S. 3539

At the request of Ms. COLLINS, the name of the Senator from Alaska (Ms. MURKOWSKI) was added as a cosponsor of S. 3539, a bill to require the Secretary of the Treasury to mint coins in commemoration of the centennial of the establishment of the Girl Scouts of the United States of America.

S. 3569

At the request of Mr. SCHUMER, the names of the Senator from Pennsylvania (Mr. SPECTER) and the Senator from Minnesota (Ms. KLOBUCHAR) were added as cosponsors of S. 3569, a bill to make improvements in the operation and administration of the Federal courts, and for other purposes.

S. RES. 499

At the request of Mr. SPECTER, the name of the Senator from Kansas (Mr. BROWNBACK) was added as a cosponsor of S. Res. 499, a resolution urging Palestinian Authority President Mahmoud Abbas, who is also the head of the Fatah Party, to officially abrogate the 10 articles in the Fatah Constitution that call for Israel's destruction and terrorism against Israel, oppose any political solution, and label Zionism as racism.

S. RES. 664

At the request of Mrs. DOLE, the name of the Senator from New Jersey (Mr. LAUTENBERG) was added as a cosponsor of S. Res. 664, a resolution celebrating the centennial of Union Station in Washington, District of Columbia.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. LEVIN (for himself, Mr. BINGAMAN, and Mr. HARKIN):

S. 3577. A bill to amend the Commodity Exchange Act to prevent excessive price speculation with respect to energy and agricultural commodities, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

Mr. LEVIN. Mr. President, energy prices are on a roller coaster, taking American consumers and the American economy on an unpredictable, expensive, and damaging ride. Just over a year ago, a barrel of crude oil sold for $70 a barrel. In less than a year, the price doubled to nearly $147. Last week, that same barrel of oil cost $91, a price drop of $56 over a few months. Just in the past week crude oil prices have jumped from about $96 per barrel to $130 per barrel and then back to $106 per barrel. No one knows whether, by the end of the year, the price of oil will stay around $100, drop lower, or climb back up. The huge price spikes we experienced can't be explained by changes in supply and demand; about half the trading in oil futures results from speculation as to whether oil prices will rise or fall by traders without any interest in actually using the oil they are buying and selling.

The natural gas, gasoline, and heating oil markets have also seen huge price swings. The prices are up, they are down, they are unpredictable—making it impossible for many businesses and consumers to afford even basic goods and services.

The sky-high oil and gasoline prices in effect for the last year are taking a tremendous toll on millions of American consumers and businesses. Speculation—not supply and demand—is keeping prices high, and our economy is forced to respond to erratic price changes. Unless we act to protect our energy markets from excessive speculation and price manipulation, the American economy will continue to be vulnerable to wild price swings affecting the prices of transportation, food, manufacturing and everything in between, endangering the economic security of our people, our businesses, and our Nation.

Congress should act now to help tame rampant speculation and reinvigorate supply and demand as market forces.

Today, I am introducing legislation, along with Senators BINGAMAN and HARKIN, that represents our collective effort to enact the strongest and most workable measures to prevent excessive speculation and price manipulation in U.S. energy markets. It will close the loopholes in our commodities laws that now impede the policing of U.S. energy trades on foreign exchanges and in the unregulated over-the-counter market. It will ensure that large commodity traders cannot use these markets to hide from CFTC oversight or avoid limits on speculation. The bill will strengthen disclosure, oversight, and enforcement in U.S. energy markets, restoring the financial oversight that is crucial to protect American consumers, American businesses, and the U.S. economy from further energy shocks.

More specifically, this legislation would make four sets of changes.

It will require the CFTC to set limits on the holdings of traders in all of the energy futures contracts traded on regulated exchanges to prevent traders from engaging in excessive speculation or price manipulation. Since we closed the Enron loophole this year all futures contracts must be traded in regulated markets.

It would close the ''London loophole'' by giving the CFTC the same authority to police traders in the United States who trade U.S. futures contracts on a foreign exchange and by requiring foreign exchanges that want to install trading terminals in the U.S. to impose comparable limits on speculative trading as the CFTC imposes on domestic exchanges to prevent excessive speculation and price manipulation.

It will close the ''swaps loophole'' by requiring traders in the over-the-counter energy markets to report large trades to the CFTC, and it would authorize the CFTC to set limits on trading in the presently unregulated over-the-counter markets to prevent excessive speculation and price manipulation.

It will require the CFTC to revise the standards that allow traders who use futures markets to hedge their holdings to exceed the speculation limits that apply to everyone else.

My Permanent Subcommittee on Investigations' investigations have shown that one key factor in price spikes of energy is increased speculation in the energy markets. Traders are trading contracts for future delivery of oil in record amounts, creating a demand for paper contracts that gets translated into increases in prices and increasing price volatility.

Much of this increase in trading of futures has been due to speculation. Speculators in the oil market do not intend to use oil; instead they buy and sell contracts for crude oil in the hope of making a profit from changing prices. According to the CFTC's data, the number of futures and options contracts held by speculators has gone from around 100,000 contracts in 2001, which was 20 percent of the total number of outstanding contracts, to almost 1.2 million contracts, which represents almost 40 percent of the outstanding futures and options contracts in oil on NYMEX Even this understates the increase in speculation, since the CFTC data classifies futures trading involving index funds as commercial trading rather than speculation, and the CFTC classifies all traders in commercial firms as commercial traders, regardless of whether any particular trader in that firm may in fact be speculating.

There is now, as a result, 12 times as many speculative holdings as there was in 2001, while holdings of nonspeculative or commercial futures and options is up but three times. The greater the demand there is to buy futures contracts for the delivery of a commodity, the higher the price will be for those futures contracts.

Not surprisingly, therefore, this massive speculation that the price of oil will increase, together with the increase in the amount of purchases of futures contracts, in fact, helped increase the price of oil to a level far above the price that is justified by the traditional forces of supply and demand.

In June 2006, I released a subcommittee report, ''The Role of Market Speculation in Rising Oil and Gas Prices: A Need to Put a Cop on the Beat.'' This report found that the traditional forces of supply and demand didn't account for sustained price increases and price volatility in the oil and gasoline markets. The report concluded that, in 2006, a growing number of trades of contracts for future delivery of oil occurred without regulatory

oversight and that market speculation had contributed to rising oil and gasoline prices, perhaps accounting for $20 out of a then-priced $70 barrel of oil.

Oil industry executives and experts have arrived at a similar conclusion. Late last year, the President and CEO of Marathon Oil said, ''$100 oil isn't justified by the physical demand in the market. It has to be speculation on the futures market that is fueling this.'' Mr. Fadel Gheit, oil analyst for Oppenheimer and Company describes the oil market as ''a farce.'' ''The speculators have seized control and it's basically a free-for-all, a global gambling hall, and it won't shut down unless and until responsible governments step in.'' In January of this year, when oil first hit $100 per barrel, Mr. Tim Evans, oil analyst for Citigroup, wrote ''the larger supply and demand fundamentals do not support a further rise and are, in fact, more consistent with lower price levels.'' At the joint hearing on the effects of speculation we held last December, Dr. Edward Krapels, a financial market analyst, testified, ''Of course financial trading, speculation affects the price of oil because it affects the price of everything we trade. . . . It would be amazing if oil somehow escaped this effect.'' Dr. Krapels added that as a result of this speculation ''there is a bubble in oil prices.''

The need to control speculation is urgent. The presidents and CEOs of major U.S. airlines recently warned about the disastrous effects of rampant speculation on the airline industry. The CEOs stated ''normal market forces are being dangerously amplified by poorly regulated market speculation.'' The CEOs wrote, ''For airlines, ultra-expensive fuel means thousands of lost jobs and severe reductions in air service to both large and small communities.''

As to reining in speculation, the first step to take is to put a cop back on the beat in all our energy markets to prevent excessive speculation, price manipulation, and trading abuses.

With respect to the futures markets, the legislation we are introducing today requires the CFTC to establish limits on the amount of futures contracts any trader can hold. Currently, the CFTC allows the futures exchanges themselves to set these limits. This bill would require the CFTC to set these limits to prevent excessive speculation and price manipulation. It would preserve, however, the exchanges' obligation and ability to police their traders to ensure they remain below these limits.

This legislation would also require the CFTC to conduct a rulemaking to review and revise the criteria for allowing traders who are using the futures market to hedge their risks in a commodity to acquire holdings in excess of the limits on holdings for speculators.

Another step is to give the CFTC authority to prevent excessive speculation in the over-the-counter markets. In 2007, my Subcommittee issued a report on the effects of speculation in the energy markets, entitled ''Excessive Speculation in the Natural Gas Market.'' This investigation showed that speculation by a hedge fund named Amaranth distorted natural gas prices during the summer of 2006 and drove up prices for average consumers. The report demonstrated how Amaranth had shifted its speculative activity to unregulated markets, under the ''Enron loophole,'' to avoid the restrictions and oversight in the regulated markets, and how Amaranth's trading in the unregulated markets contributed to price increases.

Following this investigation, I introduced a bill, S. 2058, to close the Enron loophole and regulate the unregulated electronic energy markets. Working with Senators FEINSTEIN and SNOWE, and with the members of the Agriculture Committee in a bipartisan effort, we included an amendment to close the Enron loophole in the farm bill, which Congress passed this past spring, overriding a veto by President Bush.

The legislation to close the Enron loophole placed over-the-counter—OTC—electronic exchanges under CFTC regulation. However, this legislation did not address the separate issue of trading in the rest of the OTC market, which includes bilateral trades through voice brokers, swap dealers, and direct party-to-party negotiations. In order to ensure there is a cop on the beat in all of the energy commodity markets, we need to address the rest of the OTC market as well.

Previously, I introduced legislation, S. 3255, along with Senator FEINSTEIN, the Over-the-Counter Speculation Act, to address the rest of the OTC market not covered by the farm bill. A large portion of this OTC market consists of the trading of swaps relating to the price of a commodity. Generally, commodity swaps are contracts between two parties where one party pays a fixed price to another party in return for some type of payment at a future time depending on the price of a commodity. Because some of these swap instruments look very much like futures contracts—except that they do not call for the actual delivery of the commodity—there is concern that the price of these swaps that are traded in the unregulated OTC market could affect the price of the very similar futures contracts that are traded on the regulated futures markets. We don't yet know for sure that this is the case, or that it is not, because we don't have any access to comprehensive data or reporting on the trading of these swaps in the OTC market.

The legislation introduced today includes these same provisions to give the CFTC oversight authority to stop excessive speculation in the over-the-counter market. These provisions represent a practical, workable approach that will enable the CFTC to obtain key information about the OTC market to enable it to prevent excessive speculation and price manipulation. These provisions are also included in the legislation introduced by the majority leader and others, S. 3268, to stop excessive speculation.

Under these provisions, the CFTC will have the authority to ensure that traders cannot avoid the CFTC reporting requirements by trading swaps in the unregulated OTC market instead of regulated exchanges. It will enable the CFTC to act, such as by requiring reductions in holdings of futures contracts or swaps, against traders with large positions in order to prevent excessive speculation or price manipulation regardless of whether the trader's position is on an exchange or in the OTC market.

The bill we are introducing today, unlike S. 3255, gives the CFTC the authority to establish position limits in the over-the-counter market for energy and agricultural commodities in order to prevent excessive speculation and price manipulation. The CFTC needs this authority to ensure that large traders are not using the over-the-counter markets to evade the position limits in the futures markets.

Earlier this year I introduced legislation with Senators FEINSTEIN, DURBIN, DORGAN and BINGAMAN, S.3129, to close the London loophole. This loophole has allowed crude oil traders in the U.S. to avoid the position limits that apply to trading on U.S. futures exchanges by directing their trades onto the ICE Futures Exchange in London. The legislation we introduced also was incorporated into the legislation to stop prevent excessive speculation introduced by the majority leader, S. 3268. These provisions are now included in the legislation we are introducing today.

After this legislation was first introduced, the CFTC imposed more stringent requirements upon the ICE Futures Exchange's operations in the United States—for the first time requiring the London exchange to impose and enforce comparable position limits in order to be allowed to keep its trading terminals in the United States. This is the very action our legislation called for. However, the current CFTC position limits apply only to the nearest futures contract. Our legislation will ensure that foreign exchanges with trading terminals in the U.S. will apply position limits to other futures contracts once the CFTC establishes those limits for U.S. exchanges.

Although the CFTC has taken these important steps that will go a long way towards closing the London loophole, Congress should still pass this legislation to make sure the London loophole stays closed. The legislation would put the conditions the CFTC has imposed

upon the London exchange into statute, and ensure that the CFTC has clear authority to take action against any U.S. trader who is manipulating the price of a commodity or excessively speculating through the London exchange, including requiring that trader to reduce positions.

The legislation we are introducing today also includes a number of provisions in the majority leader's bill, S. 3248, that require a variety of studies, investigations, and reports designed to improve the transparency and regulation of the energy markets. It also provides authorization for the CFTC to hire an additional 100 employees to oversee the commodity markets it regulates.

On September 11, the CFTC issued a ''Staff Report on Commodity Swap Dealers and Index Traders with Commission Recommendations.'' The legislation we have introduced embodies several of the CFTC's recommendations to improve the transparency and regulation of swap dealers and commodity index traders. These recommendations include: develop and regularly publish reports on the activity of swap dealers and commodity index traders; more accurately assess the type of trading activity in the CFTC's weekly reports on commercial and noncommercial trading; review whether to eliminate the bona fide hedge exemption for swap dealers and create new limited risk management exemption; provide additional staff and resources for the CFTC.

Our legislation also is consistent with CFTC Commissioner Chilton's dissenting views on the CFTC's recommendations. In his dissent, Commissioner Chilton requested that Congress provide: ''specific statutory authorities to allow the Commission to obtain data regarding over-the-counter transactions that may impact exchange-traded markets; ''specific statutory authorities to allow the Commission to address market disturbances or violations of the Commodity Exchange Act, based on the data received regarding over-the-counter transactions;'' and authorization and appropriation for 100 additional employees.

Our bill provides the CFTC with the statutory authorities requested by Commissioner Chilton and authorizes the requested employees.

In summary, the legislation we are introducing today will give the CFTC ability to police all of our energy commodity markets to prevent excessive speculation and price manipulation. This legislation is necessary to close all of the loopholes in current law that permit speculators to avoid trading limits designed to prevent the type of excessive speculation that has been contributing to high energy prices. We hope our colleagues will support this legislation.

Mr. President, I ask unanimous consent that a bill summary be printed in the RECORD.

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

THE LEVIN-BINGAMAN-HARKIN PREVENT EXCESSIVE SPECULATION ACT BILL SUMMARY, SEPT. 24, 2008

The Levin-Bingaman-Harkin Prevent Excessive Speculation Act would:

Authorize Speculation Limits for all Energy and Agricultural Commodities.

Direct CFTC to impose position limits on energy and agricultural futures contracts to prevent excessive speculation and manipulation and to ensure sufficient market liquidity. Similar to provisions in House-passed bill, H.R. 6604.

Authorize CFTC to permit exchanges to impose and enforce accountability levels that are lower than CFTC-established speculation limits.

Close London Loophole by Regulating Offshore Traders and Increasing Transparency of Offshore Trades.

Prohibit a foreign exchange from operating in the United States unless it imposes comparable speculation limits and reporting requirements as apply to U.S. exchanges. Similar to §3 in S. 3268, with technical changes.

Provide CFTC with same enforcement authority over U.S. traders on foreign exchanges as it has over traders on U.S. exchanges, including authority to require traders to reduce their holdings to prevent excessive speculation or manipulation. Similar to §4 in S. 3268.

Require CFTC to invite non-U.S. regulators to form an international working group to develop uniform regulatory and reporting requirements to protect futures markets from excessive speculation and manipulation. Similar to §5 in S. 3268.

Close the Swaps Loophole and Regulate Over-the-Counter Transactions.

Authorize CFTC to impose speculation limits on OTC transactions to protect the integrity of prices in the futures markets and cash markets.

Require large OTC trades that affect futures prices to be reported to CFTC. Allow one party to a transaction to authorize the other party to file the report. Require CFTC periodic review of reporting requirements to ensure key trades are covered.

Direct CFTC to revise bona fide hedge exemption to ensure regulation of all speculators, and strengthen data analysis and transparency of swap dealer and index trading.

Clarify definition of OTC transactions to exclude spot market transactions.

Protect Both Energy and Agriculture Commodities.

Cover trades in crude oil, natural gas, gasoline, heating oil, coal, propane, electricity, other petroleum products and sources of energy from fossil fuels, as well as ethanol, biofuels, emission allowances for greenhouse gases, SO_2, NO_x, and other air emissions.

Cover trades in agricultural commodities listed in the Commodity Exchange Act.

Strengthen CFTC Oversight.

Authorize CFTC to hire 100 new personnel to oversee markets.

Direct CFTC to issue proposed rules within 90 days and final rules within 180 days.

Authorize Reports and Studies.

Require various investigations, studies, and reports. Same as §§8–15 in S. 3268.

By Mr. ENSIGN:

S. 3578. A bill to establish a commission to assess the nuclear activities of the Islamic Republic of Iran; to the Committee on Foreign Relations.

Mr. ENSIGN. Mr. President, I rise today to address an issue of critical importance to the security of our Nation and the world. I want to talk about the future of Iran's nuclear capabilities and what it means for the United States.

Too often here in Washington, we get caught up in the debate of the moment and fail to appreciate the larger picture. Too many are more concerned with petty blame games and not enough are concerned with the greater challenge of protecting Americans.

General Michael Hayden, the Director of Central Intelligence, has said that he believes Iran is seeking nuclear weapons. Others, including the President of the United States and the leaders of France and Great Britain agree.

I ask myself what would happen if the Ahmadinejad regime in Iran succeeded in acquiring a nuclear weapon. Among the possibilities, he could use that weapon. Iran could share it with terrorists or other rogue states. At a minimum, an Iranian nuke would prompt its neighbors in the Gulf, in Turkey, in Egypt and elsewhere to seek a similar ability in order to defend themselves against Iran's efforts to gain regional dominance.

The stakes could not be higher, and I am concerned that we are not meeting the challenge. To the contrary, I believe we are being tested, and we are failing.

Iran is the most active state sponsor of terrorism around the world. In addition to its long time support for groups like Hezbollah and Hamas, Iran is now active in directing aggression against our troops in Iraq, sponsoring not only Shiite extremists but even Sunni terror groups. According to General Petraeus, ''. . . Iran has played [a fundamental role] in funding, training, arming, and directing the so-called Special Groups and generated renewed concern about Iran in the minds of many Iraqi leaders. Unchecked, the Special Groups pose the greatest long-term threat to the viability of a democratic Iraq.''

In addition to its destabilizing sponsorship of violence across the Middle East, we also know that Iran is working on delivery vehicles for deadly weapons. The regime has continuously upgraded its missile capabilities, and now has delivery vehicles that can strike targets all over the Middle East and into Europe. Couple that knowledge with the evidence available that Iran has worked on fitting nuclear warheads onto these missiles, and we have even more practical reasons for concern.

Iranian President Mahmoud Ahmadinejad has stated emphatically that his Nation ''will not give up one iota of its nuclear rights.''

Where does this leave the United States, and the American people, in confronting this growing and multidimensional threat? Unfortunately, the answer appear, to be: confused.

The clearest evidence that we have yet to focus on the exact nature of the Iranian threat—an understanding that is imperative if we are going to succeed in countering it—is last year's National Intelligence Estimate on Iran.

Although leaders and intelligence agencies around the world believe that Iran is indeed pursuing nuclear weapons, the NIE drew confusing, misleading, and contradicting conclusions. In dramatic phrasing clearly designed to mislead, the NIE states that ''We judge with high confidence that in fall 2003, Tehran halted its nuclear weapons program.'' In a footnote that got short shrift from both the press and the jubilant Iranian regime, the analysts explain that what they say '' 'nuclear weapons program' we mean Iran's nuclear weapon design and weaponization work and covert uranium conversion-related and uranium enrichment-related work; we do not mean Iran's declared civil work related to uranium conversion and enrichment.'' In other words, the work referred to that had ''halted'' was in fact work that this Congress had heretofore not been able to confirm, and that we were uncertain existed. What continued, according to the NIE, was Iran's attempts to use its licit nuclear program to develop nuclear weapons capability. Which is exactly what we have been worrying about all along.

Since the NIE, the intelligence community has backed away from its original assessment. The Director of National Intelligence, Vice Admiral Mike McConnell said that Iran could ''probably'' produce the fissile material needed for a nuclear weapon by as early as 2010. He has also testified that he would ''change the way we described the nuclear program'' in the NIE.

Both Hayden and McConnell have also admitted that the NIE was so quickly declassified and poorly focused that it confused people. Unfortunately, the damage is done. The notion that Iran has suspended its nuclear program—however false that may be—has derailed our diplomatic push to a great extent and caused more confusion. Whatever the intentions behind this misleading assessment, we now know that Iran, with some of its international supporters, used the opportunity to derail the diplomatic process and move ahead with its uranium enrichment. Iran is now on the verge of producing enough highly enriched uranium for one to three nuclear weapons a year.

This is not good news. Diplomacy, and more serious sanctions, keep military action at bay. A lack of options is what forces nations to make military choices.

I raise these points not to criticize the administration, advocate for one action course of action over another, or argue about the results of the recent NIE. I raise these points because our Nation cannot afford confusion about the threat at hand. We have underestimated our adversaries in the past, and missed important developments even in friendly nations. Saddam Hussein developed nuclear weapons while receiving U.S. aid. India detonated a nuclear device before the U.S. had any advance warning. More recently, Syria procured a nuclear reactor as the United States negotiated in good faith with its suppliers in North Korea.

We need to get this right. A mistake, a botched timeline, a missed event, a faulty analysis—all or any of the above could result in the worst of all possible outcomes. It is for that reason, that I rise today to introduce the legislation to help us better assess the nuclear threat from Iran. This legislation will create an independent commission comprised of 12 private U.S. citizens with expertise in nuclear proliferation and experience on the question of Iran. They will be appointed by the Speaker of the House, the House Minority Leader, and the Senate Minority Leader. Together, they will lend their expertise on this critical issue.

There is a venerable history to such bipartisan commissions, including the 9/11 Commission, the Commission to Assess the Ballistic Missile Threat to the United States, and the Commission on the Intelligence Capabilities of the United States. A commission can provide a set of fresh eyes to look without bias at the information at hand and make assessments upon which the American people and American policymakers can rely.

Perhaps there are some among my colleagues or in the bureaucracy of the executive branch who believe that they need no help, and that such a commission is not necessary. To them, I suggest a brief review of history. Let us rely on the best our Nation has to offer, and bring bipartisan, fresh expertise to the question of the Iranian threat.

I urge my colleagues to support me in this effort.

By Mr. BOND:

S. 3581. A bill to establish a Federal Mortgage Origination Commission, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

Mr. BOND. Mr. President, today I am introducing a bill that goes to the heart of one of the major problems in our loan operations. We have had a system develop where no longer are loans just made available by the State-regulated banks and thrifts. Too many loan offers come over the Internet or by fax. I have not been able to develop a good enough screening program on my computer to keep them out. I know what kinds of solicitations are being made. They are being made by unregulated entities, people not subject to any regulation. As we say back home: We regulate the bricks but not the clicks. We regulate the banks and the savings and loans but not the people who offer you loans too good to be true by fax or Internet.

Congress has already taken some steps to address the mortgage origination problem by developing a mortgage licensing and registry system through the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 and protecting consumers by requiring greater mortgage loan disclosure requirements. In addition, I have worked with Senator DODD, last year and this year, to include more housing counseling funding to assist homeowners. I strongly believe the Mortgage Origination Commission, proposed by the Secretary of the Treasury, is an important element to complement these efforts.

As many of us know, the root cause of the current financial crisis is traced to the breakdowns in the mortgage market, led by the high level of failures in subprime mortgages. These failures occurred due to many reasons, but one major reason was the loophole in the Government's oversight and regulatory system for mortgage origination. Specifically, many mortgage brokers with no or uneven regulatory oversight originated a substantial number of all housing mortgages and over half of all subprime mortgages.

To help close regulatory loopholes in mortgage origination, my bill contains the key components recommended by the Treasury.

First, this legislation creates a new Federal oversight entity called the Mortgage Origination Commission. The Commission would be led by a Presidentially appointed Director for a 5-year term who would chair a seven-member board comprised of the Federal Government's key financial regulators: the Federal Reserve, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, the National Credit Union Administration, and the Conference of State Bank Supervisors.

Second, the Commission would be empowered to develop uniform minimum licensing qualification standards for State mortgage market participants. As laid out in the bill, these standards would include personal conduct and disciplinary history, minimum educational requirements, testing criteria and procedures, and appropriate license revocation standards. The Commission would also evaluate, rate, and report on the adequacy of each State's system for licensing and regulation.

The bill retains State-level regulation of the mortgage origination process, but the new Federal Mortgage

Origination Commission would ensure that the States have adequate protections in place and improve transparency in the mortgage origination process by providing information on the strength of each State's standards. The Commission will also provide transparency in the securities market by providing evaluations and ratings on mortgages.

Finally, the bill clarifies the Federal Government's enforcement and examination responsibilities over mortgage origination companies. Specifically, the Federal Reserve and the Office of Thrift Supervision would have clear authority over mortgage originators that are affiliates of depository institutions with a federally regulated holding company. States would have clear authority to enforce Federal mortgage laws governing mortgage transactions involving mortgage originators.

In formulating this legislation, my goal was to develop a proposal to provide more effective regulation, transparency, and oversight in a streamlined manner. This bill enhances the current structure without creating a major new Federal entity. If enacted, the Commission could be up and running in a relatively short time.

As I said, the legislation mirrors the Secretary of Treasury's proposal, and it is intended to be part of the overall response. I look forward to working with my colleagues to achieve this. I know time is running short. I hope they will carefully consider this proposal and perhaps include it in the bill coming to us or in separate legislation.

By Mr. BINGAMAN:

S. 3584. A bill to comprehensively prevent, treat, and decrease overweight and obesity in our Nation's populations; to the Committee on Health, Education, Labor, and Pensions.

Mr. BINGAMAN. Mr. President, I rise today to introduce the Obesity Prevention, Treatment and Research Act of 2008. This legislation creates unprecedented collaborations and collective across agencies, and among private and public entities, individuals, and communities.

The very high prevalence of individuals who are obese or overweight has resulted in an epidemic in the United States, affecting over 66 percent of adults and 32 percent of children according to the CDC's National Center for Health Statistics. Over the last 30 years, the obesity rate has more than doubled in all ages. The United States now has the highest prevalence of obesity among the developed nations. In fact, the prevalence of obesity in U.S. in 2006, 34 percent is more than twice the average for other developed nations, 13 percent. The prevalence of obesity in the next closest country, the United Kingdom, is over 25 percent less than that of the U.S.

The Obesity Prevention, Treatment and Research Act of 2008 comprehensively addresses the obesity and overweight epidemic by focusing on coordinating and augmenting existing prevention and treatment activities. The legislation is based on the extensive work on obesity of the Institutes of Medicine, IOM, over the last few years.

The legislation focuses on developing dynamic new collaborations and collective actions, which IOM recommends as essential to successfully addressing the problems of obese and overweight individuals throughout the nation. In addition, the legislation focuses on supporting interventions that will improve access to obesity prevention and treatment services in our federal healthcare programs in recognition that the high prevalence of overweight and obese individuals dramatically increases the costs in Medicare, Medicaid, SCHIP, and other public and private health insurance programs.

I note that interventions aimed at significantly decreasing the prevalence of these illnesses are extremely cost effective and are critical to overall disease prevention and health promotion efforts. The Trust for America's Health recently reported that an investment of just $10 per person per year in proven community based disease prevention programs would yield a $2.8 billion annual health expenditure reduction. Put another way, our nation would recoup nearly $1 over and above the cost of a comprehensive disease prevention and health promotion program for every $1 invested in the first 1 to 2 years of the program.

The Obesity Prevention, Treatment and Research Act of 2008 establishes the United States Council on Overweight & Obesity Prevention, USCO–OP, which is charged with creating a comprehensive strategy to prevent, treat and reduce the prevalence of overweight individuals and obesity. This advisory council will update Federal guidelines, identify best practices, conduct ongoing surveillance and monitoring of existing Federal programs, and make recommendations to coordinate budgets, policies and programs across Federal agencies in collaboration with private and public partners. In addition, the Council will provide guidance to the Federal Government for a new series of grant programs established by the legislation to combat obesity and the high prevalence of overweight individuals.

It is important to note that in July the Journal of the American Medical Association reported that physical activity levels drop sharply as children age. Children should be engaging in 60 minutes of moderate to vigorous physical activity most days of the week. While 90 percent of children met the recommended activity at age 9, by age 15 only 31 percent met the level on weekdays, and only 17 percent on weekends. Moreover, these behaviors become worse as they get older. I find these trends very disturbing.

In addition, experts tell us that Americans want and need better and more accessible information about healthier foods, beverages and exercise programs. The Council will help develop and update the daily physical activity requirements in our schools, and identify activities that families can do together, involving parents and their children throughout the week, and as lifelong participants.

My legislation also creates grant programs to provide funding to schools, community health centers, academic institutions, state medical societies, state health departments, and communities to reduce the prevalence and improve the prevention and treatment of individuals that are obese or overweight.

It is also critical to point out that certain populations are more vulnerable than others to the obesity and overweight epidemic. In my home state of New Mexico, for example, the consequences are devastating. 74 percent of Native American adults in New Mexico are overweight or obese, as are 38 percent of Native American High School students. I take steps in this legislation to address populations more severely impacted by the obesity and overweight epidemic, including: prioritizing grants to these populations and requiring Federal reporting on research and data related to obesity in these populations.

The legislation also doubles existing funding levels for the Department of Agriculture's Fresh Foods and Vegetables program to levels that will assure that most low-income children will have access to these foods within their schools.

The legislation also requires the Secretary of Health and Human Services and the Secretary of Agriculture to consult with USCO–OP to update and reform Federal oversight of food and beverage labeling. Such reforms include improving the transparency of labeling with regard to nutritional and caloric value of food and beverages. These updates and reforms are critical. Research suggests that high-energy dense foods that are low in nutrients represent 30 percent of the average American total calorie intake. Research also suggests that these foods don't trigger the brain's normal pathways and responses to let the body know that it is full.

My legislation also amends the Social Security Act to expand access to medical nutrition therapy and exercise counseling when determined cost effective by the Secretary of Health and Human Services. We have to figure out a way to prevent the development of end stages of morbid obesity, such as kidney failure, heart failure and disability from arthritis and other problems. My bill seeks to invest our Federal dollar more wisely. This is truly the case where an ounce of prevention is worth a pound of cure.

I would like to thank Dr. Dan Derksen, who served as a Robert Wood Johnson Health Policy Fellow in my office this year, for his great work in developing this legislation. In addition, I would like to thank the Institutes of Medicine, the Campaign to End Obesity, and First Focus for their assistance in developing this legislation.

The legislation has received the endorsement of: the Campaign to End Obesity, American College of Gastroenterology, First Focus, Shaping America's Health, YMCA of the USA, the National Coalition for Promoting Physical Activity, the Sporting Goods Manufacturers of America, and the New Mexico Medical Society.

I urge my other Senate colleagues to join in supporting this critical legislation.

Mr. President, I ask unanimous consent that the text of this bill be printed in the RECORD.

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

S. 3584

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 ''Obesity Prevention, Treatment, and Research Act of 2008''.

SEC. 2. FINDINGS.

Congress finds the following:

(1) In 2001, the United States Surgeon General released the Call to Action to Prevent and Decrease Overweight and Obesity to bring attention to the public health problems related to obesity.

(2) Since the Surgeon General's call to action, the problems of obesity and overweight have become epidemic, occurring in all ages, ethnicities and races, and individuals in every State.

(3) The United States now has the highest prevalence of obesity among the developed nations, according to 2006 data by the Organisation for Economic Co-operation and Development. The prevalence of obesity in the United States (34 percent) is more than twice the average for other developed nations (13 percent). The closest nation in prevalence of obesity is the United Kingdom (24 percent) which is over 25 percent less than the United States.

(4) The National Health and Nutrition Examination Survey in 2006 estimated that 32 percent of children and adolescents aged 2 to 19 and an alarming 66 percent of adults are overweight or obese.

(5) More than 30 percent of young people in grades 9 through 12 do not regularly engage in vigorous intensity physical activity, while almost 40 percent of adults are sedentary and 70 percent report getting less than 20 minutes of regular physical activity per day.

(6) The Institute of Medicine, in their 2005 publication ''Preventing Childhood Obesity: Health in the Balance'', reported that over the last 3 decades, the rate of childhood obesity has tripled for children aged 6 to 11 years, and doubled for children aged 2 to 5 years old and in adolescents aged 12 to 19 years old. In 2004, approximately 9,000,000 children over 6 years of age were obese. Only 2 percent of children eat a healthy diet consistent with Federal nutrition guidelines.

(7) For children born in 2000, it is estimated the lifetime risk of being diagnosed with type 2 diabetes is 40 percent for females and 30 percent for males.

(8) Overweight and obesity disproportionately affect minority populations and women. According to the 2006 Behavioral Risk Factor Surveillance System of the Centers for the Disease Control and Prevention, 61 percent of adults in the United States are overweight or obese.

(9) The Centers for the Disease Control and Prevention estimates the annual expenditures related to overweight and obesity in the United States to be $117,000,000,000 in 2001 and rising rapidly.

(10) The Centers for the Disease Control and Prevention estimates that the increase in the number of overweight and obese Americans between 1987 and 2001 resulted in a 27 percent increase in per capita health costs, and that as many as 112,000 deaths per year are associated with obesity.

(11) Being overweight or obese increases the risk of chronic diseases including diabetes, heart disease, stroke, certain cancers, arthritis, and other health problems.

(12) According to the National Institute of Diabetes and Digestive and Kidney Diseases, individuals who are obese have a 50 to 100 percent increased risk of premature death.

(13) Healthy People 2010 goals identify overweight and obesity as 1 of the Nation's leading health problems and include objectives for increasing the proportion of adults who are at a healthy weight, reducing the proportion of adults who are obese, and reducing the proportion of children and adolescents who are overweight or obese.

(14) Another Healthy People 2010 goal is to eliminate health disparities among different segments of the population. Obesity is a health problem that disproportionally impacts medically underserved populations.

(15) Food and beverage advertisers are estimated to spend $10,000,000 to $12,000,000,000 per year to target children and youth.

(16) The United States spends less than 2 percent of its annual health expenditures on prevention.

(17) Employer health promotion investments net a return of $3 for every $1 invested.

(18) High-energy dense and low-nutrient dense foods represent 30 percent of American's total calorie intake. Fast food company menus are twice the energy density of recommended healthful diets.

(19) Research suggests that individuals eat too much high-energy dense foods without feeling full because the brain's pathways that regulate hunger and influence normal food intake are not triggered by these foods.

(20) Packaging, product placement, and high-energy dense food content manipulation contribute to the overweight and obesity epidemic in the United States.

(21) Such marketing and content manipulation techniques have been used by other industries to encourage consumption at the expense of health. To help individuals make healthy choices, education and information must be available with clear, consistent, and accurate labeling.

TITLE I—OBESITY TREATMENT, PREVENTION, AND REDUCTION

SEC. 101. UNITED STATES COUNCIL ON OVERWEIGHT-OBESITY PREVENTION.

Part P of title III of the Public Health Service Act (42 U.S.C. 280g et seq.) is amended by adding at the end the following:

''SEC. 399R. UNITED STATES COUNCIL ON OVERWEIGHT-OBESITY PREVENTION.

''(a) ESTABLISHMENT.—The Secretary shall convene a United States Council on Overweight-Obesity Prevention (referred to in this section as 'USCO-OP').

''(b) MEMBERSHIP.—

''(1) IN GENERAL.—USCO-OP shall be composed of 20 members, which shall consist of—

''(A) the Secretary;

''(B) the Secretary (or his or her designee) of—

''(i) the Department of Agriculture;

''(ii) the Department of Education;

''(iii) the Department of Housing and Urban Development;

''(iv) the Department of the Interior

''(v) the Federal Trade Commission;

''(vi) the Department of Transportation; and

''(vii) any other Federal agency that the Secretary of Health and Human Services determines appropriate;

''(C) the Chairman (or his or her designee) of the Federal Communications Commission;

''(D) the Director (or his or her designee) of the Centers for Disease Control and Prevention, the National Institutes of Health, and the Agency for Healthcare Research and Quality;

''(E) the Administrator of the Centers for Medicare and Medicaid Services (or his or her designee);

''(F) the Commissioner of Food and Drugs (or his or her designee); and

''(G) a minimum of 5 representatives, appointed by the Secretary, of expert organizations such as public health associations, key healthcare provider groups, planning and development organizations, education associations, advocacy groups, relevant industries, State and local leadership, and other entities as determined appropriate by the Secretary.

''(2) APPOINTMENTS.—The Secretary shall accept nominations for representation on USCO-OP through public comment before the initial appointment of members of USCO-OP under paragraph (1)(G), and on a regular basis for open positions thereafter, but not less than every 2 years.

''(3) CHAIRPERSON.—The chairperson of USCO-OP shall be—

''(A) an individual appointed by the President; and

''(B) until the date that an individual is appointed under subparagraph (A), the Secretary.

''(c) MEETINGS.—

''(1) IN GENERAL.—USCO-OP shall meet—

''(A) not later than 180 days after the date of enactment of the Obesity Prevention, Treatment, and Research Act of 2008; and

''(B) at the call of the chairperson thereafter, but in no case less often than 2 times per year.

''(2) MEETINGS OF FEDERAL AGENCIES.—The representatives of the Federal agencies on USCO-OP shall meet on a regular basis, as determined by the Secretary, to develop strategies to coordinate budgets and discuss other issues that are not otherwise permitted to be discussed in a public forum. The purpose of such meetings shall be to allow more rapid interagency strategic planning and intervention implementation to address the overweight and obesity epidemic.

''(d) DUTIES OF USCO-OP.—USCO-OP shall—

''(1) develop strategies to comprehensively prevent, treat, and reduce overweight and obesity;

''(2) coordinate interagency cooperation and action related to the prevention, treatment, and reduction of overweight and obesity in the United States;

''(3) identify best practices in communities to address overweight and obesity;

''(4) work with appropriate entities to evaluate the effectiveness of obesity and overweight interventions;

''(5) update the National Institutes of Health 1998 'Clinical Guidelines on the Identification, Evaluation, and Treatment of Overweight and Obesity in Adults: The Evidence Report' and include sections on childhood obesity in such updated report;

''(6) conduct ongoing surveillance and monitoring using tools such as the National Health and Nutrition Examination Survey and the Behavioral Risk Factor Surveillance System and assure adequate and consistent funding to support data collection and analysis to inform policy;

''(7) make recommendations to coordinate budgets, grant and pilot programs, policies, and programs across Federal agencies to cohesively address overweight and obesity, including with respect to the grant programs carried out under sections 306(n), 399S, and 1904(a)(1)(H);

''(8) make recommendations to update and improve the daily physical activity requirements for students under the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.) and include recommendations about physical activities that families can do together, and involving parents in these activities;

''(9) make recommendations about coverage for obesity-related services and for an early and periodic screening, diagnostic, and treatment services program under the State Children's Health Insurance Program established under title XXI of the Social Security Act; and

''(10) provide guidelines for childhood obesity health care related treatment under the early and periodic screening, diagnostic, and treatment services program under the Medicaid program established under title XIX of the Social Security Act and otherwise described in section 2103(c)(5) of such Act.

''(e) REPORT.—Not later than 18 months after the date of enactment of the Obesity Prevention, Treatment, and Research Act of 2008, and on an annual basis thereafter, USCO-OP shall submit to the President and to the relevant committees of Congress, a report that—

''(1) summarizes the activities and efforts of USCO-OP under this section to coordinate interagency prevention, treatment, and reduction of obesity and overweight, including a detailed strategic plan with recommendations for each Federal agency;

''(2) evaluates the effectiveness of these coordinated interventions and conducts interim assessments and reporting of health outcomes, achievement of milestones, and implementation of strategic plan goals starting with the second report, and yearly thereafter; and

''(3) makes recommendations for the following year's strategic plan based on data and findings from the previous year.

''(f) TECHNICAL ASSISTANCE.—The Department of Health and Human Services may provide technical assistance to USCO-OP to carry out the activities under this section.

''(g) PERMANENCE OF COMMITTEE.—Section 14 of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to USCO-OP.''.

SEC. 102. GRANTS AND DEMONSTRATION PROGRAMS TO PROMOTE POSITIVE HEALTH BEHAVIORS IN POPULATIONS DISPROPORTIONATELY AFFECTED BY OBESITY AND OVERWEIGHT.

Part P of title III of the Public Health Service Act (42 U.S.C. 280g et seq.), as amended by section 101, is amended by adding at the end the following:

''SEC. 399S. GRANTS AND DEMONSTRATION PROGRAMS TO PROMOTE POSITIVE HEALTH BEHAVIORS IN POPULATIONS DISPROPORTIONATELY AFFECTED BY OBESITY AND OVERWEIGHT.

''(a) ELIGIBLE ENTITY.—For purposes of this section, the term 'eligible entity' means—

''(1) a city, county, Indian tribe, tribal organization, territory, or State;

''(2) a local, tribal, or State educational agency;

''(3) a Federal medical facility, including a federally qualified health center (as defined in section 1861(aa)(4) of the Social Security Act), an Indian Health Service hospital or clinic, any health facility or program operated by or pursuant to a contractor grant from the Indian Health Service, an Indian Health Service entity, an urban Indian center, an Indian tribal clinic, a health care for the homeless center, a rural health center, migrant health center, and any other Federal medical facility;

''(4) any entity meeting the criteria for medical home under section 204 of the Tax Relief and Health Care Act of 2006 (Public Law 109–432);

''(5) a nonprofit organization (such as an academic health center or community health center);

''(6) a health department;

''(7) any licensed or certified health provider;

''(8) an accredited university or college;

''(9) a community-based organization;

''(10) a local city planning agency; and

''(11) any other entity determined appropriate by the Secretary.

''(b) APPLICATION.—An eligible entity that desires a grant under this section shall submit an application at such time, in such manner, and containing such information as the Secretary may require, including a plan for the use of funds that may be awarded and an evaluation of any training that will be provided under such grant.

''(c) GRANT DEMONSTRATION AND PILOT PROGRAM.—

''(1) IN GENERAL.—The Secretary, acting through the Director of the Centers for Disease Control and Prevention, and in consultation with the United States Council on Overweight-Obesity Prevention under section 399R, shall establish and evaluate a grant demonstration and pilot program for entities to—

''(A) prevent, treat, or otherwise reduce overweight and obesity;

''(B) increase the number of children and adults who safely walk or bike to school or work;

''(C) increase the availability and affordability of fresh fruits and vegetables in the community;

''(D) expand safe and accessible walking paths and recreational facilities to encourage physical activity, and other interventions to create healthy communities;

''(E) create advertising, social marketing, and public health campaigns promoting healthier food choices, increased physical activity, and healthier lifestyles targeted to individuals and to families;

''(F) promote increased rates and duration of breastfeeding; and

''(G) increase worksite and employer promotion of and involvement in community initiatives that prevent, treat, or otherwise reduce overweight and obesity.

''(2) SPECIAL PRIORITY.—Special priority will be given to grant proposals that target communities or populations disproportionately affected by overweight or obesity, including Native Americans, other minorities, and women.

''(d) GRANTS TO PROMOTE POSITIVE HEALTH BEHAVIORS IN POPULATIONS DISPROPORTIONATELY AFFECTED BY OBESITY AND OVERWEIGHT.—

''(1) IN GENERAL.—The Secretary, acting through the Director of the Centers for Disease Control and Prevention, may award grants to eligible entities to promote health behaviors for women and children in target populations, especially racial and ethnic minority populations in medically underserved communities.

''(2) USE OF FUNDS.—An award under this section shall be used to carry out any of the following:

''(A) To educate, promote, prevent, treat and determine best practices in overweight and obese populations.

''(B) To address behavioral risk factors including sedentary lifestyle, poor nutrition, being overweight or obese, and use of tobacco, alcohol or other substances that increase the risk of morbidity and mortality. Special priority will be given to grant applications that—

''(i) propose interventions that address embedded levels of influence on behavior, including the individual, family, peers, community and society; and

''(ii) utilize techniques that promote community involvement in the design and implementation of interventions including community diagnosis and community-based participatory research.

''(C) To develop and implement interventions to promote a balance of energy consumption and expenditure, to attain healthier weight, prevent obesity, and reduce morbidity and mortality associated with overweight and obesity.

''(D)(i) To train primary care physicians and other licensed or certified health professionals on how to identify, treat, and prevent obesity or eating disorders and aid individuals who are overweight, obese, or who suffer from eating disorders.

''(ii) To use evidence-based findings or recommendations that pertain to the prevention and treatment of obesity, being overweight, and eating disorders to conduct educational conferences, including Internet-based courses and teleconferences, on—

''(I) how to treat or prevent obesity, being overweight, and eating disorders;

''(II) the link between obesity, being overweight, eating disorders and related serious and chronic medical conditions;

''(III) how to discuss varied strategies with patients from at-risk and diverse populations to promote positive behavior change and healthy lifestyles to avoid obesity, being overweight, and eating disorders;

''(IV) how to identify overweight, obese, individuals with eating disorders, and those who are at risk for obesity and being overweight or suffer from eating disorders and, therefore, at risk for related serious and chronic medical conditions; and

''(V) how to conduct a comprehensive assessment of individual and familial health risk factors and evaluate the effectiveness of the training provided by such entity in increasing knowledge and changing attitudes and behaviors of trainees.

''(iii) In awarding a grant to carry out an activity under this subparagraph, preference shall be given to an entity described in subsection (a)(4).

''(e) REPORTING TO CONGRESS.—Not later than 3 years after the date of enactment of this section, the Director of the Centers for

Disease Control and Prevention shall submit to the Secretary and Congress a report concerning the result of the activities conducted through the grants awarded under this section.

''(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section, $50,000,000 for fiscal year 2009, and such sums as may be necessary for each of fiscal years 2010 through 2012.''.

SEC. 103. NATIONAL CENTER FOR HEALTH STATISTICS.

Section 306 of the Public Health Service Act (42 U.S.C. 242k) is amended—

(1) in subsection (m)(4)(B), by striking ''subsection (n)'' each place it appears and inserting ''subsection (o)'';

(2) by redesignating subsection (n) as subsection (o); and

(3) by inserting after subsection (m) the following:

''(n)(1) The Secretary, acting through the Center, may provide for the—

''(A) collection of data for determining the fitness levels and energy expenditure of adults, children, and youth; and

''(B) analysis of data collected as part of the National Health and Nutrition Examination Survey and other data sources.

''(2) In carrying out paragraph (1), the Secretary, acting through the Center, may make grants to States, public entities, and nonprofit entities.

''(3) The Secretary, acting through the Center, may provide technical assistance, standards, and methodologies to grantees supported by this subsection in order to maximize the data quality and comparability with other studies.''.

SEC. 104. HEALTH DISPARITIES REPORT.

Not later than 18 months after the date of enactment of this Act, and annually thereafter, the Director of the Agency for Healthcare Research and Quality shall review all research that results from the activities carried out under this Act (and the amendments made by this Act) and determine if particular information may be important to the report on health disparities required by section 903(c)(3) of the Public Health Service Act (42 U.S.C. 299a–1(c)(3)).

SEC. 105. PREVENTIVE HEALTH SERVICES BLOCK GRANT.

Section 1904(a)(1) of the Public Health Service Act (42 U.S.C. 300w–3(a)(1)) is amended by adding at the end the following:

''(H) Activities and community education programs designed to address and prevent overweight, obesity, and eating disorders through effective programs to promote healthy eating, and exercise habits and behaviors.''.

SEC. 106. REPORT ON OBESITY AND EATING DISORDERS RESEARCH.

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary of Health and Human Services shall submit to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Energy and Commerce of the House of Representatives a report on research conducted on causes and health implications (including mental health implications) of being overweight, obesity, and eating disorders.

(b) CONTENT.—The report described in subsection (a) shall contain—

(1) descriptions on the status of relevant, current, ongoing research being conducted in the Department of Health and Human Services including research at the National Institutes of Health, the Centers for Disease Control and Prevention, the Agency for Healthcare Research and Quality, the Health Resources and Services Administration, and other offices and agencies;

(2) information about what these studies have shown regarding the causes, prevention, and treatment of, being overweight, obesity, and eating disorders; and

(3) recommendations on further research that is needed, including research among diverse populations, the plan of the Department of Health and Human Services for conducting such research, and how current knowledge can be disseminated.

TITLE II—FOOD AND BEVERAGE LABELING FOR HEALTHY CHOICES

SEC. 201. FOOD AND BEVERAGE LABELING FOR HEALTHY CHOICES.

(a) USCO-OP.—In this section, the term ''USCO-OP'' means the United States Council on Overweight-Obesity Prevention under section 399R of the Public Health Service Act (as added by section 101).

(b) REFORM OF FOOD AND BEVERAGE LABELING.—The Secretary of Health and Human Services and the Secretary of Agriculture, in consultation with the USCO-OP, shall, through regulation or other appropriate action, update and reform Federal oversight of food and beverage labeling. Such reform shall include improving the transparency of such labeling with regard to nutritional and caloric value of food and beverages.

TITLE III—HEALTHY CHOICES FOOD AND BEVERAGE PROGRAMS

SEC. 301. FRESH FRUIT AND VEGETABLE PROGRAM.

Section 19(i) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769a(i)) is amended—

(1) by redesignating paragraphs (3) through (7) as paragraphs (4) through (8); and

(2) by inserting after paragraph (2) the following:

''(3) ADDITIONAL MANDATORY FUNDING.—

''(A) IN GENERAL.—Out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary of Agriculture to carry out and expand the program under this section, to remain available until expended—

''(i) on October 1, 2008, $80,000,000;

''(ii) on July 1, 2009, $130,000,000;

''(iii) on July 1, 2010, $202,000,000;

''(iv) on July 1, 2011, $300,000,000; and

''(v) on July 1, 2012, and on each July 1 thereafter, the amount made available for the previous fiscal year, as adjusted under subparagraph (B).

''(B) ADJUSTMENT.—On July 1, 2012, and on each July 1 thereafter the amount made available under subparagraph (A)(v) shall be calculated by adjusting the amount made available for the previous fiscal year to reflect changes in the Consumer Price Index of the Bureau of Labor Statistics for fresh fruits and vegetables, with the adjustment—

''(i) rounded down to the nearest dollar increment; and

''(ii) based on the unrounded amounts for the preceding 12-month period.

''(C) ALLOCATION.—Funds made available under this paragraph shall be allocated among the States and the District of Columbia in the same manner as funds made available under paragraph (1).''.

TITLE IV—AMENDMENTS TO THE SOCIAL SECURITY ACT

SEC. 401. COVERAGE OF EVIDENCE-BASED PREVENTIVE SERVICES UNDER MEDICARE, MEDICAID, AND SCHIP.

(a) MEDICARE.—Section 1861(ddd) of the Social Security Act, as added by section 101 of the Medicare Improvements for Patients and Providers Act of 2008, is amended—

(1) in paragraph (2), by striking ''paragraph (1)'' and inserting ''paragraphs (1) and (3)''; and

(2) by adding at the end the following new paragraph:

''(3) The term 'additional preventive services' includes any evidence-based preventive services which the Secretary has determined are reasonable and necessary, including, as so determined, smoking cessation and prevention services, diet and exercise counseling, and healthy weight and obesity counseling.''.

(b) STATE OPTION TO PROVIDE MEDICAL ASSISTANCE FOR EVIDENCE-BASED PREVENTIVE SERVICES.—

(1) IN GENERAL.—Section 1905 of the Social Security Act (42 U.S.C. 1396d) is amended—

(A) in subsection (a)—

(i) in paragraph (27), by striking ''and'' at the end;

(ii) by redesignating paragraph (28) as paragraph (29); and

(iii) by inserting after paragraph (27) the following:

''(28) evidence-based preventive services described in subsection (y); and''; and

(B) by adding at the end the following:

''(y)(1) For purposes of subsection (a)(28), evidence-based preventive services described in this subsection are any preventive services which the Secretary has determined are reasonable and necessary through the process for making national coverage determinations (as defined in section 1869(f)(1)(B)) under title XVIII, including, as so determined, smoking cessation and prevention services, diet and exercise counseling, and healthy weight and obesity counseling.''.

(2) CONFORMING AMENDMENT.—Section 1902(a)(10)(C)(iv) of such Act is amended by inserting ''and (28)'' after ''(24)''.

(c) STATE OPTION TO PROVIDE CHILD HEALTH ASSISTANCE FOR EVIDENCE-BASED PREVENTIVE SERVICES.—Section 2110(a) of the Social Security Act (42 U.S.C. 1397jj(a)) is amended—

(1) by redesignating paragraph (28) as paragraph (29); and

(2) by inserting after paragraph (27) the following:

''(28) Evidence-based preventive services described in section 1905(y).''.

SEC. 402. COVERAGE OF MEDICAL NUTRITION COUNSELING UNDER MEDICARE, MEDICAID, AND SCHIP.

(a) MEDICARE COVERAGE OF MEDICAL NUTRITION THERAPY SERVICES FOR PEOPLE WITH PRE-DIABETES.—Section 1861(s)(2)(V) of the Social Security Act (42 U.S.C. 1395x(s)(2)(V)) is amended by inserting after ''beneficiary with diabetes'' the following '', pre-diabetes or its risk factors (including hypertension, dyslipidemia, obesity, or overweight),''.

(b) STATE OPTION TO PROVIDE MEDICAL ASSISTANCE FOR MEDICAL THERAPY SERVICES.—

(1) IN GENERAL.—Section 1905(a) of the Social Security Act (42 U.S.C. 1396d), as amended by section 401(b), is amended—

(A) in paragraph (28), by striking ''and'' at the end;

(B) by redesignating paragraph (29) as paragraph (30); and

(C) by inserting after paragraph (28) the following:

''(29) medical nutrition therapy services (as defined in section 1861(vv)(1)) for individuals with pre-diabetes or obesity, or who are overweight (as defined by the Secretary); and''.

(2) CONFORMING AMENDMENT.—Section 1902(a)(10)(C)(iv) of such Act, as amended by section 401(b)(2), is amended by striking ''and (28)'' and inserting '', (28) and (29)''.

(c) STATE OPTION TO PROVIDE CHILD HEALTH ASSISTANCE FOR MEDICAL NUTRITION THERAPY

SERVICES.—Section 2110(a) of the Social Security Act (42 U.S.C. 1397jj(a)), as amended by section 401(c), is amended—

(1) by redesignating paragraph (29) as paragraph (30); and

(2) by inserting after paragraph (28) the following:

''(29) Medical nutrition therapy services (as defined in section 1861(vv)(1)) for individuals with pre-diabetes or obesity, or who are overweight (as defined by the Secretary).''.

SEC. 403. AUTHORIZING EXPANSION OF MEDICARE COVERAGE OF MEDICAL NUTRITION THERAPY SERVICES.

(a) AUTHORIZING EXPANDED ELIGIBLE POPULATION.—Section 1861(s)(2)(V) of the Social Security Act (42 U.S.C. 1395x(s)(2)(V)), as amended by section 402, is amended—

(1) by redesignating clauses (i) through (iii) as subclauses (I) through (III), respectively, and indenting each such clause an additional 2 ems;

(2) by striking ''in the case of a beneficiary with diabetes, pre-diabetes or its risk factors (including hypertension, dyslipidemia, obesity, overweight), or a renal disease who—'' and inserting ''in the case of a beneficiary—

''(i) with diabetes, pre-diabetes or its risk factors (including hypertension, dyslipidemia, obesity, overweight), or a renal disease who—'';

(3) by adding ''or'' at the end of subclause (III) of clause (i), as so redesignated; and

(4) by adding at the end the following new clause:

''(ii) who is not described in clause (i) but who has another disease, condition, or disorder for which the Secretary has made a national coverage determination (as defined in section 1869(f)(1)(B)) for the coverage of such services;''.

(b) COVERAGE OF SERVICES FURNISHED BY PHYSICIANS.—Section 1861(vv)(1) of the Social Security Act (42 U.S.C. 1395x(vv)(1)) is amended by inserting ''or which are furnished by a physician'' before the period at the end.

(c) NATIONAL COVERAGE DETERMINATION PROCESS.—In making a national coverage determination described in section 1861(s)(2)(V)(ii) of the Social Security Act, as added by subsection (a)(4), the Secretary of Health and Human Services, acting through the Administrator of the Centers for Medicare & Medicaid Services, shall—

(1) consult with dietetic and nutrition professional organizations in determining appropriate protocols for coverage of medical nutrition therapy services for individuals with different diseases, conditions, and disorders; and

(2) consider the degree to which medical nutrition therapy interventions prevent or help prevent the onset or progression of more serious diseases, conditions, or disorders.

SEC. 404. CLARIFICATION OF EPSDT INCLUSION OF PREVENTION, SCREENING, AND TREATMENT SERVICES FOR OBESITY AND OVERWEIGHT; SCHIP COVERAGE.

(a) IN GENERAL.—Section 1905(r)(5) of the Social Security Act (42 U.S.C. 1396d(r)(5)) is amended by inserting '', including weight and BMI measurement and monitoring, as well as appropriate treatment services (including but not limited to) medical nutrition therapy services (as defined in section 1861(vv)(1)), physical therapy or exercise training, and behavioral health counseling, based on recommendations of the United States Council on Overweight-Obesity Prevention under section 399R of the Public Health Service Act and such other expert recommendations and studies as determined by the Secretary'' before the period.

(b) SCHIP.—

(1) REQUIRED COVERAGE.—Section 2103 (42 U.S.C. 1397cc) is amended—

(A) in subsection (a), in the matter before paragraph (1), by striking ''subsection (c)(5)'' and inserting ''paragraphs (5) and (7) of subsection (c)''; and

(B) in subsection (c)—

(i) by redesignating paragraph (5) as paragraph (7); and

(ii) by inserting after paragraph (4), the following:

''(5) PREVENTION, SCREENING, AND TREATMENT SERVICES FOR OBESITY AND OVERWEIGHT.—The child health assistance provided to a targeted low-income child shall include coverage of weight and BMI measurement and monitoring, as well as appropriate treatment services (including but not limited to) medical nutrition therapy services (as defined in section 1861(vv)(1)), physical therapy or exercise training, and behavioral health counseling, based on recommendations of the United States Council on Overweight-Obesity Prevention under section 399R of the Public Health Service Act and such other expert recommendations and studies as determined by the Secretary.''.

(2) CONFORMING AMENDMENT.—Section 2102(a)(7)(B) (42 U.S.C. 1397bb(c)(2)) is amended by inserting ''and services described in section 2103(c)(5)'' after ''emergency services''.

SEC. 405. INCLUSION OF PREVENTIVE SERVICES IN QUALITY MATERNAL AND CHILD HEALTH SERVICES.

Section 501(b) of the Social Security Act (42 U.S.C. 701(b)) is amended by adding at the end the following new paragraph:

''(5) The term 'quality maternal and child health services' includes the following:

''(A) Evidence-based preventive services described in section 1905(y).

''(B) Medical nutrition counseling for individuals with pre-diabetes or obesity, or who are overweight (as defined by the Secretary).

''(C) Weight and BMI measurement and monitoring, as well as appropriate treatment services (including but not limited to) medical nutrition therapy services (as defined in section 1861(vv)(1)), physical therapy or exercise training, and behavioral health counseling, based on recommendations of the United States Council on Overweight-Obesity Prevention under section 399R of the Public Health Service Act and such other expert recommendations and studies as determined by the Secretary.''.

SEC. 406. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in subsection (b), the amendments made by this title take effect on October 1, 2009.

(b) EXTENSION OF EFFECTIVE DATE FOR STATE LAW AMENDMENT.—In the case of a State plan under title XIX or XXI of the Social Security Act (42 U.S.C. 1396 et seq., 1397aa et seq.) which the Secretary of Health and Human Services determines requires State legislation in order for the plan to meet the additional requirements imposed by the amendments made by this section, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of enactment of this Act. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of the session is considered to be a separate regular session of the State legislature.

By Mr. REID:

S. 3590. A bill to provide grants for use by rural local educational agencies in purchasing new school buses; to the Committee on Commerce, Science, and Transportation.

Mr. REID. Mr. President, many years ago, when I attended school in Searchlight, I walked to school. When it was time for high school, I hitched a ride into a town 40 miles away and had to stay with family during the week. There weren't many options back then. That was how many kids got to school in rural Nevada—walk or hitchhike.

Now, of course, in both urban and rural America, most children take school buses to school.

Unfortunately, rural school districts across America are strapped. They can't afford to buy newer, safer buses. With gas near $4 a gallon, their budgets have been stretched to the limits. As a result, many rural areas have no choice but to operate outdated, unsafe school buses for as long as they can pass inspection.

Over the years, I have met several times with the school superintendents in my State—all 17 of them. While each district has their own unique challenges, they all have an urgent need for safe and reliable school buses.

In some rural Nevada counties, school buses must travel a million miles in a single school year. Last school year, the buses in one of Nevada's rural school districts traveled close to 5 million miles combined. I am fairly confident that many of my colleagues on both sides of the aisle would agree that the need for newer and safer school buses is not unique to Nevada's rural school districts.

From my meetings with our State's superintendents, it was clear that our school districts needed assistance. In the 108th and 109th Congresses, I introduced legislation to help these and other rural districts transport children to school in a way that is safe, affordable, and environmentally sound.

The Bus Utility and Safety in School Transportation Opportunity and Purchasing Act of 2008—or BUS STOP—allows school districts across rural America to be eligible for transit funding through the Department of Transportation, with the Federal Government contributing 75 percent of the cost.

Some may wonder why we need such a program when the Environmental Protection Agency already has a cost-share grant program—the Clean School Bus USA program—to help school districts purchase new buses powered by natural gas or other alternative fuels.

Unfortunately, most of the rural districts in my State, and, I would imagine, across the country, cannot apply for these grants because they don't have the infrastructure in place to support this technology.

However, working in the spirit of a cleaner environment and healthy children, this bill will help rural school

districts buy newer buses that are better for our air, and safer for our children.

There are many small, rural towns in America, like Searchlight, where kids travel to school in outdated buses. They deserve no less than safe, clean, economical buses to get them to school.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 3590

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 ''Bus Utility and Safety in School Transportation Opportunity and Purchasing Act of 2008''.

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds that—

(1) school transportation issues remain a concern for parents, State and local educational agencies, lawmakers, the National Highway Traffic Safety Administration, the National Transportation Safety Board, and the Environmental Protection Agency;

(2) many rural local educational agencies are operating outdated, unsafe school buses that are failing inspection, resulting in a depletion of the school bus fleets of the local educational agencies;

(3) many rural local educational agencies are unable to afford newer and safer buses;

(4) the rising cost of fuel has further strained the budgets of local educational agencies across the country; and

(5) millions of children face potential future health problems because of exposure to noxious fumes emitted from older school buses.

(b) PURPOSE.—The purpose of this Act is to establish within the Department of Transportation a Federal cost-sharing program to assist rural local educational agencies with older, unsafe school bus fleets in purchasing newer, safer school buses.

SEC. 3. DEFINITIONS.

In this Act:

(1) RURAL LOCAL EDUCATIONAL AGENCY.—The term ''rural local educational agency'' means a local educational agency, as defined in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801), with respect to which—

(A) each county in which a school served by the local educational agency is located has a total population density of fewer than 10 persons per square mile;

(B) all schools served by the local educational agency are designated with a school locale code of 7 or 8, as determined by the Secretary of Education; or

(C) all schools served by the local educational agency have been designated, by official action taken by the legislature of the State in which the local educational agency is located, as rural schools for purposes relating to the provision of educational services to students in the State.

(2) SCHOOL BUS.—The term ''school bus'' means a vehicle the primary purpose of which is to transport students to and from school or school activities.

(3) SECRETARY.—The term ''Secretary'' means the Secretary of Transportation.

SEC. 4. GRANT PROGRAM.

(a) IN GENERAL.—From amounts made available under section 5311(j) of title 49, United States Code, for a fiscal year, the Secretary, in consultation with the Secretary of Education, shall provide grants, on a competitive basis, to rural local educational agencies to pay the Federal share of the cost of purchasing new school buses.

(b) APPLICATION.—

(1) IN GENERAL.—Each rural local educational agency that seeks to receive a grant under this Act shall submit to the Secretary for approval an application at such time, in such manner, and accompanied by such information (in addition to information required under paragraph (2)) as the Secretary may require.

(2) CONTENTS.—Each application submitted under paragraph (1) shall include—

(A) documentation that, of the total number of school buses operated by the rural local educational agency, a majority of these buses entered service prior to 1998;

(B) documentation of the number of miles that each school bus operated by the rural local educational agency traveled in the most recent 9-month academic year;

(C) documentation that the rural local educational agency is operating with a strained fleet of school buses;

(D) a certification from the rural local educational agency that—

(i) authorizes the application of the rural local educational agency for a grant under this Act; and

(ii) describes the dedication of the rural local educational agency to school bus replacement programs and school transportation needs (including the number of new school buses needed by the rural local educational agency); and

(E) an assurance that the rural local educational agency or state educational agency will pay the non-Federal share of the cost of the purchase of new school buses under this Act from non-Federal sources.

(c) PRIORITY.—

(1) IN GENERAL.—In providing grants under this Act, the Secretary shall give priority to rural local educational agencies that, as determined by the Secretary—

(A) are transporting students in a bus manufactured before 1977;

(B) have a strained fleet of school buses; or

(C) serve a school that is required, under section 1116(b)(9) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6316(b)(9)), to provide transportation to students to enable the students to transfer to another public school served by the rural local educational agency.

(d) PAYMENTS; FEDERAL SHARE.—

(1) PAYMENTS.—The Secretary shall pay to each rural local educational agency having an application approved under this section the Federal share described in paragraph (2) of the cost of purchasing such number of new school buses as is specified in the approved application.

(2) FEDERAL SHARE.—The Federal share of the cost of purchasing a new school bus under this Act shall be 75 percent.

(e) FORMULA GRANTS UNDER SAFETEA–LU.—Section 5311 of title 49, United States Code, is amended by inserting at the end the following:

''(j) RURAL SCHOOL TRANSPORTATION.—The Secretary may expand not to exceed 5 percent of amounts made available under this section to carry out the Bus Utility and Safety in School Transportation Opportunity and Purchasing Act of 2008.''.

By Mr. REID (for himself and Mr. ENSIGN):

S. 3595. A bill to direct the Secretary of the Interior to convey to the Nevada System of Higher Education certain Federal land located in Clark and Nye counties, Nevada, and for other purposes; to the Committee on Energy and Natural Resources.

Mr. REID. Mr. President, I rise today with my good friend Senator ENSIGN to introduce the Southern Nevada Higher Education Land Act of 2008. This bill will expand opportunities for higher education in one of the Nation's fastest growing areas, southern Nevada.

In July 1862, President Abraham Lincoln signed the Land Grant College Act into law, creating a higher education legacy that continues to benefit our country today. That bill, now referred to as the Morrill Act, provided 30,000 acres of Federal land per Member of Congress to establish institutions of higher education in each State. Today, thanks in large part to the foresight of Senator Justin Smith Morrill from Vermont and others from his time, this Nation has one of the finest public university systems in the world.

Among the many universities established as a result of this forward-looking legislation was the University of Nevada. The State's first university was originally founded in Elko in 1874. Two years later, Nevada's State legislature voted to move the university to its current home in Reno. The University of Nevada remained the State's only higher education institution for 75 years.

From these humble beginnings, the State of Nevada has expanded its higher education system to now include two research universities, one State college, one research institution, and four community colleges. The Nevada System of Higher Education, which was formed in 1968 and encompasses all 8 institutions, has grown to serve roughly 98,000 degree-seeking students.

As the State of Nevada continues to grow, so too must its university system. With over 2 million residents in 2007, greater Las Vegas is the fourth-largest metropolitan area in the Mountain West. In this decade alone, the area's population has grown by 31 percent, 5 times faster than the Nation as a whole. By the year 2040, the area's population is projected to double to nearly 4.3 million residents. We must expand higher education opportunities to meet the demands of this growing region.

Consider the following—the University of Nevada, Las Vegas, with 28,000 students and 3,300 faculty and staff, is the fourth fastest-growing research university in the Nation. The College of Southern Nevada, also in Las Vegas, serves 39,000 students and its three urban campuses are at near capacity. The town of Pahrump, 60 miles from Las Vegas in rural Nye County, has grown by 20 percent since 2000. Great Basin College's small branch campus in Pahrump uses high school classrooms at night to serve the city's 41,000 residents.

Our legislation will make selected parcels of Federal lands available for the future growth of the university system. Land will be provided for new campuses for the University of Nevada, Las Vegas; the College of Southern Nevada; and a Pahrump campus of Great Basin College. The current campuses for these three institutions comprise 1,150 acres in southern Nevada. With the passage of this legislation, an additional 2,400 acres will be available for new classroom, research, and residential facilities to help further the missions of these three fine institutions.

To establish these new campuses, three parcels of land would be conveyed from the Bureau of Land Management, BLM, to the Nevada System of Higher Education. Two of the parcels are located in Clark County, within the Southern Nevada Public Land Management Act, SNPLMA, disposal boundary. The third parcel is located in Pahrump, west of Las Vegas, in Nye County. BLM has designated all of these parcels for disposal because they are surrounded by development and are difficult to manage.

It is important to point out that the land our legislation conveys for the University of Nevada, Las Vegas, borders Nellis Air Force Base. Nellis was once on the outskirts of town, but now development is on its doorstep. In order to protect the mission of the Nellis Air Force base, we have put a special provision in the legislation requiring that the university system and Air Force sign a common agreement regarding development plans for the campus before any land is conveyed. The university system and the Air Force have been in conversations about this agreement for at least 2 years and seem to have found a middle ground that will serve the interests of both parties. We greatly appreciate the efforts of the university system and the Air Force to make this work.

This same land bordering Nellis was once used as a small arms range during World War II and will need to be cleaned up before it can be conveyed to the university system. Because it will take time to accomplish this, our legislation allows the land to be conveyed in phases, as the remediation is completed.

This proposal to expand higher education opportunities in southern Nevada has been welcomed by area leaders. City and county officials have worked closely with the Nevada System of Higher Education to plan the development of world-class facilities in their communities. These facilities are critical to meeting the challenge of diversifying their economies and attracting and growing knowledge industries in the area.

Just as the Morrill Act opened up Federal land to expand higher education across the Nation, I am hopeful that this important, though much more modest effort can do the same for the residents of southern Nevada. We look forward to working with Chairman BINGAMAN, Ranking Member DOMENICI and the other distinguished members of the Energy and Natural Resources Committee to move this legislation in an expeditious manner.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 3595

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Southern Nevada Higher Education Land Act of 2008''.

SEC. 2. FINDINGS; PURPOSE.

(a) FINDINGS.—Congress finds that—

(1) southern Nevada is 1 of the fastest growing regions in the United States, with 750,000 new residents added since 2000 and 250,000 residents expected to be added by 2010;

(2) the Nevada System of Higher Education serves more than 70,000 undergraduate and graduate students in southern Nevada, with enrollment in the System expected to grow by 21 percent during the next 10 years, which would bring enrollment to a total of 85,000 students in the System;

(3) the Nevada System of Higher Education campuses in southern Nevada comprise 1,200 acres, 1 of the smallest land bases of any major higher education system in the western United States;

(4) the University of Nevada, Las Vegas, with 28,500 students and 3,300 faculty and staff, is the fourth fastest-growing research university in the United States;

(5) the College of Southern Nevada—

(A) serves 39,000 students each semester; and

(B) is near capacity at each of the 3 urban campuses of the College;

(6) Pahrump, located in rural Nye County, Nevada—

(A) has grown by 20 percent since 2000; and

(B) has a small satellite campus of Great Basin College to serve the 40,500 residents of Pahrump, Nevada; and

(7) the Nevada System of Higher Education needs additional land to provide for the future growth of the System, particularly for the University of Nevada, Las Vegas, the College of Southern Nevada, and the Pahrump campus of Great Basin College.

(b) PURPOSES.—The purposes of this Act are—

(1) to provide additional land for a thriving higher education system that serves the residents of fast-growing southern Nevada;

(2) to provide residents of the State with greater opportunities to pursue higher education and the resulting benefits, which include increased earnings, more employment opportunities, and better health; and

(3) to provide communities in southern Nevada the economic and societal values of higher education, including economic growth, lower crime rates, greater civic participation, and less reliance on social services.

SEC. 3. DEFINITIONS.

In this Act:

(1) BOARD OF REGENTS.—The term ''Board of Regents'' means the Board of Regents of the Nevada System of Higher Education.

(2) CAMPUSES.—The term ''Campuses'' means the Great Basin College, College of Southern Nevada, and University of Las Vegas, Nevada, campuses.

(3) FEDERAL LAND.—The term ''Federal land'' means each of the 3 parcels of Bureau of Land Management land identified on the maps as ''Parcel to be Conveyed'', of which—

(A) approximately 40 acres is to be conveyed for the College of Southern Nevada;

(B) approximately 2,085 acres is to be conveyed for the University of Nevada, Las Vegas; and

(C) approximately 285 acres is to be conveyed for the Great Basin College.

(4) MAP.—The term ''Map'' means each of the 3 maps entitled ''Southern Nevada Higher Education Land Act'', dated July 11, 2008, and on file and available for public inspection in the appropriate offices of the Bureau of Land Management.

(5) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

(6) STATE.—The term ''State'' means the State of Nevada.

(7) SYSTEM.—The term ''System'' means the Nevada System of Higher Education.

SEC. 4. CONVEYANCES OF FEDERAL LAND TO THE SYSTEM.

(a) CONVEYANCES.—

(1) IN GENERAL.—Notwithstanding section 202 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1712) and section 1(c) of the Act of June 14, 1926 (commonly known as the ''Recreation and Public Purposes Act'') (43 U.S.C. 869(c)) and subject to all valid existing rights, the Secretary shall—

(A) not later than 180 days after the date of enactment of this Act, convey to the System, without consideration, all right, title, and interest of the United States in and to the Federal land for the Great Basin College and the College of Southern Nevada; and

(B) not later than 180 days after the receipt of certification of acceptable remediation of environmental conditions existing on the parcel to be conveyed for the University of Nevada, Las Vegas, convey to the System, without consideration, all right, title, and interest of the United States in and to the Federal land for the University of Nevada, Las Vegas.

(2) PHASES.—The Secretary may phase the conveyance of the Federal land under paragraph (1)(B) as remediation is completed.

(b) CONDITIONS.—

(1) IN GENERAL.—As a condition of the conveyance under subsection (a)(1), the Board of Regents shall agree in writing—

(A) to pay any administrative costs associated with the conveyance, including the costs of any environmental, wildlife, cultural, or historical resources studies;

(B) to use the Federal land conveyed for educational and recreational purposes;

(C) to release and indemnify the United States from any claims or liabilities that may arise from uses carried out on the Federal land on or before the date of enactment of this Act by the United States or any person;

(D) as soon as practicable after the date of the conveyance under subsection (a)(1), to erect at each of the Campuses an appropriate and centrally located monument that acknowledges the conveyance of the Federal land by the United States for the purpose of furthering the higher education of the citizens in the State; and

(E) to assist the Bureau of Land Management in providing information to the students of the System and the citizens of the State on—

(i) public land (including the management of public land) in the Nation; and

(ii) the role of the Bureau of Land Management in managing, preserving, and protecting the public land in the State.

(2) AGREEMENT WITH NELLIS AIR FORCE BASE.—As a condition of the conveyance of the Federal land for the University of Nevada, Las Vegas under subsection (a)(1)(B), the Board of Regents shall enter into a cooperative interlocal agreement with Nellis Air Force Base that is consistent with the missions of the System and the United States Air Force.

(c) USE OF FEDERAL LAND.—

(1) IN GENERAL.—The System may use the Federal land conveyed under subsection (a)(1) for—

(A) any purpose relating to the establishment, operation, growth, and maintenance of the System; and

(B) any uses relating to the purposes, including residential and commercial development that would generally be associated with an institution of higher education.

(2) OTHER ENTITIES.—The System may—

(A) consistent with Federal and State law, lease, or otherwise provide property or space at, the Campuses, with or without consideration, to religious, public interest, community, or other groups for services and events that are of interest to the System or to any community located in southern Nevada;

(B) allow any other communities in southern Nevada to use facilities of the Campuses for educational and recreational programs of the community; and

(C) in conjunction with the city of Las Vegas, North Las Vegas, or Pahrump or Clark or Nye County plan, finance (including through the provision of cost-share assistance), construct, and operate facilities for the city of Las Vegas, North Las Vegas, or Pahrump or Clark or Nye County on the Federal land conveyed for educational or recreational purposes consistent with this section.

(d) REVERSION.—

(1) IN GENERAL.—If the Federal land or any portion of the Federal land conveyed under subsection (a)(1) ceases to be used for the System, the Federal land, or any portion of the Federal land shall, at the discretion of the Secretary, revert to the United States.

(2) UNIVERSITY OF NEVADA, LAS VEGAS.—If the System fails to complete the first building or show progression toward development of the University of Nevada, Las Vegas campus on the applicable parcels of Federal land by the date that is 50 years after the date of receipt of certification of acceptable remediation of environmental conditions, the parcels of the Federal land described in section 3(3)(B) shall, at the discretion of the Secretary, revert to the United States.

By Mr. KERRY:

S. 3596. A bill to stabilize the small business lending market, and for other purposes; to the Committee on Small Business and Entrepreneurship.

Mr. KERRY. Mr. President, over the past several days the Federal Government has been called upon to bail out some of America's largest financial companies. While I recognize that swift action must be taken to prevent the collapse of our Nation's major financial institutions, like many other Americans, I believe we also should come to the aid of our Nation's small businesses, which are also imperiled by this financial crisis.

Today the problems facing small firms and the banks that typically lend to them are not unlike those being faced by corporate America—firms simply cannot access the capital they need to keep their small businesses afloat in the wake of this economic crisis. Although the Small Business Administration's loan programs were designed to reach these marginalized borrowers, there is ample evidence that the programs are failing to do so at this critical juncture.

Last year, the SBA's 7(a) and 504 loan guarantee programs combined to provide over 100,000 American small businesses with essential financing, and they injected approximately $20 billion into our local businesses and communities. As a result of the financial crisis, 7(a) loans are down about 30 percent in terms of the number of loans made, and down about 11 percent in terms of dollars. Meanwhile, the number of 504 loans has decreased about 16 percent and they are down approximately 15 percent in terms of dollars loaned for fiscal year 2008. But these are more than just statistics; they are stark indications that the SBA's loan programs are not reaching enough of the small businesses that are now struggling to obtain affordable credit.

The recent drop in SBA lending paints a picture of small business borrowers and lenders caught in a vicious cycle driven by the financial crises of the past year. On the lender side of the equation, struggling banks have become so concerned with risk that they have virtually cut off conventional small business borrowing, even to well-qualified firms. On the borrower side, the banks' extremely tight lending practices are preventing loans—SBA loans in particular—from serving small businesses that need capital to survive the current economic crisis. That is why I am introducing the Small Business Lending Market Stabilization Act of 2008—which will jump start SBA lending, helping thousands of American small businesses receive the financing they need to survive the current financial crisis.

In April, as Chairman of the Senate Committee on Small Business and Entrepreneurship, I held a hearing to learn why the SBA loan programs were not reaching small businesses that were being squeezed out of the conventional loan markets by the credit crunch. Although the Administration refused to admit it at the time, virtually every other witness at the hearing told me that the SBA's increased fees played a significant role. The bill I have introduced today will address that problem by temporarily eliminating the fees that the SBA charges to borrowers, lenders, and ''Certified Development Companies'' for the 7(a) and 504 loan guarantee programs. This will immediately reduce the cost of capital for SBA borrowers. With lower monthly loan payments, more money will be placed into the hands of small business owners—money that will allow them to continue purchasing inventory and equipment. At the same time, the fee relief will also reduce the cost of lending for SBA's partners in the private sector, allowing them to make more small business loans through the programs.

The bill also includes several provisions that will expand the universe of small businesses that can access the SBA's loan programs. For instance, one measure will permit certain borrowers to refinance a limited amount of their preexisting debt through a new 504 loan. This adjustment will allow 504 loans to reach small business owners who want to refinance their company's existing debt, but have been turned down by conventional lenders.

The bill also contains measures that will give lenders greater flexibility in making SBA loans. One provision would allow the SBA to use ''weighted average rates'' when pooling loans for sale on the secondary market, making the secondary markets for SBA loans more efficient and improving liquidity among participating banks. Another provision would provide greater flexibility by directing the SBA to give lenders at least one alternative interest rate to the Wall Street prime rate, which will help reduce interest rate typically charged on 7(a) loans.

In short, the bill I am introducing today will provide much needed support for America's small businesses, helping them break free from the vicious cycle caused by the crisis in our financial markets. I will continue to work with my colleagues on both sides of the aisle to ensure that the massive Wall Street bailout proposal we have been asked to approve contains adequate protections for taxpayers. But I also urge my colleagues to join me in supporting this bill, which will provide a lifeline to hundreds of thousands of American small businesses along Main Street.

By Mr. KYL:

S. 3599. A bill to amend title 18, United States Code, to add crimes committed in Indian country or exclusive Federal jurisdiction as racketeering predicates; to the Committee on the Judiciary.

Mr. KYL. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 3599

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CRIMES COMMITTED IN INDIAN COUNTRY OR EXCLUSIVE FEDERAL JURISDICTION AS RACKETEERING PREDICATES.

Section 1961(1)(A) of title 18, United States Code, is amended by inserting '', or would

have been so chargeable if the act or threat (other than gambling conducted pursuant to Federal law) had not been committed in Indian country (as defined in section 1151) or in any other area of exclusive Federal jurisdiction,'' after ''chargeable under State law''.

By Mr. KYL:

S. 3600. A bill to amend title 35, United States Code, to provide for patent reform; to the Committee on the Judiciary.

Mr. KYL. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the text of the bill ordered to be printed in the RECORD, as follows:

S. 3600

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Patent Reform Act of 2008''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

SEC. 2. RIGHT OF THE FIRST INVENTOR TO FILE.

(a) DEFINITIONS.—Section 100 of title 35, United States Code, is amended by adding at the end the following:

''(f) The term 'inventor' means the individual or, if a joint invention, the individuals collectively who invented or discovered the subject matter of the invention.

''(g) The terms 'joint inventor' and 'coinventor' mean any 1 of the individuals who invented or discovered the subject matter of a joint invention.

''(h) The 'effective filing date of a claimed invention' is—

''(1) the filing date of the patent or the application for patent containing the claim to the invention; or

''(2) if the patent or application for patent is entitled to a right of priority of any other application under section 119, 365(a), or 365(b) or to the benefit of an earlier filing date in the United States under section 120, 121, or 365(c), the filing date of the earliest such application in which the claimed invention is disclosed in the manner provided by the first paragraph of section 112.

''(i) The term 'claimed invention' means the subject matter defined by a claim in a patent or an application for a patent.''.

(b) CONDITIONS FOR PATENTABILITY.—

(1) IN GENERAL.—Section 102 of title 35, United States Code, is amended to read as follows:

''§ 102. Conditions for patentability; novelty

''(a) NOVELTY; PRIOR ART.—A patent for a claimed invention may not be obtained if—

''(1) the claimed invention was patented, described in a printed publication, or otherwise made available to the public (other than through testing undertaken to reduce the invention to practice)—

''(A) more than 1 year before the effective filing date of the claimed invention; or

''(B) 1 year or less before the effective filing date of the claimed invention, other than through disclosures made by the inventor or a joint inventor or by others who obtained the subject matter disclosed directly or indirectly from the inventor or a joint inventor; or

''(2) the claimed invention was described in a patent issued under section 151, or in an application for patent published or deemed published under section 122(b), in which the patent or application, as the case may be, names another inventor and was effectively filed before the effective filing date of the claimed invention.

''(b) EXCEPTIONS.—

''(1) PRIOR INVENTOR DISCLOSURE EXCEPTION.—Subject matter that would otherwise qualify as prior art based upon a disclosure under subparagraph (B) of subsection (a)(1) shall not be prior art to a claimed invention under that subparagraph if the subject matter had, before such disclosure, been publicly disclosed by the inventor or a joint inventor or others who obtained the subject matter disclosed directly or indirectly from the inventor or a joint inventor.

''(2) DERIVATION, PRIOR DISCLOSURE, AND COMMON ASSIGNMENT EXCEPTIONS.—Subject matter that would otherwise qualify as prior art only under subsection (a)(2), after taking into account the exception under paragraph (1), shall not be prior art to a claimed invention if—

''(A) the subject matter was obtained directly or indirectly from the inventor or a joint inventor;

''(B) the subject matter had been publicly disclosed by the inventor or a joint inventor or others who obtained the subject matter disclosed, directly or indirectly, from the inventor or a joint inventor before the effective filing date of the application or patent set forth under subsection (a)(2); or

''(C) the subject matter and the claimed invention, not later than the effective filing date of the claimed invention, were owned by the same person or subject to an obligation of assignment to the same person.

''(3) JOINT RESEARCH AGREEMENT EXCEPTION.—

''(A) IN GENERAL.—Subject matter and a claimed invention shall be deemed to have been owned by the same person or subject to an obligation of assignment to the same person in applying the provisions of paragraph (2) if—

''(i) the subject matter and the claimed invention were made by or on behalf of 1 or more parties to a joint research agreement that was in effect on or before the effective filing date of the claimed invention;

''(ii) the claimed invention was made as a result of activities undertaken within the scope of the joint research agreement; and

''(iii) the application for patent for the claimed invention discloses or is amended to disclose the names of the parties to the joint research agreement.

''(B) For purposes of subparagraph (A), the term 'joint research agreement' means a written contract, grant, or cooperative agreement entered into by 2 or more persons or entities for the performance of experimental, developmental, or research work in the field of the claimed invention.

''(4) PATENTS AND PUBLISHED APPLICATIONS EFFECTIVELY FILED.—A patent or application for patent is effectively filed under subsection (a)(2) with respect to any subject matter described in the patent or application—

''(A) as of the filing date of the patent or the application for patent; or

''(B) if the patent or application for patent is entitled to claim a right of priority under section 119, 365(a), or 365(b) or to claim the benefit of an earlier filing date under section 120, 121, or 365(c), based upon 1 or more prior filed applications for patent, as of the filing date of the earliest such application that describes the subject matter.''.

(2) CONFORMING AMENDMENT.—The item relating to section 102 in the table of sections for chapter 10 of title 35, United States Code, is amended to read as follows:

''102. Conditions for patentability; novelty.''.

(c) CONDITIONS FOR PATENTABILITY; NONOBVIOUS SUBJECT MATTER.—Section 103 of title 35, United States Code, is amended to read as follows:

''§ 103. Conditions for patentability; nonobvious subject matter

''A patent for a claimed invention may not be obtained though the claimed invention is not identically disclosed as set forth in section 102, if the differences between the claimed invention and the prior art are such that the claimed invention as a whole would have been obvious before the effective filing date of the claimed invention to a person having ordinary skill in the art to which the claimed invention pertains. Patentability shall not be negated by the manner in which the invention was made.''.

(d) REPEAL OF REQUIREMENTS FOR INVENTIONS MADE ABROAD.—Section 104 of title 35, United States Code, and the item relating to that section in the table of sections for chapter 10 of title 35, United States Code, are repealed.

(e) REPEAL OF STATUTORY INVENTION REGISTRATION.—

(1) IN GENERAL.—Section 157 of title 35, United States Code, and the item relating to that section in the table of sections for chapter 14 of title 35, United States Code, are repealed.

(2) REMOVAL OF CROSS REFERENCES.—Section 111(b)(8) of title 35, United States Code, is amended by striking ''sections 115, 131, 135, and 157'' and inserting ''sections 131 and 135''.

(f) EARLIER FILING DATE FOR INVENTOR AND JOINT INVENTOR.—Section 120 of title 35, United States Code, is amended by striking ''which is filed by an inventor or inventors named'' and inserting ''which names an inventor or joint inventor''.

(g) CONFORMING AMENDMENTS.—

(1) RIGHT OF PRIORITY.—Section 172 of title 35, United States Code, is amended by striking ''and the time specified in section 102(d)''.

(2) LIMITATION ON REMEDIES.—Section 287(c)(4) of title 35, United States Code, is amended by striking ''the earliest effective filing date of which is prior to'' and inserting ''which has an effective filing date before''.

(3) INTERNATIONAL APPLICATION DESIGNATING THE UNITED STATES: EFFECT.—Section 363 of title 35, United States Code, is amended by striking ''except as otherwise provided in section 102(e) of this title''.

(4) PUBLICATION OF INTERNATIONAL APPLICATION: EFFECT.—Section 374 of title 35, United States Code, is amended by striking ''sections 102(e) and 154(d)'' and inserting ''section 154(d)''.

(5) PATENT ISSUED ON INTERNATIONAL APPLICATION: EFFECT.—The second sentence of section 375(a) of title 35, United States Code, is amended by striking ''Subject to section 102(e) of this title, such'' and inserting ''Such''.

(6) LIMIT ON RIGHT OF PRIORITY.—Section 119(a) of title 35, United States Code, is amended by striking ''; but no patent shall be granted'' and all that follows through ''one year prior to such filing''.

(7) INVENTIONS MADE WITH FEDERAL ASSISTANCE.—Section 202(c) of title 35, United States Code, is amended—

(A) in paragraph (2)—

(i) by striking ''publication, on sale, or public use,'' and all that follows through ''obtained in the United States'' and inserting ''the 1-year period referred to in section 102(a) would end before the end of that 2-year period''; and

(ii) by striking ''the statutory'' and inserting ''that 1-year''; and

(B) in paragraph (3), by striking ''any statutory bar date that may occur under this title due to publication, on sale, or public use'' and inserting ''the expiration of the 1-year period referred to in section 102(a)''.

(h) REPEAL OF INTERFERING PATENT REMEDIES.—Section 291 of title 35, United States Code, and the item relating to that section in the table of sections for chapter 29 of title 35, United States Code, are repealed.

(i) ACTION FOR CLAIM TO PATENT ON DERIVED INVENTION.—Section 135(a) of title 35, United States Code, is amended to read as follows:

''(a) DISPUTE OVER RIGHT TO PATENT.—

''(1) INSTITUTION OF DERIVATION PROCEEDING.—An applicant may request initiation of a derivation proceeding to determine the right of the applicant to a patent by filing a request which sets forth with particularity the basis for finding that an earlier applicant derived the claimed invention from the applicant requesting the proceeding and, without authorization, filed an application claiming such invention. Any such request may only be made within 1 year after the date of first publication of an application or of the issuance of a patent, whichever is earlier, containing a claim that is the same or is substantially the same as the claimed invention, must be made under oath, and must be supported by substantial evidence. Whenever the Director determines that patents or applications for patent naming different individuals as the inventor interfere with one another because of a dispute over the right to patent under section 101, the Director shall institute a derivation proceeding for the purpose of determining which applicant is entitled to a patent.

''(2) DETERMINATION BY PATENT TRIAL AND APPEAL BOARD.—In any proceeding under this subsection, the Patent Trial and Appeal Board—

''(A) shall determine the question of the right to patent;

''(B) in appropriate circumstances, may correct the naming of the inventor in any application or patent at issue; and

''(C) shall issue a final decision on the right to patent.

''(3) DERIVATION PROCEEDING.—The Board may defer action on a request to initiate a derivation proceeding until 3 months after the date on which the Director issues a patent to the applicant whose application has the earlier effective filing date of the commonly claimed invention.

''(4) EFFECT OF FINAL DECISION.—The final decision of the Patent Trial and Appeal Board, if adverse to the claim of an applicant, shall constitute the final refusal by the United States Patent and Trademark Office on the claims involved. The Director may issue a patent to an applicant who is determined by the Patent Trial and Appeal Board to have the right to patent. The final decision of the Board, if adverse to a patentee, shall, if no appeal or other review of the decision has been or can be taken or had, constitute cancellation of the claims involved in the patent, and notice of such cancellation shall be endorsed on copies of the patent distributed after such cancellation by the United States Patent and Trademark Office.''.

(j) ELIMINATION OF REFERENCES TO INTERFERENCES.—(1) Sections 6, 41, 134, 141, 145, 146, 154, 305, and 314 of title 35, United States Code, are each amended by striking ''Board of Patent Appeals and Interferences'' each place it appears and inserting ''Patent Trial and Appeal Board''.

(2) Sections 141, 146, and 154 of title 35, United States Code, are each amended—

(A) by striking ''an interference'' each place it appears and inserting ''a derivation proceeding''; and

(B) by striking ''interference'' each additional place it appears and inserting ''derivation proceeding''.

(3) The section heading for section 134 of title 35, United States Code, is amended to read as follows:

''§ 134. Appeal to the Patent Trial and Appeal Board''.

(4) The section heading for section 135 of title 35, United States Code, is amended to read as follows:

''§ 135. Derivation proceedings''.

(5) The section heading for section 146 of title 35, United States Code, is amended to read as follows:

''§ 146. Civil action in case of derivation proceeding''.

(6) Section 154(b)(1)(C) of title 35, United States Code, is amended by striking ''INTERFERENCES'' and inserting ''DERIVATION PROCEEDINGS''.

(7) The item relating to section 6 in the table of sections for chapter 1 of title 35, United States Code, is amended to read as follows:

''6. Patent Trial and Appeal Board.''.

(8) The items relating to sections 134 and 135 in the table of sections for chapter 12 of title 35, United States Code, are amended to read as follows:

''134. Appeal to the Patent Trial and Appeal Board.

''135. Derivation proceedings.''.

(9) The item relating to section 146 in the table of sections for chapter 13 of title 35, United States Code, is amended to read as follows:

''146. Civil action in case of derivation proceeding.''.

(10) CERTAIN APPEALS.—Section 1295(a)(4)(A) of title 28, United States Code, is amended to read as follows:

''(A) the Patent Trial and Appeal Board of the United States Patent and Trademark Office with respect to patent applications, derivation proceedings, and post-grant review proceedings, at the instance of an applicant for a patent or any party to a patent interference (commenced before the effective date of the Patent Reform Act of 2008), derivation proceeding, or post-grant review proceeding, and any such appeal shall waive any right of such applicant or party to proceed under section 145 or 146 of title 35;''.

SEC. 3. INVENTOR'S OATH OR DECLARATION.

(a) INVENTOR'S OATH OR DECLARATION.—

(1) IN GENERAL.—Section 115 of title 35, United States Code, is amended to read as follows:

''§ 115. Inventor's oath or declaration

''(a) NAMING THE INVENTOR; INVENTOR'S OATH OR DECLARATION.—An application for patent that is filed under section 111(a) or that commences the national stage under section 371 (including an application under section 111 that is filed by an inventor for an invention for which an application has previously been filed under this title by that inventor) shall include, or be amended to include, the name of the inventor of any claimed invention in the application. Except as otherwise provided in this section, an individual who is the inventor or a joint inventor of a claimed invention in an application for patent shall execute an oath or declaration in connection with the application.

''(b) REQUIRED STATEMENTS.—An oath or declaration under subsection (a) shall contain statements that—

''(1) the application was made or was authorized to be made by the affiant or declarant; and

''(2) such individual believes himself or herself to be the original inventor or an original joint inventor of a claimed invention in the application.

''(c) ADDITIONAL REQUIREMENTS.—The Director may specify additional information relating to the inventor and the invention that is required to be included in an oath or declaration under subsection (a).

''(d) SUBSTITUTE STATEMENT.—

''(1) IN GENERAL.—In lieu of executing an oath or declaration under subsection (a), the applicant for patent may provide a substitute statement under the circumstances described in paragraph (2) and such additional circumstances that the Director may specify by regulation.

''(2) PERMITTED CIRCUMSTANCES.—A substitute statement under paragraph (1) is permitted with respect to any individual who—

''(A) is unable to file the oath or declaration under subsection (a) because the individual—

''(i) is deceased;

''(ii) is under legal incapacity; or

''(iii) cannot be found or reached after diligent effort; or

''(B) is under an obligation to assign the invention but has refused to make the oath or declaration required under subsection (a).

''(3) CONTENTS.—A substitute statement under this subsection shall—

''(A) identify the individual with respect to whom the statement applies;

''(B) set forth the circumstances representing the permitted basis for the filing of the substitute statement in lieu of the oath or declaration under subsection (a); and

''(C) contain any additional information, including any showing, required by the Director.

''(e) MAKING REQUIRED STATEMENTS IN ASSIGNMENT OF RECORD.—An individual who is under an obligation of assignment of an application for patent may include the required statements under subsections (b) and (c) in the assignment executed by the individual, in lieu of filing such statements separately.

''(f) TIME FOR FILING.—A notice of allowance under section 151 may be provided to an

applicant for patent only if the applicant for patent has filed each required oath or declaration under subsection (a) or has filed a substitute statement under subsection (d) or recorded an assignment meeting the requirements of subsection (e).

''(g) EARLIER-FILED APPLICATION CONTAINING REQUIRED STATEMENTS OR SUBSTITUTE STATEMENT.—The requirements under this section shall not apply to an individual with respect to an application for patent in which the individual is named as the inventor or a joint inventor and that claims the benefit under section 120 or 365(c) of the filing of an earlier-filed application, if—

''(1) an oath or declaration meeting the requirements of subsection (a) was executed by the individual and was filed in connection with the earlier-filed application;

''(2) a substitute statement meeting the requirements of subsection (d) was filed in the earlier filed application with respect to the individual; or

''(3) an assignment meeting the requirements of subsection (e) was executed with respect to the earlier-filed application by the individual and was recorded in connection with the earlier-filed application.

''(h) SUPPLEMENTAL AND CORRECTED STATEMENTS; FILING ADDITIONAL STATEMENTS.—

''(1) IN GENERAL.—Any person making a statement required under this section may withdraw, replace, or otherwise correct the statement at any time. If a change is made in the naming of the inventor requiring the filing of 1 or more additional statements under this section, the Director shall establish regulations under which such additional statements may be filed.

''(2) SUPPLEMENTAL STATEMENTS NOT REQUIRED.—If an individual has executed an oath or declaration under subsection (a) or an assignment meeting the requirements of subsection (e) with respect to an application for patent, the Director may not thereafter require that individual to make any additional oath, declaration, or other statement equivalent to those required by this section in connection with the application for patent or any patent issuing thereon.

''(3) SAVINGS CLAUSE.—No patent shall be invalid or unenforceable based upon the failure to comply with a requirement under this section if the failure is remedied as provided under paragraph (1).

''(i) ACKNOWLEDGMENT OF PENALTIES.—Any declaration or statement filed pursuant to this section shall contain an acknowledgment that any willful false statement made in such declaration or statement is punishable under section 1001 of title 18 by fine or imprisonment of not more than 5 years, or both.''.

(2) RELATIONSHIP TO DIVISIONAL APPLICATIONS.—Section 121 of title 35, United States Code, is amended by striking ''If a divisional application'' and all that follows through ''inventor.''.

(3) REQUIREMENTS FOR NONPROVISIONAL APPLICATIONS.—Section 111(a) of title 35, United States Code, is amended—

(A) in paragraph (2)(C), by striking ''by the applicant'' and inserting ''or declaration'';

(B) in the heading for paragraph (3), by striking ''AND OATH''; and

(C) by striking ''and oath'' each place it appears.

(4) CONFORMING AMENDMENT.—The item relating to section 115 in the table of sections for chapter 10 of title 35, United States Code, is amended to read as follows:

''115. Inventor's oath or declaration.''.

(b) FILING BY OTHER THAN INVENTOR.—Section 118 of title 35, United States Code, is amended to read as follows:

''§ 118. Filing by other than inventor

''A person to whom the inventor has assigned or is under an obligation to assign the invention may make an application for patent. A person who otherwise shows sufficient proprietary interest in the matter may make an application for patent on behalf of and as agent for the inventor on proof of the pertinent facts and a showing that such action is appropriate to preserve the rights of the parties. If the Director grants a patent on an application filed under this section by a person other than the inventor, the patent shall be granted to the real party in interest and upon such notice to the inventor as the Director considers to be sufficient.''.

(c) SPECIFICATION.—Section 112 of title 35, United States Code, is amended—

(1) in the first paragraph—

(A) by striking ''The specification'' and inserting ''(a) IN GENERAL.—The specification''; and

(B) by striking '', and shall set forth'' and all that follows through ''his invention''; and

(2) in the second paragraph—

(A) by striking ''The specifications'' and inserting ''(b) CONCLUSION.—The specifications''; and

(B) by striking ''applicant regards as his invention'' and inserting ''inventor or a joint inventor regards as the invention'';

(3) in the third paragraph, by striking ''A claim'' and inserting ''(c) FORM.—A claim'';

(4) in the fourth paragraph, by striking ''Subject to the following paragraph,'' and inserting ''(d) REFERENCE IN DEPENDENT FORMS.—Subject to subsection (e),'';

(5) in the fifth paragraph, by striking ''A claim'' and inserting ''(e) REFERENCE IN MULTIPLE DEPENDENT FORM.—A claim''; and

(6) in the last paragraph, by striking ''An element'' and inserting ''(f) ELEMENT IN CLAIM FOR A COMBINATION.—An element''.

SEC. 4. DAMAGES.

(a) DAMAGES.—Section 284 of title 35, United States Code, is amended to read as follows:

''§ 284. Damages

''(a) IN GENERAL.—

''(1) COMPENSATORY DAMAGES.—Upon finding for a claimant, the court shall award the claimant damages adequate to compensate for the infringement, but in no event less than a reasonable royalty for the use made of the invention by the infringer, together with interest and costs as determined by the court.

''(2) INCREASED DAMAGES.—When the damages are not found by a jury, the court shall assess them. In either event the court may increase the damages up to 3 times the amount found or assessed. Increased damages under this paragraph shall not apply to provisional rights under section 154(d) of this title.

''(3) LIMITATION.—Subsections (b) through (i) of this section apply only to the determination of the amount of reasonable royalty and shall not apply to the determination of other types of damages.

''(b) HYPOTHETICAL NEGOTIATION.—For purposes of this section, the term 'reasonable royalty' means the amount that the infringer would have agreed to pay and the claimant would have agreed to accept if the infringer and claimant had voluntarily negotiated a license for use of the invention at the time just prior to when the infringement began. The court or the jury, as the case may be, shall assume that the infringer and claimant would have agreed that the patent is valid, enforceable, and infringed.

''(c) APPROPRIATE FACTORS.—The court or the jury, as the case may be, may consider any factors that are relevant to the determination of the amount of a reasonable royalty.

''(d) STANDARDIZED MEASURES.—The amount of a reasonable royalty shall not be determined by the use of a standard or average ratio for the division of profits, an industry average rate for royalties, or other methods that are not based on the particular benefits or advantages of the use of the invention, unless the party asserting the propriety of such a method demonstrates that—

''(1) the use made of the invention is the primary reason for demand for the infringing product or process;

''(2) the method consists of the use of an established royalty;

''(3) the method consists of the use of an industry average range to confirm that an estimate of the amount of a reasonable royalty that is produced by an independently allowable method falls within a reasonable range; or

''(4) no other method is reasonably available to determine the amount of a reasonable royalty and the use of the method is otherwise appropriate.

''(e) COMPARABLE PATENTS.—

''(1) IN GENERAL.—The amount of a reasonable royalty shall not be determined by comparison to royalties paid for patents other than the patent in suit unless—

''(A) such other patents are used in the same or an analogous technological field;

''(B) such other patents are found to be economically comparable to the patent in suit; and

''(C) evidence of the value of such other patents is presented in conjunction with or as confirmation of other evidence for determining the amount of a reasonable royalty.

''(2) FACTORS.—Factors that may be considered to determine whether another patent is economically comparable to the patent in suit under paragraph (1)(A) include whether—

''(A) the other patent is comparable to the patent in suit in terms of the overall significance of the other patent to the product or process licensed under such other patent; and

''(B) the product or process that uses the other patent is comparable to the infringing product or process based upon its profitability or a like measure of value.

''(f) FINANCIAL CONDITION.—The financial condition of the infringer as of the time of the trial shall not be relevant to the determination of the amount of a reasonable royalty.

''(g) SEQUENCING.—Either party may request that a patent-infringement trial be sequenced so that the court or the jury, as the case may be, decides questions of the patent's infringement and validity before the issue of the amount of a reasonable royalty is presented to the court or the jury, as the case may be. The court shall grant such a request absent good cause to reject the request, such as the absence of issues of significant damages or infringement and validity. The sequencing of a trial pursuant to this subsection shall not affect other matters, such as the timing of discovery.

''(h) EXPERTS.—In addition to the expert disclosure requirements under rule 26(a)(2) of the Federal Rules of Civil Procedure, a party that intends to present the testimony of an expert relating to the amount of a reasonable royalty shall provide—

''(1) to the other parties to that civil action, the expert report relating to damages, including all data and other information considered by the expert in forming the opinions of the expert; and

''(2) to the court, at the same time as to the other parties, the complete statement of all opinions that the expert will express and the basis and reasons for those opinions.

''(i) JURY INSTRUCTIONS.—On the motion of any party and after allowing any other party to the civil action a reasonable opportunity to be heard, the court shall determine whether there is no legally sufficient evidence to support 1 or more of the contentions of a party relating to the amount of a reasonable royalty. The court shall identify for the record those factors that are supported by legally sufficient evidence, and shall instruct the jury to consider only those factors when determining the amount of a reasonable royalty. The jury may not consider any factor for which legally sufficient evidence has not been admitted at trial.''.

(b) TESTIMONY BY EXPERTS.—Chapter 29 of title 35, United States Code, as amended by section 11, is further amended by adding at the end the following:

''§ 299A. Testimony by experts

''(a) FEDERAL RULE.—In a patent case, the court shall ensure that the testimony of a witness qualified as an expert by knowledge, skill, experience, training, or education meets the requirements set forth in rule 702 of the Federal Rules of Evidence.

''(b) DETERMINATION OF RELIABILITY.—To determine whether an expert's principles and methods are reliable, the court may consider, among other factors—

''(1) whether the expert's theory or technique can be or has been tested;

''(2) whether the theory or technique has been subjected to peer review and publication;

''(3) the known or potential error rate of the theory or technique, and the existence and maintenance of standards controlling the technique's operation;

''(4) the degree of acceptance of the theory or technique within the relevant scientific or specialized community;

''(5) whether the theory or technique is employed independently of litigation; or

''(6) whether the expert has adequately considered or accounted for readily available alternative theories or techniques.

''(c) REQUIRED EXPLANATION.—The court shall explain its reasons for allowing or barring the introduction of an expert's proposed testimony under this section.''.

SEC. 5. POST-GRANT REVIEW PROCEEDINGS.

(a) REEXAMINATION.—Section 303(a) of title 35, United States Code, is amended to read as follows:

''(a) Within 3 months after the owner of a patent files a request for reexamination under section 302, the Director shall determine whether a substantial new question of patentability affecting any claim of the patent concerned is raised by the request, with or without consideration of other patents or printed publications. The existence of a substantial new question of patentability is not precluded by the fact that a patent or printed publication was previously cited by or to the Office or considered by the Office.''.

(b) REPEAL OF OPTIONAL INTER PARTES REEXAMINATION PROCEDURES.—

(1) IN GENERAL.—Sections 311, 312, 313, 314, 315, 316, 317, and 318 of title 35, United States Code, and the items relating to those sections in the table of sections, are repealed.

(2) EFFECTIVE DATE.—Notwithstanding paragraph (1), the provisions of sections 311, 312, 313, 314, 315, 316, 317, and 318 of title 35, United States Code, shall continue to apply to any inter partes reexamination determination request filed on or before the effective date of subsection (c).

(c) POST-GRANT REVIEW PROCEEDINGS.—Part III of title 35, United States Code, is amended by adding at the end the following:

''CHAPTER 32—POST-GRANT REVIEW PROCEEDINGS

''§ 321. Petition for post-grant review

''(a) IN GENERAL.—Subject to the provisions of this chapter, a person who has a substantial economic interest adverse to a patent may file with the Office a petition to institute a post-grant review proceeding for that patent. If instituted, such a proceeding shall be deemed to be either a first-period proceeding or a second-period proceeding. The Director shall establish, by regulation, fees to be paid by the person requesting the proceeding, in such amounts as the Director determines to be reasonable, considering the aggregate costs of the post-grant review proceeding and the status of the petitioner.

''(b) FIRST-PERIOD PROCEEDING.—

''(1) SCOPE.—A petitioner in a first-period proceeding may request to cancel as unpatentable 1 or more claims of a patent on any ground that could be raised under paragraph (2) or (3) of section 282(b) (relating to invalidity of the patent or any claim).

''(2) FILING DEADLINE.—A petition for a first-period proceeding shall be filed not later than 9 months after the grant of the patent or issuance of a reissue patent.

''(c) SECOND-PERIOD PROCEEDING.—

''(1) SCOPE.—A petitioner in a second-period proceeding may request to cancel as unpatentable 1 or more claims of a patent only on a ground that could be raised under section 102 or 103 and only on the basis of prior art consisting of patents or printed publications.

''(2) FILING DEADLINE.—A petition for a second-period proceeding shall be filed after the later of either—

''(A) 9 months after the grant of a patent or issuance of a reissue of a patent; or

''(B) if a first-period proceeding is instituted under section 327, the date of the termination of such first-period proceeding.

''§ 322. Relation to other proceedings or actions

''(a) EARLY ACTIONS.—A first-period proceeding may not be instituted until after a civil action alleging infringement of the patent is finally concluded if—

''(1) the infringement action is filed within 3 months after the grant of the patent;

''(2) a stay of the proceeding is requested by the patent owner;

''(3) the Director determines that the infringement action is likely to address the same or substantially the same questions of patentability that would be addressed in the proceeding; and

''(4) the Director determines that a stay of the proceeding would not be contrary to the interests of justice.

''(b) PENDING CIVIL ACTIONS.—

''(1) INFRINGER'S ACTION.—A post-grant review proceeding may not be instituted or maintained if the petitioner or real party in interest has filed a civil action challenging the validity of a claim of the patent.

''(2) PATENT OWNER'S ACTION.—A second-period proceeding may not be instituted if the petition requesting the proceeding is filed more than 3 months after the date on which the petitioner, real party in interest, or his privy is required to respond to a civil action alleging infringement of the patent.

''(3) STAY OR DISMISSAL.—The Director may stay or dismiss a second-period proceeding if the petitioner or real party in interest challenges the validity of a claim of the patent in a civil action.

''(c) DUPLICATIVE PROCEEDINGS.—A post-grant review or reexamination proceeding may not be instituted if—

''(1) the petition requesting the proceeding identifies the same petitioner or real party in interest and the same patent as a previous petition requesting a post-grant review proceeding; or

''(2) the petition requests cancellation of a claim in a reissue patent that is identical to a claim in the original patent from which the reissue patent was issued, and the time limitations in section 321 would bar filing a post-grant review petition for such original patent.

''(d) ESTOPPEL.—The petitioner in any post-grant review proceeding under this chapter may not request or maintain a proceeding before the Office with respect to a claim, or assert either in a civil action arising in whole or in part under section 1338 of title 28 or in a proceeding before the International Trade Commission that a claim in a patent is invalid, on any ground that—

''(1) the petitioner, real party in interest, or his privy raised during a post-grant review proceeding resulting in a final decision under section 334; or

''(2) the petitioner, real party in interest, or his privy could have raised during a second-period proceeding resulting in a final decision under section 334.

''§ 323. Requirements of petition

''A petition filed under section 321 may be considered only if—

''(1) the petition is accompanied by payment of the fee established by the Director under section 321;

''(2) the petition identifies all real parties in interest;

''(3) the petition identifies, in writing and with particularity, each claim challenged, the grounds on which the challenge to each claim is based, and the evidence that supports the grounds for each challenged claim, including—

''(A) copies of patents and printed publications that the petitioner relies upon in support of the petition; and

''(B) affidavits or declarations of supporting evidence and opinions, if the petitioner relies on other factual evidence or on expert opinions;

''(4) the petition provides such other information as the Director may require by regulation; and

''(5) the petitioner provides copies of any of the documents required under paragraphs (3) and (4) to the patent owner or, if applicable, the designated representative of the patent owner.

"§ 324. Publication and public availability of petition

''(a) IN GENERAL.—As soon as practicable after the receipt of a petition under section 321, the Director shall—

''(1) publish the petition in the Federal Register; and

''(2) make that petition available on the website of the United States Patent and Trademark Office.

''(b) PUBLIC AVAILABILITY.—The file of any proceeding under this chapter shall be made available to the public except that any petition or document filed with the intent that it be sealed shall be accompanied by a motion to seal. Such petition or document shall be treated as sealed, pending the outcome of the ruling on the motion. Failure to file a motion to seal will result in the pleadings being placed in the public record.

"§ 325. Consolidation or stay of proceedings

''(a) FIRST-PERIOD PROCEEDINGS.—If more than 1 petition for a first-period proceeding is properly filed against the same patent and the Director determines that more than 1 of these petitions warrants the instituting of a first-period proceeding under section 327, the Director shall consolidate such proceedings into a single first-period proceeding.

''(b) SECOND-PERIOD PROCEEDINGS.—If the Director institutes a second-period proceeding, the Director, in his discretion, may join as a party to that second-period proceeding any person who properly files a petition under section 321 that the Director, after receiving a preliminary response under section 330 or the expiration of the time for filing such a response, determines warrants the instituting of a second-period proceeding under section 327.

''(c) OTHER PROCEEDINGS.—Notwithstanding sections 135(a), 251, and 252, and chapter 30, during the pendency of any post-grant review proceeding the Director may determine the manner in which any proceeding or matter involving the patent that is before the Office may proceed, including providing for stay, transfer, consolidation, or termination of any such proceeding or matter.

"§ 326. Submission of additional information

''A petitioner under this chapter shall file such additional information with respect to the petition as the Director may require by regulation.

"§ 327. Institution of post-grant review proceedings

''(a) THRESHOLD.—The Director may not authorize a post-grant review proceeding to commence unless the Director determines that the information presented in the petition, if such information is not rebutted, would provide a sufficient basis to conclude that at least 1 of the claims challenged in the petition is unpatentable.

''(b) ADDITIONAL GROUNDS.—In the case of a petition for a first-period proceeding, the determination required under subsection (a) may be satisfied by a showing that the petition raises a novel or unsettled legal question that is important to other patents or patent applications.

''(c) SUCCESSIVE PETITIONS.—The Director may not institute an additional second-period proceeding if a prior second-period proceeding has been instituted and the time period established under section 329(b)(2) for requesting joinder under section 325(b) has expired, unless the Director determines that—

''(1) the additional petition satisfies the requirements under subsection (a); and

''(2) either—

''(A) the additional petition presents exceptional circumstances; or

''(B) such an additional proceeding is reasonably required in the interests of justice.

''(d) TIMING.—The Director shall determine whether to institute a post-grant review proceeding under this chapter within 3 months after receiving a preliminary response under section 330 or the expiration of the time for filing such a response.

''(e) NOTICE.—The Director shall notify the petitioner and patent owner, in writing, of the Director's determination under subsection (a). The Director shall publish each notice of institution of a post-grant review proceeding in the Federal Register and make such notice available on the website of the United States Patent and Trademark Office. Such notice shall list the date on which the proceeding shall commence.

"§ 328. Determination not appealable

''The determination by the Director regarding whether to institute a post-grant review proceeding under section 327 shall not be appealable.

"§ 329. Conduct of post-grant review proceedings

''(a) IN GENERAL.—The Director shall prescribe regulations—

''(1) in accordance with section 2(b)(2), establishing and governing post-grant review proceedings under this chapter and their relationship to other proceedings under this title;

''(2) for setting forth the standards for showings of sufficient grounds to institute a proceeding under section 321(a) and subsections (a), (b), and (c) of section 327;

''(3) providing for the publication in the Federal Register all requests for the institution of post-grant proceedings;

''(4) establishing procedures for the submission of supplemental information after the petition is filed; and

''(5) setting forth procedures for discovery of relevant evidence, including that such discovery shall be limited to evidence directly related to factual assertions advanced by either party in the proceeding.

''(b) POST-GRANT REVIEW REGULATIONS.—The regulations required under subsection (a)(1) shall—

''(1) require that the final determination in any post-grant review proceeding be issued not later than 1 year after the date on which the Director notices the institution of a post-grant proceeding under this chapter, except that the Director may, for good cause shown, extend the 1-year period by not more than 6 months, and may adjust the time periods in this paragraph in the case of joinder under section 325(b);

''(2) set a time period for requesting joinder under section 325(b);

''(3) allow for discovery upon order of the Director, provided that in a second-period proceeding discovery shall be limited to—

''(A) the deposition of witnesses submitting affidavits or declarations; and

''(B) what is otherwise necessary in the interest of justice;

''(4) prescribe sanctions for abuse of discovery, abuse of process, or any other improper use of the proceeding, such as to harass or to cause unnecessary delay or unnecessary increase in the cost of the proceeding;

''(5) provide for protective orders governing the exchange and submission of confidential information;

''(6) ensure that any information submitted by the patent owner in support of any amendment entered under section 332 is made available to the public as part of the prosecution history of the patent; and

''(7) provide either party with the right to an oral hearing as part of the proceeding.

''(c) CONSIDERATIONS.—In prescribing regulations under this section, the Director shall consider the effect on the economy, the integrity of the patent system, and the efficient administration of the Office.

''(d) CONDUCT OF PROCEEDING.—The Patent Trial and Appeal Board shall, in accordance with section 6(b), conduct each proceeding authorized by the Director.

"§ 330. Patent owner response

''(a) PRELIMINARY RESPONSE.—If a post-grant review petition is filed under section 321, the patent owner shall have the right to file a preliminary response—

''(1) in the case of a first-period proceeding, within 2 months of the expiration of the time for filing a petition for a first-period proceeding; and

''(2) in the case of a second-period proceeding, within a time period set by the Director.

''(b) CONTENT OF RESPONSE.—A preliminary response to a petition for a post-grant review proceeding shall set forth reasons why no post-grant review proceeding should be instituted based upon the failure of the petition to meet any requirement of this chapter.

''(c) ADDITIONAL RESPONSE.—After a post-grant review proceeding under this chapter has been instituted with respect to a patent, the patent owner shall have the right to file, within a time period set by the Director, a response to the petition. The patent owner shall file with the response, through affidavits or declarations, any additional factual evidence and expert opinions on which the patent owner relies in support of the response.

"§ 331. Proof and evidentiary standards

''(a) IN GENERAL.—The presumption of validity set forth in section 282 of this title shall apply in post-grant review proceedings instituted under this chapter.

''(b) BURDEN OF PROOF.—The petitioner shall have the burden of proving a proposition of invalidity by a preponderance of the evidence in a first-period proceeding and by clear and convincing evidence in a second-period proceeding.

"§ 332. Amendment of the patent

''(a) IN GENERAL.—During a post-grant review proceeding instituted under this chapter, the patent owner may file 1 motion to amend the patent in 1 or more of the following ways:

''(1) Cancel any challenged patent claim.

''(2) For each challenged claim, propose a reasonable number of substitute claims.

''(b) ADDITIONAL MOTIONS.—Additional motions to amend may be permitted upon the joint request of the petitioner and the patent owner to materially advance the settlement of a proceeding under section 333, or upon the request of the patent owner for good cause shown.

''(c) SCOPE OF CLAIMS.—An amendment under this section may not enlarge the scope of the claims of the patent or introduce new matter.

"§ 333. Settlement

''(a) IN GENERAL.—A post-grant review proceeding instituted under this chapter shall be terminated with respect to any petitioner upon the joint request of the petitioner and the patent owner, unless the Office has decided the matter before the request for termination is filed. If the post-grant review proceeding is terminated with respect to a petitioner under this section, no estoppel under this chapter shall apply to that petitioner. If no petitioner remains in the post-

grant review proceeding, the Office may terminate the post-grant review proceeding or proceed to a final written decision under section 334.

''(b) AGREEMENTS IN WRITING.—Any agreement or understanding between the patent owner and a petitioner, including any collateral agreements referred to in such agreement or understanding, made in connection with, or in contemplation of, the termination of a post-grant review proceeding under this section shall be in writing and a true copy of such agreement or understanding shall be filed in the United States Patent and Trademark Office before the termination of the post-grant review proceeding as between the parties to the agreement or understanding. If any party filing such agreement or understanding so requests, the copy shall be kept separate from the file of the post-grant review proceeding, and shall be made available only to Federal Government agencies upon written request, or to any other person on a showing of good cause.

''§ 334. Decision of the board

''If the post-grant review proceeding is instituted and not dismissed under this chapter, the Patent Trial and Appeal Board shall issue a final written decision with respect to the patentability of any patent claim challenged and any new claim added under section 332.

''§ 335. Effect of decision

''If the Patent Trial and Appeal Board issues a final decision under section 334 and the time for appeal has expired or any appeal proceeding has terminated, the Director shall issue and publish a certificate canceling any claim of the patent finally determined to be unpatentable and incorporating in the patent by operation of the certificate any new claim determined to be patentable.

''§ 336. Appeal

''A party dissatisfied with the final determination of the Patent Trial and Appeal Board in a post-grant review proceeding instituted under this chapter may appeal the determination under sections 141 through 144. Any party to the post-grant review proceeding shall have the right to be a party to the appeal.''.

(d) TECHNICAL AND CONFORMING AMENDMENT.—The table of chapters for part III of title 35, United States Code, is amended by adding at the end the following:

''32. Post-Grant Review Proceedings ...321''.

(e) REGULATIONS AND EFFECTIVE DATE.—

(1) REGULATIONS.—The Under Secretary of Commerce for Intellectual Property and the Director of the United States Patent and Trademark Office (in this subsection referred to as the ''Director'') shall, not later than the date that is 1 year after the date of the enactment of this Act, issue regulations to carry out chapter 32 of title 35, United States Code, as added by subsection (c) of this section.

(2) APPLICABILITY.—The amendments made by subsection (c) shall take effect on the date that is 1 year after the date of the enactment of this Act and shall apply only to patents issued on or after that date, except that, in the case of a patent issued before the effective date of subsection (c) on an application filed between September 15, 1999 and the effective date of subsection (c), a petition for second-period review may be filed.

(3) PENDING INTERFERENCES.—The Director shall determine the procedures under which interferences commenced before the effective date under paragraph (2) are to proceed, including whether any such interference is to be dismissed without prejudice to the filing of a petition for a post-grant review proceeding under chapter 32 of title 35, United States Code, or is to proceed as if this Act had not been enacted. The Director shall include such procedures in regulations issued under paragraph (1).

SEC. 6. DEFINITION; PATENT TRIAL AND APPEAL BOARD.

(a) DEFINITION.—Section 100 of title 35, United States Code, as amended by section 2 of this Act, is further amended in subsection (e), by striking ''or inter partes reexamination under section 311''.

(b) PATENT TRIAL AND APPEAL BOARD.—Section 6 of title 35, United States Code, is amended to read as follows:

''§ 6. Patent trial and appeal board

''(a) ESTABLISHMENT AND COMPOSITION.—There shall be in the Office a Patent Trial and Appeal Board. The Director, the Deputy Director, the Commissioner for Patents, the Commissioner for Trademarks, and the administrative patent judges shall constitute the Patent Trial and Appeal Board. The administrative patent judges shall be persons of competent legal knowledge and scientific ability who are appointed by the Secretary. Any reference in any Federal law, Executive order, rule, regulation, or delegation of authority, or any document of or pertaining to the Board of Patent Appeals and Interferences is deemed to refer to the Patent Trial and Appeal Board.

''(b) DUTIES.—The Patent Trial and Appeal Board shall—

''(1) on written appeal of an applicant, review adverse decisions of examiners upon application for patents;

''(2) on written appeal of a patent owner, review adverse decisions of examiners upon patents in reexamination proceedings under chapter 30;

''(3) determine priority and patentability of invention in derivation proceedings under subsection 135(a); and

''(4) conduct post-grant review proceedings under chapter 32.

Each appeal, derivation, and post-grant review proceeding shall be heard by at least 3 members of the Patent Trial and Appeal Board, who shall be designated by the Director. Only the Patent Trial and Appeal Board may grant rehearings.''.

SEC. 7. SUBMISSIONS BY THIRD PARTIES AND OTHER QUALITY ENHANCEMENTS.

Section 122 of title 35, United States Code, is amended by adding at the end the following:

''(e) PREISSUANCE SUBMISSIONS BY THIRD PARTIES.—

''(1) IN GENERAL.—Any person may submit for consideration and inclusion in the record of a patent application, any patent, published patent application, or other publication of potential relevance to the examination of the application, if such submission is made in writing before the earlier of—

''(A) the date a notice of allowance under section 151 is mailed in the application for patent; or

''(B) either—

''(i) 6 months after the date on which the application for patent is published under section 122, or

''(ii) the date of the first rejection under section 132 of any claim by the examiner during the examination of the application for patent,

whichever occurs later.

''(2) OTHER REQUIREMENTS.—Any submission under paragraph (1) shall—

''(A) set forth a concise description of the asserted relevance of each submitted document;

''(B) be accompanied by such fee as the Director may prescribe; and

''(C) include a statement by the person making such submission affirming that the submission was made in compliance with this section.''.

SEC. 8. VENUE.

(a) VENUE FOR PATENT CASES.—Section 1400 of title 28, United States Code, is amended by striking subsection (b) and inserting the following:

''(b) Notwithstanding subsections (b) and (c) of section 1391 of this title, any civil action for patent infringement or any action for declaratory judgment arising under any Act of Congress relating to patents may be brought only in a judicial district—

''(1) where the defendant has its principal place of business or is incorporated;

''(2) where the defendant has committed acts of infringement and has a regular and established physical facility;

''(3) where the defendant has agreed or consented to be sued;

''(4) where the invention claimed in a patent in suit was conceived or actually reduced to practice;

''(5) where significant research and development of an invention claimed in a patent in suit occurred at a regular and established physical facility;

''(6) where a party has a regular and established physical facility that such party controls and operates and has—

''(A) engaged in management of significant research and development of an invention claimed in a patent in suit;

''(B) manufactured a product that embodies an invention claimed in a patent in suit; or

''(C) implemented a manufacturing process that embodies an invention claimed in a patent in suit;

''(7) where a nonprofit organization whose function is the management of inventions on behalf of an institution of higher education (as that term is defined under section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a))), including the patent in suit, has its principal place of business; or

''(8) for foreign defendants that do not meet the requirements of paragraphs (1) or (2), according to section 1391(d) of this title.''.

(b) TECHNICAL AMENDMENTS RELATING TO VENUE.—Sections 32, 145, 146, 154(b)(4)(A), and 293 of title 35, United States Code, and section 1071(b)(4) of an Act entitled ''Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes'', approved July 5, 1946 (commonly referred to as the ''Trademark Act of 1946'' or the ''Lanham Act'') are each amended by striking ''United States District Court for the District of Columbia'' each place that term appears and inserting ''United States District Court for the Eastern District of Virginia''.

SEC. 9. PATENT AND TRADEMARK OFFICE REGULATORY AUTHORITY.

(a) FEE SETTING.—

(1) IN GENERAL.—The Director shall have authority to set or adjust by rule any fee established or charged by the Office under sections 41 and 376 of title 35, United States Code or under section 31 of the Trademark Act of 1946 (15 U.S.C. 1113) for the filing or processing of any submission to, and for all other services performed by or materials furnished by, the Office, provided that such fee amounts are set to reasonably compensate the Office for the services performed.

(2) REDUCTION OF FEES IN CERTAIN FISCAL YEARS.—In any fiscal year, the Director—

(A) shall consult with the Patent Public Advisory Committee and the Trademark Public Advisory Committee on the advisability of reducing any fees described in paragraph (1); and

(B) after that consultation may reduce such fees.

(3) ROLE OF THE PUBLIC ADVISORY COMMITTEE.—The Director shall—

(A) submit to the Patent or Trademark Public Advisory Committee, or both, as appropriate, any proposed fee under paragraph (1) not less than 45 days before publishing any proposed fee in the Federal Register;

(B) provide the relevant advisory committee described in subparagraph (A) a 30-day period following the submission of any proposed fee, on which to deliberate, consider, and comment on such proposal, and require that—

(i) during such 30-day period, the relevant advisory committee hold a public hearing related to such proposal; and

(ii) the Director shall assist the relevant advisory committee in carrying out such public hearing, including by offering the use of Office resources to notify and promote the hearing to the public and interested stakeholders;

(C) require the relevant advisory committee to make available to the public a written report detailing the comments, advice, and recommendations of the committee regarding any proposed fee;

(D) consider and analyze any comments, advice, or recommendations received from the relevant advisory committee before setting or adjusting any fee; and

(E) notify, through the Chair and Ranking Member of the Senate and House Judiciary Committees, the Congress of any final decision regarding proposed fees.

(4) PUBLICATION IN THE FEDERAL REGISTER.—

(A) IN GENERAL.—Any rules prescribed under this subsection shall be published in the Federal Register.

(B) RATIONALE.—Any proposal for a change in fees under this section shall—

(i) be published in the Federal Register; and

(ii) include, in such publication, the specific rationale and purpose for the proposal, including the possible expectations or benefits resulting from the proposed change.

(C) PUBLIC COMMENT PERIOD.—Following the publication of any proposed fee in the Federal Register pursuant to subparagraph (A), the Director shall seek public comment for a period of not less than 45 days.

(5) CONGRESSIONAL COMMENT PERIOD.—Following the notification described in paragraph (3)(E), Congress shall have not more than 45 days to consider and comment on any proposed fee under paragraph (1). No proposed fee shall be effective prior to the end of such 45-day comment period.

(6) RULE OF CONSTRUCTION.—No rules prescribed under this subsection may diminish—

(A) an applicant's rights under this title or the Trademark Act of 1946; or

(B) any rights under a ratified treaty.

(b) FEES FOR PATENT SERVICES.—Division B of Public Law 108–447 is amended in title VIII of the Departments of Commerce, Justice and State, the Judiciary, and Related Agencies Appropriations Act, 2005, in section 801(a) by striking ''During fiscal years 2005, 2006, and 2007,'', and inserting ''Until such time as the Director sets or adjusts the fees otherwise,''.

(c) ADJUSTMENT OF TRADEMARK FEES.—Division B of Public Law 108–447 is amended in title VIII of the Departments of Commerce, Justice and State, the Judiciary and Related Agencies Appropriations Act, 2005, in section 802(a) by striking ''During fiscal years 2005, 2006, and 2007,'', and inserting ''Until such time as the Director sets or adjusts the fees otherwise,''.

(d) EFFECTIVE DATE, APPLICABILITY, AND TRANSITIONAL PROVISION.—Division B of Public Law 108–447 is amended in title VIII of the Departments of Commerce, Justice and State, the Judiciary and Related Agencies Appropriations Act, 2005, in section 803(a) by striking ''and shall apply only with respect to the remaining portion of fiscal year 2005 and fiscal year 2006.''.

(e) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to affect any other provision of Division B of Public Law 108–447, including section 801(c) of title VII of the Departments of Commerce, Justice and State, the Judiciary and Related Agencies Appropriations Act, 2005.

(f) DEFINITIONS.—In this section:

(1) DIRECTOR.—The term ''Director'' means the Director of the United States Patent and Trademark Office.

(2) OFFICE.—The term ''Office'' means the United States Patent and Trademark Office.

(3) TRADEMARK ACT OF 1946.—The term ''Trademark Act of 1946'' means an Act entitled ''Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes'', approved July 5, 1946 (15 U.S.C. 1051 et seq.) (commonly referred to as the Trademark Act of 1946 or the Lanham Act).

SEC. 10. APPLICANT QUALITY SUBMISSIONS.

(a) IN GENERAL.—Chapter 11 of title 35, United States Code, is amended by adding at the end the following new section:

''§ 123. Additional information

''(a) INCENTIVES.—The Director may, by regulation, offer incentives to applicants who submit a search report, a patentability analysis, or other information relevant to patentability. Such incentives may include prosecution flexibility, modifications to requirements for adjustment of a patent term pursuant to section 154(b) of this title, or modifications to fees imposed pursuant to section 9 of the Patent Reform Act of 2008.

''(b) ADMISSIBILITY OF RECORD.—If the Director certifies that an applicant has satisfied the requirements of the regulations issued pursuant to this section with regard to a patent, the record made in a matter or proceeding before the Office involving that patent or efforts to obtain the patent shall not be admissible to construe the patent in a civil action or in a proceeding before the International Trade Commission, except that such record may be introduced to demonstrate that the patent owner is estopped from asserting that the patent is infringed under the doctrine of equivalents. The Director may, by regulation, identify any material submitted in an attempt to satisfy the requirements of any regulations issued pursuant to this section that also shall not be admissible to construe the patent in a civil action or in a proceeding before the International Trade Commission.''.

(b) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to imply that, prior to the date of enactment of this section, the Director either lacked or possessed the authority to offer incentives to applicants who submit a search report, a patentability analysis, or other information relevant to patentability.

SEC. 11. INEQUITABLE CONDUCT AND CIVIL SANCTIONS FOR MISCONDUCT BEFORE THE OFFICE.

(a) IN GENERAL.—Chapter 29 of title 35, United States Code, is amended by adding at the end the following new sections:

''§ 298. Inequitable conduct

''(a) IN GENERAL.—Except as provided under this section or section 299, a patent shall not be held invalid or unenforceable based upon misconduct before the Office. Nothing in this section shall be construed to create a cause of action or a defense in a civil action.

''(b) ORDER TO REISSUE PATENT.—

''(1) FINDING OF THE COURT.—

''(A) IN GENERAL.—If a court in a civil action, upon motion of a party to the action, finds that it is more likely than not that a person who participated in a matter or proceeding before the Office knowingly and intentionally deceived the Office by concealing material information or by submitting false material information in such matter or proceeding, the court shall order the patent to be made the subject of a reissue application under section 251. The motion shall set forth any basis upon which the moving party contends 1 or more claims of the patent are invalid in view of information relating to the conduct at issue not previously considered by the Director. The decision on a motion filed under this paragraph shall not be subject to appellate review.

''(B) MATERIAL INFORMATION.—For purposes of this paragraph, information is material if it is not part of the record or cumulative to information in the record and either establishes that a patent claim is not patentable or refutes a position that the applicant or patent owner took in response to a rejection of the claim as unpatentable.

''(2) TIMING OF MOTION.—A motion described under paragraph (1) shall be filed promptly after discovery of the conduct at issue by the moving party.

''(3) REQUIRED SPECIFICITY IN COURT ORDER.—An order issued by a court under paragraph (1) shall contain findings of fact setting out with specificity the information relating to the conduct at issue not previously considered by the Director and upon which the court based its order. The findings of fact shall not be used by a court except as provided under this paragraph.

''(4) STAYS.—A court shall not stay a civil action by reason of commencement of a reissue proceeding that was authorized to be filed under this section unless—

''(A) the Director in a notification under section 132 makes a rejection of 1 or more claims of the patent;

''(B) an allegation of infringement remains in the civil action for at least 1 of the claims rejected; and

''(C) the court determines that the interests of justice require a stay of the action.

''(5) JUDGMENT THAT PATENT IS UNENFORCEABLE.—If a patentee involved in a civil action in which an order under this subsection is issued does not seek reissue of the patent within 2 months of such order, the court shall enter judgment that the patent is unenforceable.

''(c) PERMITTED REISSUE BY PATENTEE.—A patentee may request reissue of a patent on the basis of information not previously considered by the Director in connection with a patent, or the efforts to obtain such patent, by filing an application for reissue under section 251.

''(d) REQUIRED STATEMENT, AMENDED CLAIMS.—In any application for reissue of a patent authorized to be filed under this section, the patentee shall provide a statement

to the Director containing the information described in subsections (b) and (c). The reissue application may be filed with the omission of 1 or more claims of the original patent and with a single substitute claim of equivalent or narrower scope replacing any omitted claim of the original patent. For a reissue application authorized to be filed under subsection (c), the statement shall identify with specificity the issues of patentability arising from the information and the basis upon which the claims in the reissue application are believed by the applicant to be patentable notwithstanding the information.

''(e) CONDUCT OF REISSUE PROCEEDING.—

''(1) INITIAL ACTION.—The Director shall provide at least 1 of the notifications under section 132 or a notice of allowance under section 151 not later than 3 months after the filing date of an application for reissue authorized to be filed under this section.

''(2) SCOPE OF PROCEEDING.—

''(A) IN GENERAL.—A reissue proceeding authorized to be filed under this section shall, unless substitute claims are submitted, address only whether original claims continue to be patentable after consideration of the additional information provided by the applicant for reissue pursuant to subsection (d) in combination with information already of record in the original patent.

''(B) ISSUES OF PATENTABILITY.—If the Director determines during a reissue proceeding authorized to be filed under this section that 1 or more of the original claims of the patent cannot be reissued and the time for appeal of such determination has expired or any appeal proceeding related to such determination has terminated, the Director shall notify the patentee of the surrender of the patent in connection with the termination of the reissue proceeding, subject to the patentee's right to obtain a reissue for claims the Director determines to be patentable.

''(3) DURATION OF PROCEEDING.—For a reissue application authorized to be filed under subsection (b), a final decision on all issues of patentability shall be made by the Director within 1 year from the date of the initial notification under paragraph (1), subject to the right of the patentee to appeal under section 134.

''(4) TERMINATION OF PROCEEDING.—If the Director determines that all of the original claims continue to be patentable, the Director shall terminate the proceeding without the surrender of the original patent.

''(5) PROCEDURE AND APPEALS.—

''(A) IN GENERAL.—A reissue application authorized to be filed under this section may not be abandoned by the applicant or otherwise terminated without surrender of the original patent, except as provided under this section, and shall be conducted as an ex parte matter before the Office.

''(B) SPECIAL PROCEDURES.—Subject to subsection (d), no amendments other than an amendment presenting a single substitute claim of equivalent or narrower scope for each canceled claim in the first reply to the first action under section 132 may be made during the examination of a reissue application authorized to be filed under this section. The Director may amend pending claims at any time on agreement to a change proposed by the Director to the applicant. The Director may refuse to admit any paper filed after a second notification under section 132.

''(C) CONTINUING APPLICATIONS BARRED.—No application shall be entitled to the benefit of the filing date of an application authorized to be filed under this section.

''(D) EXPANDED EXAMINATION.—The Director may consider additional information introduced by the Director if substitute claims are presented.

''(E) APPEAL.—An applicant in a reissue application authorized to be filed by this section dissatisfied with a decision by the Patent Trial and Appeal Board may appeal only under the provisions of sections 141 though 144.

''(f) LIMITATION ON ENLARGING SCOPE OF CLAIMS.—No patent may be reissued based upon the filing of a reissue application authorized to be filed under this section that enlarges the scope of the claims of the original patent.

''(g) SANCTIONS.—Except as provided under subsection (h), if a reissue proceeding authorized under this section concludes without the surrender of the original patent or with the grant of 1 or more reissued patents, no further sanctions may be imposed against the patentee in connection with the original patent or the reissued patents based upon misconduct arising from the concealment of information subsequently provided, or the misrepresentation of information subsequently corrected in the statement provided under subsection (d).

''(h) RULE OF CONSTRUCTION.—Nothing in this section shall be construed—

''(1) to preclude the imposition of sanctions based upon criminal or antitrust laws (including section 1001(a) of title 18, the first section of the Clayton Act, and section 5 of the Federal Trade Commission Act to the extent that section relates to unfair methods of competition);

''(2) to limit the authority of the Director to investigate issues of possible misconduct and impose sanctions for misconduct in connection with matters or proceedings before the Office; or

''(3) to limit the authority of the Director to promulgate regulations under chapter 3 relating to sanctions for misconduct by representatives practicing before the Office.

''§ 299. Civil sanctions for misconduct before the Office

''(a) INFORMATION RELATING TO POSSIBLE MISCONDUCT.—The Director shall provide by regulation procedures for receiving and reviewing information indicating that parties to a matter or proceeding before the Office may have engaged in misconduct in connection with such matter or proceeding.

''(b) ADMINISTRATIVE PROCEEDING.—

''(1) PROBABLE CAUSE.—The Director shall determine, based on information received and reviewed under subsection (a), if there is probable cause to believe that 1 or more individuals or parties engaged in misconduct consisting of intentionally deceptive conduct of a material nature in connection with a matter or proceeding before the Office. A determination of probable cause by the Director under this paragraph shall be final and shall not be reviewable on appeal or otherwise.

''(2) DETERMINATION.—If the Director finds probable cause under paragraph (1), the Director shall, after notice and an opportunity for a hearing, and not later than 1 year after the date of such finding, determine whether misconduct consisting of intentionally deceptive conduct of a material nature in connection with the applicable matter or proceeding before the Office has occurred. The proceeding to determine whether such misconduct occurred shall be before an individual designated by the Director.

''(3) CIVIL SANCTIONS.—

''(A) IN GENERAL.—If the Director determines under paragraph (2) that misconduct has occurred, the Director may levy a civil penalty against the party that committed such misconduct.

''(B) FACTORS.—In establishing the amount of any civil penalty to be levied under subparagraph (A), the Director shall consider—

''(i) the materiality of the misconduct;

''(ii) the impact of the misconduct on a decision of the Director regarding a patent, proceeding, or application; and

''(iii) the impact of the misconduct on the integrity of matters or proceedings before the Office.

''(C) SANCTIONS.—A civil penalty levied under subparagraph (A) may consist of—

''(i) a penalty of up to $150,000 for each act of misconduct;

''(ii) in the case of a finding of a pattern of misconduct, a penalty of up to $1,000,000; or

''(iii) in the case of a finding of exceptional misconduct establishing that an application for a patent amounted to a fraud practiced by or at the behest of a real party in interest of the application—

''(I) a determination that 1 or more claims of the patent is unenforceable; or

''(II) a penalty of up to $10,000,000.

''(D) JOINT AND SEVERAL LIABILITY.—Any party found to have been responsible for misconduct in connection with any matter or proceeding before the Office under this section may be jointly and severally liable for any civil penalty levied under subparagraph (A).

''(E) DEPOSIT WITH THE TREASURY.—Any civil penalty levied under subparagraph (A) shall—

''(i) accrue to the benefit of the United States Government; and

''(ii) be deposited under 'Miscellaneous Receipts' in the United States Treasury.

''(F) AUTHORITY TO BRING ACTION FOR RECOVERY OF PENALTIES.—

''(i) IN GENERAL.—If any party refuses to pay or remit to the United States Government a civil penalty levied under this paragraph, the United States may recover such amounts in a civil action brought by the United States Attorney General on behalf of the Director in the United States District Court for the Eastern District of Virginia.

''(ii) INJUNCTIONS.—In any action brought under clause (i), the United States District Court for the Eastern District of Virginia may, as the court determines appropriate, issue a mandatory injunction incorporating the relief sought by the Director.

''(4) COMBINED PROCEEDINGS.—If the misconduct that is the subject of a proceeding under this subsection is attributed to a practitioner who practices before the Office, the Director may combine such proceeding with any other disciplinary proceeding under section 32 of this title.

''(c) OBTAINING EVIDENCE.—

''(1) IN GENERAL.—During the period in which an investigation for a finding of probable cause or for a determination of whether misconduct occurred in connection with any matter or proceeding before the Office is being conducted, the Director may require, by subpoena issued by the Director, persons to produce any relevant information, documents, reports, answers, records, accounts, papers, and other documentary or testimonial evidence.

''(2) ADDITIONAL AUTHORITY.—For the purposes of carrying out this section, the Director—

''(A) shall have access to, and the right to copy, any document, paper, or record, the Director determines pertinent to any investigation or determination under this section, in the possession of any person;

''(B) may summon witnesses, take testimony, and administer oaths;

''(C) may require any person to produce books or papers relating to any matter pertaining to such investigation or determination; and

''(D) may require any person to furnish in writing, in such detail and in such form as the Director may prescribe, information in their possession pertaining to such investigation or determination.

''(3) WITNESSES AND EVIDENCE.—

''(A) IN GENERAL.—The Director may require the attendance of any witness and the production of any documentary evidence from any place in the United States at any designated place of hearing.

''(B) CONTUMACY.—

''(i) ORDERS OF THE COURT.—In the case of contumacy or failure to obey a subpoena issued under this subsection, any appropriate United States district court or territorial court of the United States may issue an order requiring such person—

''(I) to appear before the Director;

''(II) to appear at any other designated place to testify; and

''(III) to produce documentary or other evidence.

''(ii) FAILURE TO OBEY.—Any failure to obey an order issued under this subparagraph court may be punished by the court as a contempt of that court.

''(4) DEPOSITIONS.—

''(A) IN GENERAL.—In any proceeding or investigation under this section, the Director may order a person to give testimony by deposition.

''(B) REQUIREMENTS OF DEPOSITION.—

''(i) OATH.—A deposition may be taken before an individual designated by the Director and having the power to administer oaths.

''(ii) NOTICE.—Before taking a deposition, the Director shall give reasonable notice in writing to the person ordered to give testimony by deposition under this paragraph. The notice shall state the name of the witness and the time and place of taking the deposition.

''(iii) WRITTEN TRANSCRIPT.—The testimony of a person deposed under this paragraph shall be under oath. The person taking the deposition shall prepare, or cause to be prepared, a written transcript of the testimony taken. The transcript shall be subscribed by the deponent. Each deposition shall be filed promptly with the Director.

''(d) APPEAL.—

''(1) IN GENERAL.—A party may appeal a determination under subsection (b)(2) that misconduct occurred in connection with any matter or proceeding before the Office to the United States Court of Appeals for the Federal Circuit.

''(2) NOTICE TO USPTO.—A party appealing under this subsection shall file in the Office a written notice of appeal directed to the Director, within such time after the date of the determination from which the appeal is taken as the Director prescribes, but in no case less than 60 days after such date.

''(3) REQUIRED ACTIONS OF THE DIRECTOR.—In any appeal under this subsection, the Director shall transmit to the United States Court of Appeals for the Federal Circuit a certified list of the documents comprising the record in the determination proceeding. The court may request that the Director forward the original or certified copies of such documents during the pendency of the appeal. The court shall, before hearing the appeal, give notice of the time and place of the hearing to the Director and the parties in the appeal.

''(4) AUTHORITY OF THE COURT.—The United States Court of Appeals for the Federal Circuit shall have power to enter, upon the pleadings and evidence of record at the time the determination was made, a judgment affirming, modifying, or setting aside, in whole or in part, the determination, with or without remanding the case for a rehearing. The court shall not set aside or remand the determination made under subsection (b)(2) unless there is not substantial evidence on the record to support the findings or the determination is not in accordance with law. Any sanction levied under subsection (b)(3) shall not be set aside or remanded by the court, unless the court determines that such sanction constitutes an abuse of discretion of the Director.

''(e) DEFINITION.—For purposes of this section, the term 'person' means any individual, partnership, corporation, company, association, firm, partnership, society, trust, estate, cooperative, association, or any other entity capable of suing and being sued in a court of law.''.

(b) SUSPENSION OR EXCLUSION FROM PRACTICE.—Section 32 of title 35, United States Code, is amended—

(1) by striking ''The Director may'' and inserting the following:

''(a) IN GENERAL.—The Director may''; and

(2) by adding at the end the following:

''(b) TOLLING OF TIME PERIOD.—The time period for instituting a proceeding under subsection (a), as provided in section 2462 of title 28, shall not begin to run where fraud, concealment, or misconduct is involved until the information regarding fraud, concealment, or misconduct is made known in the manner set forth by regulation under section 2(b)(2)(D) to an officer or employee of the United States Patent and Trademark Office designated by the Director to receive such information.''.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as otherwise provided under paragraph (2), the amendments made by this section shall take effect on the date of enactment of this Act.

(2) INAPPLICABILITY TO PENDING LITIGATION.—Subsections (a) and (b) of section 298 of title 35, United States Code (as added by the amendment made by subsection (a) of this section), shall apply to any civil action filed on or after the date of the enactment of this Act.

SEC. 12. AUTHORITY OF THE DIRECTOR OF THE PATENT AND TRADEMARK OFFICE TO ACCEPT LATE FILINGS.

(a) AUTHORITY.—Section 2 of title 35, United States Code, is amended by adding at the end the following:

''(e) DISCRETION TO ACCEPT LATE FILINGS IN CERTAIN CASES OF UNINTENTIONAL DELAY.—

''(1) IN GENERAL.—The Director may accept any application or other filing made by—

''(A) an applicant for, or owner of, a patent after the applicable deadline set forth in this title with respect to the application or patent; or

''(B) an applicant for, or owner of, a mark after the applicable deadline under the Trademark Act of 1946 with respect to the registration or other filing of the mark,

to the extent that the Director considers appropriate, if the applicant or owner files a petition within 30 days after such deadline showing, to the satisfaction of the Director, that the delay was unintentional.

''(2) TREATMENT OF DIRECTOR'S ACTIONS ON PETITION.—If the Director has not made a determination on a petition filed under paragraph (1) within 60 days after the date on which the petition is filed, the petition shall be deemed to be denied. A decision by the Director not to exercise, or a failure to exercise, the discretion provided by this subsection shall not be subject to judicial review.

''(3) OTHER PROVISIONS NOT AFFECTED.—This subsection shall not apply to any other provision of this title, or to any provision of the Trademark Act of 1946, that authorizes the Director to accept, under certain circumstances, applications or other filings made after a statutory deadline or to statutory deadlines that are required by reason of the obligations of the United States under any treaty.

''(4) DEFINITION.—In this subsection, the term 'Trademark Act of 1946' means the Act entitled 'An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes', approved July 5, 1946 (15 U.S.C. 1051 et seq.) (commonly referred to as the Trademark Act of 1946 or the Lanham Act).''.

(b) APPLICABILITY.—

(1) IN GENERAL.—The amendment made by subsection (a) shall apply to any application or other filing that—

(A) is filed on or after the date of the enactment of this Act; or

(B) on such date of enactment, is pending before the Director or is subject to judicial review.

(2) TREATMENT OF PENDING APPLICATIONS AND FILINGS.—In the case of any application or filing described in paragraph (1)(B), the 30-day period prescribed in section 2(e)(1) of title 35, United States Code, as added by subsection (a) of this section, shall be deemed to be the 30-day period beginning on the date of the enactment of this Act.

(c) CONVERSION OF DAY-BASED DEADLINES INTO MONTH-BASED DEADLINES.—

(1) Sections 141, 156(d)(2)(A), 156(d)(2)(B)(ii), 156(d)(5)(C), and 282 of title 35, United States Code, are each amended by striking ''30 days'' or ''thirty days'' each place that term appears and inserting ''1 month''.

(2) Sections 135(c), 142, 145, 146, 156(d)(2)(B)(ii), 156(d)(5)(C), and the matter preceding clause (i) of section 156(d)(2)(A) of title 35, United States Code, are each amended by striking ''60 days'' or ''sixty days'' each place that term appears and inserting ''2 months''.

(3) The matter preceding subparagraph (A) of section 156(d)(1) and sections 156(d)(2)(B)(ii) and 156(d)(5)(E) of title 35, United States Code, are each amended by striking ''60-day'' or ''sixty-day'' each place that term appears and inserting ''2-month''.

(4) Sections 155 and 156(d)(2)(B)(i) of title 35, United States Code, are each amended by striking ''90 days'' or ''ninety days'' each place that term appears and inserting ''3 months''.

(5) Sections 154(b)(4)(A) and 156(d)(2)(B)(i) of title 35, United States Code, are each amended by striking ''180 days'' each place that term appears and inserting ''6 months''.

SEC. 13. LIMITATION ON DAMAGES AND OTHER REMEDIES WITH RESPECT TO PATENTS FOR METHODS IN COMPLIANCE WITH CHECK IMAGING METHODS.

(a) LIMITATION.—Section 287 of title 35, United States Code, is amended by adding at the end the following:

''(d)(1) With respect to the use by a financial institution of a check collection system that constitutes an infringement under subsection (a) or (b) of section 271, the provisions of sections 281, 283, 284, and 285 shall not apply against the financial institution

with respect to such a check collection system.

''(2) For the purposes of this subsection—

''(A) the term 'check' has the meaning given under section 3(6) of the Check Clearing for the 21st Century Act (12 U.S.C. 5002(6));

''(B) the term 'check collection system' means the use, creation, transmission, receipt, storing, settling, or archiving of truncated checks, substitute checks, check images, or electronic check data associated with or related to any method, system, or process that furthers or effectuates, in whole or in part, any of the purposes of the Check Clearing for the 21st Century Act (12 U.S.C. 5001 et seq.);

''(C) the term 'financial institution' has the meaning given under section 509 of the Gramm-Leach-Bliley Act (15 U.S.C. 6809);

''(D) the term 'substitute check' has the meaning given under section 3(16) of the Check Clearing for the 21st Century Act (12 U.S.C. 5002(16)); and

''(E) the term 'truncate' has the meaning given under section 3(18) of the Check Clearing for the 21st Century Act (12 U.S.C. 5002(18)).

''(3) This subsection shall not limit or affect the enforcement rights of the original owner of a patent where such original owner—

''(A) is directly engaged in the commercial manufacture and distribution of machinery or the commercial development of software; and

''(B) has operated as a subsidiary of a bank holding company, as such term is defined under section 2(a) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(a)), prior to July 19, 2007.

''(4) A party shall not manipulate its activities, or conspire with others to manipulate its activities, for purposes of establishing compliance with the requirements of this subsection, including, without limitation, by granting or conveying any rights in the patent, enforcement of the patent, or the result of any such enforcement.''.

(b) TAKINGS.—If this section is found to establish a taking of private property for public use without just compensation, this section shall be null and void. The exclusive remedy for such a finding shall be invalidation of this section. In the event of such invalidation, for purposes of application of the time limitation on damages in section 286 of title 35, United States Code, any action for patent infringement or counterclaim for infringement that could have been filed or continued but for this section, shall be considered to have been filed on the date of enactment of this Act or continued from such date of enactment.

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to any civil action for patent infringement pending or filed on or after the date of enactment of this Act.

SEC. 14. PATENT AND TRADEMARK OFFICE FUNDING.

(a) DEFINITIONS.—In this section:

(1) DIRECTOR.—The term ''Director'' means the Director of the United States Patent and Trademark Office.

(2) FUND.—The term ''Fund'' means the public enterprise revolving fund established under subsection (c).

(3) OFFICE.—The term ''Office'' means the United States Patent and Trademark Office.

(4) TRADEMARK ACT OF 1946.—The term ''Trademark Act of 1946'' means an Act entitled ''Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes'', approved July 5, 1946 (15 U.S.C. 1051 et seq.) (commonly referred to as the ''Trademark Act of 1946'' or the ''Lanham Act'').

(5) UNDERSECRETARY.—The term ''Undersecretary'' means the Under Secretary of Commerce for Intellectual Property.

(b) FUNDING.—

(1) IN GENERAL.—Section 42 of title 35, United States Code, is amended—

(A) in subsection (b), by striking ''Patent and Trademark Office Appropriation Account'' and inserting ''United States Patent and Trademark Office Public Enterprise Fund''; and

(B) in subsection (c), in the first sentence—

(i) by striking ''To the extent'' and all that follows through ''fees'' and inserting ''Fees''; and

(ii) by striking ''shall be collected by and shall be available to the Director'' and inserting ''shall be collected by the Director and shall be available until expended''.

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall take effect on the later of—

(A) October 1, 2008; or

(B) the date of enactment of this Act.

(c) USPTO REVOLVING FUND.—

(1) ESTABLISHMENT.—There is established in the Treasury of the United States a revolving fund to be known as the ''United States Patent and Trademark Office Public Enterprise Fund''. Any amounts in the Fund shall be available for use by the Director without fiscal year limitation.

(2) DERIVATION OF RESOURCES.—There shall be deposited into the Fund—

(A) any fees collected under sections 41, 42, and 376 of title 35, United States Code, provided that notwithstanding any other provision of law, if such fees are collected by, and payable to, the Director, the Director shall transfer such amounts to the Fund; and

(B) any fees collected under section 31 of the Trademark Act of 1946 (15 U.S.C. 1113).

(3) EXPENSES.—Amounts deposited into the Fund under paragraph (2) shall be available, without fiscal year limitation, to cover—

(A) all expenses to the extent consistent with the limitation on the use of fees set forth in section 42(c) of title 35, United States Code, including all administrative and operating expenses, determined in the discretion of the Under Secretary to be ordinary and reasonable, incurred by the Under Secretary and the Director for the continued operation of all services, programs, activities, and duties of the Office, as such services, programs, activities, and duties are described under—

(i) title 35, United States Code; and

(ii) the Trademark Act of 1946; and

(B) all expenses incurred pursuant to any obligation, representation, or other commitment of the Office.

(4) CUSTODIANS OF MONEY.—Notwithstanding section 3302 of title 31, United States Code, any funds received by the Director and transferred to Fund, or any amounts directly deposited into the Fund, may be used—

(A) to cover the expenses described in paragraph (3); and

(B) to purchase obligations of the United States, or any obligations guaranteed by the United States.

(d) ANNUAL REPORT.—Not later than 60 days after the end of each fiscal year, the Under Secretary and the Director shall submit a report to Congress which shall—

(1) summarize the operations of the Office for the preceding fiscal year, including financial details and staff levels broken down by each major activity of the Office;

(2) detail the operating plan of the Office, including specific expense and staff needs for the upcoming fiscal year;

(3) describe the long term modernization plans of the Office;

(4) set forth details of any progress towards such modernization plans made in the previous fiscal year; and

(5) include the results of the most recent audit carried out under subsection (e).

(e) ANNUAL SPENDING PLAN.—

(1) IN GENERAL.—Not later than 30 days after the beginning of each fiscal year, the Director shall notify the Committees on Appropriations of both Houses of Congress of the plan for the obligation and expenditure of the total amount of the funds for that fiscal year in accordance with section 605 of the Science, State, Justice, Commerce, and Related Agencies Appropriations Act, 2006 (Public Law 109–108; 119 Stat. 2334).

(2) CONTENTS.—Each plan under paragraph (1) shall—

(A) summarize the operations of the Office for the current fiscal year, including financial details and staff levels with respect to major activities; and

(B) detail the operating plan of the Office, including specific expense and staff needs, for the current fiscal year.

(f) AUDIT.—The Under Secretary shall, on an annual basis, provide for an independent audit of the financial statements of the Office. Such audit shall be conducted in accordance with generally acceptable accounting procedures.

(g) BUDGET.—In accordance with section 9103 of title 31, United States Code, the Fund shall prepare and submit each year to the President a business-type budget in a way, and before a date, the President prescribes by regulation for the budget program.

SEC. 15. TECHNICAL AMENDMENTS.

(a) JOINT INVENTIONS.—Section 116 of title 35, United States Code, is amended—

(1) in the first paragraph, by striking ''When'' and inserting ''(a) JOINT INVENTIONS.—When'';

(2) in the second paragraph, by striking ''If a joint inventor'' and inserting ''(b) OMITTED INVENTOR.—If a joint inventor''; and

(3) in the third paragraph—

(A) by striking ''Whenever'' and inserting ''(c) CORRECTION OF ERRORS IN APPLICATION.—Whenever''; and

(B) by striking ''and such error arose without any deceptive intent on his part,''.

(b) FILING OF APPLICATION IN FOREIGN COUNTRY.—Section 184 of title 35, United States Code, is amended—

(1) in the first paragraph—

(A) by striking ''Except when'' and inserting ''(a) FILING IN FOREIGN COUNTRY.—Except when''; and

(B) by striking ''and without deceptive intent'';

(2) in the second paragraph, by striking ''The term'' and inserting ''(b) APPLICATION.—The term''; and

(3) in the third paragraph, by striking ''The scope'' and inserting ''(c) SUBSEQUENT MODIFICATIONS, AMENDMENTS, AND SUPPLEMENTS.—The scope''.

(c) FILING WITHOUT A LICENSE.—Section 185 of title 35, United States Code, is amended by striking ''and without deceptive intent''.

(d) REISSUE OF DEFECTIVE PATENTS.—Section 251 of title 35, United States Code, is amended—

(1) in the first paragraph—

(A) by striking ''Whenever'' and inserting ''(a) IN GENERAL.—Whenever reissue of any

patent is authorized under section 298 or''; and

(B) by striking ''without deceptive intention'';

(2) in the second paragraph, by striking ''The Director'' and inserting ''(b) MULTIPLE REISSUED PATENTS.—The Director'';

(3) in the third paragraph, by striking ''The provision'' and inserting ''(c) APPLICABILITY OF THIS TITLE.—The provisions''; and

(4) in the last paragraph, by striking ''No reissued patent'' and inserting ''(d) REISSUE PATENT ENLARGING SCOPE OF CLAIMS.—No reissued patent''.

(e) EFFECT OF REISSUE.—Section 253 of title 35, United States Code, is amended—

(1) in the first paragraph, by striking ''Whenever, without deceptive intention'' and inserting ''(a) IN GENERAL.—Whenever''; and

(2) in the second paragraph, by striking ''in like manner'' and inserting ''(b) ADDITIONAL DISCLAIMER OR DEDICATION.—In the manner set forth in subsection (a),''.

(f) CORRECTION OF NAMED INVENTOR.—Section 256 of title 35, United States Code, is amended—

(1) in the first paragraph, by striking ''Whenever'' and inserting ''(a) CORRECTION.—Whenever''; and

(2) in the second paragraph, by striking ''The error'' and inserting ''(b) PATENT VALID IF ERROR CORRECTED.—The error''.

(g) PRESUMPTION OF VALIDITY.—Section 282 of title 35, United States Code, is amended—

(1) in the first undesignated paragraph, by striking ''A patent'' and inserting ''(a) IN GENERAL.—A patent'';

(2) in the second undesignated paragraph, by striking ''The following'' and inserting ''(b) DEFENSES.—The following''; and

(3) in the third undesignated paragraph, by striking ''In actions'' and inserting ''(c) NOTICE OF ACTIONS; ACTIONS DURING EXTENSION OF PATENT TERM.—In actions''.

(h) ACTION FOR INFRINGEMENT.—Section 288 of title 35, United States Code, is amended by striking '', without any deceptive intention,''.

SEC. 16. EFFECTIVE DATE; RULE OF CONSTRUCTION.

(a) EFFECTIVE DATE.—Except as otherwise provided in this Act, the provisions of this Act shall take effect 12 months after the date of the enactment of this Act and shall apply to any patent issued on or after that effective date.

(b) SPECIAL PROVISIONS RELATING TO DETERMINATIONS OF VALIDITY AND PATENTABILITY.—

(1) IN GENERAL.—The amendments made by section 2 shall apply to any application for a patent and any patent issued pursuant to such an application that at any time—

(A) contained a claim to a claimed invention that has an effective filing date, as such date is defined under section 100(h) of title 35, United States Code, 1 year or more after the date of the enactment of this Act;

(B) asserted a claim to a right of priority under section 119, 365(a), or 365(b) of title 35, United States Code, to any application that was filed 1 year or more after the date of the enactment of this Act; or

(C) made a specific reference under section 120, 121, or 365(c) of title 35, United States Code, to any application to which the amendments made by section 2 otherwise apply under this subsection.

(2) PATENTABILITY.—For any application for patent and any patent issued pursuant to such an application to which the amendments made by section 2 apply, no claim asserted in such application shall be patentable or valid unless such claim meets the conditions of patentability specified in section 102(g) of title 35, United States Code, as such conditions were in effect on the day prior to the date of enactment of this Act, if the application at any time—

(A) contained a claim to a claimed invention that has an effective filing date as defined in section 100(h) of title 35, United States Code, earlier than 1 year after the date of the enactment of this Act;

(B) asserted a claim to a right of priority under section 119, 365(a), or 365(b) of title 35, United States Code, to any application that was filed earlier than 1 year after the date of the enactment of this Act; or

(C) made a specific reference under section 120, 121, or 365(c) of title 35, United States Code, with respect to which the requirements of section 102(g) applied.

(3) VALIDITY OF PATENTS.—For the purpose of determining the validity of a claim in any patent or the patentability of any claim in a nonprovisional application for patent that is made before the effective date of the amendments made by sections 2 and 3, other than in an action brought in a court before the date of the enactment of this Act—

(A) the provisions of subsections (c), (d), and (f) of section 102 of title 35, United States Code, that were in effect on the day prior to the date of enactment of this Act shall be deemed to be repealed;

(B) the amendments made by section 3 of this Act shall apply, except that a claim in a patent that is otherwise valid under the provisions of section 102(f) of title 35, United States Code, as such provision was in effect on the day prior to the date of enactment of this Act, shall not be invalidated by reason of this paragraph; and

(C) the term ''in public use or on sale'' as used in section 102(b) of title 35, United States Code, as such section was in effect on the day prior to the date of enactment of this Act shall be deemed to exclude the use, sale, or offer for sale of any subject matter that had not become available to the public.

(4) CONTINUITY OF INTENT UNDER THE CREATE ACT.—The enactment of section 102(b)(3) of title 35, United States Code, under section (2)(b) of this Act is done with the same intent to promote joint research activities that was expressed, including in the legislative history, through the enactment of the Cooperative Research and Technology Enhancement Act of 2004 (Public Law 108–453; the ''CREATE Act''), the amendments of which are stricken by section 2(c) of this Act. The United States Patent and Trademark Office shall administer section 102(b)(3) of title 35, United States Code, in a manner consistent with the legislative history of the CREATE Act that was relevant to its administration by the United States Patent and Trademark Office.

By Mr. KYL (for himself and Mr. LEAHY):

S. 3601. A bill to authorize funding for the National Crime Victim Law Institute to provide support for victims of crime under Crime Victims Legal Assistance Programs as a part of the Victims of Crime Act of 1984; to the Committee on the Judiciary.

Mr. KYL. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 3601

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. REAUTHORIZATION.

Section 103(b) of the Justice for All Act of 2004 (Public Law 108-405; 118 Stat. 2264) is amended in paragraphs (1) through (5) by striking ''2006, 2007, 2008, and 2009'' each place it appears and inserting ''2010, 2011, 2012, and 2013''.

By Mr. KYL:

S. 3602. A bill to authorize funding for the National Crime Victim Law Institute to provide support for victims of crime under Crime Victims Legal Assistance Programs as a part of the Victims of Crime Act of 1984; to the Committee on the Judiciary.

Mr. KYL. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 3602

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. REAUTHORIZATION.

Section 103(b) of the Justice for All Act of 2004 (Public Law 108–405; 118 Stat. 2264) is amended—

(1) by striking paragraph (1) and inserting the following:

''(1) $5,000,000 for each of fiscal years 2010, 2011, 2012, 2013, and 2014 to the Office for Victims of Crime of the Department of Justice for United States Attorneys Offices for Victim/Witnesses Assistance Programs only for victim advocates and their administrative support to provide direct services to victims of crimes;''; and

(2) by striking paragraphs (3) and (4) and inserting the following:

''(3) $500,000 for each of the fiscal years 2010, 2011, 2012, 2013, and 2014 to the Office for Victims of Crime of the Department of Justice for staff to administer the appropriation for the support of organizations as designated under paragraph (4);

''(4) $11,000,000 for each of the fiscal years 2010, 2011, 2012, 2013, and 2014, to the Office for Victims of Crime of the Department of Justice, for the National Crime Victim Law Institute to provide legal counsel and support services for victims in criminal cases for the enforcement of crime victims' rights in Federal jurisdictions, and in States and tribal governments that have laws substantially equivalent to the provisions of chapter 237 of title 18, United States Code; and''.

By Mr. REID (for himself and Mr. ENSIGN):

S. 3603. A bill to promote conservation and provide sensible development in Carson City, Nevada, and for other purposes; to the Committee on Energy and Natural Resources.

Mr. REID. Mr. President, I rise today to reintroduce the Carson City Vital Community Act of 2008 for myself and Senator ENSIGN. We originally introduced this bill on July 31, 2008. Since then we have sought and received important feedback on the legislation. Carson City, numerous citizens, our federal land agencies, and committee

staff have all brought important ideas to the table. We are reintroducing this legislation today so that anyone who has an interest in this legislation can see how the bill has improved as result of the input we have received.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 3603

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Carson City Vital Community Act of 2008''.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

SEC. 2. DEFINITIONS.

In this Act:

(1) CITY.—The term ''City'' means Carson City Consolidated Municipality, Nevada.

(2) MAP.—The term ''Map'' means the map entitled ''Carson City, Nevada Area'', dated September 12, 2008, and on file and available for public inspection in the appropriate offices of—

(A) the Bureau of Land Management;

(B) the Forest Service; and

(C) the City.

(3) SECRETARY.—The term ''Secretary'' means—

(A) with respect to land in the National Forest System, the Secretary of Agriculture, acting through the Chief of the Forest Service; and

(B) with respect to other Federal land, the Secretary of the Interior.

(4) SECRETARIES.—The term ''Secretaries'' means the Secretary of Agriculture and the Secretary of the Interior, acting jointly.

(5) TRIBE.—The term ''Tribe'' means the Washoe Tribe of Nevada and California, which is a federally recognized Indian tribe.

TITLE I—PUBLIC CONVEYANCES

SEC. 101. CONVEYANCES OF FEDERAL LAND AND CITY LAND.

(a) IN GENERAL.—Notwithstanding section 202 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1712), if the City offers to convey to the United States title to the non-Federal land described in subsection (b)(1) that is acceptable to the Secretary of Agriculture—

(1) the Secretary shall accept the offer; and

(2) not later than 180 days after the date on which the Secretary receive acceptable title to the non-Federal land described in subsection (b)(1), the Secretaries shall convey to the City, subject to valid existing rights and for no consideration, except as provided in subsection (c)(1), all right, title, and interest of the United States in and to the Federal land (other than any easement reserved under subsection (c)(2)) or interest in land described in subsection (b)(2).

(b) DESCRIPTION OF LAND.—

(1) NON-FEDERAL LAND.—The non-Federal land referred to in subsection (a) is the approximately 2,264 acres of land administered by the City and identified on the Map as ''To U.S. Forest Service''.

(2) FEDERAL LAND.—The Federal land referred to in subsection (a)(2) is—

(A) the approximately 935 acres of Forest Service land identified on the Map as ''To Carson City for Natural Areas'';

(B) the approximately 3,604 acres of Bureau of Land Management land identified on the Map as ''Silver Saddle Ranch and Carson River Area'';

(C) the approximately 1,862 acres of Bureau of Land Management land identified on the Map as ''To Carson City for Parks and Public Purposes''; and

(D) the approximately 75 acres of City land in which the Bureau of Land Management has a reversionary interest that is identified on the Map as ''Reversionary Interest of the United States Released''.

(c) CONDITIONS.—

(1) CONSIDERATION.—Before the conveyance of the 62–acre Bernhard parcel to the City, the City shall deposit in the special account established by section 202(b)(1) an amount equal to 25 percent of the difference between—

(A) the amount for which the Bernhard parcel was purchased by the City on July 18, 2001; and

(B) the amount for which the Bernhard parcel was purchased by the Secretary on March 24, 2006.

(2) CONSERVATION EASEMENT.—As a condition of the conveyance of the land described in subsection (b)(2)(B), the Secretary, in consultation with Carson City and affected local interests, shall reserve a perpetual conservation easement to the land to protect, preserve, and enhance the conservation values of the land, consistent with subsection (d)(2).

(3) COSTS.—Any costs relating to the conveyance under subsection (a), including any costs for surveys and other administrative costs, shall be paid by the recipient of the land being conveyed.

(d) USE OF LAND.—

(1) NATURAL AREAS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the land described in subsection (b)(2)(A) shall be managed by the City to maintain undeveloped open space and to preserve the natural characteristics of the land in perpetuity.

(B) EXCEPTION.—Notwithstanding subparagraph (A), the City may—

(i) conduct projects on the land to reduce fuels;

(ii) construct and maintain trails, trailhead facilities, and any infrastructure on the land that is required for municipal water and flood management activities; and

(iii) maintain or reconstruct any improvements on the land that are in existence on the date of enactment of this Act.

(2) SILVER SADDLE RANCH AND CARSON RIVER AREA.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the land described in subsection (b)(2)(B) shall—

(i) be managed by the City to protect and enhance the Carson River, the floodplain and surrounding upland, and important wildlife habitat; and

(ii) be used for undeveloped open space, passive recreation, customary agricultural practices, and wildlife protection.

(B) EXCEPTION.—Notwithstanding subparagraph (A), the City may—

(i) construct and maintain trails and trailhead facilities on the land;

(ii) conduct projects on the land to reduce fuels;

(iii) maintain or reconstruct any improvements on the land that are in existence on the date of enactment of this Act; and

(iv) allow the use of motorized vehicles on designated roads, trails, and areas in the south end of Prison Hill.

(3) PARKS AND PUBLIC PURPOSES.—The land described in subsection (b)(2)(C) shall be managed by the City for—

(A) undeveloped open space; and

(B) recreation or other public purposes consistent with the Act of June 14, 1926 (commonly known as the ''Recreation and Public Purposes Act'') (43 U.S.C. 869 et seq.).

(4) REVERSIONARY INTEREST.—

(A) RELEASE.—The reversionary interest described in subsection (b)(2)(D) shall terminate on the date of enactment of this Act.

(B) CONVEYANCE BY CITY.—

(i) IN GENERAL.—If the City sells, leases, or otherwise conveys any portion of the land described in subsection (b)(2)(D), the sale, lease, or conveyance of land shall be—

(I) through a competitive bidding process; and

(II) except as provided in clause (ii), for not less than fair market value.

(ii) CONVEYANCE TO GOVERNMENT OR NONPROFIT.—A sale, lease, or conveyance of land described in subsection (b)(2)(D) to the Federal Government, a State government, a unit of local government, or a nonprofit organization shall be for consideration in an amount equal to the price established by the Secretary of the Interior under section 2741 of title 43, Code of Federal Regulation (or successor regulations).

(iii) DISPOSITION OF PROCEEDS.—The gross proceeds from the sale, lease, or conveyance of land under clause (i) shall be distributed in accordance with section 202(a).

(e) REVERSION.—If land conveyed under subsection (a) is used in a manner that is inconsistent with the uses described in paragraph (1), (2), (3), or (4) of subsection (d), the land shall, at the discretion of the Secretary, revert to the United States.

(f) MISCELLANEOUS PROVISIONS.—

(1) IN GENERAL.—On conveyance of the non-Federal land under subsection (a) to the Secretary of Agriculture, the non-Federal land shall—

(A) become part of the Humboldt-Toiyabe National Forest; and

(B) be administered in accordance with the laws (including the regulations) and rules generally applicable to the National Forest System.

(2) MANAGEMENT PLAN.—The Secretary of Agriculture, in consultation with the City and other interested parties, may develop and implement a management plan for National Forest System land that ensures the

protection and stabilization of the National Forest System land to minimize the impacts of flooding on the City.

(g) CONVEYANCE TO BUREAU OF LAND MANAGEMENT.—

(1) IN GENERAL.—If the City offers to convey to the United States title to the non-Federal land described in paragraph (2) that is acceptable to the Secretary of the Interior, the land shall, at the discretion of the Secretary, be conveyed to the United States.

(2) DESCRIPTION OF LAND.—The non-Federal land referred to in paragraph (1) is the approximately 136 acres of land administered by the City and identified on the Map as ''To Bureau of Land Management''.

(3) COSTS.—Any costs relating to the conveyance under paragraph (1), including any costs for surveys and other administrative costs, shall be paid by the Secretary of the Interior.

SEC. 102. TRANSFER OF ADMINISTRATIVE JURISDICTION FROM THE FOREST SERVICE TO THE BUREAU OF LAND MANAGEMENT.

(a) IN GENERAL.—Administrative jurisdiction over the approximately 50 acres of Forest Service land identified on the Map as ''Parcel #1'' is transferred, from the Secretary of Agriculture to the Secretary of the Interior.

(b) COSTS.—Any costs relating to the transfer under subsection (a), including any costs for surveys and other administrative costs, shall be paid by the Secretary of the Interior.

(c) USE OF LAND.—

(1) RIGHT-OF-WAY.—Not later than 120 days after the date of enactment of this Act, the Secretary of the Interior shall grant to the City a right-of-way for the maintenance of flood management facilities located on the land.

(2) DISPOSAL.—The land referred to in subsection (a) shall be disposed of in accordance with section 201.

(3) DISPOSITION OF PROCEEDS.—The gross proceeds from the disposal of land under paragraph (2) shall be distributed in accordance with section 202(a).

TITLE II—LAND DISPOSAL

SEC. 201. DISPOSAL OF CARSON CITY LAND.

(a) IN GENERAL.—Notwithstanding sections 202 and 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1712, 1713), the Secretary of the Interior shall, in accordance with that Act, this title, and other applicable law, and subject to valid existing rights, conduct sales of the Federal land described in subsection (b) to qualified bidders.

(b) DESCRIPTION OF LAND.—The Federal land referred to in subsection (a) is—

(1) the approximately 108 acres of Bureau of Land Management land identified as ''Lands for Disposal'' on the Map; and

(2) the approximately 50 acres of land identified as ''Parcel #1'' on the Map.

(c) COMPLIANCE WITH LOCAL PLANNING AND ZONING LAWS.—Before a sale of Federal land under subsection (a), the City shall submit to the Secretary a certification that qualified bidders have agreed to comply with—

(1) City zoning ordinances; and

(2) any master plan for the area approved by the City.

(d) METHOD OF SALE; CONSIDERATION.—The sale of Federal land under subsection (a) shall be—

(1) consistent with subsections (d) and (f) of section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713);

(2) unless otherwise determined by the Secretary, through a competitive bidding process; and

(3) for not less than fair market value.

(e) WITHDRAWAL.—

(1) IN GENERAL.—Subject to valid existing rights and except as provided in paragraph (2), the Federal land described in subsection (b) is withdrawn from—

(A) all forms of entry and appropriation under the public land laws;

(B) location, entry, and patent under the mining laws; and

(C) operation of the mineral leasing and geothermal leasing laws.

(2) EXCEPTION.—Paragraph (1)(A) shall not apply to sales made consistent with this section.

(f) DEADLINE FOR SALE.—

(1) IN GENERAL.—Except as provided in paragraph (2), not later than 1 year after the date of enactment of this Act, if there is a qualified bidder for the land described in paragraphs (1) and (2) of subsection (b), the Secretary of the Interior shall offer the land for sale to the qualified bidder.

(2) POSTPONEMENT; EXCLUSION FROM SALE.—

(A) REQUEST BY CARSON CITY FOR POSTPONEMENT OR EXCLUSION.—At the request of the City, the Secretary shall postpone or exclude from the sale under paragraph (1) all or a portion of the land described in paragraphs (1) and (2) of subsection (b).

(B) INDEFINITE POSTPONEMENT.—Unless specifically requested by the City, a postponement under subparagraph (A) shall not be indefinite.

SEC. 202. DISPOSITION OF PROCEEDS.

(a) IN GENERAL.—Of the proceeds from the sale of land under sections 101(d)(4)(B) and 201(a)—

(1) 5 percent shall be paid directly to the State for use in the general education program of the State; and

(2) the remainder shall be deposited in a special account in the Treasury of the United States, to be known as the ''Carson City Special Account'', and shall be available without further appropriation to the Secretary until expended to—

(A) reimburse costs incurred by the Bureau of Land Management for preparing for the sale of the Federal land described in section 201(b), including the costs of—

(i) surveys and appraisals; and

(ii) compliance with—

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

(II) sections 202 and 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1712, 1713);

(B) reimburse costs incurred by the Bureau of Land Management and Forest Service for preparing for, and carrying out, the transfers of land to be held in trust by the United States under section 301; and

(C) acquire environmentally sensitive land or an interest in environmentally sensitive land in the City.

(b) SILVER SADDLE ENDOWMENT ACCOUNT.—

(1) ESTABLISHMENT.—There is established in the Treasury of the United States a special account, to be known as the ''Silver Saddle Endowment Account'', consisting of such amounts as are deposited under section 101(c)(1).

(2) AVAILABILITY OF AMOUNTS.—Amounts deposited in the account established by paragraph (1) shall be available to the Secretary, without further appropriation, for the oversight and enforcement of the conservation easement established under section 101(c)(2).

SEC. 203. URBAN INTERFACE.

(a) IN GENERAL.—Except as otherwise provided in this Act and subject to valid existing rights, the Federal land described in subsection (b) is permanently withdrawn from—

(1) all forms of entry and appropriation under the public land laws and mining laws;

(2) location and patent under the mining laws; and

(3) operation of the mineral laws, geothermal leasing laws, and mineral material laws.

(b) DESCRIPTION OF LAND.—The land referred to in subsection (a) consists of approximately 19,747 acres, which is identified on the Map as ''Urban Interface Withdrawal''.

(c) INCORPORATION OF ACQUIRED LAND AND INTERESTS.—Any land or interest in land within the boundaries of the land described in subsection (b) that is acquired by the United States after the date of enactment of this Act shall be withdrawn in accordance with this section.

(d) OFF-HIGHWAY VEHICLE MANAGEMENT.—Until the date on which the Secretary, in consultation with the State, the City, and any other interested persons, completes a transportation plan for Federal land in the City, the use of motorized and mechanical vehicles on Federal land within the City shall be limited to roads and trails in existence on the date of enactment of this Act unless the use of the vehicles is needed—

(1) for administrative purposes; or

(2) to respond to an emergency.

SEC. 204. AVAILABILITY OF FUNDS.

Section 4(e) of the Southern Nevada Public Land Management Act of 1998 (Public Law 105–263; 112 Stat. 2346; 116 Stat. 2007; 117 Stat. 1317; 118 Stat. 2414; 120 Stat. 3045) is amended—

(1) in paragraph (3)(A)(iv), by striking ''Clark, Lincoln, and White Pine Counties and Washoe County (subject to paragraph 4))'' and inserting ''Clark, Lincoln, and White Pine Counties and Washoe County (subject to paragraph 4)) and Carson City (subject to paragraph (5))'';

(2) in paragraph (3)(A)(v), by striking ''Clark, Lincoln, and White Pine Counties'' and inserting ''Clark, Lincoln, and White Pine Counties and Carson City (subject to paragraph (5))'';

(3) in paragraph (4), by striking ''2011'' and inserting ''2015''; and

(4) by adding at the end the following:

''(5) LIMITATION FOR CARSON CITY.—Carson City shall be eligible to nominate for expenditure amounts to acquire land or an interest in land for parks or natural areas and for conservation initiatives—

''(A) adjacent to the Carson River; or

''(B) within the floodplain of the Carson River.''.

TITLE III—TRANSFER OF LAND TO BE HELD IN TRUST FOR THE WASHOE TRIBE, SKUNK HARBOR CONVEYANCE CORRECTION, FOREST SERVICE AGREEMENT, AND ARTIFACT COLLECTION

SEC. 301. TRANSFER OF LAND TO BE HELD IN TRUST FOR WASHOE TRIBE.

(a) IN GENERAL.—Subject to valid existing rights, all right, title, and interest of the United States in and to the land described in subsection (b)—

(1) shall be held in trust by the United States for the benefit and use of the Tribe; and

(2) shall be part of the reservation of the Tribe.

(b) DESCRIPTION OF LAND.—The land referred to in subsection (a) consists of approximately 293 acres, which is identified on the Map as ''To Washoe Tribe''.

(c) SURVEY.—Not later than 180 days after the date of enactment of this Act, the Secretary of Agriculture shall complete a survey of the boundary lines to establish the

boundaries of the land taken into trust under subsection (a).

(d) USE OF LAND.—

(1) GAMING.—Land taken into trust under subsection (a) shall not be eligible, or considered to have been taken into trust, for class II gaming or class III gaming (as those terms are defined in section 4 of the Indian Gaming Regulatory Act (25 U.S.C. 2703)).

(2) TRUST LAND FOR CEREMONIAL USE AND CONSERVATION.—With respect to the use of the land taken into trust under subsection (a) that is above the 5,200′ elevation contour, the Tribe—

(A) shall limit the use of the land to—

(i) traditional and customary uses; and

(ii) stewardship conservation for the benefit of the Tribe; and

(B) shall not permit any—

(i) permanent residential or recreational development on the land; or

(ii) commercial use of the land, including commercial development or gaming.

(3) TRUST LAND FOR COMMERCIAL AND RESIDENTIAL USE.—With respect to the use of the land taken into trust under subsection (a), the Tribe shall limit the use of the land below the 5,200′ elevation to—

(A) traditional and customary uses;

(B) stewardship conservation for the benefit of the Tribe; and

(C)(i) residential or recreational development; or

(ii) commercial use.

(4) THINNING; LANDSCAPE RESTORATION.—With respect to the land taken into trust under subsection (a), the Secretary of Agriculture, in consultation and coordination with the Tribe, may carry out any thinning and other landscape restoration activities on the land that is beneficial to the Tribe and the Forest Service.

SEC. 302. CORRECTION OF SKUNK HARBOR CONVEYANCE.

(a) PURPOSE.—The purpose of this section is to amend Public Law 108–67 (117 Stat. 880) to make a technical correction relating to the land conveyance authorized under that Act.

(b) TECHNICAL CORRECTION.—Section 2 of Public Law 108–67 (117 Stat. 880) is amended—

(1) by striking ''Subject to'' and inserting the following:

''(a) IN GENERAL.—Subject to'';

(2) in subsection (a) (as designated by paragraph (1)), by striking ''the parcel'' and all that follows through the period at the end and inserting the following: ''and to approximately 23 acres of land identified as 'Parcel A' on the map entitled 'Skunk Harbor Conveyance Correction' and dated September 12, 2008, the western boundary of which is the low water line of Lake Tahoe at elevation 6,223.0 (Lake Tahoe Datum).''; and

(3) by adding at the end the following:

''(b) SURVEY AND LEGAL DESCRIPTION.—

''(1) IN GENERAL.—Not later than 180 days after the date of enactment of this subsection, the Secretary of Agriculture shall complete a survey and legal description of the boundary lines to establish the boundaries of the trust land.

''(2) TECHNICAL CORRECTIONS.—The Secretary may correct any technical errors in the survey or legal description completed under paragraph (1).

''(c) PUBLIC ACCESS AND USE.—Nothing in this Act prohibits any approved general public access (through existing easements or by boat) to, or use of, land remaining within the Lake Tahoe Basin Management Unit after the conveyance of the land to the Secretary of the Interior, in trust for the Tribe, under subsection (a), including access to, and use of, the beach and shoreline areas adjacent to the portion of land conveyed under that subsection.''.

(c) DATE OF TRUST STATUS.—The trust land described in section 2(a) of Public Law 108–67 (117 Stat. 880) shall be considered to be taken into trust as of August 1, 2003.

(d) TRANSFER.—The Secretary of the Interior, acting on behalf of and for the benefit of the Tribe, shall transfer to the Secretary of Agriculture administrative jurisdiction over the land identified as ''Parcel B'' on the map entitled ''Skunk Harbor Conveyance Correction'' and dated September 12, 2008.

SEC. 303. AGREEMENT WITH FOREST SERVICE.

The Secretary of Agriculture, in consultation with the Tribe, shall develop and implement a cooperative agreement that ensures regular access by members of the Tribe and other people in the community of the Tribe across National Forest System land from the City to Lake Tahoe for cultural and religious purposes.

SEC. 304. ARTIFACT COLLECTION.

(a) NOTICE.—At least 180 days before conducting any ground disturbing activities on the land identified as ''Parcel #2'' on the Map, the City shall notify the Tribe of the proposed activities to provide the Tribe with adequate time to inventory and collect any artifacts in the affected area.

(b) AUTHORIZED ACTIVITIES.—On receipt of notice under subsection (a), the Tribe may collect and possess any artifacts relating to the Tribe in the land identified as ''Parcel #2'' on the Map.

TITLE IV—AUTHORIZATION OF APPROPRIATIONS

SEC. 401. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this Act.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 685—DESIGNATING THE LAST WEEK OF SEPTEMBER 2008 AS ''NATIONAL VOTER AWARENESS WEEK''

Mr. BROWN submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 685

Whereas the Framers of the Constitution established the United States as a representative democracy, with the fundamental principle of civic engagement on the part of all eligible citizens;

Whereas an essential element of an effective democracy is the ability of each eligible and qualified citizen to be able to vote in fair and open elections;

Whereas Congress has passed important election laws such as the Help America Vote Act (HAVA) of 2002, the National Voter Registration Act of 1993 (NVRA- Motor Voter Act), and the Voting Rights Act of 1965, dedicated to increasing the transparency of the election process, strengthening our voting systems, and protecting the right of all citizens to vote;

Whereas the 26th amendment of the Constitution requires that ''the right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on the account of age'';

Whereas Minnesota, Maine, New Hampshire, Idaho, Wisconsin, and Wyoming allow same day registration of voters at the polls, and also experience the highest voter turnout rates in the country;

Whereas most States have 30-day voter registration deadlines, and the public must be informed of their local and State election laws in September in order to participate fully in the Federal elections in November;

Whereas experts estimate that more than 20 percent of voters nationwide will cast their ballots before election day by mail or at early-voting locations, a proportion of the electorate that is rising with each election;

Whereas many election officials note that early voting is convenient for voters, increases turnout, and reduces the strain on polling places and poll workers on election day;

Whereas, according to the Fair Vote Center for Voting and Democracy, voter turnout in the United States is lower than in most other developed nations, with the United States coming 20th out of 21 in voter turnout among established democracies; and

Whereas S. 1901, introduced in the 102nd Congress, would have amended section 6103 of title 5, United States Code, to establish Democracy Day as a legal public holiday on election day, in recognition of the need for increased participation of an educated electorate to preserve the legitimacy of democracy: Now, therefore, be it

Resolved, That the Senate—

(1) designates the last week of September 2008 as ''National Voter Awareness Week'';

(2) calls upon the people of the United States to observe such a week with appropriate programs and activities, including helping State and local institutions deliver sample ballots, voter registration forms, absentee ballots, and other educational materials to all eligible voters; and

(3) encourages all grassroots organizations and educational, cultural, and community institutions to promote voter awareness and registration programs that befit local election procedure.

AMENDMENTS SUBMITTED AND PROPOSED

SA 5645. Mr. REID (for Mr. KYL) proposed an amendment to the bill S. 3296, to extend the authority of the United States Supreme Court Police to protect court officials off the Supreme Court Grounds and change the title of the Administrative Assistant to the Chief Justice.

SA 5646. Mr. REID (for Mr. BIDEN) proposed an amendment to the bill H.R. 5057, to reauthorize the Debbie Smith DNA Backlog Grant Program, and for other purposes.

SA 5647. Mr. NELSON, of Florida (for Mr. DORGAN) proposed an amendment to the bill H.R. 2786, to reauthorize the programs for housing assistance for Native Americans.

SA 5648. Mr. NELSON, of Florida (for himself and Mr. VITTER) proposed an amendment to the bill H.R. 6063, to authorize the programs of the National Aeronautics and Space Administration, and for other purposes.

SA 5649. Mr. NELSON, of Florida (for Mr. LEVIN (for himself and Mr. VOINOVICH)) proposed an amendment to the bill H.R. 6460, to amend the Federal Water Pollution Control Act to provide for the remediation of sediment contamination in areas of concern, and for other purposes.

SA 5650. Mr. DURBIN (for Mr. BIDEN (for himself, Mr. SCHUMER, Mr. HATCH, Mr. BROWN, Mr. ALEXANDER, Mr. CARPER, Mr. ALLARD, Mr. CASEY, Mr. BARRASSO, Mr. DODD, Mr. BROWNBACK, Mrs. MURRAY, Mr. CHAMBLISS, Mr. NELSON, of Nebraska, Mr.