States assistance for the purpose of eradicating severe forms of trafficking in children in eligible countries through the implementation of Child Protection Compacts, and for other purposes.

S. 253

At the request of Mr. ROCKEFELLER, the name of the Senator from Connecticut (Mr. BLUMENTHAL) was added as a cosponsor of S. 253, a bill to establish a commission to ensure a suitable observance of the centennial of World War I, and to designate memorials to the service of men and women of the United States in World War I.

S. 325

At the request of Mrs. MURRAY, the name of the Senator from Connecticut (Mr. BLUMENTHAL) was added as a cosponsor of S. 325, a bill to amend title 10, United States Code, to require the provision of behavioral health services to members of the reserve components of the Armed Forces necessary to meet pre-deployment and post-deployment readiness and fitness standards, and for other purposes.

S. 344

At the request of Mr. REID, the name of the Senator from Rhode Island (Mr. WHITEHOUSE) was added as a cosponsor of S. 344, a bill to amend title 10, United States Code, to permit certain retired members of the uniformed services who have a service-connected disability to receive both disability compensation from the Department of Veterans Affairs for their disability and either retired pay by reason of their years of military service or Combat-Related Special Compensation, and for other purposes.

S. 384

At the request of Mrs. FEINSTEIN, the name of the Senator from Georgia (Mr. ISAKSON) was added as a cosponsor of S. 384, a bill to amend title 39, United States Code, to extend the authority of the United States Postal Service to issue a semipostal to raise funds for breast cancer research.

S. 398

At the request of Mr. BINGAMAN, the name of the Senator from New Hampshire (Mrs. SHAHEEN) was added as a cosponsor of S. 398, a bill to amend the Energy Policy and Conservation Act to improve energy efficiency of certain appliances and equipment, and for other purposes.

S. 409

At the request of Mr. SCHUMER, the name of the Senator from Pennsylvania (Mr. CASEY) was added as a cosponsor of S. 409, a bill to ban the sale of certain synthetic drugs.

S. 414

At the request of Mr. DURBIN, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. 414, a bill to protect girls in developing countries through the prevention of child marriage, and for other purposes.

S. 418

At the request of Mr. HARKIN, the name of the Senator from New Jersey (Mr. LAUTENBERG) was added as a cosponsor of S. 418, a bill to award a Congressional Gold Medal to the World War II members of the Civil Air Patrol.

S. 424

At the request of Mr. SCHUMER, the name of the Senator from Vermont (Mr. SANDERS) was added as a cosponsor of S. 424, a bill to amend title XVIII of the Social Security Act to preserve access to ambulance services under the Medicare program.

S. 425

At the request of Mr. UDALL of Colorado, the names of the Senator from New Jersey (Mr. MENENDEZ) and the Senator from Alaska (Ms. MURKOWSKI) were added as cosponsors of S. 425, a bill to amend the Public Health Service Act to provide for the establishment of permanent national surveillance systems for multiple sclerosis, Parkinson's disease, and other neurological diseases and disorders.

S. 436

At the request of Mr. SCHUMER, the name of the Senator from Massachusetts (Mr. KERRY) was added as a cosponsor of S. 436, a bill to ensure that all individuals who should be prohibited from buying a firearm are listed in the national instant criminal background check system and require a background check for every firearm sale.

S. 486

At the request of Mr. WHITEHOUSE, the names of the Senator from North Carolina (Mrs. HAGAN) and the Senator from Vermont (Mr. LEAHY) were added as cosponsors of S. 486, a bill to amend the Servicemembers Civil Relief Act to enhance protections for members of the uniformed services relating to mortgages, mortgage foreclosure, and eviction, and for other purposes.

S. 488

At the request of Mr. CARDIN, the name of the Senator from Georgia (Mr. ISAKSON) was added as a cosponsor of S. 488, a bill to require the FHA to equitably treat homebuyers who have repaid in full their FHA-insured mortgages, and for other purposes.

S. 494

At the request of Mr. LIEBERMAN, the name of the Senator from North Carolina (Mrs. HAGAN) was added as a cosponsor of S. 494, a bill to amend the Public Health Service Act to establish a national screening program at the Centers for Disease Control and Prevention and to amend title XIX of the Social Security Act to provide States the option to increase screening in the United States population for the prevention, early detection, and timely treatment of colorectal cancer.

S. 496

At the request of Mr. MCCAIN, the names of the Senator from Massachusetts (Mr. BROWN) and the Senator from New Hampshire (Mrs. SHAHEEN) were added as cosponsors of S. 496, a bill to amend the Food, Conservation, and Energy Act to repeal a duplicative program relating to inspection and grading of catfish.

S. 506

At the request of Mr. CASEY, the names of the Senator from Washington (Ms. CANTWELL) and the Senator from Minnesota (Mr. FRANKEN) were added as cosponsors of S. 506, a bill to amend the Elementary and Secondary Education Act of 1965 to address and take action to prevent bullying and harassment of students.

S. 511

At the request of Mr. BLUNT, the name of the Senator from Wyoming (Mr. ENZI) was added as a cosponsor of S. 511, a bill to amend the Clean Air Act to provide for a reduction in the number of boutique fuels, and for other purposes.

S. 512

At the request of Mr. BINGAMAN, the name of the Senator from Idaho (Mr. RISCH) was added as a cosponsor of S. 512, a bill to amend the Energy Policy Act of 2005 to require the Secretary of Energy to carry out programs to develop and demonstrate 2 small modular nuclear reactor designs, and for other purposes.

S. 516

At the request of Mrs. HUTCHISON, the name of the Senator from Alabama (Mr. SHELBY) was added as a cosponsor of S. 516, a bill to extend outer Continental Shelf leases to accommodate permitting delays and to provide operators time to meet new drilling and safety requirements.

At the request of Ms. LANDRIEU, the name of the Senator from Virginia (Mr. WEBB) was added as a cosponsor of S. 516, supra.

S. CON. RES. 4

At the request of Mr. SCHUMER, the name of the Senator from Illinois (Mr. KIRK) was added as a cosponsor of S. Con. Res. 4, a concurrent resolution expressing the sense of Congress that an appropriate site on Chaplains Hill in Arlington National Cemetery should be provided for a memorial marker to honor the memory of the Jewish chaplains who died while on active duty in the Armed Forces of the United States.

S. RES. 65

At the request of Mr. WICKER, the name of the Senator from Arizona (Mr. KYL) was added as a cosponsor of S. Res. 65, a resolution expressing the sense of the Senate that the conviction by the Government of Russia of businessman Mikhail Khodorkovsky and Platon Lebedev constitutes a politically motivated case of selective arrest and prosecution that flagrantly undermines the rule of law and independence of the judicial system of Russia.

## STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. CARDIN:

S. 538. A bill to amend the Neotropical Migratory Bird Conservation Act to reauthorize the Act; to the

Committee on Environment and Public Works.

Mr. CARDIN. Mr. President, today I am introducing the Neotropical Migratory Bird Conservation Act. This bill promotes long-term conservation, education, research, monitoring, and habitat protection for more than 350 species of neotropical migratory birds that breed in North America in the summer and spend our winters in tropical climates south of our border. Through its successful competitive, matching grant program, the U.S. Fish and Wildlife Service supports public-private partnerships to countries mostly in Latin America and the Caribbean. Up to one quarter of the funds may be awarded for domestic projects.

This legislation aims to sustain healthy populations of migratory birds that are not only beautiful to look at but help our farmers by consuming billions of harmful insect pests each year. These vulnerable bird populations face many environmental factors such as pesticide pollution, deforestation, sprawl, and invasive species that threaten their habitat and, ultimately, their survival. As good indicators of a healthy ecosystem, it is troubling that, according to the National Audubon Society, at least 29 species of migratory birds are experiencing significant population declines. For example, populations of the Cerulean Warbler and Olive-Sided Flycatcher have declined as much as 70 percent since surveys began in the 1960s.

The Baltimore Oriole, the State bird of my home state of Maryland, has been experiencing a decline in population despite being protected by Federal law under the Migratory Bird Treaty Act of 1918 and the State of Maryland's Nongame and Endangered Species Conservation Act. Destruction of their domestic breeding habitat and tropical winter habitat, coupled with the toxic pesticides ingested by insects which are then eaten by the Oriole, has significantly contributed to this decline. It is essential that we invest in conservation efforts in our country as well as others along the migratory route of the wide range of migratory birds. This legislation accomplishes this goal.

The Neotropical Migratory Bird Conservation Act has a proven track record of reversing habitat loss and advancing conservation strategies for the broad range of neotropical birds that populate the United States and the rest of the Western hemisphere. According to the U.S. Fish and Wildlife Service, between 2002 and 2010, this program has successfully supported 333 projects, coordinated by groups in 48 U.S. State/territories and 36 countries. Additionally, it is a great value for taxpayers as it leverages over $4.00 for each Federal dollar spent. Since 2002, the U.S. has invested more than $25 million in 262 projects and leveraged an additional $112 million in partner funds to support these projects. It also helps to generate $2.7 billion annually for the U.S. economy through wildlife watching activities.

This legislation is cost-effective, budget-friendly, and has been a highly successful Federal program. This simple reauthorization bill will make sure that this good work continues.

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. 538

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

**SECTION 1. REAUTHORIZATION OF NEOTROPICAL MIGRATORY BIRD CONSERVATION ACT.**

Section 10 of the Neotropical Migratory Bird Conservation Act (16 U.S.C. 6109) is amended to read as follows:

**''SEC. 10. AUTHORIZATION OF APPROPRIATIONS.**

''(a) IN GENERAL.—There are authorized to be appropriated to carry out this Act such sums as are necessary for each of fiscal years 2012 through 2017.

''(b) USE OF FUNDS.—Of the amounts made available under subsection (a) for each fiscal year, not less than 75 percent shall be expended for projects carried out at a location outside of the United States.''.

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By Mr. BEGICH:

S. 542. A bill to amend title 10, United States Code, to authorize space-available travel on military aircraft for members of the reserve components, a member or former member of a reserve component who is eligible for retired pay but for age, widows and widowers of retired members, and dependents; to the Committee on Armed Services.

Mr. BEGICH. Mr. President, today I am pleased to introduce the Space Available Equity Act.

Members and retirees of the National Guard and Reserve, their families, and surviving military spouses make great sacrifices for our nation. However, too often these individuals do not receive the benefits they have earned for their service.

In Alaska, the National Guard conducts more search and rescue missions in the most challenging terrain than any other state. They save lives every day in their state role and frequently deploy just like their active duty counter-parts. The demands on our reserve component have been higher than ever before. Yet members of the reserve components and ''gray area'' retirees, National Guardsman or Reservist eligible for retirement but under the age of 60, have limited travel privileges on Department of Defense aircraft under current regulation. Their space-available travel benefits are restricted to the continental United States and are not extended to their dependents, unlike active duty members and retirees.

Surviving spouses of a military member eligible for retired pay retain no space-available travel privileges at all after the death of their spouse, despite having made a lifetime commitment to the military or in many cases, lost their loved one in war. In Alaska, we understand how important surviving spouses are. The Tragedy Assistance Program, or as it's more commonly known—TAPS, was founded in my State.

To correct these inequities, I am reintroducing the National Guard, Reserve, ''Gray Area'' Retiree, and Surviving Spouse Space-available Travel Equity Act. This bill will give these deserving individuals comprehensive and equitable space-available travel privileges on Department of Defense aircraft. The bill is endorsed by the National Guard Association of the United States.

I urge my colleagues to join me in giving parity to our reserve component members and surviving military spouses.

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. 542

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

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''National Guard, Reserve, ''Gray Area'' Retiree, and Surviving Spouses Space-available Travel Equity Act of 2011''.

**SEC. 2. ELIGIBILITY OF RESERVE MEMBERS, GRAY-AREA RETIREES, WIDOWS AND WIDOWERS OF RETIRED MEMBERS, AND DEPENDENTS FOR SPACE-AVAILABLE TRAVEL ON MILITARY AIRCRAFT.**

(a) ELIGIBILITY.—Chapter 157 of title 10, United States Code, is amended by inserting after section 2641b the following new section:

**''§ 2641c. Space-available travel on Department of Defense aircraft: reserve members, reserve members eligible for retired pay but for age; widows and widowers of retired members and dependents**

''(a) RESERVE MEMBERS.—A member of a reserve component holding a valid Uniformed Services Identification and Privilege Card shall be provided transportation on Department of Defense aircraft, on a space-available basis, on the same basis as active duty members of the uniformed services under any other provision of law or Department of Defense regulation.

''(b) RESERVE RETIREES UNDER APPLICABLE ELIGIBILITY AGE.—A member or former member of a reserve component who, but for being under the eligibility age applicable to the member under section 12731 of this title, otherwise would be eligible for retired pay under chapter 1223 of this title shall be provided transportation on Department of Defense aircraft, on a space-available basis, on the same basis as members of the armed forces entitled to retired pay under any other provision of law or Department of Defense regulation.

''(c) WIDOWS AND WIDOWERS OF RETIRED MEMBERS.—

''(1) IN GENERAL.—An unremarried widow or widower of a member of the armed forces described in paragraph (2) shall be provided transportation on Department of Defense aircraft, on a space-available basis, on the same basis as members of the armed forces entitled to retired pay under any other provision of law or Department of Defense regulation.

''(2) MEMBERS COVERED.—A member of the armed forces referred to in paragraph (1) is a member who—

''(A) is entitled to retired pay;

''(B) dies in line of duty while on active duty and is not eligible for retired pay; or

''(C) in the case of a member of a reserve component, dies as a result of a line of duty condition and is not eligible for retired pay.

''(d) DEPENDENTS.—A dependent of a member or former member described in either subsections (a) or (b) or of a deceased member entitled to retired pay holding a valid Uniformed Services Identification and Privilege Card and a surviving unremarried spouse and the surviving dependent of a deceased member or former member described in subsection (b) holding a valid Uniformed Services Identification and Privilege Card shall be provided transportation on Department of Defense aircraft, on a space-available basis, if the dependent is accompanying the member or, in the case of a deceased member, is the surviving unremarried spouse of the deceased member or is a dependent accompanying the surviving unremarried spouse of the deceased member.

''(e) DEFINITION OF DEPENDENT.—In this section, the term 'dependent' has the meaning given that term in section 1072 of this title.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 2641b the following new item:

''2641c. Space-available travel on Department of Defense aircraft: reserve members, reserve members eligible for retired pay but for age; widows and widowers of retired members and dependents.''.

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By Mr. WYDEN (for himself, Ms. SNOWE, Mrs. GILLIBRAND, Mr. MCCAIN, Mr. MENENDEZ, Mr. ENSIGN, Mr. NELSON of Florida, and Mr. BURR):

S. 543. A bill to restrict any State or local jurisdiction from imposing a new discriminatory tax on cell phone services, providers, or property; to the Committee on Finance.

Mr. WYDEN. Mr. President, today I rise to introduce the Wireless Tax Fairness Act and I am delighted and honored to be joined in this effort by Senators SNOWE, GILLIBRAND, ENSIGN, MENENDEZ, MCCAIN, BURR, and Senator NELSON from Florida.

I want to start with an interesting fact that I read a few months ago, which is that over 20 percent of Americans have gotten rid of their land line telephone service in favor of wireless mobile technology. Unfortunately, as more and more people make this shift, they are being forced to pay higher and higher state and local taxes for their wireless service. Since 2007 the average wireless tax rate consumers have to pay rose by 1.1 percentage points, from 15.2 percent to 16.3 percent. At a time when the Federal Government is trying to improve consumer access to developing technologies and broadband Internet in particular, does it make sense to have local, state, and Federal Governments forcing higher taxes on them? The answer is no, especially as 3G and 4G emerge as dominant wireless technologies. These taxes only act to hurt consumers, stifle innovation in the wireless industry, and restrict access to the Internet.

In order to make sure that wireless technology can continue to flourish I am introducing the Wireless Tax Fairness Act. This legislation will keep American companies competitive by putting the brakes on unfair wireless tax increases—allowing American companies to remain leaders in innovation, making it easier for Americans to afford these services and providing an affordable way for consumers to access the Internet. The technology that is developed and deployed in America paves the way for the same American technology to be deployed overseas, creating and sustaining good American jobs.

In an era when a new cellphone, smartphone, or tablet is introduced nearly every month it is essential that the market for these products is determined by consumers and not by disproportionately high taxes. 17 percent of American families earning less than $30,000 rely on a wireless device to access the Internet. The deployment and availability of such services needs to be encouraged by keeping prices affordable for both individuals and businesses through a fair and reasonable tax regime.

In order to make sure that our walk is consistent with our talk on promoting American innovation, it is time to place a moratorium on discriminatory wireless taxes and fees. I hope our colleagues will join us in supporting this bill.

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By Mrs. FEINSTEIN (for herself and Mrs. BOXER):

S. 544. A bill to authorize the Secretary of the Interior to conduct a study of alternatives for commemorating and interpreting the role of the Buffalo Soldiers in the early years of the National Parks, and for other purposes; to the Committee on Energy and Natural Resoruces.

Mrs. FEINSTEIN. Mr. President, I rise today on behalf of myself and Senator BOXER to introduce the Buffalo Soldiers in the National Parks Study Act. This legislation is an important step in preserving the legacy of the Army's first all-black infantry and cavalry units and their unique role in the creation of our National Park system.

The Buffalo Soldiers served bravely in campaigns both at home and abroad before being stationed at the military Presidio in San Francisco and being given charge of patrolling the National Park system. Although first tasked with taming the frontier, these troops also took on the responsibility of preserving that wilderness for future generations. Each summer, Buffalo Soldier regiments traveled roughly 320 miles from San Francisco to either Sequoia or Yosemite National Park, where they patrolled the parks for poachers and loggers, built trails, and escorted visitors. They were, in essence if not in name, the nation's first park rangers.

In a time of segregation and adversity, these soldiers served their country bravely and the National Parks they worked to establish are part of the legacy they leave behind. Unfortunately, this unique aspect of their history is neither widely recognized nor remembered. This legislation would address that by authorizing a study to determine the most appropriate way to memorialize the Buffalo Soldiers. Money procured under the act would be used to determine the feasibility of establishing a national historic trail along the route traveled by the Buffalo Soldiers, scout for properties to add to the National Register of Historic Places, and develop educational initiatives and a public awareness campaign about the contribution of African-American soldiers after the Civil War.

Although the experiences of the Buffalo Soldiers are an important piece of our national history, we are in danger of losing their legacy to the passage of time unless we take conscious steps to preserve the memory. This legislation works to ensure that the contributions of the Buffalo Soldiers will be remembered and shared by all. I urge my colleagues to join me in their support for this measure.

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. 544

*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 ''Buffalo Soldiers in the National Parks Study Act''.

**SEC. 2. FINDINGS AND PURPOSE.**

(a) FINDINGS.—The Congress finds the following:

(1) In the late 19th century and early 20th century, African-American troops who came to be known as the Buffalo Soldiers served in many critical roles in the western United States, including protecting some of the first National Parks.

(2) Based at the Presidio in San Francisco, Buffalo Soldiers were assigned to Sequoia and Yosemite National Parks where they patrolled the backcountry, built trails, stopped poaching, and otherwise served in the roles later assumed by National Park rangers.

(3) The public would benefit from having opportunities to learn more about the Buffalo Soldiers in the National Parks and their contributions to the management of National Parks and the legacy of African-Americans in the post-Civil War era.

(4) As the centennial of the National Park Service in 2016 approaches, it is an especially appropriate time to conduct research and increase public awareness of the stewardship role the Buffalo Soldiers played in the early years of the National Parks.

(b) PURPOSE.—The purpose of this Act is to authorize a study to determine the most effective ways to increase understanding and public awareness of the critical role that the Buffalo Soldiers played in the early years of the National Parks.

**SEC. 3. STUDY.**

(a) IN GENERAL.—The Secretary of the Interior shall conduct a study of alternatives for commemorating and interpreting the role of the Buffalo Soldiers in the early years of the National Parks.

(b) CONTENTS OF STUDY.—The study shall include—

(1) a historical assessment, based on extensive research, of the Buffalo Soldiers who served in National Parks in the years prior to the establishment of the National Park Service;

(2) an evaluation of the suitability and feasibility of establishing a national historic trail commemorating the route traveled by the Buffalo Soldiers from their post in the Presidio of San Francisco to Sequoia and Yosemite National Parks and to any other National Parks where they may have served;

(3) the identification of properties that could meet criteria for listing in the National Register of Historic Places or criteria for designation as National Historic Landmarks;

(4) an evaluation of appropriate ways to enhance historical research, education, interpretation, and public awareness of the story of the Buffalo Soldiers' stewardship role in the National Parks, including ways to link the story to the development of National Parks and the story of African-American military service following the Civil War; and

(5) any other matters that the Secretary of the Interior deems appropriate for this study.

(c) REPORT.—Not later than 3 years after funds are made available for the study, the Secretary of the Interior shall submit to the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a report containing the study's findings and recommendations.

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By Mr. LIEBERMAN (for himself, Ms. COLLINS, Mr. CARPER, and Mr. BROWN of Massachusetts).

S. 550. A bill to improve the provision of assistance to fire departments, and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

Mr. LIEBERMAN. Mr. President, today Senators COLLINS, CARPER, BROWN, and I are pleased to introduce the Fire Grants Reauthorization Act of 2011 to ensure that firefighters and emergency medical service personnel serving communities across the nation are repaid for the sacrifices they make every day with the best possible training and equipment—particularly given the budget cuts many communities have been forced to make in these economically uncertain times.

The bill we present to the Senate reauthorizes the Assistance to Firefighters, AFG, program and the Staffing for Adequate Fire and Emergency Response program, SAFER, two highly successful programs I worked to establish in 2000 and 2003. This is bipartisan legislation that has won overwhelming Senate support in previous years. As we all know, our first responders make great sacrifices for us. Firefighters in communities of all shapes and sizes have assumed a greater role in overall national emergency preparedness since September 11 and the Hurricane Katrina catastrophe. They now serve as the frontline of defense in many communities for disasters of all types. More than ever, firefighters need the training and equipment to deal not only with fires but also with hazardous materials; nuclear, radioactive, and explosive devices; and other potential threats.

The responsibilities placed on firefighters have only grown more demanding. Firefighters respond more and more to medical emergencies—15.8 million in 2008, a 213 percent increase from 1980. Right here in Washington, D.C., at Fire Engine Company 10—known as the ''House of Pain'' for its grueling schedule—80 percent of the calls are for medical emergencies. Our nation's firefighters—like other first responders—are the first to arrive and the last to leave whenever trouble hits. They deserve all the support we can give them.

Unfortunately, they do not always get it. Firefighters often lack the equipment and vehicles they need to do their jobs safely and effectively. In 2006 the U.S. Fire Administration reported that 60 percent of fire departments did not have enough breathing apparatuses to equip all firefighters on a shift, 65 percent did not have enough portable radios, and 49 percent of all fire engines were at least 15 years old.

We can and must do more for these brave men and women. We must make sure they have what they need to protect their communities and themselves as they perform a very dangerous job. Our bill takes much-needed steps to ensure that they do.

To start with, because career, volunteer, and combination fire departments all suffer from shortages in equipment, vehicles, and training, our bill requires that each type receives at least 25 percent of the available AFG grant funding. The remaining funds will be allocated based on factors such as risk and the needs of individual communities and the country as a whole. This creates an appropriate balance, ensuring that funds are directed at departments facing the most significant risks while guaranteeing that no department is left out.

We have also taken a number of steps in our bill to help fire departments in communities struggling with economic difficulties. In many cases, local governments have reduced spending on vital services, including fire departments. Among other things, these cuts have prevented many departments from replacing old equipment and forced them to lay off needed firefighters. To help departments rebuild, we have lowered the matching requirements for AFG and SAFER. Departments are still required to match some of their grant awards with funds of their own—ensuring they have some skin in the game—but the reduced amount will make it easier for them to accept awards.

We have similarly created an economic hardship waiver for both grant programs that will allow FEMA to waive certain requirements, such as requiring that grantees provide matching funds, for departments in communities that have been especially hard hit by tough economic times.

Our bill contains a number of other important provisions. It raises the maximum grant amounts available under AFG. As commonsense would suggest, large communities often require a substantial amount of equipment, and they will now be able to apply for funding in amounts more in line with what they need.

Our bill would provide funding for national fire safety organizations and institutions of higher education that wish to create joint programs establishing fire safety research centers. There is a great need for research devoted to fire safety and prevention and improved technology. The work these centers do will help us reduce fire casualties among firefighters and civilians and make communities safer.

But as important as it is to help our firefighters, we must also demand accountability when we spend taxpayer dollars. For this reason, we require that FEMA create performance management systems for these programs, complete with quantifiable metrics that will allow us to see how well they perform. Going forward, this will allow us to see what works in these programs and what does not so that we can make needed improvements when required.

We have also included provisions to prevent earmarks from being attached to these programs. AFG and SAFER have never been earmarked—an impressive accomplishment—and we want to keep it that way. The funding for these programs needs to go to firefighters, not pet projects.

Finally, this legislation authorizes $950 million each for these vital programs. This is actually less than what was authorized in the past. We believe that supporting our Nation's firefighters and emergency medical service responders ought to be a priority, but we recognize that these tough fiscal times require some belt-tightening. Authorizing funding for AFG and SAFER at these amounts sends the message that Congress can direct funding where it is needed while also showing discipline.

This legislation ensures that fire departments get the support they need to protect their communities while also protecting taxpayer dollars. It addresses a vital national need while increasing accountability to the public. I urge my colleagues to join me in supporting the reauthorization of these important programs.

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. 550

*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 ''Fire Grants Reauthorization Act of 2011''.

**SEC. 2. AMENDMENTS TO DEFINITIONS.**

(a) IN GENERAL.—Section 4 of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2203) is amended—

(1) in paragraph (3), by inserting '', except as otherwise provided,'' after ''means'';

(2) in paragraph (4), by striking '' 'Director' means'' and all that follows through ''Agency;'' and inserting '' 'Administrator of FEMA' means the Administrator of the Federal Emergency Management Agency;'';

(3) in paragraph (5)—

(A) by inserting ''Indian tribe,'' after ''county,''; and

(B) by striking ''and 'firecontrol' '' and inserting ''and 'fire control' '';

(4) by redesignating paragraphs (6) through (9) as paragraphs (7) through (10), respectively;

(5) by inserting after paragraph (5), the following:

''(6) 'Indian tribe' has the meaning given that term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b) and 'tribal' means of or pertaining to an Indian tribe;'';

(6) by redesignating paragraphs (9) and (10), as redesignated by paragraph (4), as paragraphs (10) and (11);

(7) by inserting after paragraph (8), as redesignated by paragraph (4), the following:

''(9) 'Secretary' means, except as otherwise provided, the Secretary of Homeland Security;'';

(8) by amending paragraph (10), as redesignated by paragraph (6), to read as follows:

''(10) 'State' has the meaning given the term in section 2 of the Homeland Security Act of 2002 (6 U.S.C. 101).''.

(b) CONFORMING AMENDMENTS.—

(1) ADMINISTRATOR OF FEMA.—The Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2201 et seq.) is amended by striking ''Director'' each place it appears and inserting ''Administrator of FEMA''.

(2) ADMINISTRATOR OF FEMA'S AWARD.—Section 15 of such Act (15 U.S.C. 2214) is amended by striking ''Director's Award'' each place it appears and inserting ''Administrator's Award''.

**SEC. 3. ASSISTANCE TO FIREFIGHTER GRANTS.**

Section 33 of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2229) is amended to read as follows:

**''SEC. 33. FIREFIGHTER ASSISTANCE.**

''(a) DEFINITIONS.—In this section:

''(1) AVAILABLE GRANT FUNDS.—The term 'available grant funds', with respect to a fiscal year, means those funds appropriated pursuant to the authorization of appropriations in subsection (p)(1) for such fiscal year less any funds used for administrative costs pursuant to subsection (p)(2) in such fiscal year.

''(2) CAREER FIRE DEPARTMENT.—The term 'career fire department' means a fire department that has an all-paid force of firefighting personnel other than paid-on-call firefighters.

''(3) COMBINATION FIRE DEPARTMENT.—The term 'combination fire department' means a fire department that has—

''(A) paid firefighting personnel; and

''(B) volunteer firefighting personnel.

''(4) FIREFIGHTING PERSONNEL.—The term 'firefighting personnel' means individuals, including volunteers, who are firefighters, officers of fire departments, or emergency medical service personnel of fire departments.

''(5) NONAFFILIATED EMS ORGANIZATION.—The term 'nonaffiliated EMS organization' means a public or private nonprofit emergency medical services organization that is not affiliated with a hospital and does not serve a geographic area in which the Administrator of FEMA finds that emergency medical services are adequately provided by a fire department.

''(6) PAID-ON-CALL.—The term 'paid-on-call' with respect to firefighting personnel means firefighting personnel who are paid a stipend for each event to which they respond.

''(7) VOLUNTEER FIRE DEPARTMENT.—The term 'volunteer fire department' means a fire department that has an all-volunteer force of firefighting personnel.

''(b) ASSISTANCE PROGRAM.—

''(1) AUTHORITY.—In accordance with this section, the Administrator of FEMA may, in consultation with the Administrator of the United States Fire Administration, award—

''(A) assistance to firefighters grants under subsection (c); and

''(B) fire prevention and safety grants and other assistance under subsection (d).

''(2) ADMINISTRATIVE ASSISTANCE.—The Administrator of FEMA shall—

''(A) establish specific criteria for the selection of grant recipients under this section; and

''(B) provide assistance with application preparation to applicants for such grants.

''(c) ASSISTANCE TO FIREFIGHTERS GRANTS.—

''(1) IN GENERAL.—The Administrator of FEMA may, in consultation with the chief executives of the States in which the recipients are located, award grants on a competitive basis directly to—

''(A) fire departments, for the purpose of protecting the health and safety of the public and firefighting personnel throughout the United States against fire, fire-related, and other hazards;

''(B) nonaffiliated EMS organizations to support the provision of emergency medical services; and

''(C) State fire training academies for the purposes described in subparagraphs (G), (H), and (I) of paragraph (3).

''(2) MAXIMUM GRANT AMOUNTS.—

''(A) POPULATION.—The Administrator of FEMA may not award a grant under this subsection in excess of amounts as follows:

''(i) In the case of a recipient that serves a jurisdiction with 100,000 people or fewer, the amount of the grant awarded to such recipient shall not exceed $1,000,000 in any fiscal year.

''(ii) In the case of a recipient that serves a jurisdiction with more than 100,000 people but not more than 500,000 people, the amount of the grant awarded to such recipient shall not exceed $2,000,000 in any fiscal year.

''(iii) In the case of a recipient that serves a jurisdiction with more than 500,000 but not more than 1,000,000 people, the amount of the grant awarded to such recipient shall not exceed $3,000,000 in any fiscal year.

''(iv) In the case of a recipient that serves a jurisdiction with more than 1,000,000 people but not more than 2,500,000 people, the amount of the grant awarded to such recipient shall not exceed $6,000,000 for any fiscal year.

''(v) In the case of a recipient that serves a jurisdiction with more than 2,500,000 people, the amount of the grant awarded to such recipient shall not exceed $9,000,000 in any fiscal year.

''(B) STATE FIRE TRAINING ACADEMIES.—The Administrator of FEMA may not award a grant under this subsection to a State fire training academy in an amount that exceeds $1,000,000 in any fiscal year.

''(C) AGGREGATE.—

''(i) IN GENERAL.—Notwithstanding subparagraphs (A) and (B) and except as provided under clause (ii), the Administrator of FEMA may not award a grant under this subsection in a fiscal year in an amount that exceeds the amount that is one percent of the available grant funds in such fiscal year.

''(ii) EXCEPTION.—The Administrator of FEMA may waive the limitation in clause (i) with respect to a grant recipient if the Administrator of FEMA determines that such recipient has an extraordinary need for a grant in an amount that exceeds the limit under clause (i).

''(3) USE OF GRANT FUNDS.—Each entity receiving a grant under this subsection shall use the grant for one or more of the following purposes:

''(A) To train firefighting personnel in—

''(i) firefighting;

''(ii) emergency medical services and other emergency response (including response to natural disasters, acts of terrorism, and other man-made disasters);

''(iii) arson prevention and detection;

''(iv) maritime firefighting; or

''(v) the handling of hazardous materials.

''(B) To train firefighting personnel to provide any of the training described under subparagraph (A).

''(C) To fund the creation of rapid intervention teams to protect firefighting personnel at the scenes of fires and other emergencies.

''(D) To certify—

''(i) fire inspectors; and

''(ii) building inspectors—

''(I) whose responsibilities include fire safety inspections; and

''(II) who are employed by or serving as volunteers with a fire department.

''(E) To establish wellness and fitness programs for firefighting personnel to ensure that the firefighting personnel are able to carry out their duties as firefighters.

''(F) To fund emergency medical services provided by fire departments and nonaffiliated EMS organizations.

''(G) To acquire additional firefighting vehicles, including fire trucks and other apparatus.

''(H) To acquire additional firefighting equipment, including equipment for—

''(i) fighting fires with foam in remote areas without access to water; and

''(ii) communications, monitoring, and response to a natural disaster, act of terrorism, or other man-made disaster, including the use of a weapon of mass destruction.

''(I) To acquire personal protective equipment, including personal protective equipment—

''(i) prescribed for firefighting personnel by the Occupational Safety and Health Administration of the Department of Labor; or

''(ii) for responding to a natural disaster or act of terrorism or other man-made disaster, including the use of a weapon of mass destruction.

''(J) To modify fire stations, fire training facilities, and other facilities to protect the health and safety of firefighting personnel.

''(K) To educate the public about arson prevention and detection.

''(L) To provide incentives for the recruitment and retention of volunteer firefighting personnel for volunteer firefighting departments and other firefighting departments that utilize volunteers.

''(M) To support such other activities, consistent with the purposes of this subsection, as the Administrator of FEMA determines appropriate.

''(d) FIRE PREVENTION AND SAFETY GRANTS.—

''(1) IN GENERAL.—For the purpose of assisting fire prevention programs and supporting firefighter health and safety research and development, the Administrator of FEMA may, on a competitive basis—

''(A) award grants to fire departments;

''(B) award grants to, or enter into contracts or cooperative agreements with, national, State, local, tribal, or nonprofit organizations that are not fire departments and that are recognized for their experience and expertise with respect to fire prevention or fire safety programs and activities and firefighter research and development programs, for the purpose of carrying out—

''(i) fire prevention programs; and

''(ii) research to improve firefighter health and life safety; and

''(C) award grants to, or enter into contracts with, regionally accredited institutions of higher education and national fire service organizations or national fire safety organizations to support joint programs focused on reducing firefighter fatalities and non-fatal injuries, including programs for establishing fire safety research centers as the Administrator of FEMA determines appropriate.

''(2) MAXIMUM GRANT AMOUNT.—A grant awarded under this subsection may not exceed $1,500,000 for a fiscal year.

''(3) USE OF GRANT FUNDS.—Each entity receiving a grant under this subsection shall use the grant for one or more of the following purposes:

''(A) To enforce fire codes and promote compliance with fire safety standards.

''(B) To fund fire prevention programs.

''(C) To fund wildland fire prevention programs, including education, awareness, and mitigation programs that protect lives, property, and natural resources from fire in the wildland-urban interface.

''(D) In the case of a grant awarded under paragraph (1)(C), to fund the establishment or operation of—

''(i) a fire safety research center; or

''(ii) a program at such a center.

''(E) To support such other activities, consistent with the purposes of this subsection, as the Administrator of FEMA determines appropriate.

''(e) APPLICATIONS FOR GRANTS.—

''(1) IN GENERAL.—An entity seeking a grant under this section shall submit to the Administrator of FEMA an application therefor in such form and in such manner as the Administrator of FEMA determines appropriate.

''(2) ELEMENTS.—Each application submitted under paragraph (1) shall include the following:

''(A) A description of the financial need of the applicant for the grant.

''(B) An analysis of the costs and benefits, with respect to public safety, of the use for which a grant is requested.

''(C) An agreement to provide information to the national fire incident reporting system for the period covered by the grant.

''(D) A list of other sources of funding received by the applicant—

''(i) for the same purpose for which the application for a grant under this section was submitted; or

''(ii) from the Federal Government for other fire-related purposes.

''(E) Such other information as the Administrator of FEMA determines appropriate.

''(3) JOINT OR REGIONAL APPLICATIONS.—

''(A) IN GENERAL.—Two or more entities may submit an application under paragraph (1) for a grant under this section to fund a joint program or initiative, including acquisition of shared equipment or vehicles.

''(B) NONEXCLUSIVITY.—Applications under this paragraph may be submitted instead of or in addition to any other application submitted under paragraph (1).

''(C) GUIDANCE.—The Administrator of FEMA shall—

''(i) publish guidance on applying for and administering grants awarded for joint programs and initiatives described in subparagraph (A); and

''(ii) encourage applicants to apply for grants for joint programs and initiatives described in subparagraph (A) as the Administrator of FEMA determines appropriate to achieve greater cost effectiveness and regional efficiency.

''(f) PEER REVIEW OF GRANT APPLICATIONS.—

''(1) IN GENERAL.—The Administrator of FEMA shall, after consultation with national fire service and emergency medical services organizations, appoint fire service personnel and personnel from nonaffiliated EMS organizations to conduct peer reviews of applications received under subsection (e)(1).

''(2) ASSIGNMENT OF REVIEWS.—In administering the peer review process under paragraph (1), the Administrator of FEMA shall ensure that—

''(A) applications submitted by career fire departments are reviewed primarily by personnel from career fire departments;

''(B) applications submitted by volunteer fire departments are reviewed primarily by personnel from volunteer fire departments;

''(C) applications submitted by combination fire departments and fire departments using paid-on-call firefighting personnel are reviewed primarily by personnel from such fire departments; and

''(D) applications for grants to fund emergency medical services pursuant to subsection (c)(3)(F) are reviewed primarily by emergency medical services personnel, including—

''(i) emergency medical service personnel affiliated with fire departments; and

''(ii) personnel from nonaffiliated EMS organizations.

''(3) REVIEW OF APPLICATIONS FOR FIRE PREVENTION AND SAFETY GRANTS SUBMITTED BY NONPROFIT ORGANIZATIONS THAT ARE NOT FIRE DEPARTMENTS.—In conducting a review of an application submitted under subsection (e)(1) by a nonprofit organization described in subsection (d)(1)(B), a peer reviewer may not recommend the applicant for a grant under subsection (d) unless such applicant is recognized for its experience and expertise with respect to—

''(A) fire prevention or safety programs and activities; or

''(B) firefighter research and development programs.

''(4) APPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to activities carried out pursuant to this subsection.

''(g) PRIORITIZATION AND ALLOCATION OF GRANT AWARDS.—In awarding grants under this section, the Administrator of FEMA shall—

''(1) consider the findings and recommendations of the peer reviews carried out under subsection (f);

''(2) consider the degree to which an award will reduce deaths, injuries, and property damage by reducing the risks associated with fire-related and other hazards;

''(3) consider the extent of the need of an applicant for a grant under this section and the need to protect the United States as a whole;

''(4) consider the number of calls requesting or requiring a fire fighting or emergency medical response received by an applicant; and

''(5) ensure that of the available grant funds—

''(A) not less than 25 percent are awarded to career fire departments;

''(B) not less than 25 percent are awarded to volunteer fire departments; and

''(C) not less than 25 percent are awarded to combination fire departments and fire departments using paid-on-call firefighting personnel.

''(h) ADDITIONAL REQUIREMENTS AND LIMITATIONS.—

''(1) FUNDING FOR EMERGENCY MEDICAL SERVICES.—Not less than 3.5 percent of the available grant funds for a fiscal year shall be awarded under this section for purposes described in subsection (c)(3)(F).

''(2) GRANT AWARDS TO NONAFFILIATED EMS ORGANIZATIONS.—Not more than 2 percent of the available grant funds for a fiscal year shall be awarded under this section to nonaffiliated EMS organizations.

''(3) FUNDING FOR FIRE PREVENTION AND SAFETY GRANTS.—For each fiscal year, not less than 10 percent of the aggregate of grant amounts under this section in that fiscal year shall be awarded under subsection (d).

''(4) STATE FIRE TRAINING ACADEMIES.—Not more than 3 percent of the available grant funds for a fiscal year shall be awarded under subsection (c)(1)(C).

''(5) AMOUNTS FOR PURCHASING FIREFIGHTING VEHICLES.—Not more than 25 percent of the available grant funds for a fiscal year may be used to assist grant recipients to purchase vehicles pursuant to subsection (c)(3)(G).

''(i) FURTHER CONSIDERATIONS.—

''(1) ASSISTANCE TO FIREFIGHTERS GRANTS TO FIRE DEPARTMENTS.—In considering applications for grants under subsection (c)(1)(A), the Administrator of FEMA shall consider the extent to which the grant would enhance the daily operations of the applicant and the impact of such a grant on the protection of lives and property.

''(2) APPLICATIONS FROM NONAFFILIATED EMS ORGANIZATIONS.—In the case of an application submitted under subsection (e)(1) by a nonaffiliated EMS organization, the Administrator of FEMA shall consider the extent to which other sources of Federal funding are available to the applicant to provide the assistance requested in such application.

''(3) AWARDING FIRE PREVENTION AND SAFETY GRANTS TO CERTAIN ORGANIZATIONS THAT ARE NOT FIRE DEPARTMENTS.—In the case of applicants for grants under this section who are described in subsection (d)(1)(B), the Administrator of FEMA shall give priority to applicants who focus on—

''(A) prevention of injuries to high risk groups from fire; and

''(B) research programs that demonstrate a potential to improve firefighter safety.

''(4) AVOIDING DUPLICATION.—The Administrator of FEMA shall review lists submitted by applicants pursuant to subsection (e)(2)(D) and take such actions as the Administrator of FEMA considers necessary to prevent unnecessary duplication of grant awards.

''(j) MATCHING AND MAINTENANCE OF EXPENDITURE REQUIREMENTS.—

''(1) MATCHING REQUIREMENT FOR ASSISTANCE TO FIREFIGHTERS GRANTS.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), an applicant seeking a grant to carry out an activity under subsection (c) shall agree to make available non-Federal funds to carry out such activity in an amount equal to not less than 15 percent of the grant awarded to such applicant under such subsection.

''(B) EXCEPTION FOR ENTITIES SERVING SMALL COMMUNITIES.—In the case that an applicant seeking a grant to carry out an activity under subsection (c) serves a jurisdiction of—

''(i) more than 20,000 residents but not more than 50,000 residents, the applicant shall agree to make available non-Federal funds in an amount equal to not less than 10 percent of the grant award to such applicant under such subsection; or

''(ii) 20,000 residents or fewer, the applicant shall agree to make available non-Federal funds in an amount equal to not less than 5 percent of the grant awarded to such applicant under such subsection.

''(2) MATCHING REQUIREMENT FOR FIRE PREVENTION AND SAFETY GRANTS.—

''(A) IN GENERAL.—An applicant seeking a grant to carry out an activity under subsection (d) shall agree to make available

non-Federal funds to carry out such activity in an amount equal to not less than 5 percent of the grant awarded to such applicant under such subsection.

''(B) MEANS OF MATCHING.—An applicant for a grant under subsection (d) may meet the matching requirement under subparagraph (A) through direct funding, funding of complementary activities, or the provision of staff, facilities, services, material, or equipment.

''(3) MAINTENANCE OF EXPENDITURES.—An applicant seeking a grant under subsection (c) or (d) shall agree to maintain during the term of the grant the applicant's aggregate expenditures relating to the uses described in subsections (c)(3) and (d)(3) at not less than 80 percent of the average amount of such expenditures in the 2 fiscal years preceding the fiscal year in which the grant amounts are received.

''(4) WAIVER.—

''(A) IN GENERAL.—Except as provided in subparagraph (C)(ii), the Administrator of FEMA may waive or reduce the requirements of paragraphs (1), (2), and (3) in cases of demonstrated economic hardship.

''(B) GUIDELINES.—

''(i) IN GENERAL.—The Administrator of FEMA shall establish and publish guidelines for determining what constitutes economic hardship for purposes of this paragraph.

''(ii) CONSIDERATIONS.—In developing guidelines under clause (i), the Administrator of FEMA shall consider, with respect to relevant communities, the following:

''(I) Changes in rates of unemployment from previous years.

''(II) Whether the rates of unemployment of the relevant communities are currently and have consistently exceeded the annual national average rates of unemployment.

''(III) Changes in percentages of individuals eligible to receive food stamps from previous years.

''(IV) Such other factors as the Administrator of FEMA considers appropriate.

''(C) CERTAIN APPLICANTS FOR FIRE PREVENTION AND SAFETY GRANTS.—The authority under subparagraph (A) shall not apply with respect to a nonprofit organization that—

''(i) is described in subsection (d)(1)(B); and

''(ii) is not a fire department or emergency medical services organization.

''(k) GRANT GUIDELINES.—

''(1) GUIDELINES.—For each fiscal year, prior to awarding any grants under this section, the Administrator of FEMA shall publish in the Federal Register—

''(A) guidelines that describe—

''(i) the process for applying for grants under this section; and

''(ii) the criteria that will be used for selecting grant recipients; and

''(B) an explanation of any differences between such guidelines and the recommendations obtained under paragraph (2).

''(2) ANNUAL MEETING TO OBTAIN RECOMMENDATIONS.—

''(A) IN GENERAL.—For each fiscal year, the Administrator of FEMA shall convene a meeting of qualified members of national fire service organizations and qualified members of emergency medical service organizations to obtain recommendations regarding the following:

''(i) Criteria for the awarding of grants under this section.

''(ii) Administrative changes to the assistance program established under subsection (b).

''(B) QUALIFIED MEMBERS.—For purposes of this paragraph, a qualified member of an organization is a member who—

''(i) is recognized for expertise in firefighting or emergency medical services;

''(ii) is not an employee of the Federal Government; and

''(iii) in the case of a member of an emergency medical service organization, is a member of an organization that represents—

''(I) providers of emergency medical services that are affiliated with fire departments; or

''(II) nonaffiliated EMS providers.

''(3) APPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to activities carried out pursuant to this subsection.

''(l) ACCOUNTING DETERMINATION.—Notwithstanding any other provision of law, for purposes of this section, equipment costs shall include all costs attributable to any design, purchase of components, assembly, manufacture, and transportation of equipment not otherwise commercially available.

''(m) ELIGIBLE GRANTEE ON BEHALF OF ALASKA NATIVE VILLAGES.—The Alaska Village Initiatives, a non-profit organization incorporated in the State of Alaska, shall be eligible to apply for and receive a grant or other assistance under this section on behalf of Alaska Native villages.

''(n) TRAINING STANDARDS.—If an applicant for a grant under this section is applying for such grant to purchase training that does not meet or exceed any applicable national voluntary consensus standards developed under section 647 of the Post-Katrina Emergency Management Reform Act of 2006 (6 U.S.C. 747), the applicant shall submit to the Administrator of FEMA an explanation of the reasons that the training proposed to be purchased will serve the needs of the applicant better than training that meets or exceeds such standards.

''(o) ENSURING EFFECTIVE USE OF GRANTS.—

''(1) AUDITS.—The Administrator of FEMA may audit a recipient of a grant awarded under this section to ensure that—

''(A) the grant amounts are expended for the intended purposes; and

''(B) the grant recipient complies with the requirements of subsection (j).

''(2) PERFORMANCE ASSESSMENT.—

''(A) IN GENERAL.—The Administrator of FEMA shall develop and implement a performance assessment system, including quantifiable performance metrics, to evaluate the extent to which grants awarded under this section are furthering the purposes of this section, including protecting the health and safety of the public and firefighting personnel against fire and fire-related hazards.

''(B) CONSULTATION.—The Administrator of FEMA shall consult with fire service representatives and with the Comptroller General of the United States in developing the assessment system required by subparagraph (A).

''(3) ANNUAL REPORTS TO ADMINISTRATOR OF FEMA.—The recipient of a grant awarded under this section shall submit to the Administrator of FEMA an annual report describing how the recipient used the grant amounts.

''(4) ANNUAL REPORTS TO CONGRESS.—

''(A) IN GENERAL.—Not later than September 30, 2012, and each year thereafter through 2016, the Administrator of FEMA shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Science and Technology of the House of Representatives a report that provides—

''(i) information on the performance assessment system developed under paragraph (2); and

''(ii) using the performance metrics developed under such paragraph, an evaluation of the effectiveness of the grants awarded under this section.

''(B) ADDITIONAL INFORMATION.—The report due under subparagraph (A) on September 30, 2015, shall also include recommendations for legislative changes to improve grants under this section, including recommendations as to whether the provisions described in section 5(a) of the Fire Grants Reauthorization Act of 2011 should be extended to apply on and after the date described in such section.

''(p) AUTHORIZATION OF APPROPRIATIONS.—

''(1) IN GENERAL.—There is authorized to be appropriated to carry out this section—

''(A) $950,000,000 for fiscal year 2012; and

''(B) for each of fiscal years 2013 through 2016, an amount equal to the amount authorized for the previous fiscal year increased by the percentage by which—

''(i) the Consumer Price Index (all items, United States city average) for the previous fiscal year, exceeds

''(ii) the Consumer Price Index for the fiscal year preceding the fiscal year described in clause (i).

''(2) ADMINISTRATIVE EXPENSES.—Of the amounts appropriated pursuant to paragraph (1) for a fiscal year, the Administrator of FEMA may use not more than 5 percent of such amounts for salaries and expenses and other administrative costs incurred by the Administrator of FEMA in the course of awarding grants and providing assistance under this section.

''(3) CONGRESSIONALLY DIRECTED SPENDING.—Consistent with the requirements in subsections (c)(1) and (d)(1) that grants under those subsections be awarded on a competitive basis, none of the funds appropriated pursuant to this subsection may be used for any congressionally directed spending item (as such term is defined in paragraph 5(a) of rule XLIV of the Standing Rules of the Senate).''.

**SEC. 4. STAFFING FOR ADEQUATE FIRE AND EMERGENCY RESPONSE.**

(a) IMPROVEMENTS TO HIRING GRANTS.—

(1) TERM OF GRANTS.—Subsection (a)(1)(B) of section 34 of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2229a) is amended by striking ''4 years'' and inserting ''3 years''.

(2) LIMITATION ON PORTION OF COSTS OF HIRING FIREFIGHTERS.—Subsection (a)(1)(E) of such section 34 is amended by striking ''not exceed—'' and all that follows through the period and inserting ''not exceed 75 percent in any fiscal year.''.

(b) CLARIFICATION REGARDING ELIGIBLE ENTITIES FOR RECRUITMENT AND RETENTION GRANTS.—The second sentence of subsection (a)(2) of such section 34 is amended by striking ''organizations on a local or statewide basis'' and inserting ''national, State, local, or tribal organizations''.

(c) MAXIMUM AMOUNT FOR HIRING FIREFIGHTER.—Paragraph (4) of subsection (c) of such section 34 is amended to read as follows:

''(4) The amount of funding provided under this section to a recipient fire department for hiring a firefighter in any fiscal year may not exceed 75 percent of the usual annual cost of a first-year firefighter in that department at the time the grant application was submitted.''.

(d) WAIVERS.—Such section 34 is further amended—

(1) by redesignating subsections (d) through (i) as subsection (e) through (j), respectively; and

(2) by inserting after subsection (c) the following:

''(d) WAIVERS.—

''(1) IN GENERAL.—In a case of demonstrated economic hardship, the Administrator of FEMA may—

''(A) waive the requirements of subsection (a)(1)(B)(ii) or subsection (c)(1); or

''(B) waive or reduce the requirements in subsection (a)(1)(E) or subsection (c)(2).

''(2) GUIDELINES.—

''(A) IN GENERAL.—The Administrator of FEMA shall establish and publish guidelines

for determining what constitutes economic hardship for purposes of paragraph (1).

''(B) CONSIDERATIONS.—In developing guidelines under subparagraph (A), the Administrator of FEMA shall consider, with respect to relevant communities, the following:

''(i) Changes in rates of unemployment from previous years.

''(ii) Whether the rates of unemployment of the relevant communities are currently and have consistently exceeded the annual national average rates of unemployment.

''(iii) Changes in percentages of individuals eligible to receive food stamps from previous years.

''(iv) Such other factors as the Administrator of FEMA considers appropriate.''.

(e) IMPROVEMENTS TO PERFORMANCE EVALUATION REQUIREMENTS.—Subsection (e) of such section 34, as redesignated by subsection (d)(1) of this section, is amended by inserting before the first sentence the following:

''(1) IN GENERAL.—The Administrator of FEMA shall establish a performance assessment system, including quantifiable performance metrics, to evaluate the extent to which grants awarded under this section are furthering the purposes of this section.

''(2) SUBMISSION OF INFORMATION.—''.

(f) REPORT.—

(1) IN GENERAL.—Subsection (f) of such section 34, as redesignated by subsection (d)(1) of this section, is amended by striking ''The authority'' and all that follows through ''Congress concerning'' and inserting the following: ''Not later than September 30, 2015, the Administrator of FEMA shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Science and Technology of the House of Representatives a report on''.

(2) CONFORMING AMENDMENT.—The heading for such subsection (f) is amended by striking ''SUNSET AND REPORTS'' and inserting ''REPORT''.

(g) ADDITIONAL DEFINITIONS.—

(1) IN GENERAL.—Subsection (i) of such section 34, as redesignated by subsection (d)(1) of this section, is amended—

(A) in the matter before paragraph (1), by striking ''In this section, the term—'' and inserting ''In this section:'';

(B) in paragraph (1)—

(i) by inserting ''The term'' before '' 'firefighter' has''; and

(ii) by striking ''; and'' and inserting a period;

(C) by striking paragraph (2); and

(D) by inserting at the end the following:

''(2) The terms 'career fire department', 'combination fire department', and 'volunteer fire department' have the meaning given such terms in section 33(a).''.

(2) CONFORMING AMENDMENT.—Subsection (a)(1)(A) of such section 34 is amended by striking ''career, volunteer, and combination fire departments'' and inserting ''career fire departments, combination fire departments, and volunteer fire departments''.

(h) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—Subsection (j) of such section 34, as redesignated by subsection (d)(1) of this section, is amended—

(A) in paragraph (6), by striking ''and'' at the end;

(B) in paragraph (7), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(8) $950,000,000 for fiscal year 2012; and

''(9) for each of fiscal years 2013 through 2016, an amount equal to the amount authorized for the previous fiscal year increased by the percentage by which—

''(A) the Consumer Price Index (all items, United States city average) for the previous fiscal year, exceeds

''(B) the Consumer Price Index for the fiscal year preceding the fiscal year described in subparagraph (A).''.

(2) ADMINISTRATIVE EXPENSES.—Such subsection (j) is further amended—

(A) in paragraph (9), as added by paragraph (1) of this subsection, by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively, and moving the left margin of such clauses, as so redesignated, 2 ems to the right;

(B) by redesignating paragraphs (1) through (9) as subparagraphs (A) through (I), respectively, and moving the left margin of such subparagraphs, as so redesignated, 2 ems to the right;

(C) by striking ''There are'' and inserting the following:

''(1) IN GENERAL.—There are''; and

(D) by adding at the end the following:

''(2) ADMINISTRATIVE EXPENSES.—Of the amounts appropriated pursuant to paragraph (1) for a fiscal year, the Administrator of FEMA may use not more than 5 percent of such amounts to cover salaries and expenses and other administrative costs incurred by the Administrator of FEMA to make grants and provide assistance under this section.''.

(3) CONGRESSIONALLY DIRECTED SPENDING.—Such subsection (j) is further amended by adding at the end the following:

''(3) CONGRESSIONALLY DIRECTED SPENDING.—Consistent with the requirement in subsection (a) that grants under this section be awarded on a competitive basis, none of the funds appropriated pursuant to this subsection may be used for any congressionally direct spending item (as defined in paragraph 5(a) of Rule XLIV of the Standing Rules of the Senate).''.

(i) TECHNICAL AMENDMENT.—Such section 34 is amended—

(1) in subsection (a), in paragraphs (1)(A) and (2), by striking ''Administrator shall'' and inserting ''Administrator of FEMA shall, in consultation with the Administrator,''; and

(2) by striking ''Administrator'' each place it appears, other than in subsection (a)(1)(A) and (a)(2), and inserting ''Administrator of FEMA''.

(j) CLERICAL AMENDMENT.—Section 34 of such Act (15 U.S.C. 2229a) is amended by striking ''**EXPANSION OF PRE-SEPTEMBER 11, 2001, FIRE GRANT PROGRAM**'' and inserting the following: ''**STAFFING FOR ADEQUATE FIRE AND EMERGENCY RESPONSE**''.

**SEC. 5. SUNSET AND PRIOR PROVISIONS.**

(a) SUNSET.—Section 3 and subsections (a), (c), (d), (e), (f), (g), and (h) of section 4, and the amendments made by such section and subsections shall not apply on or after October 1, 2016.

(b) APPLICATION OF PRIOR LAW.—On and after October 1, 2016, sections 33 and 34 of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2229 and 2229a) are amended to read as such sections read on the day before the date of the enactment of this Act, except that the amendments made by subsections (b), (i), and (j) of section 4 shall continue to apply to such section 34.

**SEC. 6. REPORT.**

Not later than September 30, 2015, the Comptroller General of the United States shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Science and Technology of the House of Representatives a report on the effect of the amendments made by this Act. Such report shall include the following:

(1) An assessment of the effect of the amendments made by sections 3 and 4 on the effectiveness, relative allocation, accountability, and administration of the grants awarded under sections 33 and 34 of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2229 and 2229a) after the date of the enactment of this Act .

(2) An evaluation of the extent to which the amendments made by sections 3 and 4 have enabled recipients of grants awarded under such sections 33 and 34 after the date of the enactment of this Act to mitigate fire and fire-related and other hazards more effectively.

Ms. COLLINS. Mr. President, I am proud to once again cosponsor the Fire Grants Reauthorization Act. I am pleased to join with Senators LIEBERMAN, BROWN, and CARPER in this effort to reauthorize these vital programs. I have always been an ardent supporter of our Nation's fire services. In addition to serving as a cochair of the Congressional Fire Services Caucus, I was a cosponsor of the original FIRE Act, and an original cosponsor of the FIRE Act reauthorization bills in 2004 and in 2010. Unfortunately, last year's bill did not become law.

The FIRE Act grants program provides fire departments with the support they need to purchase equipment and vehicles, and to conduct the training and exercises necessary to perform their jobs well. Indeed, this is one of the most successful programs administered by the Department of Homeland Security.

The FIRE Act grants program is an efficient and effective model for delivering grant funding because it has a competitive process for evaluating applications, which are peer-reviewed. It is also successful because monies are provided directly to local fire departments. This bipartisan legislation would retain and build upon these aspects of the FIRE Act program that made it successful in the first place.

In visits across the State of Maine, I have seen first-hand how these grants build the critical response capabilities of local fire departments. Maine has received more than $50 million through the FIRE Act grants program—a testament to the needs of our often rural, volunteer fire departments and proof that the program is succeeding in delivering funds to communities that need it most.

Independent analyses have confirmed that the FIRE Act grants program has been effective. To quote a 2007 study by the National Academy of Public Administration, ''From the standpoint of administrative efficiency, there is broad agreement among stakeholders and observers that the program has been well run. It is a positive case study in the management of a grant program by a government agency.''

I believe this bill will increase the capabilities of our Nation's fire services, and protect the thousands of firefighters and EMTs who put their lives on the line every day.

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By Mr. SANDERS (for himself and Ms. MIKULSKI):

S. 552. A bill to reduce the Federal budget deficit by creating a surtax on high income individuals and eliminating big oil and gas company tax

loopholes; to the Committee on Finance.

Mr. SANDERS. Mr. President, I will try to bring this budget debate down to Earth and talk a little bit about the reality of what is happening and go beyond the amount of numbers that are out there.

My good friend from Alabama who sits with me on the Budget Committee makes the point that this country has a severe budget crisis. He is right. The question is, How did we get to where we are today and how do we go forward in a way that is fair and responsible to address it? In that regard, the Senator from Alabama and I have very strong disagreements.

How did we get to where we are today when not so many years ago, the day George W. Bush became President, we had a significant surplus? We had a surplus when Clinton left office. Now we have a major deficit crisis. There are a number of reasons:

No. 1, against my vote, we are fighting a war in Iraq which, by the time we take care of our last veteran, is going to cost us some $3 trillion. I didn't hear any of my Republican friends saying we can't go to war unless we figure out a way to pay for it.

No. 2, my Republican friends for years have been pushing huge tax breaks for the very wealthiest people. I didn't hear them ask how that was going to be paid for.

No. 3, under President Bush, with strong Republican support and against my vote, Congress passed a $400 billion-plus Medicare Part D prescription drug program, written by the insurance companies and the drug companies. It drove up the deficit.

No. 4, against my vote, Congress voted for a massive bailout of Wall Street. I didn't hear too many people talking about how we would pay for that, $700 billion to bail out Wall Street. I didn't hear them arguing that it was too much money and it would drive up the deficit.

Yesterday, the Republicans brought forth and voted on H.R. 1. Almost all of them voted for it. Those who did not actually wanted to go further.

The main point I wish to make is, A, we do have to address the deficit crisis, but, B, we have to address it in a way that is fair and responsible and not solely on the backs of working families, the middle class, the elderly, the sick, and the poor. That is immoral. That is wrong. That is bad economics.

To my mind, it is absolutely absurd that when my Republican friends talk about deficit reduction, they forget to talk about the reality that the wealthiest people have never had it so good; that the effective, the real tax rate for the richest people is the lowest on record; and that the wealthiest people, the top 2 percent, have received many hundreds of billions of dollars in tax breaks.

I ask my Republican friends, why do they want to balance the budget on the backs of low-income children, low-income senior citizens, those who are sick, those who are vulnerable, without asking the wealthiest people who have never had it so good to put one penny into deficit reduction? I think that is wrong, and the American people think that is wrong. When we talk about deficit reduction, we have to talk about shared sacrifice, everybody playing a role, not just little kids, not just the elderly, not just the sick, but even—dare I say it—people who have a whole lot of money and who have never done so well.

I have not been impressed at how the media has been covering this issue. They have not made it clear to the American people how devastating the cuts are that Republicans want to impose on working families. Let me briefly tick off some of them.

The Republicans want to throw over 200,000 children off of the Head Start Program. Every working family in America knows how hard it is today to come up with affordable childcare, early childhood education. We have the highest rate of childhood poverty in the industrialized world. The Republican solution is to slash Head Start by 20 percent, cut 218,000 kids off of Head Start, and lay off 55,000 Head Start instructors.

The cost of college education today is so high that many young people are giving up their dream of going to college, while many others are graduating deeply in debt. Republican solution: Slash Pell grants by $5.7 billion and reduce or eliminate Pell grants for 9.4 million low-income college students. Middle-class families, working-class families, do they hear that? We are going to balance the budget by either eliminating or lowering Pell grants—the ability of young people to go to college—for over 9 million college students.

I know in my office we get calls every week from senior citizens, people with disabilities, widows who are having a hard time getting a timely response toward their Social Security claims. It takes too long to process the paperwork. What the Republicans want to do is slash the Social Security Administration, the people who administer Social Security for seniors and the disabled, widows and orphans, by $1.7 billion. That means half a million Americans who are legally entitled to Social Security benefits will have to wait significantly longer times in order to receive them.

We have 50 million Americans with no health insurance today, and 45,000 Americans die because they don't get to a doctor in time. Last year, as part of health care reform, I worked very hard with many Members to expand community health centers so that more and more low-and moderate-income people could walk into a doctor's office, get health care, dental care, low-cost prescription drugs, mental health counseling. In H.R. 1, the bill they voted for yesterday, Republicans want to deny primary health care to 11 million Americans at a time when State after State is cutting back on Medicaid. What are you supposed to do if you are 50 years old, you have a pain in your chest, and you don't have any health insurance? Where do you go? Republicans want to deny health care to another 11 million Americans.

For the poorest people, community services block grants provide the infrastructure, the ability to get out emergency food help, emergency help to pay the electric bill, LIHEAP. They are the infrastructure of this country that protects the poorest and most vulnerable. Republicans want to slash $405 million from the Community Services Block Grant Program. That is wrong. And the President's proposed cut to the community services block grant is also wrong.

In real terms, 16 percent of our population today is really unemployed, if we add together the official unemployment—those people who have given up looking for work, those people who work part time and want to work full time. Republicans want to slash $2 billion in Federal job-training programs.

Republicans want to slash $400 million in LIHEAP. That is the program that in my State and all over the country enables people to stay warm in the winter. We have a lot of senior citizens in Vermont getting by on $13,000 or $14,000 a year in income. They need help. It gets cold in Vermont. It gets 20 below zero. People don't have the income. LIHEAP is a very valuable tool. Republicans want to slash $100 million for LIHEAP.

They want to slash the EPA by 30 percent. These are the people who have successfully enforced the Clean Air Act, the Clean Water Act, so that the air we breathe does not give us asthma, doesn't provide us with the soup that makes us sick. The Clean Air Act has been an enormous success in cleaning up our air. Republicans want to slash that by 30 percent.

Republicans want to cut the WIC Program. This is the program that provides supplemental nutrition for women, infants, and children. They want to cut that by $750 million. Poverty in America is increasing. What we understand is that if pregnant women and little kids do not get good nutrition, the likelihood is that births might be low weight or the little babies might come down with illnesses if they don't have good nutrition. Poverty is increasing. Yet the Republicans want to cut the WIC Program by $750 million—10 percent.

Title I education funding. Everybody understands we have problems with education right now, with large dropout rates. Republicans want to cut $5 billion from the Department of Education.

On and on and on it goes.

What do I think? Do I think it is appropriate we balance the budget on low-income pregnant women and infants who need nutrition? Do I think you should throw 200,000 kids off the

Head Start Program? Do I think we cut the Social Security Administration severely? Do I think we cut Planned Parenthood, which has done such a good job in preventing unwanted pregnancies? Does that make sense? I do not think so. I do not think that is good for America.

But I do believe we have to move toward a balanced budget. So what is one way to go forward, other than savage cuts on programs for the most vulnerable people in this country? That is, I think we have to begin talking about revenue, not just cuts.

Today I am introducing legislation which does two things. No. 1, it creates a millionaire's surtax, which will be used strictly for deficit reduction. It will be a 5.4-percent surtax on income over $1 million. That says that all households that have income over $1 million will pay a 5.4-percent surtax on that income, which will go into an emergency deficit reduction fund. Just doing that—asking millionaires to pay a little bit more in taxes, after all the huge tax breaks they have received—will bring in approximately $50 billion a year.

I think that is a good idea, but it is not just me who thinks it is a good idea. Recently, last week, there was an NBC News/Wall Street Journal poll, and they asked the American people: What is the best way to go forward on deficit reduction? Mr. President, 81 percent of the American people believe it is totally acceptable or mostly acceptable to impose a surtax on millionaires to reduce the deficit.

The American people get it. They understand you cannot move toward deficit reduction just by cutting programs that working families, the middle class, and low-income people desperately need in order to survive in the midst of this terrible recession. They understand serious, responsible deficit reduction requires shared sacrifice. It is insane—and I use that word advisably—it is insane to be talking about deficit reduction, as my Republican friends do on one hand, and then say: Oh, yes, we have to give hundreds and hundreds of billions of dollars in tax breaks to the top 1 percent, the top 2 percent, when those guys are doing phenomenally well, are seeing an effective tax rate lower than it has been in decades and have received huge tax breaks already.

Why does anyone think it is moral or right to move toward deficit reduction on the backs of the weak and the vulnerable? I understand—and I know something about politics—I do understand the parents of kids who are in Head Start do not make large campaign contributions. I know the senior citizens of this country who need some help with Social Security do not make large campaign contributions. I understand that. I understand college students, desperately trying to go through college on a Pell grant, do not make large campaign contributions.

But there is a sense of morality we have to deal with. I think it makes no sense, I think it is immoral, I think it is bad economics to balance the budget on the backs of working families, while we give continued tax breaks to those people who do not need it.

So today we are introducing a piece of legislation which I hope will have strong support. I think it paves the way for us to go forward with serious deficit reduction in a way that is fair. Do we need to make cuts? Absolutely. But do we also need to ask the wealthiest people in this country to start contributing toward deficit reduction? I think we do.

Once again, the legislation I am introducing today creates a millionaire's surtax of 5.4 percent, which would bring in about $50 billion a year, to be used exclusively for an emergency deficit reduction fund.

We also end tax breaks for big oil and gas companies, which will bring in about $3.5 billion a year. Over the past decade, the five largest oil companies in the United States have earned nearly $1 trillion in profits. Meanwhile, in recent years, some of the very largest oil companies in America have paid absolutely nothing in Federal income taxes. In fact, some of them have actually gotten a refund, a rebate from the IRS.

So that is my plea. My plea is that, yes, the need for deficit reduction is real. It is urgent. Let's go forward, but let's go forward in a way that is fair and responsible and not simply on the backs of the most vulnerable people in this country.

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By Mr. FRANKEN (for himself, Mr. HARKIN, Mr. KERRY, Mrs. MURRAY, Ms. KLOBUCHAR, Mr. MERKLEY, Mr. DURBIN, Mr. LAUTENBERG, Mr. BENNET, Mr. BLUMENTHAL, Mr. UDALL of Colorado, Ms. MIKULSKI, Mr. LEAHY, Mr. SANDERS, Mr. BINGAMAN, Mr. WHITEHOUSE, Mr. CARDIN, Mrs. BOXER, Mrs. GILLIBRAND, Mr. MENENDEZ, Mr. AKAKA, Mr. SCHUMER, Mr. WYDEN, Mr. BEGICH, Mr. CASEY, Ms. CANTWELL, Mr. BROWN of Ohio, Mrs. SHAHEEN, Mr. REED, and Mr. COONS):

S. 555. A bill to end discrimination based on actual or perceived sexual orientation or gender identity in public schools, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. FRANKEN. Mr. President, I wish to tell you about a teenager whom I think you know about—Justin Aaberg—from our home State of Minnesota. Yesterday should have been Justin's 16th birthday. Justin was a kind young man, friendly and cheerful, a budding composer, but he was also the target for bullies at his high school, who targeted him because he was different—because he was gay.

I never had the opportunity to meet Justin. His family lost him to suicide last summer. The Presiding Officer knows that. But you and I have been privileged to meet his mother Tammy. I have been privileged to meet her a few times. She is incredible. She has been speaking out to protect other kids. Because, unfortunately, there are a lot of other kids out there struggling to get through school as they suffer from bullying and harassment and discrimination at their public schools. Nine out of ten LGBT students are harassed or bullied or taunted in school. This harassment deprives them of an equal education. They are more likely to skip school, they are less likely to perform well academically, and they are more likely to drop out before they graduate from high school.

In some tragic cases, such as Justin's, the harassment of LGBT students can even lead to suicide. We have seen this in all too many cases all over the country, because, sadly, this problem is so much broader than Justin. More than a third—more than a third—of lesbian, gay, and bisexual youth have made a suicide attempt. More than a third. That is horrifying beyond belief to me.

We are failing these kids. That is why I, along with 29 of my Senate colleagues, including the Presiding Officer, have reintroduced the Student Nondiscrimination Act today. While Federal civil rights laws prohibit discrimination on the basis of race, color, sex, religion, disability, and national origin, they do not expressly cover sexual origin or gender identity. As a result, parents of LGBT students have limited legal recourse when schools fail to protect their children from harassment and bullying.

You might be wondering why I am mentioning bullying and discrimination in the same breath. It is simple: When a school acts to protect kids with disabilities from bullying but looks the other way when LGBT kids are harassed by their peers, that is discrimination. When school staff members participate in or encourage bullying of LGBT youth, that is discrimination. When a principal excuses a bully who torments an LGBT kid with ''boys will be boys,'' this is discrimination and needs to stop. It needs to stop before more kids are hurt.

The Student Nondiscrimination Act would prohibit discrimination and harassment in public schools based on sexual orientation and gender identity. It would give LGBT students similar civil rights protections against bullying and harassment as those that currently apply to students based on characteristics such as race and gender.

This legislation would also provide meaningful remedies for discrimination in public schools based on sexual orientation or gender identity, modeled on Title IX's protection against discrimination and harassment based on gender. Fifty years of civil rights history shows that similar laws that contain such remedies are often most effective in preventing discrimination from occurring in the first place. Like other civil rights laws, the one we introduce today would prompt schools to

avoid liability by taking proactive steps to prevent the discrimination and bullying of students protected by the bill.

I guarantee you that when this bill is passed, nearly every school district in this country is going to go to its lawyer and ask, ''How do we come into compliance?'' I guarantee you that the U.S. Department of Education will issue regulations, as it has under Title IX, so that schools have guidance in how to protect these kids. The goal isn't for any school to be sued for failing to protect kids from bullying and harassment. The goal isn't for any school to come under Department of Education scrutiny. The goal is for schools to do all they can to ensure these incidents never happen in the first place.

Parents in Minnesota and across the country entrust their children to public schools with the understanding that these schools will do everything in their power to keep their children safe. When 9 in 10 LGBT kids are bullied at school, when they are three times more likely than straight kids to feel unsafe at school, when one third of LGBT kids say they have skipped a day of school in the last month because of feeling unsafe, then we know that our public education system is not fulfilling its most basic obligation to parents to keep children safe. We have an obligation to do something about it.

Yesterday, Justin Aaberg from Minnesota should have celebrated his 16th birthday with family and friends. But instead, I know that his family and friends were missing him terribly—are still missing him terribly.

No child should have to go through the pain that Justin went through at school. No mom or dad should have to go through the heartbreaking pain that Justin's family has gone through. It is time. It is time that we extend equal rights to LGBT students. We have the opportunity now, as we reform No Child Left Behind—the ESEA, the Elementary and Secondary Education Act—to include this legislation. Our children cannot afford for us to squander this opportunity. I urge my colleagues to join me today in supporting the Student Non-Discrimination Act and demanding protection for all of our children under the law.

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. 555

*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 ''Student Non-Discrimination Act of 2011''.

**SEC. 2. FINDINGS AND PURPOSES.**

(a) FINDINGS.—The Congress finds the following:

(1) Public school students who are lesbian, gay, bisexual, or transgender (referred to in this Act as ''LGBT''), or are perceived to be LGBT, or who associate with LGBT people, have been and are subjected to pervasive discrimination, including harassment, bullying, intimidation, and violence, and have been deprived of equal educational opportunities, in schools in every part of the Nation.

(2) While discrimination, including harassment, bullying, intimidation, and violence, of any kind is harmful to students and to the education system, actions that target students based on sexual orientation or gender identity represent a distinct and especially severe problem.

(3) Numerous social science studies demonstrate that discrimination, including harassment, bullying, intimidation, and violence, at school has contributed to high rates of absenteeism, dropping out, adverse health consequences, and academic underachievement, among LGBT youth.

(4) When left unchecked, discrimination, including harassment, bullying, intimidation, and violence, in schools based on sexual orientation or gender identity can lead, and has led, to life-threatening violence and to suicide.

(5) Public school students enjoy a variety of constitutional rights, including rights to equal protection, privacy, and free expression, which are infringed when school officials engage in or are indifferent to discrimination, including harassment, bullying, intimidation, and violence, on the basis of sexual orientation or gender identity.

(6) While Federal statutory provisions expressly address discrimination on the basis of race, color, sex, religion, disability, and national origin, Federal civil rights statutes do not expressly address discrimination on the basis of sexual orientation or gender identity. As a result, students and parents have often had limited recourse to law for remedies for discrimination on the basis of sexual orientation or gender identity.

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

(1) to ensure that all students have access to public education in a safe environment free from discrimination, including harassment, bullying, intimidation, and violence, on the basis of sexual orientation or gender identity;

(2) to provide a comprehensive Federal prohibition of discrimination in public schools based on actual or perceived sexual orientation or gender identity;

(3) to provide meaningful and effective remedies for discrimination in public schools based on actual or perceived sexual orientation or gender identity;

(4) to invoke congressional powers, including the power to enforce the 14th Amendment to the Constitution and to provide for the general welfare pursuant to section 8 of article I of the Constitution and the power to make all laws necessary and proper for the execution of the foregoing powers pursuant to section 8 of article I of the Constitution, in order to prohibit discrimination in public schools on the basis of sexual orientation or gender identity; and

(5) to allow the Department of Education to effectively combat discrimination based on sexual orientation or gender identity in public schools, through regulation and enforcement, as the Department has issued regulations under and enforced title IX of the Education Amendments of 1972 and other nondiscrimination laws in a manner that effectively addresses discrimination.

**SEC. 3. DEFINITIONS AND RULE.**

(a) DEFINITIONS.—For purposes of this Act:

(1) EDUCATIONAL AGENCY.—The term ''educational agency'' means a local educational agency, an educational service agency, and a State educational agency, as those terms are defined in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).

(2) GENDER IDENTITY.—The term ''gender identity'' means the gender-related identity, appearance, or mannerisms or other gender-related characteristics of an individual, with or without regard to the individual's designated sex at birth.

(3) HARASSMENT.—The term ''harassment'' means conduct that is sufficiently severe, persistent, or pervasive to limit a student's ability to participate in or benefit from a program or activity of a public school or educational agency, or to create a hostile or abusive educational environment at a program or activity of a public school or educational agency, including acts of verbal, nonverbal, or physical aggression, intimidation, or hostility, if such conduct is based on—

(A) a student's actual or perceived sexual orientation or gender identity; or

(B) the actual or perceived sexual orientation or gender identity of a person with whom a student associates or has associated.

(4) PROGRAM OR ACTIVITY.—The terms ''program or activity'' and ''program'' have the same meanings given such terms as applied under section 606 of the Civil Rights Act of 1964 (42 U.S.C. 2000d–4a) to the operations of public entities under paragraph (2)(B) of such section.

(5) PUBLIC SCHOOL.—The term ''public school'' means an elementary school (as the term is defined in section 9101 of the Elementary and Secondary Education Act of 1965) that is a public institution, and a secondary school (as so defined) that is a public institution.

(6) SEXUAL ORIENTATION.—The term ''sexual orientation'' means homosexuality, heterosexuality, or bisexuality.

(7) STUDENT.—The term ''student'' means an individual who is enrolled in a public school or who, regardless of official enrollment status, attends classes or participates in the programs or activities of a public school or educational agency.

(b) RULE.—Consistent with Federal law, in this Act the term ''includes'' means ''includes but is not limited to''.

**SEC. 4. PROHIBITION AGAINST DISCRIMINATION.**

(a) IN GENERAL.—No student shall, on the basis of actual or perceived sexual orientation or gender identity of such individual or of a person with whom the student associates or has associated, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

(b) HARASSMENT.—For purposes of this Act, discrimination includes harassment of a student on the basis of actual or perceived sexual orientation or gender identity of such student or of a person with whom the student associates or has associated.

(c) RETALIATION PROHIBITED.—

(1) PROHIBITION.—No person shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination, retaliation, or reprisal under any program or activity receiving Federal financial assistance based on the person's opposition to conduct made unlawful by this Act.

(2) DEFINITION.—For purposes of this subsection, ''opposition to conduct made unlawful by this Act'' includes—

(A) opposition to conduct reasonably believed to be made unlawful by this Act;

(B) any formal or informal report, whether oral or written, to any governmental entity, including public schools and educational agencies and employees of the public schools or educational agencies, regarding conduct made unlawful by this Act or reasonably believed to be made unlawful by this Act;

(C) participation in any investigation, proceeding, or hearing related to conduct made unlawful by this Act or reasonably believed to be made unlawful by this Act; and

(D) assistance or encouragement provided to any other person in the exercise or enjoyment of any right granted or protected by this Act,

if in the course of that expression, the person involved does not purposefully provide information known to be false to any public school or educational agency or other governmental entity regarding conduct made unlawful, or reasonably believed to be made unlawful, by this Act.

**SEC. 5. FEDERAL ADMINISTRATIVE ENFORCEMENT; REPORT TO CONGRESSIONAL COMMITTEES.**

(a) REQUIREMENTS.—Each Federal department and agency which is empowered to extend Federal financial assistance to any education program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section 4 with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken. No such rule, regulation, or order shall become effective unless and until approved by the President.

(b) ENFORCEMENT.—Compliance with any requirement adopted pursuant to this section may be effected—

(1) by the termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express finding on the record, after opportunity for hearing, of a failure to comply with such requirement, but such termination or refusal shall be limited to the particular political entity, or part thereof, or other recipient as to whom such a finding has been made, and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found; or

(2) by any other means authorized by law, except that no such action shall be taken until the department or agency concerned has advised the appropriate person or persons of the failure to comply with the requirement and has determined that compliance cannot be secured by voluntary means.

(c) REPORTS.—In the case of any action terminating, or refusing to grant or continue, assistance because of failure to comply with a requirement imposed pursuant to this section, the head of the Federal department or agency shall file with the committees of the House of Representatives and Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action. No such action shall become effective until 30 days have elapsed after the filing of such report.

**SEC. 6. CAUSE OF ACTION.**

(a) CAUSE OF ACTION.—Subject to subsection (c), an aggrieved individual may bring an action in a court of competent jurisdiction, asserting a violation of this Act. Aggrieved individuals may be awarded all appropriate relief, including equitable relief, compensatory damages, and costs of the action.

(b) RULE OF CONSTRUCTION.—This section shall not be construed to preclude an aggrieved individual from obtaining remedies under any other provision of law or to require such individual to exhaust any administrative complaint process or notice of claim requirement before seeking redress under this section.

(c) STATUTE OF LIMITATIONS.—For actions brought pursuant to this section, the statute of limitations period shall be determined in accordance with section 1658(a) of title 28, United States Code. The tolling of any such limitations period shall be determined in accordance with the law governing actions under section 1979 of the Revised Statutes (42 U.S.C. 1983) in the State in which the action is brought.

**SEC. 7. STATE IMMUNITY.**

(a) STATE IMMUNITY.—A State shall not be immune under the 11th Amendment to the Constitution from suit in Federal court for a violation of this Act.

(b) WAIVER.—A State's receipt or use of Federal financial assistance for any program or activity of a State shall constitute a waiver of sovereign immunity, under the 11th Amendment or otherwise, to a suit brought by an aggrieved individual for a violation of section 4.

(c) REMEDIES.—In a suit against a State for a violation of this Act, remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in the suit against any public or private entity other than a State.

**SEC. 8. ATTORNEY'S FEES.**

Section 722(b) of the Revised Statutes (42 U.S.C. 1988(b)) is amended by inserting ''the Student Non-Discrimination Act of 2011,'' after ''Religious Land Use and Institutionalized Persons Act of 2000,''.

**SEC. 9. EFFECT ON OTHER LAWS.**

(a) FEDERAL AND STATE NONDISCRIMINATION LAWS.—Nothing in this Act shall be construed to preempt, invalidate, or limit rights, remedies, procedures, or legal standards available to victims of discrimination or retaliation, under any other Federal law or law of a State or political subdivision of a State, including title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.), or section 1979 of the Revised Statutes (42 U.S.C. 1983). The obligations imposed by this Act are in addition to those imposed by title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.), and section 1979 of the Revised Statutes (42 U.S.C. 1983).

(b) FREE SPEECH AND EXPRESSION LAWS AND RELIGIOUS STUDENT GROUPS.—Nothing in this Act shall be construed to alter legal standards regarding, or affect the rights available to individuals or groups under, other Federal laws that establish protections for freedom of speech and expression, such as legal standards and rights available to religious and other student groups under the First Amendment and the Equal Access Act (20 U.S.C. 4071 et seq.).

**SEC. 10. SEVERABILITY.**

If any provision of this Act, or any application of such provision to any person or circumstance, is held to be unconstitutional, the remainder of this Act, and the application of the provision to any other person or circumstance shall not be impacted.

**SEC. 11. EFFECTIVE DATE.**

This Act shall take effect 60 days after the date of enactment of this Act and shall not apply to conduct occurring before the effective date of this Act.

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By Mrs. FEINSTEIN (for herself, Mr. LEAHY, Mr. BINGAMAN, Mrs. BOXER, Mr. BROWN of Ohio, Ms. CANTWELL, Mr. CARDIN, Mr. CASEY, Mr. DURBIN, Mr. FRANKEN, Mr. HARKIN, Mr. JOHNSON of South Dakota, Ms. KLOBUCHAR, Mr. MENENDEZ, Mr. MERKLEY, Ms. MIKULSKI, Mrs. MURRAY, Mr. ROCKEFELLER, Mr. SANDERS, Mr. UDALL of New Mexico, Mr. WHITEHOUSE, and Mr. WYDEN):

S. 558. A bill to limit the use of cluster munitions; to the Committee on Foreign Relations.

Mrs. FEINSTEIN. Mr. President, I rise today with my friend and colleague from Vermont, Senator LEAHY, and 20 co-sponsors to introduce the Cluster Munitions Civilian Protection Act of 2011.

Cluster munitions are large bombs, rockets, or artillery shells that contain up to hundreds of small submunitions, or individual ''bomblets.''

They are intended for attacking enemy troop formations and armor covering over a half mile radius.

But, in reality, they pose a deadly threat to innocent civilians. Before I discuss our legislation, I would like to share a few stories that show what these weapons can do.

Several months after the end of the Iraq war, Ahmed, 12 years old from Kebala, Iraq, was walking with his 9-year-old brother and picked up what he thought was just a shiny object, but was, in fact, a cluster bomb.

It exploded and Ahmed lost his right hand and three fingers off his left hand.

He also lost an eye and suffered shrapnel wounds to his torso and head.

A young shepherd, Akim, 13 years old, from Al-Radwaniya, Iraq, was playing on his parents' farm when it was hit by a cluster bomb attack.

He suffered burns to his lower limbs and multiple fractures to his right leg.

His wounds became infected and he developed pressure ulcers.

In 2003, 30 years after the Vietnam war, Dan, 9 years old from Phalanexay, Laos, was injured when he picked up and played with a cluster bomb. It exploded.

He suffered massive abdominal trauma, multiple shrapnel wounds, and a broken arm and leg.

Waleed Thamer, 10 years old, is from Iraq. In 2003, he was wounded by a cluster bomb on his way to the local market.

He lost his right hand and suffered shrapnel wounds to his eyes, neck, torso, and thighs.

These stories are deeply distressing. But they show us why our legislation is necessary.

Our legislation places commonsense restrictions on the use of cluster bombs. It prevents any funds from being spent to use cluster munitions that have a failure rate of more than 1 percent; and unless the rules of engagement specify the cluster munitions will only be used against clearly defined military targets; and will not be used where civilians are known to be

present or in areas normally inhabited by civilians.

Finally, our legislation includes a national security waiver that allows the President to waive the prohibition on the use of cluster bombs with a failure rate of more than 1 percent, if he determines it is vital to protect the security of the United States to do so.

If the President issues the waiver, he must issue a report to Congress within 30 days on the failure rate of the cluster bombs used and the steps taken to protect innocent civilians.

If our bill is enacted, it will have an immediate impact.

Out of the 728.5 million cluster submunitions in the U.S. arsenal, only 30,900 have self-destruct devices that would ensure a less than 1 percent dud rate.

Those submunitions account for only 0.00004 percent of the U.S. total.

So, the technology exists for the U.S. to meet the 1 percent standard but our arsenal consists overwhelmingly of cluster bombs with high failure rates.

Simply put, our bill will help save lives.

As the above stories demonstrate, cluster bombs pose a real threat to the safety of civilians when used in populated areas because they leave hundreds of unexploded bombs over a very large area and they are often inaccurate.

Indeed, the human toll of these weapons has been terrible:

In Laos, approximately 11,000 people, 30 percent of them children, have been killed or injured by U.S. cluster munitions since the Vietnam war ended.

In Afghanistan, between October 2001 and November 2002, 127 civilians lost their lives due to cluster munitions, 70 percent of them under the age of 18.

An estimated 1,220 Kuwaitis and 400 Iraqi civilians have been killed by cluster munitions since 1991.

In the 2006 war in Lebanon, Israeli cluster munitions, many of them manufactured in the U.S., injured and killed 343 civilians.

During the 2003 invasion of Baghdad, the last time the U.S. used cluster munitions, these weapons killed more civilians than any other type of U.S. weapon.

The U.S. 3rd Infantry Division described cluster munitions as ''battlefield losers'' in Iraq, because they were often forced to advance through areas contaminated with unexploded duds.

During the 1991 Gulf War, U.S. cluster munitions caused more U.S. troop casualties than any single Iraqi weapon system, killing 22 U.S. servicemen.

Yet we have seen significant progress in the effort to protect innocent civilians from these deadly weapons since we first introduced this legislation in the 110th Congress.

In December 2008, 95 countries came together to sign the Oslo Convention on Cluster Munitions which would prohibit the production, use, and export of cluster bombs and requires signatories to eliminate their arsenals within 8 years.

This group includes key NATO allies such as Canada, the United Kingdom, France, and Germany, who are fighting alongside our troops in Afghanistan.

It includes 33 countries that have produced and used cluster munitions.

To date, 108 countries have signed the convention and 48 have ratified it.

It formally came into force on August 1, 2010.

In 2007, Congress passed and President Bush signed into law a provision from our legislation contained in the fiscal year 2008 Consolidated Appropriations Act prohibiting the sale and transfer of cluster bombs with a failure rate of more than 1 percent.

Congress extended this ban as a part of the Omnibus Appropriations Act for fiscal year 2009 and the Consolidated Appropriations Act of 2010.

These actions will help save lives. But much more work remains to be done and significant obstacles remain.

For one, the United States chose not to participate in the Oslo process or sign the treaty.

The Pentagon continues to believe that cluster munitions are ''legitimate weapons with clear military utility in combat.''

It would prefer that the United States work within the Geneva-based Convention on Certain Conventional Weapons, CCW, to negotiate limits on the use of cluster munitions.

Yet these efforts have been going on since 2001 and it was the inability of the CCW to come to any meaningful agreement which prompted other countries, led by Norway, to pursue an alternative treaty through the Oslo process.

A lack of U.S. leadership in this area has given cover to other major cluster munitions producing nations—China, Russia, India, Pakistan, Israel, and Egypt—who have refused to sign the Oslo Convention as well.

Recognizing the United States could not remain silent in the face of international efforts to restrict the use of cluster bombs, Secretary of Defense Robert Gates issued a new policy on cluster munitions in June 2008 stating that after 2018, the use, sale and transfer of cluster munitions with a failure rate of more than 1 percent would be prohibited.

The policy is a step in the right direction, but under the terms of this new policy, the Pentagon will still have the authority to use cluster bombs with high failure rates for the next 10 years.

That is unacceptable and runs counter to our values. The administration should take another look at this policy.

In fact, on September 29, 2009, Senator LEAHY and I were joined by 14 of our colleagues in sending a letter to President Obama urging him to conduct a thorough review of U.S. policy on cluster munitions.

On April 14, 2010, we received a response from then National Security Advisor Jim Jones stating that the administration will undertake this review following the policy review on U.S. landmines policy.

The administration should complete this review without delay.

Let us not forget that the United States maintains an arsenal of an estimated 5.5 million cluster munitions containing 728 million submunitions which have an estimated failure rate of between 5 and 15 percent.

What does that say about us, that we are still prepared to use, sell and transfer these weapons with well-known failure rates?

The fact is, cluster munition technologies already exist, that meet the 1 percent standard. Why do we need to wait 10 years?

This delay is especially troubling given that in 2001, former Secretary of Defense William Cohen issued his own policy on cluster munitions stating that, beginning in fiscal year 2005, all new cluster munitions must have a failure rate of less than 1 percent.

Unfortunately, the Pentagon was unable to meet this deadline and Secretary Gates' new policy essentially postpones any meaningful action for another 10 years.

That means if we do nothing, by 2018 close to 20 years will have passed since the Pentagon first recognized the threat these deadly weapons pose to innocent civilians.

We can do better.

Our legislation simply moves up the Gates policy by 7 years.

For those of my colleagues who are concerned that it may be too soon to enact a ban on the use of cluster bombs with failure rates of more than 1 percent, I point out again that our bill allows the President to waive this restriction if he determines it is vital to protect the security of the United States to do so.

I would also remind my colleagues that the United States has not used cluster bombs in Iraq since 2003 and has observed a moratorium on their use in Afghanistan since 2002.

We introduce this legislation to make this moratorium permanent for the entire U.S. arsenal of cluster munitions.

We introduce this legislation for children like Hassan Hammade.

A 13-year-old Lebanese boy, Hassan lost four fingers and sustained injuries to his stomach and shoulder after he picked up an unexploded cluster bomb in front of an orange tree.

He said:

> I started playing with it and it blew up. I didn't know it was a cluster bomb—it just looked like a burned out piece of metal.
>
> All the children are too scared to go out now, we just play on the main roads or in our homes.

I urge my colleagues to support this legislation. We should do whatever we can to protect more innocent children and other civilians from these dangerous weapons.

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. 558

*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 ''Cluster Munitions Civilian Protection Act of 2011''.

**SEC. 2. LIMITATION ON THE USE OF CLUSTER MUNITIONS.**

No funds appropriated or otherwise available to any Federal department or agency may be obligated or expended to use any cluster munitions unless—

(1) the submunitions of the cluster munitions, after arming, do not result in more than 1 percent unexploded ordnance across the range of intended operational environments; and

(2) the policy applicable to the use of such cluster munitions specifies that the cluster munitions will only be used against clearly defined military targets and will not be used where civilians are known to be present or in areas normally inhabited by civilians.

**SEC. 3. PRESIDENTIAL WAIVER.**

The President may waive the requirement under section 2(1) if, prior to the use of cluster munitions, the President—

(1) certifies that it is vital to protect the security of the United States; and

(2) not later than 30 days after making such certification, submits to the appropriate congressional committees a report, in classified form if necessary, describing in detail—

(A) the steps that will be taken to protect civilians; and

(B) the failure rate of the cluster munitions that will be used and whether such munitions are fitted with self-destruct or self-deactivation devices.

**SEC. 4. CLEANUP PLAN.**

Not later than 90 days after any cluster munitions are used by a Federal department or agency, the President shall submit to the appropriate congressional committees a plan, prepared by such Federal department or agency, for cleaning up any such cluster munitions and submunitions which fail to explode and continue to pose a hazard to civilians.

**SEC. 5. APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.**

In this Act, the term ''appropriate congressional committees'' means the Committee on Foreign Relations, the Committee on Armed Services, and the Committee on Appropriations of the Senate and the Committee on Foreign Affairs, the Committee on Armed Services, and the Committee on Appropriations of the House of Representatives.

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By Mr. DURBIN (for himself, Mr. BROWN of Ohio, and Mr. AKAKA):

S. 560. A bill to amend title XVIII of the Social Security Act to deliver a meaningful benefit and lower prescription drug prices under the Medicare program; to the Committee on Finance.

Mr. DURBIN. Mr. President, this Congress, members from both sides of the aisle recognize the need to reduce the national deficit. Today, I am introducing the Medicare Prescription Drugs Savings and Choice Act of 2011, a bill that would save taxpayer dollars by giving Medicare beneficiaries the choice to participate in a Medicare Part D prescription drug plan run by Medicare, not private insurance companies.

In 2003, Congress enacted the Medicare Modernization Act, which added a long overdue prescription drug benefit to Medicare. Senior citizens and people with disabilities were relieved to finally have coverage for this important aspect of their healthcare needs.

The way the Part D program was structured under the original law, it included a coverage gap known as the ''donut hole.'' Once an initial coverage limit was reached, beneficiaries had to absorb 100 percent of their drug costs until catastrophic coverage kicked in. That meant that approximately 3.4 million seniors nationwide with the heaviest reliance on prescription drugs faced the prospect of paying up to $4,000 out of pocket before they qualified for further assistance from Medicare.

When Congress passed the Affordable Care Act last year, we made significant improvements to the Medicare Part D program. Seniors who hit the ''donut hole'' in 2010 received a one-time $250 check. This helped 109,421 seniors in Illinois pay for their prescriptions during the coverage gap. In addition, this year Medicare beneficiaries will receive a 50 percent discount on brand name drugs in the donut hole, and the donut hole will be fully closed by 2020. This means that Illinois seniors will save $1.2 billion in out of pocket costs over the next decade.

The bill I am introducing today would make yet another improvement to the Medicare prescription drug benefit. The Part D program is not structured like the rest of Medicare. For all other Medicare benefits, seniors can choose whether to receive benefits directly through Medicare or through a private insurance plan. The overwhelming majority choose the Medicare-run option for their hospital and physician coverage.

No such choice is available for prescription drugs. Medicare beneficiaries must enroll in a private insurance plan to obtain drug coverage.

In many regions, dozens of plan choices are available and each plan has its own premium, cost-sharing requirements, list of covered drugs, and pharmacy network. After you have identified the right drug plan, you have to go through the whole process again at the end of the year because your plan may have changed the drugs it covers or added new restrictions on how to access covered drugs. Anyone who has visited a senior center or spoken with an elderly relative knows that the complexity of the drug benefit has created confusion.

Adding to the frustration with the program so far is accumulating evidence that private drug plans have not been effective negotiators, which means seniors and taxpayers end up paying more than they should.

We know that drug prices are higher in private Medicare drug plans than drug prices available through the Veterans Administration, Medicaid, and other countries like Canada.

The Veterans Administration has authority to directly negotiate with drug companies, and as a result it has cut drug prices by as much as 50 percent. A study published in 2008 found that if Medicare negotiated drug prices on behalf of seniors, $21.5 billion could be saved annually.

The Medicare Prescription Drug Savings and Choice Act of 2011 would provide a simple and stable way to obtain drug coverage, since the plan Medicare-operated prescription drug plan would be available nationwide every year, and would charge everyone the same premium.

It would also save money because the Secretary of Health and Human Services would have the tools to design a formulary and negotiate prices with drug companies. The best medical evidence would determine which drugs are covered in the formulary, and it would be used to promote safety, appropriate use of drugs, and value.

The bill would establish an appeals process that is efficient, imposes minimal administrative burdens, and ensures timely procurement of non-formulary drugs or non-preferred drugs when medically necessary.

The Secretary would also develop a system for paying pharmacies that would include the prompt payment of claims.

Seniors want the ability to choose a Medicare-administered drug plan. Let us give them this option—just as they have this choice with every other benefit covered by Medicare.

A Medicare administered drug plan would create a ''win-win'' situation that could save billions of taxpayer dollars and provide a high-quality affordable option to seniors.

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. 560

*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 ''Medicare Prescription Drug Savings and Choice Act of 2011''.

**SEC. 2. ESTABLISHMENT OF MEDICARE OPERATED PRESCRIPTION DRUG PLAN OPTION.**

(a) IN GENERAL.—Subpart 2 of part D of title XVIII of the Social Security Act is amended by inserting after section 1860D–11 (42 U.S.C. 1395w–111) the following new section:

''MEDICARE OPERATED PRESCRIPTION DRUG PLAN OPTION

''SEC. 1860D–11A. (a) IN GENERAL.—Notwithstanding any other provision of this part, for each year (beginning with 2012), in addition to any plans offered under section 1860D–11, the Secretary shall offer one or more Medicare operated prescription drug plans (as defined in subsection (c)) with a service area that consists of the entire United States and shall enter into negotiations in accordance with subsection (b) with pharmaceutical manufacturers to reduce the

purchase cost of covered part D drugs for eligible part D individuals who enroll in such a plan.

''(b) NEGOTIATIONS.—Notwithstanding section 1860D–11(i), for purposes of offering a Medicare operated prescription drug plan under this section, the Secretary shall negotiate with pharmaceutical manufacturers with respect to the purchase price of covered part D drugs in a Medicare operated prescription drug plan and shall encourage the use of more affordable therapeutic equivalents to the extent such practices do not override medical necessity as determined by the prescribing physician. To the extent practicable and consistent with the previous sentence, the Secretary shall implement strategies similar to those used by other Federal purchasers of prescription drugs, and other strategies, including the use of a formulary and formulary incentives in subsection (e), to reduce the purchase cost of covered part D drugs.

''(c) MEDICARE OPERATED PRESCRIPTION DRUG PLAN DEFINED.—For purposes of this part, the term 'Medicare operated prescription drug plan' means a prescription drug plan that offers qualified prescription drug coverage and access to negotiated prices described in section 1860D–2(a)(1)(A). Such a plan may offer supplemental prescription drug coverage in the same manner as other qualified prescription drug coverage offered by other prescription drug plans.

''(d) MONTHLY BENEFICIARY PREMIUM.—

''(1) QUALIFIED PRESCRIPTION DRUG COVERAGE.—The monthly beneficiary premium for qualified prescription drug coverage and access to negotiated prices described in section 1860D–2(a)(1)(A) to be charged under a Medicare operated prescription drug plan shall be uniform nationally. Such premium for months in 2012 and each succeeding year shall be based on the average monthly per capita actuarial cost of offering the Medicare operated prescription drug plan for the year involved, including administrative expenses.

''(2) SUPPLEMENTAL PRESCRIPTION DRUG COVERAGE.—Insofar as a Medicare operated prescription drug plan offers supplemental prescription drug coverage, the Secretary may adjust the amount of the premium charged under paragraph (1).

''(e) USE OF A FORMULARY AND FORMULARY INCENTIVES.—

''(1) IN GENERAL.—With respect to the operation of a Medicare operated prescription drug plan, the Secretary shall establish and apply a formulary (and may include formulary incentives described in paragraph (2)(C)(ii)) in accordance with this subsection in order to—

''(A) increase patient safety;

''(B) increase appropriate use and reduce inappropriate use of drugs; and

''(C) reward value.

''(2) DEVELOPMENT OF INITIAL FORMULARY.—

''(A) IN GENERAL.—In selecting covered part D drugs for inclusion in a formulary, the Secretary shall consider clinical benefit and price.

''(B) ROLE OF AHRQ.—The Director of the Agency for Healthcare Research and Quality shall be responsible for assessing the clinical benefit of covered part D drugs and making recommendations to the Secretary regarding which drugs should be included in the formulary. In conducting such assessments and making such recommendations, the Director shall—

''(i) consider safety concerns including those identified by the Federal Food and Drug Administration;

''(ii) use available data and evaluations, with priority given to randomized controlled trials, to examine clinical effectiveness, comparative effectiveness, safety, and enhanced compliance with a drug regimen;

''(iii) use the same classes of drugs developed by the United States Pharmacopeia for this part;

''(iv) consider evaluations made by—

''(I) the Director under section 1013 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003;

''(II) other Federal entities, such as the Secretary of Veterans Affairs; and

''(III) other private and public entities, such as the Drug Effectiveness Review Project and Medicaid programs; and

''(v) recommend to the Secretary—

''(I) those drugs in a class that provide a greater clinical benefit, including fewer safety concerns or less risk of side-effects, than another drug in the same class that should be included in the formulary;

''(II) those drugs in a class that provide less clinical benefit, including greater safety concerns or a greater risk of side-effects, than another drug in the same class that should be excluded from the formulary; and

''(III) drugs in a class with same or similar clinical benefit for which it would be appropriate for the Secretary to competitively bid (or negotiate) for placement on the formulary.

''(C) CONSIDERATION OF AHRQ RECOMMENDATIONS.—

''(i) IN GENERAL.—The Secretary, after taking into consideration the recommendations under subparagraph (B)(v), shall establish a formulary, and formulary incentives, to encourage use of covered part D drugs that—

''(I) have a lower cost and provide a greater clinical benefit than other drugs;

''(II) have a lower cost than other drugs with same or similar clinical benefit; and

''(III) drugs that have the same cost but provide greater clinical benefit than other drugs.

''(ii) FORMULARY INCENTIVES.—The formulary incentives under clause (i) may be in the form of one or more of the following:

''(I) Tiered copayments.

''(II) Reference pricing.

''(III) Prior authorization.

''(IV) Step therapy.

''(V) Medication therapy management.

''(VI) Generic drug substitution.

''(iii) FLEXIBILITY.—In applying such formulary incentives the Secretary may decide not to impose any cost-sharing for a covered part D drug for which—

''(I) the elimination of cost sharing would be expected to increase compliance with a drug regimen; and

''(II) compliance would be expected to produce savings under part A or B or both.

''(3) LIMITATIONS ON FORMULARY.—In any formulary established under this subsection, the formulary may not be changed during a year, except—

''(A) to add a generic version of a covered part D drug that entered the market;

''(B) to remove such a drug for which a safety problem is found; and

''(C) to add a drug that the Secretary identifies as a drug which treats a condition for which there has not previously been a treatment option or for which a clear and significant benefit has been demonstrated over other covered part D drugs.

''(4) ADDING DRUGS TO THE INITIAL FORMULARY.—

''(A) USE OF ADVISORY COMMITTEE.—The Secretary shall establish and appoint an advisory committee (in this paragraph referred to as the 'advisory committee')—

''(i) to review petitions from drug manufacturers, health care provider organizations, patient groups, and other entities for inclusion of a drug in, or other changes to, such formulary; and

''(ii) to recommend any changes to the formulary established under this subsection.

''(B) COMPOSITION.—The advisory committee shall be composed of 9 members and shall include representatives of physicians, pharmacists, and consumers and others with expertise in evaluating prescription drugs. The Secretary shall select members based on their knowledge of pharmaceuticals and the Medicare population. Members shall be deemed to be special Government employees for purposes of applying the conflict of interest provisions under section 208 of title 18, United States Code, and no waiver of such provisions for such a member shall be permitted.

''(C) CONSULTATION.—The advisory committee shall consult, as necessary, with physicians who are specialists in treating the disease for which a drug is being considered.

''(D) REQUEST FOR STUDIES.—The advisory committee may request the Agency for Healthcare Research and Quality or an academic or research institution to study and make a report on a petition described in subparagraph (A)(ii) in order to assess—

''(i) clinical effectiveness;

''(ii) comparative effectiveness;

''(iii) safety; and

''(iv) enhanced compliance with a drug regimen.

''(E) RECOMMENDATIONS.—The advisory committee shall make recommendations to the Secretary regarding—

''(i) whether a covered part D drug is found to provide a greater clinical benefit, including fewer safety concerns or less risk of side-effects, than another drug in the same class that is currently included in the formulary and should be included in the formulary;

''(ii) whether a covered part D drug is found to provide less clinical benefit, including greater safety concerns or a greater risk of side-effects, than another drug in the same class that is currently included in the formulary and should not be included in the formulary; and

''(iii) whether a covered part D drug has the same or similar clinical benefit to a drug in the same class that is currently included in the formulary and whether the drug should be included in the formulary.

''(F) LIMITATIONS ON REVIEW OF MANUFACTURER PETITIONS.—The advisory committee shall not review a petition of a drug manufacturer under subparagraph (A)(ii) with respect to a covered part D drug unless the petition is accompanied by the following:

''(i) Raw data from clinical trials on the safety and effectiveness of the drug.

''(ii) Any data from clinical trials conducted using active controls on the drug or drugs that are the current standard of care.

''(iii) Any available data on comparative effectiveness of the drug.

''(iv) Any other information the Secretary requires for the advisory committee to complete its review.

''(G) RESPONSE TO RECOMMENDATIONS.—The Secretary shall review the recommendations of the advisory committee and if the Secretary accepts such recommendations the Secretary shall modify the formulary established under this subsection accordingly. Nothing in this section shall preclude the Secretary from adding to the formulary a drug for which the Director of the Agency for Healthcare Research and Quality or the advisory committee has not made a recommendation.

''(H) NOTICE OF CHANGES.—The Secretary shall provide timely notice to beneficiaries and health professionals about changes to the formulary or formulary incentives.

''(f) INFORMING BENEFICIARIES.—The Secretary shall take steps to inform beneficiaries about the availability of a Medicare operated drug plan or plans including providing information in the annual handbook

distributed to all beneficiaries and adding information to the official public Medicare website related to prescription drug coverage available through this part.

''(g) APPLICATION OF ALL OTHER REQUIREMENTS FOR PRESCRIPTION DRUG PLANS.—Except as specifically provided in this section, any Medicare operated drug plan shall meet the same requirements as apply to any other prescription drug plan, including the requirements of section 1860D–4(b)(1) relating to assuring pharmacy access.''.

(b) CONFORMING AMENDMENTS.—

(1) Section 1860D–3(a) of the Social Security Act (42 U.S.C. 1395w–103(a)) is amended by adding at the end the following new paragraph:

''(4) AVAILABILITY OF THE MEDICARE OPERATED PRESCRIPTION DRUG PLAN.—A Medicare operated prescription drug plan (as defined in section 1860D–11A(c)) shall be offered nationally in accordance with section 1860D–11A.''.

(2)(A) Section 1860D–3 of the Social Security Act (42 U.S.C. 1395w–103) is amended by adding at the end the following new subsection:

''(c) PROVISIONS ONLY APPLICABLE IN 2006 THROUGH 2011.—The provisions of this section shall only apply with respect to 2006 through 2011.''.

(B) Section 1860D–11(g) of such Act (42 U.S.C. 1395w–111(g)) is amended by adding at the end the following new paragraph:

''(8) NO AUTHORITY FOR FALLBACK PLANS AFTER 2011.—A fallback prescription drug plan shall not be available after December 31, 2011.''.

(3) Section 1860D–13(c)(3) of the Social Security Act (42 U.S.C. 1395w–113(c)(3)) is amended—

(A) in the heading, by inserting ''AND MEDICARE OPERATED PRESCRIPTION DRUG PLANS'' after ''FALLBACK PLANS''; and

(B) by inserting ''or a Medicare operated prescription drug plan'' after ''a fallback prescription drug plan''.

(4) Section 1860D–16(b)(1) of the Social Security Act (42 U.S.C. 1395w–116(b)(1)) is amended—

(A) in subparagraph (C), by striking ''and'' after the semicolon at the end;

(B) in subparagraph (D), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following new subparagraph:

''(E) payments for expenses incurred with respect to the operation of Medicare operated prescription drug plans under section 1860D–11A.''.

(5) Section 1860D–41(a) of the Social Security Act (42 U.S.C. 1395w–151(a)) is amended by adding at the end the following new paragraph:

''(19) MEDICARE OPERATED PRESCRIPTION DRUG PLAN.—The term 'Medicare operated prescription drug plan' has the meaning given such term in section 1860D–11A(c).''.

**SEC. 3. IMPROVED APPEALS PROCESS UNDER THE MEDICARE OPERATED PRESCRIPTION DRUG PLAN.**

Section 1860D–4(h) of the Social Security Act (42 U.S.C. 1305w–104(h)) is amended by adding at the end the following new paragraph:

''(4) APPEALS PROCESS FOR MEDICARE OPERATED PRESCRIPTION DRUG PLAN.—

''(A) IN GENERAL.—The Secretary shall develop a well-defined process for appeals for denials of benefits under this part under the Medicare operated prescription drug plan. Such process shall be efficient, impose minimal administrative burdens, and ensure the timely procurement of non-formulary drugs or exemption from formulary incentives when medically necessary. Medical necessity shall be based on professional medical judgment, the medical condition of the beneficiary, and other medical evidence. Such appeals process shall include—

''(i) an initial review and determination made by the Secretary; and

''(ii) for appeals denied during the initial review and determination, the option of an external review and determination by an independent entity selected by the Secretary.

''(B) CONSULTATION IN DEVELOPMENT OF PROCESS.—In developing the appeals process under subparagraph (A), the Secretary shall consult with consumer and patient groups, as well as other key stakeholders to ensure the goals described in subparagraph (A) are achieved.''.

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By Mr. BINGAMAN (for himself and Mr. UDALL of New Mexico):

S. 564. A bill to designate the Valles Caldera National Preserve as a unit of the National Park System, and for other purposes; to the Committee on Energy and Natural Resources.

Mr. BINGAMAN. Mr. President, I rise today to reintroduce legislation that would transfer administrative jurisdiction of the Valles Caldera National Preserve from the Valles Caldera Trust to the National Park Service. I am pleased that my colleague from New Mexico, TOM UDALL, is again a cosponsor of this bill.

For those not familiar with this area, the Valles Caldera in Northern New Mexico is one of only three supervolcanoes in the United States, the other two being Yellowstone, WY, and Long Valley, CA. Spanning more than 100,000 acres, the caldera contains lush and expansive grassland valleys, ponderosa pines in the foothills and mixed conifer forests in the higher elevations of the volcanic domes and peaks. Numerous cultural and archaeological sites are scattered throughout the landscape that provides quality habitat to elk, trout, golden and bald eagles, and myriad other species. In 1975, the Valles Caldera received formal recognition as an outstanding and nationally significant geologic resource when it was designated a National Natural Landmark.

More recently in 2000, the Valles Caldera Preservation Act authorized the Federal Government to acquire the property and established the Valles Caldera Trust—an independent government corporation led by a board of trustees appointed by the President whose mission is to provide for public access and protection of the Preserve's natural and cultural resources. The Trust is also directed to manage the Preserve in a manner that would achieve financial self-sustainability after fifteen years.

While the individual board members have done their best to fulfill the original legislative directives, time has shown in my opinion that this management framework is not the best suited for the long-term management of the Preserve. These issues have been laid out at length in two GAO reports, during the hearing we held on this legislation in the 111th Congress, and in previous statements I have made on the subject.

In weighing the various alternatives, the conclusion was reached that management by the National Park Service—an agency with a mission of protecting natural, historic, and cultural resources while also providing for public enjoyment of those resources—is more appropriate for the long-term future of the Valles Caldera. In my view, it would also best serve the public's desire for increased public access, balanced with the need to protect and interpret the Preserve's unique cultural and natural resources.

Senator UDALL and I first introduced this legislation during the 111th Congress, during which time the bill received a hearing in the Committee on Energy and Natural Resources and was reported out favorably by that Committee. The reported legislation, which is what we are introducing today, incorporated the many comments we received during the hearing process. This includes improvements to the provisions on hunting and fishing and cattle grazing as well as changes made based on recommendations by tribal governments. Other stakeholder comments, including those from the friends group, Los Amigos de Valles Caldera, led to modifications that will ensure the ecological restoration of the Preserve remains a priority under Park Service management. I also appreciated the valuable comments we received from the staff at the Valles Caldera Trust who remain steadfast in their commitment to the highest management standards at the Preserve.

Beyond these changes, however, the original framework and intent of the legislation remains the same. The existing character of the Preserve would be maintained and protections for tribal cultural and religious sites would be strengthened. The Park Service would manage the Preserve to protect and preserve its natural and cultural resources, while increasing public access and continuing to permit hunting and fishing and grazing. The National Park Service would also establish a science and education program similar to the highly successful program created by the Trust.

While the full Senate was unable to take action on this bill during the last Congress, I remain hopeful that we will find an opportunity during this one to bring it before the Senate for consideration. Public support in my State remains very high for the Park Service to manage this unique resource, and it is my hope that the enactment of this legislation will allow more Americans as well as future generations to enjoy this special place.

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. 564

*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 ''Valles Caldera National Preserve Management Act''.

**SEC. 2. DEFINITIONS.**

In this Act:

(1) ELIGIBLE EMPLOYEE.—The term ''eligible employee'' means a person who was a full-time or part-time employee of the Trust during the 180-day period immediately preceding the date of enactment of this Act.

(2) FUND.—The term ''Fund'' means the Valles Caldera Fund established by section 106(h)(2) of the Valles Caldera Preservation Act (16 U.S.C. 698v–4(h)(2)).

(3) PRESERVE.—The term ''Preserve'' means the Valles Caldera National Preserve in the State.

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

(5) STATE.—The term ''State'' means the State of New Mexico.

(6) TRUST.—The term ''Trust'' means the Valles Caldera Trust established by section 106(a) of the Valles Caldera Preservation Act (16 U.S.C. 698v–4(a)).

**SEC. 3. VALLES CALDERA NATIONAL PRESERVE.**

(a) DESIGNATION AS UNIT OF THE NATIONAL PARK SYSTEM.—To protect, preserve, and restore the fish, wildlife, watershed, natural, scientific, scenic, geologic, historic, cultural, archaeological, and recreational values of the area, the Valles Caldera National Preserve is designated as a unit of the National Park System.

(b) MANAGEMENT.—

(1) APPLICABLE LAW.—The Secretary shall administer the Preserve in accordance with—

(A) this Act; and

(B) the laws generally applicable to units of the National Park System, including—

(i) the National Park Service Organic Act (16 U.S.C. 1 et seq.); and

(ii) the Act of August 21, 1935 (16 U.S.C. 461 et seq.).

(2) MANAGEMENT COORDINATION.—The Secretary may coordinate the management and operations of the Preserve with the Bandelier National Monument.

(3) MANAGEMENT PLAN.—

(A) IN GENERAL.—Not later than 3 fiscal years after the date on which funds are made available to implement this subsection, the Secretary shall prepare a management plan for the Preserve.

(B) APPLICABLE LAW.—The management plan shall be prepared in accordance with—

(i) section 12(b) of Public Law 91–383 (commonly known as the ''National Park Service General Authorities Act'') (16 U.S.C. 1a–7(b)); and

(ii) any other applicable laws.

(C) CONSULTATION.—The management plan shall be prepared in consultation with—

(i) the Secretary of Agriculture;

(ii) State and local governments;

(iii) Indian tribes and pueblos, including the Pueblos of Jemez, Santa Clara, and San Ildefonso; and

(iv) the public.

(c) ACQUISITION OF LAND.—

(1) IN GENERAL.—The Secretary may acquire land and interests in land within the boundaries of the Preserve by—

(A) purchase with donated or appropriated funds;

(B) donation; or

(C) transfer from another Federal agency.

(2) ADMINISTRATION OF ACQUIRED LAND.—On acquisition of any land or interests in land under paragraph (1), the acquired land or interests in land shall be administered as part of the Preserve.

(d) SCIENCE AND EDUCATION PROGRAM.—

(1) IN GENERAL.—The Secretary shall—

(A) until the date on which a management plan is completed in accordance with subsection (b)(3), carry out the science and education program for the Preserve established by the Trust; and

(B) beginning on the date on which a management plan is completed in accordance with subsection (b)(3), establish a science and education program for the Preserve that—

(i) allows for research and interpretation of the natural, historic, cultural, geologic and other scientific features of the Preserve;

(ii) provides for improved methods of ecological restoration and science-based adaptive management of the Preserve; and

(iii) promotes outdoor educational experiences in the Preserve.

(2) SCIENCE AND EDUCATION CENTER.—As part of the program established under paragraph (1)(B), the Secretary may establish a science and education center outside the boundaries of the Preserve.

(e) GRAZING.—The Secretary may allow the grazing of livestock within the Preserve to continue—

(1) consistent with this Act; and

(2) to the extent the use furthers scientific research or interpretation of the ranching history of the Preserve.

(f) FISH AND WILDLIFE.—Nothing in this Act affects the responsibilities of the State with respect to fish and wildlife in the State, except that the Secretary, in consultation with the New Mexico Department of Game and Fish—

(1) shall permit hunting and fishing on land and water within the Preserve in accordance with applicable Federal and State laws; and

(2) may designate zones in which, and establish periods during which, no hunting or fishing shall be permitted for reasons of public safety, administration, the protection of wildlife and wildlife habitats, or public use and enjoyment.

(g) ECOLOGICAL RESTORATION.—

(1) IN GENERAL.—The Secretary shall undertake activities to improve the health of forest, grassland, and riparian areas within the Preserve, including any activities carried out in accordance with title IV of the Omnibus Public Land Management Act of 2009 (16 U.S.C. 7301 et seq.).

(2) COOPERATIVE AGREEMENTS.—The Secretary may enter into cooperative agreements with adjacent pueblos to coordinate activities carried out under paragraph (1) on the Preserve and adjacent pueblo land.

(h) WITHDRAWAL.—Subject to valid existing rights, all land and interests in land within the boundaries of the Preserve are withdrawn from—

(1) entry, disposal, or appropriation under the public land laws;

(2) location, entry, and patent under the mining laws; and

(3) operation of the mineral leasing laws, geothermal leasing laws, and mineral materials laws.

(i) VOLCANIC DOMES AND OTHER PEAKS.—

(1) IN GENERAL.—Except as provided in paragraph (3), for the purposes of preserving the natural, cultural, religious, archaeological, and historic resources of the volcanic domes and other peaks in the Preserve described in paragraph (2) within the area of the domes and peaks above 9,600 feet in elevation or 250 feet below the top of the dome, whichever is lower—

(A) no roads or buildings shall be constructed; and

(B) no motorized access shall be allowed.

(2) DESCRIPTION OF VOLCANIC DOMES.—The volcanic domes and other peaks referred to in paragraph (1) are—

(A) Redondo Peak;

(B) Redondito;

(C) South Mountain;

(D) San Antonio Mountain;

(E) Cerro Seco;

(F) Cerro San Luis;

(G) Cerros Santa Rosa;

(H) Cerros del Abrigo;

(I) Cerro del Medio;

(J) Rabbit Mountain;

(K) Cerro Grande;

(L) Cerro Toledo;

(M) Indian Point;

(N) Sierra de los Valles; and

(O) Cerros de los Posos.

(3) EXCEPTION.—Paragraph (1) shall not apply in cases in which construction or motorized access is necessary for administrative purposes (including ecological restoration activities or measures required in emergencies to protect the health and safety of persons in the area).

(j) TRADITIONAL CULTURAL AND RELIGIOUS SITES.—

(1) IN GENERAL.—The Secretary, in consultation with Indian tribes and pueblos, shall ensure the protection of traditional cultural and religious sites in the Preserve.

(2) ACCESS.—The Secretary, in accordance with Public Law 95–341 (commonly known as the ''American Indian Religious Freedom Act'') (42 U.S.C. 1996)—

(A) shall provide access to the sites described in paragraph (1) by members of Indian tribes or pueblos for traditional cultural and customary uses; and

(B) may, on request of an Indian tribe or pueblo, temporarily close to general public use 1 or more specific areas of the Preserve to protect traditional cultural and customary uses in the area by members of the Indian tribe or pueblo.

(3) PROHIBITION ON MOTORIZED ACCESS.—The Secretary shall maintain prohibitions on the use of motorized or mechanized travel on Preserve land located adjacent to the Santa Clara Indian Reservation, to the extent the prohibition was in effect on the date of enactment of this Act.

(k) CALDERA RIM TRAIL.—

(1) IN GENERAL.—Not later than 3 years after the date of enactment of this Act, the Secretary, in consultation with the Secretary of Agriculture, affected Indian tribes and pueblos, and the public, shall study the feasibility of establishing a hiking trail along the rim of the Valles Caldera on—

(A) land within the Preserve; and

(B) National Forest System land that is adjacent to the Preserve.

(2) AGREEMENTS.—On the request of an affected Indian tribe or pueblo, the Secretary and the Secretary of Agriculture shall seek to enter into an agreement with the Indian tribe or pueblo with respect to the Caldera Rim Trail that provides for the protection of—

(A) cultural and religious sites in the vicinity of the trail; and

(B) the privacy of adjacent pueblo land.

(l) VALID EXISTING RIGHTS.—Nothing in this Act affects valid existing rights.

**SEC. 4. TRANSFER OF ADMINISTRATIVE JURISDICTION.**

(a) IN GENERAL.—Administrative jurisdiction over the Preserve is transferred from the Secretary of Agriculture and the Trust to the Secretary, to be administered as a unit of the National Park System, in accordance with section 3.

(b) EXCLUSION FROM SANTA FE NATIONAL FOREST.—The boundaries of the Santa Fe National Forest are modified to exclude the Preserve.

(c) INTERIM MANAGEMENT.—

(1) MEMORANDUM OF AGREEMENT.—Not later than 90 days after the date of enactment of this Act, the Secretary and the Trust shall enter into a memorandum of agreement to facilitate the orderly transfer to the Secretary of the administration of the Preserve.

(2) EXISTING MANAGEMENT PLANS.—Notwithstanding the repeal made by section 5(a), until the date on which the Secretary

completes a management plan for the Preserve in accordance with section 3(b)(3), the Secretary may administer the Preserve in accordance with any management activities or plans adopted by the Trust under the Valles Caldera Preservation Act (16 U.S.C. 698v et seq.), to the extent the activities or plans are consistent with section 3(b)(1).

(3) PUBLIC USE.—The Preserve shall remain open to public use during the interim management period, subject to such terms and conditions as the Secretary determines to be appropriate.

(d) VALLES CALDERA TRUST.—

(1) TERMINATION.—The Trust shall terminate 180 days after the date of enactment of this Act unless the Secretary determines that the termination date should be extended to facilitate the transitional management of the Preserve.

(2) ASSETS AND LIABILITIES.—

(A) ASSETS.—On termination of the Trust—

(i) all assets of the Trust shall be transferred to the Secretary; and

(ii) any amounts appropriated for the Trust shall remain available to the Secretary for the administration of the Preserve.

(B) ASSUMPTION OF OBLIGATIONS.—

(i) IN GENERAL.—On termination of the Trust, the Secretary shall assume all contracts, obligations, and other liabilities of the Trust.

(ii) NEW LIABILITIES.—

(I) BUDGET.—Not later than 90 days after the date of enactment of this Act, the Secretary and the Trust shall prepare a budget for the interim management of the Preserve.

(II) WRITTEN CONCURRENCE REQUIRED.—The Trust shall not incur any new liabilities not authorized in the budget prepared under subclause (I) without the written concurrence of the Secretary.

(3) PERSONNEL.—

(A) HIRING.—The Secretary and the Secretary of Agriculture may hire employees of the Trust on a noncompetitive basis for comparable positions at the Preserve or other areas or offices under the jurisdiction of the Secretary or the Secretary of Agriculture.

(B) SALARY.—Any employees hired from the Trust under subparagraph (A) shall be subject to the provisions of chapter 51, and subchapter III of chapter 53, title 5, United States Code, relating to classification and General Schedule pay rates.

(C) INTERIM RETENTION OF ELIGIBLE EMPLOYEES.—For a period of not less than 180 days beginning on the date of enactment of this Act, all eligible employees of the Trust shall be—

(i) retained in the employment of the Trust;

(ii) considered to be placed on detail to the Secretary; and

(iii) subject to the direction of the Secretary.

(D) TERMINATION FOR CAUSE.—Nothing in this paragraph precludes the termination of employment of an eligible employee for cause during the period described in subparagraph (C).

(4) RECORDS.—The Secretary shall have access to all records of the Trust pertaining to the management of the Preserve.

(5) VALLES CALDERA FUND.—

(A) IN GENERAL.—Effective on the date of enactment of this Act, the Secretary shall assume the powers of the Trust over the Fund.

(B) AVAILABILITY AND USE.—Any amounts in the Fund as of the date of enactment of this Act shall be available to the Secretary for use, without further appropriation, for the management of the Preserve.

**SEC. 5. REPEAL OF VALLES CALDERA PRESERVATION ACT.**

(a) REPEAL.—On the termination of the Trust, the Valles Caldera Preservation Act (16 U.S.C. 698v et seq.) is repealed.

(b) EFFECT OF REPEAL.—Notwithstanding the repeal made by subsection (a)—

(1) the authority of the Secretary of Agriculture to acquire mineral interests under section 104(e) of the Valles Caldera Preservation Act (16 U.S.C. 698v–2(e)) is transferred to the Secretary and any proceeding for the condemnation of, or payment of compensation for, an outstanding mineral interest pursuant to the transferred authority shall continue;

(2) the provisions in section 104(g) of the Valles Caldera Preservation Act (16 U.S.C. 698v–2(g)) relating to the Pueblo of Santa Clara shall remain in effect; and

(3) the Fund shall not be terminated until all amounts in the Fund have been expended by the Secretary.

(c) BOUNDARIES.—The repeal of the Valles Caldera Preservation Act (16 U.S.C. 698v et seq.) shall not affect the boundaries as of the date of enactment of this Act (including maps and legal descriptions) of—

(1) the Preserve;

(2) the Santa Fe National Forest (other than the modification made by section 4(b));

(3) Bandelier National Monument; and

(4) any land conveyed to the Pueblo of Santa Clara.

**SEC. 6. AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated such sums as are necessary to carry out this Act.

Mr. UDALL of New Mexico. Mr. President, today I join Senator BINGAMAN in reintroducing a bill to designate the Valles Caldera National Preserve in New Mexico as a unit of the National Park System. The Valles Caldera is one of the largest volcanic calderas in the world. The vast grass-filled valleys, forested hillsides, and numerous volcanic peaks make the area a treasure to New Mexico, and a landscape of national significance millions of years in the making. It is appropriate that an area of such value be protected in perpetuity as a unit of the National Park Service.

Around 1.5 million years ago a series of explosive rhyolitic eruptions created the massive caldera and dropped hundreds of meters of volcanic ash for miles. This volcanic activity gave the Pajarito Plateau its distinctive cliffs of pink and white tuff overlaying the black basalts of the Rio Grande Rift.

In the millennia following the caldera's explosive creation, erosion and weathering carved vibrant canyons and left pinion-topped mesas stretching like fingers away from the massive crater. In time, magma and water drained from the great valley, and a diversity of plants and wildlife took their place. With such resources and natural beauty, it is no wonder that for millennia people have also been an integral part of the Valles Caldera.

For the Pueblo Tribes of northern New Mexico, the Valles Caldera has been a part of life from time immemorial. The continued cultural and religious significance of the area must and will be respected and protected as the preserve moves into the management of the National Park Service.

Private ownership of the Caldera began with Spanish settlers who introduced livestock to the grassy valleys that continue to fatten elk and cattle in the summer months. After a series of owners managed the caldera, the Federal Government finally purchased the area in 2000 through the Valles Caldera Preservation Act, which I was proud to help shepherd through Congress with Senator BINGAMAN and then-Senator Domenici. The subsequent creation of the Valles Caldera National Preserve included the establishment of a board of directors and the Valles Caldera Trust to manage the area, and mandates for stakeholder involvement and eventual financial self-sufficiency of the Trust.

I applaud the decade of work that both the Board of Trustees and the Valles Caldera Trust have dedicated to the preserve. The exceptional dedication of Caldera employees has led to the creation of a robust science and research program, to the development of incredible educational opportunities for visiting schools and universities, to a restoration of natural resources, and to an expansion of cutting-edge scientific research.

Since 1939, the National Park Service has deemed the area of significant national value because of its unique and unaltered geology, and its singular setting, which are conducive to public recreation, reflection, education, and research. By utilizing the resources and skills within the National Park Service, I believe the Valles Caldera National Preserve will continue to prosper as a natural wonder full of significant geology, ecology, history, and culture.

The bill that we introduce today reflects the comments and proposals that emerged through a successful committee process on a similar bill that Senator BINGAMAN and I introduced last year. In September 2010, the Committee on Energy and Natural Resources reported the bill out favorably, and it is my hope that the Committee will act quickly to move this reintroduced bill to the Senate floor for a vote. I look forward to working with Senator BINGAMAN and all of the stakeholders who care about the future of this preserve to complete our efforts to establish Park Service management of the preserve.

## SUBMITTED RESOLUTIONS

### SENATE RESOLUTION 98—TO EXPRESS THE SENSE OF THE SENATE REGARDING THE SCHOOL BREAKFAST PROGRAM

Mr. KOHL (for himself, Mr. DURBIN, Mr. SCHUMER, Mr. HARKIN, Mrs. GILLIBRAND, and Mr. BROWN of Ohio) submitted the following resolution; which was referred to the Committee on Agriculture, Nutrition, and Forestry: