shall not apply to any gray wolf (Canis lupus).

S. 253

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

S. 258

At the request of Mr. MENENDEZ, the name of the Senator from New York (Mr. SCHUMER) was added as a cosponsor of S. 258, a bill to amend the Internal Revenue Code of 1986 to eliminate oil and gas company preferences.

S. 262

At the request of Mr. BROWN of Massachusetts, the name of the Senator from Pennsylvania (Mr. TOOMEY) was added as a cosponsor of S. 262, a bill to repeal the excise tax on medical device manufacturers.

S. 306

At the request of Mr. WEBB, the name of the Senator from Maryland (Mr. CARDIN) was added as a cosponsor of S. 306, a bill to establish the National Criminal Justice Commission.

S. 316

At the request of Mr. CORNYN, the name of the Senator from Connecticut (Mr. LIEBERMAN) was added as a cosponsor of S. 316, a bill to ensure that the victims and victims' families of the November 5, 2009, attack at Fort Hood, Texas, receive the same treatment, benefits, and honors as those Americans who have been killed or wounded in a combat zone overseas and their families.

S. 328

At the request of Mr. BROWN of Ohio, the name of the Senator from New York (Mr. SCHUMER) was added as a cosponsor of S. 328, a bill to amend title VII of the Tariff Act of 1930 to clarify that countervailing duties may be imposed to address subsidies relating to fundamentally undervalued currency of any foreign country.

S. RES. 20

At the request of Mr. JOHANNS, the name of the Senator from North Dakota (Mr. HOEVEN) was added as a cosponsor of S. Res. 20, a resolution expressing the sense of the Senate that the United States should immediately approve the United States-Korea Free Trade Agreement, the United States-Colombia Trade Promotion Agreement, and the United States-Panama Trade Promotion Agreement.

AMENDMENT NO. 33

At the request of Mr. COCHRAN, the names of the Senator from Montana (Mr. BAUCUS) and the Senator from Montana (Mr. TESTER) were added as cosponsors of amendment No. 33 intended to be proposed to S. 223, a bill to modernize the air traffic control system, improve the safety, reliability, and availability of transportation by air in the United States, provide modernization of the air traffic control system, reauthorize the Federal Aviation Administration, and for other purposes.

AMENDMENT NO. 58

At the request of Mr. NELSON of Nebraska, the name of the Senator from Florida (Mr. NELSON) was added as a cosponsor of amendment No. 58 proposed to S. 223, a bill to modernize the air traffic control system, improve the safety, reliability, and availability of transportation by air in the United States, provide modernization of the air traffic control system, reauthorize the Federal Aviation Administration, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. LEAHY (for himself, Mrs. FEINSTEIN, Mr. MENENDEZ, Mr. SANDERS, Mr. REED, Mr. WHITEHOUSE, and Mr. FRANKEN):

S. 350. A bill to require restitution for victims of criminal violations of the Federal Water Pollution Control Act, and for other purposes; to the Committee on the Judiciary.

Mr. LEAHY. Mr. President, today, I reintroduce the Environmental Crimes Enforcement Act, ECEA, to help ensure that those who destroy the lives and livelihoods of Americans through environmental crime are held accountable for their actions. This common sense legislation was reported by the Judiciary Committee with overwhelming support last year. I hope the Senate will act on it in this Congress.

The tragic explosion of British Petroleum's Deepwater Horizon Oil Rig last year is just one example of why this legislation is needed. Eleven men died in that explosion, and oil flowed into the Gulf of Mexico for months, with deadly contaminants washing up on the shores and wetlands of the Gulf Coast. The catastrophe threatened the livelihood of many thousands of people throughout the Gulf region, as well as precious natural resources and habitats. The people responsible for this and other catastrophes should be held accountable, and wrongdoers—not taxpayers—should pay for the damage they have done. This bill will help to deter environmental crime, protect and compensate victims of environmental crime, and encourage accountability among corporate actors.

First, the ECEA is drafted to deter schemes by big oil and others that damage our environment and hurt hardworking Americans by increasing sentences for environmental crimes. All too often corporations treat fines and monetary penalties as a mere cost of doing business to be factored against profits. To deter criminal behavior by corporations, it is important to have laws that result in prison time. In that light, this bill directs the United States Sentencing Commission to amend the sentencing guidelines for environmental crimes to reflect the seriousness of these crimes.

Criminal penalties for Clean Water Act violations are not as severe as for other white-collar crimes, despite the widespread harm the crimes can cause. As last year's crisis in the Gulf of Mexico makes clear, Clean Water Act offenses can have serious consequences in people's lives and on their livelihoods. These consequences should be reflected in the sentences given to the criminals who commit them. This bill takes a reasonable approach, asking the Sentencing Commission to study the issue and raise sentencing guidelines appropriately, and it will have a real deterrent effect.

This bill also aims to help victims of environmental crime—the people who lose their livelihoods, their communities, and even their loved ones—reclaim their natural and economic resources. To do that, ECEA makes restitution mandatory for criminal Clean Water Act violations.

Currently, restitution in environmental crimes—even crimes that result in death—is discretionary, and only available under limited circumstances. Under this bill, those who commit Clean Water Act offenses would have to compensate the victims of those offenses for their losses. That restitution could help the people of the Gulf Coast rebuild their coastline and wetlands, their fisheries, and their livelihoods should criminal liability be found.

Importantly, this bill will allow the families of those killed to be compensated for criminal wrongdoing. The explosion on the Deepwater Horizon oil rig brought to light the arbitrary laws that prevent those killed in such tragedies from bringing civil lawsuits for compensation. This bill would ensure that, when a crime is committed, the criminal justice system can provide for restitution to victims, allowing the families of those killed to be given the means to carry on.

This bill takes two common sense steps—well-reasoned increases in sentences and mandatory restitution for environmental crime. These measures are tough but fair. They are important steps toward deterring criminal conduct that can cause environmental and economic disaster and toward helping those who have suffered so much from the wrongdoing of big oil and other large corporations. I hope all Senators will join me in supporting this bill and these important reforms.

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. 350

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 ''Environmental Crimes Enforcement Act of 2011''.

SEC. 2. ENVIRONMENTAL CRIMES.

(a) SENTENCING GUIDELINES.—

(1) DIRECTIVE.—Pursuant to its authority under section 994 of title 28, United States

Code, and in accordance with this subsection, the United States Sentencing Commission shall review and amend the Federal Sentencing Guidelines and policy statements applicable to persons convicted of offenses under the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), in order to reflect the intent of Congress that penalties for the offenses be increased in comparison to those provided on the date of enactment of this Act under the guidelines and policy statements, and appropriately account for the actual harm to the public and the environment from the offenses.

(2) REQUIREMENTS.—In amending the Federal Sentencing Guidelines and policy statements under paragraph (1), the United States Sentencing Commission shall—

(A) ensure that the guidelines and policy statements, including section 2Q1.2 of the Federal Sentencing Guidelines (and any successor thereto), reflect—

(i) the serious nature of the offenses described in paragraph (1);

(ii) the need for an effective deterrent and appropriate punishment to prevent the offenses; and

(iii) the effectiveness of incarceration in furthering the objectives described in clauses (i) and (ii);

(B) consider the extent to which the guidelines appropriately account for the actual harm to public and the environment resulting from the offenses;

(C) ensure reasonable consistency with other relevant directives and guidelines and Federal statutes;

(D) make any necessary conforming changes to guidelines; and

(E) ensure that the guidelines relating to offenses under the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) adequately meet the purposes of sentencing, as set forth in section 3553(a)(2) of title 18, United States Code.

(b) RESTITUTION.—Section 3663A(c)(1) of title 18, United States Code, is amended—

(1) in clause (ii), by striking ''or'' at the end;

(2) in clause (iii), by striking ''and'' at the end and inserting ''or''; and

(3) by adding at the end the following:

''(iv) an offense under section 309(c) of the Federal Water Pollution Control Act (33 U.S.C. 1319(c)); and''.

By Ms. MURKOWSKI (for herself and Mr. BEGICH):

S. 351. A bill to authorize the exploration, leasing, development, and production of oil and gas in and from the western portion of the Coastal Plain of the State of Alaska without surface occupancy, and for other purposes; to the Committee on Energy and Natural Resources.

Ms. MURKOWSKI. Mr. President, I rise today to introduce two separate bills, S. 351 and S. 352, to open a small portion of the Arctic coastal plain, in my home State of Alaska, to oil and gas development. I am introducing these bills because new production in northern Alaska is vital not only to my State's future, but also to our Nation's energy and economic security.

It has been known for more than 3 decades that the 1.5 million acres of the Arctic coastal plain that lie inside the Arctic National Wildlife Refuge present the best prospect in North America for a major oil and gas discovery. The U.S. Geological Survey continues to estimate that this part of the coastal plain—which represents just 3 percent of the coastal plain in all of northern Alaska—has a mean likelihood of containing 10.4 billion barrels of oil and 8.6 trillion cubic feet of natural gas, as well as a reasonable chance of economically producing 16 billion barrels of oil. Even the relatively recent major finds in North Dakota's Bakken field pale in comparison, as ANWR is likely to hold over four times more oil than any other on-shore energy deposit in North America.

In the 1990s, opponents dismissed ANWR's potential and argued that the nearby National Petroleum Reserve-Alaska was forecast to contain almost as much oil. Just last fall, however, the U.S. Geological Survey significantly reduced its oil estimates in the 23-million-acre reserve. Instead of containing somewhere between the 6.7 to 15 billion barrels forecast in 2002, the USGS now forecasts a mean of 896 million barrels—a dramatic downward revision.

I still believe oil production must be allowed to proceed in NPRA and that development of satellite fields west of Nusqiut must be allowed to occur, since I suspect its forecast is now too conservative. My office is working to hold this Administration to its word on NPRA by allowing leaseholders to access the CD5 development which the EPA and Corps of Engineers has now stalled. But the reduced forecast for northwest Alaska also means that opening a small area due east, along the coastal plain, is now more vital than ever for America's economic and national security interests.

America today receives over 10 percent of its daily domestic oil production from fields in Arctic Alaska. You heard correctly, production already occurs in Arctic Alaska, and for more than 30 years, we have successfully balanced resource development with environmental protection. Alaskans have proven, over and over again, that those endeavors are not mutually exclusive.

Today, however, we face a tipping point. Alaska's North Slope production has declined for years and, with new development blocked at every turn, it is now forecast to decline to levels that are threatening the continued operation of the Trans-Alaska Pipeline System. A closure of TAPS would shut down all northern Alaska oil production. This would devastate Alaska's economy, drag global oil prices even higher, and deepen our energy dependence on unstable petrostates throughout the world.

Anyone who takes the long view on energy policy recognizes that no matter what energy policy our Nation pursues, we will use substantial amounts of oil well into the future. The more of that oil we produce here, at home, the better off our economy, our trade deficit, our employment levels, and the world's environment will be. Even the President's handpicked oil spill commission advocates that the U.S. take the lead on environmental and safety standards for oil development in areas like the Arctic and Gulf of Mexico, but we cannot honestly expect to take a leadership role if we are viewed as foolishly leaving our resources in the ground. We are still more than 50 percent dependent on foreign nations for our supply of oil, and no combination of alternative technologies and conservation can appreciably diminish that number in the near future.

The Energy Information Administration, in its recent preliminary 2011 Energy Forecast, predicts that U.S. crude production may increase by roughly 10 percent by 2019 because of enhanced oil recovery, increased shale oil production, and higher oil prices, which make marginal production more attractive. That will hardly be enough to break our import dependence, but even more alarming is the forecast that U.S. domestic production will decline less than a decade from now unless these new areas are opened for development. To help meet future demand both here in America and throughout the rest of the world—and to help avoid a tremendous price spike in the event of a supply disruption—we need to take steps today to ensure new production is brought online as soon as possible.

In fact, we already face a supply disruption—a shortage of our own making. Not one permit for deepwater exploration has been granted since the Deepwater Horizon disaster last April, even though the moratorium was officially ended in October. Depending on how long this de facto moratorium lasts, our Nation could ultimately be deprived of millions of barrels of oil each day. Make no mistake: we are facing a serious downturn in offshore oil production from the Outer Continental Shelf, and that has made production in ANWR even more important for consumers.

ANWR development will also provide huge benefits for the U.S. Treasury. Let us examine this with some simple math. ANWR's mean estimate of over 10 billion barrels, at approximately $100 per barrel, means that there is a trillion dollars worth of oil locked up beneath this small area in northern Alaska. That is a trillion taxable dollars and it is difficult to calculate or even fathom the corporate and payroll taxes that this would generate for our treasury. But we do know that there is hundreds of billions of dollars in pure federal royalties since my bill devotes 50 percent of the value to a Federal share, rather than the 10 percent which current law allows. This is because deficit reduction has to be a priority.

As our Nation grapples with a $1 trillion budget deficit, $14 trillion in national debt, and a lack of capital to incentivize renewable and alternative energy, it is folly for America to further delay new onshore oil development from Alaska. Production in ANWR will lower our unsustainable debt; improve our national security; reduce our trade deficit; create well-paying American jobs; and provide a long-lasting source of funds that can help us

develop the next generation of energy technologies. The question is no longer, ''should we drill in ANWR?'' Today, it has become, ''can we afford not to?''

I understand that no matter what happens, some will remain opposed to development in this region. There are Senators who wish to not only prohibit oil and gas development onshore in the coastal plain—who wish to forever lock the area up into formal wilderness—but who also wish to impede oil and even natural gas development from vast portions of NPRA and from the offshore waters of the Beaufort and Chukchi Seas. This mindset ignores Alaska's economic realities, it ignores the nation's looming energy challenges, and it ignores the fact that Arctic oil production can proceed without significant environmental harm. Our development has coexisted productively with polar bears, and will not harm the Porcupine caribou herd or any other form of wildlife on the Arctic coast. The groups who oppose my legislation seem totally oblivious to strides made in directional, extended reach drilling, three- and four-D seismic testing, and new pipeline leak detection technology, all of which permit Alaskan energy development to proceed safely without harm to wildlife or the environment.

Yes, this Nation needs to improve its inspection and regulation of the oil and gas industry to make sure that America's high environmental standards are followed on every well, every day. I offer a means to advance that. Because without domestic oil and gas production, America will import more oil and gas from troubled global regions. In exchange we will export our jobs and economic future, as well as simply exporting environmental risk and ultimately damage, since foreign oil and gas development regularly fails to meet the standards that American operators are held to and held accountable for.

For all these reasons, I am reintroducing legislation to open the coastal plain of ANWR to full development. At the same time, I am focusing and narrowing and limiting that development so that just 2,000 acres of the 1.5 million acre coastal plain can be physically disturbed by roads, pipelines, wells, buildings or other support facilities. At most, just one-tenth of one percent of the refuge's coastal plain would be physically disturbed. For comparison's sake, 2,000 acres is much smaller than our local Dulles Airport—compared to an area roughly three times the size of the State of Maryland. It is hardly a blip on the map.

Limiting development to such a small area is important, however. It will help guarantee—beyond any shadow of doubt—the preservation in a natural state of more than sufficient habitat for caribou, muskoxen, polar bear, and Arctic bird life. My legislation also includes stringent environmental standards that will allow the designation of specific areas for full protection.

The full opening bill, named the American Energy Independence and Security Act, AEIS, also includes guaranteed funding to mitigate any impacts in the region, and guarantees that the federal government will receive half of all revenues generated, with nearly half going for the first time in the history of ANWR legislation to directly reduce the Federal deficit. The bill allots other money to fund renewable and alternative energy development, wildlife programs and fishery habitat programs, energy conservation efforts, and money to subsidize the rising cost of energy for lower-income residents through funding of the Low Income Home Energy Assistance Program, also called LIHEAP. Think about this—by producing more of our own oil, we can conserve more of our most spectacular lands, improve the standard of living for thousands of Americans, and, in one fell swoop, reduce our overall dependence on oil by creating new, cleaner alternatives.

Despite these remarkable benefits, I understand that many of my colleagues will forever oppose all development in ANWR., That is why, in 2009, I worked with my fellow Senator from Alaska to introduce a new approach that would allow the coastal plain's resources to be accessed in an even more sensitive manner. Our legislation precludes any possibility of any disturbance to any creature on the coastal plain by requiring that all oil and gas in the refuge's coastal plain be siphoned from underneath the land, with no surface roads, wells, or pipelines to assist. Not a single structure would be erected on the surface of the refuge under our bill. There would be literally no chance of marring the beauty of the coastal plain—it would look and feel and be just as it is today both during and after full production.

Today, and again in the spirit of bipartisan compromise, I am reintroducing, with Senator BEGICH, that legislation. The title is self-explanatory—we call it the No Surface Occupancy Western Arctic Coastal Plain Domestic Energy Security Act—because it would allow oil and gas production only through extended reach directional drilling from outside of the refuge. The bill would also permit oil and gas to be tapped using subsurface technology that may someday allow for full development of the refuge with no sign of such activities visible to anyone or anything in the refuge.

While I was deeply disappointed that many in the environmental community did not embrace or even for a moment consider this proposal as a genuine attempt to end the quarter century fight over Alaskan energy development, I continue to believe that it is an acceptable, deeply sensitive way to pursue development in the Arctic. Given the new extended reach drilling technology being developed for use all over the world, including Alaska, it could be possible to start producing oil and gas from ANWR even faster under the subsurface bill than might be the case under the full leasing bill.

Admittedly, while current technology will only permit wells to reach 8 miles into refuge's boundary, that should still allow us to reach up to 1.2 billion barrels of oil and 7 trillion cubic feet of natural gas. As technology improves in the years ahead, so too will the volume of resources that we can safely recover.

My no-surface occupancy bill will require that 3- or 4–dimensional seismic and other tests be conducted by mobile units on ice pads when no wildlife will be in the area. But the bill prevents any disturbance that can even be seen by migrating caribou. There is precedent for this proposal. Congress in 2007 approved a Wyoming wilderness lands bill S. 2229, the Wyoming Range Legacy Act, which permits subsurface resource extraction, provided no surface occupancy occurs. There is also clear language in the original statute, the Alaska National Interest Lands Conservation Act, which calls for seismic studies of the coastal plain.

My ANWR subsurface legislation will guarantee that royalties from any oil and gas produced are split equally between the Federal and State treasuries, and provides for full environmental protections and project labor agreements for any development that results. The bill includes the same provisions for local adaptation aid as does my bill to fully open ANWR. Both guarantee that any Alaskan community impacted by development, especially residents of the North Slope Borough and the nearby Village of Kaktovik, will be fully protected.

My subsurface proposal offers a way for America to gain the oil and natural gas that will be crucial until a new era of renewable energy can power our lights and propel our vehicles. It also ensures that none of the Arctic Porcupine caribou herd that migrates across the coastal plain between June and August will ever see, hear, or feel oil development. Combined with the environmental safeguards the Secretary of the Interior is allowed to establish, there is no danger that any of the few species that overwinter on the coastal plain will ever be impacted by seismic or other activities. Out of an abundance of caution, my legislation further protects subsistence resources and activities for Alaska Natives.

I truly do not believe that limited surface coastal plain development will harm Alaska's environment or hurt its wildlife. But my subsurface bill offers us another way to develop ANWR—and even those who oppose surface development cannot honestly disagree with its approach. My subsurface bill would lower the odds of environmental harm from incredibly miniscule to zero. It would set a precedent for development that should be welcomed by the environmental community. And if it is not actively supported, it will be clear that some oppose ANWR solely on political and philosophical, rather than substantive, environmental grounds. Such

opposition would undermine the case against the full opening of the coastal plain for energy development, because it will show that the opposition to ANWR is based on the sands of old fears, ignoring new technology and ignoring reality.

For decades, Alaskans, whom polls show overwhelmingly support ANWR development, have been asking permission to explore and develop oil in the coastal plain. Finally, technology has advanced so that it is possible to develop oil and gas from the refuge with little or no impact on the area and its wildlife. We must seriously consider this option. Without this level of seriousness about our energy policy, there will be no chance for us to stabilize global energy markets and avoid paying extremely high prices for fuel in the future. Our lack of domestic production endangers our energy security and our strategic security, especially given that ANWR development could supply more than enough oil to fully meet our military oil needs on a daily basis.

Last year, shortly after the Deepwater Horizon oil spill, the President stated that ''part of the reason oil companies are drilling a mile beneath the surface of the ocean'' is ''because we're running out of places to drill on land and in shallow water.'' A better explanation, however, was offered by the columnist Charles Krauthammer, who said that ''We haven't run out of safer and more easily accessible sources of oil. We've been run off them . . .'' The truth is that we haven't run out of oil—onshore or offshore. We've simply tied our own hands by locking up our own lands.

At this time of high unemployment and unsustainable debt, we need to pursue development opportunities more than ever. My ANWR bills offer us a chance to produce more of our own energy, for the good of the American people, in an environmentally-friendly way. With oil hovering near $100 a barrel, with so many of our fellow citizens out of work, and with our Nation still more than 50 percent dependent on foreign oil—we would be foolish to once again ignore our most promising prospect for new development.

I hope this Congress will have the common sense to allow America to help itself by developing ANWR's substantial resources. This is critical to my state and the nation as a whole. And with this in mind, I will work to educate the members of this chamber about ANWR. I will show why such development should occur—why it must occur—and how it can benefit our Nation at a time when we so desperately need good economic news.

By Ms. COLLINS:

S. 353. A bill to provide for improvements to the United States Postal Service, and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

Ms. COLLINS. Mr. President, I rise today to introduce The U.S. Postal Service Improvements Act of 2011. This legislation would help the U.S. Postal Service regain its financial footing as it adapts to the era of increasingly digital communications.

The storied history of the Postal Service pre-dates our Constitution. In 1775, the Second Continental Congress appointed Benjamin Franklin as the first Postmaster General and directed the creation of ''a line of posts . . . from Falmouth in New England to Savannah in Georgia.'' The Constitution also gives Congress the power to establish post offices and post roads.

Today, the Postal Service is the linchpin of a $1 trillion mailing industry that employs approximately 7.5 million Americans in fields as diverse as direct mail, printing, catalog companies, paper manufacturing, and financial services.

Postal Service employees deliver mail six days a week to hundreds of millions of households and businesses. From our largest cities to our smallest towns, from the Hawaiian Islands to Alaskan reservations, the Postal Service is a vital part of our national communications network and an icon of American culture.

But the financial state of the Postal Service is abysmal. The numbers are grim: the Postal Service lost $8.5 billion in fiscal year 2010 and recently announced that it posted a net loss of $329 million in the first quarter of fiscal year 2011 alone. The ''Great Recession,'' high operating costs, and the continuing diversion of mail to electronic alternatives have undermined the Postal Service's ability to remain solvent.

Faced with this much red ink, the Postal Service must reinvent itself. It must increase revenues by increasing its value to its customers and by becoming more cost effective.

Unfortunately, many of the solutions the Postal Service has proposed would only aggravate its problems. Filing for enormous rate increases, pursuing significant service reductions—including elimination of Saturday mail delivery—and seeking relief from funding its huge liabilities are not viable long-term solutions to the challenges confronting the Postal Service. These changes will drive more customers to less expensive, digital alternatives. That downturn in customers will further erode mail volume and lead to a death spiral for the Postal Service.

The Postal Service must chart a new course in this digital age. It must adopt a more customer-focused culture. It must see the changing communications landscape as an opportunity.

The Postal Accountability and Enhancement Act of 2006, which I authored with Senator CARPER, provided the foundation for these long-term changes, but the Postal Service has been slow to take advantage of some of the flexibilities afforded by that law. And, to be fair, the Postal Service has encountered problems not of its making, such as a severe recession.

The legislation that I introduce today would help the Postal Service achieve financial stability and light the way to future cost savings without undermining customer service.

The legislation would help remedy an enormous overpayment by the Postal Service into retirement funds used by both Federal and postal employees alike. Based on an independent actuarial analysis, the Postal Regulatory Commission estimates the Postal Service has overpaid in excess of $50 billion into the Civil Service Retirement System, CSRS, and nearly $3 billion into the Federal Employees Retirement System pension fund. Another independent actuarial firm, commissioned by the Postal Service Inspector General, estimates that the overpayment into the CSRS pension fund is even greater, perhaps topping $75 billion. It is simply unfair—both to the Postal Service and its customers—not to refund these overpayments.

To address these inequities, the bill would allow the Postal Service access to the amounts that it has overpaid into these pension funds. It is essential that the Postal Service be permitted to use these funds to address other financial obligations, such as its payments for future retiree health benefits and unfunded workers' compensation liabilities and for repaying its existing debt.

I have pressed the Office of Personnel Management, OPM, to change its calculation method for Postal Service payments into the CSRS fund consistent with the 2006 Postal Reform law. OPM officials, however, have stubbornly refused to change this methodology or even to admit that the 2006 postal law permits them to do so. This has created a bureaucratic standoff that is unfair to the Postal Service. The OPM holds the life preserver—it could help rescue the Postal Service, but it simply refuses to throw it.

This legislation directs the OPM to exercise its existing authority under the 2006 postal reform law and to revise its methodology for calculating the Postal Service's obligations to the CSRS pension fund. Once OPM exercises this authority, my legislation would allow the Postal Service to use any resulting overpayments to cover its annual payments into the Retiree Health Benefits Fund, rather than having to wait until after September 30, 2015, to access the CSRS overpayment.

Additionally, the legislation would allow the Postal Service to access the nearly $3 billion it has overpaid into the Federal Employees Retirement System, FERS, pension fund. The legislation would grant OPM this authority by adopting language, similar to Section 802(c) of the 2006 postal reform law, that allows OPM to recalculate the methodology governing Postal Service payments into the FERS pension fund to determine a more accurate contribution.

As with the CSRS overpayment, the Postal Service would be permitted to use the FERS overpayment to meet its

statutory obligations to the Retiree Health Benefits Fund. These fund transfers would greatly improve the Postal Service's financial condition.

While I was pleased to see that the proposed budget the President released yesterday addresses the FERS overpayment, I was disappointed that it did not direct OPM to update its methodology to allow the Postal Service to access the significant CSRS overpayment. Moreover, I am concerned that the 30-year repayment period proposed by the President to refund any FERS overpayments is too long given the immediate financial needs of the Postal Service.

If the CSRS and FERS overpayment amounts are sufficient to fully fund the Postal Service's obligations to the Retiree Health Benefits Fund, this legislation would allow the Postal Service to pay its workers' compensation liabilities, which top $1 billion annually. The Postal Service may also choose to use these funds to pay down its existing debt, which currently is $12 billion.

Second, the legislation would improve the Postal Service's contracting practices and help prevent the kind of ethical violations recently uncovered by the Postal Service Inspector General.

Several months ago, I asked the Postal Service Inspector General to review the Postal Service's contracting policies. The IG found stunning evidence of costly contract mismanagement, ethical lapses, and financial waste.

In its review of the Postal Service's contracting policies, the IG discovered no-bid contracts and examples of apparent cronyism. The Postal Service's contract management did not protect against waste, fraud, and abuse. Indeed, it left the door wide open.

In fact, the Postal Service could not even identify how many contracts were awarded without competition. Of the no-bid contracts the IG reviewed, 35 percent lacked justification.

In one of the more egregious examples of waste and abuse, the IG discovered that more than 2,700 contracts had been awarded to former employees since 1991. At least 17 of those contracts were no-bid contracts given to career executives within one year of their separation from the Postal Service.

Some of these former executives were brought back at nearly twice their former pay to advise newly hired executives—an outrageous practice that the IG said raised serious ethical questions, hurt employee morale, and tarnished the Postal Service's public image. In one example, an executive received a $260,000 no-bid contract in July 2009, just two months after retiring. The purpose? To train his successor.

My legislation would help remedy many of the contracting issues the IG identified. Specifically, the bill would direct the Postmaster General to establish a Competition Advocate, responsible for reviewing and approving justifications for noncompetitive purchases and for tracking the level of competition.

Earlier this month, the Postmaster General recognized this as an essential position by naming a Competition Advocate. My bill would help clarify and codify the Competition Advocate's role to ensure that the position continues. Under my legislation, the Competition Advocate would also be required to submit an annual report on Postal Service contracting to the Postmaster General, the Board of Governors, the Postal Regulatory Commission, and the Congress.

To improve transparency and accountability, the bill also would require the Postal Service to publish justifications of noncompetitive contracts greater than $250,000 on its website. This transparency would improve the Postal Service's contracting practices and promote competition.

To resolve the ethical issues documented by the IG, the bill would limit procurement officials from contracting with personal or business associates for private gain. In a June 2010 report, the IG identified several contracts that a former top executive awarded non-competitively to former business associates, totaling nearly $6 million. These contracts included at least two business associates he hired to manage his personal finances and outside business interests. These sorts of inappropriate, unethical contracts are unacceptable, and this legislation would help prevent similar conflicts of interest in the future. In addition, the bill would require the Postal Service's ethics official to review any ethics concerns that the contracting office identifies prior to awarding a contract.

Third, the legislation includes several provisions that would enhance efficiency and reduce costs. While the Postal Service has made efforts to reduce costs over the past several years, more must be done.

One such area is in the consolidation of area and district offices. The IG found that the Postal Service's regional structure—which at the time of the report consisted of eight area offices and 74 district offices and cost approximately $1.5 billion to maintain in fiscal year 2009—has significant room for consolidation. The Postal Service recently announced the closure of one area office, but it needs to conduct a more comprehensive review. My bill would require the Postal Service to create a strategic plan to guide consolidation efforts—a road map for future savings.

The bill also would require the Postal Service to develop a plan to increase its presence in retail facilities, or co-locate, to better serve customers. Before co-location decisions could be made, however, the bill would direct the Postal Service to weigh the impact of any decision on small communities and rural areas. Moreover, the Postal Service would be required to solicit community input before making decisions about co-location and to ensure that co-location does not diminish the quality of service.

Fourth, the bill would require the arbitrator to consider the Postal Service's financial condition when rendering decisions about collective bargaining agreements. This logical provision would allow critical financial information to be weighed as a factor in contract negotiations.

Fifth, the bill would require the Postal Service to provide notice of any significant proposed changes to mailing rules, solicit and respond to comments about the proposed changes, and analyze their potential financial impacts. Mandating that the Postal Service adhere to these notice-and-comment requirements would help ensure that the Postal Service has fully considered the effect that significant changes might have on customers and on the Postal Service's bottom-line.

Sixth, the bill would reduce workforce-related costs government-wide by converting retirement eligible postal and Federal employees on workers' compensation to retirement when they reach age 65, 5 years beyond the average retirement age for postal and Federal employees. This is a commonsense change that would significantly reduce expenses that both the Postal Service and the Federal Government cannot afford.

From July 1, 2009, to June 30, 2010, the Department of Labor paid approximately $2.78 billion to employees on workers' compensation. These workers' compensation benefits serve as a crucial safety net for Federal and postal employees who are injured on the job so they can recuperate and return to work.

But, the Department of Labor indicates that postal and Federal employees across the government are receiving workers' compensation benefits into their 80s, 90s, and even 100s. Because of its benefits structure, the workers' compensation program has morphed into a higher-paying alternative to Federal and postal retirement.

The Postal Service stands out as an unfortunate example of how Federal workers' comp is misused as a retirement system. From July 1, 2009, to June 30, 2010, postal employees accounted for nearly half of all workers' comp benefit payments—about $1.1 billion for 15,470 recipients. Of that number 2,051 were aged 70 or older; 927 were 80 or older; and 132 were 90 or older. Amazingly, three of these postal employees were 98 years old.

I must ask the obvious question: Is there any likelihood that these recipients will ever return to work? No.

Then why aren't they transitioning to the retirement system when they reach retirement age?

This bill reforms the law by converting postal and Federal employees on workers' compensation to the retirement system when they reach age

65. This is a commonsense change that would save millions of dollars that the Postal Service, the Federal Government, and American taxpayers cannot afford to spend.

The Postal Service is at a crossroads; it must choose the correct path. It must take steps toward a bright future. It must reject the path of severe service reductions and huge rate hikes, which will only alienate customers.

I have already received letters of support for my bill from various organizations, including the Alliance of Nonprofit Mailers, Greeting Card Association, Magazine Publishers Association, American Catalog Mailers Association, National Newspaper Association, PostCom, National Postal Policy Council, Coalition for a 21st Century Postal Service, and the National League of Postmasters. I expect to receive more as postal stakeholders learn more about how my bill would help the Postal Service transform its operations.

The Postal Service must re-invent itself. It must embrace changes to revitalize its business model, enabling it to attract and keep customers. The U.S. Postal Service Improvements Act of 2011 will help spark new life into this institution, helping it evolve and maintain its vital role in American society.

By Mr. CARDIN:

S. 354. A bill to amend the Classified Information Procedures Act to improve the protection of classified information and for other puroses; to the Committee on the Judiciary.

Mr. CARDIN. Mr. President, the Classified Information Procedures Act, CIPA, was enacted in 1980 with bipartisan support to address the ''disclose or dismiss'' dilemma that arose in espionage prosecutions when a defendant would threaten the government with the disclosure of classified information if the government did not drop the prosecution. Previously, there were no Congressionally-mandated procedures that required district courts to make discovery and admissibility rulings regarding classified information in advance.

CIPA has worked reasonably well during the last 30 years, but some issues have arisen in a number of notable terrorism, espionage, and narcotics cases that demonstrate that reforms and improvements could be made to ensure that classified sources, methods and information can be protected, and to ensure that a defendant's due process and fair trial rights are not violated. In 2009, when the Congress enacted the Military Commissions Act, MCA, the Congress drew heavily from the manner in which the federal courts interpreted CIPA when it updated the procedures governing the use of classified information in military commission prosecutions. At that time, however, the Congress did not update CIPA. Indeed, since its enactment in 1980, there have been no changes to the key provisions of CIPA.

As the former Chairman of the Senate Judiciary's Terrorism and Homeland Security Subcommittee, I chaired a number of hearings during which witnesses testified about the capacity of our civilian courts to try alleged terrorists and spies. The first Subcommittee hearing that I chaired was on July 28, 2009, and was entitled ''Prosecuting Terrorists: Civilian and Military Trials for GTMO and Beyond.'' The second Terrorism and Homeland Security Subcommittee hearing that I chaired was on May 12, 2010, and was entitled ''The Espionage Statutes: A Look Back and A Look Forward.'' The testimony I have heard in regard to terrorism, espionage and our civilian courts, has convinced me that while our courts have the capacity and the procedures in place to try alleged terrorists and spies, reforms and improvements could be made to CIPA to codify and clarify the decisions of the federal courts.

As a result, today I am reintroducing the Classified Information Procedures Reform and Improvement Act, CIPRIA. CIPRIA contains reforms and improvements to ensure that the statute maintains the proper balance between the protection of classified sources, methods and information, and a defendant's constitutional rights. Among other things, this legislation, which includes the applicable changes that the Congress made when it enacted the Military Commissions Act of 2009, will: codify, clarify and unify federal case law interpreting CIPA; ensure that all classified information, not just documents, will be governed by CIPA; ensure that prosecutors and defense attorneys will be able to fully inform trial courts about classified information issues; and will clarify that the civil state secrets privilege does not apply in criminal cases. CIPRIA will also ensure high-level DOJ approval before the government invokes its classified information privilege in criminal cases and will ensure that the federal courts will order the disclosure and use of classified information when the disclosure and use meets the applicable legal standards. This legislation will also ensure timely appellate review of lower court CIPA decisions before the commencement of a trial, explicitly permit trial courts to adopt alternative procedures for the admission of classified information in accordance with a defendant's fair trial and due process rights, and make technical fixes to ensure consistent use of terms throughout the statute.

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. 354

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

SECTION 1. SHORT TITLE; DEFINITIONS.

(a) SHORT TITLE.—This Act may be cited as the ''Classified Information Procedures Reform and Improvement Act of 2011''.

(b) IN GENERAL.—Section 1 of the Classified Information Procedures Act (18 U.S.C. App.) is amended—

(1) by redesignating subsection (b) as subsection (c); and

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

''(b) 'Disclosure', as used in this Act, includes the release, transmittal, or making available of, or providing access to, classified information to any person (including a defendant or counsel for a defendant) during discovery, or to a participant or member of the public at any proceeding.''.

(c) TECHNICAL AND CONFORMING AMENDMENT.—Section 501(3) of the Immigration and Nationality Act (8 U.S.C. 1531(3)) is amended by striking ''section 1(b)'' and inserting ''section 1''.

SEC. 2. PRETRIAL CONFERENCE.

Section 2 of the Classified Information Procedures Act (18 U.S.C. App.) is amended—

(1) by inserting ''(a) IN GENERAL.—'' before ''At any time'';

(2) by adding at the end the following:

''(b) EX PARTE.—If the United States or the defendant certifies that the presence of both parties at a pretrial conference reasonably could be expected to cause damage to the national security of the United States or the defendant's ability to make a defense, then upon request by either party, the court shall hold such pretrial conference ex parte, and shall seal and preserve the record of that ex parte conference in the records of the court for use in the event of an appeal.''.

SEC. 3. PROTECTIVE ORDERS.

Section 3 of the Classified Information Procedures Act (18 U.S.C. App) is amended—

(1) by inserting ''(a) IN GENERAL.—'' before ''Upon motion'';

(2) by inserting ''use or'' before ''disclosure'';

(3) by inserting '', or access to,'' after ''disclosure of'';

(4) by inserting '', or any classified information derived therefrom, that will be'' after ''classified information'';

(5) by inserting ''or made available'' after ''disclosed''; and

(6) by adding at the end the following:

''(b) NOTICE.—In the event the defendant is convicted and files a notice of appeal, the United States shall provide the defendant and the appellate court with a written notice setting forth each date that the United States obtained a protective order under this Act.''.

SEC. 4. DISCOVERY OF AND ACCESS TO CLASSIFIED INFORMATION BY DEFENDANTS.

Section 4 of the Classified Information Procedures Act (18 U.S.C. App.) is amended—

(1) in the section heading, by inserting ''AND ACCESS TO'' after ''DISCOVERY OF'';

(2) by inserting ''(a) IN GENERAL.—'' before ''The court, upon'';

(3) in the first sentence—

(A) by inserting ''to restrict the defendant's access to or'' before ''to delete'';

(B) by striking ''from documents'';

(C) by striking ''classified documents, or'' and inserting ''classified information,''; and

(D) by striking the period at the end and inserting '', or to provide other relief to the United States.'';

(4) in the second sentence, by striking ''alone.'' inserting ''alone, and may permit ex parte proceedings with the United States to discuss that request.'';

(5) in the third sentence—

(A) by striking ''If the court enters an order granting relief following such an ex parte showing, the'' and inserting ''The''; and

(B) by inserting '', and the transcript of any argument and any summary of the classified information the defendant seeks to obtain discovery of or access to,'' after ''text of the statement of the United States''; and

(6) by adding at the end the following:

''(b) ACCESS TO OTHER CLASSIFIED INFORMATION.—If the defendant seeks access to nondocumentary information from a potential witness or other person through deposition under the Federal Rules of Criminal Procedure, or otherwise, which the defendant knows or reasonably believes is classified, the defendant shall notify the attorney for the United States and the court in writing. Such notice shall specify with particularity the nondocumentary information sought by the defendant and the legal basis for such access.

''(c) SHOWING BY THE UNITED STATES.—In any prosecution in which the United States seeks to restrict, delete, withhold, or otherwise obtain relief with respect to the defendant's discovery of or access to any specific classified information, the attorney for the United States shall file with the court a declaration made by the Attorney General invoking the United States classified information privilege, which shall be supported by a declaration made by a knowledgeable United States official possessing the authority to classify information that sets forth the identifiable damage to the national security that the discovery of, or access to, such information reasonably could be expected to cause.

''(d) STANDARD FOR DISCOVERY OF OR ACCESS TO CLASSIFIED INFORMATION.—Upon the submission of a declaration of the Attorney General under subsection (c), the court may not authorize the defendant's discovery of, or access to, classified information, or to the substitution submitted by the United States, which the United States seeks to restrict, delete, or withhold, or otherwise obtain relief with respect to, unless the court first determines that such classified information or such substitution would be—

''(1) noncumulative, relevant, and helpful to—

''(A) a legally cognizable defense;

''(B) rebuttal of the prosecution's case; or

''(C) sentencing; or

''(2) noncumulative and essential to a fair determination of a pretrial proceeding.

''(e) SECURITY CLEARANCE.—Whenever a court determines that the standard for discovery of or access to classified information by the defendant has been met under subsection (d), such discovery or access may only take place after the person to whom discovery or access will be granted has received the necessary security clearances to receive the classified information, and if the classified information has been designated as sensitive compartmented information or special access program information, any additional required authorizations to receive the classified information.''.

SEC. 5. NOTICE OF DEFENDANT'S INTENTION TO DISCLOSE CLASSIFIED INFORMATION.

Section 5 of the Classified Information Procedures Act (18 U.S.C. App.) is amended—

(1) in the section heading, by inserting ''USE OR'' before ''DISCLOSE'';

(2) in subsection (a)—

(A) in the first sentence—

(i) by inserting ''use or'' before ''disclose''; and

(ii) by striking ''thirty days prior to trial'' and inserting ''45 days prior to such proceeding'';

(B) in the second sentence by striking ''brief'' and inserting ''specific'';

(C) in the third sentence—

(i) by inserting ''use or'' before ''disclose''; and

(ii) by striking ''brief'' and inserting ''specific''; and

(D) in the fourth sentence—

(i) by inserting ''use or'' before ''disclose''; and

(ii) by inserting ''reasonably'' before ''believed''; and

(3) in subsection (b), by inserting ''the use or'' before ''disclosure''.

SEC. 6. PROCEDURE FOR CASES INVOLVING CLASSIFIED INFORMATION.

Section 6 of the Classified Information Procedures Act (18 U.S.C. App.) is amended—

(1) in subsection (a)—

(A) in the second sentence, by striking ''such a hearing.'' and inserting ''a hearing and shall make all such determinations prior to proceeding under any alternative procedure set out in subsection (d).''; and

(B) in the third sentence, by striking ''petition'' and inserting ''request'';

(2) in subsection (b)(2) by striking ''trial'' and inserting ''the trial or pretrial proceeding'';

(3) by redesignating subsections (c), (d), (e), and (f), as subsections (d), (e), (f), and (g), respectively;

(4) by inserting after subsection (b) the following:

''(c) STANDARD FOR ADMISSIBILITY, USE, AND DISCLOSURE AT TRIAL.—(1) Classified information which is the subject of a notice by the United States pursuant to subsection (b) is not admissible at trial and subject to the alternative procedures set out in subsection (d), unless a court first determines that such information is noncumulative and relevant to an element of the offense or a legally cognizable defense, and is otherwise admissible in evidence.

''(2) Nothing in this subsection may be construed to prohibit the exclusion from evidence of relevant, classified information in accordance with the Federal Rules of Evidence.'';

(5) in subsection (d), as so redesignated—

(A) in the subsection heading, by inserting ''USE OR'' before ''DISCLOSURE'';

(B) in paragraph (1), by inserting ''use or'' before ''disclosure'' both places that term appears;

(C) in the flush paragraph following paragraph (1)(B), by inserting ''use or'' before ''disclosure''; and

(D) in paragraph (2)—

(i) by striking ''an affidavit of'' and inserting ''a declaration by'';

(ii) by the striking ''such affidavit'' and inserting ''such declaration''; and

(iii) by inserting ''the use or'' before ''disclosure'';

(6) in subsection (e), as so redesignated, in the first sentence, by striking ''disclosed or elicited'' and inserting ''used or disclosed''; and

(7) in subsection (f), as so redesignated—

(A) in the subsection heading, by inserting ''USE OR'' before ''DISCLOSURE'' both places that term appears;

(B) in paragraph (1)—

(i) by striking ''(c)'' and inserting ''(d)'';

(ii) by striking ''an affidavit of'' and inserting ''a declaration by'';

(iii) by inserting ''the use or'' before ''disclosure''; and

(iv) by striking ''disclose'' and inserting ''use, disclose,''; and

(C) in paragraph (2), by striking ''disclosing'' and inserting ''using, disclosing,''; and

(8) in the first sentence of subsection (g), as so redesignated—

(A) by inserting ''used or'' before ''disclosed''; and

(B) by inserting ''or disclose'' before ''to rebut the''.

SEC. 7. INTERLOCUTORY APPEAL.

Section 7(a) of the Classified Information Procedures Act (18 U.S.C. App.) is amended—

(1) by striking ''disclosure of'' both times that places that term appears and inserting ''use, disclosure, discovery of, or access to''; and

(2) by adding at the end the following: ''The right of the United States to appeal pursuant to this Act applies without regard to whether the order or ruling appealed from was entered under this Act, another provision of law, a rule, or otherwise. Any such appeal may embrace any preceding order, ruling, or reasoning constituting the basis of the order or ruling that would authorize such use, disclosure, or access. Whenever practicable, appeals pursuant to this section shall be consolidated to expedite the proceedings.''.

SEC. 8. INTRODUCTION OF CLASSIFIED INFORMATION.

Section 8 of the Classified Information Procedures Act (18 U.S.C. App.) is amended—

(1) in subsection (b), by adding at the end ''The court may fashion alternative procedures in order to prevent such unnecessary disclosure, provided that such alternative procedures do not deprive the defendant of a fair trial or violate the defendant's due process rights.''; and

(2) by adding at the end the following:

''(d) ADMISSION OF EVIDENCE.—(1) No classified information offered by the United States and admitted into evidence shall be presented to the jury unless such evidence is provided to the defendant.

''(2) Any classified information admitted into evidence shall be sealed and preserved in the records of the court to be made available to the appellate court in the event of an appeal.''.

SEC. 9. APPLICATION TO PROCEEDINGS.

The amendments made by this Act shall take effect on the date of the enactment of this Act but shall not apply to any prosecution in which an indictment or information was filed prior to such date.

By Mr. CARDIN:

S. 355. A bill to improve, modernize, and clarify the espionage statutes contained in chapter 37 of title 18, United States Code, to promote Federal whistleblower protection statutes and regulations, to deter unauthorized disclosures of classified information, and for other purposes; to the Committee on the Judiciary.

Mr. CARDIN. Mr. President, the current framework concerning the espionage statutes was designed to address classic spy cases involving persons who intended to aid foreign governments and harm the United States. The current framework traces its roots to the Espionage Act of 1917, which made it a crime to disclose defense information during wartime. The basic idea behind the legislation, which was upheld by the U.S. Supreme Court as constitutional in 1919, was to stop citizens from spying or interfering with military actions during World War I. The current framework was formed at a time when intelligence and national security information existed primarily in some tangible form, such as blueprints, photographs, maps, and other documents.

Our nation, however, has witnessed dramatic changes to nearly every facet of our lives over the last 100 years, including technological advances which have revolutionized our information gathering abilities as well as the mediums utilized to communicate such information. Yet, the basic terms and structure of the espionage statutes have remained relatively unchanged

since their inception. Moreover, issues have arisen in the prosecution and defense of criminal cases when the statutes have been applied to persons who may be disclosing classified information for purposes other than to aid a foreign government or to harm the United States. In addition, the statutes contain some terms which are outdated and do not reflect how information is classified by the Executive Branch today.

Legal scholars and commentators have criticized the current framework, and over the years, some federal courts have as well. In 2006, after reviewing the many developments in the law and changes in society that had taken place since the enactment of the espionage statutes, one district court judge stated that ''the time is ripe for Congress'' to reexamine them. *United States* v. *Rosen*, 445 F. Supp. 2d 602, 646, E.D. Va. 2006, Ellis, J. Nearly 20 years earlier in the Morison case, one federal appellate judge stated that ''[i]f one thing is clear, it is that the Espionage Act statutes as now broadly drawn are unwieldy and imprecise instruments for prosecuting government 'leakers' to the press as opposed to government 'moles' in the service of other countries.'' That judge also stated that ''carefully drawn legislation'' was a ''better long-term resolution'' than judicial intervention. See *United States* v. *Morison*, 844 F.2d 1057, 1086, 4th Cir. 1988.

As the former Chairman of the Senate Judiciary's Terrorism and Homeland Security Subcommittee, I chaired a Subcommittee hearing on May 12, 2010, entitled ''The Espionage Statutes: A Look Back and A Look Forward.'' At that Subcommittee hearing, I questioned a number of witnesses, which included witnesses from academia as well as former officials from the intelligence and law enforcement communities, about how well the espionage statutes have been working. And since that hearing, I have been closely and carefully reviewing these statutes, particularly in the context of recent events. I am convinced that changes in technology and society, combined with statutory and judicial changes to the law, have rendered some aspects of our espionage laws less effective than they need to be to protect the national security. I also believe that we need to enhance our ability to prosecute spies as well as those who make unauthorized disclosures of classified information. We don't need an Official State Secrets Act, and we must be careful not to chill protected First Amendment activities. We do, however, need to do a better job of preventing unauthorized disclosures of classified information that can harm the United States, and at the same time we need to ensure that public debates continue to take place on important national security and foreign policy issues.

As a result, today I am reintroducing the Espionage Statutes Modernization Act, ESMA. This legislation makes important improvements to the espionage statutes to make them more effective and relevant in the 21st century. This legislation is narrowly-tailored and balanced, and will enable the government to use a separate criminal statute to prosecute government employees who make unauthorized disclosures of classified information in violation of the nondisclosure agreements they have entered, irrespective of whether they intend to aid a foreign government or harm the United States.

This legislation is not designed to make it easier for the government to prosecute the press, to chill First Amendment freedoms, or to make it more difficult to expose government wrongdoing. In fact, the proposed legislation promotes the use of Federal whistleblower statutes and regulations to report unlawful and other improper conduct. Unauthorized leaks of classified information, however, are harmful to the national security and could endanger lives. Thus, in addition to proposing important refinements to the espionage statutes, this legislation will deter unauthorized leaks of classified information by government employees who knowingly and intentionally violate classified information nondisclosure agreements.

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. 355

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 ''The Espionage Statutes Modernization Act of 2011''.

SEC. 2. FINDINGS.

Congress finds the following:

(1) As of 2011, the statutory framework with respect to the espionage statutes is a compilation of statutes that began with Act of June 15, 1917 (40 Stat. 217, chapter 30)(commonly known as the ''Espionage Act of 1917''), which targeted classic espionage cases involving persons working on behalf of foreign nations.

(2) The statutory framework was formed at a time when intelligence and national security information existed primarily in a tangible form, such as blueprints, photographs, maps, and other documents.

(3) Since 1917, the United States has witnessed dramatic changes in intelligence and national security information, including technological advances that have revolutionized information gathering abilities as well as the mediums used to communicate such information.

(4) Some of the terms used in the espionage statutes are obsolete and the statutes do not fully take into account the classification levels that apply to national security information in the 21st century.

(5) In addition, the statutory framework was originally designed to address classic espionage cases involving persons working on behalf of foreign nations. However, the national security of the United States could be harmed, and lives may be put at risk, when a Government officer, employee, contractor, or consultant with access to classified information makes an unauthorized disclosure of the classified information, irrespective of whether the Government officer, employee, contractor, or consultant intended to aid a foreign nation or harm the United States.

(6) Federal whistleblower protection statutes and regulations that enable Government officers, employees, contractors, and consultants to report unlawful and improper conduct are appropriate mechanisms for reporting such conduct.

(7) Congress can deter unauthorized disclosures of classified information and thereby protect the national security by—

(A) enacting laws that improve, modernize, and clarify the espionage statutes and make the espionage statutes more relevant and effective in the 21st century in the prosecution of persons working on behalf of foreign powers;

(B) promoting Federal whistleblower protection statutes and regulations to enable Government officers, employees, contractors, or consultants to report unlawful and improper conduct; and

(C) enacting laws that separately punish the unauthorized disclosure of classified information by Government officers, employees, contractors, or consultants who knowingly and intentionally violate a classified information nondisclosure agreement, irrespective of whether the officers, employees, contractors, or consultants intend to aid a foreign power or harm the United States.

SEC. 3. CRIMES.

(a) IN GENERAL.—Chapter 37 of title 18, United States Code, is amended—

(1) in section 793—

(A) in the section heading, by striking ''**or losing defense information**'' and inserting ''**or, losing national security information**'';

(B) by striking ''the national defense'' each place it appears and inserting ''national security'';

(C) by striking ''foreign nation'' each place it appears and inserting ''foreign power'';

(D) in subsection (b), by inserting ''classified information, or other'' before ''sketch'';

(E) in subsection (c), by inserting ''classified information, or other'' before ''document'';

(F) in subsection (d), by inserting ''classified information, or other'' before ''document'';

(G) in subsection (e), by inserting ''classified information, or other'' before ''document'';

(H) in subsection (f), by inserting ''classified information,'' before ''document''; and

(I) in subsection (h)(1), by striking ''foreign government'' and inserting ''foreign power'';

(2) in section 794—

(A) in the section heading, by striking ''**Gathering**'' and all that follows and inserting ''**Gathering or delivering national security information to aid foreign powers**''; and

(B) in subsection (a)—

(i) by striking ''foreign nation'' and inserting ''foreign power'';

(ii) by striking ''foreign government'' and inserting ''foreign power'';

(iii) by inserting ''classified information,'' before ''document'';

(iv) by striking ''the national defense'' and inserting ''national security''; and

(v) by striking ''(as defined in section 101(a) of the Foreign Intelligence Surveillance Act of 1978)'';

(3) in section 795(a), by striking ''national defense'' and inserting ''national security'';

(4) in section 798—

(A) in subsection (a), by striking ''foreign government'' each place it appears and inserting ''foreign power''; and

(B) in subsection (b)—

(i) by striking the first undesignated paragraph (relating to the term ''classified information''); and

(ii) by striking the third undesignated paragraph (relating to the term ''foreign government''); and

(5) by adding at the end the following:

''§ 800. Definitions

''In this chapter—

''(1) the term 'classified information' has the meaning given the term in section 1 of the Classified Information Procedures Act (18 U.S.C. App.);

''(2) the term 'foreign power' has the meaning given the term in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801); and

''(3) the term 'national security' has the meaning given the term in section 1 of the Classified Information Procedures Act (18 U.S.C. App.).''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of section for chapter 37 of title 18, United States Code, is amended—

(1) by striking the item relating to section 793 and inserting the following:

''793. Gathering, transmitting, or losing national security information.'';

(2) by striking the item relating to section 794 and inserting the following:

''794. Gathering or delivering national security information to aid foreign powers.''; and

(3) by adding at the end the following:

''800. Definitions.''.

SEC. 4. VIOLATION OF CLASSIFIED INFORMATION NONDISCLOSURE AGREEMENT.

(a) IN GENERAL.—Chapter 93 of title 18, United States Code, is amended by adding at the end the following:

''§ 1925. Violation of classified information nondisclosure agreement

''(a) DEFINITIONS.—In this section—

''(1) the term 'classified information' has the meaning given the term in section 1 of the Classified Information Procedures Act (18 U.S.C. App.); and

''(2) the term 'covered individual' means an officer, employee, contractor, or consultant of an agency of the Federal Government who, by virtue of the office, employment, position, or contract held by the individual, knowingly and intentionally agrees to be legally bound by the terms of a classified information nondisclosure agreement.

''(b) OFFENSE.—

''(1) IN GENERAL.—Except as otherwise provided in this section, it shall be unlawful for a covered individual to intentionally disclose, deliver, communicate, or transmit classified information, without the authorization of the head of the Federal agency, or an authorized designee, knowing or having reason to know that the disclosure, delivery, communication, or transmission of the classified information is a violation of the terms of the classified information nondisclosure agreement entered by the covered individual.

''(2) PENALTY.—A covered individual who violates paragraph (1) shall be fined under this title, imprisoned for not more than 5 years, or both.

''(c) WHISTLEBLOWER PROTECTION.—The disclosure, delivery, communication, or transmission of classified information by a covered individual in accordance with a Federal whistleblower protection statute or regulation applicable to the Federal agency of which the covered individual is an officer, employee, contractor, or consultant shall not be a violation of subsection (b)(1).

''(d) REBUTTABLE PRESUMPTION.—For purposes of this section, there shall be a rebuttable presumption that information has been properly classified if the information has been marked as classified information in accordance with Executive Order 12958 (60 Fed. Reg. 19825) or a successor or predecessor to the order.

''(e) DEFENSE OF IMPROPER CLASSIFICATION.—The disclosure, delivery, communication, or transmission of classified information by a covered individual shall not violate subsection (b)(1) if the covered individual proves by clear and convincing evidence that at the time the information was originally classified, no reasonable person with original classification authority under Executive Order 13292 (68 Fed. Reg. 15315), or any successor order, could have identified or described any damage to national security that reasonably could be expected to be caused by the unauthorized disclosure of the information.

''(f) EXTRATERRITORIAL JURISDICTION.—There is extraterritorial jurisdiction over an offense under this section.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 93 of title 18, United States Code, is amended by adding at the end the following:

''1925. Violation of classified information nondisclosure agreement.''.

SEC. 5. DIRECTIVE TO SENTENCING COMMISSION.

(a) IN GENERAL.—Pursuant to its authority under section 994 of title 28, United States Code, and in accordance with this section, the United States Sentencing Commission, shall review and, if appropriate, amend the Federal Sentencing Guidelines and policy statements applicable to a person convicted of an offense under section 1925 of title 18, United States Code, as added by this Act.

(b) CONSIDERATIONS.—In carrying out this section, the Sentencing Commission shall ensure that the sentencing guidelines account for all relevant conduct, including—

(1) multiple instances of unauthorized disclosure, delivery, communication, or transmission of the classified information;

(2) the volume of the classified information that was disclosed, delivered, communicated, or transmitted;

(3) the classification level of the classified information;

(4) the harm to the national security of the United States that reasonably could be expected to be caused by the disclosure, delivery, communication, or transmission of the classified information; and

(5) the nature and manner in which the classified information was disclosed, delivered, communicated, or transmitted.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 50—AUTHORIZING EXPENDITURES BY THE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

Mrs. BOXER submitted the following resolution; from the Committee on Environment and Public Works; which was referred to the Committee on Rules and Administration:

S. RES. 50

Resolved, That, in carrying out its powers, duties, and functions under the Standing Rules of the Senate, in accordance with its jurisdiction under rule XXV of such rules, including holding hearings, reporting such hearings, and making investigations as authorized by paragraphs 1 and 8 of rule XXVI of the Standing Rules of the Senate, the Committee on Environment and Public Works is authorized from March 1, 2011, through September 30, 2011; October 1, 2011, through September 30, 2012; and October 1, 2012, through February 28, 2013, in its discretion (1) to make expenditures from the contingent fund of the Senate, (2) to employ personnel, and (3) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable or nonreimbursable basis the services of personnel of any such department or agency.

SEC. 2(a). The expenses of the committee for the period March 1, 2011, through September 30, 2011, under this resolution shall not exceed $3,612,391, of which amount (1) not to exceed $4,666.67 may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946 (2 U.S.C. 72a(i))), and (2) not to exceed $1,166.67 may be expended for the training of the professional staff of such committee (under procedures specified by section 202(j) of that Act).

(b) For the period October 1, 2011, through September 30, 2012, expenses of the committee under this resolution shall not exceed $6,192,669, of which amount (1) not to exceed $8,000 may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946 (2 U.S.C. 72a(i))), and (2) not to exceed $2,000 may be expended for the training of the professional staff of such committee (under procedures specified by section 202(j) of that Act).

(c) For the period October 1, 2012, through February 28, 2013, expenses of the committee under this resolution shall not exceed $2,580,278, of which amount (1) not to exceed $3,333.33 may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946 (2 U.S.C. 72a(i))), and (2) not to exceed $833.33 may be expended for the training of the professional staff of such committee (under procedures specified by section 202(j) of that Act).

SEC. 3. The committee shall report its findings, together with such recommendations for legislation as it deems advisable, to the Senate at the earliest practicable date, but not later than February 28, 2013.

SEC. 4. Expenses of the committee under this resolution shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the committee, except that vouchers shall not be required (1) for the disbursement of salaries of employees paid at an annual rate, or (2) for the payment of telecommunications provided by the Office of the Sergeant at Arms and Doorkeeper, United States Senate, or (3) for the payment of stationery supplies purchased through the Keeper of the Stationery, United States Senate, or (4) for payments to the Postmaster, United States Senate, or (5) for the payment of metered charges on copying equipment provided by the Office of the Sergeant at Arms and Doorkeeper, United States Senate, or (6) for the payment of Senate Recording and Photographic Services, or (7) for payment of franked and mass mail costs by the Sergeant at Arms and Doorkeeper, United States Senate.

SEC. 5. There are authorized such sums as may be necessary for agency contributions related to the compensation of employees of the committee from March 1, 2011, through September 30, 2011; October 1, 2011 through September 30, 2012; and October 1, 2012, through February 28, 2013, to be paid from the Appropriations account for ''Expenses of Inquiries and Investigations''.