 different ways, whether it is a matter of deciding you will not let us sell chickens in your country or deciding whether you will allow businessmen to operate in your country or deciding whether you will cooperate in any other 500 ways we need cooperation on.

What do our statements say, if you are North Korea or Libya or anywhere else? Do you say the United States is getting a low-yield nuclear weapon, so it is time we gave up our efforts to get nuclear weapons? Or if you think we are getting a low-yield nuclear weapon, might you decide it is time to accelerate your efforts?

So far we have one clear answer, from North Korea. It is not the one we wanted. Iran appears to be accelerating its nuclear weapons program as well. I am not suggesting they would not be doing that if we weren't enunciating the policies of this administration. I suspect they would anyway.

The whole question here is, How do we keep dangerous weapons, particularly nuclear weapons, out of the hands of the most dangerous people in the world, be they terrorists or those who would support them? That is our policy; that is the President's policy; and I agree with it. But obviously, we haven't quite gotten it right. So far, I don't think the administration has the answer to the question of how to achieve our objectives.

For a while, it seemed as though the administration's answer was to declare war on every adversary that dared to go nuclear. But do we really intend to go to war with North Korea, if the price is the slaughter of hundreds of thousands of South Korean civilians? Do we intend to go to war with Iran, when we cannot guarantee security in Iraq?

The list of countries that we accuse of having weapons of mass destruction is long; will we take them all on? And what do we do when Indian officials cite our Iraq war arguments as justification for a possible Indian attack on Pakistan that could risk a nuclear war? Is this the world we want?

The Administration has refused to negotiate directly with North Korea, so we have yet to really test North Korea's claim that it would be prepared to meet all our security concerns in return for truly normal relations with us. Instead, we have demanded that North Korea first renounce its nuclear programs and take tangible steps to dismantle them.

I sympathize with the concern not to be bullied or blackmailed. Nobody likes to be seen as backing down. I even sympathize with the President's intense dislike of North Korean leader Kim Jong Il. There is much to dislike in the man, and even more to dislike in his regime.

But what have we achieved through this policy? So far, we have gotten the end of the 1994 Agreed Framework—which had kept North Korea from reprocessing more of its spent nuclear fuel to get plutonium for nuclear weapons. We have seen international inspectors kicked out of North Korea. And now North Korea may be reprocessing its spent nuclear fuel, which could give it enough material for a half dozen more nuclear weapons.

We may be making some progress, with China engaging North Korea. If we are lucky, North Korea's posturing will lead China and Russia to finally support us and bring some pressure on North Korea. But we don't know whether they can really influence a North Korea that sees itself already in the American crosshairs as part of the ''axis of evil.''

The administration talks of stopping North Korea from exporting its nuclear weapons. That worries me a little bit because it implies we have already given up on stopping them from producing them.

And North Korea could just export plutonium with which to make nuclear weapons; they will be able to become the plutonium factory of the world if they keep on the road they are on now. How are we going to stop that? The plutonium needed for a nuclear weapon can fit in a briefcase. It does not even need much shielding because it is not very radioactive. The whole shipment might be bigger than a bread box, as Steve Allen used to say, but it wouldn't be much bigger. It certainly wouldn't be bigger than a trash can. Can we really stop and search every trash can leaving North Korea? What will we do if a year from now North Korea claims to have provided weapons plutonium to groups in other countries that will destroy major cities unless we do what it wants?

What are we going to do about Iran, which has North Korean medium-range missiles and is moving toward the ability to enrich its own uranium?

Nobody ever said that nonproliferation was easy. I don't have a silver bullet, and I don't expect the President to have one either. But don't we have to keep our eye on the ball? When conservatives opposed the Comprehensive Nuclear Test-Ban Treaty, they said countries would build nuclear weapons for their own strategic reasons. That's right. It means if we want to prevent proliferation, or roll it back, we have to affect those strategic calculations.

Nonproliferation policy gives us a framework for those efforts. The Nuclear Non-Proliferation Treaty gives us international support and may affect the calculations of countries whose neighbors sign and obey the treaty. The Nuclear Suppliers Group buys us more time by restricting exports of nuclear and dual-use materials and equipment. But in the end, it still comes

down to influencing a country's strategic calculations.

How can we influence those countries? Deterrence is one big way to influence them. Any country that builds nuclear weapons knows if they use them on us, they will very quickly cease to exist. But deterrence is still a mind game. It didn't help when the administration belittled deterrence in order to press its case for missile defense. And deterrence may not work if we say: By the way, we may still target you, even if you don't build nuclear weapons.

For countries that are not our enemies, security assurances are a big way to influence them. The U.S. nuclear umbrella offers a country a lot of security at a low cost; but that umbrella may not look so good if the United States is threatening nuclear war against a large number of countries. At that point, our friends may question whether we will really be able to protect them, when we are taking on all those other countries. That is the question you hear people asking in Japan.

To achieve lasting nonproliferation, we must treat the regional quarrels that drive countries to seek nuclear weapons. We did that with Argentina and Brazil. As South Africa moved away from apartheid, we were able to do that there as well. We are making a real effort to help India and Pakistan step back from the brink and have to continue that effort. But we also have to address security concerns in east Asia, including North Korea's concerns, if we are to keep that whole region from developing nuclear weapons, weaponizing the peninsula, and Japan becoming a nuclear power. We have to pursue peace in the Middle East, if we are truly going to take advantage of our military victory in Iraq.

Nor is there really any alternative to working with the international community. We don't have the ability to inspect sites in Iran; the Atomic Energy Agency does have that ability. Our forces in Iraq don't have a great record in their hunt for weapons of mass destruction; the IAEA and the U.N. could help in that hunt, both by providing detailed information from past inspections and by helping to monitor sites they have visited in the past.

We cannot close down proliferation traffic by ourselves. The cooperation of other countries, especially Russia and China, is essential.

These are the paths to nonproliferation. They are long and difficult. We don't know whether they will succeed, but we can see where we want to go, and we can see how working these issues will help us get there.

But building low-yield nuclear weapons is not a path to nonproliferation; neither is a program to do R&D on such weapons, while Defense Department officials tell people to come up with reasons to build them; neither is a program to test these weapons, which would surely be necessary to develop a new low-yield weapon, and which would just as surely be the death knell not only of the Comprehensive Nuclear Test-Ban Treaty—which I think is the objective of some—but of the Nuclear Non-Proliferation Treaty, the NPT.

Frankly, neither is nonproliferation served by the administration's plan to field a nearly worthless missile defense system in Alaska next year, just so the President can say he did it. The push to deploy that system has been at the expense of making an effective defense. The defense will lack the radar it needs for several years, and the space-based infrared collection it needs for even more years. And the funds and equipment to deploy it are coming out of the funds and equipment needed to test it, to improve it, and to make sure it works. You have to wonder what the administration's priorities are.

The path of deterrence, security assurance, nonproliferation, diplomacy, and sensible weapons development is difficult, but at least it is headed in the right direction.

The path of hasty deployment of a missile defense that cannot be useful for years to come is simply foolish. The path of new nuclear weapons, new nuclear testing, and looking at nuclear weapons as something ''normal'' may be a highway paved with good intentions, but as the nuns used to make me write on the board after school when I misbehaved: The road to Hell is paved with good intentions.

This is a road to disaster. We should know better than to go down it.

The Feinstein-Kennedy amendment, in my view, will keep us off that dangerous highway. It deserves our support.

I yield the floor.

Ms. MIKULSKI. Mr. President, I rise in support of the amendment offered by Senator FEINSTEIN, Senator KENNEDY and others on low-yield nuclear weapons.

The Defense Authorization bill would repeal the ban on research and development of low-yield nuclear weapons, sometimes called ''mini-nukes.''

The ban, known as the Spratt-Furse Amendment, was enacted in 1993. That law prohibits ''research and development which could lead to the production by the United States of a low-yield nuclear weapon.'' It even has specific exemptions, including allowing research on existing weapons and research to address proliferation concerns.

To state it plainly, this is not about basic research or defensive research. This is about research and development to produce new nuclear weapons. And since these weapons would have yields of less than 5 kilotons of TNT, these are not strategic weapons.

That means that if we pass this bill without adopting the Feinstein amendment, we are heading down the path of developing new, low-yield, tactical nuclear weapons. And you can bet that if we develop these weapons on the drawing board, we will see a demand to build and test these weapons to be sure that they would work. Why would we build these mini-nukes if we don't intend to use them?

We don't need to go down that path. America has the strongest military in the world. We also have a huge arsenal of strategic nuclear weapons, which can strike anywhere in the world, for deterrence. We don't need tactical nuclear weapons, not even to strike buried targets like bunkers. We have conventional weapons to do that. Our scientists are developing better weapons all the time. I am so proud of the brilliant people at the Naval Surface Warfare Center in Indian Head, Maryland, who developed and produced the ''bunker-buster'' thermobaric bombs used against caves in Afghanistan. But the bottom line is that America doesn't need new nuclear weapons.

I don't want to go down that path because it is destabilizing and dangerous to America's national security.

Why is it so dangerous?

It would signal that the U.S. would no longer use nuclear weapons only for deterrence. That would legitimize nuclear weapons and increase the risk that they'll be used against us or our allies. If we move to testing of nuclear weapons, other nations would almost surely follow our lead.

Increasing the range and number of weapons in our nuclear arsenal would fundamentally undermine our nuclear nonproliferation efforts, including the Nuclear Non-Proliferation Treaty, NPT. That would mean more countries developing and deploying nuclear weapons.

The production of small nuclear weapons, some of which could even be portable or easily transported in a truck, poses a particular danger. Even if the U.S. would effectively safeguard such weapons, other countries might develop similar weapons. The presence of a large but unknown number of tactical nuclear weapons in Russia poses one of the greatest dangers to our national security. If we are concerned about terrorists getting nuclear bombs, the last thing we should do is develop more small, easily-transported weapons.

America's national security will best be served if we keep in place the existing ban on research and development leading to production of low-yield nuclear weapons. I urge my colleagues to join me in support of this amendment.

Mr. BYRD. Mr. President, for more than half a century, our world has lived under the specter of a nuclear Armageddon. The end of the cold war has reduced this threat, but both the United States and Russia continue to be armed to the teeth, each side possessing many thousands of nuclear weapons, any one of which could devastate an innocent city.

During the cold war, both Democratic and Republican Presidents held out the chance that an end to the nuclear arms race could lead to the renunciation of nuclear weapons. I point

to article VI of the Nuclear Non-Proliferation Treaty, signed by President Nixon in 1968, and ratified by the Senate in 1969: ''Each of the Parties to the Treaty undertakes to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a Treaty on general and complete disarmament under strict and effective international control.''

But the United States is no longer striving for a world free of nuclear weapons. The administration now seeks to develop a new generation of nuclear weapons, from bunker-busting hydrogen bombs that could wipe out a buried cache of arms, and a whole city with it, to low-yield mini-nukes, which could even take the form of the suitcase nuclear weapons that are the worst case scenario for our homeland security planners.

The alarm at the development of these new weapons is underscored by the Nuclear Posture Review, released in January 2002, and the National Security Strategy, released in September 2002. Taken together, these documents envisage a United States that could strike anywhere on the globe with overwhelming force. The Nuclear Posture Review, in particular, moves breathlessly from discussions of conventional weapons to strategizing on the use of nuclear weapons.

The unavoidable conclusion is that the administration seeks to reduce, and perhaps eliminate, the difference between conventional and nuclear weapons.

A new reliance on nuclear weapons for our national security can only lead us to greater dangers. CIA Director George Tenet warned the Armed Services Committee on February 12, 2003, that the ''domino theory of the 21st century may well be nuclear.'' We must heed this warning.

One powerless country after another may seek to develop the most extreme weapon of mass destruction in order to assure its security, fearing an imminent, preemptive attack from the world's only superpower, which views itself as being unconstrained by international law, the U.N. Security Council, or the court of world opinion.

Rather than attempt to head off this destabilizing trend, this administration has recast its preemptive war as a liberation of the oppressed, threatened to find ways to punish allies who opposed our belligerency, and proposed the development of new nuclear weapons.

If we do not wish to be in a state of perpetual war, the United States must recapture its standing as a peacemaker. Let us step back from the brink of a nuclear arms race. Moving forward with new bunker-busting and low-yield nuclear weapons can only send us in the wrong direction. I urge my colleagues to reject the moves by this administration to initiate new nuclear arms programs.

Mr. REID. Mr. President, I ask unanimous consent that under the agreement we are now working, the time for Senator BOXER be given to the Senator from Massachusetts, Mr. KENNEDY. So instead of 5 minutes, he has 10 minutes.

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

Mr. WARNER. Mr. President, I ask unanimous consent that immediately following the vote this evening on the Feinstein-Kennedy amendment, Senator REED be recognized in order to offer an amendment on the subject of low-level nuclear weapons; provided further that immediately following the reporting of that amendment, Senator WARNER be recognized to offer a second-degree amendment; provided further that following any debate with respect to the amendments this evening, the amendments be temporarily set aside, and when the Senate resumes consideration of the bill tomorrow morning, there will be 20 minutes equally divided for debate between Senator WARNER and Senator REED. Finally, I ask that following the use of that time, the Senate proceed to a vote in relation to the Warner second-degree amendment, and that if the amendment is agreed to, then the underlying amendment be agreed to, as amended.

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

Mr. WARNER. Mr. President, I would like to proceed on this side for about 5 or 6 minutes and then we will rotate. I must say, I express my pleasure at the cooperation we are receiving on both sides of the aisle, particularly from our Members with regard to amendments. I might say there is a colleague on that side of the aisle who has a very meritorious commitment to be at a certain place at 7:45, and it is a family matter. We are going to try to yield back time on our side to accommodate the colleague on the other side. I am not announcing the time exactly, but I hope it can come about at about 7:42 or 7:43, enabling him to meet a very serious matter relating to his children. We are going to make that work; is that correct?

Mr. LEVIN. We are going to do our best. While the Senator is speaking, I will talk to Senator KENNEDY and Senator FEINSTEIN.

Mr. KENNEDY. I think I will only need 3 ½ or 4 minutes, if we are trying to accommodate somebody.

Mr. LEVIN. I am willing to cut my time down as well. I haven't talked to Senator FEINSTEIN, who has already cut her time down.

Mr. WARNER. We are providing flexibility to my colleague from Michigan to try to make it work.

Mr. President, I think it is important that in the Record of this debate there at least be one statement, if I may say, on behalf of the Senator from Virginia which enables the reader of the RECORD to determine with ease exactly what the debate is about. For that purpose, I will make a broad unanimous consent request.

Mr. President, I ask unanimous consent that the following material be printed in the RECORD: First, the existing law passed in 1994, which is the subject of the debate we are now having. That is to be followed by the submission of the Department of Defense as to the rationale for removing this particular law. That is to be followed by the manner in which we did it in the Armed Services Committee—it is a copy of the bill section. That is to be followed by correspondence received by the Senator from Virginia, first from the Secretary of State in which he expresses his opinion in regard to the amendment; and then the statement by Admiral Ellis, Commander of the Strategic Command, stating his support for the work done by the committee. That is to be followed by a letter from General Jumper, expressing his support for the work done by the committee. Then I have listed as a matter of convenience for my colleagues the seven steps that are taken, traditionally, with respect to nuclear weapons.

That is the information relevant to this debate.

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

EXISTING LAW PASSED IN 1994

SEC. 3136. PROHIBITION ON RESEARCH AND DEVELOPMENT OF LOW-YIELD NUCLEAR WEAPONS.

(a) UNITED STATES POLICY.—It shall be the policy of the United States not to conduct research and development which could lead to the production by the United States of a new low-yield nuclear weapon, including a precision low-yield warhead.

(b) LIMITATION.—The Secretary of Energy may not conduct, or provide for the conduct of, research and development which could lead to the production by the United States of a low-yield nuclear weapon which, as of the date of the enactment of this Act, has not entered production.

(c) EFFECT ON OTHER RESEARCH AND DEVELOPMENT.—Nothing in this section shall prohibit the Secretary of Energy from conducting, or providing for the conduct of, research and development necessary—

(1) to design a testing device that has a yield of less than five kilotons;

(2) to modify an existing weapon for the purpose of addressing safety and reliability concerns; or

(3) to address proliferation concerns.

(d) DEFINITION.—In this section, the term ''low-yield nuclear weapon'' means a nuclear weapon that has a yield of less than five kilotons.

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SUBTITLE C—OTHER MATTERS

Section 221. Section 3136, the so-called PLYWD legislation, prohibits the Secretary of Energy from conducting any research and development which could potentially lead to the production by the United States of a new low-yield nuclear weapon, including a precision low-yield warhead.

This legislation has negatively affected U.S. Government efforts to support the national strategy to counter WMD and undercuts efforts that could strengthen our ability to deter, or respond to, new or emerging threats.

A revitalized nuclear weapons advanced concepts effort is essential to: (1) train the

next generation of nuclear weapons scientists and engineers; and (2) restore a nuclear weapons enterprise able to respond rapidly and decisively to changes in the international security environment or unforeseen technical problems in the stockpile. PLYWD has had a ''chilling effect'' on this effort by impeding the ability of our scientists and engineers to explore the full range of technical options. It does not simply prohibit research on new, low-yield warheads, but prohibits any activities ''which could potentially lead to production by the United States'' of such a warhead.

It is prudent national security policy not to foreclose exploration of technical options that could strengthen our ability to deter, or respond to, new or emerging threats. In this regard, the Congressionally-mandated Nuclear Posture Review urged exploration of weapons concepts that could offer greater capabilities for precision, earth penetration (to hold at risk deeply buried and hardened bunkers), defeat of chemical and biological agents, and reduced collateral damage. The PLYWD legislation impedes this effort.

Repeal of PLYWD, however, falls far short of committing the United States to developing, producing, and deploying new, low-yield warheads. Such warhead concepts could not proceed to full-scale development, much less production and deployment, unless Congress authorizes and appropriates the substantial funds required to do this.

Subtitle B—Program Authorizations, Restrictions, and Limitations

SEC. 3131. REPEAL OF PROHIBITION ON RESEARCH AND DEVELOPMENT OF LOW-YIELD NUCLEAR WEAPONS.

(a) REPEAL.—Section 3136 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160; 107 Stat. 1946; 42 U.S.C. 2121 note) is repealed.

(b) CONSTRUCTION.—Nothing in the repeal made by subsection (a) shall be construed as authorizing the testing, acquisition, or deployment of a low-yield nuclear weapon.

THE SECRETARY OF STATE,
Washington, May 5, 2003.

Hon. JOHN WARNER,
Chairman, Committee on Armed Services, U.S. Senate.

DEAR MR. CHAIRMAN: I am writing to express support for the President's FY2004 budget request to fund the feasibility and cost study for the Robust Nuclear Earth Penetrator (RNEP), and to repeal the FY1994 legislation that prohibits the United States from conducting research and development on low yield nuclear weapons. I do not believe that these legislative steps will complicate our ongoing efforts with North Korea. Inasmuch as work on the RNEP was authorized and funded in last year's National Defense Authorization Act, I believe that North Korea already has factored the RNEP into its calculations and will not vary those calculations depending on how Congress acts on this element of the FY2004 budget request.

Thank you for your important work on these issues and please do not hesitate to ask if I can be of further assistance in the future.

Sincerely,

COLIN L. POWELL.

DEPARTMENT OF DEFENSE,
U.S. Strategic Command.

Hon. JOHN W. WARNER,
Chairman, Senate Armed Services Committee, Russell Senate Office Building, Washington, DC.

DEAR MR. CHAIRMAN, The Nuclear Posture Review put in motion a major change in the role of our nuclear forces. As we continue to strategize the most effective methods of addressing new and emerging threats to our National Security, it is an inherent responsibility of the Department of Defense to not only reevaluate the capabilities of our nuclear arsenal, but to thoroughly analyze the potential of advanced concepts that could enhance our overall deterrent posture.

U.S. Strategic Command is interested in conducting rigorous studies of all new technologies, and examining the merits of precision, increased penetration, and reduced yields for our nuclear weapons. The nation needs to understand the technical capabilities of threats under development by potential adversaries and to thoroughly explore the range of options available to the United States to deter or defeat them. Once we complete the precise engineering analyses necessary to validate facts related to nascent advanced concepts, the results of the research will enable dispassionate, fact-based discussions on very important defense and policy issues.

The findings of the Nuclear Posture Review were strongly endorsed by the Service Chiefs. Repealing Section 3136 of Fiscal Year 1994 NDAA (42 U.S.C. 2121) will allow U.S. Strategic Command the ability to evaluate the full range of advanced concepts through research and development activities.

Your support in repealing the prohibition on low-yield research and development for nuclear weapons is greatly appreciated. A similar letter has been sent to the Ranking Member of your committee.

Sincerely,

J.O. ELLIS,
Admiral, U.S. Navy,
Commander.

DEPARTMENT OF THE AIR FORCE,
OFFICE OF THE CHIEF OF STAFF,
Washington, DC, May 8, 2003.

Hon. JOHN W. WARNER,
Chairman, Committee on Armed Services, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN, I seek your support for repealing Section 3136 of the Fiscal Year 1994 National Defense Authorization Act (42 U.S.C. §2121). This section of the law, commonly referred to as the Precision Low-Yield Weapon Development (PLYWD) limitation, prohibits the Department of Energy and by extension the Air Force from conducting any research and development on a new nuclear weapon design with a yield of five kilotons or less.

Research and development of new low-yield weapon concepts is required in order to evaluate all potential options to meet current and emerging combatant commanders' requirements. Low-yield nuclear weapons currently in the stockpile simply are not suited to satisfy all these requirements.

We are pursuing full rescission of this section of the law instead of just an amendment. A partial repeal that only permits basic research and development with no prospect for production would effectively have the same impact as the current law.

A similar letter has been sent to the Ranking Minority Member of your Committee and to the Chairman and Ranking Minority Member of the House Armed Services Committee.

Sincerely

JOHN P. JUMPER,
General, USAF,
Chief of Staff.

NUCLEAR WEAPONS LIFE CYCLE MANAGEMENT PROCESS

Phase 1—Concept Study.
Phase 2—Feasibility Study.
Phase 2A—Design Definition & Cost Study.
Phase 3—Full Scale Engineering Development.
Phase 4—Production Engineering.
Phase 5—First Production.
Phase 6—Quantity Production & Stockpile Maintenance Evaluation.
Phase 7—Retirement & Dismantlement.

Mr. WARNER. Mr. President, I oppose the amendment.

Research on precision low-yield nuclear weapon design is prudent in today's national security environment. Why would we want to prevent any type of research on weapons that might contribute to improving our national security? Authorizing the research does not authorize the production, testing, or deployment of a low-yield nuclear weapon. Congress reserves the right to decide that as a separate matter, should such a step be requested by this or any future Administration.

I have received three letters on this matter: two from top military leaders, Admiral James Ellis, Commander of U.S. Strategic Command and General John Jumper, Chief of Staff to the U.S. Air Force, and one from Secretary of State Colin Powell. All three of these distinguished leaders urged support for repealing the ban on low-yield nuclear weapons research.

In the current international environment, with many new unexpected threats, it is prudent to allow research on low-yield nuclear weapons to learn whether such weapons could add to the deterrent value of our nuclear force. A repeal of the ban on low-yield nuclear weapons research and development would permit the scientists and engineers at our national laboratories to consider whether these types of weapons are feasible and for what purpose. For instance, could such a weapon destroy a laboratory with biological and chemical agents without disbursing them as a conventional weapon would do? What would be the collateral effect?

I do not agree with those who assert that even allowing this research to go forward would undermine our nuclear non-proliferation efforts. The United States is steadfast in its determination to prevent nuclear proliferation through many means including diplomacy, multilateral regimes to control the export of sensitive technologies, and interdiction of illegal exports. The U.S. also has a proven record of nuclear reductions.

Secretary Colin Powell confirmed this view in his letter sent to me on May 5th, 2003. In that letter, Secretary Powell stated: ''I do not believe [repealing the ban on low-yield nuclear weapons research and development] will complicate our ongoing efforts with North Korea.''

Over the past decade—while the current prohibition on this type of research has been in place—the United States has taken thousands of nuclear weapons out of the active stockpile, abided by a moratorium on underground nuclear tests, designed no new nuclear weapons, and refrained from research on low-yield nuclear weapons.

Some might argue that these activities served the purpose of encouraging

other countries not to develop or proliferate nuclear weapons. But let's examine the record.

Over the past decade, India and Pakistan tested nuclear weapons for the first time. Other nations have continued to seek nuclear weapons capabilities, including Iraq, Iran and North Korea. And many nation are pursing chemical and biological weapons capabilities. I believe this shows that other nations make decisions about whether or not to acquire nuclear and other WMD capabilities based on their assessment of their own national security need—not based on U.S. action in this area. The argument that some make that if U.S. refrains from certain types of activities, others will follow, just does not stand the test of time.

Some would also argue the authorizing of this research would lower the nuclear threshold. I disagree. As Ambassador Linton Brooks, Administrator of the Nuclear Security Administration, testified before the Strategic Forces Subcommittee, on April 8, 2003, the ''[n]uclear threshold is awesomely high.'' If wars of the future are about winning hearts and minds, about liberating rather than conquering, then the threshold for using nuclear weapons remains very high indeed. But as long as we maintain a nuclear deterrence force, we would be remiss if we did not keep it safe, secure and reliable, and if we did not maintain our research capabilities both for ourselves and to understand what other countries might be exploring.

It is worth noting that the United States had a large number of low-yield nuclear weapons in our inventory during the '50s, '60s, and '70s which have now been removed from the inventory. During each of these decades there were significant national security challenges to the United States. None of those challenges came close to reaching the nuclear threshold, notwithstanding the availability of low-yield nuclear weapons.

We have a responsibility to ensure the safety and security of all Americans. We should not place artificial limits on the intellectual work of our gifted scientists to explore new technologies, to understand what is possible as well as what potential adversaries could be exploring. Should threats emerge which cannot be deterred or destroyed with conventional weapons, our President must have other options available to protect the citizens of the United States, our interests and our allies. This has been the policy of the United States for almost sixty years.

The provision in the Senate bill merely permits the research that will inform future decisions as to whether such weapons would enhance the national security of our country overall. It does not prejudice how Congress would decide that question in the future. Let us not fear greater knowledge to inform our future decisions.

I urge my colleagues to oppose this amendment.

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

Mr. KENNEDY. Mr. President, this issue is as clear as any issue ever gets. You are either for nuclear war or you are not. Either you want to make it easier to start using nuclear weapons or you don't.

Our conventional weapons already have vast power and accuracy. We can make them even more powerful. No one at the Pentagon and no one in the administration has given us any examples—none at all—of cases where a smaller nuclear weapon is needed to do what a conventional weapon cannot do.

For half a century, our policy has been to do everything we possibly can to prevent nuclear war, and so far we have succeeded. The hardliners say things are different today: A nuclear war won't be so bad if we just make the nukes a little smaller. We will call them mini-nukes. They are not real nukes. A little nuclear war is OK.

That is nonsense. Nuclear war is nuclear war is nuclear war. We don't want it anywhere, anytime, anyplace. Make no mistake, a mini-nuke is still a nuke. Is half of Hiroshima OK? Is a quarter of Hiroshima OK? Is a little mushroom cloud OK? That is absurd.

The issue is too important. If we build it, we will use it. No Congress should be the Congress that says let's start down this street when it is a one-way street that can lead only to nuclear war.

Some may say that smaller weapons are less dangerous than the larger weapons already in our arsenal. But these nuclear weapons are actually more dangerous, because they are smaller, therefore easier to steal and smuggle. The Administration's goal is to make them more usable by lowering the thresholds for the first use of nuclear weapons.

Some may say we can't build new weapons, and haven't built them in years. To that I ask why do we need to build new weapons when we have over six thousand warheads in our inventory? It's enough to destroy the world at least ten times over, and leave the world in nuclear winter. It would take only ten nuclear weapons to paralyze the United States.

Some believe our non-proliferation efforts do not stop North Korea or Iran from developing nuclear weapons of their own. No one argues that these weapons have the capability to stop North Korea. But why not target them now with our existing nuclear weapons. This is not an argument for new nuclear weapons.

Some argue that current law ties the hands of the Pentagon. But there is no military requirement for these weapons, just hypothetical situations proposed by the other side. No one can point to an actual situation where we would use these weapons.

Some may argue that we need to do this research to go after Al Qaida and other asymmetric threats. How can we consider using thee weapons when we don't know where our adversaries are? Al Qaida is active in Indonesia, Saudi Arabia, Canada, and Germany. Would we use these low-yield weapons against these countries?

Some of my colleagues on the other side of the aisle believe that we have reduced our weapons while other countries have begun nuclear weapons programs. They say no one is following our lead and that since 1992, we have stopped testing while China, France, India, and Pakistan have continued to test. On the contrary, there have been no tests in the past five years. Four states who were nuclear states have come under the non-proliferation treaty as non-nuclear states: South Africa, Belarus, Kazakhstan, and the Ukraine.

They think we need to have our smartest people thinking about low-yield nuclear weapons. Lifting the ban would give them their freedom to indulge in intellectual curiosity, and it is more likely to yield a way to stop proliferation. However the research banned by this amendment is an offensive, not defensive capability. This is research leading to the development and the production of weapons, not pure intellectual exploration of advanced concepts. The Spratt amendment prohibits the construction of prototypes.

Some will argue that we cannot be confident that our weapons will work, without the development of these new weapons. According to the National Academy of Sciences (July 2002), ''The United States has the technical capabilities to maintain confidence in the safety and reliability of its existing nuclear weapons stockpile under the CTBT, provided that adequate resources are made available to the Department of Energy's nuclear weapons complex and are properly focused on this task.''

My colleagues believe that we still retain the right to authorize and appropriate funds for nuclear weapons systems. We should be allowed to think about these weapons to prevent others from developing this capability. But no one else is developing these weapons; if we start, others may follow. We may be igniting a new nuclear arms race. Nothing in law prohibits our scientists from doing research on our adversaries' capabilities.

Finally, some say we should develop these weapons because we cannot use the existing weapons, because they are too large. They say killing millions of Iraqis is too many. If we use a lower-yield weapon, we can deter Saddam Hussein. But this is just arguing for hundreds of thousands dead, rather than millions. If we really want a surgical strike capability, then we should develop a conventional alternative.

Mr. President, I yield back my remaining time to the Senator from Michigan.

The ACTING PRESIDENT pro tempore. The Senator from Michigan.

Mr. LEVIN. Mr. President, the provisions in this bill relating to the development of new nuclear weapons mark a major and a very dangerous shift in American policy. Proliferation of weapons of mass destruction is the greatest threat we face. Uncorking the nuclear bottle to develop new and modified nuclear weapons goes in the opposite direction of the commitment we made when we signed the nonproliferation treaty. We are a party to that treaty.

It has been said on this floor that North Korea is a party to the nonproliferation treaty, and they have to live up to it. They got something in return for their signature. They did, indeed. They got our signature, and our signature committed us to end the nuclear arms race.

Uncorking the nuclear bottle, which these provisions do, makes a mockery of our argument to other countries around the world that they should not go nuclear.

Just think about some of the headlines in the last few months about North Korea: ''U.S. Assails Move by North Koreans to Reject Treaty.'' That is the nonproliferation treaty to which we are a signatory, too, that commits us to end the nuclear arms race, not to start a new chapter in the nuclear arms race. So we assail their move.

Another headline: ''Military Action Possible, U.S. Warns North Korea.'' We take their move toward nuclear weapons so seriously that we have actually suggested we may initiate military action to stop them from moving in a nuclear direction. Yet we, if these provisions stay, are moving in that same direction. We have told Iran the same thing. We have urged Russia: Do not help Iran go nuclear. Do not supply them with any materials which they might use to go nuclear.

Yet in these provisions in this bill, we would, if they stay in the bill, lift a prohibition that exists in current law in the United States which prohibits the research and development on nuclear weapons that could lead to the production of new nuclear weapons. That is what the so-called Spratt-Furse language does. It prohibits research and development on nuclear weapons which could lead to their production. That is the language which was stricken by a 15-to-10 vote in the Armed Services Committee, and that is the language which the amendment offered by the Senators from California and Massachusetts would restore to the law.

We have a special responsibility for a lot of reasons. No. 1, we are the leader. We have to live up to what we say we want others to do. But we are also the only country that has actually used nuclear weapons. We say we are determined to stop the spread of nuclear weapons. Are we serious about that? If we have a prohibition in our law which says we will not do research and development on nuclear weapons which could lead to their production, are people around the world going to take us seriously that, in fact, we want to stop other countries from going nuclear, gaining nuclear weapons, that our major fear is the proliferation of nuclear weapons if we take the position that an existing prohibition in law on research and development that could lead to production of those weapons is going to be lifted by us?

We have a special responsibility. This is a security issue for us. Are we really more secure in the world where that nuclear bottle is uncorked and uncorked by us, by lifting an existing ban in our law?

Nuclear weapons cannot be seen as just another option for warfare. They cannot be seen as usable as warfighting weapons. Yet the administration is moving to change the historic position of one U.S. administration after another by looking to make nuclear weapons more usable, not just as another capability but usable in warfighting, and that is the language which has been quoted on this floor.

The language of the head of the nuclear weapons program talks about the desirability of designing weapons which are usable. That is his word, ''usable.'' One administration after another has gone in the other direction.

The specific weapons that are covered by the ban are so-called low-yield nuclear weapons. What a misnomer that is for reasons so many of us have given on the floor this afternoon. Five kilotons, which is the definition of a low-yield weapon, is roughly one-third the size of the nuclear bomb that was used on Hiroshima which immediately killed 140,000 people, left hundreds of thousands radiated and injured in other ways. And by the way, 140,000 people was almost half the population of Hiroshima.

Nuclear weapons are weapons of mass destruction, whether they are a third the size of the bomb that was used at Hiroshima or 20 times the size or 40 times the size. They are weapons of mass destruction.

The administration seeks to repeal a ban on research and development which could lead to the production of a weapon of mass destruction. That is the bottom line, and the statement by the Administrator of the National Nuclear Security Administration, Mr. Linton Brooks, makes it very clear that there is an intent here to develop weapons which are ''usable.'' That is not my word. That is not the word of the supporters of the amendment, the Senator from California and the Senator from Massachusetts. That is the testimony of the Administrator of the National Nuclear Security Administration who said that he has a bias in favor of things—referring to weapons—that might be usable, referring to the so-called low-yield nuclear weapons.

It is more than research. In this law which exists, unless we repeal it, are prohibitions on research and development. The Deputy Assistant Secretary of Defense in charge of these programs, Mr. Celec, who has also been quoted today, specifically said the following. Fred Celec, Deputy Assistant to the Secretary of Defense for Nuclear Matters, made clear that:

> The administration wants the weapon and it is moving forward.

He is talking about a weapon that could be a deep penetrator. It could be a so-called bunker buster, but also it could be a low-yield weapon. He is not specific. If a hydrogen bomb can be successfully designed to survive a crash through hard rock and still explode, it will ultimately get fielded, Celec said in an interview with the Mercury News. The San Jose Mercury News in 2003 ran that story, and we have confirmed that, in fact, that is what he said. He was not misquoted. So we have the Deputy Assistant to the Secretary of Defense for Nuclear Matters saying that if a hydrogen bomb can be designed to penetrate hard rock and still explode, ''it will ultimately get fielded.''

That is the path the language in the bill repealing the so-called Spratt amendment would take us down.

All of this is being done in the context of what is called the Nuclear Posture Review which was completed by the administration in December of 2001. This was the first step in an effort to develop new usable nuclear weapons. The Nuclear Posture Review is the basis for a new strategic policy that is described in a March 23, 2002, Washington Post article:

> Would give U.S. Presidents the option of conducting a preemptive strike with precision-guided conventional bombs or nuclear weapons.

That is the policy shift which occurred back then. That is the environment in which we are determining whether or not to lift a prohibition on research and development of new nuclear weapons.

That Nuclear Posture Review walks away from a longstanding policy that the United States will not be the first to use nuclear weapons against a nonnuclear state. That Nuclear Posture Review, again according to the Washington Post article, specifically identifies countries that could be targets, including North Korea, Iran, Syria, and Libya.

The legislative proposal that accompanied the administration's request to repeal the Spratt-Furse prohibition on low-yield nuclear weapons says the following—that is the proposal that accompanied the request that the committee voted to approve by a 15-to-10 vote. This is what the administration's language says:

> In this regard, the . . . Nuclear Posture Review urged exploration of weapons concepts that could offer greater capabilities for precision, earth penetration—

And other things.

The justification concluded that the Spratt-Furse law impedes this effort.

It does indeed.

Without the Spratt-Furse law, there is no legal impediment to the development, testing, production, or deployment of new, usable nuclear weapons.

Will that impediment be removed? That is the issue we are going to decide tonight. At a time when we are trying to dissuade other countries from going forward with nuclear weapons development, when we strongly oppose North Korea's pulling out of the Nuclear Non-Proliferation Treaty, when we are spending over a billion dollars to prevent the spread of nuclear weapons material and technology, it seems to me that lifting this prohibition on the research and development of nuclear weapons which could lead to their production sends a terrible message. We are telling others not to go down the road to nuclear weapons, but instead of being a leader in the effort to prevent the proliferation of nuclear weapons, we would be recklessly driving down that same road.

In short, the United States should not follow a policy that we do not tolerate in others. We live in a dangerous world where proliferation of weapons of mass destruction is the greatest threat we face. The answer is not to make the world more dangerous by our own actions.

If Senator ALLARD wishes to alternate, there would then be someone to speak from his side. If not, I know Senator FEINSTEIN is next in line.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from California.

Mrs. FEINSTEIN. Mr. President, I thank all of those who have come to the floor to speak. I think this is a very important debate because I think we are at a crossroad.

Clearly, this Defense authorization bill, when coupled with the repeal of the Spratt-Furse amendment, opens the door to new nuclear development. In my tenure in the Senate, in either a classified or unclassified session, I have never had any information provided that this is necessary or that there is a military requirement to do so.

One of the reasons this should not be repealed is, when it is combined with other provisions in the Defense authorization bill, one can really see where this is going. For example, this bill authorizes $15 million for the study of the robust nuclear earth penetrator. It authorizes $6 million for advanced nuclear weapons concepts. Then if we look at page 448 of the report, we see that the committee recommends a provision that would require the Secretary of Energy to achieve and thereafter maintain a readiness posture of 18 months for resumption by the United States of underground nuclear tests. This moves up a 3-year period to 18 months.

So if we combine all of these, it is very clear to me that where this country is going is toward the resumption of nuclear development.

I wish to rebut a couple of arguments. It was said that we need capabilities for any possible contingency, and I could not agree more. But if we read Spratt-Furse, it allows research but it disallows development and production. In other words, it allows research on existing systems; it does not allow research on new systems. Consequently, if Spratt-Furse is repealed, what automatically is being said is that we begin study, research, and testing on new systems. If research is promising and there is a military need, the administration can come back and ask for specific authorization. As I said, there is no specific military requirement for these weapons that we know about.

It has also been said today that developing low-yield weapons is important to preserve U.S. credibility in determining threats. In fact, we already have over 6,000 nuclear weapons in our stockpile, and we already have a warhead that can be dialed down to 1 kiloton or less. So what is the need to go to 5 kilotons of new development? We do not know because it has never been presented to us.

We also have an overwhelming conventional military advantage over any other country. We have conventional bombs that range in size from 500 to 5,000 pounds. A 5,000-pound bunker buster, like the guided bomb unit 28B, is capable of penetrating up to 20 feet of reinforced concrete or 100 feet of earth. This was used with success in Operation Enduring Freedom in Afghanistan.

To my knowledge, we have never been told that this is inadequate or that there is no other way, other than a nuclear way, to get at a deep bunker; we have never been told that our intelligence does not work or you cannot plug an air hole or you cannot use a number of conventional bunker busters to achieve a similar result.

We have been told that repealing Spratt-Furse will not affect proliferation because others will seek nuclear weapons anyway. Well, our standing in the world, I have thought, really rests on our moral case, our sense of justice, our sense of equity, our freedom. In fact, since 1992, the United States has not developed new weapons and others have followed suit. Russia has not tested since then and has not developed new weapons. China stopped testing. India and Pakistan have not tested for 5 years and are not currently developing new weapons. But we can be sure, when it is learned that the United States is going to go ahead with new studies, new feasibility tests on up to 5-kiloton new nuclear warheads, that others will follow suit.

I believe U.S. restraint is, in fact, an important element of our nonproliferation effort.

This is a very big vote that is before us right now because the only reason to repeal Spratt-Furse is to signal that we are, in fact, going to develop a new generation of nuclear weapons. This is a horrible mistake. I think it is a mistake morally. I think it is a mistake militarily. I do not know a commander who would want to send his troops onto a battlefield where a 5-kiloton nuclear weapons device had been utilized. So why are we doing this? It makes no sense to me. I hope this body would vote against it.

I leave with one point. A 1-kiloton weapon detonated at a depth of 20 to 50 feet would inject more than 1 million cubic feet of radioactive debris and form a crater about the size of ground zero in New York. If we fail to repeal the repeal, we will allow research to go ahead to develop up to five times that when we have conventional weapons that can do the job as well. I have very strong feelings on this subject.

I thank Senator KENNEDY, Senator LEVIN, and all Members who have come to the floor to speak in support of our amendment.

I yield the floor.

The PRESIDING OFFICER (Mr. TALENT). The Senator from Colorado.

Mr. ALLARD. I think we are getting to the point where we are ready to wrap up debate. I will make a few comments and we will move to table and have a vote in a relatively short period of time. I am warning everyone we are getting close to a vote.

I thought I would take a few moments to review some of the comments made by individuals in the administration about the need to allow for research, at least, and study as far as the low-yield nuclear weapons were concerned.

I rise in opposition to the Kennedy-Feinstein amendment. Let me read from a letter from Secretary of State Powell, dated May 5, 2003.

> I am writing to express support for the President's FY2004 budget request to fund the feasibility and cost study for the Robust Nuclear Earth Penetrator (RNEP), and to repeal the FY1994 legislation that prohibits the United States from conducting research and development on low yield nuclear weapons. I do not believe that these legislative steps will complicate our ongoing efforts with North Korea.

This is a statement from our Secretary of State.

ADM Ellis, U.S. Navy, had this to say in a letter to the chairman:

> The nation needs to understand the technical capabilities of threats under development by potential adversaries and to thoroughly explore the range of options available to the United States to deter or defeat them. Once we complete the precise engineering analyses necessary to validate facts related to nascent advanced concepts, the results of the research will enable dispassionate, fact-based decisions on very important defense and policy issues.

If you repeal the law on low-yield nuclear weapons, you end up producing nuclear weapons which will cause less collateral damage if used and, therefore, the United States is more likely to use that. That is the assertion.

First, in response to that, NNSA cannot produce or deploy a new nuclear weapon without an authorization and appropriation from Congress. Second, there have been thousands of deployed

low-yield nuclear weapons during the 1950s, 1960s, 1970s, 1980s, and today, and that has not lowered the nuclear weapon threshold. Nuclear weapons are still a very high threshold that only the President can initiate.

On April 8, 2003, Admiral James Ellis said:

. . . it's not clear to me there is a direct linkage between the size of the weapons and the awesome responsibilities embodied in that decision.

Ambassador Linton Brooks quoted, as then acting director of NNSA, in an April 8, 2003 hearing:

Is there a logic to saying that we have older low-yield weapons, but that we now know we are not going to ever want to produce new low-yield weapons. Now to some extent I admit we are talking about—since I'm not going to develop or produce anything without the permission of the Congress and if the Congress decided to give me permission, it could modify the ban . . .

Now, we are looking at both administrations that have basically taken the position that we need to have a nuclear response to either chemical or biological weapons or weapons of mass destruction.

On December 7, 1997, President Clinton issued some guidelines which would permit nuclear strikes after enemy attacks involving chemical or biological weapons, which was reported widely at that time.

Finally, I point out some language and remind my colleagues we have specific language in the bill, and I will again repeat that language:

Nothing in the repeal made by subsection (a) shall be construed as authorizing testing, acquisition, or deployment of a low-yield nuclear weapon.

The issue is clear. I am now willing to move forward with the vote.

Mrs. FEINSTEIN. I ask unanimous consent to add Senator BIDEN as a cosponsor.

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

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

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

Mr. ALLARD. For Members' information, we are going to proceed to a vote. I want Members to understand we are going to hold this vote open an extra length of time to accommodate those who are expecting the vote to occur at 7:45. This will allow Members who are anxious to get home early tonight to leave early, and then we will keep the vote going later on.

Having made that announcement, I will move to table.

Mr. LEVIN. Will the Senator withhold for just a moment.

Mr. ALLARD. I understand we have some time to be yielded back on both sides.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, Members all over town have been expecting this vote to occur at 7:45, so I hope the leader will allow us to have the vote drag on for a little while to make sure our people get back.

Mr. ALLARD. I have contacted the leader on the Republican side. He is expecting us to leave this open to somewhere around 8:10.

Now we both have time to yield back.

Mr. LEVIN. I yield the remainder of my time.

Mr. ALLARD. I yield the remainder of the time on the Republican side.

The PRESIDING OFFICER. All time is yielded back.

Mr. ALLARD. Now I move to table the Kennedy-Feinstein amendment. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

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

Mr. MCCONNELL. I announce that the Senator from Mississippi (Mr. LOTT) and the Senator from Ohio (Mr. VOINOVICH) are necessarily absent.

Mr. REID. I announce that the Senator from North Carolina (Mr. EDWARDS), the Senator from Florida (Mr. GRAHAM), the Senator from Hawaii (Mr. INOUYE), and the Senator from Massachusetts (Mr. KERRY) are necessarily absent.

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

The result was announced—yeas 51, nays 43, as follows:

[Rollcall Vote No. 186 Leg.]

YEAS—51

Alexander	DeWine	McConnell
Allard	Dole	Miller
Allen	Domenici	Murkowski
Bayh	Ensign	Nelson (NE)
Bennett	Enzi	Nickles
Bond	Fitzgerald	Roberts
Brownback	Frist	Santorum
Bunning	Graham (SC)	Sessions
Burns	Grassley	Shelby
Campbell	Gregg	Smith
Chambliss	Hagel	Snowe
Cochran	Hatch	Specter
Coleman	Hutchison	Stevens
Collins	Inhofe	Sununu
Cornyn	Kyl	Talent
Craig	Lugar	Thomas
Crapo	McCain	Warner

NAYS—43

Akaka	Dodd	Lieberman
Baucus	Dorgan	Lincoln
Biden	Durbin	Mikulski
Bingaman	Feingold	Murray
Boxer	Feinstein	Nelson (FL)
Breaux	Harkin	Pryor
Byrd	Hollings	Reed
Cantwell	Jeffords	Reid
Carper	Johnson	Rockefeller
Chafee	Kennedy	Sarbanes
Clinton	Kohl	Schumer
Conrad	Landrieu	Stabenow
Corzine	Lautenberg	Wyden
Daschle	Leahy	
Dayton	Levin	

NOT VOTING—6

Edwards	Inouye	Lott
Graham (FL)	Kerry	Voinovich

The motion was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. WARNER. Mr. President, we appreciate the cooperation of all Senators. We were able to accommodate one Senator who had a very serious problem. That is achieved and we are now completed. I believe the Senator from Rhode Island is to be recognized for the purpose of laying down his amendment.

The PRESIDING OFFICER. Under the previous order, the Senator from Rhode Island is recognized.

AMENDMENT NO. 751

Mr. REED. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Rhode Island [Mr. REED], for himself, Mr. LEVIN, and Mr. FEINGOLD, proposes an amendment numbered 751.

Mr. REED. 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 modify the scope of the prohibition on research and development of low-yield nuclear weapons)

Strike section 3131 and insert the following new section:

SEC. 3131. MODIFICATION OF SCOPE OF PROHIBITION ON RESEARCH AND DEVELOPMENT OF LOW-YIELD NUCLEAR WEAPONS.

(a) MODIFICATION.—Section 3136 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160; 107 Stat. 1946; 42 U.S.C. 2121 note) is amended by striking ''research and development'' each place it appears and inserting ''development engineering''.

(b) CONFORMING AMENDMENTS.—(1) The caption for subsection (c) of that section is amended by striking ''RESEARCH AND DEVELOPMENT'' and inserting ''DEVELOPMENT ENGINEERING''.

(2) The heading for that section is amended by striking ''**RESEARCH AND DEVELOPMENT**'' and inserting ''**DEVELOPMENT ENGINEERING**''.

The PRESIDING OFFICER. Under the previous order, the Senator from Virginia is recognized to offer a second-degree amendment. The Senator from Virginia.

AMENDMENT NO. 752 TO AMENDMENT NO. 751

Mr. WARNER. Mr. President, I send to the desk an amendment in the second degree and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Virginia [Mr. WARNER] proposes an amendment numbered 752 to amendment No. 751.

Mr. WARNER. 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:

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

SEC. 3131. REPEAL OF PROHIBITION ON RESEARCH AND DEVELOPMENT OF LOW-YIELD NUCLEAR WEAPONS.

(a) REPEAL.—Section 3136 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160; 107 Stat. 1946; 42 U.S.C. 2121 note) is repealed.

(b) CONSTRUCTION.—Nothing in the repeal made by subsection (a) shall be construed as authorizing the testing, acquisition, or deployment of a low-yield nuclear weapon.

(c) LIMITATION.—The Secretary of Energy may not commence the engineering development phase, or any subsequent phase, of a low-yield nuclear weapon unless specifically authorized by Congress.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. REED. Mr. President, for over 50 years, the United States has been in the vanguard in both urging and acting to delegitimize the use of nuclear weapons. Today, the Bush administration is implementing a departure from this bipartisan policy of arms control by adopting measures that will lower the threshold for the use of nuclear weapons.

Dissatisfaction with America's nuclear policy by conservatives was evident even before George W. Bush became President. One of the more dramatic examples of this was the rejection of the Comprehensive Nuclear Test-Ban Treaty by the Senate in 1999. A particularly revealing aspect of that vote was the opposition to a proposal to put the treaty aside rather than to formally defeat it. Deferral would have given a future President the ability to renegotiate aspects of the treaty, such as verification, that were specifically criticized. A combination of ideological and political motivations forced a vote that further weakened efforts at arms control. Indeed, today the defeat of the Comprehensive Nuclear Test-Ban Treaty still lingers as something that I think is a serious erosion of arms control throughout the world and our ability to influence other nations to refrain from testing and developing.

In a similar vein, Republicans in Congress enacted legislation that fixed the minimal number of launch vehicles and warheads in order to prevent the Clinton administration from initiating reductions through negotiations with the Russians. This legislation was quietly repealed when President George W. Bush announced his intention to conclude the Moscow treaty. The Moscow treaty seems to be the type of arms control treaty that conservatives can be comfortable with since it does not actually require the elimination or destruction of nuclear weapons by either side. I have heard today repeatedly discussions of how we are destroying nuclear weapons. In fact, under the Moscow treaty, we are simply redesignating nuclear weapons. We are calling them operational and nonoperational. We are not destroying nuclear weapons.

The Bush administration not only accepted these precedents, but rapidly and deliberately built upon them. The President quickly announced the withdrawal of the United States from the ABM Treaty. Here again, there was scant attention paid to the possibility of negotiating changes with the Russians in order to pursue the development of an antimissile system without jettisoning the ABM Treaty. The ABM Treaty has been a long-time target of the right wing. President Bush's decision was as much about appeasing a powerful component of his political base as it was a reflection of strategic thinking.

The President has made it clear that he will not pursue further negotiations under the START process with the Russians. He is content to let the Moscow treaty stand as the beginning and the end of his arms control initiatives.

The most effective nonproliferation program, the Cooperative Threat Reduction Program, was greeted initially by the Bush administration with skepticism. The program was placed on hold for the first year of the administration while the program was under review. The program was delayed an additional year when the administration could not make the certifications necessary for the program to proceed. The program survived the review and the certification delay but 2 years was spent on justifying the program rather than aggressively eliminating weapons and weapons material.

All of this was prelude to the publication of the Nuclear Posture Review in December of 2001. The review is classified and the administration provided only a cursory nonclassified briefing. Public comments by the administration suggest the major shifts in policy included in the review.

For the first time, the Nuclear Policy Review indicates that the United States is prepared to use nuclear weapons against nonnuclear nations that are not aligned with a nuclear power. Previously, the focus of our policy was to respond to the nuclear potential of other nuclear powers and their allies as a means of deterring the use of nuclear weapons. Today, the United States is contemplating the use of nuclear weapons against nations that do not possess nuclear weapons. In so doing, the NPR, the Nuclear Posture Review, blurs distinctions between conventional and nuclear weapons.

Instead of trying to place nuclear weapons beyond use or at least severely restricting their use to the deterrence of an attack by a nuclear power, the NPR makes them just one more tool in our tool kit. In so doing, it mischaracterizes the horrific effects of nuclear weapons; trying to suggest that they are a little bit more than a conventional weapon, when they are of a dimension and scale that is beyond the contemplation of anyone who has used conventional weapons.

The NPR maintains the current size of the stockpile of nuclear weapons. Despite the end of the cold war, the dissolution of the Soviet Union and the emergence of a democratically elected government in Russia, the administration continues to maintain thousands of warheads in the stockpile.

The NPR holds out the possibility of the resumption of nuclear testing, either to maintain the current stockpile or to develop new types of nuclear weapons. Budget requests to fund the production of hundreds of new plutonium pits per year, a necessary component of a nuclear weapon, are included in this budget.

Requests to undertake the designs of new weapons if needed and to shorten the time necessary to initiate and conduct a nuclear test are included in the budget proposals, and all of them strongly suggest that testing could go well beyond the need to maintain the existing stockpile.

Coupled with the rejection of the Comprehensive Nuclear Test-Ban Treaty, the NPR sent a disturbing signal that we would once again undertake a testing program. Such a program may very well be imitated by other nations, either through perceived need or as a means to maintain their prestige in the nuclear club. In any case, this, too, would further weaken the restraints against the use of nuclear weapons.

In the context of these dramatic changes in policy, rejection of the comprehensive test ban treaty and a new nuclear policy review that blurs the distinction between conventional and nuclear weapons, the administration proposed last year to begin the design of a robust nuclear earth penetrator to use against hard and deeply buried targets. This weapons would modify an existing nuclear device. In essence, the kinetic package already in the stockpile would come out of inventory and the key work would involve the design of a casing that could penetrate the proper depth for the weapon.

The first point to be made is that the existing weapons being considered are quite large, on the order of several hundred kilotons to over 1 megaton. For a frame of reference, the weapons dropped on Hiroshima and Nagasaki were in the range of 14 to 21 kilotons. Thus, the smaller of these bunker busters is roughly 25 times the size of the bombs dropped on Japan. These weapons will bust more than a bunker. The area of destruction will encompass an area the size of a city. They are really city breakers, not bunker busters.

A further point is the fact that conventional munitions have substantially increased their precision. We have seen that in Iraq rapidly and effectively. Although they have not achieved the ability of flying through an open door and taking the elevator down to the bunker command center, increased precision means enhanced ability to target and destroy entrances and the communication network of a command center or other sensitive target.

We have much better capacity today with conventional weapons, and many would argue these conventional weapons could effectively deal with many, if not all, of these potential targets.

Finally, the recent fighting in Iraq presented our forces with just the type of targets that the Robust Nuclear Earth Penetrator is envisioned to engage; deeply buried command centers and possible storage areas for weapons of mass destruction. From preliminary reports and from casual observations, it does not appear in any way that our military efforts were inhibited by the lack of a robust nuclear earth penetrator.

Last year Senate Democrats were able to delay spending money on a robust nuclear earth penetrator by requiring a report identifying the types of targets this weapon is designed to hold at risk and the employment policy for the robust nuclear earth penetrator. The classified report has been submitted and the administration is forging ahead.

Equally unsettling as the robust nuclear earth penetrator is the proposal by the administration to repeal the 1993 statutory ban on the research, development, testing, and production of low-yield nuclear weapons. Current law prohibits work on weapons with yields equal to or less than 5 kilotons. In attempting to justify this proposal, Ambassador Linton Brooks, Acting Director of the National Nuclear Security Administration, NNSA, stated before the Senate Armed Services Committee, that ''we are seeking to free ourselves from intellectual prohibitions against exploring a full range of technical options.''

Importantly, he did not justify this proposed work as a current military requirement. At present, there is no military requirement for a low-yield nuclear weapon. As I said before, really, low-yield nuclear weapon is a misnomer. These are still horrendous, horrific weapons. They might better be referred to as small apocalypses, not low-yield weapons.

More illustrative of the motivation behind the efforts is a subsequent statement of Ambassador Brooks at the hearing. The Ambassador declared:

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

Let me commend the Ambassador for his candor and his responsiveness to the question because I think he has laid it out very accurately and very precisely and very well. No longer are we being motivated by a sincere and intense and consistent desire to try to avoid the use of nuclear weapons. We are trying to design weapons and produce weapons that we fully anticipate can be used. That is an extraordinary sea change in our policy. And it is a sea change that I think will reverberate around the world to our disadvantage, not to our security.

At the heart of the debate over these so-called low-yield nuclear weapons lies the observation, if not the fact, that the ability to limit collateral damage makes a weapon more likely to be used. The advent of precision-guided munitions makes attacks on urban areas more acceptable to leaders. Would we have dropped a dumb bomb on Saddam Hussein's suspected hideouts in the crowded neighborhoods of Baghdad? It would have been a much tougher call.

In a similar fashion, as suggested by Ambassador Brooks' comments, developing low-yield nuclear weapons, small apocalyptic weapons, tilts the scales for use, not for restraint. That is a balance I think will again jeopardize our situation, not enhance it.

Proponents of this new policy with its bias in favor of things that are usable, in the Ambassador's terms, attempt to justify their position on several grounds. They argue arms control and nonproliferation have failed. We heard the arguments on the floor of the Senate all day long. They cite a litany of states that acquired nuclear weapons since the adoption of the Nuclear Non-Proliferation Treaty in 1968: India, Israel, Pakistan, South Africa, and apparently North Korea. But this litany must be placed in context. Forty years ago when the original nuclear powers—the United States, the Soviet Union, Britain, France, and China—had a monopoly on nuclear weapons, it was routinely assumed that proliferation would be rapid and irreversible. President Kennedy predicted in the early 1960s that an additional 25 countries might develop nuclear weapons within 10 years. This dire prediction did not come true because of efforts at arms control exemplified by the Nuclear Non-Proliferation Treaty.

Recently, this point was reiterated by Deputy Secretary of State Richard Armitage who stated: Instead of the 25 or so countries that President Kennedy once predicted, only a handful of nations possess nuclear weapons. Of course, we suspect many more countries have chemical or biological weapons, but still short of the scores that have been predicted in the past.

We have reached this state of affairs in no small part through the concerted efforts of many nations, agreements such as the Nuclear Non-Proliferation Treaty and Chemical Weapons Convention, organizations such as the IAEA and nuclear supply groups—these constitute a global security architecture that have served us satisfactorily and kept us safe.

Moreover, of the five states that have acquired nuclear weapons since 1968, three—Israel, India, and Pakistan—never signed on to the Nuclear Non-Proliferation Treaty. In retrospect, many look back and wish we could have urged them, convinced them, persuaded them, to sign on because it would have made their ascendency to the nuclear ranks that much more difficult.

South Africa gave up its nuclear weapons and joined the regime as a nonpossessor. That leaves the very special case of North Korea which joined the NPT in 1985 and has been caught on at least two occasions violating this obligation before its recent announced repudiation of the treaty.

Critics of the nonproliferation regime frequently fail to acknowledge that Argentina, Brazil, South Korea, and Taiwan ceased their suspected nuclear program in part because of the international law norm represented by the nonproliferation treaty.

Similarly, with the demise of the Soviet Union, the newly independent states of Belarus, Kazakhstan, and Ukraine found themselves in possession of nuclear weapons. All of them voluntarily relinquished their weapons in favor of joining the NPT. Their decision, at the urging of the United States and others, reaffirmed the norms of nonproliferation. Indeed, as recently as May, 2000, the United States reaffirmed this norm by joining the four other original nuclear powers in declaring their commitment to the ''unequivocal undertaking'' to eliminate nuclear arsenals.

That affirmation is in stark contrast to the legislation before us that seeks to expand and enhance our nuclear arsenal. Today, nonproliferation is being advocated by the United States as ''do what I say,'' not ''do what I do.'' Unfortunately, the United States is more often imitated than obeyed.

Last Saturday, Vladimir Putin's annual address was reported in the American media. According to one report:

> [Putin] appeared to be responding to the Bush administration's new nuclear strategy, announced last year, when he said that Russia, too, was considering developing new variants of nuclear weapons.

President Putin declared, in his words:

> I can inform you that at present the work to create new types of Russian weapons, weapons of the new generation, including those regarded by specialists as strategic weapons, is in the stage of practical implementation.

As the newspaper report further indicated:

> [A]nalysts said he [Putin] appeared to be referring to Russia's efforts to modernize its nuclear arsenal and to develop low yield nuclear weapons.

At this point in the speech, the press reported that the ''remark was greeted by applause.''

I don't know how comfortable we all feel with the Russian Duma applauding the statement that Russia is considering modernizing their nuclear forces, potentially developing low-yield nuclear weapons. Indeed, it seems terribly ironic to me that as we urge support and help for the Russians to destroy their nuclear arsenal, they are simultaneously taking the path we are in trying to create and build a new, more modern arsenal.

Acknowledging the important role of the nonproliferation treaty, as I have over many decades, should not be equated with assuming the arms control regime is without shortcomings. A structure that was designed primarily to moderate the superpower confrontation between the United States and the

Soviet Union cannot be expected to adapt to the new threats and new technologies of the post-cold-war world without conscious and committed efforts led by the United States to deal with these new circumstances. Thus, it is incumbent on ourselves, the United States, not simply to walk away from this regime of arms control but to adapt it to the new contingencies, the new threats, the new environment of this new strategic world.

The consequences of the detonation of a weapon of mass destruction are so devastating that reliance on military means alone to deter or preempt such an event is shortsighted. Abandoning serious efforts at arms control will weaken, not strengthen, our efforts to protect the Nation. We must engage, again, I believe, in a concerted effort to strengthen these norms of nonproliferation, of nonuse—not weaken them, as this legislation suggests.

A second argument used by proponents of these policies is that it is just about research; no one would ever deploy these weapons. These advocates have not been paying attention to the Bush administration. These are the words of Fred Celec, Deputy Assistant to the Secretary of Defense for Nuclear Matters, in an interview with the San Jose Mercury News, talking in the context of the development of a ''hydrogen bomb that can be successfully designed to survive a crash through the hard rock or concrete and still explode,'' which is an earth penetrator. Mr. Celec concludes, in his words, if we can do it, ''it will ultimately get fielded.'

So this is not about hypothetical research; it is not about a big science project, or training scientists. In the view of a very influential member of the Department of Defense, it is about getting weapons we can put in the field. I can't think of any weapon that we would field, that we would place in the hands of American military personnel, that we wouldn't test first. So we are also talking about testing.

These are grave—not just possibilities, but if you listen to the spokesman of the administration, these are right over the horizon. I think it is very disturbing. That is why I think we have to act here to exercise our judgment and our responsibility to ensure that our policy is consistent with the best interests of this country. I hope, through consideration of this amendment, we will do that.

A third point that seems implicit in many of the arguments that are made on behalf of these weapons is the notion that nuclear weapons can be designed so their use is, if not relatively benign, then at least tolerable.

As previously discussed, the proposed modification of existing weapons to create a robust nuclear earth penetrator is anything but benign or tolerable. It will pack an explosive punch at least 25 times that of Nagasaki or Hiroshima, and even if technology and the Congress allows for a smaller yield robust nuclear earth penetrator, its use will be devastating.

Sidney Drell, a noted physicist and arms control advocate, pointed out that even a 1-kiloton weapon, penetrating to 40 feet, would create a crater larger than the impact area at the World Trade Center and put about 1 million cubic feet of radioactive material in the air. Such radioactivity could last for many years and would likely be spread over a fairly large area by the prevailing winds. That is not a small, discrete weapon that plows into the ground with a little puff of smoke emanating. That is a devastating weapon.

A fourth rationale raised by proponents is that permission to develop low-yield nuclear weapons is necessary to train the next generation of nuclear scientists. This argument ignores the existence of thousands of nuclear weapons that are available for training purposes. The ban on low-yield nuclear weapons applies only to the fabrication of new weapons, not the dismantling and study of existing ones. Moreover, the idea that decades of arms control efforts would be cast aside simply to provide a training exercise should cause a more exhaustive search for other training opportunities rather than the creation of a new class of nuclear weapons. Or, at a minimum, it should prompt a careful exemption from the ban for the purpose of research, and not the wholesale repeal of the ban that is included in this legislation before us.

A fifth rationale advanced by supporters is the possible use of a low-yield nuclear device to attack a facility that contains biological or chemical agents. The theory is that the radiation can destroy the biological or chemical agents in addition to destroying the facility. But this rationale begs two questions. What will destroy the radiation emitted by the nuclear blast and why are precision-guided missiles not as suitable a response? Once again, this is the very specialized threat that may be dealt with by other means and is an attempt to deal with the possibility of chemical and biological exposure through the release of a definite radiological exposure. It is not a compelling reason to abandon the ban on low-yield nuclear weapons.

A final justification for the development of low-yield nuclear weapons is that it will act as a deterrent. Proponents argue that our existing nuclear weapons are so large that we are self-deterred from using them and our adversaries know this. But with new, low-yield weapons, our adversaries will have renewed concern that we will employ nuclear weapons.

Several points are in order. First, in the war on terror, our adversaries are unlikely to be deterred by any size nuclear weapon, due to their fanaticism and the practical problem of targeting them. In a confrontation with rogue states, the targeting problem is easier, but the use of nuclear weapons of any size presents difficult tactical problems.

Our doctrine of air superiority, information dominance, precision weapons, and speed makes the use of nuclear weapons less attractive on military grounds since we plan for and anticipate the rapid destruction of enemy forces and the swift seizure of key political objectives. The use of nuclear weapons will likely slow us down and increase the cost, both short run and long run, of our operations.

In Iraq, we were confronted by a rogue state. We heard before the hostilities of the existence of deep underground facilities. We were told there were significant weapons of mass destruction throughout the country. Yet, I don't think any military commanders would have even contemplated the use of low-yield nuclear weapons, or any type of nuclear weapon. For one reason, if we had, we would still be miles away from Baghdad, because we could not occupy a place that was radiating plutonium. We would have caused significant civilian casualties. We would have caused a political firestorm that could never be contained in that part of the world and passed across the globe.

These are the practical considerations that deter us—not the fact that we do not have a low-yield weapon.

In addition, the ''deterrent effect'' may have the opposite effect on these rogue nations, as we think we are going to deter them.

Indeed, as Michael May, the former head of Lawrence Livermore National Laboratory, suggested, the emphasis on tactical nuclear weapons ''increases the motivation of 'targeted states' to improve and extend their own nuclear force, or to get one if they don't have it.''

The behavior of North Korea and Iran, although clearly unjustified, might be prompted by such considerations.

The amendment I offer today is designed to do what I heard practically all of my colleagues say was the intent of this proposal by the administration—to allow scientists to do research but clearly to prevent the development, the testing, the fielding, and the use of nuclear weapons, particularly low-yield nuclear weapons.

The amendment I offer today would amend the current Spratt-Furse law so that research is allowed. Work beyond research would, however, remain prohibited.

Since 1953, the Department of Energy and the Department of Defense have worked in a very formalized weapons development process. In the DOE nuclear weapons development process there are a series of numbered phases of development. They are pictured in this chart. The top chart represents the development of a new weapon. There are eight phases as indicated in the chart. The bottom array is the development of or modification of an existing weapon such as the case would be with the robust nuclear earth penetrator. It is coming out of the stockpile, but it is still subject to the same clearly defined phases that have been

defined now for almost 50 years, concept assessment, feasibility, all the way through retirement.

The amendment I offer today would prohibit ''development engineering,'' which is phase 3, or phase 6.3. Again, these are clearly identified phases. There will be no confusion in the Department of Energy or in the Department of Defense as to what is prohibited, what is allowed, and what is allowed as ''reasonable.'' That is what I have heard consistently my colleagues say, that the whole purpose of this proposal by the administration and the development phases are well understood. They have been in use for 50 years. The phases were developed jointly by the Atomic Energy Commission, the predecessor to the DOE, and the Department of Defense in a memorandum of understanding signed in 1953.

Again, my amendment is very clear. It allows phase 1, phase 2, and phase 2–A activity for a new weapon. The red line comes at phase 3. It would allow phase 6.1, 6.2, and 6.2–A. The red line phase comes at 6.3 for the modification of existing weapons. Research is allowed, and everything else is prohibited.

The amendment is designed to allow what, as I said, the Bush administration claims is a primary reason to seek the repeal of the Spratt-Furse law—the need to ''train the next generation of nuclear weapons scientists and engineers.''

I and many of my colleagues do not support providing an open-ended authority to this or any other administration to develop, test, produce, and deploy new nuclear weapons. Unless we adopt this amendment or some variance of the amendment, that is precisely what we will be giving the administration.

The amendment would address the primary concern of ADM Ellis, Commander of Strategic Command, the command responsible for nuclear weapons.

In a letter to the Armed Services Committee, ADM Ellis stated that the ''U.S. Strategic Command is interested in conducting rigorous studies of all new technologies and examining the merits of precision, increased penetration, and reduced yield for our nuclear weapons.''

Nowhere is there a suggestion that he would like the permission to develop the test in the field of new weapons.

Again, if we are serious about arms control, and if we recognize the request for less stability in research, this amendment will be adopted. I hope it is. I would prefer, frankly, the restoration completely of the Spratt-Furse amendment. But this will, I think, do what must be done—prevent development, testing, and fielding of new nuclear weapons of the low-yield type.

I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, the Senate has just voted to authorize the research of new nuclear weapons for the first time since 1993. We have removed a prohibition on research which could lead to the production of nuclear weapons. This is a major shift, in my judgment, a terribly mistaken shift in policy because of the message it so clearly sends to the world that we are now going to walk down the road we are telling the rest of the world not to walk down.

The amendment which has been offered by Senator REED, of which I am a cosponsor, starts from that point. However, as the Senator from Rhode Island just described, it does not seek in any way to reverse what the Senate just did relative to the research that the opponents of the Feinstein-Kennedy amendment said was so important to protect. It accepts the decision of the Senate and the opponents of the Feinstein-Kennedy amendment—the argument made that research should not be prohibited. Senator REED's amendment does not prohibit research. Rather, it says we should not allow the development of these new weapons and, of course, any subsequent testing or deployment of those weapons; that if we are going to let the world know we are not committed to the deployment and the development of new weapons, we have to send a clear signal to the world of some kind that even though research would be allowed, nonetheless we are not going to raise the prohibition or lift the prohibition on the development of new nuclear weapons.

I believe it was a mistake to repeal the Spratt-Furse language. I think what we are doing is telling the North Koreas and the Irans of the world that we are not going to tolerate your having nuclear weapons, but we are going to develop new nuclear weapons ourselves. It is a totally inconsistent position. It undermines our whole position and our standing in the world to argue that nations such as North Korea and Iran should not be allowed to have nuclear weapons.

It is mighty difficult to persuade even our Allies in the world that we should take strong measures to stop North Korea from getting nuclear weapons, and we should take strong measures to stop Iran from getting nuclear weapons, including working with the Russians to try to stop Iran from getting nuclear weapons, but, oh, by the way, we are going to do research and development on new nuclear weapons.

As the Senator from Rhode Island and others have said, this isn't just a matter of research, because the Deputy Assistant Secretary of Defense for Nuclear Matters puts it this way: ''If a hydrogen bomb could be successfully designed to survive a crash through hard rock and still explode, it will ultimately get fielded''—I presume speaking for the administration.

So nobody should be, in any way, fooled that what we are talking about is just simply research. Unless we put a prohibition in to stop the development of these weapons, what the world will believe—and I think accurately—is that it is not just research, it is development. Then, in the words of Fred Celec, the Deputy Assistant Secretary on nuclear matters: It will get fielded.

Now, the opponents of the last amendment said: Well, that is not what we are trying to do here. We are not trying to make any commitment to fielding a weapon or even developing a weapon. All we are talking about is research. And since the Spratt amendment prohibits research on weapons which could lead to their deployment and to their production, we think the Spratt amendment simply goes too far and should be repealed.

So what the Senator from Rhode Island does in his amendment is say: Well, then, for Heaven's sake, consistent with that—and to avoid sending a message which even the opponents of the Feinstein-Kennedy amendment said they do not want to send—let us keep the prohibition on the development of new nuclear weapons. That is all the amendment offered by Senator REED does.

It seems to me it is the least we can do to avoid sending a signal from the U.S. Senate that this country is now going down a road that we are saying no country should go down, which is the road of new nuclear weapons.

The former Assistant Energy Secretary, Rose Gottemoeller, in March of 2003 put it this way:

> Other countries watch us like a hawk. They are very, very attentive to what we do in the nuclear arena. This is going to be considered another step in the tectonic shift.

She was referring to the repeal of the Spratt-Furse language.

> I think people abroad will interpret this as part of a really enthusiastic effort by the Bush administration to renuclearize. And I think definitely there's going to be an impetus to the development of nuclear weapons around the world.

The greatest threat we face is the terrorist threat and the proliferation of weapons of mass destruction. We should do what we can to avoid sending a signal to the world that we are committed to the development of new nuclear weapons. The prohibition now has been lifted on research and development of new nuclear weapons, which could lead to their production.

Unless we adopt the Reed amendment, it will appear to the world—accurately—that this Senate is committed to the development of new nuclear weapons. I hope we are not going to make that commitment. It would be a terrible mistake for what it would unleash.

In order to avoid that commitment from being made, or from appearing to be made, to the rest of the world, we need the Reed language, which says that we are going to keep the prohibition of Spratt-Furse from the development stage on.

The Senate has spoken relative to research. The words again of the opponents, who have said: My Heavens,

under Spratt-Furse, you can't even do the research. Surely, we ought to allow scientists to think.

The Reed amendment is consistent with what the opponents of Feinstein-Kennedy said was their main reason for opposing the prohibition that exists in law. So I would hope that we could adopt the language that is in Senator REED's amendment, to indicate we, in fact, are not committed to the development of new nuclear weapons, and that we would not march down a road when we tell other nations they must not march down that road.

I yield the floor.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I have listened very carefully to the arguments by my two distinguished colleagues, the Senator from Rhode Island and the Senator from Michigan.

The Senate has acted on repealing a portion of the ban, and I think it is important that the Senate be consistent and that it should be a total repeal unless it could be construed as not being the intention of the Congress to fully support the actions of the research in the first two steps.

My second-degree amendment would allow the entire repeal, as called for in the bill, to take place. But very importantly, I then make it eminently clear that not one step can go beyond the research phase unless—and I read section (c):

> The Secretary of Energy may not commence the engineering development phase, or any subsequent phase, of a low-yield nuclear weapon unless specifically authorized by Congress.

Laws should be written that are clear, so they are understandable. This second-degree amendment absolutely places in the mind of every reasonable person who reads it precisely what is the intent of the Congress. And that intent is that this is approved to go forward in the vote we have just taken. In the second degree amendment to the pending amendment, it is clear that Congress is fully in charge, working with the executive branch. The Congress, and only the Congress, can authorize and appropriate the funds necessary to go one step beyond what the earlier amendment provided.

Very simple. I do not need to prolong this argument. The second degree amendment is eminently clear.

Mr. REED. Will the chairman yield for a question?

Mr. WARNER. Absolutely.

Mr. REED. I think I understand your second degree, but if I could, just for a moment—my amendment authorizes research activities in phases 1, 2, and 2–A, and 6.1, 6.2, and 6.2–A, and then prohibits the following phases. Your amendment would authorize work in these phases.

I think the difference is that rather than a clear prohibition, which would require someone coming back to the Congress and seeking to repeal the prohibition, you would require them to come back and get an authorization to proceed. I think that is correct.

Mr. WARNER. I do not want to get tangled up in the terminology, but the bill, as passed out by the Armed Services Committee that is pending before us, repeals, in the entirety, the law that was passed in 1994.

Then you are coming along and saying: All right, I cede the ground that was authorized by this bill that just passed, but I wish to reimpose the limitation on the subsequent steps to the research.

All I am saying is, let's be consistent. We have repealed. Leave it repealed. But insert the Congress at precisely the point the Senator raises there and say: Not one step more until the authorization and appropriation takes place.

Mr. REED. Essentially, the functional difference between my amendment and your second degree is, at this point, under my amendment the administration would have to come and lift the prohibition; under your amendment, they would have to come and get an authorization. I think that is the functional difference.

Mr. WARNER. I think the Senator is correct.

Mr. REED. Let me say, if I may, again, we are united in the notion of allowing the research in these first three phases. We choose a different way to control government access in the succeeding phases. But the effect, I hope, at the end of the deliberations is that the development, engineering, testing, and deployment of nuclear weapons of low-yield will be subject to congressional authority.

Mr. WARNER. I think the advantages, if I may say with respect to my two highly esteemed colleagues, are that the second-degree amendment can be understood by anyone who can interpret the English language.

When I look at your amendment—I have been over here working it and reworking it—it leaves a little bit of a challenge.

Mr. REED. If the chairman will yield, that is why I have this chart, which is quite obvious, and it absolutely could explain your amendment, too.

I will lend it to you.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, I am just comparing the two amendments. It seems to me in terms of directives, the simplicity of the Reed amendment has it all over the amendment of the Senator from Virginia. It is shorter than the Senator's amendment, if I am reading this amendment correctly. I want to make sure I have the right amendment before I make this statement. It looks like on page 2 at least there are 10 lines of type; is that correct? Am I looking at the correct amendment?

Mr. REED. I believe you are.

Mr. LEVIN. On the first page.

Mr. REED. It reads ''03.857'' on the upper left hand.

Mr. LEVIN. Correct. It is at least as simple as the amendment of the Senator from Virginia, which I understand is really a substitute.

Mr. WARNER. My esteemed colleague is absolutely correct.

Mr. LEVIN. When the Senator says it reimposes the limitation on development, the Senator is correct. It does do that.

Mr. WARNER. Which amendment are you discussing? The Reed amendment?

Mr. LEVIN. The Reed amendment, according to my dear friend from Virginia, would reimpose the prohibition on development that was just repealed in the bill's language and left in because of the defeat of the Feinstein amendment. That is correct.

Mr. WARNER. First, it has to be removed and nothing has been removed yet. The law of the land remains the same tonight as it has been since 1994. We are endeavoring to see what should be done about it. The bill reported out by our committee on a fairly significant vote in favor of repeal would have the effect of repealing it in its entirety.

Mr. LEVIN. That is correct.

Mr. WARNER. My amendment says, yes, carry forward with the intent of the majority vote in the Senate Armed Services Committee but put in the steps of Congress having to authorize and approve funds for each step subsequent to research.

Mr. LEVIN. And the Senator's amendment is useful.

Mr. WARNER. Which Senator's?

Mr. LEVIN. The Senator from Virginia, the Senator I am addressing.

Mr. WARNER. I wish we were arguing that case. Both of us were trial lawyers. If you had made that mistake on the floor of a trial courtroom, I would have you nailed right now.

Mr. LEVIN. I am glad we are not in a trial courtroom because you surely don't have me nailed here.

Mr. WARNER. You are working your way around trying to figure out exactly what it is you and the distinguished Senator from Rhode Island want to do.

Mr. LEVIN. It is quite clear what the Senator from Rhode Island and I want to do, which is maintain a prohibition on the development of new nuclear weapons. The difference is exactly what the Senator from Rhode Island said, which is that his amendment, which I have cosponsored, maintains a prohibition on development; whereas the amendment of the Senator from Virginia says the administration would have to come back for reauthorization.

The Senator from Virginia's amendment is valuable. As a matter of fact, I offered the amendment the Senator from Virginia is offering tonight in committee. It was defeated by one vote.

Mr. WARNER. In the committee?

Mr. LEVIN. In our committee I offered the amendment saying, come back for reauthorization because under the circumstances, having defeated what we just had previously defeated in committee, I thought that was the best that could be achieved. And we could

not achieve that because it was defeated by a 13-to-12 vote. I don't doubt there is value to what the Senator from Virginia is doing.

Mr. WARNER. Mr. President, I apologize. I did not intend to plagiarize your good work. Suffering from a middle-age crisis, I forgot that you might have done that.

Mr. LEVIN. I am delighted that the Senator from Virginia has offered this as a second-degree amendment. Believe me, if the amendment of the Senator from Rhode Island is defeated by the adoption of the amendment of the Senator from Virginia as a substitute, all of us would be very supportive of the amendment of the Senator from Virginia. Let it be clear that while there is value in it, there is not as much value in it as the amendment of the Senator from Rhode Island. It is not as clear a statement to the world that we are not committed to the development of new nuclear weapons.

What the Reed amendment says is: Development of these new weapons is prohibited. That is a very clear statement. The clarity of that statement is absolutely pure. It is a lot clearer in terms of assuring the world that we are not committed to the development of new nuclear weapons than is a statement such as the amendment offered by the Senator from Virginia which is, if you want to develop, come back to us for authorization.

I say that in all sincerity. I look the Senator from Virginia in the eye and say: His amendment, in my book, has value but not nearly the value of the amendment of the Senator from Rhode Island.

I hope we will adopt the amendment of the Senator from Rhode Island and defeat the substitute offered by the Senator from Virginia. But should the substitute prevail, I would in all good conscience vote for the substitute amendment if, in fact, it is substituted for the amendment of the Senator from Rhode Island.

Nonetheless, there is a much stronger statement made of reassurance to the world, a statement to the North Koreas and the Irans of the world, that we are not committed to developing new nuclear weapons, if we say exactly that. That is what the amendment of the Senator from Rhode Island says. We are not going to proceed with the development, even though we are going to allow research on these new nuclear weapons.

I hope, again, the substitute is not agreed to and that the amendment of the Senator from Rhode Island is agreed to.

Again, I commend the Senator from Virginia because I do think that there is a contribution in his substitute amendment which is better than just simply repealing the Spratt-Furse language.

Mr. WARNER. Mr. President, I thank my colleague for what I interpret as kind words. We remain to have a difference of opinion as to the advisability of not repealing this current prohibition in its entirety.

I have no further comments with respect to the pending amendments.

The PRESIDING OFFICER. Who seeks recognition? The Senator from Rhode Island.

Mr. REED. Mr. President, I believe on the amendment that I offered earlier today on missile defense, we have reached agreement. It might be appropriate at this time to call up the amendment.

Mr. WARNER. Mr. President, I am perfectly willing. That is a very good suggestion.

Mr. REED. Mr. President, I will lay aside the pending amendment. We are trying to identify the numbers so we can call up the amendment.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 711

Mr. REED. Mr. President, I ask unanimous consent to lay aside the pending amendment and call up amendment No. 711.

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

The clerk will report.

The legislative clerk read as follows:

The Senator from Rhode Island [Mr. REED], for himself, Mrs. FEINSTEIN, and Mr. FEINGOLD, proposes an amendment numbered 711.

The amendment is as follows:

(Purpose: To provide under section 223 for oversight of procurement, performance criteria, and operational test plans for ballistic missile defense programs)

Strike section 223, and insert the following:

SEC. 223. OVERSIGHT OF PROCUREMENT, PERFORMANCE CRITERIA, AND OPERATIONAL TEST PLANS FOR BALLISTIC MISSILE DEFENSE PROGRAMS.

(a) PROCUREMENT.—(1) Chapter 9 of title 10, United States Code, is amended by inserting after section 223 the following new section:

"§ 223a. Ballistic missile defense programs: procurement

''(a) BUDGET JUSTIFICATION MATERIALS.—(1) In the budget justification materials submitted to Congress in support of the Department of Defense budget for any fiscal year (as submitted with the budget of the President under section 1105(a) of title 31), the Secretary of Defense shall specify, for each ballistic missile defense system element, the following information:

''(A) For each ballistic missile defense element for which the Missile Defense Agency in engaged in planning for production and initial fielding, the following information:

''(i) The production rate capabilities of the production facilities planned to be used.

''(ii) The potential date of availability of the element for initial fielding.

''(iii) The expected costs of the initial production and fielding planned for the element.

''(iv) The estimated date on which the administration of the acquisition of the element is to be transferred to the Secretary of a military department.

''(B) The performance criteria prescribed under subsection (b).

''(C) The plans and schedules established and approved for operational testing under subsection (c).

''(D) The annual assessment of the progress being made toward verifying performance through operational testing, as prepared under subsection (d).

''(2) The information provided under paragraph (1) shall be submitted in an unclassified form, but may include a classified annex as necessary.

''(b) PERFORMANCE CRITERIA.—(1) The Director of the Missile Defense Agency shall prescribe measurable performance criteria for all planned development phases (known as ''blocks'') of each ballistic missile defense system program element. The performance criteria shall be updated as necessary while the program and any follow-on program remain in development.

''(2) The performance criteria prescribed under paragraph (1) for a block of a program for a system shall include, at a minimum, the following:

''(A) One or more criteria that specifically describe, in relation to that block, the types and quantities of threat missiles for which the system is being designed as a defense, including the types and quantities of the countermeasures assumed to be employed for the protection of the threat missiles.

''(B) One or more criteria that specifically describe, in relation to that block, the intended effectiveness of the system against the threat missiles and countermeasures identified for the purposes of subparagraph (A).

''(c) OPERATIONAL TEST PLANS.—The Director of Operational Test and Evaluation, in consultation with the Director of the Missile Defense Agency, shall establish and approve for each ballistic missile defense system program element appropriate plans and schedules for operational testing to determine whether the performance criteria prescribed for the program under subsection (b) have been met. The test plans shall include an estimate of when successful performance of the system in accordance with each performance criterion is to be verified by operational testing. The test plans for a program shall be updated as necessary while the program and any follow-on program remain in development.

''(d) ANNUAL TESTING PROGRESS REPORTS.—The Director of Operational Test and Evaluation shall perform an annual assessment of the progress being made toward verifying through operational testing the performance of the system under a missile defense system program as measured by the performance criteria prescribed for the program under subsection (b).

''(e) FUTURE-YEARS DEFENSE PROGRAM.—The future-years defense program submitted to Congress each year under section 221 of this title shall include an estimate of the amount necessary for procurement for each ballistic missile defense system element, together with a discussion of the underlying factors and reasoning justifying the estimate.''.

(2) The table of contents at the beginning of such chapter 9 is amended by inserting after the item relating to section 223 the following new item:

''223a. Ballistic missile defense programs: procurement.''.

(b) EXCEPTION FOR FIRST ASSESSMENT.—For the first assessment required under subsection (d) of section 223a of title 10, United States Code (as added by subsection (a))—

(1) the budget justification materials submitted to Congress in support of the Department of Defense budget for fiscal year 2005

(as submitted with the budget of the President under section 1105(a) of title 31, United States Code) need not include such assessment; and

(2) the Director of Operational Test and Evaluation shall submit the assessment to the Committees on Armed Services of the Senate and the House of Representatives not later than July 31, 2004.

Mr. REED. I ask unanimous consent to add as cosponsors Senators FEINGOLD and FEINSTEIN.

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

AMENDMENT NO. 711, AS MODIFIED

Mr. REED. Mr. President, I ask unanimous consent that the amendment be modified with the changes at the desk.

The PRESIDING OFFICER (Mr. WARNER). The Senator has that right.

The amendment is so modified.

The amendment (No. 711), as modified, is as follows:

Strike section 223, and insert the following:

SEC. 223. OVERSIGHT OF PROCUREMENT, PERFORMANCE CRITERIA, AND OPERATIONAL TEST PLANS FOR BALLISTIC MISSILE DEFENSE PROGRAMS.

(a) PROCUREMENT.—(1) Chapter 9 of title 10, United States Code, is amended by inserting after section 223 the following new section:

''§ 223a. Ballistic missile defense programs: procurement

''(a) BUDGET JUSTIFICATION MATERIALS.—(1) In the budget justification materials submitted to Congress in support of the Department of Defense budget for any fiscal year (as submitted with the budget of the President under section 1105(a) of title 31), the Secretary of Defense shall specify, for each ballistic missile defense system element, the following information:

''(A) For each ballistic missile defense element for which the Missile Defense Agency in engaged in planning for production and initial fielding, the following information:

''(i) The production rate capabilities of the production facilities planned to be used.

''(ii) The potential date of availability of the element for initial fielding.

''(iii) The expected costs of the initial production and fielding planned for the element.

''(iv) The estimated date on which the administration of the acquisition of the element is to be transferred to the Secretary of a military department.

''(B) The performance criteria prescribed under subsection (b).

''(2) The information provided under paragraph (1) shall be submitted in an unclassified form, but may include a classified annex as necessary.

''(b) PERFORMANCE CRITERIA.—(1) The Director of the Missile Defense Agency shall prescribe measurable performance criteria for all planned development phases (known as ''blocks'') of the ballistic missile defense system and each of its elements. The performance criteria may be updated as necessary while the program and any follow-on program remain in development.

''(2) The performance criteria prescribed for a block under paragraph (1) shall include one or more criteria that specifically describe, in relation to that block, the intended effectiveness against foreign adversary capabilities, including a description of countermeasures, for which the system is being designed as a defense.

''(c) OPERATIONAL TEST PLANS.—The Director of Operational Test and Evaluation, in consultation with the Director of the Missile Defense Agency, shall establish and approve for each ballistic missile defense system element appropriate plans and schedules for operational testing. The test plans shall include an estimate of when successful performance of the element in accordance with each performance criterion is to be verified by operational testing. The test plans for a program may be updated as necessary while the program and any follow-on program remain in development.

''(d) ANNUAL TESTING PROGRESS.— The annual report of the Director of Operational Test and Evaluation required under section 232(h) of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107–107; 10 U.S.C. 2431 note) shall include the following:

''(1) The test plans established under subsection (c); and

''(2) An assessment of the progress being made toward verifying through operational testing the performance of the system under a missile defense system program as measured by the performance criteria prescribed for the program under subsection (b).

''(e) FUTURE-YEARS DEFENSE PROGRAM.— The future-years defense program submitted to Congress each year under section 221 of this title shall include an estimate of the amount necessary for procurement for each ballistic missile defense system element, together with a discussion of the underlying factors and reasoning justifying the estimate.''.

(2) The table of contents at the beginning of such chapter 9 is amended by inserting after the item relating to section 223 the following new item:

''223a. Ballistic missile defense programs: procurement.''.

(b) EXCEPTION FOR FIRST ASSESSMENT.— The first assessment required under subsection (d) of section 223a of title 10, United States Code (as added by subsection (a)), shall be an interim assessment submitted to the Committees on Armed Services of the Senate and the House of Representatives not later than July 31, 2004.

The PRESIDING OFFICER (Mr. TALENT). Will the Senator suggest the nature of the modification?

Mr. REED. The staffs have been collaborating all day. They have reached an agreement. The modifications make it clear that goals will be established with respect to the National Missile Defense Program. The modifications are acceptable to the majority and minority. I believe we have a meeting of the minds on all the details.

Mr. WARNER. The Senator is correct. The modification was reviewed on this side, and we are prepared to accept the amendment.

Mr. REED. I urge acceptance of the amendment at this time.

Mr. LEVIN. Mr. President, I commend the Senator from Rhode Island and all those who worked with him to make this amendment possible. It is a significant contribution to making our missile defense system more effective, both in terms of the cost and operational effectiveness. It fills some very important holes that otherwise would have existed, and it is his tenacity that made it possible.

Mr. WARNER. Mr. President, earlier today, when the amendment was being discussed, I did encourage the Senator from Rhode Island and the Senator from Colorado to see whether or not they could bridge the gap. They have done that.

So I compliment my good friend and fellow member of the Armed Services Committee, as well as the Senator from Colorado. They did a job that will be helpful.

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

The amendment (No. 711), as modified, was agreed to.

Mr. LEVIN. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Mr. LEVIN. Mr. President, I ask for the yeas and nays on the substitute amendment of Senator WARNER.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. WARNER. Mr. President, as a simple courtesy, I ask for the yeas and nays on the amendment of the Senator from Rhode Island.

The PRESIDING OFFICER. It is in order to request the yeas and nays on the underlying first degree amendment.

Is there is a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. WARNER. I thank the Chair. This concludes the matters on the bill.

MORNING BUSINESS

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

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

CONGRATULATING CHARLES MICHAEL DURISHIN

Mr. DASCHLE. Mr. President, today I offer my deepest gratitude and sincere congratulations to Charles Michael Durishin, Democratic staff director of the House Veterans' Affairs Committee, on the occasion of his retirement, last Friday. A good friend and a consummate professional, Mike has served in various capacities in Congress since 1973, including most of the last 16 years with the House Veterans' Affairs Committee.

I met Mike in 1972 on the Senate campaign of Jim Abourezk. We were hired within days of each other by Pete Stavrianos, one of my close friends and my longtime chief of staff. Mike and I quickly became friends on the campaign and, after the election, came to Washington together to work on Senator Abourezk's staff. I so respected his work that he was one of the first people I hired to join my own staff when I was elected to the House of Representatives in 1978. Mike worked with me, covering veterans issues, until 1986. At that time, I was a member of the House Veterans' Affairs Committee, and Mike matriculated to the committee staff.

While I lost one of my great friends and best staffers, the Veterans' Affairs Committee gained a staff member with expert knowledge, exceptional political skill, and great character.

I have been so fortunate to continue to work with Mike on veterans issues even as I moved to the Senate. On the committee staff, Mike was instrumental in securing passage of the Montgomery G.I. bill. Later, he continued his work to improve education benefits, expand veterans' employment opportunities, and end homelessness among veterans while working for one of my close friends in the House, Representative LANE EVANS.

I am truly grateful to have been able to work with such a great friend for so long. Mike's wonderful smile, his dry sense of humor, and his amazing wealth of knowledge have meant so much to me over the years. I have had the pleasure of working with his wife Joey as well, and I know she and their son, Michael, will be happy to have him around the house a little more often during his retirement. While those of us who know his work are not yet ready to see him go, I wish him the best in this next stage of his life.

The veterans of this Nation will greatly miss the day-to-day service of this advocate who has dedicated his career to ensuring that our Nation meets its obligations to the men and women who serve it so bravely. I will miss greatly working beside my longtime friend. Mike, your record of service will be long remembered and appreciated in the Halls of the Congress and beyond. Good luck with your well-earned retirement.

GRANTING TAIWAN MEMBERSHIP TO THE WORLD HEALTH ORGANIZATION

Mr. REID. Mr. President, 3 years ago today, Chen Shui-bian was democratically elected President of the Republic of China on Taiwan. Under President Chen's strong leadership, Taiwan has remained true to its democratic values and has continued to be a model for its neighbors in the region. But as the Taiwanese people prepare to celebrate the third anniversary of their President's election, they also are struggling to contain the recent outbreak of Severe Acute Respiratory Syndrome, SARS, in their country. The WHO's refusal to grant membership or even observer status to Taiwan has hindered the Nation's ability to halt the spread of SARS, and has placed the health of all 23 million Taiwanese in jeopardy. This crisis highlights Taiwan's urgent need to obtain observer status in the WHO.

I urge the WHO to give Taiwan access to all the resources it needs to fight SARS so that President Chen can be as successful in the coming years as he has been during the last 3.

I ask unanimous consent that the following op-ed on this topic by President Chen that appeared in the Washington Post on May 9 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, May 9, 2003]

HELP TAIWAN FIGHT SARS

(By Chen Shui-bian)

The outbreak and spread of severe acute respiratory syndrome, or SARS, has brought illness, death and economic peril to Asia and the rest of the world. It has also drawn attention to Taiwan's exclusion from the World Health Organization. If there was ever a time for my country to be allowed to join the WHO, it is now.

As Taiwan's democratically elected president, my first and foremost obligation is to the people of Taiwan. When SARS first appeared in Taiwan in March, our health system responded quickly and effectively. As a result, Taiwan initially achieved a record of zero mortality, zero community transmission and zero transmission abroad of SARS. But despite our efforts, another outbreak occurred in late April. We have taken strict measures in response, and are working day and night to contain the disease.

Throughout this health crisis, my government has acted in the best interest of our people and of foreign nationals living in and visiting Taiwan. At no time has my administration suppressed information about the disease. Our press has reported freely on SARS. More important, our officials know that they are accountable to the people, both morally and at the ballot box. Whatever problems arise for Taiwan, we will solve them according to the highest standards of medicine, government accountability and human compassion.

I also have an obligation to the world. Taiwan is a nation of 23 million people and a major trading partner for many countries. What happens in Taiwan affects many millions more around the world. For that reason, Taiwan immediately offered to work with the WHO in combating SARS. Unfortunately, we were rebuffed. However, in response to the most recent rise in the number of cases, and for the first time in decades, two experts from the WHO arrived in Taiwan last week. I welcome this assistance and have directed my government and called on my people to cooperate fully with them.

The WHO's decision to send these experts to Taiwan has great significance. It demonstrates that Taiwan is indispensable to international public health. But it also suggests that cooperation between the WHO and Taiwan should not be left to ad hoc arrangements.

Despite my country's advanced health system, staffed by doctors and nurses educated in highly respected institutions at home and abroad, and despite a strong desire to participate in the WHO, Taiwan is denied membership or even observer status in the organization. As a consequence, our epidemiologists are still unable to gain prompt access to information, such as samples of the virus, that could help our scientists learn about the disease and treat patients. Nevertheless, we have tried to provide information to international organizations to ensure that Taiwan can make the maximum contribution to solving this health problem.

The effort to understand and control SARS continues. Viral experts seek answers to important questions. Doctors and health professionals on the front line of the battle against SARS need as much information as possible to be able to deal with the disease. Moreover, like the WHO, international health officials need as much data as possible about SARS and the way it behaves in different environments and among different populations.

Taiwan, with a population larger than those of three-quarters of the countries of the world, is a piece of a global puzzle that experts need to understand to cope with the virus. Taiwan has long wanted not only to benefit from the WHO's expertise but also to share the responsibility that all countries have to global public health. Many health care professionals around the world have expressed their support for Taiwan's admission to the WHO as an observer. We are grateful.

We hope that at the WHO meeting on May 19, this important organization will invite Taiwan to be an observer. Taiwan's people should not be excluded from efforts to defeat SARS. Nor should the rest of the world be denied the important contribution Taiwan can and wants to make to global health.

HONORING PRIVATE DANNY J. KEOGH

Mr. REID. Mr. President, on March, 17, 1953, Private Danny J. Keogh, an Irish citizen and a resident of the State of Nevada, gave his life for America while fighting in the Korean War. Private Keogh's story is a tale of exemplary courage. After living and working in Sparks, NV for 4 years, Private Keogh was drafted to serve in the U.S. Army during one of our Nation's most difficult hours. Private Keogh served valiantly with the 9th Infantry Regiment of the 2nd Infantry Division until he fell to enemy mortar fire on March 17 when his position on Hill 355 of Little Gibralter came under attack from Chinese forces.

Today I rise to honor Private Keogh and to thank his family for the sacrifice that this brave young man made for our country. Private Keogh's family has long sought American citizenship for their fallen loved one, and I pledge my support for this cause. Those who are willing to make such great sacrifices for our Nation and our liberties have earned the title of United States citizen, and deserve a special place in the hearts of all Americans.

Our duty to honor those who serve on the front lines of our battle against tyranny, terrorism and hatred has become especially poignant in the wake of our recent war with Iraq. I am pleased that Congress included language in the Department of Justice Authorization bill last year to allow fallen heroes to receive the honor of citizenship. Efforts like this, and a strong commitment on the part of educators like Assemblyman Bernie Anderson, Private Keogh's cousin to teach the next generation of Nevadans about the sacrifices made in defense of our freedoms, are essential for keeping America and our democratic ideals strong. I salute Private Keogh and his family and look forward to the day very soon when this American hero will finally become an American citizen.

LOCAL LAW ENFORCEMENT ACT OF 2003

Mr. SMITH. Mr. President, I rise today to speak about the need for hate crimes legislation. On May 1, 2003, Senator KENNEDY and I introduced the

Local Law Enforcement Act, a bill that would add new categories to current hate crimes law, sending signal that violence of any kind is unacceptable in our society.

I would like to describe a terrible crime that occurred in Humboldt, Nebraska. Brandon Teena, 21, was brutally raped, beaten, and killed by two ''friends.'' Teena, who had been living as a man, befriended John Lotter and Tom Nissen when she moved to Humboldt. After a local newspaper revealed Teena's true identity as anatomically female, Lotter and Nissen became enraged. On Christmas Day 1993, the pair beat and raped Teena. A week later the men stabbed and shot Teena to death.

I believe that government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act is a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

MIKE JENDRZEJCZYK: A LEGEND IN HUMAN RIGHTS

Mr. KENNEDY. Mr. President, all of us who knew him and admired him and worked with him were deeply saddened earlier this month by the sudden and untimely death of Mike Jendrzejczyk, and we extend our deepest condolences to his wife Janet and their family during this difficult time. Mike was one of a kind, and his ability and dedication, his tireless energy, his wonderful personality, and his many achievements for human rights will always be remenbered.

I met Mike soon after he came to Washington more than a decade ago to work on human rights issues in Asia for the Washington, D.C. office of Human Rights Watch. Mike's work benefitted all of us who care about promoting respect for human rights. We quickly learned that his last Name was easy to pronounce even if we could never spell it. During the debates on most-favored nation trade status for China, he was a constant adviser to Senators and staff alike on the human rights aspects of the issue. He also helped draft legislation on a code of conduct for U.S. companies operating in China, and his proposals set the standard for many human rights codes developed by those firms.

I last saw Mike earlier this year as he escorted Xu Wenli, one of the many Chinese dissidents he assisted, on a round of visits to meet with members of Congress. He greeted me with his trademark good welcome and the unforgettable spirit and drive he brought to all his work. He was loved by everyone and his death is a great loss for all of us, and for the cause of human rights he served so brilliantly,

I ask unanimously consent that a series of articles on Mike be printed in the RECORD.

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

[From the New York Times, May 4, 2003]

MICHAEL JENDRZEJCZYK, 53, ADVOCATE FOR ASIANS, DIES

(By Elizabeth Becker)

Michael Jendrzejczyk, a human rights expert whose advocacy on behalf of victims in Asian nations made him an unlikely power broker in Washington, died on Thursday. He was 53 and lived in Tacoma Park, Md.

He died after collapsing during a walk near his office in Washington, has wife, Janet, said.

During more than a dozen years at the Washington office of Human Rights Watch, Mr. Jendrzejczyk (pronounced jen-DREEzick) established himself as the Capitol's leading expert on Asian human rights, routinely testifying before Congress, writing opinion articles for newspapers and promoting his causes.

He made his name after the 1989 Chinese military action in Tiananmen Square by encouraging the United States to demand that the victims be protected or, at least, accounted for.

He later became prominent in Asian human rights issues like the protection of refugees from North Korea, ending financial assistance to the military government in Burma, connecting human rights to free trade and defending the religious freedom of Tibetans in China and Montagnards in Vietnam.

What set him apart from advocates was his mastery of details of subject as well as his networks of contacts with officials, academics and dissidents he helped protect.

The House Democratic leader, NANCY PELOSI of California, said it would be ''difficult to count'' the contributions Mr. Jendrzejczyk made in his promotion of human rights.

''We can point to famous dissidents who have been released from prison because of Mike, but there are tens of thousands of ordinary people, whose names we'll never know, whose lives were improved by his work,'' she said.

Mr. Jendrzejczyk, who was born and reared in New Britain, Conn., was a graduate of the University of Hartford. He joined the Army reserve during the Vietnam War but was discharged as a conscientious objector.

He taught at a preschool while protesting the Vietnam War and working in the civil rights movement. He became a peace advocate for the Fellowship of Reconciliation in Nyack, N.Y., and for Amnesty International in New York and London.

In addition to his wife, he is survived by his sister, Lynn Ashmore of Willimantic, Conn.

He joked about the difficulty of pronouncing his surname, telling others not to waste their time learning to say it or spell it, but just to call him Mike J. His easy manner was partly responsible for his wide reach.

Establishing himself in the relatively new field of human rights advocacy in Washington, Mr. Jendrzejczyk broke ground as a lobbyist for a cause without any obvious base of support. Susan Osnos, former associate director of Human Rights Watch, said he used information to promote his ideas.

''Over the years he evolved into someone who worked well in Washington, creating two-way streets that are the bread and butter of getting things done, especially when you are advocating things that people aren't naturally interested in,'' she said.

His constituents were the Asian dissidents who might have remained faceless without Mr. Jendrzejczyk's interventions. Tibetans, Burmese, Chinese, Indonesians and other dissidents came to rely on him as their most reliable voice in Washington. When the Chinese dissident Liu Qing was released after 11 years in prison, Mr. Jendrzejczyk took him around Washington to explain to policy makers the human consequences of their votes. Today Mr. Liu works for the New York-based Human Rights in China.

During the final years of the Clinton administration, Mr. Jendrzejczyk took many dissidents to meet Harold Hongju Koh, a Yale law professor who was then an assistant secretary of state for human rights. Mr. Koh said while Mr. Jendrzejczyk pressed for countless changes in foreign policy to reflect human rights concerns he was never irritated by his demands.

''You start out in a professional relationship with him and end up considering him a dear friend,'' Mr. Koh said. ''He was one of those happy warriors who never let you forget that you are holding a job not for personal gain but for the betterment of American policy.''

[From the Washington Post, May 4, 2003]

A QUIET CHAMPION

In the culture of federal Washington, no doubt as in all cultures, there is a class of people who accomplish much by seeking little credit. These people bring information to reporters, suggest legislative language to Senate staffers, introduce experts from different fields to promote collaborations. Some do this work for profit, others for principle. One of the latter was Mike Jendrzejczyk, who died unexpectedly Thursday at age 53. He was far more influential than famous, and his death is a setback to the cause of freedom in Asia.

For Mr. Jendrzejczyk was in that subset of Washington achievers known as human rights advocates: Specifically, he was the Washington director of the Asia division of the nonprofit organization Human Rights Watch. He was not the sort of human rights champion who sneaks into totalitarian countries and emerges with damning videotape, nor did he devote much time to rhetoric or arcane points of international law and doctrine. Mr. Jendrzejczyk believed in getting things done. His ambitions were lofty, but they never stood in the way of accomplishment. He would rather see two dissidents freed from Chinese prisons than one, but he would take one over zero—and over the years, the number of political prisoners who owed their liberty in large part to his persistence grew to a formidable total. He would have liked to have seen democracy in China and Burma and Vietnam yesterday if not sooner, but he worked hard for intermediate steps: a loosening of political control, an improvement of conditions for workers, a visit by a United Nations human rights commissioner.

Those who knew Mike were always amazed at his perpetual cheerfulness even as he sought to bring attention to the worst horrors of human cruelty, to the sufferings of North Korean refugees and Burmese child laborers. He understood that human rights would always compete with commerce and security and other national interests in the formulation of foreign policy; he just wanted the voices of the oppressed not to be drowned out altogether. He was influential in part because his passion never diminished his honesty; if you asked for the best argument on the other side, he would deliver it, probably more eloquently than its true champions could. He influenced us, and will continue to do so.

HUMAN RIGHTS WATCH MOURNS DEATH OF ASIA ADVOCATE MIKE JENDRZEJCZYK

NEW YORK, May 2, 2003.—Human Rights Watch is deeply saddened to announce the

death of our beloved colleague Mike Jendrzejczyk. Mike was the Washington Director for the Asia division. He died of natural causes in Washington, D.C. on May 1. He was 53.

Mike has left a void that simply cannot be filled—not only as a powerful advocate for human rights, but also as a colleague and friend whose infectious energy, and passion for social justice inspired us all.

In his 13 years with Human Rights Watch, Mike was the leading advocate in the United States on human rights in Asia. His depth and breadth of knowledge was astounding. He was widely respected for his expertise on China, Japan's emerging global role, the World Bank and human rights, trade policy and worker rights, and US foreign policy in Asia. He was particularly engaged in seeking accountability for the 1989 Chinese military crackdown in Tiananmen Square, getting assistance to North Korean refugees, denying funding to abusive security forces across Asia, including Burma and Indonesia, and in defending religious freedom for minorities from Tibetans in China to Montagnards in Vietnam. In the past several years, Mike was also increasingly engaged in South Asian affairs, from the humanitarian consequences of the war in Afghanistan, to the human rights consequences of the military coup in Pakistan and the rise of religious intolerance in India.

Mike, who grew up in Connecticut, was the grandson of Polish immigrants, and an avid Bruce Springsteen fan. With his white short sleeve dress shirts, yellow ties, and contagious laugh, he used far more than his fair share of exclamation points!! Colleagues joked that if you could harness Mike's energy, it would power a small city. There's no one in D.C. who didn't know him, and no one in military fatigues in Asia who didn't have reason to fear him. He was late for every meeting, but only because he was saving the world on the other line. No email went unanswered, no phone call went unreturned, and no opportunity to make a difference was ever passed up. He has changed and saved the lives of so many.

For those who didn't know Mike, a comment from Human Rights Watch's former Asia Director Sidney Jones sums up the difference he made in so many people's lives:

''Mike has become an institution in DC. I have people I barely know who, once they know I'm from Human Rights Watch, begin to tell me how Mike is a national treasure; how effective he is, and how knowledgeable and well plugged-in. NGO colleagues from India to Indonesia know that by going through Mike, they can get access to more and higher-level officials than they can by going through anyone else.

Mike's ability to trade information is by now legendary. If he's gone into the stock market, he could have made a killing. He gets a piece of human rights news or gossip, floats it, and watches it circulate as everybody in a position to check it chases it down, and then waits until they call him back with the facts, grateful for the heads up he's given them.''

Mike first became involved in the human rights movement as a Vietnam war protester in the 1970s and an anti-nuclear demonstrator in the 1980s. He began working at Amnesty International USA in the mid-1980's, then went on to work on the staff of the Amnesty International Secretariat in London in 1988. In 1990, he became Washington Director for the Asia division of Human Rights Watch. Once a pre-school teacher, he continued to teach us all.

Though most of us are unable still to correctly spell his last name, we simply could not have gotten through each day without him. It is hard to imagine how we will.

Our sincerest condolences go to Mike's wife, Janet.

Mr. McCAIN. Mr. President, Mike Jendrzejczyk was an unusually decent man whose commitment to human freedom left an indelible imprint on all of us who knew him, and laid the foundation for a legacy of lasting importance to the cause of human rights in Asia and the world.

Everybody who works on Asia in Washington knew Mike, and many of us came to rely on his singular knowledge of human rights conditions across Asia, as well as his operational ability to get things done by astutely working with and through the myriad components of our government. Time and again, I found Mike to be a unique authority on the human rights agenda in Asia, and an extremely skilled advocate who was able to cajole, charm, shame, and ultimately convince his listener that a particular human rights initiative was not only a moral imperative, but would best serve the national interest. Mike's pragmatism never detracted from his high principles; on the contrary, the combination of pragmatism and principle was what led people in Government to reach out to Mike, time and again, for advice on how to advance the human rights agenda, given his unique talent for producing deliverables, in terms of policy and legislation, that advanced human freedom.

Mike was a man of unimpeachable integrity. You could trust his word and his judgment, a particularly admirable quality in Washington. He could speak to so many audiences so well: whether to Burmese dissidents, Tibetan exiles, Cambodian reformers, Chinese activists, Republicans, or Democrats, Mike had a way of engaging his listener without abandoning his trademark straight talk about practical solutions to the grave challenges that confront those who fight oppression every day. Mike had a friendly way of co-opting many of his allies, making them want to pursue the goals he had laid out, with the means he had proposed, in order to earn his respect and, as importantly, the respect associated with those causes that met with his approval.

Mike was in the process of helping my staff draft a bill related to human rights in Vietnam when we lost him. Just as he accomplished so much, Mike left behind so much more to do. I'd like to think Mike will remain a voice of conscience to each of us who had the privilege of working with him, and who found his work inspiring. Perhaps each of us will try a little harder to fill the space Mike left behind in his quest to advance the cause of basic human dignity, and hope.

There was no one like Mike. But if Mike's memory doesn't fade; if we still rhetorically fumble his amazing last name in recollecting his full life; if we each absorb a small bit of the energy that drove him; and if we are true to the principles he held so deeply, reminding us of our own obligation to uphold them as well, he will stay with us, and freedom's light will shine a little more brightly for it.

Mr. LEAHY. Mr. President, on May 1, 2003, the world lost one of those rare people who die long before their time but who touch the lives of more people than most of us do in a lifetime far longer.

I did not know Mike Jendrzejczyk well, although I had met him. I did know of his work, and my staff worked closely with him for over a decade. Shortly after Mike's sudden death, the New York Times and the Washington Post printed obituaries which described at length Mike's extraordinary career. I will not repeat what was written there, other than to say that they were remarkable for a person so young. They portrayed very movingly the extent and impact of Mike's work in the field of human rights.

It was because of Mike Jendrzejczyk and his colleague Sidney Jones at Human Rights Watch that I first became concerned about human rights violations in East Timor and Indonesia. In 1991, it was Mike's encouragement and advice that enabled me to sponsor the amendment which prohibited Indonesian military officers from participating in the International Military Education and Training program, after they slaughtered an estimated 200 peaceful demonstrators in a cemetery in Dili, East Timor. It was also Mike who helped me with a similar amendment after the Indonesian military orchestrated the mayhem in East Timor following the independence referendum there in 1999. Those were difficult issues, and the amendments were controversial. Without Mike's guidance, they would not have become law.

Today, as the Indonesian military launches a major attack against rebels in Aceh, the potential for widespread human rights violations is of great concern. Mike's absence will make it far harder for us to monitor what is happening there, and people in Aceh and throughout Asia will suffer because he is no longer here to stand up for them.

Mike was also a regular source of information and advice on Burma, Cambodia, and China, and many of the initiatives we have undertaken in those countries were a result of his input. I can remember an appearance of Mike's on ABC's Nightline when he spoke passionately about human rights in China.

Mike was so effective because of his ability to balance his deeply held beliefs about human rights with his understanding of the political realities we deal with every day here. He was a close observer of events in Southeast Asia. He saw opportunities for the U.S. Government to act to support the development of civil society and to protect human rights, the rule of law, and individuals who were persecuted for their political beliefs, and his recommendations to us of what action to take reflected his best judgment of what was possible.

Anyone who knew Mike, as my staff did over the course of so many years, saw that he was motivated out of a deep commitment to the rights and freedoms that the United States stands for. He believed, as I do, that those rights and freedoms are universal, and that Asians, like people in so many countries, yearn deeply for the right to express themselves and to associate freely, without fear of persecution. Throughout his career, Mike was a source of hope and support to thousands of people who he never met.

His goal was for Asian people to have the chance to enjoy those same rights and freedoms, and for the United States to live up to its own ideals, and he worked tirelessly to achieve those goals. They are goals I share, as do many others here. They are goals that I will continue to work towards in Mike Jendrzejczyk's memory.

Mrs. FEINSTEIN. Mr. President, I rise today to remember and pay tribute to Mike Jendrzejczyk, a tireless and dedicated champion of human rights who passed away earlier this month. A gaping hole has been left with his passing, but his life and commitment to fundamental values we all cherish will continue to inspire and motivate us all.

As the Washington director for the Asia Division of Human Rights Watch for 13 years, Mike became an institution in this city and a leader in his field. Few human rights issues in Asia escaped his attention and few of his colleagues could surpass his knowledge and level of expertise.

As Human Rights Watch noted, ''There's no one in D.C. who didn't know him, and no one in military fatigues in Asia who didn't have a reason to fear him.''

From Burma and Indonesia, to Vietnam and North Korea, Mike spoke up for those who could not speak for themselves. He shined a light on human rights abuses and made it his mission to see that justice was done. Time and time again he called on the United States to live up to the values that made this country great and be the leader for human rights that the world so desperately needed.

Recently, my office had worked with Mike on the need to bring safety and stability to the people of Afghanistan, particularly women and girls. We have lost a partner in that endeavor, but we have not lost the example he set, and I know his memory will push us to work even harder in the days and weeks ahead.

My thoughts and prayers go out to his wife Janet and his colleagues and friends at Human Rights Watch. Mike Jendrzejczyk will be sorely missed.

Mr. FEINGOLD. Mr. President, today I honor the late Mike Jendrzejczyk, the Washington director for the Asia division of Human Rights Watch, and a voice I have trusted and valued for many years. Mike was kind, smart, unquestionably committed, and amazingly energetic. He kept so many of us in Congress informed, always combining savvy and idealism in his updates and enthusiastic calls to action. He brought extraordinary human rights leaders from Asia to the Hill, and by connecting us to these courageous people, he helped to round out our view of faraway places—showing us not just the ugly reality of abuse, but also the promise and bravery of those who resist.

By introducing Washington to these heros, Mike turned resignation to resolve and did the crucial work of sustaining momentum for action and change. He became a hero himself. Mike helped countless people overseas in profound ways, but he helped the Congress as well. Mike helped us to believe that it is possible to do the right thing. His death is a terrible loss.

TRADE FACILITATION AND SECURITY

Mr. GRASSLEY. Mr. President, on behalf of myself and Mr. BAUCUS, I ask unanimous consent the following statement be printed in the RECORD.

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

CUSTOMS REVENUE FUNCTIONS AND HOMELAND SECURITY

Mr. President, On May 15, 2003, Treasury Secretary Snow signed Treasury Department order No. 100–15, which delegates authority related to certain revenue functions of the Bureau of Customs and Border Protection from the Department of Treasury to the Department of Homeland Security.

The Treasury order identifies a number of essentially commercial Customs functions over which the Secretary of the Treasury will continue to exercise sole authority to approve regulations, including import quotas, classification and valuation of imports under the U.S. Harmonized Tariff Schedules, eligibility for trade preference programs, marking and labeling regulations, and copyright and trademark enforcement. Authority to approve other regulations will now fall under the authority of the Secretary of Homeland Security.

The Customs Bureau serves two vital functions. One function is to protect our borders by making sure the goods that enter our country and the vehicles that carry them do not present a threat to the security of our nation. Customs also plays an equally critical role in supporting our country's economic security. By facilitating the movement of critical goods to American industry and its customers at home and abroad, Customs assures our continued economic growth and vitality. We are pleased that the Administration has worked with us to craft a division of responsibilities between Homeland Security and Treasury that recognizes the importance of both these functions.

The new Treasury order is intended to strike a balance between trade facilitation and security, but there remain concerns that the scope of authority remaining at Treasury may be too narrow. Over time and with experience, we may conclude that the balance requires further adjustment. The Treasury order calls for a review in twelve months. Two months prior to expiration, the Administration is required to consult closely with Congress on the upcoming review, and discuss where further adjustments to the division of authorities are warranted.

We look forward to our continued work with the Administration as the new division of authorities takes effect. The Finance Committee remains committed to the goal of assuring that Customs and our nation can advance the twin goals of enhancing homeland security and promoting economic growth.

HONORING MARINE MATTHEW R. SMITH

Mr. BAYH. Mr. President, I rise today with great sadness and tremendous gratitude to honor the life of a fellow Hoosier, soldier, family man and friend, Matthew R. Smith, who died serving our country in Kuwait on May 10, 2003.

As those who knew Matthew can attest, his strong commitment to his State and country was reflected in his successful and distinguished career. He was the younger of two children and attended Indiana University. He stood about 5 feet 8 inches and weighed 140 pounds, but never let his small stature keep him from big accomplishments.

In the Marine Reserve, Matthew served as a radio operator and was deployed to Kuwait in February. He traveled all the way to Baghdad during the war and had since been working on essential supply convoys. As a reservist with the 4th Force Service support group based in Peru, Matthew met an untimely death while driving in a military convoy. Chief Warrant Officer Suzanne Handshoe, who was his commanding officer in a training trip last summer to the Mojave Desert, remembered Matthew as an overachiever saying that he was ''a small guy, but was an extremely hard-working, can-do Marine.'' The day his son passed away, his father, David Smith received the first letter from his son since his deployment. In it, Matthew told his dad how proud he was to be overseas fighting for his country's freedom.

President Abraham Lincoln wrote in a letter to the mother of a fallen Union soldier: ''I pray that our Heavenly Father may assuage the anguish of your bereavement, and leave you only the cherished memory of the loved and lost, and the solemn pride that must be yours to have laid so costly a sacrifice upon the alter of freedom.'' These words ring as true today as they did 140 years ago, as we mourn the loss of Matthew R. Smith and honor the sacrifice he made for America and for all humanity.

It is my sad duty to enter the name of Matthew R. Smith in the official record of the 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 Matthew's family can find comfort in the word of the prophet Isaiah who said, ''He will swallow up death in victory; and the lord God will wipe away tears from all faces.

May God grant strength and peace to those who mourn, and may God bless the United States of America.

HEALTHY FORESTS

Mr. DOMENIC. Mr. President, an article from today's Los Angeles Times titled ''Fire Threat is Red-Hot in Parched West,'' outlines the threat wildfire poses to millions of acres of dense forests. The administration estimates that 190 million acres of forests are at risk for wildfire this summer. That threat is particularly ominous in the West, where years of drought have left our forests tinder dry. The Los Angeles Times notes that public opposition to forest thinning is waning because the public understands the relationship between dense forests and devastating fires. I applaud this public awareness and the growing public support for President Bush's Healthy Forest Initiative.

I congratulate President Bush for his vision and leadership in creating the Healthy Forest Initiative. His remarks today precisely outlined the crisis and proposed the right solution. Congress must act swiftly to rescue our national forests from years of neglect and mismanagement.

Next month, Senator CRAIG and I will introduce legislation that reflects the priorities of the Healthy Forest Initiative as well as the priorities of the bipartisan House forest management bill.

In the last decade, we have seen endemic litigation cause management paralysis in the Forest Service. This has cost us lives, communities and nearly 30 million acres of once beautiful forests—all lost needlessly to fire. I share President Bush's commitment to return to wise and proactive managing our forests to protect our environment and our rural communities.

I ask unanimous consent to print the article I referred to in the RECORD.

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

[From the Los Angeles Times, May 20, 2003]

FIRE THREAT IS RED-HOT IN PARCHED WEST

(By Tom Gorman)

ZION NATIONAL PARK, UTAH.—Park ranger David Eaker walks through a field thick with grass as tall as his waist and deceptive in its greenery.

Don't think for a minute, he says, that the drought is over and the risk of fire has decreased in the West.

Spring rains here and elsewhere have nourished fresh growth, belying the continuing, deep effects of the drought. For the last three years, Zion has been too dry even for grass, and now long-dormant grass seeds have sprouted across meadows and mesas.

''But this will all be brown by late June or early July,'' Eaker said, ''and when it dries out, it will be nothing but fine fuel.''

If the grass ignites, whether from a tourist's cigarette in Zion Canyon or by lightning strikes in the upper reaches of the vermilion-streaked sandstone mountains, the brittle ponderosa and pinyon pines and junipers will burst into flames.

Last summer, fires burned 7.1 million acres and 815 homes and other structures, mostly in the West. Zion escaped with eight small fires, scorching only 18 acres.

With parched forests and weather conditions that are expected to remain dry and hot, fire officials are braced for another dangerous season of wildfires. Eaker's park is almost dead center in the region where the drought will persist, according to projections issued Thursday by the National Oceanic and Atmospheric Administration's Climate Prediction Center.

The forecast through August shows that the drought, which began in 1999, may worsen from southern Idaho and southwestern Wyoming southward to the Mexican border. Some of the regions last summer experienced the driest months in recorded history, with trees drier than kiln-dried lumber.

Ed O'Lenic, senior meteorologist at the Climate Prediction Center, said heavier-than-normal rainfall is expected in late July and August across southern Nevada, Arizona, southern Utah, western Colorado and much of New Mexico. Still, he said, there won't be enough rain to erase the ravages caused by three years of sustained drought.

While the coastline areas from San Diego to Seattle are drought-free, conditions change rapidly within miles and remain bleak across entire states. In woodlands from the San Bernardino Mountains to the high desert of Santa Fe, N.M., hundreds of thousands of acres of ponderosa and pinyon pine—the most prevalent trees of the arid West—are dead or dying, weakened first by a lack of moisture and then by burrowing insects.

''Even if we get above-normal rainfall, we may still see extreme fire behavior,'' said Tom Wordell, wildland fire analyst for the U.S. Forest Service. Computer modeling, he said, predicts that fire will spread at twice the normal rate among the weakened trees.

A key to firefighting is anticipating where fires will break out and placing personnel and equipment in the region ahead of time, said Kim Christensen, who coordinates firefighting logistics at the National Interagency Fire Center in Boise, Idaho.

The fire center predicts wildfires by charting which forests are the densest because they have burned the least in recent years, analyzing the moisture content of the most flammable trees and brush, and monitoring weather fronts that may spawn lightning-laced thunderstorms.

A handful of firefighters can be assigned to areas of advancing lightning storms and, in the most vulnerable areas, hundreds of firefighters and air tankers, managed by a military-like command structure, can be positioned for a quick response. About 99 percent of fires are extinguished by the first firefighters on the scene, officials said.

Last year at this time, when big fires already were burning in New Mexico and Arizona, thousands of firefighters were flown to a staging area in Albuquerque, cutting response time by several days.

On July 31, the busiest day of last year's fire season, 31 large blazes were burning across the nation, 148 new fires erupted and fire bosses had to decide where to dispatch 28,000 wildland firefighters, 1,205 engines, 30 air tankers and 188 helicopters.

Because this year's fire season has started more slowly, air tankers have been sent only to Alaska and Minnesota, where current weather conditions make them more susceptible to wildfires.

In another effort to reduce fires, foresters throughout the country, in line with the 2-year-old National Fire Plan, are thinning woods. Most of last summer's worst fires gorged on forests overgrown with small trees and brush because of a decades-long national policy to extinguish fires as quickly as possible. Had fires been allowed to burn in previous years, experts concede, those forests would have provided less fuel for subsequent fires.

Some environmental groups have filed lawsuits to block forest thinning, and neighboring communities have complained about the smoke of prescribed fires. But public opposition is waning because ''there's a much broader awareness of the relationship between overly dense forests and large, difficult-to-control fires,'' said Tim Hartzell, who heads the wildland fire coordination office for the National Park Service.

''Our approach is very surgical, targeting the highest-priority areas, especially in terms of preventing a fire from roaring into a town,'' he said.

Fire officials have identified about 190 million acres of federal land, mostly in the West, that are considered at high risk for catastrophic blazes this summer. Of that, 2.4 million acres were thinned last year and an additional 1.4 million acres have been thinned so far this year, said Corbin Newman, who coordinates the National Fire Plan for the U.S. Forest Service.

Crews thin specific areas in forests where the spread of fire can best be slowed, he said, with greater attention to areas near residential development or areas that are critical for watershed and wildlife habitat.

Fiercely burning fires are only one outgrowth of the drought. Farmers have less water for crops, and with hay and alfalfa production retarded, cattlemen are supplementing feed for their breeding stock with federal-surplus powdered milk. Environmentalists from Northern California's Klamath Basin to New Mexico's Rio Grande want water released from reservoirs to sustain endangered fish, at the expense of farmers and urban dwellers complaining of water restrictions.

In Colorado, a late-winter snowstorm has allowed Boulder to lift water restrictions, but in nearby Aurora, which relies on a different watershed, there is a continuing prohibition against the planting of sod, restrictions on new developments and limits to landscape watering.

''We didn't get in the drought in a year and we won't get out of it in a year,'' said Jack Byers, deputy state engineer for the Colorado Division of Water Resources.

The Western Governors' Assn. pushed unsuccessfully last year for Congress to assign a federal agency to oversee drought planning and response. New legislation will be reintroduced in coming weeks, said Nebraska Gov. Mike Johanns.

''Drought is every bit as significant a natural disaster as a tornado, hurricane or flood,'' Johenns said. ''But federal policy in this area has been very hit-and-miss. We need to focus the best science available on predicting drought and in planning strategies to respond to it.

Politics aside, park ranger Eaker is wrestling with realities. Crews at Zion, in southwestern Utah, are thinning trees near park employee residences, and firefighters remain alert to thunderheads that may unleash lightning.

''Last year at this time the flow of water through our fork of the Virgin River was 5% of normal,'' he said.

''It's now flowing at 40% normal, but soil moisture is still low, and now we have more grass fuel than we've seen in years. Our anxiety about fire is as high as ever.''

REMEMBERING FORMER SENATOR RUSSELL LONG

Ms. LANDRIEU. Mr. President, I rise today to pay tribute to one of the greatest Senators to have ever served in this body, the late Senator Russell Long. Born in 1918, Russell Long came from a long line of Louisiana political elites. From the beginning of his career

as a public servant, Russell wanted to distinguish his career from that of his father and to make his own mark. No doubt, his distinguished leadership and passion for serving people allowed him to create a legacy that will be remembered by the people of Louisiana and this Nation for a long time to come. Although he is no longer with us, the legacy of his work and the relationships he fostered will live on forever.

For 38 years, Russell Long engaged in the debate of this Chamber. While he was a loyal Democrat, Russell always believed in putting principle above politics. His long list of accomplishments is a testament to that value. His Earned Income Tax Credit, EITC, has proven time and time again to be one of the most effective methods for helping low-income workers stay off of welfare. Every year, the EITC helps millions of Americans raise themselves out of poverty. Similarly, his efforts to expand Social Security to include coverage for the disabled have saved tens of millions of lives over the past 50 years. These are but a few of the many ways that Russell used his vast knowledge of the Tax Code and his position as Chairman of the Senate Finance Committee to champion the poor and downtrodden.

Russell Long will not only be remembered for his incredible intelligence, but also for his kind, jovial manner. Always ready with a quick story or a witty one-liner, Russell was well known for trying to ease tensions during difficult debates. His calm presence was a unifying force that could negotiate both sides of an issue fairly and respectfully. His frequent practice of wrapping his arm around a colleague and pulling his colleague so close that he could whisper in his ear, helped to keep his friends abundant and his enemies rare. Everyone liked and respected Russell; few public servants can claim such a distinction.

In my 23 years of public service, I cannot count how many times I have looked to him as an example. Russell Long set a benchmark for service to the people of our State—a benchmark we all still strive to meet today. I challenge my colleagues to honor his memory and the spirit of bipartisanship his career embodied. What mattered to Russell was that justice was served and the policies put forward by the U.S. Senate were both equitable and fair. Faced with a growing deficit and an ongoing war on terrorism, these principles are now more important than ever.

I end my remarks with words from the eulogy delivered by my predecessor and Russell's colleague, former Senator J. Bennett Johnston, at Russell's funeral:

Eighty-four years ago, Russell Long entered this life as Huey P. Long Junior. The legendary kingfish thought better of it shortly after and renamed him Russell, and said, ''that boy has to make a name for himself.'' And what a name he made. He served 38 years in the U.S. Senate, 16 of those years as the chairman of the Senate Finance Committee, longer continuous service in that position than anybody else in the history of the U.S. Senate.

President-elect Jimmy Carter used to say that he was sent to Washington to run the country and got there and found out Russell Long was already running it. Jimmy Carter may have been exaggerating, but he wasn't exaggerating by very much.

Russell Long understood that with the tax code we can make water run up hill, and for those who are thirsty and in need that was a great phenomenon for Russell Long to be able to perform, and this State and this Nation for decidedly better because of it.

His legislative victories are legend. If Russell didn't invent bipartisanship he certainly perfected the art. All of the presidents with whom he served had both respect and affection, and occasionally consternation, with Russell.

He had a legendary relationship with LBJ. When LBJ had a provision he wanted to pass in regards to agricultural aid to India, Russell said I can't help you, I can't help you, I am against it. Well, LBJ's top aide Bill Moyers called back in a little while and said, ''Why don't you come by the White House this evening, just a quiet dinner.'' And Russell said, ''I'm glad to go by the White House, the president is my friend, but I do not want to talk about agricultural aid to India.'' And Bill said, ''Well, that's a deal.'' So they were sitting in the family room after dinner, just the three of them in their rocking chairs, and after a couple of hours Russell got up to go home, and the president said, ''Now one more thing,'' and Russell's eyes shot through him And LBJ said to him, ''You know that fifth circuit judge from Louisiana you recommended. We'll, we've got a candidate from Texas who's pretty good, too.'' And nothing else was said. You know Texas and Louisiana share the fifth circuit. Well the next morning Russell told his staff, ''Call Bill Moyers, tell him we have an understanding.''

Nixon called him the partisan of principle, and indeed he was. But he had a few characteristics which I think are neat. He had a fifth gear he could slip into legislatively. He knew when to hold 'em, when to fold 'em, when to bring 'em up for a vote, when the time was right, what arguments would appeal. And it was an amazing thing to watch. One of his most enduring characteristics was his sense of humor.

Russell was always popular with people but he never hesitated to go along with something unpopular when it was a matter of principle. He voted for the Panama Canal because it was a matter of principle. Russell Long had a side that was unknown to the public. Always he was up. He was the most fun person to be with. Anywhere it was fun to be with Russell Long. But he was also sweet and gentle. My 16 years serving as Russell's colleague are among the most pleasant memories of my life.

He's a legend. A friend. A statesman. He will always be bright and shining within us.

Bennett's words about Russell are so true. Russell's abilities as a Senator are legendary. His passing is a tremendous loss, but his service in the U.S. Senate was a great gift to this body, the State of Louisiana, and the entire country.

I ask unanimous consent to print in the RECORD an excerpt from his official obituary and two articles on his life from the Baton Rouge Advocate.

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

[From the Baton Rouge Advocate, May 13, 2003]

RUSSELL B. LONG, LEGACY TO POWER

Russell B. Long had twice as long on this Earth as his father, who died at 42 by an assassin's hand. Huey P. Long was one of the most controversial men in America, and there were many who did not mourn his passing.

His oldest son will be buried today in Baton Rouge amid real grief at his passing last week, an with great respect for his accomplishments.

It was certainly not that Russell Long failed to be involved in the great battles of his day. He was sent to the U.S. Senate in 1948, succeeding John H. Overton, and served until he retired and was replaced in the 1986 election by John Breaux, who has held the seat since.

During his 38 years in the Senate, Long held leadership positions and chaired the Finance Committee, and was intimately involved in the most momentous issues facing the nation. He served on equal terms with giants such as Lyndon B. Johnson at the apex of the Senate's power in American government.

But if Long moved all his life among the great, he distinguished himself not by emulating his father's colorful oratory but by mastering the governing process. There were probably few more humble and self-effacing men in Washington life, and he made lifelong friends of many of those with whom he served.

Nevertheless, his legislative skills became legend. He had a fund of Uncle Earl stories to fall back on, but as often as not he was buying time, waiting for the right moment to introduce a skillfully drawn amendment or to strike the deal that would advance both a piece of legislation and Louisiana's interests.

He could judge the opportune time to strike in the Senate, but he also could be astutely tone-deaf. There is a famous story about President Kennedy lobbying Long for a vote, and Long pretending not to hear and continuing to bring up the subject of Fort Polk. The president got the message: The senator would help the president if the president would help the senator protect the military installation in Long's home state.

Long was powerful and used his position to bring jobs and projects to Louisiana. No one more diligently protected the oil industry, and shrugged off accusations that he was protecting his own substantial oil an gas properties. If he thought the depletion allowance was good for Louisiana, it would remain in law—and it did, probably too long. But it had a friend in the Senate, and that was Russell Long.

Long's aide and biographer, Bob Mann, titled his book ''Legacy to Power.'' The power was manifest, but Long's role as the legacy of his populist father often was questioned in years when liberal Democrats saw Long as too prone to support corporate interests.

It is true that he became more conservative over time. But many of Long's greatest legislative accomplishments were not for oil and gas, or other business interests. They were for Social Security and Medicare, expanding the role of government in protecting poor people and the elderly from privation.

In retirement and not often in the news in his later years, Long's own legacy might not be fully appreciated in the humble homes that he worked to protect and make whole against the vicissitudes of life.

He proved himself worthy of his father's best ideals.

[From the Baton Rouge Advocate, May 13, 2003]

LONG BROUGHT WISDOM, JOY TO D.C. POLITICS

(By Joan McKinney)

Russell Long is being buried today. He's been gone from the U.S. Senate for 17 years. If you are young or new to Louisiana—oh, how unlucky you are to have missed him.

In the three days since his death, there's been every conceivable claim about Long's importance to the politics and economic life of Louisiana, and the impact he had—and still has—on everybody in the taxpaying workplace, from the richest corporate officer to the poorest wage earner.

Believe the claims. They're true.

But what Long did to, and with, the federal tax code as chairman of the Senate Finance Committee—as huge as that work was—that alone would not account for the way we remember him. We remember him in Washington with alternating awe and amusement. Respect and laughter. What finer things could anyone leave behind?

The most fabulous things about Long were, first and foremost, his awesome brilliance, and, second, his . . . his what? The whole hilarious package of him: the Uncle Earl stories; the Southernisms; the get-to-the-heart of it one liners; the way he'd go red in the face and flail his arms around when he spoke on the Senate floor and go worked up—which was just about any time he gave a floor speech.

There was also the body bend. Long would start that arm a-flailing. Maybe he'd pump a fist in the air. Then he'd start pumping both arms up and down. Soon, he'd be pumping so hard that he'd bend at the waist.

Like the chicken and the egg, who knows what came first—the body bend or the baggy pants? Long was renowned for those pants.

Rafael Bermudez, a former Long aide living in Baton Rouge, tells a story of accompanying Long on a shopping trip. The senator, he said, pulled a huge pair of pants off the rack, put them on, went to a full-length mirror, and bent over to make sure the pants were still comfortable in the toe-touching position.

Indeed, Long was one of the Senate's greatest entertainers. Yet it was hard to quote him. He would complete a virtuoso performance, win every showdown in every amendment—and you'd go back to your notes, and there'd be only fragments. Long regularly dispensed with sentence structure. Free-associating ideas and concepts would rush out of him, and it was obvious that his nimble mind was racing way ahead of his tongue. Often he'd be having so much fun that he'd start squeaking and chortling, and he couldn't complete the thought.

And he'd stutter. Or mumble.

Cheryl Arvidson, a former news bureau chief and wire service reporter, said this week, ''He often mumbled very badly, deliberately at times I think.

She recalled that Steve Gerstel, UPI's legendary Senate chief, ordered her to closely monitor the Senate whenever it was nearing adjournment, and ''especially when Russell Long walked out on the floor.'' Gerstel had warned that, ''Russell will walk out, belch, and we'll have an entirely new tax code.''

Long's rambling speech pattern was a poor indicator of his coherent thought process. Long knew the most arcane of Senate rules and was a genius at parliamentary maneuver. He seemed to have total recall of the tax code and all IRS regulations interpreting it.

In my three decades of reporting, Long is the only politician whose intellect so intimidated me that I studied late at night for his occasional briefings with the Louisiana press corps. Any decent reporter tries to be well-grounded for any interview. With Russell Long, it was more like panic cramming for a college exam. You wanted the questions to do justice to the intellect.

And you didn't want to be snookered. Russell Long could snooker you.

Everybody knew that a Long tax bill would be chock-full of provisions benefiting one or other Louisiana corporate interest. Sugar and oil and gas were particular favorites, but no Louisiana business was too insignificant for a tax break.

Usually, these things were hidden in the fine print and went undiscovered until after the bill had passed. A former reporter, Eileen Shanahan, found one of these provisions while a Long tax bill was still pending, and she wrote about it in The New York Times—also explaining that the provision could enhance the value of Long's own oil and gas holdings.

The Senator made a floor speech and (memory fails a little), he either killed the provision or modified it to exclude his family's interests. When Shanahan next came into the Senate Press Gallery, she got an ovation from reporter colleagues. Not being snookered by Russell Long was that rare.

The Senator was unrepentant about legislation to help the industry that made him rich. Anything that helped oil and gas would help the Louisiana economy, he said.

Long said that he was proudest of authoring two tax code provisions for wage earners. The first was the Earned Income Tax Credit that pays cash to people who work but make too little money to pay federal income taxes. If the federal government subsidized welfare recipients who weren't employed, it should also subsidize the ''working poor'' so that welfare was not more generous than employment, Long said.

His other pride was the Employee Stock Ownership Plan. ESOP gives companies a tax break for helping employees buy shares of company ownership.

Long was a Democrat, but—EITC and ESOP, notwithstanding—liberals didn't find much to love about his work. He was a defense hawk. He seldom met an environmental regulation that he liked, especially one that curbed the practices of oil and gas or agriculture. He seldom met a public works project that he disliked. Highways, channel dredgings, flood control—he supported them all.

But Long wasn't a conservative ideologue, either. Sometimes he was a tax-cutter. But he also taxed-and-spent with the most ardent liberal.

Somebody had to pay for Social Security and Medicare, he thought. And he'd noticed that many anti-taxers and anti-government business people lined up for government contracts, or for bailouts when things went bad. Long ridiculed that mind-set, reciting this ditty so often it should be chanted at his funeral: ''Don't tax me. Don't tax thee. Tax that fella behind the tree.''

My favorite Long body language was the neck wrap. He'd throw out an arm, wrap it all the way around somebody's neck, and pull 'em close to whisper in an ear. Sometimes, it was a combination move—neck wrap followed by bear hug.

Years ago, former Vice President and late Sen. Hubert Humphrey, D–Minn. visited the Senate floor. He was dying of cancer, and everybody knew that this was his goodbye. Long went to Humphrey and gave him the combination. If there was a dry eye in the chamber, it wasn't mine. If anybody ever practiced the Joy of Politics, it was Long. Today's bitter politics could sorely use the palm of his joy.

Hopefully, The Advocate adequately reported during the years on the facts of Long's legislating. My own journalism failed him on a larger score. You just could not capture on the written page the twinkle in the man's eye.

SENATOR RUSSELL B. LONG,

Former Senator Russell Billiu Long, who served Louisiana in the United States Senate for 38 years, died on Friday, May 9, 2003, in Washington, DC. He was 84 years old. The son of Huey Pierce Long and Rose McConnell Long, he was born in Shreveport on November 3, 1918. He attended public schools in Shreveport, Baton Rouge, and New Orleans and graduated from Louisiana State University at Baton Rouge in 1939 and from its law school in 1942. In 1938, he was elected LSU's Student Body President. At LSU, he was a member of Delta Kappa Epsilon fraternity. He was admitted to the Louisiana Bar in 1942 and began practicing law in Baton Rouge in 1946. During the Second World War, he volunteered for and served in the United States Navy from June 1942 until discharged as a lieutenant in December 1945. As the commander of an LCT (landing craft tank) vessel, he participated in Allied invasions of North Africa, Sicily, Italy, and Southern France. For his service to the United States of America, he was awarded four Battle Stars.

He served as special counsel to Louisiana Governor Earl K. Long in 1948. On November 2, 1948—the day before his 30th birthday—he was elected to the United States Senate to fill the vacancy created by the death of Senator John H. Overton and took office on December 31, 1948. By large margins, the people of Louisiana reelected him to the Senate in 1950, 1956, 1962, 1968, 1974, and again in 1980. He retired from office on January 3, 1987, at the end of his seventh term.

He served as the Senate's Democratic Whip, or assistant majority leader, from 1956 to 1969. During his years in the Senate, he served on several committees, including Finance, Armed Services, Foreign Relations, Commerce, Science and Transportation, Joint Committee on Taxation, and Select Committee on Ethics. He was chairman of the Senate Committee on Finance from 1965 to 1981. He served as co-chairman of the Joint Committee on Internal Revenue Taxation from 1965 to 1967 and as chairman of the Joint Committee on Internal Revenue Taxation from 1967 to 1977.

He was a fierce advocate of the interests of Louisiana and its people. A tireless and effective champion for the poor, the elderly and average workers, he was father of Employee Stock Ownership Plans; these plans have given millions of American workers a meaningful stake in the companies for which they work. In 1956, he authored the first major expansion of the Social Security system to include benefits for the disabled. He was a primary architect of the Medicare system, creator of the Earned Income Tax Credit (the cornerstone of America's anti-poverty programs), and the author of public financing of presidential campaigns.

After his retirement from the Senate, he practiced law in Baton Rouge and Washington, D.C. Also, he served on the boards of directors of several corporations: the New York Stock Exchange, Metropolitan Life, Lowe's Companies, and the Louisiana Land and Exploration Company.

He is survived by his wife Carolyn Bason Long of Washington, D.C.; two daughters, Rita Katherine ''Kay'' Long of Baton Rouge, and Pamela Long Wofford and son-in-law Douglas Lloyd Wofford of Indio Hills, California; one brother, Palmer Reid Long, and his wife, Louene Long of Shreveport; and one sister, Rose Long McFarland, of Boulder, Colorado.

Also surviving are his four grandchildren, Audra McCardell Snider and husband Jeremy

Snider of Rockville, Maryland, Katherine Barrett Mosely, Russell Long Mosely and wife Erin Saporito Mosely, and Kirk Meredith Mosely, all of Baton Rouge. Nieces and nephews include Marsha McFarland Budz of Boulder, Colorado, Terry McFarland Fluke of Gallatin Gateway, Montana, Rory Scott McFarland of Boulder, Palmer Reid Long Jr. of Shreveport, Laura Long Lubin of Los Angeles, Mr. and Mrs. John J. Burke of Morganton, North Carolina, Clark Bason of North Hollywood, California, W.H. Bason, Jr. of Martinsville, Virginia, Sally Bason and Sarah Bason of Reidsville, North Carolina, Mrs. William Bason of St. Mary's, Georgia, Mr. and Mrs. John J. Burke, Jr. of Chattanooga, Tennessee, and Carolyn Cumming of Bethesda, Maryland. He was preceded in death by his parents Huey Pierce Long and Rose McConnell Long.

WINNING THE PEACE IN IRAQ

Mr. EDWARDS. Over a month ago, our military achieved an impressive victory in Iraq—a victory earned by the brave men and women of our Armed Forces, and a victory that serves as a testament to the bipartisan commitment to ensuring that our military remains the best in the world. Through these efforts, we removed a brutal regime and helped liberate a people.

This victory also brought an enormous responsibility upon the United States: to help the Iraqi people rebuild their lives in peace and prosperity. Meeting this challenge is a test of our leadership, a test of our commitment and resolve, and a test of our willingness to engage with the rest of the world.

Unfortunately, the Bush administration has put us on a course to fail these tests. Since that statue of Saddam Hussein came crashing down, America's postwar policy has been confused and chaotic. The American-led civil administration is understaffed, underequipped and unprepared. Already many of its senior leaders have come and gone. The international community has expressed a willingness to help, but has been kept on the sidelines. Baghdad and other key cities remain unsafe. There has been widespread looting of hospitals, businesses, museums, and homes. Mass gravesites have not been protected. Refugees are fleeing to neighboring countries like Jordan. Radical clerics have begun to fill the power vacuum. Saddam Hussein and many of his senior henchmen are still at large. And most disturbing, nuclear, chemical and biological facilities have been left unprotected and have been ransacked—not only destroying possible evidence about Saddam's weapons of mass destruction, but presenting a real threat that such materials will end up in the hands of terrorists.

Continuing on this path not only hurts the Iraqi people, who have suffered enough and deserve better, but it squanders all that our military achieved in Iraq, threatens our security, and undermines our standing in the world.

I am concerned that we are about to repeat the same mistakes we have made in Afghanistan, where this administration's efforts to win the peace have been ineffective and weak. The lack of American leadership has left Afghanistan dangerously unstable. We cannot make the same mistake in Iraq.

Last fall, many of us who supported the use of military force in Iraq warned President Bush about this problem. We argued that the United States needed to put the same amount of energy, effort, and creativity into planning for what to do after Saddam was gone.

We supported the use of force to ensure that Iraq complied with its commitments to the international community. But we also called on the President to carefully plan for a new Iraq—a prosperous democracy at peace with itself and its neighbors.

The President obviously did not heed our advice. The administration did not make adequate plans for the situation which now threatens the success of our mission in Iraq—and in some instances, it apparently did not plan at all. It now tries to explain away its failures as the ''untidy'' realities of postwar Iraq. Rather than make excuses, the administration must act before it undermines all that we have accomplished.

Because the administration failed to anticipate the consequences of victory, we now face the prospect of an Iraq that descends into chaos. We must take action now to stop this.

Almost 6 weeks ago, the day after Baghdad fell to U.S. forces, I outlined four clear and simple principles to guide U.S. policy in postwar Iraq.

First, the U.S. must bring other countries into this effort, as well as institutions like the United Nations and NATO. Including others will not just increase the likelihood of success. It will help create a free Iraqi government with legitimacy and authority in the region and the rest of the world. And by sharing the costs of this massive effort, including others will ease the burdens on the American people.

Second, the U.S. must do more to ensure the safety and security of the Iraqi people. It makes no sense that we did not have enough military forces on the ground to protect critical weapons sites or stop looting from spinning out of control. Clearly, we should have had more forces ready to meet these challenges.

It is good that reinforcements are on the way, but I believe that the best way to deal with this problem now would be to create a multinational peacekeeping force, led by NATO. We all know that many NATO members were deeply divided over the issue of what to do about Iraq. But now that the war is over, I believe that we have an opportunity to reaffirm NATO's importance and relevance—as well as America's commitment to the alliance—by looking for ways to include NATO in providing security today in Iraq.

Third, we have to do better at ensuring that the Iraqi people, not some puppet government, will shape Iraq's future. So far, our efforts to support an open political process have been unimpressive, raising doubts about our commitment to giving the Iraqi people a voice in the process and a government that reflects their diversity. The administration has not articulated a clear path to help the Iraqi people achieve self-government, preserve basic freedoms, and uphold the rule of law. This process must be seen as legitimate. Therefore we should act now to give the broader international community a role.

Fourth, we have to ensure that the Iraqi people can build a prosperous economy that is theirs alone. Iraq has enormous economic potential, and we have to help the Iraqi people tap into that potential and make clear that the oil is theirs and not for the U.S. or others to exploit. Many of the recent decisions about which companies will help rebuild Iraq have raised doubts around the world about our motives. We need a transparent and open process to guarantee that the awarding of contracts is fair.

While our national interest requires that we make this commitment to help rebuild Iraq, the American people deserve to know how much this is going to cost. This administration has consistently been unclear about the duration and costs of our commitment in a post-Saddam Iraq. We must have a better accounting. How much will it cost the American taxpayer? How much will other countries contribute? What are the signposts for measuring success in a transition to an independent, democratic Iraqi government?

It is in America's national interest to help build an Iraq at peace with itself and its neighbors, because a democratic, tolerant, and accountable Iraq will be a peaceful regional partner. A free Iraq could serve as a model for the entire Arab world. And if done right—with humility, patience, and cooperation—this effort to rebuild Iraq will bring the world together and return America to a place where it is respected and admired.

VOTE EXPLANATION

Mr. BAYH. Mr. President, I regret that I missed last evening's vote on the nomination of Maurice Hicks to be a District Judge for the Western District of Louisiana. My flight from Indianapolis to Washington was cancelled due to mechanical problems with the plane. I would like the record to reflect that had I been present, I would have voted ''yea'' to confirm Maurice Hicks.

ADDITIONAL STATEMENTS

IN CELEBRATION OF RABBI MARTIN S. WEINER

• Mrs. BOXER. Mr. President, I would like to take this opportunity to recognize Rabbi Martin S. Weiner, who is retiring after 31 years of dedicated service to the community.

Rabbi Weiner, a San Francisco native, was educated in the city's public

schools. He received his bachelor of arts degree from the University of California at Berkeley and his rabbinical training at the Hebrew Union College-Jewish Institute of Religion in Cincinnati.

In 1964, Rabbi Weiner was ordained from the College-Institute, where he earned a master of arts in Hebrew Letters with honors.

Rabbi Weiner came to Temple Sherith Israel in 1972, where he serves as the Senior Rabbi. Rabbi Weiner also is the immediate past president of the Central Conference of American Rabbis, the Reform movement's rabbinical union. In addition, Rabbi Weiner sits on the board of the Reform Pension Plan and the Bay Area Chapter of the American Jewish Committee.

Among his many accomplishments, Rabbi Weiner has served as president of the Pacific Association of Reform Rabbis and as chair of the San Francisco Interfaith Council. He has also served as vice president, treasurer, and a member of the Central Conference of American Rabbis Executive Board, in addition to the Jewish Community Federation, the National Commission on Reform Jewish Education, the San Francisco Human Rights Commission, and the Jewish Family & Children's Service. Rabbi Weiner also bravely offered his services during the aftermath of the September 11, 2001, attack on the World Trade Center. He comforted those in need and aided several traumatized patients at New York City's Beth Israel Hospital.

Rabbi Weiner's service to the Jewish community, both in San Francisco and nationwide, is truly inspiring. I am confident that, even in retirement, Rabbi Martin Weiner will continue to inspire people with his humanity and dedication.●

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 Committee on Armed Forces.

(The nominations received today are printed at the end of the Senate proceedings.)

2003 COMPREHENSIVE REPORT ON U.S. TRADE AND INVESTMENT POLICY TOWARD SUB-SAHARAN AFRICA AND IMPLEMENTATION OF THE AFRICAN GROWTH AND OPPORTUNITY ACT—PM 35

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Finance:

To the Congress of the United States:

Consistent with title I of the Trade and Development Act of 2000, I am providing a report prepared by my Administration entitled ''2003 Comprehensive Report on U.S. Trade and Investment Policy for Sub-Saharan Africa and Implementation of the African Growth and Opportunity Act.''

GEORGE W. BUSH.

THE WHITE HOUSE, *May 19, 2003.*

MESSAGE FROM THE HOUSE

At 2:15 p.m., a message from the House of representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House has passed the following bill, without amendment:

S.330. An act to further the protection and recognition of veterans's memorials, and for other purposes.

The message also announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 1018. An act to designate the building located at 1 Federal Plaza in New York, New York, as the ''James L. Watson United States Court of International Trade Building''; to the Committee on Environment and Public Works.

The message further announced that the House has agreed to the following concurrent resolutions, in which it requests the concurrence of the Senate:

H. Con. Res. 147. Concurrent resolution commemorating the 20th Anniversary of the Orphan Drug Act and the National Organization for Rare Disorders; to the Committee on the Judiciary.

H. Con. Res. 166. Concurrent resolution expressing the sense of Congress in support of Buckle Up America Week; to the Committee on the Judiciary.

The message also announced that pursuant to section 201(b) of the International Religious Freedom Act of 1998, as amended by section 681(b) of the Foreign Relations Authorization Act, Fiscal Year 2003, and the order of the House of January 8, 2003 and upon the recommendation of the Minority Leader, the Speaker reappoints the following member on the part of the House of Representatives to the Commission on International Religious Freedom for a 2-year term ending May 14, 2005: Ms. Felice Gaer of Paramus, New Jersey, to succeed herself.

The message further announced that pursuant to 22 U.S.C. 276d, clause 10 of rule 1, and the order of the House of January 8, 2003, the Speaker appoints the following Members of the House of Representatives to the United States Delegation of the Canada-United States Interparliamentary Group, in addition to Mr. HOUGHTON of New York, Chairman, appointed on March 13, 2003: Mr. OBERSTAR Of Minnesota: Mr. DREIER of California; Mr. SHAW of Florida; Ms. SLAUGHTER of New York; Mr. STEARNS of Florida; Mr. PETERSON of Minnesota; Mr. MANZULLO of Illinois; Mr. SMITH of Michigan; Mr. ENGLISH of Pennsylvania; Mr. SOUDER of Indiana.

ENROLLED BILLS SIGNED

The message also announced that the Speaker has signed the following enrolled bills:

S.243. An act concerning participation of Taiwan in the World Health Organization.

S. 870. An act to amend the Richard B. Russell National School Lunch Act to extend the availability of funds to carry out the fruit and vegetable pilot program.

MEASURES REFERRED

The following bill was read the first and the second times by unanimous consent, and referred as indicated:

H.R. 1018. An act to designate the building located at 1 Federal Plaza in New York, New York, as the ''James L. Watson United States Court of International Trade Building''; to the Committee on Environment and Public Works.

The following concurrent resolutions were read, and referred as indicated:

H. Con. Res. 147. Concurrent resolution commemorating the 20th Anniversary of the Orphan Drug Act and the National Organization for Rare Disorders; to the Committee on the Judiciary.

H. Con. Res. 166. Concurrent resolution expressing the sense of Congress in support of Buckle Up America Week; to the Committee on the Judiciary.

MEASURES PLACED ON THE CALENDAR

The following bill was read, and placed on the calendar:

S. 1079. A bill to extend the Temporary Extended Unemployment Compensation Act of 2002.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. HATCH, from the Committee on the Judiciary, with an amendment in the nature of a substitute:

S. 878. A bill to authorize an additional permanent judgeship in the District of Idaho, and for other purposes.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. SHELBY for the Committee on Banking, Housing, and Urban Affairs.

*Steven B. Nesmith, of Pennsylvania, to be an Assistant Secretary of Housing and Urban Development.

*Lane Carson, of Louisiana, to be a Member of the Board of Directors of the National Institute of Building Sciences for a term expiring September 7, 2004.

*James Broaddus, of Texas, to be a Member of the Board of Directors of the National Institute of Building Sciences for a term expiring September 7, 2004.

*Jose Teran, of Florida, to be a Member of the Board of Directors of the National Institute of Building Sciences for a term expiring September 7, 2005.

*Morgan Edwards, of North Carolina, to be a Member of the Board of Directors of the National Institute of Building Sciences for a term expiring September 7, 2005.

*Nicholas Gregory Mankiw, of Massachusetts, to be a Member of the Council of Economic Advisers.

*Nomination was reported with recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

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. LUGAR (for himself and Mr. BINGAMAN):

S. 1083. A bill to give States the flexibility to reduce bureaucracy by streamlining enrollment processes for the medicaid and State children's health insurance programs through better linkages with programs providing nutrition and related assistance to low-income families; to the Committee on Finance.

By Mr. INOUYE:

S. 1084. A bill to establish formally the United States Military Cancer Institute Center of Excellence, to provide for the maintenance of health in the military by enhancing cancer research and treatment, to provide for a study of the epidemiological causes of cancer among various ethnic groups for prevention efforts, and for other purposes; to the Committee on Armed Services.

By Mr. BINGAMAN (for himself, Mr. BAUCUS, Mr. DASCHLE, and Mr. DORGAN):

S. 1085. A bill to provide for a Bureau of Reclamation program to assist states and local communities in evaluating and developing rural and small community water supply systems, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. KENNEDY (for himself, Mr. LEAHY, Mr. FEINGOLD, and Mr. LAUTENBERG):

S. 1086. A bill to repeal provisions of the PROTECT Act that do not specifically deal with the prevention of the exploitation of children; to the Committee on the Judiciary.

By Ms. MIKULSKI (for herself and Mrs. CLINTON):

S. 1087. A bill to provide for uterine fibroid research and education, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mrs. BOXER:

S. 1088. A bill to enhance penalties for fraud in connection with identification documents that facilitates an act of domestic terrorism; to the Committee on the Judiciary.

By Mr. ENSIGN:

S. 1089. A bill to encourage multilateral cooperation and authorize a program of assistance to facilitate a peaceful transition in Cuba, and for other purposes; to the Committee on Foreign Relations.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. REID (for himself and Mr. ENSIGN):

S. Res. 146. A resolution expressing the sense of the Senate regarding the establishment of an international tribunal to prosecute crimes against humanity committed by Fidel Castro Ruz and other Cuban political and military leaders; to the Committee on Foreign Relations.

By Mr. MCCONNELL (for himself and Mr. DASCHLE):

S. Res. 147. A resolution to authorize representation by the Senate Legal Counsel in the case of John Jenkel v. Bill Frist; considered and agreed to.

By Mr. FRIST (for himself and Mr. DASCHLE):

S. Res. 148. A resolution to authorize representation by the Senate Legal Counsel in the case of John Jenkel v. 77 U.S. Senators; considered and agreed to.

By Mr. FEINGOLD:

S. Res. 149. A resolution expressing the sense of the Senate that the international response to the current need for food in the Horn of Africa remains inadequate; to the Committee on Foreign Relations.

By Mr. FRIST (for himself and Mr. DASCHLE):

S. Res. 150. A resolution expressing the gratitude of the Senate to Michael L. Gillette, Director of the Center for Legislative Archives, for his service in preserving and making available the records of Congress; considered and agreed to.

By Mr. FRIST (for himself and Mr. DASCHLE):

S. Con. Res. 46. A concurrent resolution to correct the enrollment of H.R. 1298; considered and agreed to.

ADDITIONAL COSPONSORS

S. 98

At the request of Mr. ALLARD, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 98, a bill to amend the Bank Holding Company Act of 1956, and the Revised Statutes of the United States, to prohibit financial holding companies and national banks from engaging, directly or indirectly, in real estate brokerage or real estate management activities, and for other purposes.

S. 215

At the request of Mrs. FEINSTEIN, the name of the Senator from New Mexico (Mr. DOMENICI) was added as a cosponsor of S. 215, a bill to authorize funding assistance for the States for the discharge of homeland security activities by the National Guard.

S. 261

At the request of Mr. BINGAMAN, the name of the Senator from New York (Mr. SCHUMER) was added as a cosponsor of S. 261, a bill to amend part A of title IV of the Social Security Act to exclude child care from the determination of the 5-year limit on assistance under the temporary assistance to needy families program, and for other purposes.

S. 333

At the request of Mr. BREAUX, the name of the Senator from Kentucky (Mr. BUNNING) was added as a cosponsor of S. 333, a bill to promote elder justice, and for other purposes.

S. 493

At the request of Mrs. LINCOLN, the name of the Senator from Hawaii (Mr. INOUYE) was added as a cosponsor of S. 493, a bill to amend title XVIII of the Social Security Act to authorize physical therapists to evaluate and treat medicare beneficiaries without a requirement for a physician referral, and for other purposes.

S. 544

At the request of Mr. DODD, the name of the Senator from Minnesota (Mr. DAYTON) was added as a cosponsor of S. 544, a bill to establish a SAFER Firefighter Grant Program.

S. 586

At the request of Mr. CORZINE, the name of the Senator from Minnesota (Mr. DAYTON) was added as a cosponsor of S. 586, a bill to provide additional funding for the second round of empowerment zones and enterprise communities.

S. 632

At the request of Mr. CRAIG, the name of the Senator from New York (Mr. SCHUMER) was added as a cosponsor of S. 632, a bill to amend title XVIII of the Social Security Act to expand coverage of medical nutrition therapy services under the medicare program for beneficiaries with cardiovascular disease.

S. 647

At the request of Mr. KENNEDY, the name of the Senator from New York (Mrs. CLINTON) was added as a cosponsor of S. 647, a bill to amend title 10, United States Code, to provide for Department of Defense funding of continuation of health benefits plan coverage for certain Reserves called or ordered to active duty and their dependents, and for other purposes.

S. 654

At the request of Ms. SNOWE, the names of the Senator from Massachusetts (Mr. KERRY) and the Senator from Rhode Island (Mr. CHAFEE) were added as cosponsors of S. 654, a bill to amend title XVIII of the Social Security Act to enhance the access of medicare beneficiaries who live in medically underserved areas to critical primary and preventive health care benefits, to improve the Medicare+Choice program, and for other purposes.

S. 656

At the request of Mr. REED, the name of the Senator from Massachusetts (Mr. KENNEDY) was added as a cosponsor of S. 656, a bill to provide for the adjustment of status of certain nationals of Liberia to that of lawful permanent residence.

S. 661

At the request of Mr. SCHUMER, the name of the Senator from Pennsylvania (Mr. SANTORUM) was added as a cosponsor of S. 661, a bill to amend the Internal Revenue Code of 1986 to equalize the exclusion from gross income of parking and transportation fringe benefits and to provide for a common cost-of-living adjustment, and for other purposes.

S. 777

At the request of Mr. INHOFE, the name of the Senator from Nevada (Mr. REID) was added as a cosponsor of S. 777, a bill to amend the impact aid program under the Elementary and Secondary Education Act of 1965 to improve the delivery of payments under the program to local educational agencies.

S. 845

At the request of Mr. GRAHAM of Florida, the name of the Senator from Mississippi (Mr. COCHRAN) was added as a cosponsor of S. 845, a bill to amend titles XIX and XXI of the Social Security Act to provide States with the option to cover certain legal immigrants under the medicaid and State children's health insurance programs.

S. 852

At the request of Mrs. MURRAY, her name was added as a cosponsor of S. 852, a bill to amend title 10, United States Code, to provide limited TRICARE program eligibility for members of the Ready Reserve of the Armed Forces, to provide financial support for continuation of health insurance for mobilized members of reserve components of the Armed Forces, and for other purposes.

S. 874

At the request of Mr. TALENT, the names of the Senator from Georgia (Mr. MILLER), the Senator from Mississippi (Mr. COCHRAN), the Senator from New Jersey (Mr. LAUTENBERG) and the Senator from New Jersey (Mr. CORZINE) were added as cosponsors of S. 874, a bill to amend title XIX of the Social Security Act to include primary and secondary preventative medical strategies for children and adults with Sickle Cell Disease as medical assistance under the medicaid program, and for other purposes.

S. 875

At the request of Mr. KERRY, the name of the Senator from Washington (Ms. CANTWELL) was added as a cosponsor of S. 875, a bill to amend the Internal Revenue Code of 1986 to allow an income tax credit for the provision of homeownership and community development, and for other purposes.

S. 877

At the request of Mr. BURNS, the name of the Senator from Florida (Mr. NELSON) was added as a cosponsor of S. 877, a bill to regulate interstate commerce by imposing limitations and penalties on the transmission of unsolicited commercial electronic mail via the Internet.

S. 878

At the request of Mr. HATCH, the name of the Senator from Nebraska (Mr. HAGEL) was added as a cosponsor of S. 878, a bill to authorize an additional permanent judgeship in the District of Idaho, and for other purposes.

S. 884

At the request of Ms. LANDRIEU, the name of the Senator from Louisiana (Mr. BREAUX) was added as a cosponsor of S. 884, 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. 959

At the request of Mr. INHOFE, the names of the Senator from Utah (Mr. HATCH) and the Senator from Virginia (Mr. WARNER) were added as cosponsors of S. 959, a bill to limit the age restrictions imposed by the Administrator of the Federal Aviation Administration for the issuance or renewal of certain airman certificates, and for other purposes.

S. 982

At the request of Mr. SANTORUM, the name of the Senator from Colorado (Mr. CAMPBELL) was added as a cosponsor of S. 982, a bill to halt Syrian support for terrorism, end its occupation of Lebanon, stop its development of weapons of mass destruction, cease its illegal importation of Iraqi oil, and hold Syria accountable for its role in the Middle East, and for other purposes.

S. 982

At the request of Mrs. BOXER, the names of the Senator from New Jersey (Mr. CORZINE), the Senator from Missouri (Mr. BOND) and the Senator from Kentucky (Mr. MCCONNELL) were added as cosponsors of S. 982, supra.

S. 985

At the request of Mr. DODD, the name of the Senator from Montana (Mr. BURNS) was added as a cosponsor of S. 985, a bill to amend the Federal Law Enforcement Pay Reform Act of 1990 to adjust the percentage differentials payable to Federal law enforcement officers in certain high-cost areas, and for other purposes.

S. 1037

At the request of Ms. SNOWE, the names of the Senator from Illinois (Mr. DURBIN) and the Senator from Kansas (Mr. BROWNBACK) were added as cosponsors of S. 1037, a bill to amend title XVIII of the Social Security Act to provide for coverage under the medicare program of all oral anticancer drugs.

S. 1079

At the request of Ms. MURKOWSKI, the name of the Senator from Pennsylvania (Mr. SPECTER) was added as a cosponsor of S. 1079, a bill to extend the Temporary Extended Unemployment Compensation Act of 2002.

S. CON. RES. 44

At the request of Mr. AKAKA, the name of the Senator from Arkansas (Mr. PRYOR) was added as a cosponsor of S. Con. Res. 44, a concurrent resolution recognizing the contributions of Asian Pacific Americans to our Nation.

S. RES. 133

At the request of Mr. DURBIN, the names of the Senator from Mississippi (Mr. COCHRAN) and the Senator from Georgia (Mr. MILLER) were added as cosponsors of S. Res. 133, a resolution condemning bigotry and violence against Arab Americans, Muslim Americans, South-Asian Americans, and Sikh Americans.

AMENDMENT NO. 689

At the request of Mr. DASCHLE, the names of the Senator from South Dakota (Mr. JOHNSON) and the Senator from Vermont (Mr. LEAHY) were added as cosponsors of amendment No. 689 proposed to S. 1050, an original bill to authorize appropriations for fiscal year 2004 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes.

AMENDMENT NO. 696

At the request of Mr. DASCHLE, his name was added as a cosponsor of amendment No. 696 proposed to S. 1050, an original bill to authorize appropriations for fiscal year 2004 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes.

AMENDMENT NO. 696

At the request of Mr. GRAHAM of South Carolina, the names of the Senator from North Dakota (Mr. DORGAN), the Senator from New York (Mrs. CLINTON), the Senator from Ohio (Mr. DEWINE), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Georgia (Mr. MILLER), the Senator from Virginia (Mr. ALLEN), the Senator from Vermont (Mr. LEAHY), the Senator from Michigan (Ms. STABENOW), the Senator from Maryland (Ms. MIKULSKI), the Senator from Louisiana (Ms. LANDRIEU), the Senator from Georgia (Mr. CHAMBLISS), the Senator from Colorado (Mr. CAMPBELL), the Senator from Maine (Ms. COLLINS) and the Senator from Mississippi (Mr. COCHRAN) were added as cosponsors of amendment No. 696 proposed to S. 1050, supra.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. LUGAR (for himself and Mr. BINGAMAN):

S. 1083. A bill to give States the flexibility to reduce bureaucracy by streamlining enrollment processes for the medicaid and State children's health insurance programs through better linkages with programs providing nutrition and related assistance to low-income families; to the Committee on Finance.

Mr. LUGAR. Mr. President, I rise today to introduce the Children's Express Lane to Health Coverage Act of 2003. This bill will give States greater flexibility in the ways they can enroll uninsured children into Medicaid and SCHIP while at the same time increasing government efficiency. Furthermore, it will help States reduce bureaucracy and red-tape.

In 1999, 4.4 million low-income uninsured children were in families that received benefits through Food Stamps, the National School Lunch Program, or the Special Supplemental Nutrition Program for Women, Infants and Children, WIC. Recognizing this, I worked to include a provision in the Agricultural Risk Protection Act of 2000,

which allowed schools and school districts to share school lunch information with State health insurance agencies for outreach and enrollment activities.

The good news is that this provision has inspired numerous States to share information with Medicaid and SCHIP for the purposes of enrollment and outreach. Some States and communities have gone even further and simplified the health insurance application process by utilizing information provided in another program application to make the eligibility or renewal determination for Medicaid and or SCHIP.

Some States would like to go further still, and determine that a child is income eligible for Medicaid or SCHIP based on the fact that they have already been found eligible for a nutrition or other comparable program that operates under similar financial guidelines. Unfortunately, they have found Federal law not flexible enough.

The Express Lane Act would give States the option of establishing that their Medicaid or SCHIP financial eligibility rules are satisfied when a family presents proof that their child is already enrolled in another public program with comparable income guidelines. Express lane does not affect other, non-income eligibility requirements and maintains existing quality control measures.

If given the ability to adopt automatic income eligibility, as set out in The Children's Express Lane to Health Coverage Act of 2003, States could reach a tangible population of uninsured children, build upon the initiative already taken by families, eliminate multi-agency duplicative efforts to collect and verify income and resource eligibility, and at the same time maintain program integrity.

By Mr. INOUYE:

S. 1084. A bill to establish formally the United States Military Cancer Institute Center of Excellence, to provide for the maintenance of health in the military by enhancing cancer research and treatment, to provide for a study of the epidemiological causes of cancer among various ethnic groups for prevention efforts, and for other purposes; to the Committee on Armed Services.

Mr. INOUYE. Mr. President, today I introduce the United States Military Cancer Institute Center of Excellence Research Collaborative Act of 2003. This legislation seeks to formally establish the United States Military Cancer Institute, Center of Excellence and seeks support for the collaborative augmentation of research efforts in cancer epidemiology, prevention, and control. The mission of the Institute is to provide for the maintenance of health in the military by enhancing cancer research and treatment, and to study the epidemiological causes of cancer among various ethnic groups. By formally establishing the USMCI as a Center of Excellence it will better unite military research efforts with other cancer research centers.

Cancer prevention and treatment for the military population is a significant issue, thus the USMCI was organized to coordinate the military cancer assets already established. The USMCI has a comprehensive database on its beneficiary population of 9 million people. The military's nationwide tumor registry, the Automated Central Tumor Registry, has acquired more than 180,000 cases in the last 14 years, and a serum repository of 30 million specimens from military personnel collected sequentially since 1987. This population is predominantly Caucasian, African-American, and Hispanic.

The Director of the USMCI, Dr. John Potter, is also a Professor of Surgery at the Uniformed Services University of the Health Sciences, USUHS. A highly talented cancer epidemiologist, Dr. Kangmin Zhu, has also been recruited to lead the USMCI Prevention and Control Programs.

The USMCI currently functions in the Washington, D.C. area, and its components are located at the National Naval Medical Center, the Malcolm Grow Medical Center, the Armed Forces Institute of Pathology, and the Armed Forces Radiobiology Research Institute. Currently there are more than 70 research workers, both active duty and Department of Defense civilian scientists, in the USMCI.

The USMCI intends to expand its research activities to military medical centers across the Nation. Special emphasis will be placed on the study of genetic and environmental factors in carcinogenesis among the entire population including Asian, Causasian, African-American and Hispanic populations.

I ask unanimous consent that the text of this bill be printed in the RECORD.

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

S. 1084

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 ''United States Military Cancer Institute Center of Excellence Act of 2003''.

SEC. 2. RESEARCH BY UNITED STATES MILITARY CANCER INSTITUTE CENTER OF EXCELLENCE.

(a) FORMAL ESTABLISHMENT OF UNITED STATES MILITARY CANCER INSTITUTE CENTER OF EXCELLENCE.—(1) There is hereby established the United States Military Cancer Institute Center of Excellence in the Uniformed Services University of the Health Sciences (USUHS).

(2) The Center shall consist of the United States Military Cancer Institute (USMCI) and such other elements of the Uniformed Services University of the Health Sciences as the President of the University considers appropriate.

(b) RESEARCH.—(1) The United States Military Cancer Institute Center of Excellence shall carry out a research study on the epidemiological causes of cancer among populations of various ethnic origins, including an assessment of the carcinogenic effect of various genetic and environmental factors, and of disparities in health, inherent or common among populations of various ethnic origins.

(2) The research study shall include complementary research on oncologic nursing.

(c) COLLABORATIVE RESEARCH.—The United States Military Cancer Institute Center of Excellence shall carry out the research study required pursuant to subsection (b) in collaboration with other cancer research organizations and entities selected by the Center for purposes of the research study and construction.

(d) REPORTS.—(1) Not later than one year after the date of the enactment of this Act, and annually thereafter, the Director of the United States Military Cancer Institute Center of Excellence shall submit to the President of the Uniformed Services University of the Health Sciences a report on the results of the research study required pursuant to subsection (b).

(2) Not later than 60 days after the receipt of a report under paragraph (1), the President of the University shall transmit such report to Congress, together with such additional information and recommendations as the President of the University considers appropriate.

By Mr. BINGAMAN (for himself, Mr. BAUCUS, Mr. DASCHLE, and Mr. DORGAN):

S. 1085. A bill to provide for a Bureau of Reclamation program to assist states and local communities in evaluating and developing rural and small community water supply systems, and for other purposes; to the Committee on Energy and Natural Resources.

Mr. BINGAMAN. Mr. President, today I am pleased to introduce the Reclamation Rural and Small Community Water Enhancement Act, which is being co-sponsored by my colleagues, Senator DASCHLE, Senator DORGAN, and Senator BAUCUS.

In introducing this bill, let me note that the Economic Research Service at the Agriculture Department estimates that 56 million Americans—around 20 percent of the population—live in nonmetropolitan areas. In the arid west, this percentage is likely much higher. In my home State of New Mexico, for example, over 50 percent of the population resides outside the four major metropolitan areas—clearly a significant number of people.

This bill is intended to address a critical issue facing many small towns and rural areas—access to adequate water supplies to provide for present and future needs. A stable and reliable water supply is the foundation for the economic activity that sustains our communities. Addressing this most basic need, however, poses a challenge that many of these localities simply cannot meet on their own. The challenge is magnified by the prolonged drought that many are predicting for the arid West.

For a number of reasons, including limited access to water supplies and the requirements of the Federal Clean Water and Safe Drinking Water Acts, many small communities in the western United States are taking a regional approach to water that involves the cooperative development of water

projects serving several communities over a large area. In New Mexico, the State Water Trust Board prioritizes funding assistance to those projects that represent a partnership of communities on a regional basis. Currently, there are three such projects rapidly taking shape in 1. Eastern New Mexico; 2. the Santa Fe Area; and 3. the Espanola Valley.

In other areas of the country, this regional approach has already taken root. Currently, the Bureau of Reclamation is authorized to construct seven rural water supply projects—most of these in the Great Plains region. The authorized cost of these projects is approximately $1.8 billion. In just two years, however, the administration has cut back the appropriations requests for authorized rural water projects by 80 percent, or almost $60 million. This includes zeroing out the funding for most of these projects—a policy choice severely impacting those communities relying on this infrastructure.

The bill being introduced today is intended to ensure there exists an active Federal program to address water needs in the rural West. It does so in a manner that respects the role of the States in water resources management and is fiscally responsible by requiring a financial partnership between Federal, State, and local entities. The bill utilizes the experience and expertise of the Bureau of Reclamation to implementation a rural water program that complements, not duplicates, existing Federal programs at the Environmental Protection Agency and the Department of Agriculture; ensures that existing projects move towards full and timely implementation; and ensures that Reclamation is fully authorized to provide assistance in evaluating all water supply options if requested by rural communities.

I believe that this is a bill for which there should be strong bipartisan support. Having helped to reclaim the West during the 20th century, the Bureau of Reclamation should help sustain it in the 21st century. Accordingly, I urge my colleagues to support this legislation and, by that, support rural and small communities within our States.

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. 1085

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Reclamation Rural and Small Community Water Enhancement Act.''

SEC. 2. DEFINITIONS.

For purposes of this Act:

(1) FEDERAL RECLAMATION LAWS.—The term ''Federal reclamation laws'' means the Reclamation Act and Acts amendatory thereof and supplementary thereto;

(2) REGIONAL RURAL WATER SUPPLY SYSTEM.—The term ''regional rural water supply system'' means a water supply system that serves multiple towns or communities in a rural area (including Indian reservations) where such towns or communities have a population for exceeding 40,000 persons.

(3) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

SEC. 3. GENERAL AUTHORITY.

(A) IN GENERAL.—The Secretary, acting pursuant to the Federal reclamation laws, is directed to undertake a program to investigate and identify opportunities to ensure safe and adequate regional rural water supply systems for municipal and industrial use in small communities and rural areas through the construction of new regional rural water supply systems and the enhancement of existing rural water supply systems.

(b) EXCEPTION.—

(1) In conducting the investigations and studies authorized by this Act, the Secretary may include a town or community with a population in excess of 40,000 persons if, in the Secretary's discretion, such town or community is considered to be a critical partner in the proposed regional rural water supply system.

(2) In conducting a feasibility study of a regional rural water supply system that includes a community with a population in excess of 40,000 persons, the Secretary may consider a non-federal cost share in excess of the percentage set forth in sections 6(a) and 6(b)(5).

(c) LIMITATION.—Such program shall be limited to the States and areas referred to in section 1 of the Reclamation Act of 1902 (Act of June 17, 1902, 32 Stat. 388), as amended, and Indian reservation lands within the external boundaries of such States and areas.

(d) AGREEMENTS.—The Secretary is authorized to enter into such agreements and promulgate such regulations as may be necessary to carry out the purposes and provisions of this Act.

SEC. 4. COORDINATION AND PLANNING.

(a) COORDINATION.—

(1) CONSULTATION.—In undertaking this program, the Secretary shall consult and coordinate with the Secretary of Agriculture, the Administrator of the Environmental Protection Agency, and the Director of the Indian Health Service, in order to develop criteria to ensure that the program does not duplicate, but instead complements, activities undertaken pursuant to the authorities administered by such agency heads.

(2) REPORT ON AUTHORITIES.—Within one year after the date of enactment of this Act, the Secretary shall submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives, a report setting forth the results of the consultation required in paragraph (1) and criteria developed pursuant to such consultation.

(b) REPORT AND ACTION ON AUTHORIZED PROJECTS.—

(1) Within one year after the date of enactment of this Act, the Secretary shall submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives a report setting forth—

(A) the status of all rural water projects within the jurisdiction of the Secretary authorized prior to the date of enactment of this Act; and

(B) the Secretary's plan, including projected financial and workforce requirements, for the completion of the rural water projects within the time frames set forth in the public laws authorizing the projects of the final engineering reports submitted pursuant thereto.

(2) The Secretary shall take all necessary steps to complete the projects within the time frames identified in subsection (1)(B).

SEC. 5. APPRAISAL INVESTIGATIONS.

(a) APPRAISAL INVESTIGATIONS.—Based on evidence of local interest and upon the request of a local sponsor, the Secretary may undertake appraisal investigations to identify opportunities for the construction of regional rural water supply systems and the enhancement of existing rural water supply systems for small communities and rural areas. Each such investigation shall include recommendations as to the preparation of a feasibility study of the potential system or system enhancement.

(b) CONSIDERATIONS.—Appraisal investigations undertaken pursuant to this Act shall consider, among other things—

(1) whether an established water supply exists for the proposed regional water supply system;

(2) the need for the regional rural water supply system or for enhancements to an existing rural water system, including but not limited to, alternative water supply opportunities and projected demand for water supply;

(3) environmental considerations relating to the regional rural water supply system or rural water system enhancement;

(4) public health and safety considerations relating to the regional rural water supply system or rural water system enhancement;

(5) Indian trust responsibility considerations relating to the regional rural water supply system or rural water system enhancement; and

(6) the availability of other Federal authorities or programs to address the water supply needs identified.

(c) CONSULTATION AND COOPERATION.—The Secretary shall consult and cooperate with appropriate Federal, state, tribal, regional, and local authorities during the conduct of each appraisal investigation conducted pursuant to this Act.

(d) COSTS NONREIMBURSABLE.—The costs of such appraisal investigations shall be nonreimbursable.

(e) PUBLIC AVAILABILITY.—The Secretary shall make available to the public, upon request, the results of each appraisal investigation undertaken pursuant to this Act, and shall promptly publish in the Federal Register a notice of the availability of those results.

SEC. 6. FEASIBILITY STUDIES.

(a) FEASIBILITY STUDIES.—The Secretary is authorized to participate with appropriate Federal, state, tribal, regional, and local authorities in studies to determine the feasibility of regional rural water supply systems and rural water supply system enhancements where an appraisal investigation so warrants. The Federal share of the costs of such feasibility studies shall not exceed 50 percent of the total, except that the Secretary may increase the Federal share of the costs of such feasibility study if the Secretary determines, based upon a demonstration of financial hardship, that the non-Federal participant is unable to contribute at least 50 percent of the costs of such study. The Secretary may accept as part of the non-Federal cost share the contribution of such in-kind services by the non-Federal participant that the Secretary determines will contribute substantially toward the conduct and completion of the study.

(b) CONSIDERATIONS.—In addition to the requirements of other Federal laws, feasibility studies authorized under this Act shall consider, among other things—

(1) whether an established water supply exists for the proposed regional rural water supply system;

(2) near- and long-term water demand and supplies in the study area including any opportunities to treat and utilize impaired water supplies through innovative and economically viable treatment technologies;

(3) public health and safety and environmental quality issues related to the regional rural water supply system or rural water system enhancement;

(4) opportunities for water conservation in the study area to reduce water use and water system costs;

(5) the construction costs and projected operation and maintenance costs of the proposed regional rural water supply system and an assessment of participating communities' ability to pay 20 percent to 50 percent of the construction costs and the full share of the system operation and maintenance costs;

(6) opportunities for mitigation of fish and wildlife losses incurred as a result of the construction of the regional rural water supply system or rural water system enhancement on an acre-for-acre basis, based on ecological equivalency, concurrent with system construction; and

(7) the extent to which assistance for rural water supply is available pursuant to other Federal authorities and the likely effectiveness of efforts to coordinate assistance provided by the Secretary with other available Federal programs and assistance.

(c) USE OF OTHER REPORTS.—In conducting a feasibility study pursuant to this section, or an appraisal investigation under section 5, the Secretary shall, to the maximum extent practicable, utilize, in whole or in part, any engineering or other relevant report submitted by a state, tribal, regional, or local authority associated with the proposed regional rural water supply system.

(d) PUBLIC AVAILABILITY.—The Secretary shall make available to the public, upon request, the results of each feasibility study undertaken pursuant to this Act, and shall promptly publish in the Federal Register a notice of the availability of those results.

(e) DISCLAIMER.—Nothing contained in this section shall be interpreted as requiring a feasibility study or imposing any other new requirement for rural water projects or programs that are already authorized.

SEC. 7. AUTHORIZATION.

There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

Mr. DASCHLE. Mr. President, I am pleased to join my colleague, Senator BINGAMAN, in introducing the Reclamation Rural and Small Community Water Enhancement Act, S. 1085.

The Bureau of Reclamation has accomplished a great deal over the last century, starting with the early irrigation and water development programs that opened the West to settlement and economic growth. Clean, abundant water supplies were integral to our Nation's westward expansion. Without the vision and effort of the Bureau over the last century, the West would be a vastly different, and less hospitable, place.

Though the role of the Bureau has changed over the years, it is still the premier Federal water development agency. Today, one of its primary duties is the building of rural water projects in South Dakota and other Western States. Rural areas often lack the resources and infrastructure necessary to provide stable water supplies to their residents. Most families, farmers, and ranchers rely on inadequate wells, or live in areas where the water quality is so poor they are required to truck or haul water over long distances. Rural water projects conducted by the Bureau have helped overcome these obstacles, tackling the problem on a regional level and vastly improving the quality of water and the quality of life in much of my State. Rural water systems have become an indispensable lifeline to help deal with the severe drought that has affected much my State.

The bill we are introducing today takes the next, logical step to bring the Bureau's rural water projects into the 21st century. The Reclamation Rural and Small Community Water Enhancement Act will create a new program within the Bureau of Reclamation to help rural and tribal communities develop water supply solutions, like rural water systems, to address regional water needs. The Bureau's experience in administering other rural water systems will ensure this program compliments existing Federal drinking water programs, like those operated by the Environmental Protection Agency and the Department of Agriculture, and provide rural communities with the tools they need to plan for the future.

As we look forward, however, it is equally important that we not ignore those projects that have already received approval by Congress. In South Dakota, the Mni Wiconi, Mid-Dakota, Perkins County, and Lewis and Clark rural water systems will serve thousands of families, farms, and businesses. Their timely completion is integral to the health, welfare, and economic security of my State. Unfortunately, the administration's fiscal year 2004 budget request drastically cuts funding for these and other rural water projects throughout the country by more than 80 percent. This will lead to unnecessary delays in the provision of drinking water to homes and families and will only serve to increase the cost of the projects.

That is why this legislation directs the Secretary of the Interior to take all necessary steps to complete these and all other rural water projects that have already received congressional authorization. The bill recognizes the hard work that has already gone into the development of these projects, and will help ensure that they are completed on schedule. At the same time, this new program will aid in the development of future projects so that other communities can finally realize the benefits that a well-run rural water system can provide.

I urge my colleagues to support this legislation.

By Mr. KENNEDY (for himself, Mr. LEAHY, Mr. FEINGOLD, and Mr. LAUTENBERG):

S. 1086. A bill to repeal provisions of the PROTECT Act that do not specifically deal with the prevention of the exploitation of children; to the Committee on the Judiciary.

Mr. KENNEDY. Mr. President, it is a privilege to join my colleagues in introducing this legislation on fairness in our Federal sentencing system. The Judicial Use of Discretion to Guarantee Equity in Sentencing Act, or the JUDGES Act, will repeal a number of controversial sentencing provisions that were added at the last moment to the recently enacted ''AMBER Alert law'' on missing, abducted, and exploited children.

These provisions—called the ''Feeney Amendment''—have nothing to do with protecting children, and everything to do with handcuffing judges and eliminating fairness in our Federal sentencing system. As Chief Justice Rehnquist said, they ''do serious harm to the basic structure of the sentencing guidelines system and . . . seriously impair the ability of courts to impose just and responsible sentences.''

The Judicial Conference of the United States, the American Bar Association, the U.S. Sentencing Commission, and many prosecutors, defense attorneys, law professors, civil rights organizations, and business groups vigorously opposed them. Now that the child-abduction legislation has passed, it is the responsibility of Congress to repeal these extraneous and ill-considered provisions and begin a serious and thorough review of the current sentencing guidelines system.

The Sentencing Reform Act of 1984 was the result of extraordinary bipartisan cooperation. In the Senate Judiciary Committee, over a ten-year period, Senator THURMOND, Senator HATCH, Senator BIDEN, and I worked with the Carter and Reagan administrations to strike the best balance between the goal of consistent sentencing in Federal law and the need to give Federal judges discretion to make the sentence fit the crime in individual cases. There was also strong bipartisan cooperation in the House Judiciary Committee, and we worked together over several years to enact a strong, balanced, and bipartisan bill.

Many judges think the 1984 Act went too far in limiting their discretion. Over the years, I have heard many Senators suggest that we should give judges more authority to consider the circumstances of each offender and the facts of each offense. Enacted without hearings or meaningful debate, the Feeney Amendment was a giant step in the wrong direction.

The Feeney Amendment effectively strips Federal judges of discretion to impose individualized sentences, and transforms the longstanding sentencing guidelines system into a mandatory minimum sentencing system. It limits in several ways the ability of judges to depart downwards from the guidelines. It overturns a unanimous 1996 Supreme Court decision, Koon v. United States, which established a deferential standard of review for departures from the guidelines based on the facts of the case—thereby undermining what the Court described as the ''traditional sentencing discretion'' of trial

courts and the ''institutional advantage'' of Federal district courts over appellate courts to make fact-based sentencing determinations.

The Feeney Amendment also limits the number of judges who can serve on the Sentencing Commission, and directs the Commission to amend the guidelines and policy statements under them ''to ensure that the incidence of downward departures are [sic] substantially reduced.'' It also requires the Attorney General to establish a ''judicial blacklist'' by informing Congress whenever a district judge departs downward from the guidelines. It imposes new, burdensome record-keeping and reporting requirements on Federal judges, and requires the Sentencing Commission to disclose confidential court records to the House and Senate Judiciary Committees upon request. Earlier this month, Chief Justice Rehnquist specifically criticized these record-keeping and reporting requirements as potentially amounting ''to an unwarranted and ill-considered effort to intimidate individual judges in the performance of their judicial duties.''

It was an extreme step for Congress to insist that Federal judges—appointed by the President and confirmed by the Senate—should not have discretion to impose lower sentences in unusual cases, subject to appeal. It was even more extreme to pass such a sweeping proposal without the benefit of hearings and full debate in either House of Congress.

Because the Feeney Amendment was introduced at the last possible moment, Congress was deprived of full and balanced information on whether departure decisions are made in inappropriate instances. The Justice Department compounded that problem by submitting a highly misleading letter on April 4th expressing its ''strong support'' for the Amendment. The Department argued that the Amendment was justified because an epidemic of lenient sentences was undermining the Sentencing Reform Act. It failed, however, to mention that the committee report accompanying the 1984 Act anticipated a departure rate of about 20 percent. Today, the rate at which judges depart from the guidelines over the objection of the government is slightly more than 10 percent—well within acceptable rates.

The Department claimed that there are too many downward departures from the sentencing guidelines, but it failed to mention that, according to the American Bar Association, almost 80 percent of these departures are requested by the Justice Department itself. In arguing for the abrogation of the Supreme Court's ruling in Boon v. United States, the Department also failed to mention that it wins 78 percent of all sentencing appeals, or that 85 percent of all defendants who receive downward departures based on grounds other than cooperation with the government nevertheless receive prison time.

Last week, I asked Michael Chertoff, a nominee to the United States Court of Appeals for the Third Circuit, about his involvement in drafting the Justice Department's letter of support for the Feeney Amendment. He said that he had ''no part in drafting'' the letter, and that he did not review the letter before it was sent. In his current position as Assistant Attorney General in charge of the Criminal Division in the Department, Mr. Chertoff is chiefly responsible for formulating criminal law enforcement policy and advising the Attorney General and the White House on matters of criminal law. The fact that the Department's leading authority on criminal law did not participate in writing its influential letter demonstrates the travesty of the process that led to the Feeney Amendment's enactment.

It is important for Congress to undo the damage done to the Federal criminal justice system. The JUDGES Act, which we are introducing today and which Congressman CONYERS is introducing in the House, repeals the provisions of the Feeney Amendment that do not specifically involve sex crimes or crimes against children—the purpose of the underlying child-abduction legislation to which it was attached. In the place of these ill-advised changes to Federal sentencing law, the JUDGES Act directs the Sentencing Commission to report to Congress within 180 days on the incidence of downward departures from the Sentencing Guidelines. The Commission's report will provide Congress with useful information to evaluate the need for reform, including information on rates of departures by district, circuit, offense, and departure ground. It will also provide a review of departure appeals, an assessment of the extent to which departures affect the guideline system, and an assessment of variations in the magnitude of departures and the frequency with which the final sentences result in imprisonment, other conditions of confinement, or release.

When completed, the Commission's report will provide a solid basis for further action by Congress. We need to hold hearings; collect the relevant data; consult with the judges, the Sentencing Commission, the Justice Department, the defense bar, and other authorities; and decide whether legislation is needed to improve the sentencing guidelines. If judges are abusing their discretion, we should limit it. If more discretion is appropriate, we should provide it. In the words of Chief Justice Rehnquist, ''Before such legislation is enacted there should, at least, be a thorough and dispassionate inquiry into the consequences of such action.''

It was a serious mistake for Congress to enact the Feeney Amendment over the strong objections of the Chief Justice, the Judicial Conference, the American Bar Association, the Sentencing Commission, and the overwhelming majority of prosecutors and defense attorneys who deal with the guidelines on a daily basis. The JUDGES Act will correct this mistake and set us on the right path to achieving any necessary reforms. I urge my colleagues to support it.

I ask unanimous consent that the following letter from the Leadership Conference on Civil Rights, the National Association of Criminal Defense Lawyers, the National Legal Aid and Defender Association, the National Association of Federal Defenders, and Families Against Mandatory Minimums be printed in the RECORD.

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

MAY 20, 2003.

The Hon. EDWARD M. KENNEDY,
U.S. Senate, Washington, DC.

DEAR SENATOR KENNEDY: The undersigned organizations write to express our strong support for the JUDGES Act. Under the guise of addressing crimes against children, the recently enacted PROTECT Act (S. 151) effected broad and ill-considered changes to our federal sentencing system. In repealing those provisions that are not limited to child-related and sexual offenses, the JUDGES Act would help restore judicial discretion to impose just sentences in most federal cases.

Enacted without hearings or meaningful debate, Title IV of the PROTECT Act (the ''Feeney Amendment'') represents the most dramatic change to federal sentencing law since passage of the Sentencing Reform Act of 1984. It threatens to deprive judges of discretion to impose individualized sentences and transform the federal sentencing guidelines into a near-mandatory minimum sentencing systems. As with mandatory sentences, Title IV will increase unwarranted sentencing disparities and disproportionate sentences, and erode public confidence in our federal justice system.

No reliable evidence was offered to justify this curtailment of judicial discretion. On the contrary, statistics indicate that the overwhelming majority of sentences, other than those requested by the government to reward defendants for assisting in the prosecution of others, are within the range specified by the sentencing guidelines. Significantly, nearly 80 percent of all downward departures are requested by the government to reward assistance to the government or to manage the high volume of immigration cases in certain border districts.

These statistics solidly discredit title IV's most disastrous provision—Section 401(m), which orders the Sentencing Commission to amend the guidelines so as to substantially reduce the number of departures. The JUDGES Act repeals that provision in favor of a neutral study of departures by the Sentencing Commission.

In carefully considering and enacting the Sentencing Reform Act of 1984 and eventually approving the Sentencing Guidelines, Congress struck a careful balance between sentencing uniformity and judicial discretion. Title IV of the PROTECT Act upsets this balance without justification and without due consideration for the opposing views of the federal judiciary, the Sentencing Commission, the bar and many diverse groups from the left and right.

We appreciate your leadership in this area, and we look forward to working with you in support of the JUDGES Act.

Leadership Conference on Civil Rights, National Association of Criminal Defense Lawyers, National Legal Aid and

Defender Association, National Association of Federal Defenders, Families Against Mandatory Minimums.

Mr. LEAHY. Mr. President, I am very pleased to join the senior Senator from Massachusetts and Senators FEINGOLD and LAUTENBERG in introducing the Judicial Use of Discretion to Guarantee Equity in Sentencing Act of 2003, or the JUDGES Act. This bill will restore judicial discretion in Federal criminal sentencing, a responsibility that was all but stripped away in controversial, extraneous provisions that were added to the AMBER Alert law enacted last month.

I was deeply disappointed when the Republicans took the bipartisan, noncontroversial AMBER Alert bill and added numerous unrelated and ill-considered provisions. One set of provisions, collectively called the Feeney Amendment, blithely overturned the basic structure of the carefully crafted sentencing guideline system without any serious process in either the House or the Senate, and over the strong objections of the Nation's most senior jurists. Speaking about the original Feeney Amendment, the Chief Justice of the United States wrote: ''This legislation, if enacted, would do serious harm to the basic structure of the sentencing system and would seriously impair the ability of courts to impose just and responsible sentences.'' I commend Senator KENNEDY for trying to repair the harm done in the Feeney Amendment by introducing the JUDGES Act today.

Rather than directly address important measures to protect our children, the AMBER Alert conference committee effectively rewrote the criminal code on the back of an envelope. First, the final language established one set of sentencing rules for child pornographers and a more flexible set of sentencing rules for other Federal defendants, including terrorists, murderers, mobsters, civil rights violators, and white collar criminals. No one here believes that sex offenders deserve anything less than harsh sentences, but I cannot understand why we would treat the terrorists better.

Second, the conference report overturned a unanimous Supreme Court decision, Koon v. United States, by establishing a new standard of appellate review in all departure cases. This provision, like so many others in the Feeney Amendment, is not limited to cases involving children. The Court in Koon interpreted the departure standard in a way that limited departures but left some room for judicial discretion. By contrast, the enacted provision appears to require appellate courts to consider the merits of a departure before it can decide what standard of review to apply to the merits. This sloppy drafted, circular provision is likely to tie up the courts in endless litigation, draining already scarce judicial resources, and costing the taxpayers money.

In addition, the Feeney Amendment effectively created a ''black list'' of judges that stray from the draconian mandates of the new law. The enacted amendment attempt to intimate the Federal judiciary by compiling a list of all judges who impose sentences that the Justice Department does not like. Again, this provision is not limited to crimes against children, but applies in any type of criminal case. It takes a sledge hammer to the concept of separation of powers.

In justifying this assault on Federal judges, my colleagues on the other side of the aisle claimed that there was a ''crisis'' of downward departures in sentencing. In fact, downward departure rates are well below the range contemplated by Congress when it authorized the Sentencing Guidelines, except for departures requested by the government. The overwhelming majority of downward departures are requested by federal prosecutors to reward cooperation by defendants or to manage the high volume of immigration cases in certain border districts. When the government does not like a specific downward departure, it can appeal that decision, and it often wins—approximately 80 percent of such appeals are successful. The Feeney Amendment, forced through Congress with virtually no debate, was a solution in search of a problem.

The legislation that I join Senator KENNEDY in introducing today will repeal those provisions of the Feeney Amendment that veered from the underlying purpose of the AMBER Alert bill. Specifically, it will annul those sections that do not specifically involve crimes against children or sex crimes, effectively reversing the Feeney Amendment's attack on judicial discretion.

The JUDGES Act will provide accurate and complete information on the incidence of downward departures in sentencing—a set of data that we were denied when the Feeney Amendment was adopted in the AMBER conference. This bill directs the Sentencing Commission to conduct a comprehensive study on sentencing departures and report to Congress within 180 days. This is the type of review Chief Justice Rehnquist called for in his letter opposing the original Feeney language. He urged the Congress to engage in a ''thorough and dispassionate inquiry'' before changes were made to the Federal sentencing structure. That request was dismissed by supporters of the Feeney Amendment, but still deserves full consideration by the Congress.

Finally, the JUDGES Act will reverse a provision that goes beyond the Feeney Amendment, having been added to the AMBER Alert bill during the conference committee's one meeting. This provision limits the number of Federal judges who can serve on the Sentencing Commission. I, for one, believe that judges are extremely valuable members of the Commission. They bring years of highly relevant experience, not to mention reasoned judgment, to the table. The Republicans apparently believe that their expertise is of limited value.

The JUDGES Act is a reasoned correction to the far-reaching provisions enacted in the Feeney Amendment. It will restore the integrity of the Federal sentencing system by allowing judges to impose just and responsible sentences. I urge my colleagues to support this important legislation.

By Ms. MIKULSKI (for herself and Mrs. CLINTON):

S. 1087. A bill to provide for uterine fibroid research and education, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Ms. MIKULSKI. Mr. President, I rise to introduce the Uterine Fibroid Research and Education Act. This bill expands and coordinates research on uterine fibroids at the National Institutes of Health, NIH, and creates an education campaign to make sure women and their doctors have the facts they need about this painful, chronic condition. I want to thank Representative STEPHANIE TUBBS JONES for introducing this legislation in the House of Representatives and Senator CLINTON for joining me as an original cosponsor.

Uterine fibroids are a major health issue for American women. Three quarters of all reproductive age women, and an even greater number of African American women, have uterine fibroids. Although many women with fibroids have few or no symptoms, it is estimated that a quarter of all women in their thirties and forties seek medical care for the abnormal or heavy bleeding, pain, infertility, or miscarriage that uterine fibroids cause.

Despite their prevalence, little is known about uterine fibroids, and few good treatment options are available to women who suffer from them. Right now, hysterectomy—the surgical removal of the uterus—is the most common treatment for uterine fibroids. More than 200,000 women undergo a hysterectomy each year to treat their uterine fibroids, which requires a six week recovery, has a 20 to 40 percent risk of complications, and means a women can no longer bear children. Less invasive treatment options, like drug regimes or fibroid embolyzation, are promising, but many have not undergone the rigorous testing that women expect. In fact, the Agency for Healthcare Research and Quality at the Department of Health and Human Services found ''a remarkable lack of high quality evidence supporting the effectiveness of most interventions for symptomatic fibroids.''

Women deserve better. That's why I am introducing the uterine Fibroid Research and Education Act—to find new and better ways to treat or even cure uterine fibroids.

This bill does three things. First, it expands research at the National Institutes of Health, NIH, by doubling funding for uterine fibroids every year for the next five years. Despite a budget of

over $27 billion, NIH spent just $5 million on uterine fibroids research in 2002. This legislation authorizes $50 million over five years to provide the investment needed to jumpstart basic research and lay the groundwork to find a cure.

This additional funding will help researchers find out why so many women get uterine fibroids, why African American women are disproportionately affected, what tests women can take to prevent uterine fibroids, and what are the best ways to treat them.

Second, this legislation coordinates research on uterine fibroids through the Office of Research on Women's Health, ORWH. More than a decade ago, I fought to create this Office at NIH to give women a seat at the table when decisions were made about funding priorities. This bill directs this Office to lead the Federal Government's research effort on uterine fibroids. A coordinated research effort is needed to make the best use of limited resources and to give women a one-stop shop to find out what the Federal Government is doing to combat uterine fibroids.

Finally, this bill creates education campaigns for patients and health care providers. According to a 1999 survey conducted by the Society for Women's Health Research, as many as one-third of women who have hysterectomies do so without discussing potential alternatives with their doctors. This bill will make sure women can count on their doctors for information about the best possible treatment for uterine fibroids. It will also give women the facts they need to make good health care decisions and take control of their health.

Since my first days in Congress, I have been fighting to make sure women don't get left out or left behind when it comes to their health. From women's inclusion in clinical trials to quality standards for mammograms, I have led the way to make sure women's health needs are treated fairly and taken seriously. This legislation builds on these past successes to address this silent epidemic among American women.

The Uterine Fibroid Research and Education Act is supported by the National Uterine Fibroid Foundation, the American College of Obstetricians and Gynecologists, the National Medical Association, the American Nurses Association, the Feminist Majority Foundation, the Center for Uterine Fibroids at Brigham and Women's Hospital, the National Urban League,, Delta Sigma Theta, and the Society for Women's Health Research. I look forward to working with these advocates and my colleagues to get this bill signed into law.

By Mrs. By Mrs. BOXER.

S. 1088. A bill to enhance penalties for fraud in connection with identification documents that facilitates an act of domestic terrorism; to the Committee on the Judiciary.

Mrs. BOXER. Mr. President, today I am reintroducing a bill to increase penalties for terrorists using false identification.

This legislation passed the Senate in the last Congress. It mandates prison time for anyone who produces, transfers, possesses, or uses a fake ID in connection with terrorism. Currently, in Federal law, there is no mandatory imprisonment for the production, transfer, possession, or use of a fake ID. This is true under any circumstances, even those involving terrorist acts. This, to me, seems wrong. If an individual at any time facilitates an act of terrorism by providing someone with a fake ID, making a fake ID, possessing a fake ID, or using that fake ID, that person should go to jail. Period. My bill make sure that principle is reflected in Federal law.

Second, my bill closes the loophole that provides enhanced penalties for fake IDs used in connection with acts of international terrorism, but not domestic terrorism. My bill makes sure that fake ID offenses related to domestic terrorism get the same enhanced punishment as those relating to international terrorism.

By Mr. ENSIGN:

S. 1089. A bill to encourage multilateral cooperation and authorize a program of assistance to facilitate a peaceful transition in Cuba, and for other purposes; to the Committee on Foreign Relations.

Mr. ENSIGN: Mr. President, I ask unanimous consent that the text of my bill, the ''Cuba Transition Act of 2003,'' be printed in the RECORD.

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

S. 1089

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 ''Cuba Transition Act of 2003''.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) The Cuban people are seeking change in their country, including through the Varela Project, Concilio Cubano, independent journalist activity, and other civil society initiatives.

(2) Civil society groups and independent, self-employed Cuban citizens will be essential to the consolidation of a genuine and effective transition to democracy from an authoritarian, communist government in Cuba, and therefore merit increased international assistance.

(3) The people of the United States support a policy of proactively helping the Cuban people to establish a democratic system of government, including supporting Cuban citizen efforts to prepare for transition to a better and more prosperous future.

(4) Without profound political and economic changes, Cuba will not meet the criteria for participation in the Summit of the Americas process.

(5) The Inter-American Democratic Charter adopted by the General Assembly of the Organization of American States (OAS) provides both guidance and mechanisms for response by OAS members to the governmental transition in Cuba and that country's eventual reintegration into the inter-American system.

(6) United States Government support of pro-democracy elements in Cuba and planning for the transition in Cuba is essential for the identification of resources and mechanisms that can be made available immediately in response to profound political and economic changes on the island.

(7) Consultations with democratic development institutions and international development agencies regarding Cuba are a critical element in the preparation of an effective multilateral response to the transition in Cuba.

SEC. 3. PURPOSES.

The purposes of this Act are as follows:

(1) To support multilateral efforts by the countries of the Western Hemisphere in planning for a transition of the government in Cuba and the return of that country to the Western Hemisphere community of democracies.

(2) To encourage the development of an international group to coordinate multilateral planning to a transition of the government in Cuba.

(3) To authorize funding for programs to assist the Cuban people and independent nongovernmental organizations in Cuba in preparing the groundwork for a peaceful transition of government in Cuba.

(4) To provide the President with funding to implement assistance programs essential to the development of a democratic government in Cuba.

SEC. 4. DEFINITIONS.

In this Act:

(1) DEMOCRATICALLY ELECTED GOVERNMENT IN CUBA.—The term ''democratically elected government in Cuba'' has the meaning given the term in section 4 of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 (22 U.S.C. 6023).

(2) TRANSITION GOVERNMENT IN CUBA.—The term ''transition government in Cuba'' has the meaning given the term in section 4 of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 (22 U.S.C. 6023).

SEC. 5. DESIGNATION OF COORDINATOR FOR CUBA TRANSITION.

(a) IN GENERAL.—The Secretary of State shall designate, within the Department of State, a coordinator who shall be responsible for—

(1) designing an overall strategy to coordinate preparations for, and a response to, a transition in Cuba;

(2) coordinating assistance provided to the Cuban people in preparation for a transition in Cuba;

(3) coordinating strategic support for the consolidation of a political and economic transition in Cuba;

(4) ensuring program and policy coordination among agencies of the United States Government in carrying out the policies set forth in this Act; and

(5) pursuing coordination with other countries and international organizations, including international financial institutions, with respect to assisting a transition in Cuba.

(b) RANK AND STATUS OF THE TRANSITION COORDINATOR.—The coordinator designated in subsection (a) shall have the rank and status of ambassador.

SEC. 6. MULTILATERAL INITIATIVES RELATED TO CUBA.

The Secretary of State is authorized to designate up to $5,000,000 of total amounts made available for contributions to international organizations to be provided to the Organization of American States for—

(1) Inter-American Commission on Human Rights activities relating to the situation of human rights in Cuba;

(2) the funding of an OAS emergency fund for the deployment of human rights observers, election support, and election observation in Cuba as described in section 109(b) of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 (22 U.S.C. 6039(b)(1)); and

(3) scholarships for Cuban students attending colleges, universities, or other educational programs in member states of the OAS.

SEC. 7. SENSE OF CONGRESS.

(a) SENSE OF CONGRESS REGARDING CONSULTATION WITH WESTERN HEMISPHERE.—It is the sense of Congress that the President should begin consultation, as appropriate, with governments of other Western Hemisphere countries regarding a transition in Cuba.

(b) SENSE OF CONGRESS REGARDING OTHER CONSULTATIONS.—It is the sense of Congress that the President should begin consultations with appropriate international partners and governments regarding a multilateral diplomatic and financial support program for response to a transition in Cuba.

SEC. 8. ASSISTANCE PROVIDED TO THE CUBAN PEOPLE IN PREPARATION FOR A TRANSITION IN CUBA.

(a) AUTHORIZATION.—Notwithstanding any other provision of law other than section 634A of the Foreign Assistance Act of 1961 (22 U.S.C. 2394–1) and comparable notification requirements contained in any Act making appropriations for foreign operations, export financing, and related programs, the President is authorized to furnish an amount not to exceed $15,000,000 in assistance and provide other support for individuals and independent nongovernmental organizations to support democracy-building efforts for Cuba, including—

(1) political prisoners and members of their families;

(2) persons persecuted or harassed for dissident activities;

(3) independent libraries;

(4) independent workers' rights activists;

(5) independent agricultural cooperatives;

(6) independent associations of self-employed Cubans;

(7) independent journalists;

(8) independent youth organizations;

(9) independent environmental groups;

(10) independent economists, medical doctors, and other professionals;

(11) in establishing and maintaining an information and resources center to be in the United States interests section in Havana, Cuba;

(12) prodemocracy programs of the National Endowment for Democracy that are related to Cuba;

(13) nongovernmental programs to facilitate access to the Internet, subject to section 102(g) of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 (22 U.S.C. 6032(g));

(14) nongovernmental charitable programs that provide nutrition and basic medical care to persons most at risk, including children and elderly persons; and

(15) nongovernmental charitable programs to reintegrate into civilian life persons who have abandoned, resigned, or been expelled from the Cuban armed forces for ideological reasons.

(b) DEFINITIONS.—In this section:

(1) INDEPENDENT NONGOVERNMENTAL ORGANIZATION.—The term ''independent nongovernmental organization'' means an organization that the Secretary of State determines, not less than 15 days before any obligation of funds to the organization, is a charitable or nonprofit nongovernmental organization that is not an agency or instrumentality of the Cuban Government.

(2) ELIGIBLE CUBAN RECIPIENTS.—The term ''eligible Cuban recipients'' is limited to any Cuban national in Cuba, including political prisoners and their families, who are not officials of the Cuban Government or of the ruling political party in Cuba, as defined in section 4(10) of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 (22 U.S.C. 6023(10)).

SEC. 9. SUPPORT FOR A TRANSITION GOVERNMENT IN CUBA.

(a) AUTHORIZATION OF APPROPRIATIONS.—In addition to funds otherwise available for such purposes, there are authorized to be appropriated $30,000,000 to the President to establish a fund to provide assistance to a transition government in Cuba as defined in section 205 of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 (22 U.S.C. 6023).

(b) DESIGNATION OF FUND.—The fund authorized in subsection (a) shall be known as the ''Fund for a Free Cuba''.

(c) AVAILABILITY OF FUNDS.—Amounts appropriated pursuant to subsection (a) are authorized to remain available until expended.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 146—EXPRESSING THE SENSE OF THE SENATE REGARDING THE ESTABLISHMENT OF AN INTERNATIONAL TRIBUNAL TO PROSECUTE CRIMES AGAINST HUMANITY COMMITTED BY FIDEL CASTRO RUZ AND OTHER CUBAN POLITICAL AND MILITARY LEADERS

Mr. REID (for himself and Mr. ENSIGN) submitted the following resolution; which was referred to the Committee on Foreign Relations:

Mr. REID. Mr. President, I submit this resolution on my behalf and that of Senator ENSIGN. Senator ENSIGN is not present on the floor today because, as I speak, he is in Florida. He will be the keynote speaker in Florida at the Cuban Independence Day celebration. And it should be a celebration.

Because today, Mr. President, a proud Cuban people should mark the 101st anniversary of their independence. But they have not had that independence for the last 44 years.

I applaud and commend my colleague from Nevada for taking the time and effort to be in Florida to be the spokesperson for those of us who hope for a truly independent Cuba—a Cuba free of the tyrant Fidel Castro.

I realize that another dictator is on the minds of many Americans these days. Our troops continue to investigate the fate of that man—Saddam Hussein—and to search for his top henchmen. We must ensure that all these despicable figures are held accountable for their crimes against humanity. Under the direction of Hussein, the Iraqi leadership embarked upon one of history's most premeditated and brutal campaigns of theft, kidnapping, torture, and murder against the Iraqi, Kuwaiti, Kurdish, and Iranian people. We are, as I speak, finding graves in Iraq where hundreds, if not thousands, of people are buried who have been murdered by the henchmen of Saddam Hussein and his two sons. Some 200,000 Iraqis are still missing, most taken from their homes under cover of darkness, never to be seen or heard from again.

In the modern era, such crimes cannot go unpunished. The United States must assist the Iraqi people in bringing Hussein—if he is still alive—and all other responsible Iraqi officials to justice. The victims of their crimes, including U.S. soldiers, deserve no less.

But closer to home, 90 miles from the shores of the United States, Fidel Castro continues to wage a vicious assault against fundamental human rights and liberties. For more than 44 years, he has led a tyrannical regime in Cuba that systematically violates basic human rights, including freedoms of expression, association, assembly, and movement.

Since 1959, more than 100,000 Cubans have been persecuted by Castro's regime, over 18,000 of whom have been killed or who have disappeared. Now, these are just ballpark figures. We do not know precisely how many people have been executed by Castro and his henchmen, but we can identify thousands of them by name. And Fidel Castro shows no sign of ending his campaign of terror—none at all. In fact, this past March, just a couple months ago, he launched a massive crackdown on leaders of independent labor unions. All they were doing was trying to organize, that's all. He also continued a crackdown on leaders of opposition parties and the pro-democracy movement that led to the arrest of almost 100 dissidents. Castro denied these detainees due process and subjected them to secret trials, after which 50 of them received prison sentences of up to 28 years.

In April, last month, three Cubans hijacked a ferry in an atempt to flee Castro's repressive regime. The Cuban Government summarily tried these men behind closed doors and then had them shot by firing squads.

Journalists have endured especially severe punishment from Castro. Just last year, his Government killed 25 journalists and threatened, harassed, or detained almost 1,500 more.

While I wish I could say I just told you about all the atrocities of his regime, I have not even come close. The list goes on and on and on.

As I said earlier, today is the 101st observance of Cuban Independence Day. It should be a celebration of freedom for the Cuban people. Instead, their island has been hijacked by a cruel dictator whose false promises of prosperity have given way to cowardly acts of intimidation. The sad truth is the Cuban people are still not free. Castro's regime is an insult to the legacy of the Cuban independence movement. As long as he continues to stifle the will of the Cuban people by denying them basic human liberties, any celebration

of Cuban Independence Day will ring hollow.

And so, Mr. President, today is a particularly appropriate day to discuss ways the United States and the international community can hold evil dictators accountable. Since the end of World War II, the United States and other free nations of the world have agreed that individuals who commit crimes against humanity must be held responsible for their actions. From Nuremburg to Bosnia to Rwanda, and now Iraq, the international community, under our leadership, has brought tyrants to justice. Why should we treat Fidel Castro any differently?

Today, with Senator ENSIGN, I am submitting a resolution that calls upon the State Department and the Organization of American States to convene a tribunal that will try Fidel Castro and other political and military leaders of Cuba who have committed crimes against humanity. We cannot allow Castro, Hussein, or other dying despots or their associates to hide behind a phony claim of immunity. They have willingly chosen to torture and kill their own people, and it is time to hold them accountable for that decision.

The Cuban people deserve justice. That includes the many Cuban Americans who came to this country to escape Castro's regime. I have come to know the Cuban-American community very well.

We have a large Cuban-American community in Las Vegas. Some of the leaders of our State are Cuban Americans. I can recite a long list of Nevadans who were forced to leave Cuba, who gave up family fortunes, professional careers, men and women who worked by their hands, who were willing to brave the 90-mile journey across the ocean to freedom. They left their homeland because of Fidel Castro's oppression. Many of these people have gone on to become leading figures in Nevada.

One of these people, who is like a father to Senator ENSIGN and is a dear friend of mine, is a man by the name of Tony Alamo. Tony Alamo still speaks with an accent, even though he has been in this country for a long time. That accent dignifies this great man. He is a person who has achieved greatness in Nevada. But he started in Reno as a janitor. He worked his way up. He dealt cards. He educated himself. He is a man of letters. He understands important issues, and he is extremely engaged in global current events.

Today he is No. 3 in the hierarchy of one of the largest resort companies in the world, Mandalay Bay, a property that has tens of thousands of hotel rooms in Nevada. He has worked in the past as a corporate officer in the MGM company. He is one of the leaders of the State's tourist society. He has two fine young children, a son, Tony, Jr., who is a physician, and a daughter who also is well educated and involved in Nevada's business community.

Tony Alamo and his family are living examples of all the good Cuban Americans have done for our country. But he still loves Cuba. Even though he will never return there—he is an American through and through—he still loves his homeland and detests what Fidel Castro has done to it.

I hope the Senate understands what an evil person Castro is, and what horrible things he has done to the people of Cuba. I hope this resolution is taken to the Foreign Relations Committee, that hearings are held, and that it is reported out favorably so that we can vote on it on the Senate floor.

I again express my appreciation for the sacrifices made today by Senator ENSIGN. He has traveled to Florida to fulfill what both he and I believe is an extremely important responsibility—to represent the Senate on the 101st observance of Cuban Independence Day.

SENATE RESOLUTION 147—TO AUTHORIZE REPRESENTATION BY THE SENATE LEGAL COUNSEL IN THE CASE OF JOHN JENKEL V. BILL FRIST

Mr. MCCONNELL (for himself and Mr. DASCHLE) submitted the following resolution; which was considered and agreed to:

S. RES. 147

Whereas, Senator Bill Frist has been named as a defendant in the case of *John Jenkel* v. *Bill Frist*, No. C-03-1235 (MEJ), now pending in the United States District Court for the Northern District of California;

Whereas, pursuant to sections 703(a) and 704(a)(1) of the Ethics in Government Act of 1978, 2 U.S.C. §§288b(a) and 288c(a)(1), the Senate may direct its counsel to defend Members of the Senate in civil actions relating to their official responsibilities: Now therefore, be it

Resolved, That the Senate Legal Counsel is authorized to represent Senator Frist in the case of *John Jenkel* v. *Bill Frist*.

SENATE RESOLUTION 148—TO AUTHORIZE REPRESENTATION BY THE SENATE LEGAL COUNSEL IN THE CASE OF JOHN JENKEL V. 77 U.S. SENATORS

Mr. FRIST (for himself and Mr. DASCHLE) submitted the following resolution; which was considered and agree to:

S. RES. 148

Whereas, in the case of John Jenkel v. 77 U.S. Senators, No. C–03–1234 (VRW), pending in the United States District Court for the Northern District of California, the plaintiff has named as defendants seventy-seven Members of the Senate;

Whereas, pursuant to sections 703(a) and 704(a)(1) of the Ethics in Government Act of 1978, 2 U.S.C. §§288b(a) and 288c(a)(1), the Senate may direct its counsel to defend Members of the Senate in civil actions relating to their official responsibilities: Now therefore, be it

Resolved, That the Senate Legal Counsel is authorized to represent the Members of the Senate who are defendants in the case of John Jenkel v. 77 U.S. Senators.

SENATE RESOLUTION 149—EXPRESSING THE SENSE OF THE SENATE THAT THE INTERNATIONAL RESPONSE TO THE CURRENT NEED FOR FOOD IN THE HORN OF AFRICA REMAINS INADEQUATE

Mr. FEINGOLD submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 149

Whereas, according to the United Nations World Food Program, there are nearly 40,000,000 people at risk of starvation in Africa this year due to drought and widespread crop failure;

Whereas more than 14,000,000 of those people live in Ethiopia and Eritrea;

Whereas the World Food Program has raised only 25 percent of the $100,000,000 it needs to assist 900,000 people in Eritrea;

Whereas increased food and transportation costs have reduced the purchasing power of aid organizations;

Whereas the United States has contributed more than any other donor country in responding to the food crisis;

Whereas food aid is only part of the solution to the complex problems associated with famine, and non-food aid is also critical to lowering fatality rates;

Whereas the number of people at risk of food shortages in the Horn of Africa could exceed the levels of the famine of 1984;

Whereas urban areas in the region lack effective food security and vulnerability monitoring and sufficient assessment capacity;

Whereas countries in Africa have the highest HIV/AIDS infection rates in the world;

Whereas malnutrition lowers the ability of people to resist infection by the HIV/AIDS virus and hastens the onset of AIDS;

Whereas a person infected with HIV/AIDS needs to consume a higher number of calories per day than the average person does in order to survive; and

Whereas there is not enough food in the assistance pipeline to satisfy the dire food needs of the people in drought-affected countries of the Horn of Africa: Now, therefore, be it

Resolved, That it is the sense of the Senate that the President should—

(1) review our food assistance programs to ensure that we are as committed to, and successful at, meeting food needs in Africa as we are to meeting food needs in other parts of the world;

(2) take all appropriate measures to shift available United States food assistance resources to meet food needs in the Horn of Africa, including drawdowns of the remainder of the reserve stocks in the Emerson Humanitarian Trust;

(3) encourage other donors to commit increased food assistance resources through bilateral and multilateral means; and

(4) direct the Secretary of State, the Secretary of Agriculture, and the Administrator of USAID to work with international organizations, other donor countries, and governments in Africa to develop a long-term, comprehensive strategy for sustainable recovery in regions affected by food crisis that—

(A) integrates agricultural development, clean water access, inoculations, HIV/AIDS awareness and action, natural disaster management, urban vulnerability measures, and other appropriate interventions in a coordinated approach;

(B) estimates costs and resource requirements; and

(C) establishes a plan for mobilizing resources, a timetable for achieving results, and indicators for measuring performance.

SENATE RESOLUTION 150—EXPRESSING THE GRATITUDE OF THE SENATE TO MICHAEL L. GILLETTE, DIRECTOR OF THE CENTER FOR LEGISLATIVE ARCHIVES; FOR HIS SERVICE IN PRESERVING AND MAKING AVAILABLE THE RECORDS OF CONGRESS

Mr. FRIST (for himself and Mr. DASCHLE) submitted the following resolution; which was considered and agreed to:

S. RES. 150

Whereas Michael L. Gillette, Director of the Center for Legislative Archives, retires on June 2, 2003, after 31 years of Government service;

Whereas Michael L. Gillette became the Director of the Center for Legislative Archives, National Archives and Records Administration, in 1991, and for 12 years has worked tirelessly to preserve and make available the official records of the Senate and the House of Representatives;

Whereas Michael L. Gillette promoted the use of the official records of Congress in educational publications, exhibitions, and projects to advance public understanding of the history of Congress and representative democracy;

Whereas Michael L. Gillette formerly was a member of the staff of what is now the National Archives and Records Administration at the Lyndon Baines Johnson Presidential Library, having joined that staff in 1972;

Whereas, during his 31 years of United States Government service at the National Archives and Records Administration, Michael L. Gillette has demonstrated unfailing dedication, skill, and good humor in the performance of his official duties; and

Whereas, throughout his career, Michael L. Gillette has sought to preserve the public record and promote the study of United States history: Now, therefore, be it

Resolved, That the Senate—

(1) commends Michael L. Gillette for his 31 years of service to the United States;

(2) expresses its appreciation and gratitude for Michael L. Gillette's dedication during the past 12 years to preserve and promote the records of Congress; and

(3) directs the Secretary of the Senate to transmit a copy of this resolution to Michael L. Gillette.

SENATE CONCURRENT RESOLUTION 46—TO CORRECT THE ENROLLMENT OF H.R. 1298

Mr. FRIST (for himself and Mr. DASCHLE) submitted the following concurrent resolution; which was considered and agreed to:

S. CON. RES. 46

Resolved by the Senate (the House of Representatives concurring), That the Secretary of the Senate, in the enrollment of the bill (H.R. 1298) to provide assistance to foreign countries to combat HIV/AIDS, tuberculosis, and malaria, and for other purposes, shall make the following correction: In section 202(d)(4)(A)(i), strike ''from all other sources'' and insert ''from all sources''.

AMENDMENTS SUBMITTED AND PROPOSED

SA 700. Mr. LOTT (for himself and Mr. LIEBERMAN) submitted an amendment intended to be proposed by him to the bill S. 1050, supra; which was ordered to lie on the table.

SA 701. Mr. INHOFE submitted an amendment intended to be proposed by him to the bill S. 1050, supra; which was ordered to lie on the table.

SA 702. Mr. INHOFE submitted an amendment intended to be proposed by him to the bill S. 1050, supra; which was ordered to lie on the table.

SA 703. Mr. INHOFE submitted an amendment intended to be proposed by him to the bill S. 1050, supra; which was ordered to lie on the table.

SA 704. Mr. INHOFE submitted an amendment intended to be proposed by him to the bill S. 1050, supra; which was ordered to lie on the table.

SA 705. Mr. INHOFE submitted an amendment intended to be proposed by him to the bill S. 1050, supra; which was ordered to lie on the table.

SA 706. Mr. INHOFE submitted an amendment intended to be proposed by him to the bill S. 1050, supra; which was ordered to lie on the table.

SA 707. Mr. INHOFE submitted an amendment intended to be proposed by him to the bill S. 1050, supra; which was ordered to lie on the table.

SA 708. Mr. LAUTENBERG submitted an amendment intended to be proposed by him to the bill S. 1050, supra; which was ordered to lie on the table.

SA 709. Mr. INHOFE submitted an amendment intended to be proposed by him to the bill S. 1050, supra; which was ordered to lie on the table.

SA 710. Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill S. 1050, supra; which was ordered to lie on the table.

SA 711. Mr. REED (for himself, Mr. LEVIN, Mr. FEINGOLD, and Mrs. FEINSTEIN) proposed an amendment to the bill S. 1050, supra.

SA 712. Mrs. HUTCHISON submitted an amendment intended to be proposed by her to the bill S. 1050, supra; which was ordered to lie on the table.

SA 713. Mrs. HUTCHISON submitted an amendment intended to be proposed by her to the bill S. 1050, supra; which was ordered to lie on the table.

SA 714. Mr. NELSON, of Florida submitted an amendment intended to be proposed by him to the bill S. 1050, supra; which was ordered to lie on the table.

SA 715. Mrs. FEINSTEIN (for herself, Mr. KENNEDY, Mr. FEINGOLD, Mr. DAYTON, Ms. STABENOW, Mr. REED, Mr. DURBIN, Mr. BINGAMAN, Mr. JEFFORDS, and Mr. BIDEN) proposed an amendment to the bill S. 1050, supra.

SA 716. Ms. LANDRIEU submitted an amendment intended to be proposed by her to the bill S. 1050, supra; which was ordered to lie on the table.

SA 717. Ms. LANDRIEU submitted an amendment intended to be proposed by her to the bill S. 1050, supra; which was ordered to lie on the table.

SA 718. Ms. LANDRIEU submitted an amendment intended to be proposed by her to the bill S. 1050, supra; which was ordered to lie on the table.

SA 719. Ms. LANDRIEU submitted an amendment intended to be proposed by her to the bill S. 1050, supra; which was ordered to lie on the table.

SA 720. Mr. KENNEDY (for himself and Mr. BROWNBACK) submitted an amendment intended to be proposed by him to the bill S. 1050, supra; which was ordered to lie on the table.

SA 721. Mr. LAUTENBERG submitted an amendment intended to be proposed by him to the bill S. 1050, supra; which was ordered to lie on the table.

SA 722. Mr. LAUTENBERG (for himself and Mr. JEFFORDS) submitted an amendment intended to be proposed by him to the bill S. 1050, supra; which was ordered to lie on the table.

SA 723. Mr. LOTT (for himself and Mr. LIEBERMAN) submitted an amendment intended to be proposed by him to the bill S. 1050, supra; which was ordered to lie on the table.

SA 724. Mr. COCHRAN (for himself, Mr. REED, Mr. CHAMBLISS, Mr. NELSON, of Nebraska, Ms. MIKULSKI, and Mr. BOND) submitted an amendment intended to be proposed by him to the bill S. 1050, supra; which was ordered to lie on the table.

SA 725. Mr. DAYTON submitted an amendment intended to be proposed by him to the bill S. 1050, supra; which was ordered to lie on the table.

SA 726. Mr. NELSON, of Florida submitted an amendment intended to be proposed by him to the bill S. 1050, supra; which was ordered to lie on the table.

SA 727. Mr. BUNNING (for himself and Mr. SESSIONS) submitted an amendment intended to be proposed by him to the bill S. 1050, supra; which was ordered to lie on the table.

SA 728. Mr. BUNNING submitted an amendment intended to be proposed by him to the bill S. 1050, supra; which was ordered to lie on the table.

SA 729. Mr. SANTORUM submitted an amendment intended to be proposed by him to the bill S. 1050, supra; which was ordered to lie on the table.

SA 730. Mr. SCHUMER submitted an amendment intended to be proposed by him to the bill S. 1050, supra; which was ordered to lie on the table.

SA 731. Mr. SCHUMER submitted an amendment intended to be proposed by him to the bill S. 1050, supra; which was ordered to lie on the table.

SA 732. Mr. BINGAMAN submitted an amendment intended to be proposed by him to the bill S. 1050, supra; which was ordered to lie on the table.

SA 733. Mr. BINGAMAN submitted an amendment intended to be proposed by him to the bill S. 1050, supra; which was ordered to lie on the table.

SA 734. Mr. LAUTENBERG submitted an amendment intended to be proposed by him to the bill S. 1050, supra; which was ordered to lie on the table.

SA 735. Mr. NELSON, of Florida (for himself, Mr. KENNEDY, and Mrs. CLINTON) submitted an amendment intended to be proposed by him to the bill S. 1050, supra; which was ordered to lie on the table.

SA 736. Mr. NELSON, of Florida (for himself, Mr. KENNEDY, and Mrs. CLINTON) submitted an amendment intended to be proposed by him to the bill S. 1050, supra; which was ordered to lie on the table.

SA 737. Mr. NELSON, of Florida (for himself, Mr. KENNEDY, and Mrs. CLINTON) submitted an amendment intended to be proposed by him to the bill S. 1050, supra; which was ordered to lie on the table.

SA 738. Mr. BENNETT submitted an amendment intended to be proposed by him to the bill S. 1050, supra; which was ordered to lie on the table.

SA 739. Mr. DOMENICI submitted an amendment intended to be proposed by him to the bill S. 1050, supra; which was ordered to lie on the table.

SA 740. Mr. DOMENICI submitted an amendment intended to be proposed by him to the bill S. 1050, supra; which was ordered to lie on the table.

SA 741. Mr. DOMENICI submitted an amendment intended to be proposed by him to the bill S. 1050, supra; which was ordered to lie on the table.

SA 742. Mr. DOMENICI submitted an amendment intended to be proposed by him to the bill S. 1050, supra; which was ordered to lie on the table.

SA 743. Mr. GRAHAM of South Carolina submitted an amendment intended to be proposed by him to the bill S. 1050, supra; which was ordered to lie on the table.

SA 744. Ms. LANDRIEU submitted an amendment intended to be proposed by her to the bill S. 1050, supra; which was ordered to lie on the table.

SA 745. Mr. LIEBERMAN submitted an amendment intended to be proposed by him to the bill S. 1050, supra; which was ordered to lie on the table.

SA 746. Mr. DODD submitted an amendment intended to be proposed by him to the bill S. 1050, supra; which was ordered to lie on the table.

SA 747. Mr. WYDEN (for himself, Ms. COLLINS, Mrs. CLINTON, Mr. BYRD, Mr. LAUTENBERG, and Mr. HARKIN) submitted an amendment intended to be proposed by him to the bill S. 1050, supra; which was ordered to lie on the table.

SA 748. Mr. DOMENICI (for himself, Mr. NELSON of Florida, Mr. BINGAMAN, Mrs. HUTCHISON, Mr. CORNYN, and Mrs. FEINSTEIN) submitted an amendment intended to be proposed by him to the bill S. 1050, supra; which was ordered to lie on the table.

SA 749. Mr. MCCAIN submitted an amendment intended to be proposed by him to the bill S. 1050, supra; which was ordered to lie on the table.

SA 750. Mr. DORGAN submitted an amendment intended to be proposed by him to the bill S. 1050, supra; which was ordered to lie on the table.

SA 751. Mr. REED (for himself, Mr. LEVIN, and Mr. FEINGOLD) proposed an amendment to the bill S. 1050, supra.

SA 752. Mr. WARNER proposed an amendment to amendment SA 751 proposed by Mr. REED (for himself, Mr. LEVIN, and Mr. FEINGOLD) to the bill S. 1050, supra.

SA 753. Mr. NELSON of Florida submitted an amendment intended to be proposed by him to the bill S. 1050, supra; which was ordered to lie on the table.

SA 754. Mr. BUNNING submitted an amendment intended to be proposed by him to the bill S. 1050, supra; which was ordered to lie on the table.

SA 755. Mr. VOINOVICH submitted an amendment intended to be proposed by him to the bill S. 1050, supra; which was ordered to lie on the table.

SA 756. Mr. INHOFE submitted an amendment intended to be proposed by him to the bill S. 1050, supra; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 700. Mr. LOTT (for himself and Mr. LIEBERMAN) submitted an amendment intended to be proposed by him to the bill S. 1050, to authorize appropriations for fiscal year 2004 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy; to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes; which was ordered to lie on the table; as follows:

On page 291, between lines 14 and 15, insert the following:

SEC. 1039. ADVANCED SHIPBUILDING ENTERPRISE.

(a) FINDINGS.—Congress makes the following findings:

(1) The President's budget for fiscal year 2004, as submitted to Congress, includes $10,300,000 for the Advanced Shipbuilding Enterprise of the National Shipbuilding Research Program.

(2) The Advanced Shipbuilding Enterprise is an innovative program to encourage greater efficiency among shipyards in the defense industrial base.

(3) The leaders of the Nation's shipbuilding industry have embraced the Advanced Shipbuilding Enterprise as a method of exploring and collaborating on innovation in shipbuilding and ship repair that collectively benefits all manufacturers in the industry.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that—

(1) the Senate strongly supports the innovative Advanced Shipbuilding Enterprise of the National Shipbuilding Research Program that has yielded new processes and techniques to reduce the cost of building and repairing ships in the United States;

(2) the Senate is concerned that the future-years defense program submitted to Congress for fiscal year 2004 does not reflect any funding for the Advanced Shipbuilding Enterprise after fiscal year 2004; and

(3) the Secretary of Defense and the Secretary of the Navy should continue funding the Advanced Shipbuilding Enterprise at a sustaining level through the future-years defense program to support subsequent rounds of research that reduce the cost of designing, building, and repairing ships.

SA 701. Mr. INHOFE submitted an amendment intended to be proposed by him to the bill S. 1050, to authorize appropriations for fiscal year 2004 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes; which was ordered to lie on the table; as follows:

At the end of title XXVIII, add the following:

Subtitle E—Other Matters

SEC. 2851. EFFECT OF CERTAIN FACILITIES ADMINISTRATION AND MILITARY HOUSING ACTIVITIES ON ALLOCATIONS OR ELIGIBILITY OF MILITARY INSTALLATIONS FOR POWER FROM FEDERAL POWER MARKETING AGENCIES.

Notwithstanding any other provision of law, a Federal power marketing agency may not terminate the eligibility of a military installation for power, or reduce the allocation of power to a military installation, as a result of the exercise at the military installation of any authority as follows:

(1) The conveyance of a utility system of the military installation under section 2688 of title 10, United States Code.

(2) The acquisition or improvement of military housing for the military installation under the alternative authority for the acquisition and improvement of military housing under subchapter IV of chapter 169 of title 10, United States Code.

SA 702. Mr. INHOFE submitted an amendment intended to be proposed by him to the bill S. 1050, to authorize appropriations for fiscal year 2004 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle B of title II, add the following:

SEC. 213. GUARDFIST II FIRE SUPPORT TRAINING SYSTEM.

(a) AVAILABILITY OF FUNDS.—(1) Of the amount authorized to be appropriated by section 201(1) for research, development, test, and evaluation for the Army, $791,000 shall be available for Non-System Training Devices Combined Arms (PE 0604715F) for the GUARDFIST II fire support training system.

(2) The amount available under paragraph (1) for the purpose specified in that section is in addition to any other amounts available under this Act for that purpose.

(b) OFFSET.—Of the amount authorized to be appropriated by section 201(1) for research, development, test, and evaluation for the Army, the amount available for Next Generation Training and Simulation Systems (PE 0603015A) for the Institute for Creative Technologies (ICT) is hereby reduced by $791,000.

SA 703. Mr. INHOFE submitted an amendment intended to be proposed by him to the bill S. 1050, to authorize appropriations for fiscal year 2004 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes; which was ordered to lie on the table; as follows:

On page 83, between lines 5 and 6, insert the following:

SEC. 370. PUBLIC-PRIVATE PARTNERSHIPS FOR GOVERNMENT-OWNED, GOVERNMENT-OPERATED ARSENALS, LOGISTICS BASES, AND WEAPON MANUFACTURING ACTIVITIES OF THE DEPARTMENT OF DEFENSE.

Section 2474(a) of title 10, United States Code, is amended—

(1) in paragraph (1), by striking ''depot-level activity of the military departments and the Defense Agencies'' and inserting ''activity of the military departments and the Defense Agencies described in paragraph (4)''; and

(2) by adding at the end the following new paragraph:

''(4) The activities of the military departments and Defense Agencies that are to be designated under paragraph (1) are as follows:

''(A) The depot-level activities.

''(B) The following Government-owned, Government operated activities:

''(i) Arsenals.

''(ii) Logistics bases.

''(iii) Weapon manufacturing activities.''.

SA 704. Mr. INHOFE submitted an amendment intended to be proposed by him to the bill S. 1050, to authorize appropriations for fiscal year 2004 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle B of title XXVIII, add the following:

SEC. 2815. PREPARATION OF LIST OF MILITARY INSTALLATIONS EXCLUDED FROM CONSIDERATION IN 2005 BASE CLOSURE ROUND.

Section 2913 of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note) is amended by adding at the end the following new subsections:

''(g) BASE EXCLUSION CRITERIA.—In preparing the selection criteria required by this section that will be used in making recommendations for the closure or realignment of military installations inside the United States, the Secretary shall ensure that the final criteria reflect the requirement to develop a list of those military installations to be excluded from the base closure and realignment process, as provided in subsection (h).

''(h) LIST OF INSTALLATIONS EXCLUDED FROM CONSIDERATION FOR CLOSURE OR REALIGNMENT.—(1) Before preparing the list required by section 2914(a) of the military installations inside the United States that the Secretary recommends for closure or realignment, the Secretary shall prepare a list of core military installations that the Secretary considers absolutely essential to the national defense and that should not be considered for closure.

''(2) Not later than April 1, 2005, the Secretary shall submit to the congressional defense committees, publish in the Federal Register, and send to the Commission the list required by paragraph (1). The list shall contain at least 50 percent of the total number of military installations located inside the United States as of the date of the enactment of the National Defense Authorization Act for Fiscal Year 2004.

''(3) The Commission shall consider the list based on the final criteria developed under subsection (e). The Commission may modify this list, in the manner provided in section 2903(d) and section 2914(d), if the Commission finds that the inclusion of a military installation on the list substantially violates the criteria. The Commission shall forward to the President, not later than April 30, 2004, a report containing its recommendations regarding the list, which must comply with the percentages specified in paragraph (2). The Comptroller General shall also comply with section 2904(d)(5) by that date.

''(4) If the Commission submits a report to the President under paragraph (3), the President shall notify Congress, not later than May 10, 2005, regarding whether the President approves or disapproves the report. If the President disapproves the report, the Commission shall be dissolved, and the process by which military installations may be selected for closure or realignment under this part in 2005 shall be terminated.

''(5) A military installation included on the exclusion list approved under this subsection may not be included on the closure and realignment list prepared under section 2914(a) or otherwise considered for closure or realignment as part of the base closure process in 2005.''.

SA 705. Mr. INHOFE submitted an amendment intended to be proposed by him to the bill S. 1050, to authorize appropriations for fiscal year 2004 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle C of title IX, add the following:

SEC. 926. REQUIRED FORCE STRUCTURE.

(a) ARMY.—Section 3062 of title 10, United States Code, is amended by adding at the end the following new subsection:

''(e) The Army shall be so organized as to include not less than—

''(1) 10 active and eight National Guard combat divisions or their equivalents;

''(2) one active armored cavalry regiment and one light cavalry regiment or their equivalents;

''(3) 15 National Guard enhanced brigades or their equivalents; and

''(4) such other active and reserve component land combat, rotary-wing aviation, and other services as may be required to support forces specified in paragraphs (1) through (3).''.

(b) NAVY.—Section 5062 of such title is amended by adding at the end the following new subsection:

''(d) The Navy, within the Department of the Navy, shall be so organized as to include—

''(1) not less than 305 vessels in active service;

''(2) not less than 12 aircraft carrier battle groups or their equivalents, not less than 12 amphibious ready groups or their equivalents, not less than 55 attack submarines, not less than 108 active surface combatant vessels, and not less than 8 reserve combatant vessels; and

''(3) such other active and reserve naval combat, naval aviation, and service forces as may be required to support forces specified in paragraphs (1) and (2).''.

(c) AIR FORCE.—Section 8062 of title 10, United States Code, is amended by adding at the end the following new subsection:

''(g) Notwithstanding subsection (e), the Air Force shall be so organized as to include not less than—

''(1) 46 active fighter squadrons or their equivalents;

''(2) 38 National Guard and Reserve squadrons or their equivalents;

''(3) 96 combat-coded bomber aircraft in active service; and

''(4) such other squadrons, reserve groups, and supporting auxiliary and reserve units as may be required to support forces specified in paragraphs (1) through (3).''.

At the end of subtitle B of title XXVIII, add the following:

SEC. 2815. MODIFICATION OF AUTHORITY TO CONDUCT A ROUND OF REALIGNMENTS AND CLOSURES OF MILITARY INSTALLATIONS IN 2005.

Section 2912(a) of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note) is amended—

(1) by striking subparagraph (A) of paragraph (1) and inserting the following:

''(A) A force-structure plan for the Armed Forces that—

''(i) at a minimum, assumes the force structure under the 1991 Base Force force structure (as defined in paragraph (5)) that is also known as the 'Cheney-Powell force structure'; and

''(ii) includes such consideration as the Secretary considers appropriate of an assessment by the Secretary of—

''(I) the probable threats to the national security during the 20-year period beginning with fiscal year 2005;

''(II) the probable end-strength levels and major military force units (including land force divisions, carrier and other major combatant vessels, air wings, and other comparable units) needed to meet those threats; and

''(III) the anticipated levels of funding that will be available for national defense purposes during such period.'';

(2) in paragraph (2)(A), by inserting before the period at the end the following: '', based upon an assumption that there are no installations available outside the United States for the permanent basing of elements of the Armed Forces'';

(3) in paragraph (4), by inserting after the first sentence the following new sentence: ''Any such revision shall be consistent with this subsection.''; and

(4) by adding at the end the following new paragraph:

''(5) BASE FORCE.—In this subsection, the term '1991 Base Force force structure' means the force structure plan for the Armed Forces, known as the 'Base Force', that was adopted by the Secretary of Defense in November 1990 based upon recommendations of the Chairman of the Joint Chiefs of Staff and as incorporated in the President's budget for fiscal year 1992, as submitted to Congress in February 1991, and that assumed the following force structure:

''(A) For the Department of Defense, 1,600,000 members of the Armed Forces on active duty and 900,000 members in an active status in the reserve components.

''(B) For the Army, 12 active divisions, six National Guard divisions, and two cadre divisions or their equivalents.

''(C) For the Navy, 12 aircraft carrier battle groups or their equivalents and 451 naval vessels, including 85 attack submarines.

''(D) For the Marine Corps, three active and one Reserve divisions and three active and one Reserve air wings.

''(E) For the Air Force, 15 active fighter wings and 11 National Guard fighter wings or their equivalents.''.

SEC. 2816. USE OF FORCE-STRUCTURE PLAN FOR ARMED FORCES IN PREPARATION OF SELECTION CRITERIA FOR BASE CLOSURE ROUND.

Section 2913(a) of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note) is amended by adding at the end the following new paragraph:

''(3) USE OF FORCE-STRUCTURE PLAN.—In preparing the proposed and final criteria to be used by the Secretary in making recommendations under section 2914 for the closure or realignment of military installations inside the United States, the Secretary shall use the force-structure plan for the Armed Forces prepared under section 2912(a).''

SA 706. Mr. INHOFE submitted an amendment intended to be proposed by him to the bill S. 1050, to authorize appropriations for fiscal year 2004 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle C of title IX, add the following:

SEC. 926. REQUIRED FORCE STRUCTURE.

(a) ARMY.—Section 3062 of title 10, United States Code, is amended by adding at the end the following new subsection:

''(e) The Army shall be so organized as to include not less than—

''(1) 10 active and eight National Guard combat divisions or their equivalents;

''(2) one active armored cavalry regiment and one light cavalry regiment or their equivalents;

''(3) 15 National Guard enhanced brigades or their equivalents; and

''(4) such other active and reserve component land combat, rotary-wing aviation, and other services as may be required to support forces specified in paragraphs (1) through (3).''.

(b) NAVY.—Section 5062 of such title is amended by adding at the end the following new subsection:

''(d) The Navy, within the Department of the Navy, shall be so organized as to include—

''(1) not less than 305 vessels in active service;

''(2) not less than 12 aircraft carrier battle groups or their equivalents, not less than 12 amphibious ready groups or their equivalents, not less than 55 attack submarines, not less than 108 active surface combatant vessels, and not less than 8 reserve combatant vessels; and

''(3) such other active and reserve naval combat, naval aviation, and service forces as may be required to support forces specified in paragraphs (1) and (2).''.

(c) AIR FORCE.—Section 8062 of title 10, United States Code, is amended by adding at the end the following new subsection:

''(g) Notwithstanding subsection (e), the Air Force shall be so organized as to include not less than—

''(1) 46 active fighter squadrons or their equivalents;

''(2) 38 National Guard and Reserve squadrons or their equivalents;

''(3) 96 combat-coded bomber aircraft in active service; and

''(4) such other squadrons, reserve groups, and supporting auxiliary and reserve units as may be required to support forces specified in paragraphs (1) through (3).''.

At the end of subtitle B of title XXVIII, add the following:

SEC. 2815. MODIFICATION OF AUTHORITY TO CONDUCT A ROUND OF REALIGNMENTS AND CLOSURES OF MILITARY INSTALLATIONS IN 2005.

(a) REVISION TO FORCE STRUCTURE PLAN FOR 2005 ROUND.—Section 2912(a) of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note) is amended—

(1) by striking subparagraph (A) of paragraph (1) and inserting the following:

''(A) A force-structure plan for the Armed Forces that—

''(i) at a minimum, assumes the force structure under the 1991 Base Force force structure (as defined in paragraph (5)) that is also known as the 'Cheney-Powell force structure'; and

''(ii) includes such consideration as the Secretary considers appropriate of an assessment by the Secretary of—

''(I) the probable threats to the national security during the 20-year period beginning with fiscal year 2005;

''(II) the probable end-strength levels and major military force units (including land force divisions, carrier and other major combatant vessels, air wings, and other comparable units) needed to meet those threats; and

''(III) the anticipated levels of funding that will be available for national defense purposes during such period.'';

(2) in paragraph (2)(A), by inserting before the period at the end the following: '', based upon an assumption that there are no installations available outside the United States for the permanent basing of elements of the Armed Forces'';

(3) in paragraph (4), by inserting after the first sentence the following new sentence: ''Any such revision shall be consistent with this subsection.''; and

(4) by adding at the end the following new paragraph:

''(5) BASE FORCE.—In this subsection, the term '1991 Base Force force structure' means the force structure plan for the Armed Forces, known as the 'Base Force', that was adopted by the Secretary of Defense in November 1990 based upon recommendations of the Chairman of the Joint Chiefs of Staff and as incorporated in the President's budget for fiscal year 1992, as submitted to Congress in February 1991, and that assumed the following force structure:

''(A) For the Department of Defense, 1,600,000 members of the Armed Forces on active duty and 900,000 members in an active status in the reserve components.

''(B) For the Army, 12 active divisions, six National Guard divisions, and two cadre divisions or their equivalents.

''(C) For the Navy, 12 aircraft carrier battle groups or their equivalents and 451 naval vessels, including 85 attack submarines.

''(D) For the Marine Corps, three active and one Reserve divisions and three active and one Reserve air wings.

''(E) For the Air Force, 15 active fighter wings and 11 National Guard fighter wings or their equivalents.''.

(b) PREPARATION OF LIST OF MILITARY INSTALLATIONS EXCLUDED FROM CONSIDERATION IN 2005 ROUND.—Section 2913 of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note) is amended by adding at the end the following new subsections:

''(g) BASE EXCLUSION CRITERIA.—In preparing the selection criteria required by this section that will be used in making recommendations for the closure or realignment of military installations inside the United States, the Secretary shall ensure that the final criteria reflect the requirement to develop a list of those military installations to be excluded from the base closure and realignment process, as provided in subsection (h).

''(h) LIST OF INSTALLATIONS EXCLUDED FROM CONSIDERATION FOR CLOSURE OR REALIGNMENT.—(1) Before preparing the list required by section 2914(a) of the military installations inside the United States that the Secretary recommends for closure or realignment, the Secretary shall prepare a list of core military installations that the Secretary considers absolutely essential to the national defense and that should not be considered for closure.

''(2) Not later than April 1, 2005, the Secretary shall submit to the congressional defense committees, publish in the Federal Register, and send to the Commission the list required by paragraph (1). The list shall contain at least 50 percent of the total number of military installations located inside the United States as of the date of the enactment of the National Defense Authorization Act for Fiscal Year 2004.

''(3) The Commission shall consider the list based on the final criteria developed under subsection (e). The Commission may modify this list, in the manner provided in section 2903(d) and section 2914(d), if the Commission finds that the inclusion of a military installation on the list substantially violates the criteria. The Commission shall forward to the President, not later than April 30, 2004, a report containing its recommendations regarding the list, which must comply with the percentages specified in paragraph (2). The Comptroller General shall also comply with section 2904(d)(5) by that date.

''(4) If the Commission submits a report to the President under paragraph (3), the President shall notify Congress, not later than May 10, 2005, regarding whether the President approves or disapproves the report. If the President disapproves the report, the Commission shall be dissolved, and the process by which military installations may be selected for closure or realignment under this part in 2005 shall be terminated.

''(5) A military installation included on the exclusion list approved under this subsection may not be included on the closure and realignment list prepared under section 2914(a) or otherwise considered for closure or realignment as part of the base closure process in 2005.''.

SEC. 2816. USE OF FORCE-STRUCTURE PLAN FOR ARMED FORCES IN PREPARATION OF SELECTION CRITERIA FOR BASE CLOSURE ROUND.

Section 2913(a) of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note) is amended by adding at the end the following new paragraph:

''(3) USE OF FORCE-STRUCTURE PLAN.—In preparing the proposed and final criteria to be used by the Secretary in making recommendations under section 2914 for the closure or realignment of military installations inside the United States, the Secretary shall use the force-structure plan for the Armed Forces prepared under section 2912(a).''

SA 707. Mr. INHOFE submitted an amendment intended to be proposed by him to the bill S. 1050, to authorize appropriations for fiscal year 2004 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes; which was ordered to lie on the table; as follows:

On page 25, between lines 11 and 12, and insert the following:

SEC. 213. HUMAN TISSUE ENGINEERING.

(a) AMOUNT.—Of the amount authorized to be appropriated under section 201(1), $1,710,000 shall be available in PE 0602787A–874 for human tissue engineering.

(b) OFFSETS.—Of the amount authorized to be appropriated under section 201(1)—

(1) the total amount available in PE 0603015A for the Institute for Creative Technology, is hereby reduced by $710,000;

(2) the total amount available in PE 0602308A–DO2 for the Institute for Creative Technology, is hereby reduced by $500,000; and

(3) the total amount available in PE 0602712A for chemical vapor sensing, for landmine detection by Fido, is hereby reduced by $500,000.

SA 708. Mr. LAUTENBERG submitted an amendment intended to be proposed by him to the bill S. 1050, to authorize appropriations for fiscal year 2004 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes; which was ordered to lie on the table; as follows:

On page 291, between lines 14 and 15, insert the following new section:

SEC. 1039. AUTHORITY TO PROVIDE HOMELAND SECURITY ASSISTANCE TO NEW YORK METROPOLITAN TRANSPORTATION AUTHORITY.

(a) AUTHORITY TO PROVIDE ASSISTANCE.—(1) The Secretary of the Army, acting through the United States Army Communications and Electronics Research Development Center of the Army Materiel Command, may provide to the New York Metropolitan Transportation Authority the assistance described in paragraph (2).

(2) The assistance that may be provided under this section is programmatic, technical, and acquisition assistance that utilizes the unique expertise of the Army in land-based command, control, communications, computers, intelligence, surveillance, and reconnaissance (C4ISR) technology in support of the homeland security efforts of the New York Metropolitan Transportation Authority.

(b) REQUIREMENT FOR REIMBURSEMENT.—The Secretary may provide assistance under subsection (a) only to the extent that the

Authority reimburses the Secretary for the costs to the Army of providing such assistance.

(c) USE OF RECEIPTS.—The Secretary may retain amounts received under subsection (b) to reimburse the costs of the Army in providing assistance under subsection (a), and such funds shall be credited to appropriations of the Army then currently available for the same purposes.

(d) TERMINATION OF AUTHORITY.—The authority under this section expires on September 30, 2010.

SA 709. Mr. INHOFE submitted an amendment intended to be proposed by him to the bill S. 1050, to authorize appropriations for fiscal year 2004 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle B of title III, add the following:

SEC. 332. RANGE MANAGEMENT.

(a) IN GENERAL.—Chapter 160 of title 10, United States Code, is amended by adding at the end the following new section:

''§ 2711. Range management

''(a) EXCLUSION OF CERTAIN MUNITIONS AND OTHER MATERIALS FROM SOLID WASTE UNDER SOLID WASTE DISPOSAL ACT.—(1) For purposes of the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.), the term 'solid waste' shall not include military munitions, including unexploded ordnance and the constituents thereof, that are or have been deposited incident to their normal and expected use on an operational range and remain thereon, unless such military munitions, including unexploded ordnance and the constituents thereof—

''(A) are recovered, collected, and then disposed of by burial or landfilling; or

''(B) have migrated off an operational range and are not addressed through a response action under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.).

''(2) Military munitions, including unexploded ordnance and the constituents thereof, that are described by subparagraph (A) or (B) of paragraph (1) shall be treated as solid waste for purposes of the Solid Waste Disposal Act, including sections 7002 and 7003 of that Act (42 U.S.C. 6972, 6973), where applicable.

''(3) Nothing in this subsection shall be construed to effect the authority of Federal, State, interstate, local regulatory authorities to determine when military munitions, including unexploded ordnance and the constituents thereof but excluding military munitions (including unexploded ordnance and the constituents thereof) that are excluded from solid waste under paragraph (1), are or become hazardous waste for purposes of the Solid Waste Disposal Act.

''(b) EXCLUSION OF CERTAIN ACTIONS ON MUNITIONS AND OTHER MATERIALS FROM RELEASE UNDER CERCLA.—(1) For purposes of Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.), the term 'release' shall not include the deposit or presence on an operational range of any military munitions, including unexploded ordnance and the constituents thereof, that are or have been deposited thereon incident to their normal and expected used and remain thereon.

''(2) For purposes of Comprehensive Environmental Response, Compensation, and Liability Act of 1980, the term 'release' shall include the deposit off an operational range, or the migration off an operational range, of military munitions, including unexploded ordnance and the constituents thereof.

''(3) Notwithstanding paragraphs (1) and (2), the authority of the President under section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9606(a)) to take action because there may be an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance includes the authority to take action because of the deposit or presence on an operational range of any military munitions, including unexploded ordnance and the constituents thereof, that are or have been deposited thereon incident to normal and expected use and remain thereon.

''(c) PROTECTION OF ENVIRONMENT, SAFETY, AND HEALTH.—Nothing in this section shall be construed to effect the authority of the Department of Defense to protect the environment, safety, and health on an operational range.

''(d) APPLICABILITY TO RANGES OTHER THAN OPERATIONAL RANGES.—Nothing in this section shall be construed to effect the legal requirements applicable to military munitions, including unexploded ordnance and the constituents thereof, that have been deposited on an operational range once the range ceases to be an operational range.

''(e) CONSTITUENTS DEFINED.—In this section, the term 'constituents' means any materials originating from military munitions, including unexploded ordnance, explosive and non-explosive materials, and the emissions, degradation, or breakdown products of such munitions.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of that chapter is amended by adding at the end the following new item:

''2711. Range management.''.

SA 710. Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill S. 1050, to authorize appropriations for fiscal year 2004 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes; which was ordered to lie on the table; as follows:

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

SEC. 1039. PROGRAM TO ENHANCE SUPPORT OF THE AMERICAN PEOPLE FOR THE MILITARY AND MILITARY SERVICE.

(a) PROGRAM AUTHORIZED.—The Secretary of Defense may carry out a program to enhance the support of the American people for the military and military service.

(b) PROGRAM NAME.—The program authorized by subsection (a) shall be known as the ''Reconnect with America Program''.

(c) ACTIVITIES.—Activities under the program authorized by subsection (a) shall include activities to achieve the following:

(1) The enhancement of support for the military and military service among those who may not be familiar with the benefits of military service to individuals or society as a whole.

(2) The creation of advocates for the military and military service among parents, teachers and others who have a significant influence on the career choices made by the youth of America.

(3) Such other objectives as the Secretary considers appropriate.

(d) CONSTRUCTION.—The authority under subsection (a) to carry out the program described in that subsection is in addition to any other authority under law to carry out programs intended to enhance the support of the American people for the military and military service.

(e) FUNDING.—Of the amount authorized to be appropriated by section 301(5) for operation and maintenance, Defense-wide, $42,000,000 may be available for the program authorized by subsection (a).

SA 711. Mr. REED (for himself, Mr. LEVIN, Mr. FEINGOLD, and Mrs. FEINSTEIN) proposed an amendment intended to be proposed by him to the bill S. 1050, to authorize appropriations for fiscal year 2004 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes; which was ordered to lie on the table; as follows:

Strike section 223, and insert the following:

SEC. 223. OVERSIGHT OF PROCUREMENT, PERFORMANCE CRITERIA, AND OPERATIONAL TEST PLANS FOR BALLISTIC MISSILE DEFENSE PROGRAMS.

(a) PROCUREMENT.—(1) Chapter 9 of title 10, United States Code, is amended by inserting after section 223 the following new section:

''§ 223a. Ballistic missile defense programs: procurement

''(a) BUDGET JUSTIFICATION MATERIALS.—(1) In the budget justification materials submitted to Congress in support of the Department of Defense budget for any fiscal year (as submitted with the budget of the President under section 1105(a) of title 31), the Secretary of Defense shall specify, for each ballistic missile defense system element, the following information:

''(A) For each ballistic missile defense element for which the Missile Defense Agency in engaged in planning for production and initial fielding, the following information:

''(i) The production rate capabilities of the production facilities planned to be used.

''(ii) The potential date of availability of the element for initial fielding.

''(iii) The expected costs of the initial production and fielding planned for the element.

''(iv) The estimated date on which the administration of the acquisition of the element is to be transferred to the Secretary of a military department.

''(B) The performance criteria prescribed under subsection (b).

''(C) The plans and schedules established and approved for operational testing under subsection (c).

''(D) The annual assessment of the progress being made toward verifying performance through operational testing, as prepared under subsection (d).

''(2) The information provided under paragraph (1) shall be submitted in an unclassified form, but may include a classified annex as necessary.

''(b) PERFORMANCE CRITERIA.—(1) The Director of the Missile Defense Agency shall prescribe measurable performance criteria for all planned development phases (known as ''blocks'') of each ballistic missile defense system program element. The performance criteria shall be updated as necessary while the program and any follow-on program remain in development.

''(2) The performance criteria prescribed under paragraph (1) for a block of a program for a system shall include, at a minimum, the following:

''(A) One or more criteria that specifically describe, in relation to that block, the types and quantities of threat missiles for which the system is being designed as a defense, including the types and quantities of the countermeasures assumed to be employed for the protection of the threat missiles.

''(B) One or more criteria that specifically describe, in relation to that block, the intended effectiveness of the system against the threat missiles and countermeasures identified for the purposes of subparagraph (A).

''(c) OPERATIONAL TEST PLANS.—The Director of Operational Test and Evaluation, in consultation with the Director of the Missile Defense Agency, shall establish and approve for each ballistic missile defense system program element appropriate plans and schedules for operational testing to determine whether the performance criteria prescribed for the program under subsection (b) have been met. The test plans shall include an estimate of when successful performance of the system in accordance with each performance criterion is to be verified by operational testing. The test plans for a program shall be updated as necessary while the program and any follow-on program remain in development.

''(d) ANNUAL TESTING PROGRESS REPORTS.—The Director of Operational Test and Evaluation shall perform an annual assessment of the progress being made toward verifying through operational testing the performance of the system under a missile defense system program as measured by the performance criteria prescribed for the program under subsection (b).

''(e) FUTURE-YEARS DEFENSE PROGRAM.—The future-years defense program submitted to Congress each year under section 221 of this title shall include an estimate of the amount necessary for procurement for each ballistic missile defense system element, together with a discussion of the underlying factors and reasoning justifying the estimate.''.

(2) The table of contents at the beginning of such chapter 9 is amended by inserting after the item relating to section 223 the following new item:

''223a. Ballistic missile defense programs: procurement.''.

(b) EXCEPTION FOR FIRST ASSESSMENT.—For the first assessment required under subsection (d) of section 223a of title 10, United States Code (as added by subsection (a))—

(1) the budget justification materials submitted to Congress in support of the Department of Defense budget for fiscal year 2005 (as submitted with the budget of the President under section 1105(a) of title 31, United States Code) need not include such assessment; and

(2) the Director of Operational Test and Evaluation shall submit the assessment to the Committees on Armed Services of the Senate and the House of Representatives not later than July 31, 2004.

SA 712. Mrs. HUTCHINSON submitted an amendment intended to be proposed by her to the bill S. 1050, to authorize appropriations for fiscal year 2004 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following new section:

SEC. ___. AIR FARES FOR MEMBERS OF ARMED FORCES.

It is the sense of the Senate that each United States air carrier should—

(1) make every effort to allow active duty members of the armed forces to purchase tickets, on a space-available basis, for the lowest fares offered for the flights desired, without regard to advance purchase requirements and other restrictions; and

(2) offer flexible terms that allow members of the armed forces on active duty to purchase, modify, or cancel tickets without time restrictions, fees, or penalties.

SA 713. Mrs. HUTCHINSON submitted an amendment intended to be proposed by her to the bill S. 1050, to authorize appropriations for fiscal year 2004 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes; which was ordered to lie on the table; as follows:

On page 123, between lines 15 and 16, insert the following:

SEC. 565. SUPPORT SERVICES FOR FAMILIES OF DEPLOYED MEMBERS OF THE ARMED FORCES.

(a) ACCESS TO SERVICES.—Chapter 88 of title 10, United States Code, is amended by adding at the end of subchapter I the following new section:

''§ 1789. Support for families of deployed members

''(a) INTERSERVICE FAMILY SUPPORT NETWORK.—The Secretary of each military department, and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, shall enter into a cooperative agreement to provide an interservice family support network in the United States.

''(b) ACCESS TO FAMILY SUPPORT SERVICES.—The interservice family support network shall be designed to ensure that—

''(1) the dependents of each member of the armed forces (including a member of a reserve component of the armed forces) deployed away from the member's permanent duty station (or, in the case of a member of a reserve component, deployed away from the commuting area of the member's residence) have access to family support services at the military installation that is nearest to the dependents' residence, without regard to whether the installation is an installation of the same armed force as the member; and

''(2) the appropriate family support services personnel of each such installation administer an ongoing outreach program to establish relationships between the sources of family support services at the installation and dependents of members of reserve components in the population potentially to be served under the circumstances described in paragraph (1).

''(c) RESERVE COMPONENT FAMILY SUPPORT COORDINATORS.—(1) The cooperative agreement entered into under subsection (a) shall provide for the designation of family support coordinators to assist dependents of members of reserve components throughout the United States with the resolution of issues involving access to family support services from the interservice family support network.

''(2) The duty to provide services to the dependents of members of the reserve components shall be distributed among the family support coordinators on a geographic basis commensurate with the geographic distribution of the population of such dependents.

''(d) EXECUTIVE AGENT FOR NETWORK.—The Secretaries of the military departments and the Secretary of Homeland Security shall designate the Chief of the National Guard Bureau to serve as executive agent for the administration of the interservice family support network established under the cooperative agreement entered into under subsection (a), including the system of reserve component family support coordinators required under subsection (c).''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such subchapter is amended by adding at the end the following new item:

''1789. Support for families of deployed members.''.

SA 712. Mr. NELSON of Florida submitted an amendment intended to be proposed by her to the bill S. 1050, to authorize appropriations for fiscal year 2004 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes; which was ordered to lie on the table; as follows:

On page 291, between lines 14 and 15, insert the following new section:

SEC. 1039. REWARD FOR INFORMATION LEADING TO THE RESOLUTION OF THE FATE OF AN AMERICAN POW/MIA OF THE FIRST GULF WAR.

(a) REWARD AUTHORIZED.—The Secretary of Defense is authorized to pay a gratuity or gratuities to an eligible individual or eligible individuals determined by the Secretary to have assisted in determining the whereabouts or status of an American POW/MIA of the First Persian Gulf War.

(b) AGGREGATE AMOUNT OF REWARDS.—The total amount of gratuities paid by the Secretary under subsection (a) may not exceed $250,000.

(c) DEFINITIONS.—In this section:

(1) AMERICAN POW/MIA OF THE FIRST PERSIAN GULF WAR.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the term ''American POW/MIA of the First Persian Gulf War'' means an individual—

(i) who is a member of a uniformed service (within the meaning of section 101(3) of title 37, United States Code) in a missing status (as defined in section 551(2) of such title and this subsection) as a result of Operation Desert Shield/Desert Storm; or

(ii) who is an employee (as defined in section 5561(2) of title 5, United States Code) in a missing status (as defined in section 5561(5) of such title) as a result of Operation Desert Shield/Desert Storm.

(B) EXCLUSION.—Such term does not include an individual with respect to whom it is officially determined under section 552(c) of title 37, United States Code, that such individual is officially absent from such individual's post of duty without authority.

(2) ELIGIBLE INDIVIDUAL.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the term ''eligible individual'' means an individual who is a national of Iraq or a nation of the Greater Middle East Region (as determined by the Secretary in consultation with the Secretary of State).

(B) EXCEPTIONS.—An individual described in this subsection does not include a terrorist, a persecutor, a person who has been convicted of a serious criminal offense, or a person who presents a danger to the security of the United States, as set forth in clauses (i) through (v) of section 208(b)(2)(A) of the

Immigration and Nationality Act (8 U.S.C. 1158(b)(2)(A)).

(3) MISSING STATUS.—The term ''missing status'', with respect to Operation Desert Shield/Desert Storm means the status of an individual as a result of Operation Desert Shield/Desert Storm if immediately before that status began the individual—

(A) was performing service in Kuwait, Iraq, or another nation of the Greater Middle East Region; or

(B) was performing service in the Greater Middle East Region in direct support of military operations in Kuwait or Iraq.

SA 715. Mrs. FEINSTEIN (for herself, Mr. KENNEDY, Mr. FEINGOLD, Mr. DAYTON, Ms. STABENOW, Mr. REED, Mr. DURBIN, Mr. BINGAMAN, Mr. JEFFORDS, and Mr. BIDEN) proposed an amendment to the bill S. 1050, to authorize appropirations for fiscal year 2004 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes; as follows:

Strike section 3131.

SA 716. Ms. LANDRIEU submitted an amendment to the bill S. 1050, to authorize appropirations for fiscal year 2004 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle C of title XXVIII, add the following new section:

SEC. 2825. PROPERTY CONVEYANCE, LOUISIANA ARMY AMMUNITION PLANT, DOYLINE, LOUISIANA.

(a) IDENTIFICATION OF COVERED PROPERTY.—This section applies specifically to the Louisiana Army Ammunition Plant (in this section referred to as the ''Plant'') in Doyline, Louisiana, consisting of approximately 14,949 acres, of which 13,665 acres are under license to the Military Department of the State of Louisiana and 1,284 acres are used by the Army Joint Munitions Command.

(b) CONVEYANCE AUTHORIZED.—The Secretary of the Army may convey, without consideration, to the State of Louisiana (in this section referred to as the ''State'') all right, title, and interest of the United States in and to the real property, including improvements thereon, that constitutes the Plant. The deed or other instrument of conveyance shall contain the conditions specified in subsections (d) and (e), specify that the United States and the State agree to such conditions, and specify that, if the State engages in a material breach of the conditions, title to the real property, including any improvements thereon, shall revert to the United States at the election of the Secretary.

(c) TRANSFER OF EQUIPMENT AND PERSONAL PROPERTY.—(1) As part of the conveyance under subsection (b), the Secretary may transfer, without consideration, to the State any Federal equipment and other items of Federal personal property that are in use or reserved for use at the Plant as of the date of the enactment of this Act. The transfer of equipment and personal property under the authority of this subsection is limited to equipment and personal property required for use by the Louisiana National Guard, as determined by the Secretary.

(2) In the case of Federal equipment and other items of Federal personal property that are in use or reserved for use at the Plant as of the date of the enactment of this Act and that are not transferred under paragraph (1), the Secretary may sell the equipment and personal property and retain the proceeds from such sales for environmental remediation of the Plant.

(d) CONDITIONS OF CONVEYANCE.—(1) The State shall use the real property conveyed under subsection (a), and any equipment or other property transferred under subsection (c)(1), for purposes of training and supporting the National Guard and military forces of the United States, for promoting and supporting reuse of infrastructure for industrial or other economic development, and for such other purposes as the Secretary may authorize.

(2) The Secretary and the State shall negotiate the terms of the conveyance such that the conveyance may become a model of a public-private partnership. As such, the terms of the conveyance may include any or all of the following:

(A) Sharing in revenues from tenants located at the Plant as a result of the Armament Retooling and Manufacturing Support program and from the divestment and sale of the equipment.

(B) The State shall honor and continue all real estate agreements made by the Army and the facility use contractor through the existing terms of those instruments after the conveyance, as determined by the Secretary.

(C) Subject to subsection (g), the State shall obtain sufficient revenue, including revenue derived from timber, water, and other natural reserves located on the real property and managed in accordance with sound conservation practices, to maintain and improve the conveyed property for purposes of training and supporting the National Guard and military forces of the United States and for promoting and supporting reuse of infrastructure for industrial or other economic development.

(3) For purposes of monitoring the extent to which the conveyed property is being used in accordance with the requirements of this section, the Secretary shall be given access to such documents as the Secretary determines to be necessary, and the Secretary may require the advance approval by the Secretary for such contracts, conveyances of real or personal property, or other transactions regarding the conveyed property as the Secretary determines to be necessary.

(4) The cost and responsibility for the monitoring of any agreed to land use controls shall be borne by the State.

(e) ACTIVITIES OF ARMY JOINT MUNITION COMMAND.—(1) The State shall permit the Army Joint Munitions Command (or its successor commands) to continue to utilize those portions of the Plant utilized by the Army Joint Munitions Command as of the date on which the conveyance under subsection (b) is made.

(2) The conveyance shall provide for the orderly transition of any operational permits which may be needed for the continued operation, either by the Army or any current tenants. The time limit for that transition shall be negotiated between the parties, but need not take place before the actual conveyance.

(3) The Army Joint Munitions Command and the State shall each comply with the duties and obligations imposed on them pursuant to the agreement entitled ''Memorandum Of Agreement Between The U.S. Army Industrial Operations Command And The Military Department, State of Louisiana, Through The Adjutant General For The Transfer Of Training Lands At The Louisiana Army Ammunition Plant'', dated April 26, 2000, until such time as Army Joint Munitions Command terminates operations at the Plant. Thereafter, the Army Joint Munitions Command shall continue to be responsible for and retain responsibility for existing environmental clean-up, remediation, and restoration of all known and unknown environmental contamination and liability for all parcels of land, associated ground waters, and surface waters within the conveyed property according to the terms of the agreement, as provided in the agreement and according to law.

(4) In the case of any waste products stored at the conveyed property by the Army Joint Munitions Command or its agents, contractors, or licensees, other than the State, as of the date of the conveyance under subsection (b), the United States shall retain title to, and responsibility for, the products.

(f) MAINTENANCE OF CEMETERIES.—Upon completion of the conveyance under subsection (b), the State shall assume responsibility for the nine cemeteries located on the conveyed property.

(g) MINERAL RIGHTS.—The United States shall retain all mineral rights associated with the Plant, and the Secretary may sell the minerals, on behalf of the United States, and retain and use the proceeds from such sales for environmental remediation of the Plant.

(h) DESCRIPTION OF PROPERTY.—The exact acreage and legal description of the real property to be conveyed under subsection (b) shall be determined by a survey satisfactory to the Secretary. The cost of the survey shall be borne by the State.

(i) ADDITIONAL TERMS AND CONDITIONS.—The Secretary may require such additional terms and conditions in connection with the conveyance under this section as the Secretary considers appropriate to protect the interests of the United States.

SA 717. Ms. LANDRIEU submitted an amendment to the bill S. 1050, to authorize appropirations for fiscal year 2004 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes; which was ordered to lie on the table; as follows:

On page 291, between lines 14 and 15, insert the following:

SEC. 1039. FEDERAL ASSISTANCE FOR STATE PROGRAMS UNDER THE NATIONAL GUARD CHALLENGE PROGRAM.

(a) MAXIMUM FEDERAL SHARE.—Section 509(d) of title 32, United States Code, is amended—

(1) by striking paragraphs (1), (2), and (3);

(2) by redesignating paragraph (4) as paragraph (1);

(3) in paragraph (1), as so redesignated, by striking the period at the end and inserting ''; and''; and

(4) by adding at the end the following new paragraph (2);

''(2) for fiscal year 2004 (notwithstanding paragraph (1)), 65 percent of the costs of operating the State program during that year.''.

(b) AMOUNT FOR FEDERAL ASSISTANCE.—(1) The amount authorized to be appropriated under section 301(1) is hereby increased by $6,000,000.

(2) Of the total amount authorized to be appropriated under section 301(1), $71,200,000 shall be available for the National Guard

Challenge Program under section 509 of title 32, United States Code.

(3) The total amount authorized to be appropriated under section 3101(a)(1) is hereby reduced by $6,000,000, to be derived from the amount provided for the Robust Nuclear Earth Penetrator program.

SA 718. Ms. LANDRIEU submitted an amendment intended to be proposed by her to the bill S. 1050, to authorize appropriations for fiscal year 2004 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes; which was ordered to lie on the table; as follows:

On page 291, between lines 14 and 15, insert the following:

SEC. 1039. FEDERAL ASSISTANCE FOR STATE PROGRAMS UNDER THE NATIONAL GUARD CHALLENGE PROGRAM.

(a) MAXIMUM FEDERAL SHARE.—Section 509(d) of title 32, United States Code, is amended by striking paragraphs (1), (2), (3), and (4), and inserting the following:

''(1) for fiscal year 2004 and each fiscal year after fiscal year 2006, 65 percent of the costs of operating the State program during that year; and

''(2) for each of fiscal years 2005 and 2006, 70 percent of the costs of operating the State program during that year.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on October 1, 2003.

SA 719. Ms. LANDRIEU submitted an amendment intended to be proposed by her to the bill S. 1050, to authorize appropriations for fiscal year 2004 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes; which was ordered to lie on the table; as follows:

On page 291, between lines 14 and 15, insert the following new section:

SEC. 1039. DESIGNATION OF AMERICA'S NATIONAL WORLD WAR II MUSEUM.

(a) FINDINGS.—Congress makes the following findings:

(1) The National D-Day Museum, operated in New Orleans, Louisiana by an educational foundation, has been established with the vision ''to celebrate the American Spirit''.

(2) The National D-Day Museum is the only museum in the United States that exists for the exclusive purpose of interpreting the American experience during the World War II years (1939–1945) on both the battlefront and the home front and, in doing so, covers all of the branches of the Armed Forces and the Merchant Marine.

(3) The National D-Day Museum was founded by the preeminent American historian, Stephen E. Ambrose, as a result of a conversation with President Dwight D. Eisenhower in 1963, when the President and former Supreme Commander, Allied Expeditionary Forces in Europe, credited Andrew Jackson Higgins, the chief executive officer of Higgins Industries in New Orleans, as the ''man who won the war for us'' because the 12,000 landing craft designed by Higgins Industries made possible all of the amphibious invasions of World War II and carried American soldiers into every theatre of the war.

(4) The National D-Day Museum, since its grand opening on June 6, 2000, the 56th anniversary of the D-Day invasion of Normandy, has attracted nearly 1,000,000 visitors from around the world, 85 percent of whom have been Americans from across the country.

(5) American World War II veterans, called the ''greatest generation'' of the Nation, are dying at the rapid rate of more than 1,200 veterans each day, creating an urgent need to preserve the stories, artifacts, and heroic achievements of that generation.

(6) The United States has a need to preserve forever the knowledge and history of the Nation's most decisive achievement in the 20th century and to portray that history to citizens, visitors, and school children for centuries to come.

(7) Congress, recognizing the need to preserve this knowledge and history, appropriated funds in 1992 to authorize the design and construction of The National D-Day Museum in New Orleans to commemorate the epic 1944 Normandy invasion, and subsequently appropriated additional funds in 1998, 2000, 2001, and 2002, to help expand the exhibits in the museum to include the D-Day invasions in the Pacific Theatre of Operations and the other campaigns of World War II.

(8) The State of Louisiana and thousands of donors and foundations across the country have contributed millions of dollars to help build this national institution.

(9) The Board of Trustees of The National D-Day Museum is national in scope and diverse in its makeup.

(10) The World War II Memorial now under construction on the National Mall in Washington, the District of Columbia, will always be the memorial in our Nation where people come to remember America's sacrifices in World War II, while The National D-Day Museum will always be the museum of the American experience in the World War II years (1939–1945), where people come to learn about Americans' experiences during that critical period, as well as a place where the history of our Nation's monumental struggle against worldwide aggression by would-be oppressors is preserved so that future generations can understand the role the United States played in the preservation and advancement of democracy and freedom in the middle of the 20th century.

(11) The National D-Day Museum seeks to educate a diverse group of audiences through its collection of artifacts, photographs, letters, documents, and first-hand personal accounts of the participants in the war and on the home front during one of history's darkest hours.

(12) The National D-Day Museum is devoted to the combat experience of United States citizen soldiers in all of the theatres of World War II and to the heroic efforts of the men and women on the home front who worked tirelessly to support the troops and the war effort.

(13) The National D-Day Museum continues to add to and maintain one of the largest personal history collections in the United States of the men and women who fought in World War II and who served on the home front.

(14) No other museum describes as well the volunteer spirit that arose throughout the United States and united the country during the World War II years.

(15) The National D-Day Museum is engaged in a 250,000 square foot expansion to include the Center for the Study of the American Spirit, an advanced format theatre, and a new United States pavilion.

(16) The planned ''We're All in this Together'' exhibit will describe the role every State, commonwealth, and territory played in World War II, and the computer database and software of The National D-Day Museum's educational program will be made available to the teachers and school children of every State, commonwealth, and territory.

(17) The National D-Day Museum is an official Smithsonian affiliate institution with a formal agreement to borrow Smithsonian artifacts for future exhibitions.

(18) Le Memorial de Caen in Normandy, France has formally recognized The National D-Day Museum as its official partner in a Patriotic Alliance signed on October 16, 2002, by both museums.

(19) The official Battle of the Bulge museums in Luxembourg and the American Battlefield Monuments Commission are already collaborating with The National D-Day Museum on World War II exhibitions.

(20) Congress made available $4,200,000 in fiscal year 2002 and $3,000,000 in fiscal year 2003 in Department of Defense appropriations Acts for the purpose of planning the expansion of The National D-Day Museum to tell the untold stories from the campaigns of World War II, and to design new exhibits on the war on land, at sea, and in the air, the China-Burma-India theatre, the Japanese invasion of Alaska's Aleutian Islands, the roles of women and African-Americans in World War II, and other relevant subjects.

(21) For all of these reasons, it is appropriate to designate The National D-Day Museum as ''America's National World War II Museum''.

(b) PURPOSES.—The purposes of this section are, through the designation of The National D-Day Museum as ''America's National World War II Museum'', to express the United States Government's support for—

(1) the continuing preservation, maintenance, and interpretation of the artifacts, documents, images, and history collected by the museum;

(2) the education of the American people as to the American experience in combat and on the home front during the World War II years, including the conduct of educational outreach programs for teachers and students throughout the United States;

(3) the operation of a premier facility for the public display of artifacts, photographs, letters, documents, and personal histories from the World War II years (1939–1945);

(4) the further expansion of the current European and Pacific campaign exhibits in the museum, including the Center for the Study of the American Spirit for education; and

(5) ensuring the understanding by all future generations of the magnitude of the American contribution to the Allied victory in World War II, the sacrifices made to preserve freedom and democracy, and the benefits of peace for all future generations in the 21st century and beyond.

(c) DESIGNATION OF ''AMERICA'S NATIONAL WORLD WAR II MUSEUM''.—The National D-Day Museum, New Orleans, Louisiana, is designated as ''America's National World War II Museum''.

SA 720. Mr. KENNEDY (for himself and Mr. BROWNBACK) submitted an amendment intended to be proposed by her to the bill S. 1050, to authorize appropriations for fiscal year 2004 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes; which was ordered to lie on the table; as follows:

At the end of title VI, add the following:

Subtitle F—Naturalization and Family Protection for Military Members

SEC. 661. SHORT TITLE.

This subtitle may be cited as the ''Naturalization and Family Protection for Military Members Act of 2003''.

SEC. 662. REQUIREMENTS FOR NATURALIZATION THROUGH SERVICE IN THE ARMED FORCES OF THE UNITED STATES.

(a) REDUCTION OF PERIOD FOR REQUIRED SERVICE.—Section 328(a) of the Immigration and Nationality Act (8 U.S.C. 1439(a)) is amended by striking ''three years'' and inserting ''2 years''.

(b) PROHIBITION ON IMPOSITION OF FEES RELATING TO NATURALIZATION.—Title III of the Immigration and Nationality Act (8 U.S.C. 1401 et seq.) is amended—

(1) in section 328(b)—

(A) in paragraph (3)—

(i) by striking ''honorable. The'' and inserting ''honorable (the''; and

(ii) by striking ''discharge.'' and inserting ''discharge); and''; and

(B) by adding at the end the following:

''(4) notwithstanding any other provision of law, no fee shall be charged or collected from the applicant for filing a petition for naturalization or for the issuance of a certificate of naturalization upon citizenship being granted to the applicant, and no clerk of any State court shall charge or collect any fee for such services unless the laws of the State require such charge to be made, in which case nothing more than the portion of the fee required to be paid to the State shall be charged or collected.''; and

(2) in section 329(b)—

(A) in paragraph (2), by striking ''and'' at the end;

(B) in paragraph (3), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(4) notwithstanding any other provision of law, no fee shall be charged or collected from the applicant for filing a petition for naturalization or for the issuance of a certificate of naturalization upon citizenship being granted to the applicant, and no clerk of any State court shall charge or collect any fee for such services unless the laws of the State require such charge to be made, in which case nothing more than the portion of the fee required to be paid to the State shall be charged or collected.''.

(c) NATURALIZATION PROCEEDINGS OVERSEAS FOR MEMBERS OF THE ARMED FORCES.—Notwithstanding any other provision of law, the Secretary of Homeland Security, the Secretary of State, and the Secretary of Defense shall ensure that any applications, interviews, filings, oaths, ceremonies, or other proceedings under title III of the Immigration and Nationality Act (8 U.S.C. 1401 et seq.) relating to naturalization of members of the Armed Forces are available through United States embassies, consulates, and as practicable, United States military installations overseas.

(d) TECHNICAL AND CONFORMING AMENDMENT.—Section 328(b)(3) of the Immigration and Nationality Act (8 U.S.C. 1439(b)(3)) is amended by striking ''Attorney General'' and inserting ''Secretary of Homeland Security''.

SEC. 663. NATURALIZATION BENEFITS FOR MEMBERS OF THE SELECTED RESERVE OF THE READY RESERVE.

Section 329(a) of the Immigration and Nationality Act (8 U.S.C. 1440(a)) is amended by inserting ''as a member of the Selected Reserve of the Ready Reserve or'' after ''has served honorably''.

SEC. 664. EXTENSION OF POSTHUMOUS BENEFITS TO SURVIVING SPOUSES, CHILDREN, AND PARENTS.

(a) TREATMENT AS IMMEDIATE RELATIVES.—

(1) SPOUSES.—Notwithstanding the second sentence of section 201(b)(2)(A)(i) of the Immigration and Nationality Act (8 U.S.C. 1151(b)(2)(A)(i)), in the case of an alien who was the spouse of a citizen of the United States at the time of the citizen's death and was not legally separated from the citizen at the time of the citizen's death, if the citizen served honorably in an active duty status in the military, air, or naval forces of the United States and died as a result of injury or disease incurred in or aggravated by that service, the alien (and each child of the alien) shall be considered, for purposes of section 201(b) of such Act, to remain an immediate relative after the date of the citizen's death, but only if the alien files a petition under section 204(a)(1)(A)(ii) of such Act within 2 years after such date and only until the date the alien remarries. For purposes of such section 204(a)(1)(A)(ii), an alien granted relief under the preceding sentence shall be considered an alien spouse described in the second sentence of section 201(b)(2)(A)(i) of such Act.

(2) CHILDREN.—

(A) IN GENERAL.—In the case of an alien who was the child of a citizen of the United States at the time of the citizen's death, if the citizen served honorably in an active duty status in the military, air, or naval forces of the United States and died as a result of injury or disease incurred in or aggravated by that service, the alien shall be considered, for purposes of section 201(b) of the Immigration and Nationality Act (8 U.S.C. 1151(b)), to remain an immediate relative after the date of the citizen's death (regardless of changes in age or marital status thereafter), but only if the alien files a petition under subparagraph (B) within 2 years after such date.

(B) PETITIONS.—An alien described in subparagraph (A) may file a petition with the Secretary of Homeland Security for classification of the alien under section 201(b)(2)(A)(i) of the Immigration and Nationality Act (8 U.S.C. 1151(b)(2)(A)(i)). For purposes of such Act, such a petition shall be considered a petition filed under section 204(a)(1)(A) of such Act (8 U.S.C. 1154(a)(1)(A)).

(3) PARENTS.—

(A) IN GENERAL.—In the case of an alien who was the parent of a citizen of the United States at the time of the citizen's death, if the citizen served honorably in an active duty status in the military, air, or naval forces of the United States and died as a result of injury or disease incurred in or aggravated by that service, the alien shall be considered, for purposes of section 201(b) of the Immigration and Nationality Act (8 U.S.C. 1151(b)), to remain an immediate relative after the date of the citizen's death (regardless of changes in age or marital status thereafter), but only if the alien files a petition under subparagraph (B) within 2 years after such date.

(B) PETITIONS.—An alien described in subparagraph (A) may file a petition with the Secretary of Homeland Security for classification of the alien under section 201(b)(2)(A)(i) of the Immigration and Nationality Act (8 U.S.C. 1151(b)(2)(A)(i)). For purposes of such Act, such a petition shall be considered a petition filed under section 204(a)(1)(A) of such Act (8 U.S.C. 1154(a)(1)(A)).

(C) EXCEPTION.—Notwithstanding section 201(b)(2)(A)(i) of the Immigration and Nationality Act (8 U.S.C. 1151(b)(2)(A)(i)), for purposes of this paragraph, a citizen described in subparagraph (A) does not have to be 21 years of age for a parent to benefit under this paragraph.

(b) APPLICATIONS FOR ADJUSTMENT OF STATUS BY SURVIVING SPOUSES, CHILDREN, AND PARENTS.—

(1) IN GENERAL.—Notwithstanding subsections (a) and (c) of section 245 of the Immigration and Nationality Act (8 U.S.C. 1255), any alien who was the spouse, child, or parent of an alien described in paragraph (2), and who applied for adjustment of status prior to the death described in paragraph (2)(B), may have such application adjudicated as if such death had not occurred.

(2) ALIEN DESCRIBED.—An alien is described in this paragraph if the alien—

(A) served honorably in an active duty status in the military, air, or naval forces of the United States;

(B) died as a result of injury or disease incurred in or aggravated by that service; and

(C) was granted posthumous citizenship under section 329A of the Immigration and Nationality Act (8 U.S.C. 1440–1).

(c) SPOUSES AND CHILDREN OF LAWFUL PERMANENT RESIDENT ALIENS.—

(1) TREATMENT AS IMMEDIATE RELATIVES.—

(A) IN GENERAL.—A spouse or child of an alien described in paragraph (3) who is included in a petition for classification as a family-sponsored immigrant under section 203(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1153(a)(2)) that was filed by such alien, shall be considered (if the spouse or child has not been admitted or approved for lawful permanent residence by such date) a valid petitioner for immediate relative status under section 201(b)(2)(A)(i) of the Immigration and Nationality Act (8 U.S.C. 1151(b)(2)(A)(i)). Such spouse or child shall be eligible for deferred action, advance parole, and work authorization.

(B) PETITIONS.—An alien spouse or child described in subparagraph (A) may file a petition with the Secretary of Homeland Security for classification of the alien under section 201(b)(2)(A)(i) of the Immigration and Nationality Act (8 U.S.C. 1151(b)(2)(A)(i)). For purposes of such Act, such a petition shall be considered a petition filed under section 204(a)(1)(A) of such Act (8 U.S.C. 1154(a)(1)(A)).

(2) SELF-PETITIONS.—Any spouse or child of an alien described in paragraph (3) who is not a beneficiary of a petition for classification as a family-sponsored immigrant may file a petition for such classification under section 201(b)(2)(A)(i) of the Immigration and Nationality Act (8 U.S.C. 1151(b)(2)(A)(i)) with the Secretary of Homeland Security, but only if the spouse or child files a petition within 2 years after such date. Such spouse or child shall be eligible for deferred action, advance parole, and work authorization.

(3) ALIEN DESCRIBED.—An alien is described in this paragraph if the alien—

(A) served honorably in an active duty status in the military, air, or naval forces of the United States;

(B) died as a result of injury or disease incurred in or aggravated by that service; and

(C) was granted posthumous citizenship under section 329A of the Immigration and Nationality Act (8 U.S.C. 1440–1).

(d) PARENTS OF LAWFUL PERMANENT RESIDENT ALIENS.—

(1) SELF-PETITIONS.—Any parent of an alien described in paragraph (2) may file a petition for classification under section 201(b)(2)(A)(i) of the Immigration and Nationality Act (8 U.S.C. 1151(b)(2)(A)(i)), but only if the parent files a petition within 2 years after such date. For purposes of such Act, such petition shall be considered a petition filed under section 204(a)(1)(A) of such Act (8 U.S.C. 1154(a)(1)(A)). Such parent shall

be eligible for deferred action, advance parole, and work authorization.

(2) ALIEN DESCRIBED.—An alien is described in this paragraph if the alien—

(A) served honorably in an active duty status in the military, air, or naval forces of the United States;

(B) died as a result of injury or disease incurred in or aggravated by that service; and

(C) was granted posthumous citizenship under section 329A of the Immigration and Nationality Act (8 U.S.C. 1440–1).

(e) ADJUSTMENT OF STATUS.—Notwithstanding subsections (a) and (c) of section 245 of the Immigration and Nationality Act (8 U.S.C. 1255), an alien physically present in the United States who is the beneficiary of a petition under paragraph (1), (2)(B), or (3)(B) of subsection (a), paragraph (1)(B) or (2) of subsection (c), or subsection (d)(1) of this section, may apply to the Secretary of Homeland Security for adjustment of status to that of an alien lawfully admitted for permanent residence.

(f) WAIVER OF CERTAIN GROUNDS OF INADMISSIBILITY.—In determining the admissibility of any alien accorded an immigration benefit under this section, the grounds for inadmissibility specified in paragraphs (4), (6), (7), and (9) of section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)) shall not apply.

(g) BENEFITS TO SURVIVORS; TECHNICAL AMENDMENT.—Section 329A of the Immigration and Nationality Act (8 U.S.C. 1440–1) is amended—

(1) by striking subsection (e); and

(2) by striking ''Attorney General'' each place that term appears and inserting ''Secretary of Homeland Security''.

(h) TECHNICAL AND CONFORMING AMENDMENTS.—Section 319(d) of the Immigration and Nationality Act (8 U.S.C. 1430(d)) is amended—

(1) by inserting '', child, or parent'' after ''surviving spouse'';

(2) by inserting '', parent, or child'' after ''whose citizen spouse''; and

(3) by striking ''who was living'' and inserting ''who, in the case of a surviving spouse, was living''.

SEC. 665. EFFECTIVE DATE.

This subtitle and the amendments made by this subtitle shall take effect as if enacted on September 11, 2001.

SA 721. Mr. LAUTENBERG submitted an amendment intended to be proposed by him to the bill S. 1050, to authorize appropriations for fiscal year 2004 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes; which was ordered to lie on the table; as follows:

On page 276, between lines 5 and 6, insert the following new section:

SEC. 1025. REPORT ON THE NUMBER OF UNITED STATES TROOPS IN IRAQ.

(a) REPORT REQUIRED.—Not later than 30 days after the date of the enactment of this Act, and every 30 days thereafter, the Secretary of Defense shall submit to Congress a report on the number of members of the United States Armed Forces in Iraq at such time.

(b) TERMINATION OF REQUIREMENT.—No report shall be required under subsection (a) after the month that begins on the date that is 2 years after the date of the enactment of this Act.

SA 722. Mr. LAUTENBERG (for himself and Mr. JEFFORDS) submitted an amendment intended to be proposed by him to the bill S. 1050, to authorize appropriations for fiscal year 2004 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes; which was ordered to lie on the table; as follows:

On page 48, beginning on line 16, strike ''if the Secretary determines that'' and all that follows through page 48, line 20, and insert the following: ''if the Secretary of the Interior determines in writing that—

''(1) the management activities identified in the plan will effectively conserve the threatened species and endangered species within the lands or areas covered by the plan; and

''(2) the plan provides assurances that adequate funding will be provided for such management activities.

SA 723. Mr. LOTT (for himself and Mr. LIEBERMAN) submitted an amendment intended to be proposed by him to the bill S. 1050, to authorize appropriations for fiscal year 2004 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes; which was ordered to lie on the table; as follows:

On page 25, between lines 11 and 12, and insert the following:

SEC. 213. COMPOSITE SAIL TEST ARTICLES.

Of the total amount authorized to be appropriated under section 201(2) for Virginia-class submarine development, $2,000,000 shall be available for the development and fabrication of composite sail test articles for incorporation into designs for future submarines.

SA 724. Mr. COCHRAN (for himself, Mr. REED, Mr. CHAMBLISS, Mr. NELSON of Nebraska, Ms. MIKULSKI, and Mr. BOND) submitted an amendment intended to be proposed by him to the bill S. 1050, to authorize appropriations for fiscal year 2004 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes; which was ordered to lie on the table; as follows:

On page 40, between lines 7 and 8, insert the following:

SEC. 235. COPRODUCTION OF ARROW BALLISTIC MISSILE DEFENSE SYSTEM.

Of the total amount authorized to be appropriated under section 201 for ballistic missile defense, $115,000,000 shall be available for coproduction of the Arrow ballistic missile defense system.

SA 725. Mr. DAYTON submitted an amendment intended to be proposed by him to the bill S. 1050, to authorize appropriations for fiscal year 2004 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes; which was ordered to lie on the table; as follows:

Strike section 833.

SA 726. Mr. NELSON of Florida submitted an amendment intended to be proposed by him to the bill S. 1050, to authorize appropriations for fiscal year 2004 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle B of title XXXI, add the following:

3135: INCLUSION OF CONVENTIONAL EARTH PENETRATOR IN FEASIBILITY STUDY FOR ROBUST NUCLEAR EARTH PENETRATOR.

(a) REQUIREMENT.—The Secretary of Energy shall include in the feasibility study for the Robust Nuclear Earth Penetrator program a conventional earth penetrator option.

(b) AVAILABILITY OF FUNDS.—Amounts authorized to be appropriated by section 3101(a)(1) and available for the Robust Nuclear Earth Penetrator program shall be available to meet the requirement under subsection (a).

SA 727. Mr. BUNNING (for himself and Mr. SESSIONS) submitted an amendment intended to be proposed by him to the bill S. 1050, to authorize appropriations for fiscal year 2004 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes; which was ordered to lie on the table; as follows:

On page 17, after line 25, add the following:

(5) The Phalanx Close in Weapon System program, Block 1B.

SA 728. Mr. BUNNING submitted an amendment intended to be proposed by him to the bill S. 1050, to authorize appropriations for fiscal year 2004 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle C of title IX, add the following:

SEC. 926. PROHIBITION ON USE OF FUNDS FOR ACTIVITIES RELATING TO CERTAIN REDUCTIONS IN NUMBER OF C–130 AIRCRAFT ASSIGNED TO UNITS OF THE AIR NATIONAL GUARD.

Notwithstanding any other provision of law, no funds authorized to be appropriated or otherwise made available for the Department of Defense by this Act may be used to plan or implement a reduction in the number of C–130 aircraft assigned to a unit of the Air National Guard of a State below the number of C–130 aircraft assigned to that unit as of October 1, 2002, if that unit is the only unit of the Air National Guard in such State.

SA 729. Mr. SANTORUM submitted an amendment intended to be proposed by him to the bill S. 1050, to authorize appropriations for fiscal year 2004 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle B of title III, add the following:

SEC. 313. INFORMATION OPERATIONS SUSTAINMENT FOR LAND FORCES READINESS OF ARMY RESERVE.

(a) INCREASE IN AUTHORIZATION OF APPROPRIATIONS FOR ARMY RESERVE.—The amount authorized to be appropriated by section 301(6) for operation and maintenance for the Army Reserve is hereby increased by $3,000,000.

(b) AVAILABILITY FOR INFORMATION OPERATIONS SUSTAINMENT.—(1) Of the amount authorized to be appropriated by section 301(6) for operation and maintenance for the Army Reserve, as increased by subsection (a), $3,000,000 shall be available for Information Operations (Account #19640) for Land Forces Readiness–Information Operations Sustainment.

(2) The amount available under paragraph (1) for the purpose specified in that paragraph is in addition to any other amounts available under this Act for that purpose.

(c) OFFSET.—The amount authorized to be appropriated by section 201(3) for research, development, test, and evaluation for the Air Force is hereby reduced by $3,000,000, with the amount of the reduction to be allocated to Advanced Aluminum Aerostructures (PE 603211F).

SA 730. Mr. SCHUMER submitted an amendment intended to be proposed by him to the bill S. 1050, to authorize appropriations for fiscal year 2004 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes; which was ordered to lie on the table; as follows:

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

SEC. 835. INCLUSION OF MATERIALS AND COMPONENTS OF CLOTHING UNDER "BERRY AMENDMENT".

Section 2533a(b)(1)(B) of title 10, United States Code, is amended by inserting before the semicolon the following: '', including the materials and components thereof''.

SA 731. Mr. SCHUMER submitted an amendment intended to be proposed by him to the bill S. 1050, to authorize appropriations for fiscal year 2004 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes; which was ordered to lie on the table; as follows:

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

SEC. 624. SPECIAL PAY FOR SERVICE AS MEMBER OF WEAPONS OF MASS DESTRUCTION CIVIL SUPPORT TEAM.

(a) IN GENERAL.—(1) Chapter 5 of title 37, United States Code, is amended by inserting after section 305a the following new section:

''§ 305b. Special pay: service as member of Weapons of Mass Destruction Civil Support Team

''(a) AVAILABILITY OF SPECIAL PAY.—The Secretary of a military department may pay special pay under this section to a member of the armed forces under the jurisdiction of that Secretary who is entitled to basic pay under section 204 and is assigned by orders to duty as a member of a Weapons of Mass Destruction Civil Support Team.

''(b) MONTHLY RATE.—Special pay payable under subsection (a) shall be paid at a rate equal to $150 a month.

''(c) ELIGIBILITY OF RESERVE COMPONENT MEMBERS WHEN PERFORMING INACTIVE DUTY TRAINING.—Under regulations prescribed by the Secretary concerned and to the extent provided for in appropriation Acts, when a member of a reserve component of the armed forces who is entitled to compensation under section 206 of this title performs duty under orders as a member of a Weapons of Mass Destruction Civil Support Team, the member may be paid an increase in compensation equal to 1/30 of the monthly special pay specified in subsection (b) for each day on which the member performs such duty.

''(d) DEFINITION.—In this section, the term 'Weapons of Mass Destruction Civil Support Team' means a team of members of the reserve components of the armed forces that is established under section 12310(c) of title 10 in support of emergency preparedness programs to prepare for or to respond to any emergency involving the use of a weapon of mass destruction.''.

(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 305a the following new item:

''305b. Special pay: service as member of Weapons of Mass Destruction Civil Support Team.''.

(b) EFFECTIVE DATE.—Section 305b of title 37, United States Code, as added by subsection (a), shall take effect on October 1, 2003.

SA 732. Mr. BINGAMAN submitted an amendment intended to be proposed by him to the bill S. 1050, to authorize appropriations for fiscal year 2004 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes; which was ordered to lie on the table; as follows:

In section 3131, add at the end the following:

(c) REPORT.—Not later than March 1, 2004, the Secretary of Defense and the Secretary of State shall jointly submit to Congress a report assessing the effects on the proliferation goals, objectives, and activities of the United States of the repeal of section 3136 of the National Defense Authorization Act for Fiscal Year 1994, including the effects of the repeal of the prohibition on activities carried out under the Cooperative Threat Reduction program.

SA 733. Mr. BINGAMAN submitted an amendment intended to be proposed by him to the bill S. 1050, to authorize appropriations for fiscal year 2004 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes; which was ordered to lie on the table; as follows:

In section 3131, add at the end the following:

(c) REPORT.—Not later than March 31, 2004, the National Academy of Sciences shall submit to Congress a report containing the determination of the National Academy of Sciences whether or not the repeal of the prohibition on research and development of low-yield nuclear weapons in section 3136 of the National Defense Authorization Act for Fiscal Year 1994 constitutes a requirement for the testing of low-yield nuclear weapons.

SA 734. Mr. LAUTENBERG submitted an amendment intended to be proposed by her to the bill S. 1050, to authorize appropriations for fiscal year 2004 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ____. PROHIBITION ON USE OF SYMBOLS OF UNITED STATES ARMED FORCES ON FIREARMS.

Section 922 of title 18, United States Code, is amended by adding at the end the following:

''(z) PROHIBITION ON USE OF SYMBOLS OF UNITED STATES ARMED FORCES ON FIREARMS.—

''(1) DEFINITIONS.—In this subsection—

''(A) the term 'armed forces of the United States' means the Army, Navy, Air Force, Marine Corps, and Coast Guard; and

''(B) the term 'civilian firearm' means any firearm that is available to the public, but does not include any firearm owned and controlled by the armed forces of the United States.

''(2) UNLAWFUL ACTS.—It shall be unlawful for any person to knowingly manufacture, sell, or transfer a civilian firearm that—

''(A) bears any symbol, seal, emblem, insignia, name, or likeness of the armed forces of the United States, or any subdivision thereof; or

''(B) can reasonably be mistaken for a firearm described under subparagraph (A).''.

SA 735. Mr. NELSON of Florida (for himself, Mr. KENNEDY, and Mrs. CLINTON) submitted an amendment intended to be proposed by her to the bill S. 1050, to authorize appropriations for fiscal year 2004 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle G of title V, add the following:

SEC. 565. MODIFICATION OF COMMENCEMENT AND TERMINATION OF TRANSITIONAL COMPENSATION FOR DEPENDENTS OF MEMBERS OF THE ARMED FORCES SEPARATED FOR DEPENDENT ABUSE.

(a) COMMENCEMENT.—Paragraph (1)(A) of section 1059(e) of title 10, United States Code, is amended by striking ''shall commence'' and all that follows and inserting ''shall commence—

''(i) as of the date the court-martial sentence is adjudged if the sentence, as adjudged, includes a dismissal, dishonorable discharge, bad conduct discharge, or forfeiture of all pay and allowances; or

''(ii) if a pretrial agreement provides for a disapproval or suspension of the dismissal, dishonorable discharge, bad conduct discharge, or forfeiture of all pay and allowances, as of the date of the approval of the court-martial sentence by the person acting under section 860(c) of this title (article 60(c) of the Uniform Code of Military Justice) if the sentence, as approved, includes a dismissal, dishonorable discharge, bad conduct discharge, or forfeiture of all pay and allowances; and''.

(b) TERMINATION.—Paragraph (3)(A) of such section is amended by striking ''and each such punishment'' and all that follows through ''or mitigated'' and inserting ''and the conviction is disapproved by the person acting under section 860(c) of this title (article 60(c) of the Uniform Code of Military Justice) or set aside, or each such punishment applicable to the member under the sentence is disapproved by the person so acting, remitted, set aside, suspended, or mitigated''.

SA 736. Mr. NELSON of Florida (for himself, Mr. KENNEDY, and Mrs. CLINTON) submitted an amendment intended to be proposed by her to the bill S. 1050, to authorize appropriations for fiscal year 2004 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle G of title V, add the following:

SEC. 565. REVIEWS OF FATALITIES ARISING FROM DOMESTIC VIOLENCE OR CHILD ABUSE INVOLVING MEMBERS OF THE ARMED FORCES.

(a) REVIEWS AUTHORIZED.—Subchapter I of chapter 88 of title 10, United States Code, is amended by adding at the end the following new section:

''§ 1789. Review of fatalities arising from domestic violence or child abuse involving members of the armed forces

''(a) REVIEWS AUTHORIZED.—The Secretary of the military department concerned may provide for the impartial review, on a multidisciplinary basis, of any fatality known or suspected to have resulted from domestic violence or child abuse involving any of the following:

''(1) A member of the armed forces.

''(2) A current or former dependent of a member of the armed forces.

''(3) A current or former intimate partner of a member of the armed forces who has a child in common with the member or has shared a common domicile with the member.

''(b) ADMINISTRATIVE MATTERS.—(1) Any review conducted under subsection (a) shall comply with the provisions of section 552a of title 5 (commonly referred to as the Privacy Act of 1974).

''(2) Documents prepared for the internal deliberations of a team conducting a review under subsection (a), and any records of such deliberations, shall not be made public under section 552 of title 5 (commonly referred to as the Freedom of Information Act).''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such subchapter is amended by adding at the end the following new item:

''1789. Review of fatalities arising from domestic violence or child abuse involving members of the armed forces.''.

SA 737. Mr. NELSON of Florida (for himself, Mr. KENNEDY, and Mrs. CLINTON) submitted an amendment intended to be proposed by her to the bill S. 1050, to authorize appropriations for fiscal year 2004 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle G of title V, add the following:

SEC. 565. CERTAIN TRAVEL AND TRANSPORTATION ALLOWANCES FOR DEPENDENTS OF MEMBERS OF THE ARMED FORCES WHO HAVE COMMITTED DEPENDENT ABUSE.

Section 406(h) of title 37, United States Code, is amended by adding at the end the following new paragraph:

''(4)(A) If the Secretary concerned makes a determination described in subparagraph (B) with respect to the spouse or a dependent of a member described in that subparagraph and a request described in subparagraph (C) has been by the spouse or on behalf of such dependent, the Secretary may provide any benefit authorized for a member under paragraph (1) or (3) to the spouse or such dependent in lieu of providing such benefit to the member.

''(B) A determination described in this subparagraph is a determination by the commanding officer of a member that—

''(i) the member has committed a dependent-abuse offense against the spouse or a dependent of the member;

''(ii) a safety plan and counseling have been provided to the spouse or such dependent;

''(iii) the safety of the spouse or such dependent is at risk; and

''(iv) the relocation of the spouse or such dependent is advisable.

''(C) A request described in this subparagraph is a request by the spouse of a member, or by the parent of a dependent child in the case of a dependent child of a member, for relocation.

''(D) Transportation may be provided under this paragraph for household effects or a motor vehicle only if a written agreement of the member, or an order of a court of competent jurisdiction, gives possession of the effects or vehicle to the spouse or dependent of the member concerned.

''(E) In this paragraph, the term 'dependent-abuse offense' means an offense described in section 1059(c) of title 10.''.

SA 738. Mr. BENNETT submitted an amendment intended to be proposed by her to the bill S. 1050, to authorize appropriations for fiscal year 2004 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes; which was ordered to lie on the table; as follows:

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

SEC. 1039. REPEAL OF MTOPS REQUIREMENT FOR COMPUTER EXPORT CONTROLS.

(a) REPEAL.—Subtitle B of title XII of, and section 3157 of, the National Defense Authorization Act for Fiscal Year 1998 (50 U.S.C. App. 2404 note) are repealed.

(b) CONSULTATION REQUIRED.—Before implementing any regulations relating to an export administration system for high-performance computers, the President shall consult with the following congressional committees:

(1) The Select Committee on Homeland Security, the Committee on Armed Services, and the Committee on International Relations of the House of Representatives.

(2) The Committee on Armed Services, the Committee on Foreign Relations, and the Committee on Banking, Housing, and Urban Affairs of the Senate.

(c) REPORT.—Not later than 30 days after implementing any regulations described in subsection (b), the President shall submit to Congress a report that—

(1) identifies the functions of the Secretary of Commerce, Secretary of Defense, Secretary of Energy, Secretary of State, Secretary of Homeland Security, and any other relevant national security or intelligence agencies under the export administration system embraced by those regulations; and

(2) explains how the export administration system will effectively advance the national security objectives of the United States.

SA 739. Mr. DOMENICI submitted an amendment intended to be proposed by her to the bill S. 1050, to authorize appropriations for fiscal year 2004 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place in title VII, insert the following:

SEC. ___. REIMBURSEMENT OF COVERED BENEFICIARIES FOR CERTAIN TRAVEL EXPENSES RELATING TO SPECIALIZED DENTAL CARE.

Section 1074i of title 10, United States Code, is amended—

(1) by inserting ''(a) IN GENERAL.—'' before ''In any case''; and

(2) by adding at the end the following new subsection:

''(b) SPECIALTY CARE PROVIDERS.—For purposes of subsection (a), the term 'specialty care provider' includes a dental specialist (including an oral surgeon, orthodontist, prosthodontist, periodontist, endodontist, or pediatric dentist).''.

SA 740. Mr. DOMENICI submitted an amendment intended to be proposed by him to the bill S. 1050, to authorize appropriations for fiscal year 2004 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place in title VII, insert the following:

SEC. ___. ELIGIBILITY OF RESERVE OFFICERS FOR HEALTH CARE PENDING ORDERS TO ACTIVE DUTY FOLLOWING COMMISSIONING.

Section 1074(a) of title 10, United States Code, is amended—

(1) by inserting ''(1)'' after ''(a)'';

(2) by striking ''who is on active duty'' and inserting ''described in paragraph (2)''; and

(3) by adding at the end the following new paragraph:

''(2) Members of the uniformed services referred to in paragraph (1) are as follows:

''(A) A member of a uniformed service on active duty.

''(B) A member of a reserve component of a uniformed service who has been commissioned as an officer if—

''(i) the member has requested orders to active duty for the member's initial period of active duty following the commissioning of the member as an officer;

''(ii) the request for orders has been approved;

''(iii) the orders are to be issued but have not been issued; and

''(iv) the member does not have health care insurance and is not covered by any other health benefits plan.''.

SA 741. Mr. DOMENICI submitted an amendment intended to be proposed by him to the bill S. 1050, to authorize appropriations for fiscal year 2004 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle B of title XXVIII, add the following:

SEC. 2815. ENERGY SAVINGS AT MILITARY INSTALLATIONS.

(a) USE OF AMOUNTS REALIZED FROM ENERGY COST SAVINGS.—(1) Paragraph (2) of subsection (b) of section 2865 of title 10, United States Code, is amended by striking ''shall be used as follows:'' and all that follows and inserting ''shall be used at the military installation at which the amount concerned was realized for one or more purposes at the installation, as determined by the commander of the installation in a manner consistent with applicable law and regulations, as follows:

''(A) For the implementation of additional energy conservation measures, and for energy conservation activities at buildings or facilities, at the installation.

''(B) For improvements to existing military family housing units at the installation.

''(C) For unspecified minor construction projects at the installation that will enhance quality of life of personnel at the installation.

''(D) For support or improvement of any morale, welfare, or recreation facility or service at the installation.''.

(2) The amendment made by paragraph (1) shall take effect on October 1, 2003, and shall apply with respect to fiscal years that begin on or after that date.

(b) ENERGY SAVINGS PERFORMANCE CONTRACTS.—That section is further amended—

(1) by redesignating subsection (f) as subsection (g); and

(2) by inserting after subsection (e) the following new subsection (f):

''(f) ENERGY SAVINGS PERFORMANCE CONTRACTS.—The Secretary of Defense shall require the use of energy savings performance contracts at each installation of the Department of Defense commencing not later than September 30, 2004.

''(2) The Secretary shall carry out the requirement under paragraph (1) at an installation through energy savings performance contracts indefinite delivery indefinite quantity contracts that are in force at the installation.

''(3) For purposes of carrying out the requirement under paragraph (1), the Secretary shall terminate any cap or ceiling on energy savings performance contracts indefinite delivery indefinite quantity contracts that are otherwise applicable to installations of the Department.

''(4) For purposes of carrying out the requirement under paragraph (1) with respect to installations of the Air Force, the Secretary of the Air Force shall—

''(A) permit the use of any indefinite delivery indefinite quantity contracts for energy savings performance contracts at such installations; and

''(B) terminate any limitation on the use of indefinite delivery indefinite quantity contracts for energy savings performance contracts that would otherwise impede the use of indefinite delivery indefinite quantity contracts for energy savings performance contracts at such installations.''.

SA 742. Mr. DOMENICI submitted an amendment intended to be proposed by him to the bill S. 1050, to authorize appropriations for fiscal year 2004 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle B of title II, add the following:

SEC. 213. BORON ENERGY CELL TECHNOLOGY.

(a) INCREASE IN RDT&E, AIR FORCE.—The amount authorized to be appropriated by section 201(3) for research, development, test, and evaluation for the Air Force for fiscal year 2004 is hereby increased by $5,000,000.

(b) AVAILABILITY FOR BORON ENERGY CELL TECHNOLOGY.—(1) of the amount authorized to be appropriated by section 201(3) for research, development, test, and evaluation for the Air Force for fiscal year 2004, as increased by subsection (a), $5,000,000 shall be available for research, development, test, and evaluation on boron energy cell technology.

(2) The amount available under paragraph (1) for fiscal year 2004 for the purpose specified in that paragraph is in addition to any other amounts available under law for fiscal year 2004 for that purpose.

(c) OFFSET FROM OTHER PROCUREMENT, AIR FORCE.—The amount authorized to be appropriated by section 103(4), for other procurement for the Air Force for fiscal year 2004 is hereby reduced by $5,000,000, with the amount of the reduction to be allocated to the Point of Maintenance Initiative.

SA 743. Mr. GRAHAM of South Carolina submitted an amendment intended to be proposed by him to the bill S. 1050, to authorize appropriations for fiscal year 2004 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes; which was ordered to lie on the table; as follows:

On page 40, between lines 7 and 8, insert the following:

SEC. 235. AMOUNT FOR COLLABORATIVE INFORMATION WARFARE NETWORK.

Of the amount authorized to be appropriated by section 201(4), $263,738,000 shall be available for advanced concept technology demonstrations, of which $8,000,000 shall be available for the Collaborative Information Warfare Network at the Critical Infrastructure Protection Center of the Space and Naval Warfare Systems Command.

SA 744. Ms. LANDRIEU submitted an amendment intended to be proposed by her to the bill S. 1050, to authorize appropriations for fiscal year 2004 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes; which was ordered to lie on the table; as follows:

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

SEC. 652. EDUCATION-RELATED REFUNDS AND LEAVE OF ABSENCE FOR MILITARY SERVICE.

(a) LEAVE OF ABSENCE FOR MILITARY SERVICE.—Part G of title IV of the Higher Education Act of 1965 is amended by inserting after section 484B (20 U.S.C. 1091b) the following new section:

''SEC. 484C. REFUNDS AND LEAVE OF ABSENCE FOR MILITARY SERVICE.

''(a) LEAVE OF ABSENCE REQUIRED.—Whenever a student who is an affected individual is unable to complete a period of instruction or to receive academic credit because he or she was called up for active duty or active service, the institution of higher education in which the student is enrolled shall—

''(1) grant the student a military leave of absence from the institution while such student is serving on active duty or active service, and for one year after the conclusion of such duty or service, in accordance with subsection (b); and

''(2) provide the student with a refund or credit in accordance with subsection (c).

''(b) CONSEQUENCES OF MILITARY LEAVE OF ABSENCE.—A student who is an affected individual and who is on a military leave of absence from an institution of higher education shall be entitled, upon release from serving on active duty or active service, to be restored to the educational status such student had attained prior to being ordered to such duty without loss of academic credits earned, scholarships or grants awarded by the institution, or, subject to subsection (c), tuition and other fees paid prior to the commencement of the active duty or active service.

''(c) REFUNDS.—An institution of higher education shall refund tuition or fees paid prior to the commencement of the active duty or active service of an affected individual. If a student taking a military leave of absence for active duty or active service requests a refund during a period of enrollment, the institution of higher education shall refund 100 percent of the tuition and fees paid for the period of enrollment.

''(d) LEAVE OF ABSENCE NOT TREATED AS WITHDRAWAL.—Notwithstanding the 180-day limitation in section 484B(a)(2), a student on a military leave of absence under this section shall not be treated as having withdrawn for purposes of section 484B unless the student fails to return at the end of the military leave of absence (as determined under subsection (a) of this section).

''(e) DEFINITIONS.—As used in this section:

''(1) ACTIVE DUTY.—The term 'active duty' has the meaning given such term in section 101(d)(1) of title 10, United States Code, except that such term does not include active duty for training or attendance at a service school.

''(2) AFFECTED INDIVIDUAL.—The term 'affected individual' means an individual who—

''(A) is serving on active duty during a war or other military operation or national emergency; or

''(B) is performing qualifying National Guard duty during a war or other military operation or national emergency.

''(3) MILITARY OPERATION.—The term 'military operation' means a contingency operation as such term is defined in section 101(a)(13) of title 10, United States Code.

''(4) NATIONAL EMERGENCY.—The term 'national emergency' means a national emergency declared by the President of the United States.

''(5) SERVING ON ACTIVE DUTY.—The term 'serving on active duty during a war or other military operation or national emergency' means service by an individual who is—

''(A) a Reserve of an Armed Force ordered to active duty under section 12301(a), 12301(g), 12302, 12304, or 12306 of title 10, United States Code, or any retired member of an Armed Force ordered to active duty under section 688 of such title, for service in connection with a war or other military operation or national emergency, regardless of the location at which such active duty service is performed; and

''(B) any other member of an Armed Force on active duty in connection with such war, operation, or emergency or subsequent actions or conditions who has been assigned to a duty station at a location other than the location at which such member is normally assigned.

''(6) QUALIFYING NATIONAL GUARD DUTY.—The term 'qualifying National Guard duty during a war or other military operation or national emergency' means service as a member of the National Guard on full-time National Guard duty (as defined in section 101(d)(5) of title 10, United States Code) under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days under section 502(f) of title 32, United States Code, in connection with a war, another military operation, or a national emergency declared by the President and supported by Federal funds.''.

(b) OBLIGATION AS PART OF PROGRAM PARTICIPATION REQUIREMENTS.—Section 487(a)(22) of the Higher Education Act of 1965 (20 U.S.C. 1094(a)(22)) is amended by inserting ''and with the policy on leave of absence for military service established pursuant to section 484C'' after ''section 484B''.

SA 745. Mr. LIEBERMAN submitted an amendment intended to be proposed by him to the bill S. 1050, to authorize appropriations for fiscal year 2004 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes; which was ordered to lie on the table; as follows:

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

SEC. 235. DEPARTMENT OF DEFENSE STRATEGY FOR MANAGEMENT OF ELECTROMAGNETIC SPECTRUM.

(a) IN GENERAL.—The Secretary of Defense shall—

(1) in accordance with subsection (c), develop a strategy for the Department of Defense for the management of the electromagnetic spectrum to improve bandwidth; and

(2) in accordance with subsection (d), coordinate with civilian departments and agencies of the Federal Government in the development of a national strategy for the management of the electromagnetic spectrum for high-bandwidth wireless communications.

(b) PURPOSE OF ACTIVITIES.—The purpose of activities required by subsection (a) is to assist in the coordinated development of a national strategy for the management of the electromagnetic spectrum for high-bandwidth wireless communications.

(c) DEPARTMENT OF DEFENSE STRATEGY FOR SPECTRUM MANAGEMENT.—(1) Not later than September 1, 2004, the Assistant Secretary shall develop a strategy for the Department of Defense for the management of the electromagnetic spectrum in order to ensure the development and use of spectrum-efficient technologies to facilitate the availability of adequate spectrum for both network-centric warfare and civilian needs. The strategy shall include specific timelines, metrics, plans for implementation, and proposals for program funding.

(2) In developing the strategy, the Assistant Secretary shall consider and take into account in the strategy the results of the research and development program carried out under section 234.

(3) The Assistant Secretary shall assist in updating the strategy developed under paragraph (1) on a yearly basis to address changes in circumstances.

(d) NATIONAL STRATEGY FOR SPECTRUM MANAGEMENT.—The Assistant Secretary shall coordinate with other departments and agencies of the Federal Government in the development of a national strategy described in subsection (a)(2) through an interagency policy coordinating committee which shall be composed of senior representatives of the military departments, the Federal Communication Commission, the National Telecommunication and Information Administration, the Department of Homeland Security, the Federal Aviation Administration, and other appropriate departments and agencies of the Federal Government.

(e) ASSISTANT SECRETARY DEFINED.—In this section, the term ''Assistant Secretary'' means the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence.

SA 746. Mr. DODD submitted an amendment intended to be proposed by him to the bill S. 1050, to authorize appropriations for fiscal year 2004 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes; which was ordered to lie on the table; as follows:

On page 17, strike line 11 and insert the following:

SEC. 111. CH–47 HELICOPTER PROGRAM.

(a) REQUIREMENT FOR STUDY.—The Secretary of the Army shall study the feasibility and the costs and benefits of providing for the participation of a second source in the production of gears for the helicopter transmissions incorporated into CH–47 helicopters being procured by the Army.

(b) REPORT.—Not later than 90 days after the date of the enactment of this Act, the Secretary shall submit a report on the results of the study to Congress.

SA 747. Mr. WYDEN (for himself, Ms. COLLINS, Mrs. CLINTON, Mr. BYRD, Mr. LAUTENBERG, and Mr. HARKIN) submitted an amendment intended to be proposed by him to the bill S. 1050, to authorize appropriations for fiscal year 2004 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes; which was ordered to lie on the table; as follows:

On page 273, between lines 20 and 21, insert the following:

(d) REPORTING REQUIREMENT RELATING TO NONCOMPETITIVE CONTRACTING FOR THE RECONSTRUCTION OF INFRASTRUCTURE OF IRAQ.—(1) If a contract for the maintenance, rehabilitation, construction, or repair of infrastructure in Iraq is entered into under the oversight and direction of the Secretary of Defense or the Office of Reconstruction and Humanitarian Assistance in the Office of the Secretary of Defense without full and open competition, the Secretary shall publish in the Federal Register or Commerce Business Daily and otherwise make available to the public, not later than 30 days after the date on which the contract is entered into, the following information:

(i) The amount of the contract.

(ii) A brief description of the scope of the contract.

(iii) A discussion of how the executive agency identified, and solicited offers from, potential contractors to perform the contract, together with a list of the potential contractors that were issued solicitations for the offers.

(iv) The justification and approval documents on which was based the determination to use procedures other than procedures that provide for full and open competition.

(B) Subparagraph (A) does not apply to a contract entered into one year after the date of enactment of this act.

(2)(A) The head of an executive agency may—

(i) withhold from publication and disclosure under paragraph (1) any document that is classified for restricted access in accordance with an Executive order in the interest of national defense or foreign policy; and

(ii) redact any part so classified that is in a document not so classified before publication and disclosure of the document under paragraph (1).

(B) In any case in which the head of an executive agency withholds information under subparagraph (A), the head of such executive agency shall make available an unredacted version of the document containing that information to the chairman and ranking member of each of the following committees of Congress:

(i) The Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives.

(ii) The Committees on Appropriations of the Senate and the House of Representatives.

(iii) Each committee that the head of the executive agency determines has legislative jurisdiction for the operations of such department or agency to which the information relates.

(3) This subsection shall apply to contracts entered into on or after October 1, 2002, except that, in the case of a contract entered into before the date of the enactment of this Act, paragraph (1) shall be applied as if the contract had been entered into on the date of the enactment of this Act.

(4) Nothing in this subsection shall be construed as affecting obligations to disclose

United States Government information under any other provision of law.

(5) In this subsection, the terms ''executive agency'' and ''full and open competition'' have the meanings given such terms in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403).

SA 748. Mr. DOMENICI (for himself, Mr. NELSON of Florida, Mr. BINGAMAN, Mrs. HUTCHISON, Mr. CORNYN, and Mrs. FEINSTEIN) submitted an amendment intended to be proposed by him to the bill S. 1050, to authorize appropriations for fiscal year 2004 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes; which was ordered to lie on the table; as follows:

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

SEC. 1039. PROHIBITION ON TERMINATION OF BORDER AND SEAPORT INSPECTION COUNTER-DRUG DUTIES OF THE NATIONAL GUARD.

The Secretary of Defense may not terminate border inspection duties or seaport inspection duties as part of the drug interdiction and counter-drug mission of the National Guard, including support for the cargo inspection activities of the Department of Homeland Security pursuant to that mission.

SA 749. Mr. McCAIN submitted an amendment intended to be proposed by her to the bill S. 1050, to authorize appropriations for fiscal year 2004 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes; which was ordered to lie on the table; as follows:

On page 310, between lines 9 and 10, insert the following:

(D) A discussion of NATO decisionmaking on the implementation of the Prague Capabilities Commitment and the development of the NATO Response Force, including—

(i) an assessment whether the Prague Capabilities Commitment and the NATO Response Force are the sole jurisdiction of the Defense Planning Committee, the North Atlantic Council, or the Military Committee;

(ii) a description of the circumstances which led to the defense, military, security, and nuclear decisions of NATO on matters such as the Prague Capabilities Commitment and the NATO Response Force being made in bodies other than the Defense Planning Committee;

(iii) a description of the extent to which France contributes to each of the component committees of NATO, including any and all committees relevant to the Prague Capabilities Commitment and the NATO Response Force;

(iv) a description of the extent to which France participates in deliberations and decisions of NATO on resource policy, contribution ceilings, infrastructure, force structure, modernization, threat assessments, training, exercises, deployments, and other issues related to the Prague Capabilities Commitment or the NATO Response Force;

(v) a description of the extent to which France participates in meetings of the Defense Planning Committee as an observer, including the justification for such participation, if any, and an assessment whether such participation is in the interest of NATO in implementing the Prague Capabilities Commitment or developing the NATO Response Force;

(vi) a description and assessment of the impediments, if any, that would preclude or limit NATO from conducting deliberations and making decisions on matters such as the Prague Capabilities Commitment or the NATO Response Force solely in the Defense Planning Committee; and

(vii) the recommendations of the Secretary of Defense on streamlining defense, military, and security decisionmaking within NATO relating to the Prague Capabilities Commitment, and NATO Response Force, and other matters, including an assessment of the feasibility and advisability of the greater utilization of the Defense Planning Committee for such purposes.

SA 750. Mr. DORGAN submitted an amendment intended to be proposed by her to the bill S. 1050, to authorize appropriations for fiscal year 2004 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle B of title XXXI, add the following:

SEC. 3135. PROHIBITION ON USE OF FUNDS FOR NUCLEAR EARTH PENETRATOR WEAPON.

(a) IN GENERAL.—Effective as of the date of the enactment of this Act, no funds authorized to be appropriated or otherwise made available for the Department of Energy by this Act or any other Act may be obligated or expended for development, testing, or engineering on a nuclear earth penetrator weapon.

(b) PROHIBITION ON USE OF FISCAL YEAR 2004 FUNDS FOR FEASIBILITY STUDY.—No funds authorized to be appropriated or otherwise made available for the Department of Energy for fiscal year 2004 by this Act or any other Act may be obligated or expended for a feasibility study on a nuclear earth penetrator weapon.

SA 751. Mr. REED (for himself, Mr. LEVIN, and Mr. FEINGOLD) proposed an amendment to the bill S. 1050, to authorize appropriations for fiscal year 2004 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes; as follows:

Strike section 3131 and insert the following new section:

SEC. 3131. MODIFICATION OF SCOPE OF PROHIBITION ON RESEARCH AND DEVELOPMENT OF LOW-YIELD NUCLEAR WEAPONS.

(a) MODIFICATION.—Section 3136 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160; 107 Stat. 1946; 42 U.S.C. 2121 note) is amended by striking ''research and development'' each place it appears and inserting ''development engineering''.

(b) CONFORMING AMENDMENTS.—(1) The caption for subsection (c) of that section is amended by striking ''RESEARCH AND DEVELOPMENT'' and inserting ''DEVELOPMENT ENGINEERING''.

(2) The heading for that section is amended by striking ''**RESEARCH AND DEVELOPMENT**'' and inserting ''**DEVELOPMENT ENGINEERING**''.

SA 752. Mr. WARNER proposed an amendment to amendment SA 751 proposed by Mr. REED (for himself, Mr. LEVIN, and Mr. FEINGOLD) to the bill S. 1050, to authorize appropriations for fiscal year 2004 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes; which was ordered to lie on the table; as follows:

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

SEC. 3131. REPEAL OF PROHIBITION ON RESEARCH AND DEVELOPMENT OF LOW-YIELD NUCLEAR WEAPONS.

(a) REPEAL.—Section 3136 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160; 107 Stat. 1946; 42 U.S.C. 2121 note) is repealed.

(b) CONSTRUCTION.—Nothing in the repeal made by subsection (a) shall be construed as authorizing the testing, acquisition, or deployment of a low-yield nuclear weapon.

(c) LIMITATION.—The Secretary of Energy may not commence the engineering development phase, or any subsequent phase, of a low-yield nuclear weapon unless specifically authorized by Congress.

SA 753. Mr. NELSON of Florida submitted an amendment intended to be proposed by him to the bill S. 1050, to authorize appropriations for fiscal year 2004 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes; which was ordered to lie on the table; as follows:

On page 291, between lines 14 and 15, insert the following new section:

SEC. 1039. REWARD FOR INFORMATION LEADING TO THE RESOLUTION OF THE FATE OF AN AMERICAN POW/MIA OF THE FIRST GULF WAR.

(a) REWARD AUTHORIZED.—The Secretary of Defense is authorized to pay a gratuity or gratuities to an individual or individuals determined by the Secretary to have assisted in determining the whereabouts or status of an American POW/MIA of the First Persian Gulf War.

(b) AGGREGATE AMOUNT OF REWARDS.—The total amount of gratuities paid by the Secretary under subsection (a) may not exceed $1,000,000.

(c) LIMITATION ON ELIGIBILITY.—The Secretary may not pay a gratuity under subsection (a) to a terrorist, a persecutor, a person who has been convicted of a serious criminal offense, a person who presents a danger to the security of the United States, as set forth in clauses (i) through (v) of section 208(b)(2)(A) of the Immigration and Nationality Act (8 U.S.C. 1158(b)(2)(A)), or a person suspected of having mistreated or harmed an American POW/MIA of the First Persian Gulf War.

(d) DEFINITIONS.—In this section:

(1) AMERICAN POW/MIA OF THE FIRST PERSIAN GULF WAR.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the term ''American POW/

MIA of the First Persian Gulf War'' means an individual—

(i) who is a member of a uniformed service (within the meaning of section 101(3) of title 37, United States Code) in a missing status (as defined in section 551(2) of such title and this subsection) as a result of Operation Desert Shield/Desert Storm; or

(ii) who is an employee (as defined in section 5561(2) of title 5, United States Code) in a missing status (as defined in section 5561(5) of such title) as a result of Operation Desert Shield/Desert Storm.

(B) EXCLUSION.—Such term does not include an individual with respect to whom it is officially determined under section 552(c) of title 37, United States Code, that such individual is officially absent from such individual's post of duty without authority.

(2) MISSING STATUS.—The term ''missing status'', with respect to Operation Desert Shield/Desert Storm means the status of an individual as a result of Operation Desert Shield/Desert Storm if immediately before that status began the individual—

(A) was performing service in Kuwait, Iraq, or another nation of the greater Middle East region; or

(B) was performing service in the greater Middle East region in direct support of military operations in Kuwait or Iraq.

(e) AUTHORIZATION OF APPROPRIATIONS.—Of the amount authorized to be appropriated by section 301(c)(5) for operations and maintenance for Defense-wide activities, $1,000,000 may be made available to the Secretary to carry out this section.

SA 754. Mr. BUNNING submitted an amendment intended to be proposed by him to the bill S. 1050, to authorize appropriations for fiscal year 2004 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes; which was ordered to lie on the table; as follows:

In subtitle E of title I, add after the subtitle heading the following:

SEC. 141. CHEMICAL AGENT MONITORING SYSTEM AT BLUEGRASS ARMY DEPOT, KENTUCKY.

(a) IN GENERAL.—Of the amount authorized to be appropriated by section 106 for chemical agents and munitions destruction, Defense, $1,000,000 shall be available to the Secretary of the Army for the deployment of a chemical agent monitoring system at Bluegrass Army Depot, Kentucky, to supplement the current chemical agent monitoring and detection systems at the Depot for the chemical demilitarization program at the Deport.

(b) PURPOSE.—The purpose of the deployment of the chemical agent monitoring system referred to in subsection (a) is to achieve the broadest possible protection of the public and personnel involved in the chemical demilitarization program at Bluegrass Army Depot and of the environment in the vicinity of the Depot.

(c) SYSTEM ELEMENTS.—(1) The chemical agent monitoring system deployed under subsection (a) shall be the most efficient and advanced chemical agent monitoring system available, combining elements of the systems as follows:

(A) Open-Path Fourier Transform Infrared Spectrometer perimeter monitoring systems.

(B) Continuous Agent Stack Monitoring Systems.

(C) Multi-Metals Continuous Emissions Monitoring Systems

(2) The chemical agent monitoring system may employ elements of systems other than systems referred to in paragraph (1) if the Secretary determines that the employment of such elements provides monitoring and detection of chemical agents equivalent to the monitoring and detection of chemical agents provided by the systems referred to in that paragraph.

(d) DEADLINE FOR DEPLOYMENT.—(1) Except as provided in paragraph (2), the Secretary shall complete the deployment of the chemical agent monitoring system referred to in subsection (a) not later than 90 days after the date of the enactment of this Act.

(2) If the Secretary has not completed the deployment of the chemical agent monitoring system as of the date required by paragraph (1), the Secretary shall submit to Congress a report setting forth—

(A) an explanation why the chemical agent monitoring system has not been completely deployed as of that date;

(B) the actions proposed to be taken by the Secretary to complete the deployment of the chemical agent monitoring system; and

(C) a schedule for the actions referred to in subparagraph (B), including the anticipated date of the completion of the deployment of the chemical agent monitoring system.

SA 755. Mr. VOINOVICH submitted an amendment intended to be proposed by him to the bill S. 1050, to authorize appropriations for fiscal year 2004 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. NASA WORKFORCE AUTHORITIES AND PERSONNEL PROVISIONS.

(a) IN GENERAL.—Subpart I of part III of title 5, United States Code, is amended by inserting after chapter 97, as added by section 841(a)(2) of the Homeland Security Act of 2002 (Public Law 107–296; 116 Stat. 2229), the following:

''CHAPTER 98—NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

''SUBCHAPTER I—WORKFORCE AUTHORITIES

''SUBCHAPTER II—PERSONNEL PROVISIONS

''SUBCHAPTER I—WORKFORCE AUTHORITIES

''§ 9801. Definitions

''For purposes of this subchapter—

''(1) the term 'Administration' means the National Aeronautics and Space Administration;

''(2) the term 'Administrator' means the Administrator of the National Aeronautics and Space Administration;

''(3) the term 'critical need' means a specific and important requirement of the Administration's mission that the Administration is unable to fulfill because the Administration lacks the appropriate employees because—

''(A) of the inability to fill positions; or

''(B) employees do not possess the requisite skills;

''(4) the term 'employee' means an individual employed in or under the Administration;

''(5) the term 'workforce plan' means the plan required under section 9802(a);

''(6) the term 'appropriate committees of Congress' means—

''(A) the Committees on Government Reform, Science, and Appropriations of the House of Representatives; and

''(B) the Committees on Governmental Affairs, Commerce, Science, and Transportation, and Appropriations of the Senate; and

''(7) the term 'redesignation bonus' means a bonus under section 9804 paid to an individual described in subsection (a)(2) thereof.

''§ 9802. Planning, notification, and reporting requirements

''(a) Not later than 90 days before exercising any of the workforce authorities under this subchapter, the Administrator shall submit a written plan to the appropriate committees of Congress. A plan under this subchapter may not be implemented without the approval of the Office of Personnel Management.

''(b) A workforce plan shall include a description of—

''(1) each critical need of the Administration and the criteria used in the identification of that need;

''(2)(A) the functions, approximate number, and classes or other categories of positions or employees that—

''(i) address critical needs; and

''(ii) would be eligible for each authority proposed to be exercised under section 9803; and

''(B) how the exercise of those authorities with respect to the eligible positions or employees involved would address each critical need identified under paragraph (1);

''(3)(A) any critical need identified under paragraph (1) which would not be addressed by the authorities made available under this subchapter; and

''(B) the reasons why those needs would not be so addressed;

''(4) the specific criteria to be used in determining which individuals may receive the benefits described under sections 9804, 9805 (including the criteria for granting bonuses in the absence of a critical need), and 9810, and how the level of those benefits will be determined;

''(5) the safeguards or other measures that will be applied to ensure that this subchapter is carried out in a manner consistent with merit system principles;

''(6) the means by which employees will be afforded the notification required under subsections (c) and (d)(1)(B);

''(7) the methods that will be used to determine if the authorities exercised under this subchapter have successfully addressed each critical need identified under paragraph (1); and

''(8)(A) the recruitment methods used by the Administration before the enactment of this chapter to recruit highly qualified individuals; and

''(B) the changes the Administration will implement after the enactment of this chapter in order to improve its recruitment of highly qualified individuals, including how it intends to use—

''(i) nongovernmental recruitment or placement agencies; and

''(ii) Internet technologies.

''(c) Not later than 60 days before first exercising any of the workforce authorities made available under this subchapter, the Administrator shall provide to all employees the workforce plan and any additional information which the Administrator considers appropriate.

''(d)(1)(A) The Administrator may submit any modifications to the workforce plan to the Office of Personnel Management. Modifications to the workforce plan may not be implemented without the approval of the Office of Personnel Management.

''(B) Not later than 60 days before implementing any such modifications, the Administrator shall provide an appropriately modified plan to all employees of the Administration and to the appropriate committees of Congress.

''(2) Any reference in this subchapter or any other provision of law to the workforce plan shall be considered to include any modification made in accordance with this subsection.

''(e) Before submitting any written plan under subsection (a) (or modification under subsection (d)) to the Office of Personnel Management, the Administrator shall—

''(1) provide to each employee representative representing any employees who might be affected by such plan (or modification) a copy of the proposed plan (or modification);

''(2) give each representative 30 calendar days (unless extraordinary circumstances require earlier action) to review and make recommendations with respect to the proposed plan (or modification); and

''(3) give any recommendations received from any such representatives under paragraph (2) full and fair consideration in deciding whether or how to proceed with respect to the proposed plan (or modification).

''(f) None of the workforce authorities made available under this subchapter may be exercised in a manner inconsistent with the workforce plan.

''(g) Whenever the Administration submits its performance plan under section 1115 of title 31 to the Office of Management and Budget for any year, the Administration shall at the same time submit a copy of such plan to the appropriate committees of Congress.

''(h) Not later than 6 years after date of enactment of this subchapter, the Administrator shall submit to the appropriate committees of Congress an evaluation and analysis of the actions taken by the Administration under this subchapter, including—

''(1) an evaluation, using the methods described in subsection (b)(7), of whether the authorities exercised under this subchapter successfully addressed each critical need identified under subsection (b)(1);

''(2) to the extent that they did not, an explanation of the reasons why any critical need (apart from the ones under subsection (b)(3)) was not successfully addressed; and

''(3) recommendations for how the Administration could address any remaining critical need and could prevent those that have been addressed from recurring.

''§ 9803. Workforce authorities

''(a) The workforce authorities under this subchapter are the following:

''(1) The authority to pay recruitment, redesignation, and relocation bonuses under section 9804.

''(2) The authority to pay retention bonuses under section 9805.

''(3) The authority to make term appointments and to take related personnel actions under section 9806.

''(4) The authority to fix rates of basic pay for critical positions under section 9807.

''(5) The authority to extend intergovernmental personnel act assignments under section 9808.

''(6) The authority to apply subchapter II of chapter 35 in accordance with section 9810.

''(b) No authority under this subchapter may be exercised with respect to any officer who is appointed by the President, by and with the advice and consent of the Senate.

''(c) Unless specifically stated otherwise, all authorities provided under this subchapter are subject to section 5307.

''§ 9804. Recruitment, redesignation, and relocation bonuses

''(a) Notwithstanding section 5753, the Administrator may pay a bonus to an individual, in accordance with the workforce plan and subject to the limitations in this section, if—

''(1) the Administrator determines that the Administration would be likely, in the absence of a bonus, to encounter difficulty in filling a position; and

''(2) the individual—

''(A) is newly appointed as an employee of the Federal Government;

''(B) is currently employed by the Federal Government and is newly appointed to another position in the same geographic area; or

''(C) is currently employed by the Federal Government and is required to relocate to a different geographic area to accept a position with the Administration.

''(b) If the position is described as addressing a critical need in the workforce plan under section 9802(b)(2)(A), the amount of a bonus may not exceed—

''(1) 50 percent of the employee's annual rate of basic pay (including comparability payments under sections 5304 and 5304a) as of the beginning of the service period multiplied by the service period specified under subsection (d)(1)(B)(i); or

''(2) 100 percent of the employee's annual rate of basic pay (including comparability payments under sections 5304 and 5304a) as of the beginning of the service period.

''(c) If the position is not described as addressing a critical need in the workforce plan under section 9802(b)(2)(A), the amount of a bonus may not exceed—

''(1) 25 percent of the employee's annual rate of basic pay (including comparability payments under sections 5304 and 5304a) as of the beginning of the service period multiplied by the service period specified under subsection (d)(1)(B)(i); or

''(2) 100 percent of the employee's annual rate of basic pay (including comparability payments under sections 5304 and 5304a) as of the beginning of the service period.

''(d)(1)(A) Payment of a bonus under this section shall be contingent upon the individual entering into a service agreement with the Administration.

''(B) At a minimum, the service agreement shall include—

''(i) the required service period;

''(ii) the method of payment, including a payment schedule, which may include a lump-sum payment, installment payments, or a combination thereof;

''(iii) the amount of the bonus and the basis for calculating that amount; and

''(iv) the conditions under which the agreement may be terminated before the agreed-upon service period has been completed, and the effect of the termination.

''(2) For purposes of determinations under subsections (b)(1) and (c)(1), the employee's service period shall be expressed as the number equal to the full years and twelfth parts thereof, rounding the fractional part of a month to the nearest twelfth part of a year. The service period may not be less than 6 months and may not exceed 4 years.

''(3) A bonus under this section may not be considered to be part of the basic pay of an employee.

''(e) Before paying a bonus under this section, the Administration shall establish a plan for paying recruitment, redesignation, and relocation bonuses, subject to approval by the Office of Personnel Management.

''§ 9805. Retention bonuses

''(a) Notwithstanding section 5754, the Administrator may pay a bonus to an employee, in accordance with the workforce plan and subject to the limitations in this section, if the Administrator determines that—

''(1) the unusually high or unique qualifications of the employee or a special need of the Administration for the employee's services makes it essential to retain the employee; and

''(2) the employee would be likely to leave in the absence of a retention bonus.

''(b) If the position is described as addressing a critical need in the workforce plan under section 9802(b)(2)(A), the amount of a bonus may not exceed 50 percent of the employee's annual rate of basic pay (including comparability payments under sections 5304 and 5304a).

''(c) If the position is not described as addressing a critical need in the workforce plan under section 9802(b)(2)(A), the amount of a bonus may not exceed 25 percent of the employee's annual rate of basic pay (including comparability payments under sections 5304 and 5304a).

''(d)(1)(A) Payment of a bonus under this section shall be contingent upon the employee entering into a service agreement with the Administration.

''(B) At a minimum, the service agreement shall include—

''(i) the required service period;

''(ii) the method of payment, including a payment schedule, which may include a lump-sum payment, installment payments, or a combination thereof;

''(iii) the amount of the bonus and the basis for calculating the amount; and

''(iv) the conditions under which the agreement may be terminated before the agreed-upon service period has been completed, and the effect of the termination.

''(2) The employee's service period shall be expressed as the number equal to the full years and twelfth parts thereof, rounding the fractional part of a month to the nearest twelfth part of a year. The service period may not be less than 6 months and may not exceed 4 years.

''(3) Notwithstanding paragraph (1), a service agreement is not required if the Administration pays a bonus in biweekly installments and sets the installment payment at the full bonus percentage rate established for the employee, with no portion of the bonus deferred. In this case, the Administration shall inform the employee in writing of any decision to change the retention bonus payments. The employee shall continue to accrue entitlement to the retention bonus through the end of the pay period in which such written notice is provided.

''(e) A bonus under this section may not be considered to be part of the basic pay of an employee.

''(f) An employee is not entitled to a retention bonus under this section during a service period previously established for that

employee under section 5753 or under section 9804.

"§ 9806. Term appointments

''(a) The Administrator may authorize term appointments within the Administration under subchapter I of chapter 33, for a period of not less than 1 year and not more than 6 years.

''(b) Notwithstanding chapter 33 or any other provision of law relating to the examination, certification, and appointment of individuals in the competitive service, the Administrator may convert an employee serving under a term appointment to a permanent appointment in the competitive service within the Administration without further competition if—

''(1) such individual was appointed under open, competitive examination under subchapter I of chapter 33 to the term position;

''(2) the announcement for the term appointment from which the conversion is made stated that there was potential for subsequent conversion to a career-conditional or career appointment;

''(3) the employee has completed at least 2 years of current continuous service under a term appointment in the competitive service;

''(4) the employee's performance under such term appointment was at least fully successful or equivalent; and

''(5) the position to which such employee is being converted under this section is in the same occupational series, is in the same geographic location, and provides no greater promotion potential than the term position for which the competitive examination was conducted.

''(c) Notwithstanding chapter 33 or any other provision of law relating to the examination, certification, and appointment of individuals in the competitive service, the Administrator may convert an employee serving under a term appointment to a permanent appointment in the competitive service within the Administration through internal competitive promotion procedures if the conditions under paragraphs (1) through (4) of subsection (b) are met.

''(d) An employee converted under this section becomes a career-conditional employee, unless the employee has otherwise completed the service requirements for career tenure.

''(e) An employee converted to career or career-conditional employment under this section acquires competitive status upon conversion.

"§ 9807. Pay authority for critical positions

''(a) In this section, the term 'position' means—

''(1) a position to which chapter 51 applies, including a position in the Senior Executive Service;

''(2) a position under the Executive Schedule under sections 5312 through 5317;

''(3) a position established under section 3104; or

''(4) a senior-level position to which section 5376(a)(1) applies.

''(b) Authority under this section—

''(1) may be exercised only with respect to a position that—

''(A) is described as addressing a critical need in the workforce plan under section 9802(b)(2)(A); and

''(B) requires expertise of an extremely high level in a scientific, technical, professional, or administrative field;

''(2) may be exercised only to the extent necessary to recruit or retain an individual exceptionally well qualified for the position; and

''(3) may be exercised only in retaining employees of the Administration or in appointing individuals who were not employees of another Federal agency as defined under section 5102(a)(1).

''(c)(1) Notwithstanding section 5377, the Administrator may fix the rate of basic pay for a position in the Administration in accordance with this section. The Administrator may not delegate this authority.

''(2) The number of positions with pay fixed under this section may not exceed 10 at any time.

''(d)(1) The rate of basic pay fixed under this section may not be less than the rate of basic pay (including any comparability payments) which would otherwise be payable for the position involved if this section had never been enacted.

''(2) The annual rate of basic pay fixed under this section may not exceed the per annum rate of salary payable under section 104 of title 3.

''(3) Notwithstanding any provision of section 5307, in the case of an employee who, during any calendar year, is receiving pay at a rate fixed under this section, no allowance, differential, bonus, award, or similar cash payment may be paid to such employee if, or to the extent that, when added to basic pay paid or payable to such employee (for service performed in such calendar year as an employee in the executive branch or as an employee outside the executive branch to whom chapter 51 applies), such payment would cause the total to exceed the per annum rate of salary which, as of the end of such calendar year, is payable under section 104 of title 3.

"§ 9808. Assignments of intergovernmental personnel

''(a) For purposes of applying the third sentence of section 3372(a) (relating to the authority of the head of a Federal agency to extend the period of an employee's assignment to or from a State or local government, institution of higher education, or other organization), the Administrator may, with the concurrence of the employee and the government or organization concerned, take any action which would be allowable if such sentence had been amended by striking 'two' and inserting 'four'.

''(b) Any individual who is assigned to the Administration under section 3372 may not directly manage Federal employees.

"§ 9809. Enhanced demonstration project authority

''When conducting a demonstration project at the Administration, section 4703(d)(1)(A) may be applied by substituting 'such numbers of individuals as determined by the Administrator' for 'not more than 5,000 individuals'.

''SUBCHAPTER II—PERSONNEL PROVISIONS

"§ 9831. Definitions

''For purposes of this subchapter, the terms 'Administration' and 'Administrator' have the meanings set forth in section 9801.

"§ 9832. NASA-Industry exchange program

''(a) For purposes of this section, the term 'detail' means—

''(1) the assignment or loan of an employee of the Administration to a private sector organization without a change of position from the Administration, or

''(2) the assignment or loan of an employee of a private sector organization to the Administration without a change of position from the private sector organization that employs the individual,

whichever is appropriate in the context in which such term is used.

''(b)(1) On request from or with the agreement of a private sector organization, and with the consent of the employee concerned, the Administrator may arrange for the assignment of an employee of the Administration to a private sector organization or an employee of a private sector organization to the Administration. An employee of the Administration shall be eligible to participate in this program only if the employee is employed at the GS–11 level or above (or equivalent) and is serving under a career or career-conditional appointment or an appointment of equivalent tenure in the excepted service.

''(2) The Administrator shall provide for a written agreement between the Administration and the employee concerned regarding the terms and conditions of the employee's assignment. The agreement shall—

''(A) require the employee to serve in the Administration, upon completion of the assignment, for a period equal to the length of the assignment; and

''(B) provide that, in the event the employee fails to carry out the agreement (except for good and sufficient reason, as determined by the Administrator), the employee shall be liable to the United States for payment of all expenses of the assignment.

An amount under subparagraph (B) shall be treated as a debt due the United States.

''(3) Assignments may be terminated by the Administration or the private sector organization concerned for any reason at any time.

''(4) Assignments under this section shall be for a period of between 6 months and 1 year, and may be extended in 3-month increments for a total of not more than 1 additional year, except that no assignment under this section may commence after the end of the 5-year period beginning on the date of the enactment of this section.

''(c)(1) An employee of the Administration who is assigned to a private sector organization under this section is deemed, during the period of the assignment, to be on detail to a regular work assignment in the Administration.

''(2) Notwithstanding any other provision of law, an employee of the Administration who is assigned to a private sector organization under this section is entitled to retain coverage, rights, and benefits under subchapter I of chapter 81, and employment during the assignment is deemed employment by the United States, except that, if the employee or the employee's dependents receive from the private sector organization any payment under an insurance policy for which the premium is wholly paid by the private sector organization, or other benefit of any kind on account of the same injury or death, then, the amount of such payment or benefit shall be credited against any compensation otherwise payable under subchapter I of chapter 81.

''(3) The assignment of an employee to a private sector organization under this section may be made with or without reimbursement by the private sector organization for the travel and transportation expenses to or from the place of assignment, subject to the same terms and conditions as apply with respect to an employee of a Federal agency or a State or local government under section 3375, and for the pay, or a part thereof, of the employee during assignment. Any reimbursements shall be credited to the appropriation of the Administration used for paying the travel and transportation expenses or pay.

''(4) The Federal Tort Claims Act (28 U.S.C. 2671 et seq.) and any other Federal tort liability statute apply to an employee of the Administration assigned to a private sector organization under this section. The supervision of the duties of an employee of the Administration who is so assigned to a private sector organization may be governed by an agreement between the Administration and the organization.

''(d)(1) An employee of a private sector organization assigned to the Administration under this section is deemed, during the period of the assignment, to be on detail to the Administration.

''(2) An employee of a private sector organization assigned to the Administration under this section—

''(A) may continue to receive pay and benefits from the private sector organization from which he is assigned;

''(B) is deemed, notwithstanding paragraph (1), to be an employee of the Administration for the purposes of—

''(i) chapter 73;

''(ii) sections 201, 203, 205, 207, 208, 209, 603, 606, 607, 643, 654, 1905, and 1913 of title 18;

''(iii) sections 1343, 1344, and 1349(b) of title 31;

''(iv) the Federal Tort Claims Act (28 U.S.C. 2671 et seq.) and any other Federal tort liability statute;

''(v) the Ethics in Government Act of 1978 (5 U.S.C. 101 et seq.); and

''(vi) section 1043 of the Internal Revenue Code of 1986;

''(C) may not have access to any trade secrets or to any other nonpublic information which is of commercial value to the private sector organization from which he is assigned; and

''(D) is subject to such regulations as the President may prescribe.

The supervision of an employee of a private sector organization assigned to the Administration under this section may be governed by agreement between the Administration and the private sector organization concerned. Such an assignment may be made with or without reimbursement by the Administration for the pay, or a part thereof, of the employee during the period of assignment, or for any contribution of the private sector organization to employee benefit systems.

''(3) An employee of a private sector organization assigned to the Administration under this section who suffers disability or dies as a result of personal injury sustained while performing duties during the assignment shall be treated, for the purpose of subchapter I of chapter 81, as an employee as defined by section 8101 who had sustained the injury in the performance of duty, except that, if the employee or the employee's dependents receive from the private sector organization any payment under an insurance policy for which the premium is wholly paid by the private sector organization, or other benefit of any kind on account of the same injury or death, then, the amount of such payment or benefit shall be credited against any compensation otherwise payable under subchapter I of chapter 81.

''(4) A private sector organization may not charge the Federal Government, as direct or indirect costs under a Federal contract, the costs of pay or benefits paid by the organization to an employee assigned to the Administration under this section for the period of the assignment.

''(e)(1) The Administration shall, not later than February 28 of each year, prepare and submit to the appropriate committees of Congress a report summarizing the operation of this section during the preceding year.

''(2) Each report shall include, with respect to the period to which such report relates—

''(A) the total number of individuals assigned to, and the total number of individuals assigned from, the Administration during such period;

''(B) a brief description of each assignment included under subparagraph (A), including—

''(i) the name of the assigned individual, as well as the private sector organization, to or from which such individual was assigned;

''(ii) the respective positions to and from which the individual was assigned, including the duties and responsibilities and the pay grade or level associated with each; and

''(iii) the duration and objectives of the individual's assignment; and

''(C) such other information as the Administration considers appropriate.

''(3) A copy of each report submitted under paragraph (1)—

''(A) shall be published in the Federal Register; and

''(B) shall be made publicly available on the Internet.

''(f) The Administrator, in consultation with the Director of the Office of Personnel Management, shall prescribe regulations for the administration of this section.

''(g) Not later than 4 years after the date of the enactment of this section, the General Accounting Office shall prepare and submit to the appropriate committees of Congress a report on the operation of this section. Such report shall include—

''(1) an evaluation of the effectiveness of the program established by this section; and

''(2) a recommendation as to whether such program should be continued (with or without modification) or allowed to lapse.

''§ 9833. Science and technology scholarship program

''(a)(1) The Administrator shall establish a National Aeronautics and Space Administration Science and Technology Scholarship Program to award scholarships to individuals that is designed to recruit and prepare students for careers in the Administration.

''(2) Individuals shall be selected to receive scholarships under this section through a competitive process primarily on the basis of academic merit, with consideration given to financial need and the goal of promoting the participation of individuals identified in section 33 or 34 of the Science and Engineering Equal Opportunities Act.

''(3) To carry out the Program the Administrator shall enter into contractual agreements with individuals selected under paragraph (2) under which the individuals agree to serve as full-time employees of the Administration, for the period described in subsection (f)(1), in positions needed by the Administration and for which the individuals are qualified, in exchange for receiving a scholarship.

''(b) In order to be eligible to participate in the Program, an individual must—

''(1) be enrolled or accepted for enrollment as a full-time student at an institution of higher education in an academic field or discipline described in the list made available under subsection (d);

''(2) be a United States citizen; and

''(3) at the time of the initial scholarship award, not be an employee (as defined in section 2105).

''(c) An individual seeking a scholarship under this section shall submit an application to the Administrator at such time, in such manner, and containing such information, agreements, or assurances as the Administrator may require.

''(d) The Administrator shall make publicly available a list of academic programs and fields of study for which scholarships under the Program may be utilized and shall update the list as necessary.

''(e)(1) The Administrator may provide a scholarship under the Program for an academic year if the individual applying for the scholarship has submitted to the Administrator, as part of the application required under subsection (c), a proposed academic program leading to a degree in a program or field of study on the list made available under subsection (d).

''(2) An individual may not receive a scholarship under this section for more than 4 academic years, unless the Administrator grants a waiver.

''(3) The dollar amount of a scholarship under this section for an academic year shall be determined under regulations issued by the Administrator, but shall in no case exceed the cost of attendance.

''(4) A scholarship provided under this section may be expended for tuition, fees, and other authorized expenses as established by the Administrator by regulation.

''(5) The Administrator may enter into a contractual agreement with an institution of higher education under which the amounts provided for a scholarship under this section for tuition, fees, and other authorized expenses are paid directly to the institution with respect to which the scholarship is provided.

''(f)(1) The period of service for which an individual shall be obligated to serve as an employee of the Administration is, except as provided in subsection (h)(2), 24 months for each academic year for which a scholarship under this section is provided.

''(2)(A) Except as provided in subparagraph (B), obligated service under paragraph (1) shall begin not later than 60 days after the individual obtains the educational degree for which the scholarship was provided.

''(B) The Administrator may defer the obligation of an individual to provide a period of service under paragraph (1) if the Administrator determines that such a deferral is appropriate. The Administrator shall prescribe the terms and conditions under which a service obligation may be deferred through regulation.

''(g)(1) Scholarship recipients who fail to maintain a high level of academic standing, as defined by the Administrator by regulation, who are dismissed from their educational institutions for disciplinary reasons, or who voluntarily terminate academic training before graduation from the educational program for which the scholarship was awarded, shall be in breach of their contractual agreement and, in lieu of any service obligation arising under such agreement, shall be liable to the United States for repayment within 1 year after the date of default of all scholarship funds paid to them and to the institution of higher education on their behalf under the agreement, except as provided in subsection (h)(2). The repayment period may be extended by the Administrator when determined to be necessary, as established by regulation.

''(2) Scholarship recipients who, for any reason, fail to begin or complete their service obligation after completion of academic training, or fail to comply with the terms and conditions of deferment established by the Administrator pursuant to subsection (f)(2)(B), shall be in breach of their contractual agreement. When recipients breach their agreements for the reasons stated in the preceding sentence, the recipient shall be liable to the United States for an amount equal to—

''(A) the total amount of scholarships received by such individual under this section; plus

''(B) the interest on the amounts of such awards which would be payable if at the time the awards were received they were loans bearing interest at the maximum legal prevailing rate, as determined by the Treasurer of the United States,

multiplied by 3.

''(h)(1) Any obligation of an individual incurred under the Program (or a contractual agreement thereunder) for service or payment shall be canceled upon the death of the individual.

''(2) The Administrator shall by regulation provide for the partial or total waiver or suspension of any obligation of service or payment incurred by an individual under the

Program (or a contractual agreement thereunder) whenever compliance by the individual is impossible or would involve extreme hardship to the individual, or if enforcement of such obligation with respect to the individual would be contrary to the best interests of the Government.

''(i) For purposes of this section—

''(1) the term 'cost of attendance' has the meaning given that term in section 472 of the Higher Education Act of 1965;

''(2) the term 'institution of higher education' has the meaning given that term in section 101(a) of the Higher Education Act of 1965; and

''(3) the term 'Program' means the National Aeronautics and Space Administration Science and Technology Scholarship Program established under this section.

''(j)(1) There is authorized to be appropriated to the Administration for the Program $10,000,000 for each fiscal year.

''(2) Amounts appropriated under this section shall remain available for 2 fiscal years.

''§ 9834. Distinguished scholar appointment authority

''(a) In this section—

''(1) the term 'professional position' means a position that is classified to an occupational series identified by the Office of Personnel Management as a position that—

''(A) requires education and training in the principles, concepts, and theories of the occupation that typically can be gained only through completion of a specified curriculum at a recognized college or university; and

''(B) is covered by the Group Coverage Qualification Standard for Professional and Scientific Positions; and

''(2) the term 'research position' means a position in a professional series that primarily involves scientific inquiry or investigation, or research-type exploratory development of a creative or scientific nature, where the knowledge required to perform the work successfully is acquired typically and primarily through graduate study.

''(b) The Administration may appoint, without regard to the provisions of sections 3304(b) and 3309 through 3318, candidates directly to General Schedule professional positions in the Administration for which public notice has been given, if—

''(1) with respect to a position at the GS–7 level, the individual—

''(A) received, from an accredited institution authorized to grant baccalaureate degrees, a baccalaureate degree in a field of study for which possession of that degree in conjunction with academic achievements meets the qualification standards as prescribed by the Office of Personnel Management for the position to which the individual is being appointed; and

''(B) achieved a cumulative grade point average of 3.0 or higher on a 4.0 scale and a grade point average of 3.5 or higher for courses in the field of study required to qualify for the position;

''(2) with respect to a position at the GS–9 level, the individual—

''(A) received, from an accredited institution authorized to grant graduate degrees, a graduate degree in a field of study for which possession of that degree meets the qualification standards at this grade level as prescribed by the Office of Personnel Management for the position to which the individual is being appointed; and

''(B) achieved a cumulative grade point average of 3.5 or higher on a 4.0 scale in graduate coursework in the field of study required for the position;

''(3) with respect to a position at the GS–11 level, the individual—

''(A) received, from an accredited institution authorized to grant graduate degrees, a graduate degree in a field of study for which possession of that degree meets the qualification standards at this grade level as prescribed by the Office of Personnel Management for the position to which the individual is being appointed; and

''(B) achieved a cumulative grade point average of 3.5 or higher on a 4.0 scale in graduate coursework in the field of study required for the position; or

''(4) with respect to a research position at the GS–12 level, the individual—

''(A) received, from an accredited institution authorized to grant graduate degrees, a graduate degree in a field of study for which possession of that degree meets the qualification standards at this grade level as prescribed by the Office of Personnel Management for the position to which the individual is being appointed; and

''(B) achieved a cumulative grade point average of 3.5 or higher on a 4.0 scale in graduate coursework in the field of study required for the position.

''(c) Veterans' preference procedures shall apply when selecting candidates under this section. Preference eligibles who meet the criteria for distinguished scholar appointments shall be considered ahead of non-preference eligibles.

''(d) An appointment made under this authority shall be a career-conditional appointment in the competitive civil service.

''§ 9835. Travel and transportation expenses of certain new appointees

''(a) In this section, the term 'new appointee' means—

''(1) a person newly appointed or reinstated to Federal service to the Administration to—

''(A) a career or career-conditional appointment;

''(B) a term appointment;

''(C) an excepted service appointment that provides for noncompetitive conversion to a career or career-conditional appointment;

''(D) a career or limited term Senior Executive Service appointment;

''(E) an appointment made under section 203(c)(2)(A) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2473(c)(2)(A));

''(F) an appointment to a position established under section 3104; or

''(G) an appointment to a position established under section 5108; or

''(2) a student trainee who, upon completion of academic work, is converted to an appointment in the Administration that is identified in paragraph (1) in accordance with an appropriate authority.

''(b) The Administrator may pay the travel, transportation, and relocation expenses of a new appointee to the same extent, in the same manner, and subject to the same conditions as the payment of such expenses under sections 5724, 5724a, 5724b, and 5724c to an employee transferred in the interests of the United States Government.

''(c) The Administrator shall submit to the appropriate committees of Congress, not later than February 28 of each of the next 10 years beginning after the date of enactment of this subchapter—

''(1) the average payment for travel and transportation expenses of certain new appointees provided under this section during the preceding year; and

''(2) the highest payment for travel and transportation expenses to an individual appointee provided under this section during the preceding year.

''§ 9836. Annual leave enhancements

''(a)(1) In this section—

''(A) the term 'newly appointed employee' means an individual who is first appointed—

''(i) regardless of tenure, as an employee of the Federal Government; or

''(ii) as an employee of the Federal Government following a break in service of at least 90 days after that individual's last period of Federal employment, other than—

''(I) employment under the Student Educational Employment Program administered by the Office of Personnel Management;

''(II) employment as a law clerk trainee;

''(III) employment under a short-term temporary appointing authority while a student during periods of vacation from the educational institution at which the student is enrolled;

''(IV) employment under a provisional appointment if the new appointment is permanent and immediately follows the provisional appointment; or

''(V) employment under a temporary appointment that is neither full-time nor the principal employment of the individual;

''(B) the term 'period of qualified non-Federal service' means any period of service performed by an individual that—

''(i) was performed in a position the duties of which were directly related to the duties of the position in the Administration to which that individual will fill as a newly appointed employee; and

''(ii) except for this section, would not otherwise be service performed by an employee for purposes of section 6303; and

''(C) the term 'directly related to the duties of the position' means duties and responsibilities in the same line of work which require similar qualifications.

''(b)(1) For purposes of section 6303, the Administrator may deem a period of qualified non-Federal service performed by a newly appointed employee to be a period of service of equal length performed as an employee.

''(2) A period deemed by the Administrator under paragraph (1) shall continue to apply to the employee during—

''(A) the period of Federal service in which the deeming is made; and

''(B) any subsequent period of Federal service.

''(c)(1) Notwithstanding section 6303(a), the annual leave accrual rate for an employee of the Administration in a position paid under section 5376 or 5383, or for an employee in an equivalent category whose rate of basic pay is greater than the rate payable at GS–15, step 10, shall be 1 day for each full biweekly pay period.

''(2) The accrual rate established under this paragraph shall continue to apply to the employee during—

''(A) the period of Federal service in which such accrual rate first applies; and

''(B) any subsequent period of Federal service.

''§ 9837. Limited appointments to Senior Executive Service positions

''(a) In this section—

''(1) the term 'career reserved position' means a position in the Administration designated under section 3132(b) which may be filled only by—

''(A) a career appointee; or

''(B) a limited emergency appointee or a limited term appointee—

''(i) who, immediately before entering the career reserved position, was serving under a career or career-conditional appointment outside the Senior Executive Service; or

''(ii) whose limited emergency or limited term appointment is approved in advance by the Office of Personnel Management;

''(2) the term 'limited emergency appointee' has the meaning given under section 3132; and

''(3) the term 'limited term appointee' means an individual appointed to a Senior Executive Service position in the Administration to meet a bona fide temporary need, as determined by the Administrator.

''(b) The number of career reserved positions which are filled by an appointee as described under subsection (a)(1)(B) may not

exceed 10 percent of the total number of Senior Executive Service positions allocated to the Administration.

''(c) Notwithstanding sections 3132 and 3394(b)—

''(1) the Administrator may appoint an individual to any Senior Executive Service position in the Administration as a limited term appointee under this section for a period of—

''(A) 4 years or less to a position the duties of which will expire at the end of such term; or

''(B) 1 year or less to a position the duties of which are continuing; and

''(2) in rare circumstances, the Administrator may authorize an extension of a limited appointment under—

''(A) paragraph (1)(A) for a period not to exceed 2 years; and

''(B) paragraph (1)(B) for a period not to exceed 1 year.

''(d) A limited term appointee who has been appointed in the Administration from a career or career-conditional appointment outside the Senior Executive Service shall have reemployment rights in the agency from which appointed, or in another agency, under requirements and conditions established by the Office of Personnel Management. The Office shall have the authority to direct such placement in any agency.

''(e) Notwithstanding section 3394(b) and section 3395—

''(1) a limited term appointee serving under a term prescribed under this section may be reassigned to another Senior Executive Service position in the Administration, the duties of which will expire at the end of a term of 4 years or less; and

''(2) a limited term appointee serving under a term prescribed under this section may be reassigned to another continuing Senior Executive Service position in the Administration, except that the appointee may not serve in 1 or more positions in the Administration under such appointment in excess of 1 year, except that in rare circumstances, the Administrator may approve an extension up to an additional 1 year.

''(f) A limited term appointee may not serve more than 7 consecutive years under any combination of limited appointments.

''(g) Notwithstanding section 5384, the Administrator may authorize performance awards to limited term appointees in the Administration in the same amounts and in the same manner as career appointees.

''§ 9838. Superior qualifications pay

''(a) In this section the term 'employee' means an employee as defined under section 2105 who is employed by the Administration.

''(b) Notwithstanding section 5334, the Administrator may set the pay of an employee paid under the General Schedule at any step within the pay range for the grade of the position, based on the superior qualifications of the employee, or the special need of the Administration.

''(c) If an exercise of the authority under this section relates to a current employee selected for another position within the Administration, a determination shall be made that the employee's contribution in the new position will exceed that in the former position, before setting pay under this section.

''(d) Pay as set under this section is basic pay for such purposes as pay set under section 5334.

''(e) If the employee serves for at least 1 year in the position for which the pay determination under this section was made, or a successor position, the pay earned under such position may be used in succeeding actions to set pay under chapter 53.

''(f) The Administrator may waive the restrictions in subsection (e), based on criteria established in the plan required under subsection (g).

''(g) Before setting any employee's pay under this section, the Administrator shall submit a plan to the Office of Personnel Management, that includes—

''(1) criteria for approval of actions to set pay under this section;

''(2) the level of approval required to set pay under this section;

''(3) all types of actions and positions to be covered;

''(4) the relationship between the exercise of authority under this section and the use of other pay incentives; and

''(5) a process to evaluate the effectiveness of this section.''.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) TABLE OF CHAPTERS.—The table of chapters for subchapter I of part III of title 5, United States Code, is amended by adding after the item relating to chapter 97 the following:

''98. National Aeronautics and Space Administration ..... 9801''.

(2) COMPENSATION FOR CERTAIN EXCEPTED PERSONNEL.—Subparagraph (A) of section 203(c)(2) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2473(c)(2)(A)) is amended by striking ''the highest rate of grade 18 of the General Schedule of the Classification Act of 1949, as amended,'' and inserting ''the rate of basic pay payable for level III of the Executive Schedule,''.

(3) COMPENSATION CLARIFICATION.—Section 209 of title 18, United States Code, as amended by section 209(g)(2) of the E-Government Act of 2002 (Public Law 107–347; 116 Stat. 2932), is amended by adding at the end the following:

''(h) This section does not prohibit an employee of a private sector organization, while assigned to the National Aeronautics and Space Administration under section 9832 of title 5, from continuing to receive pay and benefits from that organization in accordance with section 9832 of that title.''.

(4) CONTINUED TSP ELIGIBILITY.—Section 125(c)(1) of Public Law 100–238 (5 U.S.C. 8432 note), as amended by section 209(g)(3) of the E-Government Act of 2002 (Public Law 107–347; 116 Stat. 2932), is amended—

(A) in subparagraph (C), by striking ''or'' at the end;

(B) in subparagraph (D), by striking ''and'' at the end and inserting ''or''; and

(C) by adding at the end the following:

''(E) an individual assigned from the National Aeronautics and Space Administration to a private sector organization under section 9832 of title 5, United States Code; and''.

(5) ETHICS PROVISIONS.—

(A) ONE-YEAR RESTRICTION ON CERTAIN COMMUNICATIONS.—Section 207(c)(2)(A)(v) of title 18, United States Code, is amended by inserting ''or section 9832'' after ''chapter 37''.

(B) DISCLOSURE OF CONFIDENTIAL INFORMATION.—Section 1905 of title 18, United States Code, is amended by inserting ''or section 9832'' after ''chapter 37''.

(6) CONTRACT ADVICE.—Section 207(l) of title 18, United States Code, is amended by inserting ''or section 9832'' after ''chapter 37''.

(7) AMENDMENTS TO TITLE 5, UNITED STATES CODE.—Title 5, United States Code, is amended—

(A) in section 3111(d), by inserting ''or section 9832'' after ''chapter 37''; and

(B) in section 7353(b)(4), by inserting ''or section 9832'' after ''chapter 37''.

SA 756. Mr. INHOFE submitted an amendment intended to be proposed by him to the bill S. 1050, to authorize appropriations for fiscal year 2004 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle B of title II, add the following:

SEC. 213. GUARDFIST II FIRE SUPPORT TRAINING SYSTEM.

(a) AVAILABILITY OF FUNDS.—(1) Of the amount authorized to be appropriated by section 201(1) for research, development, test, and evaluation for the Army, $791,000 shall be available for Non-System Training Devices Combined Arms (PE 0604715F) for the GUARDFIST II fire support training system.

(2) The amount available under paragraph (1) for the purpose specified in that section is in addition to any other amounts available under this Act for that purpose.

(b) OFFSET.—Of the amount authorized to be appropriated by section 201(1) for research, development, test, and evaluation for the Army, the amount available for Next Generation Training and Simulation Systems (PE 0603015A) for the Institute for Creative Technologies (ICT) is hereby reduced by $791,000.

NOTICES OF HEARINGS/MEETINGS

COMMITTEE ON INDIAN AFFAIRS

Mr. CAMPBELL. Mr. President, I would like to announce that the Committee on Indian Affairs will meet on Wednesday, May 21, 2003 at 10 a.m. in room 485 of the Russell Senate Office Building to conduct an oversight hearing on Reorganization of the Bureau of Indian Affairs.

Those wishing additional information may contact the Indian Affairs Committee at 224–2251.

COMMITTEE ON INDIAN AFFAIRS

Mr. CAMPBELL. Mr. President, I would like to announce that the Committee on Indian Affairs will meet on Thursday, May 22, 2003 at 10 a.m. in room 485 of the Russell Senate Office Building to conduct an oversight hearing on the Status of Telecommunications in Indian Country.

Those wishing additional information may contact the Indian Affairs Committee at 224–2251.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. WARNER. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on May 20, 2003, at 2:00 P.M. to conduct an oversight hearing on ''overview of the fair credit reporting act and issues presented by the re-authorization of the expiring preemption provisions.''

The committee will also vote on the nominations of Dr. Nicholas Gregory Mankiw, of Massachusetts, to be a member of the council of economic advisors, executive office of the president; Mr. Steven B. Nesmith, of Pennsylvania, to be assistant secretary for

congressional and intergovernmental relations, U.S. Department of Housing and Urban Development; and Mr. Jose Teran, of Florida, Mr. James Broaddus, of Texas, Mr. Lane Carson, of Louisiana, and Mr. Morgan Edwards, of North Carolina, to be members of the Board of Directors, National Institute of Building Sciences.

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

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. WARNER. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet on Tuesday, May 20, 2003, at 9:30 am on the CEO Compensation in the Post-Enron Era, in Room SR–253.

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

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. WARNER. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet on Tuesday, May 20, 2003, at 2:30 pm on the North Pacific Crab, in SR–253.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. WARNER. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Tuesday, May 20, 2003 at 2:30 p.m. to hold a hearing on the Future of U.S. Economic Relations in the Western Hemisphere

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

COMMITTEE ON THE JUDICIARY

Mr. WARNER. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet to conduct a hearing on ''Narcco-Terrorism: International Drug Trafficking and Terrorism—A Dangerous Mix'' on Tuesday, May 20, 2003, at 10 a.m., in the Dirksen Senate Office Building Room 226.

Panel 1: Mr. Steven W. Casteel, Assistant Administrator for Intelligence, Drug Enforcement Administration, Washington, DC; Mr. Steve McCraw, Assistant Director for Intelligence, Federal Bureau of Investigation, Washington, DC; and Ms. Deborah A. McCarthy, Deputy Assistant Secretary of State, Bureau of International Narcotics and Law Enforcement Affairs, Department of State, Washington, DC.

Panel 2: Mr. Raphael Perl, Specialist in International Affairs, Congressional Research Service, Library, of Congress, Washington, DC; Mr. Rensselaer W. Lee III, President, Global Advisory Service, McLean, VA; and Mr. Larry Johnson, Managing Director, Berg Associates, Washington, DC.

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

COMMITTEE ON RULES AND ADMINISTRATION

Mr. WARNER. Mr. President, I ask unanimous consent that the Committee on Rules and Administration be authorized to meet during the session of the Senate on Tuesday, May 20, 2003, at 9:30 a.m., to conduct an oversight hearing on the operations of the John F. Kennedy Center for the Performing Arts and the Smithsonian Institution.

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

SPECIAL COMMITTEE ON AGING

Mr. WARNER. Mr. President, I ask unanimous consent that the Special Committee on Aging be authorized to meet today, May 20, 2003 at 2 p.m. in Dirksen 628 for the purpose of conducting a hearing.

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

SUBCOMMITTEE ON FINANCIAL MANAGEMENT, THE BUDGET, AND INTERNATIONAL SECURITY

Mr. WARNER. Mr. President, I ask unanimous consent that the Committee on Governmental Affairs' Subcommittee on Financial Management, the Budget, and International Security be authorized to meet on Tuesday, May 20, 2003, at 2 p.m. for a hearing regarding ''Drugs, Counterfeiting, and Arms Trade: North Korea's Crime Syndicate''.

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

SUBCOMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

Mr. WARNER. Mr. President, I ask unanimous consent that the Subcommittee on Transportation and Infrastructure be authorized to meet on Tuesday, May 20 at 2 p.m. to conduct a hearing to review the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2003, the Administration's proposal to reauthorize TEA21. The hearing will take place in Senate Dirksen 410.

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

PRIVILEGE OF THE FLOOR

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

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

Mr. REED. Mr. President, I ask unanimous consent, on behalf of Senator MIKULSKI, that Michael Hadley, a defense fellow in her office, be granted the privilege of the floor for the duration of consideration of the Defense authorization bill.

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

Mr. LEVIN. Mr. President, I ask unanimous consent that Dr. Jonathan Epstein, a legislative fellow in Senator BINGAMAN's office, be granted the privilege of the floor during the pendency of S. 1050 and any votes thereon.

I further ask unanimous consent that Kathryn Kolbe, a legislative fellow in the office of Senator KAY BAILEY HUTCHISON, be granted the privilege of the floor during the remainder of the consideration of S. 1050.

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

Mr. ALLARD. Mr. President, I ask unanimous consent that Ed Rimback, a military fellow in my office, be provided floor privileges for the duration of the debate on S. 1050.

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

Mrs. FEINSTEIN. Mr. President, I ask unanimous consent that a fellow in my office, Greg Brown, be granted the privilege of the floor for the debate on the Defense bill.

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

Mr. WARNER. Mr. President, I ask unanimous consent that John Gumbleton, a military fellow in my office, as well as James Kadtke, a science technology fellow in my office, be granted the privilege of the floor during debate on S. 1050.

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

Mr. KENNEDY. Mr. President, I ask unanimous consent that Stephan Tela, a Navy fellow, be granted the privilege of the floor during consideration of S. 1050.

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

UNANIMOUS CONSENT AGREEMENT—H.R. 2

Mr. WARNER. Mr. President, I ask unanimous consent that notwithstanding passage of H.R. 2, the following Senate amendments be modified with the changes that are at the desk: Landrieu No. 580; Schumer No. 651; Grassley-Baucus No. 680; Baucus-Grassley No. 644.

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

The amendments are as follows:

AMENDMENT NO. 580

At the end of end of subtitle C of title V add the following:

SEC. ___. RENEWAL COMMUNITY EMPLOYERS MAY QUALIFY FOR EMPLOYMENT CREDIT BY EMPLOYING RESIDENTS OF CERTAIN OTHER RENEWAL COMMUNITIES.

(a) IN GENERAL.—Section 1400H(b)(2) (relating to modification) is amended by striking ''and'' at the end of paragraph (1), by striking the period at the end of paragraph (2) and inserting '', and'', and by adding at the end the following new paragraph:

''(3) subsection (d)(1)(B) thereof shall be applied by substituting 'such renewal community, an adjacent renewal community within the same State as such renewal community, or a renewal community within such State which is within 5 miles of any border of such renewal community' for 'such empowerment zone'.''.

(c) EFFECTIVE DATES.—

(1) The amendments made by subsection (a) shall take effect as if included in the amendment made by section 101(a) of the Community Renewal Tax Relief Act of 2000.

AMENDMENT NO. 651

At the end of subtitle C of title V, insert the following:

SEC. ___. EXPANSION OF DESIGNATED RENEWAL COMMUNITY AREA BASED ON 2000 CENSUS DATA.

(a) RENEWAL COMMUNITIES.—

(1) IN GENERAL.—Section 1400E (relating to designation of renewal communities) is amended by adding at the end the following new subsection:

''(g) EXPANSION OF DESIGNATED AREAS.—

''(1) EXPANSION BASED ON 2000 CENSUS.—At the request of the nominating entity with respect to a renewal community, the Secretary of Housing and Urban Development may expand the area of a renewal community to include any census tract—

''(A) which, at the time such community was nominated, met the requirements of this section for inclusion in such community but for the failure of such tract to meet 1 or more of the population and poverty rate requirements of this section using 1990 census data, and

''(B) which meets all failed population and poverty rate requirements of this section using 2000 census data.

''(2) EXPANSION TO CERTAIN AREAS WHICH DO NOT MEET POPULATION REQUIREMENTS.—

''(A) IN GENERAL.—At the request of 1 or more local governments and the State or States in which an area described in subparagraph (B) is located, the Secretary of Housing and Urban Development may expand a designated area to include such area.

''(B) AREA.—An area is described in this subparagraph if—

''(i) the area is adjacent to at least 1 other area designated as a renewal community,

''(ii) the area has a population less than the population required under subsection (c)(2)(C), and

''(a) the area meets the requirements of subparagraphs (A) and (B) of subsection (c)(2) and subparagraph (A) of subsection (c)(3), or (b) the area contains a population of less than 100 people.

''(3) APPLICABILITY.—Any expansion of a renewal community under this section shall take effect as provided in subsection (b).''.

(2) EFFECTIVE DATE.—The amendment made by this subsection shall take effect as if included in the amendments made by section 101 of the Community Renewal Tax Relief Act of 2000.

AMENDMENT NO. 680

On page 8, beginning with line 13, strike all through the matter following line 2 on page 9, and insert:

''(A) JOINT RETURN AND SURVIVING SPOUSE.—In the case of a joint return or a surviving spouse, the amount under the following table:

''In the case of taxable years beginning:	**The exemption amount is:**
Before 2001	$45,000
In 2001 and 2002	$49,000
In 2003	$ 60,500
In 2004	$60,500
In 2005	$60,500
After 2005	$45,000.

''(B) INDIVIDUAL NOT MARRIED AND NOT A SURVIVING SPOUSE.—In the case of an individual who is not a married individual and is not a surviving spouse, the amount under the following table:

''In the case of taxable years beginning:	**The exemption amount is:**
Before 2001	$33,750
In 2001 and 2002	$35,750
In 2003	$41,500
In 2004	$41,500
In 2005	$41,500
After 2005	$33,750.''.

Beginning on page 82, line 25, strike all through page 83, line 13, and insert:

(2) EXCEPTION FOR EXISTING FASITS.—The amendments made by this section shall not apply to any FASIT in existence on the date of the enactment of this Act to the extent that regular interests issued by the FASIT before such date continue to remain outstanding in accordance with the original terms of issuance of such interests.

On page 165, beginning with line 21, strike all through page 166, line 8, and insert:

(a) GENERAL RULE.—If—

(1) a taxpayer eligible to participate in—

(A) the Department of the Treasury's Offshore Voluntary Compliance Initiative, or

(B) the Department of the Treasury's voluntary disclosure initiative which applies to the taxpayer by reason of the taxpayer's underreporting of United States income tax liability through financial arrangements which rely on the use of offshore arrangements which were the subject of the initiative described in subparagraph (A), and

(2) any interest or applicable penalty is imposed with respect to any arrangement to which any initiative described in paragraph (1) applied or to any underpayment of Federal income tax attributable to items arising in connection with any arrangement described in paragraph (1),

then, notwithstanding any other provision of law, the amount of such interest or penalty shall be equal to twice that determined without regard to this section.

On page 206, between lines 19 and 20, insert:

SEC. ___. INCREASE IN AGE OF MINOR CHILDREN WHOSE UNEARNED INCOME IS TAXED AS IF PARENT'S INCOME.

(a) IN GENERAL.—Section 1(g)(2)(A) (relating to child to whom subsection applies) is amended by striking ''age 14'' and inserting ''age 18''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2003.

SEC. ___. CONSISTENT AMORTIZATION OF PERIODS FOR INTANGIBLES.

(a) START-UP EXPENDITURES.—

(1) ALLOWANCE OF DEDUCTION.—Paragraph (1) of section 195(b) (relating to start-up expenditures) is amended to read as follows:

''(1) ALLOWANCE OF DEDUCTION.—If a taxpayer elects the application of this subsection with respect to any start-up expenditures—

''(A) the taxpayer shall be allowed a deduction for the taxable year in which the active trade or business begins in an amount equal to the lesser of—

''(i) the amount of start-up expenditures with respect to the active trade or business, or

''(ii) $5,000, reduced (but not below zero) by the amount by which such start-up expenditures exceed $50,000, and

''(B) the remainder of such start-up expenditures shall be allowed as a deduction ratably over the 180-month period beginning with the month in which the active trade or business begins.''.

(2) CONFORMING AMENDMENT.—Subsection (b) of section 195 is amended by striking ''AMORTIZE'' and inserting ''DEDUCT'' in the heading.

(b) ORGANIZATIONAL EXPENDITURES.—Subsection (a) of section 248 (relating to organizational expenditures) is amended to read as follows:

''(a) ELECTION TO DEDUCT.—If a corporation elects the application of this subsection (in accordance with regulations prescribed by the Secretary) with respect to any organizational expenditures—

''(1) the corporation shall be allowed a deduction for the taxable year in which the corporation begins business in an amount equal to the lesser of—

''(A) the amount of organizational expenditures with respect to the taxpayer, or

''(B) $5,000, reduced (but not below zero) by the amount by which such organizational expenditures exceed $50,000, and

''(2) the remainder of such organizational expenditures shall be allowed as a deduction ratably over the 180-month period beginning with the month in which the corporation begins business.''.

(c) TREATMENT OF ORGANIZATIONAL AND SYNDICATION FEES OR PARTNERSHIPS.—

(1) IN GENERAL.—Section 709(b) (relating to amortization of organization fees) is amended by redesignating paragraph (2) as paragraph (3) and by amending paragraph (1) to read as follows:

''(1) ALLOWANCE OF DEDUCTION.—If a taxpayer elects the application of this subsection (in accordance with regulations prescribed by the Secretary) with respect to any organizational expenses—

''(A) the taxpayer shall be allowed a deduction for the taxable year in which the partnership begins business in an amount equal to the lesser of—

''(i) the amount of organizational expenses with respect to the partnership, or

''(ii) $5,000, reduced (but not below zero) by the amount by which such organizational expenses exceed $50,000, and

''(B) the remainder of such organizational expenses shall be allowed as a deduction ratably over the 180-month period beginning with the month in which the partnership begins business.

''(2) DISPOSITIONS BEFORE CLOSE OF AMORTIZATION PERIOD.—In any case in which a partnership is liquidated before the end of the period to which paragraph (1)(B) applies, any deferred expenses attributable to the partnership which were not allowed as a deduction by reason of this section may be deducted to the extent allowable under section 165.''.

(2) CONFORMING AMENDMENT.—Subsection (b) of section 709 is amended by striking ''AMORTIZATION'' and inserting ''DEDUCTION'' in the heading.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or incurred after the date of the enactment of this Act.

SEC. ___. CLARIFICATION OF DEFINITION OF NONQUALIFIED PREFERRED STOCK.

(a) IN GENERAL.—Section 351(g)(3)(A) is amended by adding at the end the following: ''Stock shall not be treated as participating in corporate growth to any significant extent unless there is a real and meaningful likelihood of the shareholder actually participating in the earnings and growth of the corporation.''

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to transactions after May 14, 2003.

SEC. ___. CLASS LIVES FOR UTILITY GRADING COSTS.

(a) GAS UTILITY PROPERTY.—Section 168(e)(3)(E) (defining 15-year property) is amended by striking ''and'' at the end of clause (ii), by striking the period at the end of clause (iii) and inserting '', and'', and by adding at the end the following new clause:

''(iv) initial clearing and grading land improvements with respect to gas utility property.''

(b) ELECTRIC UTILITY PROPERTY.—Section 168(e)(3) is amended by adding at the end the following new subparagraph:

''(F) 20-YEAR PROPERTY.—The term '20-year property' means initial clearing and grading land improvements with respect to any electric utility transmission and distribution plant.''

(c) CONFORMING AMENDMENTS.—The table contained in section 168(g)(3)(B) is amended—

(1) by inserting ''or (E)(iv)'' after ''(E)(iii)'', and

(2) by adding at the end the following new item:

''(F) 225''. .....

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after the date of the enactment of this Act.

SEC. ___. PROHIBITION ON NONRECOGNITION OF GAIN THROUGH COMPLETE LIQUIDATION OF HOLDING COMPANY.

(a) IN GENERAL.—Section 332 is amended by adding at the end the following new subsection:

''(d) RECOGNITION OF GAIN ON LIQUIDATION OF CERTAIN HOLDING COMPANIES.—

''(1) IN GENERAL.—Subsection (a) and section 331 shall not apply to any distribution in complete liquidation of an applicable holding company to the extent of the earnings and profits of such company.

''(2) APPLICABLE HOLDING COMPANY.—For purposes of this subsection—

''(A) IN GENERAL.—The term 'applicable holding company' means any corporation—

''(i) which is a member of a chain of includible corporations with a common parent which is a foreign corporation,

''(ii) the stock of which is directly owned by such common parent or another foreign corporation,

''(iii) substantially all of the assets of which consist of stock in other members of such chain of corporations, and

''(iv) which has not been in existence at least 5 years as of the date of the liquidation.

''(B) INCLUDIBLE CORPORATION.—The term 'includible corporation' has the meaning given such term under section 1504(b) (without regard to paragraph (3) thereof).''

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to distributions in complete liquidation occurring after the date of the enactment of this Act.

SEC. ___. LEASE TERM TO INCLUDE CERTAIN SERVICE CONTRACTS.

(a) IN GENERAL.—Section 168(i)(3) (relating to lease term) is amended by adding at the end the following new subparagraph:

''(C) SPECIAL RULE FOR SERVICE CONTRACTS.—In determining a lease term, there shall be taken into account any optional service contract or other similar arrangement.''

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to leases entered into after the date of the enactment of this Act.

SEC. ___. RECOGNITION OF GAIN FROM THE SALE OF A PRINCIPAL RESIDENCE ACQUIRED IN A LIKE-KIND EXCHANGE WITHIN 5 YEARS OF SALE.

(a) IN GENERAL.—Section 121(d) (relating to special rules for exclusion of gain from sale of principal residence) is amended by adding at the end the following new paragraph:

''(10) PROPERTY ACQUIRED IN LIKE-KIND EXCHANGE.—If a taxpayer acquired property in an exchange to which section 1031 applied, subsection (a) shall not apply to the sale or exchange of such property if it occurs during the 5-year period beginning with the exchange to which section 1031 applied.''

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to sales or exchanges after the date of the enactment of this Act.

Beginning on page 260, line 7, strike all through page 264, line 6, and insert:

SEC. 521. CIVIL RIGHTS TAX RELIEF.

(a) DEDUCTION ALLOWED WHETHER OR NOT TAXPAYER ITEMIZES OTHER DEDUCTIONS.—Subsection (a) of section 62 (defining adjusted gross income) is amended by inserting after paragraph (18) the following new item:

''(19) COSTS INVOLVING DISCRIMINATION SUITS, ETC.—Any deduction allowable under this chapter for attorney fees and court costs paid by, or on behalf of, the taxpayer in connection with any action involving a claim of unlawful discrimination (as defined in subsection (e)) or a claim of a violation of subchapter III of chapter 37 of title 31, United States Code. The preceding sentence shall not apply to any deduction in excess of the amount includible in the taxpayer's gross income for the taxable year on account of a judgment or settlement (whether by suit or agreement and whether as lump sum or periodic payments) resulting from such claim.''.

(b) UNLAWFUL DISCRIMINATION DEFINED.—Section 62 is amended by adding at the end the following new subsection:

''(e) UNLAWFUL DISCRIMINATION DEFINED.—For purposes of subsection (a)(19), the term 'unlawful discrimination' means an act that is unlawful under any of the following:

''(1) Section 302 of the Civil Rights Act of 1991 (2 U.S.C. 1202).

''(2) Section 201, 202, 203, 204, 205, 206, or 207 of the Congressional Accountability Act of 1995 (2 U.S.C. 1311, 1312, 1313, 1314, 1315, 1316, or 1317).

''(3) The National Labor Relations Act (29 U.S.C. 151 et seq.).

''(4) The Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.).

''(5) Section 4 or 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 623 or 633a).

''(6) Section 501 or 504 of the Rehabilitation Act of 1973 (29 U.S.C. 791 or 794).

''(7) Section 510 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1140).

''(8) Title IX of the Education Amendments of 1972 (29 U.S.C. 1681 et seq.).

''(9) The Employee Polygraph Protection Act of 1988 (29 U.S.C. 201 et seq.).

''(10) The Worker Adjustment and Retraining Notification Act (29 U.S.C. 2102 et seq.).

''(11) Section 105 of the Family and Medical Leave Act of 1993 (29 U.S.C. 2615).

''(12) Chapter 43 of title 38, United States Code (relating to employment and reemployment rights of members of the uniformed services).

''(13) Section 1977, 1979, or 1980 of the Revised Statutes (42 U.S.C. 1981, 1983, or 1985).

''(14) Section 703, 704, or 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–2, 2000e–3, or 2000e–16).

''(15) Section 804, 805, 806, 808, or 818 of the Fair Housing Act (42 U.S.C. 3604, 3605, 3606, 3608, or 3617).

''(16) Section 102, 202, 302, or 503 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12112, 12132, 12182, or 12203).

''(17) Any provision of Federal law (popularly known as whistleblower protection provisions) prohibiting the discharge of an employee, the discrimination against an employee, or any other form of retaliation or reprisal against an employee for asserting rights or taking other actions permitted under Federal law.

''(18) Any provision of State or local law, or common law claims permitted under Federal, State, or local law—

''(i) providing for the enforcement of civil rights, or

''(ii) regulating any aspect of the employment relationship, including prohibiting the discharge of an employee, the discrimination against an employee, or any other form of retaliation or reprisal against an employee for asserting rights or taking other actions permitted by law.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to fees and costs paid after the date of the enactment of this Act with respect to any judgment or settlement occurring after such date.

At the end, insert the following:

TITLE VII—EXTENSIONS OF CERTAIN EXPIRING PROVISIONS

Subtitle A—Extensions of Expiring Provisions

SEC. 701. PARITY IN THE APPLICATION OF CERTAIN LIMITS TO MENTAL HEALTH BENEFITS.

(a) IN GENERAL.—Subsection (f) of section 9812 is amended by striking ''2003'' and inserting ''2004''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to plan years beginning after December 31, 2002.

SEC. 702. ALLOWANCE OF NONREFUNDABLE PERSONAL CREDITS AGAINST REGULAR AND MINIMUM TAX LIABILITY.

(a) IN GENERAL.—Paragraph (2) of section 26(a) is amended—

(1) by striking ''RULE FOR 2000, 2001, 2002, AND 2003.—'' and inserting ''RULE FOR 2000, 2001, 2002, 2003, AND 2004.—'', and

(2) by striking ''during 2000, 2001, 2002, or 2003,'' and inserting ''during 2000, 2001, 2002, 2003, or 2004''.

(b) CONFORMING AMENDMENTS.—

(1) Section 904(h) is amended by striking ''during 2000, 2001, 2002, or 2003'' and inserting ''during 2000, 2001, 2002, 2003, or 2004''.

(2) The amendments made by sections 201(b), 202(f), and 618(b) of the Economic Growth and Tax Relief Reconciliation Act of 2001 shall not apply to taxable years beginning during 2004.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2002.

SEC. 703. CREDIT FOR ELECTRICITY PRODUCED FROM CERTAIN RENEWABLE RESOURCES.

(a) IN GENERAL.—Subparagraphs (A), (B), and (C) of section 45(c)(3) are each amended by striking ''2004'' and inserting ''2005''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to facilities placed in service after December 31, 2002.

SEC. 704. WORK OPPORTUNITY CREDIT.

(a) IN GENERAL.—Subparagraph (B) of section 51(c)(4) is amended by striking ''2003'' and inserting ''2004''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to individuals who begin work for the employer after December 31, 2002.

SEC. 705. WELFARE-TO-WORK CREDIT.

(a) IN GENERAL.—Subsection (f) of section 51A is amended by striking ''2003'' and inserting ''2004''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to individuals who begin work for the employer after December 31, 2002.

SEC. 706. TAXABLE INCOME LIMIT ON PERCENTAGE DEPLETION FOR OIL AND NATURAL GAS PRODUCED FROM MARGINAL PROPERTIES.

(a) IN GENERAL.—Subparagraph (H) of section 613A(c)(6) is amended by striking ''2004'' and inserting ''2005''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 2002.

SEC. 707. QUALIFIED ZONE ACADEMY BONDS.

(a) IN GENERAL.—Paragraph (1) of section 1397E(e) is amended by striking ''2000, 2001, 2002, and 2003'' and inserting ''2000, 2001, 2002, 2003, and 2004''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to obligations issued after the date of the enactment of this Act.

SEC. 708. COVER OVER OF TAX ON DISTILLED SPIRITS.

(a) IN GENERAL.—Paragraph (1) of section 7652(f) is amended by striking ''January 1, 2004'' and inserting ''January 1, 2005''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to articles brought into the United States after December 31, 2002.

SEC. 709. DEDUCTION FOR CORPORATE DONATIONS OF COMPUTER TECHNOLOGY.

(a) EXTENSION OF DEDUCTION.—Section 170(e)(6)(G) (relating to termination) is amended by striking ''December 31, 2003'' and inserting ''December 31, 2004''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to contributions made after December 31, 2002.

SEC. 710. CREDIT FOR QUALIFIED ELECTRIC VEHICLES.

(a) IN GENERAL.—Section 30 is amended—

(1) in subsection (b)(2)—

(A) by striking ''December 31, 2003,'' and inserting ''December 31, 2004,'', and

(B) in subparagraphs (A), (B), and (C), by striking ''2004'', ''2005'', and ''2006'', respectively, and inserting ''2005'', ''2006'', and ''2007'', respectively.

(2) in subsection (e), by striking ''December 31, 2006'' and inserting ''December 31, 2007''.

(b) CONFORMING AMENDMENTS.—Clause (iii) of section 280F(a)(1)(C) is amended by striking ''2007'' and inserting ''2008''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after December 31, 2002.

SEC. 711. DEDUCTION FOR CLEAN-FUEL VEHICLES AND CERTAIN REFUELING PROPERTY.

(a) IN GENERAL.—Section 179A is amended—

(1) in subsection (b)(1)(B)—

(A) by striking ''December 31, 2003,'' and inserting ''December 31, 2004,'', and

(B) in clauses (i), (ii), and (iii), by striking ''2004'', ''2005'', and ''2006'', respectively, and inserting ''2005'', ''2006'', and ''2007'', respectively, and

(2) in subsection (f), by striking ''December 31, 2006'' and inserting ''December 31, 2007''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to property placed in service after December 31, 2002.

SEC. 712. DEDUCTION FOR CERTAIN EXPENSES OF SCHOOL TEACHERS.

(a) IN GENERAL.—Subparagraph (D) of section 62(a)(2) is amended by striking ''during 2002 or 2003'' and inserting ''during 2002, 2003, or 2004''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 2002.

SEC. 713. AVAILABILITY OF MEDICAL SAVINGS ACCOUNTS.

(a) IN GENERAL.—Paragraphs (2) and (3)(B) of section 220(i) (defining cut-off year) are each amended by striking ''2003'' each place it appears and inserting ''2004''.

(b) CONFORMING AMENDMENTS.—

(1) Paragraph (2) of section 220(j) is amended by striking ''1998, 1999, 2001, or 2002'' each place it appears and inserting ''1998, 1999, 2001, 2002, or 2003''.

(2) Subparagraph (A) of section 220(j)(4) is amended by striking ''and 2002'' and inserting ''2002, and 2003''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 2003.

SEC. 714. EXPENSING OF ENVIRONMENTAL REMEDIATION COSTS.

(a) EXTENSION OF TERMINATION DATE.—Subsection (h) of section 198 is amended by striking ''2003'' and inserting ''2004''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to expenditures paid or incurred after December 31, 2002.

On Thursday, May 15, 2003, the Senate passed H.R. 2, the text of which follows:

Resolved, That the bill from the House of Representatives (H.R. 2) entitled ''An Act to provide for reconciliation pursuant to section 201 of the concurrent resolution on the budget for fiscal year 2004.'', do pass with the following *AMENDMENT:*

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE; REFERENCES; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Jobs and Growth Tax Relief Reconciliation Act of 2003''.

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

(c) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

TITLE I—ACCELERATION OF CERTAIN PREVIOUSLY ENACTED TAX REDUCTIONS; INCREASED EXPENSING FOR SMALL BUSINESSES

SEC. 101. ACCELERATION OF 10-PERCENT INDIVIDUAL INCOME TAX RATE BRACKET EXPANSION.

(a) IN GENERAL.—Clause (i) of section 1(i)(1)(B) (relating to the initial bracket amount) is amended by striking ''($12,000 in the case of taxable years beginning before January 1, 2008)''.

(b) INFLATION ADJUSTMENT BEGINNING IN 2004.—Subparagraph (C) of section 1(i)(1) (relating to inflation adjustment) is amended to read as follows:

''(C) INFLATION ADJUSTMENT.—In prescribing the tables under subsection (f) which apply with respect to taxable years beginning in calendar years after 2003—

''(i) the cost-of-living adjustment used in making adjustments to the initial bracket amount shall be determined under subsection (f)(3) by substituting '2002' for '1992' in subparagraph (B) thereof, and

''(ii) such adjustment shall not apply to the amount referred to in subparagraph (B)(iii).

If any amount after adjustment under the preceding sentence is not a multiple of $50, such amount shall be rounded to the next lowest multiple of $50.''.

(c) EFFECTIVE DATES.—

(1) SUBSECTION (a).—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 2002.

(2) SUBSECTION (b).—The amendment made by subsection (b) shall apply to taxable years beginning after December 31, 2003.

(3) TABLES FOR 2003.—The Secretary of the Treasury shall modify each table which has been prescribed for taxable years beginning in 2003 and which relates to the amendment made by subsection (a), section 102, or section 103 to reflect each such amendment.

SEC. 102. ACCELERATION OF REDUCTION IN INDIVIDUAL INCOME TAX RATES.

(a) IN GENERAL.—The table in paragraph (2) of section 1(i) (relating to reductions in rates after June 30, 2001) is amended to read as follows:

''In the case of taxable years beginning during calendar year:	The corresponding percentages shall be substituted for the following percentages:			
	28%	31%	36%	39.6%
2001	27.5%	30.5%	35.5%	39.1%
2002	27.0%	30.0%	35.0%	38.6%
2003 and thereafter.	25.0%	28.0%	33.0%	35.0%''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2002.

SEC. 103. MINIMUM TAX RELIEF TO INDIVIDUALS.

(a) IN GENERAL.—So much of paragraph (1) of section 55(d) (relating to exemption amount for taxpayers other than corporations) as precedes subparagraph (C) thereof is amended to read as follows:

''(1) EXEMPTION AMOUNT FOR TAXPAYERS OTHER THAN CORPORATIONS.—In the case of a taxpayer other than a corporation, the term 'exemption amount' means as follows:

''(A) JOINT RETURN AND SURVIVING SPOUSE.—In the case of a joint return or a surviving spouse, the amount under the following table:

"In the case of taxable years beginning:	The exemption amount is:
Before 2001	$45,000
In 2001 and 2002	$49,000
In 2003	$60,500
In 2004	$60,500
In 2005	$60,500
After 2005	$45,000.

''(B) INDIVIDUAL NOT MARRIED AND NOT A SURVIVING SPOUSE.—In the case of an individual who is not a married individual and is not a surviving spouse, the amount under the following table:

"In the case of taxable years beginning:	The exemption amount is:
Before 2001	$33,750
In 2001 and 2002	$35,750
In 2003	$41,500
In 2004	$41,500
In 2005	$41,500
After 2005	$33,750.''.

(b) CONFORMING AMENDMENTS.—

(1) Section 55(d)(1)(C) is amended—

(A) by striking '', and'' and inserting a period, and

(B) by striking ''50 percent'' and inserting ''MARRIED INDIVIDUAL FILING A SEPARATE RETURN.—50 percent''.

(2) Section 55(d)(1)(D) is amended by striking ''$22,500'' and inserting ''ESTATE AND TRUST.—$22,500''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2002.

SEC. 104. ACCELERATION OF INCREASE IN STANDARD DEDUCTION FOR MARRIED TAXPAYERS FILING JOINT RETURNS.

(a) IN GENERAL.—Paragraph (7) of section 63(c) (relating to standard deduction) is amended to read as follows:

''(7) APPLICABLE PERCENTAGE.—For purposes of paragraph (2), the applicable percentage shall be determined in accordance with the following table:

"For taxable years beginning in calendar year—	The applicable percentage is—
2003	195
2004	200
2005	174
2006	184
2007	187
2008	190
2009 and thereafter	200.''.

(b) CONFORMING AMENDMENT.—Section 301(d) of the Economic Growth and Tax Relief Reconciliation Act of 2001 is amended by striking ''2004'' and inserting ''2002''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2002.

SEC. 105. ACCELERATION OF 15-PERCENT INDIVIDUAL INCOME TAX RATE BRACKET EXPANSION FOR MARRIED TAXPAYERS FILING JOINT RETURNS.

(a) IN GENERAL.—Subparagraph (B) of section 1(f)(8) (relating to phaseout of marriage penalty in 15-percent bracket) is amended to read as follows:

''(B) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A), the applicable percentage shall be determined in accordance with the following table:

"For taxable years beginning in calendar year—	The applicable percentage is—
2003	195
2004	200
2005	180
2006	187
2007	193
2008 and thereafter	200.''.

(b) CONFORMING AMENDMENT.—Section 302(c) of the Economic Growth and Tax Relief Reconciliation Act of 2001 is amended by striking ''2004'' and inserting ''2002''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2002.

SEC. 106. ACCELERATION OF INCREASE IN, AND REFUNDABILITY OF, CHILD TAX CREDIT.

(a) ACCELERATION OF INCREASE IN CREDIT.—Subsection (a) of section 24 (relating to child tax credit) is amended to read as follows:

''(a) ALLOWANCE OF CREDIT.—There shall be allowed as a credit against the tax imposed by this chapter for the taxable year with respect to each qualifying child of the taxpayer an amount equal to $1,000.''.

(b) EXPANSION OF CREDIT REFUNDABILITY.—Section 24(d)(1)(B)(i) (relating to portion of credit refundable) is amended by striking ''(10 percent in the case of taxable years beginning before January 1, 2005)''.

(c) ADVANCE PAYMENT OF PORTION OF INCREASED CREDIT IN 2003.—

(1) IN GENERAL.—Subchapter B of chapter 65 (relating to abatements, credits, and refunds) is amended by adding at the end the following new section:

''SEC. 6429. ADVANCE PAYMENT OF PORTION OF INCREASED CHILD CREDIT FOR 2003.

''(a) IN GENERAL.—Each taxpayer who claimed a credit under section 24 on the return for the taxpayer's first taxable year beginning in 2002 shall be treated as having made a payment against the tax imposed by chapter 1 for such taxable year in an amount equal to the child tax credit refund amount (if any) for such taxable year.

''(b) CHILD TAX CREDIT REFUND AMOUNT.—For purposes of this section, the child tax credit refund amount is the amount by which the aggregate credits allowed under part IV of subchapter A of chapter 1 for such first taxable year would have been increased if—

''(1) the per child amount under section 24(a)(2) for such year were $1,000,

''(2) only qualifying children (as defined in section 24(c)) of the taxpayer for such year who had not attained age 17 as of December 31, 2003, were taken into account, and

''(3) section 24(d)(1)(B)(ii) did not apply.

''(c) TIMING OF PAYMENTS.—In the case of any overpayment attributable to this section, the Secretary shall, subject to the provisions of this title, refund or credit such overpayment as rapidly as possible and, to the extent practicable, before October 1, 2003. No refund or credit shall be made or allowed under this section after December 31, 2003.

''(d) COORDINATION WITH CHILD TAX CREDIT.—

''(1) IN GENERAL.—The amount of credit which would (but for this subsection and section 26) be allowed under section 24 for the taxpayer's first taxable year beginning in 2003 shall be reduced (but not below zero) by the payments made to the taxpayer under this section. Any failure to so reduce the credit shall be treated as arising out of a mathematical or clerical error and assessed according to section 6213(b)(1).

''(2) JOINT RETURNS.—In the case of a payment under this section with respect to a joint return, half of such payment shall be treated as having been made to each individual filing such return.

''(e) NO INTEREST.—No interest shall be allowed on any overpayment attributable to this section.''.

(2) CLERICAL AMENDMENT.—The table of sections for subchapter B of chapter 65 is amended by adding at the end the following new item:

''Sec. 6429. Advance payment of portion of increased child credit for 2003.''.

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years beginning after December 31, 2002.

(2) SUBSECTION (c).—The amendments made by subsection (c) shall take effect on the date of the enactment of this Act.

SEC. 107. INCREASED EXPENSING FOR SMALL BUSINESS.

(a) IN GENERAL.—Paragraph (1) of section 179(b) (relating to dollar limitation) is amended to read as follows:

''(1) DOLLAR LIMITATION.—The aggregate cost which may be taken into account under subsection (a) for any taxable year shall not exceed $25,000 ($100,000 in the case of taxable years beginning after 2002 and before 2008).''.

(b) INCREASE IN QUALIFYING INVESTMENT AT WHICH PHASEOUT BEGINS.—Paragraph (2) of section 179(b) (relating to reduction in limitation) is amended by inserting ''($400,000 in the case of taxable years beginning after 2002 and before 2008)'' after ''$200,000''.

(c) OFF-THE-SHELF COMPUTER SOFTWARE.—Paragraph (1) of section 179(d) (defining section 179 property) is amended to read as follows:

''(1) SECTION 179 PROPERTY.—For purposes of this section, the term 'section 179 property' means property—

''(A) which is—

''(i) tangible property (to which section 168 applies), or

''(ii) computer software (as defined in section 197(e)(3)(B)) which is described in section 197(e)(3)(A)(i), to which section 167 applies, and which is placed in service in a taxable year beginning after 2002 and before 2008,

''(B) which is section 1245 property (as defined in section 1245(a)(3)), and

''(C) which is acquired by purchase for use in the active conduct of a trade or business.

Such term shall not include any property described in section 50(b) and shall not include air conditioning or heating units.''.

(d) ADJUSTMENT OF DOLLAR LIMIT AND PHASEOUT THRESHOLD FOR INFLATION.—Subsection (b) of section 179 (relating to limitations) is amended by adding at the end the following new paragraph:

''(5) INFLATION ADJUSTMENTS.—

''(A) IN GENERAL.—In the case of any taxable year beginning in a calendar year after 2003 and before 2008, the $100,000 and $400,000 amounts in paragraphs (1) and (2) shall each be increased by an amount equal to—

''(i) such dollar amount, multiplied by

''(ii) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, by substituting 'calendar year 2002' for 'calendar year 1992' in subparagraph (B) thereof.

''(B) ROUNDING.—

''(i) DOLLAR LIMITATION.—If the amount in paragraph (1) as increased under subparagraph (A) is not a multiple of $1,000, such amount shall be rounded to the nearest multiple of $1,000.

''(ii) PHASEOUT AMOUNT.—If the amount in paragraph (2) as increased under subparagraph (A) is not a multiple of $10,000, such amount shall be rounded to the nearest multiple of $10,000.''.

(e) REVOCATION OF ELECTION.—Paragraph (2) of section 179(c) (relating to election irrevocable) is amended to read as follows:

''(2) REVOCATION OF ELECTION.—An election under paragraph (1) with respect to any taxable year beginning after 2002 and before 2008, and any specification contained in any such election, may be revoked by the taxpayer with respect to any property. Such revocation, once made, shall be irrevocable.''.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2002.

SEC. 108. APPLICATION OF EGTRRA SUNSET TO THIS TITLE.

Each amendment made by this title (other than section 107) shall be subject to title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001 to the same extent and in the same manner as the provision of such Act to which such amendment relates.

TITLE II—PARTIAL EXCLUSION OF DIVIDENDS

SEC. 201. PARTIAL EXCLUSION OF DIVIDENDS RECEIVED BY INDIVIDUALS.

(a) GENERAL RULE.—Part III of subchapter B of chapter 1 is amended by inserting after section 115 the following new section:

''SEC. 116. PARTIAL EXCLUSION OF DIVIDENDS RECEIVED BY INDIVIDUALS.

''(a) EXCLUSION FROM GROSS INCOME.—

''(1) IN GENERAL.—Gross income does not include the applicable percentage of qualified dividend income received during the taxable year by an individual.

''(2) APPLICABLE PERCENTAGE.—For purposes of this subsection, the applicable percentage is—

''(A) 50 percent in the case of taxable years beginning in 2003,

''(B) 100 percent in the case of taxable years beginning in 2004, 2005, and 2006, and

''(C) zero percent in the case of any other taxable year.

''(b) QUALIFIED DIVIDEND INCOME.—For purposes of this subsection—

''(1) IN GENERAL.—The term 'qualified dividend income' means dividends received with respect to any share of stock of—

''(A) any domestic corporation, or

''(B) any foreign corporation but only if such share of stock is readily tradable on an established securities market.

''(2) CERTAIN DIVIDENDS EXCLUDED.—Such term shall not include—

''(A) any dividend from a corporation which for the taxable year of the corporation in which the distribution is made, or the preceding taxable year, is a corporation exempt from tax under section 501 or 521,

''(B) any amount allowed as a deduction under section 591 (relating to deduction for dividends paid by mutual savings banks, etc.), and

''(C) any dividend described in section 404(k).

''(3) EXCLUSION OF DIVIDENDS OF CERTAIN FOREIGN CORPORATIONS.—Such term shall not include any dividend from a foreign corporation which for the taxable year of the corporation in which the distribution was made, or the preceding taxable year, is a foreign personal holding company (as defined in section 552), a foreign investment company (as defined in section 1246(b)), or a passive foreign investment company (as defined in section 1297).

''(4) COORDINATION WITH SECTION 246(C).—Such term shall not include any dividend on any share of stock—

''(A) with respect to which the holding period requirements of section 246(c) are not met, or

''(B) to the extent that the taxpayer is under an obligation (whether pursuant to a short sale or otherwise) to make related payments with respect to positions in substantially similar or related property.

''(c) SPECIAL RULES.—

''(1) AMOUNTS TAKEN INTO ACCOUNT AS INVESTMENT INCOME.—Qualified dividend income shall not include any amount which the taxpayer takes into account as investment income under section 163(d)(4)(B).

''(2) COORDINATION WITH FOREIGN TAX CREDIT AND DEDUCTION.—No credit shall be allowed under section 901, and no deduction shall be allowed under this chapter, for any taxes paid or accrued with respect to any income excludable under this section.

''(3) CERTAIN NONRESIDENT ALIENS INELIGIBLE FOR EXCLUSION.—In the case of a nonresident alien individual, subsection (a) shall apply only in determining the tax imposed for the taxable year by sections 871(b)(1) and 877(b).

''(4) EXCLUSION DISREGARDED IN DETERMINING INCOME FOR CERTAIN PURPOSES.—Subsection (a) shall not apply for purposes of determining amounts of income under sections 32(i), 86(b), 135(b), 137(b), 219(g), 221(b), 222(b), 408A(c)(3), 469(i), and 530(c), or subpart A of part IV of subchapter A.

''(5) TREATMENT OF DIVIDENDS FROM REGULATED INVESTMENT COMPANIES AND REAL ESTATE INVESTMENT TRUSTS.—A dividend from a regulated investment company or real estate investment trust shall be subject to the limitations prescribed in sections 854 and 857.''.

(b) EXCLUSION OF DIVIDENDS FROM INVESTMENT INCOME.—Subparagraph (B) of section 163(d)(4) (defining net investment income) is amended by adding at the end the following flush sentence:

''Such term shall include qualified dividend income (as defined in section 116(b)) only to the extent the taxpayer elects to treat such income as investment income for purposes of this subsection.''.

(c) TREATMENT OF DIVIDENDS FROM REGULATED INVESTMENT COMPANIES.—

(1) Subsection (a) of section 854 (relating to dividends received from regulated investment companies) is amended by inserting ''section 116 (relating to partial exclusion of dividends received by individuals) and'' after ''For purposes of''.

(2) Paragraph (1) of section 854(b) (relating to other dividends) is amended by redesignating subparagraph (B) as subparagraph (C) and by inserting after subparagraph (A) the following new subparagraph:

''(B) EXCLUSION UNDER SECTION 116.—

''(i) IN GENERAL.—If the aggregate dividends received by a regulated investment company during any taxable year are less than 95 percent of its gross income, then, in computing the exclusion under section 116, rules similar to the rules of subparagraph (A) shall apply.

''(ii) GROSS INCOME.—For purposes of clause (i), in the case of 1 or more sales or other dispositions of stock or securities, the term 'gross income' includes only the excess of—

''(I) the net short-term capital gain from such sales or dispositions, over

''(II) the net long-term capital loss from such sales or dispositions.''.

(3) Subparagraph (C) of section 854(b)(1), as redesignated by paragraph (2), is amended by striking ''subparagraph (A)'' and inserting ''subparagraph (A) or (B)''.

(4) Paragraph (2) of section 854(b) is amended by inserting ''the exclusion under section 116 and'' after ''for purposes of''.

(5) Subsection (b) of section 854 is amended by adding at the end the following new paragraph:

''(5) COORDINATION WITH SECTION 116.—For purposes of paragraph (1)(B), an amount shall be treated as a dividend only if the amount is qualified dividend income (within the meaning of section 116(b)).''.

(d) TREATMENT OF DIVIDENDS RECEIVED FROM REAL ESTATE INVESTMENT TRUSTS.—Section 857(c) (relating to restrictions applicable to dividends received from real estate investment trusts) is amended to read as follows:

''(c) RESTRICTIONS APPLICABLE TO DIVIDENDS RECEIVED FROM REAL ESTATE INVESTMENT TRUSTS.—

''(1) SECTION 243.—For purposes of section 243 (relating to deductions for dividends received by corporations), a dividend received from a real estate investment trust which meets the requirements of this part shall not be considered a dividend.

''(2) SECTION 116.—For purposes of section 116 (relating to exclusion of dividends), rules similar to the rules of section 854(b)(1)(B) shall apply to dividends received from a real estate trust which meets the requirements of this part.''.

(e) CONFORMING AMENDMENTS.—

(1) Subsection (f) of section 301 is amended adding at the end the following new paragraph:

''(4) For partial exclusion from gross income of dividends received by individuals, see section 116.''.

(2) Paragraph (1) of section 306(a) is amended by adding at the end the following new subparagraph:

''(D) TREATMENT AS DIVIDEND.—For purposes of section 116, any amount treated as ordinary income under this paragraph shall be treated as a dividend received from the corporation.''.

(3)(A) Subpart C of part II of subchapter C of chapter 1 (relating to collapsible corporations) is repealed.

(B)(i) Section 338(h) is amended by striking paragraph (14).

(ii) Sections 467(c)(5)(C), 1255(b)(2), and 1257(d) are each amended by striking '', 341(e)(12),''.

(iii) The table of subparts for part II of subchapter C of chapter 1 is amended by striking the item related to subpart C.

(4) Section 531 is amended—

(A) by inserting ''the taxable percentage of'' after ''equal to'', and

(B) by adding at the end the following: ''For purposes of this section, the taxable percentage is 100 percent minus the applicable percentage (as defined in section 116(a)(2)).''

(5) Section 541 is amended—

(A) by inserting ''the taxable percentage of'' after ''equal to'', and

(B) by adding at the end the following: ''For purposes of this section, the taxable percentage is 100 percent minus the applicable percentage (as defined in section 116(a)(2)).''

(6) Section 584(c) is amended by adding at the end the following new flush sentence:

''The proportionate share of each participant in the amount of dividends received by the common trust fund and to which section 116 applies shall be considered for purposes of such paragraph as having been received by such participant.''.

(7) Section 643(a) is amended by redesignating paragraph (7) as paragraph (8) and by inserting after paragraph (6) the following new paragraph:

''(7) EXCLUDED DIVIDENDS.—There shall be included the amount of any dividends excluded from gross income under section 116 (relating to partial exclusion of dividends).''.

(8) Paragraph (5) of section 702(a) is amended to read as follows:

''(5) dividends with respect to which section 116 or part VII of subchapter B applies,''.

(9)(A) Section 1059(a) is amended by striking ''corporation'' each place it appears and inserting ''taxpayer''.

(B)(i) The heading for section 1059 is amended by striking ''**CORPORATE**''.

(ii) The item relating to section 1059 in the table of sections for part IV of subchapter O of chapter 1 is amended by striking ''Corporate shareholder's'' and inserting ''Shareholder's''.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2002.

TITLE III—REVENUE PROVISIONS

Subtitle A—Provisions Designed To Curtail Tax Shelters

SEC. 301. CLARIFICATION OF ECONOMIC SUBSTANCE DOCTRINE.

(a) IN GENERAL.—Section 7701 is amended by redesignating subsection (n) as subsection (o) and by inserting after subsection (m) the following new subsection:

''(n) CLARIFICATION OF ECONOMIC SUBSTANCE DOCTRINE; ETC.—

''(1) GENERAL RULES.—

''(A) IN GENERAL.—In applying the economic substance doctrine, the determination of whether a transaction has economic substance shall be made as provided in this paragraph.

''(B) DEFINITION OF ECONOMIC SUBSTANCE.—For purposes of subparagraph (A)—

''(i) IN GENERAL.—A transaction has economic substance only if—

''(I) the transaction changes in a meaningful way (apart from Federal tax effects) the taxpayer's economic position, and

''(II) the taxpayer has a substantial nontax purpose for entering into such transaction and the transaction is a reasonable means of accomplishing such purpose.

In applying subclause (II), a purpose of achieving a financial accounting benefit shall not be taken into account in determining whether a transaction has a substantial nontax purpose if the origin of such financial accounting benefit is a reduction of income tax.

''(ii) SPECIAL RULE WHERE TAXPAYER RELIES ON PROFIT POTENTIAL.—A transaction shall not be treated as having economic substance by reason of having a potential for profit unless—

''(I) the present value of the reasonably expected pre-tax profit from the transaction is substantial in relation to the present value of the expected net tax benefits that would be allowed if the transaction were respected, and

''(II) the reasonably expected pre-tax profit from the transaction exceeds a risk-free rate of return.

''(C) TREATMENT OF FEES AND FOREIGN TAXES.—Fees and other transaction expenses and foreign taxes shall be taken into account as expenses in determining pre-tax profit under subparagraph (B)(ii).

''(2) SPECIAL RULES FOR TRANSACTIONS WITH TAX-INDIFFERENT PARTIES.—

''(A) SPECIAL RULES FOR FINANCING TRANSACTIONS.—The form of a transaction which is in substance the borrowing of money or the acquisition of financial capital directly or indirectly from a tax-indifferent party shall not be respected if the present value of the deductions to be claimed with respect to the transaction is substantially in excess of the present value of the anticipated economic returns of the person lending the money or providing the financial capital. A public offering shall be treated as a borrowing, or an acquisition of financial capital, from a tax-indifferent party if it is reasonably expected that at least 50 percent of the offering will be placed with tax-indifferent parties.

''(B) ARTIFICIAL INCOME SHIFTING AND BASIS ADJUSTMENTS.—The form of a transaction with a tax-indifferent party shall not be respected if—

''(i) it results in an allocation of income or gain to the tax-indifferent party in excess of such party's economic income or gain, or

''(ii) it results in a basis adjustment or shifting of basis on account of overstating the income or gain of the tax-indifferent party.

''(3) DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—

''(A) ECONOMIC SUBSTANCE DOCTRINE.—The term 'economic substance doctrine' means the common law doctrine under which tax benefits under subtitle A with respect to a transaction are not allowable if the transaction does not have economic substance or lacks a business purpose.

''(B) TAX-INDIFFERENT PARTY.—The term 'tax-indifferent party' means any person or entity not subject to tax imposed by subtitle A. A person shall be treated as a tax-indifferent party with respect to a transaction if the items taken into account with respect to the transaction have no substantial impact on such person's liability under subtitle A.

''(C) EXCEPTION FOR PERSONAL TRANSACTIONS OF INDIVIDUALS.—In the case of an individual, this subsection shall apply only to transactions entered into in connection with a trade or business or an activity engaged in for the production of income.

''(D) TREATMENT OF LESSORS.—A lessor of tangible property subject to a lease shall be treated as satisfying the requirements of paragraph (1)(B)(ii) with respect to the leased property if such lease satisfies such requirements as provided by the Secretary.

''(4) OTHER COMMON LAW DOCTRINES NOT AFFECTED.—Except as specifically provided in this subsection, the provisions of this subsection shall not be construed as altering or supplanting any other rule of law, and the requirements of this subsection shall be construed as being in addition to any such other rule of law.

''(5) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection. Such regulations may include exemptions from the application of this subsection.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions entered into on or after May 8, 2003.

SEC. 302. PENALTY FOR FAILING TO DISCLOSE REPORTABLE TRANSACTION.

(a) IN GENERAL.—Part I of subchapter B of chapter 68 (relating to assessable penalties) is amended by inserting after section 6707 the following new section:

''SEC. 6707A. PENALTY FOR FAILURE TO INCLUDE REPORTABLE TRANSACTION INFORMATION WITH RETURN OR STATEMENT.

''(a) IMPOSITION OF PENALTY.—Any person who fails to include on any return or statement any information with respect to a reportable transaction which is required under section 6011 to be included with such return or statement shall pay a penalty in the amount determined under subsection (b).

''(b) AMOUNT OF PENALTY.—

''(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amount of the penalty under subsection (a) shall be $50,000.

''(2) LISTED TRANSACTION.—The amount of the penalty under subsection (a) with respect to a listed transaction shall be $100,000.

''(3) INCREASE IN PENALTY FOR LARGE ENTITIES AND HIGH NET WORTH INDIVIDUALS.—

''(A) IN GENERAL.—In the case of a failure under subsection (a) by—

''(i) a large entity, or

''(ii) a high net worth individual,

the penalty under paragraph (1) or (2) shall be twice the amount determined without regard to this paragraph.

''(B) LARGE ENTITY.—For purposes of subparagraph (A), the term 'large entity' means, with respect to any taxable year, a person (other than a natural person) with gross receipts in excess of $10,000,000 for the taxable year in which the reportable transaction occurs or the preceding taxable year. Rules similar to the rules of paragraph (2) and subparagraphs (B), (C), and (D) of paragraph (3) of section 448(c) shall apply for purposes of this subparagraph.

''(C) HIGH NET WORTH INDIVIDUAL.—For purposes of subparagraph (A), the term 'high net worth individual' means, with respect to a reportable transaction, a natural person whose net worth exceeds $2,000,000 immediately before the transaction.

''(c) DEFINITIONS.—For purposes of this section—

''(1) REPORTABLE TRANSACTION.—The term 'reportable transaction' means any transaction with respect to which information is required to be included with a return or statement because, as determined under regulations prescribed under section 6011, such transaction is of a type which the Secretary determines as having a potential for tax avoidance or evasion.

''(2) LISTED TRANSACTION.—Except as provided in regulations, the term 'listed transaction' means a reportable transaction which is the same as, or substantially similar to, a transaction specifically identified by the Secretary as a tax avoidance transaction for purposes of section 6011.

''(d) AUTHORITY TO RESCIND PENALTY.—

''(1) IN GENERAL.—The Commissioner of Internal Revenue may rescind all or any portion of any penalty imposed by this section with respect to any violation if—

''(A) the violation is with respect to a reportable transaction other than a listed transaction,

''(B) the person on whom the penalty is imposed has a history of complying with the requirements of this title,

''(C) it is shown that the violation is due to an unintentional mistake of fact;

''(D) imposing the penalty would be against equity and good conscience, and

''(E) rescinding the penalty would promote compliance with the requirements of this title and effective tax administration.

''(2) DISCRETION.—The exercise of authority under paragraph (1) shall be at the sole discretion of the Commissioner and may be delegated only to the head of the Office of Tax Shelter Analysis. The Commissioner, in the Commissioner's sole discretion, may establish a procedure to determine if a penalty should be referred to the Commissioner or the head of such Office for a determination under paragraph (1).

''(3) NO APPEAL.—Notwithstanding any other provision of law, any determination under this subsection may not be reviewed in any administrative or judicial proceeding.

''(4) RECORDS.—If a penalty is rescinded under paragraph (1), the Commissioner shall place in the file in the Office of the Commissioner the opinion of the Commissioner or the head of the Office of Tax Shelter Analysis with respect to the determination, including—

''(A) the facts and circumstances of the transaction,

''(B) the reasons for the rescission, and

''(C) the amount of the penalty rescinded.

''(5) REPORT.—The Commissioner shall each year report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate—

''(A) a summary of the total number and aggregate amount of penalties imposed, and rescinded, under this section, and

''(B) a description of each penalty rescinded under this subsection and the reasons therefor.

''(e) PENALTY REPORTED TO SEC.—In the case of a person—

''(1) which is required to file periodic reports under section 13 or 15(d) of the Securities Exchange Act of 1934 or is required to be consolidated with another person for purposes of such reports, and

''(2) which—

''(A) is required to pay a penalty under this section with respect to a listed transaction,

''(B) is required to pay a penalty under section 6662A with respect to any reportable transaction at a rate prescribed under section 6662A(c), or

''(C) is required to pay a penalty under section 6662B with respect to any noneconomic substance transaction,

the requirement to pay such penalty shall be disclosed in such reports filed by such person for such periods as the Secretary shall specify. Failure to make a disclosure in accordance with the preceding sentence shall be treated as a failure to which the penalty under subsection (b)(2) applies.

''(f) COORDINATION WITH OTHER PENALTIES.—The penalty imposed by this section is in addition to any penalty imposed under this title.''.

(b) CONFORMING AMENDMENT.—The table of sections for part I of subchapter B of chapter 68 is amended by inserting after the item relating to section 6707 the following:

''Sec. 6707A. Penalty for failure to include reportable transaction information with return or statement.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to returns and statements the due date for which is after the date of the enactment of this Act.

SEC. 303. ACCURACY-RELATED PENALTY FOR LISTED TRANSACTIONS AND OTHER REPORTABLE TRANSACTIONS HAVING A SIGNIFICANT TAX AVOIDANCE PURPOSE.

(a) IN GENERAL.—Subchapter A of chapter 68 is amended by inserting after section 6662 the following new section:

''SEC. 6662A. IMPOSITION OF ACCURACY-RELATED PENALTY ON UNDERSTATEMENTS WITH RESPECT TO REPORTABLE TRANSACTIONS.

''(a) IMPOSITION OF PENALTY.—If a taxpayer has a reportable transaction understatement for any taxable year, there shall be added to the tax an amount equal to 20 percent of the amount of such understatement.

''(b) REPORTABLE TRANSACTION UNDERSTATEMENT.—For purposes of this section—

''(1) IN GENERAL.—The term 'reportable transaction understatement' means the sum of—

''(A) the product of—

''(i) the amount of the increase (if any) in taxable income which results from a difference between the proper tax treatment of an item to which this section applies and the taxpayer's treatment of such item (as shown on the taxpayer's return of tax), and

''(ii) the highest rate of tax imposed by section 1 (section 11 in the case of a taxpayer which is a corporation), and

''(B) the amount of the decrease (if any) in the aggregate amount of credits determined under subtitle A which results from a difference between the taxpayer's treatment of an item to which this section applies (as shown on the taxpayer's return of tax) and the proper tax treatment of such item.

For purposes of subparagraph (A), any reduction of the excess of deductions allowed for the taxable year over gross income for such year, and any reduction in the amount of capital losses which would (without regard to section 1211) be allowed for such year, shall be treated as an increase in taxable income.

''(2) ITEMS TO WHICH SECTION APPLIES.—This section shall apply to any item which is attributable to—

''(A) any listed transaction, and

''(B) any reportable transaction (other than a listed transaction) if a significant purpose of such transaction is the avoidance or evasion of Federal income tax.

''(c) HIGHER PENALTY FOR NONDISCLOSED LISTED AND OTHER AVOIDANCE TRANSACTIONS.—

''(1) IN GENERAL.—Subsection (a) shall be applied by substituting '30 percent' for '20 percent' with respect to the portion of any reportable transaction understatement with respect to which the requirement of section 6664(d)(2)(A) is not met.

''(2) RULES APPLICABLE TO COMPROMISE OF PENALTY.—

''(A) IN GENERAL.—If the 1st letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals has been sent with respect to a penalty to which paragraph (1) applies, only the Commissioner of Internal Revenue may compromise all or any portion of such penalty.

''(B) APPLICABLE RULES.—The rules of paragraphs (2), (3), (4), and (5) of section 6707A(d) shall apply for purposes of subparagraph (A).

''(d) DEFINITIONS OF REPORTABLE AND LISTED TRANSACTIONS.—For purposes of this section, the terms 'reportable transaction' and 'listed transaction' have the respective meanings given to such terms by section 6707A(c).

''(e) SPECIAL RULES.—

''(1) COORDINATION WITH PENALTIES, ETC., ON OTHER UNDERSTATEMENTS.—In the case of an

understatement (as defined in section 6662(d)(2))—

''(A) the amount of such understatement (determined without regard to this paragraph) shall be increased by the aggregate amount of reportable transaction understatements and noneconomic substance transaction understatements for purposes of determining whether such understatement is a substantial understatement under section 6662(d)(1), and

''(B) the addition to tax under section 6662(a) shall apply only to the excess of the amount of the substantial understatement (if any) after the application of subparagraph (A) over the aggregate amount of reportable transaction understatements and noneconomic substance transaction understatements.

''(2) COORDINATION WITH OTHER PENALTIES.—

''(A) APPLICATION OF FRAUD PENALTY.—References to an underpayment in section 6663 shall be treated as including references to a reportable transaction understatement and a noneconomic substance transaction understatement.

''(B) NO DOUBLE PENALTY.—This section shall not apply to any portion of an understatement on which a penalty is imposed under section 6662B or 6663.

''(3) SPECIAL RULE FOR AMENDED RETURNS.—Except as provided in regulations, in no event shall any tax treatment included with an amendment or supplement to a return of tax be taken into account in determining the amount of any reportable transaction understatement or noneconomic substance transaction understatement if the amendment or supplement is filed after the earlier of the date the taxpayer is first contacted by the Secretary regarding the examination of the return or such other date as is specified by the Secretary.

''(4) NONECONOMIC SUBSTANCE TRANSACTION UNDERSTATEMENT.—For purposes of this subsection, the term 'noneconomic substance transaction understatement' has the meaning given such term by section 6662B(c).

''(5) CROSS REFERENCE.—

''For reporting of section 6662A(c) penalty to the Securities and Exchange Commission, see section 6707A(e).''.

(b) DETERMINATION OF OTHER UNDERSTATEMENTS.—Subparagraph (A) of section 6662(d)(2) is amended by adding at the end the following flush sentence:

''The excess under the preceding sentence shall be determined without regard to items to which section 6662A applies and without regard to items with respect to which a penalty is imposed by section 6662B.''.

(c) REASONABLE CAUSE EXCEPTION.—

(1) IN GENERAL.—Section 6664 is amended by adding at the end the following new subsection:

''(d) REASONABLE CAUSE EXCEPTION FOR REPORTABLE TRANSACTION UNDERSTATEMENTS.—

''(1) IN GENERAL.—No penalty shall be imposed under section 6662A with respect to any portion of a reportable transaction understatement if it is shown that there was a reasonable cause for such portion and that the taxpayer acted in good faith with respect to such portion.

''(2) SPECIAL RULES.—Paragraph (1) shall not apply to any reportable transaction understatement unless—

''(A) the relevant facts affecting the tax treatment of the item are adequately disclosed in accordance with the regulations prescribed under section 6011,

''(B) there is or was substantial authority for such treatment, and

''(C) the taxpayer reasonably believed that such treatment was more likely than not the proper treatment.

A taxpayer failing to adequately disclose in accordance with section 6011 shall be treated as meeting the requirements of subparagraph (A) if the penalty for such failure was rescinded under section 6707A(d).

''(3) RULES RELATING TO REASONABLE BELIEF.—For purposes of paragraph (2)(C)—

''(A) IN GENERAL.—A taxpayer shall be treated as having a reasonable belief with respect to the tax treatment of an item only if such belief—

''(i) is based on the facts and law that exist at the time the return of tax which includes such tax treatment is filed, and

''(ii) relates solely to the taxpayer's chances of success on the merits of such treatment and does not take into account the possibility that a return will not be audited, such treatment will not be raised on audit, or such treatment will be resolved through settlement if it is raised.

''(B) CERTAIN OPINIONS MAY NOT BE RELIED UPON.—

''(i) IN GENERAL.—An opinion of a tax advisor may not be relied upon to establish the reasonable belief of a taxpayer if—

''(I) the tax advisor is described in clause (ii), or

''(II) the opinion is described in clause (iii).

''(ii) DISQUALIFIED TAX ADVISORS.—A tax advisor is described in this clause if the tax advisor—

''(I) is a material advisor (within the meaning of section 6111(b)(1)) who participates in the organization, management, promotion, or sale of the transaction or who is related (within the meaning of section 267(b) or 707(b)(1)) to any person who so participates,

''(II) is compensated directly or indirectly by a material advisor with respect to the transaction,

''(III) has a fee arrangement with respect to the transaction which is contingent on all or part of the intended tax benefits from the transaction being sustained, or

''(IV) as determined under regulations prescribed by the Secretary, has a continuing financial interest with respect to the transaction.

''(iii) DISQUALIFIED OPINIONS.—For purposes of clause (i), an opinion is disqualified if the opinion—

''(I) is based on unreasonable factual or legal assumptions (including assumptions as to future events),

''(II) unreasonably relies on representations, statements, findings, or agreements of the taxpayer or any other person,

''(III) does not identify and consider all relevant facts, or

''(IV) fails to meet any other requirement as the Secretary may prescribe.''.

(2) CONFORMING AMENDMENT.—The heading for subsection (c) of section 6664 is amended by inserting ''FOR UNDERPAYMENTS'' after ''EXCEPTION''.

(d) CONFORMING AMENDMENTS.—

(1) Subparagraph (C) of section 461(i)(3) is amended by striking ''section 6662(d)(2)(C)(iii)'' and inserting ''section 1274(b)(3)(C)''.

(2) Paragraph (3) of section 1274(b) is amended—

(A) by striking ''(as defined in section 6662(d)(2)(C)(iii))'' in subparagraph (B)(i), and

(B) by adding at the end the following new subparagraph:

''(C) TAX SHELTER.—For purposes of subparagraph (B), the term 'tax shelter' means—

''(i) a partnership or other entity,

''(ii) any investment plan or arrangement, or

''(iii) any other plan or arrangement, if a significant purpose of such partnership, entity, plan, or arrangement is the avoidance or evasion of Federal income tax.''.

(3) Section 6662(d)(2) is amended by striking subparagraphs (C) and (D).

(4) Section 6664(c)(1) is amended by striking ''this part'' and inserting ''section 6662 or 6663''.

(5) Subsection (b) of section 7525 is amended by striking ''section 6662(d)(2)(C)(iii)'' and inserting ''section 1274(b)(3)(C)''.

(6)(A) The heading for section 6662 is amended to read as follows:

''SEC. 6662. IMPOSITION OF ACCURACY-RELATED PENALTY ON UNDERPAYMENTS.''.

(B) The table of sections for part II of subchapter A of chapter 68 is amended by striking the item relating to section 6662 and inserting the following new items:

''Sec. 6662. Imposition of accuracy-related penalty on underpayments.

''Sec. 6662A. Imposition of accuracy-related penalty on understatements with respect to reportable transactions.''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after the date of the enactment of this Act.

SEC. 304. PENALTY FOR UNDERSTATEMENTS ATTRIBUTABLE TO TRANSACTIONS LACKING ECONOMIC SUBSTANCE, ETC.

(a) IN GENERAL.—Subchapter A of chapter 68 is amended by inserting after section 6662A the following new section:

''SEC. 6662B. PENALTY FOR UNDERSTATEMENTS ATTRIBUTABLE TO TRANSACTIONS LACKING ECONOMIC SUBSTANCE, ETC.

''(a) IMPOSITION OF PENALTY.—If a taxpayer has an noneconomic substance transaction understatement for any taxable year, there shall be added to the tax an amount equal to 40 percent of the amount of such understatement.

''(b) REDUCTION OF PENALTY FOR DISCLOSED TRANSACTIONS.—Subsection (a) shall be applied by substituting '20 percent' for '40 percent' with respect to the portion of any noneconomic substance transaction understatement with respect to which the relevant facts affecting the tax treatment of the item are adequately disclosed in the return or a statement attached to the return.

''(c) NONECONOMIC SUBSTANCE TRANSACTION UNDERSTATEMENT.—For purposes of this section—

''(1) IN GENERAL.—The term 'noneconomic substance transaction understatement' means any amount which would be an understatement under section 6662A(b)(1) if section 6662A were applied by taking into account items attributable to noneconomic substance transactions rather than items to which section 6662A would apply without regard to this paragraph.

''(2) NONECONOMIC SUBSTANCE TRANSACTION.—The term 'noneconomic substance transaction' means any transaction if—

''(A) there is a lack of economic substance (within the meaning of section 7701(n)(1)) for the transaction giving rise to the claimed benefit or the transaction was not respected under section 7701(n)(2), or

''(B) the transaction fails to meet the requirements of any similar rule of law.

''(d) RULES APPLICABLE TO COMPROMISE OF PENALTY.—

''(1) IN GENERAL.—If the 1st letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals has been sent with respect to a penalty to which this section applies, only the Commissioner of Internal Revenue may compromise all or any portion of such penalty.

''(2) APPLICABLE RULES.—The rules of paragraphs (2), (3), (4), and (5) of section 6707A(d) shall apply for purposes of paragraph (1).

''(e) COORDINATION WITH OTHER PENALTIES.—Except as otherwise provided in this part, the penalty imposed by this section shall be in addition to any other penalty imposed by this title.

''(f) CROSS REFERENCES.—

''(1) For coordination of penalty with understatements under section 6662 and other special rules, see section 6662A(e).

''(2) For reporting of penalty imposed under this section to the Securities and Exchange Commission, see section 6707A(e).''.

(b) CLERICAL AMENDMENT.—The table of sections for part II of subchapter A of chapter 68 is amended by inserting after the item relating to section 6662A the following new item:

''Sec. 6662B. Penalty for understatements attributable to transactions lacking economic substance, etc.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions entered into on or after May 8, 2003.

SEC. 305. MODIFICATIONS OF SUBSTANTIAL UNDERSTATEMENT PENALTY FOR NONREPORTABLE TRANSACTIONS.

(a) SUBSTANTIAL UNDERSTATEMENT OF CORPORATIONS.—Section 6662(d)(1)(B) (relating to special rule for corporations) is amended to read as follows:

''(B) SPECIAL RULE FOR CORPORATIONS.—In the case of a corporation other than an S corporation or a personal holding company (as defined in section 542), there is a substantial understatement of income tax for any taxable year if the amount of the understatement for the taxable year exceeds the lesser of—

''(i) 10 percent of the tax required to be shown on the return for the taxable year (or, if greater, $10,000), or

''(ii) $10,000,000.''.

(b) REDUCTION FOR UNDERSTATEMENT OF TAXPAYER DUE TO POSITION OF TAXPAYER OR DISCLOSED ITEM.—

(1) IN GENERAL.—Section 6662(d)(2)(B)(i) (relating to substantial authority) is amended to read as follows:

''(i) the tax treatment of any item by the taxpayer if the taxpayer had reasonable belief that the tax treatment was more likely than not the proper treatment, or''.

(2) CONFORMING AMENDMENT.—Section 6662(d) is amended by adding at the end the following new paragraph:

''(3) SECRETARIAL LIST.—For purposes of this subsection, section 6664(d)(2), and section 6694(a)(1), the Secretary may prescribe a list of positions for which the Secretary believes there is not substantial authority or there is no reasonable belief that the tax treatment is more likely than not the proper tax treatment. Such list (and any revisions thereof) shall be published in the Federal Register or the Internal Revenue Bulletin.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 306. TAX SHELTER EXCEPTION TO CONFIDENTIALITY PRIVILEGES RELATING TO TAXPAYER COMMUNICATIONS.

(a) IN GENERAL.—Section 7525(b) (relating to section not to apply to communications regarding corporate tax shelters) is amended to read as follows:

''(b) SECTION NOT TO APPLY TO COMMUNICATIONS REGARDING TAX SHELTERS.—The privilege under subsection (a) shall not apply to any written communication which is—

''(1) between a federally authorized tax practitioner and—

''(A) any person,

''(B) any director, officer, employee, agent, or representative of the person, or

''(C) any other person holding a capital or profits interest in the person, and

''(2) in connection with the promotion of the direct or indirect participation of the person in any tax shelter (as defined in section 1274(b)(3)(C)).''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to communications made on or after the date of the enactment of this Act.

SEC. 307. DISCLOSURE OF REPORTABLE TRANSACTIONS.

(a) IN GENERAL.—Section 6111 (relating to registration of tax shelters) is amended to read as follows:

''SEC. 6111. DISCLOSURE OF REPORTABLE TRANSACTIONS.

''(a) IN GENERAL.—Each material advisor with respect to any reportable transaction shall make a return (in such form as the Secretary may prescribe) setting forth—

''(1) information identifying and describing the transaction,

''(2) information describing any potential tax benefits expected to result from the transaction, and

''(3) such other information as the Secretary may prescribe.

Such return shall be filed not later than the date specified by the Secretary.

''(b) DEFINITIONS.—For purposes of this section—

''(1) MATERIAL ADVISOR.—

''(A) IN GENERAL.—The term 'material advisor' means any person—

''(i) who provides any material aid, assistance, or advice with respect to organizing, promoting, selling, implementing, or carrying out any reportable transaction, and

''(ii) who directly or indirectly derives gross income in excess of the threshold amount for such aid, assistance, or advice.

''(B) THRESHOLD AMOUNT.—For purposes of subparagraph (A), the threshold amount is—

''(i) $50,000 in the case of a reportable transaction substantially all of the tax benefits from which are provided to natural persons, and

''(ii) $250,000 in any other case.

''(2) REPORTABLE TRANSACTION.—The term 'reportable transaction' has the meaning given to such term by section 6707A(c).

''(c) REGULATIONS.—The Secretary may prescribe regulations which provide—

''(1) that only 1 person shall be required to meet the requirements of subsection (a) in cases in which 2 or more persons would otherwise be required to meet such requirements,

''(2) exemptions from the requirements of this section, and

''(3) such rules as may be necessary or appropriate to carry out the purposes of this section.''.

(b) CONFORMING AMENDMENTS.—

(1) The item relating to section 6111 in the table of sections for subchapter B of chapter 61 is amended to read as follows:

''Sec. 6111. Disclosure of reportable transactions.''.

(2)(A) So much of section 6112 as precedes subsection (c) thereof is amended to read as follows:

''SEC. 6112. MATERIAL ADVISORS OF REPORTABLE TRANSACTIONS MUST KEEP LISTS OF ADVISEES.

''(a) IN GENERAL.—Each material advisor (as defined in section 6111) with respect to any reportable transaction (as defined in section 6707A(c)) shall maintain, in such manner as the Secretary may by regulations prescribe, a list—

''(1) identifying each person with respect to whom such advisor acted as such a material advisor with respect to such transaction, and

''(2) containing such other information as the Secretary may by regulations require.

This section shall apply without regard to whether a material advisor is required to file a return under section 6111 with respect to such transaction.''.

(B) Section 6112 is amended by redesignating subsection (c) as subsection (b).

(C) Section 6112(b), as redesignated by subparagraph (B), is amended—

(i) by inserting ''written'' before ''request'' in paragraph (1)(A), and

(ii) by striking ''shall prescribe'' in paragraph (2) and inserting ''may prescribe''.

(D) The item relating to section 6112 in the table of sections for subchapter B of chapter 61 is amended to read as follows:

''Sec. 6112. Material advisors of reportable transactions must keep lists of advisees.''.

(3)(A) The heading for section 6708 is amended to read as follows:

''SEC. 6708. FAILURE TO MAINTAIN LISTS OF ADVISEES WITH RESPECT TO REPORTABLE TRANSACTIONS.''.

(B) The item relating to section 6708 in the table of sections for part I of subchapter B of chapter 68 is amended to read as follows:

''Sec. 6708. Failure to maintain lists of advisees with respect to reportable transactions.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions with respect to which material aid, assistance, or advice referred to in section 6111(b)(1)(A)(i) of the Internal Revenue Code of 1986 (as added by this section) is provided after the date of the enactment of this Act.

SEC. 308. MODIFICATIONS TO PENALTY FOR FAILURE TO REGISTER TAX SHELTERS.

(a) IN GENERAL.—Section 6707 (relating to failure to furnish information regarding tax shelters) is amended to read as follows:

''SEC. 6707. FAILURE TO FURNISH INFORMATION REGARDING REPORTABLE TRANSACTIONS.

''(a) IN GENERAL.—If a person who is required to file a return under section 6111(a) with respect to any reportable transaction—

''(1) fails to file such return on or before the date prescribed therefor, or

''(2) files false or incomplete information with the Secretary with respect to such transaction, such person shall pay a penalty with respect to such return in the amount determined under subsection (b).

''(b) AMOUNT OF PENALTY.—

''(1) IN GENERAL.—Except as provided in paragraph (2), the penalty imposed under subsection (a) with respect to any failure shall be $50,000.

''(2) LISTED TRANSACTIONS.—The penalty imposed under subsection (a) with respect to any listed transaction shall be an amount equal to the greater of—

''(A) $200,000, or

''(B) 50 percent of the gross income derived by such person with respect to aid, assistance, or advice which is provided with respect to the listed transaction before the date the return including the transaction is filed under section 6111.

Subparagraph (B) shall be applied by substituting '75 percent' for '50 percent' in the case of an intentional failure or act described in subsection (a).

''(c) RESCISSION AUTHORITY.—The provisions of section 6707A(d) (relating to authority of Commissioner to rescind penalty) shall apply to any penalty imposed under this section.

''(d) REPORTABLE AND LISTED TRANSACTIONS.—The terms 'reportable transaction' and 'listed transaction' have the respective meanings given to such terms by section 6707A(c).''.

(b) CLERICAL AMENDMENT.—The item relating to section 6707 in the table of sections for part I of subchapter B of chapter 68 is amended by striking ''tax shelters'' and inserting ''reportable transactions''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to returns the due date for which is after the date of the enactment of this Act.

SEC. 309. MODIFICATION OF PENALTY FOR FAILURE TO MAINTAIN LISTS OF INVESTORS.

(a) IN GENERAL.—Subsection (a) of section 6708 is amended to read as follows:

''(a) IMPOSITION OF PENALTY.—

''(1) IN GENERAL.—If any person who is required to maintain a list under section 6112(a) fails to make such list available upon written request to the Secretary in accordance with section 6112(b)(1)(A) within 20 business days after the date of the Secretary's request, such person shall pay a penalty of $10,000 for each day of such failure after such 20th day.

''(2) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed by paragraph (1) with respect to the failure on any day if such failure is due to reasonable cause.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to requests made after the date of the enactment of this Act.

SEC. 310. MODIFICATION OF ACTIONS TO ENJOIN CERTAIN CONDUCT RELATED TO TAX SHELTERS AND REPORTABLE TRANSACTIONS.

(a) IN GENERAL.—Section 7408 (relating to action to enjoin promoters of abusive tax shelters,

etc.) is amended by redesignating subsection (c) as subsection (d) and by striking subsections (a) and (b) and inserting the following new subsections:

''(a) AUTHORITY TO SEEK INJUNCTION.—A civil action in the name of the United States to enjoin any person from further engaging in specified conduct may be commenced at the request of the Secretary. Any action under this section shall be brought in the district court of the United States for the district in which such person resides, has his principal place of business, or has engaged in specified conduct. The court may exercise its jurisdiction over such action (as provided in section 7402(a)) separate and apart from any other action brought by the United States against such person.

''(b) ADJUDICATION AND DECREE.—In any action under subsection (a), if the court finds—

''(1) that the person has engaged in any specified conduct, and

''(2) that injunctive relief is appropriate to prevent recurrence of such conduct,

the court may enjoin such person from engaging in such conduct or in any other activity subject to penalty under this title.

''(c) SPECIFIED CONDUCT.—For purposes of this section, the term 'specified conduct' means any action, or failure to take action, subject to penalty under section 6700, 6701, 6707, or 6708.''.

(b) CONFORMING AMENDMENTS.—

(1) The heading for section 7408 is amended to read as follows:

''SEC. 7408. ACTIONS TO ENJOIN SPECIFIED CONDUCT RELATED TO TAX SHELTERS AND REPORTABLE TRANSACTIONS.''.

(2) The table of sections for subchapter A of chapter 67 is amended by striking the item relating to section 7408 and inserting the following new item:

''Sec. 7408. Actions to enjoin specified conduct related to tax shelters and reportable transactions.''.

(c) EFFECTIVE DATE.—The amendment made by this section shall take effect on the day after the date of the enactment of this Act.

SEC. 311. UNDERSTATEMENT OF TAXPAYER'S LIABILITY BY INCOME TAX RETURN PREPARER.

(a) STANDARDS CONFORMED TO TAXPAYER STANDARDS.—Section 6694(a) (relating to understatements due to unrealistic positions) is amended—

(1) by striking ''realistic possibility of being sustained on its merits'' in paragraph (1) and inserting ''reasonable belief that the tax treatment in such position was more likely than not the proper treatment'',

(2) by striking ''or was frivolous'' in paragraph (3) and inserting ''or there was no reasonable basis for the tax treatment of such position'', and

(3) by striking ''UNREALISTIC'' in the heading and inserting ''IMPROPER''.

(b) AMOUNT OF PENALTY.—Section 6694 is amended—

(1) by striking ''$250'' in subsection (a) and inserting ''$1,000'', and

(2) by striking ''$1,000'' in subsection (b) and inserting ''$5,000''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to documents prepared after the date of the enactment of this Act.

SEC. 312. PENALTY ON FAILURE TO REPORT INTERESTS IN FOREIGN FINANCIAL ACCOUNTS.

(a) IN GENERAL.—Section 5321(a)(5) of title 31, United States Code, is amended to read as follows:

''(5) FOREIGN FINANCIAL AGENCY TRANSACTION VIOLATION.—

''(A) PENALTY AUTHORIZED.—The Secretary of the Treasury may impose a civil money penalty on any person who violates, or causes any violation of, any provision of section 5314.

''(B) AMOUNT OF PENALTY.—

''(i) IN GENERAL.—Except as provided in subparagraph (C), the amount of any civil penalty imposed under subparagraph (A) shall not exceed $5,000.

''(ii) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed under subparagraph (A) with respect to any violation if—

''(I) such violation was due to reasonable cause, and

''(II) the amount of the transaction or the balance in the account at the time of the transaction was properly reported.

''(C) WILLFUL VIOLATIONS.—In the case of any person willfully violating, or willfully causing any violation of, any provision of section 5314—

''(i) the maximum penalty under subparagraph (B)(i) shall be increased to the greater of—

''(I) $25,000, or

''(II) the amount (not exceeding $100,000) determined under subparagraph (D), and

''(ii) subparagraph (B)(ii) shall not apply.

''(D) AMOUNT.—The amount determined under this subparagraph is—

''(i) in the case of a violation involving a transaction, the amount of the transaction, or

''(ii) in the case of a violation involving a failure to report the existence of an account or any identifying information required to be provided with respect to an account, the balance in the account at the time of the violation.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to violations occurring after the date of the enactment of this Act.

SEC. 313. FRIVOLOUS TAX SUBMISSIONS.

(a) CIVIL PENALTIES.—Section 6702 is amended to read as follows:

''SEC. 6702. FRIVOLOUS TAX SUBMISSIONS.

''(a) CIVIL PENALTY FOR FRIVOLOUS TAX RETURNS.—A person shall pay a penalty of $5,000 if—

''(1) such person files what purports to be a return of a tax imposed by this title but which—

''(A) does not contain information on which the substantial correctness of the self-assessment may be judged, or

''(B) contains information that on its face indicates that the self-assessment is substantially incorrect; and

''(2) the conduct referred to in paragraph (1)—

''(A) is based on a position which the Secretary has identified as frivolous under subsection (c), or

''(B) reflects a desire to delay or impede the administration of Federal tax laws.

''(b) CIVIL PENALTY FOR SPECIFIED FRIVOLOUS SUBMISSIONS.—

''(1) IMPOSITION OF PENALTY.—Except as provided in paragraph (3), any person who submits a specified frivolous submission shall pay a penalty of $5,000.

''(2) SPECIFIED FRIVOLOUS SUBMISSION.—For purposes of this section—

''(A) SPECIFIED FRIVOLOUS SUBMISSION.—The term 'specified frivolous submission' means a specified submission if any portion of such submission—

''(i) is based on a position which the Secretary has identified as frivolous under subsection (c), or

''(ii) reflects a desire to delay or impede the administration of Federal tax laws.

''(B) SPECIFIED SUBMISSION.—The term 'specified submission' means—

''(i) a request for a hearing under—

''(I) section 6320 (relating to notice and opportunity for hearing upon filing of notice of lien), or

''(II) section 6330 (relating to notice and opportunity for hearing before levy), and

''(ii) an application under—

''(I) section 6159 (relating to agreements for payment of tax liability in installments),

''(II) section 7122 (relating to compromises), or

''(III) section 7811 (relating to taxpayer assistance orders).

''(3) OPPORTUNITY TO WITHDRAW SUBMISSION.—If the Secretary provides a person with notice that a submission is a specified frivolous submission and such person withdraws such submission within 30 days after such notice, the penalty imposed under paragraph (1) shall not apply with respect to such submission.

''(c) LISTING OF FRIVOLOUS POSITIONS.—The Secretary shall prescribe (and periodically revise) a list of positions which the Secretary has identified as being frivolous for purposes of this subsection. The Secretary shall not include in such list any position that the Secretary determines meets the requirement of section 6662(d)(2)(B)(ii)(II).

''(d) REDUCTION OF PENALTY.—The Secretary may reduce the amount of any penalty imposed under this section if the Secretary determines that such reduction would promote compliance with and administration of the Federal tax laws.

''(e) PENALTIES IN ADDITION TO OTHER PENALTIES.—The penalties imposed by this section shall be in addition to any other penalty provided by law.''.

(b) TREATMENT OF FRIVOLOUS REQUESTS FOR HEARINGS BEFORE LEVY.—

(1) FRIVOLOUS REQUESTS DISREGARDED.—Section 6330 (relating to notice and opportunity for hearing before levy) is amended by adding at the end the following new subsection:

''(g) FRIVOLOUS REQUESTS FOR HEARING, ETC.—Notwithstanding any other provision of this section, if the Secretary determines that any portion of a request for a hearing under this section or section 6320 meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A), then the Secretary may treat such portion as if it were never submitted and such portion shall not be subject to any further administrative or judicial review.''.

(2) PRECLUSION FROM RAISING FRIVOLOUS ISSUES AT HEARING.—Section 6330(c)(4) is amended—

(A) by striking ''(A)'' and inserting ''(A)(i)'';

(B) by striking ''(B)'' and inserting ''(ii)'';

(C) by striking the period at the end of the first sentence and inserting ''; or''; and

(D) by inserting after subparagraph (A)(ii) (as so redesignated) the following:

''(B) the issue meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A).''.

(3) STATEMENT OF GROUNDS.—Section 6330(b)(1) is amended by striking ''under subsection (a)(3)(B)'' and inserting ''in writing under subsection (a)(3)(B) and states the grounds for the requested hearing''.

(c) TREATMENT OF FRIVOLOUS REQUESTS FOR HEARINGS UPON FILING OF NOTICE OF LIEN.—Section 6320 is amended—

(1) in subsection (b)(1), by striking ''under subsection (a)(3)(B)'' and inserting ''in writing under subsection (a)(3)(B) and states the grounds for the requested hearing'', and

(2) in subsection (c), by striking ''and (e)'' and inserting ''(e), and (g)''.

(d) TREATMENT OF FRIVOLOUS APPLICATIONS FOR OFFERS-IN-COMPROMISE AND INSTALLMENT AGREEMENTS.—Section 7122 is amended by adding at the end the following new subsection:

''(e) FRIVOLOUS SUBMISSIONS, ETC.—Notwithstanding any other provision of this section, if the Secretary determines that any portion of an application for an offer-in-compromise or installment agreement submitted under this section or section 6159 meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A), then the Secretary may treat such portion as if it were never submitted and such portion shall not be subject to any further administrative or judicial review.''.

(e) CLERICAL AMENDMENT.—The table of sections for part I of subchapter B of chapter 68 is amended by striking the item relating to section 6702 and inserting the following new item:

''Sec. 6702. Frivolous tax submissions.''.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to submissions made

and issues raised after the date on which the Secretary first prescribes a list under section 6702(c) of the Internal Revenue Code of 1986, as amended by subsection (a).

SEC. 314. PENALTY ON PROMOTERS OF TAX SHELTERS.

(a) PENALTY ON PROMOTING ABUSIVE TAX SHELTERS.—Section 6700(a) is amended by adding at the end the following new sentence: ''Notwithstanding the first sentence, if an activity with respect to which a penalty imposed under this subsection involves a statement described in paragraph (2)(A), the amount of the penalty shall be equal to 50 percent of the gross income derived (or to be derived) from such activity by the person on which the penalty is imposed.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to activities after the date of the enactment of this Act.

SEC. 315. STATUTE OF LIMITATIONS FOR TAXABLE YEARS FOR WHICH LISTED TRANSACTIONS NOT REPORTED.

(a) IN GENERAL.—Section 6501(e)(1) (relating to substantial omission of items for income taxes) is amended by adding at the end the following new subparagraph:

''(C) LISTED TRANSACTIONS.—If a taxpayer fails to include on any return or statement for any taxable year any information with respect to a listed transaction (as defined in section 6707A(c)(2)) which is required under section 6011 to be included with such return or statement, the tax for such taxable year may be assessed, or a proceeding in court for collection of such tax may be begun without assessment, at any time within 6 years after the time the return is filed. This subparagraph shall not apply to any taxable year if the time for assessment or beginning the proceeding in court has expired before the time a transaction is treated as a listed transaction under section 6011.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to transactions in taxable years beginning after the date of the enactment of this Act.

SEC. 316. DENIAL OF DEDUCTION FOR INTEREST ON UNDERPAYMENTS ATTRIBUTABLE TO NONDISCLOSED REPORTABLE AND NONECONOMIC SUBSTANCE TRANSACTIONS.

(a) IN GENERAL.—Section 163 (relating to deduction for interest) is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following new subsection:

''(m) INTEREST ON UNPAID TAXES ATTRIBUTABLE TO NONDISCLOSED REPORTABLE TRANSACTIONS AND NONECONOMIC SUBSTANCE TRANSACTIONS.—No deduction shall be allowed under this chapter for any interest paid or accrued under section 6601 on any underpayment of tax which is attributable to—

''(1) the portion of any reportable transaction understatement (as defined in section 6662A(b)) with respect to which the requirement of section 6664(d)(2)(A) is not met, or

''(2) any noneconomic substance transaction understatement (as defined in section 6662B(c)).''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions in taxable years beginning after the date of the enactment of this Act.

Subtitle B—Enron-Related Tax Shelter Provisions

SEC. 321. LIMITATION ON TRANSFER OR IMPORTATION OF BUILT-IN LOSSES.

(a) IN GENERAL.—Section 362 (relating to basis to corporations) is amended by adding at the end the following new subsection:

''(e) LIMITATIONS ON BUILT-IN LOSSES.—

''(1) LIMITATION ON IMPORTATION OF BUILT-IN LOSSES.—

''(A) IN GENERAL.—If in any transaction described in subsection (a) or (b) there would (but for this subsection) be an importation of a net built-in loss, the basis of each property described in subparagraph (B) which is acquired in such transaction shall (notwithstanding subsections (a) and (b)) be its fair market value immediately after such transaction.

''(B) PROPERTY DESCRIBED.—For purposes of subparagraph (A), property is described in this subparagraph if—

''(i) gain or loss with respect to such property is not subject to tax under this subtitle in the hands of the transferor immediately before the transfer, and

''(ii) gain or loss with respect to such property is subject to such tax in the hands of the transferee immediately after such transfer.

In any case in which the transferor is a partnership, the preceding sentence shall be applied by treating each partner in such partnership as holding such partner's proportionate share of the property of such partnership.

''(C) IMPORTATION OF NET BUILT-IN LOSS.—For purposes of subparagraph (A), there is an importation of a net built-in loss in a transaction if the transferee's aggregate adjusted bases of property described in subparagraph (B) which is transferred in such transaction would (but for this paragraph) exceed the fair market value of such property immediately after such transaction.''.

''(2) LIMITATION ON TRANSFER OF BUILT-IN LOSSES IN SECTION 351 TRANSACTIONS.—

''(A) IN GENERAL.—If—

''(i) property is transferred by a transferor in any transaction which is described in subsection (a) and which is not described in paragraph (1) of this subsection, and

''(ii) the transferee's aggregate adjusted bases of such property so transferred would (but for this paragraph) exceed the fair market value of such property immediately after such transaction,

then, notwithstanding subsection (a), the transferee's aggregate adjusted bases of the property so transferred shall not exceed the fair market value of such property immediately after such transaction.

''(B) ALLOCATION OF BASIS REDUCTION.—The aggregate reduction in basis by reason of subparagraph (A) shall be allocated among the property so transferred in proportion to their respective built-in losses immediately before the transaction.

''(C) EXCEPTION FOR TRANSFERS WITHIN AFFILIATED GROUP.—Subparagraph (A) shall not apply to any transaction if the transferor owns stock in the transferee meeting the requirements of section 1504(a)(2). In the case of property to which subparagraph (A) does not apply by reason of the preceding sentence, the transferor's basis in the stock received for such property shall not exceed its fair market value immediately after the transfer.''.

(b) COMPARABLE TREATMENT WHERE LIQUIDATION.—Paragraph (1) of section 334(b) (relating to liquidation of subsidiary) is amended to read as follows:

''(1) IN GENERAL.—If property is received by a corporate distributee in a distribution in a complete liquidation to which section 332 applies (or in a transfer described in section 337(b)(1)), the basis of such property in the hands of such distributee shall be the same as it would be in the hands of the transferor; except that the basis of such property in the hands of such distributee shall be the fair market value of the property at the time of the distribution—

''(A) in any case in which gain or loss is recognized by the liquidating corporation with respect to such property, or

''(B) in any case in which the liquidating corporation is a foreign corporation, the corporate distributee is a domestic corporation, and the corporate distributee's aggregate adjusted bases of property described in section 362(e)(1)(B) which is distributed in such liquidation would (but for this subparagraph) exceed the fair market value of such property immediately after such liquidation.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions after February 13, 2003.

SEC. 322. NO REDUCTION OF BASIS UNDER SECTION 734 IN STOCK HELD BY PARTNERSHIP IN CORPORATE PARTNER.

(a) IN GENERAL.—Section 755 is amended by adding at the end the following new subsection:

''(c) NO ALLOCATION OF BASIS DECREASE TO STOCK OF CORPORATE PARTNER.—In making an allocation under subsection (a) of any decrease in the adjusted basis of partnership property under section 734(b)—

''(1) no allocation may be made to stock in a corporation (or any person which is related (within the meaning of section 267(b) or 707(b)(1)) to such corporation) which is a partner in the partnership, and

''(2) any amount not allocable to stock by reason of paragraph (1) shall be allocated under subsection (a) to other partnership property.

Gain shall be recognized to the partnership to the extent that the amount required to be allocated under paragraph (2) to other partnership property exceeds the aggregate adjusted basis of such other property immediately before the allocation required by paragraph (2).''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to distributions after February 13, 2003.

SEC. 323. REPEAL OF SPECIAL RULES FOR FASITS.

(a) IN GENERAL.—Part V of subchapter M of chapter 1 (relating to financial asset securitization investment trusts) is hereby repealed.

(b) CONFORMING AMENDMENTS.—

(1) Paragraph (6) of section 56(g) is amended by striking ''REMIC, or FASIT'' and inserting ''or REMIC''.

(2) Clause (ii) of section 382(l)(4)(B) is amended by striking ''a REMIC to which part IV of subchapter M applies, or a FASIT to which part V of subchapter M applies,'' and inserting ''or a REMIC to which part IV of subchapter M applies,''.

(3) Paragraph (1) of section 582(c) is amended by striking '', and any regular interest in a FASIT,''.

(4) Subparagraph (E) of section 856(c)(5) is amended by striking the last sentence.

(5) Paragraph (5) of section 860G(a) is amended by adding ''and'' at the end of subparagraph (B), by striking '', and'' at the end of subparagraph (C) and inserting a period, and by striking subparagraph (D).

(6) Subparagraph (C) of section 1202(e)(4) is amended by striking ''REMIC, or FASIT'' and inserting ''or REMIC''.

(7) Subparagraph (C) of section 7701(a)(19) is amended by adding ''and'' at the end of clause (ix), by striking '', and'' at the end of clause (x) and inserting a period, and by striking clause (xi).

(8) The table of parts for subchapter M of chapter 1 is amended by striking the item relating to part V.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall take effect on February 14, 2003.

(2) EXCEPTION FOR EXISTING FASITS.—The amendments made by this section shall not apply to any FASIT in existence on the date of the enactment of this Act to the extent that regular interests issued by the FASIT before such date continue to remain outstanding in accordance with the original terms of issuance of such interests.

SEC. 324. EXPANDED DISALLOWANCE OF DEDUCTION FOR INTEREST ON CONVERTIBLE DEBT.

(a) IN GENERAL.—Paragraph (2) of section 163(l) is amended by striking ''or a related party'' and inserting ''or equity held by the issuer (or any related party) in any other person''.

(b) EXCEPTION FOR CERTAIN INSTRUMENTS ISSUED BY DEALERS IN SECURITIES.—Section

163(l) is amended by redesignating paragraphs (4) and (5) as paragraphs (5) and (6) and by inserting after paragraph (3) the following new paragraph:

''(4) EXCEPTION FOR CERTAIN INSTRUMENTS ISSUED BY DEALERS IN SECURITIES.—For purposes of this subsection, the term 'disqualified debt instrument' does not include indebtedness issued by a dealer in securities (or a related party) which is payable in, or by reference to, equity (other than equity of the issuer or a related party) held by such dealer in its capacity as a dealer in securities. For purposes of this paragraph, the term 'dealer in securities' has the meaning given such term by section 475.''.

(c) CONFORMING AMENDMENT.—Paragraph (3) of section 163(l) is amended by striking ''or a related party'' in the material preceding subparagraph (A) and inserting ''or any other person''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to debt instruments issued after February 13, 2003.

SEC. 325. EXPANDED AUTHORITY TO DISALLOW TAX BENEFITS UNDER SECTION 269.

(a) IN GENERAL.—Subsection (a) of section 269 (relating to acquisitions made to evade or avoid income tax) is amended to read as follows:

''(a) IN GENERAL.—If—

''(1)(A) any person acquires stock in a corporation, or

''(B) any corporation acquires, directly or indirectly, property of another corporation and the basis of such property, in the hands of the acquiring corporation, is determined by reference to the basis in the hands of the transferor corporation, and

''(2) the principal purpose for which such acquisition was made is evasion or avoidance of Federal income tax by securing the benefit of a deduction, credit, or other allowance,

then the Secretary may disallow such deduction, credit, or other allowance.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to stock and property acquired after February 13, 2003.

SEC. 326. MODIFICATIONS OF CERTAIN RULES RELATING TO CONTROLLED FOREIGN CORPORATIONS.

(a) LIMITATION ON EXCEPTION FROM PFIC RULES FOR UNITED STATES SHAREHOLDERS OF CONTROLLED FOREIGN CORPORATIONS.—Paragraph (2) of section 1297(e) (relating to passive investment company) is amended by adding at the end the following flush sentence:

''Such term shall not include any period if there is only a remote likelihood of an inclusion in gross income under section 951(a)(1)(A)(i) of subpart F income of such corporation for such period.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years on controlled foreign corporation beginning after February 13, 2003, and to taxable years of United States shareholder in which or with which such taxable years of controlled foreign corporations end.

SEC. 327. CONTROLLED ENTITIES INELIGIBLE FOR REIT STATUS.

(a) IN GENERAL.—Subsection (a) of section 856 (relating to definition of real estate investment trust) is amended by striking ''and'' at the end of paragraph (6), by redesignating paragraph (7) as paragraph (8), and by inserting after paragraph (6) the following new paragraph:

''(7) which is not a controlled entity (as defined in subsection (l)); and''.

(b) CONTROLLED ENTITY.—Section 856 is amended by adding at the end the following new subsection:

''(l) CONTROLLED ENTITY.—

''(1) IN GENERAL.—For purposes of subsection (a)(7), an entity is a controlled entity if, at any time during the taxable year, one person (other than a qualified entity)—

''(A) in the case of a corporation, owns stock—

''(i) possessing at least 50 percent of the total voting power of the stock of such corporation, or

''(ii) having a value equal to at least 50 percent of the total value of the stock of such corporation, or

''(B) in the case of a trust, owns beneficial interests in the trust which would meet the requirements of subparagraph (A) if such interests were stock.

''(2) QUALIFIED ENTITY.—For purposes of paragraph (1), the term 'qualified entity' means—

''(A) any real estate investment trust, and

''(B) any partnership in which one real estate investment trust owns at least 50 percent of the capital and profits interests in the partnership.

''(3) ATTRIBUTION RULES.—For purposes of this paragraphs (1) and (2)—

''(A) IN GENERAL.—Rules similar to the rules of subsections (d)(5) and (h)(3) shall apply; except that section 318(a)(3)(C) shall not be applied under such rules to treat stock owned by a qualified entity as being owned by a person which is not a qualified entity.

''(B) STAPLED ENTITIES.—A group of entities which are stapled entities (as defined in section 269B(c)(2)) shall be treated as one person.

''(4) EXCEPTION FOR CERTAIN NEW REITS.—

''(A) IN GENERAL.—The term 'controlled entity' shall not include an incubator REIT.

''(B) INCUBATOR REIT.—A corporation shall be treated as an incubator REIT for any taxable year during the eligibility period if it meets all the following requirements for such year:

''(i) The corporation elects to be treated as an incubator REIT.

''(ii) The corporation has only voting common stock outstanding.

''(iii) Not more than 50 percent of the corporation's real estate assets consist of mortgages.

''(iv) From not later than the beginning of the last half of the second taxable year, at least 10 percent of the corporation's capital is provided by lenders or equity investors who are unrelated to the corporation's largest shareholder.

''(v) The corporation annually increases the value of its real estate assets by at least 10 percent.

''(vi) The directors of the corporation adopt a resolution setting forth an intent to engage in a going public transaction.

No election may be made with respect to any REIT if an election under this subsection was in effect for any predecessor of such REIT.

''(C) ELIGIBILITY PERIOD.—

''(i) IN GENERAL.—The eligibility period (for which an incubator REIT election can be made) begins with the REIT's second taxable year and ends at the close of the REIT's third taxable year, except that the REIT may, subject to clauses (ii), (iii), and (iv), elect to extend such period for an additional 2 taxable years.

''(ii) GOING PUBLIC TRANSACTION.—A REIT may not elect to extend the eligibility period under clause (i) unless it enters into an agreement with the Secretary that if it does not engage in a going public transaction by the end of the extended eligibility period, it shall pay Federal income taxes for the 2 years of the extended eligibility period as if it had not made an incubator REIT election and had ceased to qualify as a REIT for those 2 taxable years.

''(iii) RETURNS, INTEREST, AND NOTICE.—

''(I) RETURNS.—In the event the corporation ceases to be treated as a REIT by operation of clause (ii), the corporation shall file any appropriate amended returns reflecting the change in status within 3 months of the close of the extended eligibility period.

''(II) INTEREST.—Interest shall be payable on any tax imposed by reason of clause (ii) for any taxable year but, unless there was a finding under subparagraph (D), no substantial underpayment penalties shall be imposed.

''(III) NOTICE.—The corporation shall, at the same time it files its returns under subclause (I), notify its shareholders and any other persons whose tax position is, or may reasonably be expected to be, affected by the change in status so they also may file any appropriate amended returns to conform their tax treatment consistent with the corporation's loss of REIT status.

''(IV) REGULATIONS.—The Secretary shall provide appropriate regulations setting forth transferee liability and other provisions to ensure collection of tax and the proper administration of this provision.

''(iv) Clauses (ii) and (iii) shall not apply if the corporation allows its incubator REIT status to lapse at the end of the initial 2-year eligibility period without engaging in a going public transaction if the corporation is not a controlled entity as of the beginning of its fourth taxable year. In such a case, the corporation's directors may still be liable for the penalties described in subparagraph (D) during the eligibility period.

''(D) SPECIAL PENALTIES.—If the Secretary determines that an incubator REIT election was filed for a principal purpose other than as part of a reasonable plan to undertake a going public transaction, an excise tax of $20,000 shall be imposed on each of the corporation's directors for each taxable year for which an election was in effect.

''(E) GOING PUBLIC TRANSACTION.—For purposes of this paragraph, a going public transaction means—

''(i) a public offering of shares of the stock of the incubator REIT;

''(ii) a transaction, or series of transactions, that results in the stock of the incubator REIT being regularly traded on an established securities market and that results in at least 50 percent of such stock being held by shareholders who are unrelated to persons who held such stock before it began to be so regularly traded; or

''(iii) any transaction resulting in ownership of the REIT by 200 or more persons (excluding the largest single shareholder) who in the aggregate own at least 50 percent of the stock of the REIT.

For the purposes of this subparagraph, the rules of paragraph (3) shall apply in determining the ownership of stock.

''(F) DEFINITIONS.—The term 'established securities market' shall have the meaning set forth in the regulations under section 897.''.

(c) CONFORMING AMENDMENT.—Paragraph (2) of section 856(h) is amended by striking ''and (6)'' each place it appears and inserting '', (6), and (7)''.

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to taxable years ending after May 8, 2003.

(2) EXCEPTION FOR EXISTING CONTROLLED ENTITIES.—The amendments made by this section shall not apply to any entity which is a controlled entity (as defined in section 856(l) of the Internal Revenue Code of 1986, as added by this section) as of May 8, 2003, which is a real estate investment trust for the taxable year which includes such date, and which has significant business assets or activities as of such date. For purposes of the preceding sentence, an entity shall be treated as such a controlled entity on May 8, 2003, if it becomes such an entity after such date in a transaction—

(A) made pursuant to a written agreement which was binding on such date and at all times thereafter, or

(B) described on or before such date in a filing with the Securities and Exchange Commission required solely by reason of the transaction.

Subtitle C—Other Corporate Governance Provisions

PART I—GENERAL PROVISIONS

SEC. 331. AFFIRMATION OF CONSOLIDATED RETURN REGULATION AUTHORITY.

(a) IN GENERAL.—Section 1502 (relating to consolidated return regulations) is amended by adding at the end the following new sentence: ''In prescribing such regulations, the Secretary may prescribe rules applicable to corporations filing consolidated returns under section 1501 that are different from other provisions of this

title that would apply if such corporations filed separate returns.''.

(b) RESULT NOT OVERTURNED.—Notwithstanding subsection (a), the Internal Revenue Code of 1986 shall be construed by treating Treasury regulation §1.1502–20(c)(1)(iii) (as in effect on January 1, 2001) as being inapplicable to the type of factual situation in 255 F.3d 1357 (Fed. Cir. 2001).

(c) EFFECTIVE DATE.—The provisions of this section shall apply to taxable years beginning before, on, or after the date of the enactment of this Act.

SEC. 332. SIGNING OF CORPORATE TAX RETURNS BY CHIEF EXECUTIVE OFFICER.

(a) IN GENERAL.—Section 6062 (relating to signing of corporation returns) is amended by striking the first sentence and inserting the following new sentence: ''The return of a corporation with respect to income shall be signed by the chief executive officer of such corporation (or other such officer of the corporation as the Secretary may designate if the corporation does not have a chief executive officer). The preceding sentence shall not apply to any return of a regulated investment company (within the meaning of section 851).''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to returns filed after the date of the enactment of this Act.

SEC. 333. DENIAL OF DEDUCTION FOR CERTAIN FINES, PENALTIES, AND OTHER AMOUNTS.

(a) IN GENERAL.—Subsection (f) of section 162 (relating to trade or business expenses) is amended to read as follows:

''(f) FINES, PENALTIES, AND OTHER AMOUNTS.—

''(1) IN GENERAL.—Except as provided in paragraph (2), no deduction otherwise allowable shall be allowed under this chapter for any amount paid or incurred (whether by suit, agreement, or otherwise) to, or at the direction of, a government or entity described in paragraph (3) in relation to the violation of any law or the investigation or inquiry into the potential violation of any law.

''(2) EXCEPTION FOR AMOUNTS CONSTITUTING RESTITUTION.—Paragraph (1) shall not apply to any amount which the taxpayer establishes constitutes restitution for damage or harm caused by the violation of any law or the potential violation of any law. This paragraph shall not apply to any amount paid or incurred as reimbursement to the government or entity for the costs of any investigation or litigation.

''(3) CERTAIN NONGOVERNMENTAL REGULATORY ENTITIES.—An entity is described in this paragraph if it is—

''(A) a nongovernmental entity which exercises self-regulatory powers (including imposing sanctions) in connection with a qualified board or exchange (as defined in section 1256(g)(7)), or

''(B) to the extent provided in regulations, a nongovernmental entity which exercises self-regulatory powers (including imposing sanctions) as part of performing an essential governmental function.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to amounts paid or incurred after April 27, 2003, except that such amendment shall not apply to amounts paid or incurred under any binding order or agreement entered into on or before April 27, 2003. Such exception shall not apply to an order or agreement requiring court approval unless the approval was obtained on or before April 27, 2003.

SEC. 334. DISALLOWANCE OF DEDUCTION FOR PUNITIVE DAMAGES.

(a) DISALLOWANCE OF DEDUCTION.—

(1) IN GENERAL.—Section 162(g) (relating to treble damage payments under the antitrust laws) is amended by adding at the end the following new paragraph:

''(2) PUNITIVE DAMAGES.—No deduction shall be allowed under this chapter for any amount paid or incurred for punitive damages in connection with any judgment in, or settlement of, any action. This paragraph shall not apply to punitive damages described in section 104(c).''.

(2) CONFORMING AMENDMENTS.—

(A) Section 162(g) is amended—

(i) by striking ''If'' and inserting:

''(1) TREBLE DAMAGES.—If'', and

(ii) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively.

(B) The heading for section 162(g) is amended by inserting ''OR PUNITIVE DAMAGES'' after ''LAWS''.

(b) INCLUSION IN INCOME OF PUNITIVE DAMAGES PAID BY INSURER OR OTHERWISE.—

(1) IN GENERAL.—Part II of subchapter B of chapter 1 (relating to items specifically included in gross income) is amended by adding at the end the following new section:

''SEC. 91. PUNITIVE DAMAGES COMPENSATED BY INSURANCE OR OTHERWISE.

''Gross income shall include any amount paid to or on behalf of a taxpayer as insurance or otherwise by reason of the taxpayer's liability (or agreement) to pay punitive damages.''.

(2) REPORTING REQUIREMENTS.—Section 6041 (relating to information at source) is amended by adding at the end the following new subsection:

''(f) SECTION TO APPLY TO PUNITIVE DAMAGES COMPENSATION.—This section shall apply to payments by a person to or on behalf of another person as insurance or otherwise by reason of the other person's liability (or agreement) to pay punitive damages.''.

(3) CONFORMING AMENDMENT.—The table of sections for part II of subchapter B of chapter 1 is amended by adding at the end the following new item:

''Sec. 91. Punitive damages compensated by insurance or otherwise.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to damages paid or incurred on or after the date of the enactment of this Act.

SEC. 335. INCREASE IN CRIMINAL MONETARY PENALTY LIMITATION FOR THE UNDERPAYMENT OR OVERPAYMENT OF TAX DUE TO FRAUD.

(a) IN GENERAL.—Section 7206 (relating to fraud and false statements) is amended—

(1) by striking ''Any person who—'' and inserting ''(a) IN GENERAL.—Any person who—'', and

(2) by adding at the end the following new subsection:

''(b) INCREASE IN MONETARY LIMITATION FOR UNDERPAYMENT OR OVERPAYMENT OF TAX DUE TO FRAUD.—If any portion of any underpayment (as defined in section 6664(a)) or overpayment (as defined in section 6401(a)) of tax required to be shown on a return is attributable to fraudulent action described in subsection (a), the applicable dollar amount under subsection (a) shall in no event be less than an amount equal to such portion. A rule similar to the rule under section 6663(b) shall apply for purposes of determining the portion so attributable.''.

(b) INCREASE IN PENALTIES.—

(1) ATTEMPT TO EVADE OR DEFEAT TAX.—Section 7201 is amended—

(A) by striking ''$100,000'' and inserting ''$250,000'',

(B) by striking ''$500,000'' and inserting ''$1,000,000'', and

(C) by striking ''5 years'' and inserting ''10 years''.

(2) WILLFUL FAILURE TO FILE RETURN, SUPPLY INFORMATION, OR PAY TAX.—Section 7203 is amended—

(A) in the first sentence—

(i) by striking ''misdemeanor'' and inserting ''felony'', and

(ii) by striking ''1 year'' and inserting ''10 years'', and

(B) by striking the third sentence.

(3) FRAUD AND FALSE STATEMENTS.—Section 7206(a) (as redesignated by subsection (a)) is amended—

(A) by striking ''$100,000'' and inserting ''$250,000'',

(B) by striking ''$500,000'' and inserting ''$1,000,000'', and

(C) by striking ''3 years'' and inserting ''5 years''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to underpayments and overpayments attributable to actions occurring after the date of the enactment of this Act.

PART II—EXECUTIVE COMPENSATION REFORM

SEC. 336. TREATMENT OF NONQUALIFIED DEFERRED COMPENSATION FUNDED WITH ASSETS LOCATED OUTSIDE THE UNITED STATES.

(a) IN GENERAL.—Section 83(c) (relating to special rules for property transferred in connection with performance of services) is amended by adding at the end the following new paragraph:

''(4) FOREIGN ASSETS FUNDING NONQUALIFIED DEFERRED COMPENSATION ARRANGEMENTS.—

''(A) IN GENERAL.—In determining whether there is a transfer of property for purposes of subsection (a), if assets are—

''(i) designated or otherwise available for the payment of nonqualified deferred compensation, and

''(ii) located outside the United States,

such assets shall not be treated as subject to the claims of creditors.

''(B) COMPENSATION FOR SERVICES PERFORMED IN FOREIGN JURISDICTION.—Subparagraph (A) shall not apply to assets located in a foreign jurisdiction if substantially all of the services to which the nonqualified deferred compensation relates are performed in such jurisdiction.

''(C) REGULATIONS.—The Secretary shall prescribe such regulations as are necessary to carry out the provisions of this paragraph, including regulations to exempt arrangements from the application of this paragraph if—

''(i) the arrangement will not result in an improper deferral of United States tax, and

''(ii) the assets involved in the arrangement will be readily accessible in any insolvency or bankruptcy proceeding.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts deferred in taxable years beginning after December 31, 2003.

SEC. 337. INCLUSION IN GROSS INCOME OF FUNDED DEFERRED COMPENSATION OF CORPORATE INSIDERS.

(a) IN GENERAL.—Subpart A of part I of subchapter D of chapter 1 is amended by adding at the end the following new section:

''SEC. 409A. INCLUSION IN GROSS INCOME OF FUNDED DEFERRED COMPENSATION OF CORPORATE INSIDERS.

''(a) IN GENERAL.—If an employer maintains a funded deferred compensation plan—

''(1) compensation of any disqualified individual which is deferred under such funded deferred compensation plan shall be included in the gross income of the disqualified individual or beneficiary for the 1st taxable year in which there is no substantial risk of forfeiture of the rights to such compensation, and

''(2) the tax treatment of any amount made available under the plan to a disqualified individual or beneficiary shall be determined under section 72 (relating to annuities, etc.).

''(b) FUNDED DEFERRED COMPENSATION PLAN.—For purposes of this section—

''(1) IN GENERAL.—The term 'funded deferred compensation plan' means any plan providing for the deferral of compensation unless—

''(A) the employee's rights to the compensation deferred under the plan are no greater than the rights of a general creditor of the employer, and

''(B) all amounts set aside (directly or indirectly) for purposes of paying the deferred compensation, and all income attributable to such amounts, remain (until made available to the participant or other beneficiary) solely the property of the employer (without being restricted to the provision of benefits under the plan),

''(C) the amounts referred to in subparagraph (B) are available to satisfy the claims of the employer's general creditors at all times (not merely after bankruptcy or insolvency), and

''(D) the investment options which a participant may elect under the plan are the same as the investment options which a participant may elect under the qualified employer plan of the employer which has the fewest investment options.

Such term shall not include a qualified employer plan.

''(2) SPECIAL RULES.—

''(A) EMPLOYEE'S RIGHTS.—A plan shall be treated as failing to meet the requirements of paragraph (1)(A) unless—

''(i) the compensation deferred under the plan is payable only upon separation from service, death, disability (within the meaning of section 1614(a)(3) of the Social Security Act (42 U.S.C. 1382c(a)(3))), or at a specified time (or pursuant to a fixed schedule), and

''(ii) the plan does not permit the acceleration of the time such deferred compensation is payable by reason of any event.

If the employer and employee agree to a modification of the plan that accelerates the time for payment of any deferred compensation, then all compensation previously deferred under the plan shall be includible in gross income for the taxable year during which such modification takes effect and the taxpayer shall pay interest at the underpayment rate on the underpayments that would have occurred had the deferred compensation been includible in gross income on the earliest date that there is no substantial risk of forfeiture of the rights to such compensation.

''(B) CREDITOR'S RIGHTS.—A plan shall be treated as failing to meet the requirements of paragraph (1)(B) with respect to amounts set aside in a trust unless—

''(i) the employee has no beneficial interest in the trust,

''(ii) assets in the trust are available to satisfy claims of general creditors at all times (not merely after bankruptcy or insolvency), and

''(iii) there is no factor that would make it more difficult for general creditors to reach the assets in the trust than it would be if the trust assets were held directly by the employer in the United States.

Except as provided in regulations prescribed by the Secretary, such a factor shall include the location of the trust outside the United States unless substantially all of the services to which the nonqualified deferred compensation relates are performed outside the United States. Such regulations may exempt any such trust if the trust will not result in an improper deferral of United States tax, and the assets involved in the trust will be readily accessible in any insolvency or bankruptcy proceeding.

''(c) DISQUALIFIED INDIVIDUAL.—For purposes of this section, the term 'disqualified individual' means, with respect to a corporation, any individual—

''(1) who is subject to the requirements of section 16(a) of the Securities Exchange Act of 1934 with respect to such corporation, or

''(2) who would be subject to such requirements if such corporation were an issuer of equity securities referred to in such section.

''(d) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

''(1) QUALIFIED EMPLOYER PLAN.—The term 'qualified employer plan' means—

''(A) any plan, contract, pension, account, or trust described in subparagraph (A) or (B) of section 219(g)(5), and

''(B) any other plan of an organization exempt from tax under subtitle A.

''(2) PLAN INCLUDES ARRANGEMENTS, ETC.—The term 'plan' includes any agreement or arrangement.

''(3) SUBSTANTIAL RISK OF FORFEITURE.—The rights of a person to compensation are subject to a substantial risk of forfeiture if such person's rights to such compensation are conditioned upon the future performance of substantial services by any individual.

''(4) TREATMENT OF EARNINGS.—References to deferred compensation shall be treated as including references to income attributable to such compensation or such income.''.

(b) CLERICAL AMENDMENT.—The table of sections for such subpart A is amended by adding at the end the following new item:

''Sec. 409A. Inclusion in gross income of funded deferred compensation of corporate insiders.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts deferred in taxable years beginning after December 31, 2003.

SEC. 338. PROHIBITION ON DEFERRAL OF GAIN FROM THE EXERCISE OF STOCK OPTIONS AND RESTRICTED STOCK GAINS THROUGH DEFERRED COMPENSATION ARRANGEMENTS.

(a) IN GENERAL.—Section 83 (relating to property transferred in connection with performance of services) is amending by adding at the end the following new subsection:

''(i) PROHIBITION ON ADDITIONAL DEFERRAL THROUGH DEFERRED COMPENSATION ARRANGEMENTS.—If a taxpayer elects to exchange an option to purchase employer securities—

''(1) to which subsection (a) applies, or

''(2) which is described in subsection (e)(3),

or any other compensation based on employer securities, for a right to receive future payments, then, notwithstanding any other provision of this title, there shall be included in gross income for the taxable year of the exchange an amount equal to the present value of such right (or such other amount as the Secretary may by regulations specify). For purposes of this subsection, the term 'employer securities' has the meaning given such term by section 409(l).''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to any exchange after December 31, 2003.

SEC. 339. INCREASE IN WITHHOLDING FROM SUPPLEMENTAL WAGE PAYMENTS IN EXCESS OF $1,000,000.

(a) IN GENERAL.—If an employer elects under Treasury Regulation 31.3402(g)–1 to determine the amount to be deducted and withheld from any supplemental wage payment by using a flat percentage rate, the rate to be used in determining the amount to be so deducted and withheld shall not be less than 28 percent (or the corresponding rate in effect under section 1(i)(2) of the Internal Revenue Code of 1986 for taxable years beginning in the calendar year in which the payment is made).

(b) SPECIAL RULE FOR LARGE PAYMENTS.—

(1) IN GENERAL.—Notwithstanding subsection (a), if the supplemental wage payment, when added to all such payments previously made by the employer to the employee during the calendar year, exceeds $1,000,000, the rate used with respect to such excess shall be equal to the maximum rate of tax in effect under section 1 of such Code for taxable years beginning in such calendar year.

(2) AGGREGATION.—All persons treated as a single employer under subsection (a) or (b) of section 52 of the Internal Revenue Code of 1986 shall be treated as a single employer for purposes of this subsection.

(c) CONFORMING AMENDMENT.—Section 13273 of the Revenue Reconciliation Act of 1993 (Public Law 103–66) is repealed.

(d) EFFECTIVE DATE.—The provisions of, and the amendment made by, this section shall apply to payments made after December 31, 2003.

Subtitle D—International Provisions

PART I—PROVISIONS TO DISCOURAGE EXPATRIATION

SEC. 340. REVISION OF TAX RULES ON EXPATRIATION.

(a) IN GENERAL.—Subpart A of part II of subchapter N of chapter 1 is amended by inserting after section 877 the following new section:

''SEC. 877A. TAX RESPONSIBILITIES OF EXPATRIATION.

''(a) GENERAL RULES.—For purposes of this subtitle—

''(1) MARK TO MARKET.—Except as provided in subsections (d) and (f), all property of a covered expatriate to whom this section applies shall be treated as sold on the day before the expatriation date for its fair market value.

''(2) RECOGNITION OF GAIN OR LOSS.—In the case of any sale under paragraph (1)—

''(A) notwithstanding any other provision of this title, any gain arising from such sale shall be taken into account for the taxable year of the sale, and

''(B) any loss arising from such sale shall be taken into account for the taxable year of the sale to the extent otherwise provided by this title, except that section 1091 shall not apply to any such loss.

Proper adjustment shall be made in the amount of any gain or loss subsequently realized for gain or loss taken into account under the preceding sentence.

''(3) EXCLUSION FOR CERTAIN GAIN.—

''(A) IN GENERAL.—The amount which, but for this paragraph, would be includible in the gross income of any individual by reason of this section shall be reduced (but not below zero) by $600,000. For purposes of this paragraph, allocable expatriation gain taken into account under subsection (f)(2) shall be treated in the same manner as an amount required to be includible in gross income.

''(B) COST-OF-LIVING ADJUSTMENT.—

''(i) IN GENERAL.—In the case of an expatriation date occurring in any calendar year after 2003, the $600,000 amount under subparagraph (A) shall be increased by an amount equal to—

''(I) such dollar amount, multiplied by

''(II) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year, determined by substituting 'calendar year 2002' for 'calendar year 1992' in subparagraph (B) thereof.

''(ii) ROUNDING RULES.—If any amount after adjustment under clause (i) is not a multiple of $1,000, such amount shall be rounded to the next lower multiple of $1,000.

''(4) ELECTION TO CONTINUE TO BE TAXED AS UNITED STATES CITIZEN.—

''(A) IN GENERAL.—If a covered expatriate elects the application of this paragraph—

''(i) this section (other than this paragraph and subsection (i)) shall not apply to the expatriate, but

''(ii) in the case of property to which this section would apply but for such election, the expatriate shall be subject to tax under this title in the same manner as if the individual were a United States citizen.

''(B) REQUIREMENTS.—Subparagraph (A) shall not apply to an individual unless the individual—

''(i) provides security for payment of tax in such form and manner, and in such amount, as the Secretary may require,

''(ii) consents to the waiver of any right of the individual under any treaty of the United States which would preclude assessment or collection of any tax which may be imposed by reason of this paragraph, and

''(iii) complies with such other requirements as the Secretary may prescribe.

''(C) ELECTION.—An election under subparagraph (A) shall apply to all property to which this section would apply but for the election and, once made, shall be irrevocable. Such election shall also apply to property the basis of which is determined in whole or in part by reference to the property with respect to which the election was made.

''(b) ELECTION TO DEFER TAX.—

''(1) IN GENERAL.—If the taxpayer elects the application of this subsection with respect to any property treated as sold by reason of subsection (a), the payment of the additional tax attributable to such property shall be postponed

until the due date of the return for the taxable year in which such property is disposed of (or, in the case of property disposed of in a transaction in which gain is not recognized in whole or in part, until such other date as the Secretary may prescribe).

''(2) DETERMINATION OF TAX WITH RESPECT TO PROPERTY.—For purposes of paragraph (1), the additional tax attributable to any property is an amount which bears the same ratio to the additional tax imposed by this chapter for the taxable year solely by reason of subsection (a) as the gain taken into account under subsection (a) with respect to such property bears to the total gain taken into account under subsection (a) with respect to all property to which subsection (a) applies.

''(3) TERMINATION OF POSTPONEMENT.—No tax may be postponed under this subsection later than the due date for the return of tax imposed by this chapter for the taxable year which includes the date of death of the expatriate (or, if earlier, the time that the security provided with respect to the property fails to meet the requirements of paragraph (4), unless the taxpayer corrects such failure within the time specified by the Secretary).

''(4) SECURITY.—

''(A) IN GENERAL.—No election may be made under paragraph (1) with respect to any property unless adequate security is provided to the Secretary with respect to such property.

''(B) ADEQUATE SECURITY.—For purposes of subparagraph (A), security with respect to any property shall be treated as adequate security if—

''(i) it is a bond in an amount equal to the deferred tax amount under paragraph (2) for the property, or

''(ii) the taxpayer otherwise establishes to the satisfaction of the Secretary that the security is adequate.

''(5) WAIVER OF CERTAIN RIGHTS.—No election may be made under paragraph (1) unless the taxpayer consents to the waiver of any right under any treaty of the United States which would preclude assessment or collection of any tax imposed by reason of this section.

''(6) ELECTIONS.—An election under paragraph (1) shall only apply to property described in the election and, once made, is irrevocable. An election may be made under paragraph (1) with respect to an interest in a trust with respect to which gain is required to be recognized under subsection (f)(1).

''(7) INTEREST.—For purposes of section 6601—

''(A) the last date for the payment of tax shall be determined without regard to the election under this subsection, and

''(B) section 6621(a)(2) shall be applied by substituting '5 percentage points' for '3 percentage points' in subparagraph (B) thereof.

''(c) COVERED EXPATRIATE.—For purposes of this section—

''(1) IN GENERAL.—Except as provided in paragraph (2), the term 'covered expatriate' means an expatriate.

''(2) EXCEPTIONS.—An individual shall not be treated as a covered expatriate if—

''(A) the individual—

''(i) became at birth a citizen of the United States and a citizen of another country and, as of the expatriation date, continues to be a citizen of, and is taxed as a resident of, such other country, and

''(ii) has not been a resident of the United States (as defined in section 7701(b)(1)(A)(ii)) during the 5 taxable years ending with the taxable year during which the expatriation date occurs, or

''(B)(i) the individual's relinquishment of United States citizenship occurs before such individual attains age 18½, and

''(ii) the individual has been a resident of the United States (as so defined) for not more than 5 taxable years before the date of relinquishment.

''(d) EXEMPT PROPERTY; SPECIAL RULES FOR PENSION PLANS.—

''(1) EXEMPT PROPERTY.—This section shall not apply to the following:

''(A) UNITED STATES REAL PROPERTY INTERESTS.—Any United States real property interest (as defined in section 897(c)(1)), other than stock of a United States real property holding corporation which does not, on the day before the expatriation date, meet the requirements of section 897(c)(2).

''(B) SPECIFIED PROPERTY.—Any property or interest in property not described in subparagraph (A) which the Secretary specifies in regulations.

''(2) SPECIAL RULES FOR CERTAIN RETIREMENT PLANS.—

''(A) IN GENERAL.—If a covered expatriate holds on the day before the expatriation date any interest in a retirement plan to which this paragraph applies—

''(i) such interest shall not be treated as sold for purposes of subsection (a)(1), but

''(ii) an amount equal to the present value of the expatriate's nonforfeitable accrued benefit shall be treated as having been received by such individual on such date as a distribution under the plan.

''(B) TREATMENT OF SUBSEQUENT DISTRIBUTIONS.—In the case of any distribution on or after the expatriation date to or on behalf of the covered expatriate from a plan from which the expatriate was treated as receiving a distribution under subparagraph (A), the amount otherwise includible in gross income by reason of the subsequent distribution shall be reduced by the excess of the amount includible in gross income under subparagraph (A) over any portion of such amount to which this subparagraph previously applied.

''(C) TREATMENT OF SUBSEQUENT DISTRIBUTIONS BY PLAN.—For purposes of this title, a retirement plan to which this paragraph applies, and any person acting on the plan's behalf, shall treat any subsequent distribution described in subparagraph (B) in the same manner as such distribution would be treated without regard to this paragraph.

''(D) APPLICABLE PLANS.—This paragraph shall apply to—

''(i) any qualified retirement plan (as defined in section 4974(c)),

''(ii) an eligible deferred compensation plan (as defined in section 457(b)) of an eligible employer described in section 457(e)(1)(A), and

''(iii) to the extent provided in regulations, any foreign pension plan or similar retirement arrangements or programs.

''(e) DEFINITIONS.—For purposes of this section—

''(1) EXPATRIATE.—The term 'expatriate' means—

''(A) any United States citizen who relinquishes citizenship, and

''(B) any long-term resident of the United States who—

''(i) ceases to be a lawful permanent resident of the United States (within the meaning of section 7701(b)(6)), or

''(ii) commences to be treated as a resident of a foreign country under the provisions of a tax treaty between the United States and the foreign country and who does not waive the benefits of such treaty applicable to residents of the foreign country.

''(2) EXPATRIATION DATE.—The term 'expatriation date' means—

''(A) the date an individual relinquishes United States citizenship, or

''(B) in the case of a long-term resident of the United States, the date of the event described in clause (i) or (ii) of paragraph (1)(B).

''(3) RELINQUISHMENT OF CITIZENSHIP.—A citizen shall be treated as relinquishing United States citizenship on the earliest of—

''(A) the date the individual renounces such individual's United States nationality before a diplomatic or consular officer of the United States pursuant to paragraph (5) of section 349(a) of the Immigration and Nationality Act (8 U.S.C. 1481(a)(5)),

''(B) the date the individual furnishes to the United States Department of State a signed statement of voluntary relinquishment of United States nationality confirming the performance of an act of expatriation specified in paragraph (1), (2), (3), or (4) of section 349(a) of the Immigration and Nationality Act (8 U.S.C. 1481(a)(1)–(4)),

''(C) the date the United States Department of State issues to the individual a certificate of loss of nationality, or

''(D) the date a court of the United States cancels a naturalized citizen's certificate of naturalization.

Subparagraph (A) or (B) shall not apply to any individual unless the renunciation or voluntary relinquishment is subsequently approved by the issuance to the individual of a certificate of loss of nationality by the United States Department of State.

''(4) LONG-TERM RESIDENT.—The term 'long-term resident' has the meaning given to such term by section 877(e)(2).

''(f) SPECIAL RULES APPLICABLE TO BENEFICIARIES' INTERESTS IN TRUST.—

''(1) IN GENERAL.—Except as provided in paragraph (2), if an individual is determined under paragraph (3) to hold an interest in a trust on the day before the expatriation date—

''(A) the individual shall not be treated as having sold such interest,

''(B) such interest shall be treated as a separate share in the trust, and

''(C)(i) such separate share shall be treated as a separate trust consisting of the assets allocable to such share,

''(ii) the separate trust shall be treated as having sold its assets on the day before the expatriation date for their fair market value and as having distributed all of its assets to the individual as of such time, and

''(iii) the individual shall be treated as having recontributed the assets to the separate trust.

Subsection (a)(2) shall apply to any income, gain, or loss of the individual arising from a distribution described in subparagraph (C)(ii). In determining the amount of such distribution, proper adjustments shall be made for liabilities of the trust allocable to an individual's share in the trust.

''(2) SPECIAL RULES FOR INTERESTS IN QUALIFIED TRUSTS.—

''(A) IN GENERAL.—If the trust interest described in paragraph (1) is an interest in a qualified trust—

''(i) paragraph (1) and subsection (a) shall not apply, and

''(ii) in addition to any other tax imposed by this title, there is hereby imposed on each distribution with respect to such interest a tax in the amount determined under subparagraph (B).

''(B) AMOUNT OF TAX.—The amount of tax under subparagraph (A)(ii) shall be equal to the lesser of—

''(i) the highest rate of tax imposed by section 1(e) for the taxable year which includes the day before the expatriation date, multiplied by the amount of the distribution, or

''(ii) the balance in the deferred tax account immediately before the distribution determined without regard to any increases under subparagraph (C)(ii) after the 30th day preceding the distribution.

''(C) DEFERRED TAX ACCOUNT.—For purposes of subparagraph (B)(ii)—

''(i) OPENING BALANCE.—The opening balance in a deferred tax account with respect to any trust interest is an amount equal to the tax which would have been imposed on the allocable expatriation gain with respect to the trust interest if such gain had been included in gross income under subsection (a).

''(ii) INCREASE FOR INTEREST.—The balance in the deferred tax account shall be increased by the amount of interest determined (on the balance in the account at the time the interest accrues), for periods after the 90th day after the

expatriation date, by using the rates and method applicable under section 6621 for underpayments of tax for such periods, except that section 6621(a)(2) shall be applied by substituting '5 percentage points' for '3 percentage points' in subparagraph (B) thereof.

''(iii) DECREASE FOR TAXES PREVIOUSLY PAID.—The balance in the tax deferred account shall be reduced—

''(I) by the amount of taxes imposed by subparagraph (A) on any distribution to the person holding the trust interest, and

''(II) in the case of a person holding a nonvested interest, to the extent provided in regulations, by the amount of taxes imposed by subparagraph (A) on distributions from the trust with respect to nonvested interests not held by such person.

''(D) ALLOCABLE EXPATRIATION GAIN.—For purposes of this paragraph, the allocable expatriation gain with respect to any beneficiary's interest in a trust is the amount of gain which would be allocable to such beneficiary's vested and nonvested interests in the trust if the beneficiary held directly all assets allocable to such interests.

''(E) TAX DEDUCTED AND WITHHELD.—

''(i) IN GENERAL.—The tax imposed by subparagraph (A)(ii) shall be deducted and withheld by the trustees from the distribution to which it relates.

''(ii) EXCEPTION WHERE FAILURE TO WAIVE TREATY RIGHTS.—If an amount may not be deducted and withheld under clause (i) by reason of the distributee failing to waive any treaty right with respect to such distribution—

''(I) the tax imposed by subparagraph (A)(ii) shall be imposed on the trust and each trustee shall be personally liable for the amount of such tax, and

''(II) any other beneficiary of the trust shall be entitled to recover from the distributee the amount of such tax imposed on the other beneficiary.

''(F) DISPOSITION.—If a trust ceases to be a qualified trust at any time, a covered expatriate disposes of an interest in a qualified trust, or a covered expatriate holding an interest in a qualified trust dies, then, in lieu of the tax imposed by subparagraph (A)(ii), there is hereby imposed a tax equal to the lesser of—

''(i) the tax determined under paragraph (1) as if the day before the expatriation date were the date of such cessation, disposition, or death, whichever is applicable, or

''(ii) the balance in the tax deferred account immediately before such date.

Such tax shall be imposed on the trust and each trustee shall be personally liable for the amount of such tax and any other beneficiary of the trust shall be entitled to recover from the covered expatriate or the estate the amount of such tax imposed on the other beneficiary.

''(G) DEFINITIONS AND SPECIAL RULES.—For purposes of this paragraph—

''(i) QUALIFIED TRUST.—The term 'qualified trust' means a trust which is described in section 7701(a)(30)(E).

''(ii) VESTED INTEREST.—The term 'vested interest' means any interest which, as of the day before the expatriation date, is vested in the beneficiary.

''(iii) NONVESTED INTEREST.—The term 'nonvested interest' means, with respect to any beneficiary, any interest in a trust which is not a vested interest. Such interest shall be determined by assuming the maximum exercise of discretion in favor of the beneficiary and the occurrence of all contingencies in favor of the beneficiary.

''(iv) ADJUSTMENTS.—The Secretary may provide for such adjustments to the bases of assets in a trust or a deferred tax account, and the timing of such adjustments, in order to ensure that gain is taxed only once.

''(v) COORDINATION WITH RETIREMENT PLAN RULES.—This subsection shall not apply to an interest in a trust which is part of a retirement plan to which subsection (d)(2) applies.

''(3) DETERMINATION OF BENEFICIARIES' INTEREST IN TRUST.—

''(A) DETERMINATIONS UNDER PARAGRAPH (1).—For purposes of paragraph (1), a beneficiary's interest in a trust shall be based upon all relevant facts and circumstances, including the terms of the trust instrument and any letter of wishes or similar document, historical patterns of trust distributions, and the existence of and functions performed by a trust protector or any similar adviser.

''(B) OTHER DETERMINATIONS.—For purposes of this section—

''(i) CONSTRUCTIVE OWNERSHIP.—If a beneficiary of a trust is a corporation, partnership, trust, or estate, the shareholders, partners, or beneficiaries shall be deemed to be the trust beneficiaries for purposes of this section.

''(ii) TAXPAYER RETURN POSITION.—A taxpayer shall clearly indicate on its income tax return—

''(I) the methodology used to determine that taxpayer's trust interest under this section, and

''(II) if the taxpayer knows (or has reason to know) that any other beneficiary of such trust is using a different methodology to determine such beneficiary's trust interest under this section.

''(g) TERMINATION OF DEFERRALS, ETC.—In the case of any covered expatriate, notwithstanding any other provision of this title—

''(1) any period during which recognition of income or gain is deferred shall terminate on the day before the expatriation date, and

''(2) any extension of time for payment of tax shall cease to apply on the day before the expatriation date and the unpaid portion of such tax shall be due and payable at the time and in the manner prescribed by the Secretary.

''(h) IMPOSITION OF TENTATIVE TAX.—

''(1) IN GENERAL.—If an individual is required to include any amount in gross income under subsection (a) for any taxable year, there is hereby imposed, immediately before the expatriation date, a tax in an amount equal to the amount of tax which would be imposed if the taxable year were a short taxable year ending on the expatriation date.

''(2) DUE DATE.—The due date for any tax imposed by paragraph (1) shall be the 90th day after the expatriation date.

''(3) TREATMENT OF TAX.—Any tax paid under paragraph (1) shall be treated as a payment of the tax imposed by this chapter for the taxable year to which subsection (a) applies.

''(4) DEFERRAL OF TAX.—The provisions of subsection (b) shall apply to the tax imposed by this subsection to the extent attributable to gain includible in gross income by reason of this section.

''(i) SPECIAL LIENS FOR DEFERRED TAX AMOUNTS.—

''(1) IMPOSITION OF LIEN.—

''(A) IN GENERAL.—If a covered expatriate makes an election under subsection (a)(4) or (b) which results in the deferral of any tax imposed by reason of subsection (a), the deferred amount (including any interest, additional amount, addition to tax, assessable penalty, and costs attributable to the deferred amount) shall be a lien in favor of the United States on all property of the expatriate located in the United States (without regard to whether this section applies to the property).

''(B) DEFERRED AMOUNT.—For purposes of this subsection, the deferred amount is the amount of the increase in the covered expatriate's income tax which, but for the election under subsection (a)(4) or (b), would have occurred by reason of this section for the taxable year including the expatriation date.

''(2) PERIOD OF LIEN.—The lien imposed by this subsection shall arise on the expatriation date and continue until—

''(A) the liability for tax by reason of this section is satisfied or has become unenforceable by reason of lapse of time, or

''(B) it is established to the satisfaction of the Secretary that no further tax liability may arise by reason of this section.

''(3) CERTAIN RULES APPLY.—The rules set forth in paragraphs (1), (3), and (4) of section 6324A(d) shall apply with respect to the lien imposed by this subsection as if it were a lien imposed by section 6324A.

''(j) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.''.

(b) INCLUSION IN INCOME OF GIFTS AND BEQUESTS RECEIVED BY UNITED STATES CITIZENS AND RESIDENTS FROM EXPATRIATES.—Section 102 (relating to gifts, etc. not included in gross income) is amended by adding at the end the following new subsection:

''(d) GIFTS AND INHERITANCES FROM COVERED EXPATRIATES.—

''(1) IN GENERAL.—Subsection (a) shall not exclude from gross income the value of any property acquired by gift, bequest, devise, or inheritance from a covered expatriate after the expatriation date. For purposes of this subsection, any term used in this subsection which is also used in section 877A shall have the same meaning as when used in section 877A.

''(2) EXCEPTIONS FOR TRANSFERS OTHERWISE SUBJECT TO ESTATE OR GIFT TAX.—Paragraph (1) shall not apply to any property if either—

''(A) the gift, bequest, devise, or inheritance is—

''(i) shown on a timely filed return of tax imposed by chapter 12 as a taxable gift by the covered expatriate, or

''(ii) included in the gross estate of the covered expatriate for purposes of chapter 11 and shown on a timely filed return of tax imposed by chapter 11 of the estate of the covered expatriate, or

''(B) no such return was timely filed but no such return would have been required to be filed even if the covered expatriate were a citizen or long-term resident of the United States.''.

(c) DEFINITION OF TERMINATION OF UNITED STATES CITIZENSHIP.—Section 7701(a) is amended by adding at the end the following new paragraph:

''(48) TERMINATION OF UNITED STATES CITIZENSHIP.—

''(A) IN GENERAL.—An individual shall not cease to be treated as a United States citizen before the date on which the individual's citizenship is treated as relinquished under section 877A(e)(3).

''(B) DUAL CITIZENS.—Under regulations prescribed by the Secretary, subparagraph (A) shall not apply to an individual who became at birth a citizen of the United States and a citizen of another country.''.

(d) INELIGIBILITY FOR VISA OR ADMISSION TO UNITED STATES.—

(1) IN GENERAL.—Section 212(a)(10)(E) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(10)(E)) is amended to read as follows:

''(E) FORMER CITIZENS NOT IN COMPLIANCE WITH EXPATRIATION REVENUE PROVISIONS.—Any alien who is a former citizen of the United States who relinquishes United States citizenship (within the meaning of section 877A(e)(3) of the Internal Revenue Code of 1986) and who is not in compliance with section 877A of such Code (relating to expatriation).''.

(2) AVAILABILITY OF INFORMATION.—

(A) IN GENERAL.—Section 6103(l) (relating to disclosure of returns and return information for purposes other than tax administration) is amended by adding at the end the following new paragraph:

''(19) DISCLOSURE TO DENY VISA OR ADMISSION TO CERTAIN EXPATRIATES.—Upon written request of the Attorney General or the Attorney General's delegate, the Secretary shall disclose whether an individual is in compliance with section 877A (and if not in compliance, any items of noncompliance) to officers and employees of the Federal agency responsible for administering section 212(a)(10)(E) of the Immigration and Nationality Act solely for the purpose of, and to the extent necessary in, administering such section 212(a)(10)(E).''.

(B) SAFEGUARDS.—

(i) TECHNICAL AMENDMENTS.—Paragraph (4) of section 6103(p) of the Internal Revenue Code of 1986, as amended by section 202(b)(2)(B) of the Trade Act of 2002 (Public Law 107–210; 116 Stat. 961), is amended by striking ''or (17)'' after ''any other person described in subsection (l)(16)'' each place it appears and inserting ''or (18)''.

(ii) CONFORMING AMENDMENTS.—Section 6103(p)(4) (relating to safeguards), as amended by clause (i), is amended by striking ''or (18)'' after ''any other person described in subsection (l)(16)'' each place it appears and inserting ''(18), or (19)''.

(3) EFFECTIVE DATES.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by this subsection shall apply to individuals who relinquish United States citizenship on or after the date of the enactment of this Act.

(B) TECHNICAL AMENDMENTS.—The amendments made by paragraph (2)(B)(i) shall take effect as if included in the amendments made by section 202(b)(2)(B) of the Trade Act of 2002 (Public Law 107–210; 116 Stat. 961).

(e) CONFORMING AMENDMENTS.—

(1) Section 877 is amended by adding at the end the following new subsection:

''(g) APPLICATION.—This section shall not apply to an expatriate (as defined in section 877A(e)) whose expatriation date (as so defined) occurs on or after February 5, 2003.''.

(2) Section 2107 is amended by adding at the end the following new subsection:

''(f) APPLICATION.—This section shall not apply to any expatriate subject to section 877A.''.

(3) Section 2501(a)(3) is amended by adding at the end the following new subparagraph:

''(F) APPLICATION.—This paragraph shall not apply to any expatriate subject to section 877A.''.

(4)(A) Paragraph (1) of section 6039G(d) is amended by inserting ''or 877A'' after ''section 877''.

(B) The second sentence of section 6039G(e) is amended by inserting ''or who relinquishes United States citizenship (within the meaning of section 877A(e)(3))'' after ''877(a))''.

(C) Section 6039G(f) is amended by inserting ''or 877A(e)(2)(B)'' after ''877(e)(1)''.

(f) CLERICAL AMENDMENT.—The table of sections for subpart A of part II of subchapter N of chapter 1 is amended by inserting after the item relating to section 877 the following new item:

''Sec. 877A. Tax responsibilities of expatriation.''.

(g) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section shall apply to expatriates (within the meaning of section 877A(e) of the Internal Revenue Code of 1986, as added by this section) whose expatriation date (as so defined) occurs on or after February 5, 2003.

(2) GIFTS AND BEQUESTS.—Section 102(d) of the Internal Revenue Code of 1986 (as added by subsection (b)) shall apply to gifts and bequests received on or after February 5, 2003, from an individual or the estate of an individual whose expatriation date (as so defined) occurs after such date.

(3) DUE DATE FOR TENTATIVE TAX.—The due date under section 877A(h)(2) of the Internal Revenue Code of 1986, as added by this section, shall in no event occur before the 90th day after the date of the enactment of this Act.

SEC. 341. TAX TREATMENT OF INVERTED CORPORATE ENTITIES.

(a) IN GENERAL.—Subchapter C of chapter 80 (relating to provisions affecting more than one subtitle) is amended by adding at the end the following new section:

''SEC. 7874. RULES RELATING TO INVERTED CORPORATE ENTITIES.

''(a) INVERTED CORPORATIONS TREATED AS DOMESTIC CORPORATIONS.—

''(1) IN GENERAL.—If a foreign incorporated entity is treated as an inverted domestic corporation, then, notwithstanding section 7701(a)(4), such entity shall be treated for purposes of this title as a domestic corporation.

''(2) INVERTED DOMESTIC CORPORATION.—For purposes of this section, a foreign incorporated entity shall be treated as an inverted domestic corporation if, pursuant to a plan (or a series of related transactions)—

''(A) the entity completes after March 20, 2002, the direct or indirect acquisition of substantially all of the properties held directly or indirectly by a domestic corporation or substantially all of the properties constituting a trade or business of a domestic partnership,

''(B) after the acquisition at least 80 percent of the stock (by vote or value) of the entity is held—

''(i) in the case of an acquisition with respect to a domestic corporation, by former shareholders of the domestic corporation by reason of holding stock in the domestic corporation, or

''(ii) in the case of an acquisition with respect to a domestic partnership, by former partners of the domestic partnership by reason of holding a capital or profits interest in the domestic partnership, and

''(C) the expanded affiliated group which after the acquisition includes the entity does not have substantial business activities in the foreign country in which or under the law of which the entity is created or organized when compared to the total business activities of such expanded affiliated group.

Except as provided in regulations, an acquisition of properties of a domestic corporation shall not be treated as described in subparagraph (A) if none of the corporation's stock was readily tradeable on an established securities market at any time during the 4-year period ending on the date of the acquisition.

''(b) PRESERVATION OF DOMESTIC TAX BASE IN CERTAIN INVERSION TRANSACTIONS TO WHICH SUBSECTION (a) DOES NOT APPLY.—

''(1) IN GENERAL.—If a foreign incorporated entity would be treated as an inverted domestic corporation with respect to an acquired entity if either—

''(A) subsection (a)(2)(A) were applied by substituting 'after December 31, 1996, and on or before March 20, 2002' for 'after March 20, 2002' and subsection (a)(2)(B) were applied by substituting 'more than 50 percent' for 'at least 80 percent', or

''(B) subsection (a)(2)(B) were applied by substituting 'more than 50 percent' for 'at least 80 percent',

then the rules of subsection (c) shall apply to any inversion gain of the acquired entity during the applicable period and the rules of subsection (d) shall apply to any related party transaction of the acquired entity during the applicable period. This subsection shall not apply for any taxable year if subsection (a) applies to such foreign incorporated entity for such taxable year.

''(2) ACQUIRED ENTITY.—For purposes of this section—

''(A) IN GENERAL.—The term 'acquired entity' means the domestic corporation or partnership substantially all of the properties of which are directly or indirectly acquired in an acquisition described in subsection (a)(2)(A) to which this subsection applies.

''(B) AGGREGATION RULES.—Any domestic person bearing a relationship described in section 267(b) or 707(b) to an acquired entity shall be treated as an acquired entity with respect to the acquisition described in subparagraph (A).

''(3) APPLICABLE PERIOD.—For purposes of this section—

''(A) IN GENERAL.—The term 'applicable period' means the period—

''(i) beginning on the first date properties are acquired as part of the acquisition described in subsection (a)(2)(A) to which this subsection applies, and

''(ii) ending on the date which is 10 years after the last date properties are acquired as part of such acquisition.

''(B) SPECIAL RULE FOR INVERSIONS OCCURRING BEFORE MARCH 21, 2002.—In the case of any acquired entity to which paragraph (1)(A) applies, the applicable period shall be the 10-year period beginning on January 1, 2003.

''(c) TAX ON INVERSION GAINS MAY NOT BE OFFSET.—If subsection (b) applies—

''(1) IN GENERAL.—The taxable income of an acquired entity (or any expanded affiliated group which includes such entity) for any taxable year which includes any portion of the applicable period shall in no event be less than the inversion gain of the entity for the taxable year.

''(2) CREDITS NOT ALLOWED AGAINST TAX ON INVERSION GAIN.—Credits shall be allowed against the tax imposed by this chapter on an acquired entity for any taxable year described in paragraph (1) only to the extent such tax exceeds the product of—

''(A) the amount of the inversion gain for the taxable year, and

''(B) the highest rate of tax specified in section 11(b)(1).

For purposes of determining the credit allowed by section 901 inversion gain shall be treated as from sources within the United States.

''(3) SPECIAL RULES FOR PARTNERSHIPS.—In the case of an acquired entity which is a partnership—

''(A) the limitations of this subsection shall apply at the partner rather than the partnership level,

''(B) the inversion gain of any partner for any taxable year shall be equal to the sum of—

''(i) the partner's distributive share of inversion gain of the partnership for such taxable year, plus

''(ii) income or gain required to be recognized for the taxable year by the partner under section 367(a), 741, or 1001, or under any other provision of chapter 1, by reason of the transfer during the applicable period of any partnership interest of the partner in such partnership to the foreign incorporated entity, and

''(C) the highest rate of tax specified in the rate schedule applicable to the partner under chapter 1 shall be substituted for the rate of tax under paragraph (2)(B).

''(4) INVERSION GAIN.—For purposes of this section, the term 'inversion gain' means any income or gain required to be recognized under section 304, 311(b), 367, 1001, or 1248, or under any other provision of chapter 1, by reason of the transfer during the applicable period of stock or other properties by an acquired entity—

''(A) as part of the acquisition described in subsection (a)(2)(A) to which subsection (b) applies, or

''(B) after such acquisition to a foreign related person.

The Secretary may provide that income or gain from the sale of inventories or other transactions in the ordinary course of a trade or business shall not be treated as inversion gain under subparagraph (B) to the extent the Secretary determines such treatment would not be inconsistent with the purposes of this section.

''(5) COORDINATION WITH SECTION 172 AND MINIMUM TAX.—Rules similar to the rules of paragraphs (3) and (4) of section 860E(a) shall apply for purposes of this section.

''(6) STATUTE OF LIMITATIONS.—

''(A) IN GENERAL.—The statutory period for the assessment of any deficiency attributable to the inversion gain of any taxpayer for any pre-inversion year shall not expire before the expiration of 3 years from the date the Secretary is notified by the taxpayer (in such manner as the Secretary may prescribe) of the acquisition described in subsection (a)(2)(A) to which such gain relates and such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.

''(B) PRE-INVERSION YEAR.—For purposes of subparagraph (A), the term 'pre-inversion year' means any taxable year if—

''(i) any portion of the applicable period is included in such taxable year, and

''(ii) such year ends before the taxable year in which the acquisition described in subsection (a)(2)(A) is completed.

''(d) SPECIAL RULES APPLICABLE TO RELATED PARTY TRANSACTIONS.—

''(1) ANNUAL APPLICATION FOR AGREEMENTS ON RETURN POSITIONS.—

''(A) IN GENERAL.—Each acquired entity to which subsection (b) applies shall file with the Secretary an application for an approval agreement under subparagraph (D) for each taxable year which includes a portion of the applicable period. Such application shall be filed at such time and manner, and shall contain such information, as the Secretary may prescribe.

''(B) SECRETARIAL ACTION.—Within 90 days of receipt of an application under subparagraph (A) (or such longer period as the Secretary and entity may agree upon), the Secretary shall—

''(i) enter into an agreement described in subparagraph (D) for the taxable year covered by the application,

''(ii) notify the entity that the Secretary has determined that the application was filed in good faith and substantially complies with the requirements for the application under subparagraph (A), or

''(iii) notify the entity that the Secretary has determined that the application was not filed in good faith or does not substantially comply with such requirements.

If the Secretary fails to act within the time prescribed under the preceding sentence, the entity shall be treated for purposes of this paragraph as having received notice under clause (ii).

''(C) FAILURES TO COMPLY.—If an acquired entity fails to file an application under subparagraph (A), or the acquired entity receives a notice under subparagraph (B)(iii), for any taxable year, then for such taxable year—

''(i) there shall not be allowed any deduction, or addition to basis or cost of goods sold, for amounts paid or incurred, or losses incurred, by reason of a transaction between the acquired entity and a foreign related person,

''(ii) any transfer or license of intangible property (as defined in section 936(h)(3)(B)) between the acquired entity and a foreign related person shall be disregarded, and

''(iii) any cost-sharing arrangement between the acquired entity and a foreign related person shall be disregarded.

''(D) APPROVAL AGREEMENT.—For purposes of subparagraph (A), the term 'approval agreement' means a prefiling, advance pricing, or other agreement specified by the Secretary which contains such provisions as the Secretary determines necessary to ensure that the requirements of sections 163(j), 267(a)(3), 482, and 845, and any other provision of this title applicable to transactions between related persons and specified by the Secretary, are met.

''(E) TAX COURT REVIEW.—

''(i) IN GENERAL.—The Tax Court shall have jurisdiction over any action brought by an acquired entity receiving a notice under subparagraph (B)(iii) to determine whether the issuance of the notice was an abuse of discretion, but only if the action is brought within 30 days after the date of the mailing (determined under rules similar to section 6213) of the notice.

''(ii) COURT ACTION.—The Tax Court shall issue its decision within 30 days after the filing of the action under clause (i) and may order the Secretary to issue a notice described in subparagraph (B)(ii).

''(iii) REVIEW.—An order of the Tax Court under this subparagraph shall be reviewable in the same manner as any other decision of the Tax Court.

''(2) MODIFICATIONS OF LIMITATION ON INTEREST DEDUCTION.—In the case of an acquired entity to which subsection (b) applies, section 163(j) shall be applied—

''(A) without regard to paragraph (2)(A)(ii) thereof, and

''(B) by substituting '25 percent' for '50 percent' each place it appears in paragraph (2)(B) thereof.

''(e) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

''(1) RULES FOR APPLICATION OF SUBSECTION (a)(2).—In applying subsection (a)(2) for purposes of subsections (a) and (b), the following rules shall apply:

''(A) CERTAIN STOCK DISREGARDED.—There shall not be taken into account in determining ownership for purposes of subsection (a)(2)(B)—

''(i) stock held by members of the expanded affiliated group which includes the foreign incorporated entity, or

''(ii) stock of such entity which is sold in a public offering or private placement related to the acquisition described in subsection (a)(2)(A).

''(B) PLAN DEEMED IN CERTAIN CASES.—If a foreign incorporated entity acquires directly or indirectly substantially all of the properties of a domestic corporation or partnership during the 4-year period beginning on the date which is 2 years before the ownership requirements of subsection (a)(2)(B) are met with respect to such domestic corporation or partnership, such actions shall be treated as pursuant to a plan.

''(C) CERTAIN TRANSFERS DISREGARDED.—The transfer of properties or liabilities (including by contribution or distribution) shall be disregarded if such transfers are part of a plan a principal purpose of which is to avoid the purposes of this section.

''(D) SPECIAL RULE FOR RELATED PARTNERSHIPS.—For purposes of applying subsection (a)(2) to the acquisition of a domestic partnership, except as provided in regulations, all partnerships which are under common control (within the meaning of section 482) shall be treated as 1 partnership.

''(E) TREATMENT OF CERTAIN RIGHTS.—The Secretary shall prescribe such regulations as may be necessary—

''(i) to treat warrants, options, contracts to acquire stock, convertible debt instruments, and other similar interests as stock, and

''(ii) to treat stock as not stock.

''(2) EXPANDED AFFILIATED GROUP.—The term 'expanded affiliated group' means an affiliated group as defined in section 1504(a) but without regard to section 1504(b)(3), except that section 1504(a) shall be applied by substituting 'more than 50 percent' for 'at least 80 percent' each place it appears.

''(3) FOREIGN INCORPORATED ENTITY.—The term 'foreign incorporated entity' means any entity which is, or but for subsection (a)(1) would be, treated as a foreign corporation for purposes of this title.

''(4) FOREIGN RELATED PERSON.—The term 'foreign related person' means, with respect to any acquired entity, a foreign person which—

''(A) bears a relationship to such entity described in section 267(b) or 707(b), or

''(B) is under the same common control (within the meaning of section 482) as such entity.

''(5) SUBSEQUENT ACQUISITIONS BY UNRELATED DOMESTIC CORPORATIONS.—

''(A) IN GENERAL.—Subject to such conditions, limitations, and exceptions as the Secretary may prescribe, if, after an acquisition described in subsection (a)(2)(A) to which subsection (b) applies, a domestic corporation stock of which is traded on an established securities market acquires directly or indirectly any properties of one or more acquired entities in a transaction with respect to which the requirements of subparagraph (B) are met, this section shall cease to apply to any such acquired entity with respect to which such requirements are met.

''(B) REQUIREMENTS.—The requirements of the subparagraph are met with respect to a transaction involving any acquisition described in subparagraph (A) if—

''(i) before such transaction the domestic corporation did not have a relationship described in section 267(b) or 707(b), and was not under common control (within the meaning of section 482), with the acquired entity, or any member of an expanded affiliated group including such entity, and

''(ii) after such transaction, such acquired entity—

''(I) is a member of the same expanded affiliated group which includes the domestic corporation or has such a relationship or is under such common control with any member of such group, and

''(II) is not a member of, and does not have such a relationship and is not under such common control with any member of, the expanded affiliated group which before such acquisition included such entity.

''(f) REGULATIONS.—The Secretary shall provide such regulations as are necessary to carry out this section, including regulations providing for such adjustments to the application of this section as are necessary to prevent the avoidance of the purposes of this section, including the avoidance of such purposes through—

''(1) the use of related persons, pass-through or other noncorporate entities, or other intermediaries, or

''(2) transactions designed to have persons cease to be (or not become) members of expanded affiliated groups or related persons.''.

(b) TREATMENT OF AGREEMENTS.—

(1) CONFIDENTIALITY.—

(A) TREATMENT AS RETURN INFORMATION.—Section 6103(b)(2) (relating to return information) is amended by striking ''and'' at the end of subparagraph (C), by inserting ''and'' at the end of subparagraph (D), and by inserting after subparagraph (D) the following new subparagraph:

''(E) any approval agreement under section 7874(d)(1) to which any preceding subparagraph does not apply and any background information related to the agreement or any application for the agreement,''.

(B) EXCEPTION FROM PUBLIC INSPECTION AS WRITTEN DETERMINATION.—Section 6110(b)(1)(B) is amended by striking ''or (D)'' and inserting '', (D), or (E)''.

(2) REPORTING.—The Secretary of the Treasury shall include with any report on advance pricing agreements required to be submitted after the date of the enactment of this Act under section 521(b) of the Ticket to Work and Work Incentives Improvement Act of 1999 (Public Law 106–170) a report regarding approval agreements under section 7874(d)(1) of the Internal Revenue Code of 1986. Such report shall include information similar to the information required with respect to advance pricing agreements and shall be treated for confidentiality purposes in the same manner as the reports on advance pricing agreements are treated under section 521(b)(3) of such Act.

(c) INFORMATION REPORTING.—The Secretary of the Treasury shall exercise the Secretary's authority under the Internal Revenue Code of 1986 to require entities involved in transactions to which section 7874 of such Code (as added by subsection (a)) applies to report to the Secretary, shareholders, partners, and such other persons as the Secretary may prescribe such information as is necessary to ensure the proper tax treatment of such transactions.

(d) CONFORMING AMENDMENT.—The table of sections for subchapter C of chapter 80 is amended by adding at the end the following new item:

''Sec. 7874. Rules relating to inverted corporate entities.''.

(e) TRANSITION RULE FOR CERTAIN REGULATED INVESTMENT COMPANIES AND UNIT INVESTMENT TRUSTS.—Notwithstanding section 7874 of the Internal Revenue Code of 1986 (as added by subsection (a)), a regulated investment company, or other pooled fund or trust specified by the Secretary of the Treasury, may elect to recognize gain by reason of section 367(a) of such Code

with respect to a transaction under which a foreign incorporated entity is treated as an inverted domestic corporation under section 7874(a) of such Code by reason of an acquisition completed after March 20, 2002, and before January 1, 2004.

SEC. 342. EXCISE TAX ON STOCK COMPENSATION OF INSIDERS IN INVERTED CORPORATIONS.

(a) IN GENERAL.—Subtitle D is amended by adding at the end the following new chapter:

''CHAPTER 48—STOCK COMPENSATION OF INSIDERS IN INVERTED CORPORATIONS

''Sec. 5000A. Stock compensation of insiders in inverted corporations entities.

''SEC. 5000A. STOCK COMPENSATION OF INSIDERS IN INVERTED CORPORATIONS.

''(a) IMPOSITION OF TAX.—In the case of an individual who is a disqualified individual with respect to any inverted corporation, there is hereby imposed on such person a tax equal to 20 percent of the value (determined under subsection (b)) of the specified stock compensation held (directly or indirectly) by or for the benefit of such individual or a member of such individual's family (as defined in section 267) at any time during the 12-month period beginning on the date which is 6 months before the inversion date.

''(b) VALUE.—For purposes of subsection (a)—

''(1) IN GENERAL.—The value of specified stock compensation shall be—

''(A) in the case of a stock option (or other similar right) or any stock appreciation right, the fair value of such option or right, and

''(B) in any other case, the fair market value of such compensation.

''(2) DATE FOR DETERMINING VALUE.—The determination of value shall be made—

''(A) in the case of specified stock compensation held on the inversion date, on such date,

''(B) in the case of such compensation which is canceled during the 6 months before the inversion date, on the day before such cancellation, and

''(C) in the case of such compensation which is granted after the inversion date, on the date such compensation is granted.

''(c) TAX TO APPLY ONLY IF SHAREHOLDER GAIN RECOGNIZED.—Subsection (a) shall apply to any disqualified individual with respect to an inverted corporation only if gain (if any) on any stock in such corporation is recognized in whole or part by any shareholder by reason of the acquisition referred to in section 7874(a)(2)(A) (determined by substituting 'July 10, 2002' for 'March 20, 2002') with respect to such corporation.

''(d) EXCEPTION WHERE GAIN RECOGNIZED ON COMPENSATION.—Subsection (a) shall not apply to—

''(1) any stock option which is exercised on the inversion date or during the 6-month period before such date and to the stock acquired in such exercise, and

''(2) any specified stock compensation which is sold, exchanged, or distributed during such period in a transaction in which gain or loss is recognized in full.

''(e) DEFINITIONS.—For purposes of this section—

''(1) DISQUALIFIED INDIVIDUAL.—The term 'disqualified individual' means, with respect to a corporation, any individual who, at any time during the 12-month period beginning on the date which is 6 months before the inversion date—

''(A) is subject to the requirements of section 16(a) of the Securities Exchange Act of 1934 with respect to such corporation or any member of the expanded affiliated group which includes such corporation, or

''(B) would be subject to such requirements if such corporation or member were an issuer of equity securities referred to in such section.

''(2) INVERTED CORPORATION; INVERSION DATE.—

''(A) INVERTED CORPORATION.—The term 'inverted corporation' means any corporation to which subsection (a) or (b) of section 7874 applies determined—

''(i) by substituting 'July 10, 2002' for 'March 20, 2002' in section 7874(a)(2)(A), and

''(ii) without regard to subsection (b)(1)(A).

Such term includes any predecessor or successor of such a corporation.

''(B) INVERSION DATE.—The term 'inversion date' means, with respect to a corporation, the date on which the corporation first becomes an inverted corporation.

''(3) SPECIFIED STOCK COMPENSATION.—

''(A) IN GENERAL.—The term 'specified stock compensation' means payment (or right to payment) granted by the inverted corporation (or by any member of the expanded affiliated group which includes such corporation) to any person in connection with the performance of services by a disqualified individual for such corporation or member if the value of such payment or right is based on (or determined by reference to) the value (or change in value) of stock in such corporation (or any such member).

''(B) EXCEPTIONS.—Such term shall not include—

''(i) any option to which part II of subchapter D of chapter 1 applies, or

''(ii) any payment or right to payment from a plan referred to in section 280G(b)(6).

''(4) EXPANDED AFFILIATED GROUP.—The term 'expanded affiliated group' means an affiliated group (as defined in section 1504(a) without regard to section 1504(b)(3)); except that section 1504(a) shall be applied by substituting 'more than 50 percent' for 'at least 80 percent' each place it appears.

''(f) SPECIAL RULES.—For purposes of this section—

''(1) CANCELLATION OF RESTRICTION.—The cancellation of a restriction which by its terms will never lapse shall be treated as a grant.

''(2) PAYMENT OR REIMBURSEMENT OF TAX BY CORPORATION TREATED AS SPECIFIED STOCK COMPENSATION.—Any payment of the tax imposed by this section directly or indirectly by the inverted corporation or by any member of the expanded affiliated group which includes such corporation—

''(A) shall be treated as specified stock compensation, and

''(B) shall not be allowed as a deduction under any provision of chapter 1.

''(3) CERTAIN RESTRICTIONS IGNORED.—Whether there is specified stock compensation, and the value thereof, shall be determined without regard to any restriction other than a restriction which by its terms will never lapse.

''(4) PROPERTY TRANSFERS.—Any transfer of property shall be treated as a payment and any right to a transfer of property shall be treated as a right to a payment.

''(5) OTHER ADMINISTRATIVE PROVISIONS.—For purposes of subtitle F, any tax imposed by this section shall be treated as a tax imposed by subtitle A.

''(g) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.''.

(b) DENIAL OF DEDUCTION.—

(1) IN GENERAL.—Paragraph (6) of section 275(a) is amended by inserting ''48,'' after ''46,''.

(2) $1,000,000 LIMIT ON DEDUCTIBLE COMPENSATION REDUCED BY PAYMENT OF EXCISE TAX ON SPECIFIED STOCK COMPENSATION.—Paragraph (4) of section 162(m) is amended by adding at the end the following new subparagraph:

''(G) COORDINATION WITH EXCISE TAX ON SPECIFIED STOCK COMPENSATION.—The dollar limitation contained in paragraph (1) with respect to any covered employee shall be reduced (but not below zero) by the amount of any payment (with respect to such employee) of the tax imposed by section 5000A directly or indirectly by the inverted corporation (as defined in such section) or by any member of the expanded affiliated group (as defined in such section) which includes such corporation.''.

(c) CONFORMING AMENDMENTS.—

(1) The last sentence of section 3121(v)(2)(A) is amended by inserting before the period ''or to any specified stock compensation (as defined in section 5000A) on which tax is imposed by section 5000A''.

(2) The table of chapters for subtitle D is amended by adding at the end the following new item:

''Chapter 48. Stock compensation of insiders in inverted corporations.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on July 11, 2002; except that periods before such date shall not be taken into account in applying the periods in subsections (a) and (e)(1) of section 5000A of the Internal Revenue Code of 1986, as added by this section.

SEC. 343. REINSURANCE OF UNITED STATES RISKS IN FOREIGN JURISDICTIONS.

(a) IN GENERAL.—Section 845(a) (relating to allocation in case of reinsurance agreement involving tax avoidance or evasion) is amended by striking ''source and character'' and inserting ''amount, source, or character''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to any risk reinsured after April 11, 2002.

PART II—OTHER PROVISIONS

SEC. 344. DOUBLING OF CERTAIN PENALTIES, FINES, AND INTEREST ON UNDERPAYMENTS RELATED TO CERTAIN OFFSHORE FINANCIAL ARRANGEMENT.

(a) GENERAL RULE.—If—

(1) a taxpayer eligible to participate in—

(A) the Department of the Treasury's Offshore Voluntary Compliance Initiative, or

(B) the Department of the Treasury's voluntary disclosure initiative which applies to the taxpayer by reason of the taxpayer's underreporting of United States income tax liability through financial arrangements which rely on the use of offshore arrangements which were the subject of the initiative described in subparagraph (A), and

(2) any interest or applicable penalty is imposed with respect to any arrangement to which any initiative described in paragraph (1) applied or to any underpayment of Federal income tax attributable to items arising in connection with any arrangement described in paragraph (1),

then, notwithstanding any other provision of law, the amount of such interest or penalty shall be equal to twice that determined without regard to this section.

(b) DEFINITIONS AND RULES.—For purposes of this section—

(1) APPLICABLE PENALTY.—The term ''applicable penalty'' means any penalty, addition to tax, or fine imposed under chapter 68 of the Internal Revenue Code of 1986.

(2) VOLUNTARY OFFSHORE COMPLIANCE INITIATIVE.—The term ''Voluntary Offshore Compliance Initiative'' means the program established by the Department of the Treasury in January of 2003 under which any taxpayer was eligible to voluntarily disclose previously undisclosed income on assets placed in offshore accounts and accessed through credit card and other financial arrangements.

(3) PARTICIPATION.—A taxpayer shall be treated as having participated in the Voluntary Offshore Compliance Initiative if the taxpayer submitted the request in a timely manner and all information requested by the Secretary of the Treasury or his delegate within a reasonable period of time following the request.

(c) EFFECTIVE DATE.—The provisions of this section shall apply to interest penalties, additions to tax, and fines with respect to any taxable year if as of May 8, 2003, the assessment of any tax, penalty, or interest with respect to such taxable year is not prevented by the operation of any law or rule of law.

SEC. 345. EFFECTIVELY CONNECTED INCOME TO INCLUDE CERTAIN FOREIGN SOURCE INCOME.

(a) IN GENERAL.—Section 864(c)(4)(B) (relating to treatment of income from sources without the United States as effectively connected income) is amended by adding at the end the following new flush sentence:

''Any income or gain which is equivalent to any item of income or gain described in clause (i), (ii), or (iii) shall be treated in the same manner as such item for purposes of this subparagraph.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 346. DETERMINATION OF BASIS OF AMOUNTS PAID FROM FOREIGN PENSION PLANS.

(a) IN GENERAL.—Section 72 (relating to annuities and certain proceeds of endowment and life insurance contracts) is amended by redesignating subsection (w) as subsection (x) by inserting subsection (v) the following new subsection:

''(w) DETERMINATION OF BASIS OF FOREIGN PENSION PLANS.—Notwithstanding any other provision of this section, for purposes of determining the portion of any distribution from a foreign pension plan which is includible in gross income of the distributee, the investment in the contract with respect to the plan shall not include employer or employee contributions to the plan (or any earnings on such contributions) unless such contributions or earnings were subject to taxation by the United States or any foreign government.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to distributions on or after the date of the enactment of this Act.

SEC. 347. RECAPTURE OF OVERALL FOREIGN LOSSES ON SALE OF CONTROLLED FOREIGN CORPORATION.

(a) IN GENERAL.—Section 904(f)(3) (relating to dispositions) is amending by adding at the end the following new subparagraph:

''(D) APPLICATION TO DISPOSITIONS OF STOCK IN CONTROLLED FOREIGN CORPORATIONS.—In the case of any disposition by a taxpayer of any share of stock in a controlled foreign corporation (as defined in section 957), this paragraph shall apply to such disposition in the same manner as if it were a disposition of property described in subparagraph (A), except that the exception contained in subparagraph (C)(i) shall not apply.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to dispositions after the date of the enactment of this Act.

SEC. 348. PREVENTION OF MISMATCHING OF INTEREST AND ORIGINAL ISSUE DISCOUNT DEDUCTIONS AND INCOME INCLUSIONS IN TRANSACTIONS WITH RELATED FOREIGN PERSONS.

(a) ORIGINAL ISSUE DISCOUNT.—Section 163(e)(3) (relating to special rule for original issue discount on obligation held by related foreign person) is amended by redesignating subparagraph (B) as subparagraph (C) and by inserting after subparagraph (A) the following new subparagraph:

''(B) SPECIAL RULE FOR CERTAIN FOREIGN ENTITIES.—Notwithstanding subparagraph (A) (and any regulations thereunder), in the case of any debt instrument having original issue discount which is held by a related foreign person which is a foreign personal holding company (as defined in section 552), a controlled foreign corporation (as defined in section 957), or a passive foreign investment company (as defined in section 1297), a deduction shall be allowable to the issuer with respect to such original issue discount for any taxable year only to the extent such original issue discount is included during such taxable year in the gross income of a United States person who owns (within the meaning of section 958(a)) stock in such corporation. For purposes of this subparagraph, the determination as to the proper allocation of the original issue discount to shareholders shall be made in such manner as the Secretary may prescribe.''.

(b) INTEREST AND OTHER DEDUCTIBLE AMOUNTS.—Section 267(a)(3) is amended—

(1) by striking ''The Secretary'' and inserting:

''(A) IN GENERAL.—The Secretary'', and

(2) by adding at the end the following new subparagraph:

''(B) SPECIAL RULE FOR CERTAIN FOREIGN ENTITIES.—Notwithstanding any regulations issued under subparagraph (A), in the case of any amount payable to a foreign personal holding company (as defined in section 552), a controlled foreign corporation (as defined in section 957), or a passive foreign investment company (as defined in section 1297), a deduction shall be allowable to the payor with respect to such amount for any taxable year only to the extent such amount is included during such taxable year in the gross income of a United States person who owns (within the meaning of section 958(a)) stock in such corporation. For purposes of this subparagraph, the determination as to the proper allocation of such amount to shareholders shall be made in such manner as the Secretary may prescribe.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to payments accrued on or after May 8, 2003.

SEC. 349. SALE OF GASOLINE AND DIESEL FUEL AT DUTY-FREE SALES ENTERPRISES.

(a) PROHIBITION.—Section 555(b) of the Tariff Act of 1930 (19 U.S.C. 1555(b)) is amended—

(1) by redesignating paragraphs (6) through (8) as paragraphs (7) through (9), respectively; and

(2) by inserting after paragraph (5) the following:

''(6) Any gasoline or diesel fuel sold at a duty-free sales enterprise shall be considered to be entered for consumption into the customs territory of the United States.''.

(b) CONSTRUCTION.—The amendments made by this section shall not be construed to create any inference with respect to the interpretation of any provision of law as such provision was in effect on the day before the date of enactment of this Act.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of enactment of this Act.

SEC. 350. REPEAL OF EARNED INCOME EXCLUSION OF CITIZENS OR RESIDENTS LIVING ABROAD.

(a) REPEAL.—Section 911 (relating to citizens or residents living abroad) is amended by adding at the end the following new subsection:

''(g) TERMINATION.—This section shall not apply to any taxable year beginning after December 31, 2003.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2003.

Subtitle E—Other Revenue Provisions

SEC. 351. EXTENSION OF INTERNAL REVENUE SERVICE USER FEES.

(a) IN GENERAL.—Chapter 77 (relating to miscellaneous provisions) is amended by adding at the end the following new section:

''SEC. 7528. INTERNAL REVENUE SERVICE USER FEES.

''(a) GENERAL RULE.—The Secretary shall establish a program requiring the payment of user fees for—

''(1) requests to the Internal Revenue Service for ruling letters, opinion letters, and determination letters, and

''(2) other similar requests.

''(b) PROGRAM CRITERIA.—

''(1) IN GENERAL.—The fees charged under the program required by subsection (a)—

''(A) shall vary according to categories (or subcategories) established by the Secretary,

''(B) shall be determined after taking into account the average time for (and difficulty of) complying with requests in each category (and subcategory), and

''(C) shall be payable in advance.

''(2) EXEMPTIONS, ETC.—

''(A) IN GENERAL.—The Secretary shall provide for such exemptions (and reduced fees) under such program as the Secretary determines to be appropriate.

''(B) EXEMPTION FOR CERTAIN REQUESTS REGARDING PENSION PLANS.—The Secretary shall not require payment of user fees under such program for requests for determination letters with respect to the qualified status of a pension benefit plan maintained solely by 1 or more eligible employers or any trust which is part of the plan. The preceding sentence shall not apply to any request—

''(i) made after the later of—

''(I) the fifth plan year the pension benefit plan is in existence, or

''(II) the end of any remedial amendment period with respect to the plan beginning within the first 5 plan years, or

''(ii) made by the sponsor of any prototype or similar plan which the sponsor intends to market to participating employers.

''(C) DEFINITIONS AND SPECIAL RULES.—For purposes of subparagraph (B)—

''(i) PENSION BENEFIT PLAN.—The term 'pension benefit plan' means a pension, profit-sharing, stock bonus, annuity, or employee stock ownership plan.

''(ii) ELIGIBLE EMPLOYER.—The term 'eligible employer' means an eligible employer (as defined in section 408(p)(2)(C)(i)(I)) which has at least 1 employee who is not a highly compensated employee (as defined in section 414(q)) and is participating in the plan. The determination of whether an employer is an eligible employer under subparagraph (B) shall be made as of the date of the request described in such subparagraph.

''(iii) DETERMINATION OF AVERAGE FEES CHARGED.—For purposes of any determination of average fees charged, any request to which subparagraph (B) applies shall not be taken into account.

''(3) AVERAGE FEE REQUIREMENT.—The average fee charged under the program required by subsection (a) shall not be less than the amount determined under the following table:

''Category	Average Fee
Employee plan ruling and opinion	$250
Exempt organization ruling	$350
Employee plan determination	$300
Exempt organization determination ...	$275
Chief counsel ruling	$200.

''(c) TERMINATION.—No fee shall be imposed under this section with respect to requests made after September 30, 2013.''.

(b) CONFORMING AMENDMENTS.—

(1) The table of sections for chapter 77 is amended by adding at the end the following new item:

''Sec. 7528. Internal Revenue Service user fees.''.

(2) Section 10511 of the Revenue Act of 1987 is repealed.

(3) Section 620 of the Economic Growth and Tax Relief Reconciliation Act of 2001 is repealed.

(c) LIMITATIONS.—Notwithstanding any other provision of law, any fees collected pursuant to section 7528 of the Internal Revenue Code of 1986, as added by subsection (a), shall not be expended by the Internal Revenue Service unless provided by an appropriations Act.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to requests made after the date of the enactment of this Act.

SEC. 352. ADDITION OF VACCINES AGAINST HEPATITIS A TO LIST OF TAXABLE VACCINES.

(a) IN GENERAL.—Section 4132(a)(1) (defining taxable vaccine) is amended by redesignating subparagraphs (I), (J), (K), and (L) as subparagraphs (J), (K), (L), and (M), respectively, and

by inserting after subparagraph (H) the following new subparagraph:

''(I) Any vaccine against hepatitis A.''.

(b) CONFORMING AMENDMENT.—Section 9510(c)(1)(A) is amended by striking ''October 18, 2000'' and inserting ''May 8, 2003''.

(c) EFFECTIVE DATE.—

(1) SALES, ETC.—The amendments made by this section shall apply to sales and uses on or after the first day of the first month which begins more than 4 weeks after the date of the enactment of this Act.

(2) DELIVERIES.—For purposes of paragraph (1) and section 4131 of the Internal Revenue Code of 1986, in the case of sales on or before the effective date described in such paragraph for which delivery is made after such date, the delivery date shall be considered the sale date.

SEC. 353. DISALLOWANCE OF CERTAIN PARTNERSHIP LOSS TRANSFERS.

(a) TREATMENT OF CONTRIBUTED PROPERTY WITH BUILT-IN LOSS.—Paragraph (1) of section 704(c) is amended by striking ''and'' at the end of subparagraph (A), by striking the period at the end of subparagraph (B) and inserting '', and'', and by adding at the end the following:

''(C) if any property so contributed has a built-in loss—

''(i) such built-in loss shall be taken into account only in determining the amount of items allocated to the contributing partner, and

''(ii) except as provided in regulations, in determining the amount of items allocated to other partners, the basis of the contributed property in the hands of the partnership shall be treated as being equal to its fair market value immediately after the contribution.

For purposes of subparagraph (C), the term 'built-in loss' means the excess of the adjusted basis of the property (determined without regard to subparagraph (C)(ii)) over its fair market value immediately after the contribution.''.

(b) ADJUSTMENT TO BASIS OF PARTNERSHIP PROPERTY ON TRANSFER OF PARTNERSHIP INTEREST IF THERE IS SUBSTANTIAL BUILT-IN LOSS.—

(1) ADJUSTMENT REQUIRED.—Subsection (a) of section 743 (relating to optional adjustment to basis of partnership property) is amended by inserting before the period ''or unless the partnership has a substantial built-in loss immediately after such transfer''.

(2) ADJUSTMENT.—Subsection (b) of section 743 is amended by inserting ''or with respect to which there is a substantial built-in loss immediately after such transfer'' after ''section 754 is in effect''.

(3) SUBSTANTIAL BUILT-IN LOSS.—Section 743 is amended by adding at the end the following new subsection:

''(d) SUBSTANTIAL BUILT-IN LOSS.—

''(1) IN GENERAL.—For purposes of this section, a partnership has a substantial built-in loss with respect to a transfer of an interest in a partnership if the transferee partner's proportionate share of the adjusted basis of the partnership property exceeds by more than $250,000 the basis of such partner's interest in the partnership.

''(2) REGULATIONS.—The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of paragraph (1) and section 734(d), including regulations aggregating related partnerships and disregarding property acquired by the partnership in an attempt to avoid such purposes.''.

(4) CLERICAL AMENDMENTS.—

(A) The section heading for section 743 is amended to read as follows:

''SEC. 743. ADJUSTMENT TO BASIS OF PARTNERSHIP PROPERTY WHERE SECTION 754 ELECTION OR SUBSTANTIAL BUILT-IN LOSS.''.

(B) The table of sections for subpart C of part II of subchapter K of chapter 1 is amended by striking the item relating to section 743 and inserting the following new item:

''Sec. 743. Adjustment to basis of partnership property where section 754 election or substantial built-in loss.''.

(c) ADJUSTMENT TO BASIS OF UNDISTRIBUTED PARTNERSHIP PROPERTY IF THERE IS SUBSTANTIAL BASIS REDUCTION.—

(1) ADJUSTMENT REQUIRED.—Subsection (a) of section 734 (relating to optional adjustment to basis of undistributed partnership property) is amended by inserting before the period ''or unless there is a substantial basis reduction''.

(2) ADJUSTMENT.—Subsection (b) of section 734 is amended by inserting ''or unless there is a substantial basis reduction'' after ''section 754 is in effect''.

(3) SUBSTANTIAL BASIS REDUCTION.—Section 734 is amended by adding at the end the following new subsection:

''(d) SUBSTANTIAL BASIS REDUCTION.—

''(1) IN GENERAL.—For purposes of this section, there is a substantial basis reduction with respect to a distribution if the sum of the amounts described in subparagraphs (A) and (B) of subsection (b)(2) exceeds $250,000.

''(2) REGULATIONS.—

''For regulations to carry out this subsection, see section 743(d)(2).''.

(4) CLERICAL AMENDMENTS.—

(A) The section heading for section 734 is amended to read as follows:

''SEC. 734. ADJUSTMENT TO BASIS OF UNDISTRIBUTED PARTNERSHIP PROPERTY WHERE SECTION 754 ELECTION OR SUBSTANTIAL BASIS REDUCTION.''.

(B) The table of sections for subpart B of part II of subchapter K of chapter 1 is amended by striking the item relating to section 734 and inserting the following new item:

''Sec. 734. Adjustment to basis of undistributed partnership property where section 754 election or substantial basis reduction.''.

(d) EFFECTIVE DATES.—

(1) SUBSECTION (a).—The amendment made by subsection (a) shall apply to contributions made after the date of the enactment of this Act.

(2) SUBSECTION (b).—The amendments made by subsection (b) shall apply to transfers after the date of the enactment of this Act.

(3) SUBSECTION (c).—The amendments made by subsection (c) shall apply to distributions after the date of the enactment of this Act.

SEC. 354. TREATMENT OF STRIPPED INTERESTS IN BOND AND PREFERRED STOCK FUNDS, ETC.

(a) IN GENERAL.—Section 1286 (relating to tax treatment of stripped bonds) is amended by redesignating subsection (f) as subsection (g) and by inserting after subsection (e) the following new subsection:

''(f) TREATMENT OF STRIPPED INTERESTS IN BOND AND PREFERRED STOCK FUNDS, ETC.—In the case of an account or entity substantially all of the assets of which consist of bonds, preferred stock, or a combination thereof, the Secretary may by regulations provide that rules similar to the rules of this section and 305(e), as appropriate, shall apply to interests in such account or entity to which (but for this subsection) this section or section 305(e), as the case may be, would not apply.''.

(b) CROSS REFERENCE.—Subsection (e) of section 305 is amended by adding at the end the following new paragraph:

''(7) CROSS REFERENCE.—

''For treatment of stripped interests in certain accounts or entities holding preferred stock, see section 1286(f).''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to purchases and dispositions after the date of the enactment of this Act.

SEC. 355. REPORTING OF TAXABLE MERGERS AND ACQUISITIONS.

(a) IN GENERAL.—Subpart B of part III of subchapter A of chapter 61 is amended by inserting after section 6043 the following new section:

''SEC. 6043A. TAXABLE MERGERS AND ACQUISITIONS.

''(a) IN GENERAL.—The acquiring corporation in any taxable acquisition shall make a return (according to the forms or regulations prescribed by the Secretary) setting forth—

''(1) a description of the acquisition,

''(2) the name and address of each shareholder of the acquired corporation who is required to recognize gain (if any) as a result of the acquisition,

''(3) the amount of money and the fair market value of other property transferred to each such shareholder as part of such acquisition, and

''(4) such other information as the Secretary may prescribe.

To the extent provided by the Secretary, the requirements of this section applicable to the acquiring corporation shall be applicable to the acquired corporation and not to the acquiring corporation.

''(b) NOMINEE REPORTING.—Any person who holds stock as a nominee for another person shall furnish in the manner prescribed by the Secretary to such other person the information provided by the corporation under subsection (d).

''(c) TAXABLE ACQUISITION.—For purposes of this section, the term 'taxable acquisition' means any acquisition by a corporation of stock in or property of another corporation if any shareholder of the acquired corporation is required to recognize gain (if any) as a result of such acquisition.

''(d) STATEMENTS TO BE FURNISHED TO SHAREHOLDERS.—Every person required to make a return under subsection (a) shall furnish to each shareholder whose name is required to be set forth in such return a written statement showing—

''(1) the name, address, and phone number of the information contact of the person required to make such return,

''(2) the information required to be shown on such return with respect to such shareholder, and

''(3) such other information as the Secretary may prescribe.

The written statement required under the preceding sentence shall be furnished to the shareholder on or before January 31 of the year following the calendar year during which the taxable acquisition occurred.''.

(b) ASSESSABLE PENALTIES.—

(1) Subparagraph (B) of section 6724(d)(1) (relating to definitions) is amended by redesignating clauses (ii) through (xvii) as clauses (iii) through (xviii), respectively, and by inserting after clause (i) the following new clause:

''(ii) section 6043A(a) (relating to returns relating to taxable mergers and acquisitions),''.

(2) Paragraph (2) of section 6724(d) is amended by redesignating subparagraphs (F) through (AA) as subparagraphs (G) through (BB), respectively, and by inserting after subparagraph (E) the following new subparagraph:

''(F) subsections (b) and (d) of section 6043A (relating to returns relating to taxable mergers and acquisitions).''.

(c) CLERICAL AMENDMENT.—The table of sections for subpart B of part III of subchapter A of chapter 61 is amended by inserting after the item relating to section 6043 the following new item:

''Sec. 6043A. Returns relating to taxable mergers and acquisitions.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to acquisitions after the date of the enactment of this Act.

SEC. 356. MINIMUM HOLDING PERIOD FOR FOREIGN TAX CREDIT ON WITHHOLDING TAXES ON INCOME OTHER THAN DIVIDENDS.

(a) IN GENERAL.—Section 901 is amended by redesignating subsection (l) as subsection (m) and by inserting after subsection (k) the following new subsection:

''(l) MINIMUM HOLDING PERIOD FOR WITHHOLDING TAXES ON GAIN AND INCOME OTHER THAN DIVIDENDS ETC.—

''(1) IN GENERAL.—In no event shall a credit be allowed under subsection (a) for any withholding tax (as defined in subsection (k)) on

any item of income or gain with respect to any property if—

''(A) such property is held by the recipient of the item for 15 days or less during the 30-day period beginning on the date which is 15 days before the date on which the right to receive payment of such item arises, or

''(B) to the extent that the recipient of the item is under an obligation (whether pursuant to a short sale or otherwise) to make related payments with respect to positions in substantially similar or related property.

This paragraph shall not apply to any dividend to which subsection (k) applies.

''(2) EXCEPTION FOR TAXES PAID BY DEALERS.—

''(A) IN GENERAL.—Paragraph (1) shall not apply to any qualified tax with respect to any property held in the active conduct in a foreign country of a business as a dealer in such property.

''(B) QUALIFIED TAX.—For purposes of subparagraph (A), the term 'qualified tax' means a tax paid to a foreign country (other than the foreign country referred to in subparagraph (A)) if—

''(i) the item to which such tax is attributable is subject to taxation on a net basis by the country referred to in subparagraph (A), and

''(ii) such country allows a credit against its net basis tax for the full amount of the tax paid to such other foreign country.

''(C) DEALER.—For purposes of subparagraph (A), the term 'dealer' means—

''(i) with respect to a security, any person to whom paragraphs (1) and (2) of subsection (k) would not apply by reason of paragraph (4) thereof if such security were stock, and

''(ii) with respect to any other property, any person with respect to whom such property is described in section 1221(a)(1).

''(D) REGULATIONS.—The Secretary may prescribe such regulations as may be appropriate to carry out this paragraph, including regulations to prevent the abuse of the exception provided by this paragraph and to treat other taxes as qualified taxes.

''(3) EXCEPTIONS.—The Secretary may by regulation provide that paragraph (1) shall not apply to property where the Secretary determines that the application of paragraph (1) to such property is not necessary to carry out the purposes of this subsection.

''(4) CERTAIN RULES TO APPLY.—Rules similar to the rules of paragraphs (5), (6), and (7) of subsection (k) shall apply for purposes of this subsection.

''(5) DETERMINATION OF HOLDING PERIOD.—Holding periods shall be determined for purposes of this subsection without regard to section 1235 or any similar rule.''.

(b) CONFORMING AMENDMENT.—The heading of subsection (k) of section 901 is amended by inserting ''ON DIVIDENDS'' after ''TAXES''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or accrued more than 30 days after the date of the enactment of this Act.

SEC. 357. QUALIFIED TAX COLLECTION CONTRACTS.

(a) CONTRACT REQUIREMENTS.—

(1) IN GENERAL.—Subchapter A of chapter 64 (relating to collection) is amended by adding at the end the following new section:

''SEC. 6306. QUALIFIED TAX COLLECTION CONTRACTS.

''(a) IN GENERAL.—Nothing in any provision of law shall be construed to prevent the Secretary from entering into a qualified tax collection contract.

''(b) QUALIFIED TAX COLLECTION CONTRACT.—For purposes of this section, the term 'qualified tax collection contract' means any contract which—

''(1) is for the services of any person (other than an officer or employee of the Treasury Department) to locate and contact any taxpayer specified by the Secretary, to request payment from such taxpayer of an amount of Federal tax specified by the Secretary, and to obtain financial information specified by the Secretary with respect to such taxpayer, and

''(2) prohibits each person providing such services under such contract from committing any act or omission which employees of the Internal Revenue Service are prohibited from committing in the performance of similar services.

''(c) FEES.—The Secretary may retain and use an amount not in excess of 25 percent of the amount collected under any qualified tax collection contract for the costs of services performed under such contract. The Secretary shall keep adequate records regarding amounts so retained and used. The amount credited as paid by any taxpayer shall be determined without regard to this subsection.

''(d) NO FEDERAL LIABILITY.—The United States shall not be liable for any act or omission of any person performing services under a qualified tax collection contract.

''(e) APPLICATION OF FAIR DEBT COLLECTION PRACTICES ACT.—The provisions of the Fair Debt Collection Practices Act (15 U.S.C. 1692 et seq.) shall apply to any qualified tax collection contract, except to the extent superseded by any provision of this title.

''(f) CROSS REFERENCES.—

''(1) For damages for certain unauthorized collection actions by persons performing services under a qualified tax collection contract, see section 7433A.

''(2) For application of Taxpayer Assistance Orders to persons performing services under a qualified tax collection contract, see section 7811(a)(4).''.

(2) CONFORMING AMENDMENTS.—

(A) Section 7809(a) is amended by inserting ''6306,'' before ''7651''.

(B) The table of sections for subchapter A of chapter 64 is amended by adding at the end the following new item:

''Sec. 6306. Qualified Tax Collection Contracts.''.

(b) CIVIL DAMAGES FOR CERTAIN UNAUTHORIZED COLLECTION ACTIONS BY PERSONS PERFORMING SERVICES UNDER QUALIFIED TAX COLLECTION CONTRACTS.—

(1) IN GENERAL.—Subchapter B of chapter 76 (relating to proceedings by taxpayers and third parties) is amended by inserting after section 7433 the following new section:

''SEC. 7433A. CIVIL DAMAGES FOR CERTAIN UNAUTHORIZED COLLECTION ACTIONS BY PERSONS PERFORMING SERVICES UNDER QUALIFIED TAX COLLECTION CONTRACTS.

''(a) IN GENERAL.—Subject to the modifications provided by subsection (b), section 7433 shall apply to the acts and omissions of any person performing services under a qualified tax collection contract (as defined in section 6306(b)) to the same extent and in the same manner as if such person were an employee of the Internal Revenue Service.

''(b) MODIFICATIONS.—For purposes of subsection (a)—

''(1) Any civil action brought under section 7433 by reason of this section shall be brought against the person who entered into the qualified tax collection contract with the Secretary and shall not be brought against the United States.

''(2) Such person and not the United States shall be liable for any damages and costs determined in such civil action.

''(3) Such civil action shall not be an exclusive remedy with respect to such person.

''(4) Subsections (c) and (d)(1) of section 7433 shall not apply.''.

(2) CLERICAL AMENDMENT.—The table of sections for subchapter B of chapter 76 is amended by inserting after the item relating to section 7433 the following new item:

''Sec. 7433A. Civil damages for certain unauthorized collection actions by persons performing services under a qualified tax collection contract.''.

(c) APPLICATION OF TAXPAYER ASSISTANCE ORDERS TO PERSONS PERFORMING SERVICES UNDER A QUALIFIED TAX COLLECTION CONTRACT.—Section 7811 (relating to taxpayer assistance orders) is amended by adding at the end the following new subsection:

''(g) APPLICATION TO PERSONS PERFORMING SERVICES UNDER A QUALIFIED TAX COLLECTION CONTRACT.—Any order issued or action taken by the National Taxpayer Advocate pursuant to this section shall apply to persons performing services under a qualified tax collection contract (as defined in section 6306(b)) to the same extent and in the same manner as such order or action applies to the Secretary.''.

(d) INELIGIBILITY OF INDIVIDUALS WHO COMMIT MISCONDUCT TO PERFORM UNDER CONTRACT.—Section 1203 of the Internal Revenue Service Restructuring Act of 1998 (relating to termination of employment for misconduct) is amended by adding at the end the following new subsection:

''(e) INDIVIDUALS PERFORMING SERVICES UNDER A QUALIFIED TAX COLLECTION CONTRACT.—An individual shall cease to be permitted to perform any services under any qualified tax collection contract (as defined in section 6306(b) of the Internal Revenue Code of 1986) if there is a final determination by the Secretary of the Treasury under such contract that such individual committed any act or omission described under subsection (b) in connection with the performance of such services.''.

(e) EFFECTIVE DATE.—The amendments made to this section shall take effect on the date of the enactment of this Act.

SEC. 358. EXTENSION OF CUSTOMS USER FEES.

Section 13031(j)(3) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(j)(3)) is amended by striking ''September 30, 2003'' and inserting ''September 30, 2013''.

SEC. 359. CLARIFICATION OF EXEMPTION FROM TAX FOR SMALL PROPERTY AND CASUALTY INSURANCE COMPANIES.

(a) IN GENERAL.—Section 501(c)(15)(A) is amended to read as follows:

''(A) Insurance companies or associations other than life (including interinsurers and reciprocal underwriters) if—

''(i) the gross receipts for the taxable year do not exceed $600,000, and

''(ii) more than 50 percent of such gross receipts consist of premiums.''.

(b) CONTROLLED GROUP RULE.—Section 501(c)(15)(C) is amended by inserting '', except that in applying section 1563 for purposes of section 831(b)(2)(B)(ii), subparagraphs (B) and (C) of section 1563(b)(2) shall be disregarded'' before the period at the end.

(c) CONFORMING AMENDMENT.—Clause (i) of section 831(b)(2)(A) is amended by striking ''exceed $350,000 but''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2003.

SEC. 360. PARTIAL PAYMENT OF TAX LIABILITY IN INSTALLMENT AGREEMENTS.

(a) IN GENERAL.—

(1) Section 6159(a) (relating to authorization of agreements) is amended—

(A) by striking ''satisfy liability for payment of'' and inserting ''make payment on'', and

(B) by inserting ''full or partial'' after ''facilitate''.

(2) Section 6159(c) (relating to Secretary required to enter into installment agreements in certain cases) is amended in the matter preceding paragraph (1) by inserting ''full'' before ''payment''.

(b) REQUIREMENT TO REVIEW PARTIAL PAYMENT AGREEMENTS EVERY TWO YEARS.—Section 6159 is amended by redesignating subsections (d)

and (e) as subsections (e) and (f), respectively, and inserting after subsection (c) the following new subsection:

''(d) SECRETARY REQUIRED TO REVIEW INSTALLMENT AGREEMENTS FOR PARTIAL COLLECTION EVERY TWO YEARS.—In the case of an agreement entered into by the Secretary under subsection (a) for partial collection of a tax liability, the Secretary shall review the agreement at least once every 2 years.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to agreements entered into on or after the date of the enactment of this Act.

SEC. 361. EXTENSION OF AMORTIZATION OF INTANGIBLES TO SPORTS FRANCHISES.

(a) IN GENERAL.—Section 197(e) (relating to exceptions to definition of section 197 intangible) is amended by striking paragraph (6) and by redesignating paragraphs (7) and (8) as paragraphs (6) and (7), respectively.

(b) CONFORMING AMENDMENTS.—

(1)(A) Section 1056 (relating to basis limitation for player contracts transferred in connection with the sale of a franchise) is repealed.

(B) The table of sections for part IV of subchapter O of chapter 1 is amended by striking the item relating to section 1056.

(2) Section 1253 (relating to transfers of franchises, trademarks, and trade names) is amended by striking subsection (e).

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to property acquired after the date of the enactment of this Act.

SEC. 362. DEPOSITS MADE TO SUSPEND RUNNING OF INTEREST ON POTENTIAL UNDERPAYMENTS.

(a) IN GENERAL.—Subchapter A of chapter 67 (relating to interest on underpayments) is amended by adding at the end the following new section:

''SEC. 6603. DEPOSITS MADE TO SUSPEND RUNNING OF INTEREST ON POTENTIAL UNDERPAYMENTS, ETC.

''(a) AUTHORITY TO MAKE DEPOSITS OTHER THAN AS PAYMENT OF TAX.—A taxpayer may make a cash deposit with the Secretary which may be used by the Secretary to pay any tax imposed under subtitle A or B or chapter 41, 42, 43, or 44 which has not been assessed at the time of the deposit. Such a deposit shall be made in such manner as the Secretary shall prescribe.

''(b) NO INTEREST IMPOSED.—To the extent that such deposit is used by the Secretary to pay tax, for purposes of section 6601 (relating to interest on underpayments), the tax shall be treated as paid when the deposit is made.

''(c) RETURN OF DEPOSIT.—Except in a case where the Secretary determines that collection of tax is in jeopardy, the Secretary shall return to the taxpayer any amount of the deposit (to the extent not used for a payment of tax) which the taxpayer requests in writing.

''(d) PAYMENT OF INTEREST.—

''(1) IN GENERAL.—For purposes of section 6611 (relating to interest on overpayments), a deposit which is returned to a taxpayer shall be treated as a payment of tax for any period to the extent (and only to the extent) attributable to a disputable tax for such period. Under regulations prescribed by the Secretary, rules similar to the rules of section 6611(b)(2) shall apply.

''(2) DISPUTABLE TAX.—

''(A) IN GENERAL.—For purposes of this section, the term 'disputable tax' means the amount of tax specified at the time of the deposit as the taxpayer's reasonable estimate of the maximum amount of any tax attributable to disputable items.

''(B) SAFE HARBOR BASED ON 30-DAY LETTER.—In the case of a taxpayer who has been issued a 30-day letter, the maximum amount of tax under subparagraph (A) shall not be less than the amount of the proposed deficiency specified in such letter.

''(3) OTHER DEFINITIONS.—For purposes of paragraph (2)—

''(A) DISPUTABLE ITEM.—The term 'disputable item' means any item of income, gain, loss, deduction, or credit if the taxpayer—

''(i) has a reasonable basis for its treatment of such item, and

''(ii) reasonably believes that the Secretary also has a reasonable basis for disallowing the taxpayer's treatment of such item.

''(B) 30-DAY LETTER.—The term '30-day letter' means the first letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals.

''(4) RATE OF INTEREST.—The rate of interest allowable under this subsection shall be the Federal short-term rate determined under section 6621(b), compounded daily.

''(e) USE OF DEPOSITS.—

''(1) PAYMENT OF TAX.—Except as otherwise provided by the taxpayer, deposits shall be treated as used for the payment of tax in the order deposited.

''(2) RETURNS OF DEPOSITS.—Deposits shall be treated as returned to the taxpayer on a last-in, first-out basis.''.

(b) CLERICAL AMENDMENT.—The table of sections for subchapter A of chapter 67 is amended by adding at the end the following new item:

''Sec. 6603. Deposits made to suspend running of interest on potential underpayments, etc.''.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to deposits made after the date of the enactment of this Act.

(2) COORDINATION WITH DEPOSITS MADE UNDER REVENUE PROCEDURE 84–58.—In the case of an amount held by the Secretary of the Treasury or his delegate on the date of the enactment of this Act as a deposit in the nature of a cash bond deposit pursuant to Revenue Procedure 84–58, the date that the taxpayer identifies such amount as a deposit made pursuant to section 6603 of the Internal Revenue Code (as added by this Act) shall be treated as the date such amount is deposited for purposes of such section 6603.

SEC. 363. CLARIFICATION OF RULES FOR PAYMENT OF ESTIMATED TAX FOR CERTAIN DEEMED ASSET SALES.

(a) IN GENERAL.—Paragraph (13) of section 338(h) (relating to tax on deemed sale not taken into account for estimated tax purposes) is amended by adding at the end the following: ''The preceding sentence shall not apply with respect to a qualified stock purchase for which an election is made under paragraph (10).''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to transactions occurring after the date of the enactment of this Act.

SEC. 364. LIMITATION OF DEDUCTION FOR CHARITABLE CONTRIBUTIONS OF PATENTS AND SIMILAR PROPERTY.

(a) IN GENERAL.—Section 170(e)(1)(B) (relating to certain contributions of ordinary income and capital gain property) is amended by striking ''or'' at the end of clause (i), by adding ''or'' at the end of clause (ii), and by inserting after clause (ii) the following new clause:

''(iii) of any patent, copyright, trademark, trade name, trade secret, know-how, software, or similar property, or applications or registrations of such property,''.

(b) ANTI-ABUSE RULES.—The Secretary of the Treasury may prescribe such regulations or other administrative guidance as may be necessary or appropriate to prevent the avoidance of the purposes of section 170(e)(1)(B)(iii) of the Internal Revenue Code of 1986 (as added by subsection (a)), including preventing—

(1) the circumvention of the reduction of the charitable deduction by embedding or bundling the patent or similar property as part of a charitable contribution of property that includes the patent or similar property,

(2) the manipulation of the basis of the property to increase the amount of the charitable deduction through the use of related persons, pass-thru entities, or other intermediaries, or through the use of any provision of law or regulation (including the consolidated return regulations), and

(3) a donor from changing the form of the patent or similar property to property of a form for which different deduction rules would apply.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to contributions made after May 7, 2003.

SEC. 365. EXTENSION OF TRANSFERS OF EXCESS PENSION ASSETS TO RETIREE HEALTH ACCOUNTS.

(a) AMENDMENT OF INTERNAL REVENUE CODE OF 1986.—Paragraph (5) of section 420(b) (relating to expiration) is amended by striking ''December 31, 2005'' and inserting ''December 31, 2013''.

(b) AMENDMENTS OF ERISA.—

(1) Section 101(e)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1021(e)(3)) is amended by striking ''Tax Relief Extension Act of 1999'' and inserting ''Jobs and Growth Tax Relief Reconciliation Act of 2003''.

(2) Section 403(c)(1) of such Act (29 U.S.C. 1103(c)(1)) is amended by striking ''Tax Relief Extension Act of 1999'' and inserting ''Jobs and Growth Tax Relief Reconciliation Act of 2003''.

(3) Paragraph (13) of section 408(b) of such Act (29 U.S.C. 1108(b)(3)) is amended—

(A) by striking ''January 1, 2006'' and inserting ''January 1, 2014'', and

(B) by striking ''Tax Relief Extension Act of 1999'' and inserting ''Jobs and Growth Tax Relief Reconciliation Act of 2003''.

SEC. 366. PRORATION RULES FOR LIFE INSURANCE BUSINESS OF PROPERTY AND CASUALTY INSURANCE COMPANIES.

(a) IN GENERAL.—Section 832(b)(4) (defining premiums earned) is amended—

(1) by inserting '', except that any deduction attributable to such reserves shall be reduced in the same manner as the deductions provided by sections 243, 244, and 245 for a life insurance company are reduced under section 805(a)(4)'' before the period at the end of the first sentence following subparagraph (C), and

(2) by adding at the end the following new sentence: ''In applying section 812(d) for purposes of the reduction under the third preceding sentence, only gross investment income attributable to the reserves described in such sentence shall be taken into account.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2003.

SEC. 367. MODIFICATION OF TREATMENT OF TRANSFERS TO CREDITORS IN DIVISIVE REORGANIZATIONS.

(a) IN GENERAL.—Section 361(b)(3) (relating to treatment of transfers to creditors) is amended by adding at the end the following new sentence: ''In the case of a reorganization described in section 368(a)(1)(D) with respect to which stock or securities of the corporation to which the assets are transferred are distributed in a transaction which qualifies under section 355, this paragraph shall apply only to the extent that the money or other property transferred to such creditors does not exceed the adjusted bases of such assets transferred.''.

(b) LIABILITIES IN EXCESS OF BASIS.—Section 357(c)(1)(B) is amended by inserting ''with respect to which stock or securities of the corporation to which the assets are transferred are distributed in a transaction which qualifies under section 355'' after ''section 368(a)(1)(D)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to transfers of money or other property, or liabilities assumed, in connection with a reorganization occurring on or after the date of the enactment of this Act.

SEC. 368. INCREASE IN AGE OF MINOR CHILDREN WHOSE UNEARNED INCOME IS TAXED AS IF PARENT'S INCOME.

(a) IN GENERAL.—Section 1(g)(2)(A) (relating to child to whom subsection applies) is amended by striking ''age 14'' and inserting ''age 18''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2003.

SEC. 369. CONSISTENT AMORTIZATION OF PERIODS FOR INTANGIBLES.

(a) START-UP EXPENDITURES.—

(1) ALLOWANCE OF DEDUCTION.—Paragraph (1) of section 195(b) (relating to start-up expenditures) is amended to read as follows:

''(1) ALLOWANCE OF DEDUCTION.—If a taxpayer elects the application of this subsection with respect to any start-up expenditures—

''(A) the taxpayer shall be allowed a deduction for the taxable year in which the active trade or business begins in an amount equal to the lesser of—

''(i) the amount of start-up expenditures with respect to the active trade or business, or

''(ii) $5,000, reduced (but not below zero) by the amount by which such start-up expenditures exceed $50,000, and

''(B) the remainder of such start-up expenditures shall be allowed as a deduction ratably over the 180-month period beginning with the month in which the active trade or business begins.''.

(2) CONFORMING AMENDMENT.—Subsection (b) of section 195 is amended by striking ''AMORTIZE'' and inserting ''DEDUCT'' in the heading.

(b) ORGANIZATIONAL EXPENDITURES.—Subsection (a) of section 248 (relating to organizational expenditures) is amended to read as follows:

''(a) ELECTION TO DEDUCT.—If a corporation elects the application of this subsection (in accordance with regulations prescribed by the Secretary) with respect to any organizational expenditures—

''(1) the corporation shall be allowed a deduction for the taxable year in which the corporation begins business in an amount equal to the lesser of—

''(A) the amount of organizational expenditures with respect to the taxpayer, or

''(B) $5,000, reduced (but not below zero) by the amount by which such organizational expenditures exceed $50,000, and

''(2) the remainder of such organizational expenditures shall be allowed as a deduction ratably over the 180-month period beginning with the month in which the corporation begins business.''.

(c) TREATMENT OF ORGANIZATIONAL AND SYNDICATION FEES OR PARTNERSHIPS.—

(1) IN GENERAL.—Section 709(b) (relating to amortization of organization fees) is amended by redesignating paragraph (2) as paragraph (3) and by amending paragraph (1) to read as follows:

''(1) ALLOWANCE OF DEDUCTION.—If a taxpayer elects the application of this subsection (in accordance with regulations prescribed by the Secretary) with respect to any organizational expenses—

''(A) the taxpayer shall be allowed a deduction for the taxable year in which the partnership begins business in an amount equal to the lesser of—

''(i) the amount of organizational expenses with respect to the partnership, or

''(ii) $5,000, reduced (but not below zero) by the amount by which such organizational expenses exceed $50,000, and

''(B) the remainder of such organizational expenses shall be allowed as a deduction ratably over the 180-month period beginning with the month in which the partnership begins business.

''(2) DISPOSITIONS BEFORE CLOSE OF AMORTIZATION PERIOD.—In any case in which a partnership is liquidated before the end of the period to which paragraph (1)(B) applies, any deferred expenses attributable to the partnership which were not allowed as a deduction by reason of this section may be deducted to the extent allowable under section 165.''.

(2) CONFORMING AMENDMENT.—Subsection (b) of section 709 is amended by striking ''AMORTIZATION'' and inserting ''DEDUCTION'' in the heading.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or incurred after the date of the enactment of this Act.

SEC. 370. CLARIFICATION OF DEFINITION OF NONQUALIFIED PREFERRED STOCK.

(a) IN GENERAL.—Section 351(g)(3)(A) is amended by adding at the end the following: ''Stock shall not be treated as participating in corporate growth to any significant extent unless there is a real and meaningful likelihood of the shareholder actually participating in the earnings and growth of the corporation.''

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to transactions after May 14, 2003.

SEC. 371. CLASS LIVES FOR UTILITY GRADING COSTS.

(a) GAS UTILITY PROPERTY.—Section 168(e)(3)(E) (defining 15-year property) is amended by striking ''and'' at the end of clause (ii), by striking the period at the end of clause (iii) and inserting '', and'', and by adding at the end the following new clause:

''(iv) initial clearing and grading land improvements with respect to gas utility property.''

(b) ELECTRIC UTILITY PROPERTY.—Section 168(e)(3) is amended by adding at the end the following new subparagraph:

''(F) 20-YEAR PROPERTY.—The term '20-year property' means initial clearing and grading land improvements with respect to any electric utility transmission and distribution plant.''

(c) CONFORMING AMENDMENTS.—The table contained in section 168(g)(3)(B) is amended—

(1) by inserting ''or (E)(iv)'' after ''(E)(iii)'', and

(2) by adding at the end the following new item:

''(F) ..... 25''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after the date of the enactment of this Act.

SEC. 372. PROHIBITION ON NONRECOGNITION OF GAIN THROUGH COMPLETE LIQUIDATION OF HOLDING COMPANY.

(a) IN GENERAL.—Section 332 is amended by adding at the end the following new subsection:

''(d) RECOGNITION OF GAIN ON LIQUIDATION OF CERTAIN HOLDING COMPANIES.—

''(1) IN GENERAL.—Subsection (a) and section 331 shall not apply to any distribution in complete liquidation of an applicable holding company to the extent of the earnings and profits of such company.

''(2) APPLICABLE HOLDING COMPANY.—For purposes of this subsection—

''(A) IN GENERAL.—The term 'applicable holding company' means any corporation—

''(i) which is a member of a chain of includible corporations with a common parent which is a foreign corporation,

''(ii) the stock of which is directly owned by such common parent or another foreign corporation,

''(iii) substantially all of the assets of which consist of stock in other members of such chain of corporations, and

''(iv) which has not been in existence at least 5 years as of the date of the liquidation.

''(B) INCLUDIBLE CORPORATION.—The term 'includible corporation' has the meaning given such term under section 1504(b) (without regard to paragraph (3) thereof).''

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to distributions in complete liquidation occurring after the date of the enactment of this Act.

SEC. 373. LEASE TERM TO INCLUDE CERTAIN SERVICE CONTRACTS.

(a) IN GENERAL.—Section 168(i)(3) (relating to lease term) is amended by adding at the end the following new subparagraph:

''(C) SPECIAL RULE FOR SERVICE CONTRACTS.—In determining a lease term, there shall be taken into account any optional service contract or other similar arrangement.''

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to leases entered into after the date of the enactment of this Act.

SEC. 374. RECOGNITION OF GAIN FROM THE SALE OF A PRINCIPAL RESIDENCE ACQUIRED IN A LIKE-KIND EXCHANGE WITHIN 5 YEARS OF SALE.

(a) IN GENERAL.—Section 121(d) (relating to special rules for exclusion of gain from sale of principal residence) is amended by adding at the end the following new paragraph:

''(10) PROPERTY ACQUIRED IN LIKE-KIND EXCHANGE.—If a taxpayer acquired property in an exchange to which section 1031 applied, subsection (a) shall not apply to the sale or exchange of such property if it occurs during the 5-year period beginning with the exchange to which section 1031 applied.''

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to sales or exchanges after the date of the enactment of this Act.

Subtitle F—Other Provisions

SEC. 381. TEMPORARY STATE AND LOCAL FISCAL RELIEF.

(a) $10,000,000,000 FOR A TEMPORARY INCREASE OF THE MEDICAID FMAP.—

(1) PERMITTING MAINTENANCE OF FISCAL YEAR 2002 FMAP FOR LAST 2 CALENDAR QUARTERS OF FISCAL YEAR 2003.—Subject to paragraph (5), if the FMAP determined without regard to this subsection for a State for fiscal year 2003 is less than the FMAP as so determined for fiscal year 2002, the FMAP for the State for fiscal year 2002 shall be substituted for the State's FMAP for the third and fourth calendar quarters of fiscal year 2003, before the application of this subsection.

(2) PERMITTING MAINTENANCE OF FISCAL YEAR 2003 FMAP FOR FIRST 3 QUARTERS OF FISCAL YEAR 2004.—Subject to paragraph (5), if the FMAP determined without regard to this subsection for a State for fiscal year 2004 is less than the FMAP as so determined for fiscal year 2003, the FMAP for the State for fiscal year 2003 shall be substituted for the State's FMAP for the first, second, and third calendar quarters of fiscal year 2004, before the application of this subsection.

(3) GENERAL 2.95 PERCENTAGE POINTS INCREASE FOR LAST 2 CALENDAR QUARTERS OF FISCAL YEAR 2003 AND FIRST 3 CALENDAR QUARTERS OF FISCAL YEAR 2004.—Subject to paragraphs (5), (6), and (7), for each State for the third and fourth calendar quarters of fiscal year 2003 and for the first, second, and third calendar quarters of fiscal year 2004, the FMAP (taking into account the application of paragraphs (1) and (2)) shall be increased by 2.95 percentage points.

(4) INCREASE IN CAP ON MEDICAID PAYMENTS TO TERRITORIES.—Subject to paragraphs (6) and (7), with respect to the third and fourth calendar quarters of fiscal year 2003 and the first, second, and third calendar quarters of fiscal year 2004, the amounts otherwise determined for Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa under subsections (f) and (g) of section 1108 of the Social Security Act (42 U.S.C. 1308) shall each be increased by an amount equal to 5.90 percent of such amounts.

(5) SCOPE OF APPLICATION.—The increases in the FMAP for a State under this subsection shall apply only for purposes of title XIX of the Social Security Act and shall not apply with respect to—

(A) disproportionate share hospital payments described in section 1923 of such Act (42 U.S.C. 1396r–4);

(B) payments under title IV or XXI of such Act (42 U.S.C. 601 et seq. and 1397aa et seq.); or

(C) any payments under XIX of such Act that are based on the enhanced FMAP described in section 2105(b) of such Act (42 U.S.C. 1397ee(b)).

(6) STATE ELIGIBILITY.—

(A) IN GENERAL.—Subject to subparagraph (B), a State is eligible for an increase in its FMAP under paragraph (3) or an increase in a cap amount under paragraph (4) only if the eligibility under its State plan under title XIX of

the Social Security Act (including any waiver under such title or under section 1115 of such Act (42 U.S.C. 1315)) is no more restrictive than the eligibility under such plan (or waiver) as in effect on September 2, 2003.

(B) STATE REINSTATEMENT OF ELIGIBILITY PERMITTED.—A State that has restricted eligibility under its State plan under title XIX of the Social Security Act (including any waiver under such title or under section 1115 of such Act (42 U.S.C. 1315)) after September 2, 2003, is eligible for an increase in its FMAP under paragraph (3) or an increase in a cap amount under paragraph (4) in the first calendar quarter (and subsequent calendar quarters) in which the State has reinstated eligibility that is no more restrictive than the eligibility under such plan (or waiver) as in effect on September 2, 2003.

(C) RULE OF CONSTRUCTION.—Nothing in subparagraph (A) or (B) shall be construed as affecting a State's flexibility with respect to benefits offered under the State medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) (including any waiver under such title or under section 1115 of such Act (42 U.S.C. 1315)).

(7) REQUIREMENT FOR CERTAIN STATES.—In the case of a State that requires political subdivisions within the State to contribute toward the non-Federal share of expenditures under the State medicaid plan required under section 1902(a)(2) of the Social Security Act (42 U.S.C. 1396a(a)(2)), the State shall not require that such political subdivisions pay a greater percentage of the non-Federal share of such expenditures for the third and fourth calendar quarters of fiscal year 2003 and the first, second and third calendar quarters of fiscal year 2004, than the percentage that was required by the State under such plan on April 1, 2003, prior to application of this subsection.

(8) DEFINITIONS.—In this subsection:

(A) FMAP.—The term ''FMAP'' means the Federal medical assistance percentage, as defined in section 1905(b) of the Social Security Act (42 U.S.C. 1396d(b)).

(B) STATE.—The term ''State'' has the meaning given such term for purposes of title XIX of the Social Security Act (42 U.S.C. 1396 et seq.).

(9) REPEAL.—Effective as of October 1, 2004, this subsection is repealed.

(b) $10,000,000,000 FOR ASSISTANCE IN PROVIDING GOVERNMENT SERVICES.—

(1) ESTABLISHMENT.—

(A) IN GENERAL.—Not later than 45 days after the date of enactment of this Act, the Secretary shall establish a program under which the Secretary shall make a payment to each State in accordance with paragraph (2) and each unit of general local government which qualifies for a payment under paragraph (3).

(B) REQUIREMENT.—In making payments under this subsection, the Secretary shall ensure that not more than 72.70 percent of the amount appropriated under subparagraph (C) is paid in fiscal year 2003.

(C) APPROPRIATION.—There is authorized to be appropriated and is appropriated for making payments under this subsection, $10,000,000,000. Amounts appropriated under this subparagraph shall remain available for expenditure through September 30, 2004.

(2) $6,000,000,000 PAID TO STATES.—

(A) AMOUNT OF PAYMENT.—

(i) BASED ON POPULATION.—Subject to clause (ii), $6,000,000,000 of the amount appropriated under paragraph (1)(C) shall be used to pay each State an amount equal to the relative population proportion amount described in clause (iii).

(ii) MINIMUM PAYMENT.—

(I) IN GENERAL.—No State shall receive a payment under this paragraph that is less than—

(aa) in the case of any of the several States or the District of Columbia, $30,000,000; and

(bb) in the case of the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, or American Samoa, $6,000,000.

(II) PRO RATA ADJUSTMENTS.—The Secretary shall adjust on a pro rata basis the amount of the payments to States determined under this subparagraph to the extent necessary to comply with the requirements of subclause (I).

(iii) RELATIVE POPULATION PROPORTION AMOUNT.—The relative population proportion amount described in this clause is the product of—

(I) $6,000,000,000; and

(II) the relative State population proportion (defined in clause (iv)).

(iv) RELATIVE STATE POPULATION PROPORTION DEFINED.—For purposes of clause (iii)(II), the term ''relative State population proportion'' means, with respect to a State, the amount equal to the quotient of—

(I) the population of the State (as reported in the most recent decennial census); and

(II) the total population of all States (as reported in the most recent decennial census).

(B) USE OF PAYMENT.—

(i) IN GENERAL.—Subject to clause (ii), a State shall use the funds provided under a payment made under this paragraph to fund 1 or more of the following activities:

(I) Education or job training.

(II) Health care or other social services.

(III) Transportation or other infrastructure.

(IV) Law enforcement or public safety.

(V) Essential government services.

(ii) LIMITATION.—A State may only use funds provided under a payment made under this paragraph for types of expenditures permitted under the most recently approved budget for the State.

(C) CERTIFICATION.—In order to receive a payment under this paragraph for a fiscal year, the State shall provide the Secretary with a certification that the State's proposed uses of the funds are consistent with subparagraph (B).

(3) $4,000,000,000 PAID TO UNITS OF GENERAL LOCAL GOVERNMENT.—

(A) ELIGIBILITY.—The Secretary shall, by regulation, establish procedures under which units of general local government may qualify for the payments provided under this paragraph. Such procedures shall include a requirement that no unit of general local government shall be eligible for a payment under this paragraph unless the unit provides the Secretary with a certification that the unit's proposed uses of the funds are consistent with subparagraph (C).

(B) AMOUNT OF PAYMENT.—

(i) IN GENERAL.—Subject to clause (ii), the Secretary shall pay each unit of general local government that qualifies for a payment under the regulation required under subparagraph (A), an amount equal to the same ratio to $4,000,000,000 as the population of such unit of general local government (as reported in the most recent decennial census) bears to the total population of all such units that qualify for a payment under this paragraph (as so reported).

(ii) ADJUSTMENTS.—The Secretary may adjust the amount of the payment otherwise determined for a unit of general local government under this subparagraph to the extent the Secretary determines necessary to ensure that all such units that would qualify for a payment under this paragraph receive a payment.

(C) USE OF PAYMENT.—

(i) IN GENERAL.—Subject to clause (ii), a unit of general local government shall use the funds provided under a payment made under this paragraph to fund 1 or more of the following activities:

(I) Education or job training.

(II) Health care or other social services.

(III) Transportation or other infrastructure.

(IV) Law enforcement or public safety.

(V) Essential government services.

(ii) LIMITATION.—A unit of general local government may only use funds provided under a payment made under this paragraph for types of expenditures permitted under the most recently approved budget for the unit.

(4) DEFINITIONS.—In this subsection:

(A) SECRETARY.—The term ''Secretary'' means the Secretary of the Treasury.

(B) STATE.—The term ''State'' means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and American Samoa.

(C) UNIT OF GENERAL LOCAL GOVERNMENT.—

(i) IN GENERAL.—The term ''unit of general local government'' means—

(I) a county, parish, township, city, or political subdivision of a county, parish, township, or city, that is a unit of general local government as determined by the Secretary of Commerce for general statistical purposes; and

(II) the recognized governing body of an Indian tribe or Alaskan native village that carries out substantial governmental duties and powers.

(ii) TREATMENT OF SUBSUMED AREAS.—For purposes of determining a unit of general local government under this subsection, the rules under section 6720(c) of title 31, United States Code, shall apply.

(5) REPEAL.—Effective as of October 1, 2004, this subsection is repealed.

SEC. 382. REVIEW OF STATE AGENCY BLINDNESS AND DISABILITY DETERMINATIONS.

Section 1633 of the Social Security Act (42 U.S.C. 1383b) is amended by adding at the end the following:

''(e)(1) The Commissioner of Social Security shall review determinations, made by State agencies pursuant to subsection (a) in connection with applications for benefits under this title on the basis of blindness or disability, that individuals who have attained 18 years of age are blind or disabled as of a specified onset date. The Commissioner of Social Security shall review such a determination before any action is taken to implement the determination.

''(2)(A) In carrying out paragraph (1), the Commissioner of Social Security shall review—

''(i) at least 25 percent of all determinations referred to in paragraph (1) that are made in fiscal year 2004; and

''(ii) at least 50 percent of all such determinations that are made in fiscal year 2005 or thereafter.

''(B) In carrying out subparagraph (A), the Commissioner of Social Security shall, to the extent feasible, select for review the determinations which the Commissioner of Social Security identifies as being the most likely to be incorrect.''.

SEC. 383. PROHIBITION ON USE OF SCHIP FUNDS TO PROVIDE COVERAGE FOR CHILDLESS ADULTS.

(a) GENERAL LIMITATIONS ON PAYMENTS.—Section 2105(c)(1) of the Social Security Act (42 U.S.C. 1397ee(c)(1)) is amended by inserting before the period the following: ''and may not include coverage of a childless adult unless the childless adult is a pregnant woman. For purposes of the preceding sentence, a caretaker relative (as such term is defined for purposes of carrying out section 1931) shall not be considered a childless adult.''.

(b) LIMITATION ON WAIVER AUTHORITY.—Section 2107 of the Social Security Act (42 U.S.C. 1397gg) is amended by adding at the end the following:

''(f) LIMITATION OF WAIVER AUTHORITY.—Notwithstanding subsection (e)(2)(A) and section 1115(a), the Secretary may not approve a waiver, experimental, pilot, or demonstration project, or an amendment to such a project that has been approved as of the date of enactment of this subsection, that would allow funds made available under this title to be used to provide child health assistance or other health benefits coverage to a childless adult, other than a childless adult who is a pregnant woman. For purposes of the preceding sentence, a caretaker relative (as such term is defined for purposes of carrying out section 1931) shall not be considered a childless adult.''.

(c) EFFECTIVE DATE.—The amendments made by this section take effect on the date of enactment of this Act and apply to proposals to conduct a waiver, experimental, pilot, or demonstration project affecting the State children's health insurance program under title XXI of such Act, and to any proposals to amend such a project, that are approved or extended on or after such date of enactment.

(d) RULE OF CONSTRUCTION.—Nothing in this section or the amendments made by this section shall be construed to—

(1) authorize the waiver of any provision of title XXI of the Social Security Act (42 U.S.C. 1397aa et seq.) that is not otherwise authorized to be waived under such title or under title XI of such Act (42 U.S.C. 1301 et seq.) as of the date of enactment of this Act; or

(2) imply congressional approval of any waiver, experimental, pilot, or demonstration project affecting the State children's health insurance program under title XXI of such Act that has been approved as of such date of enactment.

SEC. 384. MEDICAID DSH ALLOTMENTS.

(a) TEMPORARY INCREASE IN FLOOR FOR TREATMENT AS AN EXTREMELY LOW DSH STATE UNDER THE MEDICAID PROGRAM.—

(1) IN GENERAL.—Section 1923(f)(5) of the Social Security Act (42 U.S.C. 1396r–4(f)(5)) is amended—

(A) by striking ''In the case of'' and inserting the following:

''(A) IN GENERAL.—In the case of''; and

(B) by adding at the end the following:

''(B) TEMPORARY INCREASE IN FLOOR FOR FISCAL YEAR 2004.—During the period that begins on October 1, 2003, and ends on September 30, 2004, subparagraph (A) shall be applied—

''(i) by substituting 'fiscal year 2002' for 'fiscal year 1999';

''(iii) by substituting 'Centers for Medicare & Medicaid Services' for 'Health Care Financing Administration';

''(ii) by substituting 'August 31, 2003' for 'August 31, 2000';

''(iv) by substituting '3 percent' for '1 percent' each place it appears;

''(v) by substituting 'fiscal year 2004' for 'fiscal year 2001'; and

''(vi) without regard to the second sentence.''.

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) take effect on October 1, 2003, and apply to DSH allotments under title XIX of the Social Security Act only with respect to fiscal year 2004.

(b) ALLOTMENT ADJUSTMENT FOR CERTAIN STATES.—

(1) IN GENERAL.—Section 1923(f) of the Social Security Act (42 U.S.C. 1396r–4(f)) is amended—

(A) by redesignating paragraph (6) as paragraph (7); and

(B) by inserting after paragraph (5) the following:

''(6) ALLOTMENT ADJUSTMENT FOR CERTAIN STATES.—

''(A) TENNESSEE.—Only with respect to fiscal year 2004, if the statewide waiver approved under section 1115 for the State of Tennessee with respect to the requirements of this title (as in effect on the date of enactment of this paragraph) is revoked or terminated, the Secretary shall—

''(i) permit the State of Tennessee to submit an amendment to its State plan that would describe the methodology to be used by the State (after the effective date of such revocation or termination) to identify and make payments to disproportionate share hospitals, including children's hospitals and institutions for mental diseases or other mental health facilities (other than State-owned institutions or facilities), on the basis of the proportion of patients served by such hospitals that are low-income patients with special needs; and

''(ii) provide for purposes of this subsection for computation of an appropriate DSH allotment for the State for fiscal year 2004 that provides for the maximum amount (permitted consistent with paragraph (3)(B)(ii)) that does not result in greater expenditures under this title than would have been made if such waiver had not been revoked or terminated.

''(B) HAWAII.—The Secretary shall compute a DSH allotment for the State of Hawaii for fiscal year 2004 in the same manner as DSH allotments are determined with respect to those States to which paragraph (5) applies (but without regard to the requirement under such paragraph that total expenditures under the State plan for disproportionate share hospital adjustments for any fiscal year exceeds 0).''.

(2) TREATMENT OF INSTITUTIONS FOR MENTAL DISEASES.—Section 1923(h)(1) of the Social Security Act (42 U.S.C. 1396r–4(h)(1)) is amended—

(A) in paragraph (1), in the matter preceding subparagraph (A), by striking ''Payment'' and inserting ''Subject to paragraph (3), payment''; and

(B) by adding at the end the following:

''(3) SPECIAL RULE.—The limitation of paragraph (1) shall not apply in the case of Tennessee with respect to fiscal year 2004 in the case of a revocation or termination of its statewide waiver described in subsection (f)(6)(A).''.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall take effect as if enacted on October 1, 2002.

TITLE IV—SMALL BUSINESS AND AGRICULTURAL PROVISIONS

Subtitle A—Small Business Provisions

SEC. 401. EXCLUSION OF CERTAIN INDEBTEDNESS OF SMALL BUSINESS INVESTMENT COMPANIES FROM ACQUISITION INDEBTEDNESS.

(a) IN GENERAL.—Section 514(c) (relating to acquisition indebtedness) is amended by adding at the end the following new paragraph:

''(10) CERTAIN INDEBTEDNESS OF SMALL BUSINESS INVESTMENT COMPANIES.—For purposes of this section, the term 'acquisition indebtedness' does not include any indebtedness incurred by a small business investment company licensed under the Small Business Investment Act of 1958 which is evidenced by a debenture—

''(A) issued by such company under section 303(a) of such Act, or

''(B) held or guaranteed by the Small Business Administration.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to any indebtedness incurred after December 31, 2002, by a small business investment company described in section 514(c)(10) of the Internal Revenue Code of 1986 (as added by this section) with respect to property acquired by such company after such date.

SEC. 402. REPEAL OF OCCUPATIONAL TAXES RELATING TO DISTILLED SPIRITS, WINE, AND BEER.

(a) REPEAL OF OCCUPATIONAL TAXES.—

(1) IN GENERAL.—The following provisions of part II of subchapter A of chapter 51 (relating to occupational taxes) are hereby repealed:

(A) Subpart A (relating to proprietors of distilled spirits plants, bonded wine cellars, etc.).

(B) Subpart B (relating to brewer).

(C) Subpart D (relating to wholesale dealers) (other than sections 5114 and 5116).

(D) Subpart E (relating to retail dealers) (other than section 5124).

(E) Subpart G (relating to general provisions) (other than sections 5142, 5143, 5145, and 5146).

(2) NONBEVERAGE DOMESTIC DRAWBACK.—Section 5131 is amended by striking '', on payment of a special tax per annum,''.

(3) INDUSTRIAL USE OF DISTILLED SPIRITS.—Section 5276 is hereby repealed.

(b) CONFORMING AMENDMENTS.—

(1)(A) The heading for part II of subchapter A of chapter 51 and the table of subparts for such part are amended to read as follows:

''PART II—MISCELLANEOUS PROVISIONS

''Subpart A. Manufacturers of stills.

''Subpart B. Nonbeverage domestic drawback claimants.

''Subpart C. Recordkeeping by dealers.

''Subpart D. Other provisions.''.

(B) The table of parts for such subchapter A is amended by striking the item relating to part II and inserting the following new item:

''Part II. Miscellaneous provisions.''.

(2) Subpart C of part II of such subchapter (relating to manufacturers of stills) is redesignated as subpart A.

(3)(A) Subpart F of such part II (relating to nonbeverage domestic drawback claimants) is redesignated as subpart B and sections 5131 through 5134 are redesignated as sections 5111 through 5114, respectively.

(B) The table of sections for such subpart B, as so redesignated, is amended—

(i) by redesignating the items relating to sections 5131 through 5134 as relating to sections 5111 through 5114, respectively, and

(ii) by striking ''and rate of tax'' in the item relating to section 5111, as so redesignated.

(C) Section 5111, as redesignated by subparagraph (A), is amended—

(i) by striking ''**AND RATE OF TAX**'' in the section heading,

(ii) by striking the subsection heading for subsection (a), and

(iii) by striking subsection (b).

(4) Part II of subchapter A of chapter 51 is amended by adding after subpart B, as redesignated by paragraph (3), the following new subpart:

''Subpart C—Recordkeeping by Dealers

''Sec. 5121. Recordkeeping by wholesale dealers.

''Sec. 5122. Recordkeeping by retail dealers.

''Sec. 5123. Preservation and inspection of records, and entry of premises for inspection.''.

(5)(A) Section 5114 (relating to records) is moved to subpart C of such part II and inserted after the table of sections for such subpart.

(B) Section 5114 is amended—

(i) by striking the section heading and inserting the following new heading:

''SEC. 5121. RECORDKEEPING BY WHOLESALE DEALERS.'',

and

(ii) by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

''(c) WHOLESALE DEALERS.—For purposes of this part—

''(1) WHOLESALE DEALER IN LIQUORS.—The term 'wholesale dealer in liquors' means any dealer (other than a wholesale dealer in beer) who sells, or offers for sale, distilled spirits, wines, or beer, to another dealer.

''(2) WHOLESALE DEALER IN BEER.—The term 'wholesale dealer in beer' means any dealer who sells, or offers for sale, beer, but not distilled spirits or wines, to another dealer.

''(3) DEALER.—The term 'dealer' means any person who sells, or offers for sale, any distilled spirits, wines, or beer.

''(4) PRESUMPTION IN CASE OF SALE OF 20 WINE GALLONS OR MORE.—The sale, or offer for sale, of distilled spirits, wines, or beer, in quantities of 20 wine gallons or more to the same person at the same time, shall be presumptive evidence that the person making such sale, or offer for sale, is engaged in or carrying on the business of a wholesale dealer in liquors or a wholesale dealer in beer, as the case may be. Such presumption may be overcome by evidence satisfactorily showing that such sale, or offer for sale, was made to a person other than a dealer.''.

(C) Paragraph (3) of section 5121(d), as so redesignated, is amended by striking ''section 5146'' and inserting ''section 5123''.

(6)(A) Section 5124 (relating to records) is moved to subpart C of part II of subchapter A of chapter 51 and inserted after section 5121.

(B) Section 5124 is amended—

(i) by striking the section heading and inserting the following new heading:

"SEC. 5122. RECORDKEEPING BY RETAIL DEALERS.",

(ii) by striking ''section 5146'' in subsection (c) and inserting ''section 5123'', and

(iii) by redesignating subsection (c) as subsection (d) and inserting after subsection (b) the following new subsection:

''(c) RETAIL DEALERS.—For purposes of this section—

''(1) RETAIL DEALER IN LIQUORS.—The term 'retail dealer in liquors' means any dealer (other than a retail dealer in beer) who sells, or offers for sale, distilled spirits, wines, or beer, to any person other than a dealer.

''(2) RETAIL DEALER IN BEER.—The term 'retail dealer in beer' means any dealer who sells, or offers for sale, beer, but not distilled spirits or wines, to any person other than a dealer.

''(3) DEALER.—The term 'dealer' has the meaning given such term by section 5121(c)(3).''.

(7) Section 5146 is moved to subpart C of part II of subchapter A of chapter 51, inserted after section 5122, and redesignated as section 5123.

(8) Part II of subchapter A of chapter 51 is amended by inserting after subpart C the following new subpart:

"Subpart D—Other Provisions

''Sec. 5131. Packaging distilled spirits for industrial uses.

''Sec. 5132. Prohibited purchases by dealers.''.

(9) Section 5116 is moved to subpart D of part II of subchapter A of chapter 51, inserted after the table of sections, redesignated as section 5131, and amended by inserting ''(as defined in section 5121(c))'' after ''dealer'' in subsection (a).

(10) Subpart D of part II of subchapter A of chapter 51 is amended by adding at the end thereof the following new section:

"SEC. 5132. PROHIBITED PURCHASES BY DEALERS.

''(a) IN GENERAL.—Except as provided in regulations prescribed by the Secretary, it shall be unlawful for a dealer to purchase distilled spirits for resale from any person other than a wholesale dealer in liquors who is required to keep the records prescribed by section 5121.

''(b) PENALTY AND FORFEITURE.—

"For penalty and forfeiture provisions applicable to violations of subsection (a), see sections 5687 and 7302.".

(11) Subsection (b) of section 5002 is amended—

(A) by striking ''section 5112(a)'' and inserting ''section 5121(c)(3)'',

(B) by striking ''section 5112'' and inserting ''section 5121(c)'',

(C) by striking ''section 5122'' and inserting ''section 5122(c)''.

(12) Subparagraph (A) of section 5010(c)(2) is amended by striking ''section 5134'' and inserting ''section 5114''.

(13) Subsection (d) of section 5052 is amended to read as follows:

''(d) BREWER.—For purposes of this chapter, the term 'brewer' means any person who brews beer or produces beer for sale. Such term shall not include any person who produces only beer exempt from tax under section 5053(e).''.

(14) The text of section 5182 is amended to read as follows:

''For provisions requiring recordkeeping by wholesale liquor dealers, see section 5121, and by retail liquor dealers, see section 5122.''.

(15) Subsection (b) of section 5402 is amended by striking ''section 5092'' and inserting ''section 5052(d)''.

(16) Section 5671 is amended by striking ''or 5091''.

(17)(A) Part V of subchapter J of chapter 51 is hereby repealed.

(B) The table of parts for such subchapter J is amended by striking the item relating to part V.

(18)(A) Sections 5142, 5143, and 5145 are moved to subchapter D of chapter 52, inserted after section 5731, redesignated as sections 5732, 5733, and 5734, respectively, and amended by striking ''this part'' each place it appears and inserting ''this subchapter''.

(B) Section 5732, as redesignated by subparagraph (A), is amended by striking ''(except the tax imposed by section 5131)'' each place it appears.

(C) Paragraph (2) of section 5733(c), as redesignated by subparagraph (A), is amended by striking ''liquors'' both places it appears and inserting ''tobacco products and cigarette papers and tubes''.

(D) The table of sections for subchapter D of chapter 52 is amended by adding at the end thereof the following:

''Sec. 5732. Payment of tax.

''Sec. 5733. Provisions relating to liability for occupational taxes.

''Sec. 5734. Application of State laws.''.

(E) Section 5731 is amended by striking subsection (c) and by redesignating subsection (d) as subsection (c).

(19) Subsection (c) of section 6071 is amended by striking ''section 5142'' and inserting ''section 5732''.

(20) Paragraph (1) of section 7652(g) is amended—

(A) by striking ''subpart F'' and inserting ''subpart B'', and

(B) by striking ''section 5131(a)'' and inserting ''section 5111''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on July 1, 2003, but shall not apply to taxes imposed for periods before such date.

SEC. 403. CUSTOM GUNSMITHS.

(a) SMALL MANUFACTURERS EXEMPT FROM FIREARMS EXCISE TAX.—Section 4182 (relating to exemptions) is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

''(c) SMALL MANUFACTURERS, ETC.—

''(1) IN GENERAL.—The tax imposed by section 4181 shall not apply to any article described in such section if manufactured, produced, or imported by a person who manufactures, produces, and imports less than 50 of such articles during the calendar year.

''(2) CONTROLLED GROUPS.—All persons treated as a single employer for purposes of subsection (a) or (b) of section 52 shall be treated as one person for purposes of paragraph (1).''.

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to articles sold by the manufacturer, producer, or importer on or after the date which is the first day of the month beginning at least 2 weeks after the date of the enactment of this Act.

(2) NO INFERENCE.—Nothing in the amendments made by this section shall be construed to create any inference with respect to the proper tax treatment of any sales before the effective date of such amendments.

SEC. 404. SIMPLIFICATION OF EXCISE TAX IMPOSED ON BOWS AND ARROWS.

(a) BOWS.—Section 4161(b)(1) (relating to bows) is amended to read as follows:

''(1) BOWS.—

''(A) IN GENERAL.—There is hereby imposed on the sale by the manufacturer, producer, or importer of any bow which has a draw weight of 30 pounds or more, a tax equal to 11 percent of the price for which so sold.

''(B) ARCHERY EQUIPMENT.—There is hereby imposed on the sale by the manufacturer, producer, or importer—

''(i) of any part or accessory suitable for inclusion in or attachment to a bow described in subparagraph (A), and

''(ii) of any quiver or broadhead suitable for use with an arrow described in paragraph (3),

a tax equal to 11 percent of the price for which so sold.''.

(b) ARROWS.—Section 4161(b) (relating to bows and arrows, etc.) is amended by redesignating paragraph (3) as paragraph (4) and inserting after paragraph (2) the following:

''(3) ARROWS.—

''(A) IN GENERAL.—There is hereby imposed on the sale by the manufacturer, producer, or importer of any arrow, a tax equal to 12 percent of the price for which so sold.

''(B) EXCEPTION.—The tax imposed by subparagraph (A) on an arrow shall not apply if the arrow contains an arrow shaft subject to the tax imposed by paragraph (2).

''(C) ARROW.—For purposes of this paragraph, the term 'arrow' means any shaft described in paragraph (2) to which additional components are attached.''.

(c) CONFORMING AMENDMENT.—The heading of section 4161(b)(2) (relating to arrows) is amended by striking ''ARROWS.—'' and inserting ''ARROW COMPONENTS.—''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to articles sold by the manufacturer, producer, or importer after the date of the enactment of this Act.

Subtitle B—Agricultural Provisions

SEC. 411. CAPITAL GAIN TREATMENT UNDER SECTION 631(b) TO APPLY TO OUTRIGHT SALES BY LANDOWNERS.

(a) IN GENERAL.—The first sentence of section 631(b) (relating to disposal of timber with a retained economic interest) is amended by striking ''retains an economic interest in such timber'' and inserting ''either retains an economic interest in such timber or makes an outright sale of such timber''.

(b) CONFORMING AMENDMENT.—The third sentence of section 631(b) is amended by striking ''The date of disposal'' and inserting ''In the case of disposal of timber with a retained economic interest, the date of disposal''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to sales after the date of the enactment of this Act.

SEC. 412. SPECIAL RULES FOR LIVESTOCK SOLD ON ACCOUNT OF WEATHER-RELATED CONDITIONS.

(a) RULES FOR REPLACEMENT OF INVOLUNTARILY CONVERTED LIVESTOCK.—Subsection (e) of section 1033 (relating to involuntary conversions) is amended—

(1) by striking ''CONDITIONS.—For purposes'' and inserting ''CONDITIONS.—

''(1) IN GENERAL.—For purposes'', and

(2) by adding at the end the following new paragraph:

''(2) EXTENSION OF REPLACEMENT PERIOD.—

''(A) IN GENERAL.—In the case of drought, flood, or other weather-related conditions described in paragraph (1) which result in the area being designated as eligible for assistance by the Federal Government, subsection (a)(2)(B) shall be applied with respect to any converted property by substituting '4 years' for '2 years'.

''(B) FURTHER EXTENSION BY SECRETARY.—The Secretary may extend on a regional basis the period for replacement under this section (after the application of subparagraph (A)) for such additional time as the Secretary determines appropriate if the weather-related conditions which resulted in such application continue for more than 3 years.''.

(b) INCOME INCLUSION RULES.—Section 451(e) (relating to special rule for proceeds from livestock sold on account of drought, flood, or other weather-related conditions) is amended by adding at the end the following new paragraph:

''(3) SPECIAL ELECTION RULES.—If section 1033(e)(2) applies to a sale or exchange of livestock described in paragraph (1), the election under paragraph (1) shall be deemed valid if made during the replacement period described in such section.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to any taxable year with respect to which the due date of the return is after December 31, 2002.

SEC. 413. EXCLUSION FOR LOAN PAYMENTS UNDER NATIONAL HEALTH SERVICE CORPS LOAN REPAYMENT PROGRAM.

(a) IN GENERAL.—Section 108(f) (relating to student loans) is amended by adding at the end the following new paragraph:

''(4) LOAN PAYMENTS UNDER NATIONAL HEALTH SERVICE CORPS LOAN REPAYMENT PROGRAM.—In the case of an individual, gross income shall not include any amount received under section 338B(g) of the Public Health Service Act.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to amounts received by an individual in taxable years beginning after December 31, 2002.

SEC. 414. PAYMENT OF DIVIDENDS ON STOCK OF COOPERATIVES WITHOUT REDUCING PATRONAGE DIVIDENDS.

(a) IN GENERAL.—Subsection (a) of section 1388 (relating to patronage dividend defined) is amended by adding at the end the following: ''For purposes of paragraph (3), net earnings shall not be reduced by amounts paid during the year as dividends on capital stock or other proprietary capital interests of the organization to the extent that the articles of incorporation or bylaws of such organization or other contract with patrons provide that such dividends are in addition to amounts otherwise payable to patrons which are derived from business done with or for patrons during the taxable year.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to distributions in taxable years ending after the date of the enactment of this Act.

TITLE V—SIMPLIFICATION AND OTHER PROVISIONS

Subtitle A—Uniform Definition of Child

SEC. 501. UNIFORM DEFINITION OF CHILD, ETC.

Section 152 is amended to read as follows:

''SEC. 152. DEPENDENT DEFINED.

''(a) IN GENERAL.—For purposes of this subtitle, the term 'dependent' means—

''(1) a qualifying child, or

''(2) a qualifying relative.

''(b) EXCEPTIONS.—For purposes of this section—

''(1) DEPENDENTS INELIGIBLE.—If an individual is a dependent of a taxpayer for any taxable year of such taxpayer beginning in a calendar year, such individual shall be treated as having no dependents for any taxable year of such individual beginning in such calendar year.

''(2) MARRIED DEPENDENTS.—An individual shall not be treated as a dependent of a taxpayer under subsection (a) if such individual has made a joint return with the individual's spouse under section 6013 for the taxable year beginning in the calendar year in which the taxable year of the taxpayer begins.

''(3) CITIZENS OR NATIONALS OF OTHER COUNTRIES.—

''(A) IN GENERAL.—The term 'dependent' does not include an individual who is not a citizen or national of the United States unless such individual is a resident of the United States or a country contiguous to the United States.

''(B) EXCEPTION FOR ADOPTED CHILD.—Subparagraph (A) shall not exclude any child of a taxpayer (within the meaning of subsection (f)(1)(B)) from the definition of 'dependent' if—

''(i) for the taxable year of the taxpayer, the child's principal place of abode is the home of the taxpayer, and

''(ii) the taxpayer is a citizen or national of the United States.

''(c) QUALIFYING CHILD.—For purposes of this section—

''(1) IN GENERAL.—The term 'qualifying child' means, with respect to any taxpayer for any taxable year, an individual—

''(A) who bears a relationship to the taxpayer described in paragraph (2),

''(B) who has the same principal place of abode as the taxpayer for more than one-half of such taxable year,

''(C) who meets the age requirements of paragraph (3), and

''(D) who has not provided over one-half of such individual's own support for the calendar year in which the taxable year of the taxpayer begins.

''(2) RELATIONSHIP TEST.—For purposes of paragraph (1)(A), an individual bears a relationship to the taxpayer described in this paragraph if such individual is—

''(A) a child of the taxpayer or a descendant of such a child, or

''(B) a brother, sister, stepbrother, or stepsister of the taxpayer or a descendant of any such relative.

''(3) AGE REQUIREMENTS.—

''(A) IN GENERAL.—For purposes of paragraph (1)(C), an individual meets the requirements of this paragraph if such individual—

''(i) has not attained the age of 19 as of the close of the calendar year in which the taxable year of the taxpayer begins, or

''(ii) is a student who has not attained the age of 24 as of the close of such calendar year.

''(B) SPECIAL RULE FOR DISABLED.—In the case of an individual who is permanently and totally disabled (as defined in section 22(e)(3)) at any time during such calendar year, the requirements of subparagraph (A) shall be treated as met with respect to such individual.

''(4) SPECIAL RULE RELATING TO 2 OR MORE CLAIMING QUALIFYING CHILD.—

''(A) IN GENERAL.—Except as provided in subparagraph (B) and subsection (e), if (but for this paragraph) an individual may be and is claimed as a qualifying child by 2 or more taxpayers for a taxable year beginning in the same calendar year, such individual shall be treated as the qualifying child of the taxpayer who is—

''(i) a parent of the individual, or

''(ii) if clause (i) does not apply, the taxpayer with the highest adjusted gross income for such taxable year.

''(B) MORE THAN 1 PARENT CLAIMING QUALIFYING CHILD.—If the parents claiming any qualifying child do not file a joint return together, such child shall be treated as the qualifying child of—

''(i) the parent with whom the child resided for the longest period of time during the taxable year, or

''(ii) if the child resides with both parents for the same amount of time during such taxable year, the parent with the highest adjusted gross income.

''(d) QUALIFYING RELATIVE.—For purposes of this section—

''(1) IN GENERAL.—The term 'qualifying relative' means, with respect to any taxpayer for any taxable year, an individual—

''(A) who bears a relationship to the taxpayer described in paragraph (2),

''(B) whose gross income for the calendar year in which such taxable year begins is less than the exemption amount (as defined in section 151(d)),

''(C) with respect to whom the taxpayer provides over one-half of the individual's support for the calendar year in which such taxable year begins, and

''(D) who is not a qualifying child of such taxpayer or of any other taxpayer for any taxable year beginning in the calendar year in which such taxable year begins.

''(2) RELATIONSHIP.—For purposes of paragraph (1)(A), an individual bears a relationship to the taxpayer described in this paragraph if the individual is any of the following with respect to the taxpayer:

''(A) A child or a descendant of a child.

''(B) A brother, sister, stepbrother, or stepsister.

''(C) The father or mother, or an ancestor of either.

''(D) A stepfather or stepmother.

''(E) A son or daughter of a brother or sister of the taxpayer.

''(F) A brother or sister of the father or mother of the taxpayer.

''(G) A son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law.

''(H) An individual (other than an individual who at any time during the taxable year was the spouse, determined without regard to section 7703, of the taxpayer) who, for the taxable year of the taxpayer, has as such individual's principal place of abode the home of the taxpayer and is a member of the taxpayer's household.

''(3) SPECIAL RULE RELATING TO MULTIPLE SUPPORT AGREEMENTS.—For purposes of paragraph (1)(C), over one-half of the support of an individual for a calendar year shall be treated as received from the taxpayer if—

''(A) no one person contributed over one-half of such support,

''(B) over one-half of such support was received from 2 or more persons each of whom, but for the fact that any such person alone did not contribute over one-half of such support, would have been entitled to claim such individual as a dependent for a taxable year beginning in such calendar year,

''(C) the taxpayer contributed over 10 percent of such support, and

''(D) each person described in subparagraph (B) (other than the taxpayer) who contributed over 10 percent of such support files a written declaration (in such manner and form as the Secretary may by regulations prescribe) that such person will not claim such individual as a dependent for any taxable year beginning in such calendar year.

''(4) SPECIAL RULE RELATING TO INCOME OF HANDICAPPED DEPENDENTS.—

''(A) IN GENERAL.—For purposes of paragraph (1)(B), the gross income of an individual who is permanently and totally disabled (as defined in section 22(e)(3)) at any time during the taxable year shall not include income attributable to services performed by the individual at a sheltered workshop if—

''(i) the availability of medical care at such workshop is the principal reason for the individual's presence there, and

''(ii) the income arises solely from activities at such workshop which are incident to such medical care.

''(B) SHELTERED WORKSHOP DEFINED.—For purposes of subparagraph (A), the term 'sheltered workshop' means a school—

''(i) which provides special instruction or training designed to alleviate the disability of the individual, and

''(ii) which is operated by an organization described in section 501(c)(3) and exempt from tax under section 501(a), or by a State, a possession of the United States, any political subdivision of any of the foregoing, the United States, or the District of Columbia.

''(5) SPECIAL SUPPORT TEST IN CASE OF STUDENTS.—For purposes of paragraph (1)(C), in the case of an individual who is—

''(A) a child of the taxpayer, and

''(B) a student,

amounts received as scholarships for study at an educational organization described in section 170(b)(1)(A)(ii) shall not be taken into account in determining whether such individual received more than one-half of such individual's support from the taxpayer.

''(6) SPECIAL RULES FOR SUPPORT.—For purposes of this subsection—

''(A) payments to a spouse which are includible in the gross income of such spouse under section 71 or 682 shall not be treated as a payment by the payor spouse for the support of any dependent,

''(B) amounts expended for the support of a child or children shall be treated as received from the noncustodial parent (as defined in subsection (e)(3)(B)) to the extent that such parent provided amounts for such support, and

''(C) in the case of the remarriage of a parent, support of a child received from the parent's spouse shall be treated as received from the parent.

''(e) SPECIAL RULE FOR DIVORCED PARENTS.—

''(1) IN GENERAL.—Notwithstanding subsection (c)(4) or (d)(1)(C), if—

''(A) a child receives over one-half of the child's support during the calendar year from the child's parents—

''(i) who are divorced or legally separated under a decree of divorce or separate maintenance,

''(ii) who are separated under a written separation agreement, or

''(iii) who live apart at all times during the last 6 months of the calendar year, and

''(B) such child is in the custody of 1 or both of the child's parents for more than ½ of the calendar year,

such child shall be treated as being the qualifying child or qualifying relative of the noncustodial parent for a calendar year if the requirements described in paragraph (2) are met.

''(2) REQUIREMENTS.—For purposes of paragraph (1), the requirements described in this paragraph are met if—

''(A) a decree of divorce or separate maintenance or written agreement between the parents applicable to the taxable year beginning in such calendar year provides that—

''(i) the noncustodial parent shall be entitled to any deduction allowable under section 151 for such child, or

''(ii) the custodial parent will sign a written declaration that such parent will not claim such child as a dependent for such taxable year, and

''(B) in the case of such an agreement executed before January 1, 1985, the noncustodial parent provides at least $600 for the support of such child during such calendar year.

''(3) CUSTODIAL PARENT AND NONCUSTODIAL PARENT.—For purposes of this subsection—

''(A) CUSTODIAL PARENT.—The term 'custodial parent' means the parent with whom a child shared the same principal place of abode for the greater portion of the calendar year.

''(B) NONCUSTODIAL PARENT.—The term 'noncustodial parent' means the parent who is not the custodial parent.

''(4) EXCEPTION FOR MULTIPLE-SUPPORT AGREEMENTS.—This subsection shall not apply in any case where over one-half of the support of the child is treated as having been received from a taxpayer under the provision of subsection (d)(3).

''(f) OTHER DEFINITIONS AND RULES.—For purposes of this section—

''(1) CHILD DEFINED.—

''(A) IN GENERAL.—The term 'child' means an individual who is—

''(i) a son, daughter, stepson, or stepdaughter of the taxpayer, or

''(ii) an eligible foster child of the taxpayer.

''(B) ADOPTED CHILD.—In determining whether any of the relationships specified in subparagraph (A)(i) or paragraph (4) exists, a legally adopted individual of the taxpayer, or an individual who is placed with the taxpayer by an authorized placement agency for adoption by the taxpayer, shall be treated as a child of such individual by blood.

''(C) ELIGIBLE FOSTER CHILD.—For purposes of subparagraph (A)(ii), the term 'eligible foster child' means an individual who is placed with the taxpayer by an authorized placement agency or by judgment, decree, or other order of any court of competent jurisdiction.

''(2) STUDENT DEFINED.—The term 'student' means an individual who during each of 5 calendar months during the calendar year in which the taxable year of the taxpayer begins—

''(A) is a full-time student at an educational organization described in section 170(b)(1)(A)(ii), or

''(B) is pursuing a full-time course of institutional on-farm training under the supervision of an accredited agent of an educational organization described in section 170(b)(1)(A)(ii) or of a State or political subdivision of a State.

''(3) PLACE OF ABODE.—An individual shall not be treated as having the same principal place of abode of the taxpayer if at any time during the taxable year of the taxpayer the relationship between the individual and the taxpayer is in violation of local law.

''(4) BROTHER AND SISTER.—The terms 'brother' and 'sister' include a brother or sister by the half blood.

''(5) TREATMENT OF MISSING CHILDREN.—

''(A) IN GENERAL.—Solely for the purposes referred to in subparagraph (B), a child of the taxpayer—

''(i) who is presumed by law enforcement authorities to have been kidnapped by someone who is not a member of the family of such child or the taxpayer, and

''(ii) who had, for the taxable year in which the kidnapping occurred, the same principal place of abode as the taxpayer for more than one-half of the portion of such year before the date of the kidnapping,

shall be treated as meeting the requirement of subsection (c)(1)(B) with respect to a taxpayer for all taxable years ending during the period that the individual is kidnapped.

''(B) PURPOSES.—Subparagraph (A) shall apply solely for purposes of determining—

''(i) the deduction under section 151(c),

''(ii) the credit under section 24 (relating to child tax credit),

''(iii) whether an individual is a surviving spouse or a head of a household (as such terms are defined in section 2), and

''(iv) the earned income credit under section 32.

''(C) COMPARABLE TREATMENT OF CERTAIN QUALIFYING RELATIVES.—For purposes of this section, a child of the taxpayer—

''(i) who is presumed by law enforcement authorities to have been kidnapped by someone who is not a member of the family of such child or the taxpayer, and

''(ii) who was (without regard to this paragraph) a qualifying relative of the taxpayer for the portion of the taxable year before the date of the kidnapping,

shall be treated as a qualifying relative of the taxpayer for all taxable years ending during the period that the child is kidnapped.

''(D) TERMINATION OF TREATMENT.—Subparagraphs (A) and (C) shall cease to apply as of the first taxable year of the taxpayer beginning after the calendar year in which there is a determination that the child is dead (or, if earlier, in which the child would have attained age 18).

''(6) CROSS REFERENCES.—

''For provision treating child as dependent of both parents for purposes of certain provisions, see sections 105(b), 132(h)(2)(B), and 213(d)(5).''.

SEC. 502. MODIFICATIONS OF DEFINITION OF HEAD OF HOUSEHOLD.

(a) HEAD OF HOUSEHOLD.—Clause (i) of section 2(b)(1)(A) is amended to read as follows:

''(i) a qualifying child of the individual (as defined in section 152(c), determined without regard to section 152(e)), but not if such child—

''(I) is married at the close of the taxpayer's taxable year, and

''(II) is not a dependent of such individual by reason of section 152(b)(2) or 152(b)3), or both, or''.

(b) CONFORMING AMENDMENTS.—

(1) Section 2(b)(2) is amended by striking subparagraph (A) and by redesignating subparagraphs (B), (C), and (D) as subparagraphs (A), (B), and (C), respectively.

(2) Clauses (i) and (ii) of section 2(b)(3)(B) are amended to read as follows:

''(i) subparagraph (H) of section 152(d)(2), or

''(ii) paragraph (3) of section 152(d).''.

SEC. 503. MODIFICATIONS OF DEPENDENT CARE CREDIT.

(a) IN GENERAL.—Section 21(a)(1) is amended by striking ''In the case of an individual who maintains a household which includes as a member one or more qualifying individuals (as defined in subsection (b)(1))'' and inserting ''In the case of an individual for which there are 1 or more qualifying individuals (as defined in subsection (b)(1)) with respect to such individual''.

(b) QUALIFYING INDIVIDUAL.—Paragraph (1) of section 21(b) is amended to read as follows:

''(1) QUALIFYING INDIVIDUAL.—The term 'qualifying individual' means—

''(A) a dependent of the taxpayer (as defined in section 152(a)(1)) who has not attained age 13,

''(B) a dependent of the taxpayer who is physically or mentally incapable of caring for himself or herself and who has the same principal place of abode as the taxpayer for more than one-half of such taxable year, or

''(C) the spouse of the taxpayer, if the spouse is physically or mentally incapable of caring for himself or herself and who has the same principal place of abode as the taxpayer for more than one-half of such taxable year.''.

(c) CONFORMING AMENDMENT.—Paragraph (1) of section 21(e) is amended to read as follows:

''(1) PLACE OF ABODE.—An individual shall not be treated as having the same principal place of abode of the taxpayer if at any time during the taxable year of the taxpayer the relationship between the individual and the taxpayer is in violation of local law.''.

SEC. 504. MODIFICATIONS OF CHILD TAX CREDIT.

(a) IN GENERAL.—Paragraph (1) of section 24(c) is amended to read as follows:

''(1) IN GENERAL.—The term 'qualifying child' means a qualifying child of the taxpayer (as defined in section 152(c)) who has not attained age 17.''.

(b) CONFORMING AMENDMENT.—Section 24(c)(2) is amended by striking ''the first sentence of section 152(b)(3)'' and inserting ''subparagraph (A) of section 152(b)(3)''.

SEC. 505. MODIFICATIONS OF EARNED INCOME CREDIT.

(a) QUALIFYING CHILD.—Paragraph (3) of section 32(c) is amended to read as follows:

''(3) QUALIFYING CHILD.—

''(A) IN GENERAL.—The term 'qualifying child' means a qualifying child of the taxpayer (as defined in section 152(c), determined without regard to paragraph (1)(D) thereof and section 152(e)).

''(B) MARRIED INDIVIDUAL.—The term 'qualifying child' shall not include an individual who is married as of the close of the taxpayer's taxable year unless the taxpayer is entitled to a deduction under section 151 for such taxable year with respect to such individual (or would be so entitled but for section 152(e)).

''(C) PLACE OF ABODE.—For purposes of subparagraph (A), the requirements of section 152(c)(1)(B) shall be met only if the principal place of abode is in the United States.

''(D) IDENTIFICATION REQUIREMENTS.—

''(i) IN GENERAL.—A qualifying child shall not be taken into account under subsection (b) unless the taxpayer includes the name, age, and TIN of the qualifying child on the return of tax for the taxable year.

''(ii) OTHER METHODS.—The Secretary may prescribe other methods for providing the information described in clause (i).''.

(b) CONFORMING AMENDMENTS.—

(1) Section 32(c)(1) is amended by striking subparagraph (C) and by redesignating subparagraphs (D), (E), (F), and (G) as subparagraphs (C), (D), (E), and (F), respectively.

(2) Section 32(c)(4) is amended by striking ''(3)(E)'' and inserting ''(3)(C)''.

(3) Section 32(m) is amended by striking ''subsections (c)(1)(F)'' and inserting ''subsections (c)(1)(E)''.

SEC. 506. MODIFICATIONS OF DEDUCTION FOR PERSONAL EXEMPTION FOR DEPENDENTS.

Subsection (c) of section 151 is amended to read as follows:

''(c) ADDITIONAL EXEMPTION FOR DEPENDENTS.—An exemption of the exemption amount

for each individual who is a dependent (as defined in section 152) of the taxpayer for the taxable year.''.

SEC. 507. TECHNICAL AND CONFORMING AMENDMENTS.

(1) Section 21(e)(5) is amended—

(A) by striking ''paragraph (2) or (4) of'' in subparagraph (A), and

(B) by striking ''within the meaning of section 152(e)(1)'' and inserting ''as defined in section 152(e)(3)(A)''.

(2) Section 21(e)(6)(B) is amended by striking ''section 151(c)(3)'' and inserting ''section 152(f)(1)''.

(3) Section 25B(c)(2)(B) is amended by striking ''151(c)(4)'' and inserting ''152(f)(2)''.

(4)(A) Subparagraphs (A) and (B) of section 51(i)(1) are each amended by striking ''paragraphs (1) through (8) of section 152(a)'' both places it appears and inserting ''subparagraphs (A) through (G) of section 152(d)(2)''.

(B) Section 51(i)(1)(C) is amended by striking ''152(a)(9)'' and inserting ''152(d)(2)(H)''.

(5) Section 72(t)(7)(A)(iii) is amended by striking ''151(c)(3)'' and inserting ''152(f)(1)''.

(6) Section 129(c)(2) is amended by striking ''151(c)(3)'' and inserting ''152(f)(1)''.

(7) The first sentence of section 132(h)(2)(B) is amended by striking ''151(c)(3)'' and inserting ''152(f)(1)''.

(8) Section 153 is amended by striking paragraph (1) and by redesignating paragraphs (2), (3), and (4) as paragraphs (1), (2), and (3), respectively.

(9) Section 170(g)(3) is amended by striking ''paragraphs (1) through (8) of section 152(a)'' and inserting ''subparagraphs (A) through (G) of section 152(d)(2)''.

(10) The second sentence of section 213(d)(11) is amended by striking ''paragraphs (1) through (8) of section 152(a)'' and inserting ''subparagraphs (A) through (G) of section 152(d)(2)''.

(11) Section 529(e)(2)(B) is amended by striking ''paragraphs (1) through (8) of section 152(a)'' and inserting ''subparagraphs (A) through (G) of section 152(d)(2)''.

(12) Section 2032A(c)(7)(D) is amended by striking ''section 151(c)(4)'' and inserting ''section 152(f)(2)''.

(13) Section 7701(a)(17) is amended by striking ''152(b)(4), 682,'' and inserting ''682''.

(14) Section 7702B(f)(2)(C)(iii) is amended by striking ''paragraphs (1) through (8) of section 152(a)'' and inserting ''subparagraphs (A) through (G) of section 152(d)(2)''.

(15) Section 7703(b)(1) is amended—

(A) by striking ''151(c)(3)'' and inserting ''152(f)(1)'', and

(B) by striking ''paragraph (2) or (4) of''.

SEC. 508. EFFECTIVE DATE.

The amendments made by this subtitle shall apply to taxable years beginning after December 31, 2003.

Subtitle B—Simplification

SEC. 511. CONSOLIDATION OF LIFE AND NON-LIFE COMPANY RETURNS.

(a) IN GENERAL.—Section 1504 (relating to definition of affiliated group) is amended by striking subsection (c) and by redesignating subsections (d), (e), and (f) as subsections (c), (d), and (e), respectively.

(b) CONFORMING AMENDMENTS.—

(1) Section 243(b)(2)(A) is amended by striking '', 1504(b)(4), and 1504(c)'' and inserting ''and 1504(b)(4)''.

(2) Section 818(e)(1) is amended by striking ''If an election under section 1504(c)(2) is effect with respect to an affiliated group for the taxable year'' and inserting ''If an affiliated group includes members which are, and which are not, life insurance companies for any taxable year''.

(3) Section 1503(c)(1) is amended by striking ''an election under section 1504(c)(2) is in effect for the taxable year''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2009.

(d) WAIVER OF 5-YEAR WAITING PERIOD.—Under regulations prescribed by the Secretary of the Treasury or his delegate, an automatic waiver from the 5-year waiting period for reconsolidation provided in section 1504(a)(3) of the Internal Revenue Code of 1986 shall be granted to any corporation which was previously an includible corporation but was subsequently deemed a nonincludible corporation as a result of becoming a subsidiary of a corporation which was not an includible corporation solely by operation of section 1504(c)(2) of such Code (as in effect on the day before the date of the enactment of this Act).

(e) NONTERMINATION OF GROUP.—No affiliated group shall terminate solely as a result of the amendments made by this section.

SEC. 512. SPECIAL RULES FOR TAXATION OF LIFE INSURANCE COMPANIES.

(a) REDUCTION IN MUTUAL LIFE INSURANCE COMPANY DEDUCTIONS NOT TO APPLY.—

(1) IN GENERAL.—Section 809 (relating to reduction in certain deductions of material life insurance companies) is amended by adding at the end the following:

''(j) DIFFERENTIAL EARNINGS RATE TREATED AS ZERO.—Notwithstanding subsection (c) or (f), the differential earnings rate shall be treated as zero for purposes of computing both the differential earnings amount and the recomputed differential earnings amount for any taxable year of a mutual life insurance company beginning after December 31, 2003, and before January 1, 2009.''.

(2) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2003.

(b) DISTRIBUTIONS TO SHAREHOLDERS FROM PRE-1984 POLICYHOLDERS SURPLUS ACCOUNT.—

(1) IN GENERAL.—Section 815 (relating to distributions to shareholders from pre-1984 policyholders surplus account) is amended by adding at the end the following:

''(g) SPECIAL RULES APPLICABLE DURING 2004 THROUGH 2008.—In the case of any taxable year of a stock life insurance company beginning after December 31, 2003, and before January 1, 2009—

''(1) the amount under subsection (a)(2) for such taxable year shall be treated as zero, and

''(2) notwithstanding subsection (b), in determining any subtractions from an account under subsections (c)(3) and (d)(3), any distribution to shareholders during such taxable year shall be treated as made first out of the policyholders surplus account, then out of the shareholders surplus account, and finally out of other accounts.''.

(2) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2003.

SEC. 513. MODIFICATION OF ACTIVE BUSINESS DEFINITION UNDER SECTION 355.

(a) IN GENERAL.—Section 355(b) (defining active conduct of a trade or business) is amended by adding at the end the following new paragraph:

''(3) SPECIAL RULES RELATING TO ACTIVE BUSINESS REQUIREMENT.—

''(A) IN GENERAL.—For purposes of determining whether a corporation meets the requirement of paragraph (2)(A), all members of such corporation's separate affiliated group shall be treated as one corporation. For purposes of the preceding sentence, a corporation's separate affiliated group is the affiliated group which would be determined under section 1504(a) if such corporation were the common parent and section 1504(b) did not apply.

''(B) CONTROL.—For purposes of paragraph (2)(D), all distributee corporations which are members of the same affiliated group (as defined in section 1504(a) without regard to section 1504(b)) shall be treated as one distributee corporation.''.

(b) CONFORMING AMENDMENTS.—

(1) Subparagraph (A) of section 355(b)(2) is amended to read as follows:

''(A) it is engaged in the active conduct of a trade or business,''.

(2) Section 355(b)(2) is amended by striking the last sentence.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply—

(A) to distributions after the date of the enactment of this Act, and

(B) for purposes of determining the continued qualification under section 355(b)(2)(A) of the Internal Revenue Code of 1986 (as amended by subsection (b)(1)) of distributions made before such date, as a result of an acquisition, disposition, or other restructuring after such date.

(2) TRANSITION RULE.—The amendments made by this section shall not apply to any distribution pursuant to a transaction which is—

(A) made pursuant to an agreement which was binding on such date of enactment and at all times thereafter,

(B) described in a ruling request submitted to the Internal Revenue Service on or before such date, or

(C) described on or before such date in a public announcement or in a filing with the Securities and Exchange Commission.

(3) ELECTION TO HAVE AMENDMENTS APPLY.—Paragraph (2) shall not apply if the distributing corporation elects not to have such paragraph apply to distributions of such corporation. Any such election, once made, shall be irrevocable.

Subtitle C—Other Provisions

SEC. 521. CIVIL RIGHTS TAX RELIEF.

(a) DEDUCTION ALLOWED WHETHER OR NOT TAXPAYER ITEMIZES OTHER DEDUCTIONS.—Subsection (a) of section 62 (defining adjusted gross income) is amended by inserting after paragraph (18) the following new item:

''(19) COSTS INVOLVING DISCRIMINATION SUITS, ETC.—Any deduction allowable under this chapter for attorney fees and court costs paid by, or on behalf of, the taxpayer in connection with any action involving a claim of unlawful discrimination (as defined in subsection (e)) or a claim of a violation of subchapter III of chapter 37 of title 31, United States Code. The preceding sentence shall not apply to any deduction in excess of the amount includible in the taxpayer's gross income for the taxable year on account of a judgment or settlement (whether by suit or agreement and whether as lump sum or periodic payments) resulting from such claim.''.

(b) UNLAWFUL DISCRIMINATION DEFINED.—Section 62 is amended by adding at the end the following new subsection:

''(e) UNLAWFUL DISCRIMINATION DEFINED.—For purposes of subsection (a)(19), the term 'unlawful discrimination' means an act that is unlawful under any of the following:

''(1) Section 302 of the Civil Rights Act of 1991 (2 U.S.C. 1202).

''(2) Section 201, 202, 203, 204, 205, 206, or 207 of the Congressional Accountability Act of 1995 (2 U.S.C. 1311, 1312, 1313, 1314, 1315, 1316, or 1317).

''(3) The National Labor Relations Act (29 U.S.C. 151 et seq.).

''(4) The Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.).

''(5) Section 4 or 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 623 or 633a).

''(6) Section 501 or 504 of the Rehabilitation Act of 1973 (29 U.S.C. 791 or 794).

''(7) Section 510 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1140).

''(8) Title IX of the Education Amendments of 1972 (29 U.S.C. 1681 et seq.).

''(9) The Employee Polygraph Protection Act of 1988 (29 U.S.C. 201 et seq.).

''(10) The Worker Adjustment and Retraining Notification Act (29 U.S.C. 2102 et seq.).

''(11) Section 105 of the Family and Medical Leave Act of 1993 (29 U.S.C. 2615).

''(12) Chapter 43 of title 38, United States Code (relating to employment and reemployment rights of members of the uniformed services).

''(13) Section 1977, 1979, or 1980 of the Revised Statutes (42 U.S.C. 1981, 1983, or 1985).

''(14) Section 703, 704, or 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–2, 2000e–3, or 2000e–16).

''(15) Section 804, 805, 806, 808, or 818 of the Fair Housing Act (42 U.S.C. 3604, 3605, 3606, 3608, or 3617).

''(16) Section 102, 202, 302, or 503 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12112, 12132, 12182, or 12203).

''(17) Any provision of Federal law (popularly known as whistleblower protection provisions) prohibiting the discharge of an employee, the discrimination against an employee, or any other form of retaliation or reprisal against an employee for asserting rights or taking other actions permitted under Federal law.

''(18) Any provision of State or local law, or common law claims permitted under Federal, State, or local law—

''(i) providing for the enforcement of civil rights, or

''(ii) regulating any aspect of the employment relationship, including prohibiting the discharge of an employee, the discrimination against an employee, or any other form of retaliation or reprisal against an employee for asserting rights or taking other actions permitted by law.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to fees and costs paid after the date of the enactment of this Act with respect to any judgment or settlement occurring after such date.

SEC. 522. INCREASE IN SECTION 382 LIMITATION FOR COMPANIES EMERGING FROM BANKRUPTCY.

(a) IN GENERAL.—Section 382(b) (relating to section 382 limitation) is amended by adding at the end the following new paragraph:

''(4) INCREASE IN SECTION 382 LIMITATION FOR COMPANIES EMERGING FROM BANKRUPTCY.—In the case of any new loss corporation which immediately before any ownership change was an old loss corporation under the jurisdiction of the court in a title 11 or similar case (as defined in subsection (l)(5)(G)), the section 382 limitation for any post-change year beginning in 2004 or 2005 shall be an amount equal to 200 percent of the amount otherwise determined under paragraph (1) for such year.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to ownership changes after December 31, 2002.

SEC. 523. INCREASE IN HISTORIC REHABILITATION CREDIT FOR CERTAIN LOW-INCOME HOUSING FOR THE ELDERLY.

(a) IN GENERAL.—Section 47 (relating to rehabilitation credit) is amended by adding at the end the following new subsection:

''(e) SPECIAL RULE REGARDING CERTAIN HISTORIC STRUCTURES.—In the case of any qualified rehabilitation expenditure with respect to any certified historic structure—

''(1) which is placed in service after the date of the enactment of this subsection,

''(2) which is part of a qualified low-income building with respect to which a credit under section 42 is allowed, and

''(3) substantially all of the residential rental units of which are used for tenants who have attained the age of 65,

subsection (a)(2) shall be applied by substituting '25 percent' for '20 percent'.''.

(b) APPLICATION OF MACRS.—The Internal Revenue Code of 1986 shall be applied and administered as if paragraph (4)(X) of section 251(d) of the Tax Reform Act of 1986 as applied to the amendments made by section 201 of such Act had not been enacted with respect to any property described in such paragraph and placed in service after the date of the enactment of this Act.

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to property placed in service after the date of the enactment of this Act.

SEC. 524. MODIFICATION OF APPLICATION OF INCOME FORECAST METHOD OF DEPRECIATION.

(a) IN GENERAL.—Section 167(g) (relating to depreciation under income forecast method) is amended by adding at the end the following new paragraph:

''(7) TREATMENT OF PARTICIPATIONS AND RESIDUALS.—

''(A) IN GENERAL.—For purposes of determining the depreciation deduction allowable with respect to a property under this subsection, the taxpayer may include participations and residuals with respect to such property in the adjusted basis of such property for the taxable year in which the property is placed in service, but only to the extent that such participations and residuals relate to income estimated (for purposes of this subsection) to be earned in connection with the property before the close of the 10th taxable year referred to in paragraph (1)(A).

''(B) PARTICIPATIONS AND RESIDUALS.—For purposes of this paragraph, the term 'participations and residuals' means, with respect to any property, costs the amount of which by contract varies with the amount of income earned in connection with such property.

''(C) SPECIAL RULES RELATING TO RECOMPUTATION YEARS.—If the adjusted basis of any property is determined under this paragraph, paragraph (4) shall be applied by substituting 'for each taxable year in such period' for 'for such period'.

''(D) COORDINATION WITH OTHER RULES.—

''(i) Notwithstanding subparagraph (A), the taxpayer may exclude participations and residuals from the adjusted basis of such property and deduct such participations and residuals in the taxable year that such participations and residuals are paid.

''(ii) Deductions computed in accordance with this paragraph shall be allowable notwithstanding paragraph (1)(B) or sections 263, 263A, 404, 419, or 461(h).

''(E) AUTHORITY TO MAKE ADJUSTMENTS.—The Secretary shall prescribe appropriate adjustments to the basis of property and to the look-back method for the additional amounts allowable as a deduction solely by reason of this paragraph.''.

(b) DETERMINATION OF INCOME.—Section 167(g)(5) (relating to special rules) is amended by redesignating subparagraphs (E) and (F) as subparagraphs (F) and (G), respectively, and inserting after subparagraph (D) the following new subparagraph:

''(E) TREATMENT OF DISTRIBUTION COSTS.—For purposes of this subsection, the income with respect to any property shall be the taxpayer's gross income from such property.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after the date of the enactment of this Act.

SEC. 525. ADDITIONAL ADVANCE REFUNDINGS OF CERTAIN GOVERNMENTAL BONDS.

(a) IN GENERAL.—Section 149(d)(3)(A)(i) (relating to advance refundings of other bonds) is amended—

(1) by striking ''or'' at the end of subclause (I),

(2) by adding ''or'' at the end of subclause (II), and

(3) by inserting after subclause (II) the following:

''(III) the 2nd advance refunding of the original bond if the original bond was issued after 1985 or the 3rd advance refunding of the original bond if the original bond was issued before 1986, if, in either case, the refunding bond is issued before the date which is 2 years after the date of the enactment of this subclause and the original bond was issued as part of an issue 90 percent or more of the net proceeds of which were used to finance a public elementary or secondary school in any State in which the State's highest court ruled by opinion issued on November 21, 2002, that the State school funding system violated the State constitution and was constitutionally inadequate,''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to refunding bonds issued on or after the date of the enactment of this Act.

SEC. 526. EXCLUSION OF INCOME DERIVED FROM CERTAIN WAGERS ON HORSE RACES FROM GROSS INCOME OF NONRESIDENT ALIEN INDIVIDUALS.

(a) IN GENERAL.—Subsection (b) of section 872 (relating to exclusions) is amended by redesignating paragraphs (5), (6), and (7) as paragraphs (6), (7), and (8), respectively, and inserting after paragraph (4) the following new paragraph:

''(5) INCOME DERIVED FROM WAGERING TRANSACTIONS IN CERTAIN PARIMUTUEL POOLS.—Gross income derived by a nonresident alien individual from a legal wagering transaction initiated outside the United States in a parimutuel pool with respect to a live horse race in the United States.''.

(b) CONFORMING AMENDMENT.—Section 883(a)(4) is amended by striking ''(5), (6), and (7)'' and inserting ''(6), (7), and (8)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to proceeds from wagering transactions after September 30, 2003.

SEC. 527. FEDERAL REIMBURSEMENT OF EMERGENCY HEALTH SERVICES FURNISHED TO UNDOCUMENTED ALIENS.

(a) TOTAL AMOUNT AVAILABLE FOR ALLOTMENT.—There is appropriated, out of any funds in the Treasury not otherwise appropriated, $48,000,000 for fiscal year 2004, for the purpose of making allotments under this section to States described in paragraph (1) or (2) of subsection (b). Funds appropriated under the preceding sentence shall remain available until expended.

(b) STATE ALLOTMENTS.—

(1) BASED ON PERCENTAGE OF UNDOCUMENTED ALIENS.—

(A) IN GENERAL.—Out of the amount appropriated under subsection (a) for fiscal year 2004, the Secretary shall use $32,000,000 of such amount to make allotments for such fiscal year in accordance with subparagraph (B).

(B) FORMULA.—The amount of the allotment for each State for fiscal year 2004 shall be equal to the product of—

(i) the total amount available for allotments under this paragraph for the fiscal year; and

(ii) the percentage of undocumented aliens residing in the State with respect to the total number of such aliens residing in all States, as determined by the Statistics Division of the Immigration and Naturalization Service, as of January 2003, based on the 2000 decennial census.

(2) BASED ON NUMBER OF UNDOCUMENTED ALIEN APPREHENSION STATES.—

(A) IN GENERAL.—Out of the amount appropriated under subsection (a) for fiscal year 2004, the Secretary shall use $16,000,000 of such amount to make allotments for such fiscal year for each of the 6 States with the highest number of undocumented alien apprehensions for such fiscal year.

(B) DETERMINATION OF ALLOTMENTS.—The amount of the allotment for each State described in subparagraph (A) for fiscal year 2004 shall bear the same ratio to the total amount available for allotments under this paragraph for the fiscal year as the ratio of the number of undocumented alien apprehensions in the State in that fiscal year bears to the total of such numbers for all such States for such fiscal year.

(C) DATA.—For purposes of this paragraph, the highest number of undocumented alien apprehensions for fiscal year 2004 shall be based on the 4 most recent quarterly apprehension rates for undocumented aliens in such States, as reported by the Immigration and Naturalization Service.

(3) RULE OF CONSTRUCTION.—Nothing in this section shall be construed as prohibiting a State

that is described in both of paragraphs (1) and (2) from receiving an allotment under both paragraphs for fiscal year 2004.

(c) USE OF FUNDS.—

(1) AUTHORITY TO MAKE PAYMENTS.—From the allotments made for a State under subsection (b) for fiscal year 2004, the Secretary shall pay directly to local governments, hospitals, or other providers located in the State (including providers of services received through an Indian Health Service facility whether operated by the Indian Health Service or by an Indian tribe or tribal organization) that provide uncompensated emergency health services furnished to undocumented aliens during that fiscal year, and to the State, such amounts (subject to the total amount available from such allotments) as the local governments, hospitals, providers, or State demonstrate were incurred for the provision of such services during that fiscal year.

(2) LIMITATION ON STATE USE OF FUNDS.—Funds paid to a State from allotments made under subsection (b) for fiscal year 2004 may only be used for making payments to local governments, hospitals, or other providers for costs incurred in providing emergency health services to undocumented aliens or for State costs incurred with respect to the provision of emergency health services to such aliens.

(3) INCLUSION OF COSTS INCURRED WITH RESPECT TO CERTAIN ALIENS.—Uncompensated emergency health services furnished to aliens who have been allowed to enter the United States for the sole purpose of receiving emergency health services may be included in the determination of costs incurred by a State, local government, hospital, or other provider with respect to the provision of such services.

(d) APPLICATIONS; ADVANCE PAYMENTS.—

(1) DEADLINE FOR ESTABLISHMENT OF APPLICATION PROCESS.—

(A) IN GENERAL.—Not later than September 1, 2003, the Secretary shall establish a process under which States, local governments, hospitals, or other providers located in the State may apply for payments from allotments made under subsection (b) for fiscal year 2004 for uncompensated emergency health services furnished to undocumented aliens during that fiscal year.

(B) INCLUSION OF MEASURES TO COMBAT FRAUD.—The Secretary shall include in the process established under subparagraph (A) measures to ensure that fraudulent payments are not made from the allotments determined under subsection (b).

(2) ADVANCE PAYMENT; RETROSPECTIVE ADJUSTMENT.—The process established under paragraph (1) shall allow for making payments under this section for each quarter of fiscal year 2004 on the basis of advance estimates of expenditures submitted by applicants for such payments and such other investigation as the Secretary may find necessary, and for making reductions or increases in the payments as necessary to adjust for any overpayment or underpayment for prior quarters of such fiscal year.

(e) DEFINITIONS.—In this section:

(1) HOSPITAL.—The term ''hospital'' has the meaning given such term in section 1861(e) of the Social Security Act (42 U.S.C. 1395x(e)).

(2) INDIAN TRIBE; TRIBAL ORGANIZATION.—The terms ''Indian tribe'' and ''tribal organization'' have the meanings given such terms in section 4 of the Indian Health Care Improvement Act (25 U.S.C. 1603).

(3) PROVIDER.—The term ''provider'' includes a physician, any other health care professional licensed under State law, and any other entity that furnishes emergency health services, including ambulance services.

(4) SECRETARY.—The term ''Secretary'' means the Secretary of Health and Human Services.

(5) STATE.—The term ''State'' means the 50 States and the District of Columbia.

(f) ENTITLEMENT.—This section constitutes budget authority in advance of appropriations Acts and represents the obligation of the Federal Government to provide for the payment of amounts provided under this section.

SEC. 528. PREMIUMS FOR MORTGAGE INSURANCE.

(a) MORTGAGE INSURANCE PREMIUMS TREATED AS INTEREST.—

(1) IN GENERAL.—Paragraph (3) of section 163(h) (relating to qualified residence interest) is amended by adding after subparagraph (D) the following new subparagraph:

''(E) MORTGAGE INSURANCE PREMIUMS TREATED AS INTEREST.—

''(i) IN GENERAL.—Premiums paid or accrued for qualified mortgage insurance by a taxpayer during the taxable year in connection with acquisition indebtedness with respect to a qualified residence of the taxpayer shall be treated for purposes of this subsection as qualified residence interest.

''(ii) PHASEOUT.—The amount otherwise allowable as a deduction under clause (i) shall be reduced (but not below zero) by 10 percent of such amount for each $1,000 ($500 in the case of a married individual filing a separate return) (or fraction thereof) that the taxpayer's adjusted gross income for the taxable year exceeds $100,000 ($50,000 in the case of a married individual filing a separate return).''.

(2) DEFINITION AND SPECIAL RULES.—Paragraph (4) of section 163(h) (relating to other definitions and special rules) is amended by adding at the end the following new subparagraphs:

''(E) QUALIFIED MORTGAGE INSURANCE.—The term 'qualified mortgage insurance' means—

''(i) mortgage insurance provided by the Veterans Administration, the Federal Housing Administration, or the Rural Housing Administration, and

''(ii) private mortgage insurance (as defined by section 2 of the Homeowners Protection Act of 1998 (12 U.S.C. 4901), as in effect on the date of the enactment of this subparagraph).

''(F) SPECIAL RULES FOR PREPAID QUALIFIED MORTGAGE INSURANCE.—Any amount paid by the taxpayer for qualified mortgage insurance that is properly allocable to any mortgage the payment of which extends to periods that are after the close of the taxable year in which such amount is paid shall be chargeable to capital account and shall be treated as paid in such periods to which so allocated. No deduction shall be allowed for the unamortized balance of such account if such mortgage is satisfied before the end of its term. The preceding sentences shall not apply to amounts paid for qualified mortgage insurance provided by the Veterans Administration or the Rural Housing Administration.''.

(b) INFORMATION RETURNS RELATING TO MORTGAGE INSURANCE.—Section 6050H (relating to returns relating to mortgage interest received in trade or business from individuals) is amended by adding at the end the following new subsection:

''(h) RETURNS RELATING TO MORTGAGE INSURANCE PREMIUMS.—

''(1) IN GENERAL.—The Secretary may prescribe, by regulations, that any person who, in the course of a trade or business, receives from any individual premiums for mortgage insurance aggregating $600 or more for any calendar year, shall make a return with respect to each such individual. Such return shall be in such form, shall be made at such time, and shall contain such information as the Secretary may prescribe.

''(2) STATEMENT TO BE FURNISHED TO INDIVIDUALS WITH RESPECT TO WHOM INFORMATION IS REQUIRED.—Every person required to make a return under paragraph (1) shall furnish to each individual with respect to whom a return is made a written statement showing such information as the Secretary may prescribe. Such written statement shall be furnished on or before January 31 of the year following the calendar year for which the return under paragraph (1) was required to be made.

''(3) SPECIAL RULES.—For purposes of this subsection—

''(A) rules similar to the rules of subsection (c) shall apply, and

''(B) the term 'mortgage insurance' means—

''(i) mortgage insurance provided by the Veterans Administration, the Federal Housing Administration, or the Rural Housing Administration, and

''(ii) private mortgage insurance (as defined by section 2 of the Homeowners Protection Act of 1998 (12 U.S.C. 4901), as in effect on the date of the enactment of this subparagraph).''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or accrued after the date of enactment of this section in taxable years ending after such date.

SEC. 529. SENSE OF THE SENATE ON REPEALING THE 1993 TAX HIKE ON SOCIAL SECURITY BENEFITS SECTION.

(a) FINDINGS.—(1) The 1993 tax on social security benefits was imposed as part of President Clinton's agenda to raise taxes.

(2) The original 1993 tax hike on social security benefits was to raise income taxes on social security retirees with as little as $25,000 of income.

(3) Repeated efforts to repeal the 1993 tax hike on social security benefits have failed.

(4) Seniors rely on social security benefits as well as dividend income to fund their retirement and they should have taxes reduced on both sources of income.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that the Senate Finance Committee should report out the Social Security Benefits Tax Relief Act of 2003, S. 514, to repeal the tax on seniors not later than July 31, 2003, and the Senate shall consider such bill not later than September 30, 2003, in a manner consistent with the preservation of the Medicare Trust Fund.

SEC. 530. FLAT TAX.

(a) FINDINGS.—The Senate finds the following:

(1) The current Internal Revenue Code, with its myriad deductions, credits and schedules, and over 17,000 pages of rules and regulations, is long overdue for an overhaul.

(2) The current Internal Revenue Code has over 6,900,000,000 words compared to the bible at 1,773,000 words, the Declaration of Independence at 1,300 words, The Gettysburg Address at 267 words, and the Pledge of Allegiance at only 31 words.

(3) It is an unacceptable waste of our Nation's precious resources when Americans spend more than 5,800,000,000 hours every year compiling information and filling out Internal Revenue Code tax forms. In addition, taxpayers spend $194,000,000,000 each year in tax code compliance. America's resources could be dedicated to far more productive pursuits.

(4) The primary goal of any tax reform is to promote growth and remove the inefficiencies of the current tax code. The flat tax will expand the economy by an estimated $2,000,000,000,000 over seven years.

(5) Another important goal of the flat tax is to achieve fairness, with a single low flat tax rate for all individuals and businesses.

(6) Simplicity is another critically important goal of the flat tax, and it is in the public interest to have a ten-lined tax form that fits on a postcard and takes 10 minutes to fill out.

(7) A comprehensive analyses of our tax structure has concluded that a flat tax of 19 percent could be imposed upon individuals and be revenue neutral.

(8) If the decision is made to include deductibility on items such as interest on home mortgages and charitable contributions, the flat tax would be raised from a 19 percent to a 20 percent rate to accommodate the deductions and remain revenue neutral.

(9) The flat tax would tax business at a 20 percent rate on net profits and be revenue neutral and lead to investment decisions being made on the basis of productivity rather than for tax avoidance.

(10) The flat tax would lead to the elimination of the capital gains tax. This would become a powerful incentive for savings and investment—which translates into economic growth and expansion, more and better jobs, and raising the standard of living for all Americans.

(11) The flat tax would lower the cost of capital by allowing businesses to write off the cost of capital purchase in the same year the purchase was made as opposed to complying with complicated depreciation schedules.

(12) By eliminating the double tax on dividends, the flat tax eliminates the distortions in the tax code favoring debt over equity financing by businesses.

(13) The flat tax would eliminate the estate and gift tax. With the elimination of the estate and gift tax, family-held businesses will be much more stable under the flat tax system.

(14) As tax loopholes are eliminated and the tax code is simplified, there will be far less opportunity for tax avoidance and fraud, which now amounts to over $120,000,000,000 in uncollected revenue annually.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that the Senate Finance Committee and the Joint Economic Committee should undertake a comprehensive analysis of simplification including flat tax proposals, including appropriate hearings and consider legislation providing for a flat tax.

SEC. 531. TOLL TAX ON EXCESS QUALIFIED FOREIGN DISTRIBUTION AMOUNT.

(a) IN GENERAL.—Subpart F of part III of subchapter N of chapter 1 is amended by adding at the end the following new section:

''SEC. 965. TOLL TAX IMPOSED ON EXCESS QUALIFIED FOREIGN DISTRIBUTION AMOUNT.

''(a) TOLL TAX IMPOSED ON EXCESS QUALIFIED FOREIGN DISTRIBUTION AMOUNT.—If a corporation elects the application of this section, a tax shall be imposed on the taxpayer in an amount equal to 5.25 percent of—

''(1) the taxpayer's excess qualified foreign distribution amount, and

''(2) the amount determined under section 78 which is attributable to such excess qualified foreign distribution amount.

Such tax shall be imposed in lieu of the tax imposed under section 11 or 55 on the amounts described in paragraphs (1) and (2) for such taxable year.

''(b) EXCESS QUALIFIED FOREIGN DISTRIBUTION AMOUNT.—For purposes of this section—

''(1) IN GENERAL.—The term 'excess qualified foreign distribution amount' means the excess (if any) of—

''(A) dividends received by the taxpayer during the taxable year which are—

''(i) from 1 or more corporations which are controlled foreign corporations in which the taxpayer is a United States shareholder on the date such dividends are paid, and

''(ii) described in a domestic reinvestment plan approved by the taxpayer's president, chief executive officer, or comparable official before the payment of such dividends and subsequently approved by the taxpayer's board of directors, management committee, executive committee, or similar body, which plan shall provide for the reinvestment of such dividends in the United States, including as a source for the funding of worker hiring and training; infrastructure; research and development; capital investments; or the financial stabilization of the corporation for the purposes of job retention or creation, over

''(B) the base dividend amount.

''(2) BASE DIVIDEND AMOUNT.—The term 'base dividend amount' means an amount designated under subsection (c)(7), but not less than the average amount of dividends received during the fixed base period from 1 or more corporations which are controlled foreign corporations in which the taxpayer is a United States shareholder on the date such dividends are paid.

''(3) FIXED BASE PERIOD.—

''(A) IN GENERAL.—The term 'fixed base period' means each of 3 taxable years which are among the 5 most recent taxable years of the taxpayer ending on or before December 31, 2002, determined by disregarding—

''(i) the 1 taxable year for which the taxpayer had the highest amount of dividends from 1 or more corporations which are controlled foreign corporations relative to the other 4 taxable years, and

''(ii) the 1 taxable year for which the taxpayer had the lowest amount of dividends from such corporations relative to the other 4 taxable years.

''(B) SHORTER PERIOD.—If the taxpayer has fewer than 5 taxable years ending on or before December 31, 2002, then in lieu of applying subparagraph (A), the fixed base period shall mean such shorter period representing all of the taxable years of the taxpayer ending on or before December 31, 2002.

''(c) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

''(1) DIVIDENDS.—The term 'dividend' means a dividend as defined in section 316, except that the term shall also include amounts described in section 951(a)(1)(B), and shall exclude amounts described in sections 78 and 959.

''(2) CONTROLLED FOREIGN CORPORATIONS AND UNITED STATES SHAREHOLDERS.—The term 'controlled foreign corporation' shall have the same meaning as under section 957(a) and the term 'United States shareholder' shall have the same meaning as under section 951(b).

''(3) FOREIGN TAX CREDITS.—The amount of any income, war, profits, or excess profit taxes paid (or deemed paid under sections 902 and 960) or accrued by the taxpayer with respect to the excess qualified foreign distribution amount for which a credit would be allowable under section 901 in the absence of this section, shall be reduced by 85 percent.

''(4) FOREIGN TAX CREDIT LIMITATION.—For all purposes of section 904, there shall be disregarded 85 percent of—

''(A) the excess qualified foreign distribution amount,

''(B) the amount determined under section 78 which is attributable to such excess qualified foreign distribution amount, and

''(C) the amounts (including assets, gross income, and other relevant bases of apportionment) which are attributable to the excess qualified foreign distribution amount which would, determined without regard to this section, be used to apportion the expenses, losses, and deductions of the taxpayer under section 861 and 864 in determining its taxable income from sources without the United States.

For purposes of applying subparagraph (C), the principles of section 864(e)(3)(A) shall apply.

''(5) TREATMENT OF ACQUISITIONS AND DISPOSITIONS.—Rules similar to the rules of section 41(f)(3) shall apply in the case of acquisitions or dispositions of controlled foreign corporations occurring on or after the first day of the earliest taxable year taken into account in determining the fixed base period.

''(6) TREATMENT OF CONSOLIDATED GROUPS.—Members of an affiliated group of corporations filing a consolidated return under section 1501 shall be treated as a single taxpayer in applying the rules of this section.

''(7) DESIGNATION OF DIVIDENDS.—Subject to subsection (b)(2), the taxpayer shall designate the particular dividends received during the taxable year from 1 or more corporations which are controlled foreign corporations in which it is a United States shareholder which are dividends excluded from the excess qualified foreign distribution amount. The total amount of such designated dividends shall equal the base dividend amount.

''(8) TREATMENT OF EXPENSES, LOSSES, AND DEDUCTIONS.—Any expenses, losses, or deductions of the taxpayer allowable under subchapter B—

''(A) shall not be applied to reduce the amounts described in subsection (a)(1), and

''(B) shall be applied to reduce other income of the taxpayer (determined without regard to the amounts described in subsection (a)(1)).

''(d) ELECTION.—

''(1) IN GENERAL.—An election under this section shall be made on the taxpayer's timely filed income tax return for the taxable year (determined by taking extensions into account) ending 120 days or more after the date of the enactment of this section, and, once made, may be revoked only with the consent of the Secretary.

''(2) ALL CONTROLLED FOREIGN CORPORATIONS.—The election shall apply to all corporations which are controlled foreign corporations in which the taxpayer is a United States shareholder during the taxable year.

''(3) CONSOLIDATED GROUPS.—If a taxpayer is a member of an affiliated group of corporations filing a consolidated return under section 1501 for the taxable year, an election under this section shall be made by the common parent of the affiliated group which includes the taxpayer, and shall apply to all members of the affiliated group.

''(e) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary and appropriate to carry out the purposes of this section, including regulations under section 55 and regulations addressing corporations which, during the fixed base period or thereafter, join or leave an affiliated group of corporations filing a consolidated return.''.

(b) CONFORMING AMENDMENT.—The table of sections for subpart F of part III of subchapter N of chapter 1 is amended by adding at the end the following new item:

''Sec. 965. Toll tax imposed on excess qualified foreign distribution amount.''.

(c) EFFECTIVE DATE.—Except as otherwise provided, the amendments made by this section, other than the amendment made by subsection (d), shall apply only to the first taxable year of the electing taxpayer ending 120 days or more after the date of the enactment of this Act.

(d) TERMINATION OF REHABILITATION CREDIT FOR BUILDINGS OTHER THAN CERTIFIED HISTORIC STRUCTURES.—Section 47 (relating to rehabilitation credit) is amended by adding at the end the following new subsection:

''(e) TERMINATION OF CREDIT FOR BUILDINGS OTHER THAN CERTIFIED HISTORIC STRUCTURES.—No credit shall be allowed under subsection (a)(1) with respect to expenditures incurred after December 31, 2003.''.

SEC. 532. CHILD SUPPORT ENFORCEMENT.

(a) INCLUSION IN INCOME OF AMOUNT OF UNPAID CHILD SUPPORT.—Section 108 (relating to discharge of indebtedness income) is amended by adding at the end the following new subsection:

''(h) UNPAID CHILD SUPPORT.—

''(1) IN GENERAL.—For purposes of this chapter, any unpaid child support of a delinquent debtor for any taxable year shall be treated as amounts includible in gross income of the delinquent debtor for the taxable year.

''(2) DEFINITIONS.—For the purposes of this subsection—

''(A) CHILD SUPPORT.—The term 'child support' means—

''(i) any periodic payment of a fixed amount, or

''(ii) any payment of a medical expense, education expense, insurance premium, or other similar item,

which is required to be paid to a custodial parent by an individual under a support instrument for the support of any qualifying child of such individual. 'Child support' does not include any amount which is described in section 408(a)(3) of the Social Security Act and which has been assigned to a State.

''(B) CUSTODIAL PARENT.—The term 'custodial parent' means an individual who is entitled to receive child support and who has registered with the appropriate State office of child support enforcement charged with implementing section 454 of the Social Security Act.

''(C) DELINQUENT DEBTOR.—The term 'delinquent debtor' means a taxpayer who owes unpaid child support to a custodial parent.

''(D) QUALIFYING CHILD.—The term 'qualifying child' means a child of a custodial parent with respect to whom a dependent deduction is allowable under section 151 for the taxable year (or would be so allowable but for paragraph (2) or (4) of section 152(e)).

''(E) SUPPORT INSTRUMENT.—The term 'support instrument' means—

''(i) a decree of divorce or separate maintenance or a written instrument incident to such a decree,

''(ii) a written separation agreement, or

''(iii) a decree (not described in clause (i)) of a court or administrative agency requiring a parent to make payments for the support or maintenance of 1 or more children of such parent.

''(F) UNPAID CHILD SUPPORT.—The term 'unpaid child support' means child support that is payable for months during a custodial parent's taxable year and unpaid as of the last day of such taxable year, provided that such unpaid amount as of such day equals or exceeds one-half of the total amount of child support due to the custodial parent for such year.

''(3) COORDINATION WITH OTHER LAWS.—Amounts treated as income by paragraph (1) shall not be treated as income by reason of paragraph (1) for the purposes of any provision of law which is not an internal revenue law.''.

(b) EFFECTIVE DATE; IMPLEMENTATION.—The amendments made by is section shall apply to taxable years beginning after December 31, 2002. The Secretary of the Treasury shall publish Form 1099–CS (or such other form that may be prescribed to comply with the amendment made by subsection (b)(1)) and regulations, if any, that may be deemed necessary to carry out the purposes of this Act, not later than 90 days after the date of enactment of this Act.

SEC. 533. LOW-INCOME HOUSING TAX CREDIT.

(a) FINDINGS.—The Senate finds the following:

(1) The low-income housing tax credit is the Nation's primary program for producing affordable rental housing.

(2) Each year, the low-income housing tax credit produces over 115,000 affordable apartments.

(3) Since Congress created the low-income housing tax credit in 1986, the credit has created 1,500,000 units of affordable housing for about 3,500,000 Americans.

(4) Analyses have found that certain approaches to reducing or eliminating the taxation of dividends have the potential to reduce the value of the low-income housing tax credit and so reduce the amount of affordable housing available.

(5) As of 2001, over 7,000,000 American renter families (1 in 5) suffer severe housing affordability problems, meaning that the family spends more than half of its income on rent or lives in substandard housing.

(6) More than 150,000 apartments in the low-cost rental housing inventory are lost each year due to rent increases, abandonment, and deterioration.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that any reduction or elimination of the taxation on dividends should include provisions to preserve the success of the low-income housing tax credit.

SEC. 534. EXPENSING OF BROADBAND INTERNET ACCESS EXPENDITURES.

(a) IN GENERAL.—Part VI of subchapter B of chapter 1 (relating to itemized deductions for individuals and corporations) is amended by inserting after section 190 the following new section:

''SEC. 191. BROADBAND EXPENDITURES.

''(a) TREATMENT OF EXPENDITURES.—

''(1) IN GENERAL.—A taxpayer may elect to treat any qualified broadband expenditure which is paid or incurred by the taxpayer as an expense which is not chargeable to capital account. Any expenditure which is so treated shall be allowed as a deduction.

''(2) ELECTION.—An election under paragraph (1) shall be made at such time and in such manner as the Secretary may prescribe by regulation.

''(b) QUALIFIED BROADBAND EXPENDITURES.—For purposes of this section—

''(1) IN GENERAL.—The term 'qualified broadband expenditure' means, with respect to any taxable year, any direct or indirect costs incurred and properly taken into account with respect to the purchase or installation of qualified equipment (including any upgrades thereto), together with any direct or indirect costs incurred and properly taken into account with respect to the connection of such qualified equipment to any qualified subscriber, but only if such costs are incurred after December 31, 2003, and before January 1, 2005.

''(2) CERTAIN SATELLITE EXPENDITURES EXCLUDED.—Such term shall not include any costs incurred with respect to the launching of any satellite equipment.

''(3) LEASED EQUIPMENT.—Such term shall include so much of the purchase price paid by the lessor of equipment subject to a lease described in subsection (c)(2)(B) as is attributable to expenditures incurred by the lessee which would otherwise be described in paragraph (1).

''(4) LIMITATION WITH REGARD TO CURRENT GENERATION BROADBAND SERVICES.—Only 50 percent of the amounts taken into account under paragraph (1) with respect to qualified equipment through which current generation broadband services are provided shall be treated as qualified broadband expenditures.

''(c) WHEN EXPENDITURES TAKEN INTO ACCOUNT.—For purposes of this section—

''(1) IN GENERAL.—Qualified broadband expenditures with respect to qualified equipment shall be taken into account with respect to the first taxable year in which—

''(A) current generation broadband services are provided through such equipment to qualified subscribers, or

''(B) next generation broadband services are provided through such equipment to qualified subscribers.

''(2) LIMITATION.—

''(A) IN GENERAL.—Qualified expenditures shall be taken into account under paragraph (1) only with respect to qualified equipment—

''(i) the original use of which commences with the taxpayer, and

''(ii) which is placed in service,

after December 31, 2003.

''(B) SALE-LEASEBACKS.—For purposes of subparagraph (A), if property—

''(i) is originally placed in service after December 31, 2003, by any person, and

''(ii) sold and leased back by such person within 3 months after the date such property was originally placed in service,

such property shall be treated as originally placed in service not earlier than the date on which such property is used under the leaseback referred to in clause (ii).

''(d) SPECIAL ALLOCATION RULES.—

''(1) CURRENT GENERATION BROADBAND SERVICES.—For purposes of determining the amount of qualified broadband expenditures under subsection (a)(1) with respect to qualified equipment through which current generation broadband services are provided, if the qualified equipment is capable of serving both qualified subscribers and other subscribers, the qualified broadband expenditures shall be multiplied by a fraction—

''(A) the numerator of which is the sum of the number of potential qualified subscribers within the rural areas and the underserved areas which the equipment is capable of serving with current generation broadband services, and

''(B) the denominator of which is the total potential subscriber population of the area which the equipment is capable of serving with current generation broadband services.

''(2) NEXT GENERATION BROADBAND SERVICES.—For purposes of determining the amount of qualified broadband expenditures under subsection (a)(1) with respect to qualified equipment through which next generation broadband services are provided, if the qualified equipment is capable of serving both qualified subscribers and other subscribers, the qualified expenditures shall be multiplied by a fraction—

''(A) the numerator of which is the sum of—

''(i) the number of potential qualified subscribers within the rural areas and underserved areas, plus

''(ii) the number of potential qualified subscribers within the area consisting only of residential subscribers not described in clause (i),

which the equipment is capable of serving with next generation broadband services, and

''(B) the denominator of which is the total potential subscriber population of the area which the equipment is capable of serving with next generation broadband services.

''(e) DEFINITIONS.—For purposes of this section—

''(1) ANTENNA.—The term 'antenna' means any device used to transmit or receive signals through the electromagnetic spectrum, including satellite equipment.

''(2) CABLE OPERATOR.—The term 'cable operator' has the meaning given such term by section 602(5) of the Communications Act of 1934 (47 U.S.C. 522(5)).

''(3) COMMERCIAL MOBILE SERVICE CARRIER.—The term 'commercial mobile service carrier' means any person authorized to provide commercial mobile radio service as defined in section 20.3 of title 47, Code of Federal Regulations.

''(4) CURRENT GENERATION BROADBAND SERVICE.—The term 'current generation broadband service' means the transmission of signals at a rate of at least 1,000,000 bits per second to the subscriber and at least 128,000 bits per second from the subscriber.

''(5) MULTIPLEXING OR DEMULTIPLEXING.—The term 'multiplexing' means the transmission of 2 or more signals over a single channel, and the term 'demultiplexing' means the separation of 2 or more signals previously combined by compatible multiplexing equipment.

''(6) NEXT GENERATION BROADBAND SERVICE.—The term 'next generation broadband service' means the transmission of signals at a rate of at least 22,000,000 bits per second to the subscriber and at least 5,000,000 bits per second from the subscriber.

''(7) NONRESIDENTIAL SUBSCRIBER.—The term 'nonresidential subscriber' means any person who purchases broadband services which are delivered to the permanent place of business of such person.

''(8) OPEN VIDEO SYSTEM OPERATOR.—The term 'open video system operator' means any person authorized to provide service under section 653 of the Communications Act of 1934 (47 U.S.C. 573).

''(9) OTHER WIRELESS CARRIER.—The term 'other wireless carrier' means any person (other than a telecommunications carrier, commercial mobile service carrier, cable operator, open video system operator, or satellite carrier) providing current generation broadband services or next generation broadband service to subscribers through the radio transmission of energy.

''(10) PACKET SWITCHING.—The term 'packet switching' means controlling or routing the path of any digitized transmission signal which is assembled into packets or cells.

''(11) PROVIDER.—The term 'provider' means, with respect to any qualified equipment—

''(A) a cable operator,

''(B) a commercial mobile service carrier,

''(C) an open video system operator,

''(D) a satellite carrier,

''(E) a telecommunications carrier, or

''(F) any other wireless carrier,

providing current generation broadband services or next generation broadband services to subscribers through such qualified equipment.

''(12) PROVISION OF SERVICES.—A provider shall be treated as providing services to 1 or more subscribers if—

''(A) such a subscriber has been passed by the provider's equipment and can be connected to such equipment for a standard connection fee,

''(B) the provider is physically able to deliver current generation broadband services or next generation broadband services, as applicable, to such a subscriber without making more than an insignificant investment with respect to such subscriber,

''(C) the provider has made reasonable efforts to make such subscribers aware of the availability of such services,

''(D) such services have been purchased by 1 or more such subscribers, and

''(E) such services are made available to such subscribers at average prices comparable to those at which the provider makes available similar services in any areas in which the provider makes available such services.

''(13) QUALIFIED EQUIPMENT.—

''(A) IN GENERAL.—The term 'qualified equipment' means equipment which provides current generation broadband services or next generation broadband services—

''(i) at least a majority of the time during periods of maximum demand to each subscriber who is utilizing such services, and

''(ii) in a manner substantially the same as such services are provided by the provider to subscribers through equipment with respect to which no deduction is allowed under subsection (a)(1).

''(B) ONLY CERTAIN INVESTMENT TAKEN INTO ACCOUNT.—Except as provided in subparagraph (C) or (D), equipment shall be taken into account under subparagraph (A) only to the extent it—

''(i) extends from the last point of switching to the outside of the unit, building, dwelling, or office owned or leased by a subscriber in the case of a telecommunications carrier,

''(ii) extends from the customer side of the mobile telephone switching office to a transmission/receive antenna (including such antenna) owned or leased by a subscriber in the case of a commercial mobile service carrier,

''(iii) extends from the customer side of the headend to the outside of the unit, building, dwelling, or office owned or leased by a subscriber in the case of a cable operator or open video system operator, or

''(iv) extends from a transmission/receive antenna (including such antenna) which transmits and receives signals to or from multiple subscribers, to a transmission/receive antenna (including such antenna) on the outside of the unit, building, dwelling, or office owned or leased by a subscriber in the case of a satellite carrier or other wireless carrier, unless such other wireless carrier is also a telecommunications carrier.

''(C) PACKET SWITCHING EQUIPMENT.—Packet switching equipment, regardless of location, shall be taken into account under subparagraph (A) only if it is deployed in connection with equipment described in subparagraph (B) and is uniquely designed to perform the function of packet switching for current generation broadband services or next generation broadband services, but only if such packet switching is the last in a series of such functions performed in the transmission of a signal to a subscriber or the first in a series of such functions performed in the transmission of a signal from a subscriber.

''(D) MULTIPLEXING AND DEMULTIPLEXING EQUIPMENT.—Multiplexing and demultiplexing equipment shall be taken into account under subparagraph (A) only to the extent it is deployed in connection with equipment described in subparagraph (B) and is uniquely designed to perform the function of multiplexing and demultiplexing packets or cells of data and making associated application adaptions, but only if such multiplexing or demultiplexing equipment is located between packet switching equipment described in subparagraph (C) and the subscriber's premises.

''(14) QUALIFIED SUBSCRIBER.—The term 'qualified subscriber' means—

''(A) with respect to the provision of current generation broadband services—

''(i) any nonresidential subscriber maintaining a permanent place of business in a rural area or underserved area, or

''(ii) any residential subscriber residing in a dwelling located in a rural area or underserved area which is not a saturated market, and

''(B) with respect to the provision of next generation broadband services—

''(i) any nonresidential subscriber maintaining a permanent place of business in a rural area or underserved area, or

''(ii) any residential subscriber.

''(15) RESIDENTIAL SUBSCRIBER.—The term 'residential subscriber' means any individual who purchases broadband services which are delivered to such individual's dwelling.

''(16) RURAL AREA.—The term 'rural area' means any census tract which—

''(A) is not within 10 miles of any incorporated or census designated place containing more than 25,000 people, and

''(B) is not within a county or county equivalent which has an overall population density of more than 500 people per square mile of land.

''(17) RURAL SUBSCRIBER.—The term 'rural subscriber' means any residential subscriber residing in a dwelling located in a rural area or nonresidential subscriber maintaining a permanent place of business located in a rural area.

''(18) SATELLITE CARRIER.—The term 'satellite carrier' means any person using the facilities of a satellite or satellite service licensed by the Federal Communications Commission and operating in the Fixed-Satellite Service under part 25 of title 47 of the Code of Federal Regulations or the Direct Broadcast Satellite Service under part 100 of title 47 of such Code to establish and operate a channel of communications for distribution of signals, and owning or leasing a capacity or service on a satellite in order to provide such point-to-multipoint distribution.

''(19) SATURATED MARKET.—The term 'saturated market' means any census tract in which, as of the date of the enactment of this section—

''(A) current generation broadband services have been provided by a single provider to 85 percent or more of the total number of potential residential subscribers residing in dwellings located within such census tract, and

''(B) such services can be utilized—

''(i) at least a majority of the time during periods of maximum demand by each such subscriber who is utilizing such services, and

''(ii) in a manner substantially the same as such services are provided by the provider to subscribers through equipment with respect to which no deduction is allowed under subsection (a)(1).

''(20) SUBSCRIBER.—The term 'subscriber' means any person who purchases current generation broadband services or next generation broadband services.

''(21) TELECOMMUNICATIONS CARRIER.—The term 'telecommunications carrier' has the meaning given such term by section 3(44) of the Communications Act of 1934 (47 U.S.C. 153(44)), but—

''(A) includes all members of an affiliated group of which a telecommunications carrier is a member, and

''(B) does not include a commercial mobile service carrier.

''(22) TOTAL POTENTIAL SUBSCRIBER POPULATION.—The term 'total potential subscriber population' means, with respect to any area and based on the most recent census data, the total number of potential residential subscribers residing in dwellings located in such area and potential nonresidential subscribers maintaining permanent places of business located in such area.

''(23) UNDERSERVED AREA.—The term 'underserved area' means any census tract which is located in—

''(A) an empowerment zone or enterprise community designated under section 1391,

''(B) the District of Columbia Enterprise Zone established under section 1400,

''(C) a renewal community designated under section 1400E, or

''(D) a low-income community designated under section 45D.

''(24) UNDERSERVED SUBSCRIBER.—The term 'underserved subscriber' means any residential subscriber residing in a dwelling located in an underserved area or nonresidential subscriber maintaining a permanent place of business located in an underserved area.

''(f) SPECIAL RULES.—

''(1) PROPERTY USED OUTSIDE THE UNITED STATES, ETC., NOT QUALIFIED.—No expenditures shall be taken into account under subsection (a)(1) with respect to the portion of the cost of any property referred to in section 50(b) or with respect to the portion of the cost of any property taken into account under section 179.

''(2) BASIS REDUCTION.—

''(A) IN GENERAL.—For purposes of this title, the basis of any property shall be reduced by the portion of the cost of such property taken into account under subsection (a)(1).

''(B) ORDINARY INCOME RECAPTURE.—For purposes of section 1245, the amount of the deduction allowable under subsection (a)(1) with respect to any property which is of a character subject to the allowance for depreciation shall be treated as a deduction allowed for depreciation under section 167.

''(3) COORDINATION WITH SECTION 38.—No credit shall be allowed under section 38 with respect to any amount for which a deduction is allowed under subsection (a)(1).''.

(b) SPECIAL RULE FOR MUTUAL OR COOPERATIVE TELEPHONE COMPANIES.—Section 501(c)(12)(B) (relating to list of exempt organizations) is amended by striking ''or'' at the end of clause (iii), by striking the period at the end of clause (iv) and inserting '', or'', and by adding at the end the following:

''(v) from the sale of property subject to a lease described in section 191(c)(2)(B), but only to the extent such income does not in any year exceed an amount equal to the qualified broadband expenditures which would be taken into account under section 191 for such year if the mutual or cooperative telephone company was not exempt from taxation and was treated as the owner of the property subject to such lease.''.

(c) CONFORMING AMENDMENTS.—

(1) Section 263(a)(1) (relating to capital expenditures) is amended by striking ''or'' at the end of subparagraph (G), by striking the period at the end of subparagraph (H) and inserting '', or'', and by adding at the end the following new subparagraph:

''(I) expenditures for which a deduction is allowed under section 191.''.

(2) Section 1016(a) of such Code is amended by striking ''and'' at the end of paragraph (27), by striking the period at the end of paragraph (28) and inserting '', and'', and by adding at the end the following new paragraph:

''(29) to the extent provided in section 191(f)(2).''.

(3) The table of sections for part VI of subchapter A of chapter 1 of such Code is amended by inserting after the item relating to section 190 the following new item:

''Sec. 191. Broadband expenditures.''.

(d) DESIGNATION OF CENSUS TRACTS.—

(1) IN GENERAL.—The Secretary of the Treasury shall, not later than 90 days after the date of the enactment of this Act, designate and publish those census tracts meeting the criteria described in paragraphs (16), (22), and (23) of section 191(e) of the Internal Revenue Code of 1986

(as added by this section). In making such designations, the Secretary of the Treasury shall consult with such other departments and agencies as the Secretary determines appropriate.

(2) SATURATED MARKET.—

(A) IN GENERAL.—For purposes of designating and publishing those census tracts meeting the criteria described in subsection (e)(19) of such section 191—

(i) the Secretary of the Treasury shall prescribe not later than 30 days after the date of the enactment of this Act the form upon which any provider which takes the position that it meets such criteria with respect to any census tract shall submit a list of such census tracts (and any other information required by the Secretary) not later than 60 days after the date of the publication of such form, and

(ii) the Secretary of the Treasury shall publish an aggregate list of such census tracts and the applicable providers not later than 30 days after the last date such submissions are allowed under clause (i).

(B) NO SUBSEQUENT LISTS REQUIRED.—The Secretary of the Treasury shall not be required to publish any list of census tracts meeting such criteria subsequent to the list described in subparagraph (A)(ii).

(C) AUTHORITY TO DISREGARD FALSE SUBMISSIONS.—In addition to imposing any other applicable penalties, the Secretary of the Treasury shall have the discretion to disregard any form described in subparagraph (A)(i) on which a provider knowingly submitted false information.

(e) OTHER REGULATORY MATTERS.—

(1) PROHIBITION.—No Federal or State agency or instrumentality shall adopt regulations or ratemaking procedures that would have the effect of confiscating any deduction or portion thereof allowed under section 191 of the Internal Revenue Code of 1986 (as added by this section) or otherwise subverting the purpose of this section.

(2) TREASURY REGULATORY AUTHORITY.—It is the intent of Congress in providing the election to deduct qualified broadband expenditures under section 191 of the Internal Revenue Code of 1986 (as added by this section) to provide incentives for the purchase, installation, and connection of equipment and facilities offering expanded broadband access to the Internet for users in certain low income and rural areas of the United States, as well as to residential users nationwide, in a manner that maintains competitive neutrality among the various classes of providers of broadband services. Accordingly, the Secretary of the Treasury shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of section 191 of such Code, including—

(A) regulations to determine how and when a taxpayer that incurs qualified broadband expenditures satisfies the requirements of section 191 of such Code to provide broadband services, and

(B) regulations describing the information, records, and data taxpayers are required to provide the Secretary to substantiate compliance with the requirements of section 191 of such Code.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to expenditures incurred after December 31, 2003.

SEC. 535. INCOME TAX CREDIT FOR DISTILLED SPIRITS WHOLESALERS AND FOR DISTILLED SPIRITS IN CONTROL STATE BAILMENT WAREHOUSES FOR COSTS OF CARRYING FEDERAL EXCISE TAXES ON BOTTLED DISTILLED SPIRITS.

(a) IN GENERAL.—Subpart A of part I of subchapter A of chapter 51 (relating to gallonage and occupational taxes) is amended by adding at the end the following new section:

"SEC. 5011. INCOME TAX CREDIT FOR AVERAGE COST OF CARRYING EXCISE TAX.

''(a) IN GENERAL.—For purposes of section 38, the amount of the distilled spirits credit for any taxable year is the amount equal to the product of—

''(1) in the case of—

''(A) any eligible wholesaler—

''(i) the number of cases of bottled distilled spirits—

''(I) which were bottled in the United States, and

''(II) which are purchased by such wholesaler during the taxable year directly from the bottler of such spirits, or

''(B) any person which is subject to section 5005 and which is not an eligible wholesaler, the number of cases of bottled distilled spirits which are stored in a warehouse operated by, or on behalf of, a State, or agency or political subdivision thereof, on which title has not passed on an unconditional sale basis, and

''(2) the average tax-financing cost per case for the most recent calendar year ending before the beginning of such taxable year.

''(b) ELIGIBLE WHOLESALER.—For purposes of this section, the term 'eligible wholesaler' means any person which holds a permit under the Federal Alcohol Administration Act as a wholesaler of distilled spirits which is not a State, or agency or political subdivision thereof.

''(c) AVERAGE TAX-FINANCING COST.—

''(1) IN GENERAL.—For purposes of this section, the average tax-financing cost per case for any calendar year is the amount of interest which would accrue at the deemed financing rate during a 60-day period on an amount equal to the deemed Federal excise tax per case.

''(2) DEEMED FINANCING RATE.—For purposes of paragraph (1), the deemed financing rate for any calendar year is the average of the corporate overpayment rates under paragraph (1) of section 6621(a) (determined without regard to the last sentence of such paragraph) for calendar quarters of such year.

''(3) DEEMED FEDERAL EXCISE TAX PER CASE.—For purposes of paragraph (1), the deemed Federal excise tax per case is $25.68.

''(d) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

''(1) CASE.—The term 'case' means 12 80-proof 750 milliliter bottles.

''(2) NUMBER OF CASES IN LOT.—The number of cases in any lot of distilled spirits shall be determined by dividing the number of liters in such lot by 9.''.

(b) CONFORMING AMENDMENTS.—

(1) Subsection (b) of section 38 is amended by striking ''plus'' at the end of paragraph (14), by striking the period at the end of paragraph (15) and inserting '', plus'', and by adding at the end the following new paragraph:

''(16) the distilled spirits credit determined under section 5011(a).''.

(2) Subsection (d) of section 39 (relating to carryback and carryforward of unused credits) is amended by adding at the end the following new paragraph:

''(11) NO CARRYBACK OF SECTION 5011 CREDIT BEFORE JANUARY 1, 2003.—No portion of the unused business credit for any taxable year which is attributable to the credit determined under section 5011(a) may be carried back to a taxable year beginning before January 1, 2003.''.

(3) The table of sections for subpart A of part I of subchapter A of chapter 51 is amended by adding at the end the following new item:

''Sec. 5011. Income tax credit for average cost of carrying excise tax.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2002.

SEC. 536. CLARIFICATION OF CONTRIBUTION IN AID OF CONSTRUCTION FOR WATER AND SEWERAGE DISPOSAL UTILITIES.

(a) IN GENERAL.—Subparagraph (A) of section 118(c)(3) (relating to definitions) is amended to read as follows:

''(A) CONTRIBUTION IN AID OF CONSTRUCTION.—The term 'contribution in aid of construction' shall be defined by regulations prescribed by the Secretary, except that such term—

''(i) shall include amounts paid as customer connection fees (including amounts paid to connect the customer's water service line or sewer lateral line to the utility's distribution or collection system or extend a main water or sewer line to provide service to a customer), and

''(ii) shall not include amounts paid as service charges for starting or stopping services.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to contributions made after the date of the enactment of this Act.

SEC. 537. RESTORATION OF DEDUCTION FOR TRAVEL EXPENSES OF SPOUSE, ETC. ACCOMPANYING TAXPAYER ON BUSINESS TRAVEL.

(a) IN GENERAL.—Subsection (m) of section 274 (relating to additional limitations on travel expenses) is amended by striking paragraph (3)(A).

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to amounts paid or incurred after the date of the enactment of this Act, and on or before December 31, 2004.

SEC. 538. CERTAIN SIGHTSEEING FLIGHTS EXEMPT FROM TAXES ON AIR TRANSPORTATION.

(a) IN GENERAL.—Section 4281 (relating to small aircraft on nonestablished lines) is amended by adding at the end the following new sentence: ''For purposes of this section, an aircraft shall not be considered as operated on an established line if such aircraft is operated on a flight the sole purpose of which is sightseeing.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to transportation beginning on or after the date of the enactment of this Act, but shall not apply to any amount paid before such date.

SEC. 539. CONFORMING THE INTERNAL REVENUE CODE OF 1986 TO REQUIREMENTS IMPOSED BY THE WOMEN'S HEALTH AND CANCER RIGHTS ACT OF 1998.

(a) IN GENERAL.—Subchapter B of chapter 100 (relating to other requirements) is amended by inserting after section 9812 the following new section:

"SEC. 9813. REQUIRED COVERAGE FOR RECONSTRUCTIVE SURGERY FOLLOWING MASTECTOMIES.

''(a) IN GENERAL.—A group health plan that provides medical and surgical benefits with respect to a mastectomy shall provide, in a case of a participant or beneficiary who is receiving benefits in connection with a mastectomy and who elects breast reconstruction in connection with such mastectomy, coverage for—

''(1) all stages of reconstruction of the breast on which the mastectomy has been performed,

''(2) surgery and reconstruction of the other breast to produce a symmetrical appearance, and

''(3) prostheses and physical complications of mastectomy, including lymphedemas,

in a manner determined in consultation with the attending physician and the patient. Such coverage may be subject to annual deductibles and coinsurance provisions as may be deemed appropriate and as are consistent with those established for other benefits under the plan. Written notice of the availability of such coverage shall be delivered to the participant upon enrollment and annually thereafter.

''(b) PROHIBITIONS.—A group health plan may not—

''(1) deny to a patient eligibility, or continued eligibility, to enroll or to renew coverage under the terms of the plan, solely for the purpose of avoiding the requirements of this section, and

''(2) penalize or otherwise reduce or limit the reimbursement of an attending provider, or provide incentives (monetary or otherwise) to an attending provider, to induce such provider to provide care to an individual participant or beneficiary in a manner inconsistent with this section.

''(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to prevent a group health plan from negotiating the level and type of reimbursement with a provider for care provided in accordance with this section.''

(b) CLERICAL AMENDMENT.—The table of sections for chapter 100 of such Code is amended inserting after the item relating to section 9812 the following new item:

''Sec. 9813. Required coverage for reconstructive surgery following mastectomies.''

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply with respect to plan years beginning on or after the date of enactment of this Act.

(2) SPECIAL RULE FOR COLLECTIVE BARGAINING AGREEMENTS.—In the case of a group health plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers, any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by this section shall not be treated as a termination of such collective bargaining agreement.

SEC. 540. EXPANSION OF DESIGNATED RENEWAL COMMUNITY AREA BASED ON 2000 CENSUS DATA.

(a) RENEWAL COMMUNITIES.—Section 1400E (relating to designation of renewal communities) is amended by adding at the end the following new subsection:

''(g) EXPANSION OF DESIGNATED AREAS.—

''(1) EXPANSION BASED ON 2000 CENSUS.—At the request of the nominating entity with respect to a renewal community, the Secretary of Housing and Urban Development may expand the area of a renewal community to include any census tract—

''(A) which, at the time such community was nominated, met the requirements of this section for inclusion in such community but for the failure of such tract to meet 1 or more of the population and poverty rate requirements of this section using 1990 census data, and

''(B) which meets all failed population and poverty rate requirements of this section using 2000 census data.

''(2) EXPANSION TO CERTAIN AREAS WHICH DO NOT MEET POPULATION REQUIREMENTS.—

''(A) IN GENERAL.—At the request of 1 or more local governments and the State or States in which an area described in subparagraph (B) is located, the Secretary of Housing and Urban Development may expand a designated area to include such area.

''(B) AREA.—An area is described in this subparagraph if—

''(i) the area is adjacent to at least 1 other area designated as a renewal community,

''(ii) the area has a population less than the population required under subsection (c)(2)(C), and

''(iii)(I) the area meets the requirements of subparagraphs (A) and (B) of subsection (c)(2) and subparagraph (A) of subsection (c)(3), or

''(II) the area contains a population of less than 100 people.

''(3) APPLICABILITY.—Any expansion of a renewal community under this section shall take effect as provided in subsection (b).''.

(b) EFFECTIVE DATE.—The amendment made by this subsection shall take effect as if included in the amendments made by section 101 of the Community Renewal Tax Relief Act of 2000.

SEC. 541. RENEWAL COMMUNITY EMPLOYERS MAY QUALIFY FOR EMPLOYMENT CREDIT BY EMPLOYING RESIDENTS OF CERTAIN OTHER RENEWAL COMMUNITIES.

(a) IN GENERAL.—Section 1400H(b)(2) (relating to modification) is amended by striking ''and'' at the end of paragraph (1), by striking the period at the end of paragraph (2) and inserting '', and'', and by adding at the end the following new paragraph:

''(3) subsection (d)(1)(B) thereof shall be applied by substituting 'such renewal community, an adjacent renewal community within the same State as such renewal community, or a renewal community within such State which is within 5 miles of any border of such renewal community' for 'such empowerment zone'.''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect as if included in the amendment made by section 101(a) of the Community Renewal Tax Relief Act of 2000.

SEC. 542. EXPANSION OF INCOME TAX EXCLUSION FOR COMBAT ZONE SERVICE.

(a) COMBAT ZONE SERVICE TO INCLUDE TRANSIT TO ZONE.—Section 112(c)(3) of the Internal Revenue Code of 1986 (relating to definitions) is amended by adding at the end the following new sentence: ''Such service shall include any period (not to exceed 14 days) of direct transit to the combat zone.''.

(b) REMOVAL OF LIMITATION ON EXCLUSION FOR COMMISSIONED OFFICERS.—

(1) IN GENERAL.—Subsection (b) of section 112 of the Internal Revenue Code of 1986 (relating to certain combat zone compensation of members of the Armed Forces) is repealed.

(2) CONFORMING AMENDMENTS.—

(A) Section 112(a) of such Code is amended—

(i) by striking ''below the grade of commissioned officer'', and

(ii) by striking ''ENLISTED PERSONNEL'' in the heading and inserting ''IN GENERAL''.

(B) Section 112(c) of such Code is amended by striking paragraphs (1) and (5) and by redesignating paragraphs (2), (3), and (4) as paragraphs (1), (2), and (3), respectively.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to months beginning after December 31, 2002.

SEC. 543. AVAILABILITY OF CERTAIN TAX BENEFITS FOR MEMBERS OF THE ARMED FORCES PERFORMING SERVICES AT GUANTANAMO BAY NAVAL STATION, CUBA, AND ON THE ISLAND OF DIEGO GARCIA.

(a) GENERAL RULE.—In the case of a member of the Armed Forces of the United States who is entitled to special pay under section 305 of title 37, United States Code (relating to special pay: hardship duty pay), for services performed as a member of the Joint Task Force Guantanamo at Guantanamo Bay Naval Station, Cuba, or for services performed on the Island of Diego Garcia as part of Operation Iraqi Freedom, such member shall be treated in the same manner as if such services were in a combat zone (as determined under section 112 of the Internal Revenue Code of 1986) for purposes of the following provisions of such Code:

(1) Section 2(a)(3) (relating to special rule where deceased spouse was in missing status).

(2) Section 112 (relating to the exclusion of certain combat pay of members of the Armed Forces).

(3) Section 692 (relating to income taxes of members of Armed Forces on death).

(4) Section 2201 (relating to members of the Armed Forces dying in combat zone or by reason of combat-zone-incurred wounds, etc.).

(5) Section 3401(a)(1) (defining wages relating to combat pay for members of the Armed Forces).

(6) Section 4253(d) (relating to the taxation of phone service originating from a combat zone from members of the Armed Forces).

(7) Section 6013(f)(1) (relating to joint return where individual is in missing status).

(8) Section 7508 (relating to time for performing certain acts postponed by reason of service in combat zone).

(b) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), this section shall take effect on January 1, 2003.

(2) WITHHOLDING.—Subsection (a)(5) shall apply to remuneration paid after December 31, 2002.

SEC. 544. CITRUS CANKER TREE RELIEF.

(a) RATABLE INCLUSION.—

(1) IN GENERAL.—Part I of subchapter Q of chapter 1 (relating to income averaging) is amended by inserting after section 1301 the following new section:

''SEC. 1302. RATABLE INCOME INCLUSION FOR CITRUS CANKER TREE PAYMENTS.

''(a) IN GENERAL.—At the election of the taxpayer, any amount taken into account as income or gain by reason of receiving a citrus canker tree payment shall be included in the income of the taxpayer ratably over the 10-year period beginning with the taxable year in which the payment is received or accrued by the taxpayer. Such election shall be made on the return of tax for such taxable year in such manner as the Secretary prescribes, and, once made shall be irrevocable.

''(b) CITRUS CANKER TREE PAYMENT.—For purposes of subsection (a), the term 'citrus canker tree payment' means a payment made to an owner of a commercial citrus grove to recover income that was lost as a result of the removal of commercial citrus trees to control canker under the amendments to the citrus canker regulations (7 C.F.R. 301) made by the final rule published in the Federal Register by the Secretary of Agriculture on June 18, 2001 (66 Fed. Reg. 32713, Docket No. 00–37–4).''.

(2) CLERICAL AMENDMENT.—The table of sections for part I of subchapter Q of chapter 1 is amended by inserting after the item relating to section 1301 the following new item:

Sec. 1302. Ratable income inclusion for citrus canker tree payments.''.

(b) EXPANSION OF PERIOD WITHIN WHICH CONVERTED CITRUS TREE PROPERTY MUST BE REPLACED.—Section 1033 (relating to period within which property must be replaced) is amended by redesignating subsection (k) as subsection (l) and by inserting after subsection (j) the following new subsection:

''(k) COMMERCIAL TREES DESTROYED BECAUSE OF CITRUS TREE CANKER.—In the case of commercial citrus trees which are compulsorily or involuntarily converted under a public order as a result of the citrus tree canker, clause (i) of subsection (a)(2)(B) shall be applied as if such clause reads: '4 years after the close of the first taxable year in which any part of the gain upon conversion is realized, or such additional period after the close of such taxable year as determined appropriate by the Secretary on a regional basis if a State or Federal plant health authority determines with respect to such region that the land on which such trees grew is not free from the bacteria that causes citrus tree canker'.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning before, on, or after the date of the enactment of this Act.

SEC. 545. EXCLUSION OF CERTAIN PUNITIVE DAMAGE AWARDS.

(a) IN GENERAL.—Section 104 (relating to compensation for injuries or sickness) is amended by redesignating subsection (d) as subsection (e), and by inserting after subsection (c) the following new subsection:

''(d) EXCLUSION OF PUNITIVE DAMAGES PAID TO A STATE UNDER A SPLIT-AWARD STATUTE.—

''(1) IN GENERAL.—The phrase '(other than punitive damages)' in subsection (a) shall not apply to—

''(A) any portion of an award of punitive damages in a civil action which is paid to a State under a split-award statute, or

''(B) any attorneys' fees or other costs incurred by the taxpayer in connection with obtaining an award of punitive damages to which subparagraph (A) is applicable.

''(2) SPLIT-AWARD STATUTE.—For purposes of this subsection, the term 'split-award statute' means a State law that requires a fixed portion of an award of punitive damages in a civil action to be paid to the State.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to awards made in

taxable years ending after the date of the enactment of this Act.

SEC. 546. TREATMENT OF CERTAIN IMPORTED RECYCLED HALONS.

(a) IN GENERAL.—Section 1803(c) of the Small Business Job Protection Act of 1986 (Public Law 104–188) is amended by striking ''1997'' and ''1998'' and inserting ''1994''.

(b) WAIVER OF LIMITATIONS.—If refund or credit of any overpayment of tax resulting from the amendment made by this section is prevented at any time before the close of the 1-year period beginning on the date of the enactment of this Act by the operation of any law or rule of law (including res judicata), such refund or credit may nevertheless be made or allowed if claim therefor is filed before the close of such period.

SEC. 547. MODIFICATION OF INVOLUNTARY CONVERSION RULES FOR BUSINESSES AFFECTED BY THE SEPTEMBER 11TH TERRORIST ATTACKS.

(a) IN GENERAL.—Subsection (g) of section 1400L is amended to read as follows:

''(g) MODIFICATION OF RULES APPLICABLE TO NONRECOGNITION OF GAIN.—In the case of property which is compulsorily or involuntarily converted as a result of the terrorist attacks on September 11, 2001, in the New York Liberty Zone—

''(1) which was held by a corporation which is a member of an affiliated group filing a consolidated return, such corporation shall be treated as satisfying the purchase requirement of section 1033(a)(2) with respect to such property to the extent such requirement is satisfied by another member of the group, and

''(2) notwithstanding subsections (g) and (h) of section 1033, clause (i) of section 1033(a)(2)(B) shall be applied by substituting '5 years' for '2 years' with respect to property which is compulsorily or involuntarily converted as a result of the terrorist attacks on September 11, 2001, in the New York Liberty Zone but only if substantially all of the use of the replacement property is in the City of New York, New York.''.

(b) EFFECTIVE DATE.—The amendments made by this Act shall apply to involuntary conversions occurring on or after September 11, 2001.

Subtitle D—Medicare Provisions

SEC. 561. EQUALIZING URBAN AND RURAL STANDARDIZED PAYMENT AMOUNTS UNDER THE MEDICARE INPATIENT HOSPITAL PROSPECTIVE PAYMENT SYSTEM.

(a) IN GENERAL.—Section 1886(d)(3)(A)(iv) of the Social Security Act (42 U.S.C. 1395ww(d)(3)(A)(iv)) is amended—

(1) by striking ''(iv) For discharges'' and inserting ''(iv)(I) Subject to subclause (II), for discharges''; and

(2) by adding at the end the following new subclause:

''(II) For discharges occurring in a fiscal year beginning with fiscal year 2004, the Secretary shall compute a standardized amount for hospitals located in any area within the United States and within each region equal to the standardized amount computed for the previous fiscal year under this subparagraph for hospitals located in a large urban area (or, beginning with fiscal year 2005, for hospitals located in any area) increased by the applicable percentage increase under subsection (b)(3)(B)(i) for the fiscal year involved.''.

(b) CONFORMING AMENDMENTS.—

(1) COMPUTING DRG-SPECIFIC RATES.—Section 1886(d)(3)(D) of the Social Security Act (42 U.S.C. 1395ww(d)(3)(D)) is amended—

(A) in the heading, by striking ''IN DIFFERENT AREAS'';

(B) in the matter preceding clause (i), by striking '', each of'';

(C) in clause (i)—

(i) in the matter preceding subclause (I), by inserting ''for fiscal years before fiscal year 2004,'' before ''for hospitals''; and

(ii) in subclause (II), by striking ''and'' after the semicolon at the end;

(D) in clause (ii)—

(i) in the matter preceding subclause (I), by inserting ''for fiscal years before fiscal year 2004,'' before ''for hospitals''; and

(ii) in subclause (II), by striking the period at the end and inserting ''; and''; and

(E) by adding at the end the following new clause:

''(iii) for a fiscal year beginning after fiscal year 2003, for hospitals located in all areas, to the product of—

''(I) the applicable standardized amount (computed under subparagraph (A)), reduced under subparagraph (B), and adjusted or reduced under subparagraph (C) for the fiscal year; and

''(II) the weighting factor (determined under paragraph (4)(B)) for that diagnosis-related group.''.

(2) TECHNICAL CONFORMING SUNSET.—Section 1886(d)(3) of the Social Security Act (42 U.S.C. 1395ww(d)(3)) is amended—

(A) in the matter preceding subparagraph (A), by inserting '', for fiscal years before fiscal year 1997,'' before ''a regional adjusted DRG prospective payment rate''; and

(B) in subparagraph (D), in the matter preceding clause (i), by inserting '', for fiscal years before fiscal year 1997,'' before ''a regional DRG prospective payment rate for each region,''.

SEC. 562. FAIRNESS IN THE MEDICARE DISPROPORTIONATE SHARE HOSPITAL (DSH) ADJUSTMENT FOR RURAL HOSPITALS.

(a) EQUALIZING DSH PAYMENT AMOUNTS.—

(1) IN GENERAL.—Section 1886(d)(5)(F)(vii) of the Social Security Act (42 U.S.C. 1395ww(d)(5)(F)(vii)) is amended by inserting '', and, after October 1, 2003, for any other hospital described in clause (iv),'' after ''clause (iv)(I)'' in the matter preceding subclause (I).

(2) CONFORMING AMENDMENTS.—Section 1886(d)(5)(F) of the Social Security Act (42 U.S.C. 1395ww(d)(5)(F)) is amended—

(A) in clause (iv)—

(i) in subclause (II)—

(I) by inserting ''and before October 1, 2003,'' after ''April 1, 2001,''; and

(II) by inserting ''or, for discharges occurring on or after October 1, 2003, is equal to the percent determined in accordance with the applicable formula described in clause (vii)'' after ''clause (xiii)'';

(ii) in subclause (III)—

(I) by inserting ''and before October 1, 2003,'' after ''April 1, 2001,''; and

(II) by inserting ''or, for discharges occurring on or after October 1, 2003, is equal to the percent determined in accordance with the applicable formula described in clause (vii)'' after ''clause (xii)'';

(iii) in subclause (IV)—

(I) by inserting ''and before October 1, 2003,'' after ''April 1, 2001,''; and

(II) by inserting ''or, for discharges occurring on or after October 1, 2003, is equal to the percent determined in accordance with the applicable formula described in clause (vii)'' after ''clause (x) or (xi)'';

(iv) in subclause (V)—

(I) by inserting ''and before October 1, 2003,'' after ''April 1, 2001,''; and

(II) by inserting ''or, for discharges occurring on or after October 1, 2003, is equal to the percent determined in accordance with the applicable formula described in clause (vii)'' after ''clause (xi)''; and

(v) in subclause (VI)—

(I) by inserting ''and before October 1, 2003,'' after ''April 1, 2001,''; and

(II) by inserting ''or, for discharges occurring on or after October 1, 2003, is equal to the percent determined in accordance with the applicable formula described in clause (vii)'' after ''clause (x)'';

(B) in clause (viii), by striking ''The formula'' and inserting ''For discharges occurring before October 1, 2003, the formula''; and

(C) in each of clauses (x), (xi), (xii), and (xiii), by striking ''For purposes'' and inserting ''With respect to discharges occurring before October 1, 2003, for purposes''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to discharges occurring on or after October 1, 2003.

SEC. 563. MEDICARE INPATIENT HOSPITAL PAYMENT ADJUSTMENT FOR LOW-VOLUME HOSPITALS.

Section 1886(d) of the Social Security Act (42 U.S.C. 1395ww(d)) is amended by adding at the end the following new paragraph:

''(12) PAYMENT ADJUSTMENT FOR LOW-VOLUME HOSPITALS.—

''(A) PAYMENT ADJUSTMENT.—

''(i) IN GENERAL.—Notwithstanding any other provision of this section, for each cost reporting period (beginning with the cost reporting period that begins in fiscal year 2005), the Secretary shall provide for an additional payment amount to each low-volume hospital (as defined in clause (iii)) for discharges occurring during that cost reporting period to increase the amount paid to such hospital under this section for such discharges by the applicable percentage increase determined under clause (ii).

''(ii) APPLICABLE PERCENTAGE INCREASE.—The Secretary shall determine a percentage increase applicable under this paragraph that ensures that—

''(I) no percentage increase in payments under this paragraph exceeds 25 percent of the amount of payment that would otherwise be made to a low-volume hospital under this section for each discharge (but for this paragraph);

''(II) low-volume hospitals that have the lowest number of discharges during a cost reporting period receive the highest percentage increase in payments due to the application of this paragraph; and

''(III) the percentage increase in payments due to the application of this paragraph is reduced as the number of discharges per cost reporting period increases.

''(iii) LOW-VOLUME HOSPITAL DEFINED.—For purposes of this paragraph, the term 'low-volume hospital' means, for a cost reporting period, a subsection (d) hospital (as defined in paragraph (1)(B)) other than a critical access hospital (as defined in section 1861(mm)(1)) that—

''(I) the Secretary determines had an average of less than 2,000 discharges (determined with respect to all patients and not just individuals receiving benefits under this title) during the 3 most recent cost reporting periods for which data are available that precede the cost reporting period to which this paragraph applies; and

''(II) is located at least 15 miles from a similar hospital (or is deemed by the Secretary to be so located by reason of such factors as the Secretary determines appropriate, including the time required for an individual to travel to the nearest alternative source of appropriate inpatient care (taking into account the location of such alternative source of inpatient care and any weather or travel conditions that may affect such travel time)).

''(B) PROHIBITING CERTAIN REDUCTIONS.—Notwithstanding subsection (e), the Secretary shall not reduce the payment amounts under this section to offset the increase in payments resulting from the application of subparagraph (A).''.

SEC. 564. ADJUSTMENT TO THE MEDICARE INPATIENT HOSPITAL PPS WAGE INDEX TO REVISE THE LABOR-RELATED SHARE OF SUCH INDEX.

(a) IN GENERAL.—Section 1886(d)(3)(E) of the Social Security Act (42 U.S.C. 1395ww(d)(3)(E)) is amended—

(1) by striking ''WAGE LEVELS.—The Secretary'' and inserting ''WAGE LEVELS.—

''(i) IN GENERAL.—Except as provided in clause (ii), the Secretary''; and

(2) by adding at the end the following new clause:

''(ii) ALTERNATIVE PROPORTION TO BE ADJUSTED BEGINNING IN FISCAL YEAR 2004.—

''(I) IN GENERAL.—Except as provided in subclause (II), for discharges occurring on or after

October 1, 2003, the Secretary shall substitute '62 percent' for the proportion described in the first sentence of clause (i).

''(II) HOLD HARMLESS FOR CERTAIN HOSPITALS.—If the application of subclause (I) would result in lower payments to a hospital than would otherwise be made, then this subparagraph shall be applied as if this clause had not been enacted.''.

(b) WAIVING BUDGET NEUTRALITY.—Section 1886(d)(3)(E) of the Social Security Act (42 U.S.C. 1395ww(d)(3)(E)), as amended by subsection (a), is amended by adding at the end of clause (i) the following new sentence: ''The Secretary shall apply the previous sentence for any period as if the amendments made by section 564(a) of the Jobs and Growth Tax Relief Reconciliation Act of 2003 had not been enacted.''.

SEC. 565. ONE-YEAR EXTENSION OF HOLD HARMLESS PROVISIONS FOR SMALL RURAL HOSPITALS AND TEMPORARY TREATMENT OF CERTAIN SOLE COMMUNITY HOSPITALS TO LIMIT DECLINE IN PAYMENT UNDER THE OPD PPS.

(a) HOLD HARMLESS PROVISIONS.—Section 1833(t)(7)(D)(i) of the Social Security Act (42 U.S.C. 1395l(t)(7)(D)(i)) is amended—

(1) in the heading, by striking ''SMALL'' and inserting ''CERTAIN'';

(2) by inserting ''or a sole community hospital (as defined in section 1886(d)(5)(D)(iii)) located in a rural area'' after ''100 beds''; and

(3) by striking ''2004'' and inserting ''2005''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a)(2) shall apply with respect to payment for OPD services furnished on and after January 1, 2004.

SEC. 566. CRITICAL ACCESS HOSPITAL (CAH) IMPROVEMENTS.

(a) PERMITTING HOSPITALS TO ALLOCATE SWING BEDS AND ACUTE CARE INPATIENT BEDS SUBJECT TO A TOTAL LIMIT OF 25 BEDS.—

(1) IN GENERAL.—Section 1820(c)(2)(B)(iii) of the Social Security Act (42 U.S.C. 1395i–4(c)(2)(B)(iii)) is amended to read as follows:

''(iii) provides not more than a total of 25 extended care service beds (pursuant to an agreement under subsection (f)) or acute care inpatient beds (meeting such standards as the Secretary may establish) for providing inpatient care for a period that does not exceed, as determined on an annual, average basis, 96 hours per patient;''.

(2) CONFORMING AMENDMENT.—Section 1820(f) of the Social Security Act (42 U.S.C. 1395i–4(f)) is amended by striking ''and the number of beds used at any time for acute care inpatient services does not exceed 15 beds''.

(b) ELIMINATION OF THE ISOLATION TEST FOR COST-BASED CAH AMBULANCE SERVICES.—

(1) IN GENERAL.—Section 1834(l)(8) of the Social Security Act (42 U.S.C. 1395m(l)(8)), as added by section 205(a) of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (114 Stat. 2763A–482), as enacted into law by section 1(a)(6) of Public Law 106–554 (114 Stat. 2763), is amended by striking the comma at the end of subparagraph (B) and all that follows and inserting a period.

(2) TECHNICAL CORRECTION.—Section 1834(l) of the Social Security Act (42 U.S.C. 1395m(l)) is amended by redesignating paragraph (8), as added by section 221(a) of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (114 Stat. 2763A–486), as enacted into law by section 1(a)(6) of Public Law 106–554 (114 Stat. 2763), as paragraph (9).

(c) COVERAGE OF COSTS FOR CERTAIN EMERGENCY ROOM ON-CALL PROVIDERS.—

(1) IN GENERAL.—Section 1834(g)(5) of the Social Security Act (42 U.S.C. 1395m(g)(5)) is amended—

(A) in the heading—

(i) by inserting ''CERTAIN'' before ''EMERGENCY''; and

(ii) by striking ''PHYSICIANS'' and inserting ''PROVIDERS'';

(B) by striking ''emergency room physicians who are on-call (as defined by the Secretary)'' and inserting ''physicians, physician assistants, nurse practitioners, and clinical nurse specialists who are on-call (as defined by the Secretary) to provide emergency services''; and

(C) by striking ''physicians' services'' and inserting ''services covered under this title''.

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply with respect to costs incurred for services provided on or after January 1, 2004.

(d) AUTHORIZATION OF PERIODIC INTERIM PAYMENT (PIP).—

(1) IN GENERAL.—Section 1815(e)(2) of the Social Security Act (42 U.S.C. 1395g(e)(2)) is amended—

(A) in subparagraph (C), by striking ''and'' after the semicolon at the end;

(B) in subparagraph (D), by adding ''and'' after the semicolon at the end; and

(C) by inserting after subparagraph (D) the following new subparagraph:

''(E) inpatient critical access hospital services,''.

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply with respect to payments for inpatient critical access hospital services furnished on or after January 1, 2004.

(e) EXCLUSION OF NEW CAHS FROM PPS HOSPITAL WAGE INDEX CALCULATION.—Section 1886(d)(3)(E)(i) of the Social Security Act (42 U.S.C. 1395ww(d)(3)(E)(i)), as amended by section 564, is amended by inserting after the first sentence the following new sentence: ''In calculating the hospital wage levels under the preceding sentence applicable with respect to cost reporting periods beginning on or after January 1, 2004, the Secretary shall exclude the wage levels of any hospital that became a critical access hospital prior to the cost reporting period for which such hospital wage levels are calculated.''.

SEC. 567. TEMPORARY INCREASE FOR HOME HEALTH SERVICES FURNISHED IN A RURAL AREA.

(a) IN GENERAL.—In the case of home health services furnished in a rural area (as defined in section 1886(d)(2)(D) of the Social Security Act (42 U.S.C. 1395ww(d)(2)(D))) on or after October 1, 2003, and before October 1, 2005, the Secretary of Health and Human Services shall increase the payment amount otherwise made under section 1895 of such Act (42 U.S.C. 1395fff) for such services by 10 percent.

(b) WAIVING BUDGET NEUTRALITY.—The Secretary of Health and Human Services shall not reduce the standard prospective payment amount (or amounts) under section 1895 of the Social Security Act (42 U.S.C. 1395fff) applicable to home health services furnished during a period to offset the increase in payments resulting from the application of subsection (a).

(c) NO EFFECT ON SUBSEQUENT PERIODS.—The payment increase provided under subsection (a) for a period under such subsection, shall not apply to episodes and visits ending after such period, and shall not be taken into account in calculating the payment amounts applicable for episodes and visits occurring after such period.

SEC. 568. TEMPORARY INCREASE IN PAYMENTS FOR CERTAIN SERVICES FURNISHED BY SMALL RURAL HOSPITALS UNDER MEDICARE PROSPECTIVE PAYMENT SYSTEM FOR HOSPITAL OUTPATIENT DEPARTMENT SERVICES.

(a) INCREASE.—

(1) IN GENERAL.—In the case of an applicable covered OPD service (as defined in paragraph (2)) that is furnished by a hospital described in paragraph (7)(D)(i) of section 1833(t) of the Social Security Act (42 U.S.C. 1395l(t)) on or after January 1, 2004, and before January 1, 2007, the Secretary of Health and Human Services (in this section referred to as the ''Secretary'') shall increase the medicare OPD fee schedule amount (as determined under paragraph (4)(A) of such section) that is applicable for such service in that year (determined without regard to any increase under this section in a previous year) by 5 percent.

(2) APPLICABLE COVERED OPD SERVICES DEFINED.—For purposes of this section, the term ''applicable covered OPD service'' means a covered clinic or emergency room visit that is classified within the groups of covered OPD services (as defined in paragraph (1)(B) of section 1833(t) of the Social Security Act (42 U.S.C. 1395l(t))) established under paragraph (2)(B) of such section.

(b) NO EFFECT ON COPAYMENT AMOUNT.—The Secretary shall compute the copayment amount for applicable covered OPD services under section 1833(t)(8)(A) of the Social Security Act (42 U.S.C. 1395l(t)(8)(A)) as if this section had not been enacted.

(c) NO EFFECT ON INCREASE UNDER HOLD HARMLESS OR OUTLIER PROVISIONS.—The Secretary shall apply the temporary hold harmless provision under paragraph (7)(D)(i) of section 1833(t) of the Social Security Act (42 U.S.C. 1395l(t)) and the outlier provision under paragraph (5) of such section as if this section had not been enacted.

(d) WAIVING BUDGET NEUTRALITY AND NO REVISION OR ADJUSTMENTS.—The Secretary shall not make any revision or adjustment under subparagraph (A), (B), or (C) of section 1833(t)(9) of the Social Security Act (42 U.S.C. 1395l(t)(9)) because of the application of subsection (a)(1).

(e) NO EFFECT ON PAYMENTS AFTER INCREASE PERIOD ENDS.—The Secretary shall not take into account any payment increase provided under subsection (a)(1) in determining payments for covered OPD services (as defined in paragraph (1)(B) of section 1833(t) of the Social Security Act (42 U.S.C. 1395l(t))) under such section that are furnished after January 1, 2007.

(f) FINDINGS.—The Senate finds the following:

(1) The medicare program has a responsibility to pay enough for beneficial new technologies in order to ensure that medicare beneficiaries have access to care; however, such program must also be a prudent purchaser of health care items and services.

(2) The 2003 Medicare Hospital Outpatient Prospective Payment System Regulation may have resulted in limiting beneficiary access to care.

(3) A methodology should be developed under the medicare outpatient prospective payment system under section 1833(t) of the Social Security Act (42 U.S.C. 1395l(t)) with appropriate resources and such methodology should be implemented January 1, 2004. This will ensure that all hospitals are appropriately reimbursed for the drugs and biologics that are used in the outpatient setting which in turn will ensure patient access to new technologies.

(g) TECHNICAL AMENDMENT.—Section 1833(t)(2)(B) (42 U.S.C. 1395l(t)(2)(B)) is amended by inserting ''(and periodically revise such groups pursuant to paragraph (9)(A))'' after ''establish groups''.

SEC. 569 TEMPORARY INCREASE FOR GROUND AMBULANCE SERVICES FURNISHED IN A RURAL AREA.

Section 1834(l) of the Social Security Act (42 U.S.C. 1395m(l)), as amended by section 566(b)(2), is amended by adding at the end the following new paragraph:

''(10) TEMPORARY INCREASE FOR GROUND AMBULANCE SERVICES FURNISHED IN A RURAL AREA.—

''(A) IN GENERAL.—Notwithstanding any other provision of this subsection, in the case of ground ambulance services furnished on or after January 1, 2004, and before January 1, 2007, for which the transportation originates in a rural area described in paragraph (9) or in a rural census tract described in such paragraph, the fee schedule established under this section shall provide that the rate for the service otherwise established, after application of any increase under such paragraph, shall be increased by 5 percent.

''(B) APPLICATION OF INCREASED PAYMENTS AFTER 2006.—The increased payments under subparagraph (A) shall not be taken into account in calculating payments for services furnished on or after the period specified in such subparagraph.''.

SEC. 570. EXCLUSION OF CERTAIN RURAL HEALTH CLINIC AND FEDERALLY QUALIFIED HEALTH CENTER SERVICES FROM THE MEDICARE PPS FOR SKILLED NURSING FACILITIES.

(a) IN GENERAL.—Section 1888(e) of the Social Security Act (42 U.S.C. 1395yy(e)) is amended—

(1) in paragraph (2)(A)(i)(II), by striking ''clauses (ii) and (iii)'' and inserting ''clauses (ii), (iii), and (iv)''; and

(2) by adding at the end of paragraph (2)(A) the following new clause:

''(iv) EXCLUSION OF CERTAIN RURAL HEALTH CLINIC AND FEDERALLY QUALIFIED HEALTH CENTER SERVICES.—Services described in this clause are—

''(I) rural health clinic services (as defined in paragraph (1) of section 1861(aa)); and

''(II) Federally qualified health center services (as defined in paragraph (3) of such section);

that would be described in clause (ii) if such services were furnished by a physician or practitioner not affiliated with a rural health clinic or a Federally qualified health center.''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to services furnished on or after January 1, 2004.

SEC. 571. MEDICARE INCENTIVE PAYMENT PROGRAM IMPROVEMENTS.

(a) PROCEDURES FOR SECRETARY, AND NOT PHYSICIANS, TO DETERMINE WHEN BONUS PAYMENTS UNDER MEDICARE INCENTIVE PAYMENT PROGRAM SHOULD BE MADE.—Section 1833(m) of the Social Security Act (42 U.S.C. 1395l(m)) is amended—

(1) by inserting ''(1)'' after ''(m)''; and

(2) by adding at the end the following new paragraph:

''(2) The Secretary shall establish procedures under which the Secretary, and not the physician furnishing the service, is responsible for determining when a payment is required to be made under paragraph (1).''.

(b) EDUCATIONAL PROGRAM REGARDING THE MEDICARE INCENTIVE PAYMENT PROGRAM.—The Secretary shall establish and implement an ongoing educational program to provide education to physicians under the medicare program on the medicare incentive payment program under section 1833(m) of the Social Security Act (42 U.S.C. 1395l(m)).

(c) ONGOING STUDY AND ANNUAL REPORT ON THE MEDICARE INCENTIVE PAYMENT PROGRAM.—

(1) ONGOING STUDY.—The Secretary shall conduct an ongoing study on the medicare incentive payment program under section 1833(m) of the Social Security Act (42 U.S.C. 1395l(m)). Such study shall focus on whether such program increases the access of medicare beneficiaries who reside in an area that is designated (under section 332(a)(1)(A) of the Public Health Service Act (42 U.S.C. 254e(a)(1)(A))) as a health professional shortage area to physicians' services under the medicare program.

(2) ANNUAL REPORTS.—Not later than 1 year after the date of enactment of this Act, and annually thereafter, the Secretary shall submit to Congress a report on the study conducted under paragraph (1), together with recommendations for such legislation and administrative action as the Secretary considers appropriate.

SEC. 572. TWO-YEAR TREATMENT OF CERTAIN CLINICAL DIAGNOSTIC LABORATORY TESTS FURNISHED BY A SOLE COMMUNITY HOSPITAL.

Notwithstanding subsections (a)(1)(D) and (h) of section 1833 of the Social Security Act (42 U.S.C. 1395l) and section 1834(d)(1) of such Act (42 U.S.C. 1395m(d)(1)), in the case of a clinical diagnostic laboratory test covered under part B of title XVIII of such Act that is furnished in 2004 or 2005 by a sole community hospital (as defined in section 1886(d)(5)(D)(iii) of such Act (42 U.S.C. 1395ww(d)(5)(D)(iii))) as part of services provided to patients of the hospital, the following rules shall apply:

(1) PAYMENT BASED ON REASONABLE COSTS.—The amount of payment for such test shall be 100 percent of the reasonable costs of the hospital in furnishing such test.

(2) NO BENEFICIARY COST-SHARING.—No coinsurance, deductible, copayment, or other cost-sharing otherwise applicable under such part B shall apply with respect to such test.

SEC. 573. ESTABLISHMENT OF FLOOR ON GEOGRAPHIC ADJUSTMENTS OF PAYMENTS FOR PHYSICIANS' SERVICES.

Section 1848(e)(1) of the Social Security Act (42 U.S.C. 1395w–4(e)(1)) is amended—

(1) in subparagraph (A), by striking ''subparagraphs (B) and (C)'' and inserting ''subparagraphs (B), (C), and (E)''; and

(2) by adding at the end the following new subparagraph:

''(E) FLOOR FOR PRACTICE EXPENSE, MALPRACTICE, AND WORK GEOGRAPHIC INDICES.—For purposes of payment for services furnished on or after January 1, 2004, after calculating the practice expense, malpractice, and work geographic indices in clauses (i), (ii), and (iii) of subparagraph (A) and in subparagraph (B), the Secretary shall increase any such index to 1.00 for any locality for which such index is less than 1.00.''.

SEC. 574. FREEZE IN PAYMENTS FOR ITEMS OF DURABLE MEDICAL EQUIPMENT AND ORTHOTICS AND PROSTHETICS.

(a) DME.—Section 1834(a)(14) of the Social Security Act (42 U.S.C. 1395m(a)(14)) is amended—

(1) in subparagraph (E), by striking ''and'' at the end;

(2) in subparagraph (F)—

(A) by striking ''a subsequent year'' and inserting ''2003''; and

(B) by striking ''the previous year.'' and inserting ''2002;''; and

(3) by adding at the end the following new subparagraphs:

''(G) for each of the years 2004 through 2013, 0 percentage points; and

''(H) for a subsequent year, the percentage increase in the consumer price index for all urban consumers (U.S. urban average) for the 12-month period ending with June of the previous year.''.

(b) ORTHOTICS AND PROSTHETICS.—Section 1834(h)(4)(A) of the Social Security Act (42 U.S.C. 1395m(h)(4)(A)) is amended—

(1) in clause (vii), by striking ''and'' at the end;

(2) in clause (viii)—

(A) by striking ''a subsequent year'' and inserting ''2003''; and

(B) by striking ''the previous year'' and inserting ''2002''; and

(3) by adding at the end the following new clauses:

''(ix) for each of the years 2004 through 2013, 0 percent; and

''(x) for a subsequent year, the percentage increase in the consumer price index for all urban consumers (U.S. urban average) for the 12-month period ending with June of the previous year;''.

SEC. 575. APPLICATION OF COINSURANCE AND DEDUCTIBLE FOR CLINICAL DIAGNOSTIC LABORATORY TESTS.

(a) COINSURANCE.—

(1) IN GENERAL.—Section 1833(a) of the Social Security Act (42 U.S.C. 1395l(a)) is amended—

(A) in paragraph (1)(D)—

(i) in clause (i), by striking ''(or 100 percent, in the case of such tests for which payment is made on an assignment-related basis)''; and

(ii) in clause (ii), by striking ''100 percent'' and inserting ''80 percent''; and

(B) in paragraph (2)(D)—

(i) in clause (i), by striking ''(or 100 percent, in the case of such tests for which payment is made on an assignment-related basis or to a provider having an agreement under section 1866)''; and

(ii) in clause (ii), by striking ''100 percent'' and inserting ''80 percent''.

(2) CONFORMING AMENDMENT.—The third sentence of section 1866(a)(2)(A) of the Social Security Act (42 U.S.C. 1395cc(a)(2)(A) is amended by striking ''and with respect to clinical diagnostic laboratory tests for which payment is made under part B''.

(b) DEDUCTIBLE.—Section 1833(b) of the Social Security Act (42 U.S.C. 1395l(b)) is amended—

(1) by striking paragraph (3); and

(2) by redesignating paragraphs (4), (5), and (6) as paragraphs (3), (4), and (5), respectively.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to tests furnished on or after January 1, 2004.

SEC. 576. REVISION IN PAYMENTS FOR COVERED OUTPATIENT DRUGS.

Section 1842(o)(1) of the Social Security Act (42 U.S.C. 1395u(o)(1)) is amended by striking ''equal to 95 percent of the average wholesale price.'' and inserting ''equal to—

''(A) in the case of drugs furnished prior to January 1, 2004, 95 percent of the average wholesale price; and

''(B) in the case of drugs furnished on or after January 1, 2004, the lesser of—

''(i) 85 percent of the average wholesale price; or

''(ii) the amount payable for the drug or biological during the last quarter of the previous year (as determined under this subparagraph, or, in the case of 2004, under subparagraph (A) using the second quarter of 2003) increased by the percentage increase in the consumer price index for all urban consumers (U.S. urban average) for the 12-month period ending with June of the previous year.''.

SEC. 577. INAPPLICABILITY OF SUNSET.

The provisions of section 1001(a) of this Act shall not apply to the provisions of, and amendments made by, this subtitle.

Subtitle E—Provisions Relating To S Corporation Reform and Simplification

PART I—MAXIMUM NUMBER OF SHAREHOLDERS OF AN S CORPORATION

SEC. 581. MEMBERS OF FAMILY TREATED AS 1 SHAREHOLDER.

(a) IN GENERAL.—Paragraph (1) of section 1361(c) (relating to special rules for applying subsection (b)) is amended to read as follows:

''(1) MEMBERS OF FAMILY TREATED AS 1 SHAREHOLDER.—

''(A) IN GENERAL.—For purpose of subsection (b)(1)(A)—

''(i) except as provided in clause (ii), a husband and wife (and their estates) shall be treated as 1 shareholder, and

''(ii) in the case of a family with respect to which an election is in effect under subparagraph (E), all members of the family shall be treated as 1 shareholder.

''(B) MEMBERS OF THE FAMILY.—For purpose of subparagraph (A)(ii), the term 'members of the family' means the common ancestor, lineal descendants of the common ancestor and the spouses of such lineal descendants or common ancestor.

''(C) COMMON ANCESTOR.—For purposes of this paragraph, an individual shall not be considered a common ancestor if, as of the later of the effective date of this paragraph or the time the election under section 1362(a) is made, the individual is more than 6 generations removed from the youngest generation of shareholders.

''(D) EFFECT OF ADOPTION, ETC.—In determining whether any relationship specified in subparagraph (B) or (C) exists, the rules of section 152(b)(2) shall apply.

''(E) ELECTION.—An election under subparagraph (A)(ii)—

''(i) must be made with the consent of all persons who are shareholders (including those that are family members) in the corporation on the day the election is made,

''(ii) in the case of—

''(I) an electing small business trust, shall be made by the trustee of the trust, and

''(II) a qualified subchapter S trust, shall be made by the beneficiary of the trust,

''(iii) under regulations, shall remain in effect until terminated, and

''(iv) shall apply only with respect to 1 family in any corporation.''.

(b) RELIEF FROM INADVERTENT INVALID ELECTION OR TERMINATION.—Section 1362(f) (relating to inadvertent invalid elections or terminations), as amended by this Act, is amended—

(1) by inserting ''or under section 1361(c)(1)(A)(ii)'' after ''section 1361(b)(3)(B)(ii)'' in paragraph (1), and

(2) by inserting ''or under section 1361(c)(1)(E)(iii)'' after ''section 1361(b)(3)(C)'' in paragraph (1)(B).

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2003.

SEC. 582. INCREASE IN NUMBER OF ELIGIBLE SHAREHOLDERS TO 100.

(a) IN GENERAL.—Section 1361(b)(1)(A) (defining small business corporation) is amended by striking ''75'' and inserting ''100''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2003.

SEC. 583. NONRESIDENT ALIENS ALLOWED AS BENEFICIARIES OF AN ELECTING SMALL BUSINESS TRUST.

(a) IN GENERAL.—Section 1361(e)(1)(A)(i)(I) is amended by inserting ''(including a nonresident alien individual)'' after ''individual''.

(b) CONFORMING AMENDMENT.—Clause (v) of section 1361(c)(2)(B) is amended by adding at the end the following new sentence: ''This clause shall not apply for purposes of subsection (b)(1)(C).''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

PART II—TERMINATION OF ELECTION AND ADDITIONS TO TAX DUE TO PASSIVE INVESTMENT INCOME

SEC. 584. MODIFICATIONS TO PASSIVE INCOME RULES.

(a) INCREASED PERCENTAGE LIMIT.—

(1) IN GENERAL.—Subsection (a)(2) of section 1375 (relating to tax imposed when passive investment income of corporation having accumulated earnings and profits exceeds 25 percent of gross receipts) is amended by striking ''25 percent'' and inserting ''60 percent''.

(2) CONFORMING AMENDMENTS.—

(A) Section 26(b)(2)(J) is amended by striking ''25 percent'' and inserting ''60 percent''.

(B) Section 1362(d)(3)(A)(i)(II) is amended by striking ''25 percent'' and inserting ''60 percent''.

(C) The heading for paragraph (3) of section 1362(d) is amended by striking ''25 PERCENT'' and inserting ''60 PERCENT''.

(D) Section 1375(b)(1)(A)(i) is amended by striking ''25 percent'' and inserting ''60 percent''.

(E) The heading for section 1375 is amended by striking ''25 percent'' and inserting ''60 percent''.

(F) The table of sections for part III of subchapter S of chapter 1 is amended by striking ''25 percent'' in the item relating to section 1375 and inserting ''60 percent''.

(b) CAPITAL GAIN NOT TREATED AS PASSIVE INVESTMENT INCOME.—Section 1362(d)(3) is amended—

(1) by striking ''annuities,'' and all that follows in subparagraph (C)(i) and inserting ''and annuities.'', and

(2) by striking subparagraphs (C)(iv) and (D) and by redesignating subparagraph (E) as subparagraph (D).

(c) CONFORMING AMENDMENTS.—Section 1375(d) is amended by striking ''subchapter C'' both places it appears and inserting ''accumulated''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2003.

PART III—TREATMENT OF S CORPORATION SHAREHOLDERS

SEC. 585. TRANSFER OF SUSPENDED LOSSES INCIDENT TO DIVORCE.

(a) IN GENERAL.—Section 1366(d) (relating to special rules for losses and deductions) is amended by adding at the end the following new paragraph:

''(4) TRANSFER OF SUSPENDED LOSSES AND DEDUCTIONS WHEN STOCK IS TRANSFERRED INCIDENT TO DIVORCE.—For purposes of paragraph (2), the transfer of any shareholder's stock in an S corporation incident to a decree of divorce shall include any loss or deduction described in such paragraph attributable to such stock.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to transfers in taxable years beginning after December 31, 2003.

SEC. 586. USE OF PASSIVE ACTIVITY LOSS AND AT-RISK AMOUNTS BY QUALIFIED SUBCHAPTER S TRUST INCOME BENEFICIARIES.

(a) IN GENERAL.—Section 1361(d)(1) (relating to special rule for qualified subchapter S trust) is amended—

(1) by striking ''and'' at the end of subparagraph (A),

(2) by striking the period at the end of subparagraph (B) and inserting '', and'', and

(3) by adding at the end the following new subparagraph:

''(C) for purposes of applying sections 465 and 469(g) to the beneficiary of the trust, the disposition of the S corporation stock by the trust shall be treated as a disposition by such beneficiary.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to transfers in taxable years beginning after December 31, 2003.

SEC. 587. DISREGARD OF UNEXERCISED POWERS OF APPOINTMENT IN DETERMINING POTENTIAL CURRENT BENEFICIARIES OF ESBT.

(a) IN GENERAL.—Section 1361(e)(2) (defining potential current beneficiary) is amended by inserting ''(determined without regard to any unexercised (in whole or in part) power of appointment during such period)'' after ''of the trust'' in the first sentence.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2003.

SEC. 588. CLARIFICATION OF ELECTING SMALL BUSINESS TRUST DISTRIBUTION RULES.

(a) IN GENERAL.—Section 641(c)(1) (relating to special rules for taxation of electing small business trusts) is amended—

(1) by striking ''and'' at the end of subparagraph (A),

(2) by redesignating subparagraph (B) as subparagraph (C), and

(3) by inserting after subparagraph (A) the following new subparagraph:

''(B) any distribution attributable to the portion treated as a separate trust shall be treated separately from any distribution attributable to the portion not so treated, and''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2003.

PART IV—PROVISIONS RELATING TO BANKS

SEC. 589. SALE OF STOCK IN IRA RELATING TO S CORPORATION ELECTION EXEMPT FROM PROHIBITED TRANSACTION RULES.

(a) IN GENERAL.—Section 4975(d) (relating to exemptions) is amended by striking ''or'' at the end of paragraph (14), by striking the period at the end of paragraph (15) and inserting ''; or'', and by adding at the end the following new paragraph:

''(16) a sale of stock held by a trust which constitutes an individual retirement account under section 408(a) to the individual for whose benefit such account is established if such sale is pursuant to an election under section 1362(a).''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to sales of stock held by individual retirement accounts on the date of the enactment of this Act.

SEC. 590. EXCLUSION OF INVESTMENT SECURITIES INCOME FROM PASSIVE INCOME TEST FOR BANK S CORPORATIONS.

(a) IN GENERAL.—Section 1362(d)(3) (relating to where passive investment income exceeds certain percentage of gross receipts for 3 consecutive taxable years and corporation has accumulated earnings and profits), as amended by this Act, is amended by adding at the end the following new subparagraph:

''(E) EXCEPTION FOR BANKS; ETC.—In the case of a bank (as defined in section 581), a bank holding company (as defined in section 246A(c)(3)(B)(ii)), or a qualified subchapter S subsidiary which is a bank, the term 'passive investment income' shall not include—

''(i) interest income earned by such bank, bank holding company, or qualified subchapter S subsidiary, or

''(ii) dividends on assets required to be held by such bank, bank holding company, or qualified subchapter S subsidiary to conduct a banking business, including stock in the Federal Reserve Bank, the Federal Home Loan Bank, or the Federal Agricultural Mortgage Bank or participation certificates issued by a Federal Intermediate Credit Bank.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2003.

SEC. 591. TREATMENT OF QUALIFYING DIRECTOR SHARES.

(a) IN GENERAL.—Section 1361 (defining S corporation) is amended by adding at the end the following new subsection:

''(f) TREATMENT OF QUALIFYING DIRECTOR SHARES.—

''(1) IN GENERAL.—For purposes of this subchapter—

''(A) qualifying director shares shall not be treated as a second class of stock, and

''(B) no person shall be treated as a shareholder of the corporation by reason of holding qualifying director shares.

''(2) QUALIFYING DIRECTOR SHARES DEFINED.—For purposes of this subsection, the term 'qualifying director shares' means any shares of stock in a bank (as defined in section 581) or in a bank holding company registered as such with the Federal Reserve System—

''(i) which are held by an individual solely by reason of status as a director of such bank or company or its controlled subsidiary; and

''(ii) which are subject to an agreement pursuant to which the holder is required to dispose of the shares of stock upon termination of the holder's status as a director at the same price as the individual acquired such shares of stock.

''(3) DISTRIBUTIONS.—A distribution (not in part or full payment in exchange for stock) made by the corporation with respect to qualifying director shares shall be includible as ordinary income of the holder and deductible to the corporation as an expense in computing taxable income under section 1363(b) in the year such distribution is received.''.

(b) CONFORMING AMENDMENT.—Section 1366(a) is amended by adding at the end the following new paragraph:

''(3) ALLOCATION WITH RESPECT TO QUALIFYING DIRECTOR SHARES.—The holders of qualifying director shares (as defined in section 1361(f)) shall not, with respect to such shares of stock, be allocated any of the items described in paragraph (1).''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2003.

PART V—QUALIFIED SUBCHAPTER S SUBSIDIARIES

SEC. 592. RELIEF FROM INADVERTENTLY INVALID QUALIFIED SUBCHAPTER S SUBSIDIARY ELECTIONS AND TERMINATIONS.

(a) IN GENERAL.—Section 1362(f) (relating to inadvertent invalid elections or terminations) is amended—

(1) by inserting ''or under section 1361(b)(3)(B)(ii)'' after ''subsection (a)''in paragraph (1),

(2) by inserting ''or under section 1361(b)(3)(C)'' after ''subsection (d)'' in paragraph (1)(B),

(3) by inserting ''or a qualified subchapter S subsidiary, as the case may be'' after ''small business corporation'' in paragraph (3)(A),

(4) by inserting ''or a qualified subchapter S subsidiary, as the case may be'' after ''S corporation'' in paragraph (4), and

(5) by inserting ''or a qualified subchapter S subsidiary, as the case may be'' after ''S corporation'' in the matter following paragraph (4).

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2003.

SEC. 593. INFORMATION RETURNS FOR QUALIFIED SUBCHAPTER S SUBSIDIARIES.

(a) IN GENERAL.—Section 1361(b)(3)(A) (relating to treatment of certain wholly owned subsidiaries) is amended by inserting ''and in the case of information returns required under part III of subchapter A of chapter 61'' after ''Secretary''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2003.

PART VI—ADDITIONAL PROVISIONS

SEC. 594. ELIMINATION OF ALL EARNINGS AND PROFITS ATTRIBUTABLE TO PRE-1983 YEARS.

(a) IN GENERAL.—Subsection (a) of section 1311 of the Small Business Job Protection Act of 1996 is amended to read as follows:

''(a) IN GENERAL.—If a corporation was an electing small business corporation under subchapter S of chapter 1 of the Internal Revenue Code of 1986 for any taxable year beginning before January 1, 1983, the amount of such corporation's accumulated earnings and profits (as of the beginning of the first taxable year beginning after December 31, 2003) shall be reduced by an amount equal to the portion (if any) of such accumulated earnings and profits which were accumulated in any taxable year beginning before January 1, 1983, for which such corporation was an electing small business corporation under such subchapter S.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2003.

TITLE VI—BLUE RIBBON COMMISSION ON COMPREHENSIVE TAX REFORM

SEC. 601. SHORT TITLE.

This Act may be cited as the ''Fundamental Tax Reform Commission Act of 2003''.

SEC. 602. ESTABLISHMENT OF COMMISSION.

(a) ESTABLISHMENT.—There is established the ''Blue Ribbon Commission on Comprehensive Tax Reform'' (in this Act referred to as the ''Commission'').

(b) MEMBERSHIP.—

(1) COMPOSITION.—The Commission shall be composed of 12 members of whom—

(A) 1 shall be the Chairman of the Board of Governors of the Federal Reserve System;

(B) 2 shall be appointed by the majority leader of the Senate;

(C) 2 shall be appointed by the minority leader of the Senate;

(D) 2 shall be appointed by the Speaker of the House of Representatives;

(E) 2 shall be appointed by the minority leader of the House of Representatives; and

(F) 3 shall be appointed by the President, of which no more than 2 shall be of the same party as the President.

(2) FEDERAL EMPLOYEES.—The members of the Commission may be employees or former employees of the Federal Government.

(3) DATE.—The appointments of the members of the Commission shall be made not later than July 30, 2003.

(c) PERIOD OF APPOINTMENT; VACANCIES.—Members shall be appointed for the life of the Commission. Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner as the original appointment.

(d) 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.

(e) MEETINGS.—The Commission shall meet at the call of the Chairman.

(f) QUORUM.—A majority of the members of the Commission shall constitute a quorum, but a lesser number of members may hold hearings.

(g) CHAIRMAN AND VICE CHAIRMAN.—The President shall select a Chairman and Vice Chairman from among its members.

SEC. 603. DUTIES OF THE COMMISSION.

(a) STUDY.—The Commission shall conduct a thorough study of all matters relating to a comprehensive reform of the Federal tax system, including the reform of the Internal Revenue Code of 1986 and the implementation (if appropriate) of other types of tax systems.

(b) RECOMMENDATIONS.—The Commission shall develop recommendations on how to comprehensively reform the Federal tax system in a manner that generates appropriate revenue for the Federal Government.

(c) REPORT.—Not later than 18 months after the date on which all initial members of the commission have been appointed pursuant to section 602(b), the Commission shall submit a report to the President and Congress which shall contain a detailed statement of the findings and conclusions of the Commission, together with its recommendations for such legislation and administrative actions as it considers appropriate.

SEC. 604. POWERS OF THE COMMISSION.

(a) HEARINGS.—The Commission may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers advisable to carry out this Act.

(b) INFORMATION FROM FEDERAL AGENCIES.—The Commission may secure directly from any Federal department or agency such information as the Commission considers necessary to carry out this Act. Upon request of the Chairman of the Commission, the head of such department or agency shall furnish such information to the Commission.

(c) POSTAL SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(d) GIFTS.—The Commission may accept, use, and dispose of gifts or donations of services or property.

SEC. 605. COMMISSION PERSONNEL MATTERS.

(a) COMPENSATION OF MEMBERS.—Each member of the Commission who is not an officer or employee of the Federal Government shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which such member is engaged in the performance of the duties of the Commission. All members of the Commission who are officers or employees of the United States shall serve without compensation in addition to that received for their services as officers or employees of the United States.

(b) TRAVEL EXPENSES.—The members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

(c) STAFF.—

(1) IN GENERAL.—The 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. 606. TERMINATION OF THE COMMISSION.

The Commission shall terminate 90 days after the date on which the Commission submits its report under section 603.

SEC. 607. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to the Commission to carry out this Act.

TITLE VII—REAL ESTATE INVESTMENT TRUSTS

Subtitle A—REIT Corrections

SEC. 701. REVISIONS TO REIT ASSET TEST.

(a) EXPANSION OF STRAIGHT DEBT SAFE HARBOR.—Section 856 (defining real estate investment trust) is amended—

(1) in subsection (c) by striking paragraph (7), and

(2) by adding at the end the following new subsection:

''(m) SAFE HARBOR IN APPLYING SUBSECTION (c)(4).—

''(1) IN GENERAL.—In applying subclause (III) of subsection (c)(4)(B)(iii), except as otherwise determined by the Secretary in regulations, the following shall not be considered securities held by the trust:

''(A) Straight debt securities of an issuer which meet the requirements of paragraph (2).

''(B) Any loan to an individual or an estate.

''(C) Any section 467 rental agreement (as defined in section 467(d)), other than with a person described in subsection (d)(2)(B).

''(D) Any obligation to pay rents from real property (as defined in subsection (d)(1)).

''(E) Any security issued by a State or any political subdivision thereof, the District of Columbia, a foreign government or any political subdivision thereof, or the Commonwealth of Puerto Rico, but only if the determination of any payment received or accrued under such security does not depend in whole or in part on the profits of any entity not described in this subparagraph or payments on any obligation issued by such an entity.

''(F) Any security issued by a real estate investment trust.

''(G) Any other arrangement as determined by the Secretary.

''(2) SPECIAL RULES RELATING TO STRAIGHT DEBT SECURITIES.—

''(A) IN GENERAL.—For purposes of paragraph (1)(A), securities meet the requirements of this paragraph if such securities are straight debt, as

defined in section 1361(c)(5) (without regard to subparagraph (B)(iii) thereof).

''(B) SPECIAL RULES RELATING TO CERTAIN CONTINGENCIES.—For purposes of subparagraph (A), any interest or principal shall not be treated as failing to satisfy section 1361(c)(5)(B)(i) solely by reason of the fact that the time of payment of such interest or principal is subject to a contingency, but only if—

''(i) any such contingency does not have the effect of changing the effective yield to maturity, as determined under section 1272, other than a change in the annual yield to maturity which either—

''(I) does not exceed the greater of ¼ of 1 percent or 5 percent of the annual yield to maturity, or

''(II) results solely from a default or the exercise of a prepayment right by the issuer of the debt, or

''(ii) neither the aggregate issue price nor the aggregate face amount of the issuer's debt instruments held by the trust,

exceeds $1,000,000 and not more than 12 months of unaccrued interest can be required to be prepaid thereunder.

''(C) SPECIAL RULES RELATING TO CORPORATE OR PARTNERSHIP ISSUERS.—In the case of an issuer which is a corporation or a partnership, securities that otherwise would be described in paragraph (1)(A) shall be considered not to be so described if the trust holding such securities and any of its controlled taxable REIT subsidiaries (as defined in subsection (d)(8)(A)(iv)) hold any securities of the issuer which—

''(i) are not described in paragraph (1) (prior to the application of paragraph (1)(C)), and

''(ii) have an aggregate value greater than 1 percent of the issuer's outstanding securities.

''(3) LOOK-THROUGH RULE FOR PARTNERSHIP SECURITIES.—

''(A) IN GENERAL.—For purposes of applying subclause (III) of subsection (c)(4)(B)(iii)—

''(i) a trust's interest as a partner in a partnership (as defined in section 7701(a)(2)) shall not be considered a security, and

''(ii) the trust shall be deemed to own its proportionate share of each of the assets of the partnership.

''(B) DETERMINATION OF TRUST'S INTEREST IN PARTNERSHIP ASSETS.—For purposes of subparagraph (A), with respect to any taxable year beginning after the date of the enactment of this subparagraph—

''(i) the trust's interest in the partnership assets shall be the trust's proportionate interest in any securities issued by the partnership (determined without regard to subparagraph (A)(i) and paragraph (4), but not including securities described in paragraph (1)), and

''(ii) the value of any debt instrument shall be the adjusted issue price thereof, as defined in section 1272(a)(4).

''(4) CERTAIN PARTNERSHIP DEBT INSTRUMENTS NOT TREATED AS A SECURITY.—For purposes of applying subclause (III) of subsection (c)(4)(B)(iii)—

''(A) any debt instrument issued by a partnership and not described in paragraph (1) shall not be considered a security to the extent of the trust's interest as a partner in the partnership, and

''(B) any debt instrument issued by a partnership and not described in paragraph (1) shall not be considered a security if at least 75 percent of the partnership's gross income (excluding gross income from prohibited transactions) is derived from sources referred to in subsection (c)(3).

''(5) SECRETARIAL GUIDANCE.—The Secretary is authorized to provide guidance (including through the issuance of a written determination, as defined in section 6110(b)) that an arrangement shall not be considered a security held by the trust for purposes of applying subclause (III) of subsection (c)(4)(B)(iii) notwithstanding that such arrangement otherwise could be considered a security under subparagraph (F) of subsection (c)(5).''.

SEC. 702. CLARIFICATION OF APPLICATION OF LIMITED RENTAL EXCEPTION.

Subparagraph (A) of section 856(d)(8) (relating to special rules for taxable REIT subsidiaries) is amended to read as follows:

''(A) LIMITED RENTAL EXCEPTION.—

''(i) IN GENERAL.—The requirements of this subparagraph are met with respect to any property if at least 90 percent of the leased space of the property is rented to persons other than taxable REIT subsidiaries of such trust and other than persons described in paragraph (2)(B).

''(ii) RENTS MUST BE SUBSTANTIALLY COMPARABLE.—Clause (i) shall apply only to the extent that the amounts paid to the trust as rents from real property (as defined in paragraph (1) without regard to paragraph (2)(B)) from such property are substantially comparable to such rents paid by the other tenants of the trust's property for comparable space.

''(iii) TIMES FOR TESTING RENT COMPARABILITY.—The substantial comparability requirement of clause (ii) shall be treated as met with respect to a lease to a taxable REIT subsidiary of the trust if such requirement is met under the terms of the lease—

''(I) at the time such lease is entered into,

''(II) at the time of each extension of the lease, including a failure to exercise a right to terminate, and

''(III) at the time of any modification of the lease between the trust and the taxable REIT subsidiary if the rent under such lease is effectively increased pursuant to such modification. With respect to subclause (III), if the taxable REIT subsidiary of the trust is a controlled taxable REIT subsidiary of the trust, the term 'rents from real property' shall not in any event include rent under such lease to the extent of the increase in such rent on account of such modification.

''(iv) CONTROLLED TAXABLE REIT SUBSIDIARY.—For purposes of clause (iii), the term 'controlled taxable REIT subsidiary' means, with respect to any real estate investment trust, any taxable REIT subsidiary of such trust if such trust owns directly or indirectly—

''(I) stock possessing more than 50 percent of the total voting power of the outstanding stock of such subsidiary, or

''(II) stock having a value of more than 50 percent of the total value of the outstanding stock of such subsidiary.

''(v) CONTINUING QUALIFICATION BASED ON THIRD PARTY ACTIONS.—If the requirements of clause (i) are met at a time referred to in clause (iii), such requirements shall continue to be treated as met so long as there is no increase in the space leased to any taxable REIT subsidiary of such trust or to any person described in paragraph (2)(B).

''(vi) CORRECTION PERIOD.—If there is an increase referred to in clause (v) during any calendar quarter with respect to any property, the requirements of clause (iii) shall be treated as met during the quarter and the succeeding quarter if such requirements are met at the close of such succeeding quarter.''.

SEC. 703. DELETION OF CUSTOMARY SERVICES EXCEPTION.

Subparagraph (B) of section 857(b)(7) (relating to redetermined rents) is amended by striking clause (ii) and by redesignating clauses (iii), (iv), (v), (vi), and (vii) as clauses (ii), (iii), (iv), (v), and (vi), respectively.

SEC. 704. CONFORMITY WITH GENERAL HEDGING DEFINITION.

(a) DEFINITION.—Subparagraph (G) of section 856(c)(5) (relating to treatment of certain hedging instruments) is amended to read as follows:

''(G) TREATMENT OF CERTAIN HEDGING INSTRUMENTS.—Except to the extent provided by regulations, any income of a real estate investment trust from a hedging transaction (as defined in clause (ii) or (iii) of section 1221(b)(2)(A)) which is clearly identified pursuant to section 1221(a)(7), including gain from the sale or disposition of such a transaction, shall not constitute gross income under paragraph (2) to the extent that the transaction hedges any indebtedness incurred or to be incurred by the trust to acquire or carry real estate assets.''.

SEC. 705. CONFORMITY WITH REGULATED INVESTMENT COMPANY RULES.

Clause (i) of section 857(b)(5)(A) (relating to imposition of tax in case of failure to meet certain requirements) is amended by striking ''90 percent'' and inserting ''95 percent''.

SEC. 706. PROHIBITED TRANSACTIONS PROVISIONS.

(a) EXPANSION OF PROHIBITED TRANSACTION SAFE HARBOR.—Section 857(b)(6) (relating to income from prohibited transactions) is amended by redesignating subparagraphs (D) and (E) as subparagraphs (E) and (F), respectively, and by inserting after subparagraph (C) the following new subparagraph:

''(D) CERTAIN SALES NOT TO CONSTITUTE PROHIBITED TRANSACTIONS.—For purposes of this part, the term 'prohibited transaction' does not include a sale of property which is a real estate asset (as defined in section 856(c)(5)(B)) if—

''(i) the trust held the property for not less than 4 years in connection with the trade or business of producing timber,

''(ii) the aggregate expenditures made by the trust, or a partner of the trust, during the 4-year period preceding the date of sale which—

''(I) are includible in the basis of the property (other than timberland acquisition expenditures), and

''(II) are directly related to operation of the property for the production of timber or for the preservation of the property for use as timberland,

do not exceed 30 percent of the net selling price of the property,

''(iii) the aggregate expenditures made by the trust, or a partner of the trust, during the 4-year period preceding the date of sale which—

''(I) are includible in the basis of the property (other than timberland acquisition expenditures), and

''(II) are not directly related to operation of the property for the production of timber, or for the preservation of the property for use as timberland,

do not exceed 5 percent of the net selling price of the property,

''(iv)(I) during the taxable year the trust does not make more than 7 sales of property (other than sales of foreclosure property or sales to which section 1033 applies), or

''(II) the aggregate adjusted bases (as determined for purposes of computing earnings and profits) of property (other than sales of foreclosure property or sales to which section 1033 applies) sold during the taxable year does not exceed 10 percent of the aggregate bases (as so determined) of all of the assets of the trust as of the beginning of the taxable year,

''(v) in the case that the requirement of clause (iv)(I) is not satisfied, substantially all of the marketing expenditures with respect to the property were made through an independent contractor (as defined in section 856(d)(3)) from whom the trust itself does not derive or receive any income, and

''(vi) the sales price of the property sold by the trust to its taxable REIT subsidiary is not based in whole or in part on the income or profits of the subsidiary or the income or profits that the subsidiary derives from the sale or operation of such property.''.

SEC. 707. EFFECTIVE DATES.

(a) IN GENERAL.—Except as provided in subsection (b), the amendments made by this title shall apply to taxable years beginning after December 31, 2000.

(b) SECTIONS 703 THROUGH 706.—The amendments made by sections 703, 704, 705 and 706 shall apply to taxable years beginning after the date of the enactment of this Act.

Subtitle B—REIT Savings Provisions

SEC. 711. REVISIONS TO REIT PROVISIONS.

(a) RULES OF APPLICATION FOR FAILURE TO SATISFY SECTION 856(c)(4).—Section 856(c) (relating to definition of real estate investment trust), as amended by section 701, is amended by inserting after paragraph (6) the following new paragraph:

''(7) RULES OF APPLICATION FOR FAILURE TO SATISFY PARAGRAPH (4).—

''(A) DE MINIMIS FAILURE.—A corporation, trust, or association that fails to meet the requirements of paragraph (4)(B)(iii) for a particular quarter shall nevertheless be considered to have satisfied the requirements of such paragraph for such quarter if—

''(i) such failure is due to the ownership of assets the total value of which does not exceed the lesser of—

''(I) 1 percent of the total value of the trust's assets at the end of the quarter for which such measurement is done, and

''(II) $10,000,000, and

''(ii)(I) the corporation, trust, or association, following the identification of such failure, disposes of assets in order to meet the requirements of such paragraph within 6 months after the last day of the quarter in which the corporation, trust or association's identification of the failure to satisfy the requirements of such paragraph occurred or such other time period prescribed by the Secretary and in the manner prescribed by the Secretary, or

''(II) the requirements of such paragraph are otherwise met within the time period specified in subclause (I).

''(B) FAILURES EXCEEDING DE MINIMIS AMOUNT.—A corporation, trust, or association that fails to meet the requirements of paragraph (4) for a particular quarter shall nevertheless be considered to have satisfied the requirements of such paragraph for such quarter if—

''(i) such failure involves the ownership of assets the total value of which exceeds the de minimis standard described in subparagraph (A)(i) at the end of the quarter for which such measurement is done,

''(ii) following the corporation, trust, or association's identification of the failure to satisfy the requirements of such paragraph for a particular quarter, a description of each asset that causes the corporation, trust, or association to fail to satisfy the requirements of such paragraph at the close of such quarter of any taxable year is set forth in a schedule for such quarter filed in accordance with regulations prescribed by the Secretary,

''(iii) the failure to meet the requirements of such paragraph for a particular quarter is due to reasonable cause and not due to willful neglect,

''(iv) the corporation, trust, or association pays a tax computed under subparagraph (C), and

''(v)(I) the corporation, trust, or association disposes of the assets set forth on the schedule specified in clause (ii) within 6 months after the last day of the quarter in which the corporation, trust or association's identification of the failure to satisfy the requirements of such paragraph occurred or such other time period prescribed by the Secretary and in the manner prescribed by the Secretary, or

''(II) the requirements of such paragraph are otherwise met within the time period specified in subclause (I).

''(C) TAX.—For purposes of subparagraph (B)(iv)—

''(i) TAX IMPOSED.—If a corporation, trust, or association elects the application of this subparagraph, there is hereby imposed a tax on the failure described in subparagraph (B) of such corporation, trust, or association. Such tax shall be paid by the corporation, trust, or association.

''(ii) TAX COMPUTED.—The amount of the tax imposed by clause (i) shall be the greater of—

''(I) $50,000, or

''(II) the amount determined (pursuant to regulations promulgated by the Secretary) by multiplying the net income generated by the assets described in the schedule specified in subparagraph (B)(ii) for the period specified in clause (iii) by the highest rate of tax specified in section 11.

''(iii) PERIOD.—For purposes of clause (ii)(II), the period described in this clause is the period beginning on the first date that the failure to satisfy the requirements of such paragraph (4) occurs as a result of the ownership of such assets and ending on the earlier of the date on which the trust disposes of such assets or the end of the first quarter when there is no longer a failure to satisfy such paragraph (4).

''(iv) ADMINISTRATIVE PROVISIONS.—For purposes of subtitle F, the taxes imposed by this subparagraph shall be treated as excise taxes with respect to which the deficiency procedures of such subtitle apply.''.

(b) MODIFICATION OF RULES OF APPLICATION FOR FAILURE TO SATISFY SECTIONS 856(c)(2) OR 856(c)(3).—Paragraph (6) of section 856(c) (relating to definition of real estate investment trust) is amended by striking subparagraphs (A) and (B), by redesignating subparagraph (C) as subparagraph (B), and by inserting before subparagraph (B) (as so redesignated) the following new subparagraph:

''(A) following the corporation, trust, or association's identification of the failure to meet the requirements of paragraph (2) or (3), or of both such paragraphs, for any taxable year, a description of each item of its gross income described in such paragraphs is set forth in a schedule for such taxable year filed in accordance with regulations prescribed by the Secretary, and''.

(c) REASONABLE CAUSE EXCEPTION TO LOSS OF REIT STATUS IF FAILURE TO SATISFY REQUIREMENTS.—Subsection (g) of section 856 (relating to termination of election) is amended—

(1) in paragraph (1) by inserting before the period at the end of the first sentence the following: ''unless paragraph (5) applies'', and

(2) by adding at the end the following new paragraph:

''(5) ENTITIES TO WHICH PARAGRAPH APPLIES.—This paragraph applies to a corporation, trust, or association—

''(A) which is not a real estate investment trust to which the provisions of this part apply for the taxable year due to one or more failures to comply with one or more of the provisions of this part (other than subsection (c)(6) or (c)(7) of section 856),

''(B) such failures are due to reasonable cause and not due to willful neglect, and

''(C) if such corporation, trust, or association pays (as prescribed by the Secretary in regulations and in the same manner as tax) a penalty of $50,000 for each failure to satisfy a provision of this part due to reasonable cause and not willful neglect.''.

(d) DEDUCTION OF TAX PAID FROM AMOUNT REQUIRED TO BE DISTRIBUTED.—Subparagraph (E) of section 857(b)(2) is amended by striking ''(7)'' and inserting ''(7) of this subsection, section 856(c)(7)(B)(iii), and section 856(g)(1).''.

(e) EXPANSION OF DEFICIENCY DIVIDEND PROCEDURE.—Subsection (e) of section 860 is amended by striking ''or'' at the end of paragraph (2), by striking the period at the end of paragraph (3) and inserting ''; or'', and by adding at the end the following new paragraph:

''(4) a statement by the taxpayer attached to its amendment or supplement to a return of tax for the relevant tax year.''.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after date of enactment.

TITLE VIII—EXTENSIONS OF CERTAIN EXPIRING PROVISIONS

Subtitle A—Extensions of Expiring Provisions

SEC. 801. PARITY IN THE APPLICATION OF CERTAIN LIMITS TO MENTAL HEALTH BENEFITS.

(a) IN GENERAL.—Subsection (f) of section 9812 is amended by striking ''2003'' and inserting ''2004''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to plan years beginning after December 31, 2002.

SEC. 802. ALLOWANCE OF NONREFUNDABLE PERSONAL CREDITS AGAINST REGULAR AND MINIMUM TAX LIABILITY.

(a) IN GENERAL.—Paragraph (2) of section 26(a) is amended—

(1) by striking ''RULE FOR 2000, 2001, 2002, AND 2003.—'' and inserting ''RULE FOR 2000, 2001, 2002, 2003, AND 2004.—'', and

(2) by striking ''during 2000, 2001, 2002, or 2003,'' and inserting ''during 2000, 2001, 2002, 2003, or 2004''.

(b) CONFORMING AMENDMENTS.—

(1) Section 904(h) is amended by striking ''during 2000, 2001, 2002, or 2003'' and inserting ''during 2000, 2001, 2002, 2003, or 2004''.

(2) The amendments made by sections 201(b), 202(f), and 618(b) of the Economic Growth and Tax Relief Reconciliation Act of 2001 shall not apply to taxable years beginning during 2004.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2002.

SEC. 803. CREDIT FOR ELECTRICITY PRODUCED FROM CERTAIN RENEWABLE RESOURCES.

(a) IN GENERAL.—Subparagraphs (A), (B), and (C) of section 45(c)(3) are each amended by striking ''2004'' and inserting ''2005''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to facilities placed in service after December 31, 2002.

SEC. 804. WORK OPPORTUNITY CREDIT.

(a) IN GENERAL.—Subparagraph (B) of section 51(c)(4) is amended by striking ''2003'' and inserting ''2004''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to individuals who begin work for the employer after December 31, 2002.

SEC. 805. WELFARE-TO-WORK CREDIT.

(a) IN GENERAL.—Subsection (f) of section 51A is amended by striking ''2003'' and inserting ''2004''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to individuals who begin work for the employer after December 31, 2002.

SEC. 806. TAXABLE INCOME LIMIT ON PERCENTAGE DEPLETION FOR OIL AND NATURAL GAS PRODUCED FROM MARGINAL PROPERTIES.

(a) IN GENERAL.—Subparagraph (H) of section 613A(c)(6) is amended by striking ''2004'' and inserting ''2005''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 2002.

SEC. 807. QUALIFIED ZONE ACADEMY BONDS.

(a) IN GENERAL.—Paragraph (1) of section 1397E(e) is amended by striking ''2000, 2001, 2002, and 2003'' and inserting ''2000, 2001, 2002, 2003, and 2004''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to obligations issued after the date of the enactment of this Act.

SEC. 808. COVER OVER OF TAX ON DISTILLED SPIRITS.

(a) IN GENERAL.—Paragraph (1) of section 7652(f) is amended by striking ''January 1, 2004'' and inserting ''January 1, 2005''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to articles brought into the United States after December 31, 2002.

SEC. 809. DEDUCTION FOR CORPORATE DONATIONS OF COMPUTER TECHNOLOGY.

(a) EXTENSION OF DEDUCTION.—Section 170(e)(6)(G) (relating to termination) is amended by striking ''December 31, 2003'' and inserting ''December 31, 2004''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to contributions made after December 31, 2002.

SEC. 810. CREDIT FOR QUALIFIED ELECTRIC VEHICLES.

(a) IN GENERAL.—Section 30 is amended—

(1) in subsection (b)(2)—

(A) by striking ''December 31, 2003,'' and inserting ''December 31, 2004,'', and

(B) in subparagraphs (A), (B), and (C), by striking ''2004'', ''2005'', and ''2006'', respectively, and inserting ''2005'', ''2006'', and ''2007'', respectively.

(2) in subsection (e), by striking ''December 31, 2006'' and inserting ''December 31, 2007''.

(b) CONFORMING AMENDMENTS.—Clause (iii) of section 280F(a)(1)(C) is amended by striking ''2007'' and inserting ''2008''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after December 31, 2002.

SEC. 811. DEDUCTION FOR CLEAN-FUEL VEHICLES AND CERTAIN REFUELING PROPERTY.

(a) IN GENERAL.—Section 179A is amended—

(1) in subsection (b)(1)(B)—

(A) by striking ''December 31, 2003,'' and inserting ''December 31, 2004,'', and

(B) in clauses (i), (ii), and (iii), by striking ''2004'', ''2005'', and ''2006'', respectively, and inserting ''2005'', ''2006'', and ''2007'', respectively, and

(2) in subsection (f), by striking ''December 31, 2006'' and inserting ''December 31, 2007''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to property placed in service after December 31, 2002.

SEC. 812. DEDUCTION FOR CERTAIN EXPENSES OF SCHOOL TEACHERS.

(a) IN GENERAL.—Subparagraph (D) of section 62(a)(2) is amended by striking ''during 2002 or 2003'' and inserting ''during 2002, 2003, or 2004''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 2002.

SEC. 813. AVAILABILITY OF MEDICAL SAVINGS ACCOUNTS.

(a) IN GENERAL.—Paragraphs (2) and (3)(B) of section 220(i) (defining cut-off year) are each amended by striking ''2003'' each place it appears and inserting ''2004''.

(b) CONFORMING AMENDMENTS.—

(1) Paragraph (2) of section 220(j) is amended by striking ''1998, 1999, 2001, or 2002'' each place it appears and inserting ''1998, 1999, 2001, 2002, or 2003''.

(2) Subparagraph (A) of section 220(j)(4) is amended by striking ''and 2002'' and inserting ''2002, and 2003''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 2003.

SEC. 814. EXPENSING OF ENVIRONMENTAL REMEDIATION COSTS.

(a) EXTENSION OF TERMINATION DATE.—Subsection (h) of section 198 is amended by striking ''2003'' and inserting ''2004''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to expenditures paid or incurred after December 31, 2002.

TITLE IX—IMPROVING TAX EQUITY FOR MILITARY PERSONNEL

SEC. 900. SHORT TITLE.

This title may be cited as the ''Armed Forces Tax Fairness Act of 2003''.

SEC. 901. EXCLUSION OF GAIN FROM SALE OF A PRINCIPAL RESIDENCE BY A MEMBER OF THE UNIFORMED SERVICES OR THE FOREIGN SERVICE.

(a) IN GENERAL.—Subsection (d) of section 121 (relating to exclusion of gain from sale of principal residence) is amended by redesignating paragraph (9) as paragraph (10) and by inserting after paragraph (8) the following new paragraph:

''(9) MEMBERS OF UNIFORMED SERVICES AND FOREIGN SERVICE.—

''(A) IN GENERAL.—At the election of an individual with respect to a property, the running of the 5-year period described in subsections (a) and (c)(1)(B) and paragraph (7) of this subsection with respect to such property shall be suspended during any period that such individual or such individual's spouse is serving on qualified official extended duty as a member of the uniformed services or of the Foreign Service of the United States.

''(B) MAXIMUM PERIOD OF SUSPENSION.—The 5-year period described in subsection (a) shall not be extended more than 10 years by reason of subparagraph (A).

''(C) QUALIFIED OFFICIAL EXTENDED DUTY.—For purposes of this paragraph—

''(i) IN GENERAL.—The term 'qualified official extended duty' means any extended duty while serving at a duty station which is at least 50 miles from such property or while residing under Government orders in Government quarters.

''(ii) UNIFORMED SERVICES.—The term 'uniformed services' has the meaning given such term by section 101(a)(5) of title 10, United States Code, as in effect on the date of the enactment of this paragraph.

''(iii) FOREIGN SERVICE OF THE UNITED STATES.—The term 'member of the Foreign Service of the United States' has the meaning given the term 'member of the Service' by paragraph (1), (2), (3), (4), or (5) of section 103 of the Foreign Service Act of 1980, as in effect on the date of the enactment of this paragraph.

''(iv) EXTENDED DUTY.—The term 'extended duty' means any period of active duty pursuant to a call or order to such duty for a period in excess of 90 days or for an indefinite period.

''(D) SPECIAL RULES RELATING TO ELECTION.—

''(i) ELECTION LIMITED TO 1 PROPERTY AT A TIME.—An election under subparagraph (A) with respect to any property may not be made if such an election is in effect with respect to any other property.

''(ii) REVOCATION OF ELECTION.—An election under subparagraph (A) may be revoked at any time.''.

(b) EFFECTIVE DATE; SPECIAL RULE.—

(1) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the amendments made by section 312 of the Taxpayer Relief Act of 1997.

(2) WAIVER OF LIMITATIONS.—If refund or credit of any overpayment of tax resulting from the amendments made by this section is prevented at any time before the close of the 1-year period beginning on the date of the enactment of this Act by the operation of any law or rule of law (including res judicata), such refund or credit may nevertheless be made or allowed if claim therefor is filed before the close of such period.

SEC. 902. EXCLUSION FROM GROSS INCOME OF CERTAIN DEATH GRATUITY PAYMENTS.

(a) IN GENERAL.—Subsection (b)(3) of section 134 (relating to certain military benefits) is amended by adding at the end the following new subparagraph:

''(C) EXCEPTION FOR DEATH GRATUITY ADJUSTMENTS MADE BY LAW.—Subparagraph (A) shall not apply to any adjustment to the amount of death gratuity payable under chapter 75 of title 10, United States Code, which is pursuant to a provision of law enacted after September 9, 1986.''.

(b) CONFORMING AMENDMENT.—Subparagraph (A) of section 134(b)(3) is amended by striking ''subparagraph (B)'' and inserting ''subparagraphs (B) and (C)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to deaths occurring after September 10, 2001.

SEC. 903. EXCLUSION FOR AMOUNTS RECEIVED UNDER DEPARTMENT OF DEFENSE HOMEOWNERS ASSISTANCE PROGRAM.

(a) IN GENERAL.—Section 132(a) (relating to the exclusion from gross income of certain fringe benefits) is amended by striking ''or'' at the end of paragraph (6), by striking the period at the end of paragraph (7) and inserting '', or'', and by adding at the end the following new paragraph:

''(8) qualified military base realignment and closure fringe.''.

(b) QUALIFIED MILITARY BASE REALIGNMENT AND CLOSURE FRINGE.—Section 132 is amended by redesignating subsection (n) as subsection (o) and by inserting after subsection (m) the following new subsection:

''(n) QUALIFIED MILITARY BASE REALIGNMENT AND CLOSURE FRINGE.—For purposes of this section—

''(1) IN GENERAL.—The term 'qualified military base realignment and closure fringe' means 1 or more payments under the authority of section 1013 of the Demonstration Cities and Metropolitan Development Act of 1966 (42 U.S.C. 3374) (as in effect on the date of the enactment of this subsection) to offset the adverse effects on housing values as a result of a military base realignment or closure.

''(2) LIMITATION.—With respect to any property, such term shall not include any payment referred to in paragraph (1) to the extent that the sum of all of such payments related to such property exceeds the maximum amount described in clause (1) of subsection (c) of such section (as in effect on such date).''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to payments made after the date of the enactment of this Act.

SEC. 904. EXPANSION OF COMBAT ZONE FILING RULES TO CONTINGENCY OPERATIONS.

(a) IN GENERAL.—Section 7508(a) (relating to time for performing certain acts postponed by reason of service in combat zone) is amended—

(1) by inserting '', or when deployed outside the United States away from the individual's permanent duty station while participating in an operation designated by the Secretary of Defense as a contingency operation (as defined in section 101(a)(13) of title 10, United States Code) or which became such a contingency operation by operation of law'' after ''section 112'',

(2) by inserting in the first sentence ''or at any time during the period of such contingency operation'' after ''for purposes of such section'',

(3) by inserting ''or operation'' after ''such an area'', and

(4) by inserting ''or operation'' after ''such area''.

(b) CONFORMING AMENDMENTS.—

(1) Section 7508(d) is amended by inserting ''or contingency operation'' after ''area''.

(2) The heading for section 7508 is amended by inserting ''**OR CONTINGENCY OPERATION**'' after ''**COMBAT ZONE**''.

(3) The item relating to section 7508 in the table of sections for chapter 77 is amended by inserting ''or contingency operation'' after ''combat zone''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to any period for performing an act which has not expired before the date of the enactment of this Act.

SEC. 905. MODIFICATION OF MEMBERSHIP REQUIREMENT FOR EXEMPTION FROM TAX FOR CERTAIN VETERANS' ORGANIZATIONS.

(a) IN GENERAL.—Subparagraph (B) of section 501(c)(19) (relating to list of exempt organizations) is amended by striking ''or widowers'' and inserting '', widowers, ancestors, or lineal descendants''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 906. CLARIFICATION OF THE TREATMENT OF CERTAIN DEPENDENT CARE ASSISTANCE PROGRAMS.

(a) IN GENERAL.—Section 134(b) (defining qualified military benefit) is amended by adding at the end the following new paragraph:

''(4) CLARIFICATION OF CERTAIN BENEFITS.—For purposes of paragraph (1), such term includes any dependent care assistance program (as in effect on the date of the enactment of this paragraph) for any individual described in paragraph (1)(A).''.

(b) CONFORMING AMENDMENTS.—

(1) Section 134(b)(3)(A), as amended by section 102, is amended by inserting ''and paragraph (4)'' after ''subparagraphs (B) and (C)''.

(2) Section 3121(a)(18) is amended by striking ''or 129'' and inserting '', 129, or 134(b)(4)''.

(3) Section 3306(b)(13) is amended by striking ''or 129'' and inserting '', 129, or 134(b)(4)''.

(4) Section 3401(a)(18) is amended by striking ''or 129'' and inserting '', 129, or 134(b)(4)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2002.

(d) NO INFERENCE.—No inference may be drawn from the amendments made by this section with respect to the tax treatment of any amounts under the program described in section 134(b)(4) of the Internal Revenue Code of 1986 (as added by this section) for any taxable year beginning before January 1, 2003.

SEC. 907. CLARIFICATION RELATING TO EXCEPTION FROM ADDITIONAL TAX ON CERTAIN DISTRIBUTIONS FROM QUALIFIED TUITION PROGRAMS, ETC. ON ACCOUNT OF ATTENDANCE AT MILITARY ACADEMY.

(a) IN GENERAL.—Subparagraph (B) of section 530(d)(4) (relating to exceptions from additional tax for distributions not used for educational purposes) is amended by striking ''or'' at the end of clause (iii), by redesignating clause (iv) as clause (v), and by inserting after clause (iii) the following new clause:

''(iv) made on account of the attendance of the designated beneficiary at the United States Military Academy, the United States Naval Academy, the United States Air Force Academy, the United States Coast Guard Academy, or the United States Merchant Marine Academy, to the extent that the amount of the payment or distribution does not exceed the costs of advanced education (as defined by section 2005(e)(3) of title 10, United States Code, as in effect on the date of the enactment of this section) attributable to such attendance, or''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2002.

SEC. 908. SUSPENSION OF TAX-EXEMPT STATUS OF TERRORIST ORGANIZATIONS.

(a) IN GENERAL.—Section 501 (relating to exemption from tax on corporations, certain trusts, etc.) is amended by redesignating subsection (p) as subsection (q) and by inserting after subsection (o) the following new subsection:

''(p) SUSPENSION OF TAX-EXEMPT STATUS OF TERRORIST ORGANIZATIONS.—

''(1) IN GENERAL.—The exemption from tax under subsection (a) with respect to any organization described in paragraph (2), and the eligibility of any organization described in paragraph (2) to apply for recognition of exemption under subsection (a), shall be suspended during the period described in paragraph (3).

''(2) TERRORIST ORGANIZATIONS.—An organization is described in this paragraph if such organization is designated or otherwise individually identified—

''(A) under section 212(a)(3)(B)(vi)(II) or 219 of the Immigration and Nationality Act as a terrorist organization or foreign terrorist organization,

''(B) in or pursuant to an Executive order which is related to terrorism and issued under the authority of the International Emergency Economic Powers Act or section 5 of the United Nations Participation Act of 1945 for the purpose of imposing on such organization an economic or other sanction, or

''(C) in or pursuant to an Executive order issued under the authority of any Federal law if—

''(i) the organization is designated or otherwise individually identified in or pursuant to such Executive order as supporting or engaging in terrorist activity (as defined in section 212(a)(3)(B) of the Immigration and Nationality Act) or supporting terrorism (as defined in section 140(d)(2) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989); and

''(ii) such Executive order refers to this subsection.

''(3) PERIOD OF SUSPENSION.—With respect to any organization described in paragraph (2), the period of suspension—

''(A) begins on the later of—

''(i) the date of the first publication of a designation or identification described in paragraph (2) with respect to such organization, or

''(ii) the date of the enactment of this subsection, and

''(B) ends on the first date that all designations and identifications described in paragraph (2) with respect to such organization are rescinded pursuant to the law or Executive order under which such designation or identification was made.

''(4) DENIAL OF DEDUCTION.—No deduction shall be allowed under any provision of this title, including sections 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), and 2522, with respect to any contribution to an organization described in paragraph (2) during the period described in paragraph (3).

''(5) DENIAL OF ADMINISTRATIVE OR JUDICIAL CHALLENGE OF SUSPENSION OR DENIAL OF DEDUCTION.—Notwithstanding section 7428 or any other provision of law, no organization or other person may challenge a suspension under paragraph (1), a designation or identification described in paragraph (2), the period of suspension described in paragraph (3), or a denial of a deduction under paragraph (4) in any administrative or judicial proceeding relating to the Federal tax liability of such organization or other person.

''(6) ERRONEOUS DESIGNATION.—

''(A) IN GENERAL.—If—

''(i) the tax exemption of any organization described in paragraph (2) is suspended under paragraph (1),

''(ii) each designation and identification described in paragraph (2) which has been made with respect to such organization is determined to be erroneous pursuant to the law or Executive order under which such designation or identification was made, and

''(iii) the erroneous designations and identifications result in an overpayment of income tax for any taxable year by such organization,

credit or refund (with interest) with respect to such overpayment shall be made.

''(B) WAIVER OF LIMITATIONS.—If the credit or refund of any overpayment of tax described in subparagraph (A)(iii) is prevented at any time by the operation of any law or rule of law (including res judicata), such credit or refund may nevertheless be allowed or made if the claim therefor is filed before the close of the 1-year period beginning on the date of the last determination described in subparagraph (A)(ii).

''(7) NOTICE OF SUSPENSIONS.—If the tax exemption of any organization is suspended under this subsection, the Internal Revenue Service shall update the listings of tax-exempt organizations and shall publish appropriate notice to taxpayers of such suspension and of the fact that contributions to such organization are not deductible during the period of such suspension.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to designations made before, on, or after the date of the enactment of this Act.

SEC. 909. ABOVE-THE-LINE DEDUCTION FOR OVERNIGHT TRAVEL EXPENSES OF NATIONAL GUARD AND RESERVE MEMBERS.

(a) DEDUCTION ALLOWED.—Section 162 (relating to certain trade or business expenses) is amended by redesignating subsection (p) as subsection (q) and inserting after subsection (o) the following new subsection:

''(p) TREATMENT OF EXPENSES OF MEMBERS OF RESERVE COMPONENT OF ARMED FORCES OF THE UNITED STATES.—For purposes of subsection (a)(2), in the case of an individual who performs services as a member of a reserve component of the Armed Forces of the United States at any time during the taxable year, such individual shall be deemed to be away from home in the pursuit of a trade or business for any period during which such individual is away from home in connection with such service.''.

(b) DEDUCTION ALLOWED WHETHER OR NOT TAXPAYER ELECTS TO ITEMIZE.—Section 62(a)(2) (relating to certain trade and business deductions of employees) is amended by adding at the end the following new subparagraph:

''(E) CERTAIN EXPENSES OF MEMBERS OF RESERVE COMPONENTS OF THE ARMED FORCES OF THE UNITED STATES.—The deductions allowed by section 162 which consist of expenses, determined at a rate not in excess of the rates for travel expenses (including per diem in lieu of subsistence) authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, paid or incurred by the taxpayer in connection with the performance of services by such taxpayer as a member of a reserve component of the Armed Forces of the United States for any period during which such individual is more than 100 miles away from home in connection with such services.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or incurred in taxable years beginning after December 31, 2002.

SEC. 910. TAX RELIEF AND ASSISTANCE FOR FAMILIES OF SPACE SHUTTLE COLUMBIA HEROES.

(a) INCOME TAX RELIEF.—

(1) IN GENERAL.—Subsection (d) of section 692 (relating to income taxes of members of Armed Forces and victims of certain terrorist attacks on death) is amended by adding at the end the following new paragraph:

''(5) RELIEF WITH RESPECT TO ASTRONAUTS.—The provisions of this subsection shall apply to any astronaut whose death occurs in the line of duty, except that paragraph (3)(B) shall be applied by using the date of the death of the astronaut rather than September 11, 2001.''.

(2) CONFORMING AMENDMENTS.—

(A) Section 5(b)(1) is amended by inserting '', astronauts,'' after ''Forces''.

(B) Section 6013(f)(2)(B) is amended by inserting '', astronauts,'' after ''Forces''.

(3) CLERICAL AMENDMENTS.—

*(A) The heading of section 692 is amended by inserting '', **ASTRONAUTS,**'' after ''**FORCES**''.*

(B) The item relating to section 692 in the table of sections for part II of subchapter J of chapter 1 is amended by inserting '', astronauts,'' after ''Forces''.

(4) EFFECTIVE DATE.—The amendments made by this subsection shall apply with respect to any astronaut whose death occurs after December 31, 2002.

(b) DEATH BENEFIT RELIEF.—

(1) IN GENERAL.—Subsection (i) of section 101 (relating to certain death benefits) is amended by adding at the end the following new paragraph:

''(4) RELIEF WITH RESPECT TO ASTRONAUTS.—The provisions of this subsection shall apply to any astronaut whose death occurs in the line of duty.''.

(2) CLERICAL AMENDMENT.—The heading for subsection (i) of section 101 is amended by inserting ''OR ASTRONAUTS'' after ''VICTIMS''.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to amounts paid

after December 31, 2002, with respect to deaths occurring after such date.

(c) ESTATE TAX RELIEF.—

(1) IN GENERAL.—Section 2201(b) (defining qualified decedent) is amended by striking ''and'' at the end of paragraph (1)(B), by striking the period at the end of paragraph (2) and inserting '', and'', and by adding at the end the following new paragraph:

''(3) any astronaut whose death occurs in the line of duty.''.

(2) CLERICAL AMENDMENTS.—

*(A) The heading of section 2201 is amended by inserting '', **DEATHS OF ASTRONAUTS,**'' after ''**FORCES**''.*

*(B) The item relating to section 2201 in the table of sections for subchapter C of chapter 11 is amended by inserting '', **DEATHS OF ASTRONAUTS**,'' after ''**FORCES**''.*

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to estates of decedents dying after December 31, 2002.

TITLE X—SUNSET

SEC. 1001. SUNSET.

(a) IN GENERAL.—Except as otherwise provided, the provisions of, and amendments made, by this Act shall not apply to taxable years beginning after December 31, 2012, and the Internal Revenue Code of 1986 shall be applied and administered to such years as if such amendments had never been enacted.

(b) EXCEPTIONS.—Subsection (a) shall not apply to the following provisions of, and amendments made by, this Act:

(1) Title I (other than section 107).

(2) Title III (other than section 362).

CORRECTING ENROLLMENT OF H.R. 1298

Mr. WARNER. I ask unanimous consent that the Senate proceed to the immediate consideration of S. Con. Res. 46 which was submitted earlier today.

The ACTING PRESIDENT pro tempore. The clerk will report the concurrent resolution by title.

The assistant legislative clerk read as follows:

A concurrent resolution (S. Con. Res. 46) to correct the enrollment of H. R. 1298.

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. WARNER. Mr. President, I ask unanimous consent that the resolution be agreed to, the motion to reconsider be laid upon the table, and any statements relating to this matter be printed in the RECORD.

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

The concurrent resolution (S. Con. Res. 46) was agreed to, as follows:

S. CON. RES. 46

Resolved by the Senate (the House of Representatives concurring), That the Secretary of the Senate, in the enrollment of the bill (H.R. 1298) to provide assistance to foreign countries to combat HIV/AIDS, tuberculosis, and malaria, and for other purposes, shall make the following correction: In section 202(d)(4)(A)(i), strike ''from all other sources'' and insert ''from all sources''.

EXPRESSING THE GRATITUDE OF THE SENATE TO MICHAEL L. GILLETTE

Mr. WARNER. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 150, which was submitted earlier today.

The PRESIDING OFFICER. The clerk will state the resolution by title.

A resolution (S. Res. 150) expressing gratitude of the Senate to Michael L. Gillette, Director of the Center for Legislative Archives, for his service in preserving and making available the records of Congress.

There being no objection, the Senate proceeded to consider the resolution.

Mr. WARNER. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motion to reconsider be laid upon the table, that any statements relating thereto be printed in the RECORD.

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

The resolution (S. Res. 150) was agreed to, as follows:

S. RES. 105

Whereas Michael L. Gillette, Director of the Center for Legislative Archives, retires on June 2, 2003, after 31 years of Government service;

Whereas Michael L. Gillette became the Director of the Center for Legislative Archives, National Archives and Records Administration, in 1991, and for 12 years has worked tirelessly to preserve and make available the official records of the Senate and the House of Representatives;

Whereas Michael L. Gillette promoted the use of the official records of Congress in educational publications, exhibitions, and projects to advance public understanding of the history of Congress and representative democracy;

Whereas Michael L. Gillette formerly was a member of the staff of what is now the National Archives and Records Administration at the Lyndon Baines Johnson Presidential Library, having joined that staff in 1972;

Whereas, during his 31 years of United States Government service at the National Archives and Records Administration, Michael L. Gillette has demonstrated unfailing dedication, skill, and good humor in the performance of his official duties; and

Whereas, throughout his career, Michael L. Gillette has sought to preserve the public record and promote the study of United States history: Now, therefore, be it

Resolved, That the Senate—

(1) commends Michael L. Gillette for his 31 years of service to the United States;

(2) expresses its appreciation and gratitude for Michael L. Gillette's dedication during the past 12 years to preserve and promote the records of Congress; and

(3) directs the Secretary of the Senate to transmit a copy of this resolution to Michael L. Gillette.

APPOINTMENTS

The PRESIDING OFFICER. The Chair, on behalf of the Majority Leader, after consultation with the Chairman of the Select Committee on Intelligence of the Senate, and pursuant to the provisions of Public Law 107–306, announces the appointment of the following individuals to serve as members of the National Commission for the Review of the Research and Development Programs of the United States Intelligence Community: The Honorable Fred Thompson of Tennessee, Bran Ferren of California.

The Chair, on behalf of the President pro tempore, upon the recommendation of the Majority Leader, pursuant to Public Law 105–292, as amended by Public Law 106–55, appoints the following individual to the United States Commission on International Religious Freedom: Michael K. Young of Washington, D.C.

The Chair, on behalf of the President pro tempore, pursuant to Public Law 99–498, appoints Claude O. Pressnell, Jr. of Tennessee, to the Advisory Committee on Student Financial Assistance for a three-year term.

ORDERS FOR WEDNESDAY, MAY 21, 2003

Mr. WARNER. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 9:30 a.m., Wednesday, May 21. I further ask that following the prayer and the pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day, and the Senate then resume consideration of S. 1050, the Department of Defense authorization bill.

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

PROGRAM

Mr. WARNER. Mr. President, for the information of all Senators, tomorrow the Senate will resume debate on the Department of Defense authorization bill. Under the previous order, there will be 20 minutes remaining for debate in relation to the first- and second-degree amendments which are pending to the Defense bill. Following that debate, the Senate will vote in relation to the Warner second-degree amendment regarding low-yield nuclear weapons. Senators should, therefore, expect the first rollcall vote to occur at approximately 10 a.m. tomorrow morning.

Following the disposition of these amendments, additional amendments are expected, and, therefore, rollcall votes are expected throughout the day. It is still hoped that the Senate will be able to complete action on this bill tomorrow afternoon so that the Senate may vote on final passage of this important legislation at a reasonable time during Wednesday's session.

I will simply add a postscript of my own, Mr. President. I will be in consultation with the ranking member of the committee and the leadership on both sides of the aisle to achieve some type of the usual procedure whereby amendments are made known to the managers at a specified time and, hopefully, in that way we can evaluate what remains to be done on the bill and expedite its final consideration by the Senate.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. WARNER. Mr. President, I think that concludes all the remarks we have. 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 9:21 p.m., adjourned until Wednesday, May 21, 2003, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate May 20, 2003:

IN THE AIR FORCE

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT AS THE VICE CHIEF OF STAFF, UNITED STATES AIR FORCE, AND APPOINTMENT TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTIONS 8034 AND 601:

To be general

LT. GEN. TEED M. MOSELEY, 0000

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES AIR FORCE TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be general

GEN. GREGORY S. MARTIN, 0000

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES AIR FORCE TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be general

GEN. ROBERT H. FOGLESONG, 0000

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES AIR FORCE TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general

MAJ. GEN. DANIEL P. LEAF, 0000

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES AIR FORCE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

To be major general

BRIG. GEN. JOSEPH E. KELLEY, 0000

IN THE ARMY

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY MEDICAL SERVICE CORPS AND FOR REGULAR APPOINTMENT (IDENTIFIED BY AN ASTERISK(*)) UNDER TITLE 10, U.S.C., SECTIONS 624, 531, AND 3064:

To be lieutenant colonel

CRAIG M ANDERSON, 0000
JOSE M ANDUJARRIVERA, 0000
DERRICK F ARINCORAYAN, 0000
SCOTT B AVERY, 0000
MICHAEL A AVILA, 0000
PATRICK C BARRETT, 0000
JOSEPH P BENTLEY, 0000
JOSEPH M BIRD, 0000
ANNETTE BOATWRIGHT, 0000
JONATHAN E BRANCH, 0000
MICHAEL J BUCKELLEW, 0000
LARRY D CADE, 0000
GORDON R CAIN, 0000
LINDA R CARMEN, 0000
SCOTT A CARPENTER, 0000
RICK F CLABAUGH, 0000
NOLAN P CLARK JR., 0000
MICHAEL R COOK, 0000
ALLAN J DARDEN, 0000
PATRICIA DARNAUER, 0000
RICHARD N DAVID, 0000
CHRISTOPHER F DAVIS, 0000
ERIC P DAWSON, 0000
JOHN A DEMCHOK, 0000
PATRICK N DENMAN, 0000
DAVID K DUNNING, 0000
PAUL H DURAY JR., 0000
MICHAEL F DYER, 0000
ROBERT A EATON, 0000
TIMOTHY D EDMAN, 0000
PATRICK S FAHERTY, 0000
CLODETH C FINDLAY, 0000
LAWRENCE E FINLEY, 0000
JEFFREY M FOE, 0000
RONNY A FRYAR, 0000
LAWRENCE V FULTON, 0000
MARK A GIFFORD, 0000
RICHARD * GONZALES, 0000
ROBERT J GRIFFITH, 0000
STEVEN D HALE, 0000
DAVID G * HEATH, 0000
MICHAEL S HEIMALL, 0000
MICHAEL E HERSHMAN, 0000
PHILLIP L HOCKINGS, 0000
WILLIAM K HOGAN, 0000
LORI A HULL, 0000
ROBERT B JIMENEZ, 0000
JAMES W * JONES, 0000
NANCY L JONES, 0000
BRIAN J KUETER, 0000
KEVIN G LAFRANCE, 0000
ANDREW J LANKOWICZ, 0000
DENNIS P LEMASTER, 0000
IRWIN M * LENEFSKY, 0000
DODOO J LINDSAY, 0000
TIMOTHY L LOBNER, 0000
LORENZO F * LUCKIE, 0000
DONALD O LUNDY, 0000
MARY R MARTIN, 0000
GARY J MATCEK, 0000
KEVIN M MCNABB, 0000
CHARLES B * MILLARD, 0000
WILLIAM B MILLER, 0000
JOSEPH C MORGAN, 0000
ROSALYN A * MORRIS, 0000
MICHAEL T * NEARY, 0000
MONICA L OGUINN, 0000
JOHN M OLSON, 0000
CLAUDIA M OQUINN, 0000
SCOTT J PUTZIER, 0000
PAUL R RIVERA, 0000
DAVID W ROBERTS, 0000
RUPERT J ROCKHILL JR., 0000
JOHN P ROGERS, 0000
STEVEN D ROTH, 0000
STEVEN T RUMBAUGH, 0000
WILLIAM J * SAMES IV, 0000
WILLIAM F SCHIEK, 0000
MATTHEW J * SCHOFIELD, 0000
BRUCE A * SHAHBAZ, 0000
VAN SHERWOOD, 0000
NASIR SIDDIQUE, 0000
THOMAS C SLADE, 0000
DOUGLAS B SLOAN, 0000
ROBERT D SLOUGH, 0000
STEPHEN M SMITH, 0000
STEPHEN D SOBCZAK, 0000
JOHN SPAIN, 0000
JENNIFER R STYLES, 0000
STEPHEN G SUTTLES, 0000
CARMINE F TAGLIERI, 0000
ANDREA E TALIAFERRO, 0000
CASMERE H TAYLOR, 0000
JOHN V TEYHEN III, 0000
GWENDOLYN H THOMPSON, 0000
CATHY N * TROUTMAN, 0000
VICKIE L * TUTEN, 0000
JOHN P URIARTE, 0000
HELEN B VISCOUNT, 0000
THOMAS M * WHITE, 0000
EDWARD L WOODY, 0000
DIANE M ZIERHOFFER, 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY MEDICAL SPECIALIST CORPS AND FOR REGULAR APPOINTMENT (IDENTIFIED BY AN ASTERISK(*)) UNDER TITLE 10, U.S.C., SECTIONS 624, 531, AND 3064:

To be lieutenant colonel

ANULI L ANYACHEBELU, 0000
MELANIE J CRAIG, 0000
STEVEN M GERARDI, 0000
PAULINE V GROSS, 0000
ROBERT B * HALLIDAY, 0000
YOSHIO G HOKAMA, 0000
RICHARD E MEANEY JR., 0000
RHONDA L PODOJIL, 0000
WILLIAM L * RANDALL, 0000
PAUL D * STONEMAN, 0000
LYNN D WILKINSON, 0000
DONALD G ZUGNER, 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY NURSE CORPS AND FOR REGULAR APPOINTMENT (IDENTIFIED BY AN ASTERISK(*)) UNDER TITLE 10, U.S.C., SECTIONS 624, 531, AND 3064:

To be lieutenant colonel

DOREEN M AGIN, 0000
JOHN A AUSTIN, 0000
MORGAN L BAILEY, 0000
JENNIFER L BEDICK, 0000
MARY L BEMENT, 0000
SANDRA S BRUNER, 0000
JOHN E BUCKWALTER, 0000
MARTHA E * CALDWELL, 0000
LORRAINE M CARNEY, 0000
THOMAS E CEREMUGA, 0000
CRYSTAL D CHATMANBROWN, 0000
SHARON D COLEWAINWRIGHT, 0000
DEBORA R COX, 0000
MARY J * CUNICO, 0000
PAULA DAVISBONNER, 0000
WENDY J DESMIDTKOHLHOFF, 0000
ROBERT F DETTMER, 0000
DEBORAH M DICKSON, 0000
KAREN D * DUNLAP, 0000
KIMBERLY A FEDELE, 0000
DOROTHY F GALBERTH, 0000
LENA F GAUDREAU, 0000
ARLIN C * GUESS, 0000
STEPHEN K HALL, 0000
BARBARA R HOLCOMB, 0000
DENISE L HOPKINS, 0000
ROBIN G HOUSTON, 0000
WANDA D JENKINS, 0000
FAYE M * JONES, 0000
VIVIAN A * KELLEY, 0000
PATRICIA A KELLY, 0000
GREGORY T KIDWELL, 0000
RICHARD T * KNOWLTON JR., 0000
JANICE M LEHMAN, 0000
MARK A LESZCZYNSKI, 0000
PAUL C LEWIS, 0000
MICHELLE A LINDSAY, 0000
ALICE D LUBBERS, 0000
MICHAEL E MARTINE, 0000
RANDY D MCDONALD, 0000
LISETTE P MELTON, 0000
MICHAEL J MEYER, 0000
MICHAEL J MONEY, 0000
LAVERNE J MOOREWASHINGTON, 0000
MARIE C MORENCY, 0000
DANILO C MOTAS, 0000
RENEE L NELSON, 0000
JANICE F NICKIEGREEN, 0000
JOAN M ONEAL, 0000
JOSEPH M PAULINO, 0000
JEFFREY E PETERS, 0000
LISA A PETTY, 0000
NANCY D ROBLESSTOKES, 0000
EVELYN M * RODRIGUEZWHITE, 0000
RUTH W ROGERS, 0000
MICHAEL D SADLER, 0000
WENDY A SAWYER, 0000
KEVIN J SCHALLER, 0000
BRUCE H SCHMIDT, 0000
WANDA L SCOTT, 0000
CATHERINE M SHUTAK, 0000
KIMBERLY A SMITH, 0000
BELINDA L * SPENCER, 0000
CHRISTOPH R STOUDER, 0000
ELIZABETH A VANE, 0000
EDNA L VELAZQUEZ, 0000
JOY A WALKER, 0000
GLORIA L WHITEHURST, 0000
KAREN M WHITMAN, 0000
CARON T WILBUR, 0000
SHARON W WILLIAMS, 0000
BONNITA D WILSON, 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES VETERINARY CORPS AND FOR REGULAR APPOINTMENT (IDENTIFIED BY AN ASTERISK(*)) UNDER TITLE 10, U.S.C., SECTIONS 624, 531, AND 3064:

To be lieutenant colonel

KEVIN R ARMSTRONG, 0000
EDWARD J * BRIAND, 0000
DEANNA A * BROWN, 0000
SUSAN D GOODWIN, 0000
ALEC S * HAIL, 0000
THOMAS E * HONADEL, 0000
BRYAN K * KETZENBERGER, 0000
ROBERT W MCHARGUE, 0000
KATHLEEN M MILLER, 0000
NANCY A VINCENTJOHNSON, 0000