ADDITIONAL COSPONSORS

S. RES. 11

At the request of Mr. WYDEN, the names of the Senator from Oklahoma (Mr. INHOFE), the Senator from Nebraska (Mr. JOHANNS) and the Senator from Montana (Mr. TESTER) were added as cosponsors of S. Res. 11, a resolution to establish as a standing order of the Senate that a Senator publicly disclose a notice of intent to objecting to any measure or matter.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. REID (for himself, Mr. DURBIN, Mr. BROWN of Ohio, Mrs. GILLIBRAND, Mr. COONS, Mrs. BOXER, Mr. LAUTENBERG, Mr. BEGICH, Mrs. SHAHEEN, and Mr. AKAKA):

S. 1. A bill to strengthen the economic competitiveness of the United States; to the Committee on Finance.

Mr. REID. 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. 1

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 ''American Competitiveness Act''.

SEC. 2. SENSE OF THE SENATE.

It is the sense of the Senate that Congress should—

(1) eliminate tax loopholes that encourage companies to ship American jobs overseas;

(2) expand markets for United States exports by enforcing trade laws, stopping unfair currency manipulation, and opening up new markets for products made in the United States;

(3) promote the development of new, innovative products bearing the inscription ''Made in America'' by creating tax incentives to support United States industries and funding research and education programs to support and train workers in those newly developed areas;

(4) modernize and improve the highways, bridges, and transit systems of the United States to reduce congestion and the negative impacts of congestion on productivity and the communities of the United States;

(5) modernize and upgrade the rail, levees, dams, and ports of the United States to get commerce flowing farther and faster;

(6) place computers in classrooms to ensure that all children in the United States have the tools they need to be the innovators of tomorrow;

(7) ensure that small businesses and households in the United States have access to high-speed broadband;

(8) invest in critical new infrastructure, such as a national energy grid, to reduce energy waste and promote the use of renewable energy sources; and

(9) streamline regulatory policies that unnecessarily put the United States at a competitive disadvantage.

By Mr. REID (for himself, Mr. DURBIN, Mrs. FEINSTEIN, Mr. BROWN of Ohio, Mr. KERRY, Mrs. GILLIBRAND, Mrs. BOXER, Mr. LAUTENBERG, and Mr. AKAKA):

S. 2. A bill to help middle class families succeed; to the Committee on Finance.

Mr. REID. 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. 2

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 ''Middle Class Success Act''.

SEC. 2. SENSE OF THE SENATE.

It is the sense of the Senate that Congress should—

(1) support middle class tax relief;

(2) help families afford the cost of college and improve opportunities for a secure retirement;

(3) invest in infrastructure and other measures to create good, well-paying jobs;

(4) help ensure that families have access to affordable child and elder care;

(5) preserve and improve affordable health care;

(6) ensure that all workers earn enough to meet basic living standards and do not live in poverty;

(7) ensure that tax dollars do not support companies that break the law or mistreat their workers;

(8) keep Social Security's promise and block proposals to privatize the program;

(9) ensure that families have access to a healthy and clean environment, including access to safe drinking water;

(10) ensure that workers can secure representation without employer obstruction;

(11) ensure that our streets and communities are safe; and

(12) address the serious housing problems facing many American families.

By Mr. REID (for himself, Mr. DURBIN, Mrs. FEINSTEIN, Mr. BROWN of Ohio, Mr. KERRY, Mr. BENNET, Mrs. GILLIBRAND, Mr. COONS, Mrs. BOXER, and Mrs. SHAHEEN):

S. 3. A bill to promote fiscal responsibility and control spending; to the Committee on Finance.

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. 3

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 ''Fiscal Responsibility and Spending Control Act''.

SEC. 2. SENSE OF THE SENATE.

It is the sense of the Senate that Congress should—

(1) address the growing public concern about our rising national debt and long-term fiscal challenges through a bipartisan agreement that—

(A) significantly corrects our Nation's long-term fiscal imbalances and closes the gap between projected revenues and expenditures;

(B) ensures the economic security of the United States; and

(C) enhances future prosperity and growth for all Americans;

(2) reduce the Federal deficit and stabilize the national debt without damaging the economic recovery;

(3) consider deficit reduction proposals recently developed by leading budget experts, including various members of the National Commission on Fiscal Responsibility and Reform, and establish a plan that can attract broad bipartisan support;

(4) ensure that any plan to address our Nation's long-term fiscal problems is balanced and provides fundamental reform of the Federal tax code along with prudent controls on spending;

(5) lower tax rates and raise Federal revenues by eliminating tax expenditures that only serve special interests, as well as take aggressive measures to close the tax gap and stop cheating;

(6) ensure that the Federal tax code fairly distributes the tax burden and helps American businesses compete in the global marketplace;

(7) extend the solvency of Social Security for its own sake and ensure that no savings are used to meet deficit reduction goals in the remainder of the budget;

(8) achieve savings through the elimination or consolidation of duplicative Federal programs and activities while also modernizing Federal procurement practices in order to reduce waste and leverage better value out of every dollar spent by the Federal Government; and

(9) reject efforts to exempt tax breaks for millionaires and special interests from strong pay-as-you-go budgetary rules.

By Mr. REID (for himself, Mr. BINGAMAN, Mr. BROWN of Ohio, Mr. DURBIN, Mr. KERRY, Mr. BENNET, Mrs. GILLIBRAND, Mr. COONS, Mrs. BOXER, Mr. LAUTENBERG, Mrs. SHAHEEN, and Mr. AKAKA):

S. 4. A bill to make America the world's leader in clean energy; to the Committee on Finance.

Mr. REID. 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. 4

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 ''Make America the World's Leader in Clean Energy Act''.

SEC. 2. SENSE OF THE SENATE.

It is the sense of the Senate that Congress should—

(1) promote investment in clean energy jobs and industries;

(2) free the United States from dependence on oil, especially foreign oil;

(3) reduce costs and pollution by promoting energy efficiency;

(4) promote clean energy by retooling the infrastructure and workforce of the United States;

(5) ensure the Federal Government is a leader in reducing pollution, promoting the use of clean energy sources, and implementing energy efficient practices;

(6) reduce harmful energy-related air, land, and water pollution; and

(7) eliminate wasteful tax subsidies that promote pollution.

By Mr. REID (for himself, Mr. DURBIN, Mr. WYDEN, Mr. BROWN of Ohio, Mr. BENNET, Mrs.

GILLIBRAND, Mr. COONS, Mr. INOUYE, Mrs. BOXER, Mr. LAUTENBERG, Mr. BEGICH, Mrs. SHAHEEN, and Mr. AKAKA):

S. 5. A bill to reform schools and give America's children the tools they need to succeed; to the Committee on Health, Education, Labor, and Pensions.

Mr. REID. 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. 5

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 ''Reform America's Schools to Educate the Leaders of the Future Act''.

SEC. 2. SENSE OF THE SENATE.

It is the sense of the Senate that Congress should—

(1) ensure that all students have equitable access to a high-quality, well-rounded education that prepares them to succeed in college and a career;

(2) fix No Child Left Behind's accountability system while continuing to focus on the success of all students;

(3) provide States and districts the resources to turn around our lowest performing schools;

(4) collaborate with teachers to put in place systems to measure teacher quality and supports to help teachers improve student achievement; and

(5) promote programs that encourage parent engagement, community involvement, and youth development.

By Mr. REID (for himself, Mr. DURBIN, Mr. LEAHY, Mrs. FEINSTEIN, Mr. BROWN of Ohio, Mr. KERRY, Mr. BENNET, Mrs. GILLIBRAND, Mrs. BOXER, and Mr. LAUTENBERG):

S. 6. A bill to reform America's broken immigration system; to the Committee on the Judiciary.

Mr. REID. 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. 6

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 ''Reform America's Broken Immigration System Act''.

SEC. 2. SENSE OF THE SENATE.

It is the sense of the Senate that Congress should—

(1) fulfill and strengthen our Nation's commitments regarding border security;

(2) pass legislation to support our national and economic security, such as the DREAM Act, which would allow students who came to America before turning 16 to earn citizenship by attending college or joining the armed forces, and AgJobs, which would help to ensure a stable and legal agricultural workforce and protect the sustainability of the American agricultural industry;

(3) implement a rational legal immigration system to ensure that the best and brightest minds of the world can come to the United States and create jobs for Americans while, at the same time, safeguarding the rights and wages of American workers;

(4) require all United States workers to obtain secure, tamper-proof identification to prevent employers from hiring people here illegally, and toughen penalties on employers who break labor and immigration laws;

(5) hold people accountable who are currently here illegally by requiring them to either earn legal status through a series of penalties, sanctions, and requirements, or face immediate deportation; and

(6) adopt practical and fair immigration reforms to help ensure that families are able to be together.

By Mr. REID (for himself, Mr. DURBIN, Mr. BROWN of Ohio, Mrs. GILLIBRAND, Mrs. BOXER, and Mr. LAUTENBERG):

S. 7. A bill to reform the Federal tax code; to the Committee on Finance.

Mr. REID. 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. 7

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 ''Comprehensive and Fair Tax Reform Act''.

SEC. 2. SENSE OF THE SENATE.

It is the sense of the Senate that Congress should—

(1) simplify and shrink the tax code to reduce burdens on taxpayers and businesses;

(2) eliminate wasteful tax breaks for special interests and remove corporate tax loopholes;

(3) get rid of extra tax breaks for millionaires and billionaires; and

(4) crack down on cheaters and close the tax gap.

By Mr. REID (for himself, Mr. DURBIN, Mr. BROWN of Ohio, Mr. BENNET, Mrs. GILLIBRAND, Mr. COONS, Mrs. BOXER, Mr. LAUTENBERG, Mr. BEGICH, and Mr. AKAKA):

S. 8. A bill to strengthen America's national security; to the Committee on Foriegn Relations.

Mr. REID. 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. 8

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 ''Tough and Smart National Security Act''.

SEC. 2. SENSE OF THE SENATE.

It is the sense of the Senate that Congress should—

(1) ensure that members of the Armed Forces, particularly those serving in Afghanistan and Iraq, and veterans get the support they need and deserve;

(2) work with the President to attack al Qaeda and other terrorist groups with a comprehensive military, intelligence, homeland security, law enforcement, and diplomatic strategy;

(3) confront the nuclear threat from Iran and North Korea;

(4) enhance the tools of the United States Government for pursuing key national security interests, including fighting terrorism, preventing failed states, thwarting global pandemics, promoting democracy and development, securing nuclear materials and preventing nuclear proliferation, and combating narco-trafficking and drug-related violence around the world, including along our border with Mexico; and

(5) reform cybersecurity policy to prevent cyber attacks on the United States Government and critical infrastructure, protect privacy and civil liberties, and implement mechanisms necessary to avert and respond to catastrophic cyber incidents.

By Mr. REID (for himself, Mr. DURBIN, Mr. WYDEN, Mr. BROWN of Ohio, Mr. KERRY, Mr. BENNET, Mrs. GILLIBRAND, Mrs. BOXER, Mr. LAUTENBERG, Mr. BEGICH, and Mr. AKAKA):

S. 9. A bill to reform America's political system and eliminate gridlock that blocks progress; to the Committee on Rules and Administration.

Mr. REID. 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. 9

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 ''Political Reform and Gridlock Elimination Act''.

SEC. 2. SENSE OF THE SENATE.

It is the sense of the Senate that Congress should—

(1) pass the DISCLOSE Act to prevent a corporate takeover of our elections and ensure that our democracy is open, transparent, and controlled by the people; and

(2) reform Senate rules and procedures to reduce excessive obstruction and delay, while protecting the legitimate rights of individual Senators and the minority.

By Mr. REID (for himself, Mr. DURBIN, Mr. BROWN of Ohio, Mr. KERRY, Mrs. GILLIBRAND, Mrs. BOXER, Mr. LAUTENBERG, Mr. BEGICH, and Mr. AKAKA):

S. 10. A bill to ensure equity for women and address rising pressures on American families; to the Committee on Health, Education, Labor, and Pensions.

Mr. REID. 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. 10

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 ''Family Economic Success Act''.

SEC. 2. SENSE OF THE SENATE.

It is the sense of the Senate that Congress should—

(1) guarantee pay equity for women;

(2) reward companies that promote flexible work environments for working parents with children, and workers who are caregivers;

(3) guarantee paid family and medical leave and paid sick days; and

(4) improve the quality and affordability of child care.

By Mrs. HUTCHISON (for herself, Mr. VITTER, Mr. ENSIGN, Mr. JOHANNS, and Mr. CORNYN):

S. 11. A bill to provide permanent tax relief from the marriage penalty; to the Committee on Finance.

Mrs. HUTCHISON. Mr. President, I am pleased to introduce a bill to provide permanent tax relief from the marriage penalty—the most egregious, anti-family provision in the tax code. One of my highest priorities in the United States Senate has been to relieve American taxpayers of this punitive burden.

We have made important strides to eliminate this unfair tax and provide marriage penalty relief by raising the standard deduction and enlarging the 15 percent tax bracket for married joint filers to twice that of single filers. Before these provisions were changed, 42 percent of married couples paid an average penalty of $1,400.

Enacting marriage penalty relief was a giant step for tax fairness, but it may be fleeting. Even as married couples use the money they now save to put food on the table and clothes on their children, a tax increase looms in the future. While I am pleased that relief from the marriage penalty was included in the recent agreement to extend the broader tax relief for all Americans, the marriage penalty provisions will only be in effect through 2012. In 2013, marriage will again be a taxable event and a significant number of married couples will again pay more in taxes unless we act decisively. Given the challenges many families face in making ends meet, we must make sure we do not backtrack on this important reform.

The benefits of marriage are well established, yet, without marriage penalty relief, the tax code provides a significant disincentive for people to walk down the aisle. Marriage is a fundamental institution in our society and should not be discouraged by the IRS. Children living in a married household are far less likely to live in poverty or to suffer from child abuse. Research indicates these children are also less likely to be depressed or have developmental problems. Scourges such as adolescent drug use are less common in married families, and married mothers are less likely to be victims of domestic violence.

We should celebrate marriage, not penalize it. The bill I am offering would make marriage penalty relief permanent, because marriage should not be a taxable event. I welcome and appreciate the support of Senators ENSIGN, JOHANNS, CORNYN, and VITTER, who have signed on as cosponsors, and I call on the Senate to finish the job we started and make marriage penalty relief permanent today.

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. 11

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 ''Permanent Marriage Penalty Relief Act of 2011''.

SEC. 2. REPEAL OF SUNSET ON MARRIAGE PENALTY RELIEF.

Title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001 (relating to sunset of provisions of such Act) shall not apply to sections 301, 302, and 303(a) of such Act (relating to marriage penalty relief).

By Mr. REID (for himself, Mrs. FEINSTEIN, Mr. KERRY, Mr. LEAHY, Mr. LEVIN, Mr. LIEBERMAN, Mr. ROCKEFELLER, and Mr. BINGAMAN):

S. 21. A bill to secure the United States against cyber attack, to enhance American competetiveness and create jobs in the information technology industry, and to protect the identities and sensitive information of American citizens and businesses; to the Committee on Homeland Security and Governmental Affairs.

Mr. REID. 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. 21

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 ''Cyber Security and American Cyber Competitiveness Act of 2011''.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) Malicious state, terrorist, and criminal actors exploiting vulnerabilities in information and communications networks and gaps in cyber security pose one of the most serious and rapidly growing threats to both the national security and economy of the United States.

(2) With information technology now the backbone of the United States economy, a critical element of United States national security infrastructure and defense systems, the primary foundation of global communications, and a key enabler of most critical infrastructure, nearly every single American citizen is touched by cyberspace and is threatened by cyber attacks.

(3) Malicious actors in cyberspace have already caused significant damage to the United States Government, the United States economy, and United States citizens: United States Government computer networks are probed millions of times each day; approximately 9,000,000 Americans have their identities stolen each year; cyber crime costs American businesses with 500 or more employees an average of $3,800,000 per year; and intellectual property worth over $1,000,000,000,000 has already been stolen from American businesses.

(4) In its 2009 Cyberspace Policy Review, the White House concluded, ''Ensuring that cyberspace is sufficiently resilient and trustworthy to support United States goals of economic growth, civil liberties and privacy protections, national security, and the continued advancement of democratic institutions requires making cybersecurity a national priority.''

(5) An effective solution to the tremendous challenges of cyber security demands cooperation and integration of effort across jurisdictions of multiple Federal, State, local, and tribal government agencies, between the government and the private sector, and with international allies, as well as increased public awareness and preparedness among the American people.

SEC. 3. SENSE OF CONGRESS.

It is the sense of Congress that Congress should enact, and the President should sign, bipartisan legislation to secure the United States against cyber attack, to enhance American competitiveness and create jobs in the information technology industry, and to protect the identities and sensitive information of American citizens and businesses by—

(1) enhancing the security and resiliency of United States Government communications and information networks against cyber attack by nation-states, terrorists, and cyber criminals;

(2) incentivizing the private sector to quantify, assess, and mitigate cyber risks to their communications and information networks;

(3) promoting investments in the American information technology sector that create and maintain good, well-paying jobs in the United States and help to enhance American economic competitiveness;

(4) improving the capability of the United States Government to assess cyber risks and prevent, detect, and robustly respond to cyber attacks against the government and the military;

(5) improving the capability of the United States Government and the private sector to assess cyber risk and prevent, detect, and robustly respond to cyber attacks against United States critical infrastructure;

(6) preventing and mitigating identity theft and guarding against abuses or breaches of personally identifiable information;

(7) enhancing United States diplomatic capacity and international cooperation to respond to emerging cyber threats, including promoting security and freedom of access for communications and information networks around the world and battling global cyber crime through focused diplomacy;

(8) protecting and increasing the resiliency of United States' critical infrastructure and assets, including the electric grid, military assets, the financial sector, and telecommunications networks against cyber attacks and other threats and vulnerabilities;

(9) expanding tools and resources for investigating and prosecuting cyber crimes in an manner that respects privacy rights and civil liberties and promotes American innovation; and

(10) maintaining robust protections of the privacy of American citizens and their online activities and communications.

By Mr. LEAHY (for himself, Mr. HATCH, Mr. GRASSLEY, Ms. KLOBUCHAR, Mr. SESSIONS, Mr. KYL, Mr. LIEBERMAN, and Mr. COONS):

S. 23. A bill to amend title 35, United States Code, to provide for patent reform; to the Committee on the Judiciary.

Mr. LEAHY. Mr. President, the United States of America has long been the world leader in invention and innovation. That leadership has propelled our economic growth, but we cannot

remain complacent while expecting to stay on top.

A Newsweek study last year found that only 41 percent of Americans believe that the United States is staying ahead of China on innovation. A Thompson Reuters analysis has already predicted that China will outpace the United States in patent filings this year. China, in fact, has a specific plan not just to overtake the United States this year in patent applications, but to more than quadruple its patent filings over the next 5 years.

That is astonishing, until considering that China has been modernizing its patent laws and promoting innovation while the United States has failed to keep pace. It has now been nearly 60 years since Congress last acted to reform American patent law. We can no longer wait.

Today, I am reintroducing bipartisan patent reform legislation that is the culmination of three Congresses worth of bipartisan, bicameral work, including eight hearings in the Senate alone. The Patent Reform Act of 2011 is structured on legislation first introduced in the House by Chairman SMITH and Mr. BERMAN in 2005. The legislation will accomplish three important goals, which have been at the center of the patent reform debate: improve the application process by transitioning to a first-inventor-to-file system; improve the quality of patents issued by the USPTO by introducing several quality-enhancement measures; and provide more certainty in litigation.

In many areas that were highly contentious when the patent reform debate began, the courts have stepped in to act. Their decisions reflect the concerns heard in Congress that questionable patents are too easily obtained and too difficult to challenge. The courts have moved the law in a generally positive direction, more closely aligned with the text of the statutes.

Most recently, the Federal Circuit aggressively moved to constrain runaway damage awards, which has plagued the patent system by basing awards on unreliable numbers, untethered to the reality of licensing decisions. As the court continues to move in the right direction, it is more apparent than ever that the gatekeeper compromise on damages we have worked to reach with Senator FEINSTEIN and others is what is needed to ensure an award of a reasonable royalty is not artificially inflated or based on irrelevant factors.

The courts have addressed issues where they can, but in some areas, only Congress can take the necessary steps. The Patent Reform Act will both speed the application process and, at the same time, improve patent quality. It will provide the USPTO with the resources it needs to work through its application backlog, while also providing for greater input from third parties to improve the quality of patents issued and that remain in effect.

High quality patents are the key to our economic growth. They benefit both patent owners and users, who can be more confident in the validity of issued patents. Patents of low quality and dubious validity, by contrast, enable patent trolls and constitute a drag on innovation. Too many dubious patents also unjustly cast doubt on truly high quality patents.

The Patent Reform Act provides the tools the USPTO needs to separate the inventive wheat from the chaff. It will allow our inventors and innovators to flourish. The Department of Commerce recently issued a report indicating that these reforms will create jobs without adding to the deficit. The Obama administration supports these efforts, as do industries and stakeholders from all sectors of the patent community. Congressional action can no longer be delayed.

Innovation and economic development are not uniquely Democrat or Republican objectives, so we worked together to find the proper balance for America—for our economy, for our inventors, for our consumers.

Thomas Freidman wrote not too long ago in The New York Times that the country which ''endows its people with more tools and basic research to invent new goods and services [] is the one that will not just survive but thrive down the road. . . . We might be able to stimulate our way back to stability, but we can only invent our way back to prosperity.''

Reforming our patent system will stimulate the American economy through structural changes, rather than taxpayer dollars. I look forward to working with all Senators and our counterparts in the House, who have also made this a bipartisan priority, to ensure that this is the year we make our patent system reward inventors and provide certainty to users.

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. 23

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Patent Reform Act of 2011''.

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

SEC. 2. FIRST INVENTOR TO FILE.

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

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

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

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

''(i)(1) The term 'effective filing date' of a claimed invention in a patent or application for patent means—

''(A) if subparagraph (B) does not apply, the actual filing date of the patent or the application for the patent containing a claim to the invention; or

''(B) the filing date of the earliest application for which the patent or application is entitled, as to such invention, to a right of priority under section 119, 365(a), or 365(b) or to the benefit of an earlier filing date under section 120, 121, or 365(c).

''(2) The effective filing date for a claimed invention in an application for reissue or reissued patent shall be determined by deeming the claim to the invention to have been contained in the patent for which reissue was sought.

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

(b) CONDITIONS FOR PATENTABILITY.—

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

''§ 102. Conditions for patentability; novelty

''(a) NOVELTY; PRIOR ART.—A person shall be entitled to a patent unless—

''(1) the claimed invention was patented, described in a printed publication, or in public use, on sale, or otherwise available to the public before the effective filing date of the claimed invention; or

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

''(b) EXCEPTIONS.—

''(1) DISCLOSURES MADE 1 YEAR OR LESS BEFORE THE EFFECTIVE FILING DATE OF THE CLAIMED INVENTION.—A disclosure made 1 year or less before the effective filing date of a claimed invention shall not be prior art to the claimed invention under subsection (a)(1) if—

''(A) the disclosure was made by the inventor or joint inventor or by another who obtained the subject matter disclosed directly or indirectly from the inventor or a joint inventor; or

''(B) the subject matter disclosed had, before such disclosure, been publicly disclosed by the inventor or a joint inventor or another who obtained the subject matter disclosed directly or indirectly from the inventor or a joint inventor.

''(2) DISCLOSURES APPEARING IN APPLICATIONS AND PATENTS.—A disclosure shall not be prior art to a claimed invention under subsection (a)(2) if—

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

''(B) the subject matter disclosed had, before such subject matter was effectively filed

under subsection (a)(2), been publicly disclosed by the inventor or a joint inventor or another who obtained the subject matter disclosed directly or indirectly from the inventor or a joint inventor; or

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

''(c) COMMON OWNERSHIP UNDER JOINT RESEARCH AGREEMENTS.—Subject matter disclosed and a claimed invention shall be deemed to have been owned by the same person or subject to an obligation of assignment to the same person in applying the provisions of subsection (b)(2)(C) if—

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

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

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

''(d) PATENTS AND PUBLISHED APPLICATIONS EFFECTIVE AS PRIOR ART.—For purposes of determining whether a patent or application for patent is prior art to a claimed invention under subsection (a)(2), such patent or application shall be considered to have been effectively filed, with respect to any subject matter described in the patent or application—

''(1) if paragraph (2) does not apply, as of the actual filing date of the patent or the application for patent; or

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

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

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

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

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

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

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

(e) REPEAL OF STATUTORY INVENTION REGISTRATION.—

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

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

(3) EFFECTIVE DATE.—The amendments made by this subsection shall take effect 1 year after the date of the enactment of this Act, and shall apply to any request for a statutory invention registration filed on or after that date.

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

(g) CONFORMING AMENDMENTS.—

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

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

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

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

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

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

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

(A) in paragraph (2)—

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

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

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

(h) DERIVED PATENTS.—Section 291 of title 35, United States Code, is amended to read as follows:

''§ 291. Derived patents

''(a) IN GENERAL.—The owner of a patent may have relief by civil action against the owner of another patent that claims the same invention and has an earlier effective filing date if the invention claimed in such other patent was derived from the inventor of the invention claimed in the patent owned by the person seeking relief under this section.

''(b) FILING LIMITATION.—An action under this section may only be filed within 1 year after the issuance of the first patent containing a claim to the allegedly derived invention and naming an individual alleged to have derived such invention as the inventor or joint inventor.''.

(i) DERIVATION PROCEEDINGS.—Section 135 of title 35, United States Code, is amended to read as follows:

''§ 135. Derivation proceedings

''(a) INSTITUTION OF PROCEEDING.—An applicant for patent may file a petition to institute a derivation proceeding in the Office. The petition shall set forth with particularity the basis for finding that an inventor named in an earlier application derived the claimed invention from an inventor named in the petitioner's application and, without authorization, the earlier application claiming such invention was filed. Any such petition may only be filed within 1 year after the first publication of a claim to an invention that is the same or substantially the same as the earlier application's claim to the invention, shall be made under oath, and shall be supported by substantial evidence. Whenever the Director determines that a petition filed under this subsection demonstrates that the standards for instituting a derivation proceeding are met, the Director may institute a derivation proceeding. The determination by the Director whether to institute a derivation proceeding shall be final and nonappealable.

''(b) DETERMINATION BY PATENT TRIAL AND APPEAL BOARD.—In a derivation proceeding instituted under subsection (a), the Patent Trial and Appeal Board shall determine whether an inventor named in the earlier application derived the claimed invention from an inventor named in the petitioner's application and, without authorization, the earlier application claiming such invention was filed. The Director shall prescribe regulations setting forth standards for the conduct of derivation proceedings.

''(c) DEFERRAL OF DECISION.—The Patent Trial and Appeal Board may defer action on a petition for a derivation proceeding until 3 months after the date on which the Director issues a patent that includes the claimed invention that is the subject of the petition. The Patent Trial and Appeal Board also may defer action on a petition for a derivation proceeding, or stay the proceeding after it has been instituted, until the termination of a proceeding under chapter 30, 31, or 32 involving the patent of the earlier applicant.

''(d) EFFECT OF FINAL DECISION.—The final decision of the Patent Trial and Appeal Board, if adverse to claims in an application for patent, shall constitute the final refusal by the Office on those claims. The final decision of the Patent Trial and Appeal Board, if adverse to claims in a patent, shall, if no appeal or other review of the decision has been or can be taken or had, constitute cancellation of those claims, and notice of such cancellation shall be endorsed on copies of the patent distributed after such cancellation

''(e) SETTLEMENT.—Parties to a proceeding instituted under subsection (a) may terminate the proceeding by filing a written statement reflecting the agreement of the parties as to the correct inventors of the claimed invention in dispute. Unless the Patent Trial and Appeal Board finds the agreement to be inconsistent with the evidence of record, if any, it shall take action consistent with the agreement. Any written settlement or understanding of the parties shall be filed with the Director. At the request of a party to the proceeding, the agreement or understanding shall be treated as business confidential information, shall be kept separate from the file of the involved patents or applications, and shall be made available only to Government agencies on written request, or to any person on a showing of good cause.

''(f) ARBITRATION.—Parties to a proceeding instituted under subsection (a) may, within such time as may be specified by the Director by regulation, determine such contest or any aspect thereof by arbitration. Such arbitration shall be governed by the provisions of title 9, to the extent such title is not inconsistent with this section. The parties

shall give notice of any arbitration award to the Director, and such award shall, as between the parties to the arbitration, be dispositive of the issues to which it relates. The arbitration award shall be unenforceable until such notice is given. Nothing in this subsection shall preclude the Director from determining the patentability of the claimed inventions involved in the proceeding.''.

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

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

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

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

(B) The subparagraph heading for section 154(b)(1)(C) of title 35, United States Code, as amended by this paragraph, is further amended by—

(i) striking ''OR'' and inserting ''OF''; and

(ii) striking ''SECRECY ORDER'' and inserting ''SECRECY ORDERS''.

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

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

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

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

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

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

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

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

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

''135. Derivation proceedings.''.

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

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

(k) FALSE MARKING.—

(1) IN GENERAL.—Section 292 of title 35, United States Code, is amended—

(A) in subsection (a), by adding at the end the following:

''Only the United States may sue for the penalty authorized by this subsection.''; and

(B) by striking subsection (b) and inserting the following:

''(b) Any person who has suffered a competitive injury as a result of a violation of this section may file a civil action in a district court of the United States for recovery of damages adequate to compensate for the injury.''.

(2) EFFECTIVE DATE.—The amendments made by this subsection shall apply to all cases, without exception, pending on or after the date of the enactment of this Act.

(l) STATUTE OF LIMITATIONS.—

(1) IN GENERAL.—Section 32 of title 35, United States Code, is amended by inserting between the third and fourth sentences the following: ''A proceeding under this section shall be commenced not later than the earlier of either 10 years after the date on which the misconduct forming the basis for the proceeding occurred, or 1 year after the date on which the misconduct forming the basis for the proceeding is made known to an officer or employee of the Office as prescribed in the regulations established under section 2(b)(2)(D).''.

(2) REPORT TO CONGRESS.—The Director shall provide on a biennial basis to the Judiciary Committees of the Senate and House of Representatives a report providing a short description of incidents made known to an officer or employee of the Office as prescribed in the regulations established under section 2(b)(2)(D) of title 35, United States Code, that reflect substantial evidence of misconduct before the Office but for which the Office was barred from commencing a proceeding under section 32 of title 35, United States Code, by the time limitation established by the fourth sentence of that section.

(3) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply in all cases in which the time period for instituting a proceeding under section 32 of title 35, United State Code, had not lapsed prior to the date of the enactment of this Act.

(m) SMALL BUSINESS STUDY.—

(1) DEFINITIONS.—In this subsection—

(A) the term ''Chief Counsel'' means the Chief Counsel for Advocacy of the Small Business Administration;

(B) the term ''General Counsel'' means the General Counsel of the United States Patent and Trademark Office; and

(C) the term ''small business concern'' has the meaning given that term under section 3 of the Small Business Act (15 U.S.C. 632).

(2) STUDY.—

(A) IN GENERAL.—The Chief Counsel, in consultation with the General Counsel, shall conduct a study of the effects of eliminating the use of dates of invention in determining whether an applicant is entitled to a patent under title 35, United States Code.

(B) AREAS OF STUDY.—The study conducted under subparagraph (A) shall include examination of the effects of eliminating the use of invention dates, including examining—

(i) how the change would affect the ability of small business concerns to obtain patents and their costs of obtaining patents;

(ii) whether the change would create, mitigate, or exacerbate any disadvantage for applicants for patents that are small business concerns relative to applicants for patents that are not small business concerns, and whether the change would create any advantages for applicants for patents that are small business concerns relative to applicants for patents that are not small business concerns;

(iii) the cost savings and other potential benefits to small business concerns of the change; and

(iv) the feasibility and costs and benefits to small business concerns of alternative means of determining whether an applicant is entitled to a patent under title 35, United States Code.

(3) REPORT.—Not later than 1 year after the date of enactment of this Act, the Chief Counsel shall submit to the Committee on Small Business and Entrepreneurship and the Committee on the Judiciary of the Senate and the Committee on Small Business and the Committee on the Judiciary of the House of Representatives a report regarding the results of the study under paragraph (2).

(n) REPORT ON PRIOR USER RIGHTS.—

(1) IN GENERAL.—Not later than 1 year after the date of the enactment of this Act, the Director shall report, to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives, the findings and recommendations of the Director on the operation of prior user rights in selected countries in the industrialized world. The report shall include the following:

(A) A comparison between patent laws of the United States and the laws of other industrialized countries, including members of the European Union and Japan, Canada, and Australia.

(B) An analysis of the effect of prior user rights on innovation rates in the selected countries.

(C) An analysis of the correlation, if any, between prior user rights and start-up enterprises and the ability to attract venture capital to start new companies.

(D) An analysis of the effect of prior user rights, if any, on small businesses, universities, and individual inventors.

(E) An analysis of legal and constitutional issues, if any, that arise from placing trade secret law in patent law.

(F) An analysis of whether the change to a first-to-file patent system creates a particular need for prior user rights.

(2) CONSULTATION WITH OTHER AGENCIES.—In preparing the report required under paragraph (1), the Director shall consult with the United States Trade Representative, the Secretary of State, and the Attorney General.

(o) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as otherwise provided by this section, the amendments made by this section shall take effect on the date that is 18 months after the date of the enactment of this Act, and shall apply to any application for patent, and to any patent issuing thereon, that contains or contained at any time—

(A) a claim to a claimed invention that has an effective filing date as defined in section 100(i) of title 35, United States Code, that is 18 months or more after the date of the enactment of this Act; or

(B) a specific reference under section 120, 121, or 365(c) of title 35, United States Code, to any patent or application that contains or contained at any time such a claim.

(2) INTERFERING PATENTS.—The provisions of sections 102(g), 135, and 291 of title 35, United States Code, in effect on the day prior to the date of the enactment of this Act, shall apply to each claim of an application for patent, and any patent issued thereon, for which the amendments made by this section also apply, if such application or patent contains or contained at any time—

(A) a claim to an invention having an effective filing date as defined in section 100(i) of title 35, United States Code, earlier than 18 months after the date of the enactment of this Act; or

(B) a specific reference under section 120, 121, or 365(c) of title 35, United States Code, to any patent or application that contains or contained at any time such a claim.

SEC. 3. INVENTOR'S OATH OR DECLARATION.

(a) INVENTOR'S OATH OR DECLARATION.—

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

''§ 115. Inventor's oath or declaration

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

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

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

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

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

''(d) SUBSTITUTE STATEMENT.—

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

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

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

''(i) is deceased;

''(ii) is under legal incapacity; or

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

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

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

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

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

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

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

''(f) TIME FOR FILING.—A notice of allowance under section 151 may be provided to an applicant for patent only if the applicant for patent has filed each required oath or declaration under subsection (a) or has filed a substitute statement under subsection (d) or recorded an assignment meeting the requirements of subsection (e).

''(g) EARLIER-FILED APPLICATION CONTAINING REQUIRED STATEMENTS OR SUBSTITUTE STATEMENT.—

''(1) EXCEPTION.—The requirements under this section shall not apply to an individual with respect to an application for patent in which the individual is named as the inventor or a joint inventor and who claims the benefit under section 120, 121, or 365(c) of the filing of an earlier-filed application, if—

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

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

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

''(2) COPIES OF OATHS, DECLARATIONS, STATEMENTS, OR ASSIGNMENTS.—Notwithstanding paragraph (1), the Director may require that a copy of the executed oath or declaration, the substitute statement, or the assignment filed in the earlier-filed application be included in the later-filed application.

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

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

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

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

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

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

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

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

(B) in the heading for paragraph (3), by inserting ''OR DECLARATION'' after ''AND OATH''; and

(C) by inserting ''or declaration'' after ''and oath'' each place it appears.

(4) CONFORMING AMENDMENT.—The item relating to section 115 in the table of sections for chapter 11 of title 35, United States Code, is amended to read as follows:

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

(b) FILING BY OTHER THAN INVENTOR.—

(1) IN GENERAL.—Section 118 of title 35, United States Code, is amended to read as follows:

''§ 118. Filing by other than inventor

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

(2) CONFORMING AMENDMENT.—Section 251 of title 35, United States Code, is amended in the third undesignated paragraph by inserting ''or the application for the original patent was filed by the assignee of the entire interest'' after ''claims of the original patent''.

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

(1) in the first paragraph—

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

(B) by striking ''of carrying out his invention'' and inserting ''or joint inventor of carrying out the invention'';

(2) in the second paragraph—

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

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

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

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

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

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

(d) CONFORMING AMENDMENTS.—

(1) Sections 111(b)(1)(A) is amended by striking ''the first paragraph of section 112 of this title'' and inserting ''section 112(a)''.

(2) Section 111(b)(2) is amended by striking ''the second through fifth paragraphs of section 112,'' and inserting ''subsections (b) through (e) of section 112,''.

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect 1 year after the date of the enactment of this Act and shall apply to patent applications that are filed on or after that effective date.

SEC. 4. DAMAGES.

(a) DAMAGES.—Section 284 of title 35, United States Code, is amended—

(1) by striking ''Upon finding'' and inserting the following: ''(a) IN GENERAL.—Upon finding'';

(2) by striking ''fixed by the court'' and all that follows through ''When the damages'' and inserting the following: ''fixed by the court. When the damages'';

(3) by striking ''shall assess them.'' and all that follows through ''The court may receive'' and inserting the following: ''shall assess them. The court may receive''; and

(4) by adding at the end the following:

''(b) PROCEDURE FOR DETERMINING DAMAGES.—

''(1) IN GENERAL.—The court shall identify the methodologies and factors that are relevant to the determination of damages, and the court or jury shall consider only those methodologies and factors relevant to making such determination.

''(2) DISCLOSURE OF CLAIMS.—By no later than the entry of the final pretrial order, unless otherwise ordered by the court, the parties shall state, in writing and with particularity, the methodologies and factors the parties propose for instruction to the jury in determining damages under this section, specifying the relevant underlying legal and factual bases for their assertions.

''(3) SUFFICIENCY OF EVIDENCE.—Prior to the introduction of any evidence concerning the determination of damages, upon motion of either party or sua sponte, the court shall consider whether one or more of a party's damages contentions lacks a legally sufficient evidentiary basis. After providing a nonmovant the opportunity to be heard, and after any further proffer of evidence, briefing, or argument that the court may deem appropriate, the court shall identify on the record those methodologies and factors as to which there is a legally sufficient evidentiary basis, and the court or jury shall

consider only those methodologies and factors in making the determination of damages under this section. The court shall only permit the introduction of evidence relating to the determination of damages that is relevant to the methodologies and factors that the court determines may be considered in making the damages determination.

''(c) SEQUENCING.—Any party may request that a patent-infringement trial be sequenced so that the trier of fact decides questions of the patent's infringement and validity before the issues of damages and willful infringement are tried to the court or the jury. The court shall grant such a request absent good cause to reject the request, such as the absence of issues of significant damages or infringement and validity. The sequencing of a trial pursuant to this subsection shall not affect other matters, such as the timing of discovery. This subsection does not authorize a party to request that the issues of damages and willful infringement be tried to a jury different than the one that will decide questions of the patent's infringement and validity.

''(d) WILLFUL INFRINGEMENT.—

''(1) IN GENERAL.—The court may increase damages up to 3 times the amount found or assessed if the court or the jury, as the case may be, determines that the infringement of the patent was willful. Increased damages under this subsection shall not apply to provisional rights under section 154(d). Infringement is not willful unless the claimant proves by clear and convincing evidence that the accused infringer's conduct with respect to the patent was objectively reckless. An accused infringer's conduct was objectively reckless if the infringer was acting despite an objectively high likelihood that his actions constituted infringement of a valid patent, and this objectively-defined risk was either known or so obvious that it should have been known to the accused infringer.

''(2) PLEADING STANDARDS.—A claimant asserting that a patent was infringed willfully shall comply with the pleading requirements set forth under Federal Rule of Civil Procedure 9(b).

''(3) KNOWLEDGE ALONE INSUFFICIENT.—Infringement of a patent may not be found to be willful solely on the basis that the infringer had knowledge of the infringed patent.

''(4) PRE-SUIT NOTIFICATION.—A claimant seeking to establish willful infringement may not rely on evidence of pre-suit notification of infringement unless that notification identifies with particularity the asserted patent, identifies the product or process accused, and explains with particularity, to the extent possible following a reasonable investigation or inquiry, how the product or process infringes one or more claims of the patent.

''(5) CLOSE CASE.—The court shall not increase damages under this subsection if the court determines that there is a close case as to infringement, validity, or enforceability. On the motion of either party, the court shall determine whether a close case as to infringement, validity, or enforceability exists, and the court shall explain its decision. Once the court determines that such a close case exists, the issue of willful infringement shall not thereafter be tried to the jury.

''(6) ACCRUED DAMAGES.—If a court or jury finds that the infringement of patent was willful, the court may increase only those damages that accrued after the infringement became willful.''.

(b) DEFENSE TO INFRINGEMENT BASED ON EARLIER INVENTOR.—Section 273(b)(6) of title 35, United States Code, is amended to read as follows:

''(6) PERSONAL DEFENSE.—The defense under this section may be asserted only by the person who performed or caused the performance of the acts necessary to establish the defense as well as any other entity that controls, is controlled by, or is under common control with such person and, except for any transfer to the patent owner, the right to assert the defense shall not be licensed or assigned or transferred to another person except as an ancillary and subordinate part of a good faith assignment or transfer for other reasons of the entire enterprise or line of business to which the defense relates. Notwithstanding the preceding sentence, any person may, on its own behalf, assert a defense based on the exhaustion of rights provided under paragraph (3), including any necessary elements thereof.''.

(c) VIRTUAL MARKING.—Section 287(a) of title 35, United States Code, is amended by inserting '', or by fixing thereon the word 'patent' or the abbreviation 'pat.' together with an address of a posting on the Internet, accessible to the public without charge for accessing the address, that associates the patented article with the number of the patent'' before '', or when''.

(d) ADVICE OF COUNSEL.—Chapter 29 of title 35, United States Code, is amended by adding at the end the following:

''§ 298. Advice of Counsel

''The failure of an infringer to obtain the advice of counsel with respect to any allegedly infringed patent or the failure of the infringer to present such advice to the court or jury may not be used to prove that the accused infringer willfully infringed the patent or that the infringer intended to induce infringement of the patent.''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to any civil action commenced on or after the date of the enactment of this Act.

SEC. 5. POST-GRANT REVIEW PROCEEDINGS.

(a) INTER PARTES REVIEW.—Chapter 31 of title 35, United States Code, is amended to read as follows:

''CHAPTER 31—INTER PARTES REVIEW

''§ 311. Inter partes review

''(a) IN GENERAL.—Subject to the provisions of this chapter, a person who is not the patent owner may file with the Office a petition to institute an inter partes review for a patent. The Director shall establish, by regulation, fees to be paid by the person requesting the review, in such amounts as the Director determines to be reasonable, considering the aggregate costs of the review.

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

''(c) FILING DEADLINE.—A petition for inter partes review shall be filed after the later of either—

''(1) 9 months after the grant of a patent or issuance of a reissue of a patent; or

''(2) if a post-grant review is instituted under chapter 32, the date of the termination of such post-grant review.

''§ 312. Petitions

''(a) REQUIREMENTS OF PETITION.—A petition filed under section 311 may be considered only if—

''(1) the petition is accompanied by payment of the fee established by the Director under section 311;

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

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

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

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

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

''(5) the petitioner provides copies of any of the documents required under paragraphs (2), (3), and (4) to the patent owner or, if applicable, the designated representative of the patent owner.

''(b) PUBLIC AVAILABILITY.—As soon as practicable after the receipt of a petition under section 311, the Director shall make the petition available to the public.

''§ 313. Preliminary response to petition

''(a) PRELIMINARY RESPONSE.—If an inter partes review petition is filed under section 311, the patent owner shall have the right to file a preliminary response within a time period set by the Director.

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

''§ 314. Institution of inter partes review

''(a) THRESHOLD.—The Director may not authorize an inter partes review to commence unless the Director determines that the information presented in the petition filed under section 311 and any response filed under section 313 shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.

''(b) TIMING.—The Director shall determine whether to institute an inter partes review under this chapter within 3 months after receiving a preliminary response under section 313 or, if none is filed, within three months after the expiration of the time for filing such a response.

''(c) NOTICE.—The Director shall notify the petitioner and patent owner, in writing, of the Director's determination under subsection (a), and shall make such notice available to the public as soon as is practicable. Such notice shall list the date on which the review shall commence.

''(d) NO APPEAL.—The determination by the Director whether to institute an inter partes review under this section shall be final and nonappealable.

''§ 315. Relation to other proceedings or actions

''(a) INFRINGER'S ACTION.—An inter partes review may not be instituted or maintained if the petitioner or real party in interest has filed a civil action challenging the validity of a claim of the patent.

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

''(c) JOINDER.—If the Director institutes an inter partes review, the Director, in his discretion, may join as a party to that inter

partes review any person who properly files a petition under section 311 that the Director, after receiving a preliminary response under section 313 or the expiration of the time for filing such a response, determines warrants the institution of an inter partes review under section 314.

''(d) MULTIPLE PROCEEDINGS.—Notwithstanding sections 135(a), 251, and 252, and chapter 30, during the pendency of an inter partes review, if another proceeding or matter involving the patent is before the Office, the Director may determine the manner in which the inter partes review or other proceeding or matter may proceed, including providing for stay, transfer, consolidation, or termination of any such matter or proceeding.

''(e) ESTOPPEL.—

''(1) PROCEEDINGS BEFORE THE OFFICE.—The petitioner in an inter partes review under this chapter, or his real party in interest or privy, may not request or maintain a proceeding before the Office with respect to a claim on any ground that the petitioner raised or reasonably could have raised during an inter partes review of the claim that resulted in a final written decision under section 318(a).

''(2) CIVIL ACTIONS AND OTHER PROCEEDINGS.—The petitioner in an inter partes review under this chapter, or his real party in interest or privy, may not assert either in a civil action arising in whole or in part under section 1338 of title 28 or in a proceeding before the International Trade Commission that a claim in a patent is invalid on any ground that the petitioner raised or reasonably could have raised during an inter partes review of the claim that resulted in a final written decision under section 318(a).

''§ 316. Conduct of inter partes review

''(a) REGULATIONS.—The Director shall prescribe regulations—

''(1) providing that the file of any proceeding under this chapter shall be made available to the public, except that any petition or document filed with the intent that it be sealed shall be accompanied by a motion to seal, and such petition or document shall be treated as sealed pending the outcome of the ruling on the motion;

''(2) setting forth the standards for the showing of sufficient grounds to institute a review under section 314(a);

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

''(4) in accordance with section 2(b)(2), establishing and governing inter partes review under this chapter and the relationship of such review to other proceedings under this title;

''(5) setting a time period for requesting joinder under section 315(c);

''(6) setting forth standards and procedures for discovery of relevant evidence, including that such discovery shall be limited to—

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

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

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

''(8) providing for protective orders governing the exchange and submission of confidential information;

''(9) allowing the patent owner to file a response to the petition after an inter partes review has been instituted, and requiring that the patent owner file with such response, through affidavits or declarations, any additional factual evidence and expert opinions on which the patent owner relies in support of the response;

''(10) setting forth standards and procedures for allowing the patent owner to move to amend the patent under subsection (d) to cancel a challenged claim or propose a reasonable number of substitute claims, and ensuring that any information submitted by the patent owner in support of any amendment entered under subsection (d) is made available to the public as part of the prosecution history of the patent;

''(11) providing either party with the right to an oral hearing as part of the proceeding; and

''(12) requiring that the final determination in an inter partes review be issued not later than 1 year after the date on which the Director notices the institution of a review under this chapter, except that the Director may, for good cause shown, extend the 1-year period by not more than 6 months, and may adjust the time periods in this paragraph in the case of joinder under section 315(c).

''(b) CONSIDERATIONS.—In prescribing regulations under this section, the Director shall consider the effect of any such regulation on the economy, the integrity of the patent system, the efficient administration of the Office, and the ability of the Office to timely complete proceedings instituted under this chapter.

''(c) PATENT TRIAL AND APPEAL BOARD.—The Patent Trial and Appeal Board shall, in accordance with section 6, conduct each proceeding authorized by the Director.

''(d) AMENDMENT OF THE PATENT.—

''(1) IN GENERAL.—During an inter partes review instituted under this chapter, the patent owner may file 1 motion to amend the patent in 1 or more of the following ways:

''(A) Cancel any challenged patent claim.

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

''(2) ADDITIONAL MOTIONS.—Additional motions to amend may be permitted upon the joint request of the petitioner and the patent owner to materially advance the settlement of a proceeding under section 317, or as permitted by regulations prescribed by the Director.

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

''(e) EVIDENTIARY STANDARDS.—In an inter partes review instituted under this chapter, the petitioner shall have the burden of proving a proposition of unpatentability by a preponderance of the evidence.

''§ 317. Settlement

''(a) IN GENERAL.—An inter partes review instituted under this chapter shall be terminated with respect to any petitioner upon the joint request of the petitioner and the patent owner, unless the Office has decided the merits of the proceeding before the request for termination is filed. If the inter partes review is terminated with respect to a petitioner under this section, no estoppel under section 315(e) shall apply to that petitioner. If no petitioner remains in the inter partes review, the Office may terminate the review or proceed to a final written decision under section 318(a).

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

''§ 318. Decision of the board

''(a) FINAL WRITTEN DECISION.—If an inter partes review is instituted and not dismissed under this chapter, the Patent Trial and Appeal Board shall issue a final written decision with respect to the patentability of any patent claim challenged by the petitioner and any new claim added under section 316(d).

''(b) CERTIFICATE.—If the Patent Trial and Appeal Board issues a final written decision under subsection (a) and the time for appeal has expired or any appeal has terminated, the Director shall issue and publish a certificate canceling any claim of the patent finally determined to be unpatentable, confirming any claim of the patent determined to be patentable, and incorporating in the patent by operation of the certificate any new or amended claim determined to be patentable.

''§ 319. Appeal

''A party dissatisfied with the final written decision of the Patent Trial and Appeal Board under section 318(a) may appeal the decision pursuant to sections 141 through 144. Any party to the inter partes review shall have the right to be a party to the appeal.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of chapters for part III of title 35, United States Code, is amended by striking the item relating to chapter 31 and inserting the following:

''31. Inter Partes Review 311.''.

(c) REGULATIONS AND EFFECTIVE DATE.—

(1) REGULATIONS.—The Director shall, not later than the date that is 1 year after the date of the enactment of this Act, issue regulations to carry out chapter 31 of title 35, United States Code, as amended by subsection (a) of this section.

(2) APPLICABILITY.—

(A) IN GENERAL.—The amendments made by subsection (a) shall take effect on the date that is 1 year after the date of the enactment of this Act and shall apply to all patents issued before, on, or after the effective date of subsection (a).

(B) EXCEPTION.—The provisions of chapter 31 of title 35, United States Code, as amended by paragraph (3), shall continue to apply to requests for inter partes reexamination that are filed prior to the effective date of subsection (a) as if subsection (a) had not been enacted.

(C) GRADUATED IMPLEMENTATION.—The Director may impose a limit on the number of inter partes reviews that may be instituted during each of the first 4 years following the effective date of subsection (a), provided that such number shall in each year be equivalent to or greater than the number of inter partes reexaminations that are ordered in the last full fiscal year prior to the effective date of subsection (a).

(3) TRANSITION.—

(A) IN GENERAL.—Chapter 31 of title 35, United States Code, is amended—

(i) in section 312—

(I) in subsection (a)—

(aa) in the first sentence, by striking ''a substantial new question of patentability affecting any claim of the patent concerned is raised by the request,'' and inserting ''the information presented in the request shows that there is a reasonable likelihood that the requester would prevail with respect to at least 1 of the claims challenged in the request,''; and

(bb) in the second sentence, by striking ''The existence of a substantial new question

of patentability'' and inserting ''A showing that there is a reasonable likelihood that the requester would prevail with respect to at least 1 of the claims challenged in the request''; and

(II) in subsection (c), in the second sentence, by striking ''no substantial new question of patentability has been raised,'' and inserting ''the showing required by subsection (a) has not been made,''; and

(ii) in section 313, by striking ''a substantial new question of patentability affecting a claim of the patent is raised'' and inserting ''it has been shown that there is a reasonable likelihood that the requester would prevail with respect to at least 1 of the claims challenged in the request''.

(B) APPLICATION.—The amendments made by this paragraph shall apply to requests for inter partes reexamination that are filed on or after the date of the enactment of this Act, but prior to the effective date of subsection (a).

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

''CHAPTER 32—POST-GRANT REVIEW

''§ 321. Post-grant review

''(a) IN GENERAL.—Subject to the provisions of this chapter, a person who is not the patent owner may file with the Office a petition to institute a post-grant review for a patent. The Director shall establish, by regulation, fees to be paid by the person requesting the review, in such amounts as the Director determines to be reasonable, considering the aggregate costs of the post-grant review.

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

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

''§ 322. Petitions

''(a) REQUIREMENTS OF PETITION.—A petition filed under section 321 may be considered only if—

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

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

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

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

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

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

''(5) the petitioner provides copies of any of the documents required under paragraphs (2), (3), and (4) to the patent owner or, if applicable, the designated representative of the patent owner.

''(b) PUBLIC AVAILABILITY.—As soon as practicable after the receipt of a petition under section 321, the Director shall make the petition available to the public.

''§ 323. Preliminary response to petition

''(a) PRELIMINARY RESPONSE.—If a post-grant review petition is filed under section 321, the patent owner shall have the right to file a preliminary response within 2 months of the filing of the petition.

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

''§ 324. Institution of post-grant review

''(a) THRESHOLD.—The Director may not authorize a post-grant review to commence unless the Director determines that the information presented in the petition, if such information is not rebutted, would demonstrate that it is more likely than not that at least 1 of the claims challenged in the petition is unpatentable.

''(b) ADDITIONAL GROUNDS.—The determination required under subsection (a) may also be satisfied by a showing that the petition raises a novel or unsettled legal question that is important to other patents or patent applications.

''(c) TIMING.—The Director shall determine whether to institute a post-grant review under this chapter within 3 months after receiving a preliminary response under section 323 or, if none is filed, the expiration of the time for filing such a response.

''(d) NOTICE.—The Director shall notify the petitioner and patent owner, in writing, of the Director's determination under subsection (a) or (b), and shall make such notice available to the public as soon as is practicable. The Director shall make each notice of the institution of a post-grant review available to the public. Such notice shall list the date on which the review shall commence.

''(e) NO APPEAL.—The determination by the Director whether to institute a post-grant review under this section shall be final and nonappealable.

''§ 325. Relation to other proceedings or actions

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

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

''(c) JOINDER.—If more than 1 petition for a post-grant review is properly filed against the same patent and the Director determines that more than 1 of these petitions warrants the institution of a post-grant review under section 324, the Director may consolidate such reviews into a single post-grant review.

''(d) MULTIPLE PROCEEDINGS.—Notwithstanding sections 135(a), 251, and 252, and chapter 30, during the pendency of any post-grant review, if another proceeding or matter involving the patent is before the Office, the Director may determine the manner in which the post-grant review or other proceeding or matter may proceed, including providing for stay, transfer, consolidation, or termination of any such matter or proceeding. In determining whether to institute or order a proceeding under this chapter, chapter 30, or chapter 31, the Director may take into account whether, and reject the petition or request because, the same or substantially the same prior art or arguments previously were presented to the Office.

''(e) ESTOPPEL.—

''(1) PROCEEDINGS BEFORE THE OFFICE.—The petitioner in a post-grant review under this chapter, or his real party in interest or privy, may not request or maintain a proceeding before the Office with respect to a claim on any ground that the petitioner raised or reasonably could have raised during a post-grant review of the claim that resulted in a final written decision under section 328(a).

''(2) CIVIL ACTIONS AND OTHER PROCEEDINGS.—The petitioner in a post-grant review under this chapter, or his real party in interest or privy, may not assert either in a civil action arising in whole or in part under section 1338 of title 28 or in a proceeding before the International Trade Commission that a claim in a patent is invalid on any ground that the petitioner raised during a post-grant review of the claim that resulted in a final written decision under section 328(a).

''(f) PRELIMINARY INJUNCTIONS.—If a civil action alleging infringement of a patent is filed within 3 months of the grant of the patent, the court may not stay its consideration of the patent owner's motion for a preliminary injunction against infringement of the patent on the basis that a petition for post-grant review has been filed or that such a proceeding has been instituted.

''(g) REISSUE PATENTS.—A post-grant review may not be instituted if the petition requests cancellation of a claim in a reissue patent that is identical to or narrower than a claim in the original patent from which the reissue patent was issued, and the time limitations in section 321(c) would bar filing a petition for a post-grant review for such original patent.

''§ 326. Conduct of post-grant review

''(a) REGULATIONS.—The Director shall prescribe regulations—

''(1) providing that the file of any proceeding under this chapter shall be made available to the public, except that any petition or document filed with the intent that it be sealed shall be accompanied by a motion to seal, and such petition or document shall be treated as sealed pending the outcome of the ruling on the motion;

''(2) setting forth the standards for the showing of sufficient grounds to institute a review under subsections (a) and (b) of section 324;

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

''(4) in accordance with section 2(b)(2), establishing and governing a post-grant review under this chapter and the relationship of such review to other proceedings under this title;

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

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

''(7) providing for protective orders governing the exchange and submission of confidential information;

''(8) allowing the patent owner to file a response to the petition after a post-grant review has been instituted, and requiring that the patent owner file with such response,

through affidavits or declarations, any additional factual evidence and expert opinions on which the patent owner relies in support of the response;

''(9) setting forth standards and procedures for allowing the patent owner to move to amend the patent under subsection (d) to cancel a challenged claim or propose a reasonable number of substitute claims, and ensuring that any information submitted by the patent owner in support of any amendment entered under subsection (d) is made available to the public as part of the prosecution history of the patent;

''(10) providing either party with the right to an oral hearing as part of the proceeding; and

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

''(b) CONSIDERATIONS.—In prescribing regulations under this section, the Director shall consider the effect of any such regulation on the economy, the integrity of the patent system, the efficient administration of the Office, and the ability of the Office to timely complete proceedings instituted under this chapter.

''(c) PATENT TRIAL AND APPEAL BOARD.—The Patent Trial and Appeal Board shall, in accordance with section 6, conduct each proceeding authorized by the Director.

''(d) AMENDMENT OF THE PATENT.—

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

''(A) Cancel any challenged patent claim.

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

''(2) ADDITIONAL MOTIONS.—Additional motions to amend may be permitted upon the joint request of the petitioner and the patent owner to materially advance the settlement of a proceeding under section 327, or upon the request of the patent owner for good cause shown.

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

''(e) EVIDENTIARY STANDARDS.—In a post-grant review instituted under this chapter, the petitioner shall have the burden of proving a proposition of unpatentability by a preponderance of the evidence.

''§ 327. Settlement

''(a) IN GENERAL.—A post-grant review instituted under this chapter shall be terminated with respect to any petitioner upon the joint request of the petitioner and the patent owner, unless the Office has decided the merits of the proceeding before the request for termination is filed. If the post-grant review is terminated with respect to a petitioner under this section, no estoppel under section 325(e) shall apply to that petitioner. If no petitioner remains in the post-grant review, the Office may terminate the post-grant review or proceed to a final written decision under section 328(a).

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

''§ 328. Decision of the board

''(a) FINAL WRITTEN DECISION.—If a post-grant review is instituted and not dismissed under this chapter, the Patent Trial and Appeal Board shall issue a final written decision with respect to the patentability of any patent claim challenged by the petitioner and any new claim added under section 326(d).

''(b) CERTIFICATE.—If the Patent Trial and Appeal Board issues a final written decision under subsection (a) and the time for appeal has expired or any appeal has terminated, the Director shall issue and publish a certificate canceling any claim of the patent finally determined to be unpatentable, confirming any claim of the patent determined to be patentable, and incorporating in the patent by operation of the certificate any new or amended claim determined to be patentable.

''§ 329. Appeal

''A party dissatisfied with the final written decision of the Patent Trial and Appeal Board under section 328(a) may appeal the decision pursuant to sections 141 through 144. Any party to the post-grant review shall have the right to be a party to the appeal.''.

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

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

(f) REGULATIONS AND EFFECTIVE DATE.—

(1) REGULATIONS.—The Director shall, not later than the date that is 1 year after the date of the enactment of this Act, issue regulations to carry out chapter 32 of title 35, United States Code, as added by subsection (d) of this section.

(2) APPLICABILITY.—The amendments made by subsection (d) shall take effect on the date that is 1 year after the date of the enactment of this Act and shall apply only to patents issued on or after that date. The Director may impose a limit on the number of post-grant reviews that may be instituted during each of the 4 years following the effective date of subsection (d).

(3) PENDING INTERFERENCES.—The Director shall determine the procedures under which interferences commenced before the effective date of subsection (d) are to proceed, including whether any such interference is to be dismissed without prejudice to the filing of a petition for a post-grant review under chapter 32 of title 35, United States Code, or is to proceed as if this Act had not been enacted. The Director shall include such procedures in regulations issued under paragraph (1). For purposes of an interference that is commenced before the effective date of subsection (d), the Director may deem the Patent Trial and Appeal Board to be the Board of Patent Appeals and Interferences, and may allow the Patent Trial and Appeal Board to conduct any further proceedings in that interference. The authorization to appeal or have remedy from derivation proceedings in sections 141(d) and 146 of title 35, United States Code, and the jurisdiction to entertain appeals from derivation proceedings in section 1295(a)(4)(A) of title 28, United States Code, shall be deemed to extend to final decisions in interferences that are commenced before the effective date of subsection (d) and that are not dismissed pursuant to this paragraph.

(g) CITATION OF PRIOR ART AND WRITTEN STATEMENTS.—

(1) IN GENERAL.—Section 301 of title 35, United States Code, is amended to read as follows:

''§ 301. Citation of prior art and written statements

''(a) IN GENERAL.—Any person at any time may cite to the Office in writing—

''(1) prior art consisting of patents or printed publications which that person believes to have a bearing on the patentability of any claim of a particular patent; or

''(2) statements of the patent owner filed in a proceeding before a Federal court or the Office in which the patent owner took a position on the scope of any claim of a particular patent.

''(b) OFFICIAL FILE.—If the person citing prior art or written statements pursuant to subsection (a) explains in writing the pertinence and manner of applying the prior art or written statements to at least 1 claim of the patent, the citation of the prior art or written statements and the explanation thereof shall become a part of the official file of the patent.

''(c) ADDITIONAL INFORMATION.—A party that submits a written statement pursuant to subsection (a)(2) shall include any other documents, pleadings, or evidence from the proceeding in which the statement was filed that addresses the written statement.

''(d) LIMITATIONS.—A written statement submitted pursuant to subsection (a)(2), and additional information submitted pursuant to subsection (c), shall not be considered by the Office for any purpose other than to determine the proper meaning of a patent claim in a proceeding that is ordered or instituted pursuant to section 304, 314, or 324. If any such written statement or additional information is subject to an applicable protective order, it shall be redacted to exclude information that is subject to that order.

''(e) CONFIDENTIALITY.—Upon the written request of the person citing prior art or written statements pursuant to subsection (a), that person's identity shall be excluded from the patent file and kept confidential.''.

(2) EFFECTIVE DATE.—The amendment made by this subsection shall take effect 1 year after the date of the enactment of this Act and shall apply to patents issued before, on, or after that effective date.

(h) REEXAMINATION.—

(1) DETERMINATION BY DIRECTOR.—

(A) IN GENERAL.—Section 303(a) of title 35, United States Code, is amended by striking ''section 301 of this title'' and inserting ''section 301 or 302''.

(B) EFFECTIVE DATE.—The amendment made by this paragraph shall take effect 1 year after the date of the enactment of this Act and shall apply to patents issued before, on, or after that effective date.

(2) APPEAL.—

(A) IN GENERAL.—Section 306 of title 35, United States Code, is amended by striking ''145'' and inserting ''144''.

(B) EFFECTIVE DATE.—The amendment made by this paragraph shall take effect on the date of enactment of this Act and shall apply to appeals of reexaminations that are pending before the Board of Patent Appeals and Interferences or the Patent Trial and Appeal Board on or after the date of the enactment of this Act.

SEC. 6. PATENT TRIAL AND APPEAL BOARD.

(a) COMPOSITION AND DUTIES.—Section 6 of title 35, United States Code, is amended to read as follows:

''§ 6. Patent Trial and Appeal Board

''(a) There shall be in the Office a Patent Trial and Appeal Board. The Director, the Deputy Director, the Commissioner for Patents, the Commissioner for Trademarks, and

the administrative patent judges shall constitute the Patent Trial and Appeal Board. The administrative patent judges shall be persons of competent legal knowledge and scientific ability who are appointed by the Secretary, in consultation with the Director. Any reference in any Federal law, Executive order, rule, regulation, or delegation of authority, or any document of or pertaining to the Board of Patent Appeals and Interferences is deemed to refer to the Patent Trial and Appeal Board.

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

''(1) on written appeal of an applicant, review adverse decisions of examiners upon applications for patents pursuant to section 134(a);

''(2) review appeals of reexaminations pursuant to section 134(b);

''(3) conduct derivation proceedings pursuant to section 135; and

''(4) conduct inter partes reviews and post-grant reviews pursuant to chapters 31 and 32.

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

''(d) The Secretary of Commerce may, in his discretion, deem the appointment of an administrative patent judge who, before the date of the enactment of this subsection, held office pursuant to an appointment by the Director to take effect on the date on which the Director initially appointed the administrative patent judge. It shall be a defense to a challenge to the appointment of an administrative patent judge on the basis of the judge's having been originally appointed by the Director that the administrative patent judge so appointed was acting as a de facto officer.''.

(b) ADMINISTRATIVE APPEALS.—Section 134 of title 35, United States Code, is amended—

(1) in subsection (b), by striking ''any reexamination proceeding'' and inserting ''a reexamination''; and

(2) by striking subsection (c).

(c) CIRCUIT APPEALS.—

(1) IN GENERAL.—Section 141 of title 35, United States Code, is amended to read as follows:

''§ 141. Appeal to the Court of Appeals for the Federal Circuit

''(a) EXAMINATIONS.—An applicant who is dissatisfied with the final decision in an appeal to the Patent Trial and Appeal Board under section 134(a) may appeal the Board's decision to the United States Court of Appeals for the Federal Circuit. By filing such an appeal, the applicant waives his right to proceed under section 145.

''(b) REEXAMINATIONS.—A patent owner who is dissatisfied with the final decision in an appeal of a reexamination to the Patent Trial and Appeal Board under section 134(b) may appeal the Board's decision only to the United States Court of Appeals for the Federal Circuit.

''(c) POST-GRANT AND INTER PARTES REVIEWS.—A party to a post-grant or inter partes review who is dissatisfied with the final written decision of the Patent Trial and Appeal Board under section 318(a) or 328(a) may appeal the Board's decision only to the United States Court of Appeals for the Federal Circuit.

''(d) DERIVATION PROCEEDINGS.—A party to a derivation proceeding who is dissatisfied with the final decision of the Patent Trial and Appeal Board on the proceeding may appeal the decision to the United States Court of Appeals for the Federal Circuit, but such appeal shall be dismissed if any adverse party to such derivation proceeding, within 20 days after the appellant has filed notice of appeal in accordance with section 142, files notice with the Director that the party elects to have all further proceedings conducted as provided in section 146. If the appellant does not, within 30 days after the filing of such notice by the adverse party, file a civil action under section 146, the Board's decision shall govern the further proceedings in the case.''.

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

''(A) the Patent Trial and Appeal Board of the United States Patent and Trademark Office with respect to patent applications, derivation proceedings, reexaminations, post-grant reviews, and inter partes reviews at the instance of a party who exercised his right to participate in a proceeding before or appeal to the Board, except that an applicant or a party to a derivation proceeding may also have remedy by civil action pursuant to section 145 or 146 of title 35. An appeal under this subparagraph of a decision of the Board with respect to an application or derivation proceeding shall waive the right of such applicant or party to proceed under section 145 or 146 of title 35;''.

(3) PROCEEDINGS ON APPEAL.—Section 143 of title 35, United States Code, is amended—

(A) by striking the third sentence and inserting the following: ''In an ex parte case, the Director shall submit to the court in writing the grounds for the decision of the Patent and Trademark Office, addressing all of the issues raised in the appeal. The Director shall have the right to intervene in an appeal from a decision entered by the Patent Trial and Appeal Board in a derivation proceeding under section 135 or in an inter partes or post-grant review under chapter 31 or 32.''; and

(B) by repealing the second of the two identical fourth sentences.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect 1 year after the date of the enactment of this Act and shall apply to proceedings commenced on or after that effective date, except that—

(1) the extension of jurisdiction to the United States Court of Appeals for the Federal Circuit to entertain appeals of decisions of the Patent Trial and Appeal Board in reexaminations under the amendment made by subsection (c)(2) shall be deemed to take effect on the date of enactment of this Act and shall extend to any decision of the Board of Patent Appeals and Interferences with respect to a reexamination that is entered before, on, or after the date of the enactment of this Act;

(2) the provisions of sections 6, 134, and 141 of title 35, United States Code, in effect on the day prior to the date of the enactment of this Act shall continue to apply to inter partes reexaminations that are requested under section 311 prior to the date that is 1 year after the date of the enactment of this Act;

(3) the Patent Trial and Appeal Board may be deemed to be the Board of Patent Appeals and Interferences for purposes of appeals of inter partes reexaminations that are requested under section 311 prior to the date that is 1 year after the date of the enactment of this Act; and

(4) the Director's right under the last sentence of section 143 of title 35, United States Code, as amended by subsection (c)(3), to intervene in an appeal from a decision entered by the Patent Trial and Appeal Board shall be deemed to extend to inter partes reexaminations that are requested under section 311 prior to the date that is 1 year after the date of the enactment of this Act.

SEC. 7. PREISSUANCE SUBMISSIONS BY THIRD PARTIES.

(a) IN GENERAL.—Section 122 of title 35, United States Code, is amended by adding at the end the following:

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

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

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

''(B) the later of—

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

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

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

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

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

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

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect 1 year after the date of the enactment of this Act and shall apply to patent applications filed before, on, or after that effective date.

SEC. 8. VENUE.

(a) CHANGE OF VENUE.—Section 1400 of title 28, Unite States Code, is amended by adding at the end the following:

''(c) CHANGE OF VENUE.—For the convenience of parties and witnesses, in the interest of justice, a district court shall transfer any civil action arising under any Act of Congress relating to patents upon a showing that the transferee venue is clearly more convenient than the venue in which the civil action is pending.''.

(b) TECHNICAL AMENDMENTS RELATING TO VENUE.—Sections 32, 145, 146, 154(b)(4)(A), and 293 of title 35, United States Code, and section 21(b)(4) of the Act entitled ''An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes'', approved July 5, 1946 (commonly referred to as the ''Trademark Act of 1946'' or the ''Lanham Act''; 15 U.S.C. 1071(b)(4)), are each amended by striking ''United States District Court for the District of Columbia'' each place that term appears and inserting ''United States District Court for the Eastern District of Virginia''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect upon the date of the enactment of this Act and shall apply to civil actions commenced on or after that date.

SEC. 9. FEE SETTING AUTHORITY.

(a) FEE SETTING.—

(1) IN GENERAL.—The Director shall have authority to set or adjust by rule any fee established or charged by the Office under sections 41 and 376 of title 35, United States Code, or under section 31 of the Trademark Act of 1946 (15 U.S.C. 1113), or any other fee established or charged by the Office under any other provision of law, notwithstanding the fee amounts established or charged thereunder, for the filing or processing of

any submission to, and for all other services performed by or materials furnished by, the Office, provided that patent and trademark fee amounts are in the aggregate set to recover the estimated cost to the Office for processing, activities, services and materials relating to patents and trademarks, respectively, including proportionate shares of the administrative costs of the Office.

(2) SMALL AND MICRO ENTITIES.—The fees established under paragraph (1) for filing, processing, issuing, and maintaining patent applications and patents shall be reduced by 50 percent with respect to their application to any small entity that qualifies for reduced fees under section 41(h)(1) of title 35, United States Code, and shall be reduced by 75 percent with respect to their application to any micro entity as defined in section 123 of that title.

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

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

(B) after the consultation required under subparagraph (A), may reduce such fees.

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

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

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

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

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

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

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

(E) notify, through the Chair and Ranking Member of the Senate and House Judiciary Committees, the Congress of any final rule setting or adjusting fees under paragraph (1).

(5) PUBLICATION IN THE FEDERAL REGISTER.—

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

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

(i) be published in the Federal Register; and

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

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

(6) CONGRESSIONAL COMMENT PERIOD.—Following the notification described in paragraph (3)(E), Congress shall have not more than 45 days to consider and comment on any final rule setting or adjusting fees under paragraph (1). No fee set or adjusted under paragraph (1) shall be effective prior to the end of such 45-day comment period.

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

(A) an applicant's rights under title 35, United States Code, or the Trademark Act of 1946; or

(B) any rights under a ratified treaty.

(b) FEES FOR PATENT SERVICES.—Division B of Public Law 108–447 is amended in title VIII of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2005—

(1) in subsections (a), (b), and (c) of section 801, by—

(A) striking ''During'' and all that follows through '' 2006, subsection'' and inserting ''Subsection''; and

(B) striking ''shall be administered as though that subsection reads'' and inserting ''is amended to read'';

(2) in subsection (d) of section 801, by striking ''During'' and all that follows through '' 2006, subsection'' and inserting ''Subsection''; and

(3) in subsection (e) of section 801, by—

(A) striking ''During'' and all that follows through ''2006, subsection'' and inserting ''Subsection''; and

(B) striking ''shall be administered as though that subsection''.

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

(d) EFFECTIVE DATE, APPLICABILITY, AND TRANSITION PROVISIONS.—Division B of Public Law 108–447 is amended in title VIII of the Departments of Commerce, Justice and State, the Judiciary and Related Agencies Appropriations Act, 2005, in section 803(a) by striking ''and shall apply only with respect to the remaining portion of fiscal year 2005, 2006 and 2007''.

(e) STATUTORY AUTHORITY.—Section 41(d)(1)(A) of title 35, United States Code, is amended by striking '', and the Director may not increase any such fee thereafter''.

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

(g) DEFINITIONS.—In this section, the following definitions shall apply:

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

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

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

(h) ELECTRONIC FILING INCENTIVE.—

(1) IN GENERAL.—Notwithstanding any other provision of this section, a fee of $400 shall be established for each application for an original patent, except for a design, plant, or provisional application, that is not filed by electronic means as prescribed by the Director. The fee established by this subsection shall be reduced 50 percent for small entities that qualify for reduced fees under section 41(h)(1) of title 35, United States Code. All fees paid under this subsection shall be deposited in the Treasury as an offsetting receipt that shall not be available for obligation or expenditure.

(2) EFFECTIVE DATE.—This subsection shall become effective 60 days after the date of the enactment of this Act.

(i) EFFECTIVE DATE.—Except as provided in subsection (h), the provisions of this section shall take effect upon the date of the enactment of this Act.

SEC. 10. SUPPLEMENTAL EXAMINATION.

(a) IN GENERAL.—Chapter 25 of title 35, United States Code, is amended by adding at the end the following:

''§ 257. Supplemental examinations to consider, reconsider, or correct information

''(a) IN GENERAL.—A patent owner may request supplemental examination of a patent in the Office to consider, reconsider, or correct information believed to be relevant to the patent. Within 3 months of the date a request for supplemental examination meeting the requirements of this section is received, the Director shall conduct the supplemental examination and shall conclude such examination by issuing a certificate indicating whether the information presented in the request raises a substantial new question of patentability.

''(b) REEXAMINATION ORDERED.—If a substantial new question of patentability is raised by 1 or more items of information in the request, the Director shall order reexamination of the patent. The reexamination shall be conducted according to procedures established by chapter 30, except that the patent owner shall not have the right to file a statement pursuant to section 304. During the reexamination, the Director shall address each substantial new question of patentability identified during the supplemental examination, notwithstanding the limitations therein relating to patents and printed publication or any other provision of chapter 30.

''(c) EFFECT.—

''(1) IN GENERAL.—A patent shall not be held unenforceable on the basis of conduct relating to information that had not been considered, was inadequately considered, or was incorrect in a prior examination of the patent if the information was considered, reconsidered, or corrected during a supplemental examination of the patent. The making of a request under subsection (a), or the absence thereof, shall not be relevant to enforceability of the patent under section 282.

''(2) EXCEPTIONS.—

''(A) PRIOR ALLEGATIONS.—This subsection shall not apply to an allegation pled with particularity, or set forth with particularity in a notice received by the patent owner under section 505(j)(2)(B)(iv)(II) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(2)(B)(iv)(II)), before the date of a supplemental-examination request under subsection (a) to consider, reconsider, or correct information forming the basis for the allegation.

''(B) PATENT ENFORCEMENT ACTIONS.—In an action brought under section 337(a) of the Tariff Act of 1930 (19 U.S.C. 1337(a)), or section 281 of this title, this subsection shall not apply to any defense raised in the action that is based upon information that was considered, reconsidered, or corrected pursuant to a supplemental-examination request under subsection (a) unless the supplemental examination, and any reexamination ordered pursuant to the request, are concluded before the date on which the action is brought.

''(d) FEES AND REGULATIONS.—The Director shall, by regulation, establish fees for the submission of a request for supplemental examination of a patent, and to consider each item of information submitted in the request. If reexamination is ordered pursuant

to subsection (a), fees established and applicable to ex parte reexamination proceedings under chapter 30 shall be paid in addition to fees applicable to supplemental examination. The Director shall promulgate regulations governing the form, content, and other requirements of requests for supplemental examination, and establishing procedures for conducting review of information submitted in such requests.

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

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

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

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

(b) EFFECTIVE DATE.—This section shall take effect 1 year after the date of the enactment of this Act and shall apply to patents issued before, on, or after that date.

SEC. 11. RESIDENCY OF FEDERAL CIRCUIT JUDGES.

(a) RESIDENCY.—The second sentence of section 44(c) of title 28, United States Code, is repealed.

(b) FACILITIES.—Section 44 of title 28, United States Code, is amended by adding at the end the following:

''(e)(1) The Director of the Administrative Office of the United States Courts shall provide—

''(A) a judge of the Federal judicial circuit who lives within 50 miles of the District of Columbia with appropriate facilities and administrative support services in the District of the District of Columbia; and

''(B) a judge of the Federal judicial circuit who does not live within 50 miles of the District of Columbia with appropriate facilities and administrative support services—

''(i) in the district and division in which that judge resides; or

''(ii) if appropriate facilities are not available in the district and division in which that judge resides, in the district and division closest to the residence of that judge in which such facilities are available, as determined by the Director.

''(2) Nothing in this subsection may be construed to authorize or require the construction of new facilities.''.

SEC. 12. MICRO ENTITY DEFINED.

Chapter 11 of title 35, United States Code, is amended by adding at the end the following new section:

''§ 123. Micro entity defined

''(a) IN GENERAL.—For purposes of this title, the term 'micro entity' means an applicant who makes a certification under either subsection (b) or (c).

''(b) UNASSIGNED APPLICATION.—For an unassigned application, each applicant shall certify that the applicant—

''(1) qualifies as a small entity, as defined in regulations issued by the Director;

''(2) has not been named on 5 or more previously filed patent applications;

''(3) has not assigned, granted, or conveyed, and is not under an obligation by contract or law to assign, grant, or convey, a license or any other ownership interest in the particular application; and

''(4) does not have a gross income, as defined in section 61(a) of the Internal Revenue Code (26 U.S.C. 61(a)), exceeding 2.5 times the average gross income, as reported by the Department of Labor, in the calendar year immediately preceding the calendar year in which the examination fee is being paid.

''(c) ASSIGNED APPLICATION.—For an assigned application, each applicant shall certify that the applicant—

''(1) qualifies as a small entity, as defined in regulations issued by the Director, and meets the requirements of subsection (b)(4);

''(2) has not been named on 5 or more previously filed patent applications; and

''(3) has assigned, granted, conveyed, or is under an obligation by contract or law to assign, grant, or convey, a license or other ownership interest in the particular application to an entity that has 5 or fewer employees and that such entity has a gross income, as defined in section 61(a) of the Internal Revenue Code (26 U.S.C. 61(a)), that does not exceed 2.5 times the average gross income, as reported by the Department of Labor, in the calendar year immediately preceding the calendar year in which the examination fee is being paid.

''(d) INCOME LEVEL ADJUSTMENT.—The gross income levels established under subsections (b) and (c) shall be adjusted by the Director on October 1, 2009, and every year thereafter, to reflect any fluctuations occurring during the previous 12 months in the Consumer Price Index, as determined by the Secretary of Labor.''.

SEC. 13. FUNDING AGREEMENTS.

(a) IN GENERAL.—Section 202(c)(7)(E)(i) of title 35, United States Code, is amended—

(1) by striking ''75 percent'' and inserting ''15 percent''; and

(2) by striking ''25 percent'' and inserting ''85 percent''.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of enactment of this Act and shall apply to patents issued before, on, or after that date.

SEC. 14. TAX STRATEGIES DEEMED WITHIN THE PRIOR ART.

(a) IN GENERAL.—For purposes of evaluating an invention under section 102 or 103 of title 35, United States Code, any strategy for reducing, avoiding, or deferring tax liability, whether known or unknown at the time of the invention or application for patent, shall be deemed insufficient to differentiate a claimed invention from the prior art.

(b) DEFINITION.—For purposes of this section, the term ''tax liability'' refers to any liability for a tax under any Federal, State, or local law, or the law of any foreign jurisdiction, including any statute, rule, regulation, or ordinance that levies, imposes, or assesses such tax liability.

(c) EFFECTIVE DATE; APPLICABILITY.—This section shall take effect on the date of enactment of this Act and shall apply to any patent application pending and any patent issued on or after that date.

SEC. 15. BEST MODE REQUIREMENT.

(a) IN GENERAL.—Section 282 of title 35, United State Code, is amended in its second undesignated paragraph by striking paragraph (3) and inserting the following:

''(3) Invalidity of the patent or any claim in suit for failure to comply with—

''(A) any requirement of section 112, except that the failure to disclose the best mode shall not be a basis on which any claim of a patent may be canceled or held invalid or otherwise unenforceable; or

''(B) any requirement of section 251.''.

(b) CONFORMING AMENDMENT.—Sections 119(e)(1) and 120 of title 35, United States Code, are each amended by striking ''the first paragraph of section 112 of this title'' and inserting ''section 112(a) (other than the requirement to disclose the best mode)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect upon the date of the enactment of this Act and shall apply to proceedings commenced on or after that date.

SEC. 16. TECHNICAL AMENDMENTS.

(a) JOINT INVENTIONS.—Section 116 of title 35, United States Code, is amended—

(1) in the first paragraph, by striking ''When'' and inserting ''(a) JOINT INVENTIONS.—When'';

(2) in the second paragraph, by striking ''If a joint inventor'' and inserting ''(b) OMITTED INVENTOR.—If a joint inventor''; and

(3) in the third paragraph—

(A) by striking ''Whenever'' and inserting ''(c) CORRECTION OF ERRORS IN APPLICATION.—Whenever''; and

(B) by striking ''and such error arose without any deceptive intent on his part,''.

(b) FILING OF APPLICATION IN FOREIGN COUNTRY.—Section 184 of title 35, United States Code, is amended—

(1) in the first paragraph—

(A) by striking ''Except when'' and inserting ''(a) FILING IN FOREIGN COUNTRY.—Except when''; and

(B) by striking ''and without deceptive intent'';

(2) in the second paragraph, by striking ''The term'' and inserting ''(b) APPLICATION.—The term''; and

(3) in the third paragraph, by striking ''The scope'' and inserting ''(c) SUBSEQUENT MODIFICATIONS, AMENDMENTS, AND SUPPLEMENTS.—The scope''.

(c) FILING WITHOUT A LICENSE.—Section 185 of title 35, United States Code, is amended by striking ''and without deceptive intent''.

(d) REISSUE OF DEFECTIVE PATENTS.—Section 251 of title 35, United States Code, is amended—

(1) in the first paragraph—

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

(B) by striking ''without any deceptive intention'';

(2) in the second paragraph, by striking ''The Director'' and inserting ''(b) MULTIPLE REISSUED PATENTS.—The Director'';

(3) in the third paragraph, by striking ''The provisions'' and inserting ''(c) APPLICABILITY OF THIS TITLE.—The provisions''; and

(4) in the last paragraph, by striking ''No reissued patent'' and inserting ''(d) REISSUE PATENT ENLARGING SCOPE OF CLAIMS.—No reissued patent''.

(e) EFFECT OF REISSUE.—Section 253 of title 35, United States Code, is amended—

(1) in the first paragraph, by striking ''Whenever, without any deceptive intention'' and inserting ''(a) IN GENERAL.—Whenever''; and

(2) in the second paragraph, by striking ''in like manner'' and inserting ''(b) ADDITIONAL DISCLAIMER OR DEDICATION.—In the manner set forth in subsection (a),''.

(f) CORRECTION OF NAMED INVENTOR.—Section 256 of title 35, United States Code, is amended—

(1) in the first paragraph—

(A) by striking ''Whenever'' and inserting ''(a) CORRECTION.—Whenever''; and

(B) by striking ''and such error arose without any deceptive intention on his part''; and

(2) in the second paragraph, by striking ''The error'' and inserting ''(b) PATENT VALID IF ERROR CORRECTED.—The error''.

(g) PRESUMPTION OF VALIDITY.—Section 282 of title 35, United States Code, is amended—

(1) in the first undesignated paragraph—

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

(B) by striking the third sentence;

(2) in the second undesignated paragraph, by striking ''The following'' and inserting ''(b) DEFENSES.—The following''; and

(3) in the third undesignated paragraph, by striking ''In actions'' and inserting ''(c) NOTICE OF ACTIONS; ACTIONS DURING EXTENSION OF PATENT TERM.—In actions''.

(h) ACTION FOR INFRINGEMENT.—Section 288 of title 35, United States Code, is amended by striking '', without deceptive intention,''.

(i) REVISER'S NOTES.—

(1) Section 3(e)(2) of title 35, United States Code, is amended by striking ''this Act,'' and inserting ''that Act,''.

(2) Section 202(b)(3) of title 35, United States Code, is amended by striking ''the section 203(b)'' and inserting ''section 203(b)''; and

(3) Section 209(d)(1) of title 35, United States Code, is amended by striking ''nontransferrable'' and inserting ''nontransferable''.

(4) Section 287(c)(2)(G) of title 35, United States Code, is amended by striking ''any state'' and inserting ''any State''.

(5) Section 371(b) of title 35, United States Code, is amended by striking ''of the treaty'' and inserting ''of the treaty.''.

(j) UNNECESSARY REFERENCES.—

(1) IN GENERAL.—Title 35, United States Code, is amended by striking ''of this title'' each place that term appears.

(2) EXCEPTION.—The amendment made by paragraph (1) shall not apply to the use of such term in the following sections of title 35, United States Code:

(A) Section 1(c).

(B) Section 101.

(C) Subsections (a) and (b) of section 105.

(D) The first instance of the use of such term in section 111(b)(8).

(E) Section 157(a).

(F) Section 161.

(G) Section 164.

(H) Section 171.

(I) Section 251(c), as so designated by this section.

(J) Section 261.

(K) Subsections (g) and (h) of section 271.

(L) Section 287(b)(1).

(M) Section 289.

(N) The first instance of the use of such term in section 375(a).

(k) EFFECTIVE DATE.—The amendments made by this section shall take effect 1 year after the date of the enactment of this Act and shall apply to proceedings commenced on or after that effective date.

SEC. 17. EFFECTIVE DATE; RULE OF CONSTRUCTION.

(a) EFFECTIVE DATE.—Except as otherwise provided in this Act, the provisions of this Act shall take effect 1 year after the date of the enactment of this Act and shall apply to any patent issued on or after that effective date.

(b) CONTINUITY OF INTENT UNDER THE CREATE ACT.—The enactment of section 102(c) of title 35, United States Code, under section (2)(b) of this Act is done with the same intent to promote joint research activities that was expressed, including in the legislative history, through the enactment of the Cooperative Research and Technology Enhancement Act of 2004 (Public Law 108–453; the ''CREATE Act''), the amendments of which are stricken by section 2(c) of this Act. The United States Patent and Trademark Office shall administer section 102(c) of title 35, United States Code, in a manner consistent with the legislative history of the CREATE Act that was relevant to its administration by the United States Patent and Trademark Office.

Mr. HATCH. Mr. President, I rise to express support for the Patent Reform Act of 2011, S. 23, introduced today by Senate Judiciary Committee Chairman PATRICK LEAHY. Senator LEAHY and I, along with a number of our colleagues, have worked for years to enact much-needed reform to our Nation's patent system.

Last Congress, the Managers' Amendment to the Patent Reform Act of 2009, S. 515, enjoyed strong bipartisan support for Senate floor consideration and passage; the momentum undoubtedly will continue under the leadership of Judiciary Committee Chairman LEAHY and Ranking Minority Member CHARLES GRASSLEY. Similarly, House Judiciary Committee Chairman LAMAR SMITH and Ranking Minority Member JOHN CONYERS are true partners in this important legislation. They share the same desire to streamline our patent system in a way that will improve the clarity and quality of patents issued by the U.S. Patent and Trademark Office, USPTO, which in return will provide greater confidence in their validity and enforcement.

I have said this before, but it bears repeating: we must ensure that our patent system is as strong and vibrant as possible, not only to protect our country's premier position as the world leader in innovation, but also to secure our economic future. Patents encourage technological advancement by providing incentives to invent, invest in, and disclose new technology. Now, more than ever, it is important to ensure efficiency and increased quality in the issuance of patents. This in turn will create an environment that fosters entrepreneurship and the creation of new jobs.

One single deployed patent has positive effects across almost all sectors of our economy. As a result, properly examined patents, promptly issued by the USPTO, creates jobs—jobs that are dedicated to developing and producing new products and services. Unfortunately, the current USPTO backlog of applications now exceeds 700,000 applications. The sheer volume of patent applications not only reflects the vibrant, innovative spirit that has made America a world-wide leader in science, engineering, and technology, but also represents dynamic economic growth waiting to be unleashed.

If enacted, the Patent Reform Act of 2011 would move the United States to a first-inventor-to-file system, which will bring greater harmony and improve our competiveness. Also, among other things, the bill would improve the system for administratively challenging the validity of a patent at the USPTO; improve patent quality; create a supplemental examination process for patent owners; prevent patents from being issued on claims for tax strategies; and provide fee-setting authority for the USPTO Director to ensure the Office is properly funded.

This bipartisan bill also contains provisions on venue; changes to the best mode; increased incentives for government laboratories to commercialize inventions; restrictions on false marking claims, and removes restrictions on the residency of Federal Circuit judges.

We have been working on this legislation since 2006. Reforming our patent system is a critical priority whose time has more than come. It is essential to growing our economy, creating jobs and promoting innovation in our Nation. I encourage my colleagues to join in this effort and help move this important legislation forward.

By Mrs. SHAHEEN (for herself, Mr. KIRK, and Mr. DURBIN):

S. 25. A bill to phase out the Federal sugar program, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

Mrs. SHAHEEN. 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. 25

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 ''Stop Unfair Giveaways and Restrictions Act of 2011'' or ''SUGAR Act of 2011''.

SEC. 2. SUGAR PROGRAM.

(a) IN GENERAL.—Section 156 of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 7272) is amended—

(1) in subsection (d), by striking paragraph (1) and inserting the following:

''(1) LOANS.—The Secretary shall carry out this section through the use of recourse loans.'';

(2) by redesignating subsection (i) as subsection (j);

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

''(i) PHASED REDUCTION OF LOAN RATE.—For each of the 2012, 2013, and 2014 crops of sugar beets and sugarcane, the Secretary shall lower the loan rate for each succeeding crop in a manner that progressively and uniformly lowers the loan rate for sugar beets and sugarcane to $0 for the 2015 crop.''; and

(4) in subsection (j) (as redesignated), by striking ''2012'' and inserting ''2014''.

(b) PROSPECTIVE REPEAL.—Effective beginning with the 2015 crop of sugar beets and sugarcane, section 156 of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 7272) is repealed.

SEC. 3. ELIMINATION OF SUGAR PRICE SUPPORT AND PRODUCTION ADJUSTMENT PROGRAMS.

(a) IN GENERAL.—Notwithstanding any other provision of law—

(1) a processor of any of the 2015 or subsequent crops of sugarcane or sugar beets shall not be eligible for a loan under any provision of law with respect to the crop; and

(2) the Secretary of Agriculture may not make price support available, whether in the form of a loan, payment, purchase, or other operation, for any of the 2015 and subsequent crops of sugar beets and sugarcane by using the funds of the Commodity Credit Corporation or other funds available to the Secretary.

(b) TERMINATION OF MARKETING QUOTAS AND ALLOTMENTS.—

(1) IN GENERAL.—Part VII of subtitle B of title III of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1359aa et seq.) is repealed.

(2) CONFORMING AMENDMENT.—Section 344(f)(2) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1344(f)(2)) is amended by striking ''sugar cane for sugar, sugar beets for sugar,''.

(c) GENERAL POWERS.—

(1) SECTION 32 ACTIVITIES.—Section 32 of the Act of August 24, 1935 (7 U.S.C. 612c), is

amended in the second sentence of the first paragraph—

(A) in paragraph (1), by inserting ''(other than sugar beets and sugarcane)'' after ''commodities''; and

(B) in paragraph (3), by inserting ''(other than sugar beets and sugarcane)'' after ''commodity''.

(2) POWERS OF COMMODITY CREDIT CORPORATION.—Section 5(a) of the Commodity Credit Corporation Charter Act (15 U.S.C. 714c(a)) is amended by inserting '', sugar beets, and sugarcane'' after ''tobacco''.

(3) PRICE SUPPORT FOR NONBASIC AGRICULTURAL COMMODITIES.—Section 201(a) of the Agricultural Act of 1949 (7 U.S.C. 1446(a)) is amended by striking ''milk, sugar beets, and sugarcane'' and inserting '', and milk''.

(4) COMMODITY CREDIT CORPORATION STORAGE PAYMENTS.—Section 167 of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 7287) is repealed.

(5) SUSPENSION AND REPEAL OF PERMANENT PRICE SUPPORT AUTHORITY.—Section 171(a)(1) of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 7301(a)(1)) is amended—

(A) by striking subparagraph (E); and

(B) by redesignating subparagraphs (F) through (I) as subparagraphs (E) through (H), respectively.

(6) STORAGE FACILITY LOANS.—Section 1402(c) of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 7971) is repealed.

(7) FEEDSTOCK FLEXIBILITY PROGRAM FOR BIOENERGY PRODUCERS.—Effective beginning with the 2013 crop of sugar beets and sugarcane, section 9010 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8110) is repealed.

(d) TRANSITION PROVISIONS.—This section and the amendments made by this section shall not affect the liability of any person under any provision of law as in effect before the application of this section and the amendments made by this section.

SEC. 4. TARIFF-RATE QUOTAS.

(a) ESTABLISHMENT.—Except as provided in subsection (c) and notwithstanding any other provision of law, not later than October 1, 2011, the Secretary of Agriculture shall develop and implement a program to increase the tariff-rate quotas for raw cane sugar and refined sugars for a quota year in a manner that ensures—

(1) a robust and competitive sugar processing industry in the United States; and

(2) an adequate supply of sugar at reasonable prices in the United States.

(b) FACTORS.—In determining the tariff-rate quotas necessary to satisfy the requirements of subsection (a), the Secretary shall consider the following:

(1) The quantity and quality of sugar that will be subject to human consumption in the United States during the quota year.

(2) The quantity and quality of sugar that will be available from domestic processing of sugarcane, sugar beets, and in-process beet sugar.

(3) The quantity of sugar that would provide for reasonable carryover stocks.

(4) The quantity of sugar that will be available from carryover stocks for human consumption in the United States during the quota year.

(5) Consistency with the obligations of the United States under international agreements.

(c) EXEMPTION.—Subsection (a) shall not include specialty sugar.

(d) DEFINITIONS.—In this section, the terms ''quota year'' and ''human consumption'' have the meaning such terms had under section 359k of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1359kk) (as in effect on the day before the date of the enactment of this Act).

SEC. 5. APPLICATION.

Except as otherwise provided in this Act, this Act and the amendments made by this Act shall apply beginning with the 2012 crop of sugar beets and sugarcane.

By Mrs. SHAHEEN:

S. 26. A bill to amend the Internal Revenue Code of 1986 to repeal the percentage depletion allowance for certain hardrock mines, and to use the resulting revenues from such repeal for deficit reduction; to the Committee on Finance.

Mrs. SHAHEEN. 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. 26

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 ''Elimination of Double Subsidies for the Hardrock Mining Industry Act of 2011''.

SEC. 2. REPEAL OF PERCENTAGE DEPLETION ALLOWANCE FOR CERTAIN HARDROCK MINES.

(a) IN GENERAL.—Section 613(a) of the Internal Revenue Code of 1986 is amended by inserting ''(other than hardrock mines located on lands subject to the general mining laws or on land patented under the general mining laws)'' after ''In the case of the mines''.

(b) GENERAL MINING LAWS DEFINED.—Section 613 of the Internal Revenue Code of 1986 is amended by adding at the end the following:

''(f) GENERAL MINING LAWS.—For purposes of subsection (a), the term 'general mining laws' means those Acts which generally comprise chapters 2, 12A, and 16, and sections 161 and 162 of title 30 of the United States Code.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2011.

(d) USE OF RESULTING REVENUES FOR DEFICIT REDUCTION.—The revenues resulting from the amendment made by subsection (a) shall not be appropriated or otherwise made available for any fiscal year, resulting in a reduction of the Federal budget deficit for such fiscal year. If in any fiscal year there is no Federal budget deficit (determined without regard to such revenues), such revenues shall be used for reducing the Federal debt in such manner as the Secretary of the Treasury considers appropriate.

By Mr. KOHL (for himself, Mr. GRASSLEY, Mr. DURBIN, Ms. COLLINS, Ms. KLOBUCHAR, Mr. FRANKEN, Mr. BROWN of Ohio, and Mr. SANDERS):

S. 27. A bill to prohibit brand name drug companies from compensating generic drug companies to delay the entry of a generic drug into the market; to the Committee on the Judiciary.

Mr. KOHL. Mr. Chairman, I rise today to introduce the Preserve Access to Affordable Generics Act. This bipartisan legislation will dramatically reduce prescription drug costs by preventing one of the most egregious, anti-consumer tactics ever devised to keep generic drugs off the market.

This amendment would combat ''pay-for-delay'' agreements between brand name and generic drug companies which delay entry of low-cost generic competition. These pay-for-delay agreements are estimated by the FTC to cost consumers $3.5 billion each year, and are estimated by the CBO estimates to cost the federal government more than $2.8 billion over the next decade in higher drug reimbursement payments.

In 2008, $235 billion were spent on prescription drugs in the United States. Generic drugs play a crucial role in containing rising prescription drug costs, by offering consumers therapeutically identical alternatives to brand-name drugs, at a significantly reduced cost. Studies have shown that generic competition to brand name drugs can reduce drug prices by as much as 80 percent. However, in recent years generic entry has frequently been blocked by anti-competitive, anti-consumer agreements between brand-name and generic drug manufacturers that limit, delay, or otherwise prevent competition from generic drugs.

In pay-for-delay agreements, a brand-name drug manufacturer settles patent litigation by paying off a generic competitor with large amounts of cash, or other valuable consideration to stay off the market until expiration—or a time close to expiration—of the brand-name patent. For example, in 2006, the CEO of Cephalon, which makes the sleep disorder pill Provigil, praised the deals his company made with four generic drug-makers to keep generic versions of Provigil off the market until 2012. ''We were able to get six more years of patent protection,'' he said. ''That's $4 billion in sales that no one expected.'' Unfortunately, that $4 billion came from the pockets of American consumers.

At their core, pay-for-delay agreements permit brand-name drug companies to pay off competitors not to compete. The brand name drug company wins because it reaps the profits from eliminating competition. The generic drug company wins because they get paid millions of dollars to do nothing more than drop their patent challenge. But consumers and the American taxpayer loses, to the tune of billions of dollars in higher drug costs every year.

Agreements between competitors, like these, are the most nefarious type of antitrust violation. Unfortunately, when the FTC has challenged ''pay-for-delay'' agreements, courts have favored big industry interests over consumers. Courts have wrongly concluded that this type of basic antitrust violation is immune from antitrust law because it involves the settlement of a patent challenge. In other words, it is permissible for competitors to collude to when it involves a patented drug and in order to keep lower cost drugs out of consumers' medicine cabinets. These misguided court rulings are what make passage of our legislation so vital.

For years, we have seen the use of anticompetitive agreements increase. From 2000 to 2004, there were twenty settlements of drug patent litigation, but we saw no pay-for-delay agreements because drug companies assumed they violated antitrust law. But, these settlements became all too prevalent following three courts of appeals decisions in 2005 which effectively found them to be per se legal and prevented the FTC from taking action on behalf of consumers against these settlements.

In the 2 years following these 2005 court decisions, 28 out of 61 patent settlements had provisions in which the brand name drug company made payments to the generic manufacturer in exchange for the generic manufacturer agreeing to delay entry of generic competition. Clearly, pay-for-delay agreements are not necessary to settle a case because during that same time, 33 cases settled without delaying entry to consumers in exchange for a payment.

Last fall, the FTC released a report which found a record 19 pay-for-delay settlements in fiscal year 2009, the highest ever recorded in a single year. This report convincingly demonstrates the danger these deals pose to consumers. Each of these deals will lead to higher drug costs for millions of consumers. Each of these deals cost the Federal Government large sums in taxpayer money in higher drug reimbursement costs. Each of these deals deprive consumers of needed drug competition. The time for action to stop these anti-consumer, anticompetitive back room deals is now.

Our legislation passed the Judiciary Committee last Congress with a strong bipartisan majority. The Judiciary Committee made several changes to the legislation as it is was introduced in the 111th Congress, and the legislation I am introducing today includes all of these changes. I believe the current version of this legislation represents a well balanced approach to this problem. Under my bill, these settlement agreements will be presumed to be illegal. However, the FTC will need to pursue legal action prior to these agreements being found illegal, and the drug companies will have an opportunity to convince the Judge why these agreement are not in fact anti-competitive. If found illegal, the FTC will have the authority to assess civil penalties up to three times the profits gained by the drug companies.

I believe this measure strikes the right balance. By presuming these agreements to be illegal, and armed with strong civil penalties, this bill will deter drug companies from entering into anti-competitive and anti-consumer ''pay-for-delay'' settlements in the first place. By giving the drug companies a hearing before a neutral tribunal, the drug companies will have their day in court to go forward with those agreements which truly do not harm competition.

The evidence is clear. These ''pay-for-delay'' agreements between brand name and generic drug companies deny consumers the benefits of generic drug competition and costs consumers and the Federal Government billions of dollars. My legislation will give the FTC strong remedies to prevent these agreements when it concludes they harm competition. Millions and millions of Americans that struggle to pay their prescription drug costs and who need low priced generic alternatives are awaiting action on this amendment. I urge my colleagues support for the Preserve Access to Affordable Generics Act.

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. 27

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Preserve Access to Affordable Generics Act''.

SEC. 2. CONGRESSIONAL FINDINGS AND DECLARATION OF PURPOSES.

(a) FINDINGS.—Congress finds the following:

(1) In 1984, the Drug Price Competition and Patent Term Restoration Act (Public Law 98–417) (referred to in this Act as the ''1984 Act''), was enacted with the intent of facilitating the early entry of generic drugs while preserving incentives for innovation.

(2) Prescription drugs make up 10 percent of the national health care spending but for the past decade have been one of the fastest growing segments of health care expenditures.

(3) Until recently, the 1984 Act was successful in facilitating generic competition to the benefit of consumers and health care payers – although 67 percent of all prescriptions dispensed in the United States are generic drugs, they account for only 20 percent of all expenditures.

(4) Generic drugs cost substantially less than brand name drugs, with discounts off the brand price sometimes exceeding 90 percent.

(5) Federal dollars currently account for an estimated 30 percent of the $235,000,000,000 spent on prescription drugs in 2008, and this share is expected to rise to 40 percent by 2018.

(6)(A) In recent years, the intent of the 1984 Act has been subverted by certain settlement agreements between brand companies and their potential generic competitors that make ''reverse payments'' which are payments by the brand company to the generic company.

(B) These settlement agreements have unduly delayed the marketing of low-cost generic drugs contrary to free competition, the interests of consumers, and the principles underlying antitrust law.

(C) Because of the price disparity between brand name and generic drugs, such agreements are more profitable for both the brand and generic manufacturers than competition, and will become increasingly common unless prohibited.

(D) These agreements result in consumers losing the benefits that the 1984 Act was intended to provide.

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

(1) to enhance competition in the pharmaceutical market by stopping anticompetitive agreements between brand name and generic drug manufacturers that limit, delay, or otherwise prevent competition from generic drugs; and

(2) to support the purpose and intent of antitrust law by prohibiting anticompetitive practices in the pharmaceutical industry that harm consumers.

SEC. 3. UNLAWFUL COMPENSATION FOR DELAY.

(a) IN GENERAL.—The Federal Trade Commission Act (15 U.S.C. 44 et seq.) is amended by—

(1) redesignating section 28 as section 29; and

(2) inserting before section 29, as redesignated, the following:

''SEC. 28. PRESERVING ACCESS TO AFFORDABLE GENERICS.

''(a) IN GENERAL.—

''(1) ENFORCEMENT PROCEEDING.—The Federal Trade Commission may initiate a proceeding to enforce the provisions of this section against the parties to any agreement resolving or settling, on a final or interim basis, a patent infringement claim, in connection with the sale of a drug product.

''(2) PRESUMPTION.—

''(A) IN GENERAL.—Subject to subparagraph (B), in such a proceeding, an agreement shall be presumed to have anticompetitive effects and be unlawful if—

''(i) an ANDA filer receives anything of value; and

''(ii) the ANDA filer agrees to limit or forego research, development, manufacturing, marketing, or sales of the ANDA product for any period of time.

''(B) EXCEPTION.—The presumption in subparagraph (A) shall not apply if the parties to such agreement demonstrate by clear and convincing evidence that the procompetitive benefits of the agreement outweigh the anticompetitive effects of the agreement.

''(b) COMPETITIVE FACTORS.—In determining whether the settling parties have met their burden under subsection (a)(2)(B), the fact finder shall consider—

''(1) the length of time remaining until the end of the life of the relevant patent, compared with the agreed upon entry date for the ANDA product;

''(2) the value to consumers of the competition from the ANDA product allowed under the agreement;

''(3) the form and amount of consideration received by the ANDA filer in the agreement resolving or settling the patent infringement claim;

''(4) the revenue the ANDA filer would have received by winning the patent litigation;

''(5) the reduction in the NDA holder's revenues if it had lost the patent litigation;

''(6) the time period between the date of the agreement conveying value to the ANDA filer and the date of the settlement of the patent infringement claim; and

''(7) any other factor that the fact finder, in its discretion, deems relevant to its determination of competitive effects under this subsection.

''(c) LIMITATIONS.—In determining whether the settling parties have met their burden under subsection (a)(2)(B), the fact finder shall not presume—

''(1) that entry would not have occurred until the expiration of the relevant patent or statutory exclusivity; or

''(2) that the agreement's provision for entry of the ANDA product prior to the expiration of the relevant patent or statutory exclusivity means that the agreement is procompetitive, although such evidence may be relevant to the fact finder's determination under this section.

''(d) EXCLUSIONS.—Nothing in this section shall prohibit a resolution or settlement of a patent infringement claim in which the consideration granted by the NDA holder to the ANDA filer as part of the resolution or settlement includes only one or more of the following:

''(1) The right to market the ANDA product in the United States prior to the expiration of—

''(A) any patent that is the basis for the patent infringement claim; or

''(B) any patent right or other statutory exclusivity that would prevent the marketing of such drug.

''(2) A payment for reasonable litigation expenses not to exceed $7,500,000.

''(3) A covenant not to sue on any claim that the ANDA product infringes a United States patent.

''(e) REGULATIONS AND ENFORCEMENT.—

''(1) REGULATIONS.—The Federal Trade Commission may issue, in accordance with section 553 of title 5, United States Code, regulations implementing and interpreting this section. These regulations may exempt certain types of agreements described in subsection (a) if the Commission determines such agreements will further market competition and benefit consumers. Judicial review of any such regulation shall be in the United States District Court for the District of Columbia pursuant to section 706 of title 5, United States Code.

''(2) ENFORCEMENT.—A violation of this section shall be treated as a violation of section 5.

''(3) JUDICIAL REVIEW.—Any person, partnership or corporation that is subject to a final order of the Commission, issued in an administrative adjudicative proceeding under the authority of subsection (a)(1), may, within 30 days of the issuance of such order, petition for review of such order in the United States Court of Appeals for the District of Columbia Circuit or the United States Court of Appeals for the circuit in which the ultimate parent entity, as defined at 16 C.F.R. 801.1(a)(3), of the NDA holder is incorporated as of the date that the NDA is filed with the Secretary of the Food and Drug Administration, or the United States Court of Appeals for the circuit in which the ultimate parent entity of the ANDA filer is incorporated as of the date that the ANDA is filed with the Secretary of the Food and Drug Administration. In such a review proceeding, the findings of the Commission as to the facts, if supported by evidence, shall be conclusive.

''(f) ANTITRUST LAWS.—Nothing in this section shall be construed to modify, impair or supersede the applicability of the antitrust laws as defined in subsection (a) of the 1st section of the Clayton Act (15 U.S.C. 12(a)) and of section 5 of this Act to the extent that section 5 applies to unfair methods of competition. Nothing in this section shall modify, impair, limit or supersede the right of an ANDA filer to assert claims or counterclaims against any person, under the antitrust laws or other laws relating to unfair competition.

''(g) PENALTIES.—

''(1) FORFEITURE.—Each person, partnership or corporation that violates or assists in the violation of this section shall forfeit and pay to the United States a civil penalty sufficient to deter violations of this section, but in no event greater than 3 times the value received by the party that is reasonably attributable to a violation of this section. If no such value has been received by the NDA holder, the penalty to the NDA holder shall be shall be sufficient to deter violations, but in no event greater than 3 times the value given to the ANDA filer reasonably attributable to the violation of this section. Such penalty shall accrue to the United States and may be recovered in a civil action brought by the Federal Trade Commission, in its own name by any of its attorneys designated by it for such purpose, in a district court of the United States against any person, partnership or corporation that violates this section. In such actions, the United States district courts are empowered to grant mandatory injunctions and such other and further equitable relief as they deem appropriate.

''(2) CEASE AND DESIST.—

''(A) IN GENERAL.—If the Commission has issued a cease and desist order with respect to a person, partnership or corporation in an administrative adjudicative proceeding under the authority of subsection (a)(1), an action brought pursuant to paragraph (1) may be commenced against such person, partnership or corporation at any time before the expiration of one year after such order becomes final pursuant to section 5(g).

''(B) EXCEPTION.—In an action under subparagraph (A), the findings of the Commission as to the material facts in the administrative adjudicative proceeding with respect to such person's, partnership's or corporation's violation of this section shall be conclusive unless—

''(i) the terms of such cease and desist order expressly provide that the Commission's findings shall not be conclusive; or

''(ii) the order became final by reason of section 5(g)(1), in which case such finding shall be conclusive if supported by evidence.

''(3) CIVIL PENALTY.—In determining the amount of the civil penalty described in this section, the court shall take into account—

''(A) the nature, circumstances, extent, and gravity of the violation;

''(B) with respect to the violator, the degree of culpability, any history of violations, the ability to pay, any effect on the ability to continue doing business, profits earned by the NDA holder, compensation received by the ANDA filer, and the amount of commerce affected; and

''(C) other matters that justice requires.

''(4) REMEDIES IN ADDITION.—Remedies provided in this subsection are in addition to, and not in lieu of, any other remedy provided by Federal law. Nothing in this paragraph shall be construed to affect any authority of the Commission under any other provision of law.

''(h) DEFINITIONS.—In this section:

''(1) AGREEMENT.—The term 'agreement' means anything that would constitute an agreement under section 1 of the Sherman Act (15 U.S.C. 1) or section 5 of this Act.

''(2) AGREEMENT RESOLVING OR SETTLING A PATENT INFRINGEMENT CLAIM.—The term 'agreement resolving or settling a patent infringement claim' includes any agreement that is entered into within 30 days of the resolution or the settlement of the claim, or any other agreement that is contingent upon, provides a contingent condition for, or is otherwise related to the resolution or settlement of the claim.

''(3) ANDA.—The term 'ANDA' means an abbreviated new drug application, as defined under section 505(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)).

''(4) ANDA FILER.—The term 'ANDA filer' means a party who has filed an ANDA with the Food and Drug Administration.

''(5) ANDA PRODUCT.—The term 'ANDA product' means the product to be manufactured under the ANDA that is the subject of the patent infringement claim.

''(6) DRUG PRODUCT.—The term 'drug product' means a finished dosage form (e.g., tablet, capsule, or solution) that contains a drug substance, generally, but not necessarily, in association with 1 or more other ingredients, as defined in section 314.3(b) of title 21, Code of Federal Regulations.

''(7) NDA.—The term 'NDA' means a new drug application, as defined under section 505(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(b)).

''(8) NDA HOLDER.—The term 'NDA holder' means—

''(A) the party that received FDA approval to market a drug product pursuant to an NDA;

''(B) a party owning or controlling enforcement of the patent listed in the Approved Drug Products With Therapeutic Equivalence Evaluations (commonly known as the 'FDA Orange Book') in connection with the NDA; or

''(C) the predecessors, subsidiaries, divisions, groups, and affiliates controlled by, controlling, or under common control with any of the entities described in subparagraphs (A) and (B) (such control to be presumed by direct or indirect share ownership of 50 percent or greater), as well as the licensees, licensors, successors, and assigns of each of the entities.

''(9) PATENT INFRINGEMENT.—The term 'patent infringement' means infringement of any patent or of any filed patent application, extension, reissue, renewal, division, continuation, continuation in part, reexamination, patent term restoration, patents of addition and extensions thereof.

''(10) PATENT INFRINGEMENT CLAIM.—The term 'patent infringement claim' means any allegation made to an ANDA filer, whether or not included in a complaint filed with a court of law, that its ANDA or ANDA product may infringe any patent held by, or exclusively licensed to, the NDA holder of the drug product.

''(11) STATUTORY EXCLUSIVITY.—The term 'statutory exclusivity' means those prohibitions on the approval of drug applications under clauses (ii) through (iv) of section 505(c)(3)(E) (5- and 3-year data exclusivity), section 527 (orphan drug exclusivity), or section 505A (pediatric exclusivity) of the Federal Food, Drug, and Cosmetic Act .''.

(b) EFFECTIVE DATE.—Section 28 of the Federal Trade Commission Act, as added by this section, shall apply to all agreements described in section 28(a)(1) of that Act entered into after November 15, 2009. Section 28(g) of the Federal Trade Commission Act, as added by this section, shall not apply to agreements entered into before the date of enactment of this Act.

SEC. 4. NOTICE AND CERTIFICATION OF AGREEMENTS.

(a) NOTICE OF ALL AGREEMENTS.—Section 1112(c)(2) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (21 U.S.C. 355 note) is amended by—

(1) striking ''the Commission the'' and inserting the following: ''the Commission—

''(1) the'';

(2) striking the period and inserting ''; and''; and

(3) inserting at the end the following:

''(2) any other agreement the parties enter into within 30 days of entering into an agreement covered by subsection (a) or (b).''.

(b) CERTIFICATION OF AGREEMENTS.—Section 1112 of such Act is amended by adding at the end the following:

''(d) CERTIFICATION.—The Chief Executive Officer or the company official responsible for negotiating any agreement required to be filed under subsection (a), (b), or (c) shall execute and file with the Assistant Attorney General and the Commission a certification as follows: 'I declare that the following is true, correct, and complete to the best of my knowledge: The materials filed with the Federal Trade Commission and the Department of Justice under section 1112 of subtitle B of title XI of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, with respect to the agreement referenced in this certification: (1) represent the complete, final, and exclusive agreement between the parties; (2) include any ancillary agreements that are contingent upon, provide a contingent condition for, or are otherwise related to, the referenced agreement; and (3) include

written descriptions of any oral agreements, representations, commitments, or promises between the parties that are responsive to subsection (a) or (b) of such section 1112 and have not been reduced to writing.'.''.

SEC. 5. FORFEITURE OF 180-DAY EXCLUSIVITY PERIOD.

Section 505(j)(5)(D)(i)(V) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 355(j)(5)(D)(i)(V)) is amended by inserting ''section 28 of the Federal Trade Commission Act or'' after ''that the agreement has violated''.

SEC. 6. COMMISSION LITIGATION AUTHORITY.

Section 16(a)(2) of the Federal Trade Commission Act (15 U.S.C. 56(a)(2)) is amended—

(1) in subparagraph (D), by striking ''or'' after the semicolon;

(2) in subparagraph (E), by inserting ''or'' after the semicolon; and

(3) inserting after subparagraph (E) the following:

''(F) under section 28;''.

SEC. 7. STATUTE OF LIMITATIONS.

The Commission shall commence any enforcement proceeding described in section 28 of the Federal Trade Commission Act, as added by section 3, except for an action described in section 28(g)(2) of the Federal Trade Commission Act, not later than 3 years after the date on which the parties to the agreement file the Notice of Agreement as provided by sections 1112(c)(2) and (d) of the Medicare Prescription Drug Improvement and Modernization Act of 2003 (21 U.S.C. 355 note).

SEC. 8. SEVERABILITY.

If any provision of this Act, an amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of the provisions of such Act or amendments to any person or circumstance shall not be affected thereby.

By Mr. ROCKEFELLER (for himself, Mr. LAUTENBERG, Mr. NELSON of Florida, Ms. KLOBUCHAR, Mr. CARDIN, and Mr. HARKIN):

S. 28. A bill to amend the Communications Act of 1934 to provide public safety providers an additional 10 megahertz of spectrum to support a national, interoperable wireless broadband network and authorize the Federal Communications Commission to hold incentive auctions to provide funding to support such a network, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Mr. ROCKEFELLER. Mr. President, I rise today to reintroduce the Public Safety Spectrum and Wireless Innovation Act.

Radio spectrum is a tremendous resource. It can grow our economy and put innovative wireless services in the hands of consumers and businesses. It also can enhance our public safety by fostering communications between first responders when the unthinkable occurs. But it is also scarce. That is why we need a forward-thinking spectrum policy that promotes smart use of our airwaves—and provides public safety officials with the wireless resources they need to keep us safe.

For all of these reasons, I believe in the Public Safety Spectrum and Wireless Innovation Act and call on my colleagues to join me and support it. I commit to them that I am open to their input and will work tirelessly with the administration, my Senate and House colleagues, and public safety officials to pass this legislation this year.

The Public Safety Spectrum and Wireless Innovation Act does two things.

First, as we approach the tenth anniversary of 9/11, this legislation will provide public safety officials with an additional 10 megahertz of spectrum known as the ''D-block.'' This spectrum will at long last, support a national, interoperable, wireless broadband network that will help first responders protect us from harm. I believe this is the right thing to do, because we owe those courageous individuals who wear the shield the resources they need to do their job.

Second, this legislation will promote smart spectrum policy and efficient use of our Nation's wireless airwaves. It will do this by providing the Federal Communications Commission with the authority to hold voluntary incentive auctions. These auctions will help put valuable spectrum into the hands of companies that can create innovative new services for American consumers and businesses. This proposal will not require the return of spectrum from existing commercial users, but instead will provide them with a voluntary opportunity to realize a portion of auction revenues if they wish to facilitate putting spectrum to new and productive uses. Then the remaining revenues from these auctions will provide a revenue stream to assist public safety with the construction and maintenance of their spectrum network.

Marrying together these ideas—good spectrum policy and the right resources for our first responders—makes good sense. It is also the right thing to do. Because the American people deserve to have the best and most innovative uses of wireless networks anywhere. They deserve to know our first responders have access to the airwaves they need when tragedy strikes. So I urge my colleagues to join me and support this important legislation.

Mr. ROCKEFELLER. 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. 28

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Public Safety Spectrum and Wireless Innovation Act''.

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

SEC. 2. DEFINITIONS.

In this Act:

(1) 700 MHZ BAND.—The term ''700 MHz band'' means the portion of the electromagnetic spectrum between the frequencies from 698 megahertz to 806 megahertz.

(2) 700 MHZ D BLOCK SPECTRUM.—The term ''700 MHz D block spectrum'' means the portion of the electromagnetic spectrum between the frequencies from 758 megahertz to 763 megahertz and between the frequencies from 788 megahertz to 793 megahertz.

(3) ASSISTANT SECRETARY.—The term ''Assistant Secretary'' means the Assistant Secretary of Commerce for Communications and Information.

(4) COMMMISSION.—The term ''Commission'' means the Federal Communications Commission.

(5) CONSTRUCTION FUND.—The term ''construction fund'' means the fund established in section 201(a)(1)(A).

(6) EXISTING PUBLIC SAFETY BROADBAND SPECTRUM.—The term ''existing public safety broadband spectrum'' means the portion of the electromagnetic spectrum between the frequencies from 763 megahertz to 768 megahertz and between the frequencies from 793 megahertz to 798 megahertz.

(7) MAINTENANCE AND OPERATION FUND.—The term ''maintenance and operation fund'' means the fund established in section 201(a)(2)(A).

(8) NARROWBAND SPECTRUM.—The term ''narrowband spectrum'' means the portion of the electromagnetic spectrum between the frequencies from 769 megahertz to 775 megahertz and between the frequencies from 799 megahertz to 805 megahertz.

(9) NTIA.—The term ''NTIA'' means the National Telecommunications and Information Administration.

TITLE I—NATIONWIDE INTEROPERABLE PUBLIC SAFETY BROADBAND NETWORK

SEC. 101. ESTABLISHMENT OF NETWORK.

(a) IN GENERAL.—The Commission shall take all actions necessary to ensure the deployment of a nationwide public safety interoperable broadband network in the 700 MHz band, including—

(1) developing and implementing nationwide technical and operational requirements for the network;

(2) adopting any rules necessary to achieve interoperability in the network; and

(3) adopting user authentication and encryption requirements for the network.

(b) COVERAGE.—The Commission shall ensure that the network is deployed and interoperable in rural, as well as urban, areas, including necessary build out of communications infrastructure in rural areas to accommodate network access and functionality.

SEC. 102. REALLOCATION OF D BLOCK TO PUBLIC SAFETY.

(a) REALLOCATION OF D BLOCK.—

(1) IN GENERAL.—The Commission shall reallocate the 700 MHz D block spectrum for use by public safety entities in accordance with the provisions of this Act.

(2) SPECTRUM ALLOCATION.—Section 337(a) of the Communications Act of 1934 (47 U.S.C. 337(a)) is amended—

(A) by striking ''24'' in paragraph (1) and inserting ''34''; and

(B) by striking ''36'' in paragraph (2) and inserting ''26''.

(b) INTEGRATION WITH EXISTING PUBLIC SAFETY BROADBAND SPECTRUM.—The Commission shall—

(1) determine the licensing for the 700 MHz D block spectrum reallocated under section 337 of the Communications Act of 1934 47 U.S.C. 337), as amended by subsection (a);

(2) determine how best to integrate the 700 MHz D block spectrum reallocated with the existing public safety spectrum; and

(3) determine whether the 20 megahertz of public safety broadband spectrum should be licensed on a nationwide, regional, or statewide basis, or some combination thereof, in accordance with the public interest.

SEC. 103. FLEXIBLE USE OF NARROWBAND SPECTRUM.

The Commission shall allow the narrowband spectrum to be used in a flexible manner, including usage for public safety broadband communications, subject to such technical and interference protection measures as the Commission may require.

SEC. 104. SECONDARY USE OF PUBLIC SAFETY SPECTRUM.

(a) IN GENERAL.—Notwithstanding section 337 of the Communications Act of 1934 (47 U.S.C. 337), the Commission may authorize any public safety licensee or licensees to allow access to spectrum licensed to such licensee or licensees to non-public safety governmental users, commercial users, utilities, including organizations providing or operating critical infrastructure, including electric, gas, and water utilities, and other Federal agencies and departments.

(b) LIMITATIONS AND CONDITIONS.—The Commission shall—

(1) authorize the provision of access to such spectrum only on a secondary basis;

(2) require secondary access agreements to be in writing and to be submitted to the Commission for review and approval;

(3) require that the public safety entity retain the right to use any such spectrum on a primary, preemptible basis;

(4) consider whether it is in the public interest to require multiple secondary leases per licensee; and

(5) require that all funds received from such secondary access pursuant to such written agreements be reinvested in the public safety interoperable broadband network by using such funds only for constructing, maintaining, improving, or purchasing equipment to be used in conjunction with the network, by deposit into the Maintenance and Operation Fund established by section 201 or otherwise.

SEC. 105. INTEROPERABILITY.

(a) IN GENERAL.—The Commission shall ensure that the nationwide public safety broadband network is fully interoperable on a nationwide basis.

(b) TECHNICAL AND OPERATIONAL RULES.—

(1) INSURING INTEROPERABILITY.—The Commission shall establish technical and operational rules to ensure nationwide interoperability, including rules that—

(A) establish requirements for nationwide roaming ability among any licensee, licensees, lessees, and secondary users;

(B) will ensure the safety of State broadband public safety networks, including requirements for protecting and monitoring the network to protect against cyber-attack;

(C) will promote competition in the device market for public safety communications by requiring devices for use on a public safety network to be—

(i) built to open standards;

(ii) capable of being used by any vendor and across all public safety systems; and

(iii) backward-compatible with existing second and third generation commercial networks;

(D) authorize public safety entities to execute partnerships with other public or private entities to build or operate the State's public safety broadband network;

(E) encourage public safety entities to utilize, to the greatest extent possible, existing commercial, State, or Federal government infrastructure;

(F) will ensure that the interoperability plan includes integration with 9-1-1 call centers; and

(G) require any licensee or licensees to file annual reports on—

(i) the status of public safety broadband network construction and interoperability; and

(ii) the status and deployment of existing public safety broadband and narrowband systems.

(2) FACTORS TO BE CONSIDERED.—In carrying out paragraph (1), the Commission shall, at a minimum, consider—

(A) the extent to which particular technologies and user equipment are, or are likely to be, available in the commercial marketplace;

(B) the availability of necessary technologies and equipment on reasonable and non-discriminatory licensing terms; and

(C) the ability of particular technologies and equipment—

(i) to evolve with technological developments in the commercial marketplace; and

(ii) to accommodate prioritization for public safety transmissions.

(c) RFP STANDARDS.—

(1) IN GENERAL.—The Commission shall establish procedural and substantive requirements for requests for proposals related to the nationwide public safety broadband network that—

(A) require such requests to meet the technical requirements under subsection (b) that ensure interoperability of the broadband network to which it relates and ensure that nothing will interfere with such interoperability;

(B) limit the authority for issuing such requests to States or multi-State organizations, except to the extent delegated to an agency or political subdivision;

(C) will ensure that the request-for-proposals process is open, transparent, and competitive;

(D) require any such request—

(i) to be issued on a Statewide or multi-State basis and to be coordinated with the appropriate State chief executive or the executive's designee;

(ii) to demonstrate that the State has a plan for interoperability, with provision for both urban and rural build out; and

(iii) to cover any necessary relocation of incumbent narrowband operations in the existing public safety broadband spectrum;

(E) authorize States to issue requests for proposals that will build on a State broadband network; and

(F) require the term of any contract under the process to be reasonable and, in any event, for less than the term of the underlying license.

(2) MODEL RFPS.—The Commission may encourage the use of the requests-for-proposal model or form developed by the Government Accountability Office under section 207 of this Act.

(d) RURAL BUILD OUT REQUIREMENTS.—The Commission shall—

(1) establish rural build out targets for the public safety broadband network, including targets for States or smaller areas;

(2) require contracts awarded through the request-for-proposals process in connection with the network to include deployment phases with substantial rural coverage milestones as part of each phase where appropriate; and

(3) in collaboration with the Assistant Secretary, make funding for each build out phase after the first contingent on meeting build out targets for the preceding phase to the extent feasible.

(e) DEVELOPMENT AND MAINTENANCE OF INTEROPERABILITY, SECURITY, AND FUNCTIONALITY STANDARDS.—The Commission and through agreements executed with the National Institute of Standards and Technology, shall develop, maintain, and update such requirements and standards as may be necessary to ensure interoperability, security, and functionality.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Commission, for use by the Emergency Response and Interoperability Center in carrying out its responsibilities under this Act, $5,500,000 for each of fiscal years 2013 through 2018.

SEC. 106. COMMERCIAL NETWORK ROAMING AND PRIORITY ACCESS.

The Commission may adopt rules, if necessary in the public interest, to improve the ability of public safety networks to roam onto commercial networks and to gain priority access to commercial networks in an emergency if—

(1) the public safety entity equipment is technically compatible with the commercial network;

(2) the commercial network is reasonably compensated; and

(3) it is consistent with the public interest.

SEC. 107. PUBLIC SAFETY ADVISORY BOARD.

(a) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Commission shall establish a public safety advisory board to advise the Commission on—

(1) carrying out its duties under section 101; and

(2) the implementation of improvements to the public safety interoperable broadband network under that section.

(b) COMPOSITION.—The Commission shall determine the composition of the advisory board, which shall include, at a minimum, representatives from each of the following:

(1) State, local, and tribal governments.

(2) Public safety organizations.

(3) Providers of commercial mobile service.

(4) Manufacturers of communications equipment.

(c) REPORTS.—The Commission shall consult with the advisory board on any study or report on public safety spectrum.

(d) FACA INAPPLICABLE.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the advisory board.

(e) TERMINATION.—The advisory board shall terminate 10 years after the date of enactment of this Act.

TITLE II—FUNDING

SEC. 201. ESTABLISHMENT OF FUNDS.

(a) IN GENERAL.—

(1) CONSTRUCTION FUND.—

(A) ESTABLISHMENT.—There is established in the Treasury of the United States a fund to be known as the Public Safety Interoperable Broadband Network Construction Fund.

(B) PURPOSE.—The Assistant Secretary shall establish and administer the grant program under section 202 using the funds deposited in the Construction Fund.

(C) CREDIT.—

(i) BORROWING AUTHORITY.—The Assistant Secretary may borrow from the general fund of the Treasury beginning on October 1, 2011, such sums as may be necessary, but not to exceed $2,000,000,000, to implement section 202.

(ii) REIMBURSEMENT.—The Secretary of the Treasury shall reimburse the general fund of the Treasury, without interest, for any amounts borrowed under clause (i) as funds are deposited into the Construction Fund, but in no case later than December 31, 2015.

(2) MAINTENANCE AND OPERATION FUND.—

(A) ESTABLISHMENT.—There is established in the Treasury of the United States a fund to be known as the Public Safety Interoperable Broadband Network Maintenance and Operation Fund.

(B) PURPOSE.—The Commission shall use the funds deposited in the Maintenance and Operation Fund to carry out section 203.

(b) TRANSFER OF FUNDS AT COMPLETION OF CONSTRUCTION.—The Secretary of the Treasury shall transfer to the Maintenance and Operation Fund any funds remaining in the Construction Fund after the date of the completion of the construction phase, as determined by the Assistant Secretary.

(c) TRANSFER OF FUNDS TO THE TREASURY.—The Secretary of the Treasury shall transfer to the general fund of the Treasury any funds remaining in the Maintenance and Operation Fund after the end of the 10-year period that begins after the date of the completion of the construction phase, as determined by the Assistant Secretary.

(d) AUTHORIZATION OF APPROPRIATIONS.—

(1) CONSTRUCTION FUND.—There are authorized to be appropriated to the Assistant Secretary for deposit in the Construction Fund in and after fiscal year 2013 such sums as necessary subject to paragraph (3).

(2) MAINTENANCE AND OPERATION FUND.—There are authorized to be appropriated to the Commission for deposit in the Maintenance and Operation Fund in and after fiscal year 2013 such sums as necessary subject to paragraph (3).

(3) LIMITATION.—The authorization of appropriations under paragraphs (1) and (2) may not exceed a total of $11,000,000,000.

SEC. 202. PUBLIC SAFETY INTEROPERABLE BROADBAND NETWORK CONSTRUCTION.

(a) CONSTRUCTION GRANT PROGRAM ESTABLISHMENT.—The Assistant Secretary, in consultation with the Commission, shall take such action as is necessary to establish a grant program to assist public safety entities to establish a nationwide public safety interoperable broadband network in the 700 MHz band.

(b) PROJECTS.—Grants may be made under this section for the construction of a public safety interoperable broadband network, including improvement of existing commercial and noncommercial networks and facilities and construction of new infrastructure to meet public safety requirements, as defined by the Commission, that operate as part of the public safety interoperable broadband network in the 700 MHz band.

(c) MATCHING REQUIREMENTS.—

(1) FEDERAL SHARE.—

(A) IN GENERAL.—The Federal share of the cost of carrying out a project under this section may not exceed 80 percent of the eligible costs of carrying out a project, as determined by the Assistant Secretary in consultation with the Commission.

(B) WAIVER.—The Assistant Secretary may waive, in whole or in part, the requirements of subparagraph (A) for good cause shown if it determines that such a waiver is in the public interest.

(2) NON-FEDERAL SHARE.—The non-Federal share of the cost of carrying out a project under this section may be provided through an in-kind contribution.

(d) REQUIREMENTS.—Not later than 6 months after the date of enactment of this Act, the Assistant Secretary, in consultation with the Commission, shall establish grant program requirements including the following:

(1) Demonstrated compliance with applicable Commission request-for-proposal and license terms and service rules, including interoperability and technical rules, construction requirements, and secondary use rules.

(2) Defining entities that are eligible to receive a grant under this section.

(3) Defining eligible costs for purposes of subsection (c)(1).

(4) Determining the scope of network infrastructure eligible for grant funding under this section.

(5) Prioritizing grants for projects that ensure coverage in rural as well as urban areas.

SEC. 203. PUBLIC SAFETY INTEROPERABLE BROADBAND MAINTENANCE AND OPERATION.

(a) MAINTENANCE AND OPERATION REIMBURSEMENT PROGRAM.—The Commission shall administer a program through which not more than 50 percent of maintenance and operational expenses associated with the public safety interoperable broadband network may be reimbursed from the Maintenance and Operation Fund for those expenses that are attributable to the maintenance, operation, and improvement of the public safety interoperable broadband network.

(b) REPORT.—Not later than 7 years after the date of enactment of this Act, the Commission shall submit to Congress a report on whether to continue to provide funding for the Maintenance and Operation Fund after the end of the 10-year period that begins after the date of the completion of the construction phase, as determined by the Assistant Secretary.

SEC. 204. AUCTION OF SPECTRUM.

(a) IN GENERAL.—

(1) IDENTIFICATION OF SPECTRUM.—Not later than 1 year after the date of enactment of this Act, the Assistant Secretary shall identify, at a minimum, 25 megahertz of contiguous spectrum at frequencies located between 1675 megahertz and 1710 megahertz, inclusive, to be made available for immediate reallocation.

(2) AUCTION.—Not later than January 31, 2014, the Commission shall conduct the auction of the licenses, by commencing the bidding, for the following:

(A) The spectrum between the frequencies of 2155 megahertz and 2180 megahertz, inclusive.

(B) The spectrum identified pursuant to paragraph (1).

(3) PROCEEDS.—The proceeds (including deposits and up front payments from successful bidders) from the auction shall be deposited in the Construction Fund.

(b) INCENTIVE SPECTRUM AUCTION AUTHORITY.—

(1) IN GENERAL.—Paragraph (8) of section 309(j) of the Communications Act of 1934 (47 U.S.C. 309(j)) is amended—

(A) by striking ''(B), (D), and (E),'' in subparagraph (A) and inserting ''(B), (D), (E), and (F),''; and

(B) by adding at the end thereof the following:

''(F) INCENTIVE AUCTION AUTHORITY.—

''(i) AUTHORITY.—The Commission may If the Commission determines that it is consistent with the public interest in utilization of the spectrum for a licensee to relinquish voluntarily some or all of its licensed spectrum usage rights in order to permit the assignment of new initial licenses subject to new service rules, the Commission may disburse to that licensee a portion of the auction proceeds related to the new use that the Commission determines, in its discretion, are attributable to the licensee's relinquished spectrum usage.

''(ii) PROCEEDS FOR FUNDS.—Notwithstanding subparagraph (A), the proceeds (including deposits and up front payments from successful bidders) from the use of a competitive bidding system under this subsection with respect to relinquished spectrum, after deduction of any amounts disbursed to the relinquishing licensee, shall be deposited as follows:

''(I) All proceeds less than or equal to $5,500,000,000 shall be deposited in the Construction Fund and shall be made available to the Assistant Secretary without further appropriations.

''(II) Any proceeds exceeding $5,500,000,000 shall be deposited in the Maintenance and Operation Fund and shall be made available to the Commission without further appropriations.

''(III) Any proceeds exceeding $11,000,000,000 shall be made available, as provided by appropriation Acts, for growth-enhancing infrastructure projects, including the NextGen aviation navigation system, development of high-speed rail transportation, and Smart Grid electrical power transmission and management technology.''.

(c) EXTENSION OF AUCTION AUTHORITY.—Section 309(j)(11) of the Communications Act of 1934 (47 U.S.C. 309(j)(11)) is amended by striking ''2012'' and inserting ''2020''.

(d) LIMITATION.—

(1) IN GENERAL.—The Commission may not reclaim frequencies licensed to broadcast television licensees or other licensees, directly or indirectly, on an involuntary basis for purposes of section 309(j)(8)(F) of the Communications Act of 1934.

(2) RULE OF CONSTRUCTION.—Nothing in this Act or in the amendments made by this Act shall be construed to permit the Commission to reclaim frequencies of broadcast television licensees or any other licensees directly or indirectly on an involuntary basis for the purpose that section.

SEC. 205. REPORT ON EFFICIENT USE OF PUBLIC SAFETY SPECTRUM.

Not later than 5 years after the date of enactment of this Act and every 5 years thereafter, the Commission shall conduct a study and submit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce on the spectrum held by the public safety entities. In the report the Commission shall—

(1) examine how such spectrum is being used;

(2) provide a recommendation for whether more spectrum needs to be made available to meet the needs of public safety entities; and

(3) assess the opportunity for return of any spectrum to the Commission for auction to commercial providers to provide revenue to the Treasury of the United States.

SEC. 206. GAO REPORT ON SATELLITE BROADBAND.

Not later than 2 .years after the date of enactment of this Act, the Comptroller General of the United States shall conduct a study and submit to Congress a report on the current and future capabilities of fixed and mobile satellite broadband to assist public safety entities during an emergency.

SEC. 207. ACCESS TO GSA SCHEDULES.

The Administrator of General Services shall—

(1) establish rules under which public safety entities may access and use the rates offered to the General Services Administration for communications services and devices;

(2) develop and furnish to the Commission a model request-for-proposals form for public safety use under section 105; and

(3) develop a procedure under which public safety entities are authorized to purchase from established GSA schedules.

SEC. 208. FEDERAL INFRASTRUCTURE SHARING.

The Administrator of General Services shall establish rules to allow any public safety licensee or licensees to have access to Federal infrastructure to construct and maintain the public safety interoperable broadband network.

SEC. 209. AUDITS.

(a) IN GENERAL.—Not later than 3 years after the date of enactment of this Act, and every 3 years thereafter, the Comptroller General of the United States shall perform an audit of the financial statements, records, and accounts of the—

(1) Public Safety Interoperable Broadband Network Construction Fund established under section 201(a)(1);

(2) Public Safety Interoperable Broadband Network Maintenance and Operation Fund established under section 201(a)(2);

(3) construction grant program established under section 202; and

(4) maintenance and operation program established under section 203.

(b) GAAP.—Each audit required under subsection (a) shall be conducted in accordance with generally acceptable accounting procedures.

(c) REPORT TO CONGRESS.—A copy of each audit required under subsection (a) shall be submitted to the appropriate committees of Congress.

SEC. 210. ANTIDIVERSION PROHIBITION.

Except as provided in section 309(j)(8)(F)(ii)(III) of the Communications Act of 1934, as added by this Act, no funds made available under this Act or any amendment made by this Act may be used for any purpose other than in support of the nationwide public safety interoperable broadband network to be deployed under this Act, including the acquisition, construction, or reconstruction of infrastructure and facilities, the purchase of equipment and services, including hardware, software, and training, in accordance with rules established by the Commission.

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

S. 29. A bill to establish the Sacramento-San Joaquin Delta National Heritage Area; to the Committee on Energy and Natural Resources.

Mrs. FEINSTEIN. Mr. President, I rise on behalf of myself and Senator BOXER to introduce legislation to establish a National Heritage Area in the California Sacramento-San Joaquin Delta. This legislation will create the first Heritage Area in California.

I am pleased that I have had the opportunity to work with Senator BOXER, Representative JOHN GARAMENDI, and the County Supervisors from the 5 Delta Counties to prepare this legislation and support their efforts to fully partner with the State, the Federal agencies, and other local governments to improve and care for the Delta.

This bill will establish the Sacramento-San Joaquin Delta as a National Heritage Area.

The Delta Protection Commission, created by California law and responsible to the citizens of the Delta and California, will manage the Heritage Area. It will ensure an open and public process, working with all levels of federal, state, and local government, tribes, local stakeholders, and private property owners as it develops and implements the management plan for the Heritage Area. The goal is to conserve and protect the Delta, its communities, its resources, and its history.

It is also important to understand what this legislation will not do. It will not affect water rights. It will not affect water contracts. It will not affect private property.

Nothing in this bill gives any governmental agency any more regulatory power than it already has, nor does it take away regulatory from agencies that have it.

In short, this bill does not affect water rights or water contracts, nor does is impose any additional responsibilities on local government or residents. Instead, it authorizes Federal assistance to a local process already required by State law that will elevate the Delta, providing a means to conserve and protect its valued communities, resources, and history.

The Sacramento-San Joaquin Delta is the largest estuary on the West Coast. It is the most extensive inland delta in the world, and a unique national treasure.

Today, it is a labyrinth of sloughs, wetlands, and deepwater channels that connect the waters of the high Sierra mountain streams to the Pacific Ocean through the San Francisco Bay. Its approximately 60 islands are protected by 1,100 miles of levees, and are home to 3,500,000 residents, including 2,500 family farmers. The Delta and its farmers produce some of the highest quality specialty crops in the United States.

The Delta offers recreational opportunities to the two million Californians who visit the Delta each year for boating, fishing, hunting, visiting historic sites, and viewing wildlife. It provides habitat for more than 750 species of plants and wildlife. These include sand hill cranes that migrate to the Delta wetland from places as far away as Siberia. The Delta also provides habitat for 55 species of fish, including Chinook salmon—some as large as 60 pounds—that return each year to travel through the Delta to spawn in the tributaries.

These same waterways also channel fresh water to the Federal and State-owned pumps in the South Delta that provide water to 23 million Californians and 3 million acres of irrigated agricultural land elsewhere in the state.

Before the Delta was reclaimed for farmland in the 19th Century, the Delta flooded regularly with snow melt each spring, and provided the rich environment that, by 1492, supported the largest settlement of Native Americans in North America.

The Delta was the gateway to the gold fields in 1849, after which Chinese workers built hundreds of miles of levees throughout the waterways of the Delta to make its rich peat soils available for farming and to control flooding.

Japanese, Italians, German, Portuguese, Dutch, Greeks, South Asians, and other immigrants began the farming legacy, and developed technologies specifically adapted to the unique environment, including the Caterpillar Tractor, which later contributed to agriculture and transportation internationally.

Delta communities created a river culture befitting their dependence on water transport, a culture which has attracted the attention of authors from Mark Twain and Jack London to Joan Didion.

The Delta is in crisis due to many factors, including invasive species, urban and agricultural run-off, wastewater discharges, channelization, dredging, water export operations, and other stressors.

Many of the islands of the Delta are between 10 and 20 feet below sea level, and the levee system is presently inadequate to provide reliable flood protection for historic communities, significant habitats, agricultural enterprises, water resources, transportation and other infrastructure.

Existing levees have not been engineered to withstand earthquakes. Should levees fail for any reason, a rush of seawater into the interior of the Delta could damage the already fragile ecosystem, contaminate drinking water for many Californians, flood agricultural land, inundate towns, and damage roads, power lines, and water project infrastructure.

The State of California has been working for decades on a resolution to the water supply and ecosystem crisis in the State, and has a long history of partnerships with Federal agencies, working together to resolve challenges to the Delta's historic communities, ecosystem and the water it supplies so many Californians.

The Delta Protection Commission, established under state law, has been tasked by the California State Legislature with providing a forum for Delta residents to engage in decisions regarding actions to recognize and enhance the unique cultural, recreational, agricultural resources, infrastructure and legacy communities of the Delta and to serve as the facilitating agency for the implementation of a National Heritage Area in the Delta.

This legislation will complement the broadly supported State Water Legislation of 2009, which called for a Heritage designation for the Delta.

This legislation authorizes the creation of the Delta Heritage Area and federal assistance to the Delta Protection Commission in implementing the Area. This legislation is just a small part of the commitment the Federal government must make to the Delta. I look forward to continuing to work with my colleagues at every level of

government to restore and sustain the ecosystem in the Delta, to provide for reliable water supply in the State of California, to recover the native species of the Delta, protect communities in the Delta from flood risk, ensure economic sustainability in the Delta, improve water quality in the Delta, and; sustain the unique cultural, historical, recreational, agricultural and economic values of the Delta.

The National Heritage Area designation for the Sacramento-San Joaquin Delta will help local governments develop and implement a plan for a sustainable future by providing Federal recognition, technical assistance and small amounts of funding to a community-based process already underway.

Through the Delta Heritage Area, local communities and citizens will partner with Federal, State and local governments to collaboratively work to promote conservation, community revitalization, and economic development projects.

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. 29

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 ''Sacramento-San Joaquin Delta National Heritage Area Establishment Act''.

SEC. 2. DEFINITIONS.

In this Act:

(1) HERITAGE AREA.—The term ''Heritage Area'' means the Sacramento-San Joaquin Delta Heritage Area established by section 3(a).

(2) HERITAGE AREA MANAGEMENT PLAN.—The term ''Heritage Area management plan'' means the plan developed and adopted by the management entity under this Act.

(3) MANAGEMENT ENTITY.—The term ''management entity'' means the management entity for the Heritage Area designated by section 3(d).

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

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

SEC. 3. SACRAMENTO-SAN JOAQUIN DELTA HERITAGE AREA.

(a) ESTABLISHMENT.—There is established the ''Sacramento-San Joaquin Delta Heritage Area'' in the State.

(b) BOUNDARIES.—The boundaries of the Heritage Area shall be in the counties of Contra Costa, Sacramento, San Joaquin, Solano, and Yolo in the State of California, as generally depicted on the map entitled ''Sacramento-San Joaquin Delta National Heritage Area Proposed Boundary'', numbered T27/105,030, and dated September 2010.

(c) AVAILABILITY OF MAP.—The map described in subsection (b) shall be on file and available for public inspection in the appropriate offices of the National Park Service and the Delta Protection Commission.

(d) MANAGEMENT ENTITY.—The management entity for the Heritage Area shall be the Delta Protection Commission established by section 29735 of the California Public Resources Code.

(e) ADMINISTRATION.—

(1) AUTHORITIES.—For purposes of carrying out the Heritage Area management plan, the Secretary, acting through the management entity, may use amounts made available under this Act to—

(A) make grants to the State or a political subdivision of the State, nonprofit organizations, and other persons;

(B) enter into cooperative agreements with, or provide technical assistance to, the State or a political subdivision of the State, nonprofit organizations, and other interested parties;

(C) hire and compensate staff, which shall include individuals with expertise in natural, cultural, and historical resources protection, and heritage programming;

(D) obtain money or services from any source including any that are provided under any other Federal law or program;

(E) contract for goods or services; and

(F) undertake to be a catalyst for any other activity that furthers the Heritage Area and is consistent with the approved Heritage Area management plan.

(2) DUTIES.—The management entity shall—

(A) in accordance with subsection (f), prepare and submit a Heritage Area management plan to the Secretary;

(B) assist units of local government, regional planning organizations, and nonprofit organizations in carrying out the approved Heritage Area management plan by—

(i) carrying out programs and projects that recognize, protect, and enhance important resource values in the Heritage Area;

(ii) establishing and maintaining interpretive exhibits and programs in the Heritage Area;

(iii) developing recreational and educational opportunities in the Heritage Area;

(iv) increasing public awareness of, and appreciation for, natural, historical, scenic, and cultural resources of the Heritage Area;

(v) protecting and restoring historic sites and buildings in the Heritage Area that are consistent with Heritage Area themes;

(vi) ensuring that clear, consistent, and appropriate signs identifying points of public access, and sites of interest are posted throughout the Heritage Area; and

(vii) promoting a wide range of partnerships among governments, organizations, and individuals to further the Heritage Area;

(C) consider the interests of diverse units of government, businesses, organizations, and individuals in the Heritage Area in the preparation and implementation of the Heritage Area management plan;

(D) conduct meetings open to the public at least semiannually regarding the development and implementation of the Heritage Area management plan;

(E) for any year that Federal funds have been received under this Act—

(i) submit an annual report to the Secretary that describes the activities, expenses, and income of the management entity (including grants to any other entities during the year that the report is made);

(ii) make available to the Secretary for audit all records relating to the expenditure of the funds and any matching funds;

(iii) require, with respect to all agreements authorizing expenditure of Federal funds by other organizations, that the organizations receiving the funds make available to the Secretary for audit all records concerning the expenditure of the funds; and

(F) encourage by appropriate means economic viability that is consistent with the Heritage Area.

(3) PROHIBITION ON THE ACQUISITION OF REAL PROPERTY.—The management entity shall not use Federal funds made available under this Act to acquire real property or any interest in real property.

(4) COST-SHARING REQUIREMENT.—The Federal share of the cost of any activity carried out using any assistance made available under this Act shall be 50 percent.

(f) HERITAGE AREA MANAGEMENT PLAN.—

(1) IN GENERAL.—Not later than 3 years after the date of enactment of this Act, the management entity shall submit to the Secretary for approval a proposed Heritage Area management pla.

(2) REQUIREMENTS.—The Heritage Area management plan shall—

(A) incorporate an integrated and cooperative approach to agricultural resources and activities, flood protection facilities, and other public infrastructure;

(B) emphasizes the importance of the resources described in subparagraph (A);

(C) take into consideration State and local plans;

(D) include—

(i) an inventory of—

(I) the resources located in the core area described in subsection (b); and

(II) any other property in the core area that—

(aa) is related to the themes of the Heritage Area; and

(bb) should be preserved, restored, managed, or maintained because of the significance of the property;

(ii) comprehensive policies, strategies and recommendations for conservation, funding, management, and development of the Heritage Area;

(iii) a description of actions that governments, private organizations, and individuals have agreed to take to protect the natural, historical and cultural resources of the Heritage Area;

(iv) a program of implementation for the Heritage Area management plan by the management entity that includes a description of—

(I) actions to facilitate ongoing collaboration among partners to promote plans for resource protection, restoration, and construction; and

(II) specific commitments for implementation that have been made by the management entity or any government, organization, or individual for the first 5 years of operation;

(v) the identification of sources of funding for carrying out the Heritage Area management plan;

(vi) analysis and recommendations for means by which local, State, and Federal programs, including the role of the National Park Service in the Heritage Area, may best be coordinated to carry out this Act; and

(vii) an interpretive plan for the Heritage Area; and

(E) recommend policies and strategies for resource management that consider and detail the application of appropriate land and water management techniques, including the development of intergovernmental and interagency cooperative agreements to protect the natural, historical, cultural, educational, scenic, and recreational resources of the Heritage Area.

(3) RESTRICTIONS.—The Heritage Area management plan submitted under this subsection shall—

(A) ensure participation by appropriate Federal, State, tribal, and local agencies, including the Delta Stewardship Council, special districts, natural and historical resource protection and agricultural organizations, educational institutions, businesses, recreational organizations, community residents, and private property owners; and

(B) not be approved until the Secretary has received certification from the Delta Protection Commission that the Delta Stewardship Council has reviewed the Heritage Area management plan for consistency with the plan adopted by the Delta Stewardship Council pursuant to State law.

(4) DEADLINE.—If a proposed Heritage Area management plan is not submitted to the Secretary by the date that is 3 years after the date of enactment of this Act, the management entity shall be ineligible to receive additional funding under this Act until the date that the Secretary receives and approves the Heritage Area management plan.

(5) APPROVAL OR DISAPPROVAL OF HERITAGE AREA MANAGEMENT PLAN.—

(A) IN GENERAL.—Not later than 180 days after the date of receipt of the Heritage Area management plan under paragraph (1), the Secretary, in consultation with the State, shall approve or disapprove the Heritage Area management plan.

(B) CRITERIA FOR APPROVAL.—In determining whether to approve the Heritage Area management plan, the Secretary shall consider whether—

(i) the management entity is representative of the diverse interests of the Heritage Area, including governments, natural and historic resource protection organizations, educational institutions, businesses, and recreational organizations;

(ii) the management entity has afforded adequate opportunity, including public hearings, for public and governmental involvement in the preparation of the Heritage Area management plan; and

(iii) the resource protection and interpretation strategies contained in the Heritage Area management plan, if implemented, would adequately protect the natural, historical, and cultural resources of the Heritage Area.

(C) ACTION FOLLOWING DISAPPROVAL.—If the Secretary disapproves the Heritage Area management plan under subparagraph (A), the Secretary shall—

(i) advise the management entity in writing of the reasons for the disapproval;

(ii) make recommendations for revisions to the Heritage Area management plan; and

(iii) not later than 180 days after the receipt of any proposed revision of the Heritage Area management plan from the management entity, approve or disapprove the proposed revision.

(D) AMENDMENTS.—

(i) IN GENERAL.—The Secretary shall approve or disapprove each amendment to the Heritage Area management plan that the Secretary determines make a substantial change to the Heritage Area management plan.

(ii) USE OF FUNDS.—The management entity shall not use Federal funds authorized by this Act to carry out any amendments to the Heritage Area management plan until the Secretary has approved the amendments.

(g) RELATIONSHIP TO OTHER FEDERAL AGENCIES.—

(1) IN GENERAL.—Nothing in this Act affects the authority of a Federal agency to provide technical or financial assistance under any other law.

(2) CONSULTATION AND COORDINATION.—The head of any Federal agency planning to conduct activities that may have an impact on the Heritage Area is encouraged to consult and coordinate the activities with the Secretary and the management entity to the maximum extent practicable.

(3) OTHER FEDERAL AGENCIES.—Nothing in this Act—

(A) modifies, alters, or amends any law or regulation authorizing a Federal agency to manage Federal land under the jurisdiction of the Federal agency;

(B) limits the discretion of a Federal land manager to implement an approved land use plan within the boundaries of the Heritage Area; or

(C) modifies, alters, or amends any authorized use of Federal land under the jurisdiction of a Federal agency.

(h) PRIVATE PROPERTY AND REGULATORY PROTECTIONS.—

(1) IN GENERAL.—Subject to paragraph (2), nothing in this Act—

(A) abridges the rights of any property owner (whether public or private), including the right to refrain from participating in any plan, project, program, or activity conducted within the Heritage Area;

(B) requires any property owner to permit public access (including access by Federal, State, or local agencies) to the property of the property owner, or to modify public access or use of property of the property owner under any other Federal, State, or local law;

(C) alters any duly adopted land use regulation, approved land use plan, or other regulatory authority of any Federal, State or local agency, or conveys any land use or other regulatory authority to the management entity;

(D) authorizes or implies the reservation or appropriation of water or water rights;

(E) diminishes the authority of the State to manage fish and wildlife, including the regulation of fishing and hunting within the Heritage Area; or

(F) creates any liability, or affects any liability under any other law, of any private property owner with respect to any person injured on the private property.

(2) OPT OUT.—An owner of private property within the Heritage Area may opt out of participating in any plan, project, program, or activity carried out within the Heritage Area under this Act, if the property owner provides written notice to the management entity.

(i) EVALUATION; REPORT.—

(1) IN GENERAL.—Not later than 3 years before the date on which authority for Federal funding terminates for the Heritage Area, the Secretary shall—

(A) conduct an evaluation of the accomplishments of the Heritage Area; and

(B) prepare a report in accordance with paragraph (3).

(2) EVALUATION.—An evaluation conducted under paragraph (1)(A) shall—

(A) assess the progress of the management entity with respect to—

(i) accomplishing the purposes of this Act for the Heritage Area; and

(ii) achieving the goals and objectives of the approved Heritage Area management plan;

(B) analyze the Federal, State, local, and private investments in the Heritage Area to determine the leverage and impact of the investments; and

(C) review the management structure, partnership relationships, and funding of the Heritage Area for purposes of identifying the critical components for sustainability of the Heritage Area.

(3) REPORT.—

(A) IN GENERAL.—Based on the evaluation conducted under paragraph (1)(A), the Secretary shall prepare a report that includes recommendations for the future role of the National Park Service, if any, with respect to the Heritage Area.

(B) REQUIRED ANALYSIS.—If the report prepared under subparagraph (A) recommends that Federal funding for the Heritage Area be reauthorized, the report shall include an analysis of—

(i) ways in which Federal funding for the Heritage Area may be reduced or eliminated; and

(ii) the appropriate time period necessary to achieve the recommended reduction or elimination.

(C) SUBMISSION TO CONGRESS.—On completion of the report, the Secretary shall submit the report to—

(i) the Committee on Energy and Natural Resources of the Senate; and

(ii) the Committee on Natural Resources of the House of Representatives.

(j) EFFECT OF DESIGNATION.—Nothing in this Act—

(1) precludes the management entity from using Federal funds made available under other laws for the purposes for which those funds were authorized; or

(2) affects any water rights or contracts.

SEC. 4. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There is authorized to be appropriated to carry out this Act $10,000,000, of which not more than $1,000,000 may be made available for any fiscal year.

(b) COST-SHARING REQUIREMENT.—The Federal share of the total cost of any activity under this Act shall be determined by the Secretary, but shall be not more than 50 percent.

(c) NON-FEDERAL SHARE.—The non-Federal share of the total cost of any activity under this Act may be in the form of in-kind contributions of goods or services.

SEC. 5. TERMINATION OF AUTHORITY.

(a) IN GENERAL.—If a proposed Heritage Area management plan has not been submitted to the Secretary by the date that is 5 years after the date of enactment of this Act, the Heritage Area designation shall be rescinded.

(b) FUNDING AUTHORITY.—The authority of the Secretary to provide assistance under this Act terminates on the date that is 15 years after the date of enactment of this Act.

By Mr. FRANKEN:

S. 31. A bill to amend part D of title XVIII of the Social Security Act to authorize the Secretary of Health and Human Services to negotiate for lower prices for Medicare prescription drugs; to the Committee on Finance.

Mr. FRANKEN. 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. 31

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 ''Prescription Drug and Health Improvement Act of 2011''.

SEC. 2. NEGOTIATING FAIR PRICES FOR MEDICARE PRESCRIPTION DRUGS.

(a) NEGOTIATING FAIR PRICES.—

(1) IN GENERAL.—Section 1860D–11 of the Social Security Act (42 U.S.C. 1395w–111) is amended by striking subsection (i) (relating to noninterference) and by inserting the following:

''(i) AUTHORITY TO NEGOTIATE PRICES WITH MANUFACTURERS.—In order to ensure that beneficiaries enrolled under prescription drug plans and MA–PD plans pay the lowest possible price, the Secretary shall have authority similar to that of other Federal entities that purchase prescription drugs in bulk to negotiate contracts with manufacturers of covered part D drugs, consistent with the requirements and in furtherance of the goals of providing quality care and containing costs under this part.''.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect on the date of the enactment of this Act.

(b) BIANNUAL REPORTS TO CONGRESS.—Not later than 1 year after the date of the enactment of this Act, and every 6 months thereafter, the Secretary of Health and Human Services shall submit to Congress a report on the negotiations conducted by the Secretary

under section 1860D–11(i) of the Social Security Act (42 U.S.C. 1395w–111(i)), as amended by subsection (a), including a description of how such negotiations are achieving lower prices for covered part D drugs (as defined in section 1860D–2(e) of the Social Security Act (42 U.S.C. 1395w–102(e)) for Medicare beneficiaries.

By Mr. LIEBERMAN (for himself, Mr. SANDERS, Mr. REED, Mrs. BOXER, Mr. UDALL of Colorado, Mr. HARKIN, Mr. BENNET, Mr. KOHL, Mr. UDALL of New Mexico, Mr. CARDIN, Ms. CANTWELL, Mrs. MURRAY, Mr. WHITEHOUSE, Mr. LEAHY, Mrs. FEINSTEIN, Ms. KLOBUCHAR, Mr. KERRY, Mr. DURBIN, Mr. WYDEN, and Mr. LAUTENBERG):

S. 33. A bill to designate a portion of the Arctic National Wildlife Refuge as wilderness; to the Committee on Environment and Public Works.

Mr. LIEBERMAN. Mr. President, today, I introduced legislation to protect the coastal plains region of the Arctic National Wildlife Refuge from oil and gas exploration and drilling. Every Congress since the 101st, I have either introduced or been an original cosponsor of legislation to protect the Refuge, making tomorrow the twelfth time since 1989 that I will mark my unwavering support for reaffirming the original intent of the Refuge: to provide habitat for Alaska's wildlife, by designating 1.5 million acres of the Refuge as Wilderness to be included in the National Wilderness Preservation System.

I have long believed we have a responsibility to future generations to preserve the Arctic National Wildlife Refuge, and I have fought to protect it for as long as I have been in the Senate. The fact is, we do not have to choose between conservation and exploration when it comes to our energy future; we can do both simultaneously while moving toward a sustainable and diverse national energy policy.

The Arctic Refuge is home to 250 species of wildlife. Drilling there would severely harm its abundant populations of polar bears, caribou, musk oxen, and snow geese. Beyond that, the amount of commercially recoverable oil in the Refuge would satisfy only a very small percentage of our Nation's need at any given time and would have no appreciable long-tem impact on gasoline prices. The permanent environmental price we would pay for ravaging the Refuge to drain those limited resources is simply too high.

I look forward to working with my colleagues to pass this important legislation.

By Mr. WHITEHOUSE (for himself, Mr. LEAHY, Mr. SANDERS, Mrs. BOXER, Mr. DURBIN, Mr. BROWN of Ohio and Mr. HARKIN):

S. 45. A bill to amend the Internal Revenue Code of 1986 to provide for the taxation of income of controlled foreign corporations attributable for imported property; to the Committee on Finance.

Mr. WHITEHOUSE. Mr. President, from the Recovery Act to the Small Business Jobs Act, in the previous Congress we passed a number of substantial pieces of legislation to preserve, protect, and create American jobs. The Recovery Act alone has supported between 2.7 and 3.7 million jobs, including 12,000 jobs in my home State of Rhode Island. This was vital in stemming the 700,000-per-month job loss rate we faced when the previous administration left office. Without the Recovery Act and the other fiscal stimulus we passed over the past 2 years, the economy would have been much worse.

While the Recovery Act protected our country from what would have been a far worse economic meltdown, the employment market is still weak and families are still hurting. Our national unemployment rate was 9.4 percent in December—an unacceptably high level. And it was higher still in harder hit States such as Rhode Island, where we have had an 11.5-percent unemployment rate in December. As we begin this new Congress, our No. 1 priority must remain job retention and creation.

The manufacturing industry has historically been the engine of growth for the American economy. The manufacturing economy has been especially important in the industrial Northeast, particularly in my State of Rhode Island. From Slater Mill in Pawtucket—one of the first water-powered textile mills in the Nation and the birthplace of the Industrial Revolution—to high-tech modern submarine production at Quonset Point, the manufacturing sector has always been central to Rhode Island's economy.

Unfortunately, as American companies have faced rising production costs and increased—and very often unfair—competition from foreign firms, U.S. manufacturing employment has plummeted. According to the Bureau of Labor Statistics, the number of manufacturing jobs declined by almost a third over the past decade, from 17.2 million people at work in 2000 to 11.7 million people at work in 2010. That is 6 million jobs lost. This decline has been felt most sharply in our old manufacturing centers, such as Rhode Island. In Rhode Island, the loss of manufacturing jobs in the past decade has topped 44 percent. The decline of the manufacturing sector is a primary reason why Rhode Island has had greater difficulty than most other States in recovering from the recent recession.

Over and over I have traveled around Rhode Island to meet with local manufacturers, listening to their frustrations and discussing ideas to help their businesses grow. During these visits, I have heard one theme over and over: Unfair foreign competition is killing domestic industries. One Pawtucket manufacturer I visited last week told me they recently lost 8 percent of their business to a Chinese competitor. It is clear to me that if we want to keep manufacturing jobs in this country and in Rhode Island, we need to level the playing field for our manufacturing companies with their foreign competitors.

Today I will introduce legislation that will remove one homegrown incentive to move jobs offshore and help to make competition fairer for companies straggling to keep their factory doors open at plants here in the United States. The Offshoring Prevention Act, cosponsored by Senators LEAHY, SANDERS, BOXER, DURBIN, BROWN of Ohio, and HARKIN, would end a perverse tax incentive that actually rewards companies for shipping jobs overseas. Under current law, an American company that manufactures goods in Rhode Island or Montana or Maine must pay Federal income tax on profits in the year the profits are earned. That is standard tax law. But if that same company moves its factory to another country, it is permitted to defer the payment of income taxes from that factory and declare them in a year that is more advantageous—for example, one in which the company has offsetting tax losses.

If an American company moves a plant offshore, it acquires this tax deferral advantage. It makes no sense that our Tax Code allows companies to delay paying income taxes on profits when made through overseas subsidiaries but charges those profits in the year they are made at home. My bill will put a stop to this practice on profits earned on manufactured goods exported to the United States. To put it simply: Our tax system should not reward companies for eliminating American jobs.

The Offshoring Prevention Act is based on legislation Senator Byron Dorgan offered over the past two decades, again and again. We can all remember Senator Dorgan coming to this floor here with pictures of iconic American goods, such as York Peppermint Patties, Radio Flyer red wagons, Fig Newton cookies, and Huffy bicycles, to highlight the fact that the production of these American classic products had moved to Mexico, to China, and elsewhere. On dozens, if not hundreds, of occasions, Senator Dorgan spoke passionately on this floor about the decline of American manufacturing. I am grateful to his leadership on this critical issue and for bringing our attention to an unfair tax advantage that rewards companies for moving manufacturing jobs overseas.

Last year, a version of Senator Dorgan's bill was included in the Creating American Jobs and Ending Offshoring Act. While a majority of this body—53 Senators—voted to begin debate on the bill, we were not able to overcome a filibuster to have a chance to consider and pass this legislation. I am sorry we were not able to pass the bill last year, and I will do my best to bring it up for a vote in this new Congress.

Mr. President, keeping jobs in America and providing a level playing field for American manufacturing should

not be a Democratic or a Republican issue. We all serve here in the Senate to represent the interests of our constituents, and our constituents want us to keep these good-paying manufacturing jobs in America. I hope that all of our colleagues will join me in passing the Offshoring Prevention Act to do just that.

By Mr. INOUYE (for himself, Mr. ROCKEFELLER, Mr. KERRY, Ms. SNOWE, and Mr. NELSON of Florida):

S. 46. A bill to reauthorize the Coral Reef Conservation Act of 2000, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Mr. INOUYE. Mr. President, I am pleased to introduce the Coral Reef Conservation Amendments Act, which I also introduced in the 111th Congress. This critical bill reauthorizes and strengthens the Coral Reef Conservation Act of 2000, a program that I was pleased to originally sponsor in the 106th Congress establishing the Coral Reef Conservation Program at the National Oceanic and Atmospheric Administration, NOAA.

Coral reefs are among the oldest and most economically and biologically important ecosystems in the world. They provide habitat for more than one million diverse aquatic species, a natural barrier for protection from coastal storms and erosion, and are a potential source of treatment for many of the world's diseases. From a commerce perspective, reef-supported tourism is a $30 billion industry worldwide, and the commercial value of United States fisheries from coral reefs is more than $100 million.

However, our coral reef ecosystems face many threats including pollution, climate change and coral bleaching, and overfishing to name a few. Coral reefs cover only one-tenth of one percent of the ocean floor, yet provide habitat for more than twenty-five percent of all marine species.

The original Coral Reef Conservation Act of 2000 recognized the need to preserve, sustain and restore the condition of these valuable coral reef ecosystems. The Coral Reef Conservation Amendments Act of 2011 would strengthen NOAA's ability to comprehensively address threats to coral reefs and empower the agency with tools to ensure that damage to our coral reef ecosystems is prevented or effectively mitigated. It also establishes consistent practices for maintaining data, products, and information, and promotes the widespread availability and dissemination of that environmental information.

Finally, the bill allows the Secretary to further develop partnerships with foreign governments and international organizations—partnerships that are critical not only to the understanding of our coral reef ecosystems, but also to their protection and restoration.

Thank you and I would urge you to support this important legislation to continue supporting NOAA's leadership role in coral reef conservation.

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. 46

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Coral Reef Conservation Amendments Act of 2011''.

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

SEC. 2. AMENDMENT OF CORAL REEF CONSERVATION ACT OF 2000.

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to or repeal of a section or other provision, the reference shall be considered to be made to a section or other provision of the Coral Reef Conservation Act of 2000 (16 U.S.C. 6401 et seq.).

SEC. 3. PURPOSES.

Section 202 (16 U.S.C. 6401) is amended to read as follows:

''SEC. 202. PURPOSES.

''The purposes of this Act are—

''(1) to preserve, sustain, and restore the condition of coral reef ecosystems;

''(2) to promote the wise management and sustainable use of coral reef ecosystems to benefit local communities, the Nation, and the world;

''(3) to develop sound scientific information on the condition of coral reef ecosystems and the threats to such ecosystems;

''(4) to assist in the preservation of coral reef ecosystems by supporting conservation programs, including projects that involve affected local communities and nongovernmental organizations;

''(5) to provide financial resources for those programs and projects;

''(6) to establish a formal mechanism for collecting and allocating monetary donations from the private sector to be used for coral reef conservation projects; and

''(7) to provide mechanisms to prevent and minimize damage to coral reefs.''.

SEC. 4. NATIONAL CORAL REEF ACTION STRATEGY.

Section 203 (16 U.S.C. 6402) is amended to read as follows:

''(a) IN GENERAL.—Not later than 180 days after the date of the enactment of the Coral Reef Conservation Amendments Act of 2011, the Secretary shall submit to the Senate Committee on Commerce, Science, and Transportation and to the House of Representatives Committee on Natural Resources and publish in the Federal Register a national coral reef ecosystem action strategy, consistent with the purposes of this title. The Secretary shall periodically review and revise the strategy as necessary. In developing this national strategy, the Secretary may consult the Coral Reef Task Force established under Executive Order 13089 (June 11, 1998).

''(b) GOALS AND OBJECTIVES.—The action strategy shall include a statement of goals and objectives as well as an implementation plan, including a description of the funds obligated each fiscal year to advance coral reef conservation. The action strategy and implementation plan shall include discussion of—

''(1) coastal uses and management, including land-based sources of pollution;

''(2) climate change;

''(3) water and air quality;

''(4) mapping and information management;

''(5) research, monitoring, and assessment;

''(6) international and regional issues;

''(7) outreach and education;

''(8) local strategies developed by the States or Federal agencies, including regional fishery management councils; and

''(9) conservation.''.

SEC. 5. CORAL REEF CONSERVATION PROGRAM.

(a) IN GENERAL.—Section 204 (16 U.S.C. 6403) is amended—

(1) by striking ''Secretary, through the Administrator and'' in subsection (a) and inserting ''Secretary,'';

(2) by striking subsection (c) and inserting the following:

''(c) ELIGIBILITY.—Any natural resource management authority of a State or other government authority with jurisdiction over coral reef ecosystems, or whose activities directly or indirectly affect coral reef ecosystems, or educational or nongovernmental institutions with demonstrated expertise in the conservation of coral reef ecosystems, may submit a coral conservation proposal to the Secretary under subsection (e).'';

(3) by striking ''GEOGRAPHIC AND BIOLOGICAL'' in the heading for subsection (d) and inserting ''PROJECT'';

(4) by striking paragraph (3) of subsection (d) and inserting the following:

''(3) Remaining funds shall be awarded for—

''(A) projects (with priority given to community-based local action strategies) that address emerging priorities or threats, including international and territorial priorities, or threats identified by the Secretary; and

''(B) other appropriate projects, as determined by the Secretary, including monitoring and assessment, research, pollution reduction, education, and technical support.'';

(5) by striking subsection (g) and inserting the following:

''(g) CRITERIA FOR APPROVAL.—The Secretary may not approve a project proposal under this section unless the project is consistent with the coral reef action strategy under section 203 and will enhance the conservation of coral reef ecosystems nationally or internationally by—

''(1) implementing coral conservation programs which promote sustainable development and ensure effective, long-term conservation of coral reef ecosystems and biodiversity;

''(2) addressing the conflicts arising from the use of environments near coral reef ecosystems or from the use of corals, species associated with coral reef ecosystems, and coral products;

''(3) enhancing compliance with laws that prohibit or regulate the taking of coral products or species associated with coral reef ecosystems or regulate the use and management of coral reef ecosystems;

''(4) developing sound scientific information on the condition of coral reef ecosystems or the threats to such ecosystems and their biodiversity, including factors that cause coral disease, ocean acidification, and bleaching;

''(5) promoting and assisting the implementation of cooperative coral reef ecosystem conservation projects that involve affected local communities, nongovernmental organizations, or others in the private sector;

''(6) increasing public knowledge and awareness of coral reef ecosystems and issues regarding their long-term conservation, including how they function to protect coastal communities;

''(7) mapping the location, distribution, and biodiversity of coral reef ecosystems;

''(8) developing and implementing techniques to monitor and assess the status and condition of coral reef ecosystems and biodiversity;

''(9) developing and implementing cost-effective methods to restore degraded coral reef ecosystems and biodiversity;

''(10) responding to, or taking action to help mitigate the effects of, coral disease, ocean acidification, and bleaching events;

''(11) promoting activities designed to prevent or minimize damage to coral reef ecosystems, including the promotion of ecologically sound navigation and anchorages; or

''(12) promoting and assisting entities to work with local communities, and all appropriate governmental and nongovernmental organizations, to support community-based planning and management initiatives for the protection of coral reef systems.''; and

(6) by striking ''coral reefs'' in subsection (j) and inserting ''coral reef ecosystems''.

(b) CONFORMING AMENDMENTS.—Subsections (b), (d), (e), (f), (h), (i), and (j) of section 204 (16 U.S.C. 6403) are each amended by striking ''Administrator'' each place it appears and inserting ''Secretary''.

SEC. 6. CORAL REEF CONSERVATION FUND.

Section 205 (16 U.S.C. 6404) is amended—

(1) by striking subsection (a) and inserting the following:

''(a) FUND.—The Secretary may enter into agreements with nonprofit organizations promoting coral reef ecosystem conservation by authorizing such organizations to receive, hold, and administer funds received pursuant to this section. Such organizations shall invest, reinvest, and otherwise administer the funds and maintain such funds and any interest or revenues earned in a separate interest-bearing account (referred to in section 219(a) as the Fund) established by such organizations solely to support partnerships between the public and private sectors that further the purposes of this title and are consistent with the national coral reef action strategy under section 203.'';

(2) by striking ''the grant program'' in subsection (c) and inserting ''any grant program''; and

(3) by striking ''Administrator'' in subsections (c) and (d) and inserting ''Secretary''.

SEC. 7. AGREEMENTS; REDESIGNATIONS.

The Act (16 U.S.C. 6401 et seq.) is amended—

(1) by redesignating section 206 (16 U.S.C. 6405) as section 207;

(2) by redesignating section 207 (16 U.S.C. 6406) as section 208;

(3) by redesignating section 208 (16 U.S.C. 6407) as section 218;

(4) by redesignating section 209 (16 U.S.C. 6408) as section 219;

(5) by redesignating section 210 (16 U.S.C. 6409) as section 221; and

(6) by inserting after section 205 (16 U.S.C. 6404) the following:

''SEC. 206. AGREEMENTS.

''(a) IN GENERAL.—The Secretary may execute and perform such contracts, leases, grants, cooperative agreements, or other transactions as may be necessary to carry out the purposes of this title.

''(b) COOPERATIVE AGREEMENTS.—In addition to the general authority provided by subsection (a), the Secretary may enter into, extend, or renegotiate agreements with universities and research centers with national or regional coral reef research institutes to conduct ecological research and monitoring explicitly aimed at building capacity for more effective resource management. Pursuant to any such agreements these institutes shall—

''(1) collaborate directly with governmental resource management agencies, nonprofit organizations, and other research organizations;

''(2) build capacity within resource management agencies to establish research priorities, plan interdisciplinary research projects and make effective use of research results; and

''(3) conduct public education and awareness programs for policy makers, resource managers, and the general public on coral reef ecosystems, best practices for coral reef and ecosystem management and conservation, their value, and threats to their sustainability.

''(c) USE OF OTHER AGENCIES' RESOURCES.—For purposes related to the conservation, preservation, protection, restoration, or replacement of coral reefs or coral reef ecosystems and the enforcement of this title, the Secretary is authorized to use, with their consent and with or without reimbursement, the land, services, equipment, personnel, and facilities of any Department, agency, or instrumentality of the United States, or of any State, local government, tribal government, Territory or possession, or of any political subdivision thereof, or of any foreign government or international organization.

''(d) AUTHORITY TO UTILIZE GRANT FUNDS.—

''(1) Except as provided in paragraph (2), the Secretary may apply for, accept, and obligate research grant funding from any Federal source operating competitive grant programs where such funding furthers the purpose of this title.

''(2) The Secretary may not apply for, accept, or obligate any grant funding under paragraph (1) for which the granting agency lacks authority to grant funds to Federal agencies, or for any purpose or subject to conditions that are prohibited by law or regulation.

''(3) Appropriated funds may be used to satisfy a requirement to match grant funds with recipient agency funds, except that no grant may be accepted that requires a commitment in advance of appropriations.

''(4) Funds received from grants shall be deposited in the National Oceanic and Atmospheric Administration account for the purpose for which the grant was awarded.

''(e) TRANSFER OF FUNDS.—Under an agreement entered into pursuant to subsection (a), and subject to the availability of funds, the Secretary may transfer funds to, and may accept transfers of funds from, Federal agencies, instrumentalities and laboratories, State and local governments, Indian tribes (as defined in section 4 of the Indian Self-Determination and Educational Assistance Act (25 U.S.C. 450(b)), organizations and associations representing Native Americans, native Hawaiians, and Native Pacific Islanders, educational institutions, nonprofit organizations, commercial organizations, and other public and private persons or entities, except that no more than 5 percent of funds appropriated to carry out this section may be transferred. The 5 percent limitation shall not apply to section 204 or section 210.''.

SEC. 8. EMERGENCY ASSISTANCE.

Section 207 (formerly 16 U.S.C. 6405), as redesignated by section 7 of this Act, is amended to read as follows:

''SEC. 207. EMERGENCY ASSISTANCE.

''The Secretary, in cooperation with the Federal Emergency Management Agency, as appropriate, may provide assistance to any State, local, or territorial government agency with jurisdiction over coral reef ecosystems to address any unforeseen or disaster-related circumstance pertaining to coral reef ecosystems.''.

SEC. 9. NATIONAL PROGRAM.

Section 208 (formerly 16 U.S.C. 6406), as redesignated by section 7 of this Act, is amended to read as follows:

''SEC. 208. NATIONAL PROGRAM.

''(a) IN GENERAL.—Subject to the availability of appropriations, the Secretary may conduct activities, including with local, State, regional, or international programs and partners, as appropriate, to conserve coral reef ecosystems, that are consistent with this title, the National Marine Sanctuaries Act, the Coastal Zone Management Act of 1972, the Magnuson-Stevens Fishery Conservation and Management Act, the Endangered Species Act of 1973, and the Marine Mammal Protection Act of 1972.

''(b) AUTHORIZED ACTIVITIES.—Activities authorized under subsection (a) include—

''(1) mapping, monitoring, assessment, restoration, socioeconomic and scientific research that benefit the understanding, sustainable use, biodiversity, and long-term conservation of coral reef ecosystems;

''(2) enhancing public awareness, education, understanding, and appreciation of coral reef ecosystems;

''(3) removing, and providing assistance to States in removing, abandoned fishing gear, marine debris, and abandoned vessels from coral reef ecosystems to conserve living marine resources;

''(4) responding to incidents and events that threaten and damage coral reef ecosystems;

''(5) conservation and management of coral reef ecosystems;

''(6) centrally archiving, managing, and distributing data sets and providing coral reef ecosystem assessments and services to the general public with local, regional, or international programs and partners; and

''(7) activities designed to prevent or minimize damage to coral reef ecosystems, including those activities described in section 212 of this title.

''(c) DATA ARCHIVE, ACCESS, AND AVAILABILITY.—The Secretary, in coordination with similar efforts at other Departments and agencies shall provide for the long-term stewardship of environmental data, products, and information via data processing, storage, and archive facilities pursuant to this title. The Secretary may—

''(1) archive environmental data collected by Federal, State, local agencies, and tribal organizations and federally funded research;

''(2) promote widespread availability and dissemination of environmental data and information through full and open access and exchange to the greatest extent possible, including in electronic format on the Internet;

''(3) develop standards, protocols, and procedures for sharing Federal data with State and local government programs and the private sector or academia; and

''(4) develop metadata standards for coral reef ecosystems in accordance with Federal Geographic Data Committee guidelines.

''(d) EMERGENCY RESPONSE, STABILIZATION, AND RESTORATION.—

''(1) ESTABLISHMENT OF ACCOUNT.—The Secretary shall establish an account (to be called the Emergency Response, Stabilization, and Restoration Account) in the Damage Assessment Restoration Revolving Fund established by the Department of Commerce Appropriations Act, 1991 (33 U.S.C. 2706 note), for implementation of this subsection for emergency actions. Amounts appropriated for the Account under section 219, and funds authorized by sections 213(d)(1)(C)(ii) and 214(f)(3)(B), shall be deposited into the Account and made available for use by the Secretary as specified in sections 213 and 214.

''(2) DEPOSIT AND INVESTMENT OF CERTAIN FUNDS.— Any amounts received by the United States pursuant to sections 213(d)(1)(C)(ii) and 212(f)(3)(B) shall be deposited into the Emergency Response, Stabilization and Restoration Account established under paragraph (1). The Secretary of Commerce may request the Secretary of the Treasury to invest such portion of the Damage Assessment Restoration Revolving Fund as is not, in the judgment of the Secretary of Commerce, required to meet the current needs of the fund. Such investments shall be made by the Secretary of the Treasury in public debt securities, with maturities suitable to the needs of the fund, as determined by the Secretary of Commerce and bearing interest at rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturity. Interest earned by such investments shall be available for use by the Secretary without further appropriation and remain available until expended.''.

SEC. 10. STUDY OF TRADE IN CORALS.

(a) IN GENERAL.—The Secretary of Commerce, in consultation with the Secretary of the Interior, shall conduct a study on the economic, social, and environmental values and impacts of the United States market in corals and coral products.

(b) CONTENTS.—The study shall—

(1) assess the economic and other values of the United States market in coral and coral products, including import and export trade;

(2) identify primary coral species used in the coral and coral product trade and locations of wild harvest;

(3) assess the environmental impacts associated with wild harvest of coral;

(4) assess the effectiveness of current public and private programs aimed at promoting conservation in the coral and coral product trade;

(5) identify economic and other incentives for coral reef conservation as part of the coral and coral product trade; and

(6) identify additional actions, if necessary, to ensure that the United States market in coral and coral products does not contribute to the degradation of coral reef ecosystems.

(c) REPORT.—Not later than 30 months after the date of enactment of this Act, the Secretary shall submit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Natural Resources a report of the study.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary to carry out this section $100,000.

SEC. 11. INTERNATIONAL CORAL REEF CONSERVATION ACTIVITIES.

The Act (16 U.S.C. 6401 et seq.) is amended by inserting after section 208, as redesignated by section 7 of this Act, the following:

''SEC. 209. INTERNATIONAL CORAL REEF CONSERVATION ACTIVITIES.

''(a) INTERNATIONAL CORAL REEF CONSERVATION ACTIVITIES.—

''(1) IN GENERAL.—The Secretary shall carry out international coral reef conservation activities consistent with the purposes of this Act with respect to coral reef ecosystems in waters outside the United States jurisdiction. The Secretary shall develop and implement an international coral reef ecosystem strategy pursuant to subsection (b).

''(2) COORDINATION.—In carrying out this subsection, the Secretary shall consult with the Secretary of State, the Administrator of the Agency for International Development, the Secretary of the Interior, and other relevant Federal agencies, and relevant United States stakeholders, and shall take into account coral reef ecosystem conservation initiatives of other nations, international agreements, and intergovernmental and nongovernmental organizations so as to provide effective cooperation and efficiencies in international coral reef conservation. The Secretary may consult with the Coral Reef Task Force in carrying out this subsection.

''(b) INTERNATIONAL CORAL REEF ECOSYSTEM STRATEGY.—

''(1) IN GENERAL.—Not later than 1 year after the date of enactment of the Coral Reef Conservation Amendments Act of 2011, the Secretary shall submit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Natural Resources, and publish in the Federal Register, an international coral reef ecosystem strategy, consistent with the purposes of this Act and the national strategy required pursuant to section 203(a). The Secretary shall periodically review and revise this strategy as necessary.

''(2) CONTENTS.—The strategy developed by the Secretary under paragraph (1) shall—

''(A) identify coral reef ecosystems throughout the world that are of high value for United States marine resources, that support high-seas resources of importance to the United States such as fisheries, or that support other interests of the United States;

''(B) summarize existing activities by Federal agencies and entities described in subsection (a)(2) to address the conservation of coral reef ecosystems identified pursuant to subparagraph (A);

''(C) establish goals, objectives, and specific targets for conservation of priority international coral reef ecosystems;

''(D) describe appropriate activities to achieve the goals and targets for international coral reef conservation, in particular those that leverage activities already conducted under this Act;

''(E) develop a plan to coordinate implementation of the strategy with entities described in subsection (a)(2) in order to leverage current activities under this Act and other conservation efforts globally;

''(F) identify appropriate partnerships, grants, or other funding and technical assistance mechanisms to carry out the strategy; and

''(G) develop criteria for prioritizing partnerships under subsection (c).

''(c) INTERNATIONAL CORAL REEF ECOSYSTEM PARTNERSHIPS.—

''(1) IN GENERAL.—The Secretary shall establish an international coral reef ecosystem partnership program to provide support, including funding and technical assistance, for activities that implement the strategy developed pursuant to subsection (b).

''(2) MECHANISMS.—The Secretary shall provide such support through existing authorities, working in collaboration with the entities described in subsection (a)(2).

''(3) AGREEMENTS.—The Secretary may execute and perform such contracts, leases, grants, cooperative agreements, or other transactions as may be necessary to carry out the purposes of this section.

''(4) TRANSFER OF FUNDS.—To implement this section and subject to the availability of funds, the Secretary may transfer funds to a foreign government or international organization, and may accept transfers of funds from such entities, except that no more than 5 percent of funds appropriated to carry out this section may be transferred.

''(5) CRITERIA FOR APPROVAL.—The Secretary may not approve a partnership proposal under this section unless the partnership is consistent with the international coral reef conservation strategy developed pursuant to subsection (b), and meets the criteria specified in that strategy.''.

SEC. 12. COMMUNITY-BASED PLANNING GRANTS.

The Act (16 U.S.C. 6401 et seq.) is amended by inserting after section 209, as added by section 11 of this Act, the following:

''SEC. 210. COMMUNITY-BASED PLANNING GRANTS.

''(a) IN GENERAL.—The Secretary may make grants to entities that have received grants under section 204 to provide additional funds to such entities to work with local communities and through appropriate Federal and State entities to prepare and implement plans for the increased protection of coral reef areas identified by the community and scientific experts as high priorities for focused attention. The plans shall—

''(1) support attainment of 1 or more of the criteria described in section 204(g);

''(2) be developed at the community level;

''(3) utilize watershed-based approaches;

''(4) provide for coordination with Federal and State experts and managers; and

''(5) build upon local approaches, strategies, or models, including traditional or island-based resource management concepts.

''(b) TERMS AND CONDITIONS.—The provisions of subsections (b), (d), (f), and (h) of section 204 apply to grants under subsection (a), except that, for the purpose of applying section 204(b)(1) to grants under this section, '75 percent' shall be substituted for '50 percent'.''.

SEC. 13. VESSEL GROUNDING INVENTORY.

The Act (16 U.S.C. 6401 et seq.) is amended by inserting after section 210, as added by section 12 of this Act, the following:

''SEC. 211. VESSEL GROUNDING INVENTORY.

''(a) IN GENERAL.—The Secretary may maintain an inventory of all vessel grounding incidents involving coral reefs, including a description of—

''(1) the impacts to affected coral reef ecosystems;

''(2) vessel and ownership information, if available;

''(3) the estimated cost of removal, mitigation, or restoration;

''(4) the response action taken by the owner, the Secretary, the Commandant of the Coast Guard, or other Federal or State agency representatives;

''(5) the status of the response action, including the dates of vessel removal and mitigation or restoration and any actions taken to prevent future grounding incidents; and

''(6) recommendations for additional navigational aids or other mechanisms for preventing future grounding incidents.

''(b) IDENTIFICATION OF AT-RISK REEFS.—The Secretary may—

''(1) use information from any inventory maintained under subsection (a) or any other available information source to identify

coral reef ecosystems that have a high incidence of vessel impacts, including groundings and anchor damage;

''(2) identify appropriate measures, including the acquisition and placement of aids to navigation, moorings, designated anchorage areas, fixed anchors and other devices, to reduce the likelihood of such impacts; and

''(3) develop a strategy and timetable to implement such measures, including cooperative actions with other government agencies and non-governmental partners.''.

SEC. 14. PROHIBITED ACTIVITIES.

(a) IN GENERAL.—The Act (16 U.S.C. 6401 et seq.) is amended by inserting after section 211, as added by section 13 of this Act, the following:

''SEC. 212. PROHIBITED ACTIVITIES AND SCOPE OF PROHIBITIONS.

''(a) PROVISIONS AS COMPLEMENTARY.—The provisions of this section are in addition to, and shall not affect the operation of, other Federal, State, or local laws or regulations providing protection to coral reef ecosystems.

''(b) DESTRUCTION, LOSS, TAKING, OR INJURY.—

''(1) IN GENERAL.—Except as provided in paragraph (2), it is unlawful for any person to destroy, take, cause the loss of, or injure any coral reef or any component thereof.

''(2) EXCEPTIONS.—The destruction, loss, taking, or injury of a coral reef or any component thereof is not unlawful if it—

''(A) was caused by the use of fishing gear used in a manner permitted under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.) or other Federal or State law;

''(B) was caused by an activity that is authorized or allowed by Federal or State law (including lawful discharges from vessels, such as graywater, cooling water, engine exhaust, ballast water, or sewage from marine sanitation devices), unless the destruction, loss, or injury resulted from actions such as vessel groundings, vessel scrapings, anchor damage, excavation not authorized by Federal or State permit, or other similar activities;

''(C) was the necessary result of bona fide marine scientific research (including marine scientific research activities approved by Federal, State, or local permits), other than excessive sampling or collecting, or actions such as vessel groundings, vessel scrapings, anchor damage, excavation, or other similar activities;

''(D) was caused by a Federal Government agency—

''(i) during—

''(I) an emergency that posed an unacceptable threat to human health or safety or to the marine environment;

''(II) an emergency that posed a threat to national security; or

''(III) an activity necessary for law enforcement or search and rescue; and

could not reasonably be avoided; or

''(E) was caused by an action taken by the master of the vessel in an emergency situation to ensure the safety of the vessel or to save a life at sea.

''(c) INTERFERENCE WITH ENFORCEMENT.—It is unlawful for any person to interfere with the enforcement of this title by—

''(1) refusing to permit any officer authorized to enforce this title to board a vessel (other than a vessel operated by the Department of Defense or United States Coast Guard) subject to such person's control for the purposes of conducting any search or inspection in connection with the enforcement of this title;

''(2) resisting, opposing, impeding, intimidating, harassing, bribing, interfering with, or forcibly assaulting any person authorized by the Secretary to implement this title or any such authorized officer in the conduct of any search or inspection performed under this title; or

''(3) submitting false information to the Secretary or any officer authorized to enforce this title in connection with any search or inspection conducted under this title.

''(d) VIOLATIONS OF TITLE, PERMIT, OR REGULATION.—It is unlawful for any person to violate any provision of this title, any permit issued pursuant to this title, or any regulation promulgated pursuant to this title.

''(e) POSSESSION AND DISTRIBUTION.—It is unlawful for any person to possess, sell, deliver, carry, transport, or ship by any means any coral taken in violation of this title.''.

(b) EMERGENCY ACTION REGULATIONS.—The Secretary of Commerce shall initiate a rulemaking proceeding to prescribe the circumstances and conditions under which the exception in section 212(b)(2)(E) of the Coral Reef Conservation Act of 2000, as amended by subsection (a), applies and shall issue a final rule pursuant to that rulemaking as soon as practicable but not later than 1 year after the date of enactment of this Act. Nothing in this subsection shall be construed to require the issuance of such regulations before the exception provided by that section is in effect.

SEC. 15. DESTRUCTION OF CORAL REEFS.

The Act (16 U.S.C. 6401 et seq.) is amended by inserting after section 212, as added by section 14 of this Act, the following:

''SEC. 213. DESTRUCTION, LOSS, OR TAKING OF, OR INJURY TO, CORAL REEFS.

''(a) LIABILITY.—

''(1) LIABILITY TO THE UNITED STATES.—Except as provided in subsection (f), all persons who engage in an activity that is prohibited under subsections (b) or (d) of section 212, or create an imminent risk thereof, are liable, jointly and severally, to the United States for an amount equal to the sum of—

''(A) response costs and damages resulting from the destruction, loss, taking, or injury, or imminent risk thereof, including damages resulting from the response actions;

''(B) costs of seizure, forfeiture, storage, and disposal arising from liability under this section; and

''(C) interest on that amount calculated in the manner described in section 1005 of the Oil Pollution Act of 1990 (33 U.S.C. 2705).

''(2) LIABILITY IN REM.—

''(A) Any vessel used in an activity that is prohibited under subsection (b) or (d) of section 212, or creates an imminent risk thereof, shall be liable in rem to the United States for an amount equal to the sum of—

''(i) response costs and damages resulting from such destruction, loss, or injury, or imminent risk thereof, including damages resulting from the response actions;

''(ii) costs of seizure, forfeiture, storage, and disposal arising from liability under this section; and

''(iii) interest on that amount calculated in the manner described in section 1005 of the Oil Pollution Act of 1990 (33 U.S.C. 2705).

''(B) The amount of liability shall constitute a maritime lien on the vessel and may be recovered in an action in rem in any district court of the United States that has jurisdiction over the vessel.

''(3) DEFENSES.—A person or vessel is not liable under this subsection if that person or vessel establishes that the destruction, loss, taking, or injury was caused solely by an act of God, an act of war, or an act or omission of a third party (other than an employee or agent of the defendant or one whose act or omission occurs in connection with a contractual relationship, existing directly or indirectly with the defendant), and the person or master of the vessel acted with due care.

''(4) NO LIMIT TO LIABILITY.—Nothing in sections 30501 through 30512 or section 30706 of title 46, United States Code, shall limit liability to any person under this title.

''(b) RESPONSE ACTIONS AND DAMAGE ASSESSMENT.—

''(1) RESPONSE ACTIONS.—The Secretary may undertake or authorize all necessary actions to prevent or minimize the destruction, loss, or taking of, or injury to, coral reefs, or components thereof, or to minimize the risk or imminent risk of such destruction, loss, or injury.

''(2) DAMAGE ASSESSMENT.—

''(A) The Secretary shall assess damages (as defined in section 221(8)) to coral reefs and shall consult with State officials regarding response and damage assessment actions undertaken for coral reefs within State waters.

''(B) There shall be no double recovery under this chapter for coral reef damages, including the cost of damage assessment, for the same incident.

''(c) COMMENCEMENT OF CIVIL ACTION FOR RESPONSE COSTS AND DAMAGES.—

''(1) COMMENCEMENT.—The Attorney General, upon the request of the Secretary, may commence a civil action against any person or vessel that may be liable under subsection (a) of this section for response costs, seizure, forfeiture, storage, or disposal costs, and damages, and interest on that amount calculated in the manner described in section 1005 of the Oil Pollution Act of 1990 (33 U.S.C. 2705). The Secretary, acting as trustee for coral reefs for the United States, shall submit a request for such an action to the Attorney General whenever a person or vessel may be liable for such costs or damages.

''(2) VENUE IN CIVIL ACTIONS.—A civil action under this title may be brought in the United States district court for any district in which—

''(A) the defendant is located, resides, or is doing business, in the case of an action against a person;

''(B) the vessel is located, in the case of an action against a vessel;

''(C) the destruction, loss, or taking of, or injury to a coral reef, or component thereof, occurred or in which there is an imminent risk of such destruction, loss, or injury; or

''(D) where some or all of the coral reef or component thereof that is the subject of the action is not within the territory covered by any United States district court, such action may be brought either in the United States district court for the district closest to the location where the destruction, loss, injury, or risk of injury occurred, or in the United States District Court for the District of Columbia.

''(d) USE OF RECOVERED AMOUNTS.—

''(1) IN GENERAL.—Any costs, including response costs and damages recovered by the Secretary under this section shall—

''(A) be deposited into an account or accounts in the Damage Assessment Restoration Revolving Fund established by the Department of Commerce Appropriations Act, 1991 (33 U.S.C. 2706 note), or the Natural Resource Damage Assessment and Restoration Fund established by the Department of the Interior and Related Agencies Appropriations Act, 1992 (43 U.S.C. 1474b), as appropriate given the location of the violation;

''(B) be available for use by the Secretary without further appropriation and remain available until expended; and

''(C) be for use, as the Secretary considers appropriate—

''(i) to reimburse the Secretary or any other Federal or State agency that conducted activities under subsection (a) or (b) of this section for costs incurred in conducting the activity;

''(ii) to be transferred to the Emergency Response, Stabilization and Restoration Account established under section 208(d) to reimburse that account for amounts used for authorized emergency actions; and

''(iii) after reimbursement of such costs, to restore, replace, or acquire the equivalent of any coral reefs, or components thereof, including the reasonable costs of monitoring, or to minimize or prevent threats of equivalent injury to, or destruction of coral reefs, or components thereof.

''(2) RESTORATION CONSIDERATIONS.—In development of restoration alternatives under paragraph (1)(C), the Secretary shall consider State and territorial preferences and, if appropriate, shall prioritize restoration projects with geographic and ecological linkages to the injured resources.

''(e) STATUTE OF LIMITATIONS.—An action for response costs or damages under subsection (c) shall be barred unless the complaint is filed within 3 years after the date on which the Secretary completes a damage assessment and restoration plan for the coral reefs, or components thereof, to which the action relates.

''(f) FEDERAL GOVERNMENT ACTIVITIES.—In the event of threatened or actual destruction of, loss of, or injury to a coral reef or component thereof resulting from an incident caused by a component of any Department or agency of the United States Government, the cognizant Department or agency shall satisfy its obligations under this section by promptly, in coordination with the Secretary, taking appropriate actions to respond to and mitigate the harm and restoring or replacing the coral reef or components thereof and reimbursing the Secretary for all assessment costs.

''(g) UNIFORMED SERVICE OFFICERS AND EMPLOYEES.—No officer or employee of a uniformed service (as defined in section 101 of title 10, United States Code) shall be held liable under this section, either in such officer's or employee's personal or official capacity, for any violation of section 212 occurring during the performance of the officer's or employee's official governmental duties.

''(h) CONTRACT EMPLOYEES.—No contract employee of a uniformed service (as so defined), serving as vessel master or crew member, shall be liable under this section for any violation of section 212 if that contract employee—

''(1) is acting as a contract employee of a uniformed service under the terms of an operating contract for a vessel owned by a uniformed service, or a time charter for pre-positioned vessels, special mission vessels, or vessels exclusively transporting military supplies and materials; and

''(2) is engaged in an action or actions over which such employee has been given no discretion (e.g., anchoring or mooring at one or more designated anchorages or buoys, or executing specific operational elements of a special mission activity), as determined by the uniformed service controlling the contract.''.

SEC. 16. ENFORCEMENT.

The Act (16 U.S.C. 6401 et seq.) is amended by inserting after section 213, as added by section 15 of this Act, the following:

''SEC. 214. ENFORCEMENT.

''(a) IN GENERAL.—The Secretary shall conduct enforcement activities to carry out this title.

''(b) POWERS OF AUTHORIZED OFFICERS.—

''(1) IN GENERAL.—Any person who is authorized to enforce this title may—

''(A) board, search, inspect, and seize any vessel or other conveyance suspected of being used to violate this title, any regulation promulgated under this title, or any permit issued under this title, and any equipment, stores, and cargo of such vessel, except that such authority shall not exist with respect to vessels owned or time chartered by a uniformed service (as defined in section 101 of title 10, United States Code) as warships or naval auxiliaries;

''(B) seize wherever found any component of coral reef taken or retained in violation of this title, any regulation promulgated under this title, or any permit issued under this title;

''(C) seize any evidence of a violation of this title, any regulation promulgated under this title, or any permit issued under this title;

''(D) execute any warrant or other process issued by any court of competent jurisdiction;

''(E) exercise any other lawful authority; and

''(F) arrest any person, if there is reasonable cause to believe that such person has committed an act prohibited by section 212.

''(2) NAVAL AUXILIARY DEFINED.—In this subsection, the term 'naval auxiliary' means a vessel, other than a warship, that is owned by or under the exclusive control of a uniformed service and used at the time of the destruction, take, loss or injury for government, non-commercial service, including combat logistics force vessels, pre-positioned vessels, special mission vessels, or vessels exclusively used to transport military supplies and materials.

''(c) CIVIL ENFORCEMENT AND PERMIT SANCTIONS.—

''(1) CIVIL ADMINISTRATIVE PENALTY.—Any person subject to the jurisdiction of the United States who violates this title or any regulation promulgated or permit issued hereunder, shall be liable to the United States for a civil administrative penalty of not more than $200,000 for each such violation, to be assessed by the Secretary. Each day of a continuing violation shall constitute a separate violation. In determining the amount of civil administrative penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, and any history of prior violations, and such other matters as justice may require. In assessing such penalty, the Secretary may also consider information related to the ability of the violator to pay.

''(2) PERMIT SANCTIONS.—For any person subject to the jurisdiction of the United States who has been issued or has applied for a permit under this title, and who violates this title or any regulation or permit issued under this title, the Secretary may deny, suspend, amend, or revoke in whole or in part any such permit. For any person who has failed to pay or defaulted on a payment agreement of any civil penalty or criminal fine or liability assessed pursuant to any natural resource law administered by the Secretary, the Secretary may deny, suspend, amend or revoke in whole or in part any permit issued or applied for under this title.

''(3) IMPOSITION OF CIVIL JUDICIAL PENALTIES.—Any person who violates any provision of this title, any regulation promulgated or permit issued thereunder, shall be subject to a civil judicial penalty not to exceed $250,000 for each such violation. Each day of a continuing violation shall constitute a separate violation. The Attorney General, upon the request of the Secretary, may commence a civil action in an appropriate district court of the United States, and such court shall have jurisdiction to award civil penalties and such other relief as justice may require. In determining the amount of a civil penalty, the court shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior violations, and such other matters as justice may require. In imposing such penalty, the district court may also consider information related to the ability of the violator to pay.

''(4) NOTICE.—No penalty or permit sanction shall be assessed under this subsection until after the person charged has been given notice and an opportunity for a hearing.

''(5) IN REM JURISDICTION.—A vessel used in violating this title, any regulation promulgated under this title, or any permit issued under this title, shall be liable in rem for any civil penalty assessed for such violation. Such penalty shall constitute a maritime lien on the vessel and may be recovered in an action in rem in the district court of the United States having jurisdiction over the vessel.

''(6) COLLECTION OF PENALTIES.—If any person fails to pay an assessment of a civil penalty under this section after it has become a final and unappealable order, or after the appropriate court has entered final judgment in favor of the Secretary, the Secretary shall refer the matter to the Attorney General, who shall recover the amount assessed in any appropriate district court of the United States (plus interest at current prevailing rates from the date of the final order). In such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review. Any person who fails to pay, on a timely basis, the amount of an assessment of a civil penalty shall be required to pay, in addition to such amount and interest, attorney's fees and costs for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to 20 percent of the aggregate amount of such person's penalties and nonpayment penalties that are unpaid as of the beginning of such quarter.

''(7) COMPROMISE OR OTHER ACTION BY SECRETARY.—The Secretary may compromise, modify, or remit, with or without conditions, any civil administrative penalty or permit sanction which is or may be imposed under this section and that has not been referred to the Attorney General for further enforcement action.

''(8) JURISIDICTION.—The several district courts of the United States shall have jurisdiction over any actions brought by the United States arising under this section. For the purpose of this section, American Samoa shall be included within the judicial district of the District Court of the United States for the District of Hawaii. Each violation shall be a separate offense and the offense shall be deemed to have been committed not only in the district where the violation first occurred, but also in any other district as authorized by law.

''(d) FORFEITURE.—

''(1) CRIMINAL FORFEITURE.—A person who is convicted of an offense in violation of this title shall forfeit to the United States—

''(A) any property, real or personal, constituting or traceable to the gross proceeds taken, obtained, or retained, in connection with or as a result of the offense, including, without limitation, any coral reef or coral reef component (or the fair market value thereof); and

''(B) any property, real or personal, used or intended to be used, in any manner, to commit or facilitate the commission of the offense, including, without limitation, any vessel (including the vessel's equipment, stores, catch and cargo), vehicle, aircraft, or other means of transportation.

Pursuant to section 2461(c) of title 28, United States Code, the provisions of section 413 of

the Controlled Substances Act (21 U.S.C. 853) other than subsection (d) thereof shall apply to criminal forfeitures under this section.

''(2) CIVIL FORFEITURE.—The property set forth below shall be subject to forfeiture to the United States in accordance with the provisions of chapter 46 of title 18, United States Code, and no property right shall exist in it:

''(A) Any property, real or personal, constituting or traceable to the gross proceeds taken, obtained, or retained, in connection with or as a result of a violation of this title, including, without limitation, any coral reef or coral reef component (or the fair market value thereof).

''(B) Any property, real or personal, used or intended to be used, in any manner, to commit or facilitate the commission of a violation of this title, including, without limitation, any vessel (including the vessel's equipment, stores, catch and cargo), vehicle, aircraft, or other means of transportation.

''(3) APPLICATION OF THE CUSTOMS LAWS.—All provisions of law relating to seizure, summary judgment, and judicial forfeiture and condemnation for violation of the customs laws, the disposition of the property forfeited or condemned or the proceeds from the sale thereof, the remission or mitigation of such forfeitures, and the compromise of claims shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this title, insofar as applicable and not inconsistent with the provisions hereof. For seizures and forfeitures of property under this section by the Secretary, such duties as are imposed upon the customs officer or any other person with respect to the seizure and forfeiture of property under the customs law may be performed by such officers as are designated by the Secretary or, upon request of the Secretary, by any other agency that has authority to manage and dispose of seized property.

''(4) PRESUMPTION.—For the purposes of this section there is a rebuttable presumption that all coral reefs, or components thereof, found on board a vessel that is used or seized in connection with a violation of this title or of any regulation promulgated under this title were taken, obtained, or retained in violation of this title or of a regulation promulgated under this title.

''(e) PAYMENT OF STORAGE, CARE, AND OTHER COSTS.—Any person assessed a civil penalty for a violation of this title or of any regulation promulgated under this title and any claimant in a forfeiture action brought for such a violation, shall be liable for the reasonable costs incurred by the Secretary in storage, care, and maintenance of any property seized in connection with the violation.

''(f) EXPENDITURES.—

''(1) Notwithstanding section 3302 of title 31, United States Code, or section 311 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1861), amounts received by the United States as civil penalties under subsection (c) of this section, forfeitures of property under subsection (d) of this section, and costs imposed under subsection (e) of this section, shall—

''(A) be placed into an account;

''(B) be available for use by the Secretary without further appropriation; and

''(C) remain available until expended.

''(2) Amounts received under this section for forfeitures under subsection (d) and costs imposed under subsection (e) shall be used to pay the reasonable and necessary costs incurred by the Secretary to provide temporary storage, care, maintenance, and disposal of any property seized in connection with a violation of this title or any regulation promulgated under this title.

''(3) Amounts received under this section as civil penalties under subsection (c) of this section and any amounts remaining after the operation of paragraph (2) of this subsection shall—

''(A) be used to stabilize, restore, or otherwise manage the coral reef with respect to which the violation occurred that resulted in the penalty or forfeiture;

''(B) be transferred to the Emergency Response, Stabilization, and Restoration Account established under section 208(d) or an account described in section 213(d)(1) of this title, to reimburse such account for amounts used for authorized emergency actions;

''(C) be used to conduct monitoring and enforcement activities;

''(D) be used to conduct research on techniques to stabilize and restore coral reefs;

''(E) be used to conduct activities that prevent or reduce the likelihood of future damage to coral reefs;

''(F) be used to stabilize, restore or otherwise manage any other coral reef; or

''(G) be used to pay a reward to any person who furnishes information leading to an assessment of a civil penalty, or to a forfeiture of property, for a violation of this title or any regulation promulgated under this title.

''(g) CRIMINAL ENFORCEMENT.—

''(1) Any person (other than a foreign government or any entity of such government) who knowingly commits any act prohibited by section 212(c) of this title shall be imprisoned for not more than 5 years and shall be fined not more than $500,000 for individuals or $1,000,000 for an organization; except that if in the commission of any such offense the individual uses a dangerous weapon, engages in conduct that causes bodily injury to any officer authorized to enforce the provisions of this title, or places any such officer in fear of imminent bodily injury, the maximum term of imprisonment is not more than 10 years.

''(2) Any person (other than a foreign government or any entity of such government) who knowingly violates subsection (b), (d), or (e) of section 212 shall be fined under title 18, United States Code, or imprisoned not more than 5 years or both.

''(3) Any person (other than a foreign government or any entity of such government) who violates subsection (b), (d), or (e) of section 212, and who, in the exercise of due care should know that such person's conduct violates subsection (b), (d), or (e) of section 212, shall be fined under title 18, United States Code, or imprisoned not more than 1 year, or both.

''(4) The several district courts of the United States shall have jurisdiction over any actions brought by the United States arising under this subsection. For the purpose of this subsection, American Samoa shall be included within the judicial district of the District Court of the United States for the District of Hawaii. Each violation shall be a separate offense and the offense shall be deemed to have been committed not only in the district where the violation first occurred, but also in any other district as authorized by law. Any offenses not committed in any district are subject to the venue provisions of section 3238 of title 18, United States Code.

''(h) SUBPOENAS.—In the case of any investigation or hearing under this section or any other natural resource statute administered by the National Oceanic and Atmospheric Administration which is determined on the record in accordance with the procedures provided for under section 554 of title 5, United States Code, the Secretary may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, electronic files, and documents, and may administer oaths.

''(i) COAST GUARD AUTHORITY NOT LIMITED.—Nothing in this section shall be considered to limit the authority of the Coast Guard to enforce this or any other Federal law under section 89 of title 14, United States Code.

''(j) INJUNCTIVE RELIEF.—

''(1) If the Secretary determines that there is an imminent risk of destruction or loss of or injury to a coral reef, or that there has been actual destruction or loss of, or injury to, a coral reef which may give rise to liability under section 213 of this title, the Attorney General, upon request of the Secretary, shall seek to obtain such relief as may be necessary to abate such risk or actual destruction, loss, or injury, or to restore or replace the coral reef, or both. The district courts of the Unites States shall have jurisdiction in such a case to order such relief as the public interest and the equities of the case may require.

''(2) Upon the request of the Secretary, the Attorney General may seek to enjoin any person who is alleged to be in violation of any provision of this title, or any regulation or permit issued under this title, and the district courts shall have jurisdiction to grant such relief.

''(k) AREA OF APPLICATION AND ENFORCEABILITY.—The area of application and enforceability of this title includes the internal waters of the United States, the territorial sea of the United States, as described in Presidential Proclamation 5928 of December 27, 1988, the Exclusive Economic Zone of the United States as described in Presidential Proclamation 5030 of March 10, 1983, and the continental shelf, consistent with international law.

''(l) NATIONWIDE SERVICE OF PROCESS.—In any action by the United States under this title, process may be served in any district where the defendant is found, resides, transacts business, or has appointed an agent for the service of process, and for civil cases may also be served in a place not within the United States in accordance with rule 4 of the Federal Rules of Civil Procedure.

''(m) VENUE IN CIVIL ACTIONS.—A civil action under this title may be brought in the United States district court for any district in which—

''(1) the defendant is located, resides, or is doing business, in the case of an action against a person;

''(2) the vessel is located, in the case of an action against a vessel;

''(3) the destruction of, loss of, or injury to a coral reef, or component thereof, occurred or in which there is an imminent risk of such destruction, loss, or injury; or

''(4) where some or all of the coral reef or component thereof that is the subject of the action is not within the territory covered by any United States district court, such action may be brought either in the United States district court for the district closest to the location where the destruction, loss, injury, or risk of injury occurred, or in the United States District Court for the District of Columbia.

''(n) UNIFORMED SERVICE OFFICERS AND EMPLOYEES.—No officer or employee of a uniformed service (as defined in section 101 of title 10, United States Code) shall be held liable under this section, either in such officer's or employee's personal or official capacity, for any violation of section 212 occurring during the performance of the officer's or employee's official governmental duties.

''(o) CONTRACT EMPLOYEES.—No contract employee of a uniformed service (as so defined), serving as vessel master or crew member, shall be liable under this section for any violation of section 212 if that contract employee—

''(1) is acting as a contract employee of a uniformed service under the terms of an operating contract for a vessel owned by a uniformed service, or a time charter for pre-positioned vessels, special mission vessels, or vessels exclusively transporting military supplies and materials; and

''(2) is engaged in an action or actions over which such employee has been given no discretion (e.g., anchoring or mooring at one or more designated anchorages or buoys, or executing specific operational elements of a special mission activity), as determined by the uniformed service controlling the contract.''.

SEC. 17. PERMITS.

The Act (16 U.S.C. 6401 et seq.) is amended by inserting after section 214, as added by section 16 of this Act, the following:

''SEC. 215. PERMITS.

''(a) IN GENERAL.—The Secretary may allow for the conduct of—

''(1) bona fide research, and

''(2) activities that would otherwise be prohibited by this title or regulations issued thereunder,

through issuance of coral reef conservation permits in accordance with regulations issued under this title.

''(b) LIMITATION OF NON-RESEARCH ACTIVITIES.—The Secretary may not issue a permit for activities other than for bona fide research unless the Secretary finds—

''(1) the activity proposed to be conducted is compatible with one or more of the purposes in section 202(b) of this title;

''(2) the activity conforms to the provisions of all other laws and regulations applicable to the area for which such permit is to be issued; and

''(3) there is no practicable alternative to conducting the activity in a manner that destroys, causes the loss of, or injures any coral reef or any component thereof.

''(c) TERMS AND CONDITIONS.—The Secretary may place any terms and conditions on a permit issued under this section that the Secretary deems reasonable.

''(d) FEES.—

''(1) ASSESSMENT AND COLLECTION.—Subject to regulations issued under this title, the Secretary may assess and collect fees as specified in this subsection.

''(2) AMOUNT.—Any fee assessed shall be equal to the sum of—

''(A) all costs incurred, or expected to be incurred, by the Secretary in processing the permit application, including indirect costs; and

''(B) if the permit is approved, all costs incurred, or expected to be incurred, by the Secretary as a direct result of the conduct of the activity for which the permit is issued, including costs of monitoring the conduct of the activity and educating the public about the activity and coral reef resources related to the activity.

''(3) USE OF FEES.—Amounts collected by the Secretary in the form of fees under this section shall be collected and available for use only to the extent provided in advance in appropriations Acts and may be used by the Secretary for issuing and administering permits under this section.

''(4) WAIVER OR REDUCTION OF FEES.—For any fee assessed under paragraph (2) of this subsection, the Secretary may—

''(A) accept in-kind contributions in lieu of a fee; or

''(B) waive or reduce the fee.

''(e) FISHING.—Nothing in this section shall be considered to require a person to obtain a permit under this section for the conduct of any fishing activities not prohibited by this title or regulations issued thereunder.''.

SEC. 18. REGIONAL, STATE, AND TERRITORIAL COORDINATION.

The Act (16 U.S.C. 6401 et seq.) is amended by inserting after section 215, as added by section 17 of this Act, the following:

''SEC. 216. REGIONAL, STATE, AND TERRITORIAL COORDINATION.

''(a) REGIONAL COORDINATION.—The Secretary and other Federal members of the Coral Reef Task Force shall work in coordination and collaboration with other Federal agencies, States, and United States territorial governments to implement the strategies developed under section 203, including regional and local strategies, to address multiple threats to coral reefs and coral reef ecosystems.

''(b) RESPONSE AND RESTORATION ACTIVITIES.—The Secretary shall enter into written agreements with any States in which coral reefs are located regarding the manner in which response and restoration activities will be conducted within the affected State's waters. Nothing in this subsection shall be construed to limit Federal response and restoration activity authority before any such agreement is final.

''(c) COOPERATIVE ENFORCEMENT AGREEMENTS.—All cooperative enforcement agreements in place between the Secretary and States affected by this title shall be updated to include enforcement of this title where appropriate.''.

SEC. 19. REGULATIONS.

The Act (16 U.S.C. 6401 et seq.) is amended by inserting after section 216, as added by section 18, the following:

''SEC. 217. REGULATIONS.

''The Secretary may issue such regulations as are necessary and appropriate to carry out the purposes of this title. This title and any regulations promulgated under this title shall be applied in accordance with international law. No restrictions shall apply to or be enforced against a person who is not a citizen, national, or resident alien of the United States (including foreign flag vessels) unless in accordance with international law.''.

SEC. 20. EFFECTIVENESS AND ASSESSMENT REPORT.

Section 218 (formerly 16 U.S.C. 6407), as redesignated by section 7 of this Act, is amended to read as follows:

''SEC. 218. EFFECTIVENESS AND ASSESSMENT REPORT.

''(a) EFFECTIVENESS REPORT.—Not later than March 1, 2010, and every 3 years thereafter, the Secretary shall submit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Natural Resources a report describing all activities undertaken to implement the strategy, including—

''(1) a description of the funds obligated by each participating Federal agency to advance coral reef conservation during each of the 3 fiscal years next preceding the fiscal year in which the report is submitted;

''(2) a description of Federal interagency and cooperative efforts with States and United States territories to prevent or address overharvesting, coastal runoff, or other anthropogenic impacts on coral reefs, including projects undertaken with the Department of Interior, Department of Agriculture, the Environmental Protection Agency, and the United States Army Corps of Engineers;

''(3) a summary of the information contained in the vessel grounding inventory established under section 210, including additional authorization or funding, needed for response and removal of such vessels; and

''(4) a description of Federal disaster response actions taken pursuant to the National Response Plan to address damage to coral reefs and coral reef ecosystems.

''(b) ASSESSMENT REPORT.—Not later than March 1, 2013, and every 5 years thereafter, the Secretary will submit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Natural Resources an assessment of the conditions of U.S. coral reefs, accomplishments under this Act, and the effectiveness of management actions to address threats to coral reefs.''.

SEC. 21. AUTHORIZATION OF APPROPRIATIONS.

Section 219 (formerly 16 U.S.C. 6408), as redesignated by section 7 of this Act, is amended—

(1) by striking ''$16,000,000 for each of fiscal years 2001, 2002, 2003, and 2004,'' in subsection (a) and inserting ''$34,000,000 for fiscal year 2012, $36,000,000 for fiscal year 2013, $38,000,000 for fiscal year 2014, and $40,000,000 for each of fiscal years 2015 through 2016, of which no less than 24 percent per year (for each of fiscal years 2012 through 2016) shall be used for the grant program under section 204, no less than 6 percent shall be used for Fishery Management Councils, and up to 10 percent per year shall be used for the Fund established under section 205(a),'';

(2) by striking ''$1,000,000'' in subsection (b) and inserting ''$2,000,000'';

(3) by striking subsection (c) and inserting the following:

''(c) COMMUNITY-BASED PLANNING GRANTS.—There are authorized to be appropriated to the Secretary to carry out section 210 $10,000,000 for fiscal years 2012 through 2016, to remain available until expended.''; and

(4) by striking subsection (d) and inserting the following:

''(d) INTERNATIONAL CORAL REEF CONSERVATION PROGRAM.—There are authorized to be appropriated to the Secretary to carry out section 209 $8,000,000 for each of fiscal years 2012 through 2016, to remain available until expended.''.

SEC. 22. JUDICIAL REVIEW.

The Act (16 U.S.C. 6401 et seq.) is amended by inserting after section 219, as redesignated by section 7 of this Act, the following:

''SEC. 220. JUDICIAL REVIEW.

''(a) IN GENERAL.—Chapter 7 of title 5, United States Code, is not applicable to any action taken by the Secretary under this title, except that—

''(1) review of any final agency action of the Secretary taken pursuant to sections 214(c)(1) and 214(c)(2) may be had only by the filing of a complaint by an interested person in the United States District Court for the appropriate district; any such complaint must be filed within 30 days of the date such final agency action is taken; and

''(2) review of any final agency action of the Secretary taken pursuant to section 215 may be had by the filing of a petition for review by an interested person in the Circuit Court of Appeals of the United States for the federal judicial district in which such person resides or transact business which is directly affected by the action taken; such petition shall be filed within 120 days from the date such final agency action is taken.

''(b) NO REVIEW IN ENFORCEMENT PROCEEDINGS.—Final agency action with respect to which review could have been obtained under subsection (a)(2) shall not be subject to judicial review in any civil or criminal proceeding for enforcement.

''(c) COST OF LITIGATION.—In any judicial proceeding under subsection (a), the court may award costs of litigation (including reasonable attorney and expert witness fees) to any prevailing party whenever it determines that such award is appropriate.''.

SEC. 23. DEFINITIONS.

Section 221 (formerly 16 U.S.C. 6409), as redesignated by section 7 of this Act, is amended to read as follows:

''SEC. 221. DEFINITIONS.

''In this title:

''(1) BIODIVERSITY.—The term 'biodiversity' means the variability among living organisms from all sources including, inter alia, terrestrial, marine, and other aquatic ecosystems and the ecological complexes of which they are part, including diversity within species, between species, and of ecosystems.

''(2) BONA FIDE RESEARCH.—The term 'bona fide research' means scientific research on corals, the results of which are likely—

''(A) to be eligible for publication in a referred scientific journal;

''(B) to contribute to the basic knowledge of coral biology or ecology; or

''(C) to identify, evaluate, or resolve conservation problems.

''(3) CORAL.—The term 'coral' means species of the phylum Cnidaria, including—

''(A) all species of the orders Antipatharia (black corals), Scleractinia (stony corals), Gorgonacea (horny corals), Stolonifera (organpipe corals and others), Alcyonacea (soft corals), and Helioporacea (blue coral) of the class Anthozoa; and

''(B) all species of the families Milleporidea (fire corals) and Stylasteridae (stylasterid hydrocorals) of the class Hydrozoa.

''(4) CORAL REEF.—The term 'coral reef' means limestone structures composed in whole or in part of living corals, as described in paragraph (3), their skeletal remains, or both, and including other corals, associated sessile invertebrates and plants, and associated seagrasses.

''(5) CORAL REEF COMPONENT.—The term 'coral reef component' means any part of a coral reef, including individual living or dead corals, associated sessile invertebrates and plants, and any adjacent or associated seagrasses.

''(6) CORAL REEF ECOSYSTEM.—The term 'coral reef ecosystem' means the system of coral reefs and geographically associated species, habitats, and environment, including any adjacent or associated mangroves and seagrass habitats, and the processes that control its dynamics.

''(7) CORAL PRODUCTS.—The term 'coral products' means any living or dead specimens, parts, or derivatives, or any product containing specimens, parts, or derivatives, of any species referred to in paragraph (3).

''(8) DAMAGES.—The term 'damages' includes—

''(A) compensation for—

''(i) the cost of replacing, restoring, or acquiring the equivalent of the coral reef, or component thereof; and

''(ii) the lost services of, or the value of the lost use of, the coral reef or component thereof, or the cost of activities to minimize or prevent threats of, equivalent injury to, or destruction of coral reefs or components thereof, pending restoration or replacement or the acquisition of an equivalent coral reef or component thereof;

''(B) the reasonable cost of damage assessments under section 213;

''(C) the reasonable costs incurred by the Secretary in implementing section 208(d);

''(D) the reasonable cost of monitoring appropriate to the injured, restored, or replaced resources;

''(E) the reasonable cost of curation, conservation and loss of contextual information of any coral encrusted archaeological, historical, and cultural resource;

''(F) the cost of legal actions under section 213, undertaken by the United States, associated with the destruction or loss of, or injury to, a coral reef or component thereof, including the costs of attorney time and expert witness fees; and

''(G) the indirect costs associated with the costs listed in subparagraphs (A) through (F) of this paragraph.

''(9) EMERGENCY ACTIONS.—The term 'emergency actions' means all necessary actions to prevent or minimize the additional destruction or loss of, or injury to, coral reefs or components thereof, or to minimize the risk of such additional destruction, loss, or injury.

''(10) EXCLUSIVE ECONOMIC ZONE.—The term 'Exclusive Economic Zone' means the waters of the Exclusive Economic Zone of the United States under Presidential Proclamation 5030, dated March 10, 1983.

''(11) PERSON.—The term 'person' means any individual, private or public corporation, partnership, trust, institution, association, or any other public or private entity, whether foreign or domestic, private person or entity, or any officer, employee, agent, Department, agency, or instrumentality of the Federal Government, of any State or local unit of government, or of any foreign government.

''(12) RESPONSE COSTS.—The term 'response costs' means the costs of actions taken or authorized by the Secretary to minimize destruction or loss of, or injury to, a coral reef, or component thereof, or to minimize the imminent risks of such destruction, loss, or injury, including costs related to seizure, forfeiture, storage, or disposal arising from liability under section 213.

''(13) SECRETARY.—The term 'Secretary' means—

''(A) for purposes of sections 201 through 211, sections 218 through 220 (except as otherwise provided in subparagraph (B)), and the other paragraphs of this section, the Secretary of Commerce, acting through the Administrator of the National Oceanic and Atmospheric Administration; and

''(B) for purposes of sections 212 through 220—

''(i) the Secretary of the Interior for any coral reef or component thereof located in (I) the National Wildlife Refuge System, (II) the National Park System, and (III) the waters surrounding Wake Island under the jurisdiction of the Secretary of the Interior, as set forth in Executive Order 11048 (27 Fed. Reg. 8851 (September 4, 1962)); or

''(ii) the Secretary of Commerce for any coral reef or component thereof located in any area not described in clause (i).

''(14) SERVICE.—The term 'service' means functions, ecological or otherwise, performed by a coral reef or component thereof.

''(15) STATE.—The term 'State' means any State of the United States that contains a coral reef ecosystem within its seaward boundaries, American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the Virgin Islands, and any other territory or possession of the United States, or separate sovereign in free association with the United States, that contains a coral reef ecosystem within its seaward boundaries.

''(16) TERRITORIAL SEA.—The term 'Territorial Sea' means the waters of the Territorial Sea of the United States under Presidential Proclamation 5928, dated December 27, 1988.''.

By Mr. INOUYE (for himself, Mr. REED, and Mr. BEGICH):

S. 48. A bill to amend the Public Health Service Act to provide for the participation of pharmacists in National Health Services Corps programs, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. INOUYE. Mr. President, today I rise to recognize the need for inclusion of pharmacists in the National Health Services Corps, NHSC, student loan repayment program. It is imperative that our Nation focus its efforts on increased access to affordable, high quality healthcare for our Nation's underserved communities. Today's pharmacist graduates with a professional doctorate degree. My home State of Hawaii is home to our only school of pharmacy program located at the University of Hawaii at Hilo and this year will mark the school's very first graduating class. Pharmacists are vital to our intent of increasing access to patient-centered, team-based healthcare for all individuals. They collaborate with providers across the continuum of care to improve medication-use related outcomes, provides access to prevention and wellness screening that, among others, can reduce tobacco use and increase immunization rates all of which support provider effectiveness and organizational efficiencies. The integration of the pharmacist across the continuum of care helps increase access to primary and preventive care and allows for better management of chronic disease. Pharmacists support prescribers by focusing on the management of medications preventing adverse events that lead to avoidable emergency room visits and hospital admissions. This collaborative effort among healthcare providers helps improve clinical and economic outcomes and increases patient satisfaction with their care.

The current approach of recruiting and retaining primary care practitioners may limit access to robust patient-centered, team-based care by patients in underserved communities. Today over 88 percent of pharmacy students borrow over $107,000 to help them pay for their education. The incorporation of comprehensive pharmacy services in these particular communities is a primary objective of the Health Resources and Services Administration patient-safety and clinical pharmacy services collaborative. Making pharmacists eligible to participate in NHSC loan repayment program will ensure that the reorganization of our healthcare system envisioned in legislation, federal action, and community-based models all benefit from patient-centered, team-based models of care that integrate comprehensive pharmacy services.

I urge you to consider the benefits of including pharmacists in the NHSC student loan repayment program.

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. 48

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 ''Pharmacist Student Loan Repayment Eligibility Act of 2011''.

SEC. 2. NATIONAL HEALTH SERVICE CORPS; PARTICIPATION OF PHARMACISTS IN LOAN REPAYMENT PROGRAM.

(a) NATIONAL HEALTH SERVICE CORPS.—Section 331(b) of the Public Health Service Act (42 U.S.C. 254d(b)) is amended—

(1) in paragraph (1), by striking ''nursing and other schools of the health professions,'' and inserting ''nursing, pharmacy, and other schools of the health professions,''; and

(2) in paragraph (2), by striking ''and physician assistants who have an interest and a commitment to providing primary health care,'' and inserting ''physician assistants, and pharmacists who have an interest and commitment to providing primary health care,''.

(b) NATIONAL HEALTH SERVICE CORPS LOAN REPAYMENT PROGRAM.—Section 338B of the Public Health Service Act (42 U.S.C. 254l–1) is amended—

(1) in subsection (a)(1), by striking ''and physician assistants'' and inserting ''physician assistants, and pharmacists''; and

(2) in subsection (b)(1)—

(A) in subparagraph (A), by striking ''dentistry, or another health profession,'' and inserting ''dentistry, pharmacy, or another health profession,''; and

(B) in subparagraph (C)(ii), by striking ''dentistry, or other health profession'' and inserting ''dentistry, pharmacy, or other health profession''.

(c) CORPS PERSONNEL.—Section 333(e) of the Public Health Service Act (42 U.S.C. 254f(e)) is amended by striking ''dentistry, or any other health profession'' and inserting ''dentistry, pharmacy, or any other health profession''.

By Mr. KOHL (for himself, Mr. VITTER, Mr. LEAHY, Mr. HATCH, Ms. KLOBUCHAR, Mr. FRANKEN, and Mr. TESTER):

S. 49. A bill to amend the Federal antitrust laws to provide expanded coverage and to eliminate exemptions from such laws that are contrary to the public interest with respect to railroads; to the Committee on the Judiciary.

Mr. KOHL. Mr. President, I rise today to introduce legislation essential to restoring competition to the nation's crucial freight railroad sector. Freight railroads are essential to shipping a myriad of vital goods, everything from coal used to generate electricity to grain used for basic foodstuffs. But for decades the freight railroads have been insulated from the normal rules of competition followed by almost all other parts of our economy by an outmoded and unwarranted antitrust exemption. So today I am introducing, along with my colleagues, the Railroad Antitrust Enforcement Act of 2011. This bipartisan legislation will eliminate the obsolete antitrust exemptions that protect freight railroads from competition. This legislation is identical to the legislation that was reported out of the Judiciary Committee in the last Congress by a unanimous 15–0 vote.

Our legislation will eliminate unwarranted and outmoded antitrust exemptions that protect freight railroads from competition and result in higher prices to millions of consumers every day. Consolidation in the railroad industry in recent years has resulted in only four Class I railroads providing nearly 90 percent of the Nation's freight rail transportation, as measured by revenue. The harmful result of this industry concentration for railroad shippers is well documented. A 2006 General Accounting Office Report found that shippers in many geographic areas ''may be paying excessive rates due to a lack of competition in these markets.'' These unjustified cost increases cause consumers to suffer higher electricity bills because a utility must pay for the high cost of transporting coal, result in higher prices for goods produced by manufacturers who rely on railroads to transport raw materials, and reduce earnings for American farmers who ship their products by rail and raise food prices paid by consumers.

A recent staff report, issued September 15, 2010, of the Committee on Commerce, Science, and Transportation also makes clear how railroads have benefited from the unique combination of deregulation and large-scale antitrust immunity, to the detriment of rail shippers and consumers. This Report—titled ''The Current State of the Class I Freight Rail Industry''—stated that ''[t]he four Class I railroads that today dominate the U.S. rail shipping market are achieving returns on revenue and operating ratios that rank them among the most profitable businesses in the U.S. economy.'' The four largest railroads nearly doubled their collective profit margins in the last decade to 13 percent ranking the railroad industry the fifth most profitable industry as ranking by Fortune magazine.

Increased concentration and lack of antitrust scrutiny have had clear price effects—according to the Commerce Committee Report, since 2004, ''Class I railroads have been raising prices by an average of 5 percent a year above inflation.'' The recent Commerce Committee Report concluded that ''Class I freight railroads have regained the pricing power they lacked in the 1980s, and are now some of the most highly profitable businesses in the U.S. economy.'' Given the industry's concentration and pricing power, the case for full fledged application of the antitrust laws is plain.

The ill-effects of railroad industry consolidation are exemplified in the case of ''captive shippers''—industries served by only one railroad. Over the past several years, these captive shippers have faced spiking rail rates. They are the victims of monopolistic practices and price gouging by the single railroad that serves them, price increases which they are forced to pass along into the price of their products, and ultimately, to consumers. And in many cases, the ordinary protections of antitrust law are unavailable to these captive shippers—instead, the railroads are protected by a series of outmoded exemptions from the normal rules of antitrust law to which all other industries must abide.

These unwarranted antitrust exemptions have put the American consumer at risk, and in Wisconsin, victims of a lack of railroad competition abound. From Dairyland Power Cooperative in La Crosse to Wolf River Lumber in New London, companies in my state are feeling the crunch of years of railroad consolidation. To help offset a 93 percent increase in shipping rates in 2006, Dairyland Power Cooperative had to raise electricity rates by 20 percent. The reliability, efficiency, and affordability of freight rail have all declined, and Wisconsin consumers feel the pinch.

And similar stories exist across the country. We held a hearing at the Antitrust Subcommittee in the 110th Congress which detailed numerous instances of anti-competitive conduct by the dominant freight railroads and at which railroad shippers testified as to the need to repeal the outmoded and unwarranted antitrust exemptions which left them without remedies. Dozens of organizations, unions and trade groups affected by monopolistic railroad conduct endorsed the Railroad Antitrust Enforcement Act in the last Congress. Supporters of the legislation include 20 state Attorneys General, the National Association of Regulatory Utility Commissioners, NARUC, the Consumers Federation of America, Consumers Union, the American Farm Bureau Federation, American Chemistry Council, the American Corn Growers Association, the American Forest and Paper Association, the American Public Power Association, and the American Bar Association Antitrust Section.

The current antitrust exemptions protect a wide range of railroad industry conduct from scrutiny by governmental antitrust enforcers. Railroad mergers and acquisitions are exempt from antitrust law and are reviewed solely by the Surface Transportation Board. Railroads that engage in collective ratemaking are also exempt from antitrust law. Railroads subject to the regulation of the Surface Transportation Board are also exempt from private antitrust lawsuits seeking the termination of anti-competitive practices via injunctive relief. Our bill will eliminate these exemptions.

No good reason exists for them. While railroad legislation in recent decades—including most notably the Staggers Rail Act of 1980—deregulated much railroad rate setting from the oversight of the Surface Transportation Board, these obsolete antitrust exemptions remained in place, insulating a consolidating industry from obeying the rules of fair competition. And there is no reason to treat railroads any differently from dozens of other regulated industries in our economy that are fully subject to antitrust law—whether the telecommunications sector regulated by the FCC, or the aviation industry regulation by the Department of Transportation, just name just two examples.

Our bill will bring railroad mergers and acquisitions under the purview of

the Clayton Act, allowing the federal government, state attorneys general and private parties to file suit to enjoin anti-competitive mergers and acquisitions. It will restore the review of these mergers to the agencies where they belong—the Justice Department's Antitrust Division and the Federal Trade Commission. It will eliminate the exemption that prevents FTC's scrutiny of railroad common carriers. It will eliminate the antitrust exemption for railroad collective ratemaking. It will allow state attorneys general and other private parties to sue railroads for treble damages and injunctive relief for violations of the antitrust laws, including collusion that leads to excessive and unreasonable rates. This legislation will force railroads to play by the rules of free competition like all other businesses.

Significantly, our bill will not affect in way the jurisdiction of the Surface Transportation Board to regulate freight railroads. It will in no way limit or alter the authority of the STB; the STB will continue to exercise full jurisdiction over the railroad industry.

In sum, by clearing out this thicket of outmoded antitrust exemptions, railroads will be subject to the same laws as the rest of the economy. Government antitrust enforcers will finally have the tools to prevent anti-competitive transactions and practices by railroads. Likewise, private parties will be able to utilize the antitrust laws to deter anti-competitive conduct and to seek redress for their injuries.

It is time to put an end to the abusive practices of the Nation's freight railroads. On the Antitrust Subcommittee, we have seen that in industry after industry, vigorous application of our Nation's antitrust laws is the best way to eliminate barriers to competition, to end monopolistic behavior, to keep prices low and quality of service high. The railroad industry is no different. All those who rely on railroads to ship their products—whether it is an electric utility for its coal, a farmer to ship grain, or a factory to acquire its raw materials or ship out its finished product—deserve the full application of the antitrust laws to end the anti-competitive abuses all too prevalent in this industry today. I urge my colleagues support the Railroad Antitrust Enforcement Act of 2011.

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. 49

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 ''Railroad Antitrust Enforcement Act of 2011''.

SEC. 2. INJUNCTIONS AGAINST RAILROAD COMMON CARRIERS.

The proviso in section 16 of the Clayton Act (15 U.S.C. 26) ending with ''Code.'' is amended to read as follows: ''*Provided,* That nothing herein contained shall be construed to entitle any person, firm, corporation, or association, except the United States, to bring suit for injunctive relief against any common carrier that is not a railroad subject to the jurisdiction of the Surface Transportation Board under subtitle IV of title 49, United States Code.''.

SEC. 3. MERGERS AND ACQUISITIONS OF RAILROADS.

The sixth undesignated paragraph of section 7 of the Clayton Act (15 U.S.C. 18) is amended to read as follows:

''Nothing contained in this section shall apply to transactions duly consummated pursuant to authority given by the Secretary of Transportation, Federal Power Commission, Surface Transportation Board (except for transactions described in section 11321 of that title), the Securities and Exchange Commission in the exercise of its jurisdiction under section 10 (of the Public Utility Holding Company Act of 1935), the United States Maritime Commission, or the Secretary of Agriculture under any statutory provision vesting such power in the Commission, Board, or Secretary.''.

SEC. 4. LIMITATION OF PRIMARY JURISDICTION.

The Clayton Act is amended by adding at the end thereof the following:

''SEC. 29. In any civil action against a common carrier railroad under section 4, 4C, 15, or 16 of this Act, the district court shall not be required to defer to the primary jurisdiction of the Surface Transportation Board.''.

SEC. 5. FEDERAL TRADE COMMISSION ENFORCEMENT.

(a) CLAYTON ACT.—Section 11(a) of the Clayton Act (15 U.S.C. 21(a)) is amended by striking ''subject to jurisdiction'' and all that follows through the first semicolon and inserting ''subject to jurisdiction under subtitle IV of title 49, United States Code (except for agreements described in section 10706 of that title and transactions described in section 11321 of that title);''.

(b) FTC ACT.—Section 5(a)(2) of the Federal Trade Commission Act (15 U.S.C. 45(a)(2)) is amended by striking ''common carriers subject'' and inserting ''common carriers, except for railroads, subject''.

SEC. 6. EXPANSION OF TREBLE DAMAGES TO RAIL COMMON CARRIERS.

Section 4 of the Clayton Act (15 U.S.C. 15) is amended by—

(1) redesignating subsections (b) and (c) as subsections (c) and (d), respectively; and

(2) inserting after subsection (a) the following:

''(b) Subsection (a) shall apply to a common carrier by railroad subject to the jurisdiction of the Surface Transportation Board under subtitle IV of title 49, United States Code, without regard to whether such railroads have filed rates or whether a complaint challenging a rate has been filed.''.

SEC. 7. TERMINATION OF EXEMPTIONS IN TITLE 49.

(a) IN GENERAL.—Section 10706 of title 49, United States Code, is amended—

(1) in subsection (a)—

(A) in paragraph (2)(A), by striking '', and the Sherman Act (15 U.S.C. 1 et seq.),'' and all that follows through ''or carrying out the agreement'' in the third sentence;

(B) in paragraph (4)—

(i) by striking the second sentence; and

(ii) by striking ''However, the'' in the third sentence and inserting ''The''; and

(C) in paragraph (5)(A), by striking '', and the antitrust laws set forth in paragraph (2) of this subsection do not apply to parties and other persons with respect to making or carrying out the agreement''; and

(2) by striking subsection (e) and inserting the following:

''(e) APPLICATION OF ANTITRUST LAWS.—

''(1) IN GENERAL.—Nothing in this section exempts a proposed agreement described in subsection (a) from the application of the Sherman Act (15 U.S.C. 1 et seq.), the Clayton Act (15 U.S.C. 12, 14 et seq.), the Federal Trade Commission Act (15 U.S.C. 41 et seq.), section 73 or 74 of the Wilson Tariff Act (15 U.S.C. 8 and 9), or the Act of June 19, 1936 (15 U.S.C. 13, 13a, 13b, 21a).

''(2) ANTITRUST ANALYSIS TO CONSIDER IMPACT.—In reviewing any such proposed agreement for the purpose of any provision of law described in paragraph (1), the Board shall take into account, among any other considerations, the impact of the proposed agreement on shippers, on consumers, and on affected communities.''.

(b) COMBINATIONS.—Section 11321 of title 49, United States Code, is amended—

(1) in subsection (a)—

(A) by striking ''The authority'' in the first sentence and inserting ''Except as provided in sections 4 (15 U.S.C. 15), 4C (15 U.S.C. 15c), section 15 (15 U.S.C. 25), and section 16 (15 U.S.C. 26) of the Clayton Act (15 U.S.C. 21(a)), the authority''; and

(B) by striking ''is exempt from the antitrust laws and from all other law,'' in the third sentence and inserting ''is exempt from all other law (except the antitrust laws referred to in subsection (c)),''; and

(2) by adding at the end the following:

''(c) APPLICATION OF ANTITRUST LAWS.—

''(1) IN GENERAL.—Nothing in this section exempts a transaction described in subsection (a) from the application of the Sherman Act (15 U.S.C. 1 et seq.), the Clayton Act (15 U.S.C. 12, 14 et seq.), the Federal Trade Commission Act (15 U.S.C. 41 et seq.), section 73 or 74 of the Wilson Tariff Act (15 U.S.C. 8–9), or the Act of June 19, 1936 (15 U.S.C. 13, 13a, 13b, 21a). The preceding sentence shall not apply to any transaction relating to the pooling of railroad cars approved by the Surface Transportation Board or its predecessor agency pursuant to section 11322 of title 49, United States Code.

''(2) ANTITRUST ANALYSIS TO CONSIDER IMPACT.—In reviewing any such transaction for the purpose of any provision of law described in paragraph (1), the Board shall take into account, among any other considerations, the impact of the transaction on shippers and on affected communities.''.

(c) CONFORMING AMENDMENTS.—

(1) The heading for section 10706 of title 49, United States Code, is amended to read as follows: ''**Rate agreements**''.

(2) The item relating to such section in the chapter analysis at the beginning of chapter 107 of such title is amended to read as follows:

''10706. Rate agreements.''.

SEC. 8. EFFECTIVE DATE.

(a) IN GENERAL.—Subject to the provisions of subsection (b), this Act shall take effect on the date of enactment of this Act.

(b) CONDITIONS.—

(1) PREVIOUS CONDUCT.—A civil action under section 4, 15, or 16 of the Clayton Act (15 U.S.C. 15, 25, 26) or complaint under section 5 of the Federal Trade Commission Act (15 U.S.C. 45) may not be filed with respect to any conduct or activity that occurred prior to the date of enactment of this Act that was previously exempted from the antitrust laws as defined in section 1 of the Clayton Act (15 U.S.C. 12) by orders of the Interstate Commerce Commission or the Surface Transportation Board issued pursuant to law.

(2) GRACE PERIOD.—A civil action or complaint described in paragraph (1) may not be filed earlier than 180 days after the date of enactment of this Act with respect to any previously exempted conduct or activity or

previously exempted agreement that is continued subsequent to the date of enactment of this Act.

By Mr. INOUYE (for himself, Ms. SNOWE, and Mr. VITTER):

S. 50. A bill to strengthen Federal consumer product safety programs and activities with respect to commercially-marketed seafood by directing the Secretary of Commerce to coordinate with the Federal Trade Commission and other appropriate Federal agencies to strengthen and coordinate those programs and activities; to the Committee on Commerce, Science, and Transportation.

Mr. INOUYE. I am pleased to introduce my Commercial Seafood Consumer Protection Act, Seafood Safety Act. The Seafood Safety Act will strengthen the partnership between the Secretary of Commerce, the Secretary of Health and Human Services, HHS, the Secretary of the Department of Homeland Security, DHS, the Federal Trade Commission, FTC, and other appropriate Federal agencies, to coordinate Federal activities for ensuring that commercially distributed seafood in the United States meets the food quality and safety requirements of Federal law. The bill provides for no new jurisdiction and does not alter any existing jurisdiction given to FDA or any other agency. The bill does not include any authorization of appropriations, but seeks only to strengthen existing partnerships and share information.

The bill remains largely unchanged since I first introduced it in the 110th Congress, but this version, like the one I introduced in the 111th, incorporates the FTC as an additional partner since they have broad existing authority for consumer and interstate commerce fraud issues.

Specifically, the bill requires the Secretaries of Commerce, HHS, DHS, and the FTC to enter into agreements as necessary to strengthen cooperation on seafood safety, seafood labeling, and seafood fraud. Those agreements must address seafood testing and inspection; data standardization for seafood names; data coordination for the exportation, transportation, sale, harvest, or trade of seafood; seafood labeling compliance assurance; and information-sharing for observed non-compliance. The bill also increases the number of laboratories certified to inspection standards of the FDA and allows the Secretary of Commerce to increase the number and capacity of NOAA laboratories responsible for seafood safety testing. It allows for an increase in the percentage of seafood import shipments tested and inspected to improve detection of violations. Finally, the bill allows the Secretary of HHS to refuse entry of seafood imports from countries with known violations, and also allows the Secretary to permit individual seafood shipments from recognized and properly certified exporters.

For the safety of the American people, I remain committed to the Seafood Safety Act and look forward to continuing to work to ensure its passage.

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. 50

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 ''Commercial Seafood Consumer Protection Act''.

SEC. 2. COMMERCIALLY-MARKETED SEAFOOD CONSUMER PROTECTION SAFETY NET.

(a) IN GENERAL.—The Secretary of Commerce shall, in coordination with the Federal Trade Commission and other appropriate Federal agencies, and consistent with the international obligations of the United States, strengthen Federal consumer protection activities for ensuring that commercially-distributed seafood in the United States meets the food quality and safety requirements of applicable Federal laws.

(b) INTERAGENCY AGREEMENTS.—

(1) IN GENERAL.—Within 180 days after the date of enactment of this Act, the Secretary and other appropriate Federal agencies shall execute memoranda of understanding or other agreements to strengthen interagency cooperation on seafood safety, seafood labeling, and seafood fraud.

(2) SCOPE OF AGREEMENTS.—The agreements shall include provisions, as appropriate for each such agreement, for—

(A) cooperative arrangements for examining and testing seafood imports that leverage the resources, capabilities, and authorities of each party to the agreement;

(B) coordination of inspections of foreign facilities to increase the percentage of imported seafood and seafood facilities inspected;

(C) standardizing data on seafood names, inspection records, and laboratory testing to improve interagency coordination;

(D) coordination of the collection, storage, analysis, and dissemination of all applicable information, intelligence, and data related to the importation, exportation, transportation, sale, harvest, processing, or trade of seafood in order to detect and investigate violations under applicable Federal laws, and to carry out the provisions of this Act;

(E) developing a process for expediting imports of seafood into the United States from foreign countries and exporters that consistently adhere to the highest standards for ensuring seafood safety;

(F) coordination to track shipments of seafood in the distribution chain within the United States;

(G) enhancing labeling requirements and methods of assuring compliance with such requirements to clearly identity species and prevent fraudulent practices;

(H) a process by which officers and employees of the National Oceanic and Atmospheric Administration may be commissioned by the head of any other appropriate Federal agency to conduct or participate in seafood examinations and investigations under applicable Federal laws administered by such other agency;

(I) the sharing of information concerning observed non-compliance with United States seafood requirements domestically and in foreign countries and new regulatory decisions and policies that may affect regulatory outcomes;

(J) conducting joint training on subjects that affect and strengthen seafood inspection effectiveness by Federal authorities;

(K) sharing, to the maximum extent allowable by law, all applicable information, intelligence, and data related to the importation, exportation, transportation, sale, harvest, processing, or trade of seafood in order to detect and investigate violations under applicable Federal laws, or otherwise to carry out the provisions of this Act; and

(L) outreach to private testing laboratories, seafood industries, and the public on Federal efforts to enhance seafood safety and compliance with labeling requirements, including education on Federal requirements for seafood safety and labeling and information on how these entities can work with appropriate Federal agencies to enhance and improve seafood inspection and assist in detecting and preventing seafood fraud and mislabeling.

(3) ANNUAL REPORTS ON IMPLEMENTATION OF AGREEMENTS.—The Secretary, the Chairman of the Federal Trade Commission, and the heads of other appropriate Federal agencies that are parties to agreements executed under paragraph (1) shall submit, jointly or severally, an annual report to the Congress concerning—

(A) specific efforts taken pursuant to the agreements;

(B) the budget and personnel necessary to strengthen seafood safety and labeling and prevent seafood fraud; and

(C) any additional authorities necessary to improve seafood safety and labeling and prevent seafood fraud.

(c) MARKETING, LABELING, AND FRAUD REPORT.—Within 1 year after the date of enactment of this Act, the Secretary and the Chairman of the Federal Trade Commission shall submit a joint report to the Congress on consumer protection and enforcement efforts with respect to seafood marketing and labeling in the United States. The report shall include—

(1) findings with respect to the scope of seafood fraud and deception in the United States market and its impact on consumers;

(2) information on how the National Oceanic and Atmospheric Administration and the Federal Trade Commission can work together more effectively to address fraud and unfair or deceptive acts or practices with respect to seafood;

(3) detailed information on the enforcement and consumer outreach activities undertaken by the National Oceanic and Atmospheric Administration and the Federal Trade Commission during the preceding year pursuant to this Act; and

(4) an examination of the scope of unfair or deceptive acts or practices in the United States market with respect to foods other than seafood and whether additional enforcement authority or activity is warranted.

(d) NOAA SEAFOOD INSPECTION AND MARKING COORDINATION.—

(1) DECEPTIVE MARKETING AND FRAUD.—The National Oceanic and Atmospheric Administration shall report deceptive seafood marketing and fraud to the Federal Trade Commission pursuant to an agreement under subsection (b).

(2) APPLICATION WITH EXISTING AGREEMENTS.—Nothing in this Act shall be construed to impede, minimize, or otherwise affect any agreement or agreements regarding cooperation and information sharing in the inspection of fish and fishery products and establishments between the Department of Commerce and the Department of Health and Human Services in effect on the date of enactment of this Act. Within 6 months after the date of enactment of this Act, the Secretary of Commerce and the Secretary of Health and Human Services shall submit a joint report to the Congress on implementation of any such agreement or agreements, including the extent to which the Food and

Drug Administration has taken into consideration information resulting from inspections conducted by the Department of Commerce in making risk-based determinations such as the establishment of inspection priorities for domestic and foreign facilities and the examination and testing of imported seafood.

(3) COORDINATION WITH SEA GRANT PROGRAM.—The Administrator of the National Oceanic and Atmospheric Administration shall ensure that the NOAA Seafood Inspection Program is coordinated with the Sea Grant Program to provide outreach to States, consumers, and the seafood industry on seafood testing, seafood labeling, and seafood substitution, and strategies to combat mislabeling and fraud.

SEC. 3. CERTIFIED LABORATORIES.

Within 180 days after the date of enactment of this Act, the Secretary, in consultation with the Secretary of Health and Human Services, shall increase the number of laboratories certified to the standards of the Food and Drug Administration in the United States and in countries that export seafood to the United States for the purpose of analyzing seafood and ensuring that the laboratories, including Federal, State, and private facilities, comply with applicable Federal laws. Within 1 year after the date of enactment of this Act, the Secretary of Commerce shall publish in the Federal Register a list of certified laboratories. The Secretary shall update and publish the list no less frequently than annually.

SEC. 4. NOAA LABORATORIES.

In any fiscal year beginning after the date of enactment of this Act, the Secretary may increase the number and capacity of laboratories operated by the National Oceanic and Atmospheric Administration involved in carrying out testing and other activities under this Act to the extent that the Secretary determines that increased laboratory capacity is necessary to carry out the provisions of this Act and as provided for in appropriations Acts.

SEC. 5. CONTAMINATED SEAFOOD.

(a) REFUSAL OF ENTRY.—The Secretary of Health and Human Services may issue an order refusing admission into the United States of all imports of seafood or seafood products originating from a country or exporter if the Secretary determines that shipments of such seafood or seafood products do not meet the requirements established under applicable Federal law.

(b) INCREASED TESTING.—If the Secretary of Health and Human Services determines that seafood imports originating from a country may not meet the requirements of Federal law, and determines that there is a lack of adequate certified laboratories to provide for the entry of shipments pursuant to section 3, then the Secretary may order an increase in the percentage of shipments tested of seafood originating from such country to improve detection of potential violations of such requirements.

(c) ALLOWANCE OF INDIVIDUAL SHIPMENTS FROM EXPORTING COUNTRY OR EXPORTER.—Notwithstanding an order under subsection (a) with respect to seafood originating from a country or exporter, the Secretary may permit individual shipments of seafood originating in that country or from that exporter to be admitted into the United States if—

(1) the exporter presents evidence from a laboratory certified by the Secretary that a shipment of seafood meets the requirements of applicable Federal laws; and

(2) the Secretary, or other agent of a Federal agency authorized to conduct inspections of seafood, has inspected the shipment and has found that the shipment and the conditions of manufacturing meet the requirements of applicable Federal laws.

(d) CANCELLATION OF ORDER.—The Secretary may cancel an order under subsection (a) with respect to seafood exported from a country or exporter if all shipments into the United States under subsection (c) of seafood originating in that country or from that exporter more than 1 year after the date on which the Secretary issued the order have been found, under the procedures described in subsection (c), to meet the requirements of Federal law. If the Secretary determines that an exporter has failed to comply with the requirements of an order under subsection (a), the 1-year period in the preceding sentence shall run from the date of that determination rather than the date on which the order was issued.

(e) EFFECT.—This section shall be in addition to, and shall have no effect on, the authority of the Secretary of Health and Human Services under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) with respect to seafood, seafood products, or any other product.

SEC. 6. INSPECTION TEAMS.

(a) INSPECTION OF FOREIGN SITES.—The Secretary, in cooperation with the Secretary of Health and Human Services, may send 1 or more inspectors to a country or exporter from which seafood exported to the United States originates. The inspection team shall assess practices and processes being used in connection with the farming, cultivation, harvesting, preparation for market, or transportation of such seafood and may provide technical assistance related to the requirements established under applicable Federal laws to address seafood fraud and safety. The inspection team shall prepare a report for the Secretary of Commerce with its findings. The Secretary of Commerce shall make a copy of the report available to the country or exporter that is the subject of the report and provide a 30-day period during which the country or exporter may provide a rebuttal or other comments on the findings to the Secretary.

(b) DISTRIBUTION AND USE OF REPORT.—The Secretary shall provide the report to the Secretary of Health and Human Services as information for consideration in making risk-based determinations such as the establishment of inspection priorities of domestic and foreign facilities and the examination and testing of imported seafood. The Secretary shall provide the report to the Executive Director of the Federal Trade Commission for consideration in making recommendations to the Chairman of the Federal Trade Commission regarding consumer protection to prevent fraud, deception, and unfair business practices in the marketplace.

SEC. 7. SEAFOOD IDENTIFICATION.

(a) STANDARIZED LIST OF NAMES FOR SEAFOOD.—The Secretary and the Secretary of Health and Human Services shall initial a joint rulemaking proceeding to develop and make public a list of standardized names for seafood identification purposes at distribution, marketing, and consumer retail stages. The list of standardized names shall take into account taxonomy, current labeling regulations, international law and custom, market value, and naming precedence for all commercially-distributed seafood distributed in interstate commerce in the United States and may not include names, whether similar to existing or commonly used names for species, that are likely to confuse or mislead consumers.

(b) PUBLICATION OF LIST.—The list of standardized names shall be made available to the public on Department of Health and Human Services and the Department of Commerce websites, shall be open to public review and comment, and shall be updated annually.

SEC. 8. DEFINITIONS.

In this Act:

(1) APPLICABLE FEDERAL LAWS.—The term ''applicable laws and regulations'' means Federal statutes, regulations, and international agreements pertaining to the importation, exportation, transportation, sale, harvest, processing, or trade of seafood, including the Magnuson-Stevens Fishery Conservation and Management Act, section 801 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381), section 203 of the Food Allergen Labeling and Consumer Protection Act of 2004 (21 U.S.C. 374a), and the Seafood Hazard Analysis and Critical Control Point regulations in part 123 of title 21, Code of Federal Regulations.

(2) APPROPRIATE FEDERAL AGENCIES.—The term ''appropriate Federal agencies'' includes the Department of Health and Human Services, the Federal Food and Drug Administration, the Department of Homeland Security, and the Department of Agriculture.

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

By Mr. INOUYE (for himself, Mr. ROCKEFELLER, Mr. KERRY, Ms. SNOWE, and Ms. CANTWELL):

S. 52. A bill to establish uniform administrative and enforcement procedures and penalties for the enforcement of the High Seas Driftnet Fishing Moratorium Protection Act and similar statutes, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Mr. INOUYE. Mr. President, I am pleased to introduce the International Fisheries Stewardship and Enforcement Act, which I also introduced in the 111th. This bill would harmonize the enforcement provisions of the U.S. statutes for implementing international fisheries agreements to strengthen international fisheries enforcement.

Specifically it would grant the National Oceanic and Atmospheric Administration, NOAA, and the U.S. Coast Guard authority to implement international fisheries laws, expand their authorities in carrying out investigations and enforcement activities, and establish interference with investigations as a prohibited act. It would also amend the enforcement provisions of statutes for implementing international fisheries agreements to conform to the Magnuson-Stevens Fishery Conservation and Management Act, while increasing both civil and criminal penalties for violating international fisheries laws.

The bill also authorizes the Secretary of Commerce to maintain and make public a list of vessels engaged in illegal, unregulated, and unreported, IUU, fishing and authorize appropriate action against listed vessels, which will hopefully allow for strong strides in our fight against illegal activity.

Finally, by creating an International Cooperation and Assistance Program that will provide assistance for international capacity building efforts, training, outreach, and education, it is my hope that we are able to more-successfully combat IUU fishing and promote international marine conservation.

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

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

S. 52

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''International Fisheries Stewardship and Enforcement Act''.

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

TITLE I—ADMINISTRATION AND ENFORCEMENT OF CERTAIN FISHERY AND RELATED STATUTES.

SEC. 101. AUTHORITY OF THE SECRETARY TO ENFORCE STATUTES.

(a) IN GENERAL.—

(1) ENFORCEMENT OF STATUTES.—The Secretary of Commerce and the Secretary of the department in which the Coast Guard is operating shall enforce the statutes to which this section applies in accordance with the provisions of this section.

(2) UTILIZATION OF NONDEPARTMENTAL RESOURCES.—The Secretary may, by agreement, on a reimbursable basis or otherwise, utilize the personnel services, equipment (including aircraft and vessels), and facilities of any other Federal agency, including all elements of the Department of Defense, and of any State agency, in carrying out this section.

(3) STATUTES TO WHICH APPLICABLE.—This section applies to—

(A) the High Seas Driftnet Fishing Moratorium Protection Act (16 U.S.C. 1826d et seq.);

(B) the Pacific Salmon Treaty Act of 1985 (16 U.S.C. 3631 et seq.);

(C) the Dolphin Protection Consumer Information Act (16 U.S.C. 1385);

(D) the Tuna Conventions Act of 1950 (16 U.S.C. 951 et seq.);

(E) the North Pacific Anadromous Stocks Act of 1992 (16 U.S.C. 5001 et seq.);

(F) the South Pacific Tuna Act of 1988 (16 U.S.C. 973 et seq.);

(G) the Antarctic Marine Living Resources Convention Act of 1984 (16 U.S.C. 2431 et seq.);

(H) the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971 et seq.);

(I) the Northwest Atlantic Fisheries Convention Act of 1995 (16 U.S.C. 5601 et seq.);

(J) the Western and Central Pacific Fisheries Convention Implementation Act (16 U.S.C. 6901 et seq.);

(K) the Northern Pacific Halibut Act of 1982 (16 U.S.C. 773 et seq.);

(L) any other Act in pari materia, so designated by the Secretary after notice and an opportunity for a hearing; and

(M) the Antigua Convention Implementing Act of 2011.

(b) ADMINISTRATION AND ENFORCEMENT.—The Secretary shall prevent any person from violating any Act to which this section applies in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though sections 307 through 311 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1857 through 1861) were incorporated into and made a part of each such Act. Except as provided in subsection (c), any person that violates any Act to which this section applies is subject to the penalties, and entitled to the privileges and immunities, provided in the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.) in the same manner and by the same means as though sections 307 through 311 of that Act were incorporated into and made a part of each such Act.

(c) SPECIAL RULES.—

(1) IN GENERAL.—Notwithstanding the incorporation by reference of certain sections of the Magnuson-Stevens Fishery Conservation and Management Act under subsection (b), if there is a conflict between a provision of this subsection and the corresponding provision of any section of the Magnuson-Stevens Fishery Conservation and Management Act so incorporated, the provision of this subsection shall apply.

(2) CIVIL ADMINISTRATIVE ENFORCEMENT.—The amount of the civil penalty for a violation of any Act to which this section applies shall not exceed $250,000 for each violation. Each day of a continuing violation shall constitute a separate violation.

(3) CIVIL JUDICIAL ENFORCEMENT.—The Attorney General, upon the request of the Secretary, may commence a civil action in an appropriate district court of the United States to enforce this Act and any Act to which this section applies, and such court shall have jurisdiction to award civil penalties or such other relief as justice may require, including a permanent or temporary injunction. The amount of the civil penalty for a violation of any Act to which this section applies shall not exceed $250,000 for each violation. Each day of a continuing violation shall constitute a separate violation. In determining the amount of a civil penalty, the court shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior violations and such other matters as justice may require. In imposing such penalty, the district court may also consider information related to the ability of the violator to pay.

(4) CRIMINAL FINES AND PENALTIES.—

(A) INDIVIDUALS.—In the case of an individual, any offense described in subsection (e)(2), (3), (4), (5), or (6) is punishable by a fine of not more than $500,000, imprisonment for not more than 5 years, or both. If, in the commission of such offense, an individual uses a dangerous weapon, engages in conduct that causes bodily injury to any officer authorized to enforce the provisions of this Act, or places any such officer in fear of imminent bodily injury the maximum term of imprisonment is 10 years.

(B) OTHER PERSONS.—In the case of any other person, any offense described in subsection (e)(2), (3), (4), (5), or (6) is punishable by a fine of not more than $1,000,000.

(5) OTHER CRIMINAL VIOLATIONS.—Any person (other than a foreign government or any entity of such government) who knowingly violates any provision of subsection (e) of this section, or any provision of any regulation promulgated pursuant to this Act, is guilty of a criminal offense punishable—

(A) in the case of an individual, by a fine of not more than $500,000, imprisonment for not more than 5 years, or both; and

(B) in the case of any other person, by a fine of not more than $1,000,000.

(6) CRIMINAL FORFEITURES.—

(A) IN GENERAL.—A person found guilty of an offense described in subsection (e), or who is convicted of a criminal violation of any Act to which this section applies, shall forfeit to the United States—

(i) any property, real or personal, constituting or traceable to the gross proceeds obtained, or retained, as a result of the offense including any marine species (or the fair market value thereof) taken or retained in connection with or as a result of the offense; and

(ii) any property, real or personal, used or intended to be used to commit or to facilitate the commission of the offense, including any shoreside facility, including its conveyances, structure, equipment, furniture, appurtenances, stores, and cargo.

(B) PROCEDURE.—Pursuant to section 2461(c) of title 28, United States Code, the provisions of section 413 of the Controlled Substances Act (21 U.S.C. 853), other than subsection (d) thereof, shall apply to criminal forfeitures under this section.

(7) ADDITIONAL ENFORCEMENT AUTHORITY.—In addition to the powers of officers authorized pursuant to subsection (b), any officer who is authorized by the Secretary, or the head of any Federal or State agency that has entered into an agreement with the Secretary under subsection (a) to enforce the provisions of any Act to which this section applies may, with the same jurisdiction, powers, and duties as though section 311 of the Magnuson-Stevens fishery Conservation and Management Act (16 U.S.C. 1861) were incorporated into and made a part of each such Act—

(A) search or inspect any facility or conveyance used or employed in, or which reasonably appears to be used or employed in, the storage, processing, transport, or trade of fish or fish products;

(B) inspect records pertaining to the storage, processing, transport, or trade of fish or fish products;

(C) detain, for a period of up to 14 days, any shipment of fish or fish product imported into, landed on, introduced into, exported from, or transported within the jurisdiction of the United States, or, if such fish or fish product is deemed to be perishable, sell and retain the proceeds therefrom for a period of up to 14 days; and

(D) make an arrest, in accordance with any guidelines which may be issued by the Attorney General, for any offense under the laws of the United States committed in the person's presence, or for the commission of any felony under the laws of the United States, if the person has reasonable grounds to believe that the person to be arrested has committed

or is committing a felony; may search and seize, in accordance with any guidelines which may be issued by the Attorney General and may execute and serve any subpoena, arrest warrant, search warrant issued in accordance with rule 41 of the Federal Rules of Criminal Procedure, or other warrant or civil or criminal process issued by any officer or court of competent jurisdiction.

(8) SUBPOENAS.—In addition to any subpoena authority pursuant to subsection (b), the Secretary may, for the purposes of conducting any investigation under this section, or any other statute administered by the Secretary, issue subpoenas for the production of relevant papers, photographs, records, books, and documents in any form, including those in electronic, electrical, or magnetic form.

(d) DISTRICT COURT JURISDICTION.—The several district courts of the United States shall have jurisdiction over any actions arising under this section. For the purpose of this section, American Samoa shall be included within the judicial district of the District Court of the United States for the District of Hawaii. Each violation shall be a separate offense and the offense shall be deemed to have been committed not only in the district where the violation first occurred, but also in any other district as authorized by law. Any offenses not committed in any district are subject to the venue provisions of section 3238 of title 18, United States Code.

(e) PROHIBITED ACTS.—It is unlawful for any person—

(1) to violate any provision of this section or any Act to which this section applies or any regulation promulgated thereunder;

(2) to refuse to permit any authorized enforcement officer to board, search, or inspect a vessel, conveyance, or shoreside facility that is subject to the person's control for purposes of conducting any search, investigation, or inspection in connection with the enforcement of this section or any Act to which this section applies or any regulation promulgated thereunder;

(3) to forcibly assault, resist, oppose, impede, intimidate, or interfere with any such authorized officer in the conduct of any search, investigation, or inspection described in paragraph (2);

(4) to resist a lawful arrest for any act prohibited by this section or any Act to which this section applies;

(5) to interfere with, delay, or prevent, by any means, the apprehension, arrest, or detection of another person, knowing that such person has committed any act prohibited by this section or any Act to which this section applies;

(6) to forcibly assault, resist, oppose, impede, intimidate, sexually harass, bribe, or interfere with any observer on a vessel under this section or any Act to which this section applies, or any data collector employed by or under contract to the National Marine Fisheries Service to carry out responsibilities under this section or any Act to which this section applies;

(7) to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any fish or fish product taken, possessed, transported, or sold in violation of any treaty or binding conservation measure adopted pursuant to an international agreement or organization to which the United States is a party; or

(8) to make or submit any false record, account, or label for, or any false identification of, any fish or fish product (including false identification of the species, harvesting vessel or nation, or the location where harvested) which has been, or is intended to be imported, exported, transported, sold, offered for sale, purchased, or received in interstate or foreign commerce.

(f) REGULATIONS.—The Secretary may promulgate such regulations, in accordance with section 553 of title 5, United States Code, as may be necessary to carry out this section or any Act to which this section applies.

SEC. 102. CONFORMING, MINOR, AND TECHNICAL AMENDMENTS.

(a) HIGH SEAS DRIFTNET FISHING MORATORIUM PROTECTION ACT.—

(1) Section 606 of the High Seas Driftnet Fishing Moratorium Protection Act (16 U.S.C. 1826g) is amended—

(A) by inserting ''(a) DETECTING, MONITORING, AND PREVENTING VIOLATIONS.—'' before ''The President''; and

(B) by adding at the end thereof the following:

''(b) ENFORCEMENT.—This Act shall be enforced under section 101 of the International Fisheries Stewardship and Enforcement Act.''.

(2) Section 607(2) of the High Seas Driftnet Fishing Moratorium Protection Act (16 U.S.C. 1826h(2)) is amended by striking ''whose vessels'' and inserting ''that''.

(3) Section 609(a) of the High Seas Driftnet Fishing Moratorium Protection Act (16 U.S.C. 1826j(a)) is amended to read as follows:

''(a) IDENTIFICATION.—

''(1) IN GENERAL.—The Secretary shall identify, and list in the report under section 607, a nation if that nation is engaged, or has been engaged at any time during the preceding 3 years, in illegal, unreported, or unregulated fishing and—

''(A) such fishing undermines the effectiveness of measures required under the relevant international fishery management organization;

''(B) the relevant international fishery management organization has failed to implement effective measures to end the illegal, unreported, or unregulated fishing activity by vessels of that nation, or the nation is not a party to, or does not maintain cooperating status with, such organization; or

''(C) there is no international fishery management organization with a mandate to regulate the fishing activity in question.

''(2) OTHER IDENTIFYING ACTIVITIES.—The Secretary shall also identify, and list in the report under section 607, a nation if—

''(A) it is violating, or has violated at any time during the preceding 3 years, conservation and management measures required under an international fishery management agreement to which the United States is a party and the violations undermine the effectiveness of such measures, taking into account the factors described in paragraph (1); or

''(B) it is failing, or has failed at any time during the preceding 3 years, to effectively address or regulate illegal, unreported, or unregulated fishing in areas described in paragraph (1)(C).

''(3) TREATMENT OF CERTAIN ENTITIES AS IF THEY WERE NATIONS.—Where the provisions of this Act apply to the act, or failure to act, of a nation, they shall also be applicable, as appropriate, to any other entity that is competent to enter into an international fishery management agreement.''.

(4) Section 609(d)(1) of the High Seas Driftnet Fishing Moratorium Protection Act (16 U.S.C. 1826j(d)(1)) is amended by striking ''of its fishing vessels'' each place it appears.

(5) Section 609(d)(2) of the High Seas Driftnet Fishing Moratorium Protection Act (16 U.S.C. 1826j(d)(2)) is amended—

(A) by striking ''procedure for certification,'' and inserting ''procedure,'';

(B) by striking ''basis of fish'' and inserting ''basis, for allowing importation of fish''; and

(C) by striking ''harvesting nation not certified under paragraph (1)'' and inserting ''nation issued a negative certification under paragraph (1)''.

(6) Section 610(a)(1) of the High Seas Driftnet Fishing Moratorium Protection Act (16 U.S.C. 1826k(a)(1)) is amended—

(A) by striking ''calendar year'' and inserting ''3 years''; and

(B) by striking ''practices;'' and inserting ''practices—''.

(b) DOLPHIN PROTECTION CONSUMER INFORMATION ACT.—Section 901 of the Dolphin Protection Consumer Information Act (16 U.S.C. 1385) is amended—

(1) by adding at the end of subsection (d) the following:

''(4) It is a violation of section 101 of the International Fisheries Stewardship and Enforcement Act for any person to assault, resist, oppose, impede, intimidate, or interfere with and authorized officer in the conduct of any search, investigation or inspection under this Act.''; and

(2) by striking subsection (e) and inserting the following:

''(e) ENFORCEMENT.—This Act shall be enforced under section 101 of the International Fisheries Stewardship and Enforcement Act.''.

(c) TUNA CONVENTIONS ACT OF 1950.—Section 8 of the Tuna Conventions Act of 1950 (16 U.S.C. 957) is amended—

(1) by striking ''regulations.'' in subsection (a) and inserting ''regulation or for any person to make or submit any false record, account, or label for, or any false identification of, any fish or fish product (including the false identification of species, harvesting vessel or nation or the location where harvested) which has been, or is intended to be imported, exported, transported, sold, offered for sale, purchased, or received in interstate or foreign commerce.'';

(2) by striking subsection (d) and inserting the following:

''(d) It shall be unlawful for any person—

''(1) to refuse to permit any officer authorized to enforce the provisions of this Act to board a fishing vessel subject to such person's control for purposes of conducting any search, investigation, or inspection in connection with the enforcement of this Act or any regulation promulgation or permit issued under this Act;

''(2) to forcibly assault, resist, oppose, impede, intimidate, or interfere with any such authorized officer in the conduct of any search, investigation or inspection described in paragraph (1);

''(3) to resist a lawful arrest for any act prohibited by this section; or

''(4) to interfere with, delay, or prevent, by any means, the apprehension or arrest of another person, knowing that such other person has committed any act prohibited by this section.'';

(3) by striking subsections (e) through (g) and redesignating subsection (h) as subsection (f); and

(4) by inserting after subsection (d) the following:

''(e) ENFORCEMENT.—This section shall be enforced under section 101 of the International Fisheries Stewardship and Enforcement Act.''.

(d) NORTHERN PACIFIC ANADROMOUS STOCKS ACT OF 1992.—

(1) UNLAWFUL ACTIVITIES.—Section 810 of the Northern Pacific Anadromous Stocks Act of 1992 (16 U.S.C. 5009) is amended—

(A) by striking ''purchases'' in paragraph (5) and inserting ''purposes'';

(B) by striking ''search or inspection'' in paragraph (5) and inserting ''search, investigation, or inspection'';

(C) by striking ''search or inspection'' in paragraph (6) and inserting ''search, investigation, or inspection'';

(D) by striking ''or'' after the semicolon in paragraph (8);

(E) by striking ''title.'' in paragraph (9) and inserting ''title; or''; and

(F) by adding at the end thereof the following:

''(10) for any person to make or submit any false record, account, or label for, or any false identification of, any fish or fish product (including false identification of the species, harvesting vessel or nation, or the location where harvested) which has been, or is intended to be imported, exported, transported, sold, offered for sale, purchased, or received in interstate or foreign commerce.''.

(2) ADMINISTRATION AND ENFORCEMENT.—Section 811 of the Northern Pacific Anadromous Stocks Act of 1992 (16 U.S.C. 5010) is amended to read as follows:

''SEC. 811. ADMINISTRATION AND ENFORCEMENT.

''This Act shall be enforced under section 101 of the International Fisheries Stewardship and Enforcement Act.''.

(e) PACIFIC SALMON TREATY ACT OF 1985.—Section 8 of the Pacific Salmon Treaty Act of 1985 (16 U.S.C. 3637) is amended—

(1) by striking ''search or inspection'' in subsection (a)(2) and inserting ''search, investigation, or inspection'';

(2) by striking ''search or inspection'' in subsection (a)(3) and inserting ''search, investigation, or inspection'';

(3) by striking ''or'' after the semicolon in subsection (a)(5);

(4) by striking ''section.'' in subsection (a)(6) and inserting ''section; or'';

(5) by adding at the end of subsection (a) the following:

''(7) for any person to make or submit any false record, account, or label for, or any false identification of, any fish or fish product (including false identification of the species, harvesting vessel or nation, or the location where harvested) which has been, or is intended to be imported, exported, transported, sold, offered for sale, purchased, or received in interstate or foreign commerce.''; and

(6) by striking subsections (b) through (f) and inserting the following:

''(b) ADMINISTRATION AND ENFORCEMENT.—This Act shall be enforced under section 101 of the International Fisheries Stewardship and Enforcement Act.''.

(f) SOUTH PACIFIC TUNA ACT OF 1988.—

(1) PROHIBITED ACTS.—Section 5(a) of the South Pacific Tuna Act of 1988 (16 U.S.C. 973c(a)) is amended—

(A) by striking ''search or inspection'' in paragraph (8) and inserting ''search, investigation, or inspection'';

(B) by striking ''search or inspection'' in paragraph (10)(A) and inserting ''search, investigation, or inspection'';

(C) by striking ''or'' after the semicolon in paragraph (12);

(D) by striking '' retained.'' in paragraph (13) and inserting ''retained; or''; and

(E) by adding at the end thereof the following:

''(14) for any person to make or submit any false record, account, or label for, or any false identification of, any fish or fish product (including false identification of the species, harvesting vessel or nation, or the location where harvested) which has been, or is intended to be imported, exported, transported, sold, offered for sale, purchased, or received in interstate or foreign commerce.''.

(2) ADMINISTRATION AND ENFORCEMENT.—The South Pacific Tuna Act of 1988 (16 U.S.C. 973 et seq.) is amended by striking sections 7 and 8 (16 U.S.C. 973e and 973f) and inserting the following:

''SEC. 7. ADMINISTRATION AND ENFORCEMENT.

''This Act shall be enforced under section 101 of the International Fisheries Stewardship and Enforcement Act.''.

(g) ANTARCTIC MARINE LIVING RESOURCES CONVENTION ACT OF 1984.—

(1) UNLAWFUL ACTIVITIES.—Section 306 of the Antarctic Marine Living Resources Convention Act (16 U.S.C. 2435) is amended—

(A) by striking ''which he knows, or reasonably should have known, was'' in paragraph (3);

(B) by striking ''search or inspection'' in paragraph (4) and inserting ''search, investigation, or inspection'';

(C) by striking ''search or inspection'' in paragraph (5) and inserting ''search, investigation, or inspection'';

(D) by striking ''or'' after the semicolon in paragraph (6);

(E) by striking ''section.'' in paragraph (7) and inserting ''section; or''; and

(F) by adding at the end thereof the following:

''(8) to make or submit any false record, account, or label for, or any false identification of, any fish or fish product (including false identification of the species, harvesting vessel or nation, or the location where harvested) which has been, or is intended to be imported, exported, transported, sold, offered for sale, purchased, or received in interstate or foreign commerce.''.

(2) REGULATIONS.—Section 307 of the Antarctic Marine Living Resources Convention Act (16 U.S.C. 2436) is amended by inserting after ''title.'' the following: ''Notwithstanding the provisions of subsections (b), (c), and (d) of section 553 of title 5, United States Code, the Secretary of Commerce may publish in the Federal Register a final rule to implement conservation measures, described in section 305(a) of this Act, that are in effect for 12 months or less, adopted by the Commission, and not objected to by the United States within the time period allotted under Article IX of the Convention. Upon publication in the Federal Register, such conservation measures shall be in force with respect to the United States.''.

(3) PENALTIES AND ENFORCEMENT.—The Antarctic Marine Living Resources Convention Act (16 U.S.C. 2431 et seq.) is amended—

(A) by striking sections 308 and 309 (16 U.S.C. 2437 and 2438);

(B) by striking subsection (b), (c), and (d) of section 310 (16 U.S.C. 2439) and redesignating subsection (e) as subsection (c); and

(C) by inserting after subsection (a) the following:

''(b) ADMINISTRATION AND ENFORCEMENT.—This title shall be enforced under section 101 of the International Fisheries Stewardship and Enforcement Act.''.

(h) ATLANTIC TUNAS CONVENTION ACT OF 1975.—

(1) VIOLATIONS.—Section 7 of the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971e) is amended—

(A) by striking subsections (e) and (f) and redesignating subsection (g) as subsection (f); and

(B) by inserting after subsection (d) the following:

''(e) MISLABELING.—It shall be unlawful for any person to make or submit any false record, account, or label for, or any false identification of, any fish or fish product (including the false identification of the species, harvesting vessel or nation, or the location where harvested) which has been, or is intended to be, imported, exported, transported, sold, offered for sale, purchased or received in interstate or foreign commerce.''.

(2) ENFORCEMENT.—Section 8 of the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971f) is amended—

(A) by striking subsections (a) and (c);

(B) by striking ''(b) INTERNATIONAL ENFORCEMENT.—'' in subsection (b) and inserting ''This Act shall be enforced under section 101 of the International Fisheries Stewardship and Enforcement Act.''; and

(C) by striking ''shall have the authority to carry out the enforcement activities specified in section 8(a) of this Act'' each place it appears and inserting ''shall enforce this Act''.

(i) NORTHWEST ATLANTIC FISHERIES CONVENTION ACT OF 1995.—Section 207 of the Northwest Atlantic Fisheries Convention Act of 1995 (16 U.S.C. 5606) is amended—

(1) by striking ''**AND PENALTIES.**'' in the section caption and inserting ''**AND ENFORCEMENT.**'';

(2) by striking ''search or inspection'' in subsection (a)(2) and inserting ''search, investigation, or inspection'';

(3) by striking ''search or inspection'' in subsection (a)(3) and inserting ''search, investigation, or inspection'';

(4) by striking ''or'' after the semicolon in subsection (a)(5);

(5) by striking ''section.'' in subsection (a)(6) and inserting ''section ; or'';

(6) by adding at the end of subsection (a) the following:

''(7) to make or submit any false record, account, or label for, or any false identification of, any fish or fish product (including false identification of the species, harvesting vessel or nation, or the location where harvested) which has been, or is intended to be imported, exported, transported, sold, offered for sale, purchased, or received in interstate or foreign commerce.''; and

(7) by striking subsection (b) through (f) and inserting the following:

''(b) ADMINISTRATION AND ENFORCEMENT.—This title shall be enforced under section 101 of the International Fisheries Stewardship and Enforcement Act.''.

(j) WESTERN AND CENTRAL PACIFIC FISHERIES CONVENTION IMPLEMENTATION ACT.—

(1) ADMINSTRATION AND ENFORCEMENT.—Section 506(c) of the Western and Central Pacific Fisheries Convention Implementation Act (16 U.S.C. 6905(c)) is amended to read as follows:

''(c) ADMINISTRATION AND ENFORCEMENT.—This title shall be enforced under section 101 of the International Fisheries Stewardship and Enforcement Act.''.

(2) PROHIBITED ACTS.—Section 507(a) of the Western and Central Pacific Fisheries Convention Implementation Act (16 U.S.C. 6906(a)) is amended—

(A) by striking ''suspension, on'' in paragraph (2) and inserting ''suspension of'';

(B) by striking ''title.'' in paragraph (14) and inserting ''title; or''; and

(C) by adding at the end thereof the following:

''(15) to make or submit any false record, account, or label for, or any false identification of, any fish or fish product (including false identification of the species, harvesting vessel or nation, or the location where harvested) which has been, or is intended to be imported, exported, transported, sold, offered for sale, purchased, or received in interstate or foreign commerce.''.

(k) NORTHERN PACIFIC HALIBUT ACT OF 1982.—

(1) PROHIBITED ACTS.—Section 7 of the Northern Pacific Halibut Act of 1982 (16 U.S.C. 773e) is amended—

(A) by redesignating subdivisions (a) and (b) as paragraphs (1) and (2), respectively, and subdivisions (1) through (6) of paragraph (1), as redesignated, as subparagraphs (A) through (F);

(B) by striking ''search or inspection'' in paragraph (1)(B), as redesignated, and inserting ''search, investigation, or inspection'';

(C) by striking ''search or inspection'' in paragraph (1)(C), as redesignated, and inserting ''search, investigation, or inspection'';

(D) by striking ''or'' after the semicolon in paragraph (1)(E), as redesignated;

(E) by striking ''section.'' in paragraph (1)(F), as redesignated, and inserting ''section;''; and

(F) by adding at the end of paragraph (1), as redesignated, the following:

''(G) to make or submit any false record, account, or label for, or any false identification of, any fish or fish product (including false identification of the species, harvesting vessel or nation, or the location where harvested) which has been, or is intended to be imported, exported, transported, sold, offered for sale, purchased, or received in interstate or foreign commerce.''.

(2) ADMINISTRATION AND ENFORCEMENT.—The Northern Pacific Halibut Act of 1982 (16 U.S.C. 773 et seq.) is amended—

(A) by striking sections 3, 9, and 10 (16 U.S.C. 773f, 773g, and 773h); and

(B) by striking subsections (b) through (f) of section 11 (16 U.S.C. 773i) and inserting the following:

''(b) ADMINISTRATION AND ENFORCEMENT.—This Act shall be enforced under section 101 of the International Fisheries Stewardship and Enforcement Act.''.

SEC. 103. ILLEGAL, UNREPORTED, OR UNREGULATED FISHING.

(a) IN GENERAL.—Section 608 of the High Seas Driftnet Fishing Moratorium Protection Act (16 U.S.C. 1826i), as amended by section 302(a) of this Act, is further amended by adding at the end thereof the following:

''(c) VESSELS AND VESSEL OWNERS ENGAGED IN ILLEGAL, UNREPORTED, OR UNREGULATED FISHING.—The Secretary may—

''(1) develop, maintain, and make public a list of vessels and vessel owners engaged in illegal, unreported, or unregulated fishing, including vessels or vessel owners identified by an international fishery management organization or arrangement made pursuant to an international fishery agreement, whether or not the United States is a party to such organization or arrangement;

''(2) take appropriate action against listed vessels and vessel owners, including action against fish, fish parts, or fish products from such vessels, in accordance with applicable United States law and consistent with applicable international law, including principles, rights, and obligations established in applicable international fishery management and trade agreements; and

''(3) provide notification to the public of vessels and vessel owners identified by international fishery management organizations or arrangements made pursuant to an international fishery agreement as having been engaged in illegal, unreported, or unregulated fishing, as well as any measures adopted by such organizations or arrangements to address illegal, unreported, or unregulated fishing.

''(d) RESTRICTIONS ON PORT ACCESS OR USE.—Action taken by the Secretary under subsection (c)(2) that includes measures to restrict use of or access to ports or port services shall apply to all ports of the United States and its territories.

''(e) REGULATIONS.—The Secretary may promulgate regulations to implement subsections (c) and (d).''.

(b) ADDITIONAL MEASURES.—

(1) AMENDMENT OF THE HIGH SEAS DRIFTNET FISHING MORATORIUM PROTECTION ACT.—

(A) Section 609(d)(3) of the High Seas Driftnet Fishing Moratorium Protection Act (16 U.S.C. 1826j(d)(3)) is amended by striking ''that has not been certified by the Secretary under this subsection, or'' in subparagraph (A)(i).

(B) Section 610(c)(5) of the High Seas Driftnet Fishing Moratorium Protection Act (16 U.S.C. 1826k(c)(5)) is amended by striking ''that has not been certified by the Secretary under this subsection, or''.

(2) AMENDMENT OF THE HIGH SEAS DRIFTNET FISHERIES ENFORCEMENT ACT.—

(A) Section 101 of the High Seas Driftnet Fisheries Enforcement Act (16 U.S.C. 1826a) is amended—

(i) by striking subsection (a)(2) and inserting the following:

''(2) DENIAL OF PORT PRIVILEGES.—The Secretary of the Treasury shall, in accordance with recognized principles of international law—

''(A) withhold or revoke the clearance required by section 60105 of title 46, United States Code, for—

''(i) any large-scale driftnet fishing vessel that is documented under the law of the United States or of a nation included on a list published under paragraph (1); or

''(ii) any fishing vessel of a nation that receives a negative certification under section 609(d) or 610(c) of the High Seas Driftnet Fishing Moratorium Protection Act (16 U.S.C. 1826j(d) or 1826k(c)); and

''(B) deny entry of that vessel to any place in the United States and to the navigable waters of the United States, except for the purpose of inspecting the vessel, conducting an investigation, or taking other appropriate enforcement action.'';

(ii) by striking ''or illegal, unreported, or unregulated fishing'' each place it appears in subsection (b)(1) and (2);

(iii) by striking ''or'' after the semicolon in subsection (b)(3)(A)(i);

(iv) by striking ''nation.'' in subsection (b)(3)(A)(ii) and inserting ''nation; or'';

(v) by adding at the end of subsection (b)(3)(A) the following:

''(iii) upon receipt of notification of a negative certification under section 609(d)(1) or 610(c)(1) of the High Seas Driftnet Fishing Moratorium Protection Act (16 U.S.C. 1826j(d)(1) or 1826k(c)(1)).'';

(vi) by inserting ''or after issuing a negative certification under section 609(d)(1) or 610(c)(1) of the High Seas Driftnet Fishing Moratorium Protection Act (16 U.S.C. 1826j(d)(1) or 1826k(c)(1),'' after ''paragraph (1),'' in subsection (b)(4)(A); and

(vii) by striking subsection (b)(4)(A)(i) and inserting the following:

''(i) any prohibition established under paragraph (3) is insufficient to cause that nation—

''(I) to terminate large-scale driftnet fishing conducted by its nationals and vessels beyond the exclusive economic zone of any nation;

''(II) to address illegal, unreported, or unregulated fishing activities for which a nation has been identified under section 609 of the High Seas Driftnet Fishing Moratorium Protection Act (16 U.S.C. 1826j); or

''(III) to address bycatch of a protected living marine resource for which a nation has been identified under section 610 of such Act (16 U.S.C. 1826k); or''.

(B) Section 102 of the High Seas Driftnet Fisheries Enforcement Act (16 U.S.C. 1826b) is amended by striking ''such nation has terminated large-scale driftnet fishing or illegal, unreported, or unregulated fishing by its nationals and vessels beyond the exclusive economic zone of any nation.'' and inserting ''such nation has—

''(1) terminated large-scale driftnet fishing by its nationals and vessels beyond the exclusive economic zone of any nation;

''(2) addressed illegal, unreported, or unregulated fishing activities for which a nation has been identified under section 609 of the High Seas Driftnet Fishing Moratorium Protection Act (16 U.S.C. 1826j); or

''(3) addressed bycatch of a protected living marine resource for which a nation has been identified under section 610 of that Act (16 U.S.C. 1826k).''.

SEC. 104. LIABILITY.

Any claims arising from the actions of any officer, authorized by the Secretary to enforce the provisions of this Act or any Act to which this Act applies, taken pursuant to any scheme for at-sea boarding and inspection authorized under any international agreement to which the United States is a party may be pursued under chapter 171 of title 28, United States Code, or such other legal authority as may be pertinent.

TITLE II—LAW ENFORCEMENT AND INTERNATIONAL OPERATIONS.

SEC. 201. INTERNATIONAL FISHERIES ENFORCEMENT PROGRAM.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—Within 12 months after the date of the enactment of this Act, the Secretary shall, subject to the availability of appropriations, establish an International Fisheries Enforcement Program within the Office of Law Enforcement of the National Marine Fisheries Service.

(2) PURPOSE.—The Program shall be an interagency program established and administered by the Secretary in coordination with the heads of other departments and agencies for the purpose of detecting and investigating illegal, unreported, or unregulated fishing activity and enforcing the provisions of this Act.

(3) STAFF.—The Program shall be staffed with representation from the Coast Guard, Customs and Border Protection, the Food and Drug Administration, and any other department or agency determined by the Secretary to be appropriate and necessary to detect and investigate illegal, unreported, or unregulated fishing activity and enforce the provisions of this Act.

(b) PROGRAM ACTIONS.—

(1) STAFFING AND OTHER RESOURCES.—At the request of the Secretary, the heads of other departments and agencies providing staff for the Program shall—

(A) by agreement, on a reimbursable basis or otherwise, participate in staffing the Program;

(B) by agreement, on a reimbursable basis or otherwise, share personnel, services, equipment (including aircraft and vessels), and facilities with the Program; and

(C) to the extent possible, and consistent with other applicable law, extend the enforcement authorities provided by their enabling legislation to the other departments and agencies participating in the Program for the purposes of conducting joint operations to detect and investigate illegal, unreported or unregulated fishing activity and enforcing the provisions of this Act.

(2) BUDGET.—The Secretary and the heads of other departments and agencies providing staff for the Program, may, at their discretion, develop interagency plans and budgets and engage in interagency financing for such purposes.

(3) 5-YEAR PLAN.—Within 180 days after the date on which the Program is established under subsection (a), the Secretary shall develop a 5-year strategic plan for guiding interagency and intergovernmental international fisheries enforcement efforts to carry out the provisions of this Act. The Secretary shall update the plan periodically as necessary, but at least once every 5 years.

(4) COOPERATIVE ACTIVITIES.—The Secretary, in coordination with the heads of other departments and agencies providing staff for the Program, may—

(A) create and participate in task forces, committees, or other working groups with other Federal, State or local governments as well as with the governments of other nations for the purposes of detecting and investigating illegal, unreported, or unregulated fishing activity and carrying out the provisions of this Act; and

(B) enter into agreements with other Federal, State, or local governments as well as with the governments of other nations, on a reimbursable basis or otherwise, for such purposes.

(c) POWERS OF AUTHORIZED OFFICERS.—Notwithstanding any other provision of law, while operating under an agreement with the Secretary entered into under section 101 of this Act, and conducting joint operations as part of the Program for the purposes of detecting and investigating illegal, unreported or unregulated fishing activity and enforcing the provisions of this Act, authorized officers shall have the powers and authority provided in that section.

(d) INFORMATION COLLECTION, MAINTENANCE AND USE.—

(1) IN GENERAL.—The Secretary and the heads of other departments and agencies providing staff for the Program shall, to the maximum extent allowable by law, share all applicable information, intelligence and data, related to the harvest, transportation or trade of fish and fish product in order to detect and investigate illegal, unreported, or unregulated fishing activity and to carry out the provisions of this Act.

(2) COORDINATION OF DATA.—The Secretary, through the Program, shall coordinate the collection, storage, analysis, and dissemination of all applicable information, intelligence, and data related to the harvest, transportation, or trade of fish and fish product collected or maintained by the member agencies of the Program.

(3) CONFIDENTIALITY.—The Secretary, through the Program, shall ensure the protection and confidentiality required by law for information, intelligence, and data related to the harvest, transportation, or trade of fish and fish product obtained by the Program.

(4) DATA STANDARDIZATION.—The Secretary and the heads of other departments and agencies providing staff for the Program shall, to the maximum extent practicable, develop data standardization for fisheries related data for Program agencies and with international fisheries enforcement databases as appropriate.

(5) ASSISTANCE FROM INTELLIGENCE COMMUNITY.—Upon request of the Secretary, elements of the intelligence community (as defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4))) shall collect information related to illegal, unreported, or unregulated fishing activity outside the United States about individuals who are not United States persons (as defined in section 105A(c)(2) of such Act (50 U.S.C. 403-5a(c)(2))). Such elements of the intelligence community shall collect and share such information with the Secretary through the Program for law enforcement purposes in order to detect and investigate illegal, unreported, or unregulated fishing activities and to carry out the provisions of this Act. All collection and sharing of information shall be in accordance with the National Security Act of 1947 (50 U.S.C. 401 et seq.).

(6) INFORMATION SHARING.—The Secretary, through the Program, shall have authority to share fisheries-related data with other Federal or State government agency, foreign government, the Food and Agriculture Organization of the United Nations, or the secretariat or equivalent of an international fisheries management organization or arrangement made pursuant to an international fishery agreement, if—

(A) such governments, organizations, or arrangements have policies and procedures to safeguard such information from unintended or unauthorized disclosure; and

(B) the exchange of information is necessary—

(i) to ensure compliance with any law or regulation enforced or administered by the Secretary;

(ii) to administer or enforce treaties to which the United States is a party;

(iii) to administer or enforce binding conservation measures adopted by any international organization or arrangement to which the United States is a party;

(iv) to assist in investigative, judicial, or administrative enforcement proceedings in the United States; or

(v) to assist in any fisheries or living marine resource related law enforcement action undertaken by a law enforcement agency of a foreign government, or in relation to a legal proceeding undertaken by a foreign government.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $30,000,000 to the Secretary for each of fiscal years 2012 through 2017 to carry out this section.

SEC. 202. INTERNATIONAL COOPERATION AND ASSISTANCE PROGRAM.

(a) INTERNATIONAL COOPERATION AND ASSISTANCE PROGRAM.—The Secretary may establish an international cooperation and assistance program, including grants, to provide assistance for international capacity building efforts.

(b) AUTHORIZED ACTIVITIES.—In carrying out the program, the Secretary may—

(1) provide funding and technical expertise to other nations to assist them in addressing illegal, unreported, or unregulated fishing activities;

(2) provide funding and technical expertise to other nations to assist them in reducing the loss and environmental impacts of derelict fishing gears, reducing the bycatch of living marine resources, and promoting international marine resource conservation;

(3) provide funding, technical expertise, and training, in cooperation with the International Fisheries Enforcement Program under section 201 of this Act, to other nations to aid them in building capacity for enhanced fisheries management, fisheries monitoring, catch and trade tracking activities, enforcement, and international marine resource conservation;

(4) establish partnerships with other Federal agencies, as appropriate, to ensure that fisheries development assistance to other nations is directed toward projects that promote sustainable fisheries; and

(5) conduct outreach and education efforts in order to promote public and private sector awareness of international fisheries sustainability issues, including the need to combat illegal, unreported, or unregulated fishing activity and to promote international marine resource conservation.

(c) GUIDELINES.—The Secretary may establish guidelines necessary to implement the program.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary $5,000,000 for each of fiscal years 2012 through 2017 to carry out this section. –

TITLE III—MISCELLANEOUS AMENDMENTS

SEC. 301. ATLANTIC TUNAS CONVENTION ACT OF 1975.

(a) ELIMINATION OF ANNUAL REPORT.—Section 11 of the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971j) is repealed.

(b) CERTAIN REGULATIONS.—Section 971d(c)(2) of the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971d(c)(2)) is amended—

(1) by inserting ''(A)'' after ''(2)'';

(2) by striking ''(A) submission'' and inserting ''the presentation'';

(3) by striking ''arguments, and (B) oral presentation at a public hearing. Such'' and inserting ''written or oral statements at a public hearing. After consideration of such presentations, the ''; and

(4) by adding at the end thereof the following:

''(B) The Secretary may issue final regulations to implement Commission recommendations referred to in paragraph (1) of this subsection concerning trade restrictive measures against nations or fishing entities without regard to the requirements of subparagraph (A) of this paragraph and subsections (b) and (c) of section 553 of title 5, United States Code.''.

SEC. 302. DATA SHARING.

(a) HIGH SEAS DRIFTNET FISHING MORATORIUM PROTECTION ACT.—Section 608 of the High Seas Driftnet Fishing Moratorium Protection Act (16 U.S.C. 1826i) is amended—

(1) by inserting ''(a) IN GENERAL.—'' before ''The Secretary,'';

(2) by striking ''organizations'' the first place it appears and inserting, ''organizations, or arrangements made pursuant to an international fishery agreement (as defined in section 3(24) of the Magnuson-Stevens Fishery Conservation and Management Act),'';

(3) by striking ''and'' after the semicolon in paragraph (2)(C);

(4) by striking ''territories.'' in paragraph (3) and inserting ''territories; and''; and

(5) by adding at the end thereof the following:

''(4) urging other nations, through the regional fishery management organizations of which the United States is a member, bilaterally and otherwise to seek and foster the sharing of accurate, relevant, and timely information—

''(A) to improve the scientific understanding of marine ecosystems;

''(B) to improve fisheries management decisions;

''(C) to promote the conservation of protected living marine resources;

''(D) to combat illegal, unreported, and unregulated fishing; and

''(E) to improve compliance with conservation and management measures in international waters.

''(b) INFORMATION SHARING.—In carrying out this section, the Secretary may disclose, as necessary and appropriate, information to the Food and Agriculture Organization of the United Nations, international fishery management organizations (as so defined), or arrangements made pursuant to an international fishery agreement, if such organizations or arrangements have policies and procedures to safeguard such information from unintended or unauthorized disclosure.''.

(b) CONFORMING AMENDMENT.—Section 402(b)(1) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1881a(b)(1)) is amended—

(1) by striking ''or'' after the semicolon in subparagraph (G);

(2) by redesignating subparagraph (H) as subparagraph (J); and

(3) by inserting after subparagraph (G) the following:

''(H) to the Food and Agriculture Organization of the United Nations, international fishery management organizations, or arrangements made pursuant to an international fishery agreement as provided for in the High Seas Driftnet Fishing Moratorium Protection Act (16 U.S.C. 1826i(b));

''(I) to any other Federal or State government agency, foreign government, the Food and Agriculture Organization of the United Nations, or the secretariat or equivalent of an international fisheries management organization or arrangement made pursuant to an international fishery agreement, as provided in section 201(d)(6) of the International

Fisheries Stewardship and Enforcement Act; or''.

SEC. 303. PERMITS UNDER THE HIGH SEAS FISHING COMPLIANCE ACT OF 1995.

Section 104(f) of the High Seas Fishing Compliance Act (16 U.S.C. 5503(f)) is amended to read as follows:

''(f) VALIDITY.—A permit issued under this section is void if—

''(1) 1 or more permits or authorizations required for a vessel to fish, in addition to a permit issued under this section, expire, are revoked, or are suspended; or

''(2) the vessel is no longer eligible for United States documentation, such documentation is revoked or denied, or the vessel is deleted from such documentation.''.

SEC. 304. COMMITTEE ON SCIENTIFIC COOPERATION FOR PACIFIC SALMON AGREEMENT.

Section 11 of the Pacific Salmon Treaty Act of 1985 (16 U.S.C. 3640) is amended by redesignating subsections (c) and (d) as subsections (d) and (e), respectively, and inserting after subsection (b) the following:

''(c) SCIENTIFIC COOPERATION COMMITTEE.—Members of the Committee on Scientific Cooperation who are not State or Federal employees shall receive compensation at a rate equivalent to the rate payable for level IV of the Executive Schedule under section 5315 of title 5, United States Code, when engaged in actual performance of duties for the Commission.''.

SEC. 305. REAUTHORIZATIONS.

(a) INTERNATIONAL DOLPHIN CONSERVATION PROGRAM.—Section 304(c)(1) of the Marine Mammal Protection Act (16 U.S.C. 1414a(c)(1)) is amended by adding at the end thereof the following:

''(E) $1,000,000 for each of fiscal years 2009 through 2013.''.

(b) PACIFIC SALMON TREATY ACT OF 1985.—Section 16(d)(2)(A) of the Pacific Salmon Treaty Act of 1985 (16 U.S.C. 3645(d)(2)(A)) is amended by striking ''and 2009,'' and inserting ''2009, 2010, 2011, 2012, and 2013,''.

(c) SOUTH PACIFIC TUNA ACT OF 1988.—Section 20(a) of the South Pacific Tuna Act of 1988 (16 U.S.C. 973r(a)) is amended by striking ''1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, and 2002,'' each place it appears and inserting ''2009 through 2013''.

TITLE IV—IMPLEMENTATION OF THE ANTIGUA CONVENTION

SEC. 401. SHORT TITLE.

This title may be cited as the ''Antigua Convention Implementing Act of 2011''.

SEC. 402. AMENDMENT OF THE TUNA CONVENTIONS ACT OF 1950.

Except as otherwise expressly provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Tuna Conventions Act of 1950 (16 U.S.C. 951 et seq.).

SEC. 403. DEFINITIONS.

Section 2 (16 U.S.C. 951) is amended to read as follows:

''SEC. 2. DEFINITIONS.

''In this Act:

''(1) ANTIGUA CONVENTION.—The term 'Antigua Convention' means the Convention for the Strengthening of the Inter-American Tropical Tuna Commission Established by the 1949 Convention Between the United States of America and the Republic of Costa Rica, signed at Washington, November 14, 2003.

''(2) COMMISSION.—The term 'Commission' means the Inter-American Tropical Tuna Commission provided for by the Convention.

''(3) CONVENTION.—The term 'Convention' means—

''(A) the Convention for the Establishment of an Inter-American Tropical Tuna Commission, signed at Washington, May 31, 1949, by the United States of America and the Republic of Costa Rica;

''(B) the Antigua Convention, upon its entry into force for the United States, and any amendments thereto that are in force for the United States; or

''(C) both such Conventions, as the context requires.

''(4) IMPORT.—The term 'import' means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States, whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States.

''(5) PERSON.—The term 'person' means an individual, partnership, corporation, or association subject to the jurisdiction of the United States.

''(6) UNITED STATES.—The term 'United States' includes all areas under the sovereignty of the United States.

''(7) U.S. COMMISSIONERS.—The term 'U.S. commissioners' means the members of the commission.

''(8) U.S. SECTION.—The term 'U.S. section' means the U.S. Commissioners to the Commission and a designee of the Secretary of State.''.

SEC. 404. COMMISSIONERS; NUMBER, APPOINTMENT, AND QUALIFICATIONS.

Section 3 (16 U.S.C. 952) is amended to read as follows:

''SEC. 3. COMMISSIONERS.

''(a) COMMISSONERS.—The United States shall be represented on the Commission by 5 United States Commissioners. The President shall appoint individuals to serve on the Commission at the pleasure of the President. In making the appointments, the President shall select Commissioners from among individuals who are knowledgeable or experienced concerning highly migratory fish stocks in the eastern tropical Pacific Ocean, one of whom shall be an officer or employee of the Department of Commerce, one of whom shall be the chairman or a member of the Western Pacific Fishery Management Council, and one of whom shall be the chairman or a member of the Pacific Fishery Management Council. Not more than 2 Commissioners may be appointed who reside in a State other than a State whose vessels maintain a substantial fishery in the area of the Convention.

''(b) ALTERNATE COMMISSIONERS.—The Secretary of State, in consultation with the Secretary, may designate from time to time and for periods of time deemed appropriate Alternate United States Commissioners to the Commission. Any Alternate United States Commissioner may exercise, at any meeting of the Commission or of the General Advisory Committee or Scientific Advisory Subcommittee established pursuant to section 4(b), all powers and duties of a United States Commissioner in the absence of any Commissioner appointed pursuant to subsection (a) of this section for whatever reason. The number of such Alternate United States Commissioners that may be designated for any such meeting shall be limited to the number of United States Commissioners appointed pursuant to subsection (a) of this section who will not be present at such meeting.

''(c) ADMINISTRATIVE MATTERS.—

''(1) EMPLOYMENT STATUS.—Individuals serving as such Commissioners, other than officers or employees of the United States Government, shall not be considered Federal employees except for the purposes of injury compensation or tort claims liability as provided in chapter 81 of title 5, United States Code, and chapter 171 of title 28, United States Code.

''(2) COMPENSATION.—The United States Commissioners or Alternate Commissioners, although officers of the United States while so serving, shall receive no compensation for their services as such Commissioners or Alternate Commissioners.

''(3) TRAVEL EXPENSES.—

''(A) The Secretary of State shall pay the necessary travel expenses of United States Commissioners and Alternate United States Commissioners to meetings of the IATTC and other meetings the Secretary deems necessary to fulfill their duties, in accordance with the Federal Travel Regulations and sections 5701, 5702, 5704 through 5708, and 5731 of title 5, United States Code.

''(B) The Secretary may reimburse the Secretary of State for amounts expended by the Secretary of State under this subsection.''.

SEC. 405. GENERAL ADVISORY COMMITTEE AND SCIENTIFIC ADVISORY SUBCOMMITTEE.

Section 4 (16 U.S.C. 953) is amended—

(1) by striking subsection (a) and inserting the following:

''(a) GENERAL ADVISORY COMMITTEE.—

''(1) APPOINTMENTS; PUBLIC PARTICIPATION; COMPENSATION.—

''(A) The Secretary, in consultation with the Secretary of State, shall appoint a General Advisory Committee which shall consist of not more than 25 individuals who shall be representative of the various groups concerned with the fisheries covered by the Convention, including nongovernmental conservation organizations, providing to the maximum extent practicable an equitable balance among such groups. Members of the General Advisory Committee will be eligible to participate as members of the U.S. delegation to the Commission and its working groups to the extent the Commission rules and space for delegations allow.

''(B) The chair of the Pacific Fishery Management Council's Advisory Subpanel for Highly Migratory Fisheries and the chair of the Western Pacific Fishery Management Council's Advisory Committee shall be members of the General Advisory Committee by virtue of their positions in those Councils;

''(C) Each member of the General Advisory Committee appointed under subparagraph (A) shall serve for a term of 3 years and is eligible for reappointment.

''(D) The General Advisory Committee shall be invited to attend all non-executive meetings of the United States Section and at such meetings shall be given opportunity to examine and to be heard on all proposed programs of investigation, reports, recommendations, and regulations of the Commission.

''(E) The General Advisory Committee shall determine its organization, and prescribe its practices and procedures for carrying out its functions under this chapter, the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.), and the Convention. The General Advisory Committee shall publish and make available to the public a statement of its organization, practices and procedures. Meetings of the General Advisory Committee, except when in executive session, shall be open to the public, and prior notice of meetings shall be made public in timely fashion. The General Advisory Committee shall not be subject to the Federal Advisory Committee Act (5 U.S.C. App.).

''(2) INFORMATION SHARING.—The Secretary and the Secretary of State shall furnish the General Advisory Committee with relevant information concerning fisheries and international fishery agreements.

''(3) ADMINISTRATIVE MATTERS.—

''(A) The Secretary shall provide to the General Advisory Committee in a timely manner such administrative and technical support services as are necessary for its effective functioning.

''(B) Individuals appointed to serve as a member of the General Advisory Committee—

''(i) shall serve without pay, but while away from their homes or regular places of business to attend meetings of the General Advisory Committee shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5, United States Code; and

''(ii) shall not be considered Federal employees except for the purposes of injury compensation or tort claims liability as provided in chapter 81 of title 5, United States Code, and chapter 171 of title 28, United States Code.''; and

(2) by striking so much of subsection (b) as precedes paragraph (2) and inserting the following:

''(b) SCIENTIFIC ADVISORY COMMITTEE.—(1) The Secretary, in consultation with the Secretary of State, shall appoint a Scientific Advisory Subcommittee of not less than 5 nor more than 15 qualified scientists with balanced representation from the public and private sectors, including nongovernmental conservation organizations.''.

SEC. 406. RULEMAKING.

Section 6 (16 U.S.C. 955) is amended—

(1) by striking the section caption and inserting the following:

''SEC. 6. RULEMAKING.'' ; and

(2) by striking subsections (a) and (b) and inserting the following:

''(a) REGULATIONS.—The Secretary, in consultation with the Secretary of State and, with respect to enforcement measures, the Secretary of the Department in which the Coast Guard is operating, may promulgate such regulations as may be necessary to carry out the United States international obligations under the Convention and this Act, including recommendations and decisions adopted by the Commission. In cases where the Secretary has discretion in the implementation of one or more measures adopted by the Commission that would govern fisheries under the authority of a Regional Fishery Management Council, the Secretary may, to the extent practicable within the implementation schedule of the Convention and any recommendations and decisions adopted by the Commission, promulgate such regulations in accordance with the procedures established by the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).

''(b) JURISDICTION.—The Secretary may promulgate regulations applicable to all vessels and persons subject to the jurisdiction of the United States, including United States flag vessels wherever they may be operating, on such date as the Secretary shall prescribe.''.

SEC. 407. PROHIBITED ACTS.

Section 8 (16 U.S.C. 957) is amended to read as follows:

''SEC. 8. PROHIBITED ACTS.

''It is unlawful for any person—

''(1) to violate any provision of this chapter or any regulation or permit issued pursuant to this Act;

''(2) to use any fishing vessel to engage in fishing after the revocation, or during the period of suspension, of an applicable permit issued pursuant to this Act;

''(3) to refuse to permit any officer authorized to enforce the provisions of this Act (as provided for in section 10) to board a fishing vessel subject to such person's control for the purposes of conducting any search, investigation or inspection in connection with the enforcement of this Act or any regulation, permit, or the Convention;

''(4) to forcibly assault, resist, oppose, impede, intimidate, sexually harass, bribe, or interfere with any such authorized officer in the conduct of any search, investigations or inspection in connection with the enforcement of this Act or any regulation, permit, or the Convention;

''(5) to resist a lawful arrest for any act prohibited by this Act;

''(6) to ship, transport, offer for sale, sell, purchase, import, export, or have custody, control, or possession of, any fish taken or retained in violation of this Act or any regulation, permit, or agreement referred to in paragraph (1) or (2);

''(7) to interfere with, delay, or prevent, by any means, the apprehension or arrest of another person, knowing that such other person has committed any act prohibited by this section;

''(8) to knowingly and willfully submit to the Secretary false information regarding any matter that the Secretary is considering in the course of carrying out this Act;

''(9) to forcibly assault, resist, oppose, impede, intimidate, sexually harass, bribe, or interfere with any observer on a vessel under this Act, or any data collector employed by the National Marine Fisheries Service or under contract to any person to carry out responsibilities under this Act;

''(10) to engage in fishing in violation of any regulation adopted pursuant to section 6(c) of this Act;

''(11) to ship, transport, purchase, sell, offer for sale, import, export, or have in custody, possession, or control any fish taken or retained in violation of such regulations;

''(12) to fail to make, keep, or furnish any catch returns, statistical records, or other reports as are required by regulations adopted pursuant to this Act to be made, kept, or furnished;

''(13) to fail to stop a vessel upon being hailed and instructed to stop by a duly authorized official of the United States;

''(14) to import, in violation of any regulation adopted pursuant to section 6(c) of this Act, any fish in any form of those species subject to regulation pursuant to a recommendation, resolution, or decision of the Commission, or any tuna in any form not under regulation but under investigation by the Commission, during the period such fish have been denied entry in accordance with the provisions of section 6(c) of this Act, unless such person provides such proof as the Secretary of Commerce may require that a fish described in this paragraph offered for entry into the United States is not ineligible for such entry under the terms of section 6(c) of this Act.''.

SEC. 408. ENFORCEMENT.

Section 10 (16 U.S.C. 959) is amended to read as follows:

''SEC. 10. ENFORCEMENT.

''This Act shall be enforced under section 101 of the International Fisheries Stewardship and Enforcement Act.''.

SEC. 409. REDUCTION OF BYCATCH.

Section 15 (16 U.S.C. 962) is amended by striking ''vessel'' and inserting ''vessels''.

SEC. 410. REPEAL OF EASTERN PACIFIC TUNA LICENSING ACT OF 1984.

The Eastern Pacific Tuna Licensing Act of 1984 (16 U.S.C. 972 et seq.) is repealed.

By Mr. INOUYE:

S. 57. A bill to amend the Internal Revenue Code of 1986 to modify the application of the tonnage tax on certain vessels; to the Committee on Finance.

Mr. INOUYE. Mr. President, foreign registered ships now carry 97 percent of the imports and exports moving in United States international trade. These foreign vessels are held to lower standards than United States registered ships, and are virtually untaxed. Their costs of operation are, therefore, lower than United States ship operating costs, which explains their 97 percent market share.

Seven years ago, in order to help level the playing field for United States-flag ships that compete in international trade, Congress enacted, under the American Jobs Creation Act of 2004, Public Law 108–357, Subchapter R, a ''tonnage tax'' that is based on the tonnage of a vessel, rather than taxing international income at a 35 percent corporate income tax rate. However, during the House and Senate conference, language was included, which states that a United States vessel cannot use the tonnage tax on international income if that vessel also operates in United States domestic commerce for more than 30 days per year.

This 30-day limitation dramatically limits the availability of the tonnage tax for those United States ships that operate in both domestic and international trade and, accordingly, severely hinders their competitiveness in foreign commerce. It is important to recognize that ships operating in United States domestic trade already have significant cost disadvantages. Specifically, they are built in higher priced United States shipyards; do not receive Maritime Security Payments, even when operated in international trade; and are owned by United States-based American corporations. The inability of these domestic operators to use the tonnage tax for their international service is a further, unnecessary burden on their competitive position in foreign commerce.

When windows of opportunity present themselves in international trade, American tax policy and maritime policy should facilitate the participation of these American-built ships. Instead, the 30-day limit makes them ineligible to use the tonnage tax, and further handicaps American vessels when competing for international cargo. Denying the tonnage tax to coastwise qualified ships further stymies the operation of American built ships in international commerce, and further exacerbates America's 97 percent reliance on foreign ships to carry its international cargo.

These concerns were of sufficient importance that in December 2006 Congress repealed the 30-day limit on domestic trading—but only for approximately 50 ships operating in the Great Lakes. These ships primarily operate in domestic trade on the Great Lakes, but also carry cargo between the United States and Canada in international trade, Section 415 of P.L. 109–432, the Tax Relief and Health Care Act of 2006.

The identifiable universe of remaining ships other than the Great Lakes

ships that operate in domestic trade, but that may also operate temporarily in international trade, totals 13 United States flag vessels. These 13 ships normally operate in domestic trades that involve Washington, Oregon, California, Hawaii, Alaska, Florida, Mississippi, and Louisiana. In the interest of providing tax equity to the United States corporations that own and operate these 13 vessels, my bill would repeal the tonnage tax 30-day limit on domestic operations and enable these vessels to utilize the tonnage tax on their international income so they receive the same treatment as other United States flag international operations. I stress that, under my bill, these ships will continue to pay the normal 35 percent United States corporate tax rate on their domestic income.

Repeal of the tonnage tax's 30-day limit on domestic operations is a necessary step toward providing tax equity between United States flag and foreign flag vessels. I strongly urge the tax writing committees of the U.S. Congress to give this legislation their expedited consideration and approval.

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. 57

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

SECTION 1. MODIFICATION OF THE APPLICATION OF THE TONNAGE TAX ON VESSELS OPERATING IN THE DUAL UNITED STATES DOMESTIC AND FOREIGN TRADES.

(a) IN GENERAL.—Subsection (f) of section 1355 of the Internal Revenue Code of 1986 (relating to definitions and special rules) is amended to read as follows:

''(f) EFFECT OF OPERATING A QUALIFYING VESSEL IN THE DUAL UNITED STATES DOMESTIC AND FOREIGN TRADES.—For purposes of this subchapter—

''(1) an electing corporation shall be treated as continuing to use a qualifying vessel in the United States foreign trade during any period of use in the United States domestic trade, and

''(2) gross income from such United States domestic trade shall not be excluded under section 1357(a), but shall not be taken into account for purposes of section 1353(b)(1)(B) or for purposes of section 1356 in connection with the application of section 1357 or 1358.''.

(b) REGULATORY AUTHORITY FOR ALLOCATION OF CREDITS, INCOME, AND DEDUCTIONS.—Section 1358 of the Internal Revenue Code of 1986 (relating to allocation of credits, income, and deductions) is amended—

(1) by striking ''in accordance with this subsection'' in subsection (c) and inserting ''to the extent provided in such regulations as may be prescribed by the Secretary'', and

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

''(d) REGULATIONS.—The Secretary shall prescribe regulations consistent with the provisions of this subchapter for the purpose of allocating gross income, deductions, and credits between or among qualifying shipping activities and other activities of a taxpayer.''.

(c) CONFORMING AMENDMENTS.—

(1) Section 1355(a)(4) of the Internal Revenue Code of 1986 is amended by striking ''exclusively''.

(2) Section 1355(b)(1)(B) of such Code is amended by striking ''as a qualifying vessel'' and inserting ''in the transportation of goods or passengers''.

(3) Section 1355 of such Code is amended—

(A) by striking subsection (g), and

(B) by redesignating subsection (h) as subsection (g).

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

By Mr. INOUYE:

S. 59. A bill to treat certain hospital support organizations as qualified organizations for purposes of determining acquisition indebtedness; to the Committee on Finance.

Mr. INOUYE. Mr. President, the legislation I am reintroducing today will extend to qualified teaching hospital support organizations the existing debt-financed safe harbor rule. Congress enacted that rule to support the public service activities of tax-exempt schools, universities, pension funds, and consortia of such institutions. Our teaching hospitals require similar support.

As a result, for-profit hospitals are moving from older areas to affluent locations where residents can afford to pay for treatment. These private hospitals typically have no mandate for community service. In contrast, nonprofit hospitals must fulfill a community service requirement. They must stretch their resources to provide increased charitable care, update their facilities, and maintain skilled staffing resulting in closures of non-profit hospitals due to this financial strain.

The problem is particularly severe for teaching hospitals. Non-profit hospitals provide nearly all the post-graduate medical education in the United States. Post-graduate medical instruction is by nature not profitable. Instruction in the treatment of mental disorders and trauma is especially costly.

Despite their financial problem, the Nation's non-profit hospitals strive to deliver a very high level of service. A study in the December 2006 issue of Archives of International Medicine had surveyed hospital's quality of care in four areas of treatment. It found that non-profit hospitals consistently outperformed for-profit hospitals. The study also found that teaching hospitals had a higher level of performance in treatment and diagnosis, and that investments in technology and staffing leads to better care. In addition, it recommended that alternative payments and sources of payments be considered to finance these improvements.

The success and financial constraints of non-profit teaching hospitals is evident in work of the Queen's Health Systems in my State. This 151-year-old organization maintains the largest, private, nonprofit hospital in Hawaii. The Queen's Health Systems serve as the primary clinical teaching facility for the University of Hawaii's medical residency program in medicine, general surgery, orthopedic surgery, pathology, psychiatry, and is a clinical teaching facility for obstetrics-gynecology. It conducts educational and training programs for nurses and allied health personnel. The Queen's Health Systems operate the only trauma unit as well as the chief behavioral health program in the State. It maintains clinics throughout Hawaii, health programs, for Native Hawaiians, and a small hospital in the rural, economically depressed island of Molokai. Furthermore, the Queen's Health Systems annually provides millions of dollars in uncompensated health services. To help pay for these community benefits, the Queen's Health Systems, as other nonprofit teaching hospitals, relies significantly on income from its endowment.

In the past, the Congress has allowed tax-exempt schools, colleges, universities, and pension funds to invest their endowment in real estate so as to better meet their financial needs. Under the tax code, these organizations can incur debt for real estate investments without triggering the tax on unrelated business activities.

If the Queen's Health Systems were part of a university, it could borrow without incurring an unrelated business income tax. Not being part of a university, however, a teaching hospital and its support organization run into the tax code's debt financing prohibition. Non-profit teaching hospitals have the same if not more pressing needs as that of universities, schools, and pension trusts. The same safe harbor rule should be extended to teaching hospitals.

My bill would allow the support organizations for qualified teaching hospitals to engage in limited borrowing to enhance their endowment income. The proposal for teaching hospitals is actually more restricted than current law for schools, universities and pension trusts. Under safeguards developed by the Joint Committee on Taxation staff, a support organization for a teaching hospital cannot buy and develop land on a commercial basis. The proposal is tied directly to the organization endowment. The staff's revenue estimates show that the provision with its general application will help a number of teaching hospitals.

The U.S. Senate has several times before acted favorably on this proposal. The Senate adopted a similar provision in H.R. 1836, the Economic Growth and Tax Relief Act of 2001. The House conferees on that bill, however, objected that the provision was unrelated to the bill's focus on individual tax relief and the conference deleted the provision from the final legislation. Subsequently, the Finance Committee included the provision in H.R. 7, the CARE Act of 2002, and in S. 476, the CARE Act of 2003, which the Senate passed. In a previous Congress' S. 6, the

Marriage, Opportunity, Relief, and Empowerment Act of 2005, which the Senate leadership introduced, also included the proposal.

As the Senate Finance Committee's hearings show, substantial health needs would go unmet if not for our charitable hospitals. It is time for the Congress to assist the Nation's teaching hospitals in their charitable, educational service.

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. 59

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

SECTION 1. TREATMENT OF CERTAIN HOSPITAL SUPPORT ORGANIZATIONS AS QUALIFIED ORGANIZATIONS FOR PURPOSES OF DETERMINING ACQUISITION INDEBTEDNESS.

(a) IN GENERAL.—Subparagraph (C) of section 514(c)(9) of the Internal Revenue Code of 1986 (relating to real property acquired by a qualified organization) is amended by striking ''or'' at the end of clause (iii), by striking the period at the end of clause (iv) and inserting ''; or'', and by adding at the end the following new clause:

''(v) a qualified hospital support organization (as defined in subparagraph (I)).''.

(b) QUALIFIED HOSPITAL SUPPORT ORGANIZATIONS.—Paragraph (9) of section 514(c) of the Internal Revenue Code of 1986 is amended by adding at the end the following new subparagraph:

''(I) QUALIFIED HOSPITAL SUPPORT ORGANIZATIONS.—For purposes of subparagraph (C)(iv), the term 'qualified hospital support organization' means, with respect to any eligible indebtedness (including any qualified refinancing of such eligible indebtedness), a support organization (as defined in section 509(a)(3)) which supports a hospital described in section 119(d)(4)(B) and with respect to which—

''(i) more than half of its assets (by value) at any time since its organization—

''(I) were acquired, directly or indirectly, by testamentary gift or devise, and

''(II) consisted of real property, and

''(ii) the fair market value of the organization's real estate acquired, directly or indirectly, by gift or devise, exceeded 25 percent of the fair market value of all investment assets held by the organization immediately prior to the time that the eligible indebtedness was incurred.

For purposes of this subparagraph, the term 'eligible indebtedness' means indebtedness secured by real property acquired by the organization, directly or indirectly, by gift or devise, the proceeds of which are used exclusively to acquire any leasehold interest in such real property or for improvements on, or repairs to, such real property. A determination under clauses (i) and (ii) of this subparagraph shall be made each time such an eligible indebtedness (or the qualified refinancing of such an eligible indebtedness) is incurred. For purposes of this subparagraph, a refinancing of such an eligible indebtedness shall be considered qualified if such refinancing does not exceed the amount of the refinanced eligible indebtedness immediately before the refinancing.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to indebtedness incurred on or after the date of the enactment of this Act.

By Mr. INOUYE:

S. 60. A bill to provide relief to the Pottawatomi Nation in Canada for settlement of certain claims against the United States; to the Committee on the Judiciary.

Mr. INOUYE. Mr. President, nearly 16 years ago I stood before you to introduce a bill ''to provide an opportunity for the Pottawatomi Nation in Canada to have the merits of their claims against the United States determined by the United States Court of Federal Claims.''

That bill was introduced as Senate Resolution 223, which referred the Pottawatomi's claim to the Chief Judge of the U.S. Court of Federal Claims and required the Chief Judge to report back to the Senate and provide sufficient findings of fact and conclusions of law to enable the Congress to determine whether the claim of the Pottawatomi Nation in Canada is legal or equitable in nature, and the amount of damages, if any, which may be legally or equitably due from the United States.

Over a decade ago, the Chief Judge of the Court of Federal Claims reported back that the Pottawatomi Nation in Canada has a legitimate and credible legal claim. Thereafter, by settlement stipulation, the United States has taken the position that it would be ''fair, just and equitable'' to settle the claims of the

ottawatomi Nation in Canada for the sum of $1,830,000. This settlement amount was reached by the parties after seven years of extensive, fact-intensive litigation. Independently, the court concluded that the settlement amount is ''not a gratuity'' and that the ''settlement was predicated on a credible legal claim.'' *Pottawatomi Nation in Canada, et al.* v. *United States,* Cong. Ref. 94–1037X at 28, Ct. Fed. Cl., September 15, 2000, Report of Hearing Officer.

The bill I introduce today is to authorize the appropriation of those funds that the United States has concluded would be ''fair, just and equitable'' to satisfy this legal claim. If enacted, this bill will finally achieve a measure of justice for a tribal nation that has for far too long been denied.

For the information of our colleagues, this is the historical background that informs the underlying legal claim of the Canadian Pottawatomi.

The members of the Pottawatomi Nation in Canada are one of the descendant groups—successors-in-interest—of the historical Pottawatomi Nation and their claim originates in the latter part of the 18th century. The historical Pottawatomi Nation was aboriginal to the United States. They occupied and possessed a vast expanse in what is now the States of Ohio, Michigan, Indiana, Illinois, and Wisconsin. From 1795 to 1833, the United States annexed most of the traditional land of the Pottawatomi Nation through a series of treaties of cession—many of these cessions were made under extreme duress and the threat of military action. In exchange, the Pottawatomi were repeatedly made promises that the remainder of their lands would be secure and, in addition, that the United States would pay certain annuities to the Pottawatomi.

In 1829, the United States formally adopted a Federal the policy of removal; an effort to remove all Indian tribes from their traditional lands east of the Mississippi River to the west. As part of that effort, the government increasingly pressured the Pottawatomi to cede the remainder of their traditional lands, some five million acres in and around the city of Chicago, and remove their nation west. For years, the Pottawatomi steadfastly refused to cede the remainder of their tribal territory. Then in 1833, the United States, pressed by settlers seeking more land, sent a Treaty Commission to the Pottawatomi with orders to extract a cession of the remaining lands. The Treaty Commissioners spent 2 weeks using extraordinarily coercive tactics—including threats of war—in an attempt to get the Pottawatomi to agree to cede their territory. Finally, those Pottawatomi who were present relented and on September 26, 1933, they ceded their remaining tribal estate through what would be known as the Treaty of Chicago. Seventy-seven members of the Pottawatomi Nation signed the Treaty of Chicago. Members of the ''Wisconsin Band'' were not present and did not assent to the cession.

In exchange for their land, the Treaty of Chicago provided that the United States would give to the Pottawatomi 5 million acres of comparable land in what is now Missouri. The Pottawatomi were familiar with the Missouri land, aware that it was similar to their homeland. However, the Senate refused to ratify that negotiated agreement and unilaterally switched the land to five million acres in Iowa. The Treaty Commissioners were sent back to acquire Pottawatomi assent to the Iowa land. All but seven of the original 77 signatories refused to accept the change even with promises that if they were dissatisfied ''justice would be done.''

Nevertheless, the Treaty of Chicago was ratified as amended by the Senate in 1834. Subsequently, the Pottawatomi sent a delegation to evaluate the land in Iowa. The delegation reported back that the land was ''not fit for snakes to live on.''

While some Pottawatomi moved westward, many of the Pottawatomi, particularly the Wisconsin Band, whose leaders never agreed to the Treaty, refused to do so. By 1836, the United States began to forcefully remove Pottawatomi who remained in the east with devastating consequences. As is true with many other American Indian tribes, the forced removal westward came at great human cost. Many of the Pottawatomi were forcefully removed

by mercenaries who were paid on a per capita basis government contract. Over one-half of the Indians removed by these means died en route. Those who reached Iowa were almost immediately removed further to inhospitable parts of Kansas against their will and without their consent.

After learning of these conditions, many of the Pottawatomi, including most of the Wisconsin Band, vigorously resisted forced removal. To avoid Federal troops and mercenaries, much of the Wisconsin Band ultimately found it necessary to flee to Canada. They were often pursued to the border by government troops, government-paid mercenaries or both. Official files of the Canadian and United States governments disclose that many Pottawatomi were forced to leave their homes without their horses or any of their possessions other than the clothes on their backs.

By the late 1830s, the government refused payment of annuities to any Pottawatomi groups that had not removed west. In the 1860s, members of the Wisconsin Band—those still in their traditional territory and those forced to flee to Canada—petitioned Congress for the payment of their treaty annuities promised under the Treaty of Chicago and all other cession treaties. By the Act of June 25, 1864, 13 Stat. 172, Congress declared that the Wisconsin Band did not forfeit their annuities by not removing and directed that the share of the Pottawatomi Indians who had refused to relocate to the west should be retained for their use in the United States Treasury. H.R. Rep. No. 470, 64th Cong., p. 5, as quoted on page 3 of memo dated October 7, 1949. Nevertheless, much of the money was never paid to the Wisconsin Band.

In 1903, the Wisconsin Band—most of whom now resided in three areas, the States of Michigan and Wisconsin and the Province of Ontario—petitioned the Senate once again to pay them their fair portion of annuities as required by the law and treaties, Sen. Doc. No. 185, 57th Cong., 2d Sess. By the act of June 21, 1906, 34 Stat. 380, Congress directed the Secretary of the Interior to investigate claims made by the Wisconsin Band and establish a roll of the Wisconsin Band Pottawatomi that still remained in the east. In addition, Congress ordered the Secretary to determine ''the [Wisconsin Bands] proportionate shares of the annuities, trust funds, and other moneys paid to or expended for the tribe to which they belong in which the claimant Indians have not shared, [and] the amount of such monies retained in the Treasury of the United States to the credit of the clamant Indians as directed the provision of the Act of June 25, 1864.''

In order to carry out the 1906 Act, the Secretary of Interior directed Dr. W.M. Wooster to conduct an enumeration of Wisconsin Band Pottawatomi in both the United States and Canada. Dr. Wooster documented 2,007 Wisconsin Pottawatomi: 457 in Wisconsin and Michigan and 1,550 in Canada. He also concluded that the proportionate share of annuities for the Pottawatomi in Wisconsin and Michigan was $477,339 and that the proportionate share of annuities due the Pottawatomi Nation in Canada was $1,517,226. Congress thereafter enacted a series of appropriation Acts from June 30, 1913 to May 29, 1928 to satisfy most of the money owed to those Wisconsin Band Pottawatomi residing in the United States. However, the Wisconsin Band Pottawatomi who resided in Canada were never paid their share of the tribal funds.

Since that time, the Pottawatomi Nation in Canada has diligently and continuously sought to enforce their treaty rights, although until this Congressional reference, they had never been provided their day in court. In 1910, the United States and Great Britain entered into an agreement for the purpose of dealing with claims between both countries, including claims of Indian tribes within their respective jurisdictions, by creating the Pecuniary Claims Tribunal. From 1910 to 1938, the Pottawatomi Nation in Canada diligently sought to have their claim heard in this international forum. Overlooked for more pressing international matters of the period, including the intervention of World War I, the Pottawatomi then came to the U.S. Congress for redress of their claim.

In 1946, the Congress waived its sovereign immunity and established the Indian Claims Commission for the purpose of granting tribes their long-delayed day in court. The Indian Claims Commission Act, ICCA, granted the Commission jurisdiction over claims such as the type involved here. In 1948, the Wisconsin Band Pottawatomi from both sides of the border brought suit together in the Indian Claims Commission for recovery of damages. *Hannahville Indian Community* v. *U.S.*, No. 28 (Ind. Cl. Comm. Filed May 4, 1948). Unfortunately, the Indian Claims Commission dismissed Pottawatomi Nation in Canada's part of the claim ruling that the Commission had no jurisdiction to consider claims of Indians living outside territorial limits of the United States. *Hannahville Indian Community* v. *U.S.*, 115 Ct. Cl. 823, 1950. The claim of the Wisconsin Band residing in the United States that was filed in the Indian Claims Commission was finally decided in favor of the Wisconsin Band by the U.S. Claims Court in 1983. *Hannahville Indian Community* v. *United States*, 4 Ct. Cl. 445, 1983. The Court of Claims concluded that the Wisconsin Band was owed a member's proportionate share of unpaid annuities from 1838 through 1907 due under various treaties, including the Treaty of Chicago and entered judgment for the American Wisconsin Band Pottawatomi for any monies not paid. Still the Pottawatomi Nation in Canada was excluded because of the jurisdictional limits of the ICCA.

Undaunted, the Pottawatomi Nation in Canada came to the Senate, and after careful consideration, we finally gave them their long-awaited day in court through the Congressional reference process. The court has now reported back to us that their claim is meritorious and that the payment that this bill would make constitutes a ''fair, just and equitable'' resolution to this claim.

The Pottawatomi Nation in Canada has sought justice for over 150 years. They have done all that we asked in order to establish their claim. Now it is time for us to finally live up to the promise our government made so many years ago. It will not correct all the wrongs of the past, but it is a demonstration that this government is willing to admit when it has left an unfulfilled obligation, and that the United States is willing to do what we can to see that justice, so long delayed, is not now denied.

Finally, I would just note that the claim of the Pottawatomi Nation in Canada is supported through specific resolutions by the National Congress of American Indians, the oldest, largest and most-representative tribal organization here in the United States, the Assembly of First Nations, which includes all recognized tribal entities in Canada, and each and every of the Pottawatomi tribal groups that remain in the United States today.

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. 60

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

SECTION 1. SETTLEMENT OF CERTAIN CLAIMS.

(a) AUTHORIZATION FOR PAYMENT.—Notwithstanding any other provision of law, subject to subsection (b), the Secretary of the Treasury shall pay to the Pottawatomi Nation in Canada $1,830,000 from amounts appropriated under section 1304 of title 31, United States Code.

(b) PAYMENT IN ACCORDANCE WITH STIPULATION FOR RECOMMENDATION OF SETTLEMENT.—The payment under subsection (a) shall—

(1) be made in accordance with the terms and conditions of the Stipulation for Recommendation of Settlement dated May 22, 2000, entered into between the Pottawatomi Nation in Canada and the United States (referred to in this section as the ''Stipulation for Recommendation of Settlement''); and

(2) be included in the report of the Chief Judge of the United States Court of Federal Claims regarding Congressional Reference No. 94–1037X, submitted to the Senate on January 4, 2001, in accordance with sections 1492 and 2509 of title 28, United States Code.

(c) FULL SATISFACTION OF CLAIMS.—The payment under subsection (a) shall be in full satisfaction of all claims of the Pottawatomi Nation in Canada against the United States that are referred to or described in the Stipulation for Recommendation of Settlement.

(d) NONAPPLICABILITY.—Notwithstanding any other provision of law, the Indian Tribal Judgment Funds Use or Distribution Act (25 U.S.C. 1401 et seq.) does not apply to the payment under subsection (a).

By Mr. INOUYE (for himself, Ms. MURKOWSKI, and Mr. BEGICH):

S. 61. A bill to establish a Native American Economic Advisory Council, and for other purposes; to the Committee on Indian Affairs.

Mr. INOUYE. Mr. President, I rise to introduce a bill that would establish a Native American Economic Advisory Council. This Council's primary duties would be to consult, coordinate, and make recommendations to Federal agencies for the purpose of improving the substandard economic conditions that exist in our Native communities.

Currently, there is no Council, and despite the Federal Government's ''trust'' relationship with Native American tribes, Native Americans themselves continue to rank lowest in quality of life standings. As a nation we need to preserve our Native communities as they are rich with cultural significance and living history.

Native communities are considered ''emerging economies'' that have stalled because of the current economic situation. This bill is an attempt to keep these communities moving by educating, empowering, and encouraging our future Native American leaders to create sustainable economic growth programs in their own communities.

In Hawaii, the cost of living ranges from 30 percent to 60 percent higher than the national average. We have to start planning for economic stability in the future and this bill provides an opportunity to do so. I look forward to working with my colleagues on reinvesting in our Nation's future.

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. 61

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 ''Native American Economic Advisory Council Act of 2011''.

SEC. 2. FINDINGS.

Congress finds—

(1) the United States has a special political and legal relationship and responsibility to promote the welfare of the Native American people of the United States;

(2) evaluations of indicators and criteria of social well-being, education, health, unemployment, housing, income, rates of poverty, justice systems, and nutrition by agencies of government and others have consistently found that Native American communities rank below other groups of United States citizens and many are at or near the bottom in those evaluations;

(3) Native Americans, like other people in the United States, have been hit hard by the deepest recession of the United States economy in over 50 years, causing a significant decline in employment and economic activity across the United States;

(4) Native American communities have been described as ''emerging economies'' and consequently have been stalled in the efforts of the communities to build sustainable growing economies for the people of the communities and are being adversely affected faster than the rest of the United States;

(5) economic stimulus programs to help Native American communities generate jobs and stronger economic performance will require United States financial and tax incentives to increase both local and expanded investment that is tailored to the unique needs and circumstances of Native American communities;

(6) the impacts of the ongoing recession and the near collapse of the financial and banking systems require a review of assumptions about the future, the need for new growth strategies, and a focus on laying the groundwork for economic success in the 21st century;

(7) there is a continuing need for direct economic stimulus, including needs for improving rural infrastructure and alternative energy in rural and Native American communities of the United States and providing Native Americans leaders with the tools to create jobs and improve economic conditions;

(8) in light of the role of Native American communities as emerging markets within the United States, there are opportunities and needs that should be addressed, including consideration of United States support for the pooling of resources to create an Indigenous Sovereign Wealth Fund that is similar to those Funds created around the world to diversify revenue streams, attract more resources, invest more wisely, and create jobs;

(9) Native Americans should be participants when major economic decisions are made that affect the property, lives, and future of Native Americans; and

(10) Native Americans should fully participate in rebuilding Native American communities and have necessary tools and resources.

SEC. 3. PURPOSE.

The purpose of this Act is to authorize and establish a Native American Economic Advisory Council to consult, coordinate with, and make recommendations to the Executive Office of the President, Cabinet officers, and Federal agencies—

(1) to improve the focus, effectiveness, and delivery of Federal economic aid and development programs to Native Americans and, as a result, improve substandard economic conditions in Native American communities;

(2) to build and expand on the capacity of leaders in Native American organizations and communities to take positive and innovative steps—

(A) to create jobs;

(B) to establish stable and profitable business enterprises;

(C) to enhance economic conditions; and

(D) to use Native American-owned resources for the benefit of members; and

(3) to achieve the long-term goal of improving the quality of Native American life and living conditions and access to basic public services to the levels enjoyed by the average citizen and community of the United States by the year 2025.

SEC. 4. ESTABLISHMENT OF NATIVE AMERICAN ECONOMIC ADVISORY COUNCIL.

(a) IN GENERAL.—There is established a Native American Economic Advisory Council (referred to in this Act as the ''Council'') to advise and assist the Executive Office of the President and Federal agencies to ensure that Native Americans (including Native American members, communities and organizations) have—

(1) the means and capacity to generate and benefit from economic stimulus and growth; and

(2) fair access to, and reasonable opportunities to participate in, Federal economic development and job growth programs.

(b) MEMBERS.—

(1) IN GENERAL.—The Council shall consist of 5 members appointed by the President.

(2) INITIAL APPOINTMENTS.—Not later than 180 days after the date of enactment of this Act, the President shall appoint the initial members of the Council.

(3) COMPOSITION.—Of the members of the Council—

(A) 1 member shall be an Alaska Native;

(B) 1 member shall be a Hawaiian Native; and

(C) 3 members shall represent American Native groups and organizations from other States.

(4) CHAIRPERSON.—The President shall designate 1 of the members of the Council to serve as Chairperson.

(c) EXPERIENCE.—Each member of the Council shall be a Native American who, as a result of work experience, training, and attainment, is well qualified—

(1) to identify, analyze, and understand the attributes and background of successful business enterprises and economic programs in Native American communities and cultures;

(2) to appraise the economic development programs and activities of Federal agencies in the context of the goals and purposes of this Act; and

(3) to recommend programs, policies, and needed program modifications to improve access to and effectiveness in the delivery of economic development programs in Native American communities.

(d) VACANCIES.—A vacancy on the Council—

(1) shall not affect the authority of the Commission; and

(2) shall be filled in the same manner as the initial appointments to the Council.

(e) EXPENSES.—Each Member of the Council shall be allowed travel expenses, including per diem in lieu of subsistence, at the rate authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from the homes or regular places of business of the employees in the performance of services for the Council.

(f) STAFF.—

(1) IN GENERAL.—The Council may, without regard to the civil service laws (including regulations), appoint and terminate an executive director and such other staff as are necessary to enable the Council to perform the duties required under this Act.

(2) COMPENSATION.—

(A) IN GENERAL.—Subject to subparagraph (B), the Council may fix the compensation of the executive director and other personnel without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates.

(B) MAXIMUM AMOUNT.—The rate of pay for the executive director and other personnel of the Council shall not exceed the rate payable for level V of the Executive Schedule under section 5316 of title 5, United States Code.

(g) DETAIL OF EMPLOYEES.—

(1) IN GENERAL.—An employee of the Federal Government may be detailed to the Council without reimbursement.

(2) CIVIL SERVICE STATUS.—The detail of an employee shall be without interruption or loss of civil service status or privilege.

(h) TEMPORARY SERVICES.—The Council may procure temporary and intermittent services in accordance with section 3109(b) of title 5, United States Code, at rates for individuals that do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of that title.

(i) ADMINISTRATIVE SERVICES.—The Secretary of Commerce shall provide necessary office space and administrative services for the Council (including staff of the Council).

SEC. 5. DUTIES.

(a) IN GENERAL.—The Council shall advise and make recommendations to Federal agencies on—

(1) proposing sustainable economic growth and poverty reduction policies in a manner that promotes self-determination, self-sufficiency, and independence in urban and remote Native American communities while preserving the traditional cultural values of those communities;

(2) ensuring that Native Americans (including Native American communities and organizations) have equal access to Federal economic aid, training, and assistance programs;

(3) developing economic growth strategies, finance, and tax policies that will enable Native American organizations to stimulate the local economies of Native Americans and create meaningful new jobs in Native American communities;

(4) increasing the effectiveness of Federal programs to address the economic, employment, medical, and social needs of Native American communities;

(5) administering Federal economic development assistance programs with an understanding of the unique needs of Native American communities with the objectives of—

(A) making Native American leaders knowledgeable about best business practices and successful economic and job growth strategies;

(B) promoting investment and economic growth and reducing unemployment and poverty in Native American communities;

(C) enhancing governance, entrepreneurship, and self-determination in Native American communities; and

(D) fostering demonstrations of transformational changes in economic conditions in remote Native American communities through the use of innovative technology, targeted investments, and the use of Native American-owned natural and scenic resources;

(6) improving the effectiveness of economic development assistance programs through the integration and coordination of assistance to Native American communities;

(7) recommending educational and business training programs for Native Americans that increase the capacity of Native Americans for economic well-being and to further the purposes of this Act; and

(8) initiating proposals, as needed, for fellowship and mentoring programs to meet the economic development needs of Native American communities.

(b) ADDITIONAL DUTIES.—The Council shall—

(1) prepare a compilation of successful business enterprises and joint ventures conducted by Native American organizations, including tribal enterprises and the commercial ventures of Native Corporations (as defined in section 102 of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3102)) in the State of Alaska; and

(2) periodically sponsor and arrange conferences and training workshops on Native American business activities, including providing mentors, resource people, and speakers to address financing, management, marketing, resource development, and best business practices in Native American business enterprises.

SEC. 6. ASSESSMENT OF IMPACTS OF LEGISLATIVE PROPOSALS ON NATIVE AMERICAN ECONOMIC PROSPECTS AND OPPORTUNITY.

In preparing and communicating the comments and recommendations of the President on proposed legislation to committees and leadership of Congress, the Director of the Office of Management and Budget and the head of a Federal agency shall include an assessment of the impacts of the proposed legislation on the economic and employment prospects and opportunities provided in the proposed legislation to improve the quality of living conditions of Native American communities, organizations, and members to the levels enjoyed by most people of the United States.

SEC. 7. REPORTS.

The Council shall—

(1) prepare periodic reports on the activities of the Council; and

(2) make the reports available to—

(A) Native American communities, organizations, and members;

(B) the General Services Administration;

(C) the Office of Management and Budget;

(D) the Domestic Policy Council;

(E) the National Economic Council;

(F) the Council of Economic Advisers;

(G) the Secretary of the Treasury;

(H) the Secretary of Commerce;

(I) the Secretary of Labor;

(J) the Secretary of the Interior;

(K) the Secretary of Energy; and

(L) members of the public.

SEC. 8. AUTHORIZATION OF APPROPRIATIONS.

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

By Mr. INOUYE:

S. 62. A bill to amend the Federal Deposit Insurance Act to modify requirements relating to the location of bank branches on Indian reservations, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

Mr. INOUYE. Mr. President, I rise to introduce a bill that would provide authority for the establishment of branch banking facilities on Indian reservations so that the Federally-chartered Native American Bank could enable access to financial services to Indian tribes and their citizens.

Many years ago, as part of my service as Chairman of the Senate Indian Affairs Committee, I met with tribal leaders to discuss the challenges of economic development in Indian country. At that time, I suggested that they might give consideration to a means by which tribal governments could pool their resources and thereby provide the capital that other tribal governments could employ on a short-term loan basis to undertake reservation-based projects that held the potential of stimulating economic growth in their tribal communities.

The tribal leaders with whom I met were very interested in this idea, and in the ensuing years, went forward and established the Native American Bank—which is headquartered in Denver—but continues to manage its first affiliated bank on the Blackfeet Indian Reservation in Montana.

As my colleagues know, there are few financial institutions located either on or near Indian reservations, and sadly, there is evidence that some financial institutions have found it apparently necessary to either charge very high rates that they associate with the risk of doing business in Indian country, or to deny financial assistance altogether.

The Native American Bank has stepped into that latter void and has been providing meaningful financial services to tribal governments and their citizens for a number of years.

This bill contains amendments to the McFadden Act that have been carefully sculpted to address only this narrow expansion of capacity on the part of financial institutions serving Indian country.

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. 62

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 ''Indian Reservation Bank Branch Act of 2009''.

SEC. 2. REGULATIONS GOVERNING INSURED DEPOSITORY INSTITUTIONS.

Section 18(d) of the Federal Deposit Insurance Act (12 U.S.C. 1828(d)) is amended by adding at the end the following:

''(5) ELECTION BY INDIAN TRIBES TO PERMIT BRANCHING OF BANKS ON INDIAN RESERVATIONS.—

''(A) DEFINITIONS.—In this paragraph, the following definitions shall apply:

''(i) DE NOVO BRANCH.—The term 'de novo branch' means a branch of a State bank that—

''(I) is originally established by the State bank as a branch; and

''(II) does not become a branch of the State bank as a result of—

''(aa) the acquisition by the State bank of an insured depository institution (or a branch of an insured depository institution); or

''(bb) the conversion, merger, or consolidation of any such institution or branch.

''(ii) HOME STATE.—

''(I) IN GENERAL.—The term 'home State' means the State in which the main office of a State bank is located.

''(II) BRANCHES ON INDIAN RESERVATIONS.—The term 'home State' with respect to a State bank, the main office of which is located within the boundaries of an Indian reservation (in a case in which State law permits the chartering of such a main office on an Indian reservation), means—

''(aa) the State in which the Indian reservation is located; or

''(bb) for an Indian reservation that is located in more than 1 State, the State in which the portion of the Indian reservation containing the main office of the State bank is located.

''(iii) HOST RESERVATION.—The term 'host reservation', with respect to a bank, means an Indian reservation located in a State other than the home State of the bank in which the bank maintains, or seeks to establish and maintain, a branch.

''(iv) INDIAN RESERVATION.—

''(I) IN GENERAL.—The term 'Indian reservation' means land subject to the jurisdiction of an Indian tribe.

''(II) INCLUSIONS.—The term 'Indian reservation' includes—

''(aa) any public domain Indian allotment;

''(bb) any land area located within the outer geographic boundaries recognized as an Indian reservation by a Federal treaty, Federal regulation, decision or order of the Bureau of Indian Affairs or any successor agency thereto, or statute in force with respect to a federally recognized tribal nation;

''(cc) any former Indian reservation in the State of Oklahoma; and

''(dd) any land held by a Native village, Native group, Regional Corporation, or Village Corporation under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.).

''(v) INDIAN TRIBE.—The term 'Indian tribe' has the same meaning as in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

''(vi) TRIBAL GOVERNMENT.—

''(I) IN GENERAL.—The term 'tribal government' means the business council, tribal council, or similar legislative or governing body of an Indian tribe—

''(aa) the members of which are representatives elected by the members of the Indian tribe; and

''(bb) that is empowered to enact laws applicable within the Indian reservation of the Indian tribe.

''(II) MULTITRIBAL RESERVATIONS.—The term 'tribal government', with respect to an Indian reservation within the boundaries of which are located more than 1 Indian tribe, each of which has a separate council, means a joint business council or similar intertribal governing council that includes representatives of each applicable Indian tribe.

''(III) INCLUSION.—The term 'tribal government' includes a governing body of any Regional Corporation or Village Corporation (as defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602)).

''(B) APPROVAL BY CORPORATION.—Subject to subparagraph (C), in addition to any other authority under this section to approve an application to establish a branch within the boundaries of an Indian reservation, the Corporation may approve an application of a State bank to establish and operate a de novo branch within the boundaries of 1 or more Indian reservations (regardless of whether the Indian reservations are located within the home State of the State bank), if there is in effect within the host reservation a law enacted by the tribal government of the host reservation that—

''(i) applies with equal effect to all banks located within the host reservation; and

''(ii) specifically permits any in-State or out-of-State bank to establish within the host reservation a de novo branch.

''(C) CONDITIONS.—

''(i) ESTABLISHMENT.—An application by a State bank to establish and operate a de novo branch within a host reservation shall not be subject to the requirements and conditions applicable to an application for an interstate merger transaction under paragraphs (1), (3), and (4) of section 44(b).

''(ii) OPERATION.—Subsections (c) and (d)(2) of section 44 shall not apply with respect to a branch of a State bank that is established and operated pursuant to an application approved under this paragraph.

''(iii) PROHIBITION.—

''(I) IN GENERAL.—Except as provided in subclause (II), no State nonmember bank that establishes or operates a branch on 1 or more Indian reservations solely pursuant to paragraph (5) may establish any additional branch outside of such Indian reservation in any State in which the Indian reservation is located.

''(II) EXCEPTION.—Subclause (I) shall not apply if a State nonmember bank described in that subclause would be permitted to establish and operate an additional branch under any other provision of this section, without regard to the establishment or operation by the State nonmember bank of a branch on the subject Indian reservation.''.

SEC. 3. BRANCH BANKS.

Section 5155 of the Revised Statutes of the United States (12 U.S.C. 36) is amended by inserting after subsection (g) the following:

''(h) ELECTION BY INDIAN TRIBES TO PERMIT BRANCHING OF NATIONAL BANKS ON INDIAN RESERVATIONS.—

''(1) DEFINITIONS.—In this subsection, the following definitions shall apply:

''(A) DE NOVO BRANCH.—The term 'de novo branch' means a branch of a national bank that—

''(i) is originally established by the national bank as a branch; and

''(ii) does not become a branch of the national bank as a result of—

''(I) the acquisition by the national bank of an insured depository institution (or a branch of an insured depository institution); or

''(II) the conversion, merger, or consolidation of any such institution or branch.

''(B) HOME STATE.—

''(i) IN GENERAL.—The term 'home State' means the State in which the main office of a national bank is located.

''(ii) BRANCHES ON INDIAN RESERVATIONS.—The term 'home State', with respect to a national bank, the main office of which is located within the boundaries of an Indian reservation, means—

''(I) the State in which the Indian reservation is located; or

''(II) for an Indian reservation that is located in more than 1 State, the State in which the portion of the Indian reservation containing the main office of the national bank is located.

''(C) HOST RESERVATION.—The term 'host reservation', with respect to a national bank, means an Indian reservation located in a State other than the home State of the bank in which the bank maintains, or seeks to establish and maintain, a branch.

''(D) INDIAN RESERVATION.—

''(i) IN GENERAL.—The term 'Indian reservation' means land subject to the jurisdiction of an Indian tribe.

''(ii) INCLUSIONS.—The term 'Indian reservation' includes—

''(I) any public domain Indian allotment;

''(II) any land area located within the outer geographic boundaries recognized as an Indian reservation by a Federal treaty, Federal regulation, decision or order of the Bureau of Indian Affairs or any successor agency thereto, or statute in force with respect to a federally recognized tribal nation;

''(III) any former Indian reservation in the State of Oklahoma; and

''(IV) any land held by a Native village, Native group, Regional Corporation, or Village Corporation under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.).

''(E) INDIAN TRIBE.—The term 'Indian tribe' has the same meaning as in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

''(F) TRIBAL GOVERNMENT.—

''(i) IN GENERAL.—The term 'tribal government' means the business council, tribal council, or similar legislative or governing body of an Indian tribe—

''(I) the members of which are representatives elected by the members of the Indian tribe; and

''(II) that is empowered to enact laws applicable within the Indian reservation of the Indian tribe.

''(ii) MULTITRIBAL RESERVATIONS.—The term 'tribal government', with respect to an Indian reservation within the boundaries of which are located more than 1 Indian tribe, each of which has a separate council, means a joint business council or similar intertribal governing council that includes representatives of each applicable Indian tribe.

''(iii) INCLUSION.—The term 'tribal government' includes a governing body of any Regional Corporation or Village Corporation (as defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602)).

''(2) APPROVAL BY COMPTROLLER.—Subject to paragraph (3), in addition to any other authority under this section to approve an application to establish a national bank branch within the boundaries of an Indian reservation, the Comptroller may approve an application of a national bank to establish and operate a de novo branch within the boundaries of an Indian reservation (regardless of whether the Indian reservation is located within the home State of the national bank), if there is in effect within the host reservation a law enacted by the tribal government of the host reservation that—

''(A) applies with equal effect to all banks located within the host reservation; and

''(B) specifically permits any in-State or out-of-State bank to establish within the host reservation a de novo branch.

''(3) CONDITIONS.—

''(A) ESTABLISHMENT.—An application by a national bank to establish and operate a de novo branch within a host reservation shall not be subject to the requirements and conditions applicable to an application for an interstate merger transaction under paragraphs (1), (3), and (4) of section 44(b) of the Federal Deposit Insurance Act (12 U.S.C. 1831u(b)).

''(B) OPERATION.—Subsections (c) and (d)(2) of section 44 of that Act (12 U.S.C. 1831u) shall not apply with respect to a branch of a national bank that is established and operated pursuant to an application approved under this subsection.

''(C) PROHIBITION.—

''(i) IN GENERAL.—Except as provided in clause (ii), no national bank that establishes or operates a branch on 1 or more Indian reservations solely pursuant to subsection (h) may establish any additional branch outside of such Indian reservation in the State in which the Indian reservation is located.

''(ii) EXCEPTION.—Clause (i) shall not apply if a national bank described in that clause would be permitted to establish and operate an additional branch under any other provision of this section or other applicable law, without regard to the establishment or operation by the national bank of a branch on the subject Indian reservation.''.

By Mr. INOUYE.

S. 63. A bill to require the Secretary of the Army to determine the validity of the claims of certain Filipinos that they performed military service on behalf of the United States during World War II; to the Committee on Veterans' Affairs.

Mr. INOUYE. Mr. President, I am reintroducing legislation today that would direct the Secretary of the Army to determine whether certain nationals of the Philippine Islands performed military service on behalf of the United States during World War II.

Our Filipino veterans fought side by side with Americans and sacrificed their lives on behalf of the United States. This legislation would confirm the validity of their claims and further allow qualified individuals the opportunity to apply for military and veterans benefits that, I believe, they are entitled to. As this population becomes older, it is important for our Nation to extend its firm commitment to the Filipino veterans and their families who participated in making us the great Nation that we are today.

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. 63

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

SECTION 1. DETERMINATIONS BY THE SECRETARY OF THE ARMY.

(a) IN GENERAL.—Upon the written application of any person who is a national of the Philippine Islands, the Secretary of the Army shall determine whether such person performed any military service in the Philippine Islands in aid of the Armed Forces of the United States during World War II which qualifies such person to receive any military, veterans', or other benefits under the laws of the United States.

(b) INFORMATION TO BE CONSIDERED.—In making a determination for the purpose of subsection (a), the Secretary shall consider all information and evidence (relating to service referred to in subsection (a)) that is available to the Secretary, including information and evidence submitted by the applicant, if any.

SEC. 2. CERTIFICATE OF SERVICE.

(a) ISSUANCE OF CERTIFICATE OF SERVICE.—The Secretary of the Army shall issue a certificate of service to each person determined by the Secretary to have performed military service described in section 1(a).

(b) EFFECT OF CERTIFICATE OF SERVICE.—A certificate of service issued to any person under subsection (a) shall, for the purpose of any law of the United States, conclusively establish the period, nature, and character of the military service described in the certificate.

SEC. 3. APPLICATIONS BY SURVIVORS.

An application submitted by a surviving spouse, child, or parent of a deceased person described in section 1(a) shall be treated as an application submitted by such person.

SEC. 4. LIMITATION PERIOD.

The Secretary of the Army may not consider for the purpose of this Act any application received by the Secretary more than two years after the date of the enactment of this Act.

SEC. 5. PROSPECTIVE APPLICATION OF DETERMINATIONS BY THE SECRETARY OF THE ARMY.

No benefits shall accrue to any person for any period before the date of the enactment of this Act as a result of the enactment of this Act.

SEC. 6. REGULATIONS.

The Secretary of the Army shall prescribe regulations to carry out sections 1, 3, and 4.

SEC. 7. RESPONSIBILITIES OF THE SECRETARY OF VETERANS AFFAIRS.

Any entitlement of a person to receive veterans' benefits by reason of this Act shall be administered by the Department of Veterans Affairs pursuant to regulations prescribed by the Secretary of Veterans Affairs.

SEC. 8. DEFINITION.

In this Act, the term ''World War II'' means the period beginning on December 7, 1941, and ending on December 31, 1946.

By Mr. INOUYE.

S. 64. A bill to establish a fact-finding Commission to extend the study of a prior Commission to investigate and determine facts and circumstances surrounding the relocation, internment, and deportation to Axis countries of Latin Americans of Japanese descent from December 1941 thorugh February 1948, and the impact of those actions by the United States, and to recommend appropriate remedies, and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

Mr. INOUYE. Mr. President, I rise today in support of the Commission on Wartime Relocation and Internment of Latin Americans of Japanese Descent Act.

The story of U.S. citizens taken from their homes on the west coast and confined in camps is a story that was made known after a fact-finding study by a Commission that Congress authorized in 1980. That study was followed by a formal apology by President Reagan and a bill for reparations. Far less known, and indeed, I myself did not initially know, is the story of Latin Americans of Japanese descent taken from their homes in Latin America, stripped of their passports, brought to the U.S., and interned in American camps.

This is a story about the U.S. government's act of reaching its arm across international borders, into a community that did not pose an immediate threat to our Nation, in order to use them, devoid of passports or any other proof of citizenship, for exchange with Americans with Japan. Between the years 1941 and 1945, our Government, with the help of Latin American officials, arbitrarily arrested persons of Japanese descent from streets, homes, and workplaces. Approximately 2,300 undocumented persons were brought to camp sites in the U.S., where they were held under armed watch, and then held in reserve for prisoner exchange. Those used in an exchange were sent to Japan, a foreign country that many had never set foot on since their ancestors' immigration to Latin America.

Despite their involuntary arrival, Latin American internees of Japanese descent were considered by the Immigration and Naturalization Service as illegal entrants. By the end of the war, some Japanese Latin Americans had been sent to Japan. Those who were not used in a prisoner exchange were cast out into a new and English-speaking country, and subject to deportation proceedings. Some returned to Latin America. Others remained in the U.S., because their country of origin in Latin America refused their re-entry, because they were unable to present a passport.

When I first learned of the wartime experiences of Japanese Latin Americans, it seemed unbelievable, but indeed, it happened. It is a part of our national history, and it is a part of the living histories of the many families whose lives are forever tied to internment camps in our country.

The outline of this story was sketched out in a book published by the Commission on Wartime Relocation and Internment of Civilians formed in 1980. This Commission had set out to learn about Japanese Americans. Towards the close of their investigations, the Commissioners stumbled upon this extraordinary effort by the U.S. Government to relocate, intern, and deport Japanese persons formerly living in Latin America. Because this finding surfaced late in its study, the Commission was unable to fully uncover the facts, but found them significant enough to include in its published study, urging a deeper investigation.

I rise today to introduce the Commission on Wartime Relocation and Internment of Latin Americans of Japanese Descent Act, which would establish a fact-finding Commission to extend the study of the 1980 Commission. This Commission's task would be to determine facts surrounding the U.S. government's actions in regards to Japanese Latin Americans subject to a program of relocation, internment, and deportation. I believe that examining this extraordinary program would give finality to, and complete the account of Federal actions to detain and intern civilians of Japanese ancestry.

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. 64

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 ''Commission on Wartime Relocation and Internment of Latin Americans of Japanese Descent Act''.

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Based on a preliminary study published in December 1982 by the Commission on Wartime Relocation and Internment of Civilians, Congress finds the following:

(1) During World War II, the United States—

(A) expanded its internment program and national security investigations to conduct the program and investigations in Latin America; and

(B) financed relocation to the United States, and internment, of approximately 2,300 Latin Americans of Japanese descent, for the purpose of exchanging the Latin Americans of Japanese descent for United States citizens held by Axis countries.

(2) Approximately 2,300 men, women, and children of Japanese descent from 13 Latin American countries were held in the custody of the Department of State in internment camps operated by the Immigration and Naturalization Service from 1941 through 1948.

(3) Those men, women, and children either—

(A) were arrested without a warrant, hearing, or indictment by local police, and sent to the United States for internment; or

(B) in some cases involving women and children, voluntarily entered internment camps to remain with their arrested husbands, fathers, and other male relatives.

(4) Passports held by individuals who were Latin Americans of Japanese descent were routinely confiscated before the individuals arrived in the United States, and the Department of State ordered United States consuls in Latin American countries to refuse to issue visas to the individuals prior to departure.

(5) Despite their involuntary arrival, Latin American internees of Japanese descent were

considered to be and treated as illegal entrants by the Immigration and Naturalization Service. Thus, the internees became illegal aliens in United States custody who were subject to deportation proceedings for immediate removal from the United States. In some cases, Latin American internees of Japanese descent were deported to Axis countries to enable the United States to conduct prisoner exchanges.

(6) Approximately 2,300 men, women, and children of Japanese descent were relocated from their homes in Latin America, detained in internment camps in the United States, and in some cases, deported to Axis countries to enable the United States to conduct prisoner exchanges.

(7) The Commission on Wartime Relocation and Internment of Civilians studied Federal actions conducted pursuant to Executive Order 9066 (relating to authorizing the Secretary of War to prescribe military areas). Although the United States program of interning Latin Americans of Japanese descent was not conducted pursuant to Executive Order 9066, an examination of that extraordinary program is necessary to establish a complete account of Federal actions to detain and intern civilians of enemy or foreign nationality, particularly of Japanese descent. Although historical documents relating to the program exist in distant archives, the Commission on Wartime Relocation and Internment of Civilians did not research those documents.

(8) Latin American internees of Japanese descent were a group not covered by the Civil Liberties Act of 1988 (50 U.S.C. App. 1989b et seq.), which formally apologized and provided compensation payments to former Japanese Americans interned pursuant to Executive Order 9066.

(b) PURPOSE.—The purpose of this Act is to establish a fact-finding Commission to extend the study of the Commission on Wartime Relocation and Internment of Civilians to investigate and determine facts and circumstances surrounding the relocation, internment, and deportation to Axis countries of Latin Americans of Japanese descent from December 1941 through February 1948, and the impact of those actions by the United States, and to recommend appropriate remedies, if any, based on preliminary findings by the original Commission and new discoveries.

SEC. 3. ESTABLISHMENT OF THE COMMISSION.

(a) IN GENERAL.—There is established the Commission on Wartime Relocation and Internment of Latin Americans of Japanese descent (referred to in this Act as the ''Commission'').

(b) COMPOSITION.—The Commission shall be composed of 9 members, who shall be appointed not later than 60 days after the date of enactment of this Act, of whom—

(1) 3 members shall be appointed by the President;

(2) 3 members shall be appointed by the Speaker of the House of Representatives, on the joint recommendation of the majority leader of the House of Representatives and the minority leader of the House of Representatives; and

(3) 3 members shall be appointed by the President pro tempore of the Senate, on the joint recommendation of the majority leader of the Senate and the minority leader of the Senate.

(c) PERIOD OF APPOINTMENT; VACANCIES.—Members shall be appointed for the life of the Commission. A vacancy in the Commission shall not affect its powers, but shall be filled in the same manner as the original appointment was made.

(d) MEETINGS.—

(1) FIRST MEETING.—The President shall call the first meeting of the Commission not later than the later of—

(A) 60 days after the date of enactment of this Act; or

(B) 30 days after the date of enactment of legislation making appropriations to carry out this Act.

(2) SUBSEQUENT MEETINGS.—Except as provided in paragraph (1), the Commission shall meet at the call of the Chairperson.

(e) QUORUM.—Five members of the Commission shall constitute a quorum, but a lesser number of members may hold hearings.

(f) CHAIRPERSON AND VICE CHAIRPERSON.—The Commission shall elect a Chairperson and Vice Chairperson from among its members. The Chairperson and Vice Chairperson shall serve for the life of the Commission.

SEC. 4. DUTIES OF THE COMMISSION.

(a) IN GENERAL.—The Commission shall—

(1) extend the study of the Commission on Wartime Relocation and Internment of Civilians, established by the Commission on Wartime Relocation and Internment of Civilians Act—

(A) to investigate and determine facts and circumstances surrounding the United States' relocation, internment, and deportation to Axis countries of Latin Americans of Japanese descent from December 1941 through February 1948, and the impact of those actions by the United States; and

(B) in investigating those facts and circumstances, to review directives of the United States Armed Forces and the Department of State requiring the relocation, detention in internment camps, and deportation to Axis countries of Latin Americans of Japanese descent; and

(2) recommend appropriate remedies, if any, based on preliminary findings by the original Commission and new discoveries.

(b) REPORT.—Not later than 1 year after the date of the first meeting of the Commission pursuant to section 3(d)(1), the Commission shall submit a written report to Congress, which shall contain findings resulting from the investigation conducted under subsection (a)(1) and recommendations described in subsection (a)(2).

SEC. 5. POWERS OF THE COMMISSION.

(a) HEARINGS.—The Commission or, at its direction, any subcommittee or member of the Commission, may, for the purpose of carrying out this Act—

(1) hold such public hearings in such cities and countries, sit and act at such times and places, take such testimony, receive such evidence, and administer such oaths as the Commission or such subcommittee or member considers advisable; and

(2) require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, documents, tapes, and materials as the Commission or such subcommittee or member considers advisable.

(b) ISSUANCE AND ENFORCEMENT OF SUBPOENAS.—

(1) ISSUANCE.—Subpoenas issued under subsection (a) shall bear the signature of the Chairperson of the Commission and shall be served by any person or class of persons designated by the Chairperson for that purpose.

(2) ENFORCEMENT.—In the case of contumacy or failure to obey a subpoena issued under subsection (a), the United States district court for the judicial district in which the subpoenaed person resides, is served, or may be found may issue an order requiring such person to appear at any designated place to testify or to produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt of that court.

(c) WITNESS ALLOWANCES AND FEES.—Section 1821 of title 28, United States Code, shall apply to witnesses requested or subpoenaed to appear at any hearing of the Commission. The per diem and mileage allowances for witnesses shall be paid from funds available to pay the expenses of the Commission.

(d) INFORMATION FROM FEDERAL AGENCIES.—The Commission may secure directly from any Federal department or agency such information as the Commission considers necessary to perform its duties. Upon request of the Chairperson of the Commission, the head of such department or agency shall furnish such information to the Commission.

(e) POSTAL SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

SEC. 6. PERSONNEL AND ADMINISTRATIVE PROVISIONS.

(a) COMPENSATION OF MEMBERS.—Each member of the Commission who is not an officer or employee of the Federal Government shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which such member is engaged in the performance of the duties of the Commission. All members of the Commission who are officers or employees of the United States shall serve without compensation in addition to that received for their services as officers or employees of the United States.

(b) TRAVEL EXPENSES.—The members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

(c) STAFF.—

(1) IN GENERAL.—The Chairperson of the Commission may, without regard to the civil service laws and regulations, appoint and terminate the employment of such personnel as may be necessary to enable the Commission to perform its duties.

(2) COMPENSATION.—The Chairperson of the Commission may fix the compensation of the personnel without regard to chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay for the personnel may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title.

(d) DETAIL OF GOVERNMENT EMPLOYEES.—Any Federal Government employee may be detailed to the Commission without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(e) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Chairperson of the Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals that do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of such title.

(f) OTHER ADMINISTRATIVE MATTERS.—The Commission may—

(1) enter into agreements with the Administrator of General Services to procure necessary financial and administrative services;

(2) enter into contracts to procure supplies, services, and property; and

(3) enter into contracts with Federal, State, or local agencies, or private institutions or organizations, for the conduct of research or surveys, the preparation of reports,

and other activities necessary to enable the Commission to perform its duties.

SEC. 7. TERMINATION.

The Commission shall terminate 90 days after the date on which the Commission submits its report to Congress under section 4(b).

SEC. 8. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated such sums as may be necessary to carry out this Act.

(b) AVAILABILITY.—Any sums appropriated under the authorization contained in this section shall remain available, without fiscal year limitation, until expended.

By Mr. INOUYE.

S. 65. A bill to reauthorize the programs of the Department of Housing and Urban Development for housing assistances for Native Hawaiians; to the Committee on Indian Affairs.

Mr. INOUYE. Mr. President, I rise to introduce a bill to reauthorize Title VIII of the Native American Housing Assistance and Self-Determination Act. Title VIII provides authority for the appropriation of funds for the construction of low-income housing for Native Hawaiians and further provides authority for access to loan guarantees associated with the construction of housing to serve Native Hawaiians.

Three studies have documented the acute housing needs of Native Hawaiians—which include the highest rates of overcrowding and homelessness in the State of Hawaii. Those same studies indicate that inadequate housing rates for Native Hawaiians are amongst the highest in the Nation.

The reauthorization of Title VIII will support the continuation of efforts to assure that the native people of Hawaii may one day have access to housing opportunities that are comparable to those now enjoyed by other Americans.

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. 65

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 ''Hawaiian Homeownership Opportunity Act of 2011''.

SEC. 2. AUTHORIZATION OF APPROPRIATIONS FOR HOUSING ASSISTANCE.

Section 824 of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4243) is amended by striking ''fiscal years'' and all that follows and inserting the following: ''fiscal years 2011, 2012, 2013, 2014, and 2015.''.

SEC. 3. LOAN GUARANTEES FOR NATIVE HAWAIIAN HOUSING.

Section 184A of the Housing and Community Development Act of 1992 (12 U.S.C. 1715z–13b) is amended—

(1) in subsection (b), by striking ''or as a result of a lack of access to private financial markets'';

(2) in subsection (c), by striking paragraph (2) and inserting the following:

''(2) ELIGIBLE HOUSING.—The loan will be used to construct, acquire, refinance, or rehabilitate 1- to 4-family dwellings that are—

''(A) standard housing; and

''(B) located on Hawaiian Home Lands.''; and

(3) in subsection (j)(7), by striking ''fiscal years'' and all that follows through the end of the paragraph and inserting the following: ''fiscal years 2011, 2012, 2013, 2014, and 2015.''.

SEC. 4. ELIGIBILITY OF DEPARTMENT OF HAWAIIAN HOME LANDS FOR TITLE VI LOAN GUARANTEES.

Title VI of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4191 et seq.) is amended—

(1) in the title heading, by inserting ''**AND NATIVE HAWAIIAN**'' after ''**TRIBAL**'';

(2) in section 601 (25 U.S.C. 4191)—

(A) in subsection (a)—

(i) by striking ''or tribally designated housing entities with tribal approval'' and inserting '', by tribally designated housing entities with tribal approval, or by the Department of Hawaiian Home Lands,''; and

(ii) by inserting ''or 810, as applicable,'' after ''section 202'' ; and

(B) in subsection (c), by inserting ''or title VIII, as applicable'' before the period at the end;

(3) in section 602 (25 U.S.C. 4192)—

(A) in subsection (a)—

(i) in the matter preceding paragraph (1), by striking ''or housing entity'' and inserting '', housing entity, or Department of Hawaiian Home Lands''; and

(ii) in paragraph (3)—

(I) by inserting ''or Department'' after ''tribe'';

(II) by inserting ''or title VIII, as applicable,'' after ''title I''; and

(III) by inserting ''or 811(b), as applicable'' before the semicolon at the end; and

(B) in subsection (b)(2), by striking ''or housing entity'' and inserting '', housing entity, or the Department of Hawaiian Home Lands'';

(4) in the first sentence of section 603 (25 U.S.C. 4193), by striking ''or housing entity'' and inserting '', housing entity, or the Department of Hawaiian Home Lands''; and

(5) in section 605(b) (25 U.S.C. 4195(b)), by striking ''2009 through 2013'' and inserting ''2011 through 2015''.

By Mr. INOUYE:

S. 67. A bill to amend title 10, United States Code, to permit former members of the Armed Forces who have a service-connected disability rated as total to travel on military aircraft in the same manner and to the same extent as retired members of the Armed Forces are entitled to travel on such aircraft; to the Committee on Armed Services.

Mr. INOUYE. Mr. President, today I am reintroducing a bill which is of great importance to a group of patriotic Americans. This legislation is designed to end space-available travel privileges on military aircraft to those who have been totally disabled in the service of our country.

Currently, retired members of the Armed Services are permitted to travel on a space-available basis on nonscheduled military flights within the continental United States, and on scheduled overseas flights operated by the Military Airlift Command. My bill would provide the same benefits for veterans with 100 percent service-connected disabilities.

We owe these heroic men and women who have given so much to our country a debt of gratitude. Of course, we can never repay them for the sacrifices they have made on behalf of our Nation, but we can surely try to make their lives more pleasant and fulfilling. One way in which we can help is to extend military travel privileges to these distinguished American veterans. I have received numerous letters from all over the country attesting to the importance attached to this issue by veterans. Therefore, I ask that my colleagues show their concern and join me in saying ''thank you'' by supporting this legislation.

Mr. President, I ask unanimous consent that the text of my 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. 67

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

SECTION 1. TRAVEL ON MILITARY AIRCRAFT OF CERTAIN DISABLED FORMER MEMBERS OF THE ARMED FORCES.

(a) IN GENERAL.—Chapter 53 of title 10, United States Code, is amended by inserting after section 1060b the following new section:

''§ 1060c. Travel on military aircraft: certain disabled former members of the armed forces

''The Secretary of Defense shall permit any former member of the armed forces who is entitled to compensation under the laws administered by the Secretary of Veterans Affairs for a service-connected disability rated as total to travel, in the same manner and to the same extent as retired members of the armed forces, on unscheduled military flights within the continental United States and on scheduled overseas flights operated by the Air Mobility Command. The Secretary of Defense shall permit such travel on a space-available basis.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 53 of such title is amended by inserting after the item relating to section 1060b the following new item:

''1060c. Travel on military aircraft: certain disabled former members of the armed forces.''.

By Mr. INOUYE:

S. 68. A bill to amend title 10, United States Code, to authorize certain disabled former prisoners of war to use Department of Defense commissary and exchange stores; to the Committee on Armed Services.

Mr. INOUYE. Mr. President, today I am reintroducing legislation to enable those former prisoners of war who have been separated honorably from their respective services and who have been rated as having a 30 percent service-connected disability to have the use of both the military commissary and post exchange privileges. While I realize it is impossible to adequately compensate one who has endured long periods of incarceration at the hands of our Nation's enemies, I do feel this gesture is both meaningful and important to those concerned because it serves as a reminder that our nation has not forgotten their sacrifices.

Mr. President, I ask unanimous consent that the text of my 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. 68

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

SECTION 1. USE OF COMMISSARY AND EXCHANGE STORES BY CERTAIN DISABLED FORMER PRISONERS OF WAR.

(a) IN GENERAL.—Chapter 54 of title 10, United States Code, is amended by inserting after section 1064 the following new section:

''§ 1064a. Use of commissary and exchange stores: certain disabled former prisoners of war

''(a) IN GENERAL.—Under regulations prescribed by the Secretary of Defense, former prisoners of war described in subsection (b) may use commissary and exchange stores.

''(b) COVERED INDIVIDUALS.—Subsection (a) applies to any former prisoner of war who—

''(1) separated from active duty in the armed forces under honorable conditions; and

''(2) has a service-connected disability rated by the Secretary of Veterans Affairs at 30 percent or more.

''(c) DEFINITIONS.—In this section:

''(1) The term 'former prisoner of war' has the meaning given that term in section 101(32) of title 38.

''(2) The term 'service-connected' has the meaning given that term in section 101(16) of title 38.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 54 of such title is amended by inserting after the item relating to section 1064 the following new item:

''1064a. Use of commissary and exchange stores: certain disabled former prisoners of war.''.

By Mr. TESTER:

S. 69. A bill to amend the Consumer Product Safety Improvement Act of 2008 to exclude secondary sales, repair services, and certain vehicles from the ban on lead in children's products, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Mr. TESTER. Mr. President, I rise today to introduce the Common Sense in Consumer Product Safety Act of 2011 on behalf of the folks across America who are outdoor enthusiasts and budding sportsman and women. This bill will bring a common sense approach to restrictions we place upon access to children's products.

In 2008, in response to the high lead paint content found in a number of toys and products intended for children, the Congress passed legislation to limit children's access to these dangerous products. Many of these products were imports from China and other places where consumer protection is weak or non-existent. I supported this legislation, as did 78 of my colleagues.

Any product sold that is intended to be used by children up to the age of 12 must be tested and certified to not contain more than the allowable level of lead. However, it became clear that the Consumer Product Safety Improvement Act has had some unintended consequences.

While the goal is admirable, it is important to inject a little common sense into the process. I want our kids and grandkids to be safe and protected from harmful toys, but we all know that most kids who are past the teething stage do not chew on their toys. It is important to strike a balance—to enact responsible safety requirements while at the same time recognizing that overzealous restrictions can interfere with a way of life enjoyed by not just Montanans, but outdoor enthusiasts across America.

As Chairman of the Congressional Sportsmen's Caucus, I am proud to stand up for Montana's outdoor heritage at every chance. The consumer protection law goes too far and limits younger Montanans' opportunities to participate in those traditions.

My bill will protect small businesses and allow families safer access to the outdoors.

The consumer protection law covers all products intended for the use of children through the age of 12. This includes ATVs, dirt bikes and other vehicles built specifically for the use of older kids and adults. However, because of the way the vehicles are built, parts that may include lead are not exclusively internal components and therefore don't pass the inaccessibility standard required by law. As a result of this requirement, a number of ATV sales and retail establishments have halted the sale of all ATVs for kids. In an abundance of caution, they have also refused to repair any equipment intended for kids use.

I have heard from many Montanans—consumers and retail sales people alike—expressing their concern about the impact of the legislation upon outdoor motor sports. A few years ago I worked with the Consumer Product Safety Commission to successfully provide a two year waiver for child-sized motorized vehicles. However, that stay of enforcement expires this May. Therefore today, I am reintroducing this bill to provide a permanent exception for vehicles intended to be used by children between the ages of 6 and 12.

In addition to manufacturers and merchants, thrift stores, and other retail establishments are also implicated because of the wide-reaching scope of the legislation. It is possible that even holding a yard sale can lead folks astray from the new law. Therefore, my bill also removes liability for lead paint content in any product that is repaired or is resold by thrift stores, flea markets or at yard sales. The liability in place at the time of primary sale of these products is sufficient and it could cripple the profitability of the secondary merchants if they were to be liable for testing the products they resell or repair.

In this tough economy, second-hand resellers simply can't afford the third-party testing requirement put in place by the bill. At the same time, more and more of Montana's families are finding their budgets tighten and are relying upon thrift and resale stores for toys, children's clothing and other household goods. I want to make sure that laws intended to keep our kids safe end up doing more harm than good.

This a very important bill, bringing a dose of common sense to the very important goal of protecting our kids from lead paint and other substances that will harm their health. I urge my colleagues to join me in this effort.

By Mr. INOUYE:

S. 70. A bill to restore the traditional day of observance of Memorial Day, and for other purposes; to the Committee on the Judiciary.

Mr. INOUYE. Mr. President, in our effort to accommodate many Americans by making Memorial Day the last Monday in May, we have lost sight of the significance of this day to our nation. My bill would restore Memorial Day to May 30 and authorize our flag to fly at half mast on that day. In addition, this legislation would authorize the President to issue a proclamation designating Memorial Day and Veterans Day as days for prayer and ceremonies. This legislation would help restore the recognition our veterans deserve for the sacrifices they have made on behalf of our Nation.

Mr. President, I ask unanimous consent that the text of my 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. 70

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

SECTION 1. RESTORATION OF TRADITIONAL DAY OF OBSERVANCE OF MEMORIAL DAY.

(a) DESIGNATION OF LEGAL PUBLIC HOLIDAY.—Section 6103(a) of title 5, United States Code, is amended by striking ''Memorial Day, the last Monday in May.'' and inserting the following:

''Memorial Day, May 30.''.

(b) OBSERVANCES AND CEREMONIES.—Section 116 of title 36, United States Code, is amended—

(1) in subsection (a), by striking ''The last Monday in May'' and inserting ''May 30''; and

(2) in subsection (b)—

(A) by striking ''and'' at the end of paragraph (3);

(B) by redesignating paragraph (4) as paragraph (5); and

(C) by inserting after paragraph (3) the following:

''(4) calling on the people of the United States to observe Memorial Day as a day of ceremonies to show respect for United States veterans of wars and other military conflicts; and''.

(c) DISPLAY OF FLAG.—

(1) TIME AND OCCASIONS FOR FLAG DISPLAY.—Section 6(d) of title 4, United States Code, is amended by striking ''the last Monday in May;'' and inserting ''May 30;''.

(2) NATIONAL LEAGUE OF FAMILIES POW/MIA FLAG.—Section 902(c)(1)(B) of title 36, United States Code, is amended by striking ''the last Monday in May'' and inserting ''May 30''.

By Ms. CANTWELL (for herself and Mr. FRANKEN):

S. 74. A bill to preserve the free and open nature of the Internet, expand the benefits of broadband, and promote

universally available and affordable broadband service; to the Committee on Commerce, Science, and Transportation.

Ms. CANTWELL. Mr. President, I rise today to introduce legislation that will preserve the free and open Internet that has led to the growth of broadband.

The broadband Internet is integral to U.S. job creation, economic growth, education, civic engagement, and innovation.

The network design principles fostering the development of the broadband Internet to date, an end-to-end design, layered architecture, and open standards, promotes innovation at the edge of the network and gives end users choice and control of their online activities.

These network design principles have led to the network neutrality of the Internet, where there are no paid-for premium fast lanes and best-effort slow lanes.

Today, broadband providers have access to technology and an economic incentive to favor their own or affiliated services, content, and applications; and discriminate against other providers of services content, and applications.

If our Nation is to achieve the ambitious broadband goals put forward in the National Broadband Plan, the U.S. needs a clear Federal policy that preserves the historically free and open nature of the Internet.

The policy must apply to all broadband Internet access service providers regardless of the means by which they reach the end user.

As you know, the FCC released its net neutrality rules last fall.

I consider the Commission's actions to be completely within the bounds of its authority.

The Chevron deference courts give agencies is rather broad.

A quick read of the 2005 U.S. Supreme Court's Brand X decision tells you all you need to know.

Former FCC Chairman Powell was very creative in his approach to deregulating broadband over cable modem in 2002.

As you remember, one of the most conservative justices on the Supreme Court, Justice Scalia, voted against the FCC action saying more or less that what Chairman Powell did was an overreach.

Even so, the final decision was six to three in favor of the FCC. That is how broad the Chevron deference is.

And because of the meticulous way Chairman Genachowski conducted the Commission's process, in the end, I am confident the court system will uphold its actions.

My issue with the Commission's net neutrality rules is that I do not think the Chairman was bold enough.

The Commission should have issued one set of rules that covered broadband delivered over wireline, wireless, or some combination of the two. Everyone realizes that the future of broadband is wireless. And with the rollout of 4–G wireless services, that future is with us now.

The Commission should not have kept open the door for any pay-for-priority schemes. It will lead to a tiered Internet, where broadband Internet service providers have the incentive to create artificial bandwidth shortages to maximize profits, rather than invest in new capacity.

The Commission also needed to get the definitions of broadband and reasonable network management right. One was too broad and one too narrow. The wording in definitions is negotiated over fiercely because, if not crafted properly, it can lead to loopholes that severely undercut the effectiveness of the rules.

More fundamentally, the Commission should have reclassified broadband Internet access into Title II of the communications act and forebear from regulation all of the elements more appropriate to Title I. It would have taken the Commission a lot more time and resources, but getting net neutrality right is that important, because this is the foundation that all broadband rules and regulations will be built on going forward.

It is surprising that as weak as these rules are they have stirred up so much vitriol.

I know this body will be taking up this matter another day.

My legislation puts in statute strong net neutrality protections, takes steps to promote broadband adoption, and provides consumer protection for broadband end users.

First I want to acknowledge the leadership of our former colleague Senator Dorgan on this issue.

The bill builds on what we started working together on last fall.

It also borrows some of the good ideas of Mr. MARKEY and Ms. ESHOO in the House.

At a high level my legislation creates a new section in Title II of the Communications Act that codifies the six new neutrality principles in the FCC's November 2009 notice of proposed rulemaking for preserving the open Internet.

My legislation adds a few things to the FCC's list. For example, my legislation also prohibits broadband operators from requiring content, service, or application providers from paying for prioritized delivery of their IP packets; more commonly referred to as pay-for priority. It also requires broadband providers to interconnect with middle-mile broadband providers on just and reasonable terms and conditions.

All of this is subject to reasonable network management as defined. And it applies to all broadband Internet platforms—wireline and wireless.

My legislation takes several steps to promote the adoption of broadband, steps such as requiring broadband providers to provide service upon reasonable request by an end user; and requiring broadband providers to offer standalone broadband at reasonable rates, terms and conditions.

My legislation increases consumer protections because all charges, practices, classifications, regulations, for and in connection with the broadband Internet access service must be just and reasonable.

My legislation directs the FCC to come up with enforcement mechanisms. End users, who include individuals, businesses of all sizes, non-for-profit organization, and others, can file a complaint either at the FCC or at a U.S. District Court, but not both. Additionally, State Attorneys General can file on behalf of their residents and seek either to enforce the act or to seek civil penalties.

My legislation supports continued broadband investment, innovation, and jobs.

Let me explain.

First innovation. With the Internet's end-to-end design, innovation is at the edge of the network in the hands of the end users. New ideas for online content, application, and services do not need the permission of the centralized network operator to become successful. Without net neutrality protections, I foresee situations arising that will chill innovation.

For example, if a broadband provider has a partnership with company A to provide end users a certain on-line service, and new company B comes up with a better value proposition for providing that same on-line service, how many believe that the broadband provider will allow company B get access to its end users with the same bandwidth or quality-of-service assurances, particularly if Company A gives a portion of its revenues from that on-line service to the broadband provider.

Experience has taught me that the most promising path to developing an innovation into a new on-line product or service is hard to predict, if one can do it at all. If broadband Internet access service provider end up on the critical path for successful commercialization of on-line innovations, the path to success will be all the much harder. The language in my bill tries to prevent these types of situations from happening.

This leads to my second point, the chilling of investment without effective net neutrality rules.

Take the situation where an early stage online company is seeking venture capital investments. The first question any responsible VC will ask is whether the following list of large broadband providers are on-board with the online product or service. Because if there is a situation, as in my example on innovation, where the large broadband provider has a partnership with the early stage companies' entrenched competitor, it is going to be difficult, if not impossible to raise funds. Basically, the blessing of broadband providers will become essential to obtaining VC investment of any magnitude. How to get large broadband

providers on board will become a key part of every business plan. Broadband providers would then become gatekeepers to online innovation and investment.

Broadband investment can also be chilled a second way. The logical extension of pay-for-priority is a tiered Internet with premium fast lanes and best effort slow lanes. With a tiered Internet, it becomes more profitable to create an artificial bandwidth shortage rather than in investing to increase broadband capacity of the local network.

The reason is that it is easier to adjust pricing policies than forecast the optimum level of investment and be able to finance it at favorable rates. Recall the Internet bubble about a decade ago. That is why I believe that if pay-for-priority exists, it will ultimately lead to a lower level of broadband investment that would occur otherwise.

I agree with the need for broadband providers to upgrade the quality of their network and increase the available bandwidth to meet the anticipated market demand. If end users want more bandwidth or quality-of-service assurances they should be willing to pay for it. It is that simple. I have no issue with allowing broadband providers explore different pricing options for consumers. My bill doesn't prevent that.

Third jobs. Since the advent of the broadband age, there have been more high-value-added, high-paying jobs created by companies operating at the edge of the network than companies at the center of the network. And because of chilled investment and other restrictions, without net neutrality rules, I believe we will experience a lower rate of growth of broadband-enabled jobs.

Let me close by saying that I bring a unique perspective to the policy discussion over net neutrality by virtue of working in the tech industry during the dial-up age and early years of broadband.

To put things in perspective, the ideas and language that became the Telecommunications Act of 1996 was coming together around the time Netscape 1.0 was being introduced commercially.

Whether intentionally or unintentionally, that 1996 Telecom Act accelerated the roll out of broadband, even though the word Internet appeared less then one dozen times. It set the wheels in motion by allowing local competition to the offspring of Ma Bell, allowing telecom companies to offer video programming, and allowing cable companies to offer telecom service.

Cable companies responded to this competitive threat, and that from the satellite TV companies due to the Satellite Home Viewing Act, by making infrastructure investments that allowed them to offer new broadband service over cable modem.

Competitive Local Exchange Carriers, taking advantage of their new ability to line share and access unbundled network elements, also saw the competitive benefits of offering broadband service.

The traditional telecom companies, well, at the time they seemed focused on trying to reassemble Ma Bell and having us all buy an extra, dedicated landline or two for dial up service.

Eventually, the competitive pressure did drive them to make the necessary investment to offer broadband.

The business models for delivering broadband Internet access differed than that of dial-up. In their heyday, ISPs such as AOL, CompuServe, and Prodigy did not own their own infrastructure; they leased telecom transmission capacity from third parties telecom companies. With broadband, for a number of reasons, there came the much greater vertical integration of the ISP and transmission capacity.

Looking back, broadband over cable modem flourished under Title II through 2002, until the FCC deregulated it. Similarly, broadband over landlines flourished under Title II through 2005, until Chairman Martin's deregulated it in the wake of the Brand X decision.

As Senator Dorgan used to say, having broadband under Title II ensured that there was a broadband cop on the beat.

If there were functioning local markets for broadband services, consumers would have true choices, and I might think differently about the need for legislation. Unfortunately end users in most communities have a limited number of choices at best when it comes to broadband Internet access services.

At its most basic, that is why we need to return that broadband cop to the beat. My bill will do that, and do that without regulating the Internet.

It will achieve the regulatory certainty industry seems to clamoring for by having the net neutrality protection in statute rather than left to agency rule and the politics of each succeeding administration.

I don't claim that this bill is a perfect bill. It lays down a marker for where we should start the discussion.

Given the complexity of the Internet ecosystem, any legislation will have to be worked through by the Commerce Committee. There are always details, details, and more details with respect to business models and usage cases that need to be considered. For these reasons I recognize that the Commission will need some flexibility in implementing the statute and I believe my language will provide them with just enough.

My bill will preserve an open and free Internet, allow for broadband's continued growth, and the economic growth and jobs that it will create.

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. 74

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 ''Internet Freedom, Broadband Promotion, and Consumer Protection Act of 2011''.

SEC. 2. FINDINGS.

The Congress finds the following:

(1) Two-way communications networks constitute basic infrastructure that is as essential to our national economy as roads and electricity.

(2) The broadband Internet constitutes the most important two-way communications infrastructure of our time.

(3) Access to the broadband Internet is critical for job creation, economic growth, and technological innovation.

(4) Access to the broadband Internet creates opportunity for more direct civic engagement, increased educational attainment, and enables free speech.

(5) The network design principles fostering the development of the broadband Internet to date, an end-to-end design, layered architecture, and open standards, promotes innovation at the edge of the network and gives end users choice and control of their online activities.

(6) These network design principles have led to the network neutrality of the Internet, where there are no paid for premium fast lanes and best effort slow lanes.

(7) According to the Federal Communications Commission in 2009, technologies now allow network operators to distinguish different classes of Internet traffic, to offer different qualities-of-service, and to charge different prices to each class of Internet traffic.

(8) Broadband Internet access service providers have an economic interest to discriminate in favor of their own or affiliated services, content, and applications and against other providers of such services, content, and applications.

(9) Broadband Internet access service providers have an economic interest in, and the ability to adopt, pay-for-priority schemes to the detriment of job creation, economic growth, innovation, and consumer protections.

(10) The market for broadband today demonstrates substantial obstacles to effective competition, to the protection of users, and to the continued viability of a free and open Internet.

(11) These obstacles impede the universal deployment and adoption of broadband, impede meeting the goals set forth in the National Broadband Plan, and perpetuate a digital divide.

(12) The United States needs clear Federal policy that preserves the historically free and open nature of the Internet, expands the benefits of broadband, and promotes universally available and affordable broadband service that does not chill innovation or speech within the content, applications, and services available online.

(13) The Federal policy to ensure that the Internet remains free and open must apply equally to all broadband Internet access services, regardless of whether those services use wire, radio, or some combination of those means to reach the end user.

SEC. 3. INTERNET FREEDOM.

Title II of the Communications Act of 1934 (47 U.S.C. 201 et seq.) is amended by adding at the end the following:

''SEC. 280. INTERNET FREEDOM AND BROADBAND PROMOTION.

''(a) PURPOSES.—The purposes of this section are—

''(1) to promote increased availability and adoption of broadband for all Americans;

''(2) to promote consumer choice and competition among broadband Internet access service providers and among providers of lawful content, applications, and services; and

''(3) to protect consumers, innovators and entrepreneurs from harmful, discriminatory, or anti-competitive behavior by providers of broadband Internet access service.

''(b) BROADBAND INTERNET ACCESS SERVICE AND CHARGES.—

''(1) It shall be the duty of every broadband Internet access service provider to furnish such broadband Internet access service to end users upon reasonable request.

''(2) Broadband Internet access service providers shall not require end users to purchase voice grade telephone service, commercial mobile radio voice services, or multichannel-video programming distribution services or other specialized services as a condition on the purchase of any broadband Internet access service.

''(3) All charges, practices, classifications, and regulations for and in connection with broadband Internet access service shall be just and reasonable.

''(4) If a broadband Internet access service provider allows its end users to request quality-of-service assurances for the transmission of Internet protocol packets associated with its own applications, services, or content or that of its affiliates, then—

''(A) the broadband Internet access service provider shall permit such assurances for all Internet Protocol packets chosen by the end user, without regard to the content, applications, or services involved; and

''(B) any quality-of-service assurance shall not block, interfere with, or degrade, any other end user's access to the content, applications, and services of their choice.

''(c) ENSURING OPEN ACCESS TO THE BROADBAND INTERNET.—A broadband Internet access service provider may not unjustly or unreasonably—

''(1) block, interfere with, or degrade an end user's ability to access, use, send, post, receive, or offer lawful content (including fair use), applications, or services of the user's choice;

''(2) block, interfere with, or degrade an end user's ability to connect and use the end user's choice of legal devices that do not harm the network;

''(3) prevent or interfere with competition among network, applications, service or content providers;

''(4) engage in discrimination against any lawful Internet content, application, service, or service provider with respect to network management practices, network performance characteristics, or commercial terms and conditions;

''(5) give preference to affiliated content, applications, or services with respect to network management practices, network performance characteristics, or commercial terms and conditions;

''(6) charge a content, application, or service provider for access to the broadband Internet access service providers' end users based on differing levels of quality of service or prioritized delivery of Internet protocol packets;

''(7) prioritize among or between content, applications, and services, or among or between different types of content, applications, and services unless the end user requests to have such prioritization;

''(8) install or utilize network features, functions, or capabilities that prevent or interfere with compliance with the requirements of this section; or

''(9) refuse to interconnect on just and reasonable terms and conditions.

''(d) REASONABLE NETWORK MANAGEMENT.—

''(1) IN GENERAL.—Nothing in this section shall prohibit a broadband Internet access service provider from engaging in reasonable network management.

''(2) REASONABLENESS PRESUMPTION.—For purposes of this section, a network management practice is presumed to be reasonable for a broadband Internet access service provider only if it is—

''(A) essential for a legitimate network management purpose assuring the operation of the network;

''(B) appropriate for achieving the stated purpose;

''(C) narrowly tailored; and

''(D) among the least restrictive, least discriminatory, and least constricting of consumer choice available.

''(3) FACTORS TO BE CONSIDERED.—In determining whether a network management practice is reasonable, the Commission shall take into account the particular network architecture and any technology and operational limitations of the broadband Internet access service provider.

''(4) LIMITATION.—A network management practice may not be considered to be a reasonable network management if the broadband Internet access service provider charges content, applications, or other online service providers for differing levels of quality of service or prioritized delivery of Internet Protocol packets.

''(e) OTHER REGULATED SERVICES.—This section shall not be construed to prevent broadband Internet access service providers from offering interconnected Voice over Internet Protocol (VoIP) services or multichannel-video programming distribution services regulated under title VI of this Act on transmission capacity also used by broadband Internet access services.

''(f) TRANSPARENCY.—

''(1) IN GENERAL.—A provider of broadband Internet access service—

''(A) shall disclose publicly on its external website and at the point of sale accurate information regarding the network management practices, network performance, and commercial terms of its broadband Internet access service in plain language sufficient for end users to make informed choices regarding use of such services, and for content, application, service, and device providers to develop, market, and maintain Internet offerings; and

''(B) shall disclose publicly on its external website and at the point of sale any other practices that affect communications between a user and a content, application, or service provider in the ordinary, routine use of such broadband service.

''(2) EXEMPTIONS.—The Commission may exempt certain kinds of information from disclosure on the grounds that it is competitively sensitive or could compromise network security.Within 90 days after the date of enactment of the Internet Freedom, Broadband Promotion, and Consumer Protection Act of 2011, the Commission shall conclude a rulemaking proceeding to implement this subsection.

''(g) STAND-ALONE INTERNET ACCESS SERVICE.—

''(1) IN GENERAL.—Within 180 days after the date of enactment of the Internet Freedom, Broadband Promotion, and Consumer Protection Act of 2011, the Commission shall promulgate rules to ensure that broadband Internet access providers do not require the purchase of voice grade telephone service, commercial mobile radio voice services, or multichannel-video programming distribution services as a condition of purchasing any broadband Internet access service, and that the rates, terms, and conditions for providing such service are just and reasonable.

''(2) REPORT.—In the report required by section 706 of the Telecommunications Act of 1996 (47 U.S.C. 1302), the Commission shall collect information on the availability, promotion, average speed, and average pricing of stand-alone broadband Internet access service offered by broadband Internet access providers.

''(3) ELIGIBILITY TO ACCESS ANY UNIVERSAL SERVICE FUND FOR BROADBAND.—If the Commission establishes a universal service fund for broadband Internet services, only broadband Internet access service providers that offer stand-alone broadband service shall be eligible to participate in the fund.

''(h) ENFORCEMENT, LIABILITY, AND RECOVERY OF DAMAGES.—

''(1) EXPEDITED COMPLAINT PROCESS.—Within 180 days after the date of enactment of the Internet Freedom, Broadband Promotion, and Consumer Protection Act of 2011, the Commission shall prescribe rules to permit any aggrieved person to file a complaint with the Commission concerning a violation of subsections (b), (c), or (g) of this section, and establish enforcement and expedited adjudicatory review procedures including the resolution of complaints not later than 90 days after such complaint was filed, except for good cause shown.

''(2) LIBILITY OF BROADBAND INTERNET ACCESS SERVICE PROVIDERS FOR DAMAGES.—If a broadband Internet access service provider does, or causes or permits to be done, any act, matter, or thing that is prohibited under this section, or fails to do any act, matter, or thing required by this section to be done, the provider shall be liable to the person or persons injured thereby for the full amount of damages sustained in consequence of any such violation of the provisions of this section, together with a reasonable counsel or attorney's fee, as determined by the Commission.

''(3) VENUE.—Any person claiming to be damaged by any broadband Internet access provider subject to the provisions of this section may either make a complaint to the Commission as provided for in paragraph (1), or may bring suit for the recovery of the damages in a district court of the United States that meets applicable requirements relating to venue under section 1391 of title 28, United States Code. A claimant may not bring an action in a Federal district court if the claimant has filed a complaint with the Commission under paragraph (1) with respect to the same violation.

''(i) ENFORCEMENT BY STATES.—

''(1) IN GENERAL.—The chief legal officer of a State, or any other State officer authorized by law to bring actions on behalf of the residents of a State, may bring a civil action, as parens patriae, on behalf of the residents of that State in an appropriate district court of the United States to enforce this section or to impose civil penalties for violation of this section, whenever the chief legal officer or other State officer has reason to believe that the interests of the residents of the State have been or are being threatened or adversely affected by a violation of this section.

''(2) NOTICE.—The chief legal officer or other State officer shall serve written notice on the Commission of any civil action under paragraph (1) prior to initiating such civil action. The notice shall include a copy of the complaint to be filed to initiate such civil action, except that if it is not feasible for the State to provide such prior notice, the State shall provide such notice immediately upon instituting such civil action.

''(3) AUTHORITY TO INTERVENE.—Upon receiving the notice required by paragraph (2), the Commission shall have the right—

''(A) to intervene in the action;

''(B) upon so intervening, to be heard on all matters arising therein; and

''(C) to file petitions for appeal.

''(4) RULE OF CONSTRUCTION.—For purposes of bringing any civil action under paragraph (1), nothing in this subsection shall prevent the chief legal officer or other State officer from exercising the powers conferred on that officer by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence

''(5) VENUE; SERVICE OF PROCESS.—

''(A) VENUE.—An action brought under paragraph (1) shall be brought in a district court of the United States that meets applicable requirements relating to venue under section 1391 of title 28, United States Code.

''(B) SERVICE OF PROCESS.—In an action brought under paragraph (1)—

''(i) process may be served without regard to the territorial limits of the district or of the State in which the action is instituted; and

''(ii) a person who participated in an alleged violation that is being litigated in the civil action may be joined in the civil action without regard to the residence of the person.

''(j) COMMISSION AUTHORITY.—The Commission may perform any and all acts, make such rules and regulations and issue such orders, not inconsistent with this section, as may be necessary to implement the purposes of this section.

''(k) OTHER LAWS AND CONSIDERATIONS.—

''(1) Nothing in this section supersedes any obligation or authorization a provider or broadband Internet access service may have to address the needs of emergency communications or law enforcement, public safety, or national security authorities, consistent with or as permitted by applicable law, or limits the provider's ability to do so.

''(2) Nothing in this section authorizes a provider of broadband Internet access service to address copyright infringement or other unlawful activity of providers, subscribers, or users, beyond its obligations under the Digital Millennium Copyright Act (17 U.S.C. 101 note), the amendments made by that Act, and consistent other applicable laws.

''(l) STUDIES.—Within one-year after the date of enactment of this Act the Government Accountability Office shall complete and submit reports to the Senate Committee on Commerce, Science, and Transportation, and the House Committee on Energy and Commerce, on the evolution of commercial and other arrangements by which broadband Internet access service providers interconnect to Internet backbone providers and intermediary networks, and assess whether, as the volume and mix of Internet Protocol traffic requested by and transported to and from the customers of broadband Internet access service providers has changed over time, there is a market failure with respect to the existing market mechanisms of transit contracts and non-settlement peering agreements.

''(m) DEFINITIONS.—In this section:

''(1) AFFILIATED.—The term 'affiliated' includes—

''(A) a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with another person; and

''(B) a person that has a contract or other arrangement with a content, application, or service provider relating to access to or distribution of such content, application or services over the Internet.

''(2) BROADBAND INTERNET ACCESS.—The term 'broadband Internet access'—

''(A) means the ability for an end user to transmit and receive data to the Internet using Internet Protocol at peak download data transfer rates in excess of 200 kilobits per second, through an always-on connection; but

''(B) does not include dial-up access requiring an end user to initiate a call across the public switched telephone network to establish a connection.

''(3) BROADBAND INTERNET ACCESS SERVICE.—The term 'broadband Internet access service' means any communications service by wire or radio that provides broadband Internet access directly to the public, or to such classes of users as to be effectively available directly to the public.

''(4) BROADBAND INTERNET ACCESS SERVICE PROVIDER.—The term 'broadband Internet access service provider' means a person or entity that operates or resells and controls any facility used to provide an Internet access service directly to the public, whether provided for a fee or for free, and whether provided via wire or radio, except when such service is offered as an incidental component of a noncommunications contractual relationship.

''(5) END USER.—The term 'end user' means any person who, by way of a broadband service, takes and utilizes Internet services, whether provided for a fee, in exchange for an explicit benefit, or for free.''.

''(6) INTERNET.—The term 'Internet' means a system of interconnected networks that use the Internet Protocol for communications with resources or endpoints reachable, directly or through a proxy, via a globally unique Internet address assigned by the Internet Assigned Numbers Authority or any successor or designee; or any technology the Commission shall find to be functionally equivalent.

''(7) INTERCONNECTED VOICE OVER INTERNET PROTOCOL (VOIP) SERVICE.—The term 'Interconnected VoIP service' means a service that enables real-time, two-way voice communications; requires a broadband connection from the user's location; requires Internet protocol compatible customer premises equipment; and permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network subject to section 9.3 of the Commission's regulations (47 C.F.R. 9.3).

By Mr. KOHL (for himself, Mrs. FEINSTEIN, Mr. DURBIN, Mr. WHITEHOUSE, Ms. KLOBUCHAR, Mr. FRANKEN, and Mr. WYDEN):

S. 75. A bill to restore the rule that agreements between manufacturers and retailers, distributors, or wholesalers to set the minimum price below which the manufacturer's product or service cannot be sold violates the Sherman Act; to the Committee on the Judiciary.

Mr. KOHL. Mr. President, I rise today to introduce legislation essential to consumers receiving the best prices on every product from electronics to clothing to groceries. My bill, the Discount Pricing Consumer Protection Act, will restore the nearly century old rule that it is illegal under antitrust law for a manufacturer to set a minimum price below which a retailer cannot sell the manufacturer's product, a practice known as ''resale price maintenance'' or ''vertical price fixing.'' This bill wil ensure that consumers can obtain discount prices at the very time they need them the most.

In June 2007, overturning a 96-year-old precedent, a narrow 5–4 Supreme Court majority in the Leegin case turned the Sherman Act on its head to overturn this basic rule of the marketplace which has served consumers well for nearly a century. My bill—identical to legislation I introduced in the last two Congresses—will correct this misinterpretation of antitrust law and restore the per se ban on vertical price fixing. My bill has been endorsed by the National Association of Attorneys General, 38 state attorneys general, as well as numerous antitrust experts, including former FTC Chairman Pitofsky and former FTC Commissioner Harbour, and the leading consumer groups, including Consumers Union, the Consumers Federation of America, and the American Antitrust Institute. This legislation passed the Judiciary Committee last year.

The reasons for this legislation are compelling. Allowing manufacturers to set minimum retail prices will threaten the very existence of discounting and discount stores, and lead to higher prices for consumers. For nearly a century the rule against vertical price fixing permitted discounters to sell goods at the most competitive price. Many credit this rule with the rise of today's low price, discount retail giants—stores like Target, Best Buy, Walmart, and the internet sites Amazon and EBay, which offer consumers a wide array of highly desired products at discount prices.

Ample evidence exists of the pernicious effect of allowing vertical price fixing. For nearly 40 years until 1975 when Congress passed the Consumer Goods Pricing Act, Federal law permitted States to enact so-called ''fair trade'' laws legalizing vertical price fixing. Studies the Department of Justice conducted in the late 1960s indicated that prices were between 18–27 percent higher in the States that allowed vertical price fixing than the States that had not passed such ''fair trade'' laws, costing consumers at least $2.1 billion per year at that time.

Given the tremendous economic growth in the intervening decades, the likely harm to consumers if vertical price fixing were permitted is even greater today. In his dissenting opinion in the Leegin case, Justice Breyer estimated that if only 10 percent of manufacturers engaged in vertical price fixing, the volume of commerce affected today would be $300 billion, translating into retail bills that would average $750 to $1,000 higher for the average family of four every year.

The experience of the last three years since the Leegin decision has begun to confirm our fears regarding the dangers from permitting vertical price fixing. The Wall Street Journal has reported that more than 5,000 companies have implemented minimum pricing policies. A new business—known as ''internet monitors''—has materialized for companies that scour the Internet in search of retailers selling products at a bargain. When such bargain sellers are detected, the manufacturer is alerted so that they can demand the seller

end its discounting. There have been many reports of everything from consumer electronics and video games to baby products and toys, rental cars and bicycles being subject to minimum retail pricing policies.

Defenders of the Leegin decision argue that today's giant retailers such as Wal-Mart, Best Buy or Target can ''take care of themselves'' and have sufficient market power to fight manufacturer efforts to impose retail prices. Whatever the merits of that argument, I am particularly worried about the effect of this new rule permitting minimum vertical price fixing on the next generation of discount retailers. If new discount retailers can be prevented from selling products at a discount at the behest of an established retailer worried about the competition, we will imperil an essential element of retail competition so beneficial to consumers.

In overturning the per se ban on vertical price fixing, the Supreme Court in Leegin announced this practice should instead be evaluated under what is known as the ''rule of reason.'' Under the rule of reason, a business practice is illegal only if it imposes an ''unreasonable'' restraint on competition. The burden is on the party challenging the practice to prove in court that the anti-competitive effects of the practice outweigh its justifications. In the words of the Supreme Court, the party challenging the practice must establish the restraint's ''history, nature and effect.'' Whether the businesses involved possess market power ''is a further, significant consideration'' under the rule of reason.

In short, establishing that any specific example of vertical price fixing violates the rule of reason is an onerous and difficult burden for a plaintiff in an antitrust case. Parties complaining about vertical price fixing are likely to be small discount stores or consumers with limited resources to engage in lengthy and complicated antitrust litigation. These plaintiffs are unlikely to possess the facts and complicated economic evidence necessary to make the extensive showing necessary to prove a case under the ''rule of reason.'' In the words of former FTC Commissioner Pamela Jones Harbour, applying the rule of reason to vertical price fixing ''is a virtual euphemism for per se legality.''

Our Antitrust Subcommittee conducted two extensive hearings into the Leegin decision and the likely effects of abolishing the ban on vertical price fixing in the last two Congresses. Both former FTC Chairman Robert Pitofsky and former FTC Commissioner Harbour strongly endorsed restoring the ban on vertical price fixing. Marcy Syms, CEO of the Syms discount clothing stores, and a senior executive of the Burlington Coat Factory discount chain testified as well, both citing the likely dangers to the ability of discounters such as Syms to survive after abolition of the rule against vertical price fixing. Ms. Syms also stated that ''it would be very unlikely for her to bring an antitrust suit'' challenging vertical price fixing under the rule of reason because her company ''would not have the resources, knowledge or a strong enough position in the market place to make such action prudent.'' Our examination of this issue has produced compelling evidence for the continued necessity of a ban on vertical price fixing to protect discounting and low prices for consumers.

The Discount Pricing Consumer Protection Act will accomplish this goal. My legislation is quite simple and direct. It would simply add one sentence to Section 1 of the Sherman Act—the basic provision addressing combinations in restraint of trade—a statement that any agreement with a retailer, wholesaler or distributor setting a price below which a product or service cannot be sold violates the law. No balancing or protracted legal proceedings will be necessary. Should a manufacturer enter into such an agreement it will unquestionably violate antitrust law. The uncertainty and legal impediments to antitrust enforcement of vertical price fixing will be replaced by simple and clear legal rule—a legal rule that will promote low prices and discount competition to the benefit of consumers every day.

In the last few decades, millions of consumers have benefited from an explosion of retail competition from new large discounters in virtually every product, from clothing to electronics to groceries, in both ''big box'' stores and on the Internet. Our legislation will correct the Supreme Court's abrupt change to antitrust law, and will ensure that today's vibrant competitive retail marketplace and the savings gained by American consumers from discounting will not be jeopardized by the abolition of the ban on vertical price fixing. I urge my colleagues to support this bill.

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. 75

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 ''Discount Pricing Consumer Protection Act''.

SEC. 2. STATEMENT OF FINDINGS AND DECLARATION OF PURPOSES.

(a) FINDINGS.—Congress finds the following:

(1) From 1911 in the *Dr. Miles* decision until June 2007 in the *Leegin* decision, the Supreme Court had ruled that the Sherman Act forbid in all circumstances the practice of a manufacturer setting a minimum price below which any retailer, wholesaler or distributor could not sell the manufacturer's product (the practice of ''resale price maintenance'' or ''vertical price fixing'').

(2) The rule of per se illegality forbidding resale price maintenance promoted price competition and the practice of discounting all to the substantial benefit of consumers and the health of the economy.

(3) Many economic studies showed that the rule against resale price maintenance led to lower prices and promoted consumer welfare.

(4) Abandoning the rule against resale price maintenance will likely lead to higher prices paid by consumers and substantially harms the ability of discount retail stores to compete. For 40 years prior to 1975, Federal law permitted states to enact so-called ''fair trade'' laws allowing vertical price fixing. Studies conducted by the Department of Justice in the late 1960s indicated that retail prices were between 18 and 27 percent higher in states that allowed vertical price fixing than those that did not. Likewise, a 1983 study by the Bureau of Economics of the Federal Trade Commission found that, in most cases, resale price maintenance increased the prices of products sold.

(5) The 5–4 decision of the Supreme Court majority in *Leegin* incorrectly interpreted the Sherman Act and improperly disregarded 96 years of antitrust law precedent in overturning the per se rule against resale price maintenance.

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

(1) to correct the Supreme Court's mistaken interpretation of the Sherman Act in the *Leegin* decision; and

(2) to restore the rule that agreements between manufacturers and retailers, distributors or wholesalers to set the minimum price below which the manufacturer's product or service cannot be sold violates the Sherman Act.

SEC. 3. PROHIBITION ON VERTICAL PRICE FIXING.

(a) AMENDMENT TO THE SHERMAN ACT.—Section 1 of the Sherman Act (15 U.S.C. 1) is amended by adding after the first sentence the following: ''Any contract, combination, conspiracy or agreement setting a minimum price below which a product or service cannot be sold by a retailer, wholesaler, or distributor shall violate this Act.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect 90 days after the date of enactment of this Act.

By Mrs. HUTCHISON (for herself, Mr. BEGICH, Mr. BARRASSO, Mr. CORNYN, Mr. ALEXANDER, and Mr. THUNE):

S. 80. A bill to provide a permanent deduction for State and local general sales taxes; to the Committee on Finance.

Mrs. HUTCHISON. Mr. President, I am pleased to introduce a bill to permanently correct an injustice in the tax code that has harmed citizens in many States of this great Nation.

State and local governments have various alternatives for raising revenue. Some levy income taxes, some use sales taxes, and others use a combination of the two. The citizens who pay State and local income taxes have been able to offset some of their Federal income taxes by receiving a deduction for those State and local income taxes. Before 1986, taxpayers also had the ability to deduct their sales taxes.

The philosophy behind these deductions is simple: people should not have to pay taxes on their taxes. The money that people must give to one level of government should not also be taxed by another level of government.

Unfortunately, citizens of some States were treated differently after

1986 when the deduction for State and local sales taxes was eliminated. This discriminated against those living in States, such as my home State of Texas, with no income taxes. It is important to remember the lack of an income tax does not mean citizens in these States do not pay State taxes; revenues are simply collected differently.

It is unfair to give citizens from some States a deduction for the revenue they provide their State and local governments, while not doing the same for citizens from other States. Federal tax law should not treat people differently on the basis of State residence and differing tax collection methods, and it should not provide an incentive for States to establish income taxes over sales taxes.

This discrepancy has a significant impact on Texas. According to the Texas Comptroller, extending the deduction would save Texans a projected $1.2 billion a year, or an average of $520 per filer claiming the deduction. The Texas Comptroller also estimates continuing the deduction is associated with 15,700 to 25,700 Texas jobs and $1.1 billion to $1.4 billion in gross state product.

Recognizing the inequity in the tax code, Congress reinstated the sales tax deduction in 2004 and authorized it for 2 years. Congress further extended the sales tax deduction in 2006 and 2008, respectively. On January 1, 2010, however, the sales tax deduction expired, and, for much of this past year, many Americans once again faced the prospect of paying Federal income taxes on their State and local sales taxes.

Fortunately, under the recent agreement to extend the broader tax relief for all Americans, Congress staved off the return of the sales tax deduction by extending it for 2 years, retroactive to January 1, 2010. However, this deduction is only in effect through 2011, and we must act to prevent the inequity from returning.

The legislation I am offering today will fix this problem for good by making the State and local sales tax deduction permanent. This will permanently end the discrimination suffered by my fellow Texans and citizens of other States who do not have the option of an income tax deduction.

This legislation is about reestablishing equity to the tax code and defending the important principle of eliminating taxes on taxes. I hope my fellow Senators will support this effort and pass this legislation, and I appreciate the backing of Senators BARRASSO, BEGICH, CORNYN, ALEXANDER, ENZI and THUNE who have already signed on as co-sponsors.

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. 80

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

SECTION 1. PERMANENT EXTENSION OF DEDUCTION FOR STATE AND LOCAL GENERAL SALES TAXES.

(a) IN GENERAL.—Subparagraph (I) of section 164(b)(5) of the Internal Revenue Code of 1986, as amended by section 722 of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, is amended by striking '', and before January 1, 2012''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2011.

By Mr. REID (for Mrs. FEINSTEIN (for herself and Mrs. BOXER):–

S. 97. A bill to amend the Federal Water Pollution Control Act to establish a grant program to support the restoration of San Francisco Bay; to the Committee on Environment and Public Works.

Mr. REID for Mrs. FEINSTEIN. Mr. President, I rise on behalf of myself and Senator BOXER to introduce legislation to further the restoration of the San Francisco Bay.

There are many areas in the country in which restoration is done, and I am pleased to introduce an authorization for restoration work in the San Francisco Bay with Senator BOXER, Chairwoman of the Senate Environment and Public Works Committee. Companion legislation will also be introduced in the U.S. House of Representatives by Congresswoman JACKIE SPEIER.

As Chair of the Appropriations Subcommittee on Interior, Environment, and Related Agencies, I secured $17 million in Federal funding for ecosystem restoration and water quality work in the San Francisco Bay in the last three years. I also secured $15 million since 2006 for the Fish and Wildlife Service to restore salt ponds to tidal wetlands in the Bay.

It is necessary to ensure that these funds continue to be appropriated and are spent on the most important projects for the ecosystem and public benefit.

To that end, this legislation will prioritize funding for projects that will protect and restore vital estuarine habitat for migratory waterfowl, shorebirds, and wildlife; improve and restore water quality and rearing habitat for fish; and ensure public benefits.

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. 97

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 ''San Francisco Bay Restoration Act''.

SEC. 2. SAN FRANCISCO BAY RESTORATION GRANT PROGRAM.

Title I of the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) is amended by adding at the end the following:

''SEC. 123. SAN FRANCISCO BAY RESTORATION GRANT PROGRAM.

''(a) DEFINITIONS.—In this section:

''(1) ANNUAL PRIORITY LIST.—The term 'annual priority list' means the annual priority list compiled under subsection (b).

''(2) COMPREHENSIVE PLAN.—The term 'comprehensive plan' means—

''(A) the comprehensive conservation and management plan approved under section 320 for the San Francisco Bay estuary; and

''(B) any amendments to that plan.

''(3) ESTUARY PARTNERSHIP.—The term 'Estuary Partnership' means the San Francisco Estuary Partnership, the entity that is designated as the management conference under section 320.

''(b) ANNUAL PRIORITY LIST.—

''(1) IN GENERAL.—After providing public notice, the Administrator shall annually compile a priority list identifying and prioritizing the activities, projects, and studies intended to be funded with the amounts made available under subsection (c).

''(2) INCLUSIONS.—The annual priority list compiled under paragraph (1) shall include—

''(A) activities, projects, or studies, including restoration projects and habitat improvement for fish, waterfowl, and wildlife, that advance the goals and objectives of the approved comprehensive plan;

''(B) information on the activities, projects, programs, or studies specified under subparagraph (A), including a description of—

''(i) the identities of the financial assistance recipients; and

''(ii) the communities to be served; and

''(C) the criteria and methods established by the Administrator for selection of activities, projects, and studies.

''(3) CONSULTATION.—In developing the priority list under paragraph (1), the Administrator shall consult with and consider the recommendations of—

''(A) the Estuary Partnership;

''(B) the State of California and affected local governments in the San Francisco Bay estuary watershed; and

''(C) any other relevant stakeholder involved with the protection and restoration of the San Francisco Bay estuary that the Administrator determines to be appropriate.

''(c) GRANT PROGRAM.—

''(1) IN GENERAL.—Pursuant to section 320, the Administrator may provide funding through cooperative agreements, grants, or other means to State and local agencies, special districts, and public or nonprofit agencies, institutions, and organizations, including the Estuary Partnership, for activities, studies, or projects identified on the annual priority list.

''(2) MAXIMUM AMOUNT OF GRANTS; NON-FEDERAL SHARE.—

''(A) MAXIMUM AMOUNT OF GRANTS.—Amounts provided to any individual or entity under this section for a fiscal year shall not exceed an amount equal to 75 percent of the total cost of any eligible activities that are to be carried out using those amounts.

''(B) NON-FEDERAL SHARE.—The non-Federal share of the total cost of any eligible activities that are carried out using amounts provided under this section shall be—

''(i) not less than 25 percent; and

''(ii) provided from non-Federal sources.

''(d) FUNDING.—

''(1) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Administrator to carry out this section such sums as are necessary for each of fiscal years 2012 through 2021.

''(2) ADMINISTRATIVE EXPENSES.—Of the amount made available to carry out this section for a fiscal year, the Administrator

shall use not more than 5 percent to pay administrative expenses incurred in carrying out this section.

''(3) RELATIONSHIP TO OTHER FUNDING.—Nothing in this section limits the eligibility of the Estuary Partnership to receive funding under section 320(g).

''(4) PROHIBITION.—No amounts made available under subsection (c) may be used for the administration of a management conference under section 320.''.

By Mr. BINGAMAN (for himself and Ms. MURKOWSKI):

S. 99. A bill to promote the production of molybdenum-99 in the United States for medical isotope production, and to condition and phase out the export of highly enriched uranium for the production of medical isotopes; to the Committee on Energy and Natural Resources.

Mr. BINGAMAN. Mr. President, today I am introducing the American Medical Isotopes Production Act of 2011. The purpose of the bill is to provide certainty in developing a domestic supply of molybdenum-99, which is used to produce technetium-99m, one of the most widely used medical isotopes in the United States. Right now we import all of our molybdenum-99 from outside the United States, primarily Canada and the Netherlands, from reactors that are old and that will most likely be shut down within the next 10 years. In addition, this bill moves us away from using highly enriched bomb-grade uranium targets to those that are low-enriched; that is, that are less than 20 percent in the fissile isotope uranium-235. I think this is a very important nonproliferation goal because the world is currently in discussion with Iran on replacing fuel and targets from their medical isotopes reactor; we should lead by example in dealing in this area with countries like Iran that can now enrich nuclear fuel.

The Committee on Energy and Natural Resources held a very detailed hearing on this topic last Congress. The bill we reported unanimously had a wide body of support among the medical isotopes and non-proliferation communities. I am attaching several letters from the last Congress as evidence of the wide support for this bill.

The new bill that I am introducing today is identical to the bill reported by the Committee in the last Congress, H.R. 3276, as amended. There are only two differences between this bill and the one from the last Congress. The authorization level has been lowered by $20 million to account for the fact that we are in fiscal year 2011 and not fiscal year 2010, and technical PAYGO language has been added.

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

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

S. 99

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 ''American Medical Isotopes Production Act of 2011''.

SEC. 2. IMPROVING THE RELIABILITY OF DOMESTIC MEDICAL ISOTOPE SUPPLY.

(a) MEDICAL ISOTOPE DEVELOPMENT PROJECTS.—

(1) IN GENERAL.—The Secretary of Energy shall establish a technology-neutral program—

(A) to evaluate and support projects for the production in the United States, without the use of highly enriched uranium, of significant quantities of molybdenum-99 for medical uses;

(B) to be carried out in cooperation with non-Federal entities; and

(C) the costs of which shall be shared in accordance with section 988 of the Energy Policy Act of 2005 (42 U.S.C. 16352).

(2) CRITERIA.—Projects shall be judged against the following primary criteria:

(A) The length of time necessary for the proposed project to begin production of molybdenum-99 for medical uses within the United States.

(B) The capability of the proposed project to produce a significant percentage of United States demand for molybdenum-99 for medical uses.

(C) The cost of the proposed project.

(3) EXEMPTION.—An existing reactor fueled with highly enriched uranium shall not be disqualified from the program if the Secretary of Energy determines that—

(A) there is no alternative nuclear reactor fuel, enriched in the isotope U-235 to less than 20 percent, that can be used in that reactor;

(B) the reactor operator has provided assurances that, whenever an alternative nuclear reactor fuel, enriched in the isotope U-235 to less than 20 percent, can be used in that reactor, it will use that alternative in lieu of highly enriched uranium; and

(C) the reactor operator has provided a current report on the status of its efforts to convert the reactor to an alternative nuclear reactor fuel enriched in the isotope U-235 to less than 20 percent, and an anticipated schedule for completion of conversion.

(4) PUBLIC PARTICIPATION AND REVIEW.—The Secretary of Energy shall—

(A) develop a program plan and annually update the program plan through public workshops; and

(B) use the Nuclear Science Advisory Committee to conduct annual reviews of the progress made in achieving the program goals.

(5) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Energy for carrying out the program under paragraph (1) $143,000,000 for the period encompassing fiscal years 2011 through 2014.

(b) DEVELOPMENT ASSISTANCE.—The Secretary of Energy shall establish a program to provide assistance for—

(1) the development of fuels, targets, and processes for domestic molybdenum-99 production that do not use highly enriched uranium; and

(2) commercial operations using the fuels, targets, and processes described in paragraph (1).

(c) URANIUM LEASE AND TAKE BACK.—The Secretary of Energy shall establish a program to make low enriched uranium available, through lease contracts, for irradiation for the production of molybdenum-99 for medical uses. The lease contracts shall provide for the Secretary to retain responsibility for the final disposition of radioactive waste created by the irradiation, processing, or purification of leased uranium. The lease contracts shall also provide for compensation in cash amounts equivalent to prevailing market rates for the sale of comparable uranium products and for compensation in cash amounts equivalent to the net present value of the cost to the Federal Government for the final disposition of such radioactive waste, provided that the discount rate used to determine the net present value of such costs shall be no greater than the average interest rate on marketable Treasury securities. The Secretary shall not barter or otherwise sell or transfer uranium in any form in exchange for services related to final disposition of the radioactive waste from such leased uranium.

SEC. 3. EXPORTS.

Section 134 of the Atomic Energy Act of 1954 (42 U.S.C. 2160d) is amended by striking subsections b. and c. and inserting in lieu thereof the following:

''b. Effective 7 years after the date of enactment of the American Medical Isotopes Production Act of 2011, the Commission may not issue a license for the export of highly enriched uranium from the United States for the purposes of medical isotope production.

''c. The period referred to in subsection b. may be extended for no more than 6 years if, no earlier than 6 years after the date of enactment of the American Medical Isotopes Production Act of 2011, the Secretary of Energy certifies to the Committee on Energy and Commerce of the House of Representatives and the Committee on Energy and Natural Resources of the Senate that—

''(1) there is insufficient global supply of molybdenum-99 produced without the use of highly enriched uranium available to satisfy the domestic United States market; and

''(2) the export of United States-origin highly enriched uranium for the purposes of medical isotope production is the most effective temporary means to increase the supply of molybdenum-99 to the domestic United States market.

''d. To ensure public review and comment, the development of the certification described in subsection c. shall be carried out through announcement in the Federal Register.

''e. At any time after the restriction of export licenses provided for in subsection b. becomes effective, if there is a critical shortage in the supply of molybdenum-99 available to satisfy the domestic United States medical isotope needs, the restriction of export licenses may be suspended for a period of no more than 12 months, if—

''(1) the Secretary of Energy certifies to the Congress that the export of United States-origin highly enriched uranium for the purposes of medical isotope production is the only effective temporary means to increase the supply of molybdenum-99 necessary to meet United States medical isotope needs during that period; and

''(2) the Congress enacts a Joint Resolution approving the temporary suspension of the restriction of export licenses.

''f. As used in this section—

''(1) the term 'alternative nuclear reactor fuel or target' means a nuclear reactor fuel or target which is enriched to less than 20 percent in the isotope U-235;

''(2) the term 'highly enriched uranium' means uranium enriched to 20 percent or more in the isotope U-235;

''(3) a fuel or target 'can be used' in a nuclear research or test reactor if—

''(A) the fuel or target has been qualified by the Reduced Enrichment Research and Test Reactor Program of the Department of Energy; and

''(B) use of the fuel or target will permit the large majority of ongoing and planned experiments and isotope production to be conducted in the reactor without a large percentage increase in the total cost of operating the reactor; and

''(4) the term 'medical isotope' includes molybdenum-99, iodine-131, xenon-133, and other radioactive materials used to produce a radiopharmaceutical for diagnostic, therapeutic procedures or for research and development.''.

SEC. 4. REPORT ON DISPOSITION OF EXPORTS.

Not later than 1 year after the date of the enactment of this Act, the Chairman of the Nuclear Regulatory Commission, after consulting with other relevant agencies, shall submit to the Congress a report detailing the current disposition of previous United States exports of highly enriched uranium, including—

(1) their location;

(2) whether they are irradiated;

(3) whether they have been used for the purpose stated in their export license;

(4) whether they have been used for an alternative purpose and, if so, whether such alternative purpose has been explicitly approved by the Commission;

(5) the year of export, and reimportation, if applicable;

(6) their current physical and chemical forms; and

(7) whether they are being stored in a manner which adequately protects against theft and unauthorized access.

SEC. 5. DOMESTIC MEDICAL ISOTOPE PRODUCTION.

(a) IN GENERAL.—Chapter 10 of the Atomic Energy Act of 1954 (42 U.S.C. 2131 et seq.) is amended by adding at the end the following new section:

''SEC. 112. DOMESTIC MEDICAL ISOTOPE PRODUCTION.— a. The Commission may issue a license, or grant an amendment to an existing license, for the use in the United States of highly enriched uranium as a target for medical isotope production in a nuclear reactor, only if, in addition to any other requirement of this Act—

''(1) the Commission determines that—

''(A) there is no alternative medical isotope production target, enriched in the isotope U-235 to less than 20 percent, that can be used in that reactor; and

''(B) the proposed recipient of the medical isotope production target has provided assurances that, whenever an alternative medical isotope production target can be used in that reactor, it will use that alternative in lieu of highly enriched uranium; and

''(2) the Secretary of Energy has certified that the United States Government is actively supporting the development of an alternative medical isotope production target that can be used in that reactor.

''b. As used in this section—

''(1) the term 'alternative medical isotope production target' means a nuclear reactor target which is enriched to less than 20 percent of the isotope U-235;

''(2) a target 'can be used' in a nuclear research or test reactor if—

''(A) the target has been qualified by the Reduced Enrichment Research and Test Reactor Program of the Department of Energy; and

''(B) use of the target will permit the large majority of ongoing and planned experiments and isotope production to be conducted in the reactor without a large percentage increase in the total cost of operating the reactor;

''(3) the term 'highly enriched uranium' means uranium enriched to 20 percent or more in the isotope U-235; and

''(4) the term 'medical isotope' includes molybdenum-99, iodine-131, xenon-133, and other radioactive materials used to produce a radiopharmaceutical for diagnostic, therapeutic procedures or for research and development.''.

(b) TABLE OF CONTENTS.—The table of contents for the Atomic Energy Act of 1954 is amended by inserting the following new item at the end of the items relating to chapter 10 of title I:

''Sec. 112. Domestic medical isotope production.''.

SEC. 6. ANNUAL DEPARTMENT OF ENERGY REPORTS.

The Secretary of Energy shall report to Congress no later than one year after the date of enactment of this Act, and annually thereafter for 5 years, on Department of Energy actions to support the production in the United States, without the use of highly enriched uranium, of molybdenum-99 for medical uses. These reports shall include the following:

(1) For medical isotope development projects—

(A) the names of any recipients of Department of Energy support under section 2 of this Act;

(B) the amount of Department of Energy funding committed to each project;

(C) the milestones expected to be reached for each project during the year for which support is provided;

(D) how each project is expected to support the increased production of molybdenum-99 for medical uses;

(E) the findings of the evaluation of projects under section 2(a)(2) of this Act; and

(F) the ultimate use of any Department of Energy funds used to support projects under section 2 of this Act.

(2) A description of actions taken in the previous year by the Secretary of Energy to ensure the safe disposition of radioactive waste from used molybdenum-99 targets.

SEC. 7. NATIONAL ACADEMY OF SCIENCES REPORT.

The Secretary of Energy shall enter into an arrangement with the National Academy of Sciences to conduct a study of the state of molybdenum-99 production and utilization, to be provided to the Congress not later than 5 years after the date of enactment of this Act. This report shall include the following:

(1) For molybdenum-99 production—

(A) a list of all facilities in the world producing molybdenum-99 for medical uses, including an indication of whether these facilities use highly enriched uranium in any way;

(B) a review of international production of molybdenum-99 over the previous 5 years, including—

(i) whether any new production was brought online;

(ii) whether any facilities halted production unexpectedly; and

(iii) whether any facilities used for production were decommissioned or otherwise permanently removed from service; and

(C) an assessment of progress made in the previous 5 years toward establishing domestic production of molybdenum-99 for medical uses, including the extent to which other medical isotopes that have been produced with molybdenum-99, such as iodine-131 and xenon-133, are being used for medical purposes.

(2) An assessment of the progress made by the Department of Energy and others to eliminate all worldwide use of highly enriched uranium in reactor fuel, reactor targets, and medical isotope production facilities.

SEC. 8. DEFINITIONS.

In this Act the following definitions apply:

(1) HIGHLY ENRICHED URANIUM.—The term ''highly enriched uranium'' means uranium enriched to 20 percent or greater in the isotope U-235.

(2) LOW ENRICHED URANIUM.—The term ''low enriched uranium'' means uranium enriched to less than 20 percent in the isotope U-235.

SEC. 9. BUDGETARY EFFECTS.

The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go-Act of 2010, shall be determined by reference to the latest statement titled ''Budgetary Effects of PAYGO Legislation'' for this Act, submitted for printing in the Congressional Record by the Chairman of the Senate Budget Committee, provided that such statement has been submitted prior to the vote on passage.

SNM,
July 21, 2010.

Hon. HARRY REID,
Senate Majority Leader, U.S. Senate, U.S. Capitol, S–221, Washington, DC.

Hon. JEFF BINGAMAN,
Chairman, Senate Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

Hon. MITCH MCCONNELL,
Senate Minority Leader, U.S. Senate, U.S. Capitol, S–231, Washington, DC.

Hon. LISA MURKOWSKI,
Ranking Member, Senate Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

DEAR MAJORITY LEADER REID, MINORITY LEADER MCCONNELL, CHAIRMAN BINGAMAN, AND RANKING MEMBER MURKOWSKI: The Society of Nuclear Medicine (SNM), a leading, multidisciplinary international scientific and professional organization with more than 17,000 physician, technologist, and scientist members dedicated to promoting the science, technology, and practical applications of molecular imaging and nuclear medicine, respectfully requests that the Senate to take up and pass the American Medical Isotopes Production Act of 2009 (H.R. 3276) as a stand-alone bill or as an amendment to an appropriate legislative vehicle. Recent disruptions in the international supply of Molybdenum–99 (Mo–99) have highlighted the urgent need to ensure a domestic supply for the U.S. H.R. 3276 would help to ensure a domestic supply of Mo–99 over the long term and curtail the use of highly-enriched uranium (HEU) in radionuclide production as a non-proliferation strategy to deter terrorism.

As you know, the House of Representatives approved this bill by an overwhelming vote of 400—17 on November 5, 2009 and the Senate Energy and Natural Resources Committee reported this bill favorably with amendments on January 28, 2010. SNM believes that rapid passage of this legislation is essential to ensure Americans' access to vital medical radionuclides and give patients timely access to appropriate heart and cancer testing.

Molybdenum–99 (Mo–99) decays into Technetium–99m (Tc–99m), which is used in approximately 16 million nuclear medicine procedures each year in the U.S. Tc–99m is used in the detection and staging of cancer, detection of heart disease, detection of thyroid disease, study of brain and kidney function, and imaging of stress fractures. In addition to pinpointing the underlying cause of disease, physicians can actually see how a disease is affecting other functions in the body. Imaging with Tc–99m is an important part of patient care. SNM, along with thousands of nuclear medicine physicians in the U.S., has, over the course of the last two years, been disturbed about supply interruptions of Mo–99 from foreign vendors and the lack of a reliable supplier of Mo–99 in the U.S. Due to these recent shutdowns in Canada, numerous nuclear medicine professionals across the country have delayed or had to cancel imaging procedures. Because Mo–99 is produced through the fission of uranium and has a half-life of 66 hours, it cannot be produced and then stored for long periods of time. Unlike traditional pharmaceuticals, which are dispensed by pharmacists or sold over-the-

counter, nuclear reactors produce radioactive isotopes that are processed and provided to hospitals and other nuclear medicine facilities based on demand. Any disruption to the supply chain can wreak havoc on patient access to important medical imaging procedures.

In order to ensure that patient needs are not compromised, a continuous reliable supply of medical radioisotopes is essential.

Currently there are no facilities in the U.S. that are dedicated to manufacturing Mo–99 for Mo–99/Tc–99m generators. The United States must develop domestic capabilities to produce Mo–99 and not rely solely on foreign suppliers. The legislation encourages domestic production of Mo–99 for medical isotopes without HEU in two different ways. First, it would facilitate the operation of new facilities by granting the government the ability ''to retain responsibility for the final disposition of radioactive waste'' under uranium-lease agreements. The Department of Energy (DoE) does not currently have this ability and cannot assume the responsibility for domestic producers' radioactive waste. The bill also authorizes government cost-sharing which would subsidize construction of production facilities. Without the multi-year authorization that is included in H.R. 3276, investments in domestic productive facilities will be prohibitively uncertain.

There is significant support for passing this piece of legislation, which has been endorsed by a variety of organizations. Further, at a House Energy and Environment Subcommittee on September 9, 2009, Parrish Staples, the U.S. official who oversees medical isotope production at DoE's National Nuclear Security Administration (NNSA) testified as follows:

''NNSA is working on several Cooperative Agreements to potential commercial Mo–99 producers, whose projects are in the most advanced stages of development, accelerating their efforts to begin producing Mo–99 in quantities adequate to the U.S. medical community's demand by the end of 2013. . . . The American Medical Isotopes Production Act of 2009 is crucial to ensuring the success of these efforts to accelerate development of a domestic supply of Mo–99 with the use of HEU.

At the subsequent Senate hearing, Dr. Staples stated:

''Currently, we are working or we would intend to work that we would develop four independent technologies, each capable of supplying up to 50 percent of the U.S. demand. Obviously, in theory, that means that if each of these are successful, we could supply the global requirement for this isotope''—roughly twice the U.S. domestic demand. In other words, under the legislation, the projected U.S. domestic production capacity could satisfy US demand prior to the cutoff of HEU exports, even if only half of the four main projects succeeded.''

Passage of this legislation is necessary to help address the future needs of patients by promoting the production of Mo–99 in the United States. We thank you for your efforts and look forward to continuing to work with you on this important issue. Should you have any further questions, please contact Cindy Tomlinson, Associate Director, Health Policy and Regulatory Affairs at either *ctomlinson@snm.org* or 703.326.1187.

Sincerely,

DOMINIQUE DELBEKE,
President.

HEALTH PHYSICS SOCIETY,
November 30, 2009.

Hon. JEFF BINGAMAN, *Chair*
Hon. LISA MURKOWSKI, *Ranking Member*
Energy and Natural Resources Committee, U.S. Senate, Washington, DC.

DEAR SENATORS BINGAMAN AND MURKOWSKI: On behalf of the Health Physics Society (HPS), I urge the Senate Energy and Natural Resources Committee to give full support to and take timely action on H.R. 3276, the ''American Medical Isotope Production Act of 2009.''

The Health Physics Society, a nonprofit scientific organization of approximately 5000 radiation safety professionals, has joined with eight other professional organizations in a coalition to address two concerns of national importance: (1) an inherent need for reliable domestic suppliers of Molybdenum–99 (Mo-99); and, (2) efforts to curtail the use of high-enriched uranium (HEU) in radionuclide production as a non-proliferation strategy and to deter terrorism. A discussion of these concerns with recommendations for action by the United States is contained in a white paper by the coalition of professional organizations titled ''Reliable Domestic & Global Supplier of Molybdenum-99 (Mo-99) and Switch from Highly Enriched Uranium (HEU) to Low-Enriched Uranium (LEU) to Produce Mo-99.'' The white paper is accessible at http://hps.org/documents/isotopes_white-paper_multiorganization.pdf.

A national effort to address these concerns requires (1) a commitment by the administration to have a coordinated inter-agency program with the specific responsibility to achieve reliable domestic independence in the production of Mo-99, (2) continued appropriations by Congress to provide the financial investment needed by the administration's program, and (3) support of the Congress through authorizing legislation that will serve as the basis for the continuation of the administration's program until its goals are achieved.

The Obama administration has made a commitment to achieve domestic independence in the production of Mo-99. The HPS believes the initiative being led by the National Nuclear Security Administration through the Global Threat Reduction Initiative with oversight and interagency coordination by the Office of Science and Technology Policy has the capability to achieve the establishment of a reliable domestic production of Mo-99 within the next ten years. The Congress has appropriated sufficient support for fiscal year 2010. The remaining task is to obtain congressional support through authorizing legislation that will serve as the support and basis for the administration's program into the future.

The HPS believes H.R. 3276 provides the needed congressional support for the administration's program.

We understand there may be some concern about the provisions in H.R. 3276 for imposing a ban on export of HEU at a fixed time in the future. HPS's interest in the issue of domestic production of radioisotopes is related to the radiation safety implications of the issue, including the implications of exporting HEU for this purpose. In 2005, the HPS did not support the inclusion of an HEU export ban provision in the Energy Policy Act of 2005. The HPS felt that the controls under which HEU was exported were rigorous enough to make the export acceptably safe when compared to the prospect of not having a supply of Mo-99. This position was influenced by the lack of any administration program or congressional support for a program dedicated to the domestic production of radioisotopes. The HPS still considers the controls for export of HEU for production of radioisotopes to be rigorous enough to make the risk of diversion for terrorism, or other malicious use of the HEU to be speculative. However, we feel that with appropriate congressional support, the initiative to establish reliable domestic production of Mo-99 will be successful within the next ten years, making the need to export HEU unnecessary. Therefore, we feel the export ban provisions will prove to be extraneous and, therefore, do not form a basis for not supporting H.R. 3276.

I hope this letter is helpful in your considered deliberation of action on H.R. 3276. Please do not hesitate to contact me if you have any questions about this letter or HPS support for H.R. 3276.

Sincerely,

HOWARD W. DICKSON.

FEBRUARY 23, 2010.

Hon. JEFF BINGAMAN,
Chairman,
Washington, DC.
Hon. LISA MURKOWSKI,
Ranking Member,
Washington, DC.

DEAR CHAIRMAN BINGAMAN AND RANKING MEMBER MURKOWSKI: As a coalition made up of the Society of Nuclear Medicine (SNM), American Association of Physicists in Medicine (AAPM), American College of Radiology (ACR), American Nuclear Society (ANS), American Society of Nuclear Cardiology (ASNC), American Society for Radiation Oncology (ASTRO), Health Physics Society (HPS), Nuclear Energy Institute (NEI), Academy of Molecular Imaging (AMI), the non-proliferation community, Union of Concerned Scientists (UCS), National Association of Nuclear Pharmacies (NANP) and the Council on Radionuclides and Radiopharmaceuticals (CORAR), we ask that you support the timely passage of H.R. 3276, the American Medical Isotope Production Act of 2009. The Senate Energy and Natural Resources Committee held a hearing on the bill December 3, 2009, and unanimously approved the bill with an amendment on December 16, 2009. We understand it is currently on the Senate calendar but we are asking for your assistance in bringing this legislation forward for action by the Senate.

H.R. 3276 is urgently needed legislation that would provide the U.S. Department of Energy the authority to aid in the domestic development of essential medical isotope production. H.R. 3276 is intended to help ensure that U.S. patients have a stable and reliable supply of diagnostic and therapeutic medical isotopes within the next ten years, while converting the production process to avoid highly enriched uranium (HEU), in keeping with U.S. non-proliferation policy.

The legislation would facilitate the adequate production of isotopes without HEU prior to the restriction of HEU exports. In the unexpected event that conversion were delayed, the legislation provides for a waiver to permit continued HEU exports to avoid a ''critical shortage'' of isotopes. The legislation thus ensures both the supply of isotopes and the timely phase out of HEU exports.

Moreover, as you may know, on November 5, 2009, the House passed H.R. 3276 by a vote of 400–17. Sponsored by Representative Edward Markey (D-Mass.) and Representative Fred Upton (R-Mich.), the Act is balanced, bipartisan legislation that addresses the current shortfall in the availability of critical medical isotopes that has had a high negative impact on patients in the U.S.

Molybdenum–99 (Mo–99) is a critical medical radioisotope whose decay product Technetium–99m (Tc–99m) is used in more than 16 million nuclear medicine procedures annually across the nation. Physicians who use Tc–99m for the diagnosis of common cancers, heart and other diseases, fully rely upon a steady and predictable supply. The very

short six-hour half-life of Tc–99m, while beneficial to patients and health care professionals, precludes any efforts to maintain an inventory. In addition, the domestic supply of Mo–99 (to produce Tc–99m-generators) is entirely dependent upon aging foreign reactors that have faced extended shutdowns for repair and maintenance.

As a consequence, the U.S. supply has been repeatedly and significantly disrupted. Many patients who need imaging with Tc–99m-based radiopharmaceuticals are now facing lengthy delays in the availability of nuclear medicine imaging, or being forced to resort to alternative diagnostic and therapeutic procedures that may involve the potential of more invasive procedures (with possible higher clinical risks to patients), greater radiation dosage, lower accuracy, and higher costs.

Additionally, the reliance on foreign reactors for the supply of Mo–99 requires the U.S. to ship highly enriched uranium, material of interest for use in nuclear terrorism, out of the country. Domestic production of Mo–99 will eliminate the risk that this nuclear material can be diverted for terrorists' use, thus increasing the effectiveness of the U.S. program for non-proliferation of nuclear materials.

The coalition believes the initiative being led by the National Nuclear Security Administration through the Global Threat Reduction Initiative with oversight and interagency coordination by the Office of Science and Technology Policy has the capability to achieve the establishment of a reliable domestic production of Mo–99 within the next ten years. The Congress has appropriated sufficient support for fiscal year 2010. The remaining task is to obtain congressional support through authorizing legislation that will serve as the support and basis for the administration's program into the future.

In order to avoid compromising patient care and increasing medical costs, a continuous and reliable supply of medical radioisotopes is clearly essential. It is also critical that domestic production capability for Mo–99 be developed. H.R. 3276 provides the needed support to accelerate the process of conversion so that the industry can move even more aggressively in this direction and be able to meet the time frame highlighted in this bill.

Senator, we hope you will join the patients, physicians, nuclear non-proliferation community, radioisotope manufacturers, and our coalition of professional organizations to quickly enact H.R. 3276. We would welcome the opportunity to answer any question you or your staff may have about the bill or the medical isotope industry. Thank you.

Sincerely,

Michael M. Graham, MD, President, SNM; Michael G. Herman, Ph.D., FAAPM, FACMP, President, The American Association of Physicists in Medicine, AAPM; James H. Thrall, MD, FACR, Chair, Board of Chancellors, American College of Radiology, ACR; Thomas Sanders, PhD, President, American Nuclear Society, ANS; Mylan C. Cohen, MD, MPH, President, American Society of Nuclear Cardiology, ASNC; Laura Thevenot, CAE, Chief Executive Officer, American Society for Radiation Oncology, ASTRO; Howard W. Dickson, CHP, President, Health Physics Society, HPS; Marvin S. Fertel, President and Chief Executive Officer, Nuclear Energy Institute, NEI; Timothy McCarthy, President, Academy of Molecular Imaging, AMI; Alan J. Kuperman, Ph.D., Director, Nuclear Proliferation Prevention Program, University of Texas at Austin; Edwin S. Lyman, Senior Staff Scientist, Union of Concerned Scientists; Jeff Norenberg, PharmD, Executive Director, National Association of Nuclear Pharmacies, NANP; Franklin B. Yeager, Chairman, Council on Radionuclides & Radiopharmaceuticals, CORAR.

By Ms. COLLINS (for herself, Mr. LEAHY, and Ms. SNOWE):

S. 112. A bill to authorize the application of State law with respect to vehicle weight limitations on the Interstate Highway System in the States of Maine and Vermont; to the Committee on Environment and Public Works.

Ms. COLLINS. Mr. President, improving public safety, growing our economy, increasing energy independence, and protecting the environment have always been among my top priorities as a Senator. Today, the very first bill I am introducing in this new Congress will advance all of those goals by allowing the heaviest trucks to travel on our Federal interstate highways in Maine rather than being forced to use secondary roads and downtown streets.

I am delighted to have the senior Senator from Vermont, PATRICK LEAHY, as my Democratic cosponsor, and my good friend and colleague from Maine, OLYMPIA SNOWE, also as an original cosponsor. Vermont has the same problem as we do in Maine. Thus the bill I am introducing applies to our two States.

In 2009, I authored a law to establish a 1-year pilot project that allowed trucks weighing up to 100,000 pounds to travel on Maine's Federal interstates—I–95, 195, 295, and 395. According to the results of a preliminary study by the Maine Department of Transportation, this pilot project, which ran until mid-December of last year, helped to preserve and create jobs by allowing Maine's businesses to receive raw materials and to ship their products more economically.

Also important, the pilot program improved safety, saved energy, and reduced carbon emissions. Let me give a specific example. On a trip from Hampden to Houlton, ME, the benefits are obvious. A truck traveling on I–95 rather than on Route 2 avoids more than 270 intersections, 9 school crossings, 30 traffic lights, and 86 crosswalks. In addition, the driver also saves more than $30 on fuel. Given the cost of diesel, it is probably even higher than that now. Additionally, 50 minutes is saved by traveling on Interstate 95 rather than on the secondary road of Route 2.

Unfortunately, despite the clear success of this pilot project and the strong support of the administration and many of my colleagues in the Senate, the House of Representatives failed to include my provision making the pilot permanent in the Federal funding bill. As a result, for both Maine and Vermont, the program expired on December 17 and the heavy trucks are once again unable to use our most modern, safe, and efficient highways.

It is important to emphasize that our legislation does not increase the size or the weight of trucks in our States. Maine law already allows trucks weighing up to 100,000 pounds to operate on State and municipal roads. Heavy trucks already operate on some 22,500 miles of non-Interstate roads in Maine, in addition to the approximately 167 miles of the Maine turnpike. But the nearly 260 miles of non-turnpike interstates that are the major economic corridors in my State are off limits. This simply makes no sense.

Furthermore, trucks weighing up to 100,000 pounds are already permitted on many Federal interstates in New Hampshire, Massachusetts, New York, and the neighboring provinces in Canada. So that puts Maine and Vermont at a distinct competitive disadvantage. All around us, the States and our Canadian counterparts allow the heavier trucks to use the Federal interstates, but unfortunately Maine and Vermont have been excluded. That is why my friend from Vermont, Senator LEAHY, has joined me in this effort to help provide a level playing field for our States.

Here are a few more important points about our bill.

The 100,000-pound trucks are no larger or wider than 80,000-pound trucks. This change would remove an estimated 7.8 million truck miles from our local roads and streets. Increasing the truck payloads by 35 percent would reduce the overall number of trucks needed. In addition to saving fuel by traveling fewer miles, the steady pace of interstate driving improves the fuel economy of trucks by 14 to 21 percent. And the Maine Department of Transportation's engineers say they are confident our interstate bridges are safe and can handle the additional weight in the State of Maine.

Countless Maine small business owners have told me how this change would improve their competitiveness. For example, at a recent press conference, Keith Van Scotter discussed the savings his company accrued under the pilot project. Under the pilot project, his company Lincoln Paper and Tissue was able to save 1.1 million billable truck miles, a 28 percent decrease from the year before. These savings are the equivalent of the company being 220 miles closer to its primary market. Also, the owner-operator of a logging business in Penobscot County said that being able to transport his pulpwood to the mill on I–95 rather than on secondary roads would save his company at least 118 gallons of fuel each week. That benefits not only this small business but also our Nation as we seek to reduce our overall fuel consumption and reduce carbon emissions.

The pilot program has also made a dramatic improvement for some of our communities. According to the Maine DOT, before the pilot program began last December of 2009, more than 200 heavy trucks heading north on Route 201 crawled through downtown Vassalboro a small town of about 4,000—each day even though I–95 runs

parallel just a few miles away. During the span of the pilot program, the number of northbound trucks on Route 201 decreased by roughly 90 percent. These trucks were using the interstate where they belong.

I will tell you that since the pilot project expired, so many of my constituents have talked to me about the return of these heavy trucks to the residential neighborhoods in which they live, to downtown Portland, Orono, Brewer, Freeport, and other towns throughout our State. The fact is, this kind of road congestion caused by diverting these heavy trucks into downtowns and along secondary roads can lead to tragedy. A study conducted by a nationally recognized traffic consulting firm found that the crash rate of semitrailer trucks on Maine's secondary roads were 7 to 10 times higher than on the turnpike. It estimated that allowing these trucks to stay on the interstates could result in three fewer fatal crashes each year. Public safety agencies in Maine, including the Maine State Police, have long supported my efforts to bring about this change. In fact, Bangor's police chief joined me at a press conference last week where he spoke eloquently about the safety implications for downtown Bangor.

In 2010, as a result of this pilot project, people throughout our State saw their roads less congested, our States safer, our air cleaner, and, most important, our businesses more competitive. That is why I am so committed to ensuring that these improvements are allowed to continue and are made permanent.

This legislation simply is common sense. It will benefit our economy as well as lower fuel costs and make our roads safer for most tourists and pedestrians. Most important, we now have the concrete evidence from this pilot project showing why this bill should become law.

I am grateful for the support and leadership of my colleague from Vermont and the steadfast support from Maine's senior Senator as well. I urge its swift passage. This is the highest priority I have for the State of Maine this year.

Mr. President, I ask unanimous consent to have printed in the RECORD a number of letters I have received endorsing this bill. These letters are from the Maine Motor Transport Association, the City of Bangor's chief of police, the Professional Logging Contractors, the Northeast Region for the Forestry Resources Association, and from a well-known trucking firm in Maine, H.O. Bouchard.

In addition, I expect to have a letter from the Governor of Maine later today that I will also ask unanimous consent to have printed in the RECORD.

MAINE MOTOR TRANSPORT ASSOCIATION,
Augusta, Maine, January 21, 2011.

Hon. SUSAN COLLINS,
U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR COLLINS: Your introduction of the bill to permanently increase the truck weight limit on Maine highways comes as great news for the trucking industry, for shippers and consumers who rely on efficient transportation of goods and for the people of our state who utilize these roads. We have heard from many of our members who were thrilled to operate on the entire interstate system in Maine under the recently-expired pilot project, as well as hearing from citizens who live along the previously traveled truck routes who were happy to have them off Maine's secondary roads. Your support for this common sense solution has been tremendous and we very much appreciate your continued efforts to educate your peers in the Senate.

As you know, when Federal Highway froze interstate weight limits in 1998 and allowed the Maine Turnpike and southern portions of 1–95 to be grandfathered, there was much concern about the same things that concern some people from other states now—safety and the impact on our infrastructure. Results in Maine have shown these concerns were unnecessary as there is ample proof of the improved safety and infrastructure costs and all we ask is for Maine to close the donut hole that puts us at a competitive disadvantage with our neighbors all around us. New Hampshire, Massachusetts and Canada already have permanently higher weight limits on their entire interstate system which put our businesses at a disadvantage, a fact not lost on the hundreds of small trucking companies hauling raw materials to the few mills still left in this state. A strong argument can be made that this is an economic development issue with many jobs at stake for the mills that rely on efficient transportation with both their inbound freight and the outbound movement of goods to markets outside Maine.

Your proposal to allow for a more productive vehicle configuration makes sense for both state and federal roads. More efficient configurations mean fewer trucks on the road. Fewer trucks on the road reduce engine emissions and promote fuel conservation, all while lessening our dependence on foreign oil. The whole notion that heavier trucks will use more fuel and pollute more is inherently false, especially since it would take approximately three trucks operating at 80,000 pounds to replace two trucks operating at 100,000 pounds to haul the same amount of freight.

In fact, a study by the American Transportation Research Institute (ATRI) commissioned by the Maine DOT found that the fuel efficiency of these rigs would improve up to 21 percent by allowing state weight limits on the entire highway system and emissions would decrease from 6 to 11 percent. Extrapolating their findings over an entire week resulted in savings of as much as 675 gallons of fuel, up to 6.8 metric tons of CO2 and almost 94 grams of Particulate Matter. Yes, that's each week and only from trucks shifting from Route 9 to 1–95 once the weight limit exemption pilot project went into effect. This efficiency has gone away now that the pilot project has expired.

Safety, however, is the most important reason to embrace this pilot project and we are proud that the safety record of the trucking industry continues to improve. Federal Highway Administration statistics tracking truck-involved crashes has shown consistent improvement by the trucking industry, with current crash rates at the lowest levels since the U.S. Department of Transportation began tracking large truck safety records in 1975. Not resting on our accomplishments, the trucking industry is actively working on ways we can improve highway safety by improving driver performance with rigorous licensing and training, focusing on equipment improvements and by giving carriers access to the proper tools that are critical for them to fulfill their responsibility to the safety of the motoring public.

Allowing these trucks to use the safer interstate system would also decrease the interactions with other vehicles and pedestrians if they are able to avoid secondary roads and having to go past driveways and through towns to deliver their goods that move the Maine economy. A four lane divided highway with all traffic going in the same direction at relatively the same speed has been statistically proven to be the safer road for all vehicles—not just trucks.

It's hard to find a topic that garners widespread and bipartisan support these days when partisan bickering and political polarization are the norm. This issue is not only strongly supported by groups you would expect like the trucking, oil dealers and forest products industries, but it also finds support from the Maine Legislature, municipalities, the Maine DOT, Maine Department of Public Safety as well as the Maine State Police and many local and regional chambers of commerce. We all may not see eye-to-eye on every public policy issue, but we are in lock step on this one.

There may never be a better opportunity than now to enact a permanent solution relative to vehicle productivity. The Maine Motor Transport Association, our members and our partner trade associations will work diligently to provide you with additional statistics and information as they become available. Your work on this issue, especially getting the pilot project implemented last year, has not gone unnoticed by our members and we continue to appreciate your efforts to address it in your recently proposed bill.

If Maine is going to be able to compete in a regional and global economy, it is essential that we encourage efficient, effective and safe transportation solutions such as the one you have proposed. Thank you.

Sincerely,

BRIAN D. PARKE,
President and CEO.

CITY OF BANGOR, MAINE,
POLICE DEPARTMENT,
January 24, 2011.

Hon. SUSAN COLLINS,
Dirkson Senate Office Building, Washington, DC.

DEAR SENATOR COLLINS: First and foremost, thank you again for being a champion for the effort to increase the truck weight limits on Maine's interstate highways. Without your diligence and dedication to this extremely important matter, any further progress to correct the inconceivable injustice of the current law would be most assuredly abandoned for the foreseeable future. Your legislation, which would allow trucks weighing up to 100,000 pounds on all of Maine's Interstate highways, would correct this injustice once and for all.

I would like to reiterate what I have previously stated regarding the present law that forces trucks weighing over 80,000 pounds off Maine's interstate highways. These trucks do not belong on Maine's city streets and secondary roads, just as they do not belong on those of New Hampshire, Massachusetts, and New York. I, along with other Maine chiefs of police across the state, believe that these trucks pose a significant risk to the safety of citizens as they travel upon the populated city streets and narrow and winding rural roads of Maine's cities and towns. We have seen, first hand, the dangers these trucks pose to Maine citizens as they travel on our secondary roads. The constant changing of speeds and their repeated starts and stops cause regular disruption to the flow of local traffic, and their presence have resulted in traffic accidents and tragedies.

During the winter months, Maine's secondary roads become much narrower, rural roads are more slippery, and speed limits are reduced, thereby increasing the danger to pedestrians and other drivers. No matter how experienced the truck driver may be, they cannot stop these trucks on a dime; they cannot anticipate every situation that can occur in heavily populated areas; and they cannot prevent the shifting of their heavy loads from occurring.

It is important to do everything possible to insure safety for the public. Therefore, I offer my utmost support for your legislation that will keep these heavy loads on Maine's interstate highways where they belong. I continue to encourage you and others, like Senator Leahy of Vermont, to continue your efforts to keep these 100,000 pound trucks on interstate highways, and off our local streets and rural roads.

Sincerely,

RONALD K. GASTIA,
Chief of Police.

PROFESSIONAL LOGGING CONTRACTORS,
New Gloucester, ME, January 24, 2011.

Hon. SUSAN COLLINS,
U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR COLLINS: I am writing to express the Professional Logging Contractors of Maine's full support for your proposed legislation to permanently allow trucks weighing up to 100,000 pounds to use federal Interstate highways in Maine and Vermont.

Our logger members rely on trucks to deliver their logs, chips and biomass to market. We are surrounded by states and provinces which allow higher Interstate truck weights, putting loggers in rural Maine at a significant competitive disadvantage. Many of our members are small business owners for whom the increased costs of being forced to make longer, less efficient trips on secondary roads could make the difference between profitability and unprofitability. This could lead some business owners to exit the market place, costing jobs and placing an additional strain on wood supplies.

Interstate highways are designed and built to handle higher truck weights and wherever possible trucks should be able to utilize this system, taking unnecessary traffic off of state and local highways and out of our communities. PLC of Maine believes each state should have the right to adjust the weight limits on Interstates within its borders to meet the needs of its people.

Last year's pilot project in Maine, allowing 100,000 pound trucks to access Interstate highways, was tremendously successful. The loss of the pilot in December was a real blow to our loggers, the forest products industry, and our rural communities as well.

Restoring the terms of the pilot is one action Congress can take that would immediately benefit industry and the public, without imposing new burdens on taxpayers. The benefits of the increased weight limits are clear:

Safety—Fewer miles travelled, on safer roads, with reduced contact with pedestrians, automobiles, rail crossings and school zones;

Environmental—Reduced fuel consumption, reduced emissions from start and stops; and

Economic—Reduced secondary road and bridge wear, improved truck efficiency for loggers.

Please let me know if there is anything the Professional Logging Contractors of Maine can do to promote your legislation. Thank you again for your continued support for Maine's loggers.

Sincerely,

MICHAEL A. BEARDSLEY,
Executive Director.

FOREST RESOURCES ASSOCIATION, INC.,
Holden, ME, January 21, 2011.

Hon. SUSAN COLLINS,
U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR COLLINS: I am writing to express the Forest Resources Association's full support for your proposed legislation which would permanently allow trucks weighing up to 100,000 pounds to use federal Interstate highways in Maine and Vermont.

Our members—forest landowners, loggers, truckers, wood-using mills, and associated businesses, as well as our families and neighbors—all rely on safe and efficient transportation of goods and services by truck for our livelihoods.

Our industry relies on trucks to deliver raw materials from the forest to our mills and shipment of finished product to market. We are surrounded by states and provinces which allow higher Interstate truck weights, putting our industry in rural Maine at a significant disadvantage.

The federal Interstate system is designed and built to handle these loads, as are Maine highways and wherever possible trucks should be able to utilize this system, taking unnecessary traffic off of state and local highways and out of communities. FRA believes that, within reasonable guidelines, each state should have the right to adjust weight limits on Interstates within its borders to conform with its needs.

By all accounts, last year's pilot project in Maine and Vermont allowing these trucks to access Interstate highways was tremendously successful. Attached is a Forest Resources Association Technical Release presenting testimony on the pilot's benefits. The loss of the pilot in December was a real blow to our industry and rural communities.

Restoring the terms of the pilot is one action Congress can take which immediately benefits both industry and the public without imposing new burdens on taxpayers. The benefits are clear:

Safety Benefits—Fewer miles travelled, on safer roads, with fewer exposures.

Environmental Benefits—Reduced fuel usage, reduced emissions.

Economic Benefits—Reduced wear on secondary roads, improved efficiency for haulers.

Please let me know if there is anything FRA can do to promote your legislation—and thanks again for your continued support for Maine's forest products community .

Sincerely,

JOEL SWANTON,
Region Manager.

H.O. BOUCHARD TRANSPORTATION SERVICES,
Hampden, ME, January 21, 2011.

Hon. SUSAN COLLINS,
Dirkson Senate Office Building, Washington, DC.

DEAR SENATOR COLLINS: I am writing on behalf of H.O. Bouchard in favor of allowing trucks weighing up to 100,000 pounds gross vehicle weight on Interstates in Maine. We are a major motor carrier in Maine whose fleet is made up of 6-axle units transporting heavy bulk products throughout Maine, Canada, New Hampshire, Massachusetts, Rhode Island and New York. These products include: cement powder, liquid asphalt, fuel oil, road salt, raw forest products, chemicals, logs and machinery. We have done this safely for 27 years.

I ask that you help those who are not from this area to understand that the whole New England area (with the exception of Vermont), New York and Canada allow up to at least 99,000 pounds on 6 axle combination units. New York allows more than 100,000 pounds and Canada allows more than 109,000 lbs. on 6 axles. The only areas that do not are a very small slice of Maine that is Interstates 95, 295, 395 and interstates in Vermont. Presently the freight moves on 6 axle units, but on secondary roads. Commerce to and from Bangor to Aroostook County must travel on secondary Route 2, rather than 1–95, which runs parallel. To go the same distance takes 50 minutes longer at a cost of approximately $70.00 more. This is multiplied by hundreds of trips daily of fuels, logs, lumber and many other consumer commodities. This commercial traffic is very noticeable in all of the small towns where the trucks must constantly stop and start for RR crossings, crosswalks, school buses and emergency vehicles. That same truck traffic was not even noticeable when it was on the interstate, a road that can handle much more traffic with ease. We have paid for the best roads and cannot use them.

The future of our nation must include increased transportation productivity to keep from clogging highways and slowing the economic recovery. Using 2 trucks to haul the freight of 3 is a simple, safe, cost effective way to accomplish this. Your proposal to allow 6-axle vehicles weighing up to 100,000 pounds to use the interstate system in Maine and Vermont (99,000) is all benefit at no cost. It is simply good business.

Thank you for your support in helping with this important legislation.

Sincerely,

BRIAN BOUCHARD,
President.

Mr. LEAHY. Mr. President, I rise today with my good friends and neighbors from New England—Senators SUSAN COLLINS and OLYMPIA SNOWE from Maine—to introduce a bill that would allow Vermont and Maine to set the appropriate truck-weight standards on the interstates in their states.

For too long, Vermont and Maine have been at a competitive disadvantage while our next-door neighbors in New York, New Hampshire, Massachusetts, and Quebec have enjoyed the economic benefits that come with higher highway truck weight limits. Due to these restrictions, the heaviest truck traffic in Vermont and Maine must travel over smaller and narrower roadways, creating significant safety concerns for pedestrians and motorists and putting pressure on our already overburdened secondary roads and bridges.

That is why Senator COLLINS and I included language in the 2010 transportation funding bill to implement pilot programs that allowed heavier trucks on interstates in Vermont and Maine for one year and studied the impacts of this policy change on highway safety, bridge and road durability, commerce, truck volumes, and energy use in Vermont.

During the past year I have heard from a number of Vermont truckers, business owners, and state and local officials who support extending the pilot program because of the economic and safety benefits they saw when the trucks were on the Interstates. Most importantly, many Vermonters reported a significant reduction of heavy truck traffic in our downtowns and villages.

Unfortunately, last month the leadership on the other side of the aisle

blocked consideration of an omnibus budget bill that included a provision Senator COLLINS and I authored to extend the Vermont and Maine truck weight pilot programs for another year. This sudden and senseless reversal of a previous commitment to support the bill led to the end of the Vermont and Maine pilot programs in December.

As a result the heaviest trucks in our states have been forced to divert back to secondary roads—and the negative economic impact of these trucks is once again being felt in downtowns and villages throughout Vermont and Maine.

I am pleased to join with Senators COLLINS and SNOWE in introducing this bipartisan bill today. It will stop overweight trucks from having to rumble through our historic villages and downtowns, and it will better protect our citizens and our ailing transportation infrastructure.

I appreciate the support this legislation has received from the State of Vermont, the Vermont League of Cities and Towns, the Vermont Truck and Bus Association, the Vermont Petroleum Association, the Vermont Fuel Dealers Association, and many individual businesses and municipalities throughout Vermont.

By Mr. LEAHY:

S. 132. A bill to establish an Office of Forensic Science and a Forensic Science Board, to strengthen and promote confidence in the criminal justice system by ensuring consistency and scientific validity in forensic testing, and for other purposes; to the Committee on the Judiciary.

Mr. LEAHY. Mr. President, I am proud today to introduce the Criminal Justice and Forensic Science Reform Act of 2011. This legislation is an important first step toward guaranteeing the effectiveness and scientific integrity of forensic evidence used in criminal cases, and in ensuring that Americans can have faith in their criminal justice system.

In March of 2009, the Senate Judiciary Committee began its examination of serious issues concerning forensic science, which is at the heart of our criminal justice system. The Committee has studied the problem exhaustively, and has worked with a wide array of experts and stakeholders. The legislation I introduce today is a product of this process. It seeks to strengthen our confidence in the criminal justice system, and the evidence it relies upon, by ensuring that forensic evidence and testimony is accurate, credible, and scientifically grounded.

The National Academy of Science published a report in February 2009 asserting that the field of forensic science has significant problems that urgently need to be addressed. The report suggested that basic research establishing the scientific validity of many forensic science disciplines has never been done in a comprehensive way. It suggested that the forensic sciences lack uniform and unassailable standards governing the accreditation of laboratories, the certification of forensic practitioners, and the testing and analysis of evidence.

The National Academy of Science's report was an urgent call to action. It has been hailed and widely cited since its release. It has also been criticized by many. I did not view the Academy's report as the final word on this issue, but rather as the starting point for a searching review of the state of forensic science in this country.

Last Congress, the Judiciary Committee held two hearings on the issue. Committee members and staff spent countless hours talking to prosecutors, defense attorneys, law enforcement officers, judges, forensic practitioners, academic experts, and many, many others to learn as much as we could about what is happening in the forensic sciences and what needs to be done.

As this effort has progressed, I have been disturbed to learn about still more cases in which innocent people may have been convicted, and perhaps even executed, in part due to faulty forensic evidence. It is a double tragedy when an innocent person is convicted. An innocent person suffers, and a guilty person remains free, leaving us all less safe. We must do everything we can to avoid that untenable outcome.

At the same time, through the course of this inquiry, it has become abundantly clear that the men and women who test and analyze forensic evidence do tremendous work that is vital to our criminal justice system. I remember their important contributions and hard work from my days as a prosecutor, when some of the forensic disciplines we have now did not even exist. Their work is even more important today, and we need to strengthen the field of forensics—and the justice system's confidence in it—so that their hard work can be consistently relied upon, as it should be.

It is beyond question that everyone recognizes the need for forensic evidence that is accurate and reliable. Prosecutors and law enforcement officers want evidence that can be relied upon to determine guilt and prove it beyond a reasonable doubt in a court of law. Defense attorneys want strong evidence that can be used to exclude innocent people from suspicion. Forensic science practitioners want their work to have as much certainty as possible and to be given deserved deference. All scientists and all attorneys who care about these issues want the science that is admitted as evidence in the courtroom to match the science that is proven through rigorous testing and research in the laboratory.

There is also general agreement that the forensic sciences can be improved through strong and unassailable research to test and establish the validity of the forensic disciplines, as well as the application of consistent and regular standards in the field. There is a dire need for well managed and appropriately directed funding for research, development, training, and technical assistance. It is a good investment, as it will lead to fewer trials and appeals, and will reduce crime by ensuring that those who commit serious offenses are promptly captured and convicted.

There is also broad consensus that all forensic laboratories should be required to meet rigorous accreditation standards and that forensic practitioners should be required to obtain meaningful certification.

The bill I introduce today seeks to address these widely recognized needs. It requires that all forensic science laboratories that receive Federal funding or Federal business be accredited according to rigorous standards. It requires all relevant personnel who perform forensic work for any laboratory or agency that gets Federal money to become certified in their fields, which will mean meeting basic proficiency, education, and training requirements.

The bill sets up a rigorous process to determine the most serious needs for research to establish the basic validity of the forensic disciplines, and establishes grant programs to provide for peer-reviewed scientific research to answer fundamental questions and promote innovation. It also sets up a process for this research to lead to appropriate standards and best practices in each discipline. The bill funds research into new technologies and techniques that will allow forensic testing to be done more quickly, more efficiently, and more accurately. I believe these are proposals that will be widely supported by those on all sides of this issue.

There have been of course some areas of disagreement, particularly as to who should oversee these vital reforms to the field of forensics. Some have argued that, because the purpose of forensic science is primarily to produce evidence to be used in the investigation and prosecution of criminal cases, it is vital that those regulating and evaluating forensics must have expertise in criminal justice. They have said that at the Federal level, the Department of Justice is the natural place for an office to examine and oversee the forensic sciences and have emphasized the need for forensic science practitioners to have substantial input in evaluating research and standards.

Others have argued that, for forensic science to truly engender our trust and confidence, its validity must be established by independent scientific research, and standards must be determined by scientists with no possible conflict of interest. They have argued for protections to ensure independent scientific decision making, as well as the significant involvement of Federal scientific agencies.

I find both of these arguments persuasive. I know firsthand the importance of understanding how the criminal justice system works when evaluating the needs and practices in forensic science. I also understand that it is absolutely essential that forensic science be grounded in independent scientific research in order to avoid any question of convictions being based on faulty forensic work.

This legislation attempts to address both of these concerns with a hybrid structure that ensures both criminal justice expertise and scientific independence. It establishes an Office of Forensic Science in the Office of the Deputy Attorney General within the Department of Justice. That office will have a Director who will make all final decisions about research priorities, standards, and structure and who will implement and enforce the systems set up by the legislation.

It also establishes a Forensic Science Board composed of forensic and academic scientists, prosecutors and defense attorneys, and other key stakeholders. The Board will have a careful balance, and a majority of its members will be scientists. It will recommend all research priorities and standards and other key definitions and structures before the Director of the Office of Forensic Science makes a decision. The bill will include important protections to encourage the Director to defer to the recommendations of the Board and to ensure that he or she explains to Congress and to the public, with opportunities for comment, any decision to disregard the Board's recommendations.

The bill also establishes committees of scientists to examine each individual forensic science discipline to determine research needs and standards. It includes protections to ensure that the committees' recommendations receive significant deference, and the committees will be overseen by the National Institute of Standards and Technology, NIST, a respected scientific agency. NIST will also implement grant programs for research into the forensic sciences premised on the research priorities established by the Forensic Science Board and the Office of Forensic Science. The National Science Foundation will help to ensure that the grant programs are run properly, with rigorous scientific peer review and without any bias.

This bill aims to carefully balance the competing considerations that are so important to getting a review of forensics right. It also capitalizes on existing expertise and structures, rather than calling for the creation of a costly new agency. It seeks to proceed modestly and cost effectively, with ample oversight, checks, and controls. I am committed to exploring ways to use existing resources so that this urgent work will not negatively impact the budget. Ultimately, improvements in the forensic sciences will save money, reduce the number of costly appeals, shorten investigations and trials, and help to eliminate wrongful imprisonments.

I understand that sweeping forensic reform and criminal justice reform legislation not only should, but must, be bipartisan. There is no reason for a partisan divide on this issue; fixing this problem does not advance the interests of only prosecutors or defendants, or of Democrats or Republicans, but the interests of justice. I have worked closely with interested Republican Senators on this vital issue. I will continue to work diligently with Senators on both sides of the aisle to ensure that this becomes the consensus bipartisan legislation that it ought to be. I hope many will cosponsor this legislation, and work with me to ensure its passage.

I want to thank the forensic science practitioners, experts, advocates, law enforcement personnel, judges, and so many others whose input forms the basis for this legislation. Your passion for this issue and for getting it right gives me confidence that we will work together successfully to make much needed progress.

I hope all Senators will join me in advancing this important legislation to bolster confidence in the forensic sciences and the criminal justice system.

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. 132

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Criminal Justice and Forensic Science Reform Act of 2011''.

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

SEC. 2. DEFINITIONS.

In this Act—

(1) the term ''Board'' means the Forensic Science Board established under section 102(a);

(2) the term ''Committee'' means a committee established under section 103(a)(2);

(3) the term ''Deputy Director'' means the Deputy Director of the Office;

(4) the term ''Director'' means the Director of the Office;

(5) the term ''forensic science discipline'' shall have the meaning given that term by the Director in accordance with section 102(h);

(6) the term ''forensic science laboratory'' shall have the meaning given that term by the Director in accordance with section 201(c);

(7) the term ''Office'' means the Office of Forensic Science established under section 101(a); and

(8) the term ''relevant personnel'' shall have the meaning given that term by the Director in accordance with section 301(b).

SEC. 3. PURPOSE.

The purpose of this Act is to strengthen and promote confidence in the criminal justice system by promoting standards and best practices and ensuring consistency, scientific validity, and accuracy with respect to forensic testing, analysis, identification, and comparisons, the results of which may be interpreted, presented, or otherwise used during the course of a criminal investigation or criminal court proceeding.

TITLE I—STRUCTURE AND OVERSIGHT

SEC. 101. OFFICE OF FORENSIC SCIENCE.

(a) IN GENERAL.—There is established an Office of Forensic Science within the Office of the Deputy Attorney General in the Department of Justice.

(b) OFFICERS AND STAFF.—

(1) IN GENERAL.—The Office shall include—

(A) a Director, who shall be appointed by the Attorney General;

(B) a Deputy Director, who shall be—

(i) an employee of the National Institute of Standards and Technology;

(ii) selected by the Director of the National Institute of Standards and Technology; and

(iii) detailed to the Office on a reimbursable basis;

(C) such additional staff detailed on a reimbursable basis from the National Institute of Standards and Technology as the Deputy Director, in consultation with the Director and subject to the approval of the Director of the National Institute of Standards and Technology, determines appropriate; and

(D) such other officers and staff as the Deputy Attorney General, the Director, and the Deputy Director determine appropriate.

(2) DEADLINE.—Not later than 180 days after the date of enactment of this Act, the

initial appointments, selections, and detailing under paragraph (1) shall be made.

(c) VACANCY.—In the event of a vacancy in the position of Director—

(1) the Attorney General shall designate an acting Director; and

(2) during any period of vacancy before designation of an acting Director, the Deputy Attorney General shall serve as acting Director.

(d) LIAISON.—The Director of the National Science Foundation, in consultation with the Director and the Deputy Director, shall designate a liaison at the National Science Foundation to facilitate communication between the Office and the National Science Foundation.

(e) DUTIES AND AUTHORITY.—

(1) IN GENERAL.—The Office shall—

(A) assist the Board in carrying out all the functions of the Board under this Act and such other related functions as are necessary to perform the functions; and

(B) evaluate and act upon the recommendations of the Board in accordance with paragraph (4).

(2) SPECIFIC RESPONSIBILITIES.—The Director, in consultation with the Deputy Director, shall—

(A) establish, implement, and enforce accreditation and certification standards under titles II and III;

(B) establish a comprehensive strategy for scientific research in the forensic sciences under title IV;

(C) establish and implement standards and best practices for forensic science disciplines under title V;

(D) define the term ''forensic science discipline'' for the purposes of this Act in accordance with section 102(h);

(E) establish and maintain a list of forensic science disciplines in accordance with section 102(h);

(F) establish Committees in accordance with section 103;

(G) define the term ''forensic science laboratory'' for the purposes of this Act in accordance with section 201(c); and

(H) perform all other functions of the Office under this Act and such other related functions as are necessary to perform the functions of the Office described in this Act.

(3) ADDITIONAL RESPONSIBILITIES OF DEPUTY DIRECTOR.—The Deputy Director, in consultation with the Director of the National Institute of Standards and Technology, shall oversee—

(A) the implementation of any standard, protocol, definition, or other material established or amended based on a recommendation by a Committee; and

(B) the work of the Committees.

(4) CONSIDERATION OF RECOMMENDATIONS.—

(A) IN GENERAL.—Upon receiving a recommendation from the Board, the Director shall—

(i) give substantial deference to the recommendation; and

(ii) not later than 90 days after the date on which the Director receives the recommendation, determine whether to adopt, modify, or reject the recommendation.

(B) MODIFICATION.—

(i) IN GENERAL.—If the Director determines to substantially modify a recommendation under subparagraph (A), the Director shall immediately notify the Board of the proposed modification.

(ii) BOARD RECOMMENDATION.—Not later than 30 days after the date on which the Director provides notice to the Board under clause (i), the Board shall submit to the Director a recommendation on whether the proposed modification should be adopted.

(iii) ACCEPTANCE OF MODIFICATION.—If the Board recommends that a proposed modification should be adopted under clause (ii), the Director may implement the modified recommendation.

(iv) REJECTION OF MODIFICATION.—If the Board recommends that a proposed modification should not be adopted under clause (ii), the Director shall, not later than 10 days after the date on which the Board makes the recommendation—

(I) provide notice and an explanation of the modification proposed to the Committee on the Judiciary and the Committee on Commerce, Science, and Transportation of the Senate and the Committee on the Judiciary and the Committee on Science and Technology of the House of Representatives; and

(II) begin a rulemaking on the record after opportunity for an agency hearing.

(C) REJECTION.—Not later than 30 days after the date on which the Director determines to reject a recommendation under subparagraph (A), the Director shall—

(i) provide notice and an explanation of the decision to the Committee on the Judiciary and the Committee on Commerce, Science, and Transportation of the Senate and the Committee on the Judiciary and the Committee on Science and Technology of the House of Representatives; and

(ii) begin a rulemaking on the record after opportunity for an agency hearing.

(f) WEBSITE.—The Director shall—

(1) establish a website that is publicly accessible; and

(2) publish recommendations of the Board and all standards, protocols, definitions, and other materials established, or amended, by the Director under this Act on the website.

SEC. 102. FORENSIC SCIENCE BOARD.

(a) IN GENERAL.—There is established a Forensic Science Board to serve as an advisory board regarding forensic science in order to strengthen and promote confidence in the criminal justice system by promoting standards and best practices and ensuring consistency, scientific validity, and accuracy with respect to forensic testing, analysis, identification, and comparisons, the results of which may be interpreted, presented, or otherwise used during the course of a criminal investigation or criminal court proceeding.

(b) APPOINTMENT.—

(1) IN GENERAL.—The Board shall be composed of 19 members, who shall—

(A) be appointed by the President not later than 180 days after the date of enactment of this Act; and

(B) come from professional communities that have expertise relevant to and significant interest in the field of forensic science.

(2) CONSIDERATION AND CONSULTATION.—In making an appointment under paragraph (1), the President shall—

(A) consider the need for the Board to exercise independent scientific judgment;

(B) consider, among other factors, recommendations from leading scientific organizations and leading professional organizations in the field of forensic science and other relevant fields; and

(C) consult with the Chairman and Ranking Member of the—

(i) Committee on the Judiciary and the Committee on Commerce, Science, and Transportation of the Senate; and

(ii) the Committee on the Judiciary and the Committee on Science and Technology of the House of Representatives.

(3) REQUIREMENTS.—The Board shall include—

(A) not fewer than 10 members who have comprehensive scientific backgrounds, of which—

(i) not fewer than 5 members have extensive experience or background in scientific research; and

(ii) not fewer than 5 members have extensive experience or background in forensic science; and

(B) not fewer than 1 member from each category described in paragraph (4).

(4) CATEGORIES.—The categories described in this paragraph are—

(A) judges;

(B) Federal Government officials;

(C) State and local government officials;

(D) prosecutors;

(E) law enforcement officers;

(F) criminal defense attorneys;

(G) organizations that represent people who may have been wrongly convicted;

(H) practitioners in forensic laboratories;

(I) physicians with relevant expertise; and

(J) State laboratory directors.

(5) FULFILLMENT OF MULTIPLE REQUIREMENTS.—An individual may fulfill more than 1 requirement described in paragraph (3) or (4).

(6) EX OFFICIO MEMBERS.—The Director and the Deputy Director shall serve as ex officio and nonvoting members of the Board.

(c) TERMS.—

(1) IN GENERAL.—A member of the Board shall be appointed for a term of 6 years.

(2) EXCEPTION.—Of the members first appointed to the Board—

(A) 6 members shall serve a term of 2 years;

(B) 6 members shall serve a term of 4 years; and

(C) 7 members shall serve a term of 6 years.

(3) RENEWABLE TERM.—A member of the Board may be appointed for not more than a total of 2 terms, including an initial term described in paragraph (2).

(4) VACANCIES.—

(A) IN GENERAL.—In the event of a vacancy, the President may appoint a member to fill the remainder of the term.

(B) ADDITIONAL TERM.—A member appointed under subparagraph (A) may be reappointed for 1 additional term.

(5) HOLDOVERS.—If a successor has not been appointed at the conclusion of the term of a member of the Board, the member of the Board may continue to serve until—

(A) a successor is appointed; or

(B) the member of the Board is reappointed.

(d) RESPONSIBILITIES.—The Board shall—

(1) make recommendations to the Director relating to research priorities and needs, accreditation and certification standards, standards and protocols for forensic science disciplines, and any other issue consistent with this Act;

(2) monitor and evaluate—

(A) the administration of accreditation, certification, and research programs and procedures established under this Act; and

(B) the operation of the Committees;

(3) review and update, as appropriate, any recommendations made under paragraph (1); and

(4) perform all other functions of the Board under this Act and such other related functions as are necessary to perform the functions of the Board.

(e) CONSULTATION.—The Board shall consult as appropriate with the Deputy Attorney General, the Director of the National Institute of Standards and Technology, the Director of the National Science Foundation, the Director of the National Institute of Justice, the Director of the Centers for Disease Control and Prevention, senior officials from other relevant Federal agencies, and relevant officials of State and local government.

(f) MEETINGS.—

(1) IN GENERAL.—The Board shall hold not fewer than 4 meetings of the full Board each year.

(2) REQUIREMENTS.—

(A) NOTICE.—The Board shall provide public notice of any meeting of the Board a reasonable period in advance of the meeting.

(B) OPEN MEETINGS.—A meeting of the Board shall be open to the public.

(C) QUORUM.—A majority of the members of the Board shall be present for a quorum to conduct business.

(g) VOTES.—

(1) IN GENERAL.—Decisions of the Board shall be made by an affirmative vote of not less than ⅔ of the members of the Board voting.

(2) VOTING PROCEDURES.—

(A) RECORDED.—All votes of the Board shall be recorded.

(B) REMOTE AND PROXY VOTING.—If necessary, a member of the Board may cast a vote—

(i) over the phone or through electronic mail or other electronic means if the vote is scheduled to take place during a time other than a full meeting of the Board; and

(ii) over the phone or by proxy if the vote is scheduled to take place during a full meeting of the Board.

(h) DEFINITION OF FORENSIC SCIENCE DISCIPLINE.—

(1) IN GENERAL.—Not later than 18 months after the date of enactment of this Act, the Board shall—

(A) develop a recommended definition of the term ''forensic science discipline'' for purposes of this Act, which shall encompass disciplines with a sufficient scientific basis that involve forensic testing, analysis, identification, or comparisons, the results of which may be interpreted, presented, or otherwise used during the course of a criminal investigation or criminal court proceeding;

(B) develop a recommended list of forensic science disciplines for purposes of this Act; and

(C) submit the recommended definition and proposed list of forensic science disciplines to the Director.

(2) CONSIDERATION.—In developing a recommended list of forensic science disciplines under paragraph (1)(B), the Board shall consider each field from which courts in criminal cases hear forensic testimony or admit forensic evidence.

(3) EXCLUSION FROM LIST.—If the Board recommends that a field should not be included on the list submitted under paragraph (1) because the field has insufficient scientific basis on the date of the recommendation of the Board, the Board shall publish an explanation of the recommendation, which—

(A) shall be published on the website of the Board; and

(B) may include a finding that a field could be recognized as a forensic science discipline, based on additional research.

(4) ESTABLISHMENT.—After the Director receives the recommendation of the Board under paragraph (1), the Director shall, in accordance with section 101(e)(4), establish a definition for the term ''forensic science discipline'', and shall establish a list of forensic science disciplines.

(5) ANNUAL EVALUATION.—On an annual basis, the Board shall—

(A) evaluate—

(i) whether any field should be added to the list of forensic science disciplines established under paragraph (4); and

(ii) whether any field on the list of forensic science disciplines established under paragraph (4) should be modified or removed; and

(B) submit the evaluation conducted under subparagraph (A), including any recommendations, to the Director.

(i) STAFF.—

(1) IN GENERAL.—The Board may, without regard to the civil service laws and regulations, appoint and terminate an executive director and such other additional personnel as may be necessary to enable the Board to perform the duties of the Board.

(2) COMPENSATION.—The Board may fix the compensation of the executive director and other personnel appointed under paragraph (1) without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay for the executive director and other personnel may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title.

(3) PERSONNEL AS FEDERAL EMPLOYEES.—

(A) IN GENERAL.—Any personnel of the Board who are employees shall be employees under section 2105 of title 5, United States Code, for purposes of chapters 63, 81, 83, 84, 24 85, 87, 89, 89A, 89B, and 90 of that title.

(B) MEMBERS OF THE BOARD.—Subparagraph (A) shall not be construed to apply to members of the Board.

(4) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Board may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals which do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of such title.

(5) VOLUNTARY SERVICES.—Notwithstanding section 1342 of title 31, United States Code, the Board may accept and use voluntary and uncompensated services for the Board as the Board determines necessary.

(j) REPORTS TO CONGRESS.—Not later than 2 years after the date of enactment of this Act, and every 2 years thereafter, the Board shall submit to Congress a report describing the work of the Board and the work of each Committee, which shall include a description of any recommendations, decisions, and other significant materials generated during the 2-year period.

(k) APPLICABILITY OF THE FEDERAL ADVISORY COMMITTEE ACT.—

(1) IN GENERAL.—Subject to paragraphs (2) and (3), the Federal Advisory Committee Act (5 U.S.C. App.) shall apply to the Board.

(2) TERMINATION PROVISION.——Section 14(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Board.

(3) COMPENSATION OF MEMBERS.—Members of the Board shall serve without compensation for services performed for the Board.

(4) TRAVEL EXPENSES.—The members of the Board shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Board.

(5) DESIGNATED FEDERAL OFFICER.—In accordance with the Federal Advisory Committee Act (5 U.S.C. App.), the Director shall—

(A) serve as the designated Federal officer; and

(B) designate a committee management officer for the Board.

SEC. 103. COMMITTEES.

(a) ESTABLISHMENT AND MAINTENANCE OF COMMITTEES.—

(1) IN GENERAL.—Not later than 18 months after the date of enactment of this Act, the Board shall issue recommendations to the Director relating to—

(A) the number of Committees that shall be established to examine research needs, standards and best practices, and certification standards for the forensic science disciplines, which shall be—

(i) not fewer than 1; and

(ii) sufficient to allow the Committees to function effectively;

(B) the scope of responsibility for each Committee recommended to be established, which shall ensure that each forensic science discipline is addressed by a Committee;

(C) what the relationship should be between the Committees and any scientific working group or technical working group that has a similar scope of responsibility; and

(D) whether any Committee should consider any field not recognized as a forensic science discipline for the purpose of determining whether there is research that could be conducted and used to form the basis for establishing the field as a forensic science discipline.

(2) ESTABLISHMENT.—After the Director receives the recommendations of the Board under paragraph (1), the Director, in coordination with the Deputy Director, shall—

(A) in accordance with section 101(e)(4), establish—

(i) Committees to examine research needs, standards, and best practices, and certification standards for the forensic science disciplines, which shall be not fewer than 1; and

(ii) a clear scope of responsibility for each Committee; and

(B) publish a list of the Committees and the scope of responsibility for each Committee on the website for the Office.

(3) ANNUAL EVALUATION.—The Board, on an annual basis, shall—

(A) evaluate—

(i) whether any new Committees should be established;

(ii) whether the scope of responsibility for any Committee should be modified; and

(iii) whether any Committee should be discontinued;

(B) submit any recommendations relating to the evaluation conducted under subparagraph (A) to the Director and Deputy Director.

(4) UPDATES.—Upon receipt of any recommendations from the Board under paragraph (3), the Director shall, in accordance with section 101(e)(4), determine whether to establish, modify the scope of, or discontinue any Committee.

(b) MEMBERSHIP.—

(1) IN GENERAL.—Each Committee shall—

(A) consist of not more than 21 members—

(i) each of whom shall be a scientist with knowledge relevant to a forensic science discipline addressed by the Committee; and

(ii) not less than 50 percent of whom shall have extensive experience or background in scientific research;

(B) have a number of members who have extensive experience or background in the forensic sciences sufficient to ensure that the Committee has an adequate understanding of the factors and needs unique to the forensic sciences; and

(C) have a membership that represents a variety of scientific disciplines, including the forensic sciences.

(2) DEFINITION.—In this subsection, the term ''scientist'' includes—

(A) a statistician with a scientific background; and

(B) a physician with expertise in forensic sciences.

(c) APPOINTMENT.—

(1) IN GENERAL.—The Deputy Director, in consultation with the Board, shall appoint the members of each Committee.

(2) CONSIDERATION.—In appointing members to a Committee under paragraph (1), the Deputy Director shall consider—

(A) the importance of analysis from scientists with academic backgrounds; and

(B) the importance of input from experienced forensic practitioners.

(3) VACANCIES.—In the event of a vacancy, the Deputy Director, in consultation with

the Board, may appoint a member to fill the remainder of the term.

(4) HOLDOVERS.—If a successor has not been appointed at the conclusion of the term of a member of the Committee, the member of the Committee may continue to serve until—

(A) a successor is appointed; or

(B) the member of the Committee is reappointed.

(d) TERMS.—A member of a Committee shall serve for renewable terms of 4 years.

(e) SUPPORT AND OVERSIGHT.—

(1) IN GENERAL.—The National Institute of Standards and Technology shall provide support and staff for each Committee as needed.

(2) DUTIES AND OVERSIGHT.—The Deputy Director shall—

(A) perform periodic oversight of each Committee; and

(B) report any concerns about the performance or functioning of a Committee to the Board and the Director.

(3) FAILURE TO COMPLY.—If a Committee fails to produce recommendations within the time periods required under this Act, the Deputy Director and the Director of the National Institute of Standards and Technology shall work with the Committee to assist the Committee in producing the required recommendations in a timely manner.

(f) DUTIES.—

(1) IN GENERAL.—A Committee shall have the duties and responsibilities set out in this Act, and shall perform any other functions determined appropriate by the Board and the Deputy Director.

(2) COMMITTEE DECISIONS AND RECOMMENDATIONS.—

(A) IN GENERAL.—A Committee shall submit recommendations and all recommended standards, protocols, or other materials developed by the Committee to the Board for evaluation.

(B) PROHIBITION OF MODIFICATION OF DECISIONS AND RECOMMENDATIONS.—Any recommendations of a Committee and any recommended standards, protocols, or other materials developed by a Committee may be approved or disapproved by the Board, but may not be modified by the Board.

(C) APPROVAL OF DECISIONS AND RECOMMENDATIONS.—If the Board approves a recommendation or recommended standard, protocol, or other material submitted by a Committee under subparagraph (A), the Board shall submit the recommendation or recommended standard, protocol, or other material as a recommendation of the Board, to the Director and Deputy Director for consideration in accordance with section 101(e)(4).

(D) DISAPPROVAL OF DECISIONS AND RECOMMENDATIONS.—If the Board disapproves of any recommendation of a Committee or recommended standard, protocol, or other material developed by a Committee—

(i) the Board shall provide in writing the reason for the disapproval of the recommendation or recommended standard, protocol, or other material;

(ii) the Committee shall withdraw the recommendation or recommended standard, protocol, or other material developed by the Committee; and

(iii) the Committee may submit a revised recommendation or recommended standard, protocol, or other material.

(g) MEETINGS.—

(1) IN GENERAL.—A Committee shall hold not fewer than 4 meetings of the full Committee each year.

(2) REQUIREMENTS.—

(A) NOTICE.—A Committee shall provide public notice of any meeting of the Committee a reasonable period in advance of the meeting.

(B) OPEN MEETINGS.—A meeting of a Committee shall be open to the public.

(C) QUORUM.—A majority of members of a Committee shall be present for a quorum to conduct business.

(h) VOTES.—

(1) IN GENERAL.—Decisions of a Committee shall be made by an affirmative vote of not less than ⅔ of the members of the Committee voting.

(2) VOTING PROCEDURES.—

(A) RECORDED.—All votes taken by a Committee shall be recorded.

(B) REMOTE AND PROXY VOTING.—If necessary, a member of the Committee may cast a vote—

(i) over the phone or through electronic mail if the vote is scheduled to take place during a time other than a full meeting of the Committee; and

(ii) over the phone or by proxy if the vote is scheduled to take place during a full meeting of the Committee.

(i) APPLICABILITY OF THE FEDERAL ADVISORY COMMITTEE ACT.—

(1) IN GENERAL.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to a Committee.

(2) COMPENSATION OF MEMBERS.—Members of a Committee shall serve without compensation for services performed for the Committee.

(3) TRAVEL EXPENSES.—The members of a Committee shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Committee.

SEC. 104. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated—

(1) $15,000,000 for each of fiscal years 2012 through 2016 for the operation and staffing of the Office;

(2) $5,000,000 for each of fiscal years 2012 through 2016 for the operation and staffing of the Board;

(3) $15,000,000 for each of fiscal years 2012 through 2016 for the operation and staffing of the Committees; and

(4) $5,000,000 for each of fiscal years 2012 through 2016 to the National Institute of Standards and Technology for the oversight, support, and staffing of the Committees.

TITLE II—ACCREDITATION OF FORENSIC SCIENCE LABORATORIES

SEC. 201. ACCREDITATION OF FORENSIC SCIENCE LABORATORIES.

(a) IN GENERAL.—On and after the date established under subsection (b)(2)(D), a forensic science laboratory may not receive, directly or indirectly, any Federal funds, unless the Director has verified that the laboratory has been accredited in accordance with the standards and procedures established under this title.

(b) PROCEDURES FOR ACCREDITATION.—

(1) RECOMMENDATIONS.—Not later than 3 years after the date of enactment of this Act, the Board shall submit to the Director—

(A) recommended procedures for the accreditation of forensic science laboratories that are consistent with the recommended standards and criteria developed by the Board under section 202;

(B) recommended procedures for the periodic review and updating of the accreditation status of forensic science laboratories;

(C) recommended procedures for the Director to verify that laboratories have been accredited in accordance with the standards and procedures established under this title, which shall include procedures to implement, administer, and coordinate enforcement of the program for the accreditation of forensic science laboratories; and

(D) a recommendation regarding the date by which forensic science laboratories should—

(i) begin the process of laboratory accreditation; and

(ii) obtain verification of laboratory accreditation to be eligible to receive Federal funds.

(2) ESTABLISHMENT.—After the Director receives the recommendations of the Board under paragraph (1), the Director shall, in accordance with section 101(e)(4), establish—

(A) procedures for the accreditation of a forensic science laboratory;

(B) procedures for the Director to verify that laboratories have been accredited in accordance with the standards and procedures established under this title;

(C) the date by which a forensic science laboratory shall begin the process of accreditation; and

(D) the date by which a forensic science laboratory shall obtain verification of laboratory accreditation to be eligible to receive Federal funds.

(c) DEFINITION.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Board shall recommend to the Director a definition of the term ''forensic science laboratory'' for purposes of this Act, which shall include any laboratory that conducts forensic testing, analysis, identification, or comparisons, the results of which may be interpreted, presented, or otherwise used during the course of a criminal investigation or criminal court proceeding.

(2) ESTABLISHMENT.—After the Director receives the recommendation of the Board under paragraph (1), the Director shall, in accordance with section 101(e)(4), establish a definition for the term ''forensic science laboratory''.

(d) APPLICABILITY TO FEDERAL AGENCIES.—On and after the date established by the Director under subsection (b)(2)(D), a Federal agency may not use any forensic science laboratory during the course of a criminal investigation or criminal court proceeding unless the forensic science laboratory meets the standards of accreditation and certification established by the Office under this Act.

SEC. 202. STANDARDS FOR LABORATORY ACCREDITATION.

(a) STANDARDS.—

(1) RECOMMENDATIONS.—Not later than 18 months after the date of enactment of this Act, the Board shall, in consultation with qualified professional organizations, submit to the Director recommendations regarding standards for the accreditation of forensic science laboratories, including quality assurance standards, to ensure the quality, integrity, and accuracy of any testing, analysis, identification, or comparisons performed by a forensic science laboratory for use during the course of a criminal investigation or criminal court proceeding.

(2) ESTABLISHMENT.—After the Director receives the recommendations of the Board under paragraph (1), the Director shall, in accordance with section 101(e)(4), establish standards for the accreditation of forensic science laboratories.

(3) REQUIREMENTS.—In recommending or establishing standards under paragraph (1) or (2) the Board and the Director shall—

(A) consider—

(i) whether any relevant national accreditation standards that were in effect before the date of enactment of this Act would be sufficient for the accreditation of forensic science laboratories under this Act; and

(ii) whether any relevant national accreditation standards that were in effect before the date of enactment of this Act would be sufficient for the accreditation of forensic science laboratories under this Act with supplemental standards; and

(B) include—

(i) educational and training requirements for relevant laboratory personnel;

(ii) proficiency and competency testing requirements for relevant laboratory personnel; and

(iii) maintenance and auditing requirements for accredited forensic science laboratories.

(b) REVIEW OF STANDARDS.—

(1) IN GENERAL.—Not less frequently than once every 5 years—

(A) the Board shall—

(i) review the scope and effectiveness of the accreditation standards established under subsection (a);

(ii) submit recommendations to the Director relating to whether, and if so, how to update the standards as necessary to—

(I) account for developments in relevant scientific research and technological advances;

(II) ensure adherence to the standards and best practices established under title V; and

(III) address any other issue identified during the course of the review conducted under clause (i); and

(B) the Director shall, as necessary and in accordance with section 101(e)(4), update the accreditation standards established under subsection (a).

(2) PROCEDURES FOR OPEN AND TRANSPARENT REVIEW OF STANDARDS.—The Director, in consultation with the Board, shall establish procedures to ensure that the process for developing, reviewing, and updating accreditation standards under this section—

(A) is open and transparent to the public; and

(B) includes an opportunity for the public to comment on proposed standards with sufficient prior notice.

SEC. 203. ADMINISTRATION AND ENFORCEMENT OF ACCREDITATION PROGRAM.

(a) ADMINISTRATION AND ENFORCEMENT OF ACCREDITATION PROGRAM.—

(1) IN GENERAL.—The Director shall determine whether a forensic science laboratory is eligible to receive, directly or indirectly, Federal funds under section 201(a).

(2) ADMINISTRATION.—

(A) IN GENERAL.—The Director may identify 1 or more qualified accrediting entities with experience and expertise relevant to the accreditation of forensic science laboratories, the accreditation of a forensic science laboratory by which shall constitute accreditation for purposes of section 201(a).

(B) OVERSIGHT.—The Director shall periodically reevaluate whether accreditation by a qualified accrediting entity identified under subparagraph (A) is adequate to ensure compliance with the standards and procedures established under this title.

(C) REPORTING.—The Director shall provide regular reports to the Board regarding the accreditation of forensic science laboratories by qualified accrediting entities identified under subparagraph (A) and reevaluations of accreditation by qualified accrediting entities under subparagraph (B), which shall be published on the website of the Office.

(b) REVIEW OF ELIGIBILITY.—Not less frequently than once every 5 years, the Director shall evaluate whether a forensic science laboratory that has been determined to be eligible to receive Federal funds under section 201(a) remains eligible to receive Federal funds, including whether any accreditation of the forensic science laboratory by a qualified accrediting entity identified under subparagraph (A) is still in effect.

(c) WEBSITE.—The Director shall develop and maintain on the website of the Office an updated list of—

(1) the forensic science laboratories that are eligible for Federal funds under section 201(a);

(2) the forensic science laboratories that have been determined to be ineligible to receive Federal funds under section 201(a); and

(3) the forensic science laboratories that are awaiting a determination regarding eligibility to receive Federal funds under section 201(a).

TITLE III—CERTIFICATION OF FORENSIC SCIENCE PERSONNEL

SEC. 301. DEFINITIONS.

(a) COVERED ENTITY.—In this title, the term ''covered entity'' means an entity that—

(1) is not a forensic science laboratory; and

(2) conducts forensic testing, analysis, identification, or comparisons, the results of which may be interpreted, presented, or otherwise used during the course of a criminal investigation or criminal court proceeding.

(b) RELEVANT PERSONNEL.—

(1) RECOMMENDATION.—Not later than 1 year after the date of enactment of this Act, the Board shall submit to the Director a recommended definition of the term ''relevant personnel'', which shall include individuals who—

(A) conduct forensic testing, analysis, identification, or comparisons, the results of which may be interpreted, presented, or otherwise used during the course of a criminal investigation or criminal court proceeding; or

(B) testify about evidence prepared by an individual described in paragraph (A).

(2) DEFINITION.—After the Director receives the recommendation of the Board under paragraph (1), the Director shall, in accordance with section 101(e)(4), define the term ''relevant personnel'' for purposes of this title.

SEC. 302. CERTIFICATION OF FORENSIC SCIENCE PERSONNEL.

Except as provided in section 304(c)(2), on and after the date established under section 304(c)(1), a forensic science laboratory or covered entity may not receive, directly or indirectly, any Federal funds, unless all relevant personnel of the forensic science laboratory or covered entity are certified under this title.

SEC. 303. STANDARDS FOR CERTIFICATION.

(a) RECOMMENDED STANDARDS.—

(1) IN GENERAL.—Not later than 2 years after the date on which all members of a Committee have been appointed, the Committee shall make recommendations to the Board relating to standards for the certification of relevant personnel in each forensic science discipline addressed by the Committee.

(2) REQUIREMENTS.—In developing recommended standards under paragraph (1), a Committee shall—

(A) consult with qualified professional organizations;

(B) consider relevant certification standards and best practices developed by qualified professional or scientific organizations;

(C) consider any standards or best practices established under title V; and

(D) consider—

(i) whether certain minimum standards should be established for the education and training of relevant personnel;

(ii) whether there should be an alternative process to enable relevant personnel who were hired before the date established under section 304(c)(1), to obtain certifications, including—

(I) testing that demonstrates proficiency in a specific forensic science discipline that is equal to or greater than the level of proficiency required by the standards for certification; and

(II) a waiver of certain educational and training requirements;

(iii) whether and under what conditions relevant personnel should be allowed to perform an activity described in subparagraph (A) or (B) of section 301(b)(1) for a forensic science laboratory or covered entity while the individual obtains the training and education required for certification under the standards developed under this title; and

(iv) whether certification by recognized and relevant medical boards should be sufficient for relevant personnel to meet the standards developed under this title.

(b) APPROVAL OR DENIAL OF RECOMMENDATIONS.—The Board shall approve or deny any recommendation submitted by a Committee under subsection (a) in accordance with section 103(f)(2).

(c) ESTABLISHMENT OF STANDARDS.—After the Director receives recommendations from the Board under subsection (b), the Director shall, in accordance with section 101(e)(4), establish standards for the certification of relevant personnel.

(d) REVIEW OF STANDARDS.—

(1) IN GENERAL.—Not less frequently than once every 5 years, a Committee shall—

(A) review the standards for certification established under subsection (c) for each forensic science discipline within the responsibility of the Committee; and

(B) submit to the Board recommendations regarding updates, if any, to the standards for certification as necessary—

(i) to account for developments in relevant scientific research, technological advances, or changes in the law; and

(ii) to ensure adherence to the uniform standards and best practices established under title V.

(2) BOARD REVIEW.—Not later than 180 days after the date on which a Committee submits recommendations under paragraph (1)(B), the Board shall, in accordance with section 103(f)(2)—

(A) consider the recommendations; and

(B) submit to the Director recommendations of uniform standards and best practices for each forensic science discipline.

(3) UPDATES.—After the Director receives recommendations from the Board under paragraph (2), the Director shall, in accordance with section 101(e)(4), update the standards for certification of relevant personnel.

(e) PUBLIC COMMENT.—The Director, in consultation with the Board, shall establish procedures to ensure that the process for establishing, reviewing, and updating standards for certification of relevant personnel under this section—

(1) is open and transparent to the public; and

(2) includes an opportunity for the public to comment on proposed standards with sufficient prior notice.

SEC. 304. ADMINISTRATION AND REVIEW OF CERTIFICATION PROGRAM.

(a) IN GENERAL.—

(1) DETERMINATION.—The Director shall determine whether a forensic science laboratory or covered entity is eligible to receive, directly or indirectly, Federal funds under section 302.

(2) PROCEDURES.—Not later than 1 year after the date of enactment of this Act, the Director shall establish policies and procedures to implement, administer, and coordinate enforcement of the certification requirements established under this title, including requiring the periodic recertification of relevant personnel.

(b) ADMINISTRATION.—

(1) IN GENERAL.—After consultation with the Board, the Director may identify 1 or more qualified professional organizations with experience and expertise relevant to the certification of individuals in a particular forensic science discipline, the certification of an individual by which shall constitute certification for purposes of section 302.

(2) OVERSIGHT.—The Director shall periodically reevaluate whether certification by a

qualified professional organizations identified under paragraph (1) is adequate to ensure compliance with the standards established under this title.

(3) REPORTING.—The Director shall provide regular reports to the Board regarding the certification of relevant personnel by qualified professional organizations identified under paragraph (1) and reevaluations of certification by qualified professional organizations under paragraph (2), which shall be published on the website of the Office.

(c) IMPLEMENTATION OF CERTIFICATION REQUIREMENTS.—

(1) IN GENERAL.—After consultation with the Board, the Director shall establish the date on which forensic science laboratories and covered entities shall be in compliance with the certification requirements of this title.

(2) GRADUAL IMPLEMENTATION.—The Director shall, in consultation with the Board and each Committee, establish policies and procedures to enable the gradual implementation of the certification requirements that—

(A) include a reasonable schedule to allow relevant personnel to obtain certifications; and

(B) allow for partial compliance with the requirements of section 302 for a reasonable period of time after the date established under paragraph (1).

(d) REVIEW OF CERTIFICATION REQUIREMENTS.—The Director shall establish policies and procedures for the periodic review of the implementation, administration, and enforcement of the certification requirements established under this title.

SEC. 305. GRANTS AND TECHNICAL ASSISTANCE.

(a) IN GENERAL.—The Director of the National Institute of Justice, in consultation with the Director, may make grants and provide technical assistance to forensic science laboratories and other entities subject to the requirements under this title and title II to ensure that forensic science laboratories and covered entities are able to effectively fulfill the responsibilities of the laboratories or entities during the process of—

(1) seeking accreditation under title II; and

(2) obtaining certifications for relevant personnel under this title.

(b) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There is authorized to be appropriated $10,000,000 for each of fiscal years 2012 through 2016 to the National Institute of Justice for the grant program and technical assistance described in subsection (a).

(2) REQUIREMENT.—Not less than 75 percent of funds appropriated pursuant to paragraph (1) shall be used for grants under this section.

(c) REPORT.—The Director of the National Institute of Justice shall, on an annual basis, submit to the Board and the Director a report that describes—

(1) the application process for grants under this section;

(2) each grant made under this section during the fiscal year before the fiscal year in which the report is submitted; and

(3) as appropriate, the status and results of any grants previously described in a report submitted under this subsection.

TITLE IV—RESEARCH

SEC. 401. RESEARCH STRATEGY AND PRIORITIES.

(a) COMPREHENSIVE RESEARCH STRATEGY AND AGENDA.—

(1) RECOMMENDATION.—Not later than 18 months after the date of enactment of this Act, the Board shall recommend to the Director a comprehensive strategy for fostering and improving peer-reviewed scientific research relating to the forensic science disciplines, including research addressing issues of accuracy, reliability, and validity in the forensic science disciplines.

(2) ESTABLISHMENT.—After the Director receives recommendations from the Board under paragraph (1), the Director shall, in accordance with section 101(e)(4), establish a comprehensive strategy for fostering and improving peer-reviewed scientific research relating to the forensic science disciplines.

(3) REVIEW.—

(A) BOARD REVIEW.—Not less frequently than once every 5 years, the Board shall—

(i) review the comprehensive strategy established under paragraph (2); and

(ii) recommend any necessary updates to the comprehensive strategy.

(B) UPDATES.—After the Director receives recommendations from the Board under subparagraph (A), the Director shall, in accordance with section 101(e)(4), update the comprehensive strategy as necessary and appropriate.

(b) RESEARCH FUNDING PRIORITIES.—

(1) RECOMMENDATION.—Not later than 18 months after the date of enactment of this Act, the Board shall recommend to the Director a list of priorities for forensic science research funding.

(2) ESTABLISHMENT.—After the Director receives the list from the Board under paragraph (1), the Director shall, in accordance with section 101(e)(4), establish a list of priorities for forensic science research funding.

(3) REVIEW.—Not less frequently than once every 2 years, the Board shall—

(A) review—

(i) the list of priorities established under paragraph (2); and

(ii) the findings of the relevant Committees made under subsection (c); and

(B) recommend any necessary updates to the list of priorities, incorporating, as appropriate, the findings of the Committees under subsection (c).

(4) UPDATES.—After the Director receives the recommendations under paragraph (3), the Director shall, in accordance with section 101(e)(4), update as necessary the list of research funding priorities.

(c) EVALUATION OF RESEARCH NEEDS.—Not later than 2 years after the date on which all members of a Committee have been appointed under section 103, and periodically thereafter, the Committee shall—

(1) examine and evaluate the scientific research in each forensic science discipline within the responsibility of the Committee;

(2) conduct comprehensive surveys of scientific research relating to each forensic science discipline within the responsibility of the Committee;

(3) examine the research needs in each forensic science discipline within the responsibility of the Committee and identify key areas in which further scientific research is needed; and

(4) develop and submit to the Board a list of research needs and priorities.

(d) CONSIDERATION.—In developing the initial research strategy, research priorities, and surveys required under this section, the Board and the Director shall consider any findings, surveys, and analyses relating to research in forensic science disciplines, including those made by the Subcommittee on Forensic Science of the National Science and Technology Council.

SEC. 402. RESEARCH GRANTS.

(a) COMPETITIVE GRANTS.—

(1) DEFINITION.—In this subsection, the term ''eligible entity'' means—

(A) a nonprofit academic or research institution; and

(B) any other entity designated by the Director of the National Institute of Standards and Technology.

(2) PEER-REVIEW RESEARCH GRANTS.—

(A) IN GENERAL.—The Director of the National Institute of Standards and Technology may, on a competitive basis, make grants to eligible entities to conduct peer-reviewed scientific research.

(B) CONSIDERATION.—In making grants under this paragraph, the Director of the National Institute of Standards and Technology shall—

(i) ensure that grants made under this paragraph are for peer-reviewed scientific research in areas that are consistent with the research priorities established by the Director under section 401(b); and

(ii) take into consideration the research needs identified by the Committees under section 401(c).

(3) DEVELOPMENT OF NEW TECHNOLOGIES.—The Director of the National Institute of Standards and Technology may, on a competitive basis, make grants to eligible entities to conduct peer-reviewed scientific research to develop new technologies and processes to increase the efficiency, effectiveness, and accuracy of forensic testing procedures.

(4) COORDINATION WITH DIRECTOR.—In making grants under this subsection, the Director of the National Institute of Standards and Technology shall—

(A) coordinate with the Director; and

(B) consider the plan established under section 404.

(5) COORDINATION WITH THE NATIONAL SCIENCE FOUNDATION.—The Director of the National Institute of Standards and Technology shall consult and coordinate with the National Science Foundation to ensure—

(A) the integrity of the process for reviewing funding proposals and awarding grants under this subsection; and

(B) that the grant-making process is not subject to any undue bias or influence.

(b) REPORT.—

(1) IN GENERAL.—

(A) SUBMISSION.—The Director of the National Institute of Standards and Technology shall, on an annual basis, submit to the Board and the Director a report that describes—

(i) the application process for grants under this section;

(ii) each grant made under this section in the fiscal year before the report is submitted; and

(iii) as appropriate, the status and results of grants previously described in a report submitted under this subsection.

(B) PUBLICATION.—The Director shall publish the report submitted under subparagraph (A) on the website of the Office.

(2) EVALUATION.—The Board and the Director shall evaluate each report submitted under paragraph (1) and consider the information provided in each report in reviewing the research strategy and priorities established under section 401.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated—

(1) $75,000,000 to the National Institute of Standards and Technology for each of fiscal years 2012 through 2016 for grants under subsection (a)(2); and

(2) $15,000,000 to the National Institute of Standards and Technology for each of fiscal years 2012 through 2016 for grants under subsection (a)(3).

SEC. 403. OVERSIGHT AND REVIEW.

(a) REPORTS.—Not later than 3 years after the date on which the first grant is awarded under paragraph (2) or (3) of section 402(a), and not later than 2 years after the date on which the first report under this subsection is submitted, the Inspector General of the Department of Justice, in coordination with the Inspector General of the Department of Commerce, shall submit to Congress a report on the administration and effectiveness of the grant programs described in section 402(a).

(b) REQUIREMENTS.—Each report submitted under this section shall evaluate—

(1) whether any undue biases or influences affected the integrity of the solicitation, award, or administration of research grants; and

(2) whether there was any unnecessary duplication, waste, fraud, or abuse in the grant-making process.

SEC. 404. PUBLIC-PRIVATE COLLABORATION.

(a) RECOMMENDATION.—Not later than 2 years after the date of enactment of this Act, the Board shall submit to the Director a recommended plan for encouraging collaboration among universities, nonprofit research institutions, State and local forensic science laboratories, private forensic science laboratories, private corporations, and the Federal Government to develop and perform cost-effective and reliable research in the forensic sciences, consistent with the research priorities established under section 401(b)(2).

(b) REQUIREMENTS.—The plan recommended under subsection (a) shall include—

(1) incentives for nongovernmental entities to invest significant resources into conducting necessary research in the forensic sciences;

(2) procedures for ensuring the research described in paragraph (1) will be conducted with sufficient scientific rigor that the research can be relied upon by—

(A) the Committees in developing standards under this Act; and

(B) forensic science personnel; and

(3) clearly defined requirements for disclosure of the sources of funding by nongovernmental entities for forensic science research conducted in collaboration with governmental entities and safeguards to prevent conflicts of interest or undue bias or influence.

(c) ESTABLISHMENT AND IMPLEMENTATION.—After receiving the recommended plan of the Board under subsection (a), the Director shall establish, in accordance with section 101(e)(4), and implement a plan for encouraging collaboration among universities, nonprofit research institutions, State and local forensic science laboratories, private forensic science laboratories, private corporations, and the Federal Government to develop and perform cost-effective and reliable research in the forensic sciences, consistent with the research priorities established under section 401(b)(2).

(d) OVERSIGHT.—The Director, in consultation with the Board, shall periodically evaluate and, as necessary, update the plan established under subsection (c).

TITLE V—STANDARDS AND BEST PRACTICES

SEC. 501. DEVELOPMENT OF STANDARDS AND BEST PRACTICES.

(a) COMMITTEE RECOMMENDATIONS.—

(1) IN GENERAL.—Not later than 2 years after the date on which all members of a Committee have been appointed under section 103, the Committee shall develop and recommend to the Board uniform standards and best practices for each forensic science discipline addressed by the Committee, including—

(A) standard protocols;

(B) quality assurance standards; and

(C) standard terminology for use in reporting, including reports of identifications, analyses, or comparisons of forensic evidence that may be used during a criminal investigation or criminal court proceeding.

(2) REQUIREMENTS.—In developing the uniform standards and best practices under paragraph (1), a Committee shall—

(A) as appropriate, consult with qualified professional organizations; and

(B) develop uniform standards and best practices that are designed to ensure the quality and scientific integrity of data, results, conclusions, analyses, and reports that are generated for use in the criminal justice system.

(b) BOARD RECOMMENDATIONS.—Not later than 180 days after the date on which a Committee submits recommended uniform standards and best practices under subsection (a), the Board shall, in accordance with section 103(f)(2)—

(1) consider the recommendations; and

(2) submit to the Director recommendations of uniform standards and best practices.

SEC. 502. ESTABLISHMENT AND DISSEMINATION OF STANDARDS AND BEST PRACTICES.

(a) IN GENERAL.—After the Board submits uniform standards or best practices for a forensic science discipline under section 501(b), the Director shall, in accordance with section 101(e)(4), establish and disseminate uniform standards and best practices for the forensic science discipline.

(b) PUBLICATION.—The Director shall publish the uniform standards and best practices established under subsection (a) on the website of the Office.

SEC. 503. REVIEW AND OVERSIGHT.

(a) REVIEW BY COMMITTEES.—

(1) IN GENERAL.—Not less frequently than once every 3 years, each Committee shall review and, as necessary, recommend to the Board updates to the uniform standards and best practices established under section 502 for each forensic science discipline within the responsibility of the Committee.

(2) CONSIDERATIONS.—In reviewing, and developing recommended updates to, the uniform standards and best practices under paragraph (1), a Committee shall consider—

(A) input from qualified professional organizations;

(B) research published after the date on which the uniform standards and best practices were established, including research conducted under title IV; and

(C) any changes to relevant law made after the date on which the uniform standards and best practices were established.

(b) BOARD RECOMMENDATIONS.—Not later than 180 days after the date on which a Committee submits recommended updates to the uniform standards and best practices under subsection (a), the Board shall, in accordance with section 103(f)(2)—

(1) consider the recommendations; and

(2) recommend to the Director any updates, as necessary, to the uniform standards and best practices established under section 502.

(c) UPDATES.—After the Director receives recommended updates, if any, under subsection (b), the Director shall, in accordance with section 101(e)(4), update and disseminate the uniform standards and best practices for each forensic science discipline as necessary.

(d) PROCEDURES.—The Director, in consultation with the Board, shall establish procedures to ensure that the process for developing, reviewing, and updating the uniform standards and best practices—

(1) is open and transparent to the public; and

(2) includes an opportunity for the public to comment on proposed standards with sufficient prior notice.

TITLE VI—ADDITIONAL RESPONSIBILITIES OF THE OFFICE OF FORENSIC SCIENCE AND THE FORENSIC SCIENCE BOARD

SEC. 601. FORENSIC SCIENCE TRAINING AND EDUCATION FOR JUDGES, ATTORNEYS, AND LAW ENFORCEMENT PERSONNEL.

(a) IN GENERAL.—

(1) RECOMMENDATION.—Not later than 2 years after the date of enactment of this Act, the Board shall submit to the Director a recommended plan for—

(A) supporting the education and training of judges, attorneys, and law enforcement personnel in the forensic sciences and fundamental scientific principles, which shall include education on the competent use and evaluation of forensic science evidence; and

(B) developing a standardized curriculum for education and training described in subparagraph (A).

(2) ESTABLISHMENT.—Upon receipt of the recommendation from the Board under paragraph (1), the Director shall establish, in accordance with section 101(e)(4), and implement a plan for—

(A) supporting the education and training of judges, attorneys, and law enforcement personnel in the forensic sciences and fundamental scientific principles, which shall include education on the competent use and evaluation of forensic science evidence; and

(B) developing a standardized curriculum for education and training described in subparagraph (A).

(3) OVERSIGHT.—The Director, in consultation with the Board, shall periodically evaluate and, as necessary, update the plan established under paragraph (2).

(b) GRANT PROGRAM.—

(1) IN GENERAL.—The Director of the National Institute of Justice may, in consultation with the Director—

(A) provide technical assistance directly or indirectly to judges, attorneys, and law enforcement personnel in the forensic sciences and fundamental scientific principles, including the competent use and evaluation of forensic science evidence; and

(B) make grants to States and units of local government and nonprofit organizations or institutions to provide training to judges, attorneys, and law enforcement personnel about the forensic sciences and fundamental scientific principles, including the competent use and evaluation of forensic science evidence.

(2) REQUIREMENT.—On and after the date on which the Director establishes the plan for supporting the education and training of judges, attorneys, and law enforcement personnel in the forensic sciences and fundamental scientific principles under subsection (a)(2), the Director of the National Institute of Justice shall administer the grant program described in paragraph (1) in accordance with the plan.

(3) AUTHORIZATION OF APPROPRIATIONS.—

(A) IN GENERAL.—There is authorized to be appropriated to the Director of the National Institute of Justice $10,000,000 for each of fiscal years 2012 through 2016 for grants and technical assistance under this subsection.

(B) REQUIREMENT.—Not less than 75 percent of the funds appropriated pursuant to this paragraph shall be used for grants under this subsection.

SEC. 602. EDUCATIONAL PROGRAMS IN THE FORENSIC SCIENCES.

(a) RECOMMENDATIONS.—Not later than 3 years after the date of enactment of this Act, the Board shall submit to the Director—

(1) a recommended plan for supporting the development of undergraduate and graduate educational programs in the forensic science disciplines and related fields; and

(2) recommendations as to whether the development of standards or requirements for educational programs in the forensic science disciplines and related fields is appropriate.

(b) ESTABLISHMENT AND IMPLEMENTATION.—Upon receipt of the recommendation from the Board under subsection (a), the Director shall establish, in accordance with section 101(e)(4), and implement—

(1) a plan for supporting the development of undergraduate and graduate educational programs in the forensic science disciplines and related fields; and

(2) any standards or requirements for education programs in the forensic science disciplines and related fields determined by the Director to be appropriate.

(c) OVERSIGHT.—The Director, in consultation with the Board, shall—

(1) oversee the implementation of any standards or requirements established under subsection (b); and

(2) periodically evaluate and, as necessary, update the plan, standards, or requirements established under subsection (b).

SEC. 603. MEDICAL-LEGAL DEATH EXAMINATION.

(a) RECOMMENDATIONS.—Not later than 3 years after the date of enactment of this Act, the Board shall submit to the Director—

(1) a recommended plan to encourage the Federal Government and State and local governments to implement systems to ensure that qualified individuals perform medical-legal death examinations and to encourage qualified individuals to enter the field of medical-legal death examination; and

(2) recommendations on whether and how the requirements, standards and regulations established under this Act should apply to individuals who perform medical-legal death examinations.

(b) ESTABLISHMENT AND IMPLEMENTATION.—Upon receipt of the recommendations from the Board under subsection (a), the Director shall establish, in accordance with section 101(e)(4), and implement—

(1) a plan to encourage the Federal Government and State and local governments to implement systems to ensure that qualified individuals perform medical-legal death examinations and to encourage qualified individuals to enter the field of medical-legal death examination; and

(2) any specific or additional standards or requirements for individuals who perform medical-death examinations determined by the Director to be appropriate.

(c) OVERSIGHT.—The Director, in consultation with the Board, shall—

(1) oversee the implementation of any standards or requirements established under subsection (b)(2); and

(2) periodically evaluate and, as necessary, update the plan, standards, and requirements established under subsection (b).

SEC. 604. INTER-GOVERNMENTAL COORDINATION.

The Board and the Director shall regularly—

(1) coordinate with relevant Federal agencies, including the National Science Foundation, the Department of Defense, and the National Institutes of Health, as appropriate, to make efficient and appropriate use of research expertise and funding; and

(2) coordinate with the Department of Homeland Security and other relevant Federal agencies to determine ways in which the forensic science disciplines may assist in homeland security and emergency preparedness.

SEC. 605. ANONYMOUS REPORTING.

Not later than 3 years after the date of enactment of this Act, the Director shall develop a system for any individual to provide information relating to compliance, or lack of compliance, with the requirements, standards, and regulations established under this Act, which may include a hotline or website that has appropriate guarantees of anonymity and confidentiality and protections for whistleblowers.

SEC. 606. INTEROPERABILITY OF DATABASES AND TECHNOLOGIES.

(a) RECOMMENDATIONS.—Not later than 3 years after the date of enactment of this Act, the Board shall submit to the Director a recommended plan to require interoperability among databases and technologies in each of the forensic science disciplines among all levels of Government, in all States, and with the private sector

(b) ESTABLISHMENT AND IMPLEMENTATION.—Upon receipt of the recommendation from the Board under subsection (a), the Director shall establish, in accordance with section 101(e)(4), and implement a plan to encourage interoperability among databases and technologies in each of the forensic science disciplines among all levels of Government, in all States, and with the private sector.

(c) OVERSIGHT.—The Director, in consultation with the Board, shall evaluate and, as necessary, update the plan established under subsection (b).

SEC. 607. CODE OF ETHICS.

(a) RECOMMENDATIONS.—

(1) IN GENERAL.—Not later than 3 years after the date of enactment of this Act, the Board shall submit to the Director a recommended code of ethics for the forensic science disciplines.

(2) REQUIREMENTS.—In developing a recommended code of ethics under paragraph (1), the Board shall—

(A) consult with relevant qualified professional organizations; and

(B) consider any recommendations relating to a code of ethics or code of professional responsibility developed by the Subcommittee on Forensic Science of the National Science and Technology Council.

(b) ESTABLISHMENT AND INCORPORATION.—Upon receipt of the recommendation from the Board under subsection (a), the Director shall—

(1) in accordance with section 101(e)(4), establish a code of ethics for the forensic science disciplines; and

(2) as appropriate, incorporate the code of ethics into the standards for accreditation of forensic science laboratories and certification of relevant personnel established under this Act.

(c) OVERSIGHT.—The Director, in consultation with the Board, shall periodically evaluate and, as necessary, update the code of ethics established under subsection (b).

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

S. 134. A bill to authorize the Mescalero Apache Tribe to lease adjudicated water rights; to the Committee on Indian Affairs.

Mr. BINGAMAN. Mr. President, today I am introducing a bill entitled the Mescalero Apache Tribe Leasing Authorization Act to allow the Mescalero Apache Tribe in New Mexico to lease certain adjudicated water rights to other communities in need of water. My colleague Senator TOM UDALL is cosponsoring this measure and I am looking forward to working with him on this issue.

As competition for limited water supplies increases and water supplies become more uncertain as a result of a changing climate, more flexibility in water management strategies is essential. This bill will enable the Mescalero Apache Tribe to lease certain unused water rights adjudicated to the Tribe to other communities in New Mexico that have significant water needs. Through this bill, communities including the Village of Ruidoso, the Village of Cloudcroft and the City of Alamogordo would be able to negotiate with the Mescalero Apache Tribe to lease water through a process overseen by the New Mexico State Engineer. These mutually beneficial transactions will provide additional water to communities in times of need and will provide economic benefits to the Tribe. Allowing these types of transactions to occur will also help to strengthen the relationship between Indian and non-Indian communities that co-exist in many parts of New Mexico.

This bill will greatly benefit the Mescalero Apache Tribe and its surrounding neighbors and it is my hope that my colleagues will ultimately support its enactment.

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. 134

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 ''Mescalero Apache Tribe Leasing Authorization Act''.

SEC. 2. DEFINITIONS.

In this Act:

(1) ADJUDICATED WATER RIGHTS.—The term ''adjudicated water rights'' means water rights that were adjudicated to the Tribe in State v. Lewis, 116 N.M. 194, 861 P. 2d 235 (1993).

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

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

(4) TRIBE.—The term ''Tribe'' means the Mescalero Apache Tribe.

SEC. 3. AUTHORIZATION TO LEASE ADJUDICATED WATER RIGHTS.

(a) IN GENERAL.—Notwithstanding any other provision of law, subject to subsections (b) and (c), the Tribe may lease, enter into a contract with respect to, or otherwise transfer to another party, for another purpose, or to another place of use in the State, all or any portion of the adjudicated water rights.

(b) STATE LAW.—In carrying out any action under subsection (a), the Tribe shall comply with all laws (including regulations) of the State with respect to the leasing or transfer of water rights.

(c) ALIENATION; MAXIMUM TERM.—

(1) ALIENATION.—The Tribe shall not permanently alienate any adjudicated water rights.

(2) MAXIMUM TERM.—The term of any water use lease, contract, or other agreement under this section (including a renewal of such an agreement) shall be not more than 99 years.

(d) LIABILITY.—The Secretary shall not be liable to the Tribe or any other person for any loss or other detriment resulting from a lease, contract, or other arrangement entered into pursuant to this section.

(e) PURCHASES OR GRANTS OF LAND FROM INDIANS.—The authorization provided by this Act for the leasing, contracting, and transfer of the adjudicated water rights shall be considered to satisfy any requirement for authorization of the action by treaty or convention imposed by section 2116 of the Revised Statutes (25 U.S.C. 177).

(f) PROHIBITION ON FORFEITURE.—The nonuse of all or any portion of the adjudicated water rights by a lessee or contractor shall not result in the forfeiture, abandonment, relinquishment, or other loss of all or any portion of the adjudicated water rights.

By Mr. REID (for Mrs. FEINSTEIN (for herself, Mr. SCHUMER, Mr. KERRY, Mr. SANDERS, and Mr. FRANKEN)):

S. 136. A bill to establish requirements with respect to bisphenol A; to the Committee on Health, Education, Labor, and Pensions.

Mrs. FEINSTEIN. Mr. President, today I am introducing the ''Ban Poisonous Additives Act of 2011,'' a bill that would ban the chemical Bisphenol A, known as BPA, from all children's feeding products. I thank my cosponsors Senators SCHUMER, KERRY, SANDERS, and FRANKEN for their support.

I vowed in the last Congress not to give up, and this is why I am introducing a bill that bans the use of BPA in baby bottles, sippy cups, infant formula, and baby food containers: the products used to provide food and beverages to the most vulnerable.

I have a deep, abiding concern regarding the presence of toxins and chemicals in the daily lives of Americans. BPA is an endocrine disruptor, which means that it interferes with the way hormones work in the body.

The evidence against BPA is mounting, especially its harmful effects on babies and children who are still developing.

I believe we have an obligation to safeguard babies and children from unnecessary exposure to this chemical that is linked to so many health problems.

Over 200 scientific studies show that even at low doses, BPA is linked to serious health problems including: Cancer, Diabetes, Heart Disease, Early puberty, Behavioral problems, Obesity.

This chemical is so widespread it has been found in 93 percent of Americans.

Babies and children are particularly at risk to the exposure of BPA because when they are developing, any small change can cause dramatic consequences.

It may not surprise you that the chemical industry continues to insist that BPA is not harmful. According to at least one study, there is reason to be skeptical about research coming from chemical companies.

In 2006, the journal Environmental Research published an article comparing the results of government funded studies on BPA to BPA studies funded by industry.

The difference is glaring.

Ninety-two percent of the government funded studies found that exposure to BPA caused health problems.

Overwhelmingly, government studies found harm. None of the industry funded studies identified health problems as a result of BPA exposure. Not one.

Clearly, serious questions are raised about the validity of the chemical industry's studies. The results also illustrate why our nation's regulatory agencies should not and cannot solely rely on chemical companies to conduct research on their own products.

The fact that so many adverse health effects are linked to this chemical, the fact that this chemical is so present in our bodies, and the fact that babies are more at risk from its harmful effects leads me to believe that there is no good reason to expose our children to BPA.

This is why we are introducing legislation that protects all babies across the country, no matter which state they happen to live.

This bill will ensure that parents no longer have to wonder whether products they buy for their babies and children will harm them now or later in life.

This bill: Bans the use of BPA in baby bottles and sippy cups within 6 months; Bans the use of BPA in baby food within 1 year; Bans the use of BPA in infant formula within 18 months; Requires that the FDA issue a revised safety assessment on BPA by December 1, 2012; and Includes a savings clause to allow states to enact their own legislation.

This bill makes sense. It's a reasonable step forward to protecting our children's health.

Major manufacturers are already phasing out BPA from their food and beverage products for children.

Food and beverage products for children all have safe, alternative, BPA-free packaging available right now.

Major baby food and formula manufacturers offer BPA-free alternatives including: Nestle's GOOD START, Similac powdered infant formula, Enfamil powdered infant formula, Nestle liquid formula, and Similac liquid formula.

At least 14 manufacturers of baby bottles either offer some BPA-free alternatives or have completely banned its use. They are: Avent, Born Free, Disney First Years, Dr. Brown's, Evenflo, Gerber, Green to Grow, Klean Kanteen, Medala, Munchkin, Nuby Sippy Cups, Playtex, Think Baby, and Weil Baby.

Many major retailers have taken action and sell BPA-free baby bottles and cups: CVS, Kmart, Kroger, Rite Aid, Safeway, Sears, Toys ''R'' Us and Babies ''R'' Us, Wal-Mart, Wegmans, and Whole Foods.

Eight states have already enacted laws banning BPA from children's products: Connecticut, Maryland, Massachusetts, Minnesota, New York, Vermont, Washington, and Wisconsin.

Other countries have already moved forward to restrict this chemical. Canada declared BPA a toxic substance, and banned it from all baby bottles and sippy cups. Denmark and France have national bans on BPA in certain children's products.

The European Commission banned BPA from baby bottles, protecting consumers in the European Union.

Clearly, the problem has been recognized and steps are being taken by countries, states, companies, and retailers to remove this harmful chemical.

Let me briefly explain what BPA is.

BPA is a synthetic estrogen. As I stated previously, it is a hormone disruptor and interferes with how hormones work in the body. This chemical is used in thousands of consumer products to harden plastics, line tin cans, and make CDs. It is even used to coat airline tickets, grocery store receipts, and to make dental sealants.

It is one of the most pervasive chemicals in modern life. And, as with so many other chemicals in consumer products, BPA has been added to our products without us knowing whether it was safe or not.

Alternatives exist because there is growing concern about the harmful effects of BPA. The chemical industry continues to try to quiet criticism by reassuring consumers that BPA is safe.

I don't buy it.

As I previously stated, over 200 scientific studies show that exposure to BPA, particularly during prenatal development and early infancy, are linked to a wide range of adverse health effects in later life.

Because of their smaller size and stage of development, babies and children are particularly at risk from the harmful health effects of BPA.

These serious effects include: increased risk of breast and prostate cancer; genital abnormalities in males; infertility in men; sexual dysfunction; early puberty in girls; metabolic disorders such as insulin resistant Type 2 diabetes and obesity; and behavioral problems such as attention deficit hyperactivity disorder, ADHD.

It continues to astound me how, even with this extensive list of potentially serious health effects, we continue to allow this chemical to be put in our products.

Moreover, additional science continues to be released, confirming the potential for BPA to cause severe problems:

Recently, the University of California, San Francisco published a small scale study finding that human exposure to BPA may compromise the quality of a woman's eggs retrieved for in vitro fertilization, IVF.

A study of over 200 Chinese factory workers found evidence that high levels of BPA exposure to adversely affect sperm quality in humans.

Researchers at the University of Nebraska Medical Center recently published a study concluding that BPA has biochemical properties similar to human carcinogens.

I want to underscore the importance and the urgency of withdrawing BPA from these children's products.

Well-known and respected organizations and Federal agencies also have expressed concern about BPA:

The President's Cancer Panel Annual Report released in April 2010 concluded that there is growing evidence of a link between BPA and several diseases, such as cancer.

The Panel recommended using BPA-free containers to limit chemical exposure.

A 2008 study by the American Medical Association suggested links between exposure to BPA and diabetes,

heart disease and liver problems in humans.

The National Health and Nutrition Examination Survey (NHANES) linked BPA in high concentrations to cardiovascular disease, and Type II diabetes.

Given these conclusions, it is critical we act now to protect the most vulnerable, our infants and toddlers from this chemical.

Children receive no benefit by having a baby bottle or cup coated with BPA.

In the last Congress, I vowed not to give up in my fight to ban BPA. After working hard for many months to reach an agreement with Senator ENZI on a more limited ban, I was sincerely disappointed that this agreement was blocked by the chemical industry from being included in the food safety bill.

I want to reiterate the importance of this legislation. I strongly believe we need to take action on this.

I don't think we can take a chance with our children's health.

BPA has been linked to developmental disorders, cancer, cardiovascular complications, and diabetes by credible scientific bodies. The evidence that BPA is unacceptably dangerous is mounting. Yet it remains in thousands of household and food products.

This is a reasonable, common sense bill.

Now, the time comes again for this body to take a stand and move forward to protect the health of America's children.

I urge my colleagues to join me in supporting my legislation, the Ban Poisonous Additives Act of 2011.

I look forward to working with my colleagues on this important issue.

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. 136

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 ''Ban Poisonous Additives Act of 2011''.

SEC. 2. REQUIREMENTS WITH RESPECT TO BISPHENOL A.

(a) BAN ON USE OF BISPHENOL A IN FOOD AND BEVERAGE CONTAINERS FOR CHILDREN.—

(1) BABY FOOD; UNFILLED BABY BOTTLES AND CUPS.—Section 402 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342) is amended by adding at the end the following:

''(j)(1) If it is a food intended for children 3 years of age or younger, the container of which (including the lining of such container) is composed, in whole or in part, of bisphenol A.

''(2) If it is a baby bottle or cup that is composed, in whole or in part, of bisphenol A.''.

(2) DEFINITION.—Section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321) is amended by adding at the end the following:

''(rr) BABY BOTTLE OR CUP.—For purposes of section 402(j), the term 'baby bottle or cup' means a bottle or cup that—

''(1) is intended to aid in the feeding or providing of drink to children 3 years of age or younger; and

''(2) does not contain a food when such bottle or cup is sold or distributed at retail.''.

(3) EFFECTIVE DATES.—

(A) BABY FOOD.—Section 402(j)(1) of the Federal Food, Drug, and Cosmetic Act, as added by paragraph (1), shall take effect 1 year after the date of enactment of this Act.

(B) UNFILLED BABY BOTTLES AND CUPS.—Section 402(j)(2) of the Federal Food, Drug, and Cosmetic Act, as added by paragraph (1), shall take effect 180 days after the date of enactment of this Act.

(b) BAN ON USE OF BISPHENOL A IN INFANT FORMULA CONTAINERS.—

(1) IN GENERAL.—Section 412(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 350a(a)) is amended—

(A) in paragraph (2), by striking '', or'' and inserting '','';

(B) in paragraph (3), by striking the period at the end and inserting '', or''; and

(C) by adding at the end the following:

''(4) the container of such infant formula (including the lining of such container and, in the case of infant formula powder, excluding packaging on the outside of the container that does not come into contact with the infant formula powder) is composed, in whole or in part, of bisphenol A.''.

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall take effect 18 months after the date of enactment of this Act.

(c) REGULATION OF OTHER CONTAINERS COMPOSED OF BISPHENOL A.—

(1) SAFETY ASSESSMENT OF PRODUCTS COMPOSED OF BPA.—Not later than December 1, 2012, the Secretary of Health and Human Services (referred to in this Act as the ''Secretary'') shall issue a revised safety assessment for food containers composed, in whole or in part, of bisphenol A, taking into consideration different types of such food containers and the use of such food containers with respect to different foods, as appropriate.

(2) SAFETY STANDARD.—Through the safety assessment described in paragraph (1), and taking into consideration the requirements of section 409 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348) and section 170.3(i) of title 21, Code of Federal Regulations, the Secretary shall determine whether there is a reasonable certainty that no harm will result from aggregate exposure to bisphenol A through food containers or other items composed, in whole or in part, of bisphenol A, taking into consideration potential adverse effects from low dose exposure, and the effects of exposure on vulnerable populations, including pregnant women, infants, children, the elderly, and populations with high exposure to bisphenol A.

(3) APPLICATION OF SAFETY STANDARD TO ALTERNATIVES.—The Secretary shall use the safety standard described under paragraph (2) to evaluate the proposed uses of alternatives to bisphenol A.

(d) SAVINGS PROVISION.—Nothing in this section shall affect the right of a State, political subdivision of a State, or Indian Tribe to adopt or enforce any regulation, requirement, liability, or standard of performance that is more stringent than a regulation, requirement, liability, or standard of performance under this section or that—

(1) applies to a product category not described in this section; or

(2) requires the provision of a warning of risk, illness, or injury associated with the use of food containers composed, in whole or in part, of bisphenol A.

(e) DEFINITION.—For purposes of this section, the term ''container'' includes the lining of a container.

By Mr. REID (for Mrs. FEINSTEIN (for herself, Mr. INOUYE, Mrs. BOXER, Mr. SANDERS, Mr. WHITEHOUSE, Mr. CASEY, and Mr. LAUTENBERG)):

S. 137. A bill to amend the Public Health Service Act to provide protections for consumers against excessive, unjustified, or unfairly discriminatory increases in premium rates; to the Committee on Health, Education, Labor, and Pensions.

Mrs. FEINSTEIN. Mr. President, in passing the Patient Protection and Affordable Care Act, PPACA, on March 23, 2010, the 111th Congress made great strides towards protecting consumers from egregious health insurance company practices. However, despite the passage of this historic legislation, the urgent need to protect Americans from unfair health insurance rate increases remains.

Health insurance premiums have been spiraling upwards nationally at out-of-control rates—10, 20, 30 percent every year—all while big national insurance companies enjoy increasing profits.

Without further legislative action, health insurance companies will continue to do what they have done for far too long: put their profits ahead of people.

Over the past decade, family health insurance premiums have more than doubled, growing a shocking 130 percent, while workers' hourly earnings rose by only 38 percent, and inflation rose just 29 percent.

From 2000–2008, individuals in the employer-sponsored market saw premiums increase an average of 90 percent.

The cost of health insurance continues to outpace income and inflation for other goods and services, and these rapidly escalating costs strain businesses, families, and individuals.

In 2009, 57 percent of people attempting to purchase insurance in the individual market found it difficult or impossible to afford coverage.

All the while, in the third quarter of 2010, the six-largest investor-owned health insurance companies (Aetna, Coventry Health, United Health, Humana, WellPoint, and Cigna) saw a 22 percent increase in combined net income, putting them on pace to break their own profit record.

The problem is that the health reform law did not go far enough to control these unfair premium increases, it leaves a loophole.

Simply stated, there is no federal authority to do anything about these rate increases, even if they are unfair.

We need to close this loophole.

This is why today I am introducing, with Senators BOXER and INOUYE, the Health Insurance Rate Review Act of 2011. Representative SCHAKOWSKY is introducing companion legislation in the House of Representatives.

This legislation creates a federal fallback rate review process, and grants regulatory authority to block or modify rate increases that are excessive, unjustified, or unfairly discriminatory.

This legislation is a simple, commonsense solution: for States where the insurance commissioner does not have or

use authority to block unfair rate increases, the Secretary of Health and Human Services can do so.

On March 4, 2010, I introduced similar legislation to what I am introducing today. I worked with the Administration and the Finance Committee in putting it together, and with Representative SCHAKOWSKY.

President Obama included it in his health reform proposal, but unfortunately, it did not meet the criteria for reconciliation.

The time has come now to take action.

This legislation is necessary in order to protect consumers from the egregious abuses of insurance companies, especially before the majority of the consumer protections included in health reform are fully in place in 2014.

It is disturbing that year after year, health insurance premiums spiral out control, all while insurance companies enjoy increasing profits.

Insurance premiums make up a higher percentage of household income than ever before, meaning that more and more families have to choose between health care and daily living expenses, saving for retirement, and education.

This is unacceptable, and more must be done to protect consumers.

Everyone by now is familiar with the increases that Anthem/Blue Cross, a subsidiary of WellPoint, was set to impose—as much as 39 percent—for 800,000 Californians.

It turns out that Anthem Blue Cross used flawed data to calculate health insurance premium increases to hundreds of thousands of policyholders in California, resulting in increases that were larger than necessary.

According to an independent analysis, the 25 percent average increase proposed by Anthem should have only been 15.2 percent.

What is most disturbing is that Anthem's case is not an aberration. Far from it.

This is not a problem unique to California. In the spring of 2010, health insurance companies pursued rate hikes in a number of States: as much as 60 percent in Illinois; 72 percent in Georgia; 50 percent in New Jersey; and 40 percent in Virginia, to name a few.

The White House reports that premium rates have been rising across the Nation, with substantial geographic variation.

For employer-sponsored family coverage, premiums increased 88 percent in Michigan over the past decade compared to a 145 percent increase in Alaska.

A report by the Center for American Progress Action Fund found that this summer, WellPoint pursued double digit increases in the individual market for 10 other States: Colorado, Connecticut, Georgia, Indiana, Maine, Nevada, New Hampshire, New York, Virginia, and Wisconsin.

The reporting requirements in the health reform law will improve the information available, but right now, comprehensive data on the premium increases insurers are imposing does not exist.

In 2009, despite the worst economic downturn since the Great Depression, the five largest for-profit health insurance companies, WellPoint Inc., United Health Group Inc., Aetna Inc., Humana Inc., and Cigna Corp., set a full-year profit record. These companies saw a 56 percent increase in profits from 2008 to 2009, from $7.7 billion to $12.1 billion.

Furthermore, when many Americans were experiencing double-digit premium increases in 2009, high unemployment, and an average wage growth of only 2 percent, insurance CEOs gave themselves a 167 percent raise.

CEO pay for the 10 largest for-profit health insurance companies was $228.1 million in 2009, up from $85.5 million in 2008.

This doesn't even include the tens of millions more dollars in exercised stock options, and means that these CEOs raked in nearly $1 billion in total compensation.

In the first three months of 2010, the five largest for-profit health insurance companies, WellPoint Inc., United Health Group Inc., Aetna Inc., Humana Inc., and Cigna Corp., recorded a combined net income of $3.2 billion—a 31 percent jump over the same period in 2009.

Meanwhile, large insurance companies now insure 2.8 million fewer Americans than they did on December 31, 2008. An estimated 59.1 million Americans were uninsured in the first quarter of 2010.

The California HealthCare Foundation reported that 6.8 million California residents lack health coverage.

That is 20 percent of the State's residents who are not able to afford health insurance.

All the while, insurance companies have been reducing the amount they spend on actual health care. As profits and CEO pay increased, the amount of money insurers spent on medical care went down.

The top six insurers drove down the portion of premiums spent on medical care. For example, the share of premium dollars that CIGNA spent on medical care decreased 6.4 percent in the second quarter of 2010 compared to the prior year, and Humana's decreased 7.4 percent.

Now, because of legislation in the health reform law, insurance companies have to spend 80–85 percent of premiums on medical care and quality improvement services, not on profits.

This will go a long way to keeping insurance company greed in check, but we need to go farther.

Clearly without additional legislative requirements, health insurance companies are not going to change.

The Department of Health and Human Services recently published proposed rules defining the rate review process. These regulations are a first step towards protecting consumers and keeping insurers in check.

But they fall short of creating a strong rate review system, and rely too heavily on the notion that public disclosure of rates will cause insurance companies to change their behavior.

The regulations do not grant explicit regulatory authority—either State or Federal—to deny, modify, or block rate increases that are excessive, unjustified, or unfairly discriminatory.

The health reform law requires insurance companies to provide justification for unreasonable premium increases to the Secretary of Health and Human Services and post them on their Web sites.

The regulations subject rate increases of 10 percent or greater to additional scrutiny and review, but the State-specific thresholds in 2012 could sanction increases higher than 10 percent.

Transparency and increased scrutiny are steps forward, but there is still this loophole where there is no authority to block or modify even excessive, unjustified, and unfairly discriminatory increases.

This is why I am again introducing my rate review legislation, which will grant this authority.

I believe there needs to be a Federal fallback in States that lack the legal authority, capacity, or resources to conduct strong rate review.

This legislation gives the Secretary of Health and Human Services the authority to block premium or other rate increases that are excessive, unjustified, or unfairly discriminatory.

In some States, insurance commissioners already have that authority, and that is fine. The bill doesn't touch them.

In Maine, for example, the State superintendent of insurance was able to block Anthem's proposed 18.5-percent increase last year. She approved only a 10.9-percent increase.

In at least 17 States, including my own—California—companies are not required to receive prior approval for rate increases before they take effect.

In these States, the Secretary would review potentially excessive, unjustified, or unfairly discriminatory rate increases and take corrective action. This could include blocking an increase, providing rebates to consumers, or adjusting an increase.

Under this proposal, the Secretary would work with the National Association of Insurance Commissioners to implement the rate review process. States already doing this work will continue to do so unabated and unfettered. The legislation would not affect them.

However, for the consumers in the other 17 States with no authority, such as California, protection from unfair rate hikes would be provided.

Given the variation in State rate review authority and process, I think this proposal strikes the right balance.

There is no need for involvement in States with insurance commissioners that are able to protect consumers. So the legislation I am introducing simply

provides Federal protection for consumers who are currently at the mercy of large health insurance companies whose top priority is their bottom line.

This legislation is particularly important given a recent report by the Kaiser Family Foundation showing that many States lack the capacity and resources to conduct adequate rate review, regardless of the State's statutory authority to review rates.

I strongly believe that we need to take action on this. The health reform law made great strides towards holding companies and shareholders accountable for providing health care at a reasonable rate.

However, there is this loophole.

So this bill becomes very necessary. Premiums are increasing every day, and people in many States have no recourse, and no way to know if a particular increase is unfair.

There needs to be a Federal fallback in States that lack the legal authority, capacity, or resources to conduct strong rate review. In States where the Insurance Commissioner is not equipped to review, modify, and block unreasonable rates, my legislation would grant the Secretary of Health and Human Services the authority to do so.

I urge my colleagues to join me in supporting this legislation, the Health Insurance Rate Review Act of 2011, which will close this loophole.

I look forward to working with my colleagues on this important issue.

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. 137

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 ''Health Insurance Rate Review Act''.

SEC. 2. PROTECTION OF CONSUMERS FROM EXCESSIVE, UNJUSTIFIED, OR UNFAIRLY DISCRIMINATORY RATES.

(a) PROTECTION FROM EXCESSIVE, UNJUSTIFIED, OR UNFAIRLY DISCRIMINATORY RATES.—The first section 2794 of the Public Health Service Act (42 U.S.C. 300gg–94), as added by section 1003 of the Patient Protection and Affordable Care Act (Public Law 111–148), is amended by adding at the end the following new subsection:

''(e) PROTECTION FROM EXCESSIVE, UNJUSTIFIED, OR UNFAIRLY DISCRIMINATORY RATES.—

''(1) AUTHORITY OF STATES.—Nothing in this section shall be construed to prohibit a State from imposing requirements (including requirements relating to rate review standards and procedures and information reporting) on health insurance issuers with respect to rates that are in addition to the requirements of this section and are more protective of consumers than such requirements.

''(2) CONSULTATION IN RATE REVIEW PROCESS.—In carrying out this section, the Secretary shall consult with the National Association of Insurance Commissioners and consumer groups.

''(3) DETERMINATION OF WHO CONDUCTS REVIEWS FOR EACH STATE.—The Secretary shall determine, after the date of enactment of this section and periodically thereafter, the following:

''(A) In which States the State insurance commissioner or relevant State regulator shall undertake the corrective actions under paragraph (4), as a condition of the State receiving the grant in subsection (c), based on the Secretary's determination that the State is adequately prepared to undertake and is adequately undertaking such actions.

''(B) In which States the Secretary shall undertake the corrective actions under paragraph (4), in cooperation with the relevant State insurance commissioner or State regulator, based on the Secretary's determination that the State is not adequately prepared to undertake or is not adequately undertaking such actions.

''(4) CORRECTIVE ACTION FOR EXCESSIVE, UNJUSTIFIED, OR UNFAIRLY DISCRIMINATORY RATES.—In accordance with the process established under this section, the Secretary or the relevant State insurance commissioner or State regulator shall take corrective actions to ensure that any excessive, unjustified, or unfairly discriminatory rates are corrected prior to implementation, or as soon as possible thereafter, through mechanisms such as—

''(A) denying rates;

''(B) modifying rates; or

''(C) requiring rebates to consumers.''.

(b) CLARIFICATION OF REGULATORY AUTHORITY.—Such section is further amended—

(1) in subsection (a)—

(A) in the heading, by striking ''PREMIUM'' and inserting ''RATE'';

(B) in paragraph (1), by striking ''unreasonable increases in premiums'' and inserting ''potentially excessive, unjustified, or unfairly discriminatory rates, including premiums,''; and

(C) in paragraph (2)—

(i) by striking ''an unreasonable premium increase'' and inserting ''a potentially excessive, unjustified, or unfairly discriminatory rate'';

(ii) by striking ''the increase'' and inserting ''the rate''; and

(iii) by striking ''such increases'' and inserting ''such rates'';

(2) in subsection (b)—

(A) by striking ''premium increases'' each place it appears and inserting ''rates''; and

(B) in paragraph (2)(B), by striking ''premium'' and inserting ''rate''; and

(3) in subsection (c)(1)—

(A) in the heading, by striking ''PREMIUM'' and inserting ''RATE'';

(B) by inserting ''that satisfy the condition under subsection (e)(3)(A)'' after ''award grants to States''; and

(C) in subparagraph (A), by striking ''premium increases'' and inserting ''rates''.

(c) CONFORMING AMENDMENT.—Title XXVII of the Public Health Service Act (42 U.S.C. 300gg et seq.) is amended—

(1) in section 2723 (42 U.S.C. 300gg–22), as redesignated by the Patient Protection and Affordable Care Act—

(A) in subsection (a)—

(i) in paragraph (1), by inserting ''and section 2794'' after ''this part''; and

(ii) in paragraph (2), by inserting ''or section 2794'' after ''this part''; and

(B) in subsection (b)—

(i) in paragraph (1), by inserting ''and section 2794'' after ''this part''; and

(ii) in paragraph (2)—

(I) in subparagraph (A), by inserting ''or section 2794 that is'' after ''this part'' ; and

(II) in subparagraph (C)(ii), by inserting ''or section 2794'' after ''this part''; and

(2) in section 2761 (42 U.S.C. 300gg–61)—

(A) in subsection (a)—

(i) in paragraph (1), by inserting ''and section 2794'' after ''this part''; and

(ii) in paragraph (2)—

(I) by inserting ''or section 2794'' after ''set forth in this part''; and

(II) by inserting ''and section 2794'' after ''the requirements of this part''; and

(B) in subsection (b)—

(i) by inserting ''and section 2794'' after ''this part''; and

(ii) by inserting ''and section 2794'' after ''part A''.

(d) APPLICABILITY TO GRANDFATHERED PLANS.—Section 1251(a)(4)(A) of the Patient Protection and Affordable Care Act (Public Law 111–148), as added by section 2301 of the Health Care and Education Reconciliation Act of 2010 (Public Law 111–152), is amended by adding at the end the following:

''(v) Section 2794 (relating to reasonableness of rates with respect to health insurance coverage).''.

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of enactment of this Act.

By Mr. REID (for Mrs. FEINSTEIN):

S. 138. A bill to provide for conservation, enhanced recreation opportunities, and development of renewable energy in the California Desert Conservation Area, and for other purposes; to the Committee on Energy and Natural Resources.

Mrs. FEINSTEIN. Mr. President, I rise today to introduce the California Desert Protection Act of 2011.

This bill is an effort to plan for the competing uses—such as conservation, off-highway vehicle recreation, development, and military training—that are now being proposed for the desert. These uses of our public lands can coexist through comprehensive planning, but in the absence of such planning, it's quite possible that none will thrive.

During the previous Congress I introduced similar legislation to help preserve pristine desert lands that were donated to the Federal Government for permanent conservation a decade ago, but that more recently have come under threat of development because of a flawed bureaucratic process that failed to protect them.

Over the last year the bill was endorsed by more than 100 organizations and agencies, and it had a hearing in the Energy and Natural Resources Committee.

I am grateful to Senator BINGAMAN and his staff for working with me to prepare the bill for further action in the Energy and Natural Resources Committee. I believe we can revise the bill to address further the needs of renewable energy developers, the Department of Defense, off-road recreation enthusiasts, local government and others, and I look forward to continuing that effort in the new Congress.

I strongly believe that conservation, renewable energy development and recreation can and must co-exist in the California Desert—and this legislation strikes a carefully conceived balance between these sometimes competing concerns.

The key provisions of this bill would designate two new national monuments—the Mojave Trails and the Sand

to Snow National Monuments; add adjacent lands to the Joshua Tree and Death Valley National Parks and the Mojave National Preserve; designate 5 new BLM wilderness areas and protect 4 important waterways—including the Amargosa River and Deep Creek—as Wild and Scenic Rivers; and enhance recreational opportunities in the desert and ensure that the training needs of the military are met.

This bill is the product of painstaking discussions with key stakeholders including environmental groups, local and State government, off-highway recreation enthusiasts, hunters, cattle ranchers, mining interests, the Department of Defense, wind and solar energy companies, California's public utility companies, and many others. I am grateful for all of their efforts.

The previous version of my bill proposed specific improvements to the Department of the Interior's rules governing the development of renewable energy on public lands. I'm pleased that the Department has instituted a number of new policies over the last year which have greatly improved the process. Consequently, the current bill focuses primarily on conservation, recreation and other important uses of the California desert.

However, I intend to work with my colleagues from the West on separate legislation to further expedite the development of wind and solar energy in California and the West.

The California Desert Protection Act, which was enacted in 1994, was a sweeping piece of legislation aimed at conserving some of the most beautiful and ecologically significant lands in my home State.

The law created Death Valley National Park, Joshua Tree National Park and the Mojave National Preserve, as well as 69 desert wilderness areas managed by the Bureau of Land Management, BLM.

Collectively, it protected more than 7 million acres of desert lands, making it the largest land conservation bill in the lower 48 States in U.S. history.

To this day, it remains one of my proudest accomplishments since joining this body.

Much has changed since the passage of the California Desert Protection Act. Many of the impediments that prevented conservation of other pristine desert lands in the area no longer exist.

For example the Department of Defense concerns with designating some wilderness areas near Fort Irwin have been resolved; many mining areas inside national parks and potential wilderness have closed; grazing allotments on both BLM and National Park Service land have been retired by willing sellers; hundreds of thousands of acres of privately owned land have been donated to or acquired by the Federal Government.

Yet even as these issues were resolved, new challenges have emerged. There are now competing demands over how best to manage hundreds of thousands of acres of public lands in the desert.

Some believe the lands should be used for large-scale solar and wind facilities and transmission lines. Others would like to conserve critical habitat for threatened and endangered species.

Some would like more acreage available for grazing or for off-road recreation.

Finally, some would like to see additional lands made available for military training and base expansion.

Two years ago, I learned that BLM had accepted applications to build vast solar and wind energy projects on former railroad lands previously owned by the Catellus Corporation. These lands had been donated to the Federal Government or acquired with taxpayer funds with the explicit goal of conservation.

Approximately $45 million of private donations—including a $5 million land discount from Catellus Corporation—and $18 million in Federal Land and Water Conservation grants was spent to purchase these lands, with the intent of conserving them in perpetuity.

As the sponsor of the legislative provisions that helped secure the deal to acquire the roughly 600,000 acres of former private land, I found the BLM's actions unacceptable.

We have an obligation to honor our commitment to conserve these lands—and I believe we can still accomplish that goal while also fulfilling California's commitment to develop a clean energy portfolio.

I believe the development of these new cleaner energy sources is vital to addressing climate change, yet we must be careful about selecting where these facilities are located.

I plan to work with senators from Western States to improve the renewable energy permitting process to allow quicker development of renewable energy projects on private and disturbed public land. This effort likely requires separate legislation and improved regulation.

I applaud the Department of the Interior's efforts over the last year to address this problem, especially Interior's proposed designation of 24 solar energy zones encompassing 677,000 acres of public land in 6 Western States. By designating these zones in appropriate areas and streamlining the permitting process for projects proposed there, the Department has helped ensure that sensitive areas of the desert can be preserved.

As BLM finalizes the creation of these Zones and its new Solar Energy Program, I will push BLM to create a development zone in the West Mojave, conduct sufficient study of zones to ensure projects in these locations can be permitted quickly, and establish the program's rules as expeditiously as possible.

I will continue to suggest ways that the U.S. Fish and Wildlife Service can improve permitting on private lands, the Defense Department can welcome development on its bases, and the Forest Service can utilize its own lands. These matters may require legislation.

There is enough land in California's desert to protect the most precious areas of the Mojave and aggressively develop renewable resources where permitting will be rapid. California must develop 15,000 to 20,000 megawatts of renewable power to meet its climate goals by 2020, and the current permitting process will need to vastly improve for the state to meet this goal.

First, this bill will ensure that hundreds of thousands of acres of land donated to the federal government for conservation will be protected by creating the Mojave Trails National Monument. This new monument would cover approximately 941,000 acres of federal land, which includes approximately 266,000 acres of the former Catellus-owned railroad lands along historic Route 66. I visited the area and was amazed by the beauty of the massive valleys, pristine dry lakes, and rugged mountains.

In addition to its iconic sweeping desert vistas and majestic mountain ranges, this area of the Eastern Mojave also contains critical wildlife corridors linking Joshua Tree National Park and the Mojave National Preserve. It also encompasses hundreds of thousands of acres designated as areas of critical environmental concern, critical habitat for the threatened desert tortoise, and ancient lava bed flows and craters. It is surrounded by more than a dozen BLM wilderness areas.

The BLM would be given the authority to both conserve the monument lands, and also to maintain existing recreational uses, including hunting, vehicular travel on open roads and trails, camping, horseback riding and rockhounding.

The bill also creates an advisory committee to help develop and oversee the implementation of the monument management plan. It would be comprised of representatives from local, state and federal government, conservation and recreation groups, and local Native American tribes.

Before I go on to the other conservation provisions in the bill, I would like to address one important issue—and that is what should be done about some of the proposed renewable energy development projects proposed for lands included in this monument.

Although it is true that the monument will prevent further consideration of some applications to develop solar and wind energy projects on former Catellus lands or adjoining lands in the monument, it is important to note that of the proposals in question, not a single one has been granted a permit, nor is a single one under review at the California Energy Commission or under formal NEPA, National Environmental Policy Act, review at BLM.

To ensure that creation of the monument does not unnecessarily harm the

firms that worked in good faith and invested substantial time and resources to produce renewable energy in California, the legislation will offer these companies an opportunity to relocate their projects to federal renewable energy zones currently being developed by the Department of the Interior.

Additionally, the monument would not prevent the construction or expansion of necessary transmission lines critical to linking renewable energy generation facilities with the electricity grid.

Second, the bill would establish the ''Sand to Snow National Monument,'' encompassing 134,000 acres of land from the desert floor in the Coachella Valley up to the top of Mount San Gorgonio, the highest peak in Southern California.

The boundaries of this second, smaller new monument would include two Areas of Critical Environmental Concern: Big Morongo Canyon and Whitewater Canyon, the BLM and U.S. Forest Service San Gorgonio Wilderness, the Wildlands Conservancy's Pipe's Canyon and Mission Creek Preserves, and additional public and private conservation lands, including two wildlife movement corridor areas connecting the Peninsular Ranges with the Transverse Ranges.

This area is truly remarkable, and would arguably be the most environmentally diverse national monument in the country. It serves as the intersection of three converging ecological systems—the Mojave Desert, the Colorado Desert, and the San Bernardino mountains—and is one of the most important wildlife corridors in Southern California.

This monument designation would protect 23.6 miles of the Pacific Crest Trail and the habitat for approximately 240 species of migrating and breeding birds, the second highest density of nesting birds in the United States. It also serves as a home and a crucial migration corridor for animals traveling between Joshua Tree National Park, the oasis at Big Morongo, and the higher elevations of the San Bernardino Mountains.

I'd like to make one additional point, and that is that despite its ecological significance, this area is not particularly well-known—largely because it is managed by a number of distinct entities, including the BLM, Forest Service, National Park Service and private preserves and conservation agencies. So, the monument designation would help to attract more attention to one of California's natural gems.

Third, the bill establishes new wilderness areas and allows more appropriate use of lands currently designated as Wilderness Study Areas.

The 1994 California Desert Protection Act extended wilderness protection to many areas in the desert, yet several areas near Fort Irwin were designated as wilderness study areas in order to allow the base to expand.

Now that Fort Irwin's expansion is complete, it is time to consider these areas for permanent wilderness designation.

The bill protects approximately 250,000 acres of BLM land as wilderness in five areas. These areas contain some of the most pristine and rugged landscapes in the California desert.

Beyond Fort Irwin, the bill also expands wilderness areas in Death Valley National Park, 90,000 acres, and the San Bernardino National Forest, 4,300 acres, inside the Sand to Snow National Monument created by this bill.

The bill also releases 126,000 acres of land from their existing wilderness study area designation in response to requests from local government and recreation users. This will allow the land to be made available for other purposes, including recreational off-highway vehicle use on designated routes.

Fourth, this bill would create the Vinagre Wash Special Management Area.

The agreed-upon designation for this area in Imperial County, near the Colorado River, was reached after careful discussion with key stakeholders.

Although the land possesses some wilderness characteristics, there are also competing interests. The Navy Seals currently use some of this area for occasional training. Additionally, many local residents enjoy touring the rolling hills in the area by jeep.

Through the combined efforts of conservation groups, local residents and county government, and the Department of Defense, a compromise conservation designation was developed.

For the land known as the Vinagre Wash, the bill will create a ''special management area'' covering 76,000 acres, including 12,000 acres of former railroad lands donated to the federal government.

Of these, 49,000 acres are designated as potential wilderness and only become permanent wilderness if and when the Department of Defense determines these lands are no longer needed for Navy Seal training.

This designation will permit the area to continue to be accessed by vehicles and be used for camping, hiking, mountain biking, sightseeing, and off-highway vehicle use on designated routes and protect tribal cultural assets in the area.

Fifth, the bill adds to or designates four new Wild and Scenic Rivers, totaling 76 miles in length. These designations will ensure the rivers remain clean and free-flowing and that their immediate environments are preserved. These beautiful waterways are Deep Creek and the Whitewater River in and near the San Bernardino National Forest, as well as the Amargosa River and Surprise Canyon Creek near Death Valley National Park.

Sixth, the bill adds approximately 74,000 acres of adjacent lands to the three National Parks established by the 1994 California Desert Protection Act: 41,000 acres in Death Valley National Park. This includes former mining areas where the claims have been retired and a narrow strip of BLM land between National Park and Defense Department boundaries that has made BLM management difficult; almost 30,000 acres in the Mojave National Preserve. This land was not included in the original Monument because of the former Viceroy gold mine. However, the mining operations ceased several years ago and the reclamation process is nearly complete. Additionally, a 2007 analysis by the Interior Department recommended that this area would be suitable to add to the Preserve; 2,900 acres in Joshua Tree National Park. This includes multiple small parcels of BLM land identified for disposal on its periphery. Transferring this land to the Park Service would help protect Joshua Tree by preserving these undeveloped areas that border residential communities.

Seventh, the bill designates new lands as Off-Highway Vehicle Recreation Areas.

One of the key goals I have strived for in this bill is to find balance to ensure that the many different needs and uses in the desert are accommodated with the least possible conflict. Some of the most frequent visitors to the desert are the off-highway recreation enthusiasts.

In California alone, there are over 1 million registered off-highway vehicles, many of which can be found exploring thousands of miles of desert trails or BLM designated open areas.

However, in order to meet military training needs, the Marine Corps is studying the potential expansion of Marine Corps Air Ground Combat Center at Twentynine Palms into Johnson Valley, the largest OHV area in the country. I strongly support providing our troops with the best possible training, but if the Marines need to expand the base into Johnson Valley, this could have potentially resulted in the loss of tens of thousands of acres of OHV recreation lands.

In 2009 I met with Major General Eugene Payne, Assistant Deputy Commandant for Installations and Logistics, and Brigadier General Melvin Spiese, Commanding General, Training and Education Command, to discuss this issue, and I am very grateful for their efforts to consider base expansion options that would preserve much of Johnson Valley for recreation.

As the result of those meetings, the Marine Corps has committed to studying an alternative that would allow for a portion of Johnson Valley to be used exclusively for military training, another portion to be used exclusively for continued OHV recreation and a third area for joint use. While the environmental review process must first be completed, I am hopeful that this option will prevail for the benefit of the Marines and recreational users of Johnson Valley.

The lesson learned from Johnson Valley is that, despite the vast size of the California desert, there are relatively

few areas dedicated to OHV recreation, and even those areas face increasing competition from other types of uses. These areas are important not only to the hundreds of thousands visitors who enjoy them, but also to the local economy that depends on their tourist dollars. Additionally, by protecting these areas, we also protect conservation areas by providing appropriate places for OHV recreation.

This bill will designate five existing OHV areas in the Mojave desert as permanent OHV areas, providing off-highway groups some certainty that these uses will be protected as much as conservation areas. Collectively, these areas could be as much as 314,000 acres, depending on what, if any, of Johnson Valley is ultimately needed by the Marines.

This section of the bill also requires the Secretary of the Inerior to conduct a study to determine which, if any, lands adjacent to these recreation areas would be suitable for addition. This will help make up for some of the lost acres in Johnson Valley should the Marines decide to expand there.

Finally, this bill includes other key provisions that address various challenges and opportunities in the California desert, including state land exchanges. There are currently about 370,000 acres of state lands spread across the California desert in isolated 640 acre parcels. Because many of these acres are inside national parks, wilderness, the proposed monuments or conservation areas, they are largely unusable. The bill seeks to remedy that problem by requiring the Department of the Interior to develop and implement a plan with the state to complete the exchange of these lands for other BLM or GSA owned property in the next ten years. These land exchanges will help consolidate the state lands into larger, more usable areas that could potentially provide the state with viable sites for renewable energy development, off-highway vehicle recreation or other commercial purposes.

Military activities. The bill ensures the right of the Department of Defense to conduct low-level overflights over wilderness, national parks and national monuments.

Climate change and wildlife corridors. The bill requires the Department of the Interior to study the impact of climate change on California desert species migration, incorporate the study's results and recommendations into land use management plans, and consider the study's findings when making decisions granting rights of way for projects on public lands.

Tribal uses and interests. The bill requires the Secretary to ensure access for tribal cultural activities within national parks, monuments, wilderness and other areas designated within the bill. It also requires the Secretary to develop a cultural resources management plan to protect a sacred tribal trail along the Colorado River between southern Nevada and the California-Baja border.

Prohibited uses of donated and acquired lands. In order to ensure that donated and acquired Catellus lands outside the Mojave Trails National Monument are maintained for conservation, the bill prohibits their use for development, mining, off-highway vehicle use, except designated routes, grazing, military training and other surface disturbing activities. The Secretary of the Interior is authorized to make limited exceptions in cases where it is deemed in the public interest, but comparable lands would have to be purchased and donated to the federal government as mitigation for lost acreage.

All of these provisions, when taken together, would serve to complement the lasting conservation established by the California Desert Protection Act—while ensuring that other important local uses are maintained in appropriate areas.

Though I have lived in or near San Francisco for most of my life, over the years I have come to truly appreciate California's sweeping desert landscapes.

I remember my first visits to the desert years ago. It was treated like a waste dump. It was full of abandoned cars. Old appliances littered the landscape.

But we have worked very hard to clean it up.

We have worked to make sure that the vast vistas and pristine desert habitat are respected by humanity, and that we give to our children a healthier, more beautiful desert than we inherited.

But if we are to remain successful in the long run, we must not only protect the desert land itself, we must also protect the broader environment from the ravages of climate change, and we must offer economic opportunity to those who live in these areas.

That is the purpose of this legislation. There are many places in the California desert where development and employment are essential and appropriate.

But there are also places that future generations will thank us for setting aside.

I have worked painstakingly with stakeholders to ensure that this legislation balances sometimes competing needs.

This bill, if enacted, will have a positive and enduring impact on the landscape of the Southern California desert by conserving pristine areas while meeting the needs of all desert stakeholders.

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. 138

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''California Desert Protection Act of 2011''.

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

SEC. 2. AMENDMENTS TO THE CALIFORNIA DESERT PROTECTION ACT OF 1994.

(a) IN GENERAL.—Public Law 103–433 (16 U.S.C. 410aaa et seq.) is amended by adding at the end the following:

''TITLE XIII—MOJAVE TRAILS NATIONAL MONUMENT

''SEC. 1301. DEFINITIONS.

''In this title:

''(1) MAP.—The term 'map' means the map entitled 'Boundary Map, Mojave Trails National Monument' and dated November 19, 2009.

''(2) MONUMENT.—The term 'Monument' means the Mojave Trails National Monument established by section 1302(a).

''(3) STUDY AREA.—The term 'study area' means the land that—

''(A) is described in—

''(i) the notice of the Bureau of Land Management of September 15, 2008 entitled 'Notice of Proposed Legislative Withdrawal and Opportunity for Public Meeting; California' (73 Fed. Reg. 53269); or

''(ii) any subsequent notice in the Federal Register that is related to the notice described in clause (i); and

''(B) has been segregated by the Director of the Bureau of Land Management.

''SEC. 1302. ESTABLISHMENT OF THE MOJAVE TRAILS NATIONAL MONUMENT.

''(a) ESTABLISHMENT.—There is designated in the State the Mojave Trails National Monument.

''(b) PURPOSES.—The purposes of the Monument are—

''(1) to preserve the nationally significant biological, cultural, recreational, geological, educational, historic, scenic, and scientific values—

''(A) in the Central and Eastern Mojave Desert; and

''(B) along historic Route 66; and

''(2) to secure the opportunity for present and future generations to experience and enjoy the magnificent vistas, wildlife, land forms, and natural and cultural resources of the Monument.

''(c) BOUNDARIES.—

''(1) IN GENERAL.—Except as provided in paragraph (2), the Monument shall consist of the Federal land and Federal interests in land within the boundaries depicted on the map.

''(2) EXCLUSIONS.—

''(A) STUDY AREA.—Subject to subparagraph (B), the study area shall be excluded from the Monument to permit the Secretary of the Navy to study the land within the study area for—

''(i) withdrawal in accordance with the Act of February 28, 1958 (43 U.S.C. 155 et seq.); and

''(ii) potential inclusion into the Marine Corps Air Ground Combat Center at Twentynine Palms, California, for national defense purposes.

''(B) INCORPORATION IN MONUMENT.—After action by the Secretary of Defense and Congress regarding the withdrawal under subparagraph (A), any land within the study area that is not withdrawn shall be incorporated into the Monument.

''(d) MAP; LEGAL DESCRIPTIONS.—

''(1) LEGAL DESCRIPTION.—As soon as practicable after the date of enactment of this title, the Secretary shall submit to the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate legal descriptions of the Monument, based on the map.

''(2) CORRECTIONS.—The map and legal descriptions of the Monument shall have the same force and effect as if included in this title, except that the Secretary may correct clerical and typographical errors in the map and legal descriptions.

''(3) AVAILABILITY OF MAP.—The map shall be on file and available for public inspection in the appropriate offices of the Bureau of Land Management.

''SEC. 1303. MANAGEMENT OF THE MONUMENT.

''(a) IN GENERAL.—The Secretary shall—

''(1) only allow uses of the Monument that—

''(A) further the purposes described in section 1302(b);

''(B) are included in the management plan developed under subsection (g); and

''(C) do not interfere with the utility rights-of-way or corridors authorized under section 1304(f); and

''(2) subject to valid existing rights, manage the Monument to protect the resources of the Monument, in accordance with—

''(A) this Act;

''(B) the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.); and

''(C) any other applicable provisions of law.

''(b) COOPERATION AGREEMENTS; GENERAL AUTHORITY.—Consistent with the management plan and existing authorities applicable to the Monument, the Secretary may enter into cooperative agreements and shared management arrangements (including special use permits with any person (including educational institutions and Indian tribes)), for the purposes of interpreting, researching, and providing education on the resources of the Monument.

''(c) ADMINISTRATION OF SUBSEQUENTLY ACQUIRED LAND.—Any land or interest in land within the boundaries of the Monument that is acquired by the Secretary after the date of enactment of this title shall be managed by the Secretary in accordance with this title.

''(d) LIMITATIONS.—

''(1) PROPERTY RIGHTS.—The establishment of the Monument does not—

''(A) affect—

''(i) any property rights of an Indian reservation, individually held trust land, or any other Indian allotments;

''(ii) any land or interests in land held by the State, any political subdivision of the State, or any special district; or

''(iii) any private property rights within the boundaries of the Monument; or

''(B) grant to the Secretary any authority on or over non-Federal land not already provided by law.

''(2) AUTHORITY.—The authority of the Secretary under this title extends only to Federal land and Federal interests in land included in the Monument.

''(e) ADJACENT MANAGEMENT.—

''(1) IN GENERAL.—Nothing in this title creates any protective perimeter or buffer zone around the Monument.

''(2) ACTIVITIES OUTSIDE MONUMENT.—The fact that an activity or use on land outside the Monument can be seen or heard within the Monument shall not preclude the activity or use outside the boundary of the Monument.

''(3) NO ADDITIONAL REGULATION.—Nothing in this title requires additional regulation of activities on land outside the boundary of the Monument.

''(f) AIR AND WATER QUALITY.—Nothing in this title affects the standards governing air or water quality outside the boundary of the Monument.

''(g) MANAGEMENT PLAN.—

''(1) IN GENERAL.—The Secretary shall—

''(A) not later than 3 years after the date of enactment of this title, complete a management plan for the conservation and protection of the Monument; and

''(B) on completion of the management plan—

''(i) submit the management plan to—

''(I) the Committee on Natural Resources of the House of Representatives; and

''(II) the Committee on Energy and Natural Resources of the Senate; and

''(ii) make the management plan available to the public.

''(2) INCLUSIONS.—The management plan shall include provisions that—

''(A) provide for the conservation and protection of the Monument;

''(B) authorize the continued recreational uses of the Monument (including hiking, camping, hunting, mountain biking, sightseeing, off-highway vehicle recreation on designated routes, rockhounding, and horseback riding), if the recreational uses are consistent with this section and any other applicable law;

''(C) address the need for and, as necessary, establish plans for, the installation, construction, and maintenance of public utility energy transport facilities within rights-of-way in the Monument, including provisions that require that the activities be conducted in a manner that minimizes the impact on Monument resources (including resources relating to the ecological, cultural, historic, and scenic viewshed of the Monument), in accordance with any other applicable law;

''(D) address the designation and maintenance of roads, trails, and paths in the Monument;

''(E) address regional fire management planning and coordination between the Director of the Bureau of Land Management, the Director of the National Park Service, and San Bernardino County; and

''(F) address the establishment of a visitor center to serve the Monument and adjacent public land.

''(3) PREPARATION AND IMPLEMENTATION.—

''(A) APPLICABLE LAW.—The Secretary shall prepare and implement the management plan in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and any other applicable laws.

''(B) CONSULTATION.—In preparing and implementing the management plan, the Secretary shall periodically consult with—

''(i) the advisory committee established under section 1306;

''(ii) interested private property owners and holders of valid existing rights located within the boundaries of the Monument; and

''(iii) representatives of the Fort Mojave Indian tribe, the Colorado River Indian Tribe, the Chemehuevi Indian tribe, and other Indian tribes with historic or cultural ties to land within, or adjacent to, the Monument regarding the management of portions of the Monument containing sacred sites or cultural importance to the Indian tribes.

''(4) INTERIM MANAGEMENT.—Except as otherwise provided in this Act, pending completion of the management plan for the Monument, the Secretary shall manage any Federal land and Federal interests in land within the boundary of the Monument—

''(A) consistent with the existing permitted uses of the land;

''(B) in accordance with the general guidelines and authorities of the existing management plans of the Bureau of Land Management for the land; and

''(C) in a manner consistent with—

''(i) the purposes described in section 1302(b);

''(ii) the provisions of the management plan under paragraph (2); and

''(iii) applicable Federal law.

''(h) EFFECT OF SECTION.—Nothing in this section diminishes or alters existing authorities applicable to Federal land included in the Monument.

''SEC. 1304. USES OF THE MONUMENT.

''(a) USE OF OFF-HIGHWAY VEHICLES.—

''(1) IN GENERAL.—The use of off-highway vehicles in the Monument (including the use of off-highway vehicles for commercial touring) shall be permitted to continue on designated routes, subject to all applicable law and and authorized by the management plan.

''(2) NONDESIGNATED ROUTES.—Off-highway vehicle access shall be permitted on nondesignated routes and trails in the Monument—

''(A) for administrative purposes;

''(B) to respond to an emergency; or

''(C) as authorized under the management plan.

''(3) INVENTORY.—Not later than 2 years after the date of enactment of this title, the Director of the Bureau of Land Management shall complete an inventory of all existing routes in the Monument.

''(b) HUNTING, TRAPPING, AND FISHING.—

''(1) IN GENERAL.—Except as provided in paragraph (2), the Secretary shall permit hunting, trapping, and fishing within the Monument in accordance with applicable Federal and State laws (including regulations) in effect as of the date of enactment of this title.

''(2) TRAPPING.—No amphibians or reptiles may be collected within the Monument.

''(3) REGULATIONS.—The Secretary, after consultation with the California Department of Fish and Game, may issue regulations designating zones where, and establishing periods during which, no hunting, trapping, or fishing shall be permitted in the Monument for reasons of public safety, administration, resource protection, or public use and enjoyment.

''(c) GRAZING.—

''(1) IN GENERAL.—Nothing in this title terminates any valid existing grazing allotment within the Monument.

''(2) EFFECT ON BLAIR PERMIT.—Nothing in this title affects the Lazy Daisy grazing permit (permittee number 9076) on land included in the Monument, including the transfer of title to the grazing permit to the Secretary or to a private party.

''(3) PERMIT RETIREMENT.—The Secretary may acquire base property and associated grazing permits within the Monument for purposes of permanently retiring the permit if—

''(A) the permittee is a willing seller;

''(B) the permittee and Secretary reach an agreement concerning the terms and conditions of the acquisition; and

''(C) termination of the allotment would further the purposes of the Monument described in section 1302(b).

''(d) ACCESS TO STATE AND PRIVATE LAND.—The Secretary shall provide adequate access to each owner of non-Federal land or interests in non-Federal land within the boundary of the Monument to ensure the reasonable use and enjoyment of the land or interest by the owner.

''(e) LIMITATIONS.—

''(1) COMMERCIAL ENTERPRISES.—Except as provided in paragraphs (2) and (3), or as required for the maintenance, upgrade, expansion, or development of energy transport facilities in the corridors described in subsection (g), no commercial enterprises shall be authorized within the boundary of the Monument after the date of enactment of this title.

''(2) AUTHORIZED EXCEPTIONS.—The Secretary may authorize exceptions to paragraph (1) if the Secretary determines that the commercial enterprises would further the purposes described in section 1302(b).

''(3) APPLICABILITY.—This subsection does not apply to—

''(A) transmission and telecommunication facilities that are owned or operated by a utility subject to regulation by the Federal Government or a State government or a State utility with a service obligation (as those terms are defined in section 217 of the Federal Power Act (16 U.S.C. 824q)); or

''(B) commercial vehicular touring enterprises within the Monument that operate on designated routes.

''(f) UTILITY RIGHTS-OF-WAY.—

''(1) IN GENERAL.—Nothing in this title precludes, prevents, or inhibits the maintenance, upgrade, expansion, or development of energy transport facilities within the Monument that are critical to reducing the effects of climate change on the environment.

''(2) AUTHORIZATION.—The Secretary shall, to the maximum extent practicable—

''(A) permit rights-of-way and alignments that best protect the values and resources of the Monument described in section 1302(b); and

''(B) ensure that existing rights-of-way and utility corridors within the Monument are fully utilized before permitting new rights-of-way or designating new utility corridors within the Monument.

''(3) EFFECT ON EXISTING FACILITIES AND RIGHTS-OF-WAY.—Nothing in this section terminates or limits—

''(A) any valid right-of-way within the Monument in existence on the date of enactment of this title (including customary operation, maintenance, repair, or replacement activities in a right-of-way); or

''(B) a right-of-way authorization issued on the expiration of an existing right-of-way authorization described in subparagraph (A).

''(4) UPGRADING AND EXPANSION OF EXISTING RIGHTS-OF-WAY.—Nothing in this subsection prohibits the upgrading (including the construction or replacement), expansion, or assignment of an existing utility transmission line for the purpose of increasing the capacity of—

''(A) a transmission line in existing rights-of-way; or

''(B) a right-of-way issued, granted, or permitted by the Secretary that is contiguous or adjacent to existing transmission line rights-of-way.

''(5) INTERSTATE 40 TRANSPORTATION CORRIDOR.—For purposes of underground utility rights-of-way under this subsection, the Secretary shall consider the Interstate 40 transportation corridor to be equivalent to an existing utility right-of-way corridor.

''(6) NEW RIGHTS-OF-WAY.—

''(A) IN GENERAL.—Any new rights-of-way or new uses within existing rights-of-way shall—

''(i) only be permitted in energy corridors or expansions of energy corridors that are designated as of the date of enactment of this title; and

''(ii) subject to subparagraph (B), require review and approval under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

''(B) APPROVAL.—New rights-of-way or uses or expansions of existing corridors under subparagraph (A) shall only be approved if the head of the applicable lead Federal agency, in consultation with other agencies as appropriate, determines that the new rights-of-way, uses, or expansions are consistent with—

''(i) this title;

''(ii) other applicable laws;

''(iii) the purposes of the Monument described in section 1302(b); and

''(iv) the management plan for the Monument.

''(g) WEST WIDE ENERGY CORRIDOR.—

''(1) ALTERNATIVE ALIGNMENT.—Subject to paragraph (2), to further the purposes of the Monument described in section 1302(b), the Secretary may require a realignment of the energy right-of-way corridor numbered 27–41 and designated under the energy corridor planning process established by section 368 of the Energy Policy Act of 2005 (42 U.S.C. 15926) if an alternative alignment within the Monument—

''(A) provides substantially similar energy transmission capacity and reliability;

''(B) does not impair other existing rights-of-way; and

''(C) is compatible with military training requirements.

''(2) CONSULTATION.—Before establishing an alternative alignment of the energy right-of-way corridor under paragraph (1), the Secretary shall consult with—

''(A) the Secretary of Energy;

''(B) the Secretary of Defense;

''(C) the State, including the transmission permitting agency of the State;

''(D) units of local government in the State; and

''(E) any entities possessing valid existing rights-of-way within—

''(i) the energy corridor described in paragraph (1); or

''(ii) any potential alternative energy corridor.

''(3) EFFECT ON ENERGY TRANSPORT CORRIDORS.—Nothing in this subsection diminishes the utility of energy transport corridors located within the Monument and identified under section 368 of the Energy Policy Act of 2005 (42 U.S.C. 15926), Energy Corridors E or I (as designated in the California Desert Conservation Area Plan), or energy corridors numbered 27–41 and 27–225 and designated by a record of decision—

''(A) to provide locations for—

''(i) electric transmission facilities that improve reliability, relieve congestion, and enhance the national grid; and

''(ii) oil, gas, and hydrogen pipelines; and

''(B) to provide locations for electric transmission facilities that—

''(i) promote renewable energy generation;

''(ii) otherwise further the interest of the United States if the transmission facilities are identified as critical—

''(I) in a Federal law; or

''(II) through a regional transmission planning process; or

''(iii) consist of high-voltage transmission facilities critical to the purposes described in clause (i) or (ii).

''(4) LAND USE PLANNING.—In conducting land use planning for the Monument, the Secretary—

''(A) shall consider the existing locations of the corridors described in paragraph (3); and

''(B) subject to paragraph (5), may amend the location of any energy corridors to comply with purposes of the Monument if the amended corridor—

''(i) provides connectivity across the landscape that is equivalent to the connectivity provided by the existing location;

''(ii) meets the criteria established by—

''(I) section 368 of the Energy Policy Act of 2005 (42 U.S.C. 15926); and

''(II) the record of decision for the applicable corridor; and

''(iii) does not impair or restrict the uses of existing rights-of-way.

''(5) CONSULTATION REQUIRED.—Before amending a corridor under paragraph (4)(B), the Secretary shall consult with all interested parties (including the persons identified in section 368(a) of the Energy Policy Act of 2005 (42 U.S.C. 15926(a))), in accordance with applicable laws (including regulations).

''(h) OVERFLIGHTS.—Nothing in this title or the management plan restricts or precludes—

''(1) overflights (including low-level overflights) of military, commercial, and general aviation aircraft that can be seen or heard within the Monument;

''(2) the designation or creation of new units of special use airspace; or

''(3) the establishment of military flight training routes over the Monument.

''(i) WITHDRAWALS.—

''(1) IN GENERAL.—Subject to valid existing rights and except as provided in paragraph (2), the Federal land and interests in Federal land included within the Monument are withdrawn from—

''(A) all forms of entry, appropriation, or disposal under the public land laws;

''(B) location, entry, and patent under the public land mining laws;

''(C) operation of the mineral leasing, geothermal leasing, and mineral materials laws; and

''(D) energy development and power generation.

''(2) EXCHANGE.—Paragraph (1) does not apply to an exchange that the Secretary determines would further the protective purposes of the Monument.

''(j) ACCESS TO RENEWABLE ENERGY FACILITIES.—

''(1) IN GENERAL.—On a determination that no reasonable alternative access exists and subject to paragraph (2), the Secretary may allow new right-of-ways within the Monument to provide vehicular access to renewable energy project sites outside the boundaries of the Monument.

''(2) RESTRICTIONS.—To the maximum extent practicable, the rights-of-way shall be designed and sited to be consistent with the purposes of the Monument described in section 1302(b).

''SEC. 1305. ACQUISITION OF LAND.

''(a) IN GENERAL.—The Secretary may acquire for inclusion in the Monument any land or interests in land within the boundary of the Monument owned by the State, units of local government, Indian tribes, or private individuals only by—

''(1) donation;

''(2) exchange with a willing party; or

''(3) purchase from a willing seller for fair market value.

''(b) USE OF EASEMENTS.—To the maximum extent practicable and only with the approval of the landowner, the Secretary may use permanent conservation easements to acquire an interest in land in the Monument rather than acquiring fee simple title to the land.

''(c) INCORPORATION OF ACQUIRED LAND AND INTERESTS IN LAND.—Any land or interest in land within the boundaries of the Monument that is acquired by the United States after the date of enactment of this title shall be added to and administered as part of the Monument.

''(d) DONATED AND ACQUIRED LAND.—

''(1) IN GENERAL.—All land within the boundary of the Monument donated to the United States or acquired using amounts from the land and water conservation fund established under section 2 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601–5) before, on, or after the date of enactment of this title—

''(A) is withdrawn from mineral entry;

''(B) shall be managed in accordance with section 1904; and

''(C) shall be managed consistent with the purposes of the Monument described in section 1302(b).

''(2) EFFECT ON MONUMENT.—Land within the boundary of the Monument that is contiguous to land donated to the United States or acquired using amounts from the land and water conservation fund established under section 2 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601–5) shall be managed in a manner consistent with conservation purposes, subject to applicable law.

''SEC. 1306. ADVISORY COMMITTEE.

''(a) IN GENERAL.—The Secretary shall establish an advisory committee for the Monument, the purpose of which is to advise the Secretary with respect to the preparation and implementation of the management plan required by section 1303(g).

''(b) MEMBERSHIP.—To the extent practicable, the advisory committee shall include the following members, to be appointed by the Secretary:

''(1) A representative with expertise in natural science and research selected from a regional university or research institute.

''(2) A representative of the California Natural Resources Agency.

''(3) A representative of the California Public Utilities Commission.

''(4) A representative of the County of San Bernardino, California.

''(5) A representative of each of the cities of Barstow, Needles, Twentynine Palms, and Yucca Valley, California.

''(6) A representative of each of the Colorado River, Fort Mojave, and the Chemehuevi Indian tribes.

''(7) A representative from the Department of Defense.

''(8) A representative of the Wildlands Conservancy.

''(9) A representative of a local conservation organization.

''(10) A representative of a historical preservation organization.

''(11) A representative from each of the following recreational activities:

''(A) Off-highway vehicles.

''(B) Hunting.

''(C) Rockhounding.

''(c) TERMS.—

''(1) IN GENERAL.—In appointing members under paragraphs (1) through (11) of subsection (b), the Secretary shall appoint 1 primary member and 1 alternate member that meets the qualifications described in each of those paragraphs.

''(2) VACANCY.—

''(A) PRIMARY MEMBER.—A vacancy on the advisory committee with respect to a primary member shall be filled by the applicable alternate member.

''(B) ALTERNATE MEMBER.—The Secretary shall appoint a new alternate members in the event of a vacancy with respect to an alternate member of the advisory committee.

''(3) TERMINATION.—

''(A) IN GENERAL.—The term of all members of the advisory committee shall terminate on the termination of the advisory committee under subsection (g).

''(B) NEW ADVISORY COMMITTEE.—At the discretion of the Secretary, the Secretary may establish a new advisory committee on the termination of the advisory committee under subsection (g) to provide ongoing recommendations on the management of the Monument.

''(d) QUORUM.—A quorum of the advisory committee shall consist of a majority of the primary members.

''(e) CHAIRPERSON AND PROCEDURES.—

''(1) IN GENERAL.—The advisory committee shall select a chairperson and vice chairperson from among the primary members of the advisory committee.

''(2) DUTIES.—The chairperson and vice chairperson selected under paragraph (1) shall establish any rules and procedures for the advisory committee that the chairperson and vice-chairperson determine to be necessary or desirable.

''(f) SERVICE WITHOUT COMPENSATION.—Members of the advisory committee shall serve without pay.

''(g) TERMINATION.—The advisory committee shall cease to exist on—

''(1) the date on which the management plan is officially adopted by the Secretary; or

''(2) at the discretion of the Secretary, a later date established by the Secretary.

''SEC. 1307. RENEWABLE ENERGY RIGHT-OF-WAY APPLICATIONS.

''(a) IN GENERAL.—Applicants for rights-of-way for the development of solar energy facilities that have been terminated by the establishment of the Monument shall be granted the right of first refusal to apply for replacement sites that—

''(1) have not previously been encumbered by right-of-way applications; and

''(2) are located within the Solar Energy Zones designated by the Solar Energy Programmatic Environmental Impact Statement of the Department of the Interior and the Department of Energy.

''(b) ELIGIBILITY.—To be eligible for a right of first refusal under subsection (a), an applicant shall have, on or before December 1, 2009—

''(1) submitted an application for a right-of-way to the Bureau of Land Management;

''(2) completed a plan of development to develop a solar energy facility on land within the Monument;

''(3) submitted cost recovery funds to the Bureau of Land Management to assist with the costs of processing the right-of-way application;

''(4) successfully submitted an application for an interconnection agreement with an electrical grid operator that is registered with the North American Electric Reliability Corporation; and

''(5)(A) secured a power purchase agreement; or

''(B) a financially and technically viable solar energy facility project, as determined by the Director of the Bureau of Land Management.

''(c) EQUIVALENT ENERGY PRODUCTION.—Each right-of-way for a replacement site granted under this section shall—

''(1) authorize the same energy production at the replacement site as had been applied for at the site that had been the subject of the terminated application; and

''(2) have—

''(A) appropriate solar insolation and geotechnical attributes; and

''(B) adequate access to existing transmission or feasible new transmission.

''(d) EXISTING RIGHTS-OF-WAY APPLICATIONS.—Nothing in this section alters, affects, or displaces primary rights-of-way applications within the Solar Energy Study Areas unless the applications are otherwise altered, affected, or displaced as a result of the Solar Energy Programmatic Environmental Impact Statement of the Department of the Interior and the Department of Energy.

''(e) DEADLINES.—A right of first refusal granted under this section shall only be exercisable by the later of—

''(1) the date that is 180 days after the date of enactment of this title; or

''(2) the date that is 180 days after the date of the designation of the Solar Energy Zones under the Solar Energy Programmatic Environmental Impact Statement.

''(f) EXPEDITED APPLICATION PROCESSING.—The Secretary shall expedite the review of replacement site applications from eligible applicants, as described in subsection (b).

''TITLE XIV—SAND TO SNOW NATIONAL MONUMENT

''SEC. 1401. DEFINITIONS.

''In this title:

''(1) MAP.—The term 'map' means the map entitled 'Boundary Map, Sand to Snow National Monument' and dated October 26, 2009.

''(2) MONUMENT.—The term 'Monument' means the Sand to Snow National Monument established by section 1402(a).

''(3) SECRETARIES.—The term 'Secretaries' means the Secretary of the Interior and the Secretary of Agriculture, acting jointly.

''SEC. 1402. ESTABLISHMENT OF THE SAND TO SNOW NATIONAL MONUMENT.

''(a) ESTABLISHMENT.—There is designated in the State the Sand to Snow National Monument.

''(b) PURPOSES.—The purposes of the Monument are—

''(1) to preserve the nationally significant biological, cultural, educational, geological, historic, scenic, and recreational values at the convergence of the Mojave and Colorado Desert and the San Bernardino Mountains; and

''(2) to secure the opportunity for present and future generations to experience and enjoy the magnificent vistas, wildlife, land forms, and natural and cultural resources of the Monument.

''(c) BOUNDARIES.—The Monument shall consist of the Federal land and Federal interests in land within the boundaries depicted on the map.

''(d) MAP; LEGAL DESCRIPTIONS.—

''(1) LEGAL DESCRIPTION.—As soon as practicable after the date of enactment of this title, the Secretary shall submit to the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate legal descriptions of the Monument, based on the map.

''(2) CORRECTIONS.—The map and legal descriptions of the Monument shall have the same force and effect as if included in this title, except that the Secretary may correct clerical and typographical errors in the map and legal descriptions.

''(3) AVAILABILITY OF MAP.—The map shall be on file and available for public inspection in appropriate offices of the Bureau of Land Management.

''SEC. 1403. MANAGEMENT OF THE MONUMENT.

''(a) IN GENERAL.—The Secretary shall—

''(1) only allow uses of the Monument that—

''(A) further the purposes described in section 1402(b);

''(B) are included in the management plan developed under subsection (g); and

''(C) do not interfere with the utility rights-of-way authorized under section 1405(e); and

''(2) subject to valid existing rights, manage the Monument to protect the resources of the Monument, in accordance with—

''(A) this title;

''(B) the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.); and

''(C) any other applicable provisions of law.

''(b) COOPERATION AGREEMENTS; GENERAL AUTHORITY.—Consistent with the management plan and existing authorities applicable to the Monument, the Secretary may enter into cooperative agreements and shared management arrangements (including special use permits with any person (including educational institutions and Indian tribes)), for the purposes of interpreting, researching, and providing education on the resources of the Monument.

''(c) ADMINISTRATION OF SUBSEQUENTLY ACQUIRED LAND.—Any land or interest in land within the boundaries of the Monument that is acquired by the Secretary of the Interior or the Secretary of Agriculture after the date of enactment of this title shall be managed by the Secretary of Agriculture or the Secretary of the Interior, respectively, in accordance with this title.

''(d) LIMITATIONS.—

''(1) PROPERTY RIGHTS.—The establishment of the Monument does not—

''(A) affect—

''(i) any property rights of an Indian reservation, individually held trust land, or any other Indian allotments;

''(ii) any land or interests in land held by the State, any political subdivision of the State, or any special district; or

''(iii) any private property rights within the boundaries of the Monument; or

''(B) grant to the Secretary any authority on or over non-Federal land not already provided by law.

''(2) AUTHORITY.—The authority of the Secretary under this title extends only to Federal land and Federal interests in land included in the Monument.

''(e) ADJACENT MANAGEMENT.—

''(1) IN GENERAL.—Nothing in this title creates any protective perimeter or buffer zone around the Monument.

''(2) ACTIVITIES OUTSIDE MONUMENT.—The fact that an activity or use on land outside the Monument can be seen or heard within the Monument shall not preclude the activity or use outside the boundary of the Monument.

''(3) NO ADDITIONAL REGULATION.—Nothing in this title requires additional regulation of activities on land outside the boundary of the Monument.

''(f) AIR AND WATER QUALITY.—Nothing in this title affects the standards governing air or water quality outside the boundary of the Monument.

''(g) MANAGEMENT PLAN.—

''(1) IN GENERAL.—The Secretaries shall—

''(A) not later than 3 years after the date of enactment of this title, complete a management plan for the conservation and protection of the Monument; and

''(B) on completion of the management plan—

''(i) submit the management plan to—

''(I) the Committee on Natural Resources of the House of Representatives; and

''(II) the Committee on Energy and Natural Resources of the Senate; and

''(ii) make the management plan available to the public.

''(2) INCLUSIONS.—The management plan shall include provisions that—

''(A) provide for the conservation and protection of the Monument;

''(B) authorize the continued recreational uses of the Monument (including hiking, camping, hunting, mountain biking, sightseeing, off-highway vehicle recreation on designated routes, rockhounding, and horseback riding), if the recreational uses are consistent with this title and any other applicable law;

''(C) address the need for and, as necessary, establish plans for, the installation, construction, and maintenance of public utility energy transport facilities within rights-of-way in the Monument outside of designated wilderness areas, including provisions that require that—

''(i) the activities be conducted in a manner that minimizes the impact on Monument resources (including resources relating to the ecological, cultural, historic, and scenic viewshed of the Monument), in accordance with any other applicable law; and

''(ii) the facilities are consistent with this section and any other applicable law;

''(D) address the designation and maintenance of roads, trails, and paths in the Monument;

''(E) address regional fire management planning and coordination between the Director of the Bureau of Land Management, the Chief of the Forest Service, Riverside County, and San Bernardino County; and

''(F) address the establishment of a visitor center to serve the Monument and adjacent public land.

''(3) PREPARATION AND IMPLEMENTATION.—

''(A) APPLICABLE LAW.—The Secretary shall prepare and implement the management plan in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and any other applicable laws.

''(B) CONSULTATION.—In preparing and implementing the management plan, the Secretary shall periodically consult with—

''(i) the advisory committee established under section 1406;

''(ii) interested private property owners and holders of valid existing rights located within the boundaries of the Monument; and

''(iii) representatives of the Morongo Band of Mission Indians and other Indian tribes with historic or cultural ties to land within, or adjacent to, the Monument regarding the management of portions of the Monument that are of cultural importance to the Indian tribes.

''(4) INTERIM MANAGEMENT.—Except as otherwise prohibited by this Act, pending completion of the management plan for the Monument, the Secretary shall manage any Federal land and Federal interests in land within the boundary of the Monument—

''(A) consistent with the existing permitted uses of the land;

''(B) in accordance with the general guidelines and authorities of the existing management plans of the Bureau of Land Management and the Forest Service for the land; and

''(C) in a manner consistent with—

''(i) the purposes described in section 1402(b);

''(ii) the provisions of the management plan under paragraph (2); and

''(iii) applicable Federal law.

''(5) EFFECT OF SECTION.—Nothing in this section diminishes or alters existing authorities applicable to Federal land included in the Monument.

''SEC. 1404. USES OF THE MONUMENT.

''(a) USE OF OFF-HIGHWAY VEHICLES.—

''(1) IN GENERAL.—The use of off-highway vehicles in the Monument (including the use of off-highway vehicles for commercial touring) shall be permitted to continue on designated routes, subject to all applicable law and authorized by the management plan.

''(2) NONDESIGNATED ROUTES.—Off-highway vehicle access shall be permitted on nondesignated routes and trails in the Monument—

''(A) for administrative purposes;

''(B) to respond to an emergency; or

''(C) as authorized under the management plan.

''(3) INVENTORY.—Not later than 2 years after the date of enactment of this title, the Director of the Bureau of Land Management shall complete an inventory of all existing routes in the Monument.

''(b) HUNTING, TRAPPING, AND FISHING.—

''(1) IN GENERAL.—Except as provided in paragraph (2), the Secretary shall permit hunting, trapping, and fishing within the Monument in accordance with applicable Federal and State laws (including regulations) as of the date of enactment of this title.

''(2) TRAPPING.—No amphibians or reptiles may be collected within the Monument.

''(3) REGULATIONS.—The Secretary, after consultation with the California Department of Fish and Game, may issue regulations designating zones where, and establishing periods during which, no hunting, trapping, or fishing shall be permitted in the Monument for reasons of public safety, administration, resource protection, or public use and enjoyment.

''(c) ACCESS TO STATE AND PRIVATE LAND.—The Secretary shall provide adequate access to each owner of non-Federal land or interests in non-Federal land within the boundary of the Monument to ensure the reasonable use and enjoyment of the land or interest by the owner.

''(d) LIMITATIONS.—

''(1) COMMERCIAL ENTERPRISES.—Except as provided in paragraphs (2) and (3), or as required for the maintenance, upgrade, expansion, or development of energy transport facilities in the corridors described in subsection (e), no commercial enterprises shall be authorized within the boundary of the Monument after the date of enactment of this title.

''(2) AUTHORIZED EXCEPTIONS.—The Secretary may authorize exceptions to paragraph (1) if the Secretary determines that the commercial enterprises would further the purposes described in section 1402(b).

''(3) TRANSMISSION AND TELECOMMUNICATION FACILITIES.—This subsection does not apply to—

''(A) transmission and telecommunication facilities that are owned or operated by a utility subject to regulation by the Federal

Government or a State government or a State utility with a service obligation (as those terms are defined in section 217 of the Federal Power Act (16 U.S.C. 824q)); or

''(B) commercial vehicular touring enterprises within the Monument that operate on designated routes.

''(e) UTILITY RIGHTS-OF-WAY.—

''(1) IN GENERAL.—Nothing in this Act precludes, prevents, or inhibits the maintenance, upgrade, expansion, or development of energy transport facilities within the Monument that are critical to reducing the effects of climate change on the environment.

''(2) RIGHT-OF-WAY.—To the maximum extent practicable—

''(A) the Secretary shall permit rights of way and alignments that best protect the values and resources of the Monument described in section 1402(b); and

''(B) the Secretary shall ensure that existing rights-of-way and utility corridors within the Monument are fully utilized before permitting new rights-of-way or designating new utility corridors within the Monument.

''(3) EFFECT ON EXISTING FACILITIES AND RIGHTS-OF-WAY.—Nothing in this section terminates or limits—

''(A) any valid right-of-way in existence within the Monument on the date of enactment of this title (including customary operation, maintenance, repair, or replacement activities in a right-of-way); or

''(B) a right-of-way authorization issued on the expiration or the assignment of an existing right-of-way authorization described in subparagraph (A).

''(4) UPGRADING AND EXPANSION OF EXISTING RIGHTS-OF-WAY.—Nothing in this subsection prohibits the upgrading (including the construction or replacement), expansion, or assignment of an existing utility transmission line for the purpose of increasing the capacity of—

''(A) a transmission line in existing rights-of-way; or

''(B) a right-of-way issued, granted, or permitted by the Secretary that is contiguous or adjacent to existing transmission line rights-of-way.

''(5) NEW RIGHTS-OF-WAY.—

''(A) IN GENERAL.—Any new rights-of-way or new uses within existing rights-of-way shall, subject to subparagraph (B), require review and approval under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

''(B) APPROVAL.—New uses under subparagraph (A) shall only be approved if the head of the applicable lead Federal agency, in consultation with other applicable agencies, determine that the uses are consistent with—

''(i) this title;

''(ii) other applicable laws;

''(iii) the purposes of the Monument described in section 1402(b); and

''(iv) the management plan for the Monument.

''(6) EFFECT ON ENERGY TRANSPORT CORRIDORS.—Nothing in this subsection diminishes the utility of energy transport corridors located within the Monument designated by a record of decision—

''(A) to provide locations for—

''(i) electric transmission facilities that improve reliability, relieve congestion, and enhance the national grid; and

''(ii) oil, gas, and hydrogen pipelines; and

''(B) to provide locations for electric transmission facilities that—

''(i) promote renewable energy generation;

''(ii) otherwise further the interest of the United States if the transmission facilities are identified as critical in law or through a regional transmission planning process; or

''(iii) consist of high-voltage transmission facilities critical to the purposes described in clause (i) or (ii).

''(7) LAND USE PLANNING.—In conducting land use planning for the Monument, the Secretary—

''(A) shall consider the existing locations of the corridors described in paragraph (6); and

''(B) subject to paragraph (8), may amend the location of any energy corridors to comply with purposes of the Monument if the amended corridor—

''(i) provides connectivity across the landscape that is equivalent to the connectivity provided by the existing location;

''(ii) meets the criteria established by—

''(I) section 368 of the Energy Policy Act of 2005 (42 U.S.C. 15926); and

''(II) the record of decision for the applicable corridor; and

''(iii) does not impair or restrict the uses of existing rights-of-way.

''(8) CONSULTATION REQUIRED.—Before amending a corridor under paragraph (7)(B), the Secretary shall consult with all interested parties (including the persons identified in section 368(a) of the Energy Policy Act of 2005 (42 U.S.C. 15926(a))), in accordance with applicable laws (including regulations).

''(f) OVERFLIGHTS.—Nothing in this title or the management plan restricts or precludes—

''(1) overflights (including low-level overflights) of military, commercial, and general aviation aircraft that can be seen or heard within the Monument;

''(2) the designation or creation of new units of special use airspace; or

''(3) the establishment of military flight training routes over the Monument.

''(g) WITHDRAWALS.—

''(1) IN GENERAL.—Subject to valid existing rights and except as provided in paragraph (2), the Federal land and interests in Federal land included within the Monument are withdrawn from—

''(A) all forms of entry, appropriation, or disposal under the public land laws;

''(B) location, entry, and patent under the public land mining laws;

''(C) operation of the mineral leasing, geothermal leasing, and mineral materials laws; and

''(D) energy development and power generation.

''(2) EXCHANGE.—Paragraph (1) does not apply to an exchange that the Secretary determines would further the protective purposes of the Monument.

''(h) ACCESS TO RENEWABLE ENERGY FACILITIES.—

''(1) IN GENERAL.—Subject to paragraph (2), the Secretary may allow new right-of-ways within the Monument to provide reasonable vehicular access to renewable energy project sites outside the boundaries of the Monument.

''(2) RESTRICTIONS.—To the maximum extent practicable, the rights-of-way shall be designed and sited to be consistent with the purposes of the Monument described in section 1402(b).

''SEC. 1405. ACQUISITION OF LAND.

''(a) IN GENERAL.—The Secretary may acquire for inclusion in the Monument any land or interests in land within the boundary of the Monument owned by the State, units of local government, Indian tribes, or private individuals only by—

''(1) donation;

''(2) exchange with a willing party; or

''(3) purchase from a willing seller for fair market value.

''(b) USE OF EASEMENTS.—To the maximum extent practicable and only with the approval of the landowner, the Secretary may use permanent conservation easements to acquire an interest in land in the Monument rather than acquiring fee simple title to the land.

''(c) INCORPORATION OF ACQUIRED LAND AND INTERESTS IN LAND.—Any land or interest in land within the boundaries of the Monument that is acquired by the United States after the date of enactment of this title shall be added to and administered as part of the Monument.

''(d) DONATED AND ACQUIRED LAND.—

''(1) IN GENERAL.—All land within the boundary of the Monument donated to the United States or acquired using amounts from the land and water conservation fund established under section 2 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601–5) before, on, or after the date of enactment of this title—

''(A) is withdrawn from mineral entry;

''(B) shall be managed in accordance with section 1904; and

''(C) shall be managed consistent with the purposes of the Monument described in section 1402(b).

''(2) EFFECT ON MONUMENT.—Land within the boundary of the Monument that is contiguous to land donated to the United States or acquired using amounts from the land and water conservation fund established under section 2 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601–5) shall be managed in a manner consistent with conservation purposes, subject to applicable law.

''SEC. 1406. ADVISORY COMMITTEE.

''(a) IN GENERAL.—The Secretary shall establish an advisory committee for the Monument, the purpose of which is to advise the Secretary with respect to the preparation and implementation of the management plan required by section 1403(g).

''(b) MEMBERSHIP.—To the extent practicable, the advisory committee shall include the following members, to be appointed by the Secretary:

''(1) A representative with expertise in natural science and research selected from a regional university or research institute.

''(2) A representative of the Department of Defense.

''(3) A representative of the California Natural Resources Agency.

''(4) A representative of each of San Bernardino and Riverside Counties, California.

''(5) A representative of each of the cities of Desert Hot Springs and Yucca Valley, California.

''(6) A representative of the Morongo Band of Mission Indians.

''(7) A representative of the Friends of Big Morongo Preserve.

''(8) A representative of the Wildlands Conservancy.

''(9) A representative of the Coachella Valley Mountains Conservancy.

''(10) A representative of the San Gorgonio Wilderness Association.

''(11) A representative of the Morongo Basin Community Services District.

''(12) A representative from each of the following recreational activities:

''(A) Off-highway vehicles.

''(B) Hunting.

''(C) Rockhounding.

''(c) TERMS.—

''(1) IN GENERAL.—In appointing members under paragraphs (1) through (12) of subsection (b), the Secretary shall appoint 1 primary member and 1 alternate member that meets the qualifications described in each of those paragraphs.

''(2) VACANCY.—

''(A) PRIMARY MEMBER.—A vacancy on the advisory committee with respect to a primary member shall be filled by the applicable alternate member.

''(B) ALTERNATE MEMBER.—The Secretary shall appoint a new alternate members in the event of a vacancy with respect to an alternate member of the advisory committee.

''(3) TERMINATION.—

''(A) IN GENERAL.—The term of all members of the advisory committee shall terminate on the termination of the advisory committee under subsection (g).

''(B) NEW ADVISORY COMMITTEE.—At the discretion of the Secretary, the Secretary may establish a new advisory committee on the termination of the advisory committee under subsection (g) to provide ongoing recommendations on the management of the Monument.

''(d) QUORUM.—A quorum of the advisory committee shall consist of a majority of the primary members.

''(e) CHAIRPERSON AND PROCEDURES.—

''(1) IN GENERAL.—The advisory committee shall select a chairperson and vice chairperson from among the primary members of the advisory committee.

''(2) DUTIES.—The chairperson and vice chairperson selected under paragraph (1) shall establish any rules and procedures for the advisory committee that the chairperson and vice-chairperson determine to be necessary or desirable.

''(f) SERVICE WITHOUT COMPENSATION.—Members of the advisory committee shall serve without pay.

''(g) TERMINATION.—The advisory committee shall cease to exist on—

''(1) the date on which the management plan is officially adopted by the Secretary; or

''(2) at the discretion of the Secretary, a later date established by the Secretary.

''TITLE XV—WILDERNESS

''SEC. 1501. DESIGNATION OF WILDERNESS AREAS.

''(a) DESIGNATION OF WILDERNESS AREAS TO BE ADMINISTERED BY THE BUREAU OF LAND MANAGEMENT.—In accordance with the Wilderness Act (16 U.S.C. 1131 et seq.) and sections 601 and 603 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1781, 1782), the following land in the State is designated as wilderness areas and as components of the National Wilderness Preservation System:

''(1) AVAWATZ MOUNTAINS WILDERNESS.—Certain land in the Conservation Area administered by the Director of the Bureau of Land Management, comprising approximately 86,614 acres, as generally depicted on the map entitled 'Avawatz Mountains Proposed Wilderness' and dated July 15, 2009, to be known as the 'Avawatz Mountains Wilderness'.

''(2) GOLDEN VALLEY WILDERNESS.—Certain land in the Conservation Area administered by the Director of the Bureau of Land Management, comprising approximately 21,633 acres, as generally depicted on the map entitled 'Golden Valley Proposed Wilderness' and dated July 15, 2009, which shall be considered to be part of the 'Golden Valley Wilderness'.

''(3) GREAT FALLS BASIN WILDERNESS.—

''(A) IN GENERAL.—Certain land in the Conservation Area administered by the Director of the Bureau of Land Management, comprising approximately 7,871 acres, as generally depicted on the map entitled 'Great Falls Basin Proposed Wilderness' and dated October 26, 2009, to be known as the 'Great Falls Basin Wilderness'.

''(B) LIMITATIONS.—Designation of the wilderness under subparagraph (A) shall not establish a Class I Airshed under the Clean Air Act (42 U.S.C. 7401 et seq.).

''(4) KINGSTON RANGE WILDERNESS.—Certain land in the Conservation Area administered by the Bureau of Land Management, comprising approximately 53,321 acres, as generally depicted on the map entitled 'Kingston Range Proposed Wilderness Additions' and dated July 15, 2009, which shall be considered to be a part of as the 'Kingston Range Wilderness'.

''(5) SODA MOUNTAINS WILDERNESS.—Certain land in the Conservation Area, administered by the Bureau of Land Management, comprising approximately 79,376 acres, as generally depicted on the map entitled 'Soda Mountains Proposed Wilderness' and dated October 26, 2009, to be known as the 'Soda Mountains Wilderness'.

''(b) DESIGNATION OF WILDERNESS AREAS TO BE ADMINISTERED BY THE NATIONAL PARK SERVICE.—In accordance with the Wilderness Act (16 U.S.C. 1131 et seq.) and sections 601 and 603 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1781, 1782), the following land in the State is designated as wilderness areas and as components of the National Wilderness Preservation System:

''(1) DEATH VALLEY NATIONAL PARK WILDERNESS ADDITIONS.—Certain land in the Conservation Area administered by the Director of the National Park Service, comprising approximately 59,264 acres, as generally depicted on the map entitled 'Death Valley National Park Additions' and dated October 1, 2009, which shall be considered to be a part of the Death Valley National Park Wilderness.

''(2) BOWLING ALLEY WILDERNESS.—Certain land in the Conservation Area administered by the Director of the Bureau of Land Management, comprising approximately 30,888 acres, as generally depicted on the map entitled 'Death Valley National Park Proposed Wilderness Area', numbered 143/100080, and dated June 2009, which shall be considered to be a part of the Death Valley National Park Wilderness.

''(c) DESIGNATION OF WILDERNESS AREA TO BE ADMINISTERED BY THE FOREST SERVICE.—

''(1) IN GENERAL.—In accordance with the Wilderness Act (16 U.S.C. 1131 et seq.) and sections 601 and 603 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1781, 1782), the land in the State described in paragraph (2) is designated as a wilderness area and as a component of the National Wilderness Preservation System.

''(2) DESCRIPTION OF LAND.—The land referred to in paragraph (1) is certain land in the San Bernardino National Forest, comprising approximately 7,141 acres, as generally depicted on the map entitled 'Proposed Sand to Snow National Monument' and dated October 26, 2009, which shall considered to be a part of the San Gorgonio Wilderness.

''SEC. 1502. MANAGEMENT.

''(a) ADJACENT MANAGEMENT.—

''(1) IN GENERAL.—Nothing in this title creates any protective perimeter or buffer zone around the wilderness areas designated by section 1501.

''(2) ACTIVITIES OUTSIDE WILDERNESS AREAS.—

''(A) IN GENERAL.—The fact that an activity (including military activities) or use on land outside a wilderness area designated by section 1501 can be seen or heard within the wilderness area shall not preclude or restrict the activity or use outside the boundary of the wilderness area.

''(B) EFFECT ON NONWILDERNESS ACTIVITIES.—

''(i) IN GENERAL.—In any permitting proceeding (including a review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.)) conducted with respect to a project described in clause (ii) that is formally initiated through a notice in the Federal Register before December 31, 2013, the consideration of any visual, noise, or other impacts of the project on a wilderness area designated by section 1501 shall be conducted based on the status of the area before designation as wilderness.

''(ii) DESCRIPTION OF PROJECTS.—A project referred to in clause (i) is a renewable energy project—

''(I) for which the Bureau of Land Management has received a right-of-way use application on or before the date of enactment of this Act; and

''(II) that is located outside the boundary of a wilderness area designated by section 1501.

''(3) NO ADDITIONAL REGULATION.—Nothing in this title requires additional regulation of activities on land outside the boundary of the wilderness areas.

''(4) EFFECT ON MILITARY OPERATIONS.—Nothing in this Act alters any authority of the Secretary of Defense to conduct any military operations at desert installations, facilities, and ranges of the State that are authorized under any other provision of law.

''(b) MAPS; LEGAL DESCRIPTIONS.—

''(1) IN GENERAL.—As soon as practicable after the date of enactment of this title, the Secretary shall file a map and legal description of each wilderness area and wilderness addition designated by section 1501 with—

''(A) the Committee on Natural Resources of the House of Representatives; and

''(B) the Committee on Energy and Natural Resources of the Senate.

''(2) FORCE OF LAW.—A map and legal description filed under paragraph (1) shall have the same force and effect as if included in this title, except that the Secretary may correct errors in the maps and legal descriptions.

''(3) PUBLIC AVAILABILITY.—Each map and legal description filed under paragraph (1) shall be filed and made available for public inspection in the appropriate office of the Secretary.

''(c) ADMINISTRATION.—Subject to valid existing rights, the land designated as wilderness or as a wilderness addition by section 1501 shall be administered by the Secretary in accordance with this Act and the Wilderness Act (16 U.S.C. 1131 et seq.), except that any reference in that Act to the effective date shall be considered to be a reference to the date of enactment of this title.

''SEC. 1503. RELEASE OF WILDERNESS STUDY AREAS.

''(a) FINDING.—Congress finds that, for purposes of section 603 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1782), any portion of a wilderness study area described in subsection (b) that is not designated as a wilderness area or wilderness addition by section 1501 or any other Act enacted before the date of enactment of this title has been adequately studied for wilderness.

''(b) DESCRIPTION OF STUDY AREAS.—The study areas referred to in subsection (a) are—

''(1) the Cady Mountains Wilderness Study Area;

''(2) the Great Falls Basin Wilderness Study Area; and

''(3) the Soda Mountains Wilderness Study Area.

''(c) RELEASE.—Any portion of a wilderness study area described in subsection (b) that is not designated as a wilderness area or wilderness addition by section 1501 is no longer subject to section 603(c) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1782(c)).

''TITLE XVI—DESIGNATION OF SPECIAL MANAGEMENT AREA

''SEC. 1601. DEFINITIONS.

''In this title:

''(1) MANAGEMENT AREA.—The term 'Management Area' means the Vinagre Wash Special Management Area.

''(2) MAP.—The term 'map' means the map entitled 'Vinagre Wash Special Management Area-Proposed' and dated November 10, 2009.

''(3) PUBLIC LAND.—The term 'public land' has the meaning given the term 'public

lands' in section 103 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1702).

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

"SEC. 1602. ESTABLISHMENT OF THE VINAGRE WASH SPECIAL MANAGEMENT AREA.

''(a) ESTABLISHMENT.—There is established the Vinagre Wash Special Management Area in the State, to be managed by the El Centro Field Office and the Yuma Field Office of the Bureau of Land Management.

''(b) PURPOSE.—The purpose of the Management Area is to conserve, protect, and enhance—

''(1) the plant and wildlife values of the Management Area; and

''(2) the outstanding and nationally significant ecological, geological, scenic, recreational, archaeological, cultural, historic, and other resources of the Management Area.

''(c) BOUNDARIES.—The Management Area shall consist of the public land in Imperial County, California, comprising approximately 74,714 acres, as generally depicted on the map.

''(d) MAP; LEGAL DESCRIPTION.—

''(1) IN GENERAL.—As soon as practicable, but not later than 3 years, after the date of enactment of this title, the Secretary shall submit a map and legal description of the Management Area to—

''(A) the Committee on Natural Resources of the House of Representatives; and

''(B) the Committee on Energy and Natural Resources of the Senate.

''(2) EFFECT.—The map and legal description submitted under paragraph (1) shall have the same force and effect as if included in this title, except that the Secretary may correct any errors in the map and legal description.

''(3) AVAILABILITY.—Copies of the map submitted under paragraph (1) shall be on file and available for public inspection in—

''(A) the Office of the Director of the Bureau of Land Management; and

''(B) the appropriate office of the Bureau of Land Management in the State.

"SEC. 1603. MANAGEMENT.

''(a) IN GENERAL.—The Secretary shall allow hiking, camping, hunting, and sightseeing and the use of motorized vehicles, mountain bikes, and horses on designated routes in the Management Area in a manner that—

''(1) is consistent with the purpose of the Management Area described in section 1602(b);

''(2) ensures public health and safety; and

''(3) is consistent with applicable law.

''(b) OFF-HIGHWAY VEHICLE USE.—

''(1) IN GENERAL.—Subject to paragraphs (2) and (3) and all other applicable laws, the use of off-highway vehicles shall be permitted on routes in the Management Area generally depicted on the map.

''(2) CLOSURE.—The Secretary may temporarily close or permanently reroute a portion of a route described in paragraph (1)—

''(A) to prevent, or allow for restoration of, resource damage;

''(B) to protect tribal cultural resources, including the resources identified in the tribal cultural resources management plan developed under section 1905(c);

''(C) to address public safety concerns; or

''(D) as otherwise required by law.

''(3) DESIGNATION OF ADDITIONAL ROUTES.—During the 3–year period beginning on the date of enactment of this title, the Secretary—

''(A) shall accept petitions from the public regarding additional routes for off-highway vehicles; and

''(B) may designate additional routes that the Secretary determines—

''(i) would provide significant or unique recreational opportunities; and

''(ii) are consistent with the purposes of the Management Area.

''(c) WITHDRAWAL.—Subject to valid existing rights, all Federal land within the Management Area is withdrawn from—

''(1) all forms of entry, appropriation, or disposal under the public land laws;

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

''(3) right-of-way, leasing, or disposition under all laws relating to—

''(A) minerals; or

''(B) solar, wind, and geothermal energy.

''(d) NO BUFFERS.—The establishment of the Management Area shall not—

''(1) create a protective perimeter or buffer zone around the Management Area; or

''(2) preclude uses or activities outside the Management Area that are permitted under other applicable laws, even if the uses or activities are prohibited within the Management Area.

''(e) NOTICE OF AVAILABLE ROUTES.—The Secretary shall ensure that visitors to the Management Area have access to adequate notice relating to the availability of designated routes in the Management Area through—

''(1) the placement of appropriate signage along the designated routes;

''(2) the distribution of maps, safety education materials, and other information that the Secretary determines to be appropriate; and

''(3) restoration of areas that are not designated as open routes, including vertical mulching.

''(f) STEWARDSHIP.—The Secretary, in consultation with Indian tribes and other interests, shall develop a program to provide opportunities for monitoring and stewardship of the Management Area to minimize environmental impacts and prevent resource damage from recreational use, including volunteer assistance with—

''(1) route signage;

''(2) restoration of closed routes;

''(3) protection of Management Area resources; and

''(4) recreation education.

''(g) PROTECTION OF TRIBAL CULTURAL RESOURCES.—Not later than 2 years after the date of enactment of this title, the Secretary, in accordance with the National Historic Preservation Act (16 U.S.C. 470 et seq.) and any other applicable law, shall—

''(1) prepare and complete a tribal cultural resources survey of the Management Area; and

''(2) consult with the Quechan Indian Nation and other Indian tribes demonstrating ancestral, cultural, or other ties to the resources within the Management Area on the development and implementation of the tribal cultural resources survey under paragraph (1).

"SEC. 1604. POTENTIAL WILDERNESS.

''(a) PROTECTION OF WILDERNESS CHARACTER.—

''(1) IN GENERAL.—The Secretary shall manage the Federal land in the Management Area described in paragraph (2) in a manner that preserves the character of the land for the eventual inclusion of the land in the National Wilderness Preservation System.

''(2) DESCRIPTION OF LAND.—The Federal land described in this paragraph is—

''(A) the approximately 9,160 acres of land, as generally depicted on the map entitled 'Indian Pass Wilderness Additions-Proposed' and dated November 10, 2009;

''(B) the approximately 17,436 acres of land, as generally depicted on the map entitled 'Milpitas Wash Wilderness Area-Proposed' and dated November 10, 2009;

''(C) the approximately 13,647 acres of land, as generally depicted on the map entitled 'Buzzard Peak Wilderness Area-Proposed' and dated November 10, 2009; and

''(D) the approximately 8,090 acres of land, as generally depicted on the map entitled 'Palo Verde Mountain Wilderness Additions-Proposed' and dated November 10, 2009.

''(3) USE OF LAND.—

''(A) MILITARY USES.—The Secretary shall manage the Federal land in the Management Area described in paragraph (2) in a manner that is consistent with the Wilderness Act (16 U.S.C. 1131 et seq.), except that the Secretary may authorize use of the land by the Secretary of the Navy for Naval Special Warfare Tactical Training, including long-range small unit training and navigation, vehicle concealment, and vehicle sustainment training, in accordance with applicable Federal laws.

''(B) PROHIBITED USES.—The following shall be prohibited on the Federal land described in paragraph (2):

''(i) Permanent roads.

''(ii) Commercial enterprises.

''(iii) Except as necessary to meet the minimum requirements for the administration of the Federal land and to protect public health and safety—

''(I) the use of mechanized vehicles; and

''(II) the establishment of temporary roads.

''(4) WILDERNESS DESIGNATION.—

''(A) IN GENERAL.—The Federal land described in paragraph (2) shall be designated as wilderness and as a component of the National Wilderness Preservation System on the date on which the Secretary, in consultation with the Secretary of Defense, publishes a notice in the Federal Register that all activities on the Federal land that are incompatible with the Wilderness Act (16 U.S.C. 1131 et seq.) have terminated.

''(B) DESIGNATION.—On designation of the Federal land under clause (i)—

''(i) the land described in paragraph (2)(A) shall be incorporated in, and shall be considered to be a part of, the Indian Pass Wilderness;

''(ii) the land described in paragraph (2)(B) shall be designated as the 'Milpitas Wash Wilderness';

''(iii) the land described in paragraph (2)(C) shall be designated as the 'Buzzard Peak Wilderness'; and

''(iv) the land described in paragraph (2)(D) shall be incorporated in, and shall be considered to be a part of, the Palo Verde Mountains Wilderness.

''(b) ADMINISTRATION OF WILDERNESS.—Subject to valid existing rights, the land designated as wilderness or as a wilderness addition by this title shall be administered by the Secretary in accordance with this Act and the Wilderness Act (16 U.S.C. 1131 et seq.).

"TITLE XVII—NATIONAL PARK SYSTEM ADDITIONS

"SEC. 1701. DEATH VALLEY NATIONAL PARK BOUNDARY REVISION.

''(a) IN GENERAL.—The boundary of Death Valley National Park is adjusted to include—

''(1) the approximately 33,041 acres of Bureau of Land Management land abutting the southern end of the Death Valley National Park that lies between Death Valley National Park to the north and Ft. Irwin Military Reservation to the south and which runs approximately 34 miles from west to east, as depicted on the map entitled 'Death Valley National Park Proposed Boundary Addition', numbered 143/100,080, and dated June 2009;

''(2) the approximately 6,379 acres of Bureau of Land Management land in Inyo County, California, located in the northeast area

of Death Valley National Park that is within, and surrounded by, land under the jurisdiction of the Director of the National Park Service, as depicted on the map entitled 'Proposed Crater Mine Area Addition to Death Valley National Park', numbered 143/100,079, and dated June 2009; and

''(3)(A) on transfer of title to the private land to the National Park Service, the approximately 280 acres of private land in Inyo County, California, located adjacent to the southeastern boundary of Death Valley National Park, as depicted on the map entitled 'Proposed Ryan Camp Addition to Death Valley National Park', numbered 143/100,097, and dated June 2009; and

''(B) the approximately 1,040 acres of Bureau of Land Management land contiguous to the private land described in subparagraph (A), as depicted on the map entitled 'Proposed Ryan Camp Addition to Death Valley National Park', numbered 143/100,097, and dated June 2009.

''(b) AVAILABILITY OF MAP.—The maps described in paragraphs (1), (2), and (3) of subsection (a) shall be on file and available for public inspection in the appropriate offices of the National Park Service.

''(c) ADMINISTRATION.—The Secretary of the Interior (referred to in this section as the 'Secretary') shall—

''(1) administer any land added to Death Valley National Park under subsection (a)—

''(A) as part of Death Valley National Park; and

''(B) in accordance with applicable laws (including regulations); and

''(2) not later than 180 days after the date of enactment of this title, develop a memorandum of understanding with Inyo County, California, permitting ongoing access and use to existing gravel pits along Saline Valley Road within Death Valley National Park for road maintenance and repairs in accordance with applicable laws (including regulations).

''SEC. 1702. MOJAVE NATIONAL PRESERVE.

''(a) IN GENERAL.—The boundary of the Mojave National Preserve is adjusted to include—

''(1) the 29,221 acres of Bureau of Land Management land that is surrounded by the Mojave National Preserve to the northwest, west, southwest, south, and southeast and by the Nevada State line on the northeast boundary, as depicted on the map entitled 'Proposed Castle Mountain Addition to the Mojave National Preserve', numbered 170/100,075, and dated August 2009; and

''(2) the 25 acres of Bureau of Land Management land in Baker, California, as depicted on the map entitled 'Mojave National Preserve–Proposed Boundary Addition', numbered 170/100,199, and dated August 2009.

''(b) AVAILABILITY OF MAPS.—The maps described in subsection (a) shall be on file and available for public inspection in the appropriate offices of the National Park Service.

''(c) ADMINISTRATION.—The Secretary shall administer any land added to Mojave National Preserve under subsection (a)—

''(1) as part of the Mojave National Preserve; and

''(2) in accordance with applicable laws (including regulations).

''SEC. 1703. JOSHUA TREE NATIONAL PARK BOUNDARY REVISION.

''(a) IN GENERAL.—The boundary of the Joshua Tree National Park is adjusted to include the 2,879 acres of land managed by Director of the Bureau of Land Management that are contiguous at several different places to the northern boundaries of Joshua Tree National Park in the northwest section of the Park, as depicted on the map entitled 'Joshua Tree National Park Proposed Boundary Additions', numbered 156/100,007, and dated June 2009.

''(b) AVAILABILITY OF MAP.—The map described in subsection (a) and the map depicting the 25 acres described in subsection (c)(2) shall be on file and available for public inspection in the appropriate offices of the National Park Service.

''(c) ADMINISTRATION.—

''(1) IN GENERAL.—The Secretary shall administer any land added to the Joshua Tree National Park under subsection (a) and the additional land described in paragraph (2)—

''(A) as part of Joshua Tree National Park; and

''(B) in accordance with applicable laws (including regulations).

''(2) DESCRIPTION OF ADDITIONAL LAND.—The additional land referred to in paragraph (1) is the 25 acres of land—

''(A) depicted on the map entitled 'Joshua Tree National Park Boundary Adjustment Map', numbered 156/80,049, and dated April 1, 2003;

''(B) added to Joshua Tree National Park by the notice of the Department Interior of August 28, 2003 (68 Fed. Reg. 51799); and

''(C) more particularly described as lots 26, 27, 28, 33, and 34 in sec. 34, T. 1 N., R. 8 E., San Bernardino Meridian.

''SEC. 1704. AUTHORIZATION OF APPROPRIATIONS.

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

''TITLE XVIII—OFF-HIGHWAY VEHICLE RECREATION AREAS

''SEC. 1801. DESIGNATION OF OFF-HIGHWAY VEHICLE RECREATION AREAS.

''(a) DESIGNATION.—In accordance with the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.) and resource management plans developed under this title and subject to valid existing rights, the following land within the Conservation Area in San Bernardino County, California, is designated as Off-Highway Vehicle Recreation Areas:

''(1) EL MIRAGE OFF-HIGHWAY VEHICLE RECREATION AREA.—Certain Bureau of Land Management land in the Conservation Area, comprising approximately 25,600 acres, as generally depicted on the map entitled 'El Mirage Off-Highway Vehicle Recreation Area' and dated July 15, 2009, which shall be known as the 'El Mirage Off-Highway Vehicle Recreation Area'.

''(2) JOHNSON VALLEY OFF-HIGHWAY VEHICLE RECREATION AREA.—

''(A) IN GENERAL.—Certain Bureau of Land Management land in the Conservation Area, comprising approximately 180,000 acres, as generally depicted on the map entitled 'Johnson Valley Off-Highway Vehicle Recreation Area' and dated July 15, 2009, which shall be known as the 'Johnson Valley Off-Highway Vehicle Recreation Area'.

''(B) EXCLUSIONS.—

''(i) IN GENERAL.—Subject to clause (iii), the land described in clause (ii) shall be excluded from the Johnson Valley Off-Highway Vehicle Recreation Area to permit the Secretary of the Navy to study the land for—

''(I) withdrawal in accordance with the Act of February 28, 1958 (43 U.S.C. 155 et seq.); and

''(II) potential inclusion in the Marine Corps Air Ground Combat Center at Twentynine Palms, California, for national defense purposes.

''(ii) STUDY AREA.—The land referred to in clause (i) is the land that—

''(I) is described in—

''(aa) the notice of the Bureau of Land Management of September 15, 2008 entitled 'Notice of Proposed Legislative Withdrawal and Opportunity for Public Meeting; California' (73 Fed. Reg. 53269); or

''(bb) any subsequent notice in the Federal Register that is related to the notice described in item (aa); and

''(II) has been segregated by the Director of the Bureau of Land Management.

''(iii) INCORPORATION IN OFF-HIGHWAY VEHICLE RECREATION AREA.—After action by the Secretary of Defense and Congress regarding the withdrawal under subparagraph (A), any land within the study area that is not withdrawn shall be incorporated into the Johnson Valley Off-Highway Vehicle Recreation Area.

''(C) JOINT USE OF CERTAIN LAND.—The Secretary of Defense shall consider a potential joint use area within the Johnson Valley Off-Highway Vehicle Recreation Area as part of the environmental impact statement of the Department of Defense that would allow for continued recreational opportunities on the joint use area during periods in which—

''(i) the joint use area is not needed for military training activities; and

''(ii) public safety can be ensured.

''(D) MILITARY ACCESS FOR ADMINISTRATIVE PURPOSES.—In cooperation with the Secretary of the Interior, the Secretary of the Navy may, after notifying the Secretary of the Interior, access the Johnson Valley Off-Highway Vehicle Recreation Area for national defense purposes supporting military training (including military range management and exercise control activities).

''(3) RASOR OFF-HIGHWAY VEHICLE RECREATION AREA.—Certain Bureau of Land Management land in the Conservation Area, comprising approximately 22,400 acres, as generally depicted on the map entitled 'Rasor Off-Highway Vehicle Recreation Area' and dated July 15, 2009, which shall be known as the 'Rasor Off-Highway Vehicle Recreation Area'.

''(4) SPANGLER HILLS OFF-HIGHWAY VEHICLE RECREATION AREA.—Certain Bureau of Land Management land in the Conservation Area, comprising approximately 62,080 acres, as generally depicted on the map entitled 'Spangler Hills Off-Highway Vehicle Recreation Area' and dated July 15, 2009, which shall be known as the 'Spangler Off-Highway Vehicle Recreation Area'.

''(5) STODDARD VALLEY OFF-HIGHWAY VEHICLE RECREATION AREA.—Certain Bureau of Land Management land in the Conservation Area, comprising approximately 54,400 acres, as generally depicted on the map entitled 'Stoddard Valley Off-Highway Vehicle Recreation Area' and dated July 15, 2009, which shall be known as the 'Stoddard Valley Off-Highway Vehicle Recreation Area'.

''(b) PURPOSE.—The purpose of the off-highway vehicle recreation areas designated under subsection (a) is to preserve and enhance the recreational opportunities within the Conservation Area (including opportunities for off-highway vehicle recreation), while conserving the wildlife and other natural resource values of the Conservation Area.

''(c) MAPS AND DESCRIPTIONS.—

''(1) PREPARATION AND SUBMISSION.—As soon as practicable after the date of enactment of this title, the Secretary shall file a map and legal description of each off-highway vehicle recreation area designated by subsection (a) with—

''(A) the Committee on Natural Resources of the House of Representatives; and

''(B) the Committee on Energy and Natural Resources of the Senate.

''(2) LEGAL EFFECT.—The map and legal descriptions of the off-highway vehicle recreation areas filed under paragraph (1) shall have the same force and effect as if included in this title, except that the Secretary may correct errors in the map and legal descriptions.

''(3) PUBLIC AVAILABILITY.—Each map and legal description filed under paragraph (1) shall be filed and made available for public

inspection in the appropriate offices of the Bureau of Land Management.

''(d) USE OF THE LAND.—

''(1) RECREATIONAL ACTIVITIES.—

''(A) IN GENERAL.—The Secretary shall continue to authorize, maintain, and enhance the recreational uses of the off-highway vehicle recreation areas designated by subsection (a), including off-highway recreation, hiking, camping, hunting, mountain biking, sightseeing, rockhounding, and horseback riding, as long as the recreational use is consistent with this section and any other applicable law.

''(B) OFF-HIGHWAY VEHICLE AND OFF-HIGHWAY RECREATION.—To the extent consistent with applicable Federal law (including regulations) and this section, any authorized recreation activities and use designations in effect on the date of enactment of this title and applicable to the off-highway vehicle recreation areas designated by subsection (a) shall continue, including casual off-highway vehicular use, racing, competitive events, rock crawling, training, and other forms of off-highway recreation.

''(2) WILDLIFE GUZZLERS.—Wildlife guzzlers shall be allowed in the off-highway vehicle recreation areas designated by subsection (a) in accordance with applicable Bureau of Land Management guidelines.

''(3) PROHIBITED USES.—Residential and commercial development (including development of mining and energy facilities, but excluding transmission line rights-of-way and related telecommunication facilities) shall be prohibited in the off-highway vehicle recreation areas designated by subsection (a) if the Secretary determines that the development is incompatible with the purpose described in subsection (b).

''(e) ADMINISTRATION.—

''(1) IN GENERAL.—The Secretary shall administer the off-highway vehicle recreation areas designated by subsection (a) in accordance with—

''(A) this title;

''(B) the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.); and

''(C) any other applicable laws (including regulations).

''(2) MANAGEMENT PLAN.—

''(A) IN GENERAL.—As soon as practicable, but not later than 3 years after the date of enactment of this title, the Secretary shall—

''(i) amend existing resource management plans applicable to the land designated as off-highway vehicle recreation areas under subsection (a); or

''(ii) develop new management plans for each off-highway vehicle recreation area designated under that subsection.

''(B) REQUIREMENTS.—All new or amended plans under subparagraph (A) shall be designed to preserve and enhance safe off-highway vehicle and other recreational opportunities within the applicable recreation area consistent with—

''(i) the purpose described in subsection (b); and

''(ii) any applicable laws (including regulations).

''(C) INTERIM PLANS.—Pending completion of a new management plan under subparagraph (A), the existing resource management plans shall govern the use of the applicable off-highway vehicle recreation area.

''(f) STUDY.—

''(1) IN GENERAL.—As soon as practicable, but not later than 2 years, after the date of enactment of this title, the Secretary shall complete a study to identify Bureau of Land Management land adjacent to the off-highway vehicle recreation areas designated by subsection (a) that is suitable for addition to the off-highway vehicle recreation areas.

''(2) REQUIREMENTS.—In preparing the study under paragraph (1), the Secretary shall—

''(A) seek input from stakeholders, including—

''(i) the State;

''(ii) San Bernardino County, California;

''(iii) the public;

''(iv) recreational user groups; and

''(v) conservation organizations;

''(B) explore the feasibility of expanding the southern boundary of the off-highway vehicle recreation area described in subsection (a)(4) to include previously disturbed land;

''(C) identify and exclude from consideration any land that—

''(i) is managed for conservation purposes;

''(ii) may be suitable for renewable energy development; or

''(iii) may be necessary for energy transmission; and

''(D) not recommend or approve expansion areas that collectively would exceed the total acres administratively designated for off-highway recreation within the Conservation Area as of the date of enactment of this title.

''(3) APPLICABLE LAW.—The Secretary shall consider the information and recommendations of the study completed under paragraph (1) to determine the impacts of expanding off-highway vehicle recreation areas designated by subsection (a) on the Conservation Area, in accordance with—

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

''(B) the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.); and

''(C) any other applicable law.

''(4) SUBMISSION TO CONGRESS.—On completion of the study under paragraph (1), the Secretary shall submit the study to—

''(A) the Committee on Natural Resources of the House of Representatives; and

''(B) the Committee on Energy and Natural Resources of the Senate.

''(5) AUTHORIZATION FOR EXPANSION.—

''(A) IN GENERAL.—On completion of the study under paragraph (1) and in accordance with all applicable laws (including regulations), the Secretary shall authorize the expansion of the off-highway vehicle recreation areas recommended under the study.

''(B) MANAGEMENT.—Any land within the expanded areas under subparagraph (A) shall be managed in accordance with this section.

''TITLE XIX—MISCELLANEOUS

''SEC. 1901. STATE LAND TRANSFERS AND EXCHANGES.

''(a) TRANSFER OF LAND TO ANZA-BORREGO DESERT STATE PARK.—

''(1) IN GENERAL.—On termination of all mining claims to the land described in paragraph (2), the Secretary shall transfer the land described in that paragraph to the State.

''(2) DESCRIPTION OF LAND.—The land referred to in paragraph (1) is certain Bureau of Land Management land in San Diego County, California, comprising approximately 934 acres, as generally depicted on the 2 maps entitled 'Anza-Borrego Desert State Park Additions-Table Mountain Wilderness Study Area' and dated July 15, 2009.

''(3) MANAGEMENT.—

''(A) IN GENERAL.—The land transferred under paragraph (1) shall be managed in accordance with the provisions of the California Wilderness Act (California Public Resources Code sections 5093.30–5093.40).

''(B) WITHDRAWAL.—Subject to valid existing rights, the land transferred under paragraph (1) is withdrawn from—

''(i) all forms of entry, appropriation, or disposal under the public land laws;

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

''(iii) disposition under all laws relating to mineral and geothermal leasing.

''(C) REVERSION.—If the State ceases to manage the land transferred under paragraph (1) as part of the State Park System or in a manner inconsistent with the California Wilderness Act (California Public Resources Code sections 5093.30–5093.40), the land shall revert to the Secretary, to be managed as a Wilderness Study Area.

''(b) LAND EXCHANGES.—

''(1) IN GENERAL.—The Secretary shall, in consultation and cooperation with the California State Lands Commission (referred to in this section as the 'Commission'), develop a process to exchange isolated parcels of State land within the Conservation Area for Federal land located in the Conservation Area or other Federal land in the State that—

''(A) is consistent with the plans described in paragraph (2); and

''(B) ensures that the conservation goals and objectives identified in those plans are not adversely impacted.

''(2) DESCRIPTION OF PLANS.—The plans referred to in paragraph (1) are—

''(A) the California Desert Renewable Energy Conservation Plan;

''(B) the California Desert Conservation Area Plan;

''(C) the Northern and Eastern Colorado Desert Plan; and

''(D) any other applicable plans.

''(3) REQUIREMENTS.—The process developed under paragraph (1) shall—

''(A) apply to all State land within the Conservation Area that is under the jurisdiction of the Commission;

''(B) prioritize the elimination of State land from units of the National Park System, national monuments, and wilderness areas;

''(C) provide the Commission with consolidated land holdings sufficient to make the land viable for commercial or recreation uses, including renewable energy development, off-highway vehicle recreation, or State infrastructure or resource needs;

''(D) establish methods to ensure that—

''(i) not later than 1 year after the date of enactment of this title, the Secretary and the Commission complete an inventory of Federal land and State land in the Conservation Area under the jurisdiction of the Secretary and the Commission, respectively, and any other Federal land and property outside the Conservation Area that is determined to be suitable for exchange consistent with paragraph (1);

''(ii) there is a public comment period of not less than 90 days with respect to—

''(I) the inventory of land under clause (i); and

''(II) any proposed land exchange under this section that involves more than 5,000 acres of Federal land;

''(iii) in preparing the inventory of Federal land suitable for exchange under clause (i), the Secretary shall use best efforts to give priority to—

''(I) land that has the potential for commercial development, including renewable energy development, such as wind and solar energy development;

''(II) the land described in section 707(b)(2); and

''(III) land located outside the boundaries of the Conservation Area (including closed military base land and land identified as surplus by the Administrator of the General Services Administration) to avoid, to the maximum extent feasible, conflicts with conservation of desert land;

''(iv) the inventory under clause (i) is updated annually by the Secretary and resubmitted to the Commission; and

''(v) the land exchanges are completed by the date that is 10 years after the date of enactment of this title; and

''(E) provide for the submission of annual reports to Congress that—

''(i) describe any progress or impediments to accomplishing the goal described in subparagraph (D)(v); and

''(ii) any recommendations for legislation to accomplish the goal.

''(4) VALUATION.—Notwithstanding paragraphs (2) through (5) of subsection (d) of section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716(d)), if, within 180 days after the submission of an appraisal under subsection (d)(1) of that section, the Secretary and the Commission cannot agree to accept the findings of the appraisal—

''(A) the Secretary and the Commission shall mutually agree to employ a process of bargaining or some other process to determine the values of the land involved in the exchange;

''(B) the appraisal shall be submitted to an arbiter appointed by the Secretary from a list of arbitrators submitted to the Secretary by the American Arbitration Association for arbitration; and

''(C) although the decision of the arbiter under subparagraph (B) shall be nonbinding, the decision may be used by the Secretary and the Commission as a valid appraisal for—

''(i) a period of 2 years; and

''(ii) on mutual agreement of the Secretary and the Commission, an additional 2-year period; or

''(D) on mutual agreement of the Secretary and the Commission, the valuation process shall be suspended or modified.

''(5) TREATMENT OF LAND USE RESTRICTIONS AND PENDING APPLICATIONS.—For the purposes of this title—

''(A) the Secretary shall not exclude parcels from exchanges because the parcels are subject to designations or pending land use applications, including applications for the development of renewable energy;

''(B) all Federal land and State land proposed for exchange or sale shall be valued—

''(i) according to fair market value;

''(ii) in accordance with section 206(d) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716(d)); and

''(iii) without regard to—

''(I) pending land use applications;

''(II) renewable energy designations; or

''(III) any land use restrictions on adjacent land.

''(6) COOPERATION AGREEMENTS.—The Secretary may—

''(A) enter into such joint agreements with the General Services Administration and the Commission as the Secretary determines to be necessary to facilitate land exchanges, including agreements that establish accounting mechanisms—

''(i) to be used for tracking the differential in dollar value of land conveyed in a series of transactions; and

''(ii) that, notwithstanding part 2200 of title 43, Code of Federal Regulations (or successor regulations), may carry outstanding cumulative credit balances until the completion of the land exchange process developed under paragraph (1); and

''(B) to the extent that the agreement does not conflict with this section, continue using the agreement entitled 'Memorandum of Agreement Between California State Lands Commission, General Services Administration, and the Department of the Interior Regarding: Implementation of the California Desert Protection Act', which became effective on November 7, 1995.

''(7) EXISTING LAW.—Except as otherwise provided in this section, nothing in this section supersede or limits section 707.

''(8) STATE LAND LEASES.—

''(A) IN GENERAL.—The Secretary shall manage any State land described in subparagraph (B) in accordance with the terms and conditions of the applicable State lease agreement for the duration of the lease, subject to applicable laws (including regulations).

''(B) DESCRIPTION OF STATE LAND.—The State land referred to in subparagraph (A) is any State land within the Conservation Area that is subject to a lease or permit on the date of enactment of this title that is transferred to the Federal Government.

''(C) EXPIRATION OF LEASE.—On the expiration of a State lease referred to in subparagraph (A), the Secretary shall provide lessees with the opportunity to seek Federal permits to continue the existing use of the State land without further action otherwise required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

''(D) APPLICABLE LAW.—Except as otherwise provided in this section, any State land transferred to the United States under this section shall be managed in accordance with all laws (including regulations) and rules applicable to the public land adjacent to the transferred State land.

''(c) TWENTYNINE PALMS MARINE CORP BASE.—

''(1) IN GENERAL.—The Secretary and the Secretary of Defense, in consultation and in cooperation with the California State Lands Commission, shall develop a process to purchase or exchange parcels of State land within the area of expansion and land use restrictions planned for the Twentynine Palms Marine Corp Base.

''(2) REQUIREMENTS.—The process developed under paragraph (1) for exchanged parcels of State land shall provide the California State Lands Commission with consolidated land holdings sufficient to make the land viable for commercial or recreational uses, including renewable energy development, off-highway vehicle recreation, or State infrastructure or resource needs.

''(3) APPLICABLE LAW.—An exchange of land under this subsection shall be subject to the requirements of subsection (b).

''(d) HOLTVILLE AIRPORT, IMPERIAL COUNTY.—

''(1) IN GENERAL.—On the submission of an application by Imperial County, California, the Secretary of Transportation shall, in accordance with section 47125 of title 49, United States Code, and section 2641.1 of title 43, Code of Federal Regulations (or successor regulations) seek a conveyance from the Secretary of approximately 3,500 acres of Bureau of Land Management land adjacent to the Imperial County Holtville Airport (L04) for the purposes of airport expansion.

''(2) SEGREGATION.—The Secretary (acting through the Director of the Bureau of Land Management) shall, with respect to the land to be conveyed under paragraph (1)—

''(A) segregate the land; and

''(B) prohibit the appropriation of the land until—

''(i) the date on which a notice of realty action terminates the application; or

''(ii) the date on which a document of conveyance is published.

''(e) NEEDLES SOLAR RESERVE, SAN BERNARDINO COUNTY.—

''(1) IN GENERAL.—The Secretary shall grant to the Commission a right of first refusal to exchange the State land described in paragraph (2) for Bureau of Land Management land identified for disposal.

''(2) SECONDARY RIGHT OF REFUSAL.—If the Commission declines to exchange State land for Bureau of Land Management land identified for disposal within the city limits of Needles, California, the City of Needles shall have a secondary right of refusal to acquire the land.

''SEC. 1902. MILITARY ACTIVITIES.

''Nothing in this Act—

''(1) restricts or precludes Department of Defense motorized access by land or air—

''(A) to respond to an emergency within a wilderness area designated by this Act; or

''(B) to control access to the emergency site;

''(2) prevents nonmechanized military training activities previously conducted on wilderness areas designated by this title that are consistent with—

''(A) the Wilderness Act (16 U.S.C. 1131 et seq.); and

''(B) all applicable laws (including regulations);

''(3) restricts or precludes low-level overflights of military aircraft over the areas designated as wilderness, national monuments, special management areas, or recreation areas by this Act, including military overflights that can be seen or heard within the designated areas;

''(4) restricts or precludes flight testing and evaluation in the areas described in paragraph (3);

''(5) restricts or precludes the designation or creation of new units of special use airspace, or the establishment of military flight training routes, over the areas described in paragraph (3); or

''SEC. 1903. CLIMATE CHANGE AND WILDLIFE CORRIDORS.

''(a) IN GENERAL.—The Secretary shall—

''(1) assess the impacts of climate change on the Conservation Area; and

''(2) establish policies and procedures to ensure the preservation of wildlife corridors and facilitate species migration likely to occur due to climate change.

''(b) STUDY.—

''(1) IN GENERAL.—As soon as practicable, but not later than 2 years, after the date of enactment of this title, the Secretary shall complete a study regarding the impact of global climate change on the Conservation Area.

''(2) COMPONENTS.—The study under paragraph (1) shall—

''(A) identify the species migrating, or likely to migrate, due to climate change;

''(B) examine the impacts and potential impacts of climate change on—

''(i) plants, insects, and animals;

''(ii) soil;

''(iii) air quality;

''(iv) water quality and quantity; and

''(v) species migration and survival;

''(C) identify critical wildlife and species migration corridors recommended for preservation; and

''(D) include recommendations for ensuring the biological connectivity of public land managed by the Secretary and the Secretary of Defense throughout the Conservation Area.

''(3) RIGHTS-OF-WAY.—The Secretary shall consider the information and recommendations of the study under paragraph (1) to determine the individual and cumulative impacts of rights-of-way for projects in the Conservation Area, in accordance with—

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

''(B) the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.); and

''(C) any other applicable law.

''(c) LAND MANAGEMENT PLANS.—The Secretary shall incorporate into all land management plans applicable to the Conservation Area the findings and recommendations of the study completed under subsection (b).

"SEC. 1904. PROHIBITED USES OF DONATED AND ACQUIRED LAND.

''(a) DEFINITIONS.—In this section:

''(1) ACQUIRED LAND.—The term 'acquired land' means any land acquired for the Conservation Area using amounts from the Land and Water Conservation Fund established under section 2 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601–5).

''(2) DONATED LAND.—The term 'donated land' means any private land donated to the United States for conservation purposes in the Conservation Area.

''(3) DONOR.—The term 'donor' means an individual or entity that donates private land within the Conservation Area to the United States.

''(4) SECRETARY.—The term 'Secretary' means the Secretary of the Interior, acting through the Director of the Bureau of Land Management.

''(b) PROHIBITIONS.—Except as provided in subsection (c), there shall be prohibited with respect to donated land or acquired land—

''(1) disposal; or

''(2) any land use authorization that would result in appreciable damage or disturbance to the public lands, including—

''(A) rights-of-way;

''(B) leases;

''(C) livestock grazing;

''(D) infrastructure development;

''(E) mineral entry;

''(F) off-highway vehicle use, except on—

''(i) designated routes;

''(ii) off-highway vehicle areas designated by law; and

''(iii) administratively-designated open areas; and

''(G) any other activities that would create impacts contrary to the conservation purposes for which the land was donated or acquired.

''(c) EXCEPTIONS.—

''(1) AUTHORIZATION BY SECRETARY.—Subject to paragraph (2), the Secretary may authorize limited exceptions to prohibited uses of donated land or acquired land in the Conservation Area if—

''(A) an applicant has submitted a right-of-way use application to the Bureau of Land Management proposing renewable energy development on the donated land or acquired land on or before December 1, 2009; or

''(B) after the completion of an analysis under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), including full public participation in the analysis, the Secretary has determined that—

''(i) the use of the donated land or acquired land is in the public interest;

''(ii) the impacts of the use are fully and appropriately mitigated; and

''(iii) the land was donated or acquired on or before December 1, 2009.

''(2) CONDITIONS.—

''(A) IN GENERAL.—If the Secretary grants an exception to the prohibition under paragraph (1), the Secretary shall require the permittee to acquire and donate comparable private land to the United States to mitigate the use.

''(B) APPROVAL.—The private land to be donated under subparagraph (A) shall be approved by the Secretary after consultation, to the maximum extent practicable, with the donor of the private land proposed for nonconservation uses.

''(d) EXISTING AGREEMENTS.—Nothing in this section affects permitted or prohibited uses of donated land or acquired land in the Conservation Area established in any easements, deed restrictions, memoranda of understanding, or other agreements in existence on the date of enactment of this title.

''(e) DEED RESTRICTIONS.—The Secretary may accept deed restrictions requested by donors for land donated to the United States within the Conservation Area after the date of enactment of this title.

"SEC. 1905. TRIBAL USES AND INTERESTS.

''(a) ACCESS.—The Secretary shall ensure access to areas designated under this Act by members of Indian tribes for traditional cultural and religious purposes, consistent with applicable law, including Public Law 95–341 (commonly known as the ''American Indian Religious Freedom Act'') (42 U.S.C. 1996).

''(b) TEMPORARY CLOSURE.—

''(1) IN GENERAL.—In accordance with applicable law, including Public Law 95–341 (commonly known as the ''American Indian Religious Freedom Act'') (42 U.S.C. 1996), and subject to paragraph (2), the Secretary, on request of an Indian tribe or Indian religious community, shall temporarily close to general public use any portion of an area designated as a national monument, special management area, wild and scenic river, or National Park System unit under this Act (referred to in this subsection as a 'designated area') to protect the privacy of traditional cultural and religious activities in the designated area by members of the Indian tribe or Indian religious community.

''(2) LIMITATION.—In closing a portion of a designated area under paragraph (1), the Secretary shall limit the closure to the smallest practicable area for the minimum period necessary for the traditional cultural and religious activities.

''(c) TRIBAL CULTURAL RESOURCES MANAGEMENT PLAN.—

''(1) IN GENERAL.—Not later than 2 years after the date of enactment of this title, the Secretary of the Interior shall develop and implement a tribal cultural resources management plan to identify, protect, and conserve cultural resources of Indian tribes associated with the Xam Kwatchan Trail network extending from Avikwaame (Spirit Mountain, Nevada) to Avikwlal (Pilot Knob, California).

''(2) CONSULTATION.—The Secretary shall consult on the development and implementation of the tribal cultural resources management plan under paragraph (1) with—

''(A) each of—

''(i) the Chemehuevi Indian Tribe;

''(ii) the Hualapai Tribal Nation;

''(iii) the Fort Mojave Indian Tribe;

''(iv) the Colorado River Indian Tribes;

''(v) the Quechan Indian Tribe; and

''(vi) the Cocopah Indian Tribe; and

''(B) the Advisory Council on Historic Preservation.

''(3) RESOURCE PROTECTION.—The tribal cultural resources management plan developed under paragraph (1) shall be—

''(A) based on a completed tribal cultural resources survey; and

''(B) include procedures for identifying, protecting, and preserving petroglyphs, ancient trails, intaglios, sleeping circles, artifacts, and other resources of cultural, archaeological, or historical significance in accordance with all applicable laws and policies, including—

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

''(ii) Public Law 95–341 (commonly known as the 'American Indian Religious Freedom Act')(42 U.S.C. 1996);

''(iii) the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa et seq.);

''(iv) the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 et seq.); and

''(v) Public Law 103–141 (commonly known as the 'Religious Freedom Restoration Act of 1993')(42 U.S.C. 2000bb et seq.).

''(d) WITHDRAWAL.—Subject to valid existing rights, all Federal land within the area administratively withdrawn and known as the 'Indian Pass Withdrawal Area' is permanently withdrawn from—

''(1) all forms of entry, appropriation, or disposal under the public laws;

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

''(3) right-of-way leasing and disposition under all laws relating to mineral, solar, wind, and geothermal energy.''.

(b) CONFORMING AMENDMENTS.—

(1) SHORT TITLE.—Section 1 of the California Desert Protection Act of 1994 (16 U.S.C. 410aaa note) is amended by striking ''1 and 2, and titles I through IX'' and inserting ''1, 2, and 3, titles I through IX, and titles XIII through XIX''.

(2) DEFINITIONS.—The California Desert Protection Act of 1994 (Public Law 103–433; 108 Stat. 4481) is amended by inserting after section 2 the following:

"SEC. 3. DEFINITIONS.

''In titles XIII through XIX:

''(1) CONSERVATION AREA.—The term 'Conservation Area' means the California Desert Conservation Area.

''(2) SECRETARY.—The term 'Secretary' means—

''(A) with respect to land under the jurisdiction of the Secretary of the Interior, the Secretary of the Interior; and

''(B) with respect to land under the jurisdiction of the Secretary of Agriculture, the Secretary of Agriculture.

''(3) STATE.—The term 'State' means the State of California.''.

(3) ADMINISTRATION OF WILDERNESS AREAS.—Section 103 of the California Desert Protection Act of 1994 (Public Law 103–433; 108 Stat. 4481) is amended—

(A) by striking subsection (d) and inserting the following:

''(d) NO BUFFER ZONES.—

''(1) IN GENERAL.—Congress does not intend for the designation of wilderness areas by this Act—

''(A) to require the additional regulation of land adjacent to the wilderness areas; or

''(B) to lead to the creation of protective perimeters or buffer zones around the wilderness areas.

''(2) NONWILDERNESS ACTIVITIES.—Any nonwilderness activities (including renewable energy projects, mining, camping, hunting, and military activities) in areas immediately adjacent to the boundary of a wilderness area designated by this Act shall not be restricted or precluded by this Act, regardless of any actual or perceived negative impacts of the nonwilderness activities on the wilderness area, including any potential indirect impacts of nonwilderness activities conducted outside the designated wilderness area on the viewshed, ambient noise level, or air quality of wilderness area.'';

(B) in subsection (f), by striking ''designated by this title and'' inserting '', potential wilderness areas, special management areas, and national monuments designated by this title or titles XIII through XIX''; and

(C) in subsection (g), by inserting '', a potential wilderness area, a special management areas, or national monument'' before ''by this Act''.

(4) MOJAVE NATIONAL PRESERVE.—Title V of the California Desert Protection Act of 1994 (16 U.S.C. 410aaa–41 et seq.) is amended by adding at the end the following:

"SEC. 520. NATIVE GROUNDWATER SUPPLIES.

''The Director of the Bureau of Land Management shall not access or process any application for a right-of-way for development projects that propose to use native groundwater from aquifers adjacent to the Mojave National Preserve that individually or collectively, in combination with proposed or anticipated projects on private land, require the use of native groundwater in excess of the estimated recharge rate as determined by the United States Geological Survey.''.

(5) AMENDMENTS TO THE CALIFORNIA MILITARY LANDS WITHDRAWAL AND OVERFLIGHTS ACT OF 1994.—

(A) FINDINGS.—Section 801(b)(2) of the California Military Lands Withdrawal and Overflights Act of 1994 (16 U.S.C. 410aaa-82 note) is amended by inserting '', national monuments, special management areas, potential wilderness areas,'' before ''and wilderness areas''.

(B) OVERFLIGHTS; SPECIAL AIRSPACE.—Section 802 of the California Military Lands Withdrawal and Overflights Act of 1994 (16 U.S.C. 410aaa-82) is amended—

(i) in subsection (a), by inserting '', national monuments, or special management areas'' before ''designated by this Act'';

(ii) in subsection (b), by inserting '', national monuments, or special management areas'' before ''designated by this Act''; and

(iii) by adding at the end the following:

''(d) DEPARTMENT OF DEFENSE FACILITIES.—Nothing in this Act alters any authority of the Secretary of Defense to conduct military operations at installations and ranges within the California Desert Conservation Area that are authorized under any other provision of law.''.

SEC. 3. DESIGNATION OF WILD AND SCENIC RIVERS.

Section 3(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1274(a)) is amended—

(1) in paragraph (196), by striking subparagraph (A) and inserting the following:

''(A)(i) The approximately 1.4-mile segment of the Amargosa River in the State of California, from the private property boundary in sec. 19, T. 22 N., R. 7 E., to 100 feet downstream of Highway 178, to be administered by the Secretary of the Interior as a scenic river as an addition to the Amargosa Wild and Scenic River on publication by the Secretary of the Interior of a notice in the Federal Register that sufficient inholdings within the boundaries of the segment have been acquired as scenic easements or in fee title to establish a manageable addition to the Amargosa Wild and Scenic River.

''(ii) The approximately 6.1-mile segment of the Amargosa River in the State of California, from 100 feet downstream of the State Highway 178 crossing to 100 feet upstream of the Tecopa Hot Springs Road crossing, to be administered by the Secretary of the Interior as a scenic river.''; and

(2) by adding at the end the following:

''(208) SURPRISE CANYON CREEK, CALIFORNIA.—

''(A) IN GENERAL.—The following segments of Surprise Canyon Creek in the State of California, to be administered by the Secretary of the Interior:

''(i) The approximately 5.3 miles of Surprise Canyon Creek from the confluence of Frenchman's Canyon and Water Canyon to 100-feet upstream of Chris Wicht Camp, as a wild river.

''(ii) The approximately 1.8 miles of Surprise Canyon Creek from 100 feet upstream of Chris Wicht Camp to the southern boundary of sec. 14, T. 21 N., R. 44 E., as a recreational river.

''(B) EFFECT ON HISTORIC MINING STRUCTURES.—Nothing in this paragraph affects the historic mining structures associated with the former Panamint Mining District.

''(209) DEEP CREEK, CALIFORNIA.—

''(A) IN GENERAL.—The following segments of Deep Creek in the State of California, to be administered by the Secretary of Agriculture:

''(i) The approximately 6.5-mile segment from 0.125 mile downstream of the Rainbow Dam site in sec. 33, T. 2 N., R. 2 W., to 0.25-miles upstream of the Road 3N34 crossing, as a wild river.

''(ii) The 0.5-mile segment from 0.25 mile upstream of the Road 3N34 crossing to 0.25 mile downstream of the Road 3N34 crossing, as a scenic river.

''(iii) The 2.5-mile segment from 0.25 miles downstream of the Road 3 N. 34 crossing to 0.25 miles upstream of the Trail 2W01 crossing, as a wild river.

''(iv) The 0.5-mile segment from 0.25 miles upstream of the Trail 2W01 crossing to 0.25 mile downstream of the Trail 2W01 crossing, as a scenic river.

''(v) The 10-mile segment from 0.25 miles downstream of the Trail 2W01 crossing to the upper limit of the Mojave dam flood zone in sec. 17, T. 3 N., R. 3 W., as a wild river.

''(vi) The 11-mile segment of Holcomb Creek from 100 yards downstream of the Road 3N12 crossing to .25 miles downstream of Holcomb Crossing, as a recreational river.

''(vii) The 3.5-mile segment of the Holcomb Creek from 0.25 miles downstream of Holcomb Crossing to the Deep Creek confluence, as a wild river.

''(B) EFFECT ON SKI OPERATIONS.—Nothing in this paragraph affects—

''(i) the operations of the Snow Valley Ski Resort; or

''(ii) the State regulation of water rights and water quality associated with the operation of the Snow Valley Ski Resort.

''(210) WHITEWATER RIVER, CALIFORNIA.—The following segments of the Whitewater River in the State of California, to be administered by the Secretary of Agriculture and the Secretary of the Interior, acting jointly:

''(A) The 5.8-mile segment of the North Fork Whitewater River from the source of the River near Mt. San Gorgonio to the confluence with the Middle Fork, as a wild river.

''(B) The 6.4-mile segment of the Middle Fork Whitewater River from the source of the River to the confluence with the South Fork, as a wild river.

''(C) The 1-mile segment of the South Fork Whitewater River from the confluence of the River with the East Fork to the section line between sections 32 and 33, T. 1 S., R. 2 E., as a wild river.

''(D) The 1-mile segment of the South Fork Whitewater River from the section line between sections 32 and 33, T. 1 S., R. 2 E., to the section line between sections 33 and 34, T. 1 S., R. 2 E., as a recreational river.

''(E) The 4.9-mile segment of the South Fork Whitewater River from the section line between sections 33 and 34, T. 1 S., R. 2 E., to the confluence with the Middle Fork, as a wild river.

''(F) The 5.4-mile segment of the main stem of the Whitewater River from the confluence of the South and Middle Forks to the San Gorgonio Wilderness boundary, as a wild river.

''(G) The 2.7-mile segment of the main stem of the Whitewater River from the San Gorgonio Wilderness boundary to the southern boundary of section 26, T. 2 S., R. 3 E., as a recreational river.''.

By Mr. BAUCUS (for himself, Mr. GRASSLEY, Mr. LEVIN, Mr. BINGAMAN, Mr. WYDEN, Mr. CONRAD, Mr. ENZI, and Mr. KERRY):

S. 139. A bill to provide that certain tax planning strategies are not patentable, and for other purposes; to the Committee on the Judiciary.

Mr. BAUCUS. Mr. President, American judge and judicial philosopher Learned Hand once wrote: ''Any one may so arrange his affairs that his taxes shall be as low as possible; he is not bound to choose that pattern which will best pay the Treasury.''

Judge Hand would probably have been surprised to learn that, through the use of patents, certain individuals have acquired monopolies on methods of arranging one's affairs to lower taxes.

That is precisely what patenting a tax strategy does: it gives the holder the exclusive right to exclude others from a particular transaction or financial arrangement without permission or payment of a royalty.

And patents have been granted on ideas as simple as funding a certain type of tax-favored trust with a specific type of financial product or calculating the ways to minimize the tax burden of converting to an alternative retirement plan.

These commonsense tax planning approaches should be available to everyone. No one should be able to patent those techniques.

Let's first assume that the tax planning technique is legitimate under the Tax Code and does, indeed, reduce taxes.

In that case, every taxpayer should be able to plan in a way that they can lower their taxes without paying royalties or worrying that they are violating patent law while filing their tax returns. This is a matter of fairness and uniform application of the tax laws.

Conversely, there are tax planning techniques that are not legitimate under the Tax Code, say, for example, a tax shelter designed to illegally evade taxes.

No taxpayer should be using those strategies. A patent on those ideas may mislead unknowing taxpayers into believing that the strategy is valid under the tax law.

Today, we have gathered a coalition of Senators to introduce legislation to prevent patents from being issued on claims of tax strategies.

Our bill, the ''Equal Access to Tax Planning Act,'' makes it clear that any strategy for reducing, avoiding, or deferring tax liability relies on the provisions of the Tax Code to work, will not be considered a new or nonobvious idea and therefore not be eligible for a patent.

In the lingo of the patent law, the Tax Code is ''prior art''—which is just another way of saying it isn't novel and nonobvious—and methods of complying with the Code cannot be patented. This would be the result under patent law whenever an invention was not found to be novel or nonobvious.

This legislation does not hinder patent protection for otherwise novel, non-tax driven inventions but only stops the patenting of the tax strategy claims.

Where a patent is indeed granted—for example, where an application advances multiple claims—the taxpayer has certainty that what is not patented is a strategy for applying the Tax Code.

It is encouraging that our bill has been incorporated into the larger patent bill that is being introduced by Senators GRASSLEY and LEAHY today.

I strongly believe in the importance of patents. America is a land that fosters innovation and competitiveness by

allowing inventors to benefit from their creative ideas.

Intellectual property drives our exports and our economy. But patents cannot be used to upset the fair and uniform application of the Tax Code.

Our tax system relies on the voluntary compliance of millions of taxpayers and the Tax Code cannot and should not be co-opted for private gain.

Mr. GRASSLEY. Mr. President, Senator BAUCUS and I first introduced a bill to ban patents for tax inventions in the 110th Congress. Since then, we have worked with the leaders of the Judiciary Committee, the Patent and Trademark Office, the American Institute of Certified Public Accountants, industry, and members of the patent bar to perfect the language. I am pleased to introduce this new and improved bill today with Senators BAUCUS, LEVIN, WYDEN, BINGAMAN, CONRAD, ENZI, and KERRY.

There are strong policy reasons to ban tax strategy patents. Tax strategy patents may lead to the marketing of aggressive tax shelters or otherwise mislead taxpayers about expected results. Tax strategy patents encumber the ability of taxpayers and their advisers to use the tax law freely, interfering with the voluntary tax compliance system. If firms or individuals were able to hold patents for these strategies, some taxpayers could face fees simply for complying with the Tax Code. And, tax patents provide windfalls to lawyers and patent holders by granting them exclusive rights to use tax loopholes, which could provide some businesses with an unfair advantage.

Tax strategy patents are unlikely to be novel given the public nature of the Tax Code. Moreover, tax strategy patents may undermine the fairness of the Federal tax system by removing from the public domain particular ways of satisfying a taxpayer's legal obligations. The Equal Access to Tax Planning Act expressly provides that a strategy for reducing, avoiding or deferring tax liability cannot be considered a new or nonobvious idea, and therefore, a patent on a tax strategy cannot be obtained. This ensures that all taxpayers will have equal access to strategies to comply with the Tax Code. I encourage support for this bill.

By Mr. KIRK (for himself and Mr. DURBIN):

S. 147. A bill to amend the Federal Water Pollution Control Act to establish a deadline for restricting sewage dumping into the Great Lakes and to fund programs and activities for improving wastewater discharges into the Great Lakes; to the Committee on Environment and Public Works.

Mr. KIRK. Mr. President, today I am pleased to join with Senator DURBIN to introduce the Great Lakes Water Protection Act. This bipartisan legislation would set a date certain to end sewage dumping in America's largest supply of fresh water, the Great Lakes. More than thirty million Americans depend on the Great Lakes for their drinking water, food, jobs, and recreation. We need to put a stop to the poisoning of our water supply. Cities along the Great Lakes must become environmental stewards of our country's most precious freshwater ecosystem.

The Great Lakes Water Protection Act gives cities until 2031 to build the full infrastructure needed to prevent sewage dumping into the Great Lakes. Those who violate EPA sewage dumping regulations after that federal deadline will be subject to fines up to $100,000 for each day a violation occurs. These fines will be directed to a newly established Great Lakes Clean-Up Fund within the Clean Water State Revolving Fund. Penalties collected would go into this fund and be reallocated to the states surrounding the Great Lakes. From there, the funds will be spent on wastewater treatment options, with a special focus on greener solutions such as habitat protection and wetland restoration.

This legislation is sorely needed. Many major cities along the Great Lakes do not have the infrastructure needed to divert sewage overflows during times of heavy rainfall. More than twenty-four billion gallons of sewage are dumped into the Lakes each year; Detroit alone dumps an estimated 13 billion gallons of sewage into the Great Lakes annually. EPA estimates show there is a total of 347 combined sewer outflows that discharge into the Lake Michigan basin alone. This development is echoed throughout the Great Lakes region and is one we need to reverse.

These disastrous practices result in thousands of annual beach closing for the region's 815 freshwater beaches. Illinois faced 628 beach closures or contamination advisories in 2009 alone, up 17 percent from 2008. This greatly affects the health of our children and families—a recent University of Chicago study showed swim bans at Chicago's beaches due to E. coli levels cost the local economy $2.4 million in lost revenue every year.

Protecting our Great Lakes is one of my top priorities in the Congress. As an original sponsor of the Great Lakes Restoration Act, I favor a broad approach to addressing needs in the region. However, we must also move forward with tailored approaches to fix specific problems as we continue to push for more comprehensive reform. I am proud to introduce this important legislation that addresses a key problem facing our Great Lakes, and hope my colleagues will support me in ensuring that these important resources become free from the threat of sewage pollution.

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. 147

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 ''Great Lakes Water Protection Act''.

SEC. 2. PROHIBITION ON SEWAGE DUMPING INTO THE GREAT LAKES.

Section 402 of the Federal Water Pollution Control Act (33 U.S.C. 1342) is amended by adding at the end the following:

''(s) PROHIBITION ON SEWAGE DUMPING INTO THE GREAT LAKES.—

''(1) DEFINITIONS.—In this subsection:

''(A) BYPASS.—The term 'bypass' means an intentional diversion of waste streams to bypass any portion of a treatment facility which results in a discharge into the Great Lakes.

''(B) GREAT LAKES.—The term 'Great Lakes' has the meaning given the term in section 118(a)(3).

''(C) TREATMENT FACILITY.—The term 'treatment facility' includes all wastewater treatment units used by a publicly owned treatment works to meet secondary treatment standards or higher, as required to attain water quality standards, under any operating conditions.

''(D) TREATMENT WORKS.—The term 'treatment works' has the meaning given the term in section 212.

''(2) PROHIBITION.—A publicly owned treatment works is prohibited from intentionally diverting waste streams to bypass any portion of a treatment facility at the treatment works if the diversion results in a discharge into the Great Lakes unless—

''(A)(i) the bypass is unavoidable to prevent loss of life, personal injury, or severe property damage;

''(ii) there is not a feasible alternative to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime; and

''(iii) the treatment works provides notice of the bypass in accordance with this subsection; or

''(B) the bypass does not cause effluent limitations to be exceeded, and the bypass is for essential maintenance to ensure efficient operation of the treatment facility.

''(3) LIMITATION.—The requirement of paragraph (2)(A)(ii) is not satisfied if—

''(A) adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent the bypass; and

''(B) the bypass occurred during normal periods of equipment downtime or preventive maintenance.

''(4) NOTICE REQUIREMENTS.—A publicly owned treatment works shall provide to the Administrator (or to the State, in the case of a State that has a permit program approved under this section)—

''(A) prior notice of an anticipated bypass; and

''(B) notice of an unanticipated bypass by not later than 24 hours after the time at which the treatment works first becomes aware of the bypass.

''(5) FOLLOW-UP NOTICE REQUIREMENTS.—In the case of an unanticipated bypass for which a publicly owned treatment works provides notice under paragraph (4)(B), the treatment works shall provide to the Administrator (or to the State in the case of a State that has a permit program approved under this section), not later than 5 days following the date on which the treatment works first becomes aware of the bypass, a follow-up notice containing a description of—

''(A) the cause of the bypass;

''(B) the reason for the bypass;

''(C) the period of bypass, including the exact dates and times;

''(D) if the bypass has not been corrected, the anticipated time the bypass is expected to continue;

''(E) the volume of the discharge resulting from the bypass;

''(F) any public access areas that may be impacted by the bypass; and

''(G) steps taken or planned to reduce, eliminate, and prevent reoccurrence of the bypass.

''(6) PUBLIC AVAILABILITY OF NOTICES.—A publicly owned treatment works providing a notice under this subsection, and the Administrator (or the State, in the case of a State that has a permit program approved under this section) receiving such a notice, shall each post the notice, by not later than 48 hours after providing or receiving the notice (as the case may be), in a searchable database accessible on the Internet.

''(7) SEWAGE BLENDING.—Bypasses prohibited by this section include bypasses resulting in discharges from a publicly owned treatment works that consist of effluent routed around treatment units and thereafter blended together with effluent from treatment units prior to discharge.

''(8) IMPLEMENTATION.—Not later than 180 days after the date of enactment of this subsection, the Administrator shall establish procedures to ensure that permits issued under this section (or under a State permit program approved under this section) to a publicly owned treatment works include requirements to implement this subsection.

''(9) INCREASE IN MAXIMUM CIVIL PENALTY FOR VIOLATIONS OCCURRING AFTER JANUARY 1, 2031.—Notwithstanding section 309, in the case of a violation of this subsection occurring on or after January 1, 2031, or any violation of a permit limitation or condition implementing this subsection occurring after such date, the maximum civil penalty that shall be assessed for the violation shall be $100,000 per day for each day the violation occurs.

''(10) APPLICABILITY.—This subsection shall apply to a bypass occurring after the last day of the 1-year period beginning on the date of enactment of this subsection.''.

SEC. 3. ESTABLISHMENT OF GREAT LAKES CLEANUP FUND.

(a) IN GENERAL.—Title V of the Federal Water Pollution Control Act (33 U.S.C. 1361 et seq.) is amended—

(1) by redesignating section 519 (33 U.S.C. 1251 note) as section 520; and

(2) by inserting after section 518 (33 U.S.C. 1377) the following:

''SEC. 519. ESTABLISHMENT OF GREAT LAKES CLEANUP FUND.

''(a) DEFINITIONS.—In this section:

''(1) FUND.—The term 'Fund' means the Great Lakes Cleanup Fund established by subsection (b).

''(2) GREAT LAKES; GREAT LAKES STATES.—The terms 'Great Lakes' and 'Great Lakes States' have the meanings given the terms in section 118(a)(3).

''(b) ESTABLISHMENT OF FUND.—There is established in the Treasury of the United States a trust fund to be known as the 'Great Lakes Cleanup Fund' (in this section referred to as the 'Fund').

''(c) TRANSFERS TO FUND.—Effective January 1, 2031, there are authorized to be appropriated to the Fund amounts equivalent to the penalties collected for violations of section 402(s).

''(d) ADMINISTRATION OF FUND.—The Administrator shall administer the Fund.

''(e) USE OF FUNDS.—The Administrator shall—

''(1) make the amounts in the Fund available to the Great Lakes States for use in carrying out programs and activities for improving wastewater discharges into the Great Lakes, including habitat protection and wetland restoration; and

''(2) allocate those amounts among the Great Lakes States based on the proportion that—

''(A) the amount attributable to a Great Lakes State for penalties collected for violations of section 402(s); bears to

''(B) the total amount of those penalties attributable to all Great Lakes States.

''(f) PRIORITY.—In selecting programs and activities to be funded using amounts made available under this section, a Great Lakes State shall give priority consideration to programs and activities that address violations of section 402(s) resulting in the collection of penalties.''.

(b) CONFORMING AMENDMENT TO STATE REVOLVING FUND PROGRAM.—Section 607 of the Federal Water Pollution Control Act (33 U.S.C. 1387) is amended—

(1) by inserting ''(a) IN GENERAL.—'' before ''There is''; and

(2) by adding at the end the following:

''(b) TREATMENT OF GREAT LAKES CLEANUP FUND.—For purposes of this title, amounts made available from the Great Lakes Cleanup Fund under section 519 shall be treated as funds authorized to be appropriated to carry out this title and as funds made available under this title, except that the funds shall be made available to the Great Lakes States in accordance with section 519.''.

Mr. DURBIN. Mr. President, today I am introducing the Great Lakes Water Protection Act with my colleague, Senator MARK KIRK.

We face many challenges in protecting the Great Lakes—from contaminated sediment to industrial pollutants to invasive species. This legislation tackles another significant threat to the water system municipal sewage.

A recent report found that from January 2009 through January 2010, five U.S. cities dumped a combined 41 billion gallons of waste water into the Great Lakes. Sewage and storm water discharges have been associated with elevated levels of bacterial pollutants. For the 40 million people who depend on the Great Lakes for their drinking water, that is no small matter.

When bacterial counts go too high, beaches have to be closed. In Illinois, we have 52 public beaches along the Lake Michigan shoreline. People use these beaches for swimming, boating, fishing—and many communities generate revenue from the public beaches.

Our legislation will quadruple fines for municipalities that dump raw sewage in the Great Lakes and direct the revenue from these penalties to projects that improve water quality. The bill also includes new reporting requirements that will provide a more complete understanding of the frequency and impact of sewage dumping on this critical water system.

The Great Lakes are a national treasure. Illinoisans know that. They want to protect Lake Michigan, and they are willing to fight for the lake. Three and a half years ago, when we learned that BP was planning to increase the pollutants it puts into Lake Michigan—the people of Illinois stood up and said: No, polluting our lake further is not an option.

Senator KIRK and I happen to agree with that message. Protecting the Great Lakes is not a partisan issue, and this is not a partisan bill. We intend to work together to ensure that this national treasure is around for generations, providing drinking water, recreation, and commerce for Illinois and other Great Lakes States.

By Mr. REID (for Mrs. FEINSTEIN):

S. 149. A bill to extend the expiring provisions of the USA PATRIOT Improvement and Reauthorization Act of 2005, the Intelligence Reform and Terrorism Prevention Act of 2004, and the FISA Amendments Act of 2008 until December 31, 2013, and for other purposes; to the Committee on the Judiciary.

Mrs. FEINSTEIN. Mr. President, today I am introducing the FISA Sunsets Extension Act of 2011 to extend the three expiring provisions of the Foreign Intelligence Surveillance Act—the authority to conduct, subject to court order, so-called ''roving wiretaps,'' ''lone wolf'' surveillance, and collection of business records. This legislation will extend these three authorities, otherwise set to expire on February 28, to December 31, 2013.

The bill will also change the expiration date of the intelligence collection authorities provided in the FISA Amendments Act of 2008 so they, too, last until the end of 2013.

I firmly believe that the United States Government needs these authorities to help prevent against future terrorist attacks against our nation and to collect vital intelligence insights into the capabilities and intentions of our adversaries. We remain a nation under threat and need to remain vigilant in our defense.

Let me briefly describe the three expiring provisions.

First, court-ordered roving authority is directed against foreign intelligence targets who attempt to thwart FISA surveillance by such actions as rapidly changing cell phones. In a September 2009 letter, the Department of Justice reported to Congress that this authority ''has proven an important intelligence-gathering tool in a small but significant subset of FISA electronic surveillance orders.''

Second, lone wolf authority allows for court-ordered collection against non-U.S. persons who engage in international terrorism but for whom an association with a specific international terrorist group has not yet been identified. In the last Congress, when the Department of Justice advised that it had not yet been necessary for the Government to use this authority, the Department stated that it could foresee circumstances in which a terrorist target had not actually contacted a terrorist group or was known to have severed his association from a terrorist group.

From the events of the last several years, we have all become aware that we may be attacked by a lone, unaffiliated terrorist—or one whose links to

terrorist groups are only clear after an individual is apprehended.

Third, the collection of business records pursuant to court orders. This provision allows the Government to require the production of ''tangible things'' in order to obtain foreign intelligence information as part of an investigation. In the September 2009 letter, the Department of Justice urged reauthorization of that authority because ''[t]he absence of such authority could force the FBI to sacrifice key intelligence opportunities.''

I cannot elaborate into the use of these authorities in this unclassified context. I can say, however, that as the Chairman of the Senate Select Committee on Intelligence and as one who reviews the intelligence on the threats we face, we remain a nation under attack. Providing the authorities to collect intelligence to identify and prevent terrorist attacks on the homeland remains necessary.

It is also important to allow Congress, in the future, to conduct a complete review of FISA provisions. By synchronizing the dates when different pieces of the law expire, Congress can consider changes to FISA at once, prior to the end of 2013.

In closing, l would like to assure all Members of the Senate and the American public that extending these sunsets does not shield them from oversight. There is a system of review and oversight in place that consists of the FISA Court, Inspectors General in the Department of Justice and in the intelligence community, regular oversight reviews by the National Security Division at the Department of Justice, a new Director of Compliance at the National Security Agency, and reporting to the Senate and House Intelligence and Judiciary Committees. As Chairman of the Senate Select Committee and as a member of the Judiciary Committee, I can assure colleagues that the Senate has placed, and will continue to place, oversight of the Government's surveillance authorities as a major priority.

I urge my colleagues to support this legislation.

By Mr. ROCKEFELLER (for himself, Mr. HARKIN, Mrs. MURRAY, and Mr. MANCHIN):

S. 153. A bill to improve compliance with mine and occupational safety and health laws, empower workers to raise safety concerns, prevent future mine and other workplace tragedies, establish rights of families of victims of workplace accidents, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. ROCKEFELLER. Mr. President, today I am proud to introduce the Robert C. Byrd Mine and Workplace Safety and Health Act of 2011. This legislation is identical to the bill I introduced last Congress with Senator Carte Goodwin and will afford miners in West Virginia and employees across the country the safest possible workplace, which is what they deserve. As I have mentioned before, this legislation is a tribute to all miners who have lost their lives and also to my dear friend and colleague, the late Senator Robert Byrd, who devoted his career to improving the working conditions of West Virginia's miners and worked diligently with me to develop this bill.

I am also very pleased that Senators TOM HARKIN, PATTY MURRAY, and JOE MANCHIN are joining me in cosponsoring this legislation. Chairman HARKIN and Senator MURRAY are strong advocates for America's workforce and worked closely with me to draft this bill. Their contributions and expertise on this issue are immeasurable. Senator MANCHIN and I also have a history of working together, when he was Governor, to improve the safety of West Virginia's mining community. We were there with the families after the Sago, Aracoma, and Upper Big Branch tragedies, and I know that he shares my commitment to keeping miners safe.

I firmly believe that every American deserves a safe and healthy work environment. No family should have to experience the sadness and grief that is felt by the families of Upper Big Branch victims. Sadly, the Upper Big Branch families are still waiting. They are waiting for answers regarding this horrible tragedy. And, they are waiting for Congress to do even more to strengthen the mine safety laws of the land.

The Upper Big Branch tragedy and several other high-profile workplace accidents around the country last year serve as stark reminders of the need to make sure that all workers can return home to their loved ones at the end of the day. Yet, these types of tragedies are far too common. Each year, thousands of employees die on the job and millions more are injured or become ill. These fatalities, injuries, and illnesses result not only in loss of life and quality of life, but also substantial costs for employers. It is in everyone's interest to improve the safety and health of America's workforce.

I also know that improving the safety of our workforce will require hard work and dedication by everyone involved including state and federal officials, businesses, unions, employees, and safety experts. Here in the Senate, I am committed to working with my colleagues on both sides of the aisle—there is no question that we must work together to find real solutions that will save lives in mining and other industries in our country. I have no doubt that we will continue to learn more about the Upper Big Branch disaster as the investigations move forward. But I also know that there are several areas of the law that we can work to fix right now. These improvements will make us more proactive in identifying hazards before they become fatal, foster cooperation between employers and employees to keep everyone safe, improve the efficiency and effectiveness of our regulators, and increase the accountability for those responsible for keeping our workforce safe.

The Robert C. Byrd Mine and Workplace Safety and Health Act of 2011 takes important steps to empower miners to report safety concerns and keep themselves and their coworkers safe. Specifically, it gives whistleblowers up to 180 days to file a complaint if they have been retaliated against, permits the assessment of punitive damages and criminal penalties against operators that retaliate against miners who report safety problems, makes sure that miners do not lose a paycheck when their mines are shut down for safety reasons, and allows miners to give private interviews to MSHA without the operator or union representative present, so that they can speak openly about investigations.

Our legislation allows MSHA to be more effective and efficient in its enforcement of our mine safety laws, while also increasing accountability and making sure that the agency is doing everything in its power to keep miners safe. Importantly, it expands MSHA's authority to subpoena documents and testimony, seek injunctions to stop dangerous acts, and implement additional safety training at unsafe mines. It also creates an independent panel to determine MSHA's role in serious accidents, and requires that MSHA conduct its inspections in a way that protects every miner regardless of when the miner's shift occurs.

Another key piece of this bill is the section that reforms the broken ''pattern of violations'' process and requires MSHA to focus on rehabilitating unsafe mines. The original pattern of violations process was meant to allow MSHA to take additional action against mines that repeatedly violate our laws, but unfortunately it has never been effectively implemented. This bill requires unsafe mines to adopt safety plans, undergo additional safety inspections, and meet specific safety improvement benchmarks. To make sure that MSHA's pattern of violations criteria accurately identifies unsafe mines, the Government Accountability Office will evaluate the implementation of MSHA's new criteria.

I know that Secretary Hilda Solis and Assistant Secretary Joe Main have made mine safety a priority, and I deeply appreciate their work. They are currently examining proposals to administratively change how the pattern of violations process is used, and I support them in those efforts. But ultimately, there is only so much that MSHA can do under existing statute, which is why I believe that Congress must address this matter legislatively.

We also know that workplace disasters are not confined to the mining industry, which is why our bill provides important, protections for workers across all industries under the jurisdiction of the Occupational Safety and

Health Administration. This legislation allows employees to refuse to perform unsafe life-threatening work, updates civil penalties that have not been increased in two decades, gives victims and their families a voice in the investigation and enforcement process, requires employers to immediately correct hazardous conditions in the workplace, and improves whistleblower protections for employees.

With these common-sense reforms, we can keep workers safe on the job, while also reducing the costs associated with occupational injuries and illnesses. By doing so, we can save lives, help employers save money, improve productivity, and increase the competitiveness of our workforce.

I hope that my colleagues will carefully consider this legislation and that we can work together on a bipartisan basis to pass meaningful mine and workplace safety legislation this Congress. After the Sago and Aracoma disasters, the Senate passed the MINER Act with strong bipartisan support. We showed then that we can get the job done, and I am confident that we can do it again.

By Mr. KOHL (for himself and Mr. BROWN of Ohio):

S. 154. A bill to authorize the Secretary of Education to make grants to support early college high schools and other dual enrollment programs; to the Committee on Health, Education, Labor, and Pensions.

Mr. KOHL. Mr. President, today I am reintroducing the Fast Track to College Act, a bill to support the expansion of dual enrollment programs and Early College High Schools. Such programs allow young people to earn up to two years of college credit while also earning their high school diploma.

I believe the key to our country's economic recovery is a strong investment in our young people. By investing in education, we ensure that today's students are well prepared to compete in a global economy.

Far too many of our students are falling behind in school, and as students struggle with their studies or drop out of school altogether, their futures and the health of our workforce are at risk. Young people who drop out of high school are at increased risk for negative outcomes such as unemployment and incarceration, as well as reliance on public assistance for healthcare, housing, and other basic needs—outcomes that have high costs for their communities and our economy. Conversely, adults who earn bachelor's degrees earn on average two-thirds more than high school graduates and $1 million more than high school dropouts over their working lives.

Studies show many youth drop out because they don't see a practical reason to complete high school or go on to get a college degree. Maybe they don't think they can get into college, don't think they can afford to go, or just don't see the point in going. Dual enrollment programs and Early College High Schools address these issues by showing students that they can succeed in college courses while saving time and money. They don't drop out because they can see that they are on track to a degree—and ultimately a job. By earning college credit, and possibly even an Associate's Degree, students are better prepared after high school to continue their education or pursue career training.

That is why I ask my colleagues to support this bill, which provides competitive grant funding for Early College High Schools and other dual enrollment programs that allow low-income students to earn college credit and a high school diploma at the same time. These programs put students on the fast track to college and increase the odds that they will not only graduate, but also go on to continue their education and secure higher-paying jobs.

This bill authorizes $140,000,000 for competitive 6-year grants to schools, with priority given to schools that serve low-income students. The funding will help defray the costs of implementing new programs, strengthening existing programs, and providing students and teachers with the resources they need to succeed in early college high schools and other dual enrollment programs. The bill also includes $10 million for states to provide support for these programs, as well as an evaluation component so we can measure the program's effectiveness.

I am proud to sponsor this legislation, with the support of Senator BROWN of Ohio, because I believe this investment in our schools will help solve the dropout crisis and secure America's future by ensuring that all young people can compete in today's global economy. Further, I believe that all children, regardless of income or other factors, deserve equal opportunities to fulfill their potential, and it is both morally and fiscally responsible for this Congress to invest in high-quality educational programs that help our youth reach their potential.

I urge my colleagues to support this important legislation.

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. 154

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 ''Fast Track to College Act of 2011''.

SEC. 2. PURPOSE.

The purpose of this Act is to increase secondary school graduation rates and the percentage of students who complete a recognized postsecondary credential by the age of 26, including among low-income students and students from other populations underrepresented in higher education.

SEC. 3. DEFINITIONS.

In this Act:

(1) DUAL ENROLLMENT PROGRAM.—The term ''dual enrollment program'' means an academic program through which a secondary school student is able simultaneously to earn credit toward a secondary school diploma and a postsecondary degree or credential.

(2) EARLY COLLEGE HIGH SCHOOL.—The term ''early college high school'' means a public secondary school, as defined in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801), that provides a course of study that enables a student to earn a secondary school diploma and either an associate's degree or 1 to 2 years of postsecondary credit toward a postsecondary degree or credential.

(3) ELIGIBLE ENTITY.—The term ''eligible entity'' means a local educational agency in a collaborative partnership with an institution of higher education. Such partnership also may include other entities, such as a nonprofit organization with experience in youth development.

(4) INSTITUTION OF HIGHER EDUCATION.—The term ''institution of higher education'' has the meaning given such term in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001).

(5) LOCAL EDUCATIONAL AGENCY.—The term ''local educational agency'' has the meaning given such term in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).

(6) SECRETARY.—The term ''Secretary'' means the Secretary of Education.

(7) LOW-INCOME STUDENT.—The term ''low-income student'' means a student who meets a measure of poverty described in section 1113(a)(5) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6313(a)(5)).

SEC. 4. AUTHORIZATION OF APPROPRIATIONS; RESERVATIONS.

(a) IN GENERAL.—To carry out this Act, there are authorized to be appropriated $150,000,000 for fiscal year 2012 and such sums as may be necessary for each of fiscal years 2013-2017.

(b) EARLY COLLEGE HIGH SCHOOLS.—The Secretary shall reserve not less than 45 percent of the funds appropriated under subsection (a) to support early college high schools under section 5.

(c) OTHER DUAL ENROLLMENT PROGRAMS.—The Secretary shall reserve not less than 45 percent of such funds to support other dual enrollment programs (not including early college high schools) under section 5.

(d) STATE GRANTS.—The Secretary shall reserve 10 percent of such funds, or $10,000,000, whichever is less, for grants to States under section 9.

SEC. 5. AUTHORIZED PROGRAM.

(a) IN GENERAL.—The Secretary is authorized to award, on a competitive basis, 6-year grants to eligible entities seeking to establish a new, or support an existing, early college high school or other dual enrollment program.

(b) GRANT AMOUNT.—The Secretary shall ensure that each grant under this section is of sufficient size to enable grantees to carry out all required activities and otherwise meet the purposes of this Act, except that a grant under this section may not exceed $2,000,000.

(c) MATCHING REQUIREMENT.—

(1) IN GENERAL.—An eligible entity shall contribute matching funds toward the costs of the early college high school or other dual enrollment program to be supported under this section, of which not less than half shall be from non-Federal sources, which funds shall represent not less than the following:

(A) 20 percent of the grant amount received in each of the first and second years of the grant.

(B) 30 percent in each of the third and fourth years.

(C) 40 percent in the fifth year.

(D) 50 percent in the sixth year.

(2) DETERMINATION OF AMOUNT CONTRIBUTED.—The Secretary shall allow an eligible entity to satisfy the requirements of this subsection through in-kind contributions.

(d) SUPPLEMENT, NOT SUPPLANT.—An eligible entity shall use a grant received under this section only to supplement funds that would, in the absence of such grant, be made available from non-Federal funds for support of the activities described in the eligible entity's application under section 7, and not to supplant such funds.

(e) PRIORITY.—In awarding grants under this section, the Secretary shall give priority to applicants—

(1) that propose to establish or support an early college high school or other dual enrollment program that will serve a student population of which 40 percent or more are students counted under section 1113(a)(5) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6313(a)(5)); and

(2) from States that provide assistance to early college high schools or other dual enrollment programs, such as assistance to defray the costs of higher education, such as tuition, fees, and textbooks.

(f) GEOGRAPHIC DISTRIBUTION.—The Secretary shall, to the maximum extent practicable, ensure that recipients of grants under this section are from a representative cross-section of urban, suburban, and rural areas.

SEC. 6. USE OF FUNDS.

(a) MANDATORY ACTIVITIES.—An eligible entity shall use grant funds received under section 5 to support the activities described in its application under section 7, including the following:

(1) PLANNING YEAR.—In the case of a new early college high school or other dual enrollment program, during the first year of the grant—

(A) hiring a principal and staff, as appropriate;

(B) designing the curriculum and sequence of courses in collaboration with, at a minimum, teachers from the local educational agency and faculty from the partner institution of higher education;

(C) informing parents and the community about the school or program and opportunities to become actively involved in the school or program;

(D) establishing a course articulation process for defining and approving courses for secondary school credit and credit toward a postsecondary degree or credential;

(E) outreach programs to ensure that secondary school students and their families are aware of the school or program;

(F) liaison activities among partners in the eligible entity; and

(G) coordinating secondary and postsecondary support services, academic calendars, and transportation.

(2) IMPLEMENTATION PERIOD.—During the remainder of the grant period—

(A) academic and social support services, including counseling;

(B) liaison activities among partners in the eligible entity;

(C) data collection and use of such data for student and instructional improvement and program evaluation;

(D) outreach programs to ensure that secondary school students and their families are aware of the early college high school or other dual enrollment program;

(E) professional development, including joint professional development for secondary school personnel and faculty from the institution of higher education; and

(F) school or program design and planning team activities, including curriculum development.

(b) ALLOWABLE ACTIVITIES.—An eligible entity may use grant funds received under section 5 to support the activities described in its application under section 7, including—

(1) purchasing textbooks and equipment that support the curriculum of the early college high school or other dual enrollment program;

(2) developing learning opportunities for students that complement classroom experiences, such as internships, career-based capstone projects, and opportunities to participate in the activities provided under chapters 1 and 2 of subpart 2 of part A of title IV of the Higher Education Act of 1965 (20 U.S.C. 1070a–11 et seq., 1070a–21 et seq.);

(3) transportation; and

(4) planning time for secondary school educators and educators from an institution of higher education to collaborate.

SEC. 7. APPLICATION.

(a) IN GENERAL.—To receive a grant under section 5, an eligible entity shall submit to the Secretary an application at such time, in such manner, and including such information as the Secretary may require.

(b) CONTENTS OF APPLICATION.—At a minimum, the application described in subsection (a) shall include a description of—

(1) the budget of the early college high school or other dual enrollment program;

(2) each partner in the eligible entity and the partner's experience with early college high schools or other dual enrollment programs, key personnel from each partner and such personnel's responsibilities for the school or program, and how the eligible entity will work with secondary and postsecondary teachers, other public and private entities, community-based organizations, businesses, labor organizations, and parents to ensure that students will be prepared to succeed in postsecondary education and employment, which may include the development of an advisory board;

(3) how the eligible entity will target and recruit at-risk youth, including those at risk of dropping out of school, students who are among the first generation in their family to attend an institution of higher education, and students from populations described in section 1111(b)(2)(C)(v)(II) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311(b)(2)(C)(v)(II));

(4) a system of student supports, including small group activities, tutoring, literacy and numeracy skill development in all academic disciplines, parental and community outreach and engagement, extended learning time, and activities to improve readiness for postsecondary education, such as academic seminars and counseling;

(5) in the case of an early college high school, how a graduation and career plan will be developed, consistent with State graduation requirements, for each student and reviewed each semester;

(6) how parents or guardians of students participating in the early college high school or other dual enrollment program will be informed of the students' academic performance and progress and, if required under paragraph (5), involved in the development of the students' career and graduation plans;

(7) coordination between the institution of higher education and the local educational agency, including regarding academic calendars, provision of student services, curriculum development, and professional development;

(8) how the eligible entity will ensure that teachers in the early college high school or other dual enrollment program—

(A) receive appropriate professional development and other supports, including professional development and supports to enable the teachers to utilize effective parent and community engagement strategies; and

(B) help English-language learners, students with disabilities, and students from diverse cultural backgrounds to succeed;

(9) learning opportunities for students that complement classroom experiences, such as internships, career-based capstone projects, and opportunities to participate in the activities provided under chapters 1 and 2 of subpart 2 of part A of title IV of the Higher Education Act of 1965 (20 U.S.C. 1070a–11 et seq., 1070a–21 et seq.);

(10) how policies, agreements, and the courses in the program will ensure that postsecondary credits earned will be transferable to, at a minimum, public institutions of higher education within the State, consistent with existing statewide articulation agreements (as of the time of the application);

(11) student assessments and other measurements of student achievement, including benchmarks for student achievement;

(12) outreach programs to provide elementary and secondary school students, especially those in middle grades, and their parents, teachers, school counselors, and principals with information about, and academic preparation for, the early college high school or other dual enrollment program;

(13) how the local educational agency and institution of higher education will work together, as appropriate, to collect and use data for student and instructional improvement and program evaluation;

(14) how the eligible entity will help students meet eligibility criteria for postsecondary courses and ensure that students understand how their credits will transfer; and

(15) how the eligible entity will access and leverage additional resources necessary to sustain the early college high school or other dual enrollment program after the grant expires, including by engaging businesses and non-profit organizations.

(c) ASSURANCES.—An eligible entity's application under subsection (a) shall include assurances that—

(1) in the case of an early college high school, the majority of courses offered, including of postsecondary courses, will be offered at facilities of the partnering institution of higher education;

(2) students will not be required to pay tuition or fees for postsecondary courses offered as part of the early college high school or other dual enrollment program;

(3) upon completion of the requisite coursework, each student shall receive an official record of postsecondary credits that have been earned;

(4) faculty teaching such postsecondary courses meet the normal standards for faculty established by the institution of higher education.

(d) WAIVER.—The Secretary may waive the requirement of subsection (c)(1) upon a showing that it is impractical to apply due to geographic considerations.

SEC. 8. PEER REVIEW.

(a) PEER REVIEW OF APPLICATIONS.—The Secretary shall establish peer review panels to review applications submitted pursuant to section 7 and to advise the Secretary regarding such applications.

(b) COMPOSITION OF PEER REVIEW PANELS.—The Secretary shall ensure that each peer review panel is not comprised wholly of full-time officers or employees of the Federal Government and includes, at a minimum—

(1) experts in the establishment and administration of early college high schools or other dual enrollment programs from the secondary and postsecondary perspective;

(2) faculty at institutions of higher education and secondary school teachers with expertise in dual enrollment; and

(3) experts in the education of students who may be at risk of not completing their secondary school education.

SEC. 9. GRANTS TO STATES.

(a) IN GENERAL.—The Secretary is authorized to award, on a competitive basis, 5-year grants to State agencies responsible for secondary or postsecondary education for efforts to support or establish early college high schools or other dual enrollment programs.

(b) GRANT AMOUNT.—The Secretary shall ensure that each grant awarded under this section is of sufficient size to enable the grantee to carry out all required activities.

(c) MATCHING REQUIREMENT.—A State receiving a grant under this section shall contribute matching funds from non-Federal sources toward the costs of carrying out activities under this section, which funds shall represent not less than 50 percent of the grant amount received in each year of the grant.

(d) PRIORITY.—In awarding grants under this section, the Secretary shall give priority to States that, as of the time of the application for the grant, provide assistance to early college high schools or other dual enrollment programs, such as assistance to defray the costs of higher education, such as tuition, fees, and textbooks.

(e) APPLICATION.—

(1) IN GENERAL.—To receive a grant under this section, a State agency shall submit to the Secretary an application at such time, in such manner, and including such information as the Secretary may require.

(2) CONTENTS OF APPLICATION.—At a minimum, the application described in paragraph (1) shall include a description of—

(A) how the State will carry out all of the required State activities described in subsection (f);

(B) how the State will identify and eliminate barriers to implementing effective early college high schools and other dual enrollment programs after the grant expires, including by engaging businesses and non-profit organizations; and

(C) how the State will access and leverage additional resources necessary to sustain early college high schools or other dual enrollment programs.

(f) STATE ACTIVITIES.—A State receiving a grant under this section shall use such funds for—

(1) creating outreach programs to ensure that secondary school students, their families, and community members are aware of early college high schools and other dual enrollment programs in the State;

(2) planning and implementing a statewide strategy for expanding access to early college high schools and other dual enrollment programs for students who are underrepresented in higher education to raise statewide rates of secondary school graduation, readiness for postsecondary education, and completion of postsecondary degrees and credentials, with a focus on at-risk students, including identifying any obstacles to such a strategy under State law or policy;

(3) providing technical assistance to early college high schools and other dual enrollment programs, such as brokering relationships and agreements that forge a strong partnership between elementary and secondary and postsecondary partners;

(4) identifying policies that will improve the effectiveness and ensure the quality of early college high schools and other dual enrollment programs, such as access, funding, data and quality assurance, governance, accountability, and alignment policies;

(5) planning and delivering statewide training and peer learning opportunities for school leaders and teachers from early college high schools and other dual enrollment programs, which may include providing instructional coaches who offer on-site guidance;

(6) disseminating best practices in early college high schools and other dual enrollment programs from across the State and from other States; and

(7) facilitating statewide data collection, research and evaluation, and reporting to policymakers and other stakeholders.

SEC. 10. REPORTING AND OVERSIGHT.

(a) REPORTING BY GRANTEES.—

(1) IN GENERAL.—The Secretary shall establish uniform guidelines for all grantees under this Act concerning the information that each grantee shall report annually to the Secretary in order to demonstrate progress toward achieving the purpose of this Act.

(2) CONTENTS OF REPORT.—At a minimum, a report submitted under this subsection by an eligible entity receiving funds under section 5 for an early college high school or other dual enrollment program shall include the following information about the students participating in the school or program, for each category of students described in section 1111(h)(1)(C)(i) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311(h)(1)(C)(i)):

(A) The number of students.

(B) The percentage of students scoring advanced, proficient, basic, and below basic on the assessments described in section 1111(b)(3) of such Act of 1965 (20 U.S.C. 6311(b)(3)).

(C) The performance of students on other assessments or measurements of achievement.

(D) The number of secondary school credits earned.

(E) The number of postsecondary credits earned.

(F) Attendance rate, as appropriate.

(G) Graduation rate.

(H) Placement in postsecondary education or advanced training, in military service, and in employment.

(I) A description of the school or program's student, parent, and community outreach and engagement.

(b) REPORTING BY SECRETARY.—The Secretary annually shall—

(1) prepare a report that compiles and analyzes the information described in subsection (a) and identifies the best practices for achieving the purpose of this Act; and

(2) submit the report to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Education and the Workforce of the House of Representatives.

(c) MONITORING VISITS.—The Secretary's designee shall visit each grantee under this Act at least once for the purpose of helping the grantee achieve the goals of this Act and to monitor the grantee's progress toward achieving such goals.

(d) NATIONAL EVALUATION.—

(1) IN GENERAL.—Not later than 6 months after the date on which funds are appropriated to carry out this Act, the Secretary shall enter into a contract with an independent organization to perform an evaluation of the grants awarded under this Act.

(2) CONTENTS OF EVALUATION.—The evaluation described in paragraph (1) shall apply rigorous procedures to—

(A) obtain valid and reliable data concerning participant outcomes, disaggregated by relevant categories, which the Secretary shall determine; and

(B) monitor the progress of students from secondary school to and through postsecondary education.

(e) TECHNICAL ASSISTANCE.—The Secretary shall provide technical assistance to eligible entities concerning best practices in early college high schools and other dual enrollment programs and shall disseminate such best practices among eligible entities, State educational agencies, and local educational agencies.

SEC. 11. RULES OF CONSTRUCTION.

(a) EMPLOYEES.—Nothing in this Act shall be construed to alter or otherwise affect the rights, remedies, and procedures afforded to the employees of local educational agencies (including schools) or institutions of higher education under Federal, State, or local laws (including applicable regulations or court orders) or under the terms of collective bargaining agreements, memoranda of understanding, or other agreements between such employees and their employers.

(b) GRADUATION RATE.—Notwithstanding any other provision of law, a student who graduates from an early college high school supported under this Act in the standard number of years for graduation described in the eligible entity's application shall be considered to have graduated on time for purposes of section 1111(b)(2)(C)(vi) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311(b)(2)(C)(vi)).

By Mr. KOHL:

S. 155. A bill to amend the Internal Revenue Code of 1986 to provide an enhanced credit for research and development by companies that manufacture products in the United States; to the Committee on Finance.

Mr. KOHL. Mr. President, I rise today to introduce three bills that I believe will be important for our small businesses, especially our smaller manufacturers. In each of these bills, there is an emphasis on keeping our research and development and manufacturing here in the United States, rewarding our innovative American businesses with predictable credits and equitable treatment, and creating good paying jobs.

The first bill, S. 155, is designed to incentivize keeping jobs in the United States by increasing the existing Research & Development tax credit for companies that produce most of their goods domestically. The Domestic Jobs Innovation Bonus Act would create a bonus R&D Credit that increases incrementally to reward a higher percentage of domestic production. To earn the bonus credit, a company would need to make at least half of their products domestically—and for doing so would receive an additional 2 percentage points on top of the existing R&D credit. The credit would max out at a 10 percentage point increase for companies with 90 percent to 100 percent of their receipts from domestic production. For example, a company with 100 percent domestic production that would normally receive a 20 percent R&D tax credit would receive a 30 percent credit under this proposal.

To be clear, this isn't a tax credit that will benefit every company that has a presence in the United States. It

may not benefit many large, multi-national corporations, but those companies will still have access to the existing R&D Credit, which I support as well.

It is my hope that a credit like this could convince a company that is deciding whether to manufacture and research here or abroad, to choose America.

I am introducing a second bill, S. 156, with Senators CORKER and ALEXANDER that would establish a uniform energy efficiency descriptor for all water heaters and improve the testing methods by which that descriptor is determined. Currently, water heaters are lumped into two categories under two federal statutes, based on arbitrary gallon capacity and energy input ratings. ''Smaller'' water heaters are covered by the National Appliance Energy Conservation Act, NAECA, and must be rated using an energy factor or EF rating. ''Larger'' water heaters are within the scope of the Energy Policy Act, EPACT, and must be rated using a thermal efficiency or TE rating. Not only do the testing methods differ, but a manufacturer is forbidden to place an EF rating on a TE-sized unit, and vice-versa.

This legislation would direct the Department of Energy to work with industry stakeholders to develop a uniform energy efficiency descriptor that applies to all sizes of water heaters. It also would develop a test method to accurately determine that descriptor for all types of water heaters. It is my hope that the water heating manufacturing community can develop and implement the new test method and descriptor that will eliminate confusion and enable consumers and business owners to make informed purchasing decisions on water heaters. In today's tough economy, energy bills continue to stretch family budgets. Families can save money and conserve energy if they have accurate information about how much energy home appliances consume.

The difference between EF and TE ratings was based on the assumption that smaller units were exclusively for residential uses while larger units were exclusively for commercial purposes. Due to advances in manufacturing technology, the assumptions underlying the earlier dividing line are no longer accurate. In fact, both larger and smaller units made by leading U.S. manufacturers are used in residences without regard to which Federal law applies. Yet, Federal legislation continues to be written by taking this distinction into account.

In particular, these American companies are affected by the current disparate energy standards because it can disadvantage some of their products. Establishing one standard will help breakdown a patchwork of incentives and efficiency designations at both the state and federal level. For example, water heaters rated with a TE rating are not eligible for the ENERGY STAR label, and accordingly, not eligible for many state appliance rebate programs that link their incentives to an ENERGY STAR designation. This bill will make it so all products are competing on a level playing field for all incentives.

In addition to the energy savings that this bill will provide, it is also about the jobs potential for companies making these cutting-edge products. A globally-recognized cluster of water technology companies is emerging in the City of Milwaukee and surrounding counties. An important part of this effort is innovative water heater technologies. Incentivizing these products through predictable and equitable standards is vital to these companies.

The third bill, S. 157, would extend the Section 48 investment tax credit to solar light pipe technology. This is a promising new technology that could save our businesses money on their electricity bills, and reduce our overall energy usage—two goals on which we can all agree. Light pipes collect natural light, and then through the use of sensor technology, automatically dim the other lights in a building—thereby using less electricity for the same amount of light.

Despite the clear benefits of the technology, high cost has kept many businesses from using light pipes. Adding this technology to Section 48 will provide that boost that these businesses need to justify the expense.

I became aware of this technology because one of the companies that makes it is based in Manitowoc, Wisconsin. This company, Orion Energy Systems, employs about 250 people, and has been growing even during this tough economic time. In addition to light pipes, Orion makes energy efficient lighting systems, and partners with wind and solar power companies to significantly reduce the energy costs for many of our largest and most distinguished companies. Orion technology has been deployed at more than 6,000 facilities, and has worked with 126 of the Fortune 500 companies. Since 2001, Orion customers have saved more than $1 billion in electricity costs by displacing nearly 600 megawatts.

This credit will help Orion and companies like it create thousands of jobs through the production of the technology as well as installing it.

I urge my colleagues to support all of these bills, and I hope that they are enacted as part of an agenda that focuses on innovation, job creation, and shoring up our vital manufacturing sector.

By Mrs. BOXER:

S. 170. A bill to provide for the affordable refinancing of mortgages held by Fannie Mae and Freddie Mac; to the Committee on Banking, Housing, and Urban Affairs.

Mrs. BOXER. Mr. President, I rise today to introduce the Helping Responsible Homeowners Act of 2011. This legislation will eliminate barriers that have prevented millions of borrowers who continue to make their payments on time from taking advantage of historically low interest rates and refinancing their mortgages.

Despite a recent uptick, interest rates for 30-year home mortgages remain at historically low levels—under five percent. Yet of the 31.5 million mortgages guaranteed by Fannie Mae and Freddie Mac, nearly 13 million still carry an interest rate at or above 6 percent. This bill would allow non-delinquent mortgages to be refinanced at current rates, putting hundreds of dollars a month back in the pockets of struggling families.

The Administration's Home Affordable Refinance Program has resulted in Fannie Mae and Freddie Mac refinancing 520,000 loans through October 2010, far short of its goal of assisting four to five million homeowners.

One reason for the program's failure is that Fannie and Freddie continue to charge risk-based fees to refinance a loan they already guarantee. These additional fees can be as high as two percent of the loan amount, or an extra $4,000 on a $200,000 loan. In my home state of California, where prices are higher, that might be $8,000 on a $400,000 loan. For borrowers struggling to keep up with their payments, this is an additional cost they simply cannot afford.

Fannie and Freddie already bear the risks on these loans; yet this policy actually makes it less likely that borrowers will be able to take advantage of the low rates and increases the chance they will eventually default.

Many borrowers also have been blocked from refinancing by the owner of their second mortgage, even though reducing payments on the first mortgage would make it more likely the borrower would be able to continue making payments on the second.

To remove these barriers and allow borrowers current on their payments to refinance their loans, the Helping Responsible Homeowners Act would eliminate risk-based fees on loans for which Fannie and Freddie already bear the risk; remove refinancing limits on properties that lost value during the real estate crisis; make it easier for borrowers with second mortgages to participate in refinancing programs; and require that borrowers are able to receive a fair interest rate, comparable to that received by any other current borrower who has not suffered a drop in home value.

At a time when millions of Americans have been forced out of their homes, this legislation will ensure that homeowners who make their payments on time will be able to refinance their mortgages at current low rates so they can stay in their homes. I urge my colleagues to join me and to support this legislation.

By Mr. HARKIN:

S. 174. A bill to improve the health of Americans and reduce health care costs by reorienting the Nation's health care

system toward prevention, wellness, and health promotion; to the Committee on Finance.

Mr. HARKIN. Mr. President, the Healthy Lifestyles and Prevention America Act, also known as the HeLP America Act, will improve the health of Americans and reduce health care costs by emphasizing prevention, wellness, and health promotion in our communities, workplaces and schools.

We made a significant investment in prevention and wellness as part of the passing of the historic Affordable Care Act into law. The robust array of provisions contained in the HeLP America Act continue to build off the investments made by the Affordable Care Act and together, they will significantly transform our current sick care system into a true health care system.

Make no mistake about it; these combined efforts will continue our transformation into a genuine wellness society by keeping people from developing chronic diseases and from costly hospitalizations in the first place.

Currently, the United States spends more than $2 trillion on health care each year but historically we invest just four cents out of every dollar in prevention and public health—let me repeat that—just four cents out of every dollar is invested in prevention and public health.

This is pennies despite all the research that shows that prevention and public health can effectively reduce health care spending. This is why I fought for the Prevention and Public Health Fund that is included in the health reform law.

But transforming our Nation into a true wellness society requires a comprehensive approach to make being healthier easier for all Americans.

It just doesn't make any sense why we don't put a greater emphasis on making health promotion easier—why would we focus so little on prevention and public health when we know that these initiatives can make us healthier and reduce our annual health care spending?

Well, I am proud that the bill before the Senate continues to make significant investments in prevention and wellness. The HeLP America Act will put additional systems into place that will improve access to nutritious foods, opportunities for physical activity, and affordability of recommended preventive services.

The bill focuses on initiatives to make kids and schools healthier. In particular, it will support State efforts to provide resources to child care providers to help them meet high-quality physical activity and healthy eating standards. It also directs the Department of Education to provide guidance and technical assistance to schools to provide equal opportunities for students with disabilities for physical education and extracurricular athletics.

In addition, the bill focuses on initiatives to make healthier communities and workplaces. For example, it requires the Secretary of Health and Human Services to establish guidelines in physical activity for children under the age of 5 and the Secretary of Agriculture to establish a grant program promoting and expanding efforts to create community gardens. Specific to small businesses and workplace wellness programs, there is a provision that allows employers to deduct the cost of athletic facility memberships for their employees and exempts this benefit as taxable income for employees.

The HeLP America Act also creates systems that give Americans the information they need to make informed decisions. In particular, there is a provision that requires uniform guidelines be developed for the use of nutrient labeling symbols or systems on the front of food packages. There are provisions meant to strengthen federal initiatives to improve the health literacy of consumers by making health information easier to understand and health care systems easier to navigate.

Let me be clear, this bill doesn't just tinker around the edges; it changes the very paradigm of a variety of systems to make it easier for Americans to be healthy. After many years of advocating for wellness and prevention, I am thrilled to see that these things were at the very heart of the historic Affordable Care Act passed into law. But there is still much more to be done, and the HeLP America Act is an important step in continuing our transformation into a genuine wellness society and getting health care costs under control.

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

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

S. 174

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Healthy Lifestyles and Prevention America Act'' or the ''HeLP America Act''.

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

TITLE I—HEALTHIER KIDS AND SCHOOLS

SEC. 101. NUTRITION AND PHYSICAL ACTIVITY IN CHILD CARE QUALITY IMPROVEMENT.

Section 658G of the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858e) is amended—

(1) by striking ''choice, and'' and inserting ''choice,''; and

(2) by inserting after ''referral services)'' the following: '', and the provision of resources to enable eligible child care providers to meet, exceed, or sustain success in meeting or exceeding Federal or State high-quality program standards relating to health, mental health, nutrition, physical activity, and physical development''.

SEC. 102. ACCESS TO LOCAL FOODS AND SCHOOL GARDENS AT PRESCHOOLS AND CHILD CARE.

Section 18(g) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769(g)) is amended—

(1) by redesignating paragraphs (1) through (4) as paragraphs (2) through (5), respectively;

(2) by inserting before paragraph (2) (as redesignated by paragraph (1)) the following:

''(1) DEFINITIONS.—In this subsection:

''(A) CHILD CARE CENTER.—The term 'child care center' means a child care center participating in the program under section 17 (other than a child care center that solely participates in the program under subsection (r) of that section).

''(B) SPONSORING ORGANIZATION.—The term 'sponsoring organization' means an institution described in subparagraphs (C), (D), or (E) of section 17(a)(2).'';

(3) in paragraph (2) (as so redesignated)—

(A) in the paragraph heading, by striking ''**IN GENERAL**'' and inserting ''**ASSISTANCE**'';

(B) in the matter preceding subparagraph (A), by inserting '', child care centers, sponsoring organizations for home-based care,'' after ''schools''; and

(C) in subparagraph (A), by inserting '', child care centers, sponsoring organizations for home-based care,'' after ''schools'';

(4) in paragraph (3) (as so redesignated), by striking ''paragraph (1)'' and inserting ''paragraph (2)''; and

(5) in paragraph (4) (as so redesignated)—

(A) in subparagraph (A)(i)—

(i) in subclause (I), by striking ''or'';

(ii) in subclause (II), by striking the period at the end and inserting ''; or''; and

(iii) by adding at the end the following:

''(III) a consortium of at least 2 child care centers or sponsoring organizations for home-based care with hands-on vegetable gardening and nutrition education that is incorporated into the curriculum for 1 or more age groups at 2 or more eligible centers or family child care homes supported by sponsoring organizations for home-based care.''; and

(B) in subparagraph (F), by striking ''paragraph (1)(H)'' and inserting ''paragraph (2)(H)''.

SEC. 103. FRESH FRUIT AND VEGETABLE PROGRAM.

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

(1) by striking subsections (c) and (d) and inserting the following:

''(c) SCHOOL PARTICIPATION.—

''(1) IN GENERAL.—Each State shall carry out the program in each elementary school (as defined in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801)) in the State—

''(A) in which not less than 50 percent of the students are eligible for free or reduced price meals under this Act; and

''(B) that submits an application in accordance with paragraph (2).

''(2) APPLICATION.—

''(A) IN GENERAL.—An interested elementary school shall submit to the State an application containing—

''(i) information pertaining to the percentage of students enrolled in the school who are eligible for free or reduced price school lunches under this Act;

''(ii) a certification of support for participation in the program signed by the school food manager, the school principal, and the district superintendent (or equivalent positions, as determined by the school);

''(iii) a plan for implementation of the program, including efforts to integrate activities carried out under this section with other efforts to promote sound health and nutrition, reduce overweight and obesity, or promote physical activity; and

''(iv) such other information as may be requested by the Secretary.

''(B) PARTNERSHIPS.—Each State shall encourage interested elementary schools to submit a plan for implementation of the program that includes a partnership with 1 or more entities that will provide non-Federal resources (including entities representing the fruit and vegetable industry).'';

(2) by striking subsection (i) and inserting the following:

''(i) FUNDING.—

''(1) IN GENERAL.—Out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary to carry out this section such sums as are necessary, to remain available until expended.

''(2) RECEIPT AND ACCEPTANCE.—The Secretary shall be entitled to receive, shall accept, and shall use to carry out this section the funds transferred under paragraph (1), without further appropriation.''; and

(3) by redesignating subsections (e) through (i) as subsections (d) through (h), respectively.

SEC. 104. EQUAL PHYSICAL ACTIVITY OPPORTUNITIES FOR STUDENTS WITH DISABILITIES.

(a) IN GENERAL.—Title V of the Rehabilitation Act of 1973 (29 U.S.C. 791 et seq.) is amended by adding at the end the following:

''SEC. 511. EQUAL PHYSICAL ACTIVITY OPPORTUNITIES FOR STUDENTS WITH DISABILITIES.

''(a) IN GENERAL.—The Secretary shall promote equal opportunities for students with disabilities to be included and to participate in physical education and extracurricular athletics implemented in, or in conjunction with, elementary schools, secondary schools, and institutions of higher education, by ensuring the provision of appropriate technical assistance and guidance for schools and institutions described in this subsection and their personnel.

''(b) TECHNICAL ASSISTANCE AND GUIDANCE.—The provision of technical assistance and guidance described in subsection (a) shall include—

''(1) providing technical assistance to elementary schools, secondary schools, local educational agencies, State educational agencies, and institutions of higher education, regarding—

''(A) inclusion and participation of students with disabilities, in a manner equal to that of the other students, in physical education opportunities (including classes), and extracurricular athletics opportunities, including technical assistance on providing reasonable modifications to policies, practices, and procedures, and providing supports to ensure such inclusion and participation;

''(B) provision of adaptive sports programs, in the physical education and extracurricular athletics opportunities, including programs with competitive sports leagues or competitions, for students with disabilities; and

''(C) responsibilities of the schools, institutions, and agencies involved under section 504, the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.), and any other applicable Federal law to provide students with disabilities equal access to extracurricular athletics;

''(2) facilitating information sharing among the schools, institutions, and agencies, and students with disabilities, on ways to provide inclusive opportunities in physical education and extracurricular athletics for students with disabilities; and

''(3) monitoring the extent to which physical education and extracurricular athletics opportunities for students with disabilities are implemented in, or in conjunction with, elementary schools, secondary schools, and institutions of higher education.

''(c) DEFINITIONS.—In this section:

''(1) AGENCIES.—The terms 'local educational agency' and 'State educational agency' have the meanings given the terms in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).

''(2) SCHOOLS.—The terms 'elementary school', 'secondary school', and 'institution of higher education' mean an elementary school, secondary school, or institution of higher education, respectively (as defined in section 9101 of the Elementary and Secondary Education Act of 1965), that receives or has 1 or more students that receive, Federal financial assistance.

''(3) STUDENT WITH A DISABILITY.—

''(A) IN GENERAL.—The term 'student with a disability' means an individual who—

''(i) attends an elementary school, secondary school, or institution of higher education; and

''(ii) who—

''(I) is eligible for, and receiving, special education or related services under part B of the Individuals with Disabilities Education Act (20 U.S.C. 1411 et seq.); or

''(II) is an individual with a disability, for purposes of section 504 or the Americans with Disabilities Act of 1990.

''(B) STUDENTS WITH DISABILITIES.—The term 'students with disabilities' means more than 1 student with a disability.''.

(b) TABLE OF CONTENTS.—The table of contents in section 1(b) of the Rehabilitation Act of 1973 is amended by inserting after the item relating to section 509 the following:

''Sec. 510. Establishment of standards for accessible medical diagnostic equipment.

''Sec. 511. Equal physical activity opportunities for students with disabilities.''.

TITLE II—HEALTHIER COMMUNITIES AND WORKPLACES

Subtitle A—Creating Healthier Communities

SEC. 201. TECHNICAL ASSISTANCE FOR THE DEVELOPMENT OF JOINT USE AGREEMENTS.

(a) IN GENERAL.—The Secretary of Health and Human Services, acting through the Director of the Centers for Disease Control and Prevention and in coordination with the Secretary of Education and in consultation with leading national experts and organizations advancing healthy living in the school environment, shall develop and disseminate guidelines and best practices, including model documents, and provide technical assistance to elementary and secondary schools to assist such schools with the development of joint use agreements so as to address liability, operational and management, and cost issues that may otherwise impede the ability of community members to use school facilities for recreational and nutritional purposes during nonschool hours.

(b) DEFINITION.—In this section, the term ''joint use agreement'' means a formal agreement between an elementary or secondary school and another entity relating to the use of the school's facilities, equipment, or property, including recreational and food services facilities, equipment, and property, by individuals other than the school's students or staff.

SEC. 202. COMMUNITY SPORTS PROGRAMS FOR INDIVIDUALS WITH DISABILITIES.

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

''SEC. 399V-5. COMMUNITY SPORTS PROGRAMS FOR INDIVIDUALS WITH DISABILITIES.

''(a) IN GENERAL.—

''(1) INDIVIDUAL WITH A DISABILITY DEFINED.—For purposes of this section, the term 'individual with a disability' means any person who has a disability as defined in section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102).

''(2) INDIVIDUAL WITH A PHYSICAL DISABILITY.—The term 'individual with a physical disability' means an individual with a disability that has a physical or visual disability.

''(3) COMMUNITY SPORTS GRANTS PROGRAM.—The Secretary, in collaboration with the National Advisory Committee on Community Sports Programs for Individuals with Disabilities, may award grants on a competitive basis to public and nonprofit private entities to implement community-based, sports and

athletic programs for individuals with disabilities, including youth with disabilities.

''(b) APPLICATION.—To be eligible to receive a grant under this section, a public or nonprofit private entity shall submit to the Secretary an application at such time, in such manner, and containing such agreements, assurances, and information as the Secretary determines to be necessary to carry out this section.

''(c) AUTHORIZED ACTIVITIES.—Amounts awarded under a grant under subsection (a) shall be used for—

''(1) community-based sports programs, leagues, or competitions in individual or team sports for individuals with physical disabilities;

''(2) regional sports programs or competitions in individual or team sports for individuals with physical disabilities;

''(3) the development of competitive team and individual sports programs for individuals with disabilities at the high school and collegiate level; or

''(4) the development of mentoring programs to encourage participation in sports programs for individuals with disabilities, including individuals with recently acquired disabilities.

''(d) PRIORITIES.—

''(1) ADVISORY COMMITTEE.—The Secretary shall establish a National Advisory Committee on Community Sports Programs for Individuals with Disabilities that shall—

''(A) establish priorities for the implementation of this section;

''(B) review grant proposals;

''(C) make recommendations for distribution of the available appropriated funds to specific applicants; and

''(D) annually evaluate the progress of programs carried out under this section in implementing such priorities.

''(2) REPRESENTATION.—The Advisory Committee established under paragraph (1) shall include representatives of—

''(A) the Department of Health and Human Services Office on Disability;

''(B) the United States Surgeon General;

''(C) the Centers for Disease Control and Prevention;

''(D) disabled sports organizations;

''(E) organizations that represent the interests of individuals with disabilities; and

''(F) individuals with disabilities (including athletes with physical disabilities) or their family members.

''(e) DISSEMINATION OF INFORMATION.—The Secretary shall disseminate information about the availability of grants under this section in a manner that is designed to reach public entities and nonprofit private organizations that are dedicated to providing outreach, advocacy, or independent living services to individuals with disabilities.

''(f) TECHNICAL ASSISTANCE.—The Secretary, in conjunction with the United States Olympic Committee and disabled sports organizations, shall establish a technical assistance center to provide training, support, and information to grantees under this section on establishing and operating community sports programs for individuals with disabilities.

''(g) REPORT TO CONGRESS.—Not later than 180 days after the date of the enactment of this section, and annually thereafter, the Secretary shall submit to Congress a report summarizing activities, findings, outcomes, and recommendations resulting from the grant projects funded under this section during the year for which the report is being prepared.

''(h) AUTHORIZATION OF APPROPRIATIONS.—

''(1) IN GENERAL.—To carry out this section, there are authorized to be appropriated such sums as may be necessary.

''(2) LIMITATION.—Not to exceed 10 percent of the amount appropriated in each fiscal year shall be used to carry out activities under subsection (c)(4).''.

SEC. 203. COMMUNITY GARDENS.

Subtitle D of title X of the Food, Conservation, and Energy Act of 2008 (Public Law 110-246; 122 Stat. 2109) is amended by adding at the end the following:

''SEC. 10405. COMMUNITY GARDEN GRANT PROGRAM.

''(a) DEFINITIONS.—In this section:

''(1) ELIGIBLE ENTITY.—The term 'eligible entity' means—

''(A) a nonprofit organization; or

''(B) a unit of general local government, or tribal government, located on tribal land or in a low-income community.

''(2) LOW-INCOME COMMUNITY.—The term 'low-income community' means—

''(A) a community in which not less than 50 percent of children are eligible for free or reduced priced meals under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.); or

''(B) any other community determined by the Secretary to be low-income for purposes of this section.

''(3) UNIT OF GENERAL LOCAL GOVERNMENT.—The term 'unit of general local government' has the meaning given the term in section 102 of the Housing and Community Development Act of 1974 (42 U.S.C. 5302).

''(b) PROGRAM ESTABLISHED.—Using such amounts as are appropriated to carry out this section, the Secretary shall award grants to eligible entities to expand, establish, or maintain community gardens.

''(c) APPLICATION.—To be considered for a grant under this section, an eligible entity shall submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require, including—

''(1) an assurance that priority for hiring for jobs created by the expansion, establishment, or maintenance of a community garden funded with a grant received under this section will be given to individuals who reside in the community in which the garden is located; and

''(2) a demonstration that the eligible entity is committed to providing non-Federal financial or in-kind support (such as providing a water supply) for the community garden for which the entity receives funds under this section.''.

SEC. 204. PHYSICAL ACTIVITY GUIDELINES FOR AMERICANS.

(a) REPORT.—

(1) IN GENERAL.—At least every 5 years, the Secretary of Health and Human Services (in this Act referred to as the ''Secretary'') shall publish a report entitled ''Physical Activity Guidelines for Americans''. Each such report shall contain physical activity information and guidelines for the general public, and shall be promoted by each Federal agency in carrying out any Federal health program.

(2) BASIS OF GUIDELINES.—The information and guidelines contained in each report required under paragraph (1) shall be based on the preponderance of the scientific and medical knowledge which is current at the time the report is prepared, and shall include guidelines for identified population subgroups, including children, if the preponderance of scientific and medical knowledge indicates those subgroups require different levels of physical activity.

(b) APPROVAL BY SECRETARY.—

(1) REVIEW.—Any Federal agency that proposes to issue any physical activity guidance for the general population or identified population subgroups shall submit the text of such guidance to the Secretary for a 60-day review period.

(2) BASIS OF REVIEW.—

(A) IN GENERAL.—During the 60-day review period established in paragraph (1), the Secretary shall review and approve or disapprove such guidance to assure that the guidance either is consistent with the ''Physical Activity Guidelines for Americans'' or that the guidance is based on medical or new scientific knowledge which is determined to be valid by the Secretary. If after such 60-day review period the Secretary has not notified the proposing agency that such guidance has been disapproved, then such guidance may be issued by the agency. If the Secretary disapproves such guidance, it shall be returned to the agency. If the Secretary finds that such guidance is inconsistent with the ''Physical Activity Guidelines for Americans'' and so notifies the proposing agency, such agency shall follow the procedures set forth in this subsection before disseminating such proposal to the public in final form. If after such 60-day period, the Secretary disapproves such guidance as inconsistent with the ''Physical Activity Guidelines for Americans'' the proposing agency shall—

(i) publish a notice in the Federal Register of the availability of the full text of the proposal and the preamble of such proposal which shall explain the basis and purpose for the proposed physical activity guidance;

(ii) provide in such notice for a public comment period of 30 days; and

(iii) make available for public inspection and copying during normal business hours any comment received by the agency during such comment period.

(B) REVIEW OF COMMENTS.—After review of comments received during the comment period, the Secretary may approve for dissemination by the proposing agency a final version of such physical activity guidance along with an explanation of the basis and purpose for the final guidance which addresses significant and substantive comments as determined by the proposing agency.

(C) ANNOUNCEMENT.—Any such final physical activity guidance to be disseminated under subparagraph (B) shall be announced in a notice published in the Federal Register, before public dissemination along with an address where copies may be obtained.

(D) NOTIFICATION OF DISAPPROVAL.—If after the 30-day period for comment as provided under subparagraph (A)(ii), the Secretary disapproves a proposed physical activity guidance, the Secretary shall notify the Federal agency submitting such guidance of such disapproval, and such guidance may not be issued, except as provided in subparagraph (E).

(E) REVIEW OF DISAPPROVAL.—If a proposed physical activity guidance is disapproved by the Secretary under subparagraph (D), the Federal agency proposing such guidance may, within 15 days after receiving notification of such disapproval under subparagraph (D), request the Secretary to review such disapproval. Within 15 days after receiving a request for such a review, the Secretary shall conduct such review. If, pursuant to such review, the Secretary approves such proposed physical activity guidance, such guidance may be issued by the Federal agency.

(3) DEFINITIONS.—In this subsection:

(A) The term ''physical activity guidance for the general population'' does not include any rule or regulation issued by a Federal agency.

(B) The term ''identified population subgroups'' shall include, but not be limited to, groups based on factors such as age, sex, race, or physical disability.

(c) EXISTING AUTHORITY NOT AFFECTED.—This section does not place any limitations on—

(1) the conduct or support of any scientific or medical research by any Federal agency; or

(2) the presentation of any scientific or medical findings or the exchange or review of scientific or medical information by any Federal agency.

SEC. 205. TOBACCO TAXES PARITY.

(a) INCREASE IN EXCISE TAX ON SMALL CIGARETTES AND SMALL CIGARS.—

(1) Section 5701(a)(1) of the Internal Revenue Code of 1986 is amended by striking ''$50.33'' and inserting ''$77.83''.

(2) Section 5701(b)(1) of the Internal Revenue Code of 1986 is amended by striking ''$50.33'' and inserting ''$77.83''

(b) TAX PARITY FOR PIPE TOBACCO AND ROLL-YOUR-OWN TOBACCO.—

(1) Section 5701(f) of the Internal Revenue Code of 1986 is amended by striking ''$2.8311 cents'' and inserting ''$38.32''.

(2) Section 5701(g) of the Internal Revenue Code of 1986 is amended by striking ''$24.78'' and inserting ''$38.32''.

(c) CLARIFICATION OF DEFINITION OF SMALL CIGARS.—Paragraphs (1) and (2) of section 5701(a) of the Internal Revenue Code of 1986 are each amended by striking ''three pounds per thousand'' and inserting ''four and one-half pounds per thousand''.

(d) CLARIFICATION OF DEFINITION OF CIGARETTE.—Paragraph (2) of section 5702(b) of the Internal Revenue Code of 1986 is amended by insert before the final period the following: '', which includes any roll for smoking containing tobacco that weighs no more than four and a half pounds per thousand, unless it is wrapped in whole tobacco leaf and does not have a cellulose acetate or other cigarette-style filter''.

(e) TAX PARITY FOR SMOKELESS TOBACCO.—

(1) Section 5701(e) of the Internal Revenue Code of 1986 is amended—

(A) in paragraph (1), by striking ''$1.51'' and inserting ''$20.75'';

(B) in paragraph (2), by striking ''50.33 cents'' and inserting ''$8.30''; and

(C) by adding at the end the following:

''(3) SMOKELESS TOBACCO SOLD IN DISCRETE SINGLE-USE UNITS.—On discrete single-use units, $77.83 per each 1,000 single-use units.''.

(2) Section 5702(m) of the Internal Revenue Code of 1986 is amended—

(A) in paragraph (1), ''or chewing tobacco'' and inserting ''chewing tobacco, discrete single-use unit'';

(B) in paragraphs (2) and (3), by inserting ''that is not a discrete single-use unit'' before the period in each such paragraph;

(C) by adding at the end the following:

''(4) DISCRETE SINGLE-USE UNIT.—The term 'discrete single-use unit' means any product containing tobacco that—

''(A) is intended or expected to be consumed without being combusted; and

''(B) is in the form of a lozenge, tablet, pill, pouch, dissolvable strip, or other discrete single-use or single-dose unit.''.

(f) CLARIFYING OTHER TOBACCO TAX DEFINITIONS.—

(1) TOBACCO PRODUCT DEFINITION.—Section 5702(c) of the Internal Revenue Code of 1986 is amended by inserting before the period the following: '', and any other product containing tobacco that is intended or expected to be consumed''.

(2) CIGARETTE PAPER DEFINITION.—Section 5702(e) of the Internal Revenue Code of 1986 is amended by striking ''except tobacco,'' and inserting ''or cigar''.

(3) CIGARETTE TUBE DEFINITION.—Section 5702(f) of the Internal Revenue Code of 1986 is amended by inserting before the period ''or cigars''.

(4) IMPORTER DEFINITION.—Section 5702(k) of the Internal Revenue Code of 1986 is amended by inserting ''or any other tobacco product'' after ''cigars or cigarettes''.

(g) FLOOR STOCKS TAXES.—

(1) IMPOSITION OF TAX.—On tobacco products manufactured in or imported into the United States which are removed before any tax increase date and held on such date for sale by any person, there is hereby imposed a tax in an amount equal to the excess of—

(A) the tax which would be imposed under section 5701 of the Internal Revenue Code of 1986 on the article if the article had been removed on such date, over

(B) the prior tax (if any) imposed under section 5701 of such Code on such article.

(2) CREDIT AGAINST TAX.—Each person shall be allowed as a credit against the taxes imposed by paragraph (1) an amount equal to $500. Such credit shall not exceed the amount of taxes imposed by paragraph (1) on such date for which such person is liable.

(3) LIABILITY FOR TAX AND METHOD OF PAYMENT.—

(A) LIABILITY FOR TAX.—A person holding tobacco products on any tax increase date to which any tax imposed by paragraph (1) applies shall be liable for such tax.

(B) METHOD OF PAYMENT.—The tax imposed by paragraph (1) shall be paid in such manner as the Secretary shall prescribe by regulations.

(C) TIME FOR PAYMENT.—The tax imposed by paragraph (1) shall be paid on or before the date that is 120 days after the effective date of the tax rate increase.

(4) ARTICLES IN FOREIGN TRADE ZONES.—Notwithstanding the Act of June 18, 1934 (commonly known as the Foreign Trade Zone Act, 48 Stat. 998, 19 U.S.C. 81a et seq.) or any other provision of law, any article which is located in a foreign trade zone on any tax increase date shall be subject to the tax imposed by paragraph (1) if—

(A) internal revenue taxes have been determined, or customs duties liquidated, with respect to such article before such date pursuant to a request made under the 1st proviso of section 3(a) of such Act, or

(B) such article is held on such date under the supervision of an officer of the United States Customs and Border Protection of the Department of Homeland Security pursuant to the 2d proviso of such section 3(a).

(5) DEFINITIONS.—For purposes of this subsection—

(A) IN GENERAL.—Any term used in this subsection which is also used in section 5702 of such Code shall have the same meaning as such term has in such section.

(B) TAX INCREASE DATE.—The term ''tax increase date'' means the effective date of any increase in any tobacco product excise tax rate pursuant to the amendments made by this section.

(C) SECRETARY.—The term ''Secretary'' means the Secretary of the Treasury or the Secretary's delegate.

(6) CONTROLLED GROUPS.—Rules similar to the rules of section 5061(e)(3) of such Code shall apply for purposes of this subsection.

(7) OTHER LAWS APPLICABLE.—All provisions of law, including penalties, applicable with respect to the taxes imposed by section 5701 of such Code shall, insofar as applicable and not inconsistent with the provisions of this subsection, apply to the floor stocks taxes imposed by paragraph (1), to the same extent as if such taxes were imposed by such section 5701. The Secretary may treat any person who bore the ultimate burden of the tax imposed by paragraph (1) as the person to whom a credit or refund under such provisions may be allowed or made.

(h) EFFECTIVE DATE.—The amendments made by this section shall apply to articles removed (as defined in section 5702(j) of the Internal Revenue Code of 1986) after December 31, 2010.

SEC. 206. LEVERAGING AND COORDINATING FEDERAL RESOURCES FOR IMPROVED HEALTH.

(a) HEALTH IMPACTS OF NON-HEALTH LEGISLATION.—

(1) IN GENERAL.—Not later than 6 months after the date of enactment of this Act, the National Prevention, Health Promotion and Public Health Council, shall enter into a contract with the Institute of Medicine of the National Academy of Sciences for the conduct of a study to assess the potential health impacts of major non-health related legislation that is likely to be considered by Congress within a year of completion of the study. Such study shall identify the ways in which such legislation involved is likely to impact the health of Americans and shall contain recommendations to Congress on ways to maximize the positive health impacts and minimize the negative health impacts.

(2) TIMING.—The timing of the study under paragraph (1) shall be provide for in a manner that ensures that the results of the study will be available at least 3 months prior to the consideration of the legislation involved by Congress.

(3) GUIDELINES.—To the extent practicable, the Council under paragraph (1) shall ensure that the study conducted under this subsection complies with the consensus guidelines on how to carry out a health impact assessment, including stakeholder engagement guidelines, such as the HIA of the Americas Practice Guidelines and guidelines promulgated by the World Health Organization and other consensus bodies.

(4) REPORT.—Upon completion of the study under this subsection, the Institute of Medicine shall submit to the Council under paragraph (1), and make available to the general public, a report that—

(A) summarizes the direct, indirect, and cumulative health impacts identified in the assessment; and

(B) contains recommendations for how to maximize positive health impacts and minimize negative health impacts of the legislation involved.

(5) TYPE OF LEGISLATION.—For purposes of this subsection, the term ''non-health related legislation'' shall have the meaning given such term by the Council under paragraph (1), and shall include legislation that is likely to have impacts on the health of Americans where such impacts are not likely to be considered by Congress to the extent required by their scope without the conduct of an assessment under this subsection. Examples of major non-health related legislation that could be the subject of the study include reauthorizations of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU; Public Law 109-59), the Food, Conservation, and Energy Act of 2008 (Public Law 110-246), and the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.).

(b) IMPROVING HEALTH IMPACTS OF FEDERAL AGENCY ACTIVITIES.—

(1) IN GENERAL.—The Secretary, acting through the Director of the Centers for Disease Control and Prevention and in coordination with the National Prevention, Health Promotion and Public Health Council, shall detail employees of the Department of Health and Human Services to policy and program planning offices of other Federal departments and agencies, including the Department of Transportation, the Department of Housing and Urban Development, the Department of Agriculture, the Department of Education, and the Department of the Interior, in order to assist those departments and agencies to consider the impacts of their activities on the health of the populations served and to assist with the integration of health goals into the activities of the departments and agencies, as appropriate.

(2) DUTIES.—Employees detailed under paragraph (1) shall assist with assessments of the potential impacts of the programs and

activities of the department or agency involved on the health and well-being of the populations served, the development of metrics and performance standards that can be incorporated, as appropriate, into the activities, performance measurements, and grant and contract standards of the department or agency, and the development of the report detailed in paragraph (3).

(3) REPORTS.—Not later than 1 year after the date of enactment of this Act, and annually thereafter, each department and agency with a detailee under this section shall submit to the National Prevention, Health Promotion and Public Health Council, the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Energy and Commerce of the House of Representatives a report detailing the health impacts of the department or agency's activities and any plans to improve those impacts.''

Subtitle B—Incentives for a Healthier Workforce

SEC. 211. TAX CREDIT TO EMPLOYERS FOR COSTS OF IMPLEMENTING WELLNESS PROGRAMS.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by adding at the end the following:

''SEC. 45S. WELLNESS PROGRAM CREDIT.

''(a) ALLOWANCE OF CREDIT.—

''(1) IN GENERAL.—For purposes of section 38, the wellness program credit determined under this section for any taxable year during the credit period with respect to an employer is an amount equal to 50 percent of the costs paid or incurred by the employer in connection with a qualified wellness program during the taxable year.

''(2) LIMITATION.—The amount of credit allowed under paragraph (1) for any taxable year shall not exceed the sum of—

''(A) the product of $200 and the number of employees of the employer not in excess of 200 employees, plus

''(B) the product of $100 and the number of employees of the employer in excess of 200 employees.

''(b) QUALIFIED WELLNESS PROGRAM.—For purposes of this section—

''(1) QUALIFIED WELLNESS PROGRAM.—The term 'qualified wellness program' means a program which—

''(A) consists of any 3 of the wellness program components described in subsection (c), and

''(B) which is certified by the Secretary of Health and Human Services, in consultation with the Secretary of the Treasury and Secretary of Labor, as a qualified wellness program under this section.

''(2) PROGRAMS MUST BE CONSISTENT WITH RESEARCH AND BEST PRACTICES.—

''(A) IN GENERAL.—The Secretary of Health and Human Services shall not certify a program as a qualified wellness program unless the program—

''(i) is consistent with evidence-based research and best practices, as identified by persons with expertise in employer health promotion and wellness programs,

''(ii) includes multiple, evidence-based strategies which are based on the existing and emerging research and careful scientific reviews, including the Guide to Community Preventive Services, the Guide to Clinical Preventive Services, and the National Registry for Effective Programs, and

''(iii) includes strategies which focus on employee populations with a disproportionate burden of health problems.

''(B) PERIODIC UPDATING AND REVIEW.—The Secretary of Health and Human Services shall establish procedures for periodic review and recertifications of programs under this subsection. Such procedures shall require revisions of programs if necessary to ensure compliance with the requirements of this section and require updating of the programs to the extent the Secretary, in consultation with the Secretary of the Treasury and the Secretary of Labor, determines necessary to reflect new scientific findings.

''(3) HEALTH LITERACY.—The Secretary of Health and Human Services shall, as part of the certification process, encourage employers to make the programs culturally competent and to meet the health literacy needs of the employees covered by the programs.

''(c) WELLNESS PROGRAM COMPONENTS.—For purposes of this section, the wellness program components described in this subsection are the following:

''(1) HEALTH AWARENESS COMPONENT.—A health awareness component which provides for the following:

''(A) HEALTH EDUCATION.—The dissemination of health information which addresses the specific needs and health risks of employees.

''(B) HEALTH SCREENINGS.—The opportunity for periodic screenings for health problems and referrals for appropriate follow up measures.

''(2) EMPLOYEE ENGAGEMENT COMPONENT.—An employee engagement component which provides for—

''(A) the establishment of a committee to actively engage employees in worksite wellness programs through worksite assessments and program planning, delivery, evaluation, and improvement efforts, and

''(B) the tracking of employee participation.

''(3) BEHAVIORAL CHANGE COMPONENT.—A behavioral change component which provides for altering employee lifestyles to encourage healthy living through counseling, seminars, on-line programs, or self-help materials which provide technical assistance and problem solving skills. Such component may include programs relating to—

''(A) tobacco use,

''(B) overweight and obesity,

''(C) stress management,

''(D) physical activity,

''(E) nutrition,

''(F) substance abuse,

''(G) depression, and

''(H) mental health promotion (including anxiety).

''(4) SUPPORTIVE ENVIRONMENT COMPONENT.—A supportive environment component which includes the following:

''(A) ON-SITE POLICIES.—Policies and services at the worksite which promote a healthy lifestyle, including policies relating to—

''(i) tobacco use at the worksite,

''(ii) the nutrition of food available at the worksite through cafeterias and vending options,

''(iii) minimizing stress and promoting positive mental health in the workplace,

''(iv) where applicable, accessible and attractive stairs, and

''(v) the encouragement of physical activity before, during, and after work hours.

''(B) PARTICIPATION INCENTIVES.—

''(i) IN GENERAL.—Qualified incentive benefits for each employee who participates in the health screenings described in paragraph (1)(B) or the behavioral change programs described in paragraph (3).

''(ii) QUALIFIED INCENTIVE BENEFIT.—For purposes of clause (i), the term 'qualified incentive benefit' means any benefit which is approved by the Secretary of Health and Human Services, in consultation with the Secretary of the Treasury and the Secretary of Labor. Such benefit may include an adjustment in health insurance premiums or co-pays.

''(C) EMPLOYEE INPUT.—The opportunity for employees to participate in the management of any qualified wellness program to which this section applies.

''(d) PARTICIPATION REQUIREMENT.—

''(1) IN GENERAL.—No credit shall be allowed under subsection (a) unless the Secretary of Health and Human Services, in consultation with the Secretary of the Treasury and Secretary of Labor, as a part of any certification described in subsection (b), that each wellness program component of the qualified wellness program applies to all qualified employees of the employer. The Secretary of Health and Human Services shall prescribe rules under which an employer shall not be treated as failing to meet the requirements of this subsection merely because the employer provides specialized programs for employees with specific health needs or unusual employment requirements or provides a pilot program to test new wellness strategies.

''(2) QUALIFIED EMPLOYEE.—For purposes of paragraph (1), the term 'qualified employee' means an employee who works an average of not less than 25 hours per week during the taxable year.

''(e) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

''(1) EMPLOYEE AND EMPLOYER.—

''(A) PARTNERS AND PARTNERSHIPS.—The term 'employee' includes a partner and the term 'employer' includes a partnership.

''(B) CERTAIN RULES TO APPLY.—Rules similar to the rules of section 52 shall apply.

''(2) CERTAIN COSTS NOT INCLUDED.—Costs paid or incurred by an employer for food or health insurance shall not be taken into account under subsection (a).

''(3) NO CREDIT WHERE GRANT AWARDED.—No credit shall be allowable under subsection (a) with respect to any qualified wellness program of any taxpayer (other than an eligible employer described in subsection (f)(2)(A)) who receives a grant provided by the United States, a State, or a political subdivision of a State for use in connection with such program. The Secretary shall prescribe rules providing for the waiver of this paragraph with respect to any grant which does not constitute a significant portion of the funding for the qualified wellness program.

''(4) CREDIT PERIOD.—

''(A) IN GENERAL.—The term 'credit period' means the period of 10 consecutive taxable years beginning with the taxable year in which the qualified wellness program is first certified under this section.

''(B) SPECIAL RULE FOR EXISTING PROGRAMS.—In the case of an employer (or predecessor) which operates a wellness program for its employees on the date of the enactment of this section, subparagraph (A) shall be applied by substituting '3 consecutive taxable years' for '10 consecutive taxable years'. The Secretary shall prescribe rules under which this subsection shall not apply if an employer is required to make substantial modifications in the existing wellness program in order to qualify such program for certification as a qualified wellness program.

''(C) CONTROLLED GROUPS.—For purposes of this paragraph, all persons treated as a single employer under subsection (b), (c), (m), or (o) of section 414 shall be treated as a single employer.

''(f) PORTION OF CREDIT MADE REFUNDABLE.—

''(1) IN GENERAL.—In the case of an eligible employer of an employee, the aggregate credits allowed to a taxpayer under subpart C shall be increased by the lesser of—

''(A) the credit which would be allowed under this section without regard to this subsection and the limitation under section 38(c), or

''(B) the amount by which the aggregate amount of credits allowed by this subpart (determined without regard to this subsection) would increase if the limitation imposed by section 38(c) for any taxable year were increased by the amount of employer payroll taxes imposed on the taxpayer during the calendar year in which the taxable year begins.

The amount of the credit allowed under this subsection shall not be treated as a credit allowed under this subpart and shall reduce the amount of the credit otherwise allowable under subsection (a) without regard to section 38(c).

''(2) ELIGIBLE EMPLOYER.—For purposes of this subsection, the term 'eligible employer' means an employer which is—

''(A) a State or political subdivision thereof, the District of Columbia, a possession of the United States, or an agency or instrumentality of any of the foregoing, or

''(B) any organization described in section 501(c) of the Internal Revenue Code of 1986 which is exempt from taxation under section 501(a) of such Code.

''(3) EMPLOYER PAYROLL TAXES.—For purposes of this subsection—

''(A) IN GENERAL.—The term 'employer payroll taxes' means the taxes imposed by—

''(i) section 3111(b), and

''(ii) sections 3211(a) and 3221(a) (determined at a rate equal to the rate under section 3111(b)).

''(B) SPECIAL RULE.—A rule similar to the rule of section 24(d)(2)(C) shall apply for purposes of subparagraph (A).

''(g) TERMINATION.—This section shall not apply to any amount paid or incurred after December 31, 2017.''.

(b) TREATMENT AS GENERAL BUSINESS CREDIT.—Subsection (b) of section 38 of the Internal Revenue Code of 1986 is amended by striking ''plus'' at the end of paragraph (35), by striking the period at the end of paragraph (36) and inserting '', plus'', and by adding at the end the following:

''(37) the wellness program credit determined under section 45S.''.

(c) DENIAL OF DOUBLE BENEFIT.—Section 280C of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:

''(j) WELLNESS PROGRAM CREDIT.—

''(1) IN GENERAL.—No deduction shall be allowed for that portion of the costs paid or incurred for a qualified wellness program (within the meaning of section 45S) allowable as a deduction for the taxable year which is equal to the amount of the credit allowable for the taxable year under section 45S.

''(2) SIMILAR RULE WHERE TAXPAYER CAPITALIZES RATHER THAN DEDUCTS EXPENSES.—If—

''(A) the amount of the credit determined for the taxable year under section 45S, exceeds

''(B) the amount allowable as a deduction for such taxable year for a qualified wellness program,

the amount chargeable to capital account for the taxable year for such expenses shall be reduced by the amount of such excess.

''(3) CONTROLLED GROUPS.—In the case of a corporation which is a member of a controlled group of corporations (within the meaning of section 41(f)(5)) or a trade or business which is treated as being under common control with other trades or business (within the meaning of section 41(f)(1)(B)), this subsection shall be applied under rules prescribed by the Secretary similar to the rules applicable under subparagraphs (A) and (B) of section 41(f)(1).''.

(d) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by adding at the end the following:

''Sec. 45S. Wellness program credit.''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of enactment of this Act.

(f) OUTREACH.—

(1) IN GENERAL.—The Secretary of the Treasury, in conjunction with the Director of the Centers for Disease Control and members of the business community, shall institute an outreach program to inform businesses about the availability of the wellness program credit under section 45S of the Internal Revenue Code of 1986 as well as to educate businesses on how to develop programs according to recognized and promising practices and on how to measure the success of implemented programs.

(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out the outreach program described in paragraph (1).

SEC. 212. EMPLOYER-PROVIDED OFF-PREMISES ATHLETIC FACILITIES.

(a) TREATMENT AS FRINGE BENEFIT.—Subparagraph (A) of section 132(j)(4) of the Internal Revenue Code of 1986 is amended to read as follows:

''(A) IN GENERAL.—Gross income shall not include—

''(i) the value of any on-premises athletic facility provided by an employer to its employees, and

''(ii) so much of the fees, dues, or membership expenses paid by an employer to an athletic or fitness facility described in subparagraph (C) on behalf of its employees as does not exceed $900 per employee per year.''.

(b) ATHLETIC FACILITIES DESCRIBED.—Paragraph (4) of section 132(j) of the Internal Revenue Code of 1986 is amended by adding at the end the following new subparagraph:

''(C) CERTAIN ATHLETIC OR FITNESS FACILITIES DESCRIBED.—For purposes of subparagraph (A)(ii), an athletic or fitness facility described in this subparagraph is a facility—

''(i) which provides instruction in a program of physical exercise, offers facilities for the preservation, maintenance, encouragement, or development of physical fitness, or is the site of such a program of a State or local government,

''(ii) which is not a private club owned and operated by its members,

''(iii) which does not offer golf, hunting, sailing, or riding facilities,

''(iv) whose health or fitness facility is not incidental to its overall function and purpose, and

''(v) which is fully compliant with the State of jurisdiction and Federal anti-discrimination laws.''.

(c) EXCLUSION APPLIES TO HIGHLY COMPENSATED EMPLOYEES ONLY IF NO DISCRIMINATION.—Section 132(j)(1) of the Internal Revenue Code of 1986 is amended—

(1) by striking ''Paragraphs (1) and (2) of subsection (a)'' and inserting ''Subsections (a)(1), (a)(2), and (j)(4)'', and

(2) by striking the heading thereof through ''APPLY'' and inserting ''CERTAIN EXCLUSIONS APPLY''.

(d) EMPLOYER DEDUCTION FOR DUES TO CERTAIN ATHLETIC FACILITIES.—

(1) IN GENERAL.—Paragraph (3) of section 274(a) of the Internal Revenue Code of 1986 is amended by adding at the end the following new sentence: ''The preceding sentence shall not apply to so much of the fees, dues, or membership expenses paid to athletic or fitness facilities (within the meaning of section 132(j)(4)(C)) as does not exceed $900 per employee per year.''.

(2) CONFORMING AMENDMENT.—The last sentence of section 274(e)(4) of such Code is amended by inserting ''the first sentence of'' before ''subsection (a)(3)''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 213. TASK FORCE FOR THE PROMOTION OF BREASTFEEDING IN THE WORKPLACE.

(a) ESTABLISHMENT.—The Secretary of Health and Human Services and the Secretary of Labor, or their designees, shall convene a task force for the purpose of promoting breastfeeding among working mothers (referred to in this section as the ''Task Force'').

(b) MEMBERSHIP.—The Task Force shall be composed of members who are—

(1) expert staff from the Department of Labor with expertise in workforce issues;

(2) expert staff from the Department of Health and Human Services with expertise in the areas of breastfeeding and breastfeeding promotion;

(3) members of the United States Breastfeeding Committee;

(4) expert staff from the Department of Agriculture; and

(5) appointed by the Secretary of Health and Human Services and the Secretary of Labor, including—

(A) working mothers who have experience in working and breastfeeding; and

(B) representatives of the human resource departments of both large and small employers that have successfully promoted breastfeeding and breastmilk pumping support at work.

(c) PERIOD OF APPOINTMENT; VACANCIES.—Members shall be appointed for the life of the Task Force. Any vacancy in the Task Force shall not affects its powers, but shall be filled in the same manner as the original appointment.

(d) CHAIR.—The Task Force shall be chaired jointly by the Secretary of Health and Human Services and the Secretary of Labor, or their designees.

(e) DUTIES OF THE TASK FORCE.—

(1) EXAMINATION.—Consistent with the Department of Health and Human Services Blueprint for Action on Breastfeeding (2000), the Task Force shall examine the following issues:

(A) The challenges that mothers face with continuing breastfeeding when the mothers return to work after giving birth.

(B) The challenges that employers face in accommodating mothers who seek to continue to breastfeed or to express milk when the mothers re-enter the workforce, including different challenges that mothers of varying socio-economic status and in different professions may face.

(C) The benefits that accrue to mothers, babies, and to employers when mothers are able to continue to breastfeed or to express breastmilk at work after the mothers have re-entered the workforce.

(D) Federal and State statutes that may have the effect of reducing breastfeeding and breastfeeding retention rates among working mothers.

(2) REPORTS.—

(A) IN GENERAL.—Not later than 1 year after the date of enactment of this section, the Task Force shall issue a public report with recommendations on the following:

(i) Steps that can be taken to promote breastfeeding among working mothers and to remove barriers to breastfeeding among working mothers.

(ii) Potential ways in which the Federal Government can work with employers to promote breastfeeding among working mothers.

(iii) Areas in which changes to existing Federal, State, or local laws would likely

have the effect of making it easier for working mothers to breastfeed or would remove impediments to breastfeeding that currently exist in such laws.

(iv) Whether or not increased rates of breastfeeding among working mothers would likely have the result of reducing health care costs among such mothers and their children, and, in particular, whether increased rates of breastfeeding would be likely to result in lower Federal expenditures on health care for such mothers and their children.

(v) Areas in which the Federal Government, through increased efforts by Federal agencies, or changes to existing Federal law, can and should increase the Federal Government's efforts to promote breastfeeding among working mothers.

(B) COPY TO CONGRESS.—Upon completion of the report described in subparagraph (A), the Task Force shall submit a copy of the report to the Committee on Health, Education, Labor, and Pensions of the Senate, the Committee on Appropriations of the Senate, the Committee on Education and the Workforce of the House of Representatives, and the Committee on Appropriations of the House of Representatives.

(f) POWERS OF THE TASK FORCE.—

(1) HEARINGS.—The Task Force may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Task Force considers advisable to carry out this section.

(2) INFORMATION FROM FEDERAL AGENCIES.—The Task Force may secure directly from any Federal department or agency such information as the Task Force considers necessary to carry out this section. Upon request of the Chair of the Task Force, the head of such department or agency shall furnish such information to the Task Force.

(3) POSTAL SERVICES.—The Task Force may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(4) DONATIONS.—The Task Force may accept, use, and dispose of donations of services or property.

(g) OPERATING EXPENSES.—The operating expenses of the Task Force, including travel expenses for members of the Task Force, shall be paid for from the general operating expenses funds of the Secretary of Health and Human Services and the Secretary of Labor.

SEC. 214. IMPROVING HEALTHY EATING AND ACTIVE LIVING OPTIONS IN FEDERAL WORKPLACES.

(a) MENU LABELING IN FEDERAL FOOD ESTABLISHMENTS.—

(1) IN GENERAL.—

(A) EXECUTIVE AND JUDICIAL BUILDINGS.—Section 403(q) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343(q)) is amended by adding at the end the following:

''(6)(A) The requirements of subparagraph (5)(H) shall apply—

''(i) to a restaurant or similar retail food establishment located in a Federal building in the same manner as such subparagraph applies to a restaurant or similar retail food establishment that is part of a chain with 20 or more locations, as described in subparagraph (5)(H)(i); and

''(ii) to a person that operates a vending machine located in a Federal building in the same manner as such subparagraph applies to a person who is engaged in the business of owning or operating 20 or more vending machines, as described in subparagraph (5)(H)(viii).

''(B) In this subparagraph, the term 'Federal building' means a building that is—

''(i) under the control of the Federal agency (as defined in section 102 of title 40, United States Code);

''(ii) owned by the Federal Government; and

''(iii) located in a State, the District of Columbia, Puerto Rico, or a territory or possession of the United States.''.

(B) APPLICABILITY.—The requirement in the amendment made by paragraph (1) shall apply to restaurants or similar retail food establishments and vending machines located in a Federal building beginning 12 months after the date of enactment of this Act.

(2) CONGRESSIONAL BUILDINGS.—The Architect of the Capitol, in coordination with the Committee on Rules and Administration of the Senate and the Committee on House Administration of the House of Representatives, shall establish a program to apply the requirements of section 403(q)(5)(H) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343(q)(5)(H)) (as amended by paragraph (1)) to—

(A) food that is served in restaurants or other similar retail food establishments that are located in Congressional buildings and installations;

(B) food that is sold through vending machines that are operated in Congressional buildings and installations; and

(C) food that is served to individuals within Congressional buildings and installations pursuant to a contract with a private entity.

(b) NUTRITIONAL STANDARDS FOR FOOD IN FEDERAL BUILDINGS.—

(1) EXECUTIVE AND JUDICIAL BUILDINGS.—Subchapter V of chapter 5 of subtitle I of title 40, United States Code, is amended by adding at the end the following:

''SEC. 594. NUTRITIONAL STANDARDS FOR FOOD IN FEDERAL BUILDINGS.

''(a) IN GENERAL.—The Administrator of General Services, in consultation with the Secretary of Health and Human Services, shall establish, by regulation, nutritional standards for all food products provided at Federal buildings and installations (including food products provided by contractors or vending machines).

''(b) USE OF AMOUNTS.—Amounts appropriated to an executive agency for installation, repair, and maintenance, generally, may be used to achieve compliance with the regulations promulgated pursuant to this section.

''(c) LIABILITY.—Nothing in this section increases or enlarges the tort liability of the Federal Government for any injury to an individual or damage to property.''.

(2) CONGRESSIONAL BUILDINGS.—The Architect of the Capitol, in coordination with the Committee on Rules and Administration of the Senate and the Committee on House Administration of the House of Representatives shall establish nutritional standards for all food products provided at Congressional buildings and installations (including food products provided by contractors or vending machines).

(c) ENCOURAGEMENT OF USE OF STAIRS.—

(1) EXECUTIVE AND JUDICIAL BUILDINGS.—Subchapter V of chapter 5 of subtitle I of title 40, United States Code, as amended by subsection (b), is further amended by adding at the end the following:

''SEC. 595. ENCOURAGEMENT OF USE OF STAIRS.

''(a) IN GENERAL.—Each Federal agency shall install point-of-decision prompts encouraging individuals to use stairs wherever practicable at each relevant building and installation that is—

''(1) under the control of the Federal agency;

''(2) owned by the Federal Government; and

''(3) located in a State, the District of Columbia, Puerto Rico, or a territory or possession of the United States.

''(b) REIMBURSEMENT.—Subsection (a) may be carried out by—

''(1) reimbursement to a State or political subdivision of a State, the District of Columbia, Puerto Rico, or a territory or possession of the United States; or

''(2) a means other than reimbursement.

''(c) REGULATIONS.—Subsection (a) shall be carried out in accordance with such regulations as the Administrator of General Services may promulgate, with the approval of the Director of the Office of Management and Budget.

''(d) USE OF AMOUNTS.—Amounts appropriated to a Federal agency for installation, repair, and maintenance, generally, shall be available to carry out this section.

''(e) LIABILITY.—Nothing in this section increases or enlarges the tort liability of the Federal Government for any injury to an individual or damage to property.''.

(2) CONGRESSIONAL BUILDINGS.—The Architect of the Capitol shall implement a program to install point-of-decision prompts encouraging individuals to use stairs wherever practicable in Congressional buildings and installations in the same manner as established under section 595 of title 40, United States Code (as added by paragraph (1)).

(d) ACCOMMODATIONS FOR BICYCLE COMMUTERS.—

(1) EXECUTIVE AND JUDICIAL FEDERAL BUILDINGS.—Subchapter V of chapter 5 of subtitle I of title 40, United States Code, as amended by subsection (c), is further amended by adding at the end the following:

''SEC. 596. ACCOMMODATIONS FOR BICYCLE COMMUTERS.

''(a) IN GENERAL.—Each Federal agency shall install and maintain a bicycle storage area and equipment (such as a bicycle rack) and a shower for bicycle commuters at each relevant parking structure that is—

''(1) under the control of the Federal agency;

''(2) owned by the Federal Government; and

''(3) located in a State, the District of Columbia, Puerto Rico, or a territory or possession of the United States.

''(b) REIMBURSEMENT.—Subsection (a) may be carried out by—

''(1) reimbursement to a State or political subdivision of a State, the District of Columbia, Puerto Rico, or a territory or possession of the United States; or

''(2) a means other than reimbursement.

''(c) REGULATIONS.—Subsection (a) shall be carried out in accordance with such regulations as the Administrator of General Services may promulgate, with the approval of the Director of the Office of Management and Budget.

''(d) USE OF AMOUNTS.—Amounts appropriated to a Federal agency for installation, repair, and maintenance, generally, shall be available to carry out this section.

''(e) LIABILITY.—Nothing in this section increases or enlarges the tort liability of the Federal Government for any injury to an individual or damage to property.''.

(2) CONGRESSIONAL BUILDINGS.—The Architect of the Capitol, in coordination with the Sergeant at Arms and Doorkeeper of the Senate, the Sergeant at Arms of the House of Representatives, and the United States Capitol Police, shall implement, within their respective jurisdictions, a program to make accommodations for bicycle commuters on the United States Capitol complex in the same manner as established under section 596 of title 40, United States Code (as added by paragraph (1)).

TITLE III—RESPONSIBLE MARKETING AND CONSUMER AWARENESS

SEC. 301. GUIDELINES FOR REDUCTION IN SODIUM CONTENT IN CERTAIN FOODS.

(a) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the

Secretary of Health and Human Services shall promulgate regulations establishing guidelines for the reduction, over a 2 year period, in the sodium content of processed food and restaurant food following, as appropriate, the recommendations made by the Institute of Medicine report entitled ''Strategies to Reduce Sodium Intake in the United States''.

(b) DEFINITIONS.—For purposes of this section—

(1) the term ''processed food'' has the meaning given such term in section 201(gg) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(gg)); and

(2) the term ''restaurant food'' means food subject to the requirements of section 403(q)(5)(H) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343(q)(5)(H)).

SEC. 302. NUTRITION LABELING FOR FOOD PRODUCTS SOLD PRINCIPALLY FOR USE IN RESTAURANTS OR OTHER RETAIL FOOD ESTABLISHMENTS.

Section 403(q)(5) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343(q)(5)) is amended by striking clause (G).

SEC. 303. FRONT-LABEL FOOD GUIDANCE SYSTEMS.

(a) IN GENERAL.—Not later than 6 months after the date of enactment of this Act, the Secretary of Health and Human Services (referred to in this section as the ''Secretary'') shall begin soliciting public comments regarding—

(1) the use of retail front-label food guidance systems to convey nutrition information to the public using logos, symbols, signs, emblems, insignia, or other graphic representations on the labeling of food intended for human consumption that are intended to provide simple, standardized, and understandable nutrition information to the public in graphic form;

(2) appropriate nutrition standards by which a retail front-label food guidance system may convey the relative nutritional value of different foods in simple graphic form; and

(3) whether American consumers would be better served by establishing a single, standardized retail front-label food guidance system regulated by the Food and Drug Administration, or by allowing individual food companies, trade associations, nonprofit organizations, and others to continue to develop their own retail front-label food guidance systems.

(b) EFFECT ON NUTRITION FACTS PANEL.—In soliciting public comments under subsection (a), the Secretary shall inform the public that any retail front-label food guidance system is intended to supplement, not replace, the Nutrition Facts Panel that appears on food labels pursuant to section 403(q) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343(q)).

(c) PROPOSED REGULATION.—Not later than 12 months following the closure of the public comment solicitation period under subsection (a), the Secretary shall—

(1) publish a notice in the Federal Register that summarizes the public comments and describes the suggested retail front-label food guidance systems received through such solicitation; and

(2) publish proposed regulations that—

(A) establish a single, standardized retail front-label food guidance system; or

(B) establish the conditions under which individual food companies, trade associations, nonprofit organizations, and other entities may continue to develop their own retail front-label food guidance systems.

SEC. 304. RULEMAKING AUTHORITY FOR ADVERTISING TO CHILDREN.

(a) PURPOSE.—The purpose of this section is to restore the authority of the Federal Trade Commission to issue regulations that restrict the marketing or advertising of foods and beverages to children under the age of 18 years if the Federal Trade Commission determines that there is evidence that consumption of certain foods and beverages is detrimental to the health of children.

(b) AUTHORITY.—Section 18 of the Federal Trade Commission Act (15 U.S.C. 57a) is amended—

(1) in subsection (a), by striking ''Except as provided in subsection (h), the'' and inserting ''The'';

(2) by amending subsection (b) to read as follows:

''(b) PROCEDURE APPLICABLE.—When prescribing a rule under subsection (a)(1)(B) of this section, the Commission shall proceed in accordance with section 553 of title 5 (without regard to any reference in such section to sections 556 and 557 of such title).'';

(3) by striking subsections (c), (f), (h), (i), and (j);

(4) by striking subsection (d) and inserting the following:

''(c) When any rule under subsection (a)(1)(B) takes effect a subsequent violation thereof shall constitute an unfair or deceptive act or practice in violation of section 5(a)(1) of this Act, unless the Commission otherwise expressly provides in such rule.'';

(5) by redesignating subsections (e) and (g) as subsections (d) and (e), respectively; and

(6) in subsection (d), as redesignated—

(A) in paragraph (1)(B), by striking ''the transcript required by subsection (c)(5),'';

(B) in paragraph (3), by striking ''error)'' and all that follows through the period at the end and inserting ''error).''; and

(C) in paragraph (5), by striking subparagraph (C).

SEC. 305. HEALTH LITERACY: RESEARCH, COORDINATION AND DISSEMINATION.

(a) IN GENERAL.—Part A of title IX of the Public Health Service Act (42 U.S.C. 299 et seq.) is amended by adding at the end the following:

''SEC. 904. HEALTH LITERACY: RESEARCH, COORDINATION AND DISSEMINATION.

''(a) DEFINITION.—In this section, the term 'health literacy' means a consumer's ability to obtain, process, and understand basic health information and services needed to make appropriate health care decisions and the adaptation of services to enhance a consumer's understanding and navigation of applicable health care services.

''(b) HEALTH LITERACY PROGRAM.—

''(1) ESTABLISHMENT.—The Director shall establish within the Agency a program (referred to in this section as the 'program') to strengthen health literacy by improving measurement, research, development, and information dissemination.

''(2) DUTIES.—In carrying out the program, the Director shall—

''(A) gather health literacy resources from public and private sources and make such resources available to researchers, health care providers, and the general public;

''(B) identify and fill research gaps relating to health literacy that have direct applicability to—

''(i) prevention;

''(ii) self-management of chronic disease;

''(iii) quality improvement;

''(iv) the barriers to health literacy;

''(v) relationships between health literacy and health disparities, particularly with respect to language and cultural competency; and

''(vi) the utilization of information on comparative effectiveness of health treatments;

''(C) sponsor demonstration and evaluation projects with respect to interventions and tools designed to strengthen health literacy, including projects focused on—

''(i) the provision of simplified, patient-centered written materials;

''(ii) technology-based communication techniques;

''(iii) consumer navigation services; and

''(iv) the training of health professional providers;

''(D) give preference to health literacy initiatives that—

''(i) focus on the particular needs of vulnerable populations such as the elderly, racial and ethnic minorities, children, individuals with limited English proficiency, and individuals with disabilities; and

''(ii) partner with institutions in the community such as schools, libraries, senior centers, literacy groups, recreation centers, early childhood education centers, area health education centers, and public assistance programs;

''(E) assist appropriate Federal agencies in establishing specific objectives and strategies for carrying out the program, in monitoring the programs of such agencies, and incorporating health literacy into research design, human subjects protections, and informed consent in clinical research;

''(F) seek to enter into implementation partnerships with organizations and agencies, including other agencies within the Department of Health and Human Services, such as the Centers for Medicare & Medicaid Services and the Health Resources and Services Administration, the Office of the Surgeon General, the Joint Commission on the Accreditation of Healthcare Organizations, the Office of the National Coordinator for Health Information Technology, and the National Committee for Quality Assurance, to promote the adoption of interventions and tools developed under this section, particularly in the training of health professionals; and

''(G) coordinate with other agencies within the Department of Health and Human Services to collect data that monitors national trends in health literacy by including relevant items in surveys such as the Medical Expenditure Panel Survey, the National Health Interview Survey, and the National Hospital Discharge Survey.

''(3) REPORT.—The Agency for Healthcare Research and Quality shall annually submit to Congress a report that includes—

''(A) a comprehensive and detailed description of the operations, activities, financial condition, and accomplishments of the Agency in the field of health literacy; and

''(B) a description of how plans for the operation of the program for the succeeding fiscal year will facilitate achievement of the goals of the program.

''(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subsection such sums as may be necessary for each of fiscal years 2012 through 2016.

''(c) STATE HEALTH LITERACY GRANTS.—

''(1) GRANTS.—The Director of the Agency shall award grants to eligible entities to facilitate State and community efforts to strengthen health literacy.

''(2) USE OF FUNDS.—An entity receiving a grant under this subsection shall use amounts received under such grant to—

''(A) support efforts to monitor and strengthen health literacy within a State or community;

''(B) assist public and private efforts in the State or community in coordinating and delivering health literacy services;

''(C) encourage partnerships among State and local governments, community organizations, non-profit entities, academic institutions, and businesses to coordinate efforts to strengthen health literacy;

''(D) provide technical and policy assistance to State and local governments and service providers; and

''(E) monitor and evaluate programs conducted under this grant.

''(3) REPORT.—Not later than September 30 of each fiscal year for which a grant is received by an entity under this section, the entity shall submit to the Director a report that describes the programs supported by the grant and the results of monitoring and evaluation of those programs.

''(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this subsection for each of fiscal years 2012 through 2016.''.

(b) INSTITUTE OF MEDICINE STUDY AND REPORT.—

(1) STUDY.—The Secretary of Health and Human Services shall seek to enter into a contract with the Institute of Medicine to conduct a study identifying opportunities within the Department of Health and Human Services to strengthen the health literacy of health care providers and health care consumers in accordance with the Patient Protection and Affordable Care Act (Public law 111–148).

(2) REPORT.—A contract entered into under paragraph (1) shall include a provision requiring the Institute of Medicine, not later than 1 year after the date of enactment of this Act, to submit a report concerning the results of the study conducted under paragraph (1) to the Secretary of Health and Human Services and the appropriate committees of Congress.''.

SEC. 306. DISALLOWANCE OF DEDUCTIONS FOR ADVERTISING AND MARKETING EXPENSES RELATING TO TOBACCO PRODUCT USE.

(a) IN GENERAL.—Part IX of subchapter B of chapter 1 of subtitle A of the Internal Revenue Code of 1986 (relating to items not deductible) is amended by adding at the end the following new section:

''SEC. 280I. DISALLOWANCE OF DEDUCTION FOR ADVERTISING AND MARKETING EXPENSES RELATING TO TOBACCO PRODUCT USE.

''No deduction shall be allowed under this chapter for expenses relating to advertising or marketing cigars, cigarettes, smokeless tobacco, pipe tobacco, or any other tobacco product. For purposes of this section, any term used in this section which is also used in section 5702 shall have the same meaning given such term by section 5702.''.

(b) CONFORMING AMENDMENT.—The table of sections for such part IX is amended by adding after the item relating to section 280H the following new item:

''Sec. 280I. Disallowance of deduction for tobacco advertising and marketing expenses.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 307. INCENTIVES TO REDUCE TOBACCO USE.

(a) CHILD TOBACCO USE SURVEYS.—

(1) ANNUAL PERFORMANCE SURVEY.—

(A) IN GENERAL.—Not later than August 31, 2012, and annually thereafter, the Secretary of Health and Human Services (referred to in this section as the ''Secretary'') shall publish the results of an annual tobacco use survey, to be carried out not later than 18 months after the date of enactment of this Act and completed on an annual basis thereafter, to determine—

(i) the percentage of all young individuals who used tobacco products within the 30-day period prior to the conduct of the survey involved; and

(ii) the percentage of young individuals who identify each brand of each type of tobacco product as the usual brand used within such 30-day period.

(B) YOUNG INDIVIDUALS.—For the purposes of this section, the term ''young individuals'' means individuals who are under 18 years of age.

(2) SIZE AND METHODOLOGY.—

(A) IN GENERAL.—The survey referred to in paragraph (1) may be the National Survey on Drug Use and Health or shall at least be comparable in size and methodology to the NSDUH that was completed in 2009 to measure the use of cigarettes (by brand) by youths under 18 years of age within the 30-day period prior to the conduct of the study.

(B) CONCLUSIVE ACCURATENESS.—A survey using the methodology described in subparagraph (A) shall be deemed conclusively proper, correct, and accurate for purposes of this section.

(C) DEFINITION.—In this section, the term ''National Survey on Drug Use and Health'' or ''NSDUH'' means the annual nationwide survey of randomly selected individuals, aged 12 and older, conducted by the Substance Abuse and Mental Health Services Administration.

(3) REDUCTION.—The Secretary, based on a comparison of the results of the first annual tobacco product survey referred to in paragraph (1) and the most recent NSDUH referred to in paragraph (2)(A) completed prior to the date of enactment of this Act, shall determine the percentage reduction (if any) in youth tobacco use for each manufacturer of tobacco products.

(4) PARTICIPATION IN SURVEY.—Notwithstanding any other provision of law, the Secretary may conduct a survey under this subsection involving minors if the results of such survey with respect to such minors are kept confidential and not disclosed.

(5) NONAPPLICABILITY.—Chapter 35 of title 44, United States Code, shall not apply to information required for the purposes of carrying out this section.

(b) TOBACCO USE REDUCTION GOAL AND NONCOMPLIANCE.—

(1) GOAL.—It shall be the tobacco use reduction goal that youth tobacco use be reduced by at least 5 percent or a level determined significantly sufficient by the Secretary between the most recent NSDUH referred to in subsection (a)(2)(A) and the completion of the first annual cigarette survey (and such subsequent surveys as compared to the previous year's survey) referred to in subsection (a)(1).

(2) NONCOMPLIANCE.—

(A) INDUSTRY-WIDE PENALTY.—If the Secretary determines that the tobacco use reduction goal under paragraph (1) has not been achieved, the Secretary shall, not later than September 10, 2012, and September 10 of each year thereafter, impose an industry-wide penalty on the manufacturers of cigarettes in an amount that is in the aggregate equal to $3,000,000,000.

(B) PAYMENT.—The industry-wide penalty imposed under this subsection shall be paid by each manufacturer based on the brand share among youth ages 12-17 (as determined by the survey described in subsection (a)(1)) as such percentage relates to the total amount to be paid by all manufacturers.

(C) FINAL DETERMINATION.—The determination of the Secretary as to the amount and allocation of a surcharge under this section shall be final and the manufacturer shall pay such surcharge within 10 days of the date on which the manufacturer is assessed. Such payment shall be retained by the Secretary pending final judicial review of what, if any, change in the surcharge is appropriate.

(D) LIMITATION.—With respect to cigarettes, a manufacturer with a market share of 1 percent or less of youth tobacco use shall not be liable for the payment of a surcharge under this paragraph.

(E) USE OF AMOUNTS.—Amounts collected under subparagraph (A) shall be deposited into the Prevention and Public Health Fund established under section 4002 of the Patient Protection and Affordable Care Act (42 U.S.C. 300u-11). Such funds shall remain available for transfer through September 30th of the fifth fiscal year following their collection, subject to the terms and conditions of such section 4002.

(3) PENALTIES NONDEDUCTIBLE.—The payment of penalties under this section shall not be considered to be an ordinary and necessary expense in carrying on a trade or business for purposes of the Internal Revenue Code of 1986 and shall not be deductible.

(4) JUDICIAL REVIEW.—

(A) AFTER PAYMENT.—A manufacturer of cigarettes may seek judicial review of any action under this section only after the assessment involved has been paid by the manufacturer to the Department of the Treasury and only in the United States District Court for the District of Columbia.

(B) REVIEW BY ATTORNEY GENERAL.—Prior to the filing of an action by a manufacturer seeking judicial review of an action under this section, the manufacturer shall notify the Attorney General of such intent to file and the Attorney General shall have 30 days in which to respond to the action.

(C) REVIEW.—The amount of any surcharge paid under this section shall be subject to judicial review by the United States Court of Appeals for the District of Columbia Circuit, based on the arbitrary and capricious standard of section 706 of title 5, United States Code. Notwithstanding any other provision of law, no court shall have the authority to stay any surcharge payment due to the Secretary under this section pending judicial review until the Secretary has made or failed to make a compliance determination, as described under this section, that has adversely affected the person seeking the review.

(c) ENFORCEMENT.—

(1) INITIAL PENALTY.—There is hereby imposed an initial penalty on the failure of any manufacturer to make any payment required under this section not later than a period determined sufficient by the Secretary after the date on which such payment is due.

(2) AMOUNT OF PENALTY.—The amount of the penalty imposed by paragraph (1) on any failure with respect to a manufacturer shall be an amount equal to 2 percent of the penalty owed under subsection (b) for each day during the noncompliance period.

(3) NONCOMPLIANCE PERIOD.—For purposes of this subsection, the term ''noncompliance period'' means, with respect to any failure to make the surcharge payment required under this section, the period—

(A) beginning on the due date for such payment; and

(B) ending on the date on which such payment is paid in fall.

(4) LIMITATIONS.—No penalty shall be imposed by paragraph (1) on—

(A) any failure to make a surcharge payment under this section during any period for which it is established to the satisfaction of the Secretary that none of the persons responsible for such failure knew or, exercising reasonable diligence, would have known, that such failure existed; or

(B) any manufacturer that produces less than 1 percent of cigarettes used by youth in that year (as determined by the annual survey).

TITLE IV—EXPANDED COVERAGE OF PREVENTIVE SERVICES

SEC. 401. REQUIRED COVERAGE OF PREVENTIVE SERVICES UNDER THE MEDICAID PROGRAM.

(a) MANDATORY COVERAGE.—Section 1905 of the Social Security Act (42 U.S.C. 1396d), as amended by section 4107(a)(1) of the Patient Protection and Affordable Care Act (Public Law 111-148), is amended—

(1) in subsection (a)(4)—

(A) by striking ''and'' before ''(D)''; and

(B) by inserting before the semicolon at the end the following new subparagraph: ''; and (E) preventive services described in subsection (ee);'' and

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

''(ee) PREVENTIVE SERVICES.—For purposes of subsection (a)(4)(E), the preventives services described in this subsection are diagnostic, screening, preventive, and rehabilitative services not otherwise described in subsection (a) or (r) that the Secretary determines are appropriate for individuals entitled to medical assistance under this title, including—

''(1) evidence-based services that are assigned a grade of A or B by the United States Preventive Services Task Force; and

''(2) with respect to an adult individual, approved vaccines recommended for routine use by the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention.''.

(b) ELIMINATION OF COST-SHARING.—

(1) Subsections (a)(2)(D) and (b)(2)(D) of section 1916 of the Social Security Act (42 U.S.C. 1396o) are each amended by inserting ''preventive services described in section 1905(ee),'' after ''emergency services (as defined by the Secretary),''.

(2) Section 1916A(a)(1) of such Act (42 U.S.C. 1396o–1(a)(1)) is amended by inserting '', preventive services described in section 1905(ee),'' after ''subsection (c)''.

(c) CONFORMING AMENDMENT.—Effective as if included in the enactment of the Patient Protection and Affordable Care Act (Public Law 111-148), the provisions of, and amendments made by, section 4106 of such Act are repealed.

(d) INTERVAL PERIOD FOR INCLUSION OF NEW RECOMMENDATIONS IN STATE PLANS.—With respect to a recommendation issued on or after the date of enactment of this Act by an organization described in subsection (ee) of section 1905 of the Social Security Act for a preventive service included under such subsection, the Secretary of Health and Human Services shall establish a minimum interval period, which shall be not less than 12 months, between the date on which the recommendation is issued and the plan year for which a State plan for medical assistance under title XIX of the Social Security Act shall be required to include such preventive service.

(e) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by subsections (a) and (b) take effect on the date of enactment of this Act.

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

SEC. 402. COVERAGE FOR COMPREHENSIVE WORKPLACE WELLNESS PROGRAM AND PREVENTIVE SERVICES.

Section 8904(a) of title 5, United States Code, is amended—

(1) in paragraph (1), by adding at the end the following:

''(G) Comprehensive workplace wellness program benefits that meet the requirements of section 10408 of the Patient Protection and Affordable Care Act (Public Law 111–148).

''(H) Preventive services benefits deemed an 'A' or 'B' service by the United States Preventive Services Taskforce.

''(I) Immunizations that have in effect a recommendation from the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention with respect to the individuals involved.

''(J) With respect to infants, children, and adolescents, evidence-informed preventive care and screenings provided for in the comprehensive guidelines supported by the Health Resources and Services Administration of the Department of Health and Human Services.''; and

(2) in paragraph (2), by adding at the end the following:

''(G) Comprehensive workplace wellness program benefits that meet the requirements of section 10408 of the Patient Protection and Affordable Care Act (Public Law 111–148).

''(H) Preventive services benefits deemed an 'A' or 'B' service by the United States Preventive Services Taskforce.

''(I) Immunizations that have in effect a recommendation from the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention with respect to the individuals involved.

''(J) With respect to infants, children, and adolescents, evidence-informed preventive care and screenings provided for in the comprehensive guidelines supported by the Health Resources and Services Administration of the Department of Health and Human Services.''.

SEC. 403. HEALTH PROFESSIONAL EDUCATION AND TRAINING IN HEALTHY EATING.

Part Q of title III of the Public Health Service Act (42 U.S.C. 280h et seq.) is amended by striking section 399Z and inserting the following:

''SEC. 399Z. HEALTH PROFESSIONAL EDUCATION AND TRAINING IN HEALTHY EATING.

''(a) IN GENERAL.—The Secretary, acting through the Director of the Centers for Disease Control and Prevention, in collaboration with the Administrator of the Health Resources and Services Administration and the heads of other agencies, and in consultation with appropriate health professional associations, shall develop and carry out a program to educate and train health professionals in effective strategies to—

''(1) better identify patients at-risk of becoming overweight or obese or developing an eating disorder;

''(2) detect overweight or obesity or eating disorders among a diverse patient population;

''(3) counsel, refer, or treat patients with overweight or obesity or an eating disorder;

''(4) educate patients and the families of patients about effective strategies to establish healthy eating habits and appropriate levels of physical activity; and

''(5) assist in the creation and administration of community-based overweight and obesity and eating disorder prevention efforts.

''(b) EATING DISORDER.—In this section, the term 'eating disorder' includes anorexia nervosa, bulimia nervosa, binge eating disorder, and eating disorders not otherwise specified, as defined in the fourth edition of the Diagnostic and Statistical Manual of Mental Disorders or any subsequent edition.

''(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary for each of the fiscal years 2012 through 2016.''.

TITLE V—RESEARCH

SEC. 501. GRANTS FOR BODY MASS INDEX DATA ANALYSIS.

(a) ESTABLISHMENT.—The Secretary of Health and Human Services may make grants to not more than 20 eligible entities to analyze body mass index (hereinafter in this section referred to as ''BMI'') measurements of children, ages 2 through 18.

(b) ELIGIBILITY.—An eligible entity for purposes of this section is a State (including the District of Columbia, the Commonwealth of Puerto Rico, and each territory of the United States) that has a statewide immunization information system that—

(1) has the capacity to store basic demographic information (including date of birth, gender, and geographic area of residence), height, weight, and immunization data for each resident of the State;

(2) is accessible to doctors, nurses, other licensed medical professionals, and officials of the relevant department in the State charged with maintaining health and immunization records; and

(3) has the capacity to integrate large amounts of data for the analysis of BMI measurements.

(c) USE OF FUNDS.—A State that receives a grant under this section shall use the grant for the following purposes:

(1) Analyzing the effectiveness of obesity prevention programs and wellness policies carried out in the State.

(2) Purchasing new computers, computer equipment, and software to upgrade computers to be used for a statewide immunization information system.

(3) The hiring and employment of personnel to maintain and analyze BMI data.

(4) The development and implementation of training programs for medical professionals to aid such professionals in taking BMI measurements and discussing such measurements with patients.

(5) Providing information to parents and legal guardians in accordance with subsection (e)(2).

(d) SELECTION CRITERIA.—In selecting recipients of grants under this section, the Secretary shall give priority to States in which a high percentage of public and private health care providers submit data to a statewide immunization information system that—

(1) contains immunization data for not less than 20 percent of the population of such State that is under the age of 18; and

(2) includes data collected from men and women who are of a wide variety of ages and who reside in a wide variety of geographic areas in a State (as determined by the Secretary).

(e) CONDITIONS.—As a condition of receiving a grant under this section, a State shall—

(1) ensure that BMI measurements will be recorded for children ages 2 through 18—

(A) on an annual basis by a licensed physician, nurse, nurse practitioner, or physicians assistant during an annual physical examination, wellness visit, or similar visit with a physician; and

(B) in accordance with data collection protocols published by the American Academy

of Pediatrics in the 2007 Expert Committee Recommendations; and

(2) for each child in the State for whom such measurements indicate a BMI greater than the 95th percentile for such child's age and gender, provide to the parents or legal guardians of such child information on how to lower BMI and information on State and local obesity prevention programs.

(f) REPORTS.—

(1) REPORTS TO THE SECRETARY.—Not later than 5 years after the receipt of a grant under this section, the State receiving such grant shall submit to the Secretary the following reports:

(A) A report containing an analysis of BMI data collected using the grant, including—

(i) the differences in obesity trends by gender, disability, geographic area (as determined by the State), and socioeconomic status within such State; and

(ii) the demographic groups and geographic areas most affected by obesity within such State.

(B) A report containing an analysis of the effectiveness of obesity prevention programs and State wellness policies, including—

(i) an analysis of the success of such programs and policies prior to the receipt of the grant; and

(ii) a discussion of the means to determine the most effective strategies to combat obesity in the geographic areas identified under subparagraph (A).

(2) REPORT TO CONGRESS AND CERTAIN EXECUTIVE AGENCIES.—Not later than 1 year after the Secretary receives all the reports required pursuant to paragraph (1), the Secretary shall submit to the Secretary of Education, the Secretary of Agriculture, and to Congress a report that contains the following:

(A) An analysis of trends in childhood obesity, including how such trends vary across regions of the United States, and how such trends vary by gender and socioeconomic status.

(B) A description of any programs that—

(i) the Secretary has determined significantly lower childhood obesity rates for certain geographic areas in the United States, including urban, rural, and suburban areas; and

(ii) the Secretary recommends to be implemented by the States (including States that did not receive a grant under this section).

(g) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary such sums as may be necessary to carry out this section for each of fiscal years 2012 through 2016.

SEC. 502. NATIONAL ASSESSMENT OF MENTAL HEALTH NEEDS.

Title V of the Public Health Service Act (42 U.S.C. 290aa et seq.) is amended by inserting after section 506B (42 U.S.C. 290aa–5b) the following:

"SEC. 506C. NATIONAL ASSESSMENT OF MENTAL HEALTH NEEDS.

''(a) IN GENERAL.—The Secretary, acting through the Administrator, and in consultation with the Centers for Disease Control and Prevention and the Director of the National Institutes of Health, shall establish and implement public health monitoring measures to address the mental and behavioral health status of the population of the United States and other populations served by the Administration, that include—

''(1) monitoring the mental health status of the population, including the incidence and prevalence of mental and behavioral health conditions across the lifespan;

''(2) monitoring access to appropriate diagnostic and treatment services for mental and behavioral health conditions, including trends in unmet need for services;

''(3) monitoring mental and behavioral health conditions as risk factors for obesity and chronic diseases to the extent practicable;

''(4) enhancing existing public health monitoring systems by including measures assessing mental and behavioral health status and associated risk factors; and

''(5) to the extent practicable, monitoring the immediate and long-term impact of disasters or catastrophic events, whether natural or man-made on the mental and behavioral health of affected populations.

''(b) DISTINGUISHING AMONG AGE GROUPS.—In designing and implementing the measures described in subsection (a) the Secretary shall ensure that data collection and reporting standards stratify data by age groups, in particular, to the extent practicable, children under the age of 5 years.

''(c) REPORT.—Not later than 1 year after the date of enactment of this section, the Secretary shall submit a report to Congress that describes the progress on the implementation of the monitoring measures described in subsection (a).

''(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section such sums as may be necessary to carry out this section for each of fiscal years 2012 through 2016.''.

By Mr. HARKIN (for himself, Mr. JOHNSON of South Dakota, Ms. KLOBUCHAR, and Mr. FRANKEN):

S. 187. A bill to provide for the expansion of the biofuels market; to the Committee on Energy and Natural Resources.

Mr. HARKIN. Mr. President, I rise today to discuss the great importance of expanding the production and availability of biofuels, and the significant impact that biofuels continue to have on reducing our overall consumption of petroleum in the United States.

Our national energy situation continues to deteriorate. Because we import 60 percent of the petroleum we consume, our economy faces a constant threat from volatile petroleum prices as well as significant amounts of American wealth being transferred to foreign producers. Because more than two-thirds of our petroleum supply is consumed by our transportation sector, we can improve this situation by expanding the production and use of alternatives to petroleum-derived fuels. Domestic biofuels have been by far our most successful alternative. Biofuels already displace close to 10 percent of our gasoline supplies, and they have the potential to make significantly larger contributions in the years ahead. Expanding domestic biofuels production and use also will support economic recovery by creating jobs in the areas of feedstock production and delivery, fuels processing in bio refineries, and biofuels marketing.

The American people understand the need to reduce our dependence on foreign petroleum supplies. Congress has expressed broad agreement on two fundamental approaches—increasing efficiency of vehicles and increasing use of alternative fuels. We mandated more efficient vehicles by passing the Energy Independence and Security Act of 2007, EISA. That bill mandates a brisk expansion of biofuels production under the Renewable Fuels Standard. However, biofuels currently are facing critical market barriers. The most common form of biofuel, ethanol, can only be used as a 10 percent blend with gasoline in most highway vehicles. To enable much larger production and use levels, we need to expand the number of flex-fuel vehicles that can use higher blends, and we need to expand the number of filling stations selling those higher blends. We also need to enable safer and more economical transport of higher volumes by supporting development of biofuel pipelines.

To these ends, I am proud today to introduce the Biofuels Market Expansion Act of 2011. This measure would require that at least 90 percent of new auto sales in the United States be flex fuel vehicles by 2016. It would also require major fuel distributers, those owning or branding more than 50 gasoline filling stations, to install increasing numbers of blender pumps at their retail filling stations, and it would authorize funding to support blender pump installations by smaller filling station operators. Finally, this measure would authorize guarantees for loans covering 80 percent of renewable fuel pipeline project costs.

The requirements and assistance authorized in this bill will ensure that the number of flex-fuel automobiles and the availability of alternative fuels are expanding in tandem with the production and use of biofuels in our national fuel supply over the next 8 years and beyond. This is a job-creating bill that reduces American dependence on foreign petroleum by giving Americans the option of choosing clean, domestically-produced fuels for their personal transportation needs in the future. These steps represent critical components in the transition of our energy systems away from fossil and imported fuels toward the benefits of greater reliance on sustainable domestic fuel sources.

Today, I urge my Senate colleagues to join us in taking action to boost the transition to a cleaner, more resilient, and more secure energy economy. I urge Senators' support for this bill and its rapid enactment.

Mr. President, I ask unanimous consent that 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. 187

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 ''Biofuels Market Expansion Act of 2011''.

SEC. 2. ENSURING THE AVAILABILITY OF DUAL FUELED AUTOMOBILES AND LIGHT DUTY TRUCKS.

(a) IN GENERAL.—Chapter 329 of title 49, United States Code, is amended by inserting after section 32902 the following:

"§ 32902A. Requirement to manufacture dual fueled automobiles and light duty trucks

''(a) IN GENERAL.—For each model year listed in the following table, each manufacturer shall ensure that the percentage of

automobiles and light duty trucks manufactured by the manufacturer for sale in the United States that are dual fueled automobiles and light duty trucks is not less than the percentage set forth for that model year in the following table:

''Model Year	Percentage
Model years 2014 and 2015	50
Model year 2016 and each subsequent model year	90

''(b) EXCEPTION.—Subsection (a) shall not apply to automobiles or light duty trucks that operate only on electricity.''.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 329 of title 49, United States Code, is amended by inserting after the item relating to section 32902 the following:

''32902A. Requirement to manufacture dual fueled automobiles and light duty trucks.''.

(c) RULEMAKING.—Not later than 1 year after the date of the enactment of this Act, the Secretary of Transportation shall prescribe regulations to carry out the amendments made by this Act.

SEC. 3. BLENDER PUMP PROMOTION.

(a) BLENDER PUMP GRANT PROGRAM.—

(1) DEFINITIONS.—In this subsection:

(A) BLENDER PUMP.—The term ''blender pump'' means an automotive fuel dispensing pump capable of dispensing at least 3 different blends of gasoline and ethanol, as selected by the pump operator, including blends ranging from 0 percent ethanol to 85 percent denatured ethanol, as determined by the Secretary.

(B) E–85 FUEL.—The term ''E–85 fuel'' means a blend of gasoline approximately 85 percent of the content of which is ethanol.

(C) ETHANOL FUEL BLEND.—The term ''ethanol fuel blend'' means a blend of gasoline and ethanol, with a minimum of 0 percent and maximum of 85 percent of the content of which is denatured ethanol.

(D) MAJOR FUEL DISTRIBUTOR.—

(i) IN GENERAL.—The term ''major fuel distributor'' means any person that owns a refinery or directly markets the output of a refinery.

(ii) EXCLUSION.—The term ''major fuel distributor'' does not include any person that directly markets through less than 50 retail fueling stations.

(E) SECRETARY.—The term ''Secretary'' means the Secretary of Energy.

(2) GRANTS.—The Secretary shall make grants under this subsection to eligible facilities (as determined by the Secretary) to pay the Federal share of—

(A) installing blender pump fuel infrastructure, including infrastructure necessary for the direct retail sale of ethanol fuel blends (including E–85 fuel), including blender pumps and storage tanks; and

(B) providing subgrants to direct retailers of ethanol fuel blends (including E–85 fuel) for the purpose of installing fuel infrastructure for the direct retail sale of ethanol fuel blends (including E–85 fuel), including blender pumps and storage tanks.

(3) LIMITATION.—A major fuel distributor shall not be eligible for a grant or subgrant under this subsection.

(4) FEDERAL SHARE.—The Federal share of the cost of a project carried out under this subsection shall be up to 50 percent of the total cost of the project.

(5) REVERSION.—If an eligible facility or retailer that receives a grant or subgrant under this subsection does not offer ethanol fuel blends for sale for at least 2 years during the 4-year period beginning on the date of installation of the blender pump, the eligible facility or retailer shall be required to repay to the Secretary an amount determined to be appropriate by the Secretary, but not more than the amount of the grant provided to the eligible facility or retailer under this subsection.

(6) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary to carry out this subsection, to remain available until expended—

(A) $50,000,000 for fiscal year 2012;

(B) $100,000,000 for fiscal year 2013;

(C) $200,000,000 for fiscal year 2014;

(D) $300,000,000 for fiscal year 2015; and

(E) $350,000,000 for fiscal year 2016.

(b) INSTALLATION OF BLENDER PUMPS BY MAJOR FUEL DISTRIBUTORS AT OWNED STATIONS AND BRANDED STATIONS.—Section 211(o) of the Clean Air Act (42 U.S.C. 7545(o)) is amended by adding at the end the following:

''(13) INSTALLATION OF BLENDER PUMPS BY MAJOR FUEL DISTRIBUTORS AT OWNED STATIONS AND BRANDED STATIONS.—

''(A) DEFINITIONS.—In this paragraph:

''(i) E–85 FUEL.—The term 'E–85 fuel' means a blend of gasoline approximately 85 percent of the content of which is ethanol.

''(ii) ETHANOL FUEL BLEND.—The term 'ethanol fuel blend' means a blend of gasoline and ethanol, with a minimum of 0 percent and maximum of 85 percent of the content of which is denatured ethanol.

''(iii) MAJOR FUEL DISTRIBUTOR.—

''(I) IN GENERAL.—The term 'major fuel distributor' means any person that owns a refinery or directly markets the output of a refinery.

''(II) EXCLUSION.—The term 'major fuel distributor' does not include any person that directly markets through less than 50 retail fueling stations.

''(iv) SECRETARY.—The term 'Secretary' means the Secretary of Energy, acting in consultation with the Administrator of the Environmental Protection Agency and the Secretary of Agriculture.

''(B) REGULATIONS.—The Secretary shall promulgate regulations to ensure that each major fuel distributor that sells or introduces gasoline into commerce in the United States through majority-owned stations or branded stations installs or otherwise makes available 1 or more blender pumps that dispense E–85 fuel and ethanol fuel blends (including any other equipment necessary, such as tanks, to ensure that the pumps function properly) for a period of not less than 5 years at not less than the applicable percentage of the majority-owned stations and the branded stations of the major fuel distributor specified in subparagraph (C).

''(C) APPLICABLE PERCENTAGE.—For the purpose of subparagraph (B), the applicable percentage of the majority-owned stations and the branded stations shall be determined in accordance with the following table:

''Applicable percentage of majority-owned stations and branded stations Calendar year:	**Percent:**
2014	10
2016	20
2018	35
2020 and each calendar year thereafter	50.

''(D) GEOGRAPHIC DISTRIBUTION.—

''(i) IN GENERAL.—Subject to clause (ii), in promulgating regulations under subparagraph (B), the Secretary shall ensure that each major fuel distributor described in that subparagraph installs or otherwise makes available 1 or more blender pumps that dispense E–85 fuel and ethanol fuel blends at not less than a minimum percentage (specified in the regulations) of the majority-owned stations and the branded stations of the major fuel distributors in each State.

''(ii) REQUIREMENT.—In specifying the minimum percentage under clause (i), the Secretary shall ensure that each major fuel distributor installs or otherwise makes available 1 or more blender pumps described in that clause in each State in which the major fuel distributor operates.

''(E) FINANCIAL RESPONSIBILITY.—In promulgating regulations under subparagraph (B), the Secretary shall ensure that each major fuel distributor described in that subparagraph assumes full financial responsibility for the costs of installing or otherwise making available the blender pumps described in that subparagraph and any other equipment necessary (including tanks) to ensure that the pumps function properly.

''(F) PRODUCTION CREDITS FOR EXCEEDING BLENDER PUMPS INSTALLATION REQUIREMENT.—

''(i) EARNING AND PERIOD FOR APPLYING CREDITS.—If the percentage of the majority-owned stations and the branded stations of a major fuel distributor at which the major fuel distributor installs blender pumps in a particular calendar year exceeds the percentage required under subparagraph (C), the major fuel distributor shall earn credits under this paragraph, which may be applied to any of the 3 consecutive calendar years immediately after the calendar year for which the credits are earned.

''(ii) TRADING CREDITS.—Subject to clause (iii), a major fuel distributor that has earned credits under clause (i) may sell the credits to another major fuel distributor to enable the purchaser to meet the requirement under subparagraph (C).

''(iii) EXCEPTION.—A major fuel distributor may not use credits purchased under clause (ii) to fulfill the geographic distribution requirement in subparagraph (D).''.

SEC. 4. LOAN GUARANTEES FOR PROJECTS TO CONSTRUCT RENEWABLE FUEL PIPELINES.

(a) DEFINITIONS.—Section 1701 of the Energy Policy Act of 2005 (42 U.S.C. 16511) is amended by adding at the end the following:

''(6) RENEWABLE FUEL.—The term 'renewable fuel' has the meaning given the term in section 211(o)(1) of the Clean Air Act (42 U.S.C. 7545(o)(1)), except that the term includes all types of ethanol and biodiesel.

''(7) RENEWABLE FUEL PIPELINE.—The term 'renewable fuel pipeline' means a pipeline for transporting renewable fuel.''.

(b) AMOUNT.—Section 1702(c) of the Energy Policy Act of 2005 (42 U.S.C. 16512(c)) is amended—

(1) by striking ''(c) AMOUNT.—Unless'' and inserting the following:

''(c) AMOUNT.—

''(1) IN GENERAL.—Unless''; and

(2) by adding at the end the following:

''(2) RENEWABLE FUEL PIPELINES.—A guarantee for a project described in section 1703(b)(11) shall be in an amount equal to 80 percent of the project cost of the facility that is the subject of the guarantee, as estimated at the time at which the guarantee is issued.''.

(c) RENEWABLE FUEL PIPELINE ELIGIBILITY.—Section 1703(b) of the Energy Policy Act of 2005 (42 U.S.C. 16513(b)) is amended by adding at the end the following:

''(11) Renewable fuel pipelines.''.

(d) RAPID DEPLOYMENT OF RENEWABLE FUEL PIPELINES.—Section 1705 of the Energy Policy Act of 2005 (42 U.S.C. 16516) is amended—

(1) in subsection (a)—

(A) in the matter preceding paragraph (1), by inserting '', or, in the case of projects described in paragraph (4), September 30, 2012'' before the colon at the end; and

(B) by adding at the end the following:

''(4) Installation of sufficient infrastructure to allow for the cost-effective deployment of clean energy technologies appropriate to each region of the United States, including the deployment of renewable fuel pipelines through loan guarantees in an amount equal to 80 percent of the cost.''; and

(2) in subsection (e), by inserting '', or, in the case of projects described in subsection (a)(4), September 30, 2012'' before the period at the end.

(e) REGULATIONS.—Not later than 90 days after the date of enactment of this Act, the Secretary of Energy shall promulgate such regulations as are necessary to carry out the amendments made by this section.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 14—HONORING THE VICTIMS AND HEROES OF THE SHOOTING ON JANUARY 8, 2011 IN TUCSON, ARIZONA

Mr. MCCAIN (for himself, Mr. KYL, Mr. REID of Nevada, Mr. MCCONNELL, Mr. AKAKA, Mr. ALEXANDER, Ms. AYOTTE, Mr. BARRASSO, Mr. BAUCUS, Mr. BEGICH, Mr. BENNET, Mr. BINGAMAN, Mr. BLUMENTHAL, Mr. BLUNT, Mr. BOOZMAN, Mrs. BOXER, Mr. BROWN of Massachusetts, Mr. BROWN of Ohio, Mr. BURR, Ms. CANTWELL, Mr. CARDIN, Mr. CARPER, Mr. CASEY, Mr. CHAMBLISS, Mr. COATS, Mr. COBURN, Mr. COCHRAN, Ms. COLLINS, Mr. CONRAD, Mr. COONS, Mr. CORKER, Mr. CORNYN, Mr. CRAPO, Mr. DEMINT, Mr. DURBIN, Mr. ENSIGN, Mr. ENZI, Mrs. FEINSTEIN, Mr. FRANKEN, Mrs. GILLIBRAND, Mr. GRAHAM, Mr. GRASSLEY, Mrs. HAGAN, Mr. HARKIN, Mr. HATCH, Mr. HOEVEN, Mrs. HUTCHISON, Mr. INHOFE, Mr. INOUYE, Mr. ISAKSON, Mr. JOHANNS, Mr. JOHNSON of Wisconsin, Mr. JOHNSON of South Dakota, Mr. KERRY, Mr. KIRK, Ms. KLOBUCHAR, Mr. KOHL, Ms. LANDRIEU, Mr. LAUTENBERG, Mr. LEAHY, Mr. LEE, Mr. LEVIN, Mr. LIEBERMAN, Mr. LUGAR, Mr. MANCHIN, Mrs. MCCASKILL, Mr. MENENDEZ, Mr. MERKLEY, Ms. MIKULSKI, Mr. MORAN, Ms. MURKOWSKI, Mrs. MURRAY, Mr. NELSON of Nebraska, Mr. NELSON of Florida, Mr. PAUL, Mr. PORTMAN, Mr. PRYOR, Mr. REED of Rhode Island, Mr. RISCH, Mr. ROBERTS, Mr. ROCKEFELLER, Mr. RUBIO, Mr. SANDERS, Mr. SCHUMER, Mr. SESSIONS, Mrs. SHAHEEN, Mr. SHELBY, Ms. SNOWE, Ms. STABENOW, Mr. TESTER, Mr. THUNE, Mr. TOOMEY, Mr. UDALL of Colorado, Mr. UDALL of New Mexico, Mr. VITTER, Mr. WARNER, Mr. WEBB, Mr. WHITEHOUSE, Mr. WICKER, and Mr. WYDEN) submitted the following resolution; which was ordered held at the desk:

S. RES. 14

Whereas on January 8, 2011, a gunman opened fire at a ''Congress on your Corner'' event hosted by Representative Gabrielle Giffords in Tucson, Arizona, killing 6 and wounding 13 others;

Whereas Christina-Taylor Green, Dorothy Morris, John Roll, Phyllis Schneck, Dorwan Stoddard, and Gabriel Matthew Zimmerman lost their lives in this attack;

Whereas Christina-Taylor Green, the 9-year-old daughter of John and Roxanna Green, was born on September 11, 2001, and was a third grader with an avid interest in government who was recently elected to the student council at Mesa Verde Elementary School;

Whereas Dorothy Morris, who was 76 years old, attended the January 8 event with George, her husband of over 50 years with whom she had 2 daughters, and who was also critically injured as he tried to shield her from the shooting;

Whereas John Roll, a Pennsylvania native who was 63 years old, began his professional career as a bailiff in 1972, was appointed to the Federal bench in 1991, and became chief judge for the District of Arizona in 2006, was a devoted husband to his wife Maureen, father to his 3 sons, and grandfather to his 5 grandchildren, and heroically attempted to shield Ron Barber from additional gunfire;

Whereas Phyllis Schneck, a proud mother of 3, grandmother of 7, and great-grandmother from New Jersey, was spending the winter in Arizona, and was a 79-year-old church volunteer and New York Giants fan;

Whereas Dorwan Stoddard, a 76-year-old retired construction worker and volunteer at the Mountain Avenue Church of Christ, is credited with shielding his wife Mavy, a longtime friend whom he married while they were in their 60s, who was also injured in the shooting;

Whereas Gabriel Matthew Zimmerman, who was 30 years old and engaged to be married, served as Director of Community Outreach to Representative Gabrielle Giffords, and was a social worker before serving with Representative Giffords;

Whereas Representative Gabrielle Giffords was a target of this attack, and was critically injured;

Whereas 13 others were also wounded in the shooting, including Ron Barber and Pamela Simon, both staffers to Representative Giffords; and

Whereas several individuals, including Patricia Maisch, Army Col. Bill Badger (Retired), who was also wounded in the shooting, Roger Salzgeber, Joseph Zamudio, Daniel Hernandez, Jr., Anna Ballis, and Dr. Steven Rayle helped apprehend the gunman and assist the injured, thereby risking their lives for the safety of others, and should be commended for their bravery: Now, therefore, be it

Resolved, That the Senate—

(1) condemns in the strongest possible terms the horrific attack which occurred at the ''Congress on your Corner'' event hosted by Representative Gabrielle Giffords in Tucson, Arizona, on January 8, 2011;

(2) offers its heartfelt condolences to the families, friends, and loved ones of those who were killed in that attack;

(3) expresses its hope for the rapid and complete recovery of those wounded in the shooting;

(4) honors the memory of Christina-Taylor Green, Dorothy Morris, John Roll, Phyllis Schneck, Dorwan Stoddard, and Gabriel Matthew Zimmerman;

(5) applauds the bravery and quick thinking exhibited by those individuals who prevented the gunman from potentially taking more lives and helped to save those who had been wounded;

(6) recognizes the service of the first responders who raced to the scene and the health care professionals who tended to the victims once they reached the hospital, whose service and skill saved lives;

(7) reaffirms the bedrock principle of American democracy and representative government, which is memorialized in the First Amendment of the Constitution and which Representative Gabrielle Giffords herself read in the Hall of the House of Representatives on January 6, 2011, of ''the right of the people peaceably to assemble, and to petition the Government for a redress of grievances'';

(8) stands firm in its belief in a democracy in which all can participate and in which intimidation and threats of violence cannot silence the voices of any American;

(9) honors the service and leadership of Representative Gabrielle Giffords, a distinguished member of the House of Representatives, as she courageously fights to recover; and

(10) when adjourning today, shall do so out of respect to the victims of this attack.

SENATE RESOLUTION 15—DESIGNATING THE WEEK OF AUGUST 1 THROUGH AUGUST 7, 2011, AS ''NATIONAL CONVENIENT CARE CLINIC WEEK'', AND SUPPORTING THE GOALS AND IDEALS OF RAISING AWARENESS OF THE NEED FOR ACCESSIBLE AND COST-EFFECTIVE HEALTH CARE OPTIONS TO COMPLEMENT THE TRADITIONAL HEALTH CARE MODEL

Mr. INOUYE (for himself and Mr. COCHRAN) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 15

Whereas convenient care clinics are health care facilities located in high-traffic retail outlets that provide affordable and accessible care to patients who might otherwise be delayed or unable to schedule an appointment with a traditional primary care provider;

Whereas millions of people in the United States do not have a primary care provider, and there is a worsening primary care shortage that will prevent many people from obtaining one in the future;

Whereas convenient care clinics have provided an accessible alternative for more than 15,000,000 people in the United States since the first clinic opened in 2000, continue to expand rapidly, and as of June 2010, consist of approximately 1,100 clinics in 35 States;

Whereas convenient care clinics follow rigid industry-wide quality of care and safety standards;

Whereas convenient care clinics are staffed by highly qualified health care providers, including advanced practice nurses, physician assistants, and physicians;

Whereas convenient care clinicians all have advanced education in providing quality health care for common episodic ailments including cold and flu, skin irritation, and muscle strains or sprains, and can also provide immunizations, physicals, and preventive health screening;

Whereas convenient care clinics are proven to be a cost-effective alternative to similar treatment obtained in physician offices, urgent care, or emergency departments; and

Whereas convenient care clinics complement traditional medical service providers by providing extended weekday and weekend hours without the need for an appointment, short wait times, and visits that generally last only 15 to 20 minutes: Now, therefore, be it

Resolved, That the Senate—

(1) designates the week of August 1 through August 7, 2011, as ''National Convenient Care Clinic Week'';

(2) supports the goals and ideals of National Convenient Care Clinic Week to raise awareness of the need for accessible and